

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION, and
STATE OF MINNESOTA, by its Attorney
General, Lori Swanson,

Plaintiffs,

v.

SELLERS PLAYBOOK, INC., a corporation,

EXPOSURE MARKETING COMPANY, a
corporation also, d/b/a Sellers Online and
Sellers Systems,

JESSIE CONNERS TIEVA, individually and
as an officer of SELLERS PLAYBOOK, INC.
and EXPOSURE MARKETING COMPANY,
and

MATTHEW R. TIEVA, individually and as an
officer of SELLERS PLAYBOOK, INC. and
EXPOSURE MARKETING COMPANY,

Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**TEMPORARY RECEIVER'S
MOTION FOR ORDER
APPROVING AND AUTHORIZING
FOR PAYMENT OF RECEIVER'S
AND PROFESSIONAL'S FEES
AND COSTS FROM INCEPTION
OF THE RECEIVERSHIP
THROUGH SEPTEMBER 30, 2018**

Pursuant to Section XIX of the Temporary Restraining Order, as modified by the Order Approving Stipulation Extending Deadline for Temporary Receiver to File Initial Request for Compensation Pursuant to Section XIX of the Temporary Restraining Order, the Temporary Receiver, Robb Evans & Associates LLC ("Receiver"), moves the Court for an order approving and authorizing for payment the receivership fees and costs incurred from the inception of the receivership, July 30, 2018, through September 30, 2018 ("Initial

Expense Period”). The Receiver specifically moves the Court for an order: (1) approving in full and authorizing for payment at such time as there becomes available funds in the receivership estate to do so and the Receiver determines in its discretion that such payment is prudent and appropriate based on available funds, the fees of the Receiver, the Receiver’s members, staff and professionals, and reimbursement of costs, comprised of (a) Receiver’s fees, including the Receiver’s members and staff, of \$83,082.45, and Receiver’s costs of \$13,092.08, **for a total of \$96,174.53**; and (b) Receiver’s counsel, Barnes & Thornburg LLP’s (“Barnes & Thornburg”) fees of \$15,244.10 and its costs of \$464.77, **for a total of \$15,708.87**.

The Receiver does not presently have on hand funds in the receivership estate in which to pay the fees and costs requested for approval pursuant to this Motion. The Receiver therefore seeks, as part of this Motion, an order providing that the Receiver is authorized to pay approved fees and costs awarded pursuant to this Motion at such time as there becomes available funds in the receivership estate to do so and the Receiver determines in its discretion that such payment is prudent and appropriate based on available funds, and that if funds become available to pay less than all approved fees and costs, payment shall be made on a pro rata basis as between the Receiver and Barnes & Thornburg.

This Motion is made and based on the supporting Memorandum of Law, Declarations of Brick Kane and Gary Owen Caris filed herewith and exhibits attached thereto, the files, records, pleadings and proceedings herein, and such other and further oral

documentary evidence as may be presented by the Receiver at or prior to the hearing on the Motion.

Dated: October 26, 2018

Respectfully submitted,

BARNES & THORNBURG LLP

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and

By: /s/ Gary Owen Caris

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

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FEDERAL TRADE COMMISSION, and
STATE OF MINNESOTA, by its Attorney
General, Lori Swanson,

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SELLERS PLAYBOOK, INC., a corporation,

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corporation also, d/b/a Sellers Online and
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JESSIE CONNERS TIEVA, individually and
as an officer of SELLERS PLAYBOOK, INC.
and EXPOSURE MARKETING COMPANY,
and

MATTHEW R. TIEVA, individually and as an
officer of SELLERS PLAYBOOK, INC. and
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Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**MEMORANDUM OF LAW IN
SUPPORT OF TEMPORARY
RECEIVER'S MOTION FOR
ORDER APPROVING AND
AUTHORIZING FOR PAYMENT
OF RECEIVER'S AND
PROFESSIONAL'S FEES AND
COSTS FROM INCEPTION OF
THE RECEIVERSHIP ESTATE
THROUGH SEPTEMBER 30, 2018**

MEMORANDUM OF LAW

I. INTRODUCTION

This lawsuit was commenced by the Federal Trade Commission (“FTC”) and the State of Minnesota (“Minnesota”) with a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) (“Complaint”) on July 30, 2018 against Sellers Playbook, Inc. (“Sellers Playbook”), Exposure Marketing Company (“Exposure Marketing”), Jessie

Conners Tieva (“Jessie Tieva”), individually and as an officer of those entities, and Matthew R. Tieva (“Matthew Tieva”), individually and as an officer of those entities (collectively, the “Defendants”). As described in the Complaint, Defendants were alleged to lure consumers into purchasing expensive business opportunities by deceptively offering consumers the tools to earn substantial sums of money by implementing the Defendants’ customized system to sell products on Amazon effectively and profitably. As detailed in the Report of Receiver’s Activities From August 1, 2018 Through September 25, 2018 (Doc. 48) (“Receiver’s Report”), Sellers Playbook and Exposure Marketing generated total revenue of \$26 million from January 2015 to August 2018, of which approximately \$23 million was received from consumers from March 2017 to August 2018.

The Receiver became temporary receiver pursuant to the Temporary Restraining Order (Doc. 29) (“TRO”) entered on July 30, 2018. Under the TRO, the Receiver became temporary receiver over the “Receivership Entities,” defined in the TRO to mean Sellers Playbook, Exposure Marketing, and each of their subsidiaries, affiliates, successors and assigns (all of the foregoing referred to as “Corporate Defendants” at Definition B), and “any other entity that the 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.” (Definition M) The TRO was extended pursuant to a stipulated Order Extending the Duration of the Temporary Restraining Order and Postponing Preliminary Hearing (Doc. 39) (“Order Extending TRO”) until the Court issues a ruling on the Plaintiffs’ request for a preliminary injunction or further order of the Court and the preliminary injunction hearing was re-set for December 4, 2018.

Under Section XIX of the TRO, the Receiver is required to file its initial request for compensation no more than sixty days from the date of entry of the TRO. Pursuant to stipulation of the parties and the Receiver, the Court issued its Order Approving Stipulation Extending Deadline for Temporary Receiver to File Initial Request for Compensation Pursuant to Section XIX of the Temporary Restraining Order (Doc. 47), extending the deadline for the Receiver to file with the Court and serve on the parties the initial request for compensation to October 29, 2018. The Motion accompanying this Memorandum of Law is the initial request for compensation and covers the period from July 30, 2018, the date services were first rendered by the Receiver in anticipation of taking possession and control of the Receivership Entities, through September 30, 2018 (“Initial Expense Period”).

As evidenced by the detailed billing records which accompany the Declaration of Brick Kane (“Kane Declaration”) in support of the Motion, marked as Exhibits 2, 3 and 4 to the Kane Declaration, the initial period of this receivership, like almost all equity

receiverships, required the Receiver to render extensive services in gaining possession and control of the Receivership Entities' business and operations, including their paper and electronic records, analyzing the financial operations and results of the Receivership Entities, communicating extensively with the Plaintiffs, representatives and employees of the Receivership Entities, creditors and consumers, and preparing an initial report to the Court as to the progress of the receivership. The services rendered by the Receiver, its members, staff and counsel during the Initial Expense Period have been extensive, varied, necessary and appropriate. The services of the Receiver and its counsel are summarized separately below and described in the detailed billing records attached to the Kane Declaration and the Declaration of Gary Owen Caris ("Caris Declaration").

As is also typical of many equity receiverships, after the intensive initial period of the receivership, the Receiver's services lessened as evidenced by the significant decrease in Receiver's fees incurred in September (\$11,532.30) than those incurred from July 30 through the end of August (\$71,550.15).

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

The Receiver seeks payment of the Receiver's fees and costs summarized in the Receivership Administrative Expense and Fund Balance spreadsheet ("Financial Summary") attached as Exhibit 1 to the Kane Declaration, together with the detailed billing records of the Receiver, attached to the Kane Declaration as Exhibits 2, 3 and 4.¹

¹ As explained in the Caris Declaration, the bills have been redacted where appropriate to preserve confidential, sensitive, tactical, strategic, attorney-client privileged and/or work-product information.

During the Initial Expense Period, the Receiver has incurred fees for the Receiver and its members of \$27,189.00, senior staff fees of \$55,584.45 and support staff fees of \$309.00, for total Receiver's fees of \$83,082.45. The Receiver's costs during the Initial Expense Period total \$13,092.08, mostly comprised of travel expenses between California or Nevada and Minnesota for six members of the Receiver's team in the amount of \$12,302.12. The Receiver's costs are detailed in the Financial Summary.

The Receiver commenced work on July 30, 2018 as it began to prepare for entry onto the Receivership Entities' premises and control of the business operations. On July 31, 2018, six members and senior staff of the Receiver traveled to Minneapolis in order to take control of the business operations. As indicated on the billing records, all of the Receiver's travel time to and from Minneapolis was charged at one-half of the actual time spent traveling. Prior to entering the business premises on August 1, 2018, the Receiver consulted with the Plaintiffs and coordinated its entry with Plaintiffs and law enforcement personnel. On August 1, 2018 the Receiver entered the business premises in New Hope, Minnesota where Sellers Playbook was operating. The Receiver did not discover any information that indicated Exposure Marketing had any ongoing operations at the business premises.

Each of the Receiver's representatives on-site was assigned different duties during the initial day's work to avoid duplication of effort and to increase efficiency. After taking control of the premises, the Receiver completed a photographic inventory of receivership assets and interviewed the individual Defendants and employees. The Receiver commenced its review and preservation of paper and electronic documents.

QuickBooks accounting documents and Google Docs were downloaded and preserved. The Receiver determined that most of the office and warehouse space was occupied and operated by Northland Mechanical Contractors, Inc. (“Northland”), a company owned by Matthew Tieva and his family. The Receiver interviewed management personnel with Northland. The Receiver secured the area occupied by Sellers Playbook so as not to interrupt the ongoing, unrelated business activities of Northland. The Receiver also determined that the portion of inventory in Sellers Playbook’s portion of the warehouse belonged to Sellers Playbook’s consumers and not Sellers Playbook. The Receiver was able to suspend Sellers Playbook’s operations and return from Minneapolis after only one day on site.

Much work remained to be done during the early days of the receivership. Sellers Playbook maintained an internet-based Consumer Records Management (“CRM”) system with Infusionsoft. The Receiver served the TRO on Infusionsoft and obtained two databases containing the CRM. The Receiver also served the TRO on various financial institutions, merchant processors, domain name vendors and website hosts, as well as Intuit (the Receivership Entities’ payroll processor), and Fully Accountable (Sellers Playbook’s outside accountant). This led to freezing Receivership Entities’ funds of approximately \$1.62 million, including merchant reserves of approximately \$1.43 million and funds held in Sellers Playbook’s bank account at Fidelity Bank in the amount of approximately \$192,000. The Receiver also obtained tax returns from the Receivership Entities’ outside tax accountant, Malloy, Montague, Karnowski, Radosevich & Co. (“Malloy”) in order to review financial results for Exposure Marketing, because there

were no accounting records for that entity.

The Receiver undertook a detailed financial review and analysis of the Receivership Entities based on its analysis of the paper and electronic records it obtained from the Receivership Entities, Fully Accountable and Malloy, including the QuickBooks accounting file for Sellers Playbook, tax returns for Exposure Marketing, monthly merchant processing account statements, bank statements, and research of public records. The results of the Receiver's financial analysis are set forth in the detailed Receiver's Report which was filed on September 28, 2018, shortly before the end of the Initial Expense Period. Among other things, the Receiver's Report detailed the amount of sales and income generated by the Receivership Entities, the amount of refunds and chargebacks, and the Receivership Entities' sources of revenue. The Receiver's Report also itemized the cost of goods sold and expenses incurred, and detailed compensation paid to Defendants Matthew Tieva and Jessie Tieva.

During the Initial Expense Period, the Receiver also addressed unpaid payroll issues in order to determine the extent to which employees were owed money for unpaid pre-receivership salary and determined that Sellers Playbook employees are owed approximately \$42,000 for their final paychecks. It addressed the return of merchandise located in the Sellers Playbook warehouse belonging to approximately 37 consumers who purchased products and had them shipped to Sellers Playbook. It communicated with merchant processors to determine the extent of funds held in merchant reserve accounts and the extent of potential chargebacks. The Receiver and its counsel have been engaged in communications with the merchant processors and the FTC regarding the funds held in

merchant reserve accounts. The Receiver has also been involved in communications with Fidelity Bank over its claim to a security interest in the \$192,000 held at that bank, as more particularly set forth below.

The Receiver has also had extensive communications with consumers throughout the Initial Expense Period, and it prepared a notice to consumers advising them of the receivership which was posted on the Receiver's website. The Receiver also created an e-mail address for this receivership. It also took steps to terminate all campaign e-mails issued by Sellers Playbook. The Receiver also analyzed a pre-receivership promissory note in the amount of \$1,510,000 in favor of Capsource Inc. ("Capsource") to JC Commercial Holdings LLC, a company solely owned by Defendant Jessie Tieva. It also responded to a subpoena served on it in connection with a lawsuit between non-Receivership Entities in Arizona.

During the Initial Expense Period, the Receiver was advised that the FTC and Minnesota were engaged in settlement negotiations with the Defendants. It had discussions with the FTC and Minnesota about various issues, including assets not part of the receivership estate but owned by the individual Defendants, in connection with these settlement negotiations.

As noted above, after the initial period of intense activity, the Receiver has been able to significantly reduce its time incurred and fees billed during the last month of the Initial Expense Period, to \$11,532.30, after billing \$71,550.15 from July 30, 2018 through August 31, 2018.

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

The Receiver also seeks approval of its counsel's fees and expenses summarized in the Financial Summary, Exhibit 1 to the Kane Declaration, and set forth in the detailed billing records of Barnes & Thornburg LLP ("Barnes & Thornburg"), attached as Exhibits 1 and 2 to the Caris Declaration. During the Initial Expense Period, the Receiver incurred fees to Barnes & Thornburg of \$15,244.10 and costs of \$464.77, for a total of \$15,708.87.

Barnes & Thornburg performed a variety of services during the Initial Expense Period, as more particularly set forth in the detailed billing records. Along with the Receiver and the FTC, it addressed whether Northland was properly considered a Receivership Entity, and concluded it was not. It addressed an arbitration proceeding commenced against Sellers Playbook prior to the inception of the receivership and took steps in an effort to ensure that the matter was stayed pursuant to the TRO, including communicating with Sellers Playbook's pre-receivership counsel who were defending the arbitration. The firm assisted in the filing of the Receiver's bond at the outset of the receivership. Barnes & Thornburg reviewed and revised a consumer notice posted on the Receiver's website.

The firm also analyzed and assisted the Receiver with respect to payroll issues. It monitored the status of settlement discussions between the parties as those discussions impacted the Receiver. Barnes & Thornburg also reviewed loan documentation in connection with the Capsource promissory note. Barnes & Thornburg also reviewed,

suggested revisions to and filed the Receiver's Report.

Barnes & Thornburg also addressed various issues in communications with parties to the litigation and with third parties. It addressed merchant processing issues with the FTC and with the principal merchant processor and its merchant processing bank, Qualpay and Synovus Bank respectively. Barnes & Thornburg also addressed Fidelity Bank's secured claim in the deposit account held in the name of Sellers Playbook and reached an interim agreement with the FTC and Fidelity Bank to freeze that account pending a resolution of the bank's secured claim. It also communicated with counsel for Nevada Corporate Headquarters involving a lawsuit it filed after the TRO was entered and advised counsel for that entity that the lawsuit violated the stay provisions in the TRO. It also reviewed a draft affidavit requested by counsel in Arizona regarding the Receiver's production of documents pursuant to a subpoena served on the Receiver in connection with a third party lawsuit between non-Receivership Entities and communicated with Arizona counsel about the affidavit. The firm also prepared a stipulation and proposed order, approved by the Court, to extend by one month the time for the initial fee motion to be filed and served.

While Caris is the lead attorney for the Receiver on this matter, who works in the firm's Los Angeles office, Barnes & Thornburg has utilized its local office in Minneapolis to assist as local counsel and ensure that Caris was properly admitted *pro hac vice* and that the firm is complying with all applicable local rules and procedures.

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

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

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

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

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

[I]t is sometimes difficult to ascertain what type of benefits a receiver has bestowed on receivership property [A] benefit to a secured party may take more subtle forms than a bare increase in monetary value. Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently

discharges his duties, he is entitled to compensation.
[Citations omitted.]

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

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

The Receiver and its professionals have performed extensive and wide-ranging tasks during the Initial Expense Period. This motion establishes that the Receiver, its members, staff and professionals rendered reasonable and necessary services for the receivership estate during this Initial Expense Period that were beneficial to the estate. *See Federal Trade Commission v. Capital Acquisitions & Management Corp.*, 2005 U.S. Dist. LEXIS 18504 (N.D. Ill. August 26, 2005). The Receiver submits the fees are reasonable in light of the services rendered, and that the fees and expenses requested should be awarded in their entirety.

The Receiver does not presently have on hand funds in the receivership estate in which to pay the fees and costs requested for approval herein, although there is approximately \$1.62 million in frozen funds, including merchant reserves of approximately \$1.43 million. As part of the fee motion, the Receiver seeks an order providing that the Receiver is authorized to pay the approved fees and costs awarded

pursuant to this Motion at such time as there becomes available funds in the receivership estate to do so and the Receiver determines in its discretion that such payment is prudent and appropriate based on available funds. The proposed order further provides that if funds become available to pay less than all approved fees and costs, payment shall be made on a pro rata basis as between the Receiver and its counsel.

V. **CONCLUSION**

Based on the Notice of Hearing, Motion, this supporting Memorandum of Law, Kane Declaration, Caris Declaration, and supporting exhibits, it is respectfully requested that the Court grant the Motion in its entirety, and approve and authorize for payment, when funds become available and the Receiver determines that it is prudent and appropriate to do so, the fees and costs of the Receiver and its counsel as set forth herein.

Dated: October 26, 2018

Respectfully submitted,

BARNES & THORNBURG LLP

Christopher Lynch (#0284154)
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402
(612) 333-2111

and

By: /s/ Gary Owen Caris

Gary Owen Caris
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ROBB EVANS & ASSOCIATES LLC

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**DECLARATION OF BRICK KANE
IN SUPPORT OF TEMPORARY
RECEIVER'S MOTION FOR
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AUTHORIZING FOR PAYMENT
OF RECEIVER'S AND
PROFESSIONAL'S FEES AND
COSTS FROM INCEPTION OF
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THROUGH SEPTEMBER 30, 2018**

I, Brick Kane, declare:

1. I am the President of Robb Evans & Associates LLC. Robb Evans & Associates LLC ("Receiver") was appointed as temporary receiver pursuant to the Temporary Restraining Order ("TRO") entered on July 30, 2018. Under the TRO, the Receiver became temporary receiver over the "Receivership Entities," defined in the TRO to mean Sellers Playbook, Inc. ("Sellers Playbook"), Exposure Marketing Company

(“Exposure Marketing”), and each of their subsidiaries, affiliates, successors and assigns (all of the foregoing referred to as “Corporate Defendants” at Definition B), and “any other entity that the 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.” (Definition M)

2. I have been one of the members of Robb Evans & Associates LLC primarily responsible for the supervision, management and administration of the receivership estate, the Receiver’s taking possession and control of the business and operations of the Receivership Entities, the review and investigation of the business and operations of the Receivership Entities, and the Receiver’s exercise of the other powers and duties set forth in the TRO. I have been involved in the Receiver’s review and detailed analysis of the Receivership Entities’ financial records and other business records and files. I was personally involved in the preparation of the Report of Receiver’s Activities From August 1, 2018 Through September 25, 2018 (“Receiver’s Report”) filed September 28, 2018. I have personal knowledge of the matters set forth in this declaration, and if I were called upon to testify as to these matters I could and would competently testify thereto based on my personal knowledge.

3. The Receiver seeks payment of the Receiver’s fees and costs summarized in the Receivership Administrative Expense and Fund Balance spreadsheet (“Financial

Summary”) attached hereto as Exhibit 1, together with the detailed billing records of the Receiver, attached hereto as Exhibits 2, 3 and 4 for the period from the inception of the receivership estate, July 30, 2018, the date services were first rendered by the Receiver in anticipation of taking possession and control of the Receivership Entities, through September 30, 2018 (“Initial Expense Period”). During the Initial Expense Period, the Receiver has incurred fees for the Receiver and its members of \$27,189.00, senior staff fees of \$55,584.45 and support staff fees of \$309.00, for total Receiver’s fees of \$83,082.45. The Receiver’s costs during the Initial Expense Period total \$13,092.08, mostly comprised of travel expenses between California or Nevada and Minnesota for six members of the Receiver’s team in the amount of \$12,302.12. The Receiver’s costs are detailed in the Financial Summary.

4. As evidenced by the billing records, the initial period of this receivership, like almost all equity receiverships, required the Receiver to render extensive services in gaining possession and control of the Receivership Entities’ business and operations, including their paper and electronic records, analyzing the financial operations and results of the Receivership Entities, communicating extensively with the Plaintiffs, representatives and employees of the Receivership Entities, creditors and consumers, and preparing an initial report to the Court as to the progress of the receivership. Based on my experience, I know it is often the case that after the intensive initial period of the receivership, the Receiver’s time spent and fees incurred are significantly reduced. Such was the case here, as evidenced by the significant decrease in Receiver’s fees incurred in September (\$11,532.30) than those incurred from July 30 through the end of August

(\$71,550.15).

5. The Receiver commenced work on July 30, 2018 as it began to prepare for entry onto the Receivership Entities' premises and control of the business operations. On July 31, 2018, I along with five other members and senior staff of the Receiver traveled to Minneapolis in order to take control of the business operations. As indicated on the billing records, all of the Receiver's travel time to and from Minneapolis was charged at one-half of the actual time spent traveling. Prior to entering the business premises on August 1, 2018, the Receiver consulted with the Plaintiffs and coordinated its entry with Plaintiffs and law enforcement personnel. On August 1, 2018 the Receiver entered the business premises in New Hope, Minnesota where Sellers Playbook was operating. The Receiver did not discover any information that indicated Exposure Marketing had any ongoing operations at the business premises.

6. Each of the Receiver's representatives on-site was assigned different duties during the initial day's work to avoid duplication of effort and to increase efficiency. After taking control of the premises, the Receiver completed a photographic inventory of receivership assets and interviewed the individual Defendants and employees. The Receiver commenced its review and preservation of paper and electronic documents. QuickBooks accounting documents and Google Docs were downloaded and preserved. The Receiver determined that most of the office and warehouse space was occupied and operated by Northland Mechanical Contractors, Inc. ("Northland"), a company owned by Matthew Tieva and his family. The Receiver interviewed management personnel with Northland. The Receiver secured the area occupied by Sellers Playbook so as not to

interrupt the ongoing, unrelated business activities of Northland. The Receiver also determined that the portion of inventory in Sellers Playbook's portion of the warehouse belonged to Sellers Playbook's consumers and not Sellers Playbook. The Receiver was able to suspend Sellers Playbook's operations and return from Minneapolis after only one day on site.

7. Much work remained to be done during the early days of the receivership. Sellers Playbook maintained an internet-based Consumer Records Management ("CRM") system with Infusionsoft. The Receiver served the TRO on Infusionsoft and obtained two databases containing the CRM. The Receiver also served the TRO on various financial institutions, merchant processors, domain name vendors and website hosts, as well as Intuit (the Receivership Entities' payroll processor), and Fully Accountable (Sellers Playbook's outside accountant). This led to freezing Receivership Entities' funds of approximately \$1.62 million, including merchant reserves of approximately \$1.43 million and funds held in Sellers Playbook's bank account at Fidelity Bank in the amount of approximately \$192,000. The Receiver also obtained tax returns from the Receivership Entities' outside tax accountant, Malloy, Montague, Karnowski, Radosevich & Co. ("Malloy") in order to review financial results for Exposure Marketing, because there were no accounting records for that entity.

8. The Receiver undertook a detailed financial review and analysis of the Receivership Entities based on its analysis of the paper and electronic records it obtained from the Receivership Entities, Fully Accountable and Malloy, including the QuickBooks accounting file for Sellers Playbook, tax returns for Exposure Marketing, monthly

merchant processing account statements, bank statements, and research of public records. The results of the Receiver's financial analysis are set forth in the detailed Receiver's Report which was filed on September 28, 2018, shortly before the end of the Initial Expense Period. Among other things, the Receiver's Report detailed the amount of sales and income generated by the Receivership Entities, the amount of refunds and chargebacks, and the Receivership Entities' sources of revenue. The Receiver's Report also itemized the cost of goods sold and expenses incurred, and detailed compensation paid to Defendants Matthew Tieva and Jessie Tieva.

9. During the Initial Expense Period, the Receiver also addressed unpaid payroll issues in order to determine the extent to which employees were owed money for unpaid pre-receivership salary and determined that Sellers Playbook employees are owed approximately \$42,000 for their final paychecks. It addressed the return of merchandise located in the Sellers Playbook warehouse belonging to approximately 37 consumers who purchased products and had them shipped to Sellers Playbook. It communicated with merchant processors to determine the extent of funds held in merchant reserve accounts and the extent of potential chargebacks. The Receiver and its counsel have been engaged in communications with the merchant processors and the FTC regarding the funds held in merchant reserve accounts. The Receiver has also been involved in communications with Fidelity Bank over its claim to a security interest in the \$192,000 held at that bank.

10. The Receiver has also had extensive communications with consumers throughout the Initial Expense Period, and it prepared a notice to consumers advising them of the receivership which was posted on the Receiver's website. The Receiver also

created an e-mail address for this receivership. It also took steps to terminate all campaign e-mails issued by Sellers Playbook. The Receiver also analyzed a pre-receivership promissory note in the amount of \$1,510,000 in favor of Capsource Inc. (“Capsource”) to JC Commercial Holdings LLC, a company solely owned by Defendant Jessie Tieva. It also responded to a subpoena served on it in connection with a lawsuit between non-Receivership Entities in Arizona.

11. During the Initial Expense Period, the Receiver was advised that the FTC and Minnesota were engaged in settlement negotiations with the Defendants. It had discussions with the FTC and Minnesota about various issues, including assets not part of the receivership estate but owned by the individual Defendants, in connection with these settlement negotiations.

12. As noted above, and as is consistent with my experience in many federal equity receivership cases, after the initial period of intense activity, the Receiver has been able to significantly reduce its time incurred and fees billed during the last month of the Initial Expense Period, to \$11,532.30, after billing \$71,550.15 from July 30, 2018 through August 31, 2018.

13. The Receiver does not presently have on hand funds in the receivership estate in which to pay the fees and costs requested for approval herein, although there is approximately \$1.62 million in frozen funds, including merchant reserves of approximately \$1.43 million. The Receiver seeks an order providing that the Receiver is authorized to pay the approved fees and costs awarded pursuant to its fee motion at such time as there becomes available funds in the receivership estate to do so and the Receiver

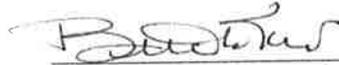
determines in its discretion that such payment is prudent and appropriate based on available funds and that if funds become available to pay less than all approved fees and costs, payment shall be made on a pro rata basis as between the Receiver and its counsel.

14. The billing rates charged by the Receiver in this case reflected in the billing records attached hereto for the Receiver, the Receiver's members and staff are discounted by 10% from the rates charged by the Receiver's firm in private sector cases as of 2018. The Receiver does not raise its rates during the receivership case.

15. As a member of Robb Evans & Associates LLC, I am familiar with the methods and procedures used by the Receiver and its staff and employees to record the time spent rendering services to receivership estates over which Robb Evans & Associates LLC have been appointed. The records attached hereto as Exhibits 2, 3 and 4 are regularly prepared by members, staff and employees of the Receiver at or about the time of the services rendered and each of whom has a business duty to accurately record the information regarding their services set forth in these records. The records are reviewed by the Receiver's accounting staff and summarized in the Financial Summary, Exhibit 1 hereto. As explained in the accompanying Declaration of Gary Owen Caris, the Receiver's time records and the records of its professionals have been redacted where appropriate to preserve descriptions containing confidential, tactical, strategic, attorney-client privileged and/or work-product information. Based upon my experience with Robb Evans & Associates LLC, I believe the Receiver's methods and procedures for recording

and accounting for time and services for the receivership estates over which Robb Evans & Associates LLC have been appointed are reliable and accurate. Based on my experience, I also believe that the fees incurred by the Receiver during the Initial Expense Period are reasonable and appropriate based on the services rendered and the quality and amount of services provided.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 26, 2018 at Sun Valley, California.



BRICK KANE

EXHIBIT 1

Robb Evans & Associates LLC, Receiver of Sellers Playbook, Inc. et al.

Receivership Administrative Expense and Fund Balance

From Inception (July 30, 2018) to September 30, 2018

	<u>Jul 31, 18</u>	<u>Aug 31, 18</u>	<u>Sep 30, 18</u>	<u>TOTAL</u>
Corporate Defendants Assets				
Cash on Premises	0.00	997.00	0.00	997.00
Total Corporate Defendants Assets	<u>0.00</u>	<u>997.00</u>	<u>0.00</u>	<u>997.00</u>
Expenses				
Receiver Fees & Expenses				
Receiver Fees				
Receiver				
B. Kane	1,710.00	6,771.60	1,675.80	10,157.40
V. Miller	1,778.40	7,079.40	0.00	8,857.80
A. Jen	1,641.60	5,711.40	820.80	8,173.80
Total Receiver	<u>5,130.00</u>	<u>19,562.40</u>	<u>2,496.60</u>	<u>27,189.00</u>
Senior Staff				
F. Jen	1,658.25	13,899.15	3,859.20	19,416.60
T. Chung	1,658.25	19,386.45	2,623.05	23,667.75
C. Callahan	810.00	5,422.50	2,317.50	8,550.00
C. DeCius	571.05	2,964.60	157.95	3,693.60
E. Roop	0.00	256.50	0.00	256.50
Total Senior Staff	<u>4,697.55</u>	<u>41,929.20</u>	<u>8,957.70</u>	<u>55,584.45</u>
Support Staff	<u>15.00</u>	<u>216.00</u>	<u>78.00</u>	<u>309.00</u>
Total Receiver Fees	<u>9,842.55</u>	<u>61,707.60</u>	<u>11,532.30</u>	<u>83,082.45</u>
Receiver Expenses				
Email Hosting	0.00	111.00	0.00	111.00
Investigative Search Costs	0.00	309.00	0.00	309.00
Receiver Bond Premium	0.00	232.45	0.00	232.45
Travel Expenses	0.00	12,302.12	0.00	12,302.12
Website Support	0.00	106.46	31.05	137.51
Total Receiver Expenses	<u>0.00</u>	<u>13,061.03</u>	<u>31.05</u>	<u>13,092.08</u>
Legal Fee & Costs				
Barnes & Thornburg LLP				
Legal Fees	0.00	8,724.30	6,519.80	15,244.10
Legal Costs	0.00	464.77	0.00	464.77
Total Barnes & Thornburg LLP	<u>0.00</u>	<u>9,189.07</u>	<u>6,519.80</u>	<u>15,708.87</u>
Total Legal Fee & Costs	<u>0.00</u>	<u>9,189.07</u>	<u>6,519.80</u>	<u>15,708.87</u>
Total Receiver Fees & Expenses	<u>9,842.55</u>	<u>83,957.70</u>	<u>18,083.15</u>	<u>111,883.40</u>
Total Expenses	<u>9,842.55</u>	<u>83,957.70</u>	<u>18,083.15</u>	<u>111,883.40</u>
Fund Balance	<u>(9,842.55)</u>	<u>(82,960.70)</u>	<u>(18,083.15)</u>	<u>(110,886.40)</u>

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION, and

STATE OF MINNESOTA, by its Attorney
General, Lori Swanson,

Plaintiffs,

v.

SELLERS PLAYBOOK, INC., a corporation,

EXPOSURE MARKETING COMPANY, a
corporation also, d/b/a Sellers Online and
Sellers Systems,

JESSIE CONNERS TIEVA, individually and
as an officer of SELLERS PLAYBOOK, INC.
and EXPOSURE MARKETING COMPANY,
and

MATTHEW R. TIEVA, individually and as an
officer of SELLERS PLAYBOOK, INC. and
EXPOSURE MARKETING COMPANY,

Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**DECLARATION OF GARY OWEN
CARIS IN SUPPORT OF
TEMPORARY RECEIVER'S
MOTION FOR ORDER
APPROVING AND AUTHORIZING
FOR PAYMENT OF RECEIVER'S
AND PROFESSIONAL'S FEES
AND COSTS FROM INCEPTION
OF THE RECEIVERSHIP ESTATE
THROUGH SEPTEMBER 30, 2018**

I, Gary Owen Caris, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and admitted *pro hac vice* to the United States District Court for the

District of Minnesota. I am a partner in the law firm of Barnes & Thornburg LLP (“Barnes & Thornburg”). Since the inception of this receivership estate, I have been the attorney primarily responsible for representing the Receiver in this matter and I am its lead counsel. I have personal knowledge of the matters set forth in this declaration, and if I were called upon to testify as to these matters I could and would competently testify thereto.

2. Attached hereto as Exhibits 1 and 2 are copies of the billing records for the attorneys and paralegals at Barnes & Thornburg who performed work on this matter during the period from the inception of the receivership through September 30, 2018 (“Initial Expense Period”). During the Initial Expense Period, the Receiver has incurred attorneys’ fees of \$15,244.10 and costs of \$464.77, for a total of \$15,708.87. 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 and 2, 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, tactical, strategic, attorney-client privileged and or work-product information.

3. Barnes & Thornburg performed a variety of services during the Initial Expense Period, as more particularly set forth in the detailed billing records. Along with the Receiver and the FTC, I addressed whether Northland was properly considered a Receivership Entity, and concluded it was not. The firm addressed an arbitration proceeding commenced against Sellers Playbook, Inc. (“Sellers Playbook”) prior to the inception of the receivership and took steps in an effort to ensure that the matter was

stayed pursuant to the TRO, including communicating with Sellers Playbook's pre-receivership counsel who was defending the arbitration. The firm assisted in the filing of the Receiver's bond at the outset of the receivership. I reviewed and revised a consumer notice posted on the Receiver's website.

4. The firm also analyzed and assisted the Receiver with respect to payroll issues. I monitored the status of settlement discussions between the parties as those discussions impacted the Receiver. I also reviewed loan documentation in connection with the Capsource promissory note described in the Memorandum of Law. Barnes & Thornburg also reviewed, suggested revisions to and filed the Receiver's Report.

5. Barnes & Thornburg also addressed various issues in communications with parties to the litigation and with third parties. It addressed merchant processing issues with the FTC and with the principal merchant processor and its merchant processing bank, Qualpay and Synovus Bank respectively. Barnes & Thornburg also addressed Fidelity Bank's secured claim in the deposit account held in the name of Sellers Playbook and reached an interim agreement with the FTC and Fidelity Bank to freeze that account pending a resolution of the bank's secured claim. I also communicated with counsel for Nevada Corporate Headquarters involving a lawsuit it filed after the TRO was entered and advised counsel for that entity that the lawsuit violated the stay provisions in the TRO. The firm also reviewed a draft affidavit requested by counsel in Arizona regarding the Receiver's production of documents pursuant to a subpoena served on the Receiver in

connection with a third party lawsuit between non-Receiver Entities and communicated with Arizona counsel about the affidavit. The firm also prepared a stipulation and proposed order, approved by the Court, to extend by one month the time for the initial fee motion to be filed and served.

6. While I am the lead attorney for the Receiver on this matter, working in the firm's Los Angeles office, Barnes & Thornburg has utilized its local office in Minneapolis to assist as local counsel and ensure that I was properly admitted *pro hac vice* and that the firm is complying with all applicable local rules and procedures.

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

8. The fees charged by Barnes & Thornburg on this matter reflect a 10% discount off of the standard hourly billing rates charged by the firm in 2018 for lawyers

and paralegals who worked on this matter.

9. I have more than 38 years' experience as a business and commercial litigator and also have extensive experience as a bankruptcy attorney representing creditors in Chapter 11 and Chapter 7 bankruptcy cases. For more than eighteen years, I have also specialized in representing receivers in federal equity receiverships. I believe the rates and the amounts incurred by the Receiver to Barnes & Thornburg for the services rendered during the Initial Expense Period are reasonable and appropriate based on the nature of the services rendered, the quality and amount of services provided, the complexity of the issues involved and other factors under the circumstances.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 26, 2018 at Los Angeles, California.

/s/ Gary Owen Caris
GARY OWEN CARIS