

ROBB EVANS & ASSOCIATES LLC

Receiver of

**Homeland Financial Services, National Support Services, LLC, United Debt Recovery, LLC,
Freedom First Financial, LLC, Prosper Financial Solutions,
USA Debt Co, LLC, aka USADEBT.CO.COM and
Monitor of Nationwide Support Services, Inc.**

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

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**Federal Trade Commission v. Dennis Connelly, et al.
CASE No. SACV 06-701 DOC (RNBx)**

Notice of Motion and Motion for Order:

- (1) Approving Proposed Settlement Agreement with Nationwide Support Services, Inc.; and**
 - (2) Approving Limited Notice of Motion under Local Civil Rule 66-7;**
- Memorandum of Points and Authorities in Support Thereof
Declaration of Kenton Johnson in Support Thereof**

Filed October 31, 2008

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 DENNIS CONNELLY, et al.,

15 Defendants.
16
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CASE NO. SACV-06-701 DOC (RNBx)

**NOTICE OF MOTION AND MOTION
FOR ORDER (1) APPROVING
PROPOSED SETTLEMENT
AGREEMENT WITH NATIONWIDE
SUPPORT SERVICES, INC.; AND (2)
APPROVING LIMITED NOTICE OF
MOTION UNDER LOCAL CIVIL
RULE 66-7; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

**[DECLARATION OF KENTON
JOHNSON FILED CONCURRENTLY
UNDER SEPARATE COVER]**

DATE: November 24, 2008
TIME: 8:30 a.m.
PLACE: Courtroom 9D

1 PLEASE TAKE NOTICE THAT on November 24, 2008 commencing at
2 8:30 a.m. or as soon thereafter as the parties may be heard in Courtroom 9D of the
3 above-entitled Court located at 411 W. 4th Street, Santa Ana, California, Robb
4 Evans and Robb Evans & Associates LLC as Permanent Receiver (“Receiver”) of
5 Homeland Financial Services, Inc., National Support Services, Inc., United Debt
6 Recovery, LLC, and Financial Liberty Services, LLC (for convenience referred to
7 herein as the “Homeland Entities”) will and does hereby move the Court for the
8 following relief:

9 1. An order approving the Receiver’s proposed settlement agreement
10 with Nationwide Support Services, Inc. (“Nationwide”), providing for payment of
11 the sum of \$277,000 by Nationwide to the receivership estate and the retention by
12 the receivership estate of an additional \$170,462.50 in funds previously claimed by
13 Nationwide, plus all accrued interest thereon, in full settlement of all claims of the
14 receivership estate against Nationwide under that certain pre-receivership Purchase
15 Agreement between Nationwide and the receivership entity Financial Liberty
16 Services, Inc. (“FLS”). The settlement agreement with Nationwide further provides
17 for mutual releases between Nationwide and the receivership estate and resolves
18 any claims Nationwide may have against FLS under the Purchase Agreement,
19 including any claims for indemnification thereunder;

20 2. An order deeming the Receiver’s service of notice of this motion and
21 the motion on the parties to this action through service on their counsel of record,
22 service of notice of the hearing on the motion on known non-consumer creditors of
23 the Homeland Entities as well as consumers who have affirmatively contacted the
24 Receiver for a refund, and the Receiver’s posting of the notice of motion and
25 motion, supporting memorandum and declaration on the Receiver’s website for this
26 case at <http://www.robbevans.com/html/homeland.html> pursuant to Local Civil
27 Rules 66-7 and 6-1 to be sufficient and appropriate notice under the circumstances.
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1 This motion is made pursuant to Local Civil Rule 66-7 and is made and
2 based on this notice of motion and motion, the memorandum of points and
3 authorities and declaration of Kenton Johnson in support hereof, the separate notice
4 of hearing on the motion, on the pleadings, records and files of the Court in
5 connection with this action and on such other oral and documentary evidence and
6 arguments of counsel as may be presented by the Receiver prior to or at the hearing
7 on the motion.
8

9 DATED: October 31, 2008

McKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

12 By: /s/ Gary Owen Caris

Gary Owen Caris
Attorneys for Permanent Receiver,
ROBB EVANS and ROBB EVANS &
ASSOCIATES LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 A. Procedural History

4 This action is a civil enforcement action filed by plaintiff Federal Trade
5 Commission (“FTC”) against numerous individual defendants and entities,
6 including Dennis Connolly (“Connolly”), Richard Wade Torkelson (“Torkelson”),
7 Joanne Garneau (“Garneau”), an individual formerly doing business as Prosper
8 Financial Solutions (“Prosper”), Homeland Financial Service, LLC (“Homeland”),
9 National Support Service, LLC (“National”), United Debt Recovery, LLC
10 (“United”), Freedom First Financial LLC (“Freedom”), and USA Debt Co., LLC
11 (“DebtCo”). Robina Capital, Inc. (“Robina”), a corporation owned and controlled
12 by Garneau, assumed the fictitious business name of Prosper (“Robina/Prosper”).
13 By Temporary Restraining Orders entered on August 9, 2006 and August 11, 2006
14 (individually and collectively the “Restraining Order”), the Court appointed Robb
15 Evans and Robb Evans & Associates LLC as Temporary Receiver over defendants
16 Homeland, Prosper, National, United, Freedom, DebtCo and Financial Liberty
17 Services, LLC (“FLS”), and their affiliates, subsidiaries, successors and assigns and
18 any other corporations or businesses under their control. See Temporary
19 Restraining Order entered August 11, 2006, Section X. Such orders further
20 appointed the Receiver as Monitor over the entity Nationwide Support Services,
21 Inc. (“Nationwide”). See Temporary Restraining Order entered August 11, 2006,
22 Section XII. The Court’s August 11, 2006 Temporary Restraining Order which
23 also set the hearing on the Court’s Order to Show Cause regarding issuance of a
24 Preliminary Injunction Order was extended from time to time by various orders of
25 the Court.

26 The Court subsequently issued three preliminary injunction orders. The
27 Stipulated Preliminary Injunction as to Defendant Joanne Garneau filed October 10,
28 2006 provided for the appointment of the Receiver as permanent receiver over

1 Robina/ Prosper, its affiliates, subsidiaries, successors and assigns and any other
2 corporations or businesses under their control, and also provided for the Receiver to
3 continue as Monitor over Nationwide. The Revised Preliminary Injunction with
4 Asset Freeze, Appointment of Receiver and Other Equitable Relief filed
5 October 18, 2006, provided for the Receiver to be appointed as Permanent Receiver
6 over Homeland, National, United, and Liberty. The Stipulated Preliminary
7 Injunction as to Defendants Freedom First Financial, LLC and USA DebtCo, LLC
8 aka USADebtCo.Com Order entered October 13, 2006 provided for the
9 appointment of Robb Evans & Associates LLC as Monitor over DebtCo and
10 Freedom and their affiliates, subsidiaries, successors and assigns and any other
11 corporations or businesses under their control.¹

12 Stipulations were entered between the FTC and certain defendants that have
13 resolved the proceedings with Nationwide, DebtCo and Freedom and certain
14 receivership defendants. The FTC and defendants Garneau and Robina/Prosper
15 entered into a settlement agreement and proposed final order providing for the
16 winding up of Monitor proceedings with respect to Nationwide and the winding up
17 of the Robina/Prosper receivership and for the discharge of the Monitor over
18 Nationwide and the Receiver over Robina/Prosper. The Court approved the
19 settlement agreement, and a final judgment as to Nationwide and Robina/Prosper
20 was entered by the Court on February 23, 2007. The FTC and defendants Freedom
21 and DebtCo entered into a settlement providing for the winding up of the Monitor
22 proceedings with respect to Freedom and DebtCo and discharging the Monitor
23 which was approved by the Court on April 2, 2007. The required payments under
24 these settlements were made to the Receiver, and therefore this receivership
25 proceeding is now limited to proceedings pertaining to the Homeland Entities.

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27 ¹ The October 10, 2006 Stipulated Preliminary Injunction, the October 13,
28 2006 Stipulated Preliminary Injunction and the October 18, 2006 Revised
Preliminary Injunction are referred to individually and collectively herein for
convenience as the "Preliminary Injunction Orders."

1 B. Disputes and Claims Between Receivership Entity FLS and
2 Nationwide

3 Prior to the receivership, Nationwide and the receivership entity FLS entered
4 into a Purchase Agreement dated October 17, 2005 pursuant to which Nationwide
5 purchased all of FLS's assets, as the term assets is defined in the Purchase
6 Agreement. Nationwide purchased the FLS assets for the sum of \$1,560,000. The
7 Purchase Agreement provided for payment of the purchase price over time, with
8 interest and additional payments as provided in that agreement. FLS's rights under
9 the Purchase Agreement are an asset of the receivership estate and enforceable by
10 the Receiver.

11 The Receiver on behalf of FLS contends that Nationwide is obligated to
12 perform under the Purchase Agreement by paying the balance of the unpaid
13 purchase price to the Receiver on behalf of FLS and the receivership estate. As of
14 November 1, 2007, the Receiver calculated the balance due and owing to FLS
15 under the Purchase Agreement as \$878,766.87. Nationwide disputes that this sum
16 remains due and owing, and Nationwide asserted that it has claims against FLS
17 under the Purchase Agreement based on the indemnification provisions in the
18 Purchase Agreement that would reduce or eliminate any remaining balance due
19 FLS under the Purchase Agreement. In addition, the Receiver is holding payments
20 totaling \$170,462.50 made by Note World that Nationwide claims constitute
21 Nationwide's funds which the Receiver should turn over to Nationwide.

22 After the monitorship proceeding covering Nationwide was resolved and the
23 Monitor discharged, in March 2007, Nationwide filed a lawsuit against FLS and the
24 Receiver in the Orange County Superior Court. In addition, Nationwide filed a
25 motion in this action in the District Court for leave to intervene in the receivership
26 for the purpose of pursuing the Nationwide claims against FLS and the Receiver.
27 The Receiver in turn filed a motion for instructions, seeking instructions from the
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1 Court that the Receiver should prosecute the FLS claims for the balance due under
2 the Purchase Agreement against Nationwide.

3 On August 27, 2007, the Court issued its Order Regarding Receiver's Motion
4 for Instructions and Nationwide's Motion to Intervene, pursuant to which the Court
5 denied the motion to intervene and instructed the Receiver to continue its efforts to
6 collect any sums Nationwide may owe to FLS under the Purchase Agreement.

7 Under that Order, the Receiver was also authorized to remove Nationwide's state
8 court action to the District Court or to file an action on behalf of FLS directly in the
9 District Court. Shortly after the Court's ruling, on September 14, 2007, Nationwide
10 dismissed its state court action without prejudice.

11 Nationwide and FLS, through the Receiver, have exchanged information and
12 negotiated a proposed Settlement Agreement to resolve their disputes and claims.
13 The proposed Settlement Agreement is attached as Exhibit 1 to the Declaration of
14 Kenton Johnson filed in support of this Motion.

15 Under the Settlement Agreement, Nationwide will make a cash payment of
16 \$277,000 to the Receiver on behalf of the estate. In addition, the Receiver will be
17 allowed to retain the \$170,462.50 in funds held by the Receiver which Nationwide
18 claimed constituted Nationwide's funds. The Receiver will accept all of the
19 foregoing in full settlement of all claims and demands it may have against
20 Nationwide under the Purchase Agreement, and the Settlement Agreement provides
21 for mutual releases to be exchanged between the parties.

22 By this Motion, the Receiver seeks approval of the proposed Settlement
23 Agreement with Nationwide. The Receiver contends the Settlement Agreement is
24 favorable to the estate by providing funds totaling over \$447,000 to the estate and
25 resolving any claims for indemnification by Nationwide under the Purchase
26 Agreement. The Receiver has determined that the \$170,462.50 in funds it holds are
27 properly Nationwide's so that this settlement has a value of over \$447,000.
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1 In addition, Nationwide asserted that it was owed money by FLS on account
2 of lost business, attorneys' fees and costs of the Monitor which it asserted
3 constituted claims against the receivership estate based on the indemnity provisions
4 of the Purchase Agreement. Under the Purchase Agreement, FLS agreed that
5 Nationwide was not assuming any past liabilities of FLS and further agreed to
6 indemnify Nationwide for any claims, demands or losses arising out of or related to
7 FLS's servicing of past clients. Nationwide has asserted that the allegations of the
8 FTC's complaint against FLS and others in this action was that FLS engaged in
9 improper or ineffective servicing of its clients and that the claims asserted in this
10 action in fact support Nationwide's contention that FLS has significant
11 indemnification liability to Nationwide under the Purchase Agreement. Nationwide
12 claimed its lost business and other damages covered by the indemnity in the
13 Purchase Agreement exceeded any amounts still due FLS for payment of the
14 purchase price under the agreement.

15 The Settlement Agreement resolves these disputes without the estate
16 incurring the substantial expense, delays and risks of litigation under the Purchase
17 Agreement, including both the risk of an adverse determination and the risks of
18 enforcing and collecting any judgment even if the Receiver prevailed. In addition,
19 there are limited assets available for distribution to creditors in this estate. The
20 approval of the Settlement Agreement will bring over \$447,000 in funds into the
21 estate for distribution to creditors promptly. Delays attendant to protracted
22 litigation over the competing claims between FLS and Nationwide would also delay
23 any distributions to creditors and diminish the value of the distributions if the
24 distribution could not be made for many more months or years based on such
25 litigation.

26 Under all of the facts and circumstances, the Receiver contends the proposed
27 Settlement Agreement is fair and reasonable and should be approved.

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1 **II. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT**

2 The leading treatise on receivership law states:

3 The only justification for the compromise of claims is that
4 it is done for the best interests of the receivership and the
5 estate under the control and possession of the court.

6 3 *Clark on Receivers* § 655 (3d ed. 1959)

7 The court appointing a receiver must use its discretion in
8 determining whether it is for the best interests of the
9 estate that the receiver be authorized to compromise a
10 claim, and when the appointing court has not abused its
11 discretion in giving instructions to the receiver, its orders
12 will not be disturbed or reviewed in the appellate court.

13 3 *Clark on Receivers* § 770 (3d ed. 1959)

14 Pursuant to Local Rule 66-8, a receiver is directed to administer receivership
15 estates “as nearly as possible in accordance with the practice in the administration
16 of estates in bankruptcy.” Under Rule 9019 of the Federal Rules of Bankruptcy
17 Procedure, the court in a bankruptcy case may approve a proposed compromise of
18 controversies after notice and an opportunity for hearing. Ninth Circuit decisions in
19 *In re A & C Properties*, 784 F.2d 1377 (9th Cir. 1986) and *In re Woodson*, 839 F.2d
20 610 (9th Cir. 1988) establish four factors the court must consider in ruling on the
21 approval of compromises in bankruptcy:

22 “(a) The probability of success in the litigation; (b) the
23 difficulties, if any, to be encountered in the matter of
24 collection; (c) the complexity of the litigation involved,
25 and the expense, inconvenience and delay necessarily
26 attending it; (d) the paramount interest of the creditors
27 and a proper deference to their reasonable views in the
28 premises.”

1 *In re A & C Properties*, 784 F.2d at 1381. *See also In re Woodson*, 839 F.2d at
2 620.

3 The Receiver has evaluated the proposed Settlement Agreement with
4 Nationwide under the factors identified in the Ninth Circuit cases cited above and
5 the other considerations relevant to this case. The proposed settlement with
6 Nationwide provides the estate an immediate cash payment of \$277,000 together
7 with additional cash of over \$170,000 through the Receiver's retention of funds
8 Nationwide claims, and the Receiver has determined, constitute Nationwide's
9 monies that were incorrectly paid to the receivership estate. The combined funds of
10 over \$447,000 will substantially enhance the modest funds available for distribution
11 to creditors, and if approved, the Settlement Agreement will allow the Receiver to
12 promptly take steps to wind up the estate so that creditors can receive their
13 distributions. The settlement avoids what the Receiver contends would be costly,
14 potentially lengthy and uncertain litigation regarding the parties' respective rights
15 and claims under the Purchase Agreement and regarding the funds held by the
16 estate as well as claims Nationwide contends it has against FLS as a result of the
17 monitorship proceeding. Given that the Receiver determined the maximum claim
18 for the remaining purchase price due FLS under the Purchase Agreement was
19 approximately \$878,000 not taking into account any offsets or reductions under the
20 indemnification provision, the Receiver contends a cash settlement at \$447,000 in
21 full satisfaction of all claims by the Receiver and Nationwide is well within the
22 range of reasonableness for settlement of the claim and should be approved.

23 **III. NOTICE OF THIS MOTION IS SUFFICIENT AND APPROPRIATE**
24 **UNDER THE CIRCUMSTANCES**

25 Local Civil Rule 66-7 provides for service of notice of hearings on
26 applications for orders concerning the administration of receivership estates should
27 be made on all parties to the action and "on all known creditors of the defendant."
28 Local Rule 66-7 further states that Local Civil Rule 6-1 applies to the notice, and

1 Local Rule 6-1 provides that “unless otherwise ordered by the Court,” service of the
2 notice of motion and motion is to be made not later than 24 days in advance of the
3 hearing. As to the Homeland Entities, Homeland itself and other receivership
4 entities ceased doing business prior to the Receiver’s appointment. Not including
5 the thousands of potential consumer creditors, the Receiver has compiled a list of
6 non-consumer creditors from receivership records and a small number of potential
7 consumer creditors who have affirmatively contacted the Receiver for a refund.
8 The Receiver has caused the known non-consumer creditors and consumers who
9 have contacted the Receiver for a refund to date to be served with notice of hearing
10 on this motion. Consumer claims will be administered by the FTC under the
11 Receiver’s proposal. It is neither practical nor cost-effective for the receivership
12 estate to serve notice of the hearing on the motion at this time on the thousands of
13 potential consumer claimants who may have done business with the receivership
14 entities. For these reasons, the Receiver submits that notice of this motion should
15 be deemed sufficient and appropriate under the circumstances based on service of
16 the motion on the parties to the action through their respective counsel of record as
17 well as service of a notice of the hearing on the motion on the known non-consumer
18 creditors and the consumers who have affirmatively requested a refund, and posting
19 of the motion on the Receiver’s website for this matter.

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1 **IV. CONCLUSION**

2 Based upon the foregoing, the Receiver respectfully requests that the Court
3 grant this motion.

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5 DATED: October 31, 2008

McKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

6
7
8 By: /s/ Gary Owen Caris

9 Gary Owen Caris
10 Attorneys for Permanent Receiver,
11 ROBB EVANS and ROBB EVANS &
12 ASSOCIATES LLC
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6 Attorneys for Permanent Receiver
7 ROBB EVANS and ROBB EVANS &
ASSOCIATES LLC

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 FEDERAL TRADE COMMISSION,
12 Plaintiff,

13 v.

14 DENNIS CONNELLY, et al.,
15 Defendants.

CASE NO. SACV-06-701 DOC (RNBx)

**DECLARATION OF KENTON
JOHNSON IN SUPPORT OF
MOTION FOR ORDER (1)
APPROVING PROPOSED
SETTLEMENT AGREEMENT WITH
NATIONWIDE SUPPORT SERVICES,
INC.; AND (2) APPROVING
LIMITED NOTICE OF MOTION
UNDER LOCAL CIVIL RULE 66-7**

16
17 DATE: November 24, 2008
18 TIME: 8:30 a.m.
19 PLACE: Courtroom 9D

20 I, Kenton Johnson, declare:

21 1. I am a Deputy to the Permanent Receiver Robb Evans and Robb Evans
22 & Associates LLC, and am a member in Robb Evans & Associates LLC. I have
23 personal knowledge of the matters set forth in this declaration, and if I were called
24 upon to testify as to these matters, I could and would competently testify based
25 upon my personal knowledge.

26 2. On August 9, 2006 and August 11, 2006, the Court issued two
27 Temporary Restraining Orders in this action against numerous individual
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1 defendants and entities, including Dennis Connolly (“Connolly”), Richard Wade
2 Torkelson (“Torkelson”), Joanne Garneau (“Garneau”), an individual formerly
3 doing business as Prosper Financial Solutions (“Prosper”), Homeland Financial
4 Service, LLC (“Homeland”), National Support Service, LLC (“National”), United
5 Debt Recovery, LLC (“United”), Freedom Financial LLC (“Freedom”), and USA
6 Debt Co., LLC (“DebtCo”). Robina Capital, Inc. (“Robina”), a corporation owned
7 and controlled by Garneau, assumed the fictitious business name of Prosper. The
8 Temporary Restraining Orders appointed Robb Evans and Robb Evans &
9 Associates LLC as Temporary Receiver over defendants Homeland, Prosper,
10 National, United, Freedom, DebtCo and Financial Liberty Services, LLC (“FLS”),
11 and their affiliates, subsidiaries, successors and assigns and any other corporations
12 or businesses under their control. Such orders further appointed the Receiver as
13 Monitor over the entity Nationwide Support Service, Inc. (“Nationwide”).

14 3. The Court subsequently issued three preliminary injunction orders
15 pertaining to the receivership entities and the monitored entities Nationwide,
16 DebtCo and Freedom. The Stipulated Preliminary Injunction as to Defendant
17 Joanne Garneau filed October 10, 2006 provided for the appointment of the
18 Receiver as permanent receiver over Robina/ Prosper, its affiliates, subsidiaries,
19 successors and assigns and any other corporations or businesses under their control,
20 and also provided for the Receiver to continue as Monitor over Nationwide. The
21 Revised Preliminary Injunction with Asset Freeze, Appointment of Receiver and
22 Other Equitable Relief filed October 18, 2006, provided for the Receiver to be
23 appointed as Permanent Receiver over Homeland, National, United, and Liberty.
24 The Stipulated Preliminary Injunction as to Defendants Freedom First Financial,
25 LLC and USA DebtCo, LLC aka USADebtCo.Com Order entered October 13,
26 2006 provided for the appointment of Robb Evans & Associates LLC as Monitor
27 over DebtCo and Freedom and their affiliates, subsidiaries, successors and assigns
28 and any other corporations or businesses under their control.

1 4. Stipulations were entered between the FTC and certain defendants that
2 have resolved the proceedings with Nationwide, DebtCo and Freedom and certain
3 receivership defendants. The FTC and defendants Garneau and Robina/Prosper
4 entered into a settlement agreement and proposed final order providing for the
5 winding up of Monitor proceedings with respect to Nationwide and the winding up
6 of the Robina/Prosper receivership and for the discharge of the Monitor over
7 Nationwide and the Receiver over Robina/Prosper. The Court approved the
8 settlement agreement, and a final judgment as to Nationwide and Robina/Prosper
9 was entered by the Court on February 23, 2007. The FTC and defendants Freedom
10 and DebtCo entered into a settlement providing for the winding up of the Monitor
11 proceedings with respect to Freedom and DebtCo and discharging the Monitor
12 which was approved by the Court on April 2, 2007. The required payments under
13 these settlements were made to the Receiver, and therefore this receivership
14 proceeding is now limited to proceedings pertaining to the Homeland Entities.

15 5. Prior to the receivership, Nationwide and the receivership entity FLS
16 entered into a Purchase Agreement dated October 17, 2005 pursuant to which
17 Nationwide purchased all of FLS's assets, as the term assets is defined in the
18 Purchase Agreement. Nationwide purchased the FLS assets for the sum of
19 \$1,560,000. The Purchase Agreement provided for payment of the purchase price
20 over time, with interest and additional payments as provided in that agreement.
21 FLS's rights under the Purchase Agreement are an asset of the receivership estate
22 and enforceable by the Receiver.

23 6. The Receiver on behalf of FLS contends that Nationwide is obligated
24 to perform under the Purchase Agreement by paying the balance of the unpaid
25 purchase price to the Receiver on behalf of FLS and the receivership estate. As of
26 November 1, 2007, the Receiver calculated the balance due and owing to FLS
27 under the Purchase Agreement as \$878,766.87.

28

1 7. Nationwide disputes that the sum of \$878,766.87 remains due and
2 owing to FLS. Nationwide asserted that it has claims against FLS under the
3 Purchase Agreement based on the indemnification provisions in the Purchase
4 Agreement that would reduce or eliminate any remaining balance due FLS under
5 the Purchase Agreement. In addition, the Receiver is holding payments totaling
6 \$170,462.50 made by Note World that Nationwide claims constitute Nationwide's
7 funds which the Receiver should turn over to Nationwide.

8 8. After the monitorship proceeding covering Nationwide was resolved
9 and the Monitor discharged, in March 2007, Nationwide filed a lawsuit against FLS
10 and the Receiver in the Orange County Superior Court. In addition, Nationwide
11 filed a motion in this action in the District Court for leave to intervene in the
12 receivership for the purpose of pursuing the Nationwide claims against FLS and the
13 Receiver. In April 2007, the Receiver filed a motion for instructions, seeking
14 instructions from the Court that the Receiver should prosecute the FLS claims for
15 the balance due under the Purchase Agreement against Nationwide.

16 9. On August 27, 2007, the Court issued its Order Regarding Receiver's
17 Motion for Instructions and Nationwide's Motion to Intervene, pursuant to which
18 the Court denied the motion to intervene and instructed the Receiver to continue its
19 efforts to collect any sums Nationwide may owe to FLS under the Purchase
20 Agreement. Under that Order, the Receiver was also authorized to remove
21 Nationwide's state court action to the District Court or to file an action on behalf of
22 FLS directly in the District Court. Shortly after the Court's ruling, on September
23 14, 2007, Nationwide dismissed its state court action without prejudice.

24 10. Nationwide and FLS, through the Receiver, have exchanged
25 information and negotiated a proposed Settlement Agreement to resolve their
26 disputes and claims. A true and correct copy of the proposed Settlement
27 Agreement is attached hereto as Exhibit 1.

28

1 11. Under the Settlement Agreement, Exhibit 1, Nationwide will make a
2 cash payment of \$277,000 to the Receiver on behalf of the estate. In addition, the
3 Receiver will be allowed to retain the \$170,462.50 in funds held by the Receiver
4 which Nationwide claimed constituted Nationwide's funds. The Receiver has
5 determined that the \$170,462.50 in funds it holds are properly Nationwide's so that
6 this settlement has a value of over \$447,000. The Receiver will accept all of the
7 foregoing sums in full settlement of all claims and demands it may have against
8 Nationwide under the Purchase Agreement, and the Settlement Agreement provides
9 for mutual releases to be exchanged between the parties.

10 12. The Receiver contends the Settlement Agreement is favorable to the
11 estate by providing funds totaling over \$447,000 to the estate and resolving any
12 claims for indemnification by Nationwide under the Purchase Agreement. In
13 addition, Nationwide asserted that it was owed money by FLS on account of lost
14 business, attorneys' fees and costs of the Monitor which it asserted constituted
15 claims against the receivership estate. Under the Purchase Agreement, FLS
16 agreed that Nationwide was not assuming any past liabilities of FLS and further
17 agreed to indemnify Nationwide for any claims, demands or losses arising out of or
18 related to FLS's servicing of past clients. Nationwide has asserted that the
19 allegations of the FTC's complaint against FLS and others in this action was that
20 FLS engaged in improper or ineffective servicing of its clients and that the claims
21 asserted in this action in fact support Nationwide's contention that FLS has
22 significant indemnification liability to Nationwide under the Purchase Agreement.
23 Nationwide claimed its lost business and other damages covered by the indemnity
24 in the Purchase Agreement exceeded any amounts still due FLS for payment of the
25 purchase price under the agreement.

26 13. The Settlement Agreement resolves these disputes without the estate
27 incurring the substantial expense, delays and risks of litigation under the Purchase
28 Agreement, including both the risk of an adverse determination and the risks of

1 later enforcing and collecting any judgment even if the Receiver prevailed. In
2 addition, there are limited assets available for distribution to creditors in this estate.
3 The approval of the Settlement Agreement will bring over \$447,000 in funds into
4 the estate for distribution to creditors promptly. Delays attendant to protracted
5 litigation over the competing claims between FLS and Nationwide would also delay
6 any distributions to creditors and diminish the value of the distributions if the
7 distribution could not be made for many more months or years based on such
8 litigation.


9 14. The Receiver has evaluated the proposed Settlement Agreement with
10 Nationwide and believes the settlement is fair and reasonable and beneficial to the
11 estate. The proposed settlement with Nationwide provides the estate an immediate
12 cash payment of \$277,000 together with additional cash of over \$170,000 through
13 the Receiver's retention of funds Nationwide claims, and which the Receiver has
14 determined, constitute Nationwide's monies that were incorrectly paid to the
15 receivership estate. The combined funds of over \$447,000 will substantially
16 enhance the modest funds available for distribution to creditors, and if approved,
17 the Settlement Agreement will allow the Receiver to promptly take steps to wind up
18 the estate so that creditors can receive their distributions.

19 15. The settlement avoids what could be costly, potentially lengthy and
20 uncertain litigation regarding the parties' respective rights and claims under the
21 Purchase Agreement and regarding the funds held by the estate as well as claims
22 Nationwide contends it has against FLS as a result of the monitorship proceeding.
23 Given that the Receiver determined the maximum claim for the remaining purchase
24 price due FLS under the Purchase Agreement was approximately \$878,000 not
25 taking into account any offsets or reductions under the indemnification provision,
26 the Receiver contends a cash settlement at \$447,000 in full satisfaction of all claims
27 by the Receiver and Nationwide is well within the range of reasonableness for
28 settlement of the claim and should be approved.

1 16. Homeland and certain other receivership entities ceased doing business
2 prior to the Receiver's appointment. Not including the thousands of potential
3 consumer creditors, the Receiver has compiled a list of non-consumer creditors
4 from receivership records and of the small number of potential consumer creditors
5 who have affirmatively contacted the Receiver for a refund. The Receiver has
6 caused the known non-consumer creditors and consumers who have contacted the
7 Receiver for a refund to date to be served with notice of the hearing on this motion.
8 The Receiver has also caused the motion to be served on the parties to this action
9 through their counsel of record. The Receiver will also cause a copy of the notice
10 of motion and motion, supporting memorandum and declaration to be posted on the
11 Receiver's website for this case at <http://www.robbevans.com/html/homeland.html>.

12 17. Consumer claims will be administered by the FTC under the
13 Receiver's proposal. The Receiver believes it is neither practical nor cost-effective
14 for the receivership estate to serve notice of the hearing on the motion at this time
15 on the thousands of potential consumer claimants who may have done business
16 with the receivership entities. For these reasons, the Receiver submits that notice of
17 this motion should be deemed sufficient and appropriate under the circumstances
18 based on service of the motion on the parties to the action through their respective
19 counsel of record as well as service of a notice of the hearing on the motion on the
20 known non-consumer creditors and the consumers who have affirmatively
21 requested a refund, and posting of the motion on the Receiver's website for this
22 matter.

23 I declare under penalty of perjury that the foregoing is true and correct and
24 that this declaration was executed on October 30, 2008 at Sun Valley, California.

25
26 
27 KENTON JOHNSON
28