

**ROBB EVANS OF
ROBB EVANS & ASSOCIATES LLC
Receiver of I Works, Inc., et al. and
the Assets of Jeremy Johnson**

11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

**Federal Trade Commission v. Jeremy Johnson, I Works, Inc., et al.
CASE No. 2:10-CV-02203-MMD-GWF**

**Notice of Motion and Motion for Order Approving Settlement with Peterson Parties and for Order Authorizing Receiver to Market and List for Sale Paradise Ranch if Settlement is not Approved or Settlement Payment is not Made;
and for Order for Limited Notice Under Local Rule 66-5 if Applicable;
Memorandum of Points and Authorities in Support Thereof
Declaration of M. Val Miller in Support Thereof**

Filed October 11, 2013

1 RANDOLPH L. HOWARD (Nev. SBN 006688)
rhoward@klnevada.com
2 KOLESAR & LEATHAM, CHTD.
400 South Rampart Boulevard, Suite 400
3 Las Vegas, NV 89145
Telephone: (702) 362-7800
4 Facsimile: (702) 362-9472

5 GARY OWEN CARIS (Cal. SBN 088918)
gcaris@mckennalong.com
6 LESLEY ANNE HAWES (Cal. SBN 117101)
lhawes@mckennalong.com
7 MCKENNA LONG & ALDRIDGE LLP
300 South Grand Avenue, 14th Floor
8 Los Angeles, CA 90071-3124
Telephone: (213) 688-1000
9 Facsimile: (213) 243-6330

10 Attorneys for Receiver
11 **ROBB EVANS OF ROBB EVANS & ASSOCIATES**
12 **LLC**

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

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16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, etc., et al.,

20 Defendants.
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Case No. 2:10-CV-02203-MMD-GWF

**NOTICE OF MOTION AND MOTION
FOR ORDER APPROVING
SETTLEMENT WITH PETERSON
PARTIES AND FOR ORDER
AUTHORIZING RECEIVER TO
MARKET AND LIST FOR SALE
PARADISE RANCH IF SETTLEMENT
IS NOT APPROVED OR SETTLEMENT
PAYMENT IS NOT MADE; AND FOR
ORDER FOR LIMITED NOTICE
UNDER LOCAL RULE 66-5 IF
APPLICABLE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

**[DECLARATION OF M. VAL MILLER
IN SUPPORT THEREOF FILED
CONCURRENTLY UNDER SEPARATE
COVER]**

1 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC
2 (“Receiver”), the Receiver appointed pursuant to the Court’s Preliminary Injunction Order issued
3 February 10, 2011 (“Preliminary Injunction”), hereby moves the Court for an order approving the
4 Receiver’s proposed Settlement Agreement (the "Peterson Settlement") with Paradise Ranch
5 Development LLC, a Utah limited liability company ("Paradise Ranch Utah"), Brent F. Peterson
6 and Loretta S. Peterson (the “Petersons”) (collectively Paradise Ranch Utah and the Petersons are
7 referred to as the "Peterson Parties"), a true and correct copy of which is attached as Exhibit 1 to
8 the supporting Declaration of M Val Miller filed concurrently herewith.

9 Under the Clarifying Order,¹ Paradise Ranch Development LLC and its assets are
10 receivership property subject to the Receiver’s administration. The Peterson Settlement resolves
11 the Receiver’s rights, claims and interests in the entity Paradise Ranch Utah and its assets,
12 consisting of the approximate 48 acres of land in Hurricane, Utah known as Paradise Ranch (the
13 “Ranch”) and its associated water rights, Water Right No. 81-1102 (“Water Right”) in exchange
14 for a cash payment to the receivership estate of \$200,000 due by November 15, 2013 or five
15 business days after the date of entry of an order of the Court approving the Peterson Settlement,
16 whichever is later. The total settlement amount is \$257,178.00, with the Petersons receiving a
17 credit for \$57,178 based on their claims for services and expenditures which they contend they
18 made in connection with the Ranch.

19 The Receiver recommends the approval of the Peterson Settlement and requests that the
20 Receiver be authorized to implement the Peterson Settlement pursuant to its terms. The Peterson
21 Settlement it is fair and equitable and in the best interests of the receivership estate in that the
22 Peterson Settlement provides the estate with an immediate cash payment of \$200,000 for the
23 value of the estate’s interest in the Ranch and Water Right. Based on the fact the Ranch is subject
24 to an existing first deed of trust with a balance due of over \$438,000 that is all due on December
25 15, 2015, and the Ranch has other issues regarding its use, development and potential sale to third

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27 ¹ The full title of the order is the Order Granting Motion for Order Clarifying Preliminary
28 Injunction Order and for Further Instructions Regarding Scope of Receivership Defendants under
Preliminary Injunction Order and Report of Receiver’s Financial Reconstruction and Granting
Relief from Local Rule 66-5 Pertaining to Notice to Creditors After Hearing (“Clarifying Order”).

1 parties that would require significant administrative expense and supervision over a period of
2 months or years with the risks and uncertainties associated with market forces, local zoning and
3 other land use and regulatory issues and other matters affecting the estate's recovery from this
4 property, the Receiver believes the settlement with the proposed prompt substantial cash payment
5 for the estate's interest is the best alternative for the disposition of the estate's interests in the
6 Ranch and Paradise Ranch Utah. In connection with the approval of the Peterson Settlement, the
7 Receiver seeks Court approval for the Receiver to take all steps necessary or convenient to
8 implement and perform under the Peterson Settlement and to execute all documents provided for
9 the Receiver to execute under the Peterson Settlement.

10 The Peterson Settlement provides for a cash payment to the estate by the Petersons by the
11 later of November 15, 2013 or five business days after the effective date of the agreement, which
12 is the date of entry of an order of this Court approving the settlement. In the event that the Court
13 for any reason does not approve the Peterson Settlement, or in the unlikely event that the Peterson
14 Parties fail to make the settlement payment required under the Peterson Settlement, then the
15 Receiver also seeks an order of the Court authorizing the Receiver to market and list the Ranch
16 for sale with a local real estate broker to be selected by the Receiver and engaged pursuant to a
17 listing agreement providing for the payment of ordinary and customary sales commissions
18 consistent with the type of property being sold. In such event, the Receiver seeks permission to
19 sell the Ranch either in bulk or in parcels with separate listings, as determined by the Receiver in
20 his business judgment.

21 The Receiver further seeks an order deeming notice of this Motion to be sufficient under
22 Local Civil Rules 66-5 and 66-10 based on the service of a notice of the filing of this Motion and
23 the Motion on all parties and service of a notice of the filing of the Motion on all known non-
24 consumer creditors of the estate, and on all known taxing authorities with a potential claim in the
25 receivership estate concurrent with the filing of this Motion with the Court, but not on the tens of
26 thousands of potential consumer creditors.

27 This Motion is made under 28 U.S.C. §§ 2001 and 2004, Local Civil Rules 7-2, 66-5 and
28 66-10 and other applicable law and is based on this motion, the accompanying Memorandum of

1 Points and Authorities and Declaration of M. Val Miller filed concurrently herewith in support of
2 this Motion, the proposed order lodged concurrently herewith, on the separate notice of filing of
3 this Motion, and on the pleadings, records and files of the Court in this receivership proceeding of
4 which the Receiver requests the Court take judicial notice, including without limitation the
5 Preliminary Injunction (Doc. No. 130) and the Clarifying Order entered March 25, 2013 and on
6 such further oral and documentary evidence and arguments of counsel as may be presented at any
7 hearing on this Motion.

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Dated: October 11, 2013

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

By: /s/ Gary Owen Caris
Gary Owen Caris
Attorneys for Receiver
**ROBB EVANS OF ROBB EVANS &
ASSOCIATES LLC**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 On January 13, 2011, the Receiver was appointed Temporary Receiver over I Works, Inc.
4 (“I Works”), numerous other Corporate Defendants as defined in the Temporary Restraining
5 Order and over the assets of defendant Jeremy Johnson (collectively the “Receivership
6 Defendants”). Pursuant to the Preliminary Injunction Order entered February 10, 2011, the
7 Receiver was appointed permanent Receiver over the Receivership Defendants. On March 25,
8 2013, the Court entered its Order granting the Receiver’s Motion for Order Clarifying
9 Preliminary Injunction Order and for Further Instructions Regarding Scope of Receivership
10 Defendants under Preliminary Injunction Order and Report of Receiver’s Financial
11 Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors
12 (“Clarifying Order”) pursuant to which the Court confirmed the status of numerous entities and
13 properties as assets of the receivership estate, including those entities and assets subject to this
14 Motion.

15 The Report of Receiver’s Financial Reconstruction filed February 3, 2012 (Doc. No. 464)
16 which is supported by a four-volume Appendix of Exhibits (Doc. Nos. 465-468) (“Receiver’s
17 Second Report”) along with the Motion to Clarify and its supporting pleadings (Doc. No. 580)
18 address Paradise Ranch Development LLC and its acquisition and movement of receivership
19 funds and property. The Clarifying Order makes Paradise Ranch Development LLC a
20 receivership entity and the entity and its assets receivership property subject to the Receiver’s
21 control and administration.

22 Paradise Ranch Development LLC was formed on October 12, 2010 in Nevada with
23 Taggart Management, LLC (“Taggart”) as the member and Todd Vowell and Jason Vowell as
24 managers. (Second Report, pp. 6-7, 38, 46 and 76; App. Tabs 3, 12, 17 and 66.) In January 2012,
25 Paradise Ranch Development, LLC was dissolved as a Nevada entity and organized under new
26 Articles of Organization as a Utah entity, with Brent Peterson as the sole member and manager.
27 Paradise Ranch Development, LLC received funds from both Flying High Enterprises LLC and
28 Cerberus Management LLC, entities which the Receiver demonstrated were beneficially owned

1 and controlled by Jeremy Johnson and were involved in third party payment processing. In
2 December 2010, Paradise Ranch Development, LLC acquired from Semeco Industries, Inc.
3 ("Semeco") four parcels of land located in Section 7, Township 42 South, Range 13 West,
4 Hurricane, Utah comprising the "Ranch" for a purchase price of \$630,500, with seller take-back
5 financing in the approximate sum of \$435,000 and with Paradise Ranch Development, LLC
6 funding \$200,000 toward the purchase price through a \$100,000 withdrawal from its JP Morgan
7 Chase account and the other \$100,000 provided in the form of two \$50,000 cashier's checks. The
8 escrow records subpoenaed by the Receiver in his investigation of Paradise Ranch Development,
9 LLC included a note in the escrow file indicating that: "Jeremy Johnson = Paradise Ranch Dev.
10 LLC." On February 14, 2012, after the Second Report was filed, the defunct Paradise Ranch
11 Development, LLC entity from Nevada purported to deed the Ranch to the newly created
12 Paradise Ranch Utah.

13 After entry of the Clarifying Order, the Receiver worked with Brent Peterson and his wife
14 Loretta Peterson to assume control over the Ranch and the Water Right. When the Receiver had
15 identified potential claims to the Ranch and the Water Right, the Receiver had also recorded
16 notices of pending action as to those assets to protect the estate's interests. The Receiver began
17 investigating the Ranch, the senior tax liens and the senior deed of trust in favor of Semeco under
18 the seller take-back financing transaction, the circumstances of the Ranch property and its value.
19 The Receiver obtained multiple appraisals and marketing proposals for the Ranch from local
20 appraisers and real estate brokers.

21 The Ranch is zoned in part for agricultural uses. The Ranch has certain structures on the
22 property, some of which are in disrepair. When the Receiver took custody and control, the Ranch
23 also had various tenants and other occupants of the property, including a number of persons
24 occupying portions of the property in trailers. The Receiver's investigation also determined that
25 one or more local agencies had issued certain notices concerning the occupancy of the property as
26 being in violation of local laws. The Receiver investigated the tenancies and evicted the tenants
27 to preserve the property and resolve the disputes with the local agencies and protect the estate
28 while in custody and control of the property.

1 The Peterson Settlement resolves the estate's and the Peterson Parties contested claims
2 concerning Paradise Ranch Utah, the Ranch and the Water Right, which the Receiver contends all
3 constitute receivership property and subject to the Receiver's control. The Peterson Parties
4 contest the Receiver's claims to the Ranch and Water Right based on their alleged good faith
5 acquisition of the Ranch from Paradise Ranch Development, LLC of Nevada, they contest the
6 Receiver's rights in Paradise Ranch Utah based on Brent Peterson's formation of that entity and
7 his status as sole member, and they assert they have made improvements and provided value to
8 the Ranch through their work since Paradise Ranch Utah acquired the property. The Receiver
9 disputes the Peterson Parties' claims and contentions.

10 The Peterson Settlement resolves these and any other claims between the Peterson Parties
11 and the receivership estate pursuant to the terms of the settlement agreement. The Receiver's
12 settlement with the Peterson Parties provides for an immediate cash payment of \$200,000 for the
13 estate's interest in the Ranch and Water Right and resolves any interest of the estate in Paradise
14 Ranch Utah. The Petersons asserted that they had a claim against the estate for \$57,178 for
15 services rendered and goods supplied to the operation of the Ranch, and the Peterson Settlement
16 provides that the total settlement amount that are paying to the estate is \$257,178 as to which they
17 are receiving a \$57,178 credit for their claim. They are waiving any other claims, and 92 days
18 after they make a full and timely payment of the cash settlement payment, they will receive a
19 release. The receivership estate receives an immediate release under the Peterson Settlement.

20 The \$200,000 cash settlement payment from the Peterson Parties is equal to the amount of
21 the two primary cash transfers of receivership assets the Receiver determined were made in
22 connection with the acquisition of the Ranch as set forth in the Receiver's Second Report and the
23 Motion to Clarify pleadings. The settlement was made after several months of investigation into
24 the Ranch by the Receiver and months of discussions and negotiations between the Receiver and
25 the Petersons.

26 The Receiver believes the immediate cash payment for the estate's interest in the Ranch
27 and Water Right as provided under the Peterson Settlement is a very favorable result for the estate
28 and avoids substantial expense, risks and uncertainties associated with the marketing and sale of

1 the property by the estate. In an abundance of caution and in the interests of not losing time or
2 incurring the expense of a separate motion in the unlikely event that the Peterson Parties were to
3 fail to make the settlement payment required under the Peterson Settlement, or if for any reason
4 the Court were to disapprove the proposed Peterson Settlement, the Receiver seeks an order
5 authorizing the Receiver to list and market the Ranch and Water Right, consistent with the recent
6 sale authorization motion covering other real estate assets and an aircraft filed in August 2013
7 which was granted (Doc. No. 1179). Any specific sale of the Ranch and Water Right would be
8 subject to a later motion for approval on notice to the affected parties.

9 **II. THE PETERSON SETTLEMENT IS FAIR AND EQUITABLE AND SHOULD BE**
10 **APPROVED FORTHWITH**

11 The leading treatise on receivership law states:

12 The only justification for the compromise of claims is that it is done
13 for the best interests of the receivership and the estate under the
14 control and possession of the court.

15 3 *Clark on Receivers* § 655 (3d ed. 1992)

16 The court appointing a receiver must use its discretion in
17 determining whether it is for the best interests of the estate that the
18 receiver be authorized to compromise a claim, and when the
19 appointing court has not abused its discretion in giving instructions
20 to the receiver, its orders will not be disturbed or reviewed in the
21 appellate court.

22 3 *Clark on Receivers* § 770 (3d ed. 1992).

23 Under Rule 9019 of the Federal Rules of Bankruptcy Procedure, the court in a bankruptcy
24 case may approve a proposed compromise of controversies after notice and an opportunity for
25 hearing.² Ninth Circuit decisions in *In re A & C Properties*, 784 F. 2d 1377 (9th Cir. 1986) and
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28 ² Local Civil Rule 66-10 provides for a receiver to administer a receivership estate in a manner similar to the administration of estates in Chapter 11 bankruptcy cases.

1 *In re Woodson*, 839 F. 2d 610 (9th Cir. 1988) establish four factors the court must consider in
2 ruling on the approval of compromises in bankruptcy:

3 “(a) The probability of success in the litigation; (b) the difficulties,
4 if any, to be encountered in the matter of collection; (c) the
5 complexity of the litigation involved, and the expense,
6 inconvenience and delay necessarily attending it; (d) the paramount
7 interest of the creditors and a proper deference to their reasonable
8 views in the premises.”

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

10 The foregoing factors have been examined by courts in receiverships in approving
11 settlements, but the court in a federal equity receivership has even broader authority to approve
12 proposed settlements by a receiver and to look to other factors in determining that the settlement
13 should be approved. *See Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009) (settlement by
14 receiver in a federal equity receivership within the receiver’s discretion and should be approved if
15 it is fair); *Securities and Exchange Commission v. Credit Bancorp, Ltd.*, No. 99 Civ. 11395, 2002
16 WL 1792053 at *4-5 (S.D.N.Y. Aug. 2, 2002); *Securities and Exchange Commission v. Princeton*
17 *Economic International, Inc.*, No. 99 Civ. 9667, 2002 WL 206990 at *1 (S.D.N.Y. Feb. 8, 2002).
18 “[R]eceivers benefit from the general presumption that district courts favor settlements.” *Sterling*
19 *v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998). The District Court’s determination of the
20 fairness of a settlement by the Receiver is subject to the sound discretion of the Court and will
21 only be overturned based on a clear showing of abuse of discretion. *Gordon v. Dadante*, 336 Fed.
22 Appx. at 545 (holding that district court did not abuse its discretion in approving settlement
23 agreement entered into by a receiver); *Sterling v. Stewart*, 158 F.3d at 1202 (quoting *Bennett v.*
24 *Behring*, 737 F.2d 982, 986 (11th Cir. 1984)); *Securities and Exchange Commission v. Arkansas*
25 *Loan and Thrift Corp.*, 427 F.2d 1171, 1172 (8th Cir. 1970) (court finds no abuse of discretion in
26 trial court’s approval of receiver’s settlement on fidelity bond claim).

27 The Peterson Settlement is a very favorable resolution of contested claims by the
28 receivership estate that provides the estate with a significant recovery through a prompt cash

1 payment for the value of the estate's interest in the Ranch and Water Right. The Peterson
2 Settlement avoids the costs, delays, risks and uncertainties associated with the Receiver
3 administering the Ranch and attempting to liquidate it either in bulk or through piecemeal sales of
4 parcels of the property. The property includes four separate parcels with different zoning/land
5 use issues, and there are structures on the property that require repair and maintenance. There is a
6 senior lien for real property taxes and accruing debt service on the first deed of trust that must be
7 paid, either eroding the equity in the asset if they accrue or reducing cash in the estate if they are
8 paid. The property would require additional administrative expense and supervision to maintain
9 and preserve the property for sale. The estate's interest in the property is subject to a first deed of
10 trust requiring monthly payments and a full payoff of the principal balance in December 2015,
11 and the marketing time for the property may be lengthy given the nature of the asset. The
12 Peterson Settlement with the proposed cash payment of \$200,000 provides the estate a significant,
13 prompt cash recovery taking into account the circumstances of the property and allows the estate
14 to recover the receivership funds identified as having been transferred into the acquisition of the
15 property. As a result, the Peterson Settlement is beneficial within the four factors in the *A & C*
16 *Properties* decision and falls well within the reasonable exercise of discretion by the Receiver to
17 settle under the circumstances. For these reasons, the Peterson Settlement should be approved
18 promptly.

19 **III. THE RECEIVER SHOULD BE AUTHORIZED TO MARKET AND LIST FOR**
20 **SALE THE RANCH AND WATER RIGHT IN THE EVENT THAT THE COURT**
21 **DOES NOT APPROVE THE PETERSON SETTLEMENT OR THAT THE**
22 **PETERSON PARTIES FAIL TO MAKE THE SETTLEMENT PAYMENT**
23 **REQUIRED UNDER THEIR AGREEMENT**

24 Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property.
25 Subsection (a) pertains to procedures for the public sale of real property and provides for the sale
26 of real property by public sale at the courthouse where the Receiver was first appointed, at the
27 courthouse where most of the property is located or at such other premises as the Court directs.
28 28 U.S.C. § 2001(a). Section 2001(b) of title 28 pertains to the sale of real property at private

1 sale and among other things provides for a private sale of real property after notice and a hearing
2 if the Court finds that it is in the best interests of the estate and sets a minimum price of two-
3 thirds of the appraised value for confirmation of a sale of real property by private sale. 28 U.S.C.
4 § 2001(b). As to sales of personal property, section 2004 of title 28 provides that "Any personal
5 property sold under order or decree of any court of the United States shall be sold in accordance
6 with Section 2001 of this title, unless the court orders otherwise."

7 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve
8 assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the
9 value of the Ranch and Water Right for the benefit of consumers and creditors, and in the
10 unlikely event that the Peterson Parties fail to make the settlement payment under the Peterson
11 Settlement, the Receiver is requesting authority to list and market those assets for sale and to
12 conditionally accept the highest and best offer received for those assets, but not to approve and
13 confirm any specific sale.

14 The District Court has wide latitude in adopting a procedure for the sale of property and
15 except in cases where abuse is shown, appellate courts will not disturb the exercise of the District
16 Court's discretion in setting the terms and conditions for a judicial sale or the confirmation
17 thereof. *See United States v. Branch Coal Corp.*, 390 F.2d 7 (3rd Cir. 1968) *cert. den.* *Sun*
18 *Protection Co. v. U.S.*, 391 U.S. 966, 88 S.Ct. 2034, 20 L. Ed. 2d 878 (1968). The discretion
19 granted in connection with sales of assets is consistent with the broad discretion accorded to the
20 Court sitting in equity in receivership proceedings to make orders concerning the administration
21 and supervision of the estate that will promote equity, efficiency and cost-effectiveness in the
22 estate's administration. *See generally Securities and Exchange Commission v. Hardy*, 803 F.2d
23 1034 (9th Cir. 1986); *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir.
24 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992). The Court
25 has previously granted the Receiver authority to list and market for sale various assets, including
26 real property assets. (*See* Doc. No. 288 and Doc. No. 1179).

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1 **IV. NOTICE OF THIS MOTION SHOULD BE DEEMED SUFFICIENT UNDER THE**
2 **CIRCUMSTANCES**

3 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by
4 a receiver concerning the administration of the estate. That rule provides for service of the notice
5 of hearing on such motions on all creditors of the receivership estate. Further, Local Rule 66-10
6 provides for a receiver to administer a receivership in a manner similar to a Chapter 11
7 bankruptcy estate, and notice of a motion to approve a compromise in Chapter 11 is generally
8 served on all creditors under Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure.

9 No hearing has been set on this Motion and the provisions of Local Civil Rule 66-5 do not
10 specifically apply. Nevertheless, the Receiver has served a notice of filing of the Motion on the
11 parties and on all known non-consumer creditors of the estate and on known taxing authorities
12 with a potential claim in the receivership estate (“Notice Parties”), to provide them notice and an
13 opportunity to be heard concerning the Motion. This notice is consistent with notice previously
14 approved by the Court in this case.

15 There are believed to be an extremely large number of potential consumer creditors who
16 may have claims against the Receivership Defendants arising out of the business operations of the
17 Receivership Defendants prior to the Receiver’s appointment, although the precise number,
18 identity and location of such consumer creditors have not been determined by the Receiver at this
19 time. Given the Receiver’s determination that more than \$332.5 million³ in sales revenues were
20 generated by I Works and the related and affiliated entities, the number of consumer creditors is
21 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its
22 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with
23 notice of this and other similar administrative motions, and the expense and burden on the estate
24 of attempting to effectuate such service would drain the estate’s resources and cause undue
25 administrative expense.

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28 ³ This figure does not include tens of millions of dollars in additional revenues addressed by the Receiver in the Report of Receiver’s Financial Reconstruction filed on February 3, 2012.

1 To the extent that Local Rule 66-5 applies to this Motion, the Receiver seeks an order that
2 notice of this Motion is sufficient if notice of the filing of the Motion is given by serving copies
3 of all motion papers on the parties to the action and by serving copies of the notice of filing of the
4 motion on the Notice Parties. The Receiver submits that such service provides sufficient notice
5 and an opportunity for hearing to the interested parties and should be approved as adequate.

6 There is ample authority for approval of the scope and method of notice as set forth above.
7 This Court, as a court of equity supervising the receivership estate, may make appropriate
8 administrative orders governing the receivership, including limitations on and changes in notice
9 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
10 procedures when numerous defendants are involved in litigation). In addition, as set out above,
11 pursuant to Local Rule 66-10, a receiver is directed to administer receivership estates “as nearly
12 as may be in accordance with the practice in the administration of estates in Chapter 11
13 bankruptcy cases.” Orders limiting notice when the Bankruptcy Code or Rules would otherwise
14 require notice to all creditors are routinely granted in bankruptcy cases to promote the expeditious
15 and economical administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269
16 B.R. 428, 442 (C.D. Cal. 2001) (referencing in *dicta* in the court's recitation of facts the
17 bankruptcy court's order limiting notice issued in that case); 11 U.S.C. section 102(1)(A)
18 (defining the phrase "after notice and a hearing" to mean "after such notice as is appropriate in the
19 particular circumstances, and such opportunity for hearing as is appropriate in the particular
20 circumstances"); 11 U.S.C. section 105(a) and (d) (granting broad equitable powers to the court to
21 issue orders "necessary or appropriate to carry out the provisions" of title 11 including
22 "prescribing such limitations and conditions as the court deems appropriate to ensure the case is
23 handled expeditiously and economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to
24 enter "orders designating the matters in respect to which, the entity to whom, and the form and
25 manner in which notices shall be sent except as otherwise provided by these rules").

1 **V. CONCLUSION**

2 The Receiver respectfully requests that the Peterson Settlement be approved and the relief
3 requested by the Receiver in its Motion be granted.

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5 Dated: October 11, 2013

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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By: /s/ Gary Owen Caris

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Gary Owen Caris

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Attorneys for Receiver
**ROBB EVANS OF ROBB EVANS &
ASSOCIATES LLC**

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1 RANDOLPH L. HOWARD (Nev. SBN 006688)
rhoward@klnevada.com
2 KOLESAR & LEATHAM, CHTD.
400 South Rampart Boulevard, Suite 400
3 Las Vegas, NV 89145
Telephone: (702) 362-7800
4 Facsimile: (702) 362-9472

5 GARY OWEN CARIS (Cal. SBN 088918)
gcaris@mckennalong.com
6 LESLEY ANNE HAWES (Cal. SBN 117101)
lhawes@mckennalong.com
7 MCKENNA LONG & ALDRIDGE LLP
300 South Grand Avenue, 14th Floor
8 Los Angeles, CA 90071-3124
Telephone: (213) 688-1000
9 Facsimile: (213) 243-6330

10 Attorneys for Receiver
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12 **LLC**

13 **UNITED STATES DISTRICT COURT**

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**DECLARATION OF M. VAL MILLER
IN SUPPORT OF MOTION FOR ORDER
APPROVING SETTLEMENT WITH
PETERSON PARTIES AND FOR
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MARKET AND LIST FOR SALE
PARADISE RANCH IF SETTLEMENT
IS NOT APPROVED OR SETTLEMENT
PAYMENT IS NOT MADE; AND FOR
ORDER FOR LIMITED NOTICE
UNDER LOCAL RULE 66-5 IF
APPLICABLE**

1 I, M. Val Miller, declare:

2 1. I am an Executive Vice President of Robb Evans & Associates LLC and am a
3 deputy to Robb Evans of Robb Evans & Associates LLC, appointed as Receiver in this case
4 (“Receiver”). I am one of the deputies to the Receiver responsible for the day-to-day supervision
5 of the receivership estate. If called upon to testify as to the facts set forth in this declaration, I
6 could and would testify competently thereto as the facts are true and within my personal
7 knowledge or I have gained knowledge of such facts from the books and records of the
8 receivership proceeding, including the books and records of the entities subject to the
9 receivership.

10 2. On January 13, 2011, the Receiver was appointed Temporary Receiver over I
11 Works, Inc. (“I Works”), numerous other Corporate Defendants as defined in the Temporary
12 Restraining Order and over the assets of defendant Jeremy Johnson (collectively the
13 “Receivership Defendants”). Pursuant to the Preliminary Injunction Order entered February 10,
14 2011, the Receiver has been appointed permanent Receiver over the Receivership Defendants.
15 On March 25, 2013, the Court entered its Order granting the Receiver’s Motion for Order
16 Clarifying Preliminary Injunction Order and for Further Instructions Regarding Scope of
17 Receivership Defendants under Preliminary Injunction Order and Report of Receiver’s Financial
18 Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors
19 (“Clarifying Order”) pursuant to which the Court confirmed the status of numerous entities and
20 properties as assets of the receivership estate, including Paradise Ranch Development LLC and its
21 assets.

22 3. I am one of the deputies to the Receiver who has been responsible for the
23 supervision and administration of the receivership estate and for the Receiver’s review,
24 administration and disposition of various receivership assets since the inception of the case. I
25 have specifically investigated and reviewed the status and valuations of the four parcels
26 comprising approximately 48 acres of land in Hurricane, Utah (the “Ranch”) titled to Paradise
27 Ranch Development LLC. I am the deputy to the Receiver who has been primarily responsible
28 for administering the Ranch and its associated water rights, Water Right No. 81-1102 (“Water

1 Right") since the Court entered the Clarifying Order, including meeting and negotiating with
2 Brent Peterson and Loretta Peterson (the "Petersons"), inspecting the Ranch, and addressing
3 tenant issues at the Ranch.

4 4. The Report of Receiver's Financial Reconstruction filed February 3, 2012
5 ("Receiver's Second Report") along with the Motion to Clarify and its supporting pleadings (Doc.
6 No. 580) address Paradise Ranch Development LLC and its acquisition and movement of
7 receivership funds and property. The Clarifying Order makes Paradise Ranch Development LLC
8 a receivership entity and the entity and its assets receivership property subject to the Receiver's
9 control and administration.

10 5. As set forth in the Receiver's Second Report, Paradise Ranch Development, LLC
11 was formed on October 12, 2010 in Nevada with Taggart Management, LLC ("Taggart") as the
12 member and Todd Vowell and Jason Vowell as managers. In January 2012, Paradise Ranch
13 Development, LLC was dissolved as a Nevada entity and organized under new Articles of
14 Organization as a Utah entity, with Brent Peterson as the sole member and manager. The
15 Receiver's Second Report and the Motion to Clarify explain that Paradise Ranch Development,
16 LLC received funds from Flying High Enterprises LLC ("Flying High") and from Cerberus
17 Management LLC ("Cerberus") (Receiver's Second Report, p. 21). The Receiver demonstrated as
18 part of the Receiver's Second Report and the Motion to Clarify that Flying High and Cerberus
19 were beneficially owned and controlled by Jeremy Johnson and were involved in third party
20 payment processing.

21 6. In December 2010, Paradise Ranch Development, LLC acquired from Semeco
22 Industries, Inc. ("Semeco") four parcels of land located in Section 7, Township 42 South, Range
23 13 West, Hurricane, Utah comprising the "Ranch" for a purchase price of \$630,500, with seller
24 take-back financing in the approximate sum of \$435,000 and with Paradise Ranch Development,
25 LLC funding \$200,000 toward the purchase price through a \$100,000 withdrawal from its JP
26 Morgan Chase account and the other \$100,000 provided in the form of two \$50,000 cashier's
27 checks. The escrow records subpoenaed by the Receiver in his investigation of Paradise Ranch
28 Development, LLC included a note in the escrow file indicating that: "Jeremy Johnson = Paradise

1 Ranch Dev. LLC.” On February 14, 2012, after the Receiver's Second Report was filed, the
2 defunct Paradise Ranch Development, LLC entity from Nevada purported to deed the Ranch to
3 the newly created Paradise Ranch Development, LLC entity from Utah ("Paradise Ranch Utah").

4 7. After entry of the Clarifying Order, the Receiver worked with Brent Peterson and
5 his wife Loretta Peterson to assume control over the Ranch and the Water Right. When the
6 Receiver had identified potential claims to the Ranch and the Water Right, the Receiver had also
7 recorded notices of pending action as to those assets to protect the estate's interests. The Receiver
8 began investigating the Ranch, the senior tax liens and the senior deed of trust in favor of Semeco
9 under the seller take-back financing transaction, the circumstances of the Ranch property and its
10 value. The Receiver obtained multiple appraisals and marketing proposals for the Ranch from
11 local appraisers and real estate brokers.

12 8. The Ranch is zoned in part for agricultural uses. The Ranch has certain structures
13 on the property, some of which are in disrepair. When the Receiver took custody and control, the
14 Ranch also had various tenants and other occupants of the property, including a number of
15 persons occupying portions of the property in trailers. The Receiver's investigation also
16 determined that one or more local agencies had issued certain notices concerning the occupancy
17 of the property as being in violation of local laws. The Receiver investigated the tenancies and
18 evicted the tenants to preserve the property and resolve the disputes with the local agencies and
19 protect the estate while in custody and control of the property.

20 9. After several months of investigation and evaluation of the Ranch and meetings
21 and negotiations with the Petersons, the Receiver has entered into a proposed Settlement
22 Agreement with the Petersons and Paradise Ranch Utah (the "Peterson Settlement") (the
23 Petersons and Paradise Ranch Utah are referred to collectively as the "Peterson Parties"). The
24 Peterson Settlement resolves the estate's and the Peterson Parties contested claims concerning
25 Paradise Ranch Utah, the Ranch and the Water Right, which the Receiver contends all constitute
26 receivership property and subject to the Receiver's control. The Peterson Parties contest the
27 Receiver's claims to the Ranch and Water Right based on their alleged good faith acquisition of
28 the Ranch from Paradise Ranch Development, LLC of Nevada, they contest the Receiver's rights

1 in Paradise Ranch Utah based on Brent Peterson's formation of that entity and his status as sole
2 member, and they assert they have made improvements and provided value to the Ranch through
3 their work since Paradise Ranch Utah acquired the property. The Receiver disputes the Peterson
4 Parties' claims and contentions. The Peterson Settlement resolves these and any other claims
5 between the Peterson Parties and the receivership estate pursuant to the terms of the settlement
6 agreement. The Peterson Settlement provides for an immediate cash payment of \$200,000 for the
7 estate's interest in the Ranch and Water Right and resolves any interest of the estate in Paradise
8 Ranch Utah. The Petersons asserted that they had a claim against the estate for \$57,178 for
9 services rendered and goods supplied to the operation of the Ranch, and the Peterson Settlement
10 provides that the total settlement amount that are paying to the estate is \$257,178 as to which they
11 are receiving a \$57,178 credit for their claim. The Peterson Parties are waiving any other claims,
12 and 92 days after they make a full and timely payment of the cash settlement, they will receive a
13 release. The receivership estate receives an immediate release under the Peterson Settlement.

14 10. The \$200,000 cash settlement payment from the Peterson Parties is equal to the
15 amount of the two primary cash transfers of receivership assets the Receiver determined were
16 made in connection with the acquisition of the Ranch as set forth in the Receiver's Second Report
17 and the Motion to Clarify pleadings. The Receiver believes the immediate cash payment for the
18 estate's interest in the Ranch and Water Right as provided under the Peterson Settlement is a very
19 favorable result for the estate and avoids substantial expense, risks and uncertainties associated
20 with the marketing and sale of the property by the estate. In an abundance of caution and in the
21 interests of not losing time or incurring the expense of a separate motion in the unlikely event that
22 the Peterson Parties were to fail to make the settlement payment required under the Peterson
23 Settlement, or if for any reason the Court were to disapprove the proposed Peterson Settlement,
24 the Receiver seeks an order authorizing the Receiver to list and market the Ranch and Water
25 Right, consistent with the recent sale authorization motion covering other real estate assets and an
26 aircraft filed in August 2013 which was granted (Doc. No. 1179). Any specific sale of the Ranch
27 and Water Right would be subject to a later motion for approval on notice to the affected parties.

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11. The Receiver believes the Peterson Settlement is a very favorable resolution of contested claims by the receivership estate that provides the estate with a significant recovery through a prompt cash payment for the value of the estate's interest in the Ranch and Water Right. The Peterson Settlement avoids the costs, delays, risks and uncertainties associated with the Receiver administering the Ranch and attempting to liquidate it either in bulk or through piecemeal sales of parcels of the property. The property includes four separate parcels with different zoning/land use issues, and there are structures on the property that require repair and maintenance. There is a senior lien for real property taxes and accruing debt service on the first deed of trust that must be paid, either eroding the equity in the asset if they accrue or reducing cash in the estate if they are paid. The property would require additional administrative expense and supervision to maintain and preserve the property for sale. The estate's interest in the property is subject to a first deed of trust requiring monthly payments and a full payoff of the principal balance in December 2015, and the marketing time for the property may be lengthy given the nature of the asset.

12. The Receiver requests that the Court approve notice of this Motion as detailed in the Motion and supporting memorandum. The proposed notice to the parties and to creditors is consistent with the notice approved by the Court regarding numerous other motions filed in this case.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 10th day of October 2013 at Las Vegas, Nevada.


M. VAL MILLER