

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

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**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:

- (1) Approving and Confirming Sale of Mt. Carmel Lots and for Related Relief; and**
- (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors;**

**Memorandum of Points and Authorities;
Declaration of M. Val Miller in Support Thereof**

Filed December 19, 2013

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

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14
15 FEDERAL TRADE COMMISSION,
16 Plaintiff,
17 v.
18 JEREMY JOHNSON, etc., et al.,
19 Defendants.

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

**NOTICE OF MOTION AND MOTION
FOR ORDER: (1) APPROVING AND
CONFIRMING SALE OF MT. CARMEL
LOTS AND FOR RELATED RELIEF;
AND (2) GRANTING RELIEF FROM
LOCAL RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

22
23 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC
24 (“Receiver”), the Receiver pursuant to the Court’s Preliminary Injunction Order issued
25 February 10, 2011, hereby moves the Court for an order authorizing the Receiver to sell Lots 6
26 and 16 of Chamberlain Ranch located in Mt. Carmel, Utah more fully described hereafter on the
27 terms and conditions more fully described below and for related relief, including without
28 limitation for modification of the sale procedures of 28 U.S.C. section 2001 in connection

1 therewith. As detailed below, the sale is required to close on or before February 14, 2014. The
2 Receiver specifically seeks the following relief:

3 1. An order approving and confirming the Receiver’s proposed sale of the vacant land
4 identified as Lots 6 and 16 in Chamberlain Ranch located in Mt. Carmel, County of Kane, Utah
5 (“Mt. Carmel Lots”) for a purchase price of \$38,000, all cash and without any financing
6 contingency, to Zion Mountain Resort, Inc. (“Buyer”) pursuant to the Real Estate Purchase
7 Contract for Land dated as of October 17, 2013 together with related Addendum No. 1, the
8 Additional Terms provisions and “as-is” sale Addendum (collectively the “Purchase Agreement”).
9 A true and correct copy of the Purchase Agreement is attached as Exhibit 2 to the Declaration of
10 M. Val Miller filed concurrently herewith in support of the Motion. In connection with the sale,
11 the Receiver further seeks an order:

12 A. Authorizing the Receiver to execute all documents and instruments
13 necessary or convenient to complete, implement, effectuate and close the sale to the Buyer
14 pursuant to the terms and conditions of the Purchase Agreement and the order to be entered on the
15 Motion, including but not limited to authorizing the Receiver to execute the deed, on behalf of the
16 record title holder Kombi Capital LP (“Kombi”) conveying title to the Mt. Carmel Lots to the
17 Buyer;

18 B. Authorizing the Receiver to permit and/or cause to be paid from the
19 proceeds of sale of the Mt. Carmel Lots all ordinary and customary closing costs, all costs and
20 expenses required to be paid under the terms of the Purchase Agreement by the seller from the
21 proceeds of sale, all commissions provided for in the Exclusive Right to Sell Listing Agreement
22 and the Purchase Agreement attached as Exhibits 1 and 2, respectively, to the Declaration of M.
23 Val Miller filed in support of the Motion, and all real property taxes due up to date of closing;

24 C. Authorizing the Receiver to complete the sale of the Mt. Carmel Lots
25 without further notice, order or overbidding under the circumstances, including based on the
26 modest value of the Mt. Carmel Lots and limited anticipated recovery from the sale, the failure of
27 the Buyer to agree to the sale subject to overbidding, the long-term marketing of the Mt. Carmel
28 Lots without success since 2011, there being little or no likelihood of obtaining a higher or better

1 offer, and the fact that the anticipated modest recovery would not warrant the Receiver incurring
2 additional expenses for publication, one or more appraisals and related administrative expenses
3 such that the estate's options may be limited to the pending sales or abandonment of these assets
4 given their value and lack of buyers;

5 2. An order deeming notice of the Motion to be sufficient under Local Civil Rule 66-5
6 based on the service of a notice of the filing of the Motion and the Motion on all parties and the
7 affected lienholders, and service of a notice of the filing of the Motion on all known non-consumer
8 creditors of the estate, and on all known taxing authorities with a potential claim in the
9 receivership estate concurrent with the filing of the Motion with the Court, but not on the tens of
10 thousands of potential consumer creditors.

11 This Motion is made pursuant to 28 U.S.C. § 2001 and Local Civil Rules 66-5 and 66-10
12 and other applicable law and is based upon this notice of motion and motion, the accompanying
13 memorandum of points and authorities and the Declaration of M. Val Miller filed in support
14 hereof, the separate notice of filing of this Motion, any reply, the pleadings, records and files of
15 this Court in this matter of which the Receiver requests the Court take judicial notice, and upon all
16 other pleadings, documentary evidence and argument as may be presented to the Court by the
17 Receiver.

18
19 Dated: December 19, 2013

Respectfully submitted,

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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25 By: /s/ Gary Owen Caris

Gary Owen Caris
Lesley Anne Hawes

26
27 Attorneys for Receiver
**ROBB EVANS OF ROBB EVANS &
ASSOCIATES LLC**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY 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 Order
5 and over the assets of defendant Jeremy Johnson (collectively the “Receivership Defendants”).
6 Pursuant to the Preliminary Injunction Order entered February 10, 2011, the Receiver was
7 appointed permanent Receiver over the Receivership Defendants. On March 25, 2013, the Court
8 entered its Order granting the Receiver’s Motion for Order Clarifying Preliminary Injunction
9 Order and for Further Instructions Regarding Scope of Receivership Defendants under Preliminary
10 Injunction Order and Report of Receiver’s Financial Reconstruction and Granting Relief from
11 Local Rule 66-5 Pertaining to Notice to Creditors (“Clarifying Order”) pursuant to which the
12 Court confirmed the status of numerous entities and properties as assets of the receivership estate,
13 including without limitation, the entity Kombi Capital, L.P. (“Kombi”), whose assets include the
14 Mt. Carmel Lots which are the subject of this Motion. Pursuant to the Court’s March 25, 2013
15 Clarifying Order, Kombi constitutes a Receivership Defendant and its assets constitute
16 receivership property. Kombi is an entity referred to in this case as part of the “Todd Vowell
17 Entities” in that it is an entity nominally owned and controlled by Todd Vowell and that was
18 represented by the same counsel representing Todd Vowell in connection with the proceedings
19 related to the Clarifying Order. Pursuant to the Todd Vowell Parties Settlement Agreement with
20 the Receiver, which was approved by the Court by order entered on December 11, 2013 (Doc.
21 No. 1303), the Todd Vowell Parties have relinquished any claim or interest they may have
22 purportedly held in Kombi.

23 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve
24 assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the
25 value of the assets for the benefit of consumers and creditors, on August 21, 2013, the Receiver
26 filed a motion seeking authority for the Receiver to list and market for sale the Mt. Carmel Lots
27 along with other receivership assets (Doc. No. 1161) (“Mt. Carmel Lots Sale Authorization
28 Motion”). The Court granted the Mt. Carmel Lots Sale Authorization Motion by Order entered on

1 September 30, 2013 (Doc. No. 1178). The Receiver has located a qualified buyer for the Mt.
2 Carmel Lots with all cash terms and recommends approval of the sale without further notice,
3 hearing or overbidding under the circumstances and particularly given the lack of buyers, broad,
4 long-term market exposure of the lots prior to the Receiver's marketing and the modest value of
5 the properties.

6 **A. The Mt. Carmel Lots**

7 After the Clarifying Order was entered on March 25, 2013, the Receiver began
8 investigating the status, condition and value of the assets which were to be turned over for the
9 Receiver's administration under the Preliminary Injunction, including the Mt. Carmel Lots. The
10 Receiver contacted real estate brokers in the area and obtained informal valuations and potential
11 listing price ranges for various assets, including the Mt. Carmel Lots. Mt. Carmel is a community
12 located in Kane County, Utah which borders the Zion National Park.

13 The two Mt. Carmel Lots consist of an approximate 1.889 acre lot and a 3.386 acre lot in
14 Kane County, Utah, a rural portion of Southern Utah bordering Zion National Park. The Receiver
15 has investigated the two Mt. Carmel Lots through its real estate broker Jason Griffith of NAI Utah.
16 The two Mt. Carmel Lots are part of Chamberlain Ranch, which was originally intended to be
17 developed with an approximate 20-lot subdivision. The two lots are in a particularly remote part
18 of the state, located approximately 23.5 miles from Highway SR-14 and 18 miles from highway
19 SR-9. This latter highway, SR-9, is only partially paved, and the Receiver believes access to the
20 lots during winter would be limited and that they are likely only accessible by snowmobile.

21 The Trust for Public Lands has purchased the development rights and a conservation
22 easement over much of the proposed subdivision to allow public access for hiking and preserve
23 the land without development. The land over which it has purchased the development rights may
24 only be used for limited purposes, such as agriculture and farming. Further, there have been very
25 few sales of rural lots in the area. Prior to entry of the Clarifying Order, Brent Miner of Coldwell
26 Banker real estate brokerage had listed the two Mt. Carmel Lots for sale beginning September 8,
27 2011; the lots had been continually listed for 632 days without a sale.

28

1 The two Mt. Carmel Lots have an assessed value of \$36,600 according to the Kane County
2 assessor's office. The Receiver's investigation through its broker into the value of the lots also
3 indicates that the appraisals for the development rights/conservation easements had been generally
4 in the range of \$19,000 per lot for the Chamberlain Ranch lots. The original rancher who still
5 works the land has advised the Receiver's agent that the water system for the ranch is not active.
6 A Comparable Market Analysis performed by an independent broker with knowledge of the area,
7 John L. Houston of ERA Brokers Consolidated in St. George, Utah, valued the lots at \$15,000 and
8 \$25,000, respectively, for a combined value of \$40,000. The independent broker's Comparable
9 Market Analysis also indicates that there are no water rights associated with the Mt. Carmel Lots,
10 which along with all of the foregoing factors keeps their value relatively modest. Based on the
11 limited value of the Mt. Carmel Lots, the Receiver has not obtained a formal appraisal of the
12 property. The Receiver believes any additional expenditures associated with the sale of the Mt.
13 Carmel Lots will only further diminish any recovery for the estate from these properties, which
14 will be modest in any event. Real property taxes continue to accrue until the properties are sold.

15 **B. Proposed Sale of the Mt. Carmel Lots**

16 The Receiver entered into the listing agreement with his real estate broker dated
17 October 15, 2013, although the broker had been analyzing the lots for the Receiver well in
18 advance of the listing agreement and had been researching the most likely buyers for the lots given
19 the limitations and circumstances of the properties. The most likely buyer for the lots was either
20 The Trust for Public Lands or the prior developer which holds title to most of the other property in
21 Chamberlain Ranch subject to the restrictions on use and development and the conservation
22 easement. On October 17, 2013, the Receiver entered into the proposed Real Estate Purchase
23 Contract for Land with Zion Mountain Resort, Inc. as the proposed buyer ("Buyer"), together with
24 Addendum No. 1, Additional Terms and the "as-is" sale Addendum (collectively "Purchase
25 Agreement"). The Purchase Agreement provides for an all-cash sale of the Mt. Carmel Lots for a
26 price of \$38,000. The former developer of Chamberlain Ranch is affiliated with the entity Buyer.

27 The sale under the Purchase Agreement has no contingencies and provides for a closing of
28 the sale after the Court's entry of an order approving the sale on or before February 14, 2014. The

1 Purchase Agreement does not provide for any overbidding. Based on the Receiver's investigation
2 into the Mt. Carmel Lots, the lack of realistic prospects for buyers other than the former developer
3 or The Trust for Public Lands to acquire the properties, the remote location of the lots, and the fact
4 that the lots were listed for sale for over two years without a sale by Brent Miner, an associate of
5 Jeremy Johnson who has listed other properties of Jeremy Johnson, all strongly suggest that the
6 proposed sale represents the best alternative for the estate and creditors to liquidate this asset and
7 avoid further erosion of its value through accruing taxes. The price obtained is consistent with the
8 assessed value of the property as well as the independent broker's opinion of value by ERA
9 Brokers Consolidated. The Receiver believes further marketing efforts and expenditures,
10 including expenditures for further notice and publication and overbidding, would only further
11 reduce the limited recovery anticipated from these assets. With sales commissions, insurance,
12 accruing real property taxes and administration, if this proposed sale is not approved, the Receiver
13 would have to consider whether to continue administering these lots and for what time period
14 under these circumstances.

15 **II. THE SALE OF THE MT. CARMEL LOTS UNDER THE TERMS AND**
16 **CONDITIONS OF THE PURCHASE AGREEMENT SHOULD BE APPROVED**
17 **UNDER 28 U.S.C. § 2001 AND RECEIVERSHIP LAW**

18 Section § 2001(b) of title 28 pertains to the sale of real property at private sale. That
19 statute provides in part:

20 After a hearing, of which notice to all interested parties shall be
21 given by publication or otherwise as the court directs, the court may
22 order the sale of such realty or interest therein by private sale for
23 cash or other consideration and upon such terms and conditions as
24 the court approves, if it finds that the best interests of the estate will
25 be served thereby.

26 The time, manner, terms of sale and notice thereof are regulated by the court appointing
27 the receiver. As noted above, courts are granted discretion in setting the terms and conditions for
28 judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of

1 discretion is shown. *United States v. Branch Coal Corp.*, 390 F.2d 7 (3rd Cir. 1968) *cert. den.* *Sun*
2 *Protection Co. v. U.S.*, 391 U.S. 966, 88 S.Ct. 2034, 20 L.Ed. 2d 878 (1968). The terms and
3 conditions of the judicial sale that the Court may adopt are based on the facts and circumstances of
4 each case. The discretion granted in connection with sales of assets is consistent with the broad
5 discretion accorded to the Court sitting in equity in receivership proceedings to make orders
6 concerning the administration and supervision of the estate that will promote equity, efficiency
7 and cost-effectiveness in the estate's administration. *See generally Securities and Exchange*
8 *Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange Commission v.*
9 *Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d
10 1560 (11th Cir. 1992).

11 There are four general components for the approval of a private sale under § 2001(b),
12 including (1) three appraisals valuing the property, (2) a minimum sale price of two-thirds of the
13 average value of the three appraisals, (3) publication of notice ten days prior to confirmation, and
14 (4) a provision that a private sale cannot be confirmed if there is an overbid at least 10 percent
15 higher than the proposed sale price under the private sale. As set forth above, the Receiver has
16 obtained two valuations of the Mt. Carmel Lots, one of which is from an independent broker at
17 ERA Brokers Consolidated, and has not obtained a formal appraisal of the lots because of the
18 expense associated with obtaining such an appraisal. The lots are located in a remote area of
19 Southern Utah that is likely at this point only accessible by snowmobile because of the winter
20 conditions with snow and with highway SR-9 not being fully paved to the location of the lots. The
21 lots, as vacant land, produce no income and are subject to accruing real property taxes. The price
22 achieved for the two lots of \$38,000 is approximately equal to the average of the assessed
23 valuation (\$36,600), the Receiver's broker's valuation (\$36,600) and the independent broker's
24 valuation (\$40,000), and is consistent with what the Receiver is informed has been the general
25 appraised value of other lots in the subdivision of approximately \$19,000 each. The Mt. Carmel
26 Lots were listed for sale for over two years by a predecessor broker apparently with no sales
27 activity. Particularly given the limited potential pool of buyers, and the limited value of the
28 property, the costs associated with conducting what the Receiver believes would be a futile

1 overbid session would only reduce the estate's recovery from this property without the estate
2 obtaining higher or better offers for these lots. The administrative expenses associated with
3 obtaining an appraisal or any additional valuations and administering and publishing notice of an
4 overbid session in addition to the sales commissions and accruing real estate taxes may reduce the
5 likely net recovery from these two lots to the point at which abandonment of the lots from the
6 estate may be warranted. The Receiver has attempted to balance the various factors, the financial
7 and administrative considerations regarding the Mt. Carmel Lots and the practical limits on the
8 Receiver's ability to maximize the value of the estate's interests in these lots through the proposed
9 Purchase Agreement. Under the circumstances, given the alternative of potentially obtaining no
10 recovery if the lots were abandoned, based on the administrative expenses that might be incurred
11 to sell them, or maximizing value through the terms and conditions provided in the Purchase
12 Agreement that the Receiver believes is supported by the Receiver's investigation into the Mt.
13 Carmel Lots, their value and their marketability, the Receiver recommends approval of the
14 proposed Purchase Agreement under the circumstances.

15 **III. NOTICE OF THIS MOTION IS SUFFICIENT UNDER THE CIRCUMSTANCES**
16 **AND SHOULD BE APPROVED**

17 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by a
18 Receiver concerning the administration of the estate. That rule provides for service of the notice
19 of hearing on such motions on all creditors of the receivership estate.

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

26 There are believed to be an extremely large number of potential consumer creditors who
27 may have claims against the Receivership Defendants arising out of the business operations of the
28 Receivership Defendants prior to the Receiver's appointment, although the precise number,

1 identity and location of such consumer creditors have not been determined by the Receiver at this
2 time. Given the Receiver's determination that more than \$332.5 million¹ in sales revenues were
3 generated by I Works and the related and affiliated entities, the number of consumer creditors is
4 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its
5 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with
6 notice of this and other similar administrative motions, and the expense and burden on the estate
7 of attempting to effectuate such service would drain the estate's resources and cause undue
8 administrative expense.

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

14 There is ample authority for approval of the scope and method of notice as set forth above.
15 This Court, as a court of equity supervising the receivership estate, may make appropriate
16 administrative orders governing the receivership, including limitations on and changes in notice
17 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
18 procedures when numerous defendants are involved in litigation). In addition, as set out above,
19 pursuant to Local Rule 66-10, a receiver is directed to administer receivership estates "as nearly as
20 may be in accordance with the practice in the administration of estates in Chapter 11 bankruptcy
21 cases." Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice
22 to all creditors are routinely granted in bankruptcy cases to promote the expeditious and
23 economical administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R.
24 428, 442 (C.D. Cal. 2001) (referencing in *dicta* in the court's recitation of facts the bankruptcy
25 court's order limiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the phrase
26 "after notice and a hearing" to mean "after such notice as is appropriate in the particular
27

28 ¹ 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 circumstances, and such opportunity for hearing as is appropriate in the particular
2 circumstances”); 11 U.S.C. section 105(a) and (d) (granting broad equitable powers to the court to
3 issue orders “necessary or appropriate to carry out the provisions” of title 11 including
4 “prescribing such limitations and conditions as the court deems appropriate to ensure the case is
5 handled expeditiously and economically”); and F.R. Bankr. P. 2002(m) (authorizing the court to
6 enter “orders designating the matters in respect to which, the entity to whom, and the form and
7 manner in which notices shall be sent except as otherwise provided by these rules”).

8 **IV. CONCLUSION**

9 For the foregoing reasons, it is respectfully requested that the Court grant relief as
10 requested in the Motion.

11
12 Dated: December 19, 2013

Respectfully submitted,

13 RANDOLPH L. HOWARD
14 KOLESAR & LEATHAM, CHTD.

15 MCKENNA LONG & ALDRIDGE LLP
16 GARY OWEN CARIS
17 LESLEY ANNE HAWES

18 By: /s/ Gary Owen Caris

Gary Owen Caris

19 Attorneys for Receiver
20 **ROBB EVANS OF ROBB EVANS &
21 ASSOCIATES LLC**

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

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13 **UNITED STATES DISTRICT COURT**

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15 **DISTRICT OF NEVADA**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, etc., et al.,

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

**DECLARATION OF M. VAL MILLER
IN SUPPORT OF MOTION FOR
ORDER: (1) APPROVING AND
CONFIRMING SALE OF MT. CARMEL
LOTS AND FOR RELATED RELIEF;
AND (2) GRANTING RELIEF FROM
LOCAL RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS**

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 Kombi Capital LP (“Kombi”) 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, reviewed the status and valuations of and supervised the listing and
26 proposed sale of Lot 6 and Lot 16 in Chamberlain Ranch located in Mt. Carmel, County of Kane,
27 Utah (“Mt. Carmel Lots”) titled to Kombi. The facts set forth in this declaration regarding the
28 Mt. Carmel Lots have been obtained through my investigation and with the assistance of the

1 Receiver's agents, including the Receiver's real estate agent for this proposed transaction, NAI
2 Utah.

3 4. In the Clarifying Order, the Court confirmed the status of numerous entities and
4 properties as assets of the receivership estate, including without limitation, Kombi whose assets
5 include the Mt. Carmel Lots which are the subject of this Motion. Pursuant to the Court's March
6 25, 2013 Clarifying Order, Kombi constitutes a Receivership Defendant and its assets constitute
7 receivership property. Kombi is an entity referred to in this case as part of the "Todd Vowell
8 Entities" in that it is an entity nominally owned and controlled by Todd Vowell and that was
9 represented by the same counsel representing Todd Vowell in connection with the proceedings
10 related to the Clarifying Order. Pursuant to the Todd Vowell Parties Settlement Agreement with
11 the Receiver, which was approved by the Court by order entered on December 11, 2013 (Doc.
12 No. 1303), the Todd Vowell Parties have relinquished any claim or interest they may have
13 purportedly held in Kombi.

14 5. After the Clarifying Order was entered on March 25, 2013, the Receiver began
15 investigating the status, condition and value of the assets which were to be turned over for the
16 Receiver's administration under the Preliminary Injunction, including the Mt. Carmel Lots. The
17 Receiver contacted real estate brokers in the area and obtained informal valuations and potential
18 listing price ranges for various assets, including the Mt. Carmel Lots. Mt. Carmel is a community
19 located in Kane County, Utah which borders the Zion National Park.

20 6. In order to preserve the value of the assets for the benefit of consumers and
21 creditors, on August 21, 2013, the Receiver filed a motion seeking authority for the Receiver to
22 list and market for sale the Mt. Carmel Lots along with other receivership assets (Doc. No. 1161)
23 ("Mt. Carmel Lots Sale Authorization Motion"). The Court granted the Mt. Carmel Lots Sale
24 Authorization Motion by Order entered on September 30, 2013 (Doc. No. 1178).

25 7. The two Mt. Carmel Lots consist of an approximate 1.889 acre lot and a 3.386 acre
26 lot in Kane County, Utah, a rural portion of Southern Utah bordering Zion National Park. The
27 Receiver has investigated the two Mt. Carmel Lots through its real estate broker Jason Griffith of
28 NAI Utah. The two Mt. Carmel Lots are part of Chamberlain Ranch, which was originally

1 intended to be developed with an approximate 20-lot subdivision. The two lots are in a
2 particularly remote part of the state, located approximately 23.5 miles from Highway SR-14 and
3 18 miles from highway SR-9. This latter highway, SR-9, is only partially paved, and the
4 Receiver believes access to the lots during winter would be limited and that they are likely only
5 accessible by snowmobile.

6 8. The Receiver has been advised through his broker that The Trust for Public Lands
7 has purchased the development rights and a conservation easement over much of the proposed
8 subdivision to allow public access for hiking and preserve the land without development. The
9 land over which it has purchased the development rights may only be used for limited purposes,
10 such as agriculture and farming. There have been very few sales of rural lots in the area. Prior to
11 entry of the Clarifying Order, Brent Miner of Coldwell Banker real estate brokerage had listed the
12 two Mt. Carmel Lots for sale beginning September 8, 2011; the lots had been continually listed
13 for 632 days without a sale.

14 9. The two Mt. Carmel Lots have an assessed value of \$36,600 according to the Kane
15 County assessor's office. The Receiver's investigation, through its broker NAI Utah, into the
16 value of the lots in August 2013 also indicated that the appraisals for the development
17 rights/conservation easements had been generally in the range of \$19,000 per lot for the
18 Chamberlain Ranch lots. The original rancher who still works the land has advised the Receiver's
19 agent that the water system for the ranch is not active. I have obtained a Comparable Market
20 Analysis performed by an independent broker with knowledge of the area, John L. Houston of
21 ERA Brokers Consolidated in St. George, Utah, which valued the lots at \$15,000 and \$25,000,
22 respectively, for a combined value of \$40,000. The independent broker's Comparable Market
23 Analysis also indicates that there are no water rights associated with the Mt. Carmel Lots, which
24 along with all of the foregoing factors keeps their value relatively modest. Based on the limited
25 value of the Mt. Carmel Lots, the Receiver has not obtained a formal appraisal of the property.
26 The Receiver believes any additional expenditures associated with the sale of the Mt. Carmel Lots
27 will only further diminish any recovery for the estate from these properties, which will be modest
28 in any event. Real property taxes continue to accrue until the properties are sold.

1 10. The Receiver entered into the listing agreement with his real estate broker dated
2 October 15, 2013, although the broker had been analyzing the lots for the Receiver well in
3 advance of the listing agreement and had been researching the most likely buyers for the lots
4 given the limitations and circumstances of the properties. A true and correct copy of the listing
5 agreement is attached hereto as Exhibit 1. The most likely buyer for the lots was either The Trust
6 for Public Lands or the prior developer which holds title to most of the other property in
7 Chamberlain Ranch subject to the restrictions on use and development and the conservation
8 easement. On October 17, 2013, the Receiver entered into the proposed Real Estate Purchase
9 Contract for Land with Zion Mountain Resort, Inc. as the proposed buyer ("Buyer"), together
10 with Addendum No. 1, Additional Terms and the "as-is" sale Addendum (collectively "Purchase
11 Agreement"). A true and correct copy of the Purchase Agreement is attached hereto as Exhibit 2.
12 The Purchase Agreement provides for an all-cash sale of the Mt. Carmel Lots for a price of
13 \$38,000. The former developer of Chamberlain Ranch is affiliated with the entity Buyer. The
14 Receiver has obtained title reports for the Mt. Carmel Lots which indicate that there are liens for
15 accruing delinquent real property taxes encumbering the properties. True and correct copies of
16 the title reports are attached hereto as Exhibits 3 and 4.

17 11. The sale under the Purchase Agreement has no contingencies and provides for a
18 closing of the sale after the Court's entry of an order approving the sale on or before February 14,
19 2014. The Purchase Agreement does not provide for any overbidding. Based on the Receiver's
20 investigation into the Mt. Carmel Lots, the lack of realistic prospects for buyers other than the
21 former developer or The Trust for Public Lands to acquire the properties, the remote location of
22 the lots, and the fact that the lots were listed for sale for over two years without a sale by Brent
23 Miner, an associate of Jeremy Johnson who has listed other properties of Jeremy Johnson, all
24 strongly suggest that the proposed sale represents the best alternative for the estate and creditors
25 to liquidate this asset and avoid further erosion of its value through accruing taxes. The price
26 obtained is consistent with the assessed value of the property as well as the independent broker's
27 opinion of value by ERA Brokers Consolidated. The Receiver believes further marketing efforts
28 and expenditures, including expenditures for further notice and publication and overbidding,

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would only further reduce the limited recovery anticipated from these assets. With sales commissions, insurance, accruing real property taxes and administration, if this proposed sale is not approved, the Receiver would have to consider whether to continue administering these lots and for what time period under these circumstances.

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 18th day of December 2013 at Sun Valley, California.


M. VAL MILLER