

**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 5 South 500 West #1105,
Salt Lake City, Utah 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 March 4, 2014

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ROBB EVANS OF ROBB EVANS &
11 **ASSOCIATES LLC**

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

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 5 SOUTH 500
WEST #1105, SALT LAKE CITY, UTAH
AND FOR RELATED RELIEF; AND
(2) GRANTING RELIEF FROM LOCAL
RULE 66-5 PERTAINING TO NOTICE
TO CREDITORS; MEMORANDUM OF
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 5 South
26 500 West #1105, Salt Lake City, Utah ("Salt Lake Condominium") on the terms and conditions
27 more fully described below and for related relief, including without limitation for modification of
28

1 the sale procedures of 28 U.S.C. section 2001 in connection therewith. The Receiver specifically
2 seeks the following relief:

3 1. An order approving and confirming the Receiver's proposed sale of the Salt Lake
4 Condominium for a purchase price of \$215,000 to Susan Rieck ("Buyer") pursuant to the Real
5 Estate Purchase Contract dated as of February 4, 2014 together with the related Addendum No. 1,
6 Addendum No. 2, with the Additional Terms provisions and "As-Is" Sale Attachments thereto
7 (collectively the "Purchase Agreement"). A true and correct copy of the Purchase Agreement is
8 attached as Exhibit 2 to the Declaration of M. Val Miller filed concurrently herewith in support of
9 the Motion. In connection with the sale, the Receiver further seeks an order:

10 A. Authorizing the Receiver to execute all documents and instruments
11 necessary or convenient to complete, implement, effectuate and close the sale to the Buyer
12 pursuant to the terms and conditions of the Purchase Agreement and the order to be entered on the
13 Motion, including but not limited to authorizing the Receiver to execute the deed, on behalf of the
14 record title holder Phoenix Rising, LLC ("Phoenix Rising") conveying title to the Salt Lake
15 Condominium to the Buyer;

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

22 C. Authorizing the Receiver to complete the sale of the Salt Lake
23 Condominium without further notice, order or overbidding under the circumstances, including the
24 modest value of the Salt Lake Condominium, the failure of the Buyer to agree to the sale subject
25 to overbidding, the fact that the Receiver conducted an informal overbid session prior to entering
26 into the Purchase Agreement with the Buyer and the proposed purchase price is higher than any of
27 the other offers for the property received from other potential buyers, and the fact that the
28 proposed purchase price is equal to the appraised value such that any additional potential recovery

1 from an overbid is unlikely and would not warrant the Receiver incurring additional expenses for
2 publication and related administrative expenses;

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

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

16
17 Dated: March 4, 2014

Respectfully submitted,

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

By: /s/ Gary Owen Caris

Gary Owen Caris
Lesley Anne Hawes

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 Phoenix Rising, whose assets include the Salt Lake
14 Condominium which is the subject of this Motion. Pursuant to the Court’s March 25, 2013
15 Clarifying Order, Phoenix Rising constitutes a Receivership Defendant and its assets constitute
16 receivership property. Phoenix Rising is an entity referred to in this case as part of the “Jason
17 Vowell Entities” in that it is an entity nominally owned and controlled by Jason Vowell and that
18 was represented by the same counsel representing Jason Vowell in connection with the
19 proceedings related to the Clarifying Order. Jason Vowell and the Jason Vowell Entities,
20 including Phoenix Rising, did not appeal the Clarifying Order and the order is final as to those
21 parties.

22 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve
23 assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the
24 value of the assets for the benefit of consumers and creditors, on August 21, 2013, the Receiver
25 filed a motion seeking authority for the Receiver to list and market for sale the Salt Lake
26 Condominium along with other receivership assets (Doc. No. 1161) (“Salt Lake Condominium
27 Sale Authorization Motion”). The Court granted the Salt Lake Condominium Sale Authorization
28 Motion by Order entered on September 30, 2013 (Doc. No. 1178).

1 The Receiver has located a qualified buyer for the Salt Lake Condominium at a price
2 higher than any other offer received by the Receiver over the months the property has been
3 marketed and that equals the appraised value. The Purchase Agreement contains a financing
4 contingency. The Receiver recommends approval of the sale without further notice, hearing or
5 overbidding under the circumstances.

6 **A. The Salt Lake Condominium**

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 Salt Lake
10 Condominium. The Receiver contacted real estate brokers in the area and obtained informal
11 valuations and potential listing price ranges for various assets, including the Salt Lake
12 Condominium.

13 The Salt Lake Condominium is a two bedroom, two bath unit with approximately 925
14 square feet of gross living area. The unit is located in a condominium project known as The Parc
15 at Gateway in the southwest urban district of Salt Lake City. The condominium development is
16 connected to the Gateway Shopping Center. The Salt Lake Condominium has views of the
17 commercial and industrial development, railroad tracks and a major highway (Interstate 15). In
18 the course of the Receiver's investigation of the Salt Lake Condominium for the estate after entry
19 of the Clarifying Order, the Receiver discovered that the condominium had been rented to a third
20 party by Jason Vowell. That third party renter has been cooperative with the Receiver and has
21 agreed to a month-to-month tenancy at the property. The Salt Lake Condominium is
22 unencumbered, except for the accruing senior lien for real property taxes.

23 After the Court granted the Salt Lake Condominium Sale Authorization Motion, the
24 Receiver listed the Salt Lake Condominium for sale with Cityhome Collective and Brianna Davis
25 as the listing agent on October 7, 2013. The Receiver obtained a formal appraisal which valued
26 the Salt Lake Condominium as of October 17, 2013 at \$215,000. The appraisal was prepared by
27 Thomas E. Mulcock, a Certified Appraiser. The Receiver has also obtained two comparable
28 sale/comparable market analyses of the Salt Lake Condominium prepared by local brokers

1 familiar with the area and with condominium sales in this building and in the area and valuing the
2 property based on recent closed sales of comparable properties. The purchase price under the
3 Purchase Agreement represents an amount that is approximately equal to the average of the three
4 valuations obtained for the Salt Lake Condominium. In addition, the Receiver's investigation in
5 connection with the Motion to Clarify indicated that the Salt Lake Condominium was listed for
6 sale in July 2012 for \$194,900.

7 The Receiver believes any additional expenditures associated with the sale of the Salt Lake
8 Condominium for publication and a further, formal overbidding session are unlikely to result in a
9 higher purchase price, and any increase in the purchase price would likely result in no additional
10 recovery to the estate when the delays, costs of publication and additional administrative expenses
11 that would be incurred are taken into account. Further, because the Buyer is seeking a loan to
12 complete the purchase and made an offer equal to the appraised value of the unit, the Buyer would
13 not agree to a sale subject to overbidding.

14 **B. Proposed Sale of the Salt Lake Condominium**

15 The Receiver entered into the listing agreement with his real estate broker dated October 7,
16 2013. The Receiver obtained multiple offers for the property from different buyers, both at a
17 purchase price of \$195,000. The Receiver invited those proposed buyers to submit their highest
18 and best offers, but those buyers did not increase their offers. The Receiver later received an offer
19 at \$180,000 to which the Receiver made a substantially higher counteroffer without contingencies,
20 which was not accepted. In December 2013, the Receiver obtained an offer for \$202,000 from a
21 proposed buyer, which the Receiver accepted subject to the contingency periods provided in the
22 contract and Court approval. Escrow was opened, but the prior sale at \$202,000 failed in the
23 contingency period.

24 The Receiver's broker reconnected with buyers who had expressed interest and additional
25 offers were received. After another round of informal overbidding, the Buyer made her last and
26 best offer for the property at \$215,000. The Receiver submitted a counteroffer on certain terms
27 and conditions of the sale, and the Buyer accepted the counteroffer on February 4, 2014. The
28 Purchase Agreement contains two sets of contingencies, including the Buyer's physical inspection

1 of the property, which has been satisfied, and the Buyer's obtaining a loan. The Buyer's loan
2 application is being processed. The final condition to the sale is the Receiver obtaining approval
3 of the sale by the Court. The Buyer is an arm's length buyer and unaffiliated with the defendants
4 or Receivership Defendants to the best of the Receiver's knowledge and belief.

5 The Purchase Agreement does not provide for any overbidding. As set forth above, the
6 Receiver has conducted multiple rounds of informal overbidding prior to accepting the Purchase
7 Agreement. The purchase price under the Purchase Agreement equals the appraised value and
8 approximately equals the average of the three valuations. The current offer is materially higher
9 than the prior offers received, including the offer the Receiver initially accepted.

10 The Receiver subsequently received the offer from the Buyer that is the highest and best
11 offer received to date for the Salt Lake Condominium. Although the Purchase Agreement
12 contains a financing contingency, the Receiver believes the Buyer should qualify for the loan
13 requested. Based on the marketing history, the valuations and the informal overbidding
14 opportunities already afforded to potential buyers, the Receiver believes it is not realistic to expect
15 any overbidder to offer a purchase price 10% higher than the current purchase price of
16 \$215,000.00 under the Purchase Agreement.

17 **II. THE SALE OF THE SALT LAKE CONDOMINIUM UNDER THE TERMS AND**
18 **CONDITIONS OF THE PURCHASE AGREEMENT SHOULD BE APPROVED**
19 **UNDER 28 U.S.C. § 2001 AND RECEIVERSHIP LAW**

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

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

28

1 The time, manner, terms of sale and notice thereof are regulated by the court appointing
2 the receiver. As noted above, courts are granted discretion in setting the terms and conditions for
3 judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of
4 discretion is shown. *United States v. Branch Coal Corp.*, 390 F.2d 7 (3rd Cir. 1968) *cert. den.* *Sun*
5 *Protection Co. v. U.S.*, 391 U.S. 966, 88 S.Ct. 2034, 20 L.Ed. 2d 878 (1968). The terms and
6 conditions of the judicial sale that the Court may adopt are based on the facts and circumstances of
7 each case. The discretion granted in connection with sales of assets is consistent with the broad
8 discretion accorded to the Court sitting in equity in receivership proceedings to make orders
9 concerning the administration and supervision of the estate that will promote equity, efficiency
10 and cost-effectiveness in the estate's administration. *See generally Securities and Exchange*
11 *Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange Commission v.*
12 *Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d
13 1560 (11th Cir. 1992).

14 There are four general components for the approval of a private sale under § 2001(b),
15 including (1) three appraisals valuing the property, (2) a minimum sale price of two-thirds of the
16 average value of the three appraisals, (3) publication of notice ten days prior to confirmation, and
17 (4) a provision that a private sale cannot be confirmed if there is an overbid at least 10 percent
18 higher than the proposed sale price under the private sale. As set forth above, the Receiver has
19 obtained an appraisal and two other valuations of the Salt Lake Condominium sale. The costs
20 associated with conducting what the Receiver believes would be a futile overbid session would
21 only reduce the estate's recovery from this property without the estate obtaining higher or better
22 offers for the condominium. The administrative expenses associated with obtaining additional
23 formal appraisals and administering and publishing notice of an overbid session in addition to the
24 sales commissions and accruing real estate taxes would reduce the recovery to the estate from any
25 overbid, and it is highly unlikely that an overbidder would appear that would be willing to bid an
26 amount 10% higher than the current offer given the marketing history of the property, the
27 comparable sales and the appraisal and other valuations. The Receiver has attempted to balance
28 various factors, including the financial and administrative considerations regarding the Salt Lake

1 Condominium, the informal overbid sessions conducted by the Receiver and invitation to potential
2 buyers to make higher offers given the multiple offers received, and the market limitations based
3 on the recent sales of comparable units, and concluded that the estate should accept the proposed
4 Purchase Agreement. Under the circumstances, the Receiver recommends approval of the
5 proposed Purchase Agreement as presented without further notice or further overbidding.

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

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

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

17 There are believed to be an extremely large number of potential consumer creditors who
18 may have claims against the Receivership Defendants arising out of the business operations of the
19 Receivership Defendants prior to the Receiver’s appointment, although the precise number,
20 identity and location of such consumer creditors have not been determined by the Receiver at this
21 time. Given the Receiver’s determination that more than \$332.5 million¹ in sales revenues were
22 generated by I Works and the related and affiliated entities, the number of consumer creditors is
23 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its
24 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with
25 notice of this and other similar administrative motions, and the expense and burden on the estate
26
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 of attempting to effectuate such service would drain the estate's resources and cause undue
2 administrative expense.

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

8 There is ample authority for approval of the scope and method of notice as set forth above.
9 This Court, as a court of equity supervising the receivership estate, may make appropriate
10 administrative orders governing the receivership, including limitations on and changes in notice
11 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
12 procedures when numerous defendants are involved in litigation). In addition, as set out above,
13 pursuant to Local Rule 66-10, a receiver is directed to administer receivership estates "as nearly as
14 may be in accordance with the practice in the administration of estates in Chapter 11 bankruptcy
15 cases." Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice
16 to all creditors are routinely granted in bankruptcy cases to promote the expeditious and
17 economical administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R.
18 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the bankruptcy
19 court's order limiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the phrase
20 "after notice and a hearing" to mean "after such notice as is appropriate in the particular
21 circumstances, and such opportunity for hearing as is appropriate in the particular
22 circumstances"); 11 U.S.C. section 105(a) and (d) (granting broad equitable powers to the court to
23 issue orders "necessary or appropriate to carry out the provisions" of title 11 including
24 "prescribing such limitations and conditions as the court deems appropriate to ensure the case is
25 handled expeditiously and economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to
26 enter "orders designating the matters in respect to which, the entity to whom, and the form and
27 manner in which notices shall be sent except as otherwise provided by these rules").
28

1 **IV. CONCLUSION**

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

4
5 Dated: March 4, 2014

Respectfully submitted,

6 RANDOLPH L. HOWARD
7 KOLESAR & LEATHAM, CHTD.

8 MCKENNA LONG & ALDRIDGE LLP
9 GARY OWEN CARIS
10 LESLEY ANNE HAWES

11 By: /s/ Gary Owen Caris

Gary Owen Caris

12 Attorneys for Receiver
13 **ROBB EVANS OF ROBB EVANS &
14 ASSOCIATES LLC**

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

12 **UNITED STATES DISTRICT COURT**

13
14 **DISTRICT OF NEVADA**

15
16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, etc., et al.,

20 Defendants.
21
22

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 5 SOUTH 500
WEST, #1105, SALT LAKE CITY, UTAH
AND FOR RELATED RELIEF; AND
(2) GRANTING RELIEF FROM LOCAL
RULE 66-5 PERTAINING TO NOTICE
TO CREDITORS**

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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 Phoenix Rising, LLC (“Phoenix Rising”)
21 and its 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 the two bedroom, two bath condominium unit at The Parc at Gateway located at
27 5 South 500 West, #1105, Salt Lake City, Utah (“Salt Lake Condominium”) title to which is held
28 by Phoenix Rising. The facts set forth in this declaration regarding the Salt Lake Condominium

1 have been obtained through my investigation and with the assistance of the Receiver's agents,
2 including the Receiver's real estate agent for this proposed transaction, Cityhome Collective and
3 Brianna Davis.

4 4. In the Clarifying Order, the Court confirmed the status of numerous entities and
5 properties as assets of the receivership estate, including without limitation, Phoenix Rising whose
6 assets include the Salt Lake Condominium which is the subject of this Motion. Pursuant to the
7 Court's March 25, 2013 Clarifying Order, Phoenix Rising constitutes a Receivership Defendant
8 and its assets constitute receivership property. Phoenix Rising is an entity referred to in this case
9 as part of the "Jason Vowell Entities" in that it is an entity nominally owned and controlled by
10 Jason Vowell and that was represented by the same counsel representing Jason Vowell in
11 connection with the proceedings related to the Clarifying Order. Jason Vowell did not appeal the
12 Clarifying Order, and that order is final as to Jason Vowell and the Jason Vowell Entities.

13 5. After the Clarifying Order was entered on March 25, 2013, the Receiver began
14 investigating the status, condition and value of the assets which were to be turned over for the
15 Receiver's administration under the Preliminary Injunction, including the Salt Lake
16 Condominium. The Receiver contacted real estate brokers in the area and obtained informal
17 valuations and potential listing price ranges for various assets, including the Salt Lake
18 Condominium. In investigating the Salt Lake Condominium, the Receiver determined that the
19 condominium had been rented to a third party by Jason Vowell. That third party renter has been
20 cooperative with the Receiver and has agreed to a month-to-month tenancy at the property.

21 6. The Salt Lake Condominium is a two bedroom, two bath unit with approximately
22 925 square feet of gross living area. It is located in a condominium project known as The Parc at
23 Gateway in the southwest urban district of Salt Lake City. The condominium development is
24 connected to the Gateway Shopping Center. The Salt Lake Condominium has views of the
25 commercial and industrial development, railroad tracks and a major highway (Interstate 15).

26 7. In order to preserve the value of the assets for the benefit of consumers and
27 creditors, on August 21, 2013, the Receiver filed a motion seeking authority for the Receiver to
28 list and market for sale the Salt Lake Condominium along with other receivership assets (Doc.

1 No. 1161) ("Salt Lake Condominium Sale Authorization Motion"). The Court granted the Salt
2 Lake Condominium Sale Authorization Motion by Order entered on September 30, 2013 (Doc.
3 No. 1178).

4 8. After the Court granted the Salt Lake Condominium Sale Authorization Motion,
5 the Receiver listed the Salt Lake Condominium for sale with Cityhome Collective and Brianna
6 Davis as the listing agent on October 7, 2013. Attached hereto as Exhibit 1 is a true and correct
7 copy of the Receiver's Exclusive Listing Agreement dated October 7, 2013 pertaining to the Salt
8 Lake Condominium. The Receiver obtained a formal appraisal which valued the Salt Lake
9 Condominium as of October 17, 2013 at \$215,000. The appraisal was prepared by Thomas E.
10 Mulcock, a Certified Appraiser. The Receiver has also obtained a comparable sales/comparable
11 market analysis prepared by C-Squared Real Estate dated October 4, 2013 and a comparable sales
12 analysis by the Receiver's broker Cityhome Collective dated October 2, 2013, both local brokers
13 familiar with the area and with condominium sales in this building and in the area and which
14 valued the property based on recent closed sales of comparable properties.

15 9. After the property was listed for sale, the Receiver obtained multiple offers for the
16 property from different buyers, both at a purchase price of \$195,000. The Receiver invited those
17 proposed buyers to submit their highest and best offers, but those buyers did not increase their
18 offers. The Receiver later received an offer at \$180,000 to which the Receiver made a
19 substantially higher counteroffer without contingencies, which was not accepted. In December
20 2013, the Receiver obtained an offer for \$202,000 from a proposed buyer, which the Receiver
21 accepted subject to the contingency periods provided in the contract and Court approval. Escrow
22 was opened, but the prior sale at \$202,000 failed in the contingency period.

23 10. The Receiver's broker reconnected with buyers who had expressed interest and
24 additional offers were received. After another round of informal overbidding, Susan Rieck (the
25 "Buyer") made her last and best offer for the property at \$215,000. The Receiver obtained the
26 offer for \$215,000 from the Buyer on February 4, 2014, and responded with a counteroffer
27 regarding the sale being subject to Court approval and other matters reflected in the Purchase
28 Agreement, which was accepted by the Buyer pursuant to the signed agreement dated as of

1 February 4, 2014. Attached hereto collectively as Exhibit 2 are true and correct copies of the
2 Real Estate Purchase Contract dated as of February 4, 2014 together with the related Addendum
3 No. 1, Addendum No. 2, with the Additional Terms provisions and "As-Is" Sale Attachments
4 thereto (collectively the "Purchase Agreement") pursuant to which the Receiver proposes to sell
5 the Salt Lake Condominium for a purchase price of \$215,000 to the Buyer, an arm's length
6 unaffiliated third party buyer.

7 11. The Purchase Agreement contains two sets of contingencies, including the Buyer's
8 physical inspection of the property, which has been satisfied, and the Buyer's obtaining a loan.
9 The Buyer's loan application is being processed. The final condition to the sale is the Receiver
10 obtaining approval of the sale by the Court.

11 12. The Salt Lake Condominium is unencumbered except for a senior lien for accruing
12 real property taxes. Attached hereto as Exhibit 3 is a true and correct copy of the preliminary title
13 report obtained by the Receiver in connection with the opening of escrow for the proposed sale.

14 13. The Purchase Agreement does not provide for any overbidding. As set forth
15 above, the Receiver has conducted multiple rounds of informal overbidding prior to accepting the
16 Purchase Agreement. The purchase price under the Purchase Agreement equals the appraised
17 value and approximately equals the average of the three valuations. The current offer is
18 materially higher than the prior offers received, including the offer the Receiver initially accepted.

19 14. The offer from the Buyer that is the highest and best offer received to date for the
20 Salt Lake Condominium. Although the Purchase Agreement contains a financing contingency,
21 the Receiver believes the Buyer should qualify for the loan requested. Based on the marketing
22 history, the valuations and the informal overbidding opportunities already afforded to potential
23 buyers, the Receiver believes it is not realistic to expect any overbidder to offer a purchase price
24 10% higher than the current purchase price of \$215,000.00 under the Purchase Agreement. The
25 Receiver believes the expenses of conducting an overbid session with publication costs and the
26 delay involved, commissions, and other sale expenses, are not warranted because any such
27 overbid session is unlikely to produce any qualified overbidder and any additional net proceeds
28 for the estate.

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15. The purchase price under the Purchase Agreement represents an amount that is approximately equal to the average of the three valuations obtained for the Salt Lake Condominium. In addition, the Receiver's investigation in connection with the Motion to Clarify indicated that the Salt Lake Condominium was listed for sale in July 2012 for \$194,900.

16 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 4th day of March 2014 at Las Vegas, Nevada.


M. VAL MILLER