

**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) Authorizing Receiver to Sell Houseboat "Animal House" at Public Auction, Approving Terms and Conditions of Sale and Receiver's Engagement of Statewide Auction Company 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 13, 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) AUTHORIZING  
RECEIVER TO SELL HOUSEBOAT  
"ANIMAL HOUSE" AT PUBLIC  
AUCTION, APPROVING TERMS AND  
CONDITIONS OF SALE AND  
RECEIVER'S ENGAGEMENT OF  
STATEWIDE AUCTION COMPANY  
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**

24  
25 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC  
26 ("Receiver"), the Receiver pursuant to the Court's Preliminary Injunction Order issued  
27 February 10, 2011, hereby moves the Court for the following relief:  
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1           1.       For an order authorizing the Receiver to sell that certain 1994 Skipperliner 74 foot  
2 houseboat named Animal House, hull number HIN # SGU01661L394 ("Animal House") owned  
3 by Orange Cat Investments LLC and located in Lake Powell, Arizona by public auction;

4           2.       For an order authorizing the Receiver to engage the firm of Statewide Auction  
5 Company ("Statewide") as auctioneer to conduct the public auction pursuant to the proposed  
6 Statewide Auction Company Consignment Agreement and Additional Terms ("Auction Contract")  
7 attached as Exhibit 1 to the Declaration of M. Val Miller filed in support of this Motion;

8           3.       For an order authorizing the Receiver to pay commissions and other fees from the  
9 gross proceeds of sale in connection with the sale of the Animal House (a) to Statewide, in the  
10 amount of 10% of the gross sales price paid by the purchaser of the Animal House at the public  
11 auction in accordance with the Auction Contract; and (b) to Aramark Sports and Entertainment  
12 Services, Inc. d/b/a Lake Powell Resorts and Marinas ("Marine Broker"), any outstanding  
13 moorage fees as of the date of closing, a \$300 administrative fee together with a commission of  
14 1% of the gross sales price paid by the purchaser of the Animal House based on the exclusive  
15 concession rights granted to the Marine Broker for houseboats located on Lake Powell that entitle  
16 the Marine Broker to a commission in connection with any sale of a houseboat located at Lake  
17 Powell, as reflected in Exhibit 2 to the Declaration of M. Val Miller in support of this Motion;

18           4.       For an order approving the following sale procedures, notice and publication of the  
19 sale, and terms and conditions for the conduct of the public auction of the Animal House ("Sale  
20 Procedures") and that the sale and publication procedures of 28 U.S.C. §§ 2001, 2002 and 2004 be  
21 modified accordingly:

22                   A.       That the public auction of the Animal House shall be conducted at the  
23 offices of Statewide located at 5099 Wheeler Way, Hurricane, Utah, rather than at Wahweap  
24 Marina in Lake Powell, Arizona;

25                   B.       That the Receiver shall be authorized to sell the Animal House at public  
26 auction without reserve but subject to final approval of the sale and the highest bid by the Receiver  
27 as Seller, in his sole discretion, as set forth in the Auction Contract;

28                   C.       That all bidders for the purchase of the Animal House shall pre-qualify with

1 Statewide by providing Statewide a cashier's check in the amount of \$5,000 ("Deposit") and  
2 otherwise comply with, and must perform pursuant to, the Bidder Terms and Additional Terms  
3 (collectively "Sale Terms") attached collectively as Exhibit 3 to the Declaration of M. Val Miller  
4 in support of this Motion, including without limitation the following:

5 (1) that the Animal House shall be sold on an "as is, where is" basis  
6 without representations or warranties of any kind, express or implied, as set forth in the Sale  
7 Terms;

8 (2) that the Animal House shall be sold to the highest bidder at the  
9 auction, subject to final approval of the sale by the Receiver as Seller in his sole discretion, for  
10 payment in cash, certified funds or other immediately available funds, with the successful bidder  
11 to close the sale and remit the balance of the purchase price above the buyer's Deposit within ten  
12 days after the auction;

13 (3) that Statewide may accept back-up bids for the purchase of the  
14 Animal House in the event that the successful high bidder does not complete the sale;

15 (4) that if the successful highest bidder fails to timely complete the  
16 purchase of the Animal House, then the successful bidder's Deposit shall be deemed forfeited and  
17 shall be immediately paid to the Receiver;

18 D. That Statewide shall provide notice of the auction of the Animal House by  
19 publishing a written notice of the date, time and place of the auction sale at least once a week for  
20 the two weeks preceding the auction sale in the following newspapers: The Spectrum, the Salt  
21 Lake Tribune, and the Lake Powell Chronicle;

22 E. That the sale of the Animal House in accordance with the Sale Procedures  
23 shall be deemed confirmed without further notice, hearing or order, and the notice of the filing of  
24 the Motion and publication of notice of the sale as set forth in such procedures shall be deemed  
25 sufficient notice to the public and to interested parties pursuant to 28 U.S.C. sections 2001 and  
26 2004;

27 5. An order deeming notice of the Motion to be sufficient under Local Civil Rule 66-5  
28 based on the service of a notice of the filing of the Motion and the Motion on all parties, and

1 service of a notice of the filing of the Motion on all known non-consumer creditors of the estate,  
2 and on all known taxing authorities with a potential claim in the receivership estate, concurrent  
3 with the filing of the Motion with the Court, but not on the tens of thousands of potential  
4 consumer creditors.

5 This Motion is made pursuant to 28 U.S.C. §§ 2001, 2002 and 2004 and Local Civil Rules  
6 7-2, 66-5 and 66-10 and other applicable law and is based upon this notice of motion and motion,  
7 the accompanying memorandum of points and authorities and the Declaration of M. Val Miller  
8 filed in support hereof, the separate notice of filing of this Motion, any reply, the pleadings,  
9 records and files of this Court in this matter of which the Receiver requests the Court take judicial  
10 notice, and upon all other pleadings, documentary evidence and argument as may be presented to  
11 the Court by the Receiver.

12

13 Dated: March 13, 2014

Respectfully submitted,

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RANDOLPH L. HOWARD  
KOLESAR & LEATHAM, CHTD.

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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  
Lesley Anne Hawes

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

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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.

8 On May 27, 2011, the Receiver filed his Motion for Order: (1) Authorizing and  
9 Confirming Sale of Personal Property by Public Auction; (2) Authorizing and Confirming Sale  
10 and Redemption of Investment Interest; (3) Authorizing Receiver to List and Offer for Sale  
11 Houseboats, Aircraft and Multiple Real Properties; and (4) Granting Relief from Local Rule 66-5  
12 Pertaining to Notice to Creditors (“Sale Authorization Motion”). (Doc. No. 227.) Pursuant to the  
13 Sale Authorization Motion, the Receiver sought approval to sell certain property at public auction  
14 and to list and market for sale other assets, including two houseboats titled to Orange Cat  
15 Investments, LLC (“Orange Cat”). On August 26, 2011, the Court issued its Order granting the  
16 Receiver's Sale Authorization Motion (“First Sale Authorization Order”). (Doc. No. 288.)

17 Under the First Sale Authorization Order, the Receiver was authorized to list and market  
18 for sale the two houseboats titled to Orange Cat by engaging Aramark Sports and Entertainment  
19 Services, Inc. d/b/a Lake Powell Resorts and Marinas (“Marine Broker”). Lake Powell borders  
20 both Utah and Arizona. Lake Powell is a national park, and the federal government issues  
21 concession rights to entities that do business in the park. The Marine Broker holds the exclusive  
22 broker's license in Lake Powell to sell the houseboats while the houseboats are located on Lake  
23 Powell. Moving the houseboats would have been costly. The Wahweap Marina is located on the  
24 Arizona side of Lake Powell, and it is where the two Orange Cat houseboats were docked when  
25 the Receiver was appointed.

26 One of the two houseboats subject to the First Sale Authorization Order, a vessel known as  
27 the PEPS I, was encumbered by a lien in favor of Town and Country Bank. Although the  
28 Receiver had obtained a marine survey indicating that there might be substantial equity in the

1 PEPS I, after more than a year of unsuccessful efforts to sell the PEPS I, the Receiver obtained  
2 Court approval to abandon the houseboat and turn it over to Town and Country Bank as the  
3 secured lienholder. (Doc. No. 703.)

4 **A. The Animal House and Prior Marketing Efforts**

5 The other houseboat, the Animal House, is unencumbered. The Animal House is a 1994  
6 foot Skipperliner 74-foot houseboat. Skipperliner went out of business several years ago, making  
7 its houseboats less desirable.

8 The Receiver originally listed the Animal House for sale at \$244,900 based on the  
9 appraisal (Marine Survey) obtained by the Receiver at the commencement of the case. The  
10 Receiver has since reduced the list price multiple times. The latest list price for the Animal House  
11 was \$149,000.

12 In over two years of attempting to market the Animal House through the Marine Broker,  
13 the Receiver has not obtained any written offers to buy the houseboat from any party. There has  
14 been only modest interest in the Animal House by any potential buyer, and the Receiver has only  
15 obtained two informal, verbal proposals, neither of which materialized into a written purchase  
16 offer.

17 The Receiver is continuing to incur expenses for the Animal House insurance, mooring,  
18 maintenance, repair and preservation that are diminishing the value of the asset for the estate. To  
19 date, the Receiver estimates those expenses concerning the houseboat have totaled at least \$53,000  
20 for the three years since the receivership commenced. Since the Marine Broker has been unable to  
21 obtain a buyer for the Animal House after this extended marketing period, the Receiver  
22 recommends that the Receiver sell the Animal House at a public auction to liquidate the estate's  
23 interest in the asset and prevent the net asset value from further diminishing through ongoing  
24 administrative expenses associated with the asset.

25 **B. Proposed Engagement of Statewide**

26 The Receiver previously engaged the firm of Statewide Auction Company ("Statewide") to  
27 conduct public auctions of personal property for the benefit of the receivership estate pursuant to  
28 the First Sale Authorization Order. The commission approved for the auctioneer under the First

1 Sale Authorization Order was 15% of the gross purchase price paid by buyers. Statewide has  
2 agreed to accept a commission of 10% of the gross purchase price paid by the buyer of the Animal  
3 House. Under Statewide's proposed contract, Statewide pays for all advertising, including the  
4 publication of the public notice of the auction sale required under any order of the Court on this  
5 Motion so that the Receiver will not incur out of pocket expenses associated with the sale.

6       Because of the exclusive concession rights granted to the Marine Broker under its contract  
7 with the federal government, the Marine Broker will be entitled to a reduced commission on the  
8 sale of the Animal House. Under its contract with the Receiver made pursuant to the First Sale  
9 Authorization Order, the Receiver agreed to a commission of 6% of the gross sales price to be paid  
10 to the Marine Broker upon a sale of the houseboat which the Marine Broker obtained. Since the  
11 Receiver proposes to engage an auctioneer to sell the Animal House, the Marine Broker has  
12 agreed to limit its commission to one percent of the gross sales price plus a \$300 administrative  
13 fee and any outstanding moorage fees as of the date of closing. Therefore, although the combined  
14 total commission percentage for the auction sale of the Animal House paid to Statewide and  
15 Aramark will be higher than the commission approved for a private sale by Aramark, the  
16 percentage is less than the auction sale commission of 15% previously approved to be paid to  
17 Statewide in the First Sale Authorization Order for the auction sale of other personal property in  
18 this case. The Receiver believes the commission and terms of the proposed Auction Contract with  
19 Statewide, Exhibit 1 to the Declaration of M. Val Miller filed in support of this Motion, is  
20 appropriate under the circumstances and necessary in order to allow the estate to sell the asset and  
21 prevent further erosion of the estate's interest.

22       **C. Proposed Sale Procedures**

23       With respect to the procedures for the auction sale of the Animal House, the Receiver  
24 proposes that the public auction of the Animal House be conducted at the offices of Statewide  
25 located at 5099 Wheeler Way, Hurricane, Utah, rather than at Wahweap Marina in Lake Powell,  
26 Arizona. The Wahweap Marina is in a relatively remote location hours from any major city in  
27 Arizona or from St. George or other major cities in Southern Utah. Access to the Wahweap  
28 Marina can also be hampered by weather in the winter and early spring based on snow and ice



1 conditions. Given the connection of the owner of the Animal House to St. George, Utah and  
2 Statewide's strong connections with the Southern Utah community as a long-established, well-  
3 known and reputable auctioneer, Statewide has recommended that the auction be conducted at its  
4 facilities in Hurricane, Utah, near St. George, and the Receiver supports that recommendation.

5 The Receiver has proposed that all bidders for the purchase of the Animal House be pre-  
6 qualified with Statewide by providing Statewide a cashier's check in the amount of \$5,000  
7 ("Deposit"). The Receiver also requests authority for Statewide to accept a back-up bid in the  
8 event that the successful bidder fails to complete the sale for any reason. If the successful highest  
9 bidder fails to timely complete the purchase of the Animal House, then the successful bidder's  
10 Deposit would be forfeited and immediately paid to the Receiver.

11 The Receiver seeks authorization to auction the Animal House without reserve but  
12 granting the Receiver as Seller the right to approve any sale and leaving it up to the Receiver in his  
13 discretion whether to approve the sale to the highest bidder at the auction. The Receiver's  
14 recommendation in this regard is based on the Receiver's consultation with the auctioneer. The  
15 auctioneer has strongly recommended that the Receiver not set a reserve price for the houseboat  
16 and not auction the houseboat "with reserve" based on the auctioneering company's experience in  
17 conducting hundreds of auctions over almost four decades. Based on the auctioneer's experience,  
18 "with reserve" auctions tend to limit the number of bidders and diminish the excitement of an  
19 auction sale, and many bidders do not view a "with reserve" auction as a "real" auction but rather  
20 as more of a sale for a set price. On the other hand, the auctioneer indicates that the auctioneer  
21 conducts many sales with a "subject to seller approval" provision for approval of any sale which  
22 the auctioneer can explain to those interested bidders who ask is a provision designed for the seller  
23 to be able to ensure that there is adequate participation in the auction to warrant the sale and to  
24 protect the seller in the event that only one or two bidders appear. The auctioneer believes a "with  
25 reserve" term adversely affects and limits the bidding process but does not believe the "subject to  
26 seller approval" term has the same negative effect. The right of the Receiver to approval the final  
27 sale and acceptance of the high bid in the Receiver's discretion will allow the Receiver to protect  
28 the estate in the event that there is little competitive bidding or participation in the auction.

1           The Receiver also proposes to sell the Animal House “as is, where is,” without  
2 representation or warranty of any kind or nature, express or implied, to the highest bidder at the  
3 sale for payment in cash, certified funds or other immediately available funds. Given the potential  
4 value of the houseboat, the Receiver has agreed that the successful bidder may close the sale and  
5 remit the balance of the purchase price above its \$5,000 deposit within ten days following the  
6 conclusion of the auction.

7           The Receiver also proposes that Statewide provide notice of the auction of the Animal  
8 House by publishing a written notice of the date, time and place of the auction sale once a week  
9 for the two weeks preceding the auction sale in the following newspapers: The Spectrum, which  
10 is a newspaper of general circulation in the St. George, Utah area; the Salt Lake Tribune, and the  
11 Lake Powell Chronicle, which is a newspaper of general circulation in the Lake Powell  
12 community. The Receiver anticipates that Statewide will provide additional advertising of the sale  
13 through its web site, its e-mail marketing lists and other avenues which Statewide customarily  
14 employs for its auctions.

15           The Receiver further seeks an order that the sale of the Animal House in accordance with  
16 the Sale Procedures shall be deemed confirmed without further notice, hearing or order, and the  
17 notice of the filing of the Motion and publication of notice of the sale as set forth in this Motion is  
18 deemed sufficient notice to the public and to interested parties pursuant to 28 U.S.C. sections 2001  
19 and 2004.

20 **II. THE RECEIVER'S PROPOSED AUCTION OF THE HOUSEBOAT AND**  
21 **RELATED SALE PROCEDURES SHOULD BE APPROVED UNDER 28 U.S.C. §§**  
22 **2001 AND 2004 SHOULD BE MODIFIED**

23           Section 2004 of title 28 provides that sales of personal property pursuant to an order of the  
24 Court should be conducted “in accordance with section 2001 of this title, unless the court orders  
25 otherwise.” Section 2001 provides the procedures for court-ordered sales of real property and sets  
26 forth lengthy and detailed steps to be taken when the property is sold by public sale:  
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(a) . . .

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

In addition, section 2002 of title 28 provides for publication of notice of a public sale of real property at least once a week for four weeks prior to the sale in a newspaper of general circulation in the county, state or judicial district where the property is located and provides for the Court to direct the content of the notice of the sale:

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

. . . . The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

The Animal House is personal property subject to sale pursuant to section 2004 of title 28. While the proposed Sale Procedures for the sale of the Animal House would be modified from

1 those provided for real property under 2002 as to the publication of notice, they are appropriate  
2 under the circumstances given the nature of the asset being sold, the current location of the asset  
3 and the substantial, long-term exposure of this asset to the market without results. The auction  
4 terms and conditions are reasonable, and the proposed publication of the sale beginning two weeks  
5 prior to the scheduled auction should be approved in light of the fact the Animal House houseboat  
6 has been publicly listed for sale through the Marine Broker for well over two years. The  
7 newspapers designated for publication of the notice are those in general circulation in Utah and in  
8 Lake Powell. While those are the only required publications, the auctioneer will be advertising the  
9 sale extensively prior to the auction. The Receiver submits these sale procedures are appropriate  
10 under the circumstances.

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

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

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

22 There are believed to be an extremely large number of potential consumer creditors who  
23 may have claims against the Receivership Defendants arising out of the business operations of the  
24 Receivership Defendants prior to the Receiver’s appointment, although the precise number,  
25 identity and location of such consumer creditors have not been determined by the Receiver at this  
26 time. Given the Receiver’s determination that more than \$332.5 million<sup>1</sup> in sales revenues were  
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28 <sup>1</sup> 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 generated by I Works and the related and affiliated entities, the number of consumer creditors is  
2 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its  
3 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with  
4 notice of this and other similar administrative motions, and the expense and burden on the estate  
5 of attempting to effectuate such service would drain the estate's resources and cause undue  
6 administrative expense.

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

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

1 handled expeditiously and economically”); and F.R. Bankr. P. 2002(m) (authorizing the court to  
2 enter “orders designating the matters in respect to which, the entity to whom, and the form and  
3 manner in which notices shall be sent except as otherwise provided by these rules”).

4 **IV. CONCLUSION**

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

7  
8 Dated: March 13, 2014

Respectfully submitted,

9 RANDOLPH L. HOWARD  
10 KOLESAR & LEATHAM, CHTD.

11 MCKENNA LONG & ALDRIDGE LLP  
12 GARY OWEN CARIS  
13 LESLEY ANNE HAWES

14 By: /s/ Gary Owen Caris

Gary Owen Caris

15 Attorneys for Receiver  
16 **ROBB EVANS OF ROBB EVANS &  
17 ASSOCIATES LLC**

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

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15  
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

**DECLARATION OF M. VAL MILLER  
IN SUPPORT OF MOTION FOR  
ORDER: (1) AUTHORIZING RECEIVER  
TO SELL HOUSEBOAT "ANIMAL  
HOUSE" AT PUBLIC AUCTION,  
APPROVING TERMS AND  
CONDITIONS OF SALE AND  
RECEIVER'S ENGAGEMENT OF  
STATEWIDE AUCTION COMPANY  
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 3. I am one of the deputies to the Receiver who has been responsible for the  
16 supervision and administration of the receivership estate and for the Receiver's review,  
17 administration and disposition of various receivership assets since the inception of the case. I  
18 have specifically investigated, reviewed the status and valuations of and supervised the listing and  
19 marketing of the 1994 Skipperliner, a 74-foot houseboat named the "Animal House," hull number  
20 HIN # SGU01661L394 ("Animal House"). The facts set forth in this declaration regarding the  
21 Houseboat have been obtained through my investigation and with the assistance of the Receiver's  
22 agents, including the Receiver's agent for the sale of the Animal House, Aramark Sports and  
23 Entertainment Services, Inc. d/b/a Lake Powell Resorts and Marinas ("Marine Broker"), and the  
24 Receiver's proposed auctioneer Statewide Auction Company ("Statewide").

25 4. On May 27, 2011, the Receiver filed a motion seeking an order authorizing him to  
26 sell certain personal property at public auctions to be conducted by Statewide and to market and  
27 list for sale various other real and personal property assets, including the houseboat Animal  
28 House ("Sale Authorization Motion"). The Sale Authorization Motion was granted by the Court



1 by Order entered on August 26, 2011 ("First Sale Authorization Order").

2 5. Under the First Sale Authorization Order, the Receiver was authorized to list and  
3 market for sale the two houseboats titled to Orange Cat by engaging Aramark Sports and  
4 Entertainment Services, Inc. d/b/a Lake Powell Resorts and Marinas ("Marine Broker"). Lake  
5 Powell borders both Utah and Arizona. Lake Powell is a national park, and the federal  
6 government issues concession rights to entities that do business in the park. The Marine Broker  
7 holds the exclusive broker's license in Lake Powell to sell the houseboats while the houseboats  
8 are located on Lake Powell. Moving the houseboats would have been costly. The Wahweap  
9 Marina is located on the Arizona side of Lake Powell, and it is where the two Orange Cat  
10 houseboats were docked when the Receiver was appointed.

11 6. One of the two houseboats subject to the Sale Authorization Order, a vessel known  
12 as the PEPS I, was encumbered by a lien in favor of Town and Country Bank. Although the  
13 Receiver had obtained a marine survey indicating that there might be substantial equity in the  
14 PEPS I, after more than a year of unsuccessful efforts to sell the PEPS I, the Receiver obtained  
15 Court approval to abandon the houseboat and turn it over to Town and Country Bank as the  
16 secured lienholder. (Doc. No. 703.)

17 7. The other houseboat, the Animal House, is unencumbered. Skipperliner, the  
18 manufacturer of the Animal House, went out of business several years ago, making its houseboats  
19 less desirable. The Receiver originally listed the Animal House for sale at \$244,900 based on the  
20 appraisal (Marine Survey) obtained by the Receiver at the commencement of the case. The  
21 Receiver has since reduced the list price multiple times. The latest list price for the Animal  
22 House was \$149,000. In over two years of attempting to market the Animal House through the  
23 Marine Broker, the Receiver has not obtained any written offers to buy the houseboat from any  
24 party. There has been only modest interest in the Animal House by any potential buyer, and the  
25 Receiver has only obtained two informal, verbal proposals, neither of which materialized into a  
26 written purchase offer.

27 8. The Receiver is continuing to incur expenses for the Animal House insurance,  
28 mooring, maintenance, repair and preservation that are diminishing the value of the asset for the

1 estate. To date, the Receiver estimates those expenses concerning the houseboat have totaled at  
2 least \$53,000 for the three years since the receivership commenced. Since the Marine Broker has  
3 been unable to obtain a buyer for the Animal House after this extended marketing period, the  
4 Receiver recommends that the Receiver sell the Animal House at a public auction to liquidate the  
5 estate's interest in the asset and prevent the net asset value from further diminishing through  
6 ongoing administrative expenses associated with the asset.

7 9. The Receiver previously engaged the firm of Statewide Auction Company  
8 ("Statewide") to conduct public auctions of personal property for the benefit of the receivership  
9 estate pursuant to the First Sale Authorization Order. The commission approved for the  
10 auctioneer under the First Sale Authorization Order was 15% of the gross purchase price paid by  
11 buyers. Statewide has agreed to accept a commission of 10% of the gross purchase price paid by  
12 the buyer of the Animal House. Under Statewide's proposed Statewide Auction Company  
13 Consignment Agreement ("Auction Contract"), Statewide pays for all advertising, including the  
14 publication of the public notice of the auction sale required under any order of the Court on this  
15 Motion so that the Receiver will not incur out of pocket expenses associated with the sale. A true  
16 and correct copy of the proposed Auction Contract is attached hereto as Exhibit 1.

17 10. Because of the exclusive concession rights granted to the Marine Broker under its  
18 contract with the federal government, the Marine Broker will be entitled to a reduced commission  
19 on the sale of the Animal House. Under its contract with the Receiver made pursuant to the  
20 First Sale Authorization Order, the Receiver agreed to a commission of 6% of the gross sales  
21 price to be paid to the Marine Broker upon a sale of the houseboat which the Marine Broker  
22 obtained. Since the Receiver proposes to engage an auctioneer to sell the Animal House, the  
23 Marine Broker has agreed to limit its commission to one percent of the gross sales price plus a  
24 \$300 administrative fee. Attached hereto as Exhibit 2 is a true and correct copy of the Receiver's  
25 proposed agreement with the Marine Broker regarding the sale of the Animal House. Therefore,  
26 although the combined total commission percentage for the auction sale of the Animal House  
27 paid to Statewide and Aramark will be higher than the commission approved for a private sale by  
28 Aramark, the percentage is less than the auction sale commission of 15% previously approved to

1 be paid to Statewide in the First Sale Authorization Order for the auction sale of other personal  
2 property in this case.

3 11. With respect to the procedures for the auction sale of the Animal House, the  
4 Receiver proposes that the public auction of the Animal House be conducted at the offices of  
5 Statewide located at 5099 Wheeler Way, Hurricane, Utah, rather than at Wahweap Marina in  
6 Lake Powell, Arizona. The Wahweap Marina is in a relatively remote location hours from any  
7 major city in Arizona or from St. George or other major cities in Southern Utah. Access to the  
8 Wahweap Marina can also be hampered by weather in the winter and early spring based on snow  
9 and ice conditions. Given the connection of the owner of the Animal House to St. George, Utah  
10 and Statewide's strong connections with the Southern Utah community as a long-established and  
11 well-known and reputable auctioneer, Statewide has recommended that the auction be conducted  
12 at its facilities in Hurricane, Utah, near St. George, and the Receiver supports that  
13 recommendation.

14 12. The Receiver has proposed that all bidders for the purchase of the Animal House  
15 be pre-qualified with Statewide by providing Statewide a cashier's check in the amount of \$5,000  
16 ("Deposit"). The Receiver also requests authority for Statewide to accept a back-up offer in the  
17 event that the successful bidder fails to complete the sale for any reason. If the successful highest  
18 bidder fails to timely complete the purchase of the Animal House, then the successful bidder's  
19 Deposit would be forfeited and immediately paid to the Receiver. A true and correct copy of the  
20 proposed Bidder Terms is attached hereto as Exhibit 3.

21 13. The Receiver seeks authorization to auction the Animal House without reserve.  
22 The Receiver has consulted with the auctioneer, and the auctioneer has strongly recommended  
23 that the Receiver not set a reserve price for the houseboat based on the auctioneering company's  
24 experience in conducting hundreds of auctions over almost four decades as the auctioneer  
25 believes the reserve adversely affects and limits the bidding process. Instead, the Receiver seeks  
26 authorization to auction the Animal House without reserve but granting the Receiver as Seller the  
27 right to approve any sale and leaving it up to the Receiver whether to approve the sale to the  
28 highest bidder at the auction. Based on the auctioneer's experience, "with reserve" auctions tend

1 to limit the number of bidders and diminish the excitement of an auction sale, and many bidders  
2 do not view a "with reserve" auction as a "real" auction but rather as more of a sale for a set price.  
3 On the other hand, the auctioneer indicates that the auctioneer conducts many sales with a  
4 "subject to seller approval" provision for approval of any sale which the auctioneer can explain to  
5 those interested bidders who ask is a provision designed for the seller to be able to ensure that  
6 there is adequate participation in the auction to warrant the sale and to protect the seller in the  
7 event that only one or two bidders appear. The auctioneer believes a "with reserve" term  
8 adversely affects and limits the bidding process but does not believe the "subject to seller  
9 approval" term has the same negative effect. The right of the Receiver to approval the final sale  
10 and acceptance of the high bid in the Receiver's discretion will allow the Receiver to protect the  
11 estate in the event that there is little competitive bidding or participation in the auction.

12 14. The Receiver proposes to sell the Animal House "as is, where is, with all faults,"  
13 without representation or warranty of any kind or nature, express or implied, to the highest bidder  
14 at the sale for payment in cash, certified funds or other immediately available funds. Given the  
15 potential value of the houseboat, the Receiver has agreed that the successful bidder may close the  
16 sale and remit the balance of the purchase price above its \$5,000 deposit within ten days  
17 following the conclusion of the auction.

18 15. The Receiver also proposes that Statewide provide notice of the auction of the  
19 Animal House by publishing a written notice of the date, time and place of the auction sale once a  
20 week for the two weeks preceding the auction sale in the following newspapers: The Spectrum,  
21 which is a newspaper of general circulation in the St. George, Utah area; the Salt Lake Tribune,  
22 and the Lake Powell Chronicle, which is a newspaper of general circulation in the Lake Powell  
23 community. The Receiver anticipates that Statewide will provide additional advertising of the  
24 sale through its web site, its e-mail marketing lists and other avenues which Statewide  
25 customarily employs for its auctions.

26 16. The Receiver requests that the order authorizing the auction of the Animal House  
27 provide that the sale of the Animal House in accordance with the Sale Procedures shall be  
28 deemed confirmed without further notice, hearing or order.

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17. The Receiver further 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 11<sup>th</sup> day of March 2014 at Las Vegas, Nevada.

  
M. VAL MILLER