

**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 Authorizing Receiver to Market and  
Sell Two Castle Rock Lots Titled to Anthon Holdings Corp. and  
for Related Relief Retroactive to December 9, 2014 and  
Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors;  
Memorandum of Points and Authorities; and  
Declaration of M. Val Miller in Support Thereof**

**Filed March 12, 2015**

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18 **ROBB EVANS OF ROBB EVANS & ASSOCIATES**  
19 **LLC**

20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF NEVADA**

22 FEDERAL TRADE COMMISSION,

23 Plaintiff,

24 v.

25 JEREMY JOHNSON, etc., et al.,

26 Defendants.

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

**NOTICE OF MOTION AND MOTION  
FOR ORDER AUTHORIZING  
RECEIVER TO MARKET AND SELL  
TWO CASTLE ROCK LOTS TITLED  
TO ANTHON HOLDINGS CORP. AND  
FOR RELATED RELIEF  
RETROACTIVE TO DECEMBER 9,  
2014, AND 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**

1 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC  
2 ("Receiver"), the Receiver pursuant to the Court's Preliminary Injunction Order issued February  
3 10, 2011, hereby moves the Court for the following relief:

4 1. An order authorizing the Receiver to list and conditionally sell, subject to Court  
5 approval upon subsequent motion by the Receiver, two undeveloped lots located on Artesia Drive  
6 in the Castle Rock development in the City of St. George, County of Washington, Utah,  
7 consisting of Lots 105 and 166 (the "Castle Rock Lots") titled to Anthon Holdings Corp., a  
8 defendant and Receivership Defendant in this case. The Receiver seeks to list and conditionally  
9 sell the Castle Rock Lots pursuant to two listing agreements designated Exclusive Listing  
10 Agreement and Agency Disclosure, including an Addendum and Additional Terms, with Keller  
11 Williams Realty St. George and Heidi Skinner as agent (collectively "Broker") dated December 9,  
12 2014 (collectively, the "Listing Agreement"), and to pay a sales commission to the Broker of 10%  
13 of the gross sales price as provided for therein in connection with any subsequent sale of the  
14 Castle Rock Lots approved by the Court. A true and correct copy of the Listing Agreement is  
15 attached as Exhibit 1 to the Declaration of M. Val Miller in support of this Motion. The Receiver  
16 further moves the Court to make the authorization effective retroactively to the date of the Listing  
17 Agreement of December 9, 2014 based on the Receiver's inadvertence in entering into the Listing  
18 Agreement for the Castle Rock Lots without prior Court approval, as explained in the supporting  
19 Memorandum and Declaration of M. Val Miller; and

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

26 This Motion is made pursuant to 28 U.S.C. § 2001 and Local Civil Rules 66-5 and 66-10  
27 and other applicable law and is based upon this Notice of Motion and Motion, the separate Notice  
28 of Filing of the Motion served concurrently herewith, the accompanying Memorandum of Points

1 and Authorities, the Declaration of M. Val Miller filed in support hereof, any reply, on all  
2 pleadings, records and files of the Court in this action of which the Receiver requests judicial  
3 notice, and upon all other evidence and arguments of counsel as may be presented to the Court by  
4 the Receiver in support of this Motion.

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Dated: March 12, 2015

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. INTRODUCTION AND 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  
5 Order and over the assets of defendant Jeremy Johnson (collectively the “Receivership  
6 Defendants”). Pursuant to the Preliminary Injunction Order entered February 10, 2011, the  
7 Receiver has been appointed permanent Receiver over the Receivership Defendants, including  
8 defendant Anthon Holdings Corp.<sup>1</sup>

9 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve  
10 assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the  
11 value of the assets for the benefit of consumers and creditors, the Receiver has previously sought  
12 and obtained approval from the Court through multiple motions to list and market for sale various  
13 receivership assets.

14 The property that is the subject of this Motion consists of two residential lots located on  
15 Artesia Drive in St. George in a development known as Castle Rock in Washington County, Utah  
16 (the "Castle Rock Lots"). The Castle Rock development is off scenic Snow Canyon Drive, but  
17 the Castle Rock Lots have a neighborhood view, not views of Snow Canyon. Each of the lots is  
18 approximately 10,500 square feet (or approximately .23 acres).

19 The Castle Rock Lots were recently disclosed and turned over to the Receiver in  
20 connection with the Receiver's pursuit of a contempt application against Duane Fielding  
21 concerning two aircraft constituting receivership property. The Receiver has listed the Castle  
22 Rock Lots and seeks Court approval to list and sell the Castle Rock Lots pursuant to the Listing  
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25 <sup>1</sup> On March 25, 2013, the Court entered its Order granting the Receiver’s Motion for Order  
26 Clarifying Preliminary Injunction Order and for Further Instructions Regarding Scope of  
27 Receivership Defendants under Preliminary Injunction Order and Report of Receiver’s Financial  
28 Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors  
 (“Clarifying Order”) pursuant to which the Court confirmed the status of numerous entities and  
 properties as assets of the receivership estate and confirmed the status of various entities as  
 Receivership Defendants.

1 Agreement.<sup>2</sup> There have been no offers for the Castle Rock Lots and the Receiver is informed  
2 that there is a seasonal market for these properties. The prime selling season for the Castle Rock  
3 Lots is approaching beginning in April 2015.

4 Liquidating the Castle Rock Lots is in the best interests of the receivership estate and  
5 creditors. Demand for undeveloped land in the area is relatively soft, and there is a limited pool  
6 of interested buyers. The Castle Rock Lots are encumbered by liens for delinquent real property  
7 taxes. Selling the Castle Rock Lots avoids the estate being subject to the market risks and  
8 fluctuating values, particularly in light of the limited demand for undeveloped land in the area.  
9 There are other parcels of vacant land available for sale in other developments that may be  
10 considered competitors of the Castle Rock development, and records of sales show that vacant  
11 lots may take many months of marketing before a buyer is located, as the marketing of the Castle  
12 Rock Lots to date demonstrates.

13 The Receiver at this time seeks only authorization to list the Castle Rock Lots pursuant to  
14 the Listing Agreement and to enter into conditional sale contracts for the sale of the Castle Rock  
15 Lots, subject to subsequent Court approval after notice and a hearing. The Receiver will file a  
16 subsequent motion on notice to the interested parties seeking approval of specific sales of the  
17 Castle Rock Lots, and interested parties will have an opportunity to object to the specific sales of  
18 the properties when the Receiver locates buyers for the lots. Interested parties will have an  
19 opportunity to be heard on the sale terms and the proposed sale procedures.

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26 <sup>2</sup> The Receiver inadvertently entered into the Listing Agreement for the Castle Rock Lots  
27 concurrently with listing the former residence of Jason Vowell at 573 S. Woodview Circle. The  
28 Court had authorized the Receiver to list and sell that property, subject to subsequent Court  
approval of the specific sale.

1 **II. THE COURT HAS AUTHORITY TO PERMIT THE RECEIVER TO MARKET**  
2 **AND SELL RECEIVERSHIP ASSETS, SUBJECT TO SUBSEQUENT COURT**  
3 **APPROVAL OF SPECIFIC SALES, AND TO APPROVE THE LISTING AND**  
4 **LISTING AGREEMENT EFFECTIVE RETROACTIVELY**

5 Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property.  
6 Subsection (a) pertains to procedures for the public sale of real property and provides for the sale  
7 of real property by public sale at the courthouse where the Receiver was first appointed, at the  
8 courthouse where most of the property is located or at such other premises as the Court directs.  
9 28 U.S.C. § 2001(a). Section 2001(b) of title 28 pertains to the sale of real property at private  
10 sale and among other things provides for a private sale of real property after notice and a hearing  
11 if the Court finds that it is in the best interests of the estate and sets a minimum price of two-  
12 thirds of the appraised value for confirmation of a sale of real property by private sale. 28 U.S.C.  
13 § 2001(b).

14 By this Motion, the Receiver seeks the Court's authority to market the Castle Rock Lots  
15 pursuant to the Listing Agreement and to conditionally accept the highest and best offers received  
16 for each of those lots, but not to approve and confirm any specific sale. The Receiver also does  
17 not seek approval of specific sales and sale procedures at this time in order to retain flexibility  
18 based on the response by the market and potential buyers to these assets and so that the Receiver  
19 in consultation with his Broker can make specific recommendations for sale procedures based on  
20 the nature and extent of the interest in the assets by prospective purchasers when specific offers  
21 are received.

22 The District Court has wide latitude in adopting a procedure for the sale of property and  
23 except in cases where abuse is shown, appellate courts will not disturb the exercise of the District  
24 Court's discretion in setting the terms and conditions for a judicial sale or the confirmation  
25 thereof. *See United States v. Branch Coal Corp.*, 390 F.2d 7 (3<sup>rd</sup> Cir. 1968) *cert. den. Sun*  
26 *Protection Co. v. U.S.*, 391 U.S. 966, 88 S.Ct. 2034, 20 L. Ed. 2d 878 (1968). The discretion  
27 granted in connection with sales of assets is consistent with the broad discretion accorded to the  
28 Court sitting in equity in receivership proceedings to make orders concerning the administration

1 and supervision of the estate that will promote equity, efficiency and cost-effectiveness in the  
2 estate's administration. *See generally Securities and Exchange Commission v. Hardy*, 803 F.2d  
3 1034 (9th Cir. 1986); *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir.  
4 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992). The Court  
5 has previously granted the Receiver authority to list and market for sale various assets, including  
6 real property assets. (*See, e.g.*, Document 288).

7 The Receiver inadvertently entered into the Listing Agreement to sell the Castle Rock  
8 Lots without having obtained prior approval of the Court and by mistake, in that the Receiver was  
9 also listing with the same Broker the 573 S. Woodsvie Circle property as to which the Court  
10 had granted the Receiver authority to list and sell. The interests of justice are served by entry of  
11 an order that is effective retroactively to the date of the Listing Agreement to avoid any question  
12 as to the ability of the Broker under the Listing Agreement to market the property and the  
13 Receiver to sell the property if a buyer is obtained during the period of the listing.

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

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

25 There are believed to be an extremely large number of potential consumer creditors who  
26 may have claims against the Receivership Defendants arising out of the business operations of the  
27 Receivership Defendants prior to the Receiver's appointment, although the precise number,  
28 identity and location of such consumer creditors have not been determined by the Receiver at this



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

8 To the extent that Local Rule 66-5 applies to this Motion, the Receiver seeks an order that  
9 notice of this Motion is sufficient if notice of the filing of the Motion is given by serving copies  
10 of all motion papers on the parties to the action and by serving copies of the notice of filing of the  
11 motion on the Notice Parties identified above. The Receiver submits that such service provides  
12 sufficient notice and an opportunity for hearing to the interested parties and should be approved  
13 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, pursuant to Local  
19 Rule 66-10, a receiver is directed to administer receivership estates "as nearly as may be in  
20 accordance with the practice in the administration of estates in Chapter 11 bankruptcy cases."  
21 Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all  
22 creditors are routinely granted in bankruptcy cases to promote the expeditious and economical  
23 administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R. 428, 442  
24 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the bankruptcy court's order  
25 limiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the phrase "after notice  
26 and a hearing" to mean "after such notice as is appropriate in the particular circumstances, and

27 <sup>3</sup> This figure does not include tens of millions of dollars in additional sales revenues addressed by  
28 the Receiver in the Report of Receiver's Financial Reconstruction filed on February 3, 2012.

1 such opportunity for hearing as is appropriate in the particular circumstances"); 11 U.S.C. section  
2 105(a) and (d) (granting broad equitable powers to the court to issue orders "necessary or  
3 appropriate to carry out the provisions" of title 11 including "prescribing such limitations and  
4 conditions as the court deems appropriate to ensure the case is handled expeditiously and  
5 economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to enter "orders designating  
6 the matters in respect to which, the entity to whom, and the form and manner in which notices  
7 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: March 12, 2015

RANDOLPH L. HOWARD  
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
LESLEY ANNE HAWES

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17 By: /s/ Gary Owen Caris  
18 Gary Owen Caris

19 Attorneys for Receiver  
20 **ROBB EVANS OF ROBB EVANS &  
21 ASSOCIATES LLC**  
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**DECLARATION OF M. VAL MILLER**

I, M. Val Miller, declare:

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

2. On January 13, 2011, the Receiver was appointed Temporary Receiver over I Works, Inc. ("I Works"), numerous other Corporate Defendants as defined in the Temporary Restraining Order and over the assets of defendant Jeremy Johnson (collectively the "Receivership Defendants"). Pursuant to the Preliminary Injunction Order entered February 10, 2011, the Receiver has been appointed permanent Receiver over the Receivership Defendants, including Anthon Holdings Corp. ("Anthon"). Anthon is nominally owned and controlled by defendant Duane Fielding ("Fielding"). I am one of the deputies to the Receiver responsible for the administration of the receivership estate, including the investigation of assets and potential assets of the receivership estate, review of the books and records of the receivership estate and the analysis of receivership assets, including the status of loans encumbering those assets. I have been one of the Receiver's deputies responsible for the marketing and sale of numerous real property assets.

3. The property that is the subject of this Motion consists of two residential lots, Lots 105 and 166, located on Artesia Drive in St. George in a development known as Castle Rock in Washington County, Utah (the "Castle Rock Lots"). The Castle Rock development is off scenic Snow Canyon Drive, but the Castle Rock Lots have a neighborhood view, not views of Snow Canyon. Based on market evaluations obtained by the Receiver, each of the lots is approximately 10,500 square feet (or approximately .23 acres).

1           4.       The Receiver only recently took control of the Castle Rock Lots as the lots were  
2 only recently disclosed and turned over to the Receiver by Anthon and Fielding. The Receiver  
3 obtained information and the turnover of control of the lots in connection with a contempt  
4 proceeding concerning two aircraft pursued by the Receiver against Fielding that was resolved as  
5 to Fielding in late fall of 2014. The Receiver has listed the Castle Rock Lots with Keller  
6 Williams Realty St. George and Heidi Skinner (collectively "Broker") pursuant to two listing  
7 agreements designated Exclusive Listing Agreement and Agency Disclosure, including an  
8 Addendum and Additional Terms, with the Broker dated December 9, 2014 (collectively, the  
9 "Listing Agreement"). A true and correct copy of the Listing Agreement is attached hereto as  
10 Exhibit 1. The Receiver inadvertently entered into the Listing Agreement prior to obtaining the  
11 Court's approval at the time that the Receiver entered into a listing agreement with the same  
12 Broker to sell the 573 S. Woodview Circle property, the former residence of Jason Vowell,  
13 which had been approved by the Court.

14           5.       Pursuant to the Listing Agreement, in connection with a sale of the Castle Rock  
15 Lots, the Receiver seeks to pay a sales commission to the Broker of 10% of the gross sales price.  
16 This commission is consistent with ordinary and customary commission rates for sales of  
17 undeveloped land and lots such as the Castle Rock Lots. There have been no offers for the Castle  
18 Rock Lots to date. The Receiver is informed that there is a seasonal market for these properties.  
19 The prime selling season for the Castle Rock Lots is approaching beginning in April 2015.

20           6.       The Receiver believes that liquidating the Castle Rock Lots is in the best interests  
21 of the receivership estate and creditors. Based on consultations with the Receiver's Broker and  
22 the Receiver's attempts to sell other receivership assets in this case, demand for undeveloped land  
23 in the area is relatively soft, and there is a limited pool of interested buyers. The Receiver has  
24 obtained preliminary title reports for the Castle Rock Lots. The Castle Rock Lots are encumbered  
25 by liens for delinquent real property taxes. Selling the Castle Rock Lots avoids the estate being  
26 subject to the market risks and fluctuating values, particularly in light of the limited demand for  
27 undeveloped land in the area. There are other parcels of vacant land available for sale in other  
28 developments that may be considered competitors of the Castle Rock development, and records

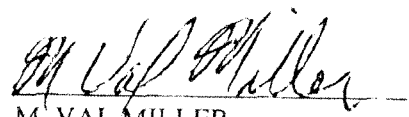
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of sales show that vacant lots may take many months of marketing before a buyer is located, as the marketing of the Castle Rock Lots to date demonstrates.

7. The Receiver at this time seeks only authorization to list the Castle Rock Lots pursuant to the Listing Agreement and to enter into conditional sale contracts for the sale of the Castle Rock Lots, subject to subsequent Court approval after notice and a hearing. The Receiver will file a subsequent motion on notice to the interested parties seeking approval of specific sales of the Castle Rock Lots, and interested parties will have an opportunity to object to the specific sales of the properties when the Receiver locates buyers for the lots. Interested parties will have an opportunity to be heard on the sale terms and the proposed sale procedures.

8. The Receiver also requests that the Court approve notice of the filing of this Motion as detailed in the Motion and supporting memorandum. The proposed notice is consistent with the notice of filing of a number of motions that the Court has previously found to be sufficient and proper in this case.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 12 day of March 2015 at Las Vegas, Nevada.

  
M. VAL MILLER