

1 GARY OWEN CARIS (SBN 088918)
E-mail: gcaris@mckennalong.com
2 LESLEY ANNE HAWES (SBN 117101)
E-mail: lhawes@mckennalong.com
3 MCKENNA LONG & ALDRIDGE LLP
444 South Flower Street, 8th Floor
4 Los Angeles, CA 90071
Telephone: (213) 688-1000
5 Facsimile: (213) 243-6330

6 Attorneys for Receiver
7 ROBB EVANS and ROBB EVANS &
ASSOCIATES LLC

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11
12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 J.K. PUBLICATIONS, INC., etc., et
16 al.,

17 Defendants.

CASE NO. CV 99-00044 ABC (AJWx)

**NOTICE OF MOTION AND
MOTION FOR ORDER
AUTHORIZING INITIAL
DISTRIBUTION BY THE
RECEIVER TO THE FEDERAL
TRADE COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

**[DECLARATION OF ROBB EVANS
IN SUPPORT THEREOF FILED
UNDER SEPARATE COVER]**

**DATE: March 16, 2009
TIME: 10:00 a.m.
CTRM: 680**

1 TO: ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD,
2 PLAINTIFF FEDERAL TRADE COMMISSION, INTERESTED THIRD PARTY
3 HEARTLAND PAYMENT SYSTEMS, INC., AND OTHER PARTIES-IN-
4 INTEREST:

5 PLEASE TAKE NOTICE that on March 16, 2009, at 10:00 a.m. or as soon
6 thereafter as the parties may be heard in Courtroom 680 of the above-entitled Court
7 located at 255 East Temple Street, Los Angeles, California, Permanent Receiver
8 Robb Evans and Robb Evans & Associates LLC ("Receiver") will and does hereby
9 move the Court for an order permitting it to make an initial distribution to the
10 Federal Trade Commission in the amount of \$13,500,000.00 pursuant to the Final
11 Order and Permanent Injunction as to Defendants J.K. Publications, Inc., MJD
12 Service Corp., Herbal Care, Inc., Kenneth H. Taves, and Teresa Callei Taves
13 ("Final Order") entered August 30, 2000.

14 This Motion is made pursuant to Local Rule 66-7 and the Court's Order
15 Amending Preliminary Injunction as to Defendants J.K. Publications, Inc., MJD
16 Service Corp., Kenneth H. Taves, and Teresa Callei Taves entered August 19, 1999
17 which, among other provisions, limits notice of actions by the Receiver described in
18 Local Civil Rule 25.7 (now Local Rule 66-7), including applications for
19 instructions concerning the administration of the estate and petitions for the
20 payment of dividends to creditors, to service on Plaintiff and Defendants through
21 their counsel of record, and those parties requesting special notice.

22 This Motion is based on this Notice and Motion, the Memorandum of Points
23 and Authorities, and Declaration of Robb Evans filed concurrently herewith, and
24 upon all documents, records and files in this action, and such oral and

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1 documentary evidence as may be presented at or before the time of the hearing on
2 this Motion.

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4 Dated: February 20, 2009

MCKENNA LONG & ALDRIDGE LLP
Gary Owen Caris
Lesley Anne Hawes

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF FACTS**

3 The Receiver was originally appointed temporary receiver, with the full
4 powers of an equity receiver, for J.K. Publications, Inc. (“J.K. Publications”) and
5 MJD Service Corp. (“MJD Service”) and each of their affiliates and subsidiaries,
6 upon application of the Federal Trade Commission (“FTC”) by this Court pursuant
7 to a Temporary Restraining Order issued on January 6, 1999. The Receiver was
8 subsequently confirmed as permanent receiver, with the full powers of an equity
9 receiver, for J.K. Publications, MJD Service and each of its affiliates and
10 subsidiaries, and over the assets of Kenneth H. Taves (“Taves”) and Teresa Callei
11 Taves, pursuant to the Order of Preliminary Injunction as to Defendants J.K.
12 Publications, Inc., MJD Service Corp., Kenneth H. Taves, and Teresa Callei Taves
13 entered March 16, 1999 (“Preliminary Injunction”). The Receiver was ordered to
14 remain as permanent receiver, retaining the powers established under the
15 Preliminary Injunction, pursuant to Section XVII of this Court’s Final Order and
16 Permanent Injunction as to Defendants J.K. Publications, Inc., MJD Service Corp.,
17 Herbal Care, Inc., Kenneth H. Taves, and Teresa Callei Taves entered August 30,
18 2000 (“Final Order”).

19 Under Section VIII of the Final Order, a judgment was ordered against
20 Defendants J.K. Publications, MJD Service, Taves, Teresa Callei Taves, and Herbal
21 Care, Inc. in the amount of \$37,566,577.00. It was further provided at Section
22 VIII.C. of the Final Order that the FTC “may apply any or all funds received from
23 Defendants and the Receiver pursuant to this Order, and any interest received
24 thereon, to a consumer redress program and to related administrative expenses.”
25 Section VIII.D. of the Final Order further provides “in implementing a redress plan,
26 the FTC or its agent shall have full and sole discretion to: 1. Determine the criteria
27 for participation by individual claimants in any consumer redress program
28 implemented pursuant to this Order . . .”

1 Over the last two years, the FTC, in conjunction with the Receiver, has
2 commenced taking steps necessary to identify claimants victimized by Defendants'
3 theft of credit card numbers in order to effectuate a consumer redress program. As
4 previously reported to the Court, this process began with the dissemination of fraud
5 alert letters to Mastercard member institutions and Visa member institutions in
6 October and November 2006 to canvass whether responding members had active
7 card numbers victimized by Defendants' misconduct. Starting the week of March
8 5, 2007, the FTC began issuing subpoenas to Mastercard and Visa member
9 institutions to further identify active accounts. In August 2007, the Court signed an
10 order directing the credit reporting agencies to comply with subpoenas issued by
11 the FTC to assist in further locating potential consumer claimants.

12 As a result of these and other steps taken, the FTC reports to the Receiver
13 that there are 235,509 positively identified claimants. The FTC further reports that
14 the FTC has an additional 178,589 records which have not yet been reviewed.
15 While it is believed that these records may, in part, duplicate the 235,509 positively
16 identified claimants, it is likely that additional claimants will be uncovered from
17 these records.

18 Given the great progress made by the FTC in identifying claimants, the FTC
19 has requested, and the Receiver has agreed subject to this Court's approval, that the
20 Receiver make an interim distribution to the FTC to allow positively identified
21 claimants to receive an initial distribution before there is a further deterioration of
22 the claimant base as a result of the lapse of time.

23 As the Court is aware, the Receiver and the FTC were reluctant to make
24 multiple distributions because of the costs involved. However, there are three
25 pending matters which must be resolved before receivership assets can be fully
26 distributed and the estate finally wound up. The most problematic issue has been
27 and continues to be events in Vanuatu and the Receiver's efforts to secure
28 repatriation of more than \$7.5 million deposited into and held by European Bank

1 Ltd. A second issue is resolution of the claim of the only potential non-consumer
2 creditor in the action, Heartland Payment Systems, Inc. (“Heartland”). The
3 Receiver disputes that Heartland is entitled to an allowed claim in the receivership
4 case or, to the extent Heartland is permitted an allowed claim, the Receiver
5 contends that it should be subordinated to payments for consumer redress.
6 Nevertheless, the Receiver and Heartland have been engaged in settlement
7 discussions in an effort to resolve Heartland’s asserted claim, although settlement
8 has not yet been reached. These discussions are ongoing. If a settlement is not
9 reached, pursuant to the Court’s September 8, 2008 minute order, it is anticipated
10 that Heartland will bring a motion allowing it to assert a claim against the
11 receivership estate and the Court will set deadlines with respect to the briefing of
12 that motion. Third, the Receiver is seeking a determination that Taves’ distribution
13 as an intestate heir of William Arnold Pann is an asset of the receivership estate.
14 The motion seeking that determination is set for hearing concurrently with the
15 instant motion. Assuming the Receiver is successful, there will be an initial
16 distribution of \$550,000 to the Receiver from the Pann probate estate, but some
17 delay before subsequent distributions are made to the Receiver from the probate
18 estate.

19 Given the outstanding items, and in particular the continued delay in
20 Vanuatu, the FTC has requested, and the Receiver has agreed, that the Receiver
21 make an initial distribution under the Final Order to allow the FTC to begin to
22 implement a consumer redress program without further delay. The Receiver
23 currently has on hand approximately \$17.1 million. The Receiver has agreed to
24 distribute to the FTC \$13.5 million at this time, subject to Court approval. The
25 Receiver has determined that this will leave ample funds in the receivership estate
26 to continue to address legal events in Vanuatu and to pay any claim of Heartland
27 which hereafter may be allowed, whether by stipulation or after Court adjudication.

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1 **II. THIS INITIAL DISTRIBUTION TO THE FTC IS IN ACCORDANCE**
2 **WITH THE FINAL ORDER AND APPLICABLE NINTH CIRCUIT**
3 **AUTHORITY**

4 The Final Order always contemplated that assets recovered by the Receiver
5 in discharging its duties under the Preliminary Injunction and Final Order would be
6 turned over to the FTC for consumer redress. *See*, Final Order at Section VIII.C.

7 This is in accord with Ninth Circuit authority. In *Securities and Exchange*
8 *Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986), the Court identified two key
9 principals applicable in federal equity receiverships:

10 First, a district court's power to supervise an equity
11 receivership and to determine the appropriate action to be
12 taken in the administration of the receivership is
13 extremely broad. . . . The basis for broad deference to the
14 district court's supervisory role in equity receiverships
15 arises out of the fact that most receiverships involve
16 multiple parties and complex transactions.

17 . . .

18 Secondly, we have acknowledged that a primary purpose
19 of equity receiverships is to promote orderly and efficient
20 administration of the estate by the district court for the
21 benefit of creditors. [Citations omitted.] Accordingly, we
22 generally uphold reasonable procedures instituted by the
23 district court that serve this purpose. [Citations omitted.]

24 *Securities and Exchange Commission v. Hardy*, 803 F.2d at 1037-38.

25 The Court went on to observe:

26 A district judge supervising an equity receivership faces a
27 myriad of complicated problems in dealing with the
28 various parties and issues involved in administering the

1 receivership. Reasonable administrative procedures,
2 crafted to deal with the complex circumstances of each
3 case, will be upheld. A district judge simply cannot
4 effectively and successfully supervise a receivership and
5 protect the interests of its beneficiaries absent broad
6 discretionary power. We would be remiss were we to
7 interfere with a district court's supervision of an equity
8 receivership absent a clear abuse of discretion.

9 *Securities and Exchange Commission v. Hardy*, 803 F.2d at 1038.

10 In light of the ongoing delay in Vanuatu and the other remaining issues that
11 have not yet been resolved, it is appropriate at this time for the Court to allow the
12 Receiver to turn over a substantial portion of the assets it holds so as to allow the
13 FTC to implement a consumer redress program before there is any further
14 deterioration in the positively identified pool of claimants.

15 **III. CONCLUSION**

16 For the reasons set forth herein, it is respectfully requested this Court grant
17 the Receiver's motion allowing it to make an initial distribution of \$13.5 million to
18 the FTC to enable the FTC to implement a consumer redress program.

19 Dated: February 20, 2009

MCKENNA LONG & ALDRIDGE LLP
Gary Owen Caris
Lesley Anne Hawes

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23 By: /s/ Gary Owen Caris

Gary Owen Caris
Attorneys for Receiver
ROBB EVANS and ROBB EVANS &
ASSOCIATES LLC

1 GARY OWEN CARIS (SBN 088918)
E-mail: gcaris@mckennalong.com
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E-mail: lhawes@mckennalong.com
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4 Los Angeles, CA 90071
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6 Attorneys for Receiver
7 ROBB EVANS and ROBB EVANS &
ASSOCIATES LLC

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 J.K. PUBLICATIONS, INC., etc., et
16 al.,

17 Defendants.

CASE NO. CV 99-00044 ABC (AJWx)

**DECLARATION OF ROBB EVANS
IN SUPPORT OF MOTION FOR
ORDER AUTHORIZING INITIAL
DISTRIBUTION BY THE
RECEIVER TO THE FEDERAL
TRADE COMMISSION**

**DATE: March 16, 2009
TIME: 10:00 a.m.
CTRM: 680**

1 I, Robb Evans, declare:

2 1. Along with Robb Evans & Associates LLC, the company that I
3 founded and of which I am a member, I am the Receiver for J.K. Publications, Inc.
4 ("J.K. Publications") and MJD Service Corp. ("MJD Service") and each of their
5 affiliates and subsidiaries, and over the assets of Kenneth H. Taves ("Taves"). I
6 was originally appointed temporary receiver, with the full powers of an equity
7 receiver, for J.K. Publications and MJD Service and each of their affiliates and
8 subsidiaries, upon application of the Federal Trade Commission ("FTC") by this
9 Court pursuant to a Temporary Restraining Order issued on January 6, 1999. I was
10 subsequently confirmed as Permanent Receiver with the full powers of an equity
11 receiver for J.K. Publications, MJD Service and each of its affiliates and
12 subsidiaries, and over the assets of Taves and Teresa Callei Taves, pursuant to the
13 Order of Preliminary Injunction as to Defendants J.K. Publications, Inc., MJD
14 Service Corp., Kenneth H. Taves and Teresa Callei Taves entered March 16, 1999
15 ("Preliminary Injunction"). I was ordered to remain as Permanent Receiver,
16 retaining the powers established under the Preliminary Injunction, pursuant to
17 Section XVII of this Court's Final Order and Permanent Injunction as to
18 Defendants J.K. Publications, Inc., MJD Service Corp., Herbal Care, Inc., Kenneth
19 A. Taves and Teresa Callei Taves entered August 30, 2000 ("Final Order").

20 2. Under Section VIII of the Final Order, a judgment was ordered against
21 Defendants J.K. Publications, MJD Service, Taves, Teresa Callei Taves, and Herbal
22 Care, Inc. in the amount of \$37,566,577.00. It was further provided at Section
23 VIII.C. of the Final Order that the FTC "may apply any or all funds received from
24 Defendants and the Receiver pursuant to this Order, and any interest received
25 thereon, to a consumer redress program and to related administrative expenses."
26 Section VIII.D. of the Final Order further provides "In implementing a redress plan,
27 the FTC or its agents shall have full and sole discretion to: 1. Determine the
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1 criteria for participation by individual claimants in any consumer redress program
2 implemented pursuant to this Order . . .”

3 3. Over the last two years, the FTC, in conjunction with Robb Evans &
4 Associates LLC, has commenced taking steps necessary to identify claimants
5 victimized by Defendants’ theft of credit card numbers in order to effectuate a
6 consumer redress program. As we previously reported to the Court, this process
7 began with the dissemination of fraud alert letters to Mastercard member
8 institutions and Visa member institutions in October and November 2006 to
9 canvass whether responding members had active card numbers victimized by
10 Defendants’ misconduct. Starting the week of March 5, 2007, the FTC began
11 issuing subpoenas to Mastercard and Visa member institutions to further identify
12 active accounts. In August 2007, the Court signed an order directing the credit
13 reporting agencies to comply with subpoenas issued by the FTC to assist in further
14 locating potential consumer claimants.

15 4. As a result of these and other steps taken, the FTC has reported to me
16 that there are 235,509 positively identified claimants. The FTC has further reported
17 that it has an additional 178,589 records which have not yet been reviewed. I
18 understand that it is believed that these additional records may, in part, duplicate the
19 235,509 positively identified claimants, however I am further advised that it is
20 likely that additional claimants will be uncovered from these records.

21 5. Given the progress made by the FTC in identifying claimants, the FTC
22 has requested, and I have agreed subject to this Court’s approval, that I be permitted
23 to make an interim distribution to the FTC to allow positively identified claimants
24 to receive an initial distribution before there is a further deterioration of the
25 claimant base as a result of the lapse of time.

26 6. As the Court is aware from prior pleadings, the FTC and I were
27 reluctant to make multiple distributions because of the costs involved. However,
28 there are three pending matters which must be resolved before receivership assets

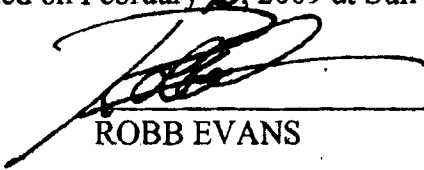
1 can be fully distributed and the estate finally wound up. The most problematic
2 issue has been and continues to be events in Vanuatu and my efforts to secure
3 repatriation of more than \$7.5 million deposited into and held by European Bank
4 Ltd. A second issue is resolution of the claim of the only potential non-consumer
5 creditor in the action, Heartland Payment Systems, Inc. ("Heartland"). I dispute
6 that Heartland is entitled to an allowed claim in the receivership case or, to the
7 extent Heartland is permitted an allowed claim, I contend that it should be
8 subordinated to payments for consumer redress. Nevertheless, through my counsel
9 I have been involved in settlement discussions with Heartland in an effort to resolve
10 its asserted claim, although settlement has not yet been reached. These discussions
11 are ongoing. If a settlement is not reached, pursuant to the Court's September 8,
12 2008 minute order, I anticipate that Heartland will bring a motion allowing it to
13 assert a claim against the receivership estate and the Court will set deadlines with
14 respect to the briefing of that motion. Third, I am seeking a determination that
15 Taves' distribution as an intestate heir of William Arnold Pann is an asset of the
16 receivership estate. The motion seeking that determination is set for hearing
17 concurrently with this distribution motion. Assuming I am successful, there will be
18 an initial distribution of \$550,000 to the Receiver from the Pann probate estate, but
19 some delay before subsequent distributions are made to the Receiver from the
20 probate estate.

21 7. Given the outstanding items, and in particular the continued delay in
22 Vanuatu, the FTC has requested, and I have agreed, that I make an initial
23 distribution under the Final Order to allow the FTC to begin to implement a
24 consumer redress program without further delay. We currently have on hand in the
25 receivership estate approximately \$17.1 million. I have agreed to distribute to the
26 FTC \$13.5 million at this time, subject to this Court's approval. I have determined
27 that this will leave ample funds in the receivership estate to continue to address
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1 legal events in Vanuatu and to pay any claim of Heartland which hereafter may be
2 allowed, whether by stipulation or after Court adjudication.

3 8. For the reasons set forth in the Motion and this Declaration, I
4 respectfully request that the Court allow me to make an initial distribution of \$13.5
5 million to the FTC to enable the FTC to implement a consumer redress program.

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7 I declare under penalty of perjury that the foregoing is true and correct and
8 that this declaration was executed on February 20, 2009 at Sun Valley, California.

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12 ROBB EVANS

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