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6 Attorneys for Receiver
ROBB EVANS and ROBB EVANS &
7 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 JFW (AJWx)

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

**[DECLARATION OF BRICK KANE
IN SUPPORT THEREOF FILED
UNDER SEPARATE COVER]**

**[NO HEARING SET PURSUANT
TO "ORDER AMENDING
PRELIMINARY INJUNCTION AS
TO DEFENDANTS J.K.
PUBLICATIONS, INC., MJD
SERVICE CORP., KENNETH H.
TAVES, AND TERESA CALLEI
TAVES" ENTERED ON
AUGUST 19, 1999]**

1 TO: ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD,
2 PLAINTIFF FEDERAL TRADE COMMISSION, AND OTHER PARTIES-IN-
3 INTEREST:

4 PLEASE TAKE NOTICE that Permanent Receiver Robb Evans and Robb
5 Evans & Associates LLC (“Receiver”) will and does hereby move the Court for an
6 order permitting it to make a second distribution of receivership funds to the
7 Federal Trade Commission in the amount of \$7.1 million pursuant to the Final
8 Order and Permanent Injunction as to Defendants J.K. Publications, Inc., MJD
9 Service Corp., Herbal Care, Inc., Kenneth H. Taves, and Teresa Callei Taves
10 (“Final Order”) entered August 30, 2000.

11 This Motion is made pursuant to that Order Amending Preliminary
12 Injunction as to Defendants J.K. Publications, Inc., MJD Service Corp., Kenneth H.
13 Taves, and Teresa Callei Taves entered August 19, 1999 (“Order Amending
14 Preliminary Injunction”), which provides that actions by the Receiver described in
15 Local Civil Rule 25.7 (now Local Rule 66-7), including applications for
16 instructions concerning the administration of the estate and petitions for the
17 payment of dividends to creditors, may be brought on not less than ten (10) days’
18 notice by mail to plaintiff and defendants, through their counsel of record, and those
19 parties requesting special notice, and that orders on such motions may be obtained
20 by the Receiver without a hearing unless a party or entity specifically files and
21 serves on the Receiver through his counsel a written opposition and request for a
22 hearing within ten (10) days from the date the motion is served.

23 PLEASE TAKE FURTHER NOTICE that if no filing of an opposition and
24 request for hearing is received by counsel for the Receiver within ten days from the
25 date this motion is served upon you, the Receiver shall request the Court to sign the
26 proposed order, which has been lodged and served concurrently herewith. If an
27 opposition or request for hearing is timely filed and served, the Receiver shall

28

1 promptly schedule a hearing and give not less than ten (10) days' notice of the
2 hearing to the opposing party.

3 This Motion is based on this Notice and Motion, the Memorandum of Points
4 and Authorities, and Declaration of Brick Kane filed concurrently herewith, and
5 upon all documents, records and files in this action, and such oral and documentary
6 evidence as may be presented at or before the time of any hearing on this Motion, in
7 the event opposition is filed.

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9 Dated: September 28, 2015 DENTONS US LLP
Gary Owen Caris
Lesley Anne Hawes

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

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

12 As a result of these and other steps taken, in 2009, the FTC reported to the
13 Receiver that there are 235,509 positively identified claimants and that the FTC was
14 reviewing an additional 178,589 records which likely duplicated in part the 235,509
15 positively identified claimants but also likely identified additional claimants
16 entitled to redress. Therefore, in 2009, the FTC requested that the Receiver make a
17 distribution of available receivership assets so that the FTC could commence the
18 process of making consumer redress to those injured by the Receivership
19 Defendants' fraud. In February 2009, the Receiver filed a motion seeking approval
20 to make an initial distribution to the FTC of approximately \$13.5 million from the
21 available receivership assets ("Initial distribution motion") (Doc. No. 626). The
22 Court granted the Receiver's motion by its minute order entered March 10, 2009
23 (Doc. No. 634). In June, 2009 the FTC paid consumer redress from these funds by
24 mailing out more than 400,000 checks to consumers totaling over \$12 million.
25 Thereafter, in 2010 the FTC distributed another \$4 million to over 145,000
26 consumers who did not cash the checks mailed to them in 2009.

27 The Receiver has accumulated additional receivership funds as a result of a
28 payment received from European Bank Limited ("European Bank") in the amount

1 of \$5,052,811.81. These funds were paid by European Bank pursuant to the
2 judgment of the Court of Appeals in Vanuatu which affirmed the Supreme Court
3 (trial court) ruling of May 6, 2014 that funds held at European Bank in an account
4 in the name of Receivership Defendant Benford Limited should be turned over to
5 the Receiver. The Receiver contends an additional approximate \$3.7 million is still
6 owed by European Bank to the receivership estate based on ongoing disputes
7 between European Bank and the Receiver over the Benford account. However,
8 despite the Receiver's efforts to settle claims with European Bank over the
9 additional amounts owed, the Receiver has not been able to resolve his claims
10 through settlement and has not recovered those additional funds to date.

11 To avoid any additional delay, the Receiver and the FTC believe that an
12 additional distribution of funds from the receivership estate for consumer redress to
13 the victims in this case should be effectuated as soon as possible. Therefore, the
14 Receiver seeks Court approval to make an additional distribution of \$7.1 million to
15 the FTC from the receivership funds on hand. If the Court approves this proposed
16 second distribution, the Receiver will have remaining funds on hand in the estate
17 net of administrative expenses and the distributed funds of approximately \$384,000,
18 which the Receiver believes is sufficient to satisfy any anticipated receivership
19 expenses through the conclusion of the administration of the estate.

20
21 **II. THE SECOND DISTRIBUTION TO THE FTC IS IN ACCORDANCE**
22 **WITH THE FINAL ORDER AND APPLICABLE NINTH CIRCUIT**
23 **AUTHORITY**

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

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

4 First, a district court's power to supervise an equity
5 receivership and to determine the appropriate action to be
6 taken in the administration of the receivership is
7 extremely broad. . . . The basis for broad deference to the
8 district court's supervisory role in equity receiverships
9 arises out of the fact that most receiverships involve
10 multiple parties and complex transactions.

11 . . .

12 Secondly, we have acknowledged that a primary purpose
13 of equity receiverships is to promote orderly and efficient
14 administration of the estate by the district court for the
15 benefit of creditors. [Citations omitted.] Accordingly, we
16 generally uphold reasonable procedures instituted by the
17 district court that serve this purpose. [Citations omitted.]
18 *Securities and Exchange Commission v. Hardy*, 803 F.2d at 1037-38.

19 The Court went on to observe:

20 A district judge supervising an equity receivership faces a
21 myriad of complicated problems in dealing with the
22 various parties and issues involved in administering the
23 receivership. Reasonable administrative procedures,
24 crafted to deal with the complex circumstances of each
25 case, will be upheld. A district judge simply cannot
26 effectively and successfully supervise a receivership and
27 protect the interests of its beneficiaries absent broad
28 discretionary power. We would be remiss were we to

1 interfere with a district court’s supervision of an equity
2 receivership absent a clear abuse of discretion.

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

4 Under the circumstances, given the uncertainty as to when any additional
5 funds in the disputed Benford account will be turned over to the estate and the
6 current availability of \$7.1 million to pay to consumers on their claims, it is
7 appropriate for the Court to allow the Receiver to turn over a substantial portion of
8 the remaining assets it holds so as to allow the FTC to continue its consumer
9 redress program. The longer the delay in paying consumer claimants, the greater
10 the risk of a deterioration in the positively identified pool of claimants.

11 **III. CONCLUSION**

12 For the reasons set forth herein, it is respectfully requested this Court grant
13 the Receiver’s motion allowing it to make a second distribution of \$7.1 million to
14 the FTC to enable the FTC to continue its consumer redress program in this case.

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Dated: September 28, 2015

DENTONS US LLP
Gary Owen Caris
Lesley Anne Hawes

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

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6 Attorneys for Receiver
ROBB EVANS and ROBB EVANS &
7 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 JFW (AJWx)

**DECLARATION OF BRICK KANE
IN SUPPORT OF MOTION FOR
ORDER AUTHORIZING SECOND
DISTRIBUTION BY THE
RECEIVER TO THE FEDERAL
TRADE COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

**[NO HEARING SET PURSUANT
TO "ORDER AMENDING
PRELIMINARY INJUNCTION AS
TO DEFENDANTS J.K.
PUBLICATIONS, INC., MJD
SERVICE CORP., KENNETH H.
TAVES, AND TERESA CALLEI
TAVES" ENTERED ON
AUGUST 19, 1999]**

1 I, Brick Kane, declare:

2 1. I am the President and Chief Operating Officer and a member of Robb
3 Evans & Associates LLC, which entity along with Robb Evans is the Receiver in
4 the above-referenced action. I am one of the members of Robb Evans & Associates
5 LLC primarily responsible for handling the administration and management of this
6 receivership estate since the Receiver's appointment on January 6, 1999 pursuant to
7 the Court's Temporary Restraining Order. I have personal knowledge of the
8 matters set forth in this declaration, and if I were called upon to testify as to these
9 matters, I could and would competently testify based upon my own personal
10 knowledge.

11 2. Robb Evans and Robb Evans & Associates LLC is the Receiver for
12 J.K. Publications, Inc. ("J.K. Publications") and MJD Service Corp. ("MJD
13 Service") and each of their affiliates and subsidiaries, and over the assets of
14 Kenneth H. Taves ("Taves"). The Receiver was originally appointed temporary
15 receiver, with the full powers of an equity receiver, for J.K. Publications and MJD
16 Service and each of their affiliates and subsidiaries, upon application of the Federal
17 Trade Commission ("FTC") by this Court pursuant to a Temporary Restraining
18 Order issued on January 6, 1999. The Receiver was subsequently confirmed as
19 Permanent Receiver with the full powers of an equity receiver for J.K. Publications,
20 MJD Service and each of its affiliates and subsidiaries, and over the assets of Taves
21 and Teresa Callei Taves, pursuant to the Order of Preliminary Injunction as to
22 Defendants J.K. Publications, Inc., MJD Service Corp., Kenneth H. Taves and
23 Teresa Callei Taves entered March 16, 1999 ("Preliminary Injunction"). The
24 Receiver was ordered to remain as Permanent Receiver, retaining the powers
25 established under the Preliminary Injunction, pursuant to Section XVII of this
26 Court's Final Order and Permanent Injunction as to Defendants J.K. Publications,
27 Inc., MJD Service Corp., Herbal Care, Inc., Kenneth A. Taves and Teresa Callei
28 Taves entered August 30, 2000 ("Final Order").

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

11 4. The FTC, in conjunction with the Receiver, has previously taken steps
12 to identify claimants victimized by Defendants’ theft of credit card numbers in
13 order to effectuate a consumer redress program. As previously reported to the
14 Court, this process began with the dissemination of fraud alert letters to Mastercard
15 member institutions and Visa member institutions in October and November 2006
16 to canvass whether responding members had active card numbers victimized by
17 Defendants’ misconduct. Starting the week of March 5, 2007, the FTC began
18 issuing subpoenas to Mastercard and Visa member institutions to further identify
19 active accounts. In August 2007, the Court signed an order directing the credit
20 reporting agencies to comply with subpoenas issued by the FTC to assist in further
21 locating potential consumer claimants.

22 5. As a result of these and other steps taken, in 2009, the FTC reported to
23 the Receiver that there are 235,509 positively identified claimants and that the FTC
24 was reviewing an additional 178,589 records which likely duplicated in part the
25 235,509 positively identified claimants but also likely identified additional
26 claimants entitled to redress. Therefore, in 2009, the FTC requested that the
27 Receiver make a distribution of available receivership assets so that the FTC could
28 commence the process of making consumer redress to those injured by the

1 Receivership Defendants' fraud. In February 2009, the Receiver filed a motion
2 seeking approval to make an initial distribution to the FTC of approximately \$13.5
3 million from the available receivership assets ("Initial distribution motion") (Doc.
4 No. 626). The Court granted the Receiver's motion by its minute order entered
5 March 10, 2009 (Doc. No. 634). In June, 2009 the FTC paid consumer redress
6 from these funds by mailing out more than 400,000 checks to consumers totaling
7 over \$12 million. Thereafter, in 2010 the FTC distributed another \$4 million to
8 over 145,000 consumers who did not cash the checks mailed to them in 2009.

9 6. The Receiver has accumulated additional receivership funds as a result
10 of a payment received from European Bank Limited ("European Bank") in the
11 amount of \$5,052,811.81. These funds were paid by European Bank pursuant to
12 the judgment of the Court of Appeals in Vanuatu which affirmed the Supreme
13 Court (trial court) ruling of May 6, 2014 that funds held at European Bank in an
14 account in the name of Receivership Defendant Benford Limited should be turned
15 over to the Receiver. The Receiver contends an additional approximate \$3.7
16 million is still owed by European Bank to the receivership estate based on ongoing
17 disputes between European Bank and the Receiver over the Benford account.
18 However, despite the Receiver's efforts to settle his claims with European Bank
19 over the additional amounts owed, the Receiver has not been able to resolve his
20 claims through settlement and has not recovered those additional funds to date.

21 7. To avoid any additional delay, the Receiver and the FTC believe that
22 an additional distribution of funds from the receivership estate to make consumer
23 redress to the victims in this case should occur as soon as possible. Therefore, the
24 Receiver seeks Court approval to make an additional distribution of \$7.1 million to
25 the FTC from the receivership funds on hand. If the Court approves this proposed
26 second distribution, the Receiver will have remaining funds on hand in the estate
27 net of administrative expenses and the distributed funds of approximately \$384,000,
28 which the Receiver believes is sufficient to satisfy any anticipated receivership

1 expenses through the conclusion of the administration of the estate. Further, I
2 believe making this distribution to allow the FTC to continue its consumer redress
3 to victims is appropriate to avoid a further deterioration in the database of consumer
4 victims.

5 8. For the reasons set forth in the Motion and this Declaration, I
6 respectfully request that the Court allow the Receiver to make a second distribution
7 of \$7.1 million to the FTC to enable the FTC to continue its consumer redress
8 program.

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10 I declare under penalty of perjury that the foregoing is true and correct and
11 that this declaration was executed on September 28, 2015 at Sun Valley, California.

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14 _____
15 BRICK KANE
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