

ROBB EVANS & ASSOCIATES LLC

Receiver of

Universal Premium Services, Inc. AKA Premier Benefits, Inc.

Consumer Reward Network, Inc.

Star Communications LLC

Membership Services Direct, Inc. AKA Continuity Partners Inc.

Connect2USA, Inc., et al.

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

Facsimile No.: (818) 768-8802

**Federal Trade Commission v. Universal Premium Services, Inc, et al.
CASE No. CV06-0849 SJO (OPx)**

**Notice of Motion and Motion for Approval of Receiver's Settlement
with First Regional Bank, Electronic Clearing House, Inc., Internet
Transaction Services, Inc. and Edward A. Courdy; Memorandum of
Points and Authorities and Declaration of Kenton Johnson in Support
Thereof; Request for Judicial Notice Filed Concurrently Herewith**

Dated September 8, 2006

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
4 444 South Flower Street, 8th Floor
Los Angeles, CA 90071
Telephone: (213) 688-1000
5 Facsimile: (213) 243-6330

6 Attorneys for Permanent Receiver
ROBB EVANS & ASSOCIATES LLC
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 UNIVERSAL PREMIUM SERVICES,
INC., a California corporation (also
15 known as Premier Benefits, Inc.), et al.,

16 Defendants.
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22

CASE NO. CV06-0849 SJO (OPx)

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
RECEIVER'S SETTLEMENT
WITH FIRST REGIONAL BANK,
ELECTRONIC CLEARING
HOUSE, INC., INTERNET
TRANSACTION SERVICES, INC.
AND EDWARD A. COURDY;
MEMORANDUM OF POINTS AND
AUTHORITIES AND
DECLARATION OF KENTON
JOHNSON IN SUPPORT
THEREOF; REQUEST FOR
JUDICIAL NOTICED FILED
CONCURRENTLY HEREWITH**

**DATE: October 2, 2006
TIME: 10:00 a.m.
CTRM: 1600**

23 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD AND
24 OTHER PARTIES-IN-INTEREST:

25 PLEASE TAKE NOTICE that on October 2, 2006, at 10:00 a.m. in
26 Courtroom 1600 of the above-entitled Court located at 312 North Spring Street, Los
27 Angeles, California 90012, Robb Evans & Associates LLC ("Receiver"), the
28

1 Permanent Receiver over the assets of Universal Premium Services, Inc. aka
2 Premier Benefits, Inc., Consumer Reward Network, Inc., Star Communications,
3 LLC, Membership Direct Services, Inc. aka Continuity Partners, Inc.,
4 Connect2USA, Inc. and their subsidiaries and affiliates (collectively, the
5 “Receivership Defendants”) will and does hereby move the Court for an order
6 authorizing the Receiver to enter into and approving the Agreement of
7 Compromise, Settlement and Mutual Release (“Agreement”) by and between the
8 Receiver, as Receiver for Continuity Partners, Inc., Premier Benefits, Inc. and
9 Consumer Reward Network, Inc., on the one hand, and First Regional Bank,
10 Electronic Clearing House, Inc., Internet Transaction Services, Inc. and Edward A.
11 Courdy, on the other, in full and complete resolution of two state court lawsuits:
12 (1) *Continuity Partners, Inc. v. Electronic Clearing House, Inc., Internet*
13 *Transaction Services, Inc., First Regional Bank and Edward A. Courdy*, Los
14 Angeles Superior Court Case No. SC086314; and (2) *Premier Benefits, Inc. and*
15 *Consumer Reward Network, Inc. v. First Regional Bank, Internet Transaction*
16 *Services, Inc., Electronic Clearing House, Inc. and Edward A. Courdy*, Los
17 Angeles Superior Court Case No. SC085538. Pursuant to this Agreement, the
18 Receiver will obtain all funds held under attachment in connection with the lawsuit
19 brought by Premier Benefits, Inc. and Consumer Reward Network, Inc. in the
20 amount of not less than \$447,862.49, less \$25,000 which shall be paid to Internet
21 Transaction Services, Inc., and First Regional Bank shall pay an additional
22 \$15,757.44 to the Receiver. The settlement also calls for mutual releases. The
23 Receiver further seeks an order granting relief from the notice provisions of Local
24 Rule 66-7 to the extent such provisions may be deemed applicable.

25 PLEASE TAKE FURTHER NOTICE that this Motion is based upon this
26 Notice of Motion and Motion, the accompanying Memorandum of Points and
27 Authorities and argument, the Declaration of Kenton Johnson attached hereto and
28 served and filed concurrently herewith, the Request for Judicial Notice filed

1 concurrently herewith, and upon such other further pleadings, oral and documentary
2 evidence as may be presented at or before the time of the hearing on the Motion.

3 PLEASE TAKE FURTHER NOTICE that this Motion is posted on the
4 Receiver's website at www.robbevans.com/html/univprem.html, where it may be
5 reviewed in its entirety. Copies of this Motion will be provided to any interested
6 party upon receipt of a written request which may be sent to: Robb Evans &
7 Associates, LLC, Attn: Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA
8 91352-1121; facsimile: (818) 768-8802.

9
10 Dated: September __, 2006

McKenna Long & Aldridge LLP
Gary Owen Caris
Lesley Anne Hawes

11
12
13 By: _____

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 **A. Federal Trade Commission Action**

4 On February 14, 2006, the Federal Trade Commission (“FTC”) commenced
5 this action (“FTC Action”) against the Receivership Defendants as well as against
6 Brian K. MacGregor, Harijinder Sidhu, Joseph L. LaRosa, Jr., Pranot Sangpravit,
7 William Thomas Heichert, Michael Howard Cushing, Paul P. Tosi and Manh Cao
8 (collectively referred to hereinafter as “Defendants”). The FTC alleged that the
9 Defendants engaged in a deceptive and abusive telemarketing campaign in which
10 their telemarketers called consumers offering an attractive free item, such as gift
11 cards for use at major retailers, “shopping sprees,” movie passes, or gas vouchers.
12 Consumers were allegedly told that to receive the item, they must pay a nominal
13 shipping and handling fee, which would be debited from their bank account. After
14 obtaining the consumers’ bank account information, Defendants’ telemarketers
15 allegedly engaged in various deceptive and abusive tactics to induce consumers to
16 enroll in membership discount programs through which the consumers’ bank
17 accounts were to be debited on a negative option basis. Consumers reported that
18 the Defendants made numerous debits to the consumers’ bank accounts, in amounts
19 ranging from \$1.95 to \$149.90, but did not send the free item as promised. The
20 Defendants allegedly made it difficult, if not impossible, for the consumers to
21 obtain refunds and avoid additional debits to the consumers’ bank accounts,
22 notwithstanding the Defendants’ previous representations that consumers may
23 cancel their memberships and obtain refunds.

24 The Receiver was appointed pursuant to a Temporary Restraining Order
25 entered February 21, 2006. Thereafter, on March 14, 2006, the Court issued its
26 Order Granting Plaintiff Federal Trade Commission’s Application for Preliminary
27 Injunction and Appointment of Permanent Receiver (“Order Granting Preliminary
28 Injunction”) and on March 21, 2006, the Court issued its Preliminary Injunction

1 with Asset Freeze, Appointment of Permanent Receiver, and Other Equitable Relief
2 (“Preliminary Injunction”) pursuant to which the Receiver was appointed
3 Permanent Receiver. On March 7, 2006, the Receiver filed a Temporary Receiver’s
4 Report for the period from February 22, 2006 through March 3, 2006 (“Receiver’s
5 Report”), which provides a preliminary analysis of the Receivership Defendants
6 and their operations, and sets forth a detailed accounting of the Receiver’s
7 investigation through March 3, 2006.

8 The Court’s Order Granting Preliminary Injunction, a copy of which is
9 attached to the Request for Judicial Notice as Exhibit 1, set forth a detailed analysis
10 of why the FTC was likely to succeed on its claim against the defendants, including
11 Continuity Partners, Inc., Premier Benefits, Inc. and Consumer Reward Network,
12 Inc. Among other things, the Court found the defendants failed to sufficiently
13 dispute that they made numerous misrepresentations to consumers to induce them
14 to disclose their bank account information so as to obtain authorizations to debit
15 their bank accounts. Through these misrepresentations, the Court found that it was
16 likely that the FTC will prove that defendants engaged in deceptive practices in
17 violation of Section 5 of the Federal Trade Commission Act. The Court further
18 stated that defendants failed to submit evidence of the existence of “valuable items”
19 that defendants’ telemarketers offered to consumers. The Court found that the
20 failure of defendants to demonstrate that it did not engage in deceptive business
21 practices by offering valuable items it did not possess and did not intend to provide
22 strongly weighs in favor of finding that the FTC is likely to demonstrate that
23 defendants engaged in acts of misrepresentation in violation of the Federal Trade
24 Commission Act. The Court further found that it was likely that the FTC will
25 prevail in demonstrating that defendants falsely affiliated itself with other
26 companies and the government in violation of the Telemarketing Sales Rule.
27 Relying on consumer declarations, the Court found that defendants caused
28 customers’ billing information to be submitted for payment without the express and

1 informed consent of the customer and that defendants' telemarketers used threats,
2 intimidation and profane or obscene language in their telemarketing calls to
3 consumers, also in violation of the Telemarketing Sales Rule. The Court also found
4 that telemarketers continued to call consumers who had previously asked them to
5 stop calling, another violation of the Telemarketing Sales Rule.

6 For its part, the Receiver conducted an investigation to determine the
7 structure of the entities involved in the alleged fraudulent scheme perpetrated by the
8 Receivership Defendants. The Receiver conducted multiple interviews of several
9 defendants and property managers, searched and analyzed public records, and
10 analyzed voluminous corporate documents, leases, e-mails, mail and other
11 documents. The Receiver determined that the Receivership Defendants had used a
12 series of corporate entities and affiliated entities to conduct business operations and
13 transformed their public presence through a series of name changes and newly
14 created corporate entities.

15 The Receiver also conducted an investigation of the products sold by the
16 Receivership Defendants and the methods employed to market those products, a
17 process made more difficult by the fact that the Receivership Defendants repeatedly
18 changed the names of their approximately 11 products to create the impression of
19 new products, and the fact that they used over 150 offshore call centers as well as a
20 domestic telemarketing center to market the products during the history of their
21 operations. The Receiver analyzed business records and documents, interviewed
22 employees of the Receivership Defendants, reviewed mailing and marketing
23 material from many of the products promoted to consumers, and reviewed scripts
24 furnished to domestic and offshore telemarketing centers used to sell products and
25 convince customers to remain as customers. The Receiver's preliminary analysis is
26 reflected in detail in the Receiver's Report, a copy of which is attached to the
27 Request for Judicial Notice as Exhibit 2 (without exhibits). The Court relied on
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1 both the evidence presented by the FTC and the Receiver's Report in its Order
2 Granting Preliminary Injunction.

3 **B. State Court Litigation**

4 Prior to the inception of the FTC Action, certain of the Receivership
5 Defendants filed litigation which is the subject of this settlement motion. On May
6 13, 2005, Premier Benefits, Inc. ("Premier") and Consumer Reward Network, Inc.
7 ("CRN") sued First Regional Bank ("Bank"), Internet Transaction Services, Inc.
8 ("Intertrans"), Electronic Clearing House, Inc. ("ECHO") and Edward A. Courdy
9 ("Courdy"), Los Angeles Superior Court Case No. SC085538 ("Premier Lawsuit").
10 In the Premier Lawsuit, it was alleged that defendants provided electronic debit and
11 credit transaction services to the checking accounts of consumers. Among other
12 things, plaintiffs alleged that defendants breached their contract by failing to set up
13 separate accounts in favor of Premier and CRN, instead processing Premier's
14 transactions and CRN's transactions through a single aggregate account. Premier
15 further alleged that the defendants breached their contract by freezing all sums of
16 money in their possession held on behalf of Premier and CRN. Premier further
17 asserted that defendants breached their contract by processing Automated Clearing
18 House ("ACH") transactions from telephone "cold call" sales in violation of
19 Federal Reserve rules. In the action, the plaintiffs asserted damages totaling
20 \$696,177.30. A copy of the first amended complaint in the Premier Lawsuit is
21 attached to the Request for Judicial Notice as Exhibit 3.

22 On November 17, 2005, plaintiffs obtained a right to attach order and order
23 for issuance of writ of attachment against the Bank and Intertrans as to accounts in
24 which payment for products had been made to the plaintiffs by customers. Because
25 the Bank was acting as a depository and did not have any interest in the funds, it did
26 not oppose the attachment and instead turned over \$447,862.49 to the Sheriff's
27 Office pursuant to the attachment order. On February 27, 2006, demurrers to
28 plaintiffs' first amended complaint were set for hearing. Essentially, the demurrers

1 argued that because plaintiffs acted in an illegal manner, they could not accuse
2 defendants of contractual breach in freezing the accounts or otherwise. Intertrans
3 also cross-complained against Premier and CRN. The Temporary Restraining
4 Order and litigation stay issued in the FTC Action on February 21, 2006 precluded
5 the hearing on the demurrers from going forward.

6 On July 18, 2005, Continuity Partners, Inc. ("CPI") sued ECHO, Intertrans,
7 the Bank and Courdy ("CPI Lawsuit"). In the CPI Lawsuit, CPI alleged that
8 defendants negligently froze plaintiff's money and negligently processed ACH
9 transactions in violation of the banking rules. In this action, \$98,145.75 was
10 sought. A copy of the complaint in the CPI Lawsuit is attached to the Request for
11 Judicial Notice as Exhibit 4. The Bank is holding \$5,757.44 relating to CPI and its
12 prior relationship with Intertrans in reserve and a separate reserve account of
13 \$10,000 for a total of \$15,757.44.

14 C. The Settlement

15 The Receiver, on behalf of the state court litigation plaintiffs CPI, Premier,
16 and CRN, has entered into a proposed settlement with defendants in the two
17 lawsuits, the Bank, ECHO, Intertrans and Courdy. The settlement document,
18 entitled Agreement of Compromise, Settlement and Mutual Release ("Agreement"),
19 is attached as Exhibit 1 to the Declaration of Kenton Johnson. Under the
20 Agreement, all sums held under attachment (at least \$447,862.49) shall be paid to
21 the Receiver, less \$25,000 which shall be paid to Intertrans. In addition, the sums
22 held by the Bank totaling \$15,757.44 shall be paid to the Receiver. Therefore, the
23 Receiver will obtain at least \$438,619.93. In exchange, the Premier Lawsuit and
24 the CPI Lawsuit will be dismissed with prejudice in their entirety, including the
25 Intertrans cross-complaint. In addition, mutual releases will be executed by the
26 Receiver on behalf of CPI, Premier and CRN on the one hand, and the Bank,
27 ECHO, Intertrans and Courdy in favor of the Receiver, the receivership estate, CPI,
28 Premier and CRN, on the other.

1 **II. THE COURT SHOULD APPROVE THE AGREEMENT**

2 The leading treatise on receivership law states:

3 The only justification for the compromise of claims is that
4 it is done for the best interests of the receivership and the
5 estate under the control and possession of the court.

6 *3 Clark on Receivers* § 655 (3d ed. 1959)

7 The court appointing a receiver must use its discretion in
8 determining whether it is for the best interests of the
9 estate that the receiver be authorized to compromise a
10 claim, and when the appointing court has not abused its
11 discretion in giving instructions to the receiver, its orders
12 will not be disturbed or reviewed in the appellate court.

13 *3 Clark on Receivers* § 770 (3d ed. 1959)

14 Pursuant to Local Rule 66-8, a receiver is directed to administer receivership
15 estates “as nearly as possible in accordance with the practice in the administration
16 of estates in bankruptcy.” Under Rule 9019 of the Federal Rules of Bankruptcy
17 Procedure, the court in a bankruptcy case may approve a proposed compromise of
18 controversies after notice and an opportunity for hearing. Ninth Circuit decisions in
19 *In re A & C Properties*, 784 F. 2d 1377 (9th Cir. 1986) and *In re Woodson*, 839 F.
20 2d 610 (9th Cir. 1988) establish four factors the court must consider in ruling on the
21 approval of compromises in bankruptcy:

22 “(a) The probability of success in the litigation; (b) the
23 difficulties, if any, to be encountered in the matter of
24 collection; (c) the complexity of the litigation involved,
25 and the expense, inconvenience and delay necessarily
26 attending it; (d) the paramount interest of the creditors
27 and a proper deference to their reasonable views in the
28 premises.”

1 *In re A & C Properties*, 784 F. 2d at 1381. *See also In re Woodson*, 839 F. 2d at
2 620.

3 Under these standards, the Receiver believes the Agreement is fair and
4 reasonable and should be approved. Given the allegations in the FTC Action, the
5 Receiver's analysis of the Receivership Defendants' business practices and
6 operations, and this Court's findings as set forth in the Order Granting Preliminary
7 Injunction, the Receiver believes that the claims asserted by the Receivership
8 Defendants in the two state court actions will be difficult to prove and unlikely to
9 be meritorious. In settlement of the claims, the Receiver will obtain all sums held
10 under attachment which represent proceeds paid by consumers, less a payment of
11 only \$25,000 to Intertrans, and all sums being held in reserve by the Bank.

12 Therefore, all the proceeds under attachment and held in reserve by First Regional
13 Bank representing consumer funds are being returned to the receivership estate
14 except for \$25,000. The payment to the Receiver represents 55% of the total
15 amount sought in the two lawsuits without the need to incur further legal expense.

16 The Receiver believes that it is reasonable to allow Intertrans to keep
17 \$25,000 based upon its contention that the Receivership Defendants are required to
18 indemnify and defend Intertrans and the Bank for any and all claims arising from or
19 relating to the contracts and the services provided by Intertrans, including but not
20 limited to attorneys' fees and costs. It has been alleged that defendants incurred
21 over \$150,000 in attorneys' fees and costs and Intertrans' cross-complaint in the
22 Premier Lawsuit seeks to recover all of these fees and costs.

23 While the Receiver believes there would be good defenses to the cross-
24 complaint and that any claim which Intertrans might assert would properly be the
25 subject of a claim in the receivership estate, and not a priority payment,
26 nevertheless the Receiver understands that there is a risk Intertrans might succeed
27 in asserting a priority right to payment or in any event assert a sizable claim in the
28 estate, payment of which might ultimately exceed \$25,000. In order to avoid any

1 further disputes and differences with all of the defendants, it is fair and reasonable
2 to pay Intertrans \$25,000 from the funds held under attachment.

3 Taking into consideration all of these facts, the Receiver believes that the
4 settlement is an excellent one for the estate and should be approved.

5 **III. THE RECEIVER REQUESTS THAT THE MOTION BE GRANTED**
6 **WITHOUT REQUIRING THE RECEIVER TO GIVE WRITTEN**
7 **NOTICE TO ALL CREDITORS**

8 To the extent applicable, the Receiver requests that this Motion be granted
9 without requiring the Receiver to give written notice to all known creditors
10 pursuant to Local Rule 66-7. Local Rule 66-7 applies to the following: (a)
11 petitions for payment of dividends to creditors; (b) petitions for confirmation of
12 sales of real property and personal property; (c) reports of the receiver; (d)
13 applications for instructions concerning administration of the estate; (e) applications
14 for discharge of the receiver; and (f) applications for fees and expenses of the
15 receiver, the attorney for the receiver and any other persons appointed to aid the
16 receiver. Arguably, this Motion falls within Local Rule 66-7(d) as an application
17 for instructions concerning administration of the estate. Irrespective of whether
18 Local Rule 66-7(d) strictly applies, the Receiver requests that the Motion be granted
19 without the need to give written notice to all creditors.

20 In this case, there are hundreds of thousands of consumers who are potential
21 creditors in this case and there are also over sixty vendor creditors. The identity
22 and address of each of the consumers and vendor creditors is not currently known
23 to the Receiver. If the Receiver were required to give notice to all these creditors,
24 such a requirement would be burdensome, time-consuming and expensive for the
25 receivership estate, including substantial photocopying and postage costs.
26 Moreover, the Receiver would likely be unable to comply with such a requirement
27 as a practical matter given that the identity and address of the consumers and all
28 potential vendor creditors have not yet been determined.

1 Based on the foregoing, the Receiver seeks an order providing that the notice
2 requirement for the hearing on this Motion shall be deemed satisfied if copies of
3 this Motion are served on: (a) all parties to this action; (b) all parties who have
4 served the Receiver with a written request for notice; and (c) all parties who request
5 a copy of the Motion in writing directed to: Robb Evans & Associates LLC, Attn:
6 Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352-1121; facsimile:
7 (818) 768-8802. The Receiver will post a copy of this Motion on the Receiver's
8 website for this case at www.robbevans.com/html/univprem.html, allowing all
9 interested parties an opportunity to review the Motion and to submit to a written
10 request for service thereof. This procedure for limited notice is reasonable in light
11 of the large number of potential consumers, and provides adequate notice while
12 allowing for efficient, cost-effective administration of the receivership estate.

13 There is ample authority for approval of the scope and method of limited
14 notice as set forth above. Local Rule 66-7 provides that the provisions of Local
15 Rule 6-1 apply to notice of Rule 66-7 Motions. Local Rule 6-1 in turn provides for
16 the filing and service of written notices of motion "unless otherwise provided by
17 rule or ordered by the Court." This Court, as a court of equity supervising the
18 receivership estate, may make appropriate administrative orders governing the
19 receivership, including limitations on and changes in notice and other procedures.
20 See F.R. Civ. P. 5(a) and (c) (authorizing the court to modify service procedures
21 when numerous defendants are involved in litigation). Pursuant to Local Rules 66-
22 8, a receiver is directed to administer receivership estates "as nearly as possible in
23 accordance with the practice in administration of estates of bankruptcy." Orders
24 limiting notice when the Bankruptcy Code or Rules would otherwise require notice
25 to all creditors are routinely granted in bankruptcy cases to promote the expeditious
26 and economical administration of bankruptcy estates. See In re First Alliance
27 Mortgage Co., 269 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the
28 court's recitation of facts the bankruptcy court's order limiting notice issued in that

1 case); 11 U.S.C. § 102(1)(A) (defining the phrase “after notice and a hearing” to
2 mean “after such notice as is appropriate in the particular circumstances, and such
3 opportunity for hearing as is appropriate in the particular circumstances”);
4 11.U.S.C. § 105(a) and (s) (granting broad equitable powers to the court to issue
5 orders “necessary or appropriate to carry out the provisions” of title 11 including
6 “prescribing such limitations and conditions as the court deems appropriate to
7 ensure the case is handled expeditiously and economically”); and F.R. Bankr. P.
8 2002(m) (authorizing the court to enter “orders designating the matters in respect to
9 which, the entity to whom, and the form and manner in which notices shall be sent
10 except as otherwise provided by these rules”).

11 **IV. CONCLUSION**

12 Based on the foregoing, the Receiver respectfully requests that this Court
13 grant this Motion in its entirety, and enter an order authorizing the Receiver to enter
14 into and approving the Agreement, Exhibit 1 to the accompanying Declaration of
15 Kenton Johnson.

16 Dated: September __, 2006

McKenna Long & Aldridge LLP
Gary Owen Caris
Lesley Anne Hawes

19 By: _____

20 Gary Owen Caris
21 Attorneys for Permanent Receiver
22 ROBB EVANS & ASSOCIATES
23 LLC

1 DECLARATION OF KENTON JOHNSON

2 I, Kenton Johnson, declare:

3 1. I am a principal of Robb Evans & Associates LLC, the entity
4 appointed by this Court as Permanent Receiver over the assets of Universal
5 Premium Services, Inc. aka Premier Benefits, Inc., Consumer Reward Network,
6 Inc., Star Communciations, LLC, Membership Direct Services, Inc. aka Continuity
7 Partners, Inc., Connect2USA, Inc. and their subsidiaries and affiliates (collectively,
8 the "Receivership Defendants") in connection with the above-referenced matter. I
9 am one of the principals of Robb Evans & Associates LLC responsible for the day-
10 to-day management and supervision of this receivership estate. I have personal
11 knowledge of the matters set forth in this declaration or have gained knowledge of
12 these matters based upon my supervision of other members and staff of Robb Evans
13 & Associates LLC involved in the day-to-day management of this receivership
14 estate. If called upon to testify as to these matters, I could and would competently
15 testify thereto.

16 2. Robb Evans & Associates LLC was appointed as the temporary
17 receiver pursuant to a Temporary Restraining Order entered on February 21, 2006.
18 Thereafter, on March 21, 2006, Robb Evans & Associates LLC was appointed as
19 Permanent Receiver ("Receiver") pursuant to this Court's Preliminary Injunction
20 with Asset Freeze, Appointment of Permanent Receiver, and Other Equitable
21 Relief.

22 3. On March 7, 2006, the Receiver filed a Temporary Receiver's Report
23 for the period from February 22, 2006 through March 3, 2006 ("Receiver's
24 Report"), which provided a preliminary analysis of the Receivership Defendants
25 and their operations, and sets forth a detailed accounting of the Receiver's
26 investigation through March 3, 2006. I was one of the members of Robb Evans &
27 Associates LLC responsible for undertaking the analysis reflected in the Receiver's
28 Report and writing the Receiver's Report.

1 4. As reflected in the Receiver's Report, the Receiver conducted an
2 investigation to determine the structure of the entities involved in the alleged
3 fraudulent scheme perpetrated by the Receivership Defendants. The Receiver
4 conducted multiple interviews of several defendants and property managers,
5 searched and analyzed public records, and analyzed voluminous corporate
6 documents, leases, e-mails, mail and other documents. The Receiver determined
7 that the Receivership Defendants had used a series of corporate entities and
8 affiliated entities to conduct business operations and transformed their public
9 presence through a series of name changes and newly created corporate entities.

10 5. The Receiver also conducted an investigation of the products sold by
11 the Receivership Defendants and the methods employed to market those products, a
12 process made more difficult by the fact that the Receivership Defendants repeatedly
13 changed the names of their approximately 11 products to create the impression of
14 new products, and the fact that they used over 150 offshore call centers as well as a
15 domestic telemarketing center to market the products during the history of their
16 operations. As part of this investigation, the Receiver analyzed business records
17 and documents, interviewed employees of the Receivership Defendants, reviewed
18 mailing and marketing material from many of the products promoted to consumers,
19 and reviewed scripts furnished to domestic and offshore telemarketing centers used
20 to sell products and convince customers to remain as customers.

21 6. After becoming Receiver, we were contacted by Timothy Bice, an
22 attorney that had represented certain of the Receivership Defendants before the
23 *Federal Trade Commission* action was commenced. He advised us of two lawsuits
24 which are the subject of this settlement motion in which he was counsel for
25 plaintiffs. He forwarded to the Receiver's attorneys various pleadings from these
26 lawsuits. I reviewed materials which Mr. Bice forwarded and I consulted with the
27 Receiver's counsel concerning the lawsuits. In addition, a meeting was held with
28 Mr. Bice and the Receiver's counsel on April 11, 2006 in which the lawsuits were

1 discussed in detail. I am also advised that the Receiver's counsel discussed these
2 lawsuits with William Steckbauer, counsel for Internet Transaction Services, Inc.
3 and Edward A. Courdy.

4 7. From the documents which were provided by Mr. Bice as well as the
5 discussions held with Mr. Bice and Mr. Steckbauer as described in the preceding
6 paragraph, the Receiver determined that on May 13, 2005, Premier Benefits, Inc.
7 ("Premier") and Consumer Reward Network, Inc. ("CRN") sued First Regional
8 Bank ("Bank"), Internet Transaction Services, Inc. ("Intertrans"), Electronic
9 Clearing House, Inc. ("ECHO") and Edward A. Courdy ("Courdy"), Los Angeles
10 Superior Court Case No. SC085538 ("Premier Lawsuit"). In the Premier Lawsuit,
11 it was alleged that defendants provided electronic debit and credit transaction
12 services to the checking accounts of consumers. Among other things, plaintiffs
13 alleged that defendants breached their contract by failing to set up separate accounts
14 in favor of Premier and CRN, instead processing Premier's transactions and CRN's
15 transactions through a single aggregate account. Premier further alleged that the
16 defendants breached their contract by freezing all sums of money in their
17 possession held on behalf of Premier and CRN. Premier further asserted that
18 defendants breached their contract by processing Automated Clearing House
19 ("ACH") transactions from telephone "cold call" sales in violation of Federal
20 Reserve rules. In the action, the plaintiffs asserted damages totaling \$696,177.30.

21 8. I further learned that on November 17, 2005, plaintiffs obtained a right
22 to attach order and order for issuance of writ of attachment against the Bank and
23 Intertrans as to accounts in which payment for products had been made to the
24 plaintiffs by customers. Because the Bank was acting as a depository and did not
25 have any interest in the funds, it did not oppose the attachment and instead turned
26 over \$447,862.49 to the Sheriff's Office pursuant to the attachment order. On
27 February 27, 2006, demurrers to plaintiffs' first amended complaint were set for
28 hearing. Essentially, the demurrers argued that because plaintiffs acted in an illegal

1 manner, they could not accuse defendants of contractual breach in freezing the
2 accounts or otherwise. Intertrans also cross-complained against Premier and CRN.
3 The Temporary Restraining Order and litigation stay issued in the FTC Action on
4 February 21, 2006 precluded the hearing on the demurrers from going forward.

5 9. I further learned that on July 18, 2005, Continuity Partners, Inc.
6 (“CPI”) sued ECHO, Intertrans, the Bank and Courdy (“CPI Lawsuit”). In the CPI
7 Lawsuit, CPI alleged that defendants negligently froze plaintiff’s money and
8 negligently processed ACH transactions in violation of the banking rules. In this
9 action, \$98,145.75 was sought. The Bank is holding \$5,757.44 relating to CPI and
10 its prior relationship with Intertrans in reserve and a separate reserve account of
11 \$10,000 for a total of \$15,757.44.

12 10. The Receiver, on behalf of the state court litigation plaintiffs CPI,
13 Premier, and CRN, has entered into a proposed settlement with defendants in the
14 two lawsuits, the Bank, ECHO, Intertrans and Courdy. A true and correct copy of
15 the settlement document, entitled Agreement of Compromise, Settlement and
16 Mutual Release (“Agreement”), is attached as Exhibit 1 hereto. Under the
17 Agreement, all sums held under attachment (at least \$447,862.49) shall be paid to
18 the Receiver, less \$25,000 which shall be paid to Intertrans. In addition, the sums
19 held by the Bank totaling \$15,757.44 shall be paid to the Receiver. Therefore, the
20 Receiver will obtain at least \$438,619.93. In exchange, the Premier Lawsuit and
21 the CPI Lawsuit will be dismissed with prejudice in their entirety, including the
22 Intertrans cross-complaint. In addition, mutual releases will be executed by the
23 Receiver on behalf of CPI, Premier and CRN on the one hand, and the Bank,
24 ECHO, Intertrans and Courdy in favor of the Receiver, the receivership estate, CPI,
25 Premier and CRN, on the other.

26 11. The Receiver believes the Agreement is fair and reasonable and should
27 be approved. Given the allegations in the FTC Action, the Receiver’s analysis of
28 the Receivership Defendants’ business practices and operations, and this Court’s

1 findings as set forth in its Order Granting Preliminary Injunction, the Receiver
2 believes that the claims asserted by the Receivership Defendants in the two state
3 court actions will be difficult to prove and unlikely to be meritorious. In settlement
4 of the claims, the Receiver will obtain all sums held under attachment which
5 represent proceeds paid by consumers, less a payment of only \$25,000 to Intertrans,
6 and all sums being held in reserve by the Bank. Therefore, all the proceeds under
7 attachment and held in reserve by First Regional Bank representing consumer funds
8 are being returned to the receivership estate except for \$25,000. The payment to
9 the Receiver represents 55% of the total amount sought in the two lawsuits without
10 the need to incur further legal expense.

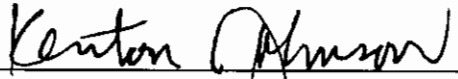
11 12. The Receiver believes that it is reasonable to allow Intertrans to keep
12 \$25,000 based upon its contention that the Receivership Defendants are required to
13 indemnify and defend Intertrans and the Bank for any and all claims arising from or
14 relating to the contracts and the services provided by Intertrans, including but not
15 limited to attorneys' fees and costs. It has been alleged that defendants incurred
16 over \$150,000 in attorneys' fees and costs and I am advised that Intertrans' cross-
17 complaint in the Premier Lawsuit seeks to recover all of these fees and costs.

18 13. While the Receiver believes there would be good defenses to the cross-
19 complaint and that any claim which Intertrans might assert would properly be the
20 subject of a claim in the receivership estate, and not a priority payment,
21 nevertheless the Receiver understands that there is a risk Intertrans might succeed
22 in asserting a priority right to payment or in any event assert a sizable claim in the
23 estate, payment of which might ultimately exceed \$25,000. In order to avoid any
24 further disputes and differences with all of the defendants, it is fair and reasonable
25 to pay Intertrans \$25,000 from the funds held under attachment.

26 14. Taking into consideration all of these facts, the Receiver believes that
27 the settlement is an excellent one for the estate and should be approved.

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1 I declare under penalty of perjury that the foregoing is true and correct and
2 that this declaration was executed on September 8, 2006 at Sun Valley, California.

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6 Kenton Johnson
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