**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**
**SOUTHERN DIVISION**

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| FEDERAL TRADE COMMISSION,<br>Plaintiff,<br>v.<br>AMERIDEBT, INC., et al.,<br>Defendants. | Civil Action No. PJM 03-3317 |

**RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF**

Robb Evans & Associates LLC as Receiver over the assets of Andris Pukke and DebtWorks, Inc. ("Receiver") pursuant to this Court's Preliminary Injunction Order with Asset Freeze, Appointment of a Receiver, Repatriation of Assets, and Other Equitable Relief dated April 20, 2005 (the "Preliminary Injunction Order") and the Stipulated Final Judgment and Permanent Injunction as to Defendants DebtWorks, Inc. and Andris Pukke entered on May 17, 2006 ("Final Judgment") hereby (a) submits this Report on Status of Receivership, and (b) moves the Court for an order approving the fees and expenses of the Receiver, its staff and its attorneys for the twelve-month period from October 1, 2011 through September 30, 2012 and authorizing payment thereof, as set forth more specifically herein. The Receiver submits good cause exists for the relief sought herein based on the following.

## I. INTRODUCTION AND SUMMARY OF RECEIVERSHIP CASE

On April 20, 2005, the Court entered the Preliminary Injunction Order appointing Robb Evans & Associates LLC as Receiver over the assets of Andris Pukke ("Pukke") and DebtWorks, Inc. ("DebtWorks"). The receivership estate established by the Preliminary Injunction Order includes all assets owned or controlled, in whole or in part, directly or indirectly, by Pukke and DebtWorks.

The Preliminary Injunction Order charges the Receiver with the power and duty to locate receivership assets and take possession and control of those assets to prevent dissipation of the assets. The Order also confers expansive investigatory powers and duties on the Receiver, including expressly conferring the power to issue subpoenas under Rule 45 pursuant to Section XIII of the Order.[1] On motion filed by the Receiver in November 2005, the Preliminary Injunction Order was modified in part to clarify the Receiver's powers to conduct discovery and in part to eliminate the limitation on the Receiver's power to liquidate only "wasting" assets. See Revised Order (A) Assigning Magistrate Judge; and (B) for Limited Modification of Receivership Provisions of Preliminary Injunction Order entered December 13, 2005.

On July 11, 2005, Andris Pukke filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California, Santa Ana Division. On motion of the Federal Trade Commission ("FTC"), venue of the Pukke bankruptcy case was transferred to the District of Maryland. The Court *sua sponte* withdrew the reference of the Pukke bankruptcy case to this Court.

Shortly before the scheduled trial in this action, the FTC and Pukke reached a resolution of their disputes which was documented and filed with the Court on January 12, 2006. The Final Judgment was subsequently approved by the Court and entered as the judgment in this action on May 17, 2006. Under the Final Judgment, the Receiver's powers and duties are confirmed and continued. A related order approving the Final

[1] The Receiver requests that the Court take judicial notice of the Preliminary Injunction Order and other orders, pleadings and files of the Court in this action and the related lawsuits before the Court referenced in this Motion pursuant to F. R. E., Rule 201.

Judgment and an agreement between the FTC and the Internal Revenue Service ("IRS") was entered in Pukke's bankruptcy case. Pamela Pukke, Andris Pukke's former spouse named as a relief defendant in this action, also stipulated to judgment by the Stipulated Final Judgment and Order as to Pamela Pukke ("Pamela Pukke Judgment") entered by the Court on February 8, 2006.

**A. <u>Prior Fee Motions</u>**

The Receiver has filed fourteen prior fee motions since its appointment on April 20, 2005. Each of the Receiver's prior fee motions has been granted, and all fees and expenses have been awarded as requested.

**B. <u>Current Fee Motion</u>**

This is the Receiver's fifteenth motion for approval of fees and expenses and covers the twelve-month period of October 1, 2011 through September 30, 2012 ("Fifteenth Expense Period").

**C. <u>Status of Recoveries and Net Fund Balance</u>**

As of September 30, 2012, the end of the Fifteenth Expense Period, the receivership estate had total recoveries and interest income of $48,043,267.68. Of that sum, almost $22 million worth of assets recovered by the Receiver are comprised of assets that were <u>not</u> disclosed by Pukke in the IRS Form 433-A Financial Statement submitted to the FTC and the Receiver on or about May 26, 2005.

From the aggregate gross recoveries and interest income of the estate as of September 30, 2012 of $48,043,267.68, the Receiver has made four distributions totaling over $37.5 million pursuant to stipulations approved by the Court. Attached as Exhibit 1 to the Declaration of Brick Kane filed in support of this Motion is the Receiver's spreadsheet entitled Administrative Expenses and Fund Balance by Month ("Financial Summary") which summarizes these recoveries, distributions and the financial status of the receivership estate. As of the end of the Fifteenth Expense Period, September 30, 2012, the net fund balance of the estate after expenses and after the first four interim distributions was $1,384,699.15. The Receiver recovered over $419,000 during the Fifteenth Expense Period. In addition, during the Fifteenth Expense Period, the Receiver filed a motion to approve the sale of Long Caye, the one-half island in Belize, and anticipates a net payment to the estate when the sale closes of over $400,000, as more fully addressed hereafter.

## II. SUMMARY OF STATUS OF RECEIVERSHIP ESTATE

The Receiver continues to make progress in completing its administration of the estate through the collection and liquidation of the remaining receivership assets, which remained the primary focus of the activities of the Receiver and its counsel during the Fifteenth Expense Period. After completion of the Receiver's collection and liquidation activities during the current expense period, there are two primary assets left to be addressed; namely, the closing of the sale of the Long Caye property in Belize, a property which is in escrow and the sale of which was approved by Court order entered November 7, 2012, and the recovery of the remaining balance due under a $225,000 promissory note in favor of the estate issued in compromise and repayment of the value of the estate's equity interest in Deep Woods pursuant to a confirmed Chapter 11 plan of reorganization. There are also three outstanding loans in the Infinity portfolio which the Receiver is continuing to collect. The following will summarize the primary assets and investigatory activities which the Receiver has pursued during this expense period.

### Status of Collection of Infinity Loan Portfolio

Among the assets of the receivership estate is the entity Infinity Resources Group, Inc. ("Infinity"), a corporation which made numerous small, high-risk consumer loans generally secured by motor vehicles and certain large loans to close friends and family members of Pukke. Since the commencement of the receivership, the Receiver's collections under the Infinity loan portfolio totaled $4,362,760.47 through September 30, 2012, including $17,003.85 recovered during this Fifteenth Expense Period. There is one outstanding small loan in the Infinity loan portfolio with a principal balance of $7,134.22

on which a small monthly payment is being made, although the loan is in default. In addition, the estate holds two long-term performing loans that are current. The estate is obtaining monthly payments totaling approximately $1,900 per month, and which the Receiver is evaluating alternative disposition strategies for these loans.

As of the commencement of the receivership, one of the outstanding Infinity loans was a loan to Jeffrey Holibaugh ("Holibaugh") which has been the subject of litigation by the Receiver. The Receiver obtained judgment against Holibaugh for over $1.4 million, a judgment which was affirmed by the Fourth Circuit. *See Robb Evans & Associates LLC v. Holibaugh,* 608 F. 3d 359 (4th Cir. 2010). Holibaugh filed a request for rehearing *en banc* by the Fourth Circuit and a petition for writ of certiorari to the United States Supreme Court, both of which were denied, and the judgment became final.

During prior expense periods, the Receiver filed a motion in the District Court for the District of Columbia for a charging order in connection with Holibaugh's interest in an entity that owns the Cleveland Bar & Grill. That motion was not opposed by Holibaugh, but no ruling was made on the motion in that district. During this Fifteenth Expense Period, the Receiver filed a motion for an order for a judgment debtor examination in this Court, which was granted. The Receiver conducted Holibaugh's judgment debtor examination and obtained and reviewed financial documents and records in connection with the examination. The Receiver and Holibaugh entered into settlement negotiations and ultimately reached a compromise of the Receiver's judgment which resulted in a cash recovery in the aggregate sum of $225,000 to the receivership estate during this expense period.

**<u>Deep Woods Real Estate Development (Belchertown Property)</u>**

One of the assets of the receivership estate was an undocumented equity interest in an entity that owned a large parcel of undeveloped land located in Belchertown, Massachusetts. The property was owned by the entity Deep Woods Real Estate Development LLC ("Deep Woods LLC"), whose sole member is Deep Woods Real

Estate Development Corp. ("Deep Woods Corp."), an entity owned nominally by two individuals, 75% by Matthew Case ("Case") and 25% by Ray Suris ("Suris") through his wholly owned limited liability company, National Properties, LLC (collectively Deep Woods Corp. and Deep Woods LLC are referred to herein as "Deep Woods"). Deep Woods Corp.'s sole asset is its membership in Deep Woods Real Estate Development LLC.

The two Deep Woods entities each filed Chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Eastern District of New York. The cases were jointly administratively and subsequently substantively consolidated through a Chapter 11 plan that was confirmed in October 2011. Deep Woods sold one portion of the Belchertown property to The Trust for Public Land to generate sufficient cash to pay off its principal secured creditor, Country Bank for Savings, and provide cash to fund a Chapter 11 plan of reorganization, including a large initial cash payment to the Receiver.

Pursuant to a compromise by the Receiver of its claim against Deep Woods which was approved by this Court, Deep Woods agreed to pay the Receiver on behalf of the receivership estate the sum of $350,000, payable by an initial $125,000 cash payment shortly after the Effective Date of the Deep Woods confirmed plan and with the balance of $225,000 reflected in a promissory note secured by a first mortgage on the remainder of the Belchertown property still owned by Deep Woods. The Deep Woods Chapter 11 plan of reorganization which was confirmed on October 25, 2011 incorporated this approved compromise as the treatment of the disputed Pukke equity interest in Deep Woods now held by the Receiver. The Effective Date of the plan was November 1, 2011, and pursuant to the plan, the Receiver obtained the initial $125,000 cash payment during this Fifteenth Expense Period. Deep Woods also executed and delivered to the Receiver its promissory note in the principal sum of $225,000 (the "Deep Woods Note") and a first priority mortgage securing the note which has been recorded. The promissory note bears 6% per annum interest and is due on February 1, 2013. The Deep Woods Note is one of two primary assets of the estate remaining to be converted into cash so that the estate can be closed.

**Long Caye, Belize**

Another asset of the receivership estate is half of an island in Belize, Central America known as Long Caye. After years of marketing efforts that began in late 2008, at or about the time the worldwide recession began, the Receiver was able to locate a buyer for the property for $525,000. The Receiver filed a motion to approve the sale of Long Caye on September 25, 2012 (Doc. No. 819). An order for approval of the sale was entered on November 7, 2012. The Receiver is now taking steps to promptly close the sale of the Long Caye property.

**Agave Receivership Recovery**

The Receiver previously reported that it had located a claim held by Pukke and Seaspray Holdings, LLC against a receivership estate in a case pending in Michigan which is referred to in the Financial Summary as the "Agave Receivership." The Receiver and its counsel have continued to monitor that receivership. During the prior expense period, the Receiver was notified that the Agave Receivership would make an additional, final distribution on the estate's claim. In February 2012, the Receiver obtained the final distribution payment from that estate in the sum of $48,319.55.

**Receiver's Investigation of Assets in Central and South America and Letters Rogatory for Nevis Documents**

During prior expense periods, the Receiver pursued records and discovery in Nevis to attempt to locate possible receivership assets. The Receiver sought and obtained from the Court in Nevis, based on this Court's Letters Rogatory, discovery orders against a number of financial institutions and other companies in Nevis. The Receiver has concluded its efforts to obtain further records. The Receiver has reviewed and evaluated the documents obtained from the financial institutions and other companies in Nevis but has not located evidence of other hidden overseas assets of the receivership. The

Receiver has concluded its investigation of possible assets of the receivership located in Central America or South America, including any possible assets in those locations connected with internet gaming. The Receiver believes it is not cost-effective for the estate to pursue further investigation at this point in the receivership based on the Receiver's analysis of the information obtained to date.

**Current Expense Period Activities and Fee Motion**

During the Fifteenth Expense Period, the principal activities of the Receiver and its counsel McKenna Long & Aldridge LLP ("McKenna Firm") have been collecting and administering the Infinity loan portfolio, enforcing and settling the Holibaugh judgment, documenting the treatment of the Receiver's claim in the Deep Woods Chapter 11 case, and completing the marketing and sale of the Long Caye property. In summary, during the twelve months of the Fifteenth Expense Period, the Receiver and its counsel prepared and filed four motions, conducted a judgment debtor examination and related document production, documented a settlement with Holibaugh and a note and deed of trust pertaining to the balance of the Receiver's claim against Deep Woods, and addressed other administrative issues in the case as the Receiver continues to move the receivership forward toward closure.

## III. SUMMARY OF FEES AND EXPENSES, SERVICES AND ACTIVITIES DURING THE FIFTEENTH EXPENSE PERIOD

The Receiver's fees and expenses incurred during the Fifteenth Expense Period for services rendered by the Receiver, the Receiver's staff, and the Receiver's attorneys are set forth in the Financial Summary attached to the Declaration of Brick Kane as Exhibit 1. The fees and costs of the Receiver are set forth in the redacted billing records of the Receiver attached as Exhibit 2 to the Declaration of Brick Kane, and include the Receiver's fees of $5,557.50, financial reconstruction and accounting fees of $2,250.00, and support staff fees of $201.84 for a total of $8,009.34 in fees. Receiver's expenses for the Fifteenth Expense Period total $13,702.46, including $4,703.75 for tax preparation. Aggregate Receiver's fees and expenses for the period are $21,711.80.

The fees and expenses of the Receiver's counsel, the McKenna Firm, for the period for which the Receiver seeks approval and payment total $38,665.10, including fees of $36,356.00 and expenses of $2,309.10 for the twelve-month period covered by this expense period. The fees and expenses are reflected in the McKenna Firm's redacted billing statements attached to the Declaration of Gary Owen Caris as Exhibit 1.

The services and fees of the Receiver, its members and staff and its counsel performed during the Fifteenth Expense Period for which the Receiver seeks recovery are detailed above and summarized below.

**A. Loan Collections**

During the Fifteenth Expense Period, the Receiver's collections on the Infinity loan portfolio totaled $17,003.85. During this expense period, the Receiver continued its enforcement efforts regarding the estate's judgment against Holibaugh. The Receiver filed a motion for an order authorizing the Receiver to conduct a judgment debtor examination of Holibaugh and in connection with the examination, to compel Holibaugh to produce documents regarding his assets, liabilities and income. The Court granted the Receiver's motion, and the Receiver conducted Holibaugh's judgment debtor examination in March 2012. Through that examination and the documents produced, the Receiver began a settlement dialogue with Holibaugh. These settlement discussions ultimately resulted in a settlement agreement for a cash payment of $225,000 to the estate. The McKenna Firm documented the settlement and prepared and filed a motion for approval of the Holibaugh settlement, which was granted by the Court.

**B. Real Property Assets**

The Receiver continued its extensive efforts to market and sell the property in Belize known as the Long Caye property. The Receiver was able to locate a buyer for Long Caye through its long-term marketing efforts. The McKenna Firm and local Belize counsel for the Receiver assisted the Receiver in finalizing the sale contract for Long Caye. On September 25, 2012, the Receiver filed its motion for approval of the sale of the Long Caye property for a cash purchase price of $525,000. No opposition to the sale motion was filed, and the Court entered an order granting the motion on November 7, 2012.

The Receiver and its counsel also completed work to address the disposition of the estate's interest in Deep Woods during this expense period. During a prior expense period, the Receiver negotiated and obtained Court approval to compromise the estate's interest in Deep Woods. That Court-approved compromise was later incorporated into a proposed Chapter 11 plan of reorganization by Deep Woods which was confirmed by the Bankruptcy Court on October 25, 2011 and became effective November 1, 2011. Pursuant to the Deep Woods confirmed plan, during the current expense period, the Receiver was paid $125,000 as the initial cash payment due under the compromise and the confirmed plan. During this Fifteenth Expense Period, the Receiver's counsel reviewed, revised and finalized the promissory note for the balance due the estate of $225,000 and the related mortgage on the Deep Woods property. These documents were signed and delivered. The note matures in February 2013.

**C. <u>Forensic Accounting and Administrative Activities</u>**

The Receiver's members, accountants and staff continue to address forensic accounting, records analysis and related investigatory issues. The Receiver continues to prepare regular financial reports and account reconciliations. The Receiver's accountants addressed tax issues and supervised the preparation of tax returns. In addition, the Receiver and counsel addressed the payment of remaining amounts due for notice and other expenses in connection with the Polacsek class action. The remaining amount due for class notice expenses under prior Court orders was paid during this expense period. The McKenna Firm also prepared and filed a fee motion covering the Fourteenth Expense Period.

**D. Cash Asset Status**

As of September 30, 2012, the aggregate assets collected and recovered by the Receiver totaled $48,043,267.68 of which $21,974,900.67 had not been disclosed by Pukke based on the IRS Form 433-A Financial Statement provided to the FTC and the Receiver at the inception of the case. Recoveries during the Fifteenth Expense Period from all sources totaled $419,112.06. These recoveries included $125,000 in November 2011 from the Deep Woods confirmed plan payment, $225,000 from the Receiver's settlement with Holibaugh, as well as $48,319.55 representing the final distribution from the Agave Receivership. The primary sources of future recoveries anticipated by the Receiver are over $400,000 from the sale of Long Caye and recovery of the balance of the $225,000 Deep Woods Note, the primary remaining assets to be administered before the Receiver closes the estate.

As of September 30, 2012, the Receiver was holding the net sum of $1,384,699.15 in cash from all sources, including loan payments from loans made by Infinity, proceeds of asset sales, other cash assets and proceeds received by the estate, and bank account interest, after taking into account receivership fees and expenses incurred through that date. None of the sums in the estate are subject to claims of third parties, except for the amounts required to be paid for indemnification of Janis Pukke's tax liability for interest on the tax refunds, if any.[2] Therefore, there are ample receivership funds on hand available for satisfaction of receivership fees and expenses requested in this motion.

WHEREFORE, based upon this Motion, the Memorandum of Law, the Declaration of Brick Kane and the Declaration of Gary Owen Caris in support hereof

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[2] Based on the amount of interest paid by the state and federal taxing authorities in connection with the refunds, the Receiver estimates the maximum potential tax liability subject to the indemnity to be approximately $150,000. To date, no such potential tax claim has been asserted. The Receiver is informed that Janis Pukke passed away in the fall of 2010.

which are filed concurrently herewith, the Receiver respectfully requests that the Court grant relief as requested in the Motion.

Dated: November 20, 2012

MCKENNA LONG & ALDRIDGE LLP

By: /s/ – Gary Owen Caris

GARY OWEN CARIS
California Bar No. 088918
LESLEY ANNE HAWES
California Bar No. 117101
300 South Grand Avenue, 14th Floor
Los Angeles, California 90071
Telephone: (213) 688-1000
Facsimile: (213) 243-6330
E-Mail: gcaris@mckennalong.com
lhawes@mckennalong.com

Dated: November 20, 2012

MCKENNA LONG & ALDRIDGE LLP

By: /s/ – Christina M. Carroll

Christina M. Carroll (Bar No. 16863)
McKENNA LONG & ALDRIDGE LLP
1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 496-7500
Fax: (202) 496-7756
E-mail: ccarroll@mckennalong.com

Attorneys for Robb Evans & Associates LLC, Receiver

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20th day of November, 2012, a copy of the **RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF, MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF, DECLARATION OF GARY OWEN CARIS IN SUPPORT OF RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF, AND DECLARATION OF BRICK KANE IN SUPPORT OF RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF** was served on the parties listed on the attached Service List in the manner indicated.

/s/ – Christina M. Carroll
Christina M. Carroll
McKENNA LONG & ALDRIDGE LLP
1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 496-7500
Fax: (202) 496-7756
E-mail: ccarroll@mckennalong.com

Attorneys for Robb Evans & Associates LLC, Receiver

**SERVICE LIST**

The following CM/ECF participants were served by electronic means on November 20, 2012:

Gary C. Adler – gadler@ralaw.com
Allison Ilene Brown - aibrown@ftc.gov
Patrick R. Buckler – pat@sbpclaw.com
Gary Owen Caris – gcaris@mckennalong.com, pcoates@mckennalong.com
Christina Marleen Carroll – ccarroll@mckennalong.com
John D. D'Ercole – jdd@robinsonbrog.com
Gilbert David Dean, II – ddean@coleschotz.com, jdonaghy@coleschotz.com
John David Folds – dfolds@mckennalong.com, sparson@mckennalong.com
Lesley Anne Hawes – lhawes@mckennalong.com, pcoates@mckennalong.com
Geoffrey Smith Irwin - gsirwin@jonesday.com
Daniel E. Johnson – djohnson@mckennalong.com
Charles Kevin Kobbe - kevin.kobbe@dlapiper.com
William N. Lobel - wlobel@irell.com
Glenn A. Mitchell - gamitchell@steinmitchell.com; abeato@steinmitchell.com
Malini Mithal – mmithal1@ftc.gov
Lucy Emily Morris - lmorris@ftc.gov
Kristen Nichole Nesbitt – knn@gdldlaw.com, bqueen@gdldlaw.com
Kevyn D. Orr - korr@jonesday.com
Alan M. Pollack – amp@robinsonbrog.com
Jeffrey Mark Reisner - jreisner@irell.com
Peter John Romatowski – pjromatowski@jonesday.com
Sanford M. Saunders, Jr. - saunderss@gtlaw.com
Roger Schlossberg - bkcreditor@schlosslaw.com; rschlossberg@schlosslaw.com
Garrett Minor Smith – gsmith@garrettsmithlaw.com, jsharp@garrettsmithlaw.com
Mark David Taylor – mdtaylor@kilpatrickstockton.com
Christopher R. Wampler – cwampler@wssfirm.com
John Buchanan Williams - jbwillians@jonesday.com; aypowell@jonesday.com

The following non-CM/ECF participants were served by first-class mail, postage prepaid on November 20, 2012:

John J. Locurto
Stuart M. Fischbein
United States Department of Justice
PO Box 227
Washington, DC 20044

Dara B. Oliphant
Trial Attorney, Tax Division
United States Department of Justice
PO Box 227, Ben Franklin Station
Washington, DC 20044
Dara.B.Oliphant@usdoj.gov (additional courtesy copy by e-mail)

Ellyn Garofalo, Esq. (Courtesy Copy)
Liner Yankelevitz Sunshine & Regenstreif, LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, CA 90024-3503
(Counsel for Andris Pukke)

Robert M. Adler
O'Connor and Hannan LLP
1666 K Street NW, Suite 500
Washington, DC 20006-2803

Villa C Acquisition Company, LLC
800 Connecticut Avenue, NW, Suite 500
Washington, DC 20006

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**
**SOUTHERN DIVISION**

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| FEDERAL TRADE COMMISSION,<br>Plaintiff,<br>v.<br>AMERIDEBT, INC., et al.,<br>Defendants. | Civil Action No. PJM 03-3317 |

**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF**

Robb Evans & Associates LLC as Receiver over the assets of Andris Pukke and DebtWorks, Inc. ("Receiver") pursuant to this Court's Preliminary Injunction Order with Asset Freeze, Appointment of a Receiver, Repatriation of Assets, and Other Equitable Relief dated April 20, 2005 (the "Preliminary Injunction") and continued under the Stipulated Final Judgment and Permanent Injunction as to Defendants Debtworks, Inc. and Andris Pukke entered May 17, 2006 ("Final Judgment") hereby submits the following memorandum of law in support of the Receiver's (a) Report on Status of Receivership; and (b) Motion for Order Approving Receiver's and Attorneys' Fees and Expenses for Fifteenth Expense Period and Authorizing Payment Thereof ("Motion").

## I. INTRODUCTION

The Receiver's Motion provides the Court with a summary of the status of the receivership and seeks an order approving the fees and expenses of the Receiver, its staff and its attorneys for the period of October 1, 2011 through September 30, 2012 ("Fifteenth Expense Period") and authorizing payment thereof.

The receivership fees and expenses incurred during the Fifteenth Expense Period for which approval and payment is sought are summarized in the Administrative Expenses and Fund Balance by Month attached as Exhibit 1 to the accompanying Declaration of Brick Kane and detailed in the supporting billing records attached to the Declaration of Brick Kane and the Declaration of Gary Owen Caris. As of the conclusion of the Fifteenth Expense Period, September 30, 2012, the Receiver had located, collected, recovered and liquidated a total of more than $48 million in assets during the course of the receivership. As of September 30, 2012, the Receiver has made four Court-approved distributions totaling over $37.5 million to the Federal Trade Commission ("FTC") and the Internal Revenue Service ("IRS"). As of September 30, 2012, there were net funds remaining in the estate of over $1.3 million after the prior approved distributions and after expenses. The Motion provides a status report regarding the Receiver's activities and the remaining assets to be liquidated in order for the Receiver to close the estate.

## II. THE FEES AND EXPENSES OF THE RECEIVER, ITS STAFF AND ITS ATTORNEYS SHOULD BE APPROVED AND ORDERED PAID FROM RECEIVERSHIP ASSETS

It is a fundamental tenet of receivership law that expenses of administration incurred by the receiver, including those of the receiver, its counsel and others employed by the receiver, constitute priority expenses for which compensation should be paid from the assets of the receivership. As explained in the leading treatise *Clark on Receivers*:

> The obligations and expenses which the court creates in its administration of the property are necessarily burdens on the property taken possession of, and this, irrespective of the question who may be the ultimate owner, or who may have the preferred lien, or who may invoke the receivership. The appointing court pledges its good faith that all duly authorized obligations incurred during the receivership shall be paid.

2 Clark, Ralph Ewing, *A Treatise on the Law and Practice of Receivers* § 637, p. 1052 (3rd ed. 1992).

The Motion establishes that the Receiver, its staff and its counsel rendered services and obtained significant and very beneficial results for the receivership estate during the period covered by the Fifteenth Expense Period. *See Federal Trade Commission v. Capital Acquisitions & Management Corp.*, 2005 U.S. Dist. LEXIS 18504 (N.D. Ill. August 26, 2005). The Receiver submits the fees and expenses are reasonable in light of the services rendered and the results obtained and that the fees and expenses requested should be awarded in their entirety. As set forth above and in the declarations of Brick Kane and Gary Caris in support of the Motion, the activities of the Receiver and its counsel during the Fifteenth Expense Period have resulted in the recovery for the estate of over $419,000 during this period, based on the Receiver's settlement of the estate's judgment against Jeffrey Holibaugh ("Holibaugh") for $225,000, the payment of $125,000 in connection with the Court-approved compromise of the estate's claim against Deep Woods, the receipt of the final distribution from the Agave Receivership, continued loan collections from the Infinity Resource Group, Inc. loan portfolio and other miscellaneous receipts. The Receiver anticipates making additional recoveries through the closing of the sale of the half island in Belize known as Long Caye and the payment of the remainder due under the compromise with Deep Woods. There are ample assets available in the estate to pay the requested receivership fees and expenses.

WHEREFORE, based upon the Motion and the pleadings and papers in support hereof, the Receiver respectfully requests that the Court grant relief as requested in the Motion.

Dated: November 20, 2012

MCKENNA LONG & ALDRIDGE LLP

By: /s/ – Gary Owen Caris

GARY OWEN CARIS
California Bar No. 088918
LESLEY ANNE HAWES
California Bar No. 117101
300 South Grand Avenue, 14th Floor
Los Angeles, California 90071
Telephone: (213) 688-1000
Facsimile: (213) 243-6330
E-Mail: gcaris@mckennalong.com
lhawes@mckennalong.com

Dated: November 20, 2012

MCKENNA LONG & ALDRIDGE LLP

By: /s/ – Christina M. Carroll

Christina M. Carroll (Bar No. 16863)
McKENNA LONG & ALDRIDGE LLP
1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 496-7500
Fax: (202) 496-7756
E-mail: ccarroll@mckennalong.com

Attorneys for Robb Evans & Associates LLC, Receiver

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**
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| FEDERAL TRADE COMMISSION,<br>Plaintiff,<br>v.<br>AMERIDEBT, INC., et al.,<br>Defendants. | Civil Action No. PJM 03-3317 |

**DECLARATION OF GARY OWEN CARIS IN SUPPORT OF RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF**

I, Gary Owen Caris, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and have been admitted pro hac vice as counsel for the Receiver, Robb Evans & Associates LLC ("Receiver") in connection with this matter. Since January 30, 2006, I have been a member of the firm of McKenna Long & Aldridge LLP, the Receiver's general receivership counsel in this case ("McKenna Firm"). I am one of the attorneys primarily responsible for representing the Receiver in this matter. I have personal knowledge of the facts set forth in this declaration, and if I were called upon to testify as to these facts, I could and would competently testify based upon my personal knowledge.

2. Attached hereto as Exhibit 1 are redacted billing summaries reflecting the services rendered, time spent and expenses incurred by the McKenna Firm pertaining to this matter during the Fifteenth Expense Period of October 1, 2011 through September 30, 2012. The billing summaries, Exhibit 1, as well as the billing summaries for the Receiver and its staff and accountants, have had the descriptions redacted where

appropriate to preserve descriptions containing confidential, tactical, strategic, attorney-client privileged and/or attorney work-product information.

3. Attorneys' fees and expenses incurred by the Receiver during the Fifteenth Expense Period to the McKenna Firm total $38,655.10, comprised of attorneys' fees of $36,356.00 and costs of $2,309.10. The services rendered by the McKenna Firm are detailed in the billing summaries, Exhibit 1 hereto, and are summarized in this declaration.

4. The McKenna Firm has been employed as the Receiver's general counsel since January 30, 2006. During the Fifteenth Expense Period, the McKenna Firm prepared and filed multiple motions, documented a settlement agreement with a judgment debtor, reviewed, revised and finalized a promissory note and mortgage pertaining to the Receiver's claim in the Deep Woods bankruptcy, and assisted the Receiver in addressing other administrative issues that arose during the twelve months covered by the Fifteenth Expense Period. These services are discussed in further detail below.

5. The judgment entered by this Court against Jeffrey Holibaugh ("Holibaugh") on an Infinity promissory note in the original principal sum of $1,330,000 became final based on the denial of Holibaugh's petition for rehearing *en banc* before the Fourth Circuit Court of Appeals and denial of his petition for writ of certiorari to the United States Supreme Court. The McKenna Firm continued to pursue post-judgment collection efforts on behalf of the estate. In a prior expense period, the McKenna Firm filed a motion for a charging order against an entity in which Holibaugh has an interest and that owns the Cleveland Bar & Grill. The motion was filed in the District Court for the District of Columbia and was unopposed but no ruling had been made on that motion.

6. During the Fifteenth Expense Period, the Receiver filed a motion in this Court for an order allowing the Receiver to conduct a judgment debtor examination of Holibaugh and directing Holibaugh to produce documents pertaining to his assets, liabilities and income. The Court granted the motion, and the McKenna Firm conducted the examination in March 2012. The Receiver and Holibaugh, through their respective

counsel, began settlement negotiations to resolve the Receiver's judgment after the judgment debtor examination. The negotiations were successful, and the McKenna Firm documented a settlement agreement with Holibaugh which was subsequently presented to the Court for approval. The McKenna Firm prepared and filed the motion for approval of the Holibaugh settlement which was granted by the Court.

7. One of the estate's assets is Pukke's undocumented equity interest in an entity that owns a large parcel of undeveloped land located in Belchertown, Massachusetts, Deep Woods Real Estate Development LLC ("Deep Woods LLC"). The sole member of Deep Woods LLC is Deep Woods Real Estate Development Corp. ("Deep Woods Corp.") (collectively Deep Woods Corp. and Deep Woods LLC are referred to herein as "Deep Woods"). Deep Woods Corp.'s sole asset is its membership in Deep Woods Real Estate Development LLC. The two Deep Woods entities filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York. Their cases were jointly administered and subsequently substantively consolidated through a joint Chapter 11 plan of reorganization that was confirmed on October 25, 2011 and became effective November 1, 2011.

8. Based on the confirmed Deep Woods plan, my firm monitored the Receiver's receipt of the initial $125,000 payment due the receivership estate after the Effective Date of the plan, which was timely made in November 2011. My firm reviewed, revised and finalzied the note and mortgage reflecting the remaining $225,000 due the receivership estate on its claim against Deep Woods pursuant to the Court-approved compromise of the estate's interest in Deep Woods.

9. The McKenna Firm has also assisted the Receiver in connection with the sale of the half island in Belize known as Long Caye. The McKenna Firm reviewed and provided advice to the Receiver concerning the proposed sale contract. After the sale contract was signed and the contingency period passed, the McKenna Firm prepared and filed a motion for approval of the sale of the Long Caye property on September 25, 2012

(Doc. No. 819). No opposition to that motion was filed, and the Court entered an order granting the motion on November 7, 2012. My firm also filed a motion for approval of fees and expenses for the fourteenth expense period. That fee motion was granted.

10. My firm has continued to monitor the Agave Receivership, and during the Fifteenth Expense Period, the Receiver obtained the final distribution payment from that receivership estate. The McKenna Firm also assisted the Receiver in addressing the request for payment of the remaining balance due for notice costs pertaining to the Polacsek class action under prior orders of the Court.

11. I have been employed as a partner by the McKenna Firm for over six years. I have become and am familiar with the methods and procedures employed by the McKenna Firm for the preparation of its billing statements pertaining to matters in which it is engaged. The McKenna Firm prepares its billing records from computerized time records prepared contemporaneously with the services rendered by each attorney and paralegal billing time to this matter. These computerized records are prepared in the ordinary course of business by the attorneys and paralegals employed by the McKenna Firm who have a business duty to accurately record their time spent and services rendered on the matters on which they perform work. The time records are transferred into a computerized billing program which generates monthly invoices under the supervision of the McKenna Firm's accounting department. Based on my experience with the McKenna Firm, I believe that the firm's methods and procedures for recording and accounting for time and services for its clients are reliable and accurate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 19th day of November 2012 at Los Angeles, California.

Gary Owen Caris

GARY OWEN CARIS

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**
**SOUTHERN DIVISION**

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| FEDERAL TRADE COMMISSION,<br>Plaintiff,<br>v.<br>AMERIDEBT, INC., et al.,<br>Defendants. | Civil Action No. PJM 03-3317 |

**DECLARATION OF BRICK KANE IN SUPPORT OF RECEIVER'S (A) REPORT ON STATUS OF RECEIVERSHIP; AND (B) MOTION FOR ORDER APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR FIFTEENTH EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF**

I, Brick Kane, declare:

1. I am a member of Robb Evans & Associates LLC, the Receiver in the above-captioned matter. I am one of the members of Robb Evans & Associates LLC with primary responsibility for the supervision, management and administration of the receivership estate on a day-to-day basis. I have personal knowledge of the matters set forth in this declaration and if I were called upon to testify as to these matters, I could and would competently testify based upon my personal knowledge.

2. On April 20, 2005, the Court entered the Preliminary Injunction Order appointing Robb Evans & Associates LLC as Receiver over the assets of Andris Pukke ("Pukke") and DebtWorks, Inc. ("DebtWorks"). The receivership estate established by the Preliminary Injunction Order includes all assets owned or controlled, in whole or in part, directly or indirectly, by Pukke and DebtWorks.

3. The Preliminary Injunction Order charges the Receiver with the power and duty to locate receivership assets and take possession and control of those assets to prevent dissipation of the assets. The Order also confers investigatory powers and duties

on the Receiver, including the power to issue subpoenas under Rule 45 pursuant to Section XIII of the Order. The Preliminary Injunction Order specifically provides the Receiver with the power and duty to, among other things, take custody, control and possession of all Receivership Property (Order, Section VI.A.2), to hold, conserve and manage such Property (Order, Section VI.A.3), to prevent the dissipation and concealment of such Property (Order, Section VI.A.5), to oversee the operation of businesses owned or controlled by Defendants or that constitute Receivership Property (Order, Section VI.A.6) and to investigate the nature and location of and obtain records pertaining to all such Property, including through subpoena powers granted to the Receiver under the Order (Order, Sections VI.A1, VII., VIII, IX.D. and XIII). Based on a motion filed by the Receiver in November 2005, the Preliminary Injunction Order was modified in part to clarify the Receiver's powers to conduct discovery and in part to eliminate the limitation on the Receiver's power to liquidate only "wasting" assets pursuant to the Revised Order (A) Assigning Magistrate Judge; and (B) for Limited Modification of Receivership Provisions of Preliminary Injunction Order entered December 13, 2005.

4. The Receiver has filed fourteen prior fee motions in this case since the Receiver was appointed on April 20, 2005. Each of the prior fee motions has been granted, and all of the fees and costs have been awarded as requested.

5. The Receiver's current motion seeks approval of and authorization for payment from receivership assets of the fees and expenses incurred by the Receiver during the twelve-month period from October 1, 2011 through September 30, 2012 ("Fifteenth Expense Period"), including those of its staff and its professionals, which are detailed in the exhibits attached hereto as Exhibits 1 and 2. The fees and costs of the Receiver for which approval is requested are set forth in the summary entitled "Administrative Expenses and Fund Balance by Month" ("Financial Summary") attached hereto as Exhibit 1. The Receiver seeks approval and payment of aggregate fees and expenses for the Fifteenth Expense Period of $60,376.90, comprised of (1) the fees of the

Receiver and its staff of $8,009.34, (2) expenses of the Receiver of $13,702.46, for an aggregate of $21,711.80 in Receiver's fees and expenses, and (3) legal fees and costs incurred to the Receiver's attorneys McKenna Long & Aldridge LLP ("McKenna Firm") in the aggregate sum of $38,665.10 for that twelve-month period. The fees and costs of the Receiver are set forth in the redacted billing records attached hereto collectively as Exhibit 2, and include the Receiver's fees of $5,557.50, financial reconstruction and accounting fees of $2,250.00, and support staff fees of $201.84.

6. As of September 30, 2012, the end of the Fifteenth Expense Period, the receivership estate had total recoveries and interest income of $48,043,267.68. Of that sum, $21,974,900.67 worth of assets recovered by the Receiver are comprised of assets that were not disclosed by Pukke in the IRS Form 433-A Financial Statement submitted to the Federal Trade Commission ("FTC") and the Receiver on or about May 26, 2005.

7. From the aggregate gross recoveries and interest income of the estate through September 30, 2012 of $48,043,267.68, the Receiver has made four distributions totaling over $37.5 million pursuant to stipulations approved by the Court. As of the end of the Fifteenth Expense Period, September 30, 2012, the net fund balance of the estate after expenses and after the four interim distributions was $1,384,699.15.

8. Among the assets of the receivership estate is the entity Infinity Resources Group, Inc. ("Infinity"), a corporation which made numerous small, high-risk consumer loans generally secured by motor vehicles and certain large loans to close friends and family members of Pukke. Since the commencement of the receivership, the Receiver has continued to collect the loan portfolio. Through September 30, 2012, the Receiver had collected $4,362,760.47 from the Infinity loan portfolio, including $17,003.85 recovered during this Fifteenth Expense Period. There is one outstanding small loan in the Infinity loan portfolio with a principal balance of $7,134.22 on which a small monthly payment is being made, although the loan is in default. In addition, the estate holds two long-term performing loans that are current. The estate is obtaining monthly payments

totaling approximately $1,900 per month, and which the Receiver is evaluating alternative disposition strategies for these loans.

10. As of the commencement of the receivership, one of the outstanding Infinity loans was a loan to Jeffrey Holibaugh ("Holibaugh") which has been the subject of litigation by the Receiver. The Receiver obtained judgment against Holibaugh for over $1.4 million, a judgment which was affirmed by the Fourth Circuit in the reported decision *Robb Evans & Associates LLC v. Holibaugh*, 608 F. 3d 359 (4th Cir. 2010). Holibaugh filed a request for rehearing *en banc* by the Fourth Circuit and a petition for writ of certiorari to the United States Supreme Court, both of which were denied, and the judgment became final.

11. During this expense period, the Receiver's counsel conducted a judgment debtor examination of Holibaugh and obtained financial documents and records in connection with the examination. The Receiver and Holibaugh entered into settlement negotiations and ultimately reached a compromise of the Receiver's judgment which resulted in a cash recovery in the aggregate sum of $225,000 to the receivership estate during this expense period.

12. Another asset of the receivership estate was an undocumented equity interest in an entity that owned a large parcel of undeveloped land located in Belchertown, Massachusetts. The property was owned by the entity Deep Woods Real Estate Development LLC ("Deep Woods LLC"), whose sole member is Deep Woods Real Estate Development Corp. ("Deep Woods Corp."), an entity owned nominally by two individuals, 75% by Matthew Case ("Case") and 25% by Ray Suris ("Suris") through his wholly owned limited liability company, National Properties, LLC (collectively Deep Woods Corp. and Deep Woods LLC are referred to herein as "Deep Woods"). Deep Woods Corp.'s sole asset is its membership in Deep Woods Real Estate Development LLC.

13. The two Deep Woods entities each filed Chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Eastern District of New York. The cases were

jointly administratively and subsequently substantively consolidated through a Chapter 11 plan that was confirmed in October 2011. Deep Woods sold one portion of the Belchertown property to The Trust for Public Land to generate sufficient cash to pay off its principal secured creditor, Country Bank for Savings, and provide cash to fund a Chapter 11 plan of reorganization, including a large initial cash payment to the Receiver.

14. Pursuant to a compromise by the Receiver of its claim against Deep Woods which was approved by this Court, Deep Woods agreed to pay the Receiver on behalf of the receivership estate the sum of $350,000, payable by an initial $125,000 cash payment shortly after the Effective Date of the Deep Woods confirmed plan and with the balance of $225,000 reflected in a promissory note secured by a first mortgage on the remainder of the Belchertown property still owned by Deep Woods. Deep Woods confirmed a Chapter 11 plan of reorganization on October 25, 2011 which incorporated this approved compromise as the treatment of the disputed Pukke equity interest in Deep Woods now held by the Receiver. The Effective Date of the plan was November 1, 2011, and pursuant to the plan, the Receiver obtained the initial $125,000 cash payment during this Fifteenth Expense Period. Deep Woods also executed and delivered to the Receiver its promissory note in the principal sum of $225,000 (the "Deep Woods Note") and a first priority mortgage securing the note which has been recorded. The promissory note bears 6% per annum interest and is due on February 1, 2013. The Deep Woods Note is one of two primary assets of the estate remaining to be converted into cash.

15. Another asset of the receivership estate is half of an island in Belize, Central America known as Long Caye. After years of marketing efforts that began in late 2008, at or about the time the worldwide recession began, the Receiver was able to locate a buyer for the property for $525,000. The Receiver filed a motion to approve the sale of Long Caye on September 25, 2012. An order for approval of the sale was entered on November 7, 2012. The Receiver is now taking steps to promptly close the sale of the Long Caye property.

16. The Receiver previously reported that it had located a claim held by Pukke and Seaspray Holdings, LLC against a receivership estate pending in Michigan which is referred to in the Financial Summary as the "Agave Receivership." The Receiver and its counsel have continued to monitor that receivership. During the prior expense period, the Receiver was notified that the Agave Receivership would make an additional, final distribution on the estate's claim. In February 2012, the Receiver obtained the final distribution payment from that estate in the sum of $48,319.55.

17. During prior expense periods, the Receiver pursued records and discovery in Nevis to attempt to locate possible receivership assets. The Receiver sought and obtained from the Court in Nevis, based on this Court's Letters Rogatory, discovery orders against a number of financial institutions and other companies in Nevis. The Receiver has concluded its efforts to obtain further records. The Receiver's members and accounting staff have reviewed and evaluated the documents obtained from the financial institutions and other companies in Nevis but have not located evidence of other hidden overseas assets of the receivership. The Receiver has concluded its investigation of possible assets of the receivership located in Central America or South America, including any possible assets in those locations connected with internet gaming. The Receiver believes it is not cost-effective for the estate to pursue further investigation at this point in the receivership based on the Receiver's analysis of the information obtained to date.

18. As of September 30, 2012, the aggregate assets collected and recovered by the Receiver totaled $48,043,267.68 of which almost $22 million had not been disclosed by Pukke based on the IRS Form 433-A Financial Statement provided to the FTC and the Receiver at the inception of the case. Recoveries from all sources totaled $419,112.06 during the Fifteenth Expense Period. These recoveries included $125,000 in November 2011 from the Deep Woods confirmed plan payment, $225,000 from the Receiver's settlement with Holibaugh, as well as $48,319.55 representing the final distribution from the Agave Receivership. The primary sources of future recoveries anticipated by the

Receiver are over $400,000 from the sale of Long Caye and the recovery of the balance of the $225,000 Deep Woods Note, the primary assets left to be administered before the Receiver closes the estate.

19. As of September 30, 2012, the Receiver was holding the net sum of $1,384,399.15 in cash from all sources, including loan payments from loans made by Infinity, proceeds of asset sales, other cash assets and proceeds received by the estate, and bank account interest, after taking into account receivership fees and expenses incurred through that date. None of the sums in the estate are subject to claims of third parties, except for the amounts required to be paid for indemnification of Janis Pukke's tax liability for interest on the tax refunds turned over to the estate. The Receiver believes no income taxes may be due on the interest paid on the tax refunds under the circumstances, and even if taxes are due, the Receiver believes the maximum liability would be approximately $150,000.00, roughly half of the approximate $301,000.00 in interest paid by the federal and state taxing authorities with the refund amounts. The Receiver has been advised that Janis Pukke passed away in the fall of 2010.

20. As a member of Robb Evans & Associates LLC, I am familiar with the methods and procedures used by the Receiver and its staff and employees to record the time spent rendering services to receivership estates over which the Receiver has been appointed. The time records attached hereto as Exhibit 2 are regularly prepared by the members, staff and employees of the Receiver at or about the time of the services rendered and each of whom has a business duty to accurately record the information regarding their services set forth in these records. The records are reviewed by the Receiver's accounting staff and summarized in the Financial Summary attached hereto as Exhibit 1. Based upon my experience with Robb Evans & Associates LLC, I believe the Receiver's methods and procedures for recording and accounting for time and services for the receivership estates over which it has been appointed are reliable and accurate. As set forth in the Declaration of Gary Owen Caris, the billing records of the Receiver and

its counsel have been redacted to protect against disclosure of attorney-client privileged information and attorney work product and other confidential information.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 16 day of November 2012 at Alhambra, California.

BRICK KANE