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12
13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15
16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, etc., et al.,

20 Defendants.
21

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

**OPPOSITION TO EMERGENCY
MOTIONS FOR STAY OF SALE ORDER
PENDING APPEAL BY JEREMY
JOHNSON**

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1 Robb Evans of Robb Evans & Associates LLC (“Receiver”), the Receiver appointed
2 pursuant to the Court’s Preliminary Injunction Order issued February 10, 2011, hereby opposes
3 the emergency motion for a stay of the Court’s Order granting the Receiver’s Motion for Order:
4 (1) Authorizing and Confirming Sale of Personal Property by Public Auction; (2) Authorizing and
5 Confirming Sale and Redemption of Investment Interest; (3) Authorizing Receiver to List and
6 Offer for Sale Houseboats, Aircraft and Multiple Real Properties; and (4) Granting Relief from
7 Local Rule 66-5 Pertaining to Notice to Creditors (“Sale Order”) (Doc. No. 288) entered August
8 26, 2011 pending the appeal of that order by defendant Jeremy Johnson (“Johnson”).

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

10 A. Procedural Summary

11 The Sale Order entered on August 26, 2011 granted a motion to sell various assets of the
12 receivership estate filed by the Receiver on May 27, 2011 and served on all interested parties,
13 including counsel for Jeremy Johnson and the I Works Defendants and on his wife, Sharla
14 Johnson at the home address she and Johnson share in St. George, Utah. Specifically, the Sale
15 Order granted the Receiver’s Motion for Order: (1) Authorizing and Confirming Sale of Personal
16 Property by Public Auction; (2) Authorizing and Confirming Sale and Redemption of Investment
17 Interest; (3) Authorizing Receiver to List and Offer for Sale Houseboats, Aircraft and Multiple
18 Real Properties; and (4) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors
19 (“Motion”) (Document No. 227). The Motion was supported by a memorandum, the Declaration
20 of Kenton Johnson and a proposed form of order, and the Receiver also filed and served on all
21 known creditor a Notice of Filing of the Motion/Memorandum (*see* Document Nos. 227, 227-1
22 and 227-3, 228). (All of the foregoing pleadings pertaining to the Motion are referred to
23 collectively herein as the “Sale Motion.”)

24 In response to the Sale Motion, oppositions were filed by two groups of parties, the
25 Fielding Defendants and by Jeremy Johnson and his related entities including I Works, Inc. (the
26 “Johnson Defendants”). The Receiver filed and served separate reply papers in response to the
27 two oppositions. *See* Doc. Nos. 250 and 250-1 (Reply to Fielding Defendants’ Opposition) and
28 256 (Reply to J. Johnson Defendants’ Opposition). Throughout the period the Sale Motion was

1 filed, served, and briefed, Johnson was represented by counsel. The Sale Order was issued
2 shortly after the Hutchison & Steffan firm was authorized to withdraw as counsel for the Johnson
3 Defendants.

4 On September 8, 2011, eight business days after the Sale Order was entered, Johnson's
5 wife Sharla Johnson, *pro se*, filed a motion to intervene in the case for the limited purpose of
6 appealing the Sale Order. Sharla Johnson's address on her motion is the same address where she
7 was served with the Sale Motion and is the same address listed for Johnson on his recent
8 pleadings filed by him *pro se*.

9 The Sale Order authorizes the Receiver to sell certain limited personal property assets at
10 auction, including office furniture, furnishings and equipment and certain "classic" cars, a dune
11 buggy and a snow plane that were located in a hangar at the old St. George airport. Pursuant to
12 the Sale Order, the Receiver scheduled auction sales for the personal property authorized to be
13 sold at auction for September 24, 2011 (in Hurricane, Utah near St. George) and on October 4,
14 2011 (in Ephraim, Utah, where the I Works, Inc. offices were located). The sales were advertised
15 in periodicals and on the auctioneer's web site.

16 On September 23, 2011, a notice of appeal and a motion to stay the Sale Order was filed
17 by the Fielding Defendants. On September 23, 2011, the Court's ECF system provided notice to
18 the parties that a notice of appeal had been filed by Jeremy Johnson. No written notice of any
19 request for a stay of the auction by Jeremy Johnson was sent to the parties as of September 23,
20 2011.

21 On September 26, 2011, the Receiver filed an opposition to the limited intervention
22 motion by Sharla Johnson and an opposition to the Fielding Defendants' motion for a stay
23 pending appeal.¹ Plaintiff Federal Trade Commission ("FTC") also filed an opposition to the
24 Sharla Johnson intervention motion on September 26, 2011, and the FTC filed an opposition to
25 the Fielding Defendants' motion for stay pending appeal on September 28, 2011. On the

26
27 ¹ The Receiver has filed a supplemental opposition to the Fielding Defendants' motion for stay
28 pending appeal supported by the Declaration of Kenton Johnson attesting to the results of the
September 24, 2011 auction. A substantively identical Declaration of Kenton Johnson is also
filed concurrently in support of this opposition.

1 afternoon of September 28, 2011, the Court issued an order staying the Sale Order temporarily
 2 and setting a hearing on the Fielding Defendants' stay motion, on the Sharla Johnson limited
 3 intervention motion, and on two motions for stay pending appeal filed by Jeremy Johnson, the
 4 original ex parte emergency motion (Doc. No. 298) and a subsequently filed emergency motion
 5 for a stay (Doc. No. 308) (for convenience, Johnson's two emergency motions for stay pending
 6 appeal, Document Nos. 298 and 308, are referred to collectively hereinafter as the "Emergency
 7 Motion").

8 The Court's September 28, 2011 minute order provides for the FTC and the Receiver to
 9 file opposition to the stay motions by Johnson and by the Fielding Defendants by October 12,
 10 2011.² In addition to staying the Sale Order temporarily pending the October 14, 2011 hearing,
 11 the Court's September 28, 2011 order also stays the Court's order approving the Receiver's
 12 stipulation for relief from the automatic stay with Bank of Utah pertaining to the Hilton Sparkle
 13 & Shine car wash (Doc. No. 299). The motion to approve the abandonment of the Hilton Sparkle
 14 & Shine car wash property located on Hilton Drive in St. George, Utah and allow Bank of Utah to
 15 foreclose its lien on that property was not opposed and no appeal of that order has been filed by
 16 any party.

17 B. Summary of Facts

18 The Sale Motion was filed on May 27, 2011. Johnson and his related companies sought
 19 and obtained a stipulation extending the time for them to file opposition to the Sale Motion, and
 20 Johnson filed opposition to the Sale Motion on June 20, 2011 (Doc. No. 245). The Receiver filed
 21 a reply to the Fielding opposition (Doc. No. 253) and a reply to the Johnson opposition (Doc. No.
 22 256).

23 The Sale Motion includes several components of relief, all of which were granted by the
 24 Court after notice to all interested parties and after the Court considered and rejected oppositions

25
 26 ² On October 3, 2011, Johnson and the Fielding Defendants filed motions to vacate the Sale
 27 Order and void the auction sale (Doc. Nos. 322 and 324). On October 6, 2011, the Court issued
 28 an amended minute order stating that those motions will also be addressed at the October 14,
 2011 hearing and that the FTC and the Receiver shall have until October 12, 2011 to file
 opposition to those motions as well. The Receiver is filing separate opposition to those motions.

1 filed by the Fielding Defendants and by Johnson and his related entities, through counsel. The
2 Sale Order authorizes the Receiver to conduct auction sales of certain limited personal property,
3 including office furniture, furnishings and equipment from the I Works, Inc. offices in St. George,
4 Utah and Ephraim, Utah, certain “classic” cars, a dune buggy and a snow plane in two auctions,
5 one in Hurricane, near St. George, and one in Ephraim. The Sale Order authorizes the Receiver
6 to liquidate a commodity futures investment in Global Wealth Long/Short Commodity Futures
7 Fund, LLC (“Global Wealth”) managed by Marathon Investments, Inc. (“Marathon”). As to the
8 remainder of the real properties, aircraft and two houseboats, the Sale Order authorizes the
9 Receiver to list and market for sale those assets, subject to further order of the Court approving
10 the specific terms and conditions of any proposed sales of those assets.

11 The Receiver’s Sale Motion explained with evidence the risks and concerns for the estate
12 supporting the liquidation of the assets subject to the Sale Motion. The Declaration of Kenton
13 Johnson filed in support of the Sale Motion addressed the volatility and risks of the Global
14 Wealth investment, and the administrative costs, insurance, maintenance, storage and other
15 similar expenses associated with the other assets which would erode the value of those assets for
16 the estate. The Declaration of Kenton Johnson also addressed the expenses of debt service for
17 many of the real properties and the ongoing accrual of real property taxes that would also further
18 erode the value of those assets for the estate until the assets are liquidated. Further, all of the
19 assets are subject to market risks of decline until they are liquidated and their value converted to
20 cash.

21 The Emergency Motion, as well as Johnson’s opposition to the Sale Motion, fail to
22 address the fact that the Receiver is charged with preserving the value of the estate’s assets and
23 the evidence presented by the Receiver of the risks of diminution of the estate’s interest in these
24 assets as a result of the factors cited above. The Receiver’s Sale Motion, and the Court’s
25 subsequent Sale Order, also make clear that the purpose of the motion was to allow the assets to
26 be sold, but that the parties’ claims to the proceeds of sale of the assets was not being determined
27 by the Sale Motion or the Sale Order.

28

1 As set forth in the supporting Declaration of Kenton Johnson filed concurrently with this
2 Opposition, based on the Sale Order, the Receiver has conducted the first of the two auction sales
3 of personal property authorized to be conducted under the Sale Order. The auction sale
4 conducted in Hurricane, Utah on September 24, 2011, was completed that day, and all property
5 subject to the sale was fully paid for and removed by close of business on September 26, 2011.
6 The proceeds have been paid to the Receiver, and the auctioneer received its commission of over
7 \$24,000. The assets sold at the September 24, 2011 public auction were sold to approximately 74
8 different buyers. The Receiver contends Johnson's motion to stay the Sale Order is moot as to
9 these assets.

10 The Receiver had issued instructions for the liquidation of the Global Wealth investment,
11 but based on the Court's September 28, 2011 order, the Receiver has placed the redemption of
12 that investment on hold. The Receiver has entered into agreements with brokers and sales agents
13 for the real properties, aircraft and the two houseboats subject to the Sale Order but instructed
14 those agents and brokers to hold their marketing activities based on the Court's September 28,
15 2011 order. The Receiver has cancelled the October 4, 2011 scheduled public auction of the
16 office furniture, furnishings and equipment in Ephraim pending determination of the Emergency
17 Motion.

18 **II. THE EMERGENCY MOTION DOES NOT MEET THE STANDARDS FOR**
19 **GRANTING A STAY PENDING APPEAL**

20 The standards for a district court to grant a stay of a judgment or order were described by
21 the United States Supreme Court in its decision in *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)
22 as follows:

23 Different Rules of Procedure govern the power of district courts
24 and courts of appeals to stay an order pending appeal. *See* Fed.Rule
25 Civ.Proc. 62(c); Fed.Rule App.Proc. 8(a). Under both Rules,
26 however, the factors regulating the issuance of a stay are generally
27 the same: (1) whether the stay applicant has made a strong showing
28 that he is likely to succeed on the merits; (2) whether the applicant

1 will be irreparably injured absent a stay; (3) whether issuance of the
2 stay will substantially injure the other parties interested in the
3 proceeding; and (4) where the public interest lies. [Citations
4 omitted.]

5 The grounds for opposing the Sale Motion by Johnson and those asserted for reversing the
6 Sale Order on appeal are unmeritorious. Johnson essentially ignores the harm to the estate and its
7 creditors, as the assets diminish in value through administrative expenses, market forces and
8 physical deterioration and has not addressed the Receiver's duty to preserve and protect the value
9 of the assets of the estate and prevent their dissipation as well as the fact that Johnson's claims, if
10 any, to the value of the assets to be sold are not being determined and are reserved. Johnson
11 offered nothing but speculative and unsupported argument that the value of the assets to be sold
12 might increase rather than decrease if they are held, and indeed that argument implicitly
13 recognizes the risks to the estate and potential volatility of values of these assets. Johnson has not
14 provided any evidence to rebut the Receiver's showing that, pursuant to the Receiver's charge
15 under the Preliminary Injunction Order, the liquidation of the assets in question will prevent the
16 value of the estate assets from decreasing through ongoing expenses for insurance, storage,
17 maintenance and other administrative costs, accrual of taxes and debt service as well as
18 potentially through market forces. Johnson has offered no competent showing that the assets are
19 unique and that the right to claim the monetary value of the assets after liquidation would not
20 fully protect Johnson if he were later able to demonstrate a right to those funds. Johnson ignores
21 the public interest in maximizing value for the benefit of consumers alleged by the FTC to have
22 been defrauded and to have suffered hundreds of millions of dollars in losses at the hands of the
23 defendants.

24 A. Johnson Has Not Demonstrated He Has A Meritorious Appeal or That He Is
25 Raising Serious Legal Arguments That May Warrant Reversal of the Sale Order

26 While Johnson may not be required to prove with certainty that he will prevail on appeal
27 in order to obtain a stay of the Sale Order, he must make a "strong showing" that he is "likely to
28 succeed on the merits" of the appeal. *Hilton v. Braunskill*, 481 U.S. at 776. That showing is

1 necessary in order for Johnson to be entitled to a stay of the Sale Order, regardless of any other
2 showing on the other elements required to be met to warrant issuance of a stay. Without such a
3 showing, Johnson is not entitled to a stay of the Sale Order. *See In re Torch Offshore, Inc.*, 327
4 B.R. 254 (E.D. La. 2005) (denying motion for stay pending appeal of Bankruptcy Court order
5 authorizing sale of debtor's assets and approving compromise with creditor). When the appellant
6 fails to raise a serious legal argument sufficient to demonstrate a likelihood of success on the
7 merits of the appeal, the Court need not address the balance of the equities or conduct a
8 comparison of hardships involved in granting or denying the stay. *Mount Graham Coalition v.*
9 *Thomas*, 89 F.3d 554, 558 (9th Cir. 1996). There, a stay was denied because the appellant failed
10 to raise a serious legal argument even though "both sides [made] plausible arguments of some
11 hardship." *Mount Graham Coalition v. Thomas*, 89 F.3d at 558.

12 The Court in *Motorola Credit Corp. v. Uzan*, 275 F. Supp. 2d 519, 520 (S.D.N.Y. 2003)
13 denied a motion for stay pending appeal, finding that appellant's conclusory assertions failed to
14 meet the high standard of proof to demonstrate appellant had a strong likelihood of prevailing on
15 appeal:

16 [W]hile recognizing this high standard, defendants, in their motion
17 papers, do little more than recite in conclusory fashion numerous
18 points on which the Court has ruled against them, apparently in the
19 belief that quantity can substitute for quality. Mere conclusions,
20 however, whether applied to one issue or many, do not constitute
21 any kind of showing, let alone the requisite "strong showing."

22 Accordingly, defendants have not even met the first requirement of
23 a stay pending appeal.
24

25 Johnson relies on unsupported argument and conclusory allegations which are insufficient
26 to make the "strong showing" that he will prevail on appeal. Both in opposition to the Sale
27 Motion and in his Emergency Motion, Johnson makes speculative claims, unsupported by
28 evidence, that the value of the assets subject to the Sale Order will not decline and may increase

1 in value. Johnson has provided no competent evidence to rebut the Receiver's showing that
2 liquidation is necessary to preserve the value of the receivership estate and prevent loss or erosion
3 of these assets for creditors. Johnson continues to offer nothing more than bald conclusions and
4 speculation that the asset values might increase in the future and ignores the effect of mounting
5 debt service and expenses of administration associated with the retention of the physical assets
6 without liquidation, all of which justify the Receiver's motion to sell certain of the assets at
7 auction and to list and market the rest. *See Smith v. Securities and Exchange Commission*, Nos.
8 10-3576-cv(L), 11-0684-cv(CON), 11-0916-cv(CON), 2011 WL 3437561 at *1, *6 (2d Cir.
9 August 8, 2011) (affirming the decision to modify an asset freeze and directing the receiver to
10 oversee the pre-judgment sale of a real property of a relief defendant).

11 Further, to the extent that Johnson relies on a challenge to the merits of the FTC's
12 underlying claims against him in connection with his appeal of the Sale Order, Johnson has
13 waived any appeal of the Preliminary Injunction Order (28 U.S.C. § 1292(a)(1) making an
14 interlocutory order granting a preliminary injunction appealable). The Preliminary Injunction
15 Order appointing the Receiver as permanent receiver was entered after a full opportunity for
16 Johnson and the other defendants to present extensive evidence and make almost a full day of
17 argument in opposition to the FTC's request for the injunction. The Court ultimately found based
18 on overwhelming evidence presented by the FTC that the FTC had proven a probability of
19 prevailing on its claims against Johnson and the other defendants. Since that hearing in February
20 2010, Johnson has been criminally indicted based on conduct as alleged in the FTC's action in
21 this case.

22 B. There Is No Showing of Harm, Much Less Irreparable Harm, to Johnson If the
23 Sale Order Is Not Stayed

24 Johnson asserts "irreparable harm" based on the alleged "unique" nature of the real and
25 personal property subject to the Sale Order. The only evidentiary support for his claim of
26 irreparable harm offered by Johnson is found in his Ex Parte Emergency Motion and consists of
27 two sentences in his supporting affidavit: "Without entry of an order immediately staying the
28 application of this Court's judgment, I will be irreparably harmed by the sale of the property

1 before I can appeal this Court’s decision to the Ninth Circuit. The real and personal property to
2 be sold is unique and I will be unable to retrieve this property after the judicial sale.” Affidavit
3 for Ex-Parte Emergency Motion, Doc. No. 298, l. 9, ll. 19-23. This is the extent of the showing
4 of “irreparable harm” in the Emergency Motion.

5 These statements constitute argument and conclusory allegations without foundation, are
6 objectionable and inadmissible as a result (F.R.E. 601, 602, 603), and are wholly insufficient in
7 any event to demonstrate irreparable harm. The statements do not provide facts or evidentiary
8 support to demonstrate irreparable injury to Johnson, and lack credibility under the
9 circumstances. The real properties subject to the Sale Motion do not include Johnson’s current
10 residence, the Global Wealth investment is simply a share in an investment fund and not in any
11 way “unique” on its face, and many of the real properties are clearly investment assets, such as the
12 Mendon trailer park. The used office furniture, equipment and furnishings in the I Works, Inc.
13 offices that were shuttered prior to the Receiver’s appointment are clearly not “unique” as
14 Johnson asserts. Johnson offers no fact supported by competent evidence as to why any of the
15 assets in question are in fact “unique” to him and why the reservation of his claim to the monetary
16 value of those assets would not fully protect his claims in this case, particularly when considered
17 and weighed against Johnson’s failure to demonstrate a meritorious claim on appeal to reverse the
18 Sale Order, the strong showing already made by the FTC in support of the validity of its claims
19 against Johnson to obtain the Preliminary Injunction Order, the interests of potential creditors of
20 the estate in preventing loss to the value of estate’s assets, and the public interest.

21 Further, the Sale Order only authorizes the Receiver to list and market most of the assets,
22 with any actual sale subject to further motion and order of the Court. Johnson has offered no
23 evidence of specific, concrete injury that would result without a stay, much less proof of
24 irreparable harm. *Goldie’s Bookstore v. Superior Court*, 739 F. 2d 466, 472 (9th Cir. 1984)
25 (stating, in reversing a preliminary injunction, “Speculative injury does not constitute irreparable
26 injury”). Second, as the Court indicated in its ruling, even if Johnson later proves a right to the
27 proceeds notwithstanding the FTC’s claims, he has failed to demonstrate with evidence why his
28 interests cannot be protected by his claims to the cash proceeds of the assets, which claims are

1 expressly preserved. In fact, to the extent Johnson has any interest that would be supposedly
 2 “harmed” by the Sale Order, that harm appears to be at best financial injury and fully
 3 compensable through a claim for money, including recovery of the sale proceeds to the extent
 4 Johnson is later able to show he has a right to them. Such harm is not “irreparable” so as to
 5 warrant a stay. *Los Angeles Memorial Coliseum v. National Football League*, 634 F. 2d 1197,
 6 1202 (9th Cir. 1980) (threat of loss of revenues is not irreparable injury).

7 C. Johnson Ignores the Injury to the Estate and Creditors If the Sale Order Were
 8 Stayed and the Public Interest in Maximizing and Preserving the Value of the
 9 Estate that Would Be Adversely Affected by A Stay

10 Without analysis, evidence or other support, Johnson asserts no other interested party will
 11 be injured by a stay of the Sale Order. That conclusion is wrong.

12 The Receiver has demonstrated in the Sale Motion and Reply that there is significant cost
 13 associated with the storage, insurance and administration of the assets in question, that all of the
 14 real properties are subject to real property tax liens that are increasing and that many of the
 15 properties are also encumbered by other accruing debt. The administrative costs and increasing
 16 debt erode the estate’s interest in these assets by diminishing whatever equity exists in the assets,
 17 erosion that can only be stopped by completing sales of the assets and converting the assets to
 18 cash. Further, many of the assets, such as the office furniture, furnishings and equipment, are
 19 subject to depreciation and other assets have significant risk of market decline. These assets are
 20 the source of recovery for consumers alleged to have been defrauded and injured, and the
 21 Receiver is charged with the duty to preserve the estate and prevent dissipation of the value of
 22 these assets. Johnson has failed to demonstrate that there would be no loss or injury to the
 23 consumer creditors if the Sale Order is stayed while he prosecutes his appeal.

24 D. The Appeal of the Sale Order, and the Motion for A Stay Pending Appeal, Is Moot
 25 as to the Sale of Assets at Auction Conducted on September 24, 2011

26 It is well-established that the filing of a notice of appeal does not affect the validity of the
 27 underlying order appealed from absent a stay of that order. *See Matter of Combined Metals*
 28 *Reduction Co. (Bennett v. Gemmill)*, 557 F. 2d 179, 188-189 (9th Cir. 1977). On September 24,

1 2011, a public auction of the office furniture, furnishings and equipment, various vehicles and a
2 snow plane at the auctioneer's facility in Hurricane, Utah was conducted and those assets sold to
3 the public pursuant to the Sale Order. The assets were divided into approximately 248 lots, and
4 the assets were sold to approximately 74 different buyers. Declaration of Kenton Johnson filed
5 concurrently. All assets subject to the September 24, 2011 auction sale were transferred to the
6 buyers and fully paid for by close of business on September 26, 2011 prior to the issuance of any
7 stay of the Sale Order. At this point, the motion for a stay concerning the sale of those assets is
8 moot as the auction of those assets has been completed. *See Matter of Combined Metals*
9 *Reduction Co. (Bennett v. Gemmill)*, 557 F. 2d 179, 191 (9th Cir. 1977). Indeed, Johnson's
10 Emergency Motion conceded that without a stay, the sale of the assets would render their appeal
11 moot absent very limited circumstances not present here. *See Ex Parte Emergency Motion* (Doc.
12 No. 298), p. 3, ll. 19-25; *Emergency Motion* (Doc. No. 308), p. 3, ll. 22-28 ("the sale will be
13 unreviewable on appeal from a final judgment because relief cannot be granted after confirmation
14 of judicial sale" citing *Morrison v. Burnette*, 154 F. 617 (8th Cir. 1907), appeal dismissed at 212
15 U.S. 291 (1909)).

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1 **III. CONCLUSION**

2 The Receiver respectfully submits that the Emergency Motion for a stay pending appeal
3 should be denied.

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5 Dated: October 12, 2011

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

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11 Attorneys for Receiver
12 **ROBB EVANS OF ROBB EVANS &
13 ASSOCIATES LLC**

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CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 300 South Grand Avenue, 14th Floor, Los Angeles, CA 90071.

On October 12, 2011, I served the **OPPOSITION TO EMERGENCY MOTIONS FOR STAY OF SALE ORDER PENDING APPEAL BY JEREMY JOHNSON** upon the parties and/or counsel listed and by the methods indicated on the attached Service List.

I declare upon the penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on October 12, 2011 at Los Angeles, California.

/s/ Pamela A. Coates
Pamela A. Coates

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SERVICE LIST

The following CM/ECF participants were served by electronic means on October 12, 2011:

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15 The following non-CM/ECF participant was served by first-class mail, postage prepaid on
16 October 12, 2011:

17 David Willcox, Revenue Officer
18 Nevada Department of Taxation
19 Attn: Bankruptcy Section
20 555 E Washington Ave #1300
Las Vegas, NV 89101

21 The following non-CM/ECF participants were served by overnight mail on October 12, 2011:

22 Sharla Johnson
23 529 Woods View Circle
St. George, UT 84770

24 Jeremy Johnson
25 529 Woods View Circle
St. George, UT 84770

26 The following non-CM/ECF participant was served by electronic mail on October 12,
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28 Jeremy Johnson – royalorangecat@gmail.com

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10 Attorneys for Receiver
ROBB EVANS OF ROBB EVANS & ASSOCIATES
11 **LLC**

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 JEREMY JOHNSON, etc., et al.,

18 Defendants.

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

**DECLARATION OF KENTON
JOHNSON IN SUPPORT OF
OPPOSITION TO EMERGENCY
MOTION FOR STAY OF SALE ORDER
PENDING APPEAL BY JEREMY
JOHNSON**

19 I, Kenton Johnson, declare:

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

3 2. On January 13, 2011, the Receiver was appointed Temporary Receiver over I
4 Works, Inc. ("I Works"), numerous other Corporate Defendants as defined in the Temporary
5 Restraining Order and over the assets of defendant Jeremy Johnson (collectively the
6 "Receivership Defendants"). Pursuant to the Preliminary Injunction Order entered February 10,
7 2011, the Receiver has been appointed permanent Receiver over the Receivership Defendants. I
8 am one of the deputies to the Receiver responsible for the administration of the receivership
9 estate, including the monitoring of the auction sales scheduled pursuant to the Court's Order: (1)
10 Authorizing and Confirming Sale of Personal Property by Public Auction; (2) Authorizing and
11 Confirming Sale and Redemption of Investment Interest; (3) Authorizing Receiver to List and
12 Offer for Sale Houseboats, Aircraft and Multiple Real Properties; and (4) Granting Relief from
13 Local Rule 66-5 Pertaining to Notice to Creditors ("Sale Order") entered August 26, 2011.

14 3. Pursuant to the Sale Order, the Receiver scheduled an auction sale to take place at
15 the auctioneer's location in Hurricane, Utah on September 24, 2011 to sell certain personal
16 property, including office furniture, furnishings and equipment previously located at the St.
17 George offices of I Works, Inc., "classic" cars identified in the Sale Order, a dune buggy and a
18 snow plane. The auction was advertised widely, with ads for the sale published in three
19 periodicals (*Salt Lake Tribune*, *Deseret News* and *The Spectrum* in St. George, Utah) and on the
20 internet through the auctioneer's web site. Based on the auctioneer's report provided to the
21 Receiver, the assets were divided into and sold in 248 separate lots. Approximately 359 bidders
22 registered at the auction, and approximately 74 different persons or entities purchased property
23 from the auction. The auction was conducted and completed on September 24, 2011, and on
24 behalf of the Receiver, I have received verbal and written reports from the auctioneer of the
25 results of the September 24, 2011 auction. On September 28, 2011, a cashier's check was issued
26 by the auctioneer to the Receiver in the amount of \$141,027.39 representing the net auction
27 proceeds from the September 24, 2011 sale after deducting certain out-of-pocket expenses
28 (\$285.95) and the auctioneer's commission of \$24,937.66. I have confirmed with the auctioneer

1 that all property subject to the September 24, 2011 auction was fully paid for and removed by the
2 buyers as of the close of business on September 26, 2011. The items sold included all of the
3 “classic” cars and the dune buggy.

4 4. There is an additional auction that was scheduled to be conducted on October 4,
5 2011 to sell the office furniture, furnishings and equipment located at the I Works office in
6 Ephraim, Utah. Based on the Court’s order issued on the afternoon of September 28, 2011, the
7 Receiver cancelled that auction pending the hearing on the motions for stay filed by the Fielding
8 Defendants and Jeremy Johnson.

9 I declare under penalty of perjury that the foregoing is true and correct and that this
10 declaration was executed this 12th day of October, 2011 at Sun Valley, California.

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13 KENTON JOHNSON
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CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 300 South Grand Avenue, 14th Floor, Los Angeles, CA 90071.

On October 12, 2011, I served the **DECLARATION OF KENTON JOHNSON IN SUPPORT OF OPPOSITION TO EMERGENCY MOTION FOR STAY OF SALE ORDER PENDING APPEAL BY JEREMY JOHNSON** upon the parties and/or counsel listed and by the methods indicated on the attached Service List.

I declare upon the penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on October 12, 2011 at Los Angeles, California.

/s/ Pamela A. Coates

Pamela A. Coates

SERVICE LIST

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The following CM/ECF participants were served by electronic means on October 12,

2011:

- | | |
|--------------------|--|
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| Lesley Anne Hawes | lhawes@mckennalong.com; pcoates@mckennalong.com |
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5 Reza Sina reza@sinalawgroup.com; brothbard@roadrunner.com
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7 Michael P. Studebaker mike@studebakerlaw.com
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12 eunice.jones@usdoj.gov; doriayn.olivarra@usdoj.gov;
13 mary.booker@usdoj.gov
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The following non-CM/ECF participant was served by electronic mail on October 12,
2011:

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