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12

13 UNITED STATES DISTRICT COURT

14 WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 MCS PROGRAMS, LLC, a Washington
Limited Liability Company, also doing business
19 as Mutual Consolidated Savings; UNITED
SAVINGS CENTER, INC., a Washington
20 corporation, also doing business as Mutual
Consolidated Savings; USC PROGRAMS,
21 LLC, a Washington Limited Liability
Company, also doing business as Mutual
22 Consolidated Savings; PAUL MORRIS
THOMPSON, individually and as an officer of
23 MCS Programs, LLC, United Savings Center,
Inc., and USC Programs, LLC; and MIRANDA
24 CAVENDER, individually and as a manager of
MCS Programs, LLC, United Savings Center,
25 Inc., and USC Programs, LLC,

26 Defendants.
27
28

Case No. C09 5380 RJB

DECLARATION OF MICHAEL A.
GRASSMUECK IN SUPPORT OF MOTION
FOR ORDER CLOSING CASE AND
DISCHARGING THE RECEIVER EFFECTIVE
UPON COMPLETION OF THE FINAL
CLOSING TASKS AND FOR OTHER
RELATED RELIEF

1 I, Michael A. Grassmueck, declare:

2 1. I am the duly appointed receiver (the "Receiver") for MCS Programs, LLC, United
3 Savings Center, Inc., USC Programs, LLC, and their subsidiaries and affiliates and any entities
4 controlled by them (collectively referred to as the "Receivership Defendants").

5 2. I submit this declaration (the "Declaration") in support of the motion ("Motion") for
6 an order closing case and discharging the receiver effective upon completion of the final closing
7 tasks and for other related relief. I have personal knowledge of the facts stated in this Declaration
8 as to which I could and would personally and competently testify if called upon to do so.

9 3. On June 25, 2009, the FTC filed a complaint ("Complaint") against the
10 Receivership Defendants, for violation of, among other things, Section 5(a) of the Federal Trade
11 Commission Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310,
12 to halt the Receivership Defendants' deceptive telemarketing practices. The FTC alleged that the
13 Receivership Defendants engaged in deceptive and abusive telemarketing acts or practices.

14 4. In conjunction with filing the Complaint, the FTC filed on June 25, 2009, an *Ex*
15 *Parte* Application for Temporary Restraining Order, with Asset Freeze, Appointment of Receiver,
16 *et al.* ("*Ex Parte* Application"). The FTC sought, among other things, a freeze of the Receivership
17 Defendants' assets to preserve for consumers any funds obtained by fraud, and the appointment of
18 a receiver over the assets. There was great concern that without such immediate relief, the
19 Receivership Defendants, and the principals that managed them, would secrete assets to off-shore
20 accounts, as they had access to accounts outside the United States.

21 5. On June 26, 2009, the Court granted the *Ex Parte* Application and a Temporary
22 Restraining Order was entered providing for an asset freeze of the Receivership Defendants
23 ("*Asset Freeze*"), and appointing me as temporary receiver over the Receivership Defendants'
24 assets and business operations.

25 6. On July 10, 2009, a Stipulated Preliminary Injunction and Order for Other
26 Equitable Relief was entered ("*Receiver Order*"), continuing the Asset Freeze and appointing me
27 as permanent receiver, with the full powers and duties of a federal equity receiver. The Receiver
28 Order provided that I was granted full access and authority over all of the Receivership

1 Defendants' business premises, including any records located at the Office Property and Storage
 2 Unit. The Receiver Order at Section IX.D further provided that I had the power to investigate,
 3 conserve, hold, and manage all receivership assets, and perform all acts necessary or advisable to
 4 preserve the value of those assets in an effort to prevent any irreparable loss, damage or injury to
 5 consumers or to creditors of the Receivership Defendants.

6 7. In 2009, after my appointment, I assumed control of the Estate's business
 7 operations, including the credit card processing transactions for customer chargebacks and
 8 deposits. I, together with my office staff, (collectively, "Receiver Office and Staff") also took
 9 possession of the Estate's various assets, including but not limited to the Office Property, Storage
 10 Unit, Mobile Home, boat, truck, recreational vehicle, certificate of deposit, safe deposit box, 12
 11 bank accounts, and business records. The Receiver Office and Staff also conducted an orderly
 12 termination of business operations including, among other things, processing the final payroll for
 13 the Receivership Defendants' employees.

14 8. In 2010, the Receiver Office and Staff continued to respond to consumer issues
 15 regarding the credit card transactions involving Receivership Defendants. The Receiver Office
 16 and Staff also began the process of preparing the Estate tax returns. The Receiver Office and Staff
 17 continued its efforts to investigate the status of any Estate assets which could be subject to
 18 recovery, and sold Estate assets including the Mobile Home¹, boat, truck, and RV. The Receiver
 19 Office and Staff also seized a CD account at Bank of America which held Estate funds. Finally,
 20 the Receiver Office and Staff coordinated with the FTC in providing critical information to the
 21 FTC for its preparation of a final stipulated judgment against the Receivership Defendants.

22 9. On July 19, 2010, the Stipulated Final Judgment and Order for Permanent
 23 Injunction was entered against the Receivership Defendants ("Final Judgment"). The Final
 24 Judgment provided for, among other things, entry of a money judgment for \$22,508,306 against
 25 the Receivership Defendants, jointly and severally, and the release of certain Receivership
 26 Defendants' property to the Receiver Office and Staff for liquidation. The Final Judgment at
 27

28 ¹ All capitalized terms not defined herein shall have the same meanings as set forth in the
 Memorandum of Points and Authorities, filed concurrently herewith.

1 Section VII also authorized me to, among other things, take the necessary steps to wind down the
2 businesses of the Receivership Defendants, locate and liquidate all Receivership Defendants'
3 assets, marshal and take control and possession of all funds, property, accounts of the
4 Receivership Defendants, dispose of the Receivership Defendants' records, perform all acts to
5 complete an accounting of assets, and make payments and disbursements from the Estate as
6 necessary to carry out my duties under the Final Judgment.

7 10. At the end of 2010, the Court granted the Motion to Destroy Certain Receivership
8 Estate Records and for Other Related Relief. The Court's order authorized the Receiver Office
9 and Staff to destroy the business records located at the Office Property and the Storage Unit, and
10 remove other miscellaneous furniture and equipment in the Office Property which I determined
11 were of inconsequential value to the Estate.

12 11. During 2011, the Receiver Office and Staff completed and filed the Estate's tax
13 returns. The Receiver Office and Staff also completed the destruction of the Estate's business
14 records. The Receiver Office and Staff attempted to sell the Office Property, but eventually
15 determined the Office Property could not be sold for more than the liens against the Office
16 Property and I elected to abandon it. On October 19, 2011, the Court granted the Motion to
17 Abandon Real Property and for Other Related Relief, which authorized the Estate to abandon the
18 Office Property.

19 12. By this Motion, I request that the Court authorize the closing of the Estate and my
20 discharge as Receiver, effective upon (i) the transfer of all Estate funds to the Federal Trade
21 Commission redress contractor for distribution to merchants and creditors of the Estate (after
22 payment of all administrative expenses and professionals fees and costs), and (ii) the filing of the
23 Receiver's declaration confirming completion of (i) above, and attaching the final accounting for
24 the Estate, (collectively, the "Final Closing Tasks").

25 13. I request that the discharge release me from (i) all duties under the Receiver Order
26 and Final Judgment, and (ii) any and all claims and liabilities associated with the receivership, the
27 Receivership Defendants, and the individual defendants named in this action.

28

1 14. As part of closing the case, I also seek approval of my and my professionals' fees
2 and expenses as set forth in the respective final fee statements, which are attached to the
3 concurrently filed Motion. The final fee statements cover my fees and expenses, and those of my
4 professionals, Allen Matkins Leck Gamble Mallory & Natsis LLP, Larkins Vacura LLP, and Moss
5 Adams. I, along with Allen Matkins and Moss Adams, have included as part of the respective fee
6 statements reserves for estimated fees and expenses for services which will be incurred after the
7 filing of the Motion through the closing of the receivership.

8 15. In addition to the final fee statements, I seek final approval of all fee statements
9 which I previously submitted and those of my professionals, as set forth in each of the Notices of
10 Monthly Statements of Receiver and Professionals filed in this case (including the Final
11 Statements). Approval of the statements on a final basis is appropriate here since there are no
12 further administrative tasks that need to be taken.

13 I declare under penalty of perjury under the laws of the United States of America
14 that the foregoing is true and correct. Executed this 1st day of May, 2012, at Portland,
15 Oregon.

16
17 
18 MICHAEL A. GRASSMUECK

CERTIFICATE OF SERVICE

I am employed in Multnomah County, State of Oregon. I am over the age of 18 and am not a party to the within action; my business address is 621 SW Morrison St., Suite 1450, Portland, Oregon 97205.

On May 2, 2012, I served the following document(s) described as:

DECLARATION OF MICHAEL A. GRASSMUECK IN SUPPORT OF MOTION FOR ORDER CLOSING CASE AND DISCHARGING THE RECEIVER EFFECTIVE UPON COMPLETION OF THE FINAL CLOSING TASKS AND FOR OTHER RELATED RELIEF AND MEMORANDUM OF POINTS AND AUTHORITIES

on the interested parties in this action in the following manner(s):

BY REGULAR MAIL: I placed copies of the document in sealed envelopes and caused such envelopes to be deposited in the United States mail at Portland, Oregon, with postage thereon fully prepaid and addressed as stated on the attached service list.

BY HAND DELIVERY: I placed copies of the document in sealed envelopes and caused such envelopes to be delivered by messenger to the addresses as stated on the attached service list.

BY FACSIMILE: I served the document by facsimile to the facsimile numbers stated on the attached service list provided by each party and/or attorney of record.

OTHER: I served the document by using the CM/ECF system which will send notification to the email address stated on the attached service list provided by each party and/or attorney of record.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

/s/ William L. Larkins, Jr.

William L. Larkins, Jr.

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