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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.
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Case No. C09 5380 RJB

MOTION TO ABANDON REAL PROPERTY
AT 1215 EARNEST S. BRAZILL STREET,
BUILDING #33, TACOMA, WA AND FOR
OTHER RELATED RELIEF AND
MEMORANDUM OF POINTS AND
AUTHORITIES

[Declaration of Michael A. Grassmueck, Notice
of Motion, and Proposed Order Filed
Concurrently Herewith]

Note on Motion Calendar:

1 Michael A. Grassmueck (the "Receiver"), the duly appointed receiver for MCS Programs,
2 LLC, United Savings Center, Inc., USC Programs, LLC, and their subsidiaries and affiliates and
3 any entities controlled by them (collectively referred to as the "Receivership Defendants"), hereby
4 moves this Court (the "Motion") for an order authorizing the Receiver to abandon the real property
5 and improvements located at and commonly known as 1215 Earnest S. Brazill Street,
6 Building #33, Tacoma, Washington (the "Property") as described below and for other related
7 relief. The legal description of Property and associated improvements which the Receiver seeks
8 authority to abandon is set forth on Exhibit A attached to the Declaration of Michael A.
9 Grassmueck filed herewith.

10 I.

11 INTRODUCTION

12 By this Motion, the Receiver seeks authority to abandon the Property and to notify lenders,
13 creditors and state agencies that the Receiver has abandoned any interest in the Property; that the
14 Receiver and receivership estate shall have no liability as to the Property or anything associated
15 therewith; and that creditors and others may look solely to the Property as to any claims that they
16 may have as to the same.

17 The Property has no equity for the receivership estate to recover after payment of the
18 secured liens and taxes associated with the Property. Moreover, the Property is an ongoing burden
19 on the receivership estate in that there are ongoing costs, taxes and potential liabilities associated
20 with retaining the asset. The Receiver has not yet notified the lender that the Receiver has no
21 interest in the Property and that it is the Receiver's intention to abandon the Property. The
22 Receiver plans to reach out to the lender to discuss the proposed abandonment of the Property.
23 Therefore, the Receiver believes it is in the best interest of the creditors and parties to this
24 receivership that the Property be abandoned.

25 The Receiver has submitted this Motion for the FTC's review and the FTC has indicated
26 that they have no objection to the Motion.

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1 II.

2 FACTS

3 A. The FTC Complaint Filed Against Receivership Defendants

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

9 The Receivership Defendants engaged in a telemarketing program known as a "rapid debt
10 reduction" program. They claimed that their financial consultants could negotiate substantial
11 interest rate reductions for customers on their credit card balances. The Receivership Defendants
12 would charge a fee ranging from \$399 to \$899 for such services. The Receivership Defendants
13 further claimed that their program would result in customers paying their debts off at a
14 substantially faster rate, without increasing their monthly payments. The FTC's investigation
15 determined that these claims were false, and filed this action to stop such deceptive and abusive
16 business practices. The FTC additionally alleged that the Receivership Defendants' violated the
17 "Do Not Call" provisions of the Telemarketing Sales Rule, and telemarketers would call potential
18 customers, who asked not to be called, advertising these program services, would fail to transmit
19 caller ID of the telemarketer, and would also fail to provide required disclosures during at the
20 outset of the telemarketing calls.

21 B. The Ex Parte Application for TRO, Asset Freeze, and Appointment of Temporary
22 Receiver

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

3 On June 26, 2009, the Court granted the *Ex Parte* Application, and an Order was entered
4 providing for an asset freeze of the Receivership Defendants ("Asset Freeze"), pursuant to a
5 temporary restraining order, and Michael A. Grassmueck was appointed as temporary receiver
6 over the Receivership Defendants' assets and business operations.

7 C. Michael A. Grassmueck Appointed as Permanent Receiver over the Receivership
8 Defendants

9 On July 10, 2009, a Stipulated Preliminary Injunction and Order for Other Equitable Relief
10 was entered ("Receiver Order"), which authorized the issuance of a preliminary injunction for the
11 Asset Freeze and for the appointment of Michael A. Grassmueck as a permanent receiver, with the
12 full powers and duties of a federal equity receiver. The Receiver Order provided that the Receiver
13 was granted full access and authority over all of the Receivership Defendants' business premises,
14 including any Records located at the Office Property and Storage Unit. The Receiver Order at
15 Section IX.D further provided that the Receiver had the power to investigate, conserve, hold, and
16 manage all receivership assets, and perform all acts necessary or advisable to preserve the value of
17 those assets in an effort to prevent any irreparable loss, damage or injury to consumers or to
18 creditors of the Receivership Defendants.

19 D. The Final Judgment

20 On July 19, 2010, the Stipulated Final Judgment and Order for Permanent Injunction was
21 entered against the Receivership Defendants ("Final Judgment"). The Final Judgment provided
22 for, among other things, entry of a money judgment for \$22,508,306 ("Money Award") against the
23 Receivership Defendants, jointly and severally, the release of certain Receivership Defendants'
24 property to the Receiver for liquidation, and sale of the Receivership Defendants' property for the
25 benefit of the defrauded consumers. The Final Judgment provides that the effect and
26 enforceability of the Money Award is suspended in full and in part as to some of the individual
27 defendants, subject to certain contingencies set forth in the Final Judgment.

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1 The Final Judgment at Section VII further expanded the Receiver's powers to include the
2 winding-down of the Receivership Defendants' businesses, the liquidation of the Receivership
3 Defendants' assets. The abandonment of the Property falls within the scope of the Receiver's duty
4 to wind-down the business and liquidate assets.

5 E. The Motion to Destroy Certain Receivership Estate Records and for Other Related
6 Relief

7 On December 17, 2010, the Court granted the Receiver's Motion to Destroy Certain
8 Receivership Estate Records and for Other Related Relief, which included the authority to destroy
9 records located at the Property, as set forth in the Court's Order entered as ECF Docket # 53.

10 III.

11 THE RECEIVER IS EMPOWERED TO ABANDON THE PROPERTY

12 It is axiomatic that federal district courts presiding over equity receiverships have broad
13 power and wide discretion in the supervision of such receiverships, to facilitate the orderly and
14 efficient administration of the receivership assets. *See, e.g., SEC v. Hardy*, 803 F.3d 1034, 1037-
15 38 (9th Cir. 1986). This power and discretion includes the authority to "make rules which are
16 practicable as well as equitable." *Id.* at 1039 (*quoting First Empire Bank-New York v. FDIC*, 572
17 F.2d 1361, 1368 (9th Cir. 1978)).

18 In addition, as many Federal District Courts do, this Court should look to the Bankruptcy
19 Code for guidance (11 U.S.C. § 101, *et seq.*). Under the Bankruptcy Code, a trustee, after notice
20 and a hearing, may abandon any property of the estate that is burdensome or that is of
21 inconsequential value and benefit to the estate. 11 U.S.C. § 554; *see, e.g., Johnson v. Johnson*, 49
22 F.3d 538, 540 (9th Cir. 1995) (this provision permits abandonment if the property is either of
23 inconsequential value or burdensome to the estate). A bankruptcy trustee may abandon any
24 property which is either worthless, overburdened, or for any other reason does not yield any
25 benefit to the estate. *See Adelphi Hospital Corp. v. New York State Dep't of Health*, 579 F.2d 726,
26 729 (2d Cir. 1978).

27 The Court can authorize the Receiver to abandon the Properties pursuant to the Court's
28 broad equitable powers. *See Securities and Exchange Commission v. Lincoln Thrift Association*,

1 577 F. 2d 600, 606 (9th Cir. 1978) ("The District Court has broad powers and wide discretion to
2 determine the appropriate relief in an equity receivership"); *see also SEC v. Wencke*, 622 F. 2d
3 1363, 1369 (9th Cir. 1980) (Holding that, because the District Court takes control over the assets
4 of the receivership estate when it appoints a receiver, the Court retains authority to take steps "to
5 achieve the purposes of the receivership"); *see also Helvey v. United States Building and Loan*
6 *Association*, 184 P. 2d 919, 921 (Cal. Ct. App. 1947) (noting, in connection with assets abandoned
7 in a related federal receivership action that a federal receiver "has the right to determine whether
8 the assets are so burdensome or of such little value as to render the administration of the same
9 unprofitable, and if he so determines, the Court may upon his petition authorize the abandonment
10 of worthless property".)

11 As in *Helvey*, the Receiver has made a determination that the Property cannot be sold for
12 more than the liens against the Property and represents no value to the Receivership Estate.
13 Furthermore, the Property imposes an ongoing potential financial burden to the Receivership
14 Estate.

15 The Receiver in this action has weighed whether retaining or selling the Property would be
16 beneficial to the Receivership Estate. The Receiver did previously receive an offer for the
17 Property. However, the buyer backed out of such sale, and the sale never closed, and no further
18 offers were received for the Property. The Receiver has determined that at this time, the Property
19 has no value, and that continued maintenance of the Property would be financially burdensome to
20 the Receivership Estate. In other words, the administrative cost of maintaining the Property would
21 outweigh any benefit in maintaining the Property because the value of the Property is less than the
22 amount owed to the secured lender. As such, abandoning the Property will substantially benefit
23 the Receivership Estate, because this will allow for the Receiver to cease paying the mortgage and
24 maintenance costs.

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IV.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests this Court grant the relief requested in the Motion, and for such other relief as the Court deems just and necessary.

Dated: September __, 2011

Respectfully submitted,

/s/ David R. Zaro, Esq.

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