

ROBB EVANS
Receiver of
Assets of James P. Lewis, Jr.,
Financial Advisory Consultants,
Income Fund Ltd. &
Growth Fund Ltd.

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Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
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Securities and Exchange Commission v. James P. Lewis, Jr., et al.
CASE No. CV 03-9354 ABC (VBKx)

Notice of Motion and Motion by Receiver for Order:

- (1) Approving Receiver's Report of Activities [July 1, 2006 Through January 31, 2007]; and**
- (2) Approving and Authorizing Payment of Receivership Expenses [October 1, 2006 Through March 31, 2007];**

Memorandum of Points and Authorities and Declaration of Kenton Johnson in Support Thereof

Filed May 11, 2007

FILED

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2007 MAY 11 PM 3:18
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

6 Attorneys for Receiver
7 **ROBB EVANS**

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 Plaintiff,

14 v.

15 **JAMES P. LEWIS, JR., individually**
16 **and doing business as FINANCIAL**
17 **ADVISORY CONSULTANTS,**
18 **INCOME FUND, LTD. AND**
19 **GROWTH FUND, LTD.,**

20 Defendants.

CASE NO. CV 03-9354 ABC (VBKx)

NOTICE OF MOTION AND
MOTION BY RECEIVER FOR
ORDER (1) APPROVING
RECEIVER'S REPORT OF
ACTIVITIES [JULY 1, 2006
THROUGH JANUARY 31, 2007];
AND (2) APPROVING AND
AUTHORIZING PAYMENT OF
RECEIVERSHIP EXPENSES
[OCTOBER 1, 2006 THROUGH
MARCH 31, 2007];
MEMORANDUM OF POINTS AND
AUTHORITIES AND
DECLARATION OF KENTON
JOHNSON IN SUPPORT THEREOF

21 DATE: June 4, 2007
22 TIME: 10:00 a.m.
23 PLACE: Courtroom 680

1 PLEASE TAKE NOTICE that on June 4, 2007 at 10:00 a.m. in Courtroom
2 680 of the above-referenced Court, located at 255 E. Temple Street, Los Angeles,
3 California, the permanent receiver, Robb Evans ("Receiver") will move the Court
4 for the following relief:

5 (1) An order approving the Receiver's Report of Activities for the period
6 of July 1, 2006 through January 31, 2007 (the "Receiver's Seventh Report") filed
7 with the Court on February 13, 2007 and confirming the Receiver's activities
8 described therein; and

9 (2) An order approving and authorizing payment of receivership expenses
10 incurred for the six-month period from October 1, 2006 through March 31, 2007
11 ("Eighth Expense Period"), including payment of the fees of the Receiver, the
12 Receiver's deputies, agents, staff and professionals, and reimbursement of costs
13 incurred during the Eighth Expense Period. The fees and expenses of the Receiver
14 and his staff incurred during the Eighth Expense Period total \$61,536.02 and his
15 legal fees and expenses, including those of outside counsel, incurred during the
16 Eighth Expense Period total \$272,416.08.

17 This Motion is made pursuant to Local Civil Rule 66-7(c) and (f) and the
18 limited notice order entered July 14, 2004,¹ and is based upon this notice of motion
19 and motion, the accompanying memorandum of points and authorities and
20 declaration of Kenton Johnson attached hereto and served and filed herewith, any
21 reply, and upon all other pleadings, oral and documentary evidence as may be
22 presented at or before the time of the hearing on the Motion.


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24
25 ¹ The order is entitled "Order Granting Motion by Receiver for Second Omnibus
26 Order: (1) Approving Sale of Coin Collection by Private Sale and Modifying Sale
27 Procedures of 28 U.S.C. sections 2001 and 2004 in Connection Therewith; (2)
28 Approving Sale of All Ownership and Other Claims and Interests in Pyro Shield,
Inc., and Related Compromises and Modifying Sale Procedures of 28 U.S.C.
sections 2001 and 2004 in Connection Therewith; (3) Approving and Authorizing
Payment of Receivership Expenses [January 6, 2004 through April 30, 2004]; and
(4) Limiting Notice" (hereinafter, the "Limited Notice Order").

1 PLEASE TAKE FURTHER NOTICE that this Motion is served in
2 accordance with the Limited Notice Order. Pursuant to the Limited Notice Order,
3 this Motion and the Receiver's Seventh Report have been posted on the Receiver's
4 website at www.facreceiver.com where they may be reviewed in their entirety.
5 This Motion and the Receiver's Seventh Report have also been mailed to those
6 creditors and other interested parties who have made requests for notice in
7 accordance with the procedures specified in the Limited Notice Order. Hard copies
8 of the Motion and the Receiver's Seventh Report will be provided upon written
9 request for copies submitted to the Receiver's office at: Robb Evans & Associates,
10 11450 Sheldon Street, Sun Valley, California 91352-1121, Attn: Lillian Lee,
11 Deputy to the Receiver.

12
13 DATED: May 11, 2007

McKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

14
15
16 By:



GARY OWEN CARIS

Attorneys for Receiver, ROBB EVANS

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The Receiver was originally appointed as temporary receiver pursuant to this
4 Court's Order Appointing Temporary Receiver Over the Assets of James P. Lewis,
5 Jr., Individually and Doing Business as Financial Advisory Consultants, Income
6 Fund, Ltd., and Growth Fund, Ltd. filed January 6, 2004. The Receiver learned of
7 his appointment as temporary receiver on January 8, 2004 and commenced work as
8 temporary receiver the following day. Thereafter, the Receiver was appointed as
9 permanent receiver pursuant to this Court's Preliminary Injunction Order and
10 Orders: (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3)
11 Granting Expedited Discovery; (4) for Accountings; and (5) Order Appointing a
12 Permanent Receiver ("Permanent Receivership Order"). The Permanent
13 Receivership Order provided that Robb Evans was appointed as permanent receiver
14 over the assets of Defendant James P. Lewis, Jr. ("Lewis"), Financial Advisory
15 Consultants ("FAC"), Income Fund, Ltd. ("Income Fund") and Growth Fund, Ltd.
16 ("Growth Fund"), and their subsidiaries and affiliates, with full powers of an equity
17 receiver, including but not limited to, full power over all funds, assets, collateral,
18 premises, choses in action, books, records, papers and other property belonging to
19 or in the possession of or control of Lewis, FAC, Income Fund and Growth Fund.

20 By this motion, the Receiver seeks approval of the Receiver's Report of
21 Activities for the period of July 1, 2006 through January 31, 2007 (the "Receiver's
22 Seventh Report") described in this motion. A copy of the Receiver's Seventh
23 Report, which was filed on February 13, 2007, is attached to the declaration of
24 Kenton Johnson as Exhibit 1. Second, the Receiver seeks an order approving and
25 authorizing the payment of receivership fees and expenses for the six-month period
26 from October 1, 2006 through March 31, 2007 ("Eighth Expense Period"). The
27 Receiver's fees and expenses for the Eighth Expense Period include fees and
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1 expenses of the Receiver and his deputies, agents and staff as well as the fees and
2 expenses of his attorneys, and other receivership expenses more fully detailed by
3 category in the Receiver's Eighth Expense Period spreadsheets attached to the
4 declaration of Kenton Johnson collectively as Exhibit 2. The expenses for which
5 approval and payment are sought are described in Exhibit 2.

6 **II. THE RECEIVER SEEKS APPROVAL OF THE RECEIVER'S**
7 **SEVENTH REPORT**

8 The Receiver has previously filed and obtained approval of six reports
9 outlining his activities since the inception of the receivership. These reports
10 describe the Receiver's initial control over receivership property, recovery of
11 investor data, recovery of assets of the receivership estate and subsequent
12 liquidation of these assets, communications with victims, the reconstruction of
13 investor data and financial records, settlements reached with relatives and friends of
14 Lewis, sale of properties owned by Lewis, and demands for repayment from
15 investors who received payments in excess of the principal amount of their
16 investments and status of settlement with those investors. The Receiver filed his
17 Seventh Report on February 13, 2007 and by this Motion seeks approval of the
18 Receiver's activities described therein for the period of July 1, 2006 through
19 January 31, 2007.

20 The Receiver's Seventh Report describes the proposed sale of the Greenwich
21 property co-owned by Sharon Lefevers and Lewis pursuant to the terms of the
22 settlement reached by the Receiver and Sharon Lefevers. The Seventh Report
23 describes the steps taken by the Receiver to obtain a buyer for the Greenwich
24 property, including the listing of the property with an agent with substantial
25 knowledge and expertise in the high-end real estate market in Greenwich,
26 Connecticut and the informal overbid procedure initiated by the Receiver. The
27 Seventh Report also describes the Receiver's ongoing settlement negotiations with
28 winning investors and the status of settlements approved by the Court, which

1 include settlements approved in the amount of approximately \$7.3 million. The
2 Seventh Report further describes the amount of distributions to date to losing
3 investors of approximately \$9 million or 5.7% of approved claims and the intention
4 to seek Court approval for a third distribution by June 30, 2007. The Receiver files
5 concurrently herewith a motion seeking to distribute at least another \$4 million.

6 **III. THE RECEIVER SEEKS APPROVAL AND PAYMENT OF**
7 **RECEIVERSHIP FEES AND EXPENSES INCURRED DURING THE**
8 **EIGHTH EXPENSE PERIOD**

9 Since the inception of the receivership, the Receiver has sought and obtained
10 approval for payment of receivership expenses for seven prior expense periods. By
11 this motion, the Receiver seeks approval of receivership expenses for the Eighth
12 Expense Period as described hereinbelow.

13 a. Continuing Communication with Investors

14 The Receiver has continued to respond to investor inquiries and communicate
15 with investors regarding his activities during the Eighth Expense Period, including
16 through the preparation and filing of the Receiver's Seventh Report. The Receiver
17 and his staff have also participated in the negotiation and settlement of certain
18 claims against the Winning Investors.

19 b. Sale of the Greenwich Property

20 During this expense period, the Receiver marketed and sold the Greenwich
21 property pursuant to the settlement agreement the Receiver and his counsel
22 negotiated with Sharon Lefevers. The Receiver listed the Greenwich property with
23 an agent with substantial expertise in high-end real estate in Greenwich,
24 Connecticut, initiated an informal overbidding procedure and negotiated a purchase
25 price over the fair market value with the buyer. This sale was approved by the
26 Court on February 13, 2007 and the Receiver assisted in the closing of the property
27 and removal of two judgment liens against Sharon Lefevers filed against the
28 property.

1 a. Settlements and Negotiations

2 As previously reported, the Receiver and his counsel have been in on-going
3 extensive settlement discussions with the Winning Investors. As a result, the
4 Receiver, directly and through counsel, has negotiated an aggregate of at least 98
5 settlements with Winning Investors providing for a recovery of an aggregate of at
6 least \$7.6 million for the receivership estate. The Receiver's third motion for
7 approval of settlements with Winning Investors was granted at a hearing on January
8 22, 2007. The Receiver, with counsel, has continued to negotiate with the Winning
9 Investors in recent months, and continues to make progress in settling claims which
10 will be the subject of a motion for approval of additional settlements within the next
11 few months.

12 b. Discovery

13 The Receiver has gathered and prepared documents for defendants in the ten
14 lawsuits filed against Winning Investors in order to serve initial disclosures
15 pursuant to Rule 26(a) of the Federal Rules of Civil Procedure. The Receiver and
16 his staff began this process during the Seventh Expense period, but this extensive
17 process has continued through this Eighth Expense period. For each Winning
18 Investor defendant, the Receiver has attempted to locate statements of account,
19 evidence of payment to the Winning Investors from Lewis and investor files. This
20 process involved the reconciliation of documents evidencing payments made by
21 Winning Investors to Lewis and by Lewis to Winning Investors in order to provide
22 evidence of the Receiver's claims against each Winning Investor. To the extent the
23 Receiver was able to locate these documents, he produced them to the Winning
24 Investors. The Receiver and his staff have also responded to multiple requests for
25 production of documents propounded by various Winning Investors by gathering
26 responsive documents and making them available for inspection or copying. The
27 Receiver has also, with the assistance of counsel, responded to interrogatories and
28 requests for admissions propounded by several of the Winning Investors.

1 c. Legal Services

2 During the Eighth Expense Period, legal services rendered by counsel have
3 included (a) pursuit of litigation against approximately 220 Winning Investors
4 brought in ten related lawsuits seeking recoveries in the aggregate of over \$47
5 million (b) pursuit of litigation against James P. Lewis, III (“Lewis III”) and
6 Allison Routson (“Routson”), two of Lewis’s children, to recover transfers of funds
7 to them by Lewis and successful negotiation of settlement with Lewis, III; (c)
8 negotiation and documentation, subject to court approval, of settlements with
9 Winning Investors and Lewis III, and preparation of the motion to approve
10 settlements with fourteen settling parties heard on January 22, 2007; and (d)
11 preparation of a motion to approve the Receiver’s fees and expenses for the Seventh
12 Expense Period, which was heard on November 20, 2006. Each of the motions was
13 granted.

14 The Receiver’s counsel continues to pursue the Receiver’s claims filed
15 against approximately 220 Winning Investors, of which a little more than half have
16 been resolved by settlement, default or dismissal, and against Routson. Moreover,
17 the Receiver’s counsel has amended the complaint in one of the Winning Investor
18 lawsuits, Robb Evans v. Seymour H. Sachs, U.S.D.C. Case No. CV06-37 ABC
19 (VBKx) to join two more defendants. The Receiver’s counsel filed a motion to
20 amend the complaint, which was opposed by one of the defendants, though
21 ultimately granted by the Court on February 22, 2007 without a hearing.

22 At the end of the Seventh Expense Period, eleven of the Winning Investor
23 defendants remained unserved as well as Routson. Since then, the Receiver’s
24 counsel has successfully effectuated service on these defendants or otherwise
25 resolved the Receiver’s claims against them. The Receiver’s counsel prepared and
26 filed five ex parte applications to serve certain defendants by publication, which
27 were granted by the Court. These defendants were subsequently served with the
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1 summons and complaint through publication of the summons in newspapers of
2 general circulation provided for in the orders approving the ex parte applications.

3 During the Eighth Expense Period, two of the Winning Investor defendants
4 filed a motion to dismiss based on several grounds including personal jurisdiction.
5 The Receiver's counsel prepared and filed an opposition to the motion to dismiss,
6 attended the hearing on the motion and researched and submitted a supplemental
7 brief on the issue of personal jurisdiction per the Court's request. The Court
8 thereafter issued an order denying the defendants' motion to dismiss on March 7,
9 2007. Lewis III also filed a motion to dismiss based on lack of personal
10 jurisdiction. The Receiver's counsel prepared an opposition to the motion to
11 dismiss but did not file it with the Court as the Receiver, with the assistance of
12 counsel, negotiated a settlement with Lewis III in the interim.

13 Also in connection with the Winning Investor lawsuits, the Receiver's
14 counsel prepared for and attended status conferences in each of the ten lawsuits
15 during the Eighth Expense Period. The Receiver's counsel coordinated and
16 conducted a total of six conference calls with counsel and pro per defendants in
17 preparation for the status conferences, drafted joint status reports in each of these
18 cases and coordinated the submission of these reports to the other parties for
19 comment, approval, signature and filing of the reports with the Court. Further, in
20 compliance with Rule 26(a) of the Federal Rules of Civil Procedure, the Receiver's
21 counsel has continued to gather, review and produce statements of accounts,
22 evidence of payment and investor files for each of the defendants who have
23 appeared in the ten Winning Investor lawsuits. The Receiver's counsel has also
24 assisted the Receiver in responding to various discovery requests of Winning
25 Investor defendants by drafting responses to Interrogatories, Requests for
26 Production and Requests for Admissions.

27 The Receiver retained the law firm of Shipman & Goodwin LLP ("Shipman
28 & Goodwin") as local counsel in Connecticut in connection with the sale of the

1 Greenwich Property. Shipman & Goodwin assisted the Receiver in closing the sale
2 of the Greenwich Property pursuant to the settlement agreement reached between
3 the Receiver and Sharon Lefevers in Greenwich, Connecticut. Shipman &
4 Goodwin also assisted the Receiver in drafting and filing the necessary documents
5 for closing escrow on the property in Connecticut. Shipman & Goodwin also
6 obtained and filed releases of the judgment liens against Sharon Lefevers in favor
7 of Neiman Marcus and American Express recorded against the Greenwich Property.

8 **IV. THE RECEIVER'S MOTION FOR APPROVAL OF THE**
9 **RECEIVER'S REPORT AND FOR APPROVAL AND**
10 **AUTHORIZATION FOR PAYMENT OF RECEIVERSHIP FEES AND**
11 **EXPENSES HAS BEEN PROPERLY SERVED**

12 Local Rule 66-7(f) provides for notice to be given to known creditors of a
13 receivership estate of applications by the Receiver and his counsel for payment of
14 receivership fees and expenses. The Court's Limited Notice Order permits the
15 Receiver to seek approval of receivership fees and expenses under Local Rule 66-
16 7(f) by notice served on the parties to the action and those creditors who have
17 requested written notice. This motion was served in accordance with the Limited
18 Notice Order, and a copy of the motion has been posted on the Receiver's website.

1 V. CONCLUSION

2 The Receiver respectfully requests that the Court approve the Report of
3 Receiver's Activities for the period from July 1, 2006 through January 31, 2007,
4 and authorize the payment of receivership expenses for the six-month period from
5 October 1, 2006 through March 31, 2007.

6
7 DATED: May 11, 2007

McKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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10 By: 
11 GARY OWEN CARIS
12 Attorneys for Receiver, ROBB EVANS
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1 property belonging to or in the possession of or control of Lewis, FAC, Income
2 Fund and Growth Fund.

3 3. The Receiver has previously filed and obtained approval of six reports
4 outlining his activities since the inception of the receivership. These reports
5 describe the Receiver's initial control over receivership property, recovery of
6 investor data and assets or potential assets of the receivership estate and subsequent
7 liquidation of these assets, communications with victims, the reconstruction of
8 investor data and financial records, settlements reached with relatives and friends of
9 Lewis, sale of properties owned by Lewis, and demands for repayment from
10 investors who received payments in excess of the principal amount of their
11 investments and status of settlement with those investors.

12 4. I have participated in the preparation of the Receiver's Report of
13 Activities for the period of July 1, 2006 through January 31, 2007 (the "Receiver's
14 Seventh Report"). A copy of the Receiver's Seventh Report which was filed with
15 the Court on February 13, 2007 is attached hereto as Exhibit 1. The Receiver seeks
16 an order approving the Receiver's Seventh Report and confirming the Receiver's
17 activities described therein. The Receiver's Seventh Report describes the proposed
18 sale of the Greenwich property co-owned by Sharon Lefevers and Lewis pursuant
19 to the terms of the settlement reached by the Receiver and Sharon Lefevers. The
20 Seventh Report describes the steps taken by the Receiver to obtain a buyer for the
21 Greenwich property, including the listing of the property with an agent with
22 substantial knowledge and expertise in the high-end real estate market in
23 Greenwich, Connecticut and the informal overbid procedure initiated by the
24 Receiver. The Seventh Report also describes the Receiver's ongoing settlement
25 negotiations with winning investors and the status of settlements approved by the
26 Court, which include settlements approved in the amount of approximately \$7.3
27 million. The Seventh Report further describes the amount of distributions to date to
28 losing investors of approximately \$9 million or 5.7% of approved claims and the

1 intention to seek Court approval for a third distribution by June 30, 2007. The
2 Receiver files concurrently herewith a motion seeking to distribute at least another
3 \$4 million.

4 5. The Receiver also seeks an order approving and authorizing the
5 payment of receivership fees and expenses for the six-month period from October
6 1, 2006 through March 31, 2007 ("Eighth Expense Period") The Receiver's fees
7 and expenses for the Eighth Expense Period include fees and expenses of the
8 Receiver and his deputies, agents and staff as well as the fees and expenses of his
9 attorneys, and other receivership expenses more fully detailed by category in the
10 Receiver's Fund Balance and Receivership Expenses spreadsheets attached hereto
11 collectively as Exhibit 2. As set forth in the spreadsheets, the administrative fees
12 and expenses of the Receiver, including his deputies, agents and staff, total
13 \$61,536.02 and the legal fees and expenses of the Receiver, including outside
14 counsel fees and expenses, total \$272,416.08 for the six-month period.

15 6. Since the inception of the receivership, the Receiver has sought and
16 obtained approval for payment of receivership expenses for seven prior expense
17 periods. During this Eighth Expense Period, the Receiver has continued to respond
18 to investor inquiries and communicate with investors regarding his activities during
19 the Eighth Expense Period, including through the preparation and filing of the
20 Receiver's Seventh Report. The Receiver and his staff have also participated in the
21 negotiation and settlement of certain claims against the Winning Investors.

22 7. During this expense period, the Receiver marketed and sold the
23 Greenwich property pursuant to the settlement agreement the Receiver and his
24 counsel negotiated with Sharon Lefevers. The Receiver listed the Greenwich
25 property with an agent with substantial expertise in high-end real estate in
26 Greenwich, Connecticut, initiated an informal overbidding procedure and
27 negotiated a purchase price over the fair market value with the buyer. This sale was
28 approved by the Court on February 13, 2007 and the Receiver assisted in the

1 closing of the property and removal of two judgment liens against Sharon Lefevers
2 filed against the property

3 8. As previously reported, the Receiver and his counsel have been in on-
4 going extensive settlement discussions with the Winning Investors. As a result, the
5 Receiver, directly and through counsel, has negotiated an aggregate of at least 98
6 settlements with Winning Investors providing for a recovery of an aggregate of at
7 least \$7.6 million for the receivership estate. The Receiver's third motion for
8 approval of settlements with Winning Investors was granted at a hearing on January
9 22, 2007. The Receiver, with counsel, has continued to negotiate with the Winning
10 Investors in recent months, and continues to make progress in settling claims which
11 will be the subject of a motion for approval of additional settlements within the next
12 few months.

13 9. The Receiver has gathered and prepared documents for defendants in
14 the ten lawsuits filed against Winning Investors in order to serve initial disclosures
15 pursuant to Rule 26(a) of the Federal Rules of Civil Procedure. The Receiver and
16 his staff began this process during the Seventh Expense period, but this extensive
17 process has continued through this Eighth Expense period. For each Winning
18 Investor defendant, the Receiver has attempted to locate statements of account,
19 evidence of payment to the Winning Investors from Lewis and investor files. This
20 process involved the reconciliation of documents evidencing payments made by
21 Winning Investors to Lewis and by Lewis to Winning Investors in order to provide
22 evidence of the Receiver's claims against each Winning Investor. To the extent the
23 Receiver was able to locate these documents, he produced them to the Winning
24 Investors. The Receiver and his staff have also responded to multiple requests for
25 production of documents propounded by various Winning Investors by gathering
26 responsive documents and making them available for inspection or copying. The
27 Receiver has also, with the assistance of counsel, responded to interrogatories and
28 requests for admissions propounded by several of the Winning Investors.

1 amend the complaint, which was opposed by one of the defendants, though
2 ultimately granted by the Court on February 22, 2007 without a hearing.

3 4. At the end of the Seventh Expense Period, eleven of the Winning
4 Investor defendants remained unserved as well as Routson. Since then, the
5 Receiver's counsel has successfully effectuated service on these defendants or
6 otherwise resolved the Receiver's claims against them. The Receiver's counsel
7 prepared and filed five ex parte applications to serve certain defendants by
8 publication, which were granted by the Court. These defendants were subsequently
9 served with the summons and complaint through publication of the summons in
10 newspapers of general circulation provided for in the orders approving the ex parte
11 applications.

12 5. During the Eighth Expense Period, two of the Winning Investor
13 defendants filed a motion to dismiss based on several grounds including personal
14 jurisdiction. The Receiver's counsel prepared and filed an opposition to the motion
15 to dismiss, attended the hearing on the motion and researched and submitted a
16 supplemental brief on the issue of personal jurisdiction per the Court's request. The
17 Court thereafter issued an order denying the defendants' motion to dismiss on
18 March 7, 2007. Lewis III also filed a motion to dismiss based on lack of personal
19 jurisdiction. The Receiver's counsel prepared an opposition to the motion to
20 dismiss but did not file it with the Court as the Receiver, with the assistance of
21 counsel, negotiated a settlement with Lewis III in the interim.

22 6. Also in connection with the Winning Investor lawsuits, the Receiver's
23 counsel prepared for and attended status conferences in each of the ten lawsuits
24 during the Eighth Expense Period. The Receiver's counsel coordinated and
25 conducted a total of six conference calls with counsel and pro per defendants in
26 preparation for the status conferences, drafted joint status reports in each of these
27 cases and coordinated the submission of these reports to the other parties for
28 comment, approval, signature and filing of the reports with the Court. Further, in

1 compliance with Rule 26(a) of the Federal Rules of Civil Procedure, the Receiver's
2 counsel has continued to gather, review and produce statements of accounts,
3 evidence of payment and investor files for each of the defendants who have
4 appeared in the ten Winning Investor lawsuits. The Receiver's counsel has also
5 assisted the Receiver in responding to various discovery requests of Winning
6 Investor defendants by drafting responses to Interrogatories, Requests for
7 Production and Requests for Admissions.

8 7. I am familiar with the billing practices and procedures of the McKenna
9 Firm and the attorneys, paralegals and other professionals whose services are billed
10 by the Firm to its clients. The billing statements are prepared in the ordinary course
11 of business by the Firm's accounting department from time records regularly input
12 and updated by attorneys, paralegals and other professionals rendering services to
13 clients. I review the draft "pre-bills" that are generated from the time entries and
14 the final billing statements for my clients. I find that the billing statements
15 accurately reflect the time entries regularly made by professionals at the Firm and
16 the services rendered and expenses incurred in connection with the McKenna
17 Firm's representation of its clients.

18 8. I have practiced law in the State of California for over 27 years and
19 have specialized in the representation of federal equity receivers in civil
20 enforcement actions filed by the Federal Trade Commission and the Securities and
21 Exchange Commission for more than seven years. I am familiar with the billing
22 rates charged by attorneys in the Southern California area and believe the rates
23 charged by the McKenna Firm in this matter and the fees and expenses requested
24 for the Eighth Expense Period are fair and reasonable given the nature of the
25 services rendered, the time expended, the expertise of the attorneys and others
26 performing services in this matter, the rates charged by other firms and attorneys in
27 the Southern California area and other factors.

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1 I declare under penalty of perjury that the foregoing is true and correct and
2 that this declaration was executed on May 11, 2007 at Los Angeles, California.

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4 GARY OWEN CARIS

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