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Attorneys for Robb Evans, Receiver

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF TEXAS  
12 BEAUMONT DIVISION

13 UNITED STATES OF AMERICA )  
14 v. ) No. 9:02CR34  
15 ) (Hon. Ron Clark)  
16 JOHN ALLEN WHEELER )

17  
18 **NOTICE OF MOTION AND MOTION OF ROBB EVANS, RECEIVER, FOR (1)**  
19 **APPROVAL OF RECEIVER'S REPORT OF ACTIVITIES FOR THE PERIOD**  
20 **MARCH 1, 2006 THROUGH DECEMBER 31, 2006, AND (2) APPROVAL OF**  
21 **ADMINISTRATIVE FEES AND COSTS INCURRED FOR THE PERIOD**  
22 **MARCH 1, 2006 THROUGH DECEMBER 31, 2006, MEMORANDUM OF**  
23 **POINTS & AUTHORITIES; DECLARATION OF ROBB EVANS**

24 TO THE HONORABLE RON CLARK, JUDGE OF THE UNITED STATES  
25 DISTRICT COURT, ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF  
26 RECORD:

1 PLEASE TAKE NOTICE that Robb Evans, Receiver in the above-captioned case,  
2 hereby presents his Motion for (1) Approval of Receiver's Report of Activities for the  
3 Period March 1, 2006 through December 31, 2006 and (2) Administrative Fees and Costs  
4 Incurred for the Period March 1, 2006 through December 31, 2006 ("Motion"). No  
5 hearing has been set on the Motion at the present time.  
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7  
8 The Receiver's Motion is based on this Notice; the Memorandum of Points and  
9 Authorities; the Declaration of Robb Evans, Receiver, and the Court's records and  
10 pleadings on file in this action, and all other evidence, both oral and documentary, as  
11 may be presented at the time of hearing.  
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13  
14 Any person or entity opposing this Motion must file with the Court and serve upon  
15 the Receiver, whose name and address appear in the upper left-hand corner of the first  
16 page of this Motion, a written opposition which complies in all respects with the rules of  
17 this Court. Failure to timely file an opposition may be deemed by the Court to be  
18 consent to the granting of the Receiver's Motion without a hearing.  
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21 I.

22 **BACKGROUND**

23  
24 On May 16, 2003, Robb Evans ("Evans" or "Receiver") was appointed as  
25 Receiver in the within action pursuant to an Order Appointing Receiver pursuant to the  
26 Government's Motion for Appointment of Receiver ("Order"). Pursuant to the terms of  
27 the Order, Evans was appointed as Receiver over certain forfeited assets of Defendant  
28

1 John Allen Wheeler ("Wheeler" or "Defendant"). The Court's May 16, 2003 Order  
2 directed the Receiver to file reports advising the Court of his progress.  
3

4 On September 22, 2003, the Court entered a Restitution Order, which  
5 directed Wheeler to "pay restitution in an amount to be determined by the Court." On  
6 January 20, 2004, the Court entered an Order directing restitution by Wheeler in the  
7 amount of \$23,706,368.90. An Amended Judgment for that amount was entered on  
8 January 26, 2004.  
9

10 On July 15, 2004, the Court approved the Receiver's recommendation to make an  
11 interim distribution of \$3,100,000 to claimants with approved claims. The distribution  
12 was completed by August 20, 2004.  
13

14 The Receiver has continued his efforts to identify and collect assets subject to the  
15 restitution order since that date. On September 20, 2005, this Court granted the  
16 Receiver's Motion for Return of Receivership Property and Imposition of Constructive  
17 Trust in the amount of \$1,048,881.19. On August 15, 2006, this Court approved a  
18 settlement agreement for payment of \$700,000.00 in full settlement of this judgment.  
19 The Receiver has collected this sum, plus accrued oil and gas royalties to the date of sale,  
20 and those funds are being held for distribution to investors.  
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II.

**RECEIVER'S REPORT**

Attached hereto as Exhibit "A" is the Receiver's Report of Activities for the period March 1, 2006 through December 31, 2006. ("Report"). The Report addresses the activities of the Receiver for the period. The Receiver's Report does not constitute an audit of financial condition and is intended only to provide information for use by the Court in assessing the progress of the receivership. By this Motion, the Receiver respectfully requests that the Court approve the Receiver's Report for the period March 1, 2006 through December 31, 2006, as being right and proper and in the best interest of the Receivership Estate and the parties to this action.

III.

**RECEIVER'S FEES AND EXPENSES FOR THE PERIOD**

**MARCH 1, 2006 THROUGH DECEMBER 31, 2006**

Attached as Tab "1" to Exhibit "A" hereto is a detailed statement evidencing the specific fees and expenses of the Receivership Estate incurred during the period March 1, 2006 through December 31, 2006 in the total amount of \$16,096.33. This sum represents the following:

FEES:	Senior Staff	\$6,776.50
	Supporting Staff	\$1,736.17
	Legal Fees	\$6,710.00
<i>Total Fees:</i>		<i>\$15,222.67</i>

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EXPENSES: Telephone	\$40.92
Legal Cost	\$200.00
Office Supplies	\$11.41
Postage & Delivery	\$226.52
Miscellaneous Expenses	\$394.81
<i>Total Fees and Expenses:</i>	<i>\$16,096.33</i>

Also attached collectively under Tab "1" to Exhibit "A" are detailed statements evidencing administrative fees and expenses in the total amount of \$16,096.33.

The Receiver respectfully requests that the Court approve the Receiver's fees and costs for the aforesaid period in the total amount of \$16,096.33 and authorize the Receiver to pay that amount from the funds currently held in the Receivership Estate.

IV.

**MEMORANDUM OF POINTS & AUTHORITIES**

The Court's May 16, 2003 Order, at Page 5, Paragraph 2, states:

The Receiver is directed to file quarterly reports with this Court from the date of this Order advising the Court of its progress and for payment of the Receiver's fees and out-of-pocket expenses for the Court's approval, except that prior approval for payment of the expenses outlined in paragraph 1, above, shall not be required.

1 The Receiver respectfully requests that the Court approve the Receiver's fees and  
2 expenses for the aforesaid period in the total amount of \$16,096.33.  
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4 V.

5 CONCLUSION  
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7 WHEREFORE, the Receiver prays that this Court enter an Order as follows:  
8

9 1. Approving and confirming all expenses of the Receivership for the period  
10 March 1, 2006 through December 31, 2006 including administrative fees and expenses  
11 totaling \$16,096.33, as such are detailed under Tab 1 of Exhibit "A" hereto, and  
12 authorizing the Receiver to pay that amount from funds currently on hand in the  
13 Receivership Estate;  
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15 2. Approving the Receiver's Report for the period March 1, 2006 through  
16 December 31, 2006; and  
17

18 3. For such other and further relief as the Court may deem just and proper.  
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21 Dated: January 24, 2007  
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23 LINDA J. CANDLER  
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1 **DECLARATION OF ROBB EVANS**

2 I, ROBB EVANS, declare as follows:

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4 1. I am the duly appointed, qualified and acting Receiver in the within  
5 action. I have caused the foregoing Motion to be prepared and know the contents  
6 thereof, and the same is true of my own knowledge, except as to those matters which are  
7 stated upon information or belief, and as to those matters, I believe them to be true.  
8

9 2. Attached hereto as Tab 1 to Exhibit "A" is a detailed statement evidencing  
10 the specific fees and expenses of the Receivership Estate incurred during the period  
11 March 1, 2006 through December 31, 2006 in the total amount of \$16,096.33. This sum  
12 represents the following:  
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15	FEES:	Senior Staff	\$6776.50
16		Supporting Staff	\$1736.17
17		Legal Fees	\$6710
18	<i>Total Fees:</i>		<i>\$15,222.67</i>

19

20	EXPENSES:	Legal Cost	\$200.00
21		Telephone	\$40.92
22		Office Supplies	\$11.41
23		Postage & Delivery	\$226.52
24		Miscellaneous Expenses	\$394.81
25	<i>Total Fees and Expenses:</i>		<i>\$16,096.33</i>

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I respectfully request that the Court approve the fees and costs of the Receivership for the aforesaid period and authorize me to pay that amount from funds currently held in the Receivership Estate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24<sup>th</sup> day of January, 2007, at San Valley, California.

  
\_\_\_\_\_  
ROBB EVANS

# **EXHIBIT A**

**Robb Evans**  
**Receiver in the Matter of**  
**United States of America v. John Allen Wheeler**

**Report of Receiver's Activities**  
**March 1, 2006 through December 31, 2006**

In its May 16, 2003 Order, this Court appointed the Receiver and directed the Receiver to file reports advising the Court of its progress and for payment of the Receiver's fee and out-of-pocket expenses for the Court's approval. This is the ninth report. It does not constitute an audit of the financial condition and is intended only to provide information for use by the Court in assessing the progress of the Receivership.

**Assets**

Wheeler Ranch

Following this Court's entry of judgment in the amount of \$1,048,881.19 on October 19, 2005 against the Wheeler Ranch in Nacogdoches, Texas, the Receiver commenced discussions with Wheeler family members with ownership interests (Wheeler family) in the ranch property concerning a payment of the judgment. These discussions resulted in a proposed sale and settlement of \$700,000 cash in full satisfaction of the judgment. The Receiver reviewed the various options and concluded that the settlement offer was reasonable and in the in the best interests of the investors, based on appraisals and the location of the property. This Court approved the proposed settlement on August 15, 2006, and the Receiver received the sum of \$700,000 on October 12, 2006 in full settlement of this judgment.

Pinnacle Energy Group

As part of the sale of the Wheeler Ranch, the Receiver released its claim to the oil and gas royalties as of the date of sale. Oil and gas royalties up to the date of sale were paid to the Receiver. All royalties and lease payments made after the date of settlement accrue to the benefit of the Wheeler family, or the purchaser of the property.

U.S. Reservation Bank and Trust in Arizona

As previously reported, John Wheeler transferred \$1 million to U.S. Reservation Bank and Trust in Arizona. That company was placed into receivership by order of the United States District Court for the District of Arizona. A claim in the amount of \$1,000,000 has been filed with the Arizona Receiver. The Arizona Receiver

recently obtained court approval authorizing a pro-rata distribution. If the Arizona court order is not appealed, the Arizona Receiver anticipates making a distribution of about \$554,000 to this receivership estate in March 2007.

#### Other Wheeler Investments

The Receiver interviewed a witness with respect to other investments made by John Wheeler in an aircraft company, Elegaire, owned or controlled by Thomas Plummer. As set out in previous reports, Thomas Plummer purchased property located at 5101 Yale Court, Brentwood, Tennessee, and reportedly purchased an aircraft. Plummer filed for bankruptcy on October 11, 2005. His financial statement filed in the bankruptcy proceeding alleged that his home had been sold in April, 2005, and he received net income of \$258,139.73. Plummer's bankruptcy filing also stated that Elegaire ceased its operations in October of 2005. The bankruptcy trustee filed a Motion for discharge on November 22, 2005, certifying that there was no receipt of non-exempt property. The debtors were discharged in bankruptcy on January 24, 2006.

#### **Proposed Distribution**

When the Arizona Receiver makes payment on the claim the Receiver will make a recommendation to this Court for a final distribution to approved claimants.

#### **Administrative Expenses**

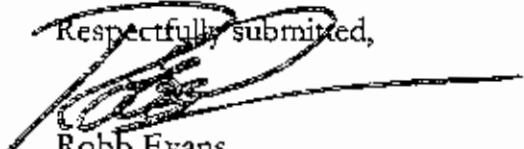
Under Tab 1 is a report of the expenses incurred by the Receivership from March 1, 2006 through December 31, 2006.

#### **Requests of the Court**

The Court is respectfully requested to:

1. Approve this report and confirm the actions of the Receiver described therein.
2. Approve and authorize payment of expenses of the Receivership from March 1, 2006 through December 31, 2006, as detailed under Tab 1.

Respectfully submitted,

  
Robb Evans  
Receiver

# TAB 1

Robb Evans, Receiver in the matter of USA v. John Wheeler

**Administrative Expenses**

From Inception (May 16, 2003) to December 31, 2006

	Paid	Incurred but Unpaid	Total
<b>Receiver's Admin. Expenses</b>			
Receiver Fees	0.00	110.00	110.00
Senior Staff	62,887.50	6,776.50	69,664.00
Supporting Staff	24,164.86	1,736.17	25,901.03
Out-of-Pocket Expense	8,658.98	0.00	8,658.98
<b>Legal Fees &amp; Costs</b>			
Legal Fees	28,476.00	6,710.00	35,186.00
Legal Costs	469.34	0.00	469.34
<b>Total Legal Fees &amp; Costs</b>	<b>28,945.34</b>	<b>6,710.00</b>	<b>35,655.34</b>
Equipment Rental	215.96	0.00	215.96
Telephone	271.53	40.92	312.45
Office Supplies	292.73	11.41	304.14
Postage & Delivery	2,199.60	226.52	2,426.12
Appraisal & Inspection	11,314.00	0.00	11,314.00
<b>Miscellaneous Expenses</b>			
Asset Search	65.00	1.95	66.95
Website Expense	1,065.00	325.00	1,390.00
Bank Service Charge	140.47	0.00	140.47
Other	845.91	0.00	845.91
<b>Total Miscellaneous Expenses</b>	<b>2,116.38</b>	<b>326.95</b>	<b>2,443.33</b>
<b>Total Receiver's Admin. Expenses</b>	<b>141,066.88</b>	<b>15,938.47</b>	<b>157,005.35</b>

**Robb Evans, Receiver in the matter of USA v. John Wheeler**  
**Administrative Expenses**  
From Inception (May 16, 2003) to December 31, 2006

	Previously Reported 5/16/03-2/28/06	This Period 3/1/06-12/31/06	Total
<b>Receiver's Admin. Expenses</b>			
Receiver Fees	0.00	110.00	110.00
Senior Staff	62,887.50	6,776.50	69,664.00
Supporting Staff	24,164.86	1,736.17	25,901.03
Out-of-Pocket Expense	8,658.98	0.00	8,658.98
Legal Fees & Costs			
Legal Fees	28,476.00	6,710.00	35,186.00
Legal Costs	269.34	200.00	469.34
<b>Total Legal Fees &amp; Costs</b>	<b>28,745.34</b>	<b>6,910.00</b>	<b>35,655.34</b>
Equipment Rental	215.96	0.00	215.96
Telephone	271.53	40.92	312.45
Office Supplies	292.73	11.41	304.14
Postage & Delivery	2,199.60	226.52	2,426.12
Appraisal & Inspection	11,314.00	0.00	11,314.00
Miscellaneous Expenses			
Asset Search	0.00	66.95	66.95
Website Expense	1,065.00	325.00	1,390.00
Bank Service Charge	137.61	2.86	140.47
Other	845.91	0.00	845.91
<b>Total Miscellaneous Expenses</b>	<b>2,048.52</b>	<b>394.81</b>	<b>2,443.33</b>
<b>Total Receiver's Admin. Expenses</b>	<b>140,799.02</b>	<b>16,206.33</b>	<b>157,005.35</b>