

1 Linda J. Candler, CA Bar No. 181805  
(Admitted in EdTex Pro Hac Vice)  
2 Linda\_candler@robbevans.com

3 Robb Evans & Associates LLC  
4 11450 Sheldon Street  
Sun Valley, Ca 91352

5 Tel: (818) 768-8100  
6 Fax: (818) 768-8802  
Attorney for Robb Evans, Receiver

7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF TEXAS  
10 BEAUMONT DIVISION

11 UNITED STATES OF AMERICA )  
12 )  
13 v. ) No. 9:02CR34  
14 ) (Hon. Ron Clark)  
JOHN ALLEN WHEELER )

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16  
17 **NOTICE OF MOTION AND MOTION OF ROBB EVANS, RECEIVER, FOR**  
18 **(1) A PROPOSED DISTRIBUTION TO INVESTORS; (2) APPROVAL OF**  
19 **RECEIVER'S REPORT OF ACTIVITIES FOR THE PERIOD JANUARY 1, 2007**  
20 **THROUGH MARCH 31, 2007, AND (3) APPROVAL OF ADMINISTRATIVE**  
21 **FEEES AND COSTS INCURRED FOR THE PERIOD JANUARY 1, 2007**  
22 **THROUGH MARCH 31, 2007, MEMORANDUM OF POINTS & AUTHORITIES;**  
23 **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:  
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1 PLEASE TAKE NOTICE that Robb Evans, Receiver in the above-captioned case,  
2 hereby presents his Motion for (1) Approval of a Proposed Distribution to Investors; (2)  
3 Approval of Receiver's Report of Activities for the Period January 1, 2007 through  
4 March 31, 2007 and (3) Approval of Payment of Administrative Fees and Costs Incurred  
5 for the Period January 1, 2007 through March 31, 2007 ("Motion"). No hearing has been  
6 set on the Motion at the present time.  
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9 The Receiver's Motion is based on this Notice; the Memorandum of Points and  
10 Authorities; the Declaration of Robb Evans, Receiver, and the Court's records and  
11 pleadings on file in this action, and all other evidence, both oral and documentary, as  
12 may be presented at the time of hearing.  
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15 Any person or entity opposing this Motion must file with the Court and serve upon  
16 the Receiver, whose name and address appear in the upper left-hand corner of the first  
17 page of this Motion, a written opposition, which complies in all respects with the rules of  
18 this Court. Failure to timely file an opposition may be deemed by the Court to be  
19 consent to the granting of the Receiver's Motion without a hearing.  
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## 22 I.

### 23 BACKGROUND

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  
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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.

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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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25 **II.**

26 **REQUEST FOR PROPOSED DISTRIBUTION**

27 By this Motion, the Receiver seeks the approval of a pro rata claims distribution to  
28 the Wheeler investors in the amount of \$1,462,000. This amount represents funds

1 received from a claim filed by the Receiver in Arizona with the Court-Appointed  
2 Receiver for the U.S. Reservation Bank and Trust and funds received from the sale of the  
3 Wheeler ranch. The Receiver expects one final payment from the Arizona Receiver.  
4 All other assets identified by the Receiver have been liquidated.  
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8 **III.**

9 **RECEIVER'S REPORT**

10 Attached hereto as Exhibit "A" is the Receiver's Report of Activities for the  
11 period January 1, 2007 through March 31, 2007. ("Report"). The Report addresses the  
12 activities of the Receiver for the period. The Receiver's Report does not constitute an  
13 audit of financial condition and is intended only to provide information for use by the  
14 Court in assessing the progress of the receivership. By this Motion, the Receiver  
15 respectfully requests that the Court approve the Receiver's Report for the period January  
16 1, 2007 through March 31, 2007, as being right and proper and in the best interest of the  
17 Receivership Estate and the parties to this action.  
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21 **IV.**

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

23  
24 **JANUARY 1, 2007 THROUGH MARCH 31, 2007**

25 Attached as Tab "1" to Exhibit "A" hereto is a detailed statement evidencing the  
26 specific fees and expenses of the Receivership Estate incurred during the period January  
27 1, 2007 through March 31, 2007 in the total amount of \$2,823.00. This sum represents  
28 the following:

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FEES:	Receiver	\$726.00
	Senior Staff	\$280.00
	Supporting Staff	\$1,202.26
	Legal Fees	\$460.00
	<b>Total Fees:</b>	<b>\$2,668.26</b>
EXPENSES:	Telephone	\$7.44
	Postage & Delivery	\$57.15
	Miscellaneous Expenses	\$90.15
	<b>Total Fees and Expenses:</b>	<b>\$2,823.00</b>

Also attached collectively under Tab "1" to Exhibit "A" are detailed statements evidencing administrative fees and expenses in the total amount of \$2,823.00.

The Receiver respectfully requests that the Court approve the Receiver's fees and costs for the aforesaid period in the total amount of \$2,823.00 and authorize the Receiver to pay that amount from the funds currently held in the Receivership Estate.

V.

**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

1 prior approval for payment of the expenses outlined in paragraph 1, above, shall  
2 not be required.

3 The Receiver respectfully requests that the Court approve the Receiver's fees and  
4 expenses for the aforesaid period in the total amount of \$2,823.00.

5  
6 The proposed distribution is consistent with previous orders of this Court and will  
7 represent a pro rata distribution to all approved investors of 5 %. As recognized in  
8 *SEC v. Forex Asset Management, 242 F.3d 325 (5<sup>th</sup> Cir. 2001)*, "a pro rata  
9 distribution plan provide[d] the most equitable means of addressing all of the  
10 victim's harms" even where the individual investor alleged his funds were  
11 deposited into a segregated account. *See, also, United States v. Durham, 86 F.3d*  
12 *70, 73 (5<sup>th</sup> Cir. 1996).*

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15 **VI.**  
16 **CONCLUSION**

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18 WHEREFORE, the Receiver prays that this Court enter an Order as follows:

- 19  
20 1. Approving and confirming all expenses of the Receivership for the period  
21 January 1, 2007 through March 31, 2007 including administrative fees and expenses  
22 totaling \$2,823.00, as such are detailed under Tab 1 of Exhibit "A" hereto, and  
23 authorizing the Receiver to pay that amount from funds currently on hand in the  
24 Receivership Estate;
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27 2. Approving the Receiver's Report for the period January 1, 2007 through  
28 March 31, 2007; and

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3. "Approving the Receiver's proposed pro rata claims distribution to all investors in the total sum of \$1,462,000."

For such other and further relief as the Court may deem just and proper.

Dated: July 3, 2007



LINDA J. CANDLER

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 January 1, 2007 through March 31, 2007 in the total amount of \$2,823.00. This sum  
12 represents the following:  
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15	FEES:	Receiver	\$726.00
16		Senior Staff	\$280.00
17		Supporting Staff	\$1,202.26
18		Legal Fees	\$460.00
19	<b>Total Fees:</b>		<b>\$2,668.26</b>

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22	EXPENSES:		
23		Telephone	\$7.44
24		Postage & Delivery	\$57.15
25		Miscellaneous Expenses	\$90.15
26	<b>Total Fees and Expenses:</b>		<b>\$2,823.00</b>

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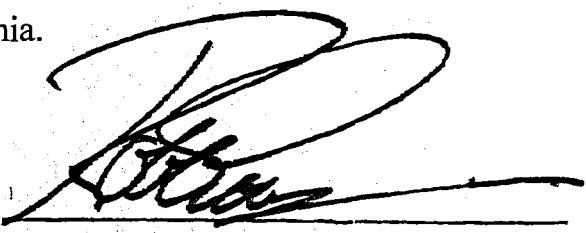
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I respectfully request that the Court approve the fees and costs of the Receivership for the aforesaid period and authorize me to pay that amount from funds currently held in the Receivership Estate.

There is currently the sum of \$1,485,502.52 in the Receivership Estate. I hereby request approval to make a distribution in the amount of \$1,462,000, which will result in a pro rata distribution to each approved investor of approximately 5%.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of July 2007, at

    Cambria    , 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**  
**January 1, 2007 through March 31, 2007**

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 tenth 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 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 the sale. Oil and gas royalties up to the date of the 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 Receiver received the

first interim distribution in the amount of \$553,874.82 on March 22, 2007. The Arizona Receiver indicated to the Receiver that there are many factors, which must first be addressed and resolved before its case can be brought to a close. The Arizona Receiver's hope is to close this case by June 2008 and to make a final distribution for an additional amount of 10-15% of the approved claim amount.

### 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 a 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 a 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**

The Receiver proposes to make an interim distribution of \$1,462,000 or about 5% of approved claims on a pro-rata basis. This will reserve about \$20,000 for distribution administration expenses and Receivership estate closing expenses. If these reserves are not needed, they will be included in a future distribution. The two distributions to the claimants will total \$4,562,000 or 17% of their approved claims.

We expect minimal receivership activity while we wait for the final distribution from the Arizona Receiver. We request the court to approve the filing of our next report before the third distribution in lieu of quarterly reports.

### **Administrative Expenses**

Under Tab 1 is a report of the expenses incurred by the Receivership from January 1, 2007 through March 31, 2007.

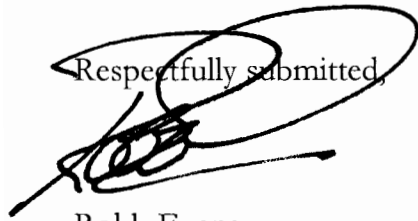
### **Requests of the Court**

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 January 1, 2007 through March 31, 2007 as detailed under Tab 1.
3. Approve a \$1,462,000 interim distribution to 741 claimants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robb Evans', written over the text '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 March 31, 2007

	Previously Reported 05/16/03-12/31/06	This Period 01/01/07-03/31/07	Total
<b>Receiver's Admin. Expenses</b>			
Receiver Fees	110.00	726.00	836.00
Senior Staff	69,664.00	280.00	69,944.00
Supporting Staff	25,901.03	1,202.26	27,103.29
Out-of-Pocket Expense	8,658.98	0.00	8,658.98
<b>Legal Fees &amp; Costs</b>			
Legal Fees	35,186.00	460.00	35,646.00
Legal Costs	469.34	0.00	469.34
<b>Total Legal Fees &amp; Costs</b>	<b>35,655.34</b>	<b>460.00</b>	<b>36,115.34</b>
Equipment Rental	215.96	0.00	215.96
Telephone	312.45	7.44	319.89
Office Supplies	304.14	0.00	304.14
Postage & Delivery	2,426.12	57.15	2,483.27
Appraisal & Inspection	11,314.00	0.00	11,314.00
<b>Miscellaneous Expenses</b>			
Asset Search	66.95	0.00	66.95
Website Expense	1,390.00	90.00	1,480.00
Bank Service Charge	140.47	0.15	140.62
Other	845.91	0.00	845.91
<b>Total Miscellaneous Expenses</b>	<b>2,443.33</b>	<b>90.15</b>	<b>2,533.48</b>
<b>Total Receiver's Admin. Expenses</b>	<b>157,005.35</b>	<b>2,823.00</b>	<b>159,828.35</b>

**EXHIBIT A**

TAB 1 p 1 of 10

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

Administrative Expenses

From Inception (May 16, 2003) to March 31, 2007

	Paid	Incurred but Unpaid	Total
<b>Receiver's Admin. Expenses</b>			
Receiver Fees	0.00	836.00	836.00
Senior Staff	69,664.00	280.00	69,944.00
Supporting Staff	25,901.03	1,202.26	27,103.29
Out-of-Pocket Expense	8,658.98	0.00	8,658.98
Legal Fees & Costs			
Legal Fees	35,186.00	460.00	35,646.00
Legal Costs	469.34	0.00	469.34
<b>Total Legal Fees &amp; Costs</b>	<b>35,655.34</b>	<b>460.00</b>	<b>36,115.34</b>
Equipment Rental	215.96	0.00	215.96
Telephone	312.45	7.44	319.89
Office Supplies	304.14	0.00	304.14
Postage & Delivery	2,426.12	57.15	2,483.27
Appraisal & Inspection	11,314.00	0.00	11,314.00
Miscellaneous Expenses			
Asset Search	66.95	0.00	66.95
Website Expense	1,390.00	90.00	1,480.00
Bank Service Charge	140.62	0.00	140.62
Other	845.91	0.00	845.91
<b>Total Miscellaneous Expenses</b>	<b>2,443.48</b>	<b>90.00</b>	<b>2,533.48</b>
<b>Total Receiver's Admin. Expenses</b>	<b>156,895.50</b>	<b>2,932.85</b>	<b>159,828.35</b>

EXHIBIT A

Tab 1 p 2 of 10