

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]  
2 ROBB EVANS & ASSOCIATES LLC  
11450 SHELDON STREET  
3 SUN VALLEY, CA 91352  
4 TELEPHONE: (818) 768-8100  
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5 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,  
6 PERMANENT RECEIVER

7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 COMMODITY FUTURES TRADING  
COMMISSION,

12 Plaintiff,

13 v.

14 WHITE PINE TRUST CORPORATION,  
15 a California corporation, RICHARD  
MATTHEWS, an individual, and  
16 STEPHEN BAERE, an individual.

17 Defendants.

18 LUCIA MATTHEWS, an individual,

19 Relief Defendant.

CASE NO. 04cv2093-J (NLS)

NOTICE OF MOTION AND MOTION OF  
RECEIVER FOR (1) ORDER  
AUTHORIZING THE SALE OF PERSONAL  
PROPERTY, AND (2) APPROVING  
PROCEDURE FOR LIMITED NOTICE  
THEREOF; DECLARATION OF BRICK  
KANE IN SUPPORT THEREOF; AND  
PROPOSED ORDER

[Personal Property: Approximately 109 Gold Coins]

Date: March 6, 2006  
Time: 10:30 A.M.  
Place: Courtroom 12  
940 Front Street  
San Diego, CA 92101-8900  
(Hon. Napoleon A. Jones, Jr.)

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23 TO THE HONORABLE NAPOLEON A. JONES, JR., UNITED STATES  
24 DISTRICT JUDGE, AND TO ALL PARTIES IN INTEREST:

25 PLEASE TAKE NOTICE that on March 6, 2006, at 10:30 a.m. in Courtroom 12 of  
26 the United States District Court for the Southern District of California located at 940 Front  
27 Street, San Diego, California 92101, or sooner, if the Receiver's Motion is unopposed,  
28 Robb Evans & Associates LLC, Receiver in the above-captioned case, will and does hereby

1 move the Court for an Order authorizing the sale of certain personal property consisting of  
2 approximately 109 gold coins.


3 PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant to 28  
4 U.S.C. § 2001 and 2004, Local Civil Rule 66.1, and this Court's Order Granting in Part  
5 Receiver's Motion for Order Approving Sale of Real and Personal Property; Granting in  
6 Part Receiver's Motion to Modify Statutory Sale Procedures and Approving Procedure for  
7 Limited Notice Thereof, entered on May 4, 2005.

8 The Receiver's Motion is based on this Notice of Motion, the Memorandum of  
9 Points and Authorities; the Declaration of Brick Kane annexed hereto, and the Court's  
10 records and pleadings on file in this action, and all other evidence, both oral and  
11 documentary, as may be presented at the time of hearing, if one occurs. The Receiver  
12 respectfully submits that this matter does not require oral argument, unless opposition to the  
13 Motion is subsequently submitted to the Court.

14 Any person or entity opposing this Motion must timely file with the Court and serve  
15 upon the Receiver a written opposition which complies in all respects with the  
16 rules of this Court. Failure to timely file an opposition may be deemed by the Court to be  
17 consent to the granting of the Receiver's Motion.

18 PLEASE TAKE FURTHER NOTICE that this Motion is posted on the Receiver's  
19 website at <http://www.robbevans.com/html/whitepine.html>, where it may be reviewed in  
20 its entirety. A copy of this Motion will be provided to any interested party upon receipt of a  
21 request therefore which may be directed to: Robb Evans & Associates LLC, Attn: Cherrie  
22 Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352 telephone: (818) 768-8100,  
23 facsimile: (818) 768-8802.

24 Dated: December 16, 2005  
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ROBB EVANS & ASSOCIATES LLC  
By:   
LINDA J. CANDLER, ESQ.  
ATTORNEY FOR RECEIVER

I.

INTRODUCTION

On October 21, 2004, Robb Evans & Associates LLC (“REA” or “Receiver”) was appointed as Temporary Receiver in the within action pursuant to an “*Ex Parte* Statutory Restraining Order; Order Permitting Expedited Discovery, the Appointment of a Receiver and Other Equitable Relief”. Thereafter, on October 28, 2004, the Court entered an Order of Preliminary Injunction (“Order”). Pursuant to the terms of the Order, REA was appointed as Receiver for Defendants White Pine Trust Corporation and Richard Matthews, and all of the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by them with the full powers of an equity Receiver. The Order states that the Receiver shall be the agent of the Court in acting as Receiver under the Order, and charges the Receiver with managing the assets of Receivership Defendants for the purpose of preserving the interests of, and preventing any loss, damage or injury to, customers or clients of Receivership Defendants. On November 18, 2004, the CFTC filed an Amended Complaint which added Lucia Matthews as a Relief Defendant and Stephen Baere as a Receivership Defendant. On February 23, 2005, the Receiver filed a Motion for Order Approving the Sale of Real and Personal Property and Modifying the Procedures for Sale. (Docket Entry 46). The Defendant, Richard Matthews, and the Plaintiff, CFTC, filed Notices of Non-Opposition (Docket Entry 44; Docket Entry 54).

On May 4, 2005, this Court entered an Order: (1) Granting in Part Receiver’s Motion for Order Approving Sale of Real and Personal Property; (2) Granting in Part Receiver’s Motion to Modify Statutory Sale Procedures; and (3) Approving Procedure for Limited Notice Thereof (“May 4, 2005 Order”), which authorized the Receiver to sell gold coins and other personal property of the Receivership Estate by private sale. (Docket Entry 66). The Receiver proceeded to sell personal property consisting of 6,398 gold one-ounce coins. The Receiver also sold the jewelry, for a sales price of approximately \$13,200.00.

Based on financial records reviewed by the Receiver’s staff, the Receiver determined that a number of the gold coins purchased by Richard and Lucia Matthews had not been

1 accounted for. Since the date of sale of the gold coins in the Receiver's possession, the  
2 Receiver has continued to investigate the missing gold coins. As a result of a further  
3 inquiry to Mr. Matthews, an additional 109 coins were recovered from a third party and  
4 turned over to the Receiver in November of 2005. By this Motion, the Receiver seeks  
5 authorization to sell these coins at a private sale, and further authorization to sell any  
6 additional coins that are located and returned to the Receiver.

7  
8 **II.**

9 **PROPOSED SALE**

10 Attached hereto in support of this Motion is the Declaration of Brick Kane,  
11 Deputy to the Receiver. As set out in Mr. Kane's Declaration, the Receiver believes that the  
12 maximum value will be obtained if these coins are sold at a private sale. Section 2004 of Title  
13 28 provides: "Any personal property sold under order or decree of any court of the United States  
14 shall be sold in accordance with Section 2001 of this title, unless the court orders otherwise." With  
15 respect to the sale of personal property items, Section 2004 expressly states that the Court may  
16 modify the sale procedures set forth in Section 2001. Subsection (b) of Section 2001 pertains to the  
17 sale of real property at private sale and states, in pertinent part:

18 After a hearing, of which notice to all interested parties shall be given by  
19 publication or otherwise as the court directs, the court may order the sale of  
20 such realty or interest or any part thereof at private sale for cash or other  
21 consideration and upon such terms and conditions as the court approves, if it  
22 finds that the best interest of the estate will be conserved thereby.  
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1 III.

2 **THE RECEIVER REQUESTS APPROVAL OF THE PROCEDURE FOR**  
3 **LIMITED NOTICE OF THIS MOTION**

4 Pursuant to Local Rule 66.1(f)(2), the Receiver is required to give at least ten days  
5 notice to all interested parties of the time and place for hearings on Receiver's petitions for  
6 confirmation of sales of property. The Receiver has served the parties by mail. The  
7 Receiver proposes to serve all investors by posting a copy of the motion on the Receiver's  
8 website, and by serving Notice of Motion on each investor by mail. There are  
9 approximately 220 known investors, and it is more cost-effective to serve the Motion and all  
10 accompanying exhibits by posting on the website. The Receiver will also provide a written  
11 copy to any investor, upon request. The expense associated with copying and serving this  
12 Motion and Declaration on all investors would be unduly burdensome and expensive, and  
13 service by posting on the website will save costs for the receivership estate.

14 This Court, as a court of equity supervising the receivership estate, may make  
15 appropriate administrative orders governing the receivership, including limitations on and  
16 changes in notice and other procedures. See F.R. Civ. P. 5(a) and (c) (authorizing the court  
17 to modify service procedures when numerous defendants are involved in litigation). Orders  
18 limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all  
19 creditors are routinely granted in bankruptcy cases to promote the expeditious and  
20 economical administration of bankruptcy estates. See In re First Alliance Mortgage Co., 269  
21 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the  
22 bankruptcy court's order limiting notice issued in that case); 11 U.S.C. § 102(1)(A) (defining  
23 the phrase "after notice and a hearing" to mean "after such notice as is appropriate in the  
24 particular circumstances, and such opportunity for hearing as is appropriate in the particular  
25 circumstances"); 11 U.S.C. § 105(a) and (d) (granting broad equitable powers to the court to  
26 issue orders "necessary or appropriate to carry out the provisions" of title 11 including  
27 "prescribing such limitations and conditions as the court deems appropriate to ensure the  
28 case is handled expeditiously and economically").

1 In light of the fact that the Motion is being served on the parties to the action  
2 and will be posted on the Receiver's website, the Receiver submits that it is reasonable and  
3 cost-effective to serve all investors of the Receivership entities by posting the Motion on the  
4 Receiver's website and by serving the Notice of Motion and instructions for requesting a  
5 written copy on all known investors by mail. The Receiver has communicated with many of  
6 the investors by email and is aware that many of the investors routinely check the Receiver's  
7 website for updated information about this case. The Receiver requests approval to proceed  
8 based on this procedure. Notice has been given in the Notice of Motion that the Receiver  
9 will provide a copy of the Motion and accompanying Declaration to any interested party  
10 upon request. Parties may direct such a request to: Robb Evans & Associates LLC, Attn:  
11 Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352 telephone: (818) 768-8100,  
12 facsimile: (818) 768-8802. The Motion will be posted on the Receiver's website at the  
13 following address: <http://www.robbevans.com/html/whitepine.html>.

14  
15 **IV.**

16 **CONCLUSION**

17 WHEREFORE, Robb Evans & Associates LLC, Receiver, prays that this Court  
18 enter an Order

19 1. Approving the sale of personal property, to wit approximately 109 gold coins,  
20 and any additional gold coins that may be transferred to the Receiver, by private sale, on the  
21 terms and conditions set forth in the Receiver's Motion dated February 23, 2005;

22 2. Approving the procedures for limited notice of this Motion described herein;  
23 and

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

25 Dated: December 16, 2005

ROBB EVANS & ASSOCIATES LLC

26  
27 By: 

LINDA J. CANDLER, ESQ.  
ATTORNEY FOR RECEIVER

**DECLARATION OF BRICK KANE**

I, BRICK KANE, declare as follows:

1. I am a Deputy to the Receiver, Robb Evans & Associates LLC. I have personal knowledge of the matters set forth in this declaration or have gained knowledge of these matters based upon my supervision of other members and staff of Robb Evans & Associates LLC who assist in the day-to-day management of this Receivership Estate. If called upon to testify as to these matters, I could and would competently testify thereto.

2. This Declaration is made in support of the Receiver's Motion for an Order authorizing the sale of certain personal property consisting of approximately 109 gold coins.


3. During the course of the investigation of receivership property, the Receiver and members of the Receiver's staff have determined that defendant Richard Matthews and Relief Defendant Lucia Matthews purchased 8,894 gold coins. The coins were purchased with White Pine Trust funds. The Receiver and members of the Receiver's staff have also examined financial records of numerous coin dealers and bank records of Defendant Richard Matthews regarding the sale of gold coins.

4. As set out in the Receiver's Previous Motion for an Order approving the sale of gold coins, although many of the gold coins had been accounted for, there were a number of coins still missing. Specifically, as of Sept 30, 2005, at least 757 gold coins had not been located, nor had financial records been located to account for the sale of these coins.

5. I spoke with counsel for Defendant Richard Matthews and asked if their client had any additional information about the missing gold coins. Following this request, the Receiver received a check for \$33,975 from Mr. Matthews' counsel in October 2005, which represented proceeds of the sale of some of the missing coins. On or about November 17, 2005, we received an additional 109 gold coins from Mr. Matthews' counsel. I was advised that these had been retrieved from a third party. At least 575 coins remain missing as of today.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 16 day of December, 2005, at Sun Valley, California.

  
\_\_\_\_\_  
BRICK KANE

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]  
2 ROBB EVANS & ASSOCIATES LLC  
3 11450 SHELDON STREET  
4 SUN VALLEY, CA 91352  
5 TELEPHONE: (818) 768-8100  
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8 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,  
9 PERMANENT RECEIVER

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

WHITE PINE TRUST CORPORATION,  
a California corporation, RICHARD  
MATTHEWS, an individual, and  
STEPHEN BAERE, an individual,

Defendants.

LUCIA MATTHEWS, an individual,

Relief Defendant.

CASE NO. 04cv2093-J (NLS)

[Proposed] ORDER (1) AUTHORIZING  
THE SALE OF PERSONAL  
PROPERTY, TO WIT:  
APPROXIMATELY 109 GOLD COINS  
AND (2) APPROVING PROCEDURE  
FOR LIMITED NOTICE THEREOF

Date: March 6, 2006

Time: 10:30 a.m.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

The Motion of Robb Evans & Associates LLC, Receiver in the above-captioned case, for Order (1) Authorizing the sale of certain personal property, to wit: approximately 109 gold coins, and any other missing coins that are subsequently located by the Receiver, by private sale; and (2) Approving Procedure for Limited Notice Thereof ("Motion") came on regularly for hearing on March 6, 2006, in Courtroom 12 of the above-referenced Court, the Honorable Napoleon A. Jones, Jr., United States District Judge, presiding. Linda Candler, Esq. appeared on behalf of the Permanent Receiver, Robb Evans & Associates LLC; other parties appeared as reflected in the Court's record.

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The Court, having reviewed the Motion and all papers filed in support thereof, and no opposition to the Motion having been filed, despite due and proper notice having been given, and good cause being shown therefore, the Court rules as follows:

IT IS HEREBY ORDERED:

1. The Motion shall be and hereby is granted in its entirety;
2. The Receiver is authorized to sell the gold coins by private sale; and
3. The Court approves the proposed limited notice procedures set forth in the Receiver's Motion.

Dated: \_\_\_\_\_

NAPOLEON A. JONES, JR.  
United States District Judge