



Approving the Receiver's Final Accounting; Approving the Receiver's costs and fees; Approving the abandonment in favor of Plaintiff of any other claims against third parties; and Approving the Receiver's action. Said motion is based on the grounds that the Receiver has liquidated all Assets to be liquidated, and that there is no aspect of the receivership remaining for this Court but for the approval of the Final Distribution and Final Accounting. No hearing has been set on the Motion at the present time and the Receiver does not request oral argument unless an opposition is filed and oral argument is requested.

The Receiver's Motion is based on this Notice; the Memorandum of Points and Authorities; the Declaration of Robb Evans annexed hereto, and the Court's records and pleadings on file in this action, and all other evidence, both oral and documentary, as may be presented at the time of hearing, if a hearing is subsequently scheduled by the Court.

Any person or entity opposing this Motion must file with the Court and serve upon the Receiver a written opposition, which complies in all respects with the rules of this Court. Failure to timely file an opposition may be deemed by the Court to be consent to the granting of the Receiver's Motion without a hearing.

**I.**  
**BACKGROUND**

In this case, the Receiver was appointed by the Court following the Defendant Allen Petty, Jr.'s conviction on October 30, 2002. On that date, the Jury also returned a

Special Verdict of Forfeiture. A Preliminary Order of Forfeiture was entered on December 20, 2002. The Receiver files this Motion based upon the Order Appointing Receiver dated January 27, 2003. Pursuant to that Order, Robb Evans, of Robb Evans & Associates LLC, was appointed to liquidate the property subject to forfeiture and oversee and administer claims made against the forfeited property for restitution.

Since his appointment, the Receiver has submitted periodic reports to the Court regarding the status of liquidation efforts and claims administration. At November 30, 2004, the sum of \$1,958,352.00 existed in the Receivership Estate. Of those funds, \$1,943,500.00 was distributed to the victims on or about February 9, 2005, following this Court's approval of the Receiver's Distribution Plan. The Receiver now submits this Motion for approval of a Final Distribution Plan, for remaining funds since the date of the last distribution. The Receiver also moves this Court for an Order authorizing the Receiver to Close the Estate, once the Final Distribution is Complete.

**II.**  
**REQUEST FOR APPROVAL OF PROPOSED**  
**DISTRIBUTION TO INVESTORS**

The Receiver is holding approximately \$60,574.43 for distribution. The Receiver proposes issuing Cashier's checks to each investor for this final distribution because the recipients will have three years to negotiate the checks. Thus, this eliminates the need to keep the Receivership estate open for six months or longer until

any uncleared checks are negotiated or remain unnegotiated. The three-year period will ensure that the checks remain valid and payable for a longer period of time, in the event that investors have moved and mail is forwarded. The Receiver estimates the cost of distribution will include approximately \$1,200.00 in bank charges for issuing Cashier's checks at \$8.00 per check. The Receiver has examined other options for a final distribution, including the use of stored-value credit cards for each investor, but the cost of issuing such cards would be more expensive as the individual data for each investor would have to be loaded onto the card by the issuing bank. The estimate of Receiver's costs also includes shredding fees of \$3,000.00. The Receiver proposes shredding all investor files, once the final distribution has occurred, because these files contain sensitive and personal information about the investors, including social security numbers. The costs of distribution of the final checks and other costs to close the estate totaled \$9,696.10, including payment of expenses incurred but not yet paid totaled \$20,278.33, will total approximately \$29,974.43.

The Receiver also proposes that distributions not be made to victims whose claims are less than \$50.00, as this is not cost-effective. There are approximately 1,632 victims in this category. The Receiver seeks approval to make a distribution to those victims whose claims total \$50.00 or more. There are approximately 250 victims who would receive funds in this category. Total claims for final distribution based on claimants with good addresses totaled \$9,729,986.88.

The Receiver proposes to distribute the sum of \$30,600.00, on a *pro rata* basis,

to investors with approved claims. Thus, each investor with an approved claim of \$50.00 or more would receive a final distribution of 0.5726% of his or her allowed claim. The Receiver proposes to pay the costs associated with this distribution and the remaining expenses of the Receivership out of the total funds held of \$60,574.43. Included with this Motion is the Receiver's Final Accounting and Report and a Motion for an Order discharging the Receiver. The Receiver has discussed this proposed final distribution plan with the United States Attorney's Office, and we are authorized to notify the Court of their non-opposition to this Motion.

The Receiver also seeks Approval of its Final Accounting. Attached hereto is the Declaration of Robb Evans setting out the Proposal for a Final Distribution, the Receiver's final fees and expenses, and the final accounting of the Receivership Estate. As set out in this Declaration, the Receiver is not aware of any other claims against the Receivership estate or assets to be collected on behalf of the Receivership estate and the Receiver's duties have been completed. The Receiver therefore seeks approval of Receiver's actions and discharge of all liability and an Order to extinguish all potential or unknown liability against the Receiver and its agents.

### III.

#### **MEMORANDUM OF POINTS & AUTHORITIES**

The Court's powers to approve the Receiver's proposals for administering the receivership estate are extremely broad. *See, SEC v. Hardy*, 803 F.2d 1034, 1037 (9<sup>th</sup> Cir. 1986) ["A district court's power to supervise an equity receivership and to

determine the appropriate action to be taken in the administration of the receivership is extremely broad.”] and SEC v. American Capital Invest. Inc., 98 F.3d 1133, 1144 (9<sup>th</sup> Cir. 1996) [appointing court “has broad powers and wide discretion to determine appropriate relief in equity receiverships.”] Similarly, in Texas State Court receiverships, “the duration of a receivership and its termination is within the sound judicial discretion of the court in which the suit is pending.” Gilles v. Yarbrough, 224 S.W.2d 720, 722 (Tex. Civ. App.-Fort Worth 1949, no writ); see also Mallou v. Payne & Vendig, 750 S.W.2d 251, 254-55 (Tex. App.-Dallas 1988, writ denied). Orders to terminate a receivership are within the sound discretion of the trial court and are reviewed for abuse of discretion. The same standard of review is employed for a trial court's decision whether to set aside an action taken by a receiver. See B.B.M.M., Ltd. v. Texas Commerce Bank-Chem., 777 S.W.2d 193, 197 (Tex. App.-Houston [14th Dist.] 1989, no writ); Cornelison v. First Nat'l Bank of San Angelo, 218 S.W.2d 888, 890 (Tex. Civ. App.-Austin 1949, writ ref'd n.r.e.) (both applying abuse of discretion standard to trial court's confirmation of receiver's sale of property).

The Fifth Circuit ruled on the appropriateness of a Receiver’s distribution plan in Securities and Exchange Commission v. Forex Asset Management, 242 F.3d 325, 242 F.3d 325 (5th Cir. 2001). In that case, an investor challenged the Receiver’s pro rata distribution plan. The Fifth Circuit approved the plan, and held that “we review the district court's decision to approve the Receiver's distribution plan for abuse of discretion” because the district court was ‘acting pursuant to its inherent equitable

powers' when it approved the plan." citing United States v. Durham, 86 F.3d 70, 72 (5th Cir. 1996) (abuse of discretion standard applies when a district court is "impos[ing] an equitable remedy"); and Quenzer v. United States, 19 F.3d 163, 165 (5th Cir. 1993), (the trial court is vested with broad discretionary powers in shaping equity decrees). The Fifth Circuit concluded that the district court in this case did not abuse its discretion in rejecting the investor's claim. The District Court held that "the facts did not support a remedy that would elevate the [investor's] claim above the other victims, and accordingly determined that a pro rata distribution would provide a fair and equitable remedy. Thus, the district court 'used its discretion in a logical way to divide the money,' and, therefore, did not abuse its discretion in approving the plan. " citing Durham, Id., at 73.

In this case, for the reasons discussed above, the Receiver believes the most equitable manner for distribution of the final sums available is to pay only those claims which equal or exceed \$50.00 and to pay those claims by cashier's check, so that the receivership estate may then be closed expeditiously.

## VI. CONCLUSION

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

1. Approving the Receiver's proposed distribution to investors in the sum of \$30,600.00 as described herein, and authorizing the Receiver to immediately disburse funds to investors with approved claims on a *pro rata* basis; and to make those

payments by cashier's check;

2. Approving the Receiver's Final Account and Report;
3. Approving the Receiver's Motion for Approval of Receivership Fees and

Costs;

4. Approving the Receiver's Motion to Abandon any remaining claims;
5. Approving the Receiver's action;
6. Approval of the Receiver to dispose of all books and records;
7. Discharging the Receiver and his staff from all liability; and
6. for such other and further relief as the Court may deem just and proper.

Dated: April 1, 2008

Respectfully submitted:

  
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Linda Candler

Counsel for Receiver, Robb Evans



## DECLARATION OF ROBB EVANS

I, ROBB EVANS, declare as follows:

1. I am the duly appointed, qualified and acting Receiver in the within action, pursuant to this Court's January 27, 2003 Order. I have caused the foregoing Motion to be prepared and know the contents thereof, and the same is true of my own knowledge, except as to those matters which are stated upon information or belief, and as to those matters, I believe them to be true.

2. Pursuant to the Order Appointing Receiver entered on January 27, 2003, I was appointed to liquidate the property subject to forfeiture and oversee and administer claims made against the forfeited property for restitution. Since my appointment, I have submitted periodic reports to the Court regarding the status of liquidation efforts and claims administration. The sum of \$60,574.43 exists in the Receivership Estate. This amount represents funds remained in the Receivership account from uncashed checks and incurred but unpaid Receivership expenses.

3. I now propose to distribute the sum of approximately \$30,600.00, on a *pro rata* basis, to investors with approved claims. Thus, each investor with an approved claim would receive a distribution of 0.5726% of his or her allowed claim. This amount represents the balance of funds remaining in the Receivership estate (\$60,574.43), net of fees and costs of final distribution of \$9,696.10 and outstanding accrued but unpaid fees and costs of \$20,278.33. Attached hereto as Exhibit 1 is my Final Account and Report.

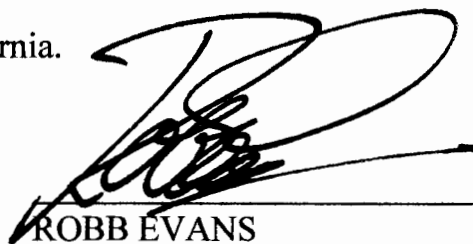
5. The Receiver has completed all of his tasks, as outlined in the Order of Appointment, and is ready to make the Final Distribution requested herein.

6. The Receiver now requests relief as follows:

- a. Approving the Receiver's Final Account and report;
- b. Approving the Receiver's actions;
- c. Approving the Receivership expenses, including the Receiver's Fees and Costs, those of his staff and his attorney, and other expenses;
- d. Terminating the Receivership;
- e. Discharging the Receiver and his staff from all liability;
- f. Approving the abandonment of any potential claims to any other assets of Defendant, and claims against third parties, if any;

Authorizing the Receiver to dispose of the books and records. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27<sup>th</sup> day of March, 2008, at

Bakersfield, California.



ROBB EVANS

**TAB 1**

**Robb Evans, Rec. in the Matter of USA v. Petty  
Receiver Administrative Expenses**

From Inception (January 27, 2003) to February 29, 2008 and closing Estimate for Final Distribution

	Previously Reported 1/27/03-12/9/04	Previously Estimate to Close	Previously Reported Total to Close	Actual from 1/27/03 to 2/29/08	Estimate to close with Final Distribution	Total from beginning (1/27/03) to closing including Estimate for Final Distribution
<b>Receiver's Admin. Expenses</b>						
Receiver's Fees & Costs	5,808.00	200.00	6,008.00	5,808.00	0.00	5,808.00
Receiver's Fees	674.45	0.00	674.45	674.45	0.00	674.45
Receiver's Costs	6,482.45	200.00	6,682.45	6,482.45	0.00	6,482.45
<b>Total Receiver's Fees &amp; Costs</b>						
<b>Staff</b>						
Senior Staff	15,600.75	660.00	16,260.75	20,188.75	1,080.00	21,268.75
Investor/Financial Reconstructi	54,223.75	2,425.00	56,648.75	57,992.75	1,600.00	59,592.75
Asset Resolution Manager	13,857.75	400.00	14,257.75	14,193.75	0.00	14,193.75
Asset Preservation	14,858.00	0.00	14,858.00	14,858.00	0.00	14,858.00
Investor Communications	7,596.19	88.72	7,684.91	7,653.86	0.00	7,653.86
Supporting Staff						
Employer's Tax	1,558.51	115.80	1,674.31	1,760.94	82.79	1,843.73
Supporting Staff - Other	10,987.23	2,665.00	13,652.23	12,718.33	689.92	13,408.25
<b>Total Supporting Staff</b>	<b>12,545.74</b>	<b>2,780.80</b>	<b>15,326.54</b>	<b>14,479.27</b>	<b>772.71</b>	<b>15,251.98</b>
<b>Total Staff</b>	<b>118,682.18</b>	<b>6,354.52</b>	<b>125,036.70</b>	<b>129,366.38</b>	<b>3,452.71</b>	<b>132,819.09</b>
<b>Out-Of-Pocket Expenses</b>						
Legal Fees & Costs	2,744.19	0.00	2,744.19	2,744.19	0.00	2,744.19
Legal Costs	42.74	50.00	92.74	53.10	50.00	103.10
Legal Fees	5,074.00	1,400.00	6,474.00	8,265.00	1,000.00	9,265.00
<b>Total Legal Fees &amp; Costs</b>	<b>5,116.74</b>	<b>1,450.00</b>	<b>6,566.74</b>	<b>8,318.10</b>	<b>1,050.00</b>	<b>9,368.10</b>
<b>Asset Protection</b>						
Insurance Expense	5,090.09	0.00	5,090.09	5,090.09	0.00	5,090.09
Storage Rental Expense	174.00	0.00	174.00	174.00	0.00	174.00
Miscellaneous Expense	1,808.66	0.00	1,808.66	1,808.66	0.00	1,808.66
Management Fee	1,613.24	0.00	1,613.24	1,613.24	0.00	1,613.24
Legal Fees	1,300.00	0.00	1,300.00	1,300.00	0.00	1,300.00
Asset Protection - Other	12,854.96	0.00	12,854.96	12,854.96	0.00	12,854.96
<b>Total Asset Protection</b>	<b>22,840.95</b>	<b>0.00</b>	<b>22,840.95</b>	<b>22,840.95</b>	<b>0.00</b>	<b>22,840.95</b>
<b>Printing &amp; Reproduction</b>						
Office Supplies & Telephone	207.62	600.00	807.62	333.06	0.00	333.06
Postage & Delivery	598.68	100.00	698.68	666.93	67.39	734.32
Appraisal Expense	3,103.81	1,000.00	4,103.81	4,292.48	126.00	4,418.48
Auction Expense	4,511.90	0.00	4,511.90	4,511.90	0.00	4,511.90
Miscellaneous Expense	293.90	0.00	293.90	293.90	0.00	293.90
Bank Service Charges	83.39	15.00	98.39	407.39	2,000.00	2,407.39
Miscellaneous Expense - Other	2,422.29	62.02	2,484.31	2,617.29	3,000.00	5,617.29
<b>Total Miscellaneous Expense</b>	<b>2,505.68</b>	<b>77.02</b>	<b>2,582.70</b>	<b>3,024.68</b>	<b>5,000.00</b>	<b>8,024.68</b>
<b>Total Receiver's Admin. Expenses</b>	<b>167,088.10</b>	<b>9,781.54</b>	<b>176,869.64</b>	<b>182,875.02</b>	<b>9,696.10</b>	<b>192,571.12</b>
<b>1st Distribution</b>						
Funds Available for Distribution			1,943,500.00	1,897,720.94	30,600.00	1,928,320.94
<b>Total Distribution</b>						