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10 Attorneys for Receiver
ROBB EVANS & ASSOCIATES LLC

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**
13

14 THE PEOPLE OF THE STATE OF CALIFORNIA,
15 by and through the COMMISSIONER OF
CORPORATIONS,

16 Plaintiff,

17 v.

18 MICHAEL P. GAMBOA; individually and doing
19 business as GAMBOA & COMPANY; MPG, LLC;
MARK H. POORE; RMB OPERATIONS, LLC;
20 PALETTE SIENNA INTERNATIONAL FUND,
LLC; PALETTE GROUP, LLC; PALETTE II
21 GROUP, LLC; PALETTE III GROUP, LLC;
PALETTE IV GROUP, LLC; PALETTE AQUA
22 INVESTMENT FUND, LLC; PALETTE COBALT
INVESTMENT FUND, LLC; THE CRIMSON
23 FUND, LLC; EPLAY, LLC; EPLAY
INVESTMENTS LLC; EPLAY INVESTMENTS 2
24 LLC; POGA MANAGEMENT PARTNERS, LLC;
401K RETIREMENT SOLUTIONS, LLC; MXM
25 INVESTMENTS, LLC and DOES 1-100,

26 Defendants.
27
28

ENDORSED
FILED
Superior Court of California
County of San Francisco

OCT 25 2010

CLERK OF THE COURT
BY: MICHAEL RAYRAY
Deputy Clerk

CASE NO. CGC 09-492027

Date: December 9, 2010
Time: 11:00 a.m.
Place: Department 305
Judge: Hon. John E. Munter

**MOTION FOR ORDER
APPROVING RECEIVER'S
FINAL REPORT AND
ACCOUNTING, DISCHARGING
RECEIVER, EXONERATING
RECEIVER'S BOND,
AUTHORIZING ABANDONMENT
AND DESTRUCTION OF
RECORDS AND FOR RELATED
RELIEF; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Filed Concurrently with Notice of
Hearing, Kane Declaration, Request for
Judicial Notice, and [Proposed] Order]

1 TO: ALL PARTIES TO THIS ACTION AND THEIR COUNSEL AND ALL OTHER
2 INTERESTED PARTIES NAMED ON THE ATTACHED SERVICE LIST:

3 COMES NOW, Robb Evans & Associates LLC ("Receiver") and moves the Court for an
4 order approving the Receiver's final report as set forth in this Motion and the supporting
5 Memorandum and the Receiver's final accounting attached as Exhibit 1 to the Declaration of
6 Brick Kane ("Kane Declaration") filed concurrently herewith, discharging the Receiver,
7 exonerating his bond, authorizing abandonment and destruction of records and for related relief in
8 connection with the wind up and termination of the receivership. The Receiver further seeks the
9 following relief:

10 A. An order approving the Receiver's final report as set forth in this Motion and the
11 supporting Memorandum and the Receiver's final accounting, Exhibit 1 to the Kane Declaration,
12 and approving and confirming all activities of the Receiver in connection with the administration
13 of the receivership estate as described herein and in the Memorandum;

14 B. An order discharging the Receiver Robb Evans & Associates LLC, and
15 discharging and releasing the Receiver, its deputies, members, officers, agents, employees,
16 attorneys and representatives from any and all claims and liabilities that were asserted and/or
17 could have been asserted in the receivership estate and in connection with their administration of
18 the receivership estate, including without limitation all claims and causes of action asserted or
19 that could have been asserted by Shelby Belogorsky, as Trustee of the Shelby Belogorsky Trust
20 and as Trustee of the Anderson Grandchildren Trust, Arthur Folker, Cindy Folker and Brian J.
21 Breiling (individually and collectively the "Aqua Fund Objectors") as set forth in the proposed
22 complaints in intervention previously lodged with the Court in connection with the receivership;

23 C. An order relieving the Receiver, its deputies, members, officers, agents,
24 employees, attorneys and representatives from all duties and responsibilities in connection with
25 the estate;

26 D. An order exonerating the Receiver's bond;

27 E. To the extent the Receiver is in possession or custody of records of Defendants, or
28 any of them, an order authorizing the Receiver to dispose of and destroy such records within 30

1 days of the date of the Order unless within such 30-day period, plaintiff Department of
2 Corporations has served the Receiver with a written request for possession of such records and
3 has in fact taken possession and custody of such records prior to the expiration of such 30-day
4 period at plaintiff's expense, or alternatively, unless within such 30-day period, the Receiver has
5 been served with a subpoena for such records by another governmental or law enforcement
6 agency, in which case the Receiver is authorized to turn over such records to such governmental
7 or law enforcement agency pursuant to such subpoena at such requesting party's expense. The
8 Receiver requests that the order further provide that to the extent plaintiff and/or such
9 governmental or law enforcement agency does not take possession of any portion of such records
10 within such 30-day period, the Receiver is authorized to dispose of and destroy such records;

11 F. An order directing the Defendants, and each of them, to provide the Receiver a
12 forwarding address for mail within five calendar days of the date of entry of this Order, and
13 further providing that if Defendants, or any of them, fail to provide a forwarding address for mail
14 within such five-day period that the Receiver is authorized to file with the U.S. Postal Service
15 forwarding orders directing all mail for all defendants to be sent to Mark Poore at his last known
16 address in Maryland. Further, the Receiver seeks an order that to the extent that any of the
17 Defendants requests mail in the Receiver's custody to be forwarded to that party, the Defendant
18 be required to reimburse the Receiver for the cost of mailing, and that to the extent the Defendant
19 fails to pay the cost of mailing to a forwarding address any mail of Defendants in the Receiver's
20 possession, that the Receiver be authorized to dispose of and destroy mail received on behalf of
21 Defendants;

22 G. An order directing the Aqua Fund Objectors to comply with paragraph 2 of the
23 Stipulated Order Resolving: (1) Aqua Fund Objectors' Dispute with the Receiver; and (2)
24 Receiver's Motion for Approval and Payment of Receiver's Fees and Expenses, Including Fees
25 and Expenses of Its Counsel issued by the Court on September 8, 2010 ("Fee Allowance Order")
26 pursuant to which the Aqua Fund Objectors are to direct the Receiver as to the manner in which
27 the Aqua Fund assets held for the benefit of the Aqua Fund Objectors are to be turned over to the
28 Aqua Fund Objectors by the Receiver and if they do not comply within ten days of entry of an

1 order granting this relief that the Receiver abandon Palette Aqua Investment Fund, LLC (“Aqua
2 Fund”) to the members of Aqua Fund and that Aqua Fund be thereafter operated pursuant to the
3 Aqua Fund governance documents and applicable state law; and

4 H. An order for such other and further relief as this Court may deem just and proper.

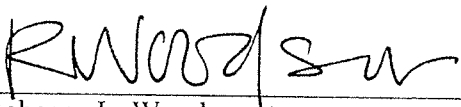
5 Good cause exists for the relief sought in this Motion, as more fully detailed in the
6 Memorandum of Points and Authorities in support of the Motion, in that judgment has been
7 entered against the Defendants, all known assets of the receivership estate have either been
8 abandoned, liquidated or resolved pursuant to the Fee Allowance Order, and pursuant to the Fee
9 Allowance Order the Receiver has been directed to wind up and close the receivership estate as
10 soon as practicable, and it is therefore necessary and appropriate that the receivership be
11 concluded, the Receiver file a final report and accounting, that the Receiver be discharged and its
12 bond exonerated pursuant to California Rules of Court 3.1184.

13 This Motion is made and based on the Notice of Hearing on the Motion, this Motion, the
14 Memorandum of Points and Authorities, Declaration of Brick Kane, Request for Judicial Notice
15 and proposed order filed in support hereof, on the pleadings, records and files of the Court in this
16 case, and on such further oral and documentary evidence and arguments of counsel for the
17 Receiver as may be presented in support of the Motion prior to or at the hearing.

18 Dated: October 25, 2010

19 Respectfully submitted,

20 MCKENNA LONG & ALDRIDGE LLP
21 GARY OWEN CARIS
22 LESLEY ANNE HAWES

23 By: 
24 Rebecca L. Woodson
25 Attorneys for Receiver
26 ROBB EVANS & ASSOCIATES LLC
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 This action was commenced by plaintiff against defendants Michael P. Gamboa
4 (“Gamboa”), Mark H. Poore (“Poore”) and various limited liability companies and other entities
5 owned and controlled, directly or indirectly, by Gamboa and Poore as a civil enforcement action
6 based on alleged violations of California securities laws and other provisions of the California
7 Corporations Code. The Receiver was initially appointed as Temporary Receiver under the
8 Court’s Ex Parte Temporary Restraining Order issued in September 2009. The Receiver’s
9 appointment was continued as Receiver under the Court’s Order Issuing Preliminary Injunction,
10 Appointing A Receiver, and Freezing Defendants’ Assets filed October 8, 2009 (“Receivership
11 Order”).

12 On January 8, 2010, the Receiver filed its Report of Receiver’s Activities for the Period
13 September 1, 2009 Through December 31, 2009 (“Receiver’s Report”) which provides a detailed,
14 41-page single-spaced report of the Receiver’s activities and of the results of the Receiver’s
15 investigation and forensic accounting analysis of the Receivership Entities, the Defendants’
16 financial and business operations and transactions prior to the receivership, and the status of the
17 estate. The Receiver’s Report also included 48 exhibits, comprised mainly of detailed financial
18 analyses and spreadsheets.

19 On March 19, 2010, the Receiver filed two motions for instructions, including the Motion
20 for Instructions Concerning (1) Exclusion of Mark Poore Accountancy Practice from Estate; (2)
21 Treatment of Personal Expenses and Liabilities of Defendants Mark H. Poore and Michael P.
22 Gamboa and Abandonment of Assets; and (3) Sale of Estate’s Interest in Vehicle By Private Sale
23 Under Modified Sale Procedures (“Abandonment/Sale Motion”) and the Motion for Instructions
24 Concerning Continuation of Receivership and Financial Condition of Receivership Estate
25 (Receivership Order, Para. B.13) and For Approval and Authority to Liquidate Aqua Fund
26 Investments (“Financial Status Motion”).

27 The hearing on the two motions for instructions as well as a motion by defendant Mark H.
28 Poore (“Poore”) for a good faith settlement determination in connection with the proposed

1 stipulation for judgment against the two individual defendants Michael P. Gamboa (“Gamboa”)
2 and Poore was conducted on April 19, 2010. The Abandonment/Sale Motion was not opposed,
3 and the Court subsequently entered an order granting the relief sought in that motion.

4 The Court continued the hearing on the Receiver’s Financial Status Motion to June 10,
5 2010 and provided for the Receiver to file and serve a fee motion by May 10, 2010. The Receiver
6 filed its Motion for Approval and Payment of Receiver’s Fees and Expenses, Including Fees and
7 Expenses of Its Counsel [Inception Through February 28, 2010] (“Fee Motion”). The Fee Motion
8 sought approval and payment of Receiver’s fees and costs and attorneys’ fees and costs totaling
9 \$438,559.13, incurred during the six months of the receivership through February 28, 2010 and
10 sought authority to pay such fees and expenses from the assets of the receivership estate,
11 including without limitation, the assets of The Palette Aqua Investment Fund, LLC (“Aqua
12 Fund”) pursuant to the instructions sought in the Receiver’s Financial Status Motion. Certain of
13 the Aqua Fund investors, specifically Shelby Belogorsky, as Trustee of the Shelby Belogorsky
14 Trust and as Trustee of the Anderson Grandchildren Trust, Arthur Folker, Cindy Folker and Brian
15 J. Breiling (individually and collectively the “Aqua Fund Objectors”), opposed the Receiver’s Fee
16 Motion as well as the instructions sought in the Financial Status Motion. The Aqua Fund
17 Objectors filed motions for leave to intervene and to file complaints in intervention seeking
18 declaratory and other relief concerning the assets and disposition of Aqua Fund, including orders
19 declaring that the investments in the Aqua Fund could not be used to pay receivership fees and
20 expenses.

21 The Court issued an oral tentative ruling at the June 10, 2010 hearing on the Fee Motion
22 and other matters, and continued the hearing to August 18, 2010. A settlement conference was
23 also scheduled in July 2010 before Judge Robertson of the San Francisco Superior Court to
24 attempt to resolve the disputes between the Receiver and the Aqua Fund Objectors. The
25 settlement conference was successful and resulted in the parties entering into the Stipulated Order
26 Resolving: (1) Aqua Fund Objectors’ Dispute with the Receiver; and (2) Receiver’s Motion for
27 Approval and Payment of Receiver’s Fees and Expenses, Including Fees and Expenses of Its
28 Counsel issued by the Court on September 8, 2010 (“Fee Allowance Order”).

1 Under the Fee Allowance Order, the Receiver's requested fees and expenses of \$438,000
2 set forth in the Fee Motion have been allowed and authorized to be paid from cash on hand in the
3 receivership estate (estimated to be \$44,000 as of July 28, 2010), from any Aqua Fund
4 investments not held by or for the benefit of the Aqua Fund Objectors (estimated to have a value
5 of approximately \$26,000 as of the end of July 2010) and from the aggregate sum of \$250,000 in
6 payments made to the Receiver by the Aqua Fund Objectors (which payments were received on
7 or about September 27, 2010). The Receiver and its counsel have continued to perform services
8 and incur substantial fees and expenses from and after March 1, 2010 in the administration of the
9 estate, including in preparing and filing pleadings on and appearing at hearings on the
10 Abandonment/Sale Motion, the Financial Status Motion, the Fee Motion and the Aqua Fund
11 Objectors' motions to intervene. Based on the provisions of the Fee Allowance Order and given
12 the status of the estate and the instructions by the Court in the Fee Allowance Order to wind up
13 the estate as expeditiously as possible, the Receiver's Motion and this supporting Memorandum
14 constitute the Receiver's final report.

15 The Receiver has submitted a Final Accounting attached as Exhibit 1 to the Declaration of
16 Brick Kane in support of this Motion. The Final Accounting summarizes all receipts and
17 disbursements and funds on hand in the estate from the inception of the case through August 31,
18 2010. The only material change in the financial status of the estate since August 31, 2010 is the
19 Receiver's receipt of the \$250,000 in funds from the Aqua Fund Objectors on or about September
20 27, 2010 pursuant to the Fee Allowance Order.

21 The Aqua Fund Objectors are required under the Fee Allowance Order to direct the
22 Receiver as to the manner in which the Receiver should turn over Aqua Fund to them. The
23 Receiver has not been provided such direction to date. The Receiver seeks an order requiring the
24 Aqua Fund Objectors to comply with that provision of the Fee Allowance Order and direct the
25 Receiver as to how to turn over Aqua Fund to them. However, if within ten days of the date of
26 entry of the order on this Motion the Aqua Fund Objectors fail to provide direction to the
27 Receiver as to how to turn over Aqua Fund to them, then the Receiver requests that the order
28 provide for the Receiver to abandon Aqua Fund to the members of Aqua Fund and for Aqua Fund

1 to be thereafter operated pursuant to the Aqua Fund governance documents and applicable state
2 law.

3 The Receiver is holding substantial records of the Defendants which the Receiver took
4 custody of under the terms of the Receivership Order. These records include confidential
5 financial information and personal identifying information. The Receiver therefore seeks leave to
6 destroy those records unless plaintiff Department of Corporations or another governmental or law
7 enforcement agency takes custody of the records within 30 days of issuance of the order on this
8 Motion.

9 The Receiver also seeks orders concerning the mail that the Receiver continues to receive
10 for the Defendants. The Receiver has filed with the United States Postal Service an order to
11 terminate the prior forwarding order by which mail of Mark Poore sent to his Beachwood
12 residence address was being forwarded to the Receiver. However, certain mail of Mark Poore
13 continues to be sent to the Receiver, and all mail for the receivership entities is presently
14 forwarded to the Receiver. Defendant Gamboa's mail has not been forwarded to the Receiver.
15 The Receiver seeks an order directing the Defendants to provide current forwarding addresses for
16 all Defendants within five days after entry of the Court's order on this Motion. The Receiver
17 further seeks authorization to file with the U.S. Postal Service forwarding orders directing all mail
18 for all defendants to be sent to Mark Poore at his last known address in Maryland if no other
19 instructions are timely issued to the Receiver by the Defendants. To the extent that any of the
20 Defendants requests mail in the Receiver's custody to be forwarded to that party, the Receiver
21 requests that the Defendant be required to reimburse the Receiver for the cost of mailing.

22 **II. AN ORDER OF DISCHARGE AND OTHER RELATED RELIEF SHOULD BE**
23 **ISSUED**

24 California Rule of Court, Rule 3.1184 provides for a receiver to file a final report and
25 accounting with the Court. The Rule further provides for the Receiver to seek approval of the
26 final report and accounting, a discharge and exoneration of the Receiver's bond in connection
27 with the wind up of the receivership estate. That rule requires that the motion be heard as a
28 noticed motion and that the known potential creditors receive notice of the motion.

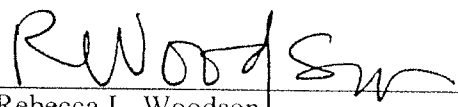
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This motion complies with the provisions of this rule. The motion has been served on the parties to the action through their counsel, on Michael P. Gamboa and Mark Poore at their last known addresses and by electronic mail, and on the known potential creditors of the receivership entities, including both the known investor creditors and non-investor creditors. All known post-receivership claims of the receivership estate, other than the Receiver and the Receiver's counsel, have been paid and therefore all known unpaid post-receivership claimants have also been served or have notice of the motion.

WHEREFORE, based on the foregoing, the Receiver respectfully requests that the Court grant relief as sought in this Motion.

Dated: October 25, 2010

MCKENNA LONG & ALDRIDGE LLP
Gary Owen Caris
Lesley Anne Hawes
Rebecca L. Woodson

By: 
Rebecca L. Woodson
Attorneys for Receiver
ROBB EVANS & ASSOCIATES
LLC

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9 Facsimile: (415) 267-4198

10 Attorneys for Receiver
ROBB EVANS & ASSOCIATES LLC

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

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15 THE PEOPLE OF THE STATE OF CALIFORNIA,
by and through the COMMISSIONER OF
16 CORPORATIONS,

17 Plaintiff,

18 v.

19 MICHAEL P. GAMBOA; individually and doing
business as GAMBOA & COMPANY; MPG, LLC;
20 MARK H. POORE; RMB OPERATIONS, LLC;
PALETTE SIENNA INTERNATIONAL FUND,
21 LLC; PALETTE GROUP, LLC; PALETTE II
GROUP, LLC; PALETTE III GROUP, LLC;
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24 LLC; POGA MANAGEMENT PARTNERS, LLC;
401K RETIREMENT SOLUTIONS, LLC; MXM
25 INVESTMENTS, LLC and DOES 1-100,

26 Defendants.
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ENDORSED
FILED
Superior Court of California
County of San Francisco

NOV 17 2010

CLERK OF THE COURT
BY: WESLEY RAMIREZ
Deputy Clerk

CASE NO. CGC 09-492027

Date December 9, 2010
Time: 11:00 a.m.
Place: Department 305
Judge: Hon. John E. Munter

**AMENDED/CORRECTED
DECLARATION OF BRICK KANE
IN SUPPORT OF MOTION FOR
ORDER APPROVING
RECEIVER'S FINAL REPORT
AND ACCOUNTING,
DISCHARGING RECEIVER,
EXONERATING RECEIVER'S
BOND, AUTHORIZING
ABANDONMENT AND
DESTRUCTION OF RECORDS
AND FOR RELATED RELIEF**

[Filed Concurrently with Notice of
Hearing, Motion, Request for Judicial
Notice, and [Proposed] Order]

1 I, Brick Kane, declare:

2 1. I am the Chief Operating Officer of Robb Evans & Associates LLC (“Receiver”),
3 the receiver under the Court’s Order Issuing Preliminary Injunction, Appointing a Receiver, and
4 Freezing Defendants’ Assets filed October 8, 2009 (“Receivership Order”). If called upon to
5 testify as to the facts set forth in this declaration, I could and would testify competently thereto as
6 the facts are personally known to me to be true.

7 2. I am one of the deputies to the Receiver responsible for the day-to-day supervision
8 of the receivership estate and am familiar with the Receiver’s investigation and other activities in
9 the case to date. I personally participated in the preparation of the Report of Receiver’s Activities
10 filed January 8, 2010 (“Receiver’s Report”) and monitored and supervised the other members of
11 the Receiver’s office who participated in the preparation of the Receiver’s Report. I also
12 reviewed and approved the Receiver’s Special Report dated March 1, 2010 (“Receiver’s Special
13 Report”) and supervised the preparation of the financial summary attached to the Receiver’s
14 Special Report as Tab 1. The Receiver’s Special Report was attached as Exhibit 1 to my
15 declaration filed in support of the Receiver’s Motion for Instructions Concerning Continuation of
16 Receivership and Financial Condition of Receivership Estate (Receivership Order, Para. B.13)
17 and For Approval and Authority to Liquidate Aqua Fund Investments (“Financial Status Motion”)
18 initially heard by the Court on April 19, 2010. As to the facts set forth in this Declaration, I know
19 the facts to be true of my own personal knowledge or I have gained knowledge of such facts
20 through my role in the supervision and administration of the receivership estate in this case as a
21 deputy to the Receiver.

22 3. The Receiver was initially appointed to implement an asset freeze imposed in the
23 Court’s Order on Ex Parte Application Appointing A Receiver and Freezing Defendants’ Assets
24 (“Asset Freeze Order”) issued on August 31, 2009. On September 3, 2009, the Court issued the
25 Order on Ex Parte Application, Appointment of a Receiver, Freezing Defendants’ Assets and
26 Issuing a Temporary Restraining Order (“TRO”), pursuant to which the Receiver was appointed
27 as an equity receiver over the Receivership Entities and the assets of the individual defendants
28 Gamboa and Poore. The Receiver’s appointment was continued as Receiver under the Court’s

1 Order Issuing Preliminary Injunction, Appointing A Receiver, and Freezing Defendants' Assets
2 filed October 8, 2009 ("Receivership Order").

3 4. On January 8, 2010, the Receiver filed Receiver's Report which provides a
4 detailed, 41-page single-spaced report of the Receiver's activities and of the results of the
5 Receiver's investigation and forensic accounting analysis of the Receivership Entities, the
6 Defendants' financial and business operations and transactions prior to the receivership, and the
7 status of the estate. The Receiver's Report also included 48 exhibits, comprised mainly of
8 detailed financial analyses and spreadsheets.

9 5. On March 19, 2010, the Receiver filed two motions for instructions, including the
10 Motion for Instructions Concerning (1) Exclusion of Mark Poore Accountancy Practice from
11 Estate; (2) Treatment of Personal Expenses and Liabilities of Defendants Mark H. Poore and
12 Michael P. Gamboa and Abandonment of Assets; and (3) Sale of Estate's Interest in Vehicle By
13 Private Sale Under Modified Sale Procedures ("Abandonment/Sale Motion") and the Motion for
14 Instructions Concerning Continuation of Receivership and Financial Condition of Receivership
15 Estate (Receivership Order, Para. B.13) and For Approval and Authority to Liquidate Aqua Fund
16 Investments ("Financial Status Motion").

17 6. The hearing on the two motions for instructions as well as a motion by defendant
18 Mark H. Poore ("Poore") for a good faith settlement determination in connection with the
19 proposed stipulation for judgment against the two individual defendants Michael P. Gamboa
20 ("Gamboa") and Poore was conducted on April 19, 2010. The Abandonment/Sale Motion was
21 not opposed, and the Court subsequently entered an order granting the relief sought in that
22 motion.

23 7. The Court continued the hearing on the Receiver's Financial Status Motion to June
24 10, 2010 and provided for the Receiver to file and serve a fee motion by May 10, 2010. The
25 Receiver filed its Motion for Approval and Payment of Receiver's Fees and Expenses, Including
26 Fees and Expenses of Its Counsel [Inception Through February 28, 2010] ("Fee Motion"). The
27 Fee Motion sought approval and payment of Receiver's fees and costs and attorneys' fees and
28 costs totaling \$438,559.13, incurred during the six months of the receivership through February

1 28, 2010 and sought authority to pay such fees and expenses from the assets of the receivership
2 estate, including without limitation, the assets of The Palette Aqua Investment Fund, LLC (“Aqua
3 Fund”) pursuant to the instructions sought in the Receiver’s Financial Status Motion.

4 8. Certain of the Aqua Fund investors, specifically Shelby Belogorsky, as Trustee of
5 the Shelby Belogorsky Trust and as Trustee of the Anderson Grandchildren Trust, Arthur Folker,
6 Cindy Folker and Brian J. Breiling (individually and collectively the “Aqua Fund Objectors”),
7 opposed the Receiver’s Fee Motion as well as the instructions sought in the Financial Status
8 Motion. The Aqua Fund Objectors filed motions for leave to intervene and to file complaints in
9 intervention seeking declaratory and other relief concerning the assets and disposition of Aqua
10 Fund, including orders declaring that the investments in the Aqua Fund could not be used to pay
11 receivership fees and expenses.

12 9. At the June 10, 2010 hearing, the Court continued the hearing on the Fee Motion
13 to August 18, 2010. The Court scheduled a settlement conference in July 2010 before Judge
14 Robertson of the San Francisco Superior Court to attempt to resolve the disputes between the
15 Receiver and the Aqua Fund Objectors. The settlement conference was successful and resulted in
16 the parties entering into the Stipulated Order Resolving: (1) Aqua Fund Objectors’ Dispute with
17 the Receiver; and (2) Receiver’s Motion for Approval and Payment of Receiver’s Fees and
18 Expenses, Including Fees and Expenses of Its Counsel issued by the Court on September 8, 2010
19 (“Fee Allowance Order”).

20 10. Under the Fee Allowance Order, the Receiver’s requested fees and expenses of
21 \$438,000 set forth in the Fee Motion have been allowed and authorized to be paid from cash on
22 hand in the receivership estate (estimated to be \$44,000 as of July 28, 2010), from any Aqua Fund
23 investments not held by or for the benefit of the Aqua Fund Objectors (estimated to have a value
24 of approximately \$26,000 as of the end of July 2010) and from the aggregate sum of \$250,000 in
25 payments made to the Receiver by the Aqua Fund Objectors (which payments were received on
26 or about September 27, 2010). The Receiver and its counsel have continued to perform services
27 and incur substantial fees and expenses from and after March 1, 2010 in the administration of the
28 estate, including in preparing and filing pleadings on and appearing at hearings on the

1 Abandonment/Sale Motion, the Financial Status Motion, the Fee Motion and the Aqua Fund
2 Objectors' motions to intervene. The estate is administratively insolvent, and the Receiver has
3 been directed to wind up the estate.

4 11. Attached hereto as Exhibit 1 is the Receiver's Final Accounting. The Final
5 Accounting summarizes all receipts and disbursements and funds on hand in the estate from the
6 inception of the case through August 31, 2010. The only material change in the financial status of
7 the estate since August 31, 2010 is the Receiver's receipt of the \$250,000 in funds from the Aqua
8 Fund Objectors on or about September 27, 2010 pursuant to the Fee Allowance Order. The Final
9 Accounting is prepared in the ordinary course of the Receiver's business by members of the
10 Receiver's office with a duty to review, maintain, report and account for receipts, funds and
11 expenses of the receivership estate and for time spent rendering services to receivership estates
12 over which the Receiver has been appointed. As a member of Robb Evans & Associates LLC, I
13 am familiar with the methods and procedures used by the Receiver and its staff and employees to
14 review, maintain, report and account for such receipts, funds and expenses of receivership estates
15 over which the Receiver has been appointed. Based upon my experience with Robb Evans &
16 Associates LLC, I believe the Receiver's methods and procedures for recording and accounting
17 for receipts, funds and expenses of receivership estates over which the Receiver has been
18 appointed are reliable and accurate.

19 12. The Aqua Fund Objectors are required under the Fee Allowance Order to direct
20 the Receiver as to the manner in which the Receiver should turn over Aqua Fund to them. As of
21 the date of this declaration, the Receiver has not been provided such direction.

22 13. The Receiver is holding substantial records of the Defendants which the Receiver
23 took custody of under the terms of the Receivership Order. These records include confidential
24 financial information and personal identifying information.

25 14. The Receiver has filed with the United States Postal Service an order to terminate
26 the prior forwarding order by which mail of Mark Poore sent to his Beachwood residence address
27 was being forwarded to the Receiver. However, certain mail of Mark Poore continues to be sent
28 to the Receiver, and all mail for the receivership entities is presently forwarded to the Receiver.

NOV. 17. 2010 10.15AM

RODD EVANG & ASSOC. LAS VEGAS

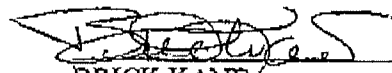
NO. 9456 P. 2

1 Defendant Gamboa's mail has not been forwarded to the Receiver. The Receiver seeks an order
 2 directing Mark Poore and Michael Gamboa to provide current forwarding addresses for all
 3 Defendants within five days after entry of the Court's order on this Motion. The Receiver further
 4 seeks authorization to file with the U.S. Postal Service forwarding orders directing all mail for all
 5 defendants to be sent to Mark Poore at his last known address in Maryland if no other instructions
 6 are timely issued by the parties. To the extent that any of the defendants requests mail in the
 7 Receiver's custody to be forwarded to that party, the Receiver requests that the defendant be
 8 required to reimburse the Receiver for the cost of mailing.

9 15. The Receiver has paid all known post-receivership claims, other than
 10 compensation claims of the Receiver and his counsel. The Receiver is not aware of any person or
 11 entity with a substantial, unsatisfied post-receivership claim other than the Receiver and its
 12 counsel, and therefore all such claimants have notice of this Motion.

13 16. In addition, the Receiver has caused notice of the motion to be served on all
 14 known pre-receivership creditors of the receivership entities, including all known investor and
 15 non-investor creditors based on the records of the receivership entities.

16 I declare under penalty of perjury that the foregoing is true and correct and that this
 17 declaration was executed this 17 day of November 2010 at Las Vegas, Nevada.

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 19 
 20 BRICK KANE

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 McKenna Long &
 Aldridge LLP
 ATTORNEYS AT LAW
 LOS ANGELES

EXHIBIT 1

Robb Evans & Associates LLC, Receiver of
 Michael P. Gamboa, individually and dba Gamboa and Company, Mark H. Poore et al.
 Receiver Administrative Expenses by Month & Fund Balance
 From Inception to September 28, 2010

	8/31/09- 2/28/10	Mar 31, 10	Apr 30, 10	May 31, 10	Jun 30, 10	Jul 31, 10	Aug 31, 10	Sep 28, 10	3/1/10- 9/28/10	TOTAL
Funds Transferred In										
Belogony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	20,000.00	20,000.00	20,000.00
Folker & Breiling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	230,000.00	230,000.00	230,000.00
401K Retirement Solutions	0.00	0.00	11,351.89	0.00	0.00	0.00	0.00	0.00	11,351.89	11,351.89
Crimson Fund LLC	172.46	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	172.46
ePlay, LLC	25,468.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25,468.02
M Poore, W Vincent, K Vincent	18.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	18.40
Mark H Poore	1,614.92	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,614.92
Michael Gamboa	1,682.54	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,682.54
MPG LLC	555.85	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	555.85
MXM Investments, LLC	889.35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	889.35
RMB Operations, LLC	2,290.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,290.00
The Palente II Group, LLC	696.35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	696.35
The Palente Sienna International	77.69	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	77.69
Total Funds Transferred In	33,465.58	0.00	11,351.89	0.00	0.00	0.00	0.00	250,000.00	261,351.89	294,817.47
Expense										
Asset Preservation										
Register Agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Insurance	0.00	11,000.00	0.00	0.00	0.00	0.00	0.00	0.00	11,000.00	11,000.00
Payroll Processing Costs	298.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	298.50
Storage	625.65	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	625.65
Moving Cost	884.92	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	884.92
Medical/Dental Insurance	5,726.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,726.00
Total Asset Preservation	7,537.07	3,351.51	408.00	3,164.48	0.00	0.00	0.00	0.00	6,923.99	14,461.06
Receiverhip Fees & Costs										
Receiver Fees	567.00	0.00	0.00	0.00	0.00	3,612.00	147.00	0.00	3,759.00	4,326.00
K. Johnson	1,044.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,044.00
R. Evans	41,195.00	2,227.50	1,347.50	1,072.50	330.00	137.50	55.00	0.00	5,170.00	46,365.00
B. Kane										

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	8/31/09- 2/28/10	Mar 31, 10	Apr 30, 10	May 31, 10	Jun 30, 10	Jul 31, 10	Aug 31, 10	Sep 28, 10	3/1/10- 9/28/10	TOTAL
V. Miller	22,029.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	22,029.00
A. Jen	12,516.00	4,994.00	315.00	924.00	168.00	399.00	42.00	0.00	6,342.00	18,858.00
Total Receiver Fees	77,351.00	6,721.50	1,662.50	1,996.50	498.00	4,148.50	244.00	0.00	15,271.00	92,622.00
Senior & Accounting Staff										
P. Chung	0.00	0.00	0.00	105.00	0.00	0.00	0.00	0.00	105.00	105.00
C. Jen	0.00	160.00	0.00	0.00	0.00	0.00	0.00	0.00	160.00	160.00
N. Wolf	0.00	25.00	0.00	0.00	25.00	0.00	0.00	0.00	50.00	50.00
A. Coffman	4,812.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,812.50
C. Callahan	14,448.00	672.00	0.00	42.00	0.00	0.00	0.00	0.00	714.00	15,162.00
C. DeCus	22.50	22.50	0.00	22.50	0.00	0.00	37.50	0.00	82.50	105.00
F. Jen	294.00	0.00	0.00	105.00	0.00	0.00	0.00	0.00	105.00	399.00
J. Dabbio	2,775.00	1,660.00	115.00	0.00	530.00	95.00	55.00	0.00	2,455.00	5,230.00
L. Lee	12,138.00	1,407.00	924.00	462.00	21.00	42.00	21.00	0.00	2,877.00	15,015.00
M. Lin	179,298.00	1,407.00	2,394.00	252.00	0.00	189.00	0.00	0.00	4,242.00	183,540.00
Total Senior & Accounting Staff	213,788.00	5,353.50	3,433.00	988.50	576.00	326.00	113.50	0.00	10,790.50	224,578.50
IT Management										
E. Roop	14,350.00	400.00	2,200.00	1,150.00	0.00	0.00	0.00	0.00	3,750.00	18,100.00
K. Chapin	594.42	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	594.42
Total IT Management	14,944.42	400.00	2,200.00	1,150.00	0.00	0.00	0.00	0.00	3,750.00	18,694.42
Supporting Staff	2,713.10	279.30	207.00	282.80	261.20	193.50	251.50	0.00	1,475.30	4,188.40
Total Receivership Fees & Costs	308,790.52	12,754.30	7,502.50	4,417.80	1,335.20	4,668.00	609.00	0.00	31,286.80	340,083.32
Receivership Costs										
Tax Preparation Expenses	0.00	0.00	0.00	0.00	0.00	0.00	1,290.55	0.00	1,290.55	1,290.55
Real Estate Analysis Expense	0.00	0.00	0.00	0.00	1,000.00	0.00	0.00	0.00	1,000.00	1,000.00
Copy/Document Production	578.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	578.33
Office Supply	106.16	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	106.16
Postage & Shipping	241.85	86.02	28.23	83.03	6.39	8.56	5.36	0.00	217.59	459.44
Telephone Communications	116.64	54.75	12.59	36.41	44.42	18.00	25.36	0.00	192.13	308.77
Equipment	345.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	345.90
Travel Expense	13,076.49	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13,076.49
Miscellaneous	68.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	68.00
Total Receivership Costs	14,533.37	140.77	40.82	119.44	1,050.81	27.16	1,321.27	0.00	2,700.27	17,233.64

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Legal Fees & Costs										
Legal Fees	105,561.90	24,243.30	38,376.45	55,858.50	11,942.10	17,420.40	3,973.05	0.00	151,813.80	257,375.70
Legal Costs	9,667.34	2,803.73	2,376.50	2,613.20	912.57	984.69	379.62	0.00	10,068.31	19,735.65
Total Legal Fees & Costs	<u>115,229.24</u>	<u>27,047.03</u>	<u>40,750.95</u>	<u>58,471.70</u>	<u>12,854.67</u>	<u>18,405.09</u>	<u>4,352.67</u>	<u>0.00</u>	<u>161,882.11</u>	<u>277,111.35</u>
Total Expense	<u>446,096.20</u>	<u>43,293.61</u>	<u>48,702.27</u>	<u>66,173.42</u>	<u>15,240.68</u>	<u>23,100.25</u>	<u>6,282.94</u>	<u>(1.00)</u>	<u>202,793.17</u>	<u>648,889.37</u>
Fund Balance (Deficit)	<u>(408,987.11)</u>	<u>(31,893.61)</u>	<u>(37,350.38)</u>	<u>(65,773.42)</u>	<u>(15,040.68)</u>	<u>(22,900.25)</u>	<u>(5,291.94)</u>	<u>250,000.00</u>	<u>71,749.72</u>	<u>(337,237.39)</u>