

**ROBB EVANS**  
**Receiver of**  
**D.W. Heath & Associates, Inc.;**  
**PCM Fixed Income Fund I, LLC;**  
**Private Capital Management, Inc.;**  
**Private Collateral Management, Inc.**  
**and the Schlarmann Interests**

11450 Sheldon Street  
Sun Valley, California 91352-1121  
Telephone No.: (818) 768-8100  
Facsimile No.: (818) 768-8802

**Securities and Exchange Commission v. D. W. Heath & Associates Inc., et al.**  
**CASE No. CV-04-02949 JFW (Ex)**

**Notice of Motion and Motion for Order Approving Payment of  
Receiver's and Professionals' Fees and Expenses for the Period from  
July 1, 2004 through December 31, 2004  
Declarations of Robb Evans and Gary Owen Caris in Support Thereof**

**Dated February 3, 2005**

1 Gary Owen Caris (State Bar No. 088918)  
Lesley Anne Hawes (State Bar No. 117101)  
2 Leslie Ann Walden (State Bar No. 196882)  
FRANDZEL ROBINS BLOOM & CSATO, L.C.  
3 6500 Wilshire Boulevard  
Seventeenth Floor  
4 Los Angeles, California 90048-4920  
Telephone: (323) 852-1000  
5 Facsimile: (323) 651-2577

6 Attorneys for Permanent Receiver,  
ROBB EVANS

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8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 D.W. HEATH & ASSOCIATES, INC.,  
etc., et al.,

16 Defendants.  
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CASE NO. CV 04-02949 JFW (Ex)

**NOTICE OF MOTION AND  
MOTION FOR ORDER  
APPROVING PAYMENT OF  
RECEIVER'S AND  
PROFESSIONALS' FEES AND  
EXPENSES FOR THE PERIOD  
FROM JULY 1, 2004 THROUGH  
DECEMBER 31, 2004  
DECLARATIONS OF ROBB  
EVANS AND GARY OWEN CARIS  
IN SUPPORT THEREOF**

DATE: February 28, 2005  
TIME: 1:30 p.m.  
DEPT.: Courtroom 16

1 TO: THE PARTIES TO THIS ACTION AND THEIR ATTORNEYS OF  
2 RECORD AND TO ALL CREDITORS AND OTHER PARTIES IN INTEREST:  
3

4 PLEASE TAKE NOTICE that on February 28, 2005 at 1:30 p.m., or as soon  
5 as thereafter counsel may be heard in Courtroom 16 of the above-entitled Court,  
6 located at 312 N. Spring Street, Los Angeles, California, Robb Evans as permanent  
7 receiver ("Receiver") of D.W. Heath & Associates, Inc., Private Capital  
8 Management, Inc., Private Collateral Management, Inc. and PCM Fixed Income  
9 Fund I, LLC and their subsidiaries and affiliates (collectively, the "Receivership  
10 Defendants"), will and does hereby move the Court for an order approving the  
11 payment of the fees and expenses of the Receiver, the Receiver's staff, and the  
12 Receiver's counsel for the period from July 1, 2004 through December 31, 2004.  
13 During this six month period, the fees and expenses of the Receiver and his staff  
14 were \$227,263.90, the fees of his in-house counsel were \$48,440.00, the fees of his  
15 outside counsel were \$160,468.30, and his legal expenses were \$19,716.01, for a  
16 total of \$455,888.21.  
17

18 PLEASE TAKE FURTHER NOTICE that this motion is made pursuant  
19 to Local Rule 66-7(f), and is based upon this notice of motion and motion,  
20 the accompanying memorandum of points and authorities and declarations of  
21 Robb Evans and Gary Owen Caris, and upon such other pleadings and oral and  
22 documentary evidence as may be presented at or before the time of hearing on  
23 the motion.  
24

25 PLEASE TAKE FURTHER NOTICE that this motion is posted on the  
26 Receiver's website at [www.heath-receiver.com](http://www.heath-receiver.com), where it may be viewed in its  
27 entirety. Copies of this Motion will be provided to any interested party upon receipt  
28 of a written request which may be sent to: Robb Evans & Associates LLC, 11450

FRANDZEL ROBINS BLOOM & CSATO, L.C.  
6500 WILSHIRE BOULEVARD, 17TH FLOOR  
LOS ANGELES, CALIFORNIA 90048-4920  
(323) 652-1000

1 Sheldon Street, Sun Valley, CA 91352-1121, Facsimile No. (818) 768-8802, Attn:  
2 Judi Ehrlich.

3  
4 DATED: February \_\_, 2005 FRANDZEL ROBINS BLOOM & CSATO, L.C.  
5 GARY OWEN CARIS  
6 LESLEY ANNE HAWES

7  
8 By:

9 GARY OWEN CARIS  
10 Attorneys for Permanent Receiver  
11 ROBB EVANS  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

This action was filed by the Securities and Exchange Commission ("SEC") against the Receivership Defendants as well as Daniel William Heath ("Heath") and Denis Timothy O'Brien on or about April 29, 2004.

The Receiver is the permanent equity receiver in this matter. The Receiver was initially appointed as temporary receiver pursuant to this Court's Stipulation and Order Appointing Robb Evans Temporary Receiver filed May 3, 2004. Thereafter, the Receiver was appointed as permanent receiver pursuant to the Stipulation and Order Appointing a Permanent Receiver entered May 19, 2004.

The Court has previously approved and authorized for payment the fees and expenses of the Receiver, the Receiver's staff, and the Receiver's counsel for the period from May 3, 2004 through June 30, 2004. By this motion, the Receiver seeks an order approving and authorizing payment of fees and expenses of the Receiver, the Receiver's staff, and the Receiver's counsel for the period from July 1, 2004 through December 31, 2004.

**II.**

**THE RECEIVER SEEKS APPROVAL FOR THE PAYMENT OF THE FEES AND EXPENSES INCURRED BY THE RECEIVER AND PROFESSIONALS FROM JULY 1, 2004 THROUGH DECEMBER 31, 2004**

The Receiver seeks approval and authority for payment of the fees and

1 expenses of the Receiver, the Receiver's staff, and the Receiver's counsel for the  
2 period from July 1, 2004 through December 31, 2004. The fees and costs for the  
3 Receiver for which approval is requested are set forth in the summary entitled  
4 "Receivership Collections and Administrative Expenses by Month," attached hereto  
5 as Exhibit 1. The fees and costs of the Receiver are then itemized by the Receiver's  
6 fees of \$12,419.00 (Exhibit 2 hereto), staff fees for project coordination and  
7 management of \$16,608.00 (Exhibit 3 hereto), staff fees for financial reconstruction  
8 and accounting of \$84,468.00 (Exhibit 4 hereto), staff fees for asset evaluation and  
9 collection of \$58,534.00 (Exhibit 5 hereto), staff fees for database maintenance and  
10 reconstruction of \$8,220.00 (Exhibit 6 hereto), staff fees for investigation of  
11 \$6,209.00 (Exhibit 7 hereto), support staff fees of \$19,778.50 (Exhibit 8 hereto) and  
12 in-house legal fees (Linda Candler) of \$48,440.00 (Exhibit 9 hereto). The fees and  
13 expenses of the Receiver's outside counsel, Frandzel Robins Bloom & Csato, L.C.,  
14 comprised of \$159,153.30 in fees and \$18,230.27 in expenses, are attached hereto as  
15 Exhibit 10. Other outside counsel fees of \$1,315.00 are attached hereto as Exhibit  
16 11. As set forth in detail in Exhibits 1 through 11 hereto, including out-of-pocket  
17 expenses as itemized on Exhibit 1, the Receiver has incurred \$455,888.21 in fees and  
18 expenses for the six-month period from July 1, 2004 through December 31, 2004.

19  
20 Overview of Services Performed By The Receiver And His Staff

21 From July 1, 2004 through December 31, 2004, the Receiver has continued  
22 to undertake substantial efforts to obtain control over and liquidate numerous and  
23 varied assets and multiple operating businesses, which efforts have been made  
24 more difficult and challenging because of the complex ownership structure for many  
25 of those assets and businesses, the existence of a number of entities owned or  
26 controlled in whole or in part by a non-defendant, Larre Schlarmann  
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1 ("Schlarmann"), and the filing of a Chapter 7 petition in bankruptcy by Leslee  
2 Heath, Heath's wife.<sup>1</sup> Among other things, during this time period, the Receiver and  
3 his staff have done the following:

4 1. Contacted, interviewed and conducted depositions of owners and  
5 operators of numerous businesses and inspected properties in which the  
6 Receivership Defendants, Heath and Schlarmann placed investor funds to determine  
7 how those funds were spent and what cash flow was generated from those funds.

8 2. Evaluated the value of the businesses and properties in which the  
9 Receivership Defendants, Heath and Schlarmann invested, and attempted to  
10 negotiate a sale or settlement of the Receivership Defendants' interest in those  
11 businesses and properties in order to maximize the return for the receivership estate.

12 3. Continued the immense job of reconstructing the financial history of  
13 the Receivership Defendants and the myriad of entities directly or indirectly owned  
14 or controlled by the Receivership Defendants, Heath and/or cohort Schlarmann.

15 4. Continued to maintain and update the investor and investment data on  
16 the Receiver's database that was consolidated from three databases maintained by  
17 Heath and Schlarmann. The Receiver has completed his consolidation of the  
18 three databases and determined that 1,692 investors are owed approximately  
19 \$118,000,000.00.

20 5. Continued to extensively communicate with investors concerning the  
21 status of the receivership estate and the prospects for recovery.

22  
23 Liquidation of Assets Of The Receivership Estate

24 During this time frame, the Receiver was successful in negotiating and  
25

26 <sup>1</sup> A motion to expand this receivership to encompass the Schlarmann assets  
27 and to approve a stipulation with the Chapter 7 Trustee in Leslee Heath's bankruptcy  
28 proceeding is set for hearing concurrently herewith.

1 liquidating many of the investments held by the Receivership Defendants. In other  
2 instances, the Receiver has undertaken efforts to liquidate and settle investments,  
3 although such efforts have not yet come to fruition. Highlights of the Receiver's  
4 efforts to liquidate assets and investments during this period include the following:

5 1. The Receiver negotiated an agreement whereby the estate received  
6 \$725,000.00 from the construction lender CapitalSource Finance LLC on The Club  
7 at Big Bear Village, together with an interest in the project's future profits, if any.

8 2. In his capacity as state court receiver over the Schlarmann receivership  
9 estate assets, the Receiver obtained approval to sell 31 Quizno franchise stores. To  
10 date, nine stores have been sold resulting in net proceeds to the estate of  
11 approximately \$1,300,000.00. Another seven stores are under a letter of intent for  
12 sale or are in escrow.

13 3. A settlement with Valley of the Sun Cosmetics was completed,  
14 generating payment to the estate of \$150,000.00.

15 4. A sale of the receivership estate's interest in the BikeBoard Company  
16 was completed, generating \$60,000.00 for the estate.

17 5. The Receiver negotiated for full and immediate repayment of the  
18 amounts loaned to and invested in Direct PT, National Nursing and Rehabilitation,  
19 Restorative Healthcare and UHC, Inc. with a total recovery of \$909,282.66 to be  
20 paid by February 15, 2005.<sup>2</sup>

21 6. The Receiver undertook substantial efforts to sell the Northwoods  
22 Resort Hotel and Conference Center located in Big Bear, California  
23 ("Northwoods"). These efforts have resulted in the successful negotiation of a  
24

25 <sup>2</sup> Originally scheduled to close by January 31, 2005, the lender for the party  
26 satisfying the loans and repurchasing the stock agreed to extend its loan  
27 commitment to February 15, 2005 to enable the parties to finalize their  
28 documentation.



1 contract to sell Northwoods for \$9,250,000.00 which is the subject of a concurrent  
2 motion to approve the sale and overbidding procedures. It is anticipated that a sale  
3 will close by March 31, 2005 and the estate will receive net proceeds of at least \$8.9  
4 million.

5 As a result of the Receiver's on-going efforts, the Receiver believes that a  
6 minimum of \$16 million will be available for distribution to investors beginning  
7 mid-year, after claims filing and allowance procedures are implemented.<sup>3</sup>

8  
9 Overview Of Services Performed By In-House Counsel

10 During this time frame, the Receiver's in-house counsel Linda Candler was  
11 extensively involved in the litigation which arose out of the sale of Physical Therapy  
12 Dynamics, Inc. and Centre For Hand Therapy, Inc. to Rivien Health Aquatic, Inc.  
13 which has resulted in a tentative agreement whereby the selling entities and the  
14 buyer drop all claims against one another and execute full general mutual releases.  
15 Candler also was responsible for an extensive review of documents produced by  
16 Fitness Care Inc. and interviewing its president, James Sullivan. Candler also  
17 reviewed records and deposed various individuals in connection with Fitness Care.  
18 As set forth in his Third Report, Fitness Care operated as a start-up incubator to  
19 acquire, restructure and spin-off companies including Valley of the Sun Cosmetics,  
20 Magnum Sports International, Novelties U.S.A. and TechNiGlove, International.

21  
22 Overview Of Services Performed By Outside Counsel

23 During this time frame, the Receiver's outside law firm of Frandzel Robins  
24 Bloom & Csato, L.C. ("Frandzel Firm") performed numerous assignments,

25  
26 <sup>3</sup> A hearing on the Receiver's motion for an order approving his proposed  
27 claims filing and allowance procedures is set to be heard concurrently with this  
28 motion.

1 including the following:

2 1. Appeared on the Receiver's successful motion approving the sale of  
3 personal property.

4 2. Prepared the successful ex parte application for permission for the  
5 Receiver to accept the appointment as state court receiver over the assets of  
6 Schlarmann, and subsequently prepared and appeared on the Receiver's successful  
7 motion in the Riverside Superior Court pursuant to which the Receiver was  
8 appointed as receiver over the Schlarmann interests.

9 3. Participated in negotiating and documenting the settlement and  
10 appeared at the successful motion to approve the settlement between the Receiver  
11 and CapitalSource.

12 4. Prepared and appeared on the Receiver's successful motion approving  
13 his settlements with BikeBoard and Valley of the Sun.

14 5. Prepared the Receiver's successful ex parte application for order  
15 shortening time and motion for approval of the settlement pertaining to Direct PT,  
16 National Nursing and Rehabilitation, Restorative Healthcare, and UHC, Inc.

17 6. Extensively dealt with counsel for Quiznos and various landlords on a  
18 variety of subjects pertaining to the receivership estate's interest in and liquidation  
19 of 31 franchises, and the valuable Quiznos area directorships. The Frandzel Firm  
20 also prepared successful ex parte applications permitting the Receiver to issue  
21 receiver certificates to enable it to borrow from Quiznos on an interim basis and to  
22 enable the Receiver to commence the process of selling the franchises in an orderly  
23 manner to preserve their going concern value. The Frandzel Firm also reviewed and  
24 drafted various documentation facilitating the sale of franchises.

25 7. Extensively negotiated and documented a settlement between the  
26 Receiver and the Chapter 7 Trustee of Leslee Heath, to be heard concurrently with  
27 this motion, which provides for efficient procedures regarding the management  
28 and administration of the receivership and bankruptcy estates.



FRANZEL ROBINS BLOOM & CSATO, L.C.  
6500 WILSHIRE BOULEVARD, 17TH FLOOR  
LOS ANGELES, CALIFORNIA 90048-4920  
(323) 852-1000

**DECLARATION OF ROBB EVANS**

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I, Robb Evans, declare:

1. I have been appointed by this Court as permanent receiver of D.W. Heath & Associates, Inc., Private Capital Management, Inc., Private Collateral Management, Inc. and PCM Fixed Income Fund I, LCC and their subsidiaries and affiliates (collectively, the "Receivership Defendants"), in connection with the above-referenced matter. 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 ("Receiver") who participate 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. I was initially appointed as temporary receiver pursuant to this Court's Stipulation and Order Appointing Robb Evans Temporary Receiver filed May 3, 2004.

3. Thereafter, I was appointed the permanent receiver in this matter by this Court pursuant to the Stipulation and Order Appointing a Permanent Receiver entered May 19, 2004.

4. I am seeking approval and authority for payment of the fees and expenses of the Receiver, the Receiver's staff and the Receiver's counsel for the period from July 1, 2004 through December 31, 2004. The fees and costs for the Receiver for which approval is requested are set forth in the summary entitled "Receivership Collections and Administrative Expenses by Month," attached hereto as Exhibit 1. The fees and costs of the Receiver are then itemized by my fees of

1 \$12,419.00 (Exhibit 2 hereto), staff fees for project coordination and management of  
2 \$16,608.00 (Exhibit 3 hereto), staff fees for financial reconstruction and accounting  
3 of \$84,468.00 (Exhibit 4 hereto), staff fees for asset evaluation and collection of  
4 \$58,534.00 (Exhibit 5 hereto), staff fees for database maintenance on reconstruction  
5 of \$8,220.00 (Exhibit 6 hereto), staff fees for investigation of \$6,209.00 (Exhibit 7  
6 hereto), support staff fees of \$19,778.50 (Exhibit 8 hereto) and in-house legal fees  
7 (Linda Candler) of \$48,440.00 (Exhibit 9 hereto). The fees and expenses of my  
8 outside counsel, Frandzel Robins Bloom & Csato, L.C., comprised of \$159,153.30  
9 in fees and \$18,230.27 in expenses, are attached hereto as Exhibit 10. Other outside  
10 counsel fees of \$1,315.00 are attached hereto as Exhibit 11. As set forth in detail in  
11 Exhibits 1 through 11 hereto, including out-of-pocket expenses as itemized on  
12 Exhibit 1, as Receiver I have incurred \$455,888.21 in fees and expenses for the six-  
13 month period from July 1, 2004 through December 31, 2004.

14  
15 5. During this six-month period, my staff and I have continued to  
16 undertake substantial efforts to obtain control over and liquidate numerous and  
17 varied assets and multiple operating businesses, which efforts have been made more  
18 difficult and challenging because of the complex ownership structure for many of  
19 those assets and businesses, the existence of a number of entities owned or  
20 controlled in whole or in part by a non-defendant, Larry Schlarmann  
21 ("Schlarmann"), and the filing of a Chapter 7 petition in bankruptcy by Leslee  
22 Heath, Defendant Daniel Heath's wife. Among other things, during this time period  
23 my staff and I have done the following:

24  
25 a. Contacted, interviewed and conducted depositions of owners and  
26 operators of numerous businesses and inspected properties in which the  
27 Receivership Defendants, Daniel Heath ("Heath") and Schlarmann placed investor  
28 funds to determine how those funds were spent and what cash flow was generated

1 from those funds.

2

3 b. Evaluated the value of the businesses and properties in which the  
4 Receivership Defendants; Heath and Schlarmann invested, and attempted to  
5 negotiate a sale or settlement of the Receivership Defendants' interest in those  
6 businesses and properties in order to maximize the return for the receivership estate.

7

8 c. Continued the immense job of reconstructing the financial  
9 history of the Receivership Defendants and the myriad of entities directly or  
10 indirectly owned or controlled by the Receivership Defendants, Heath and/or cohort  
11 Schlarmann.

12

13 d. Continued to maintain and update the investor and investment  
14 data on the Receiver's database that was consolidated from three databases  
15 maintained by Heath and Schlarmann. We have now completed our consolidation  
16 of the three databases and have determined that 1,692 investors are owed  
17 approximately \$118 million.

18

19 e. Continued to extensively communicate with investors concerning  
20 the status of the receivership estate and the prospects for recovery.

21

22 6. During this time frame, my staff and I were successful in negotiating  
23 and liquidating many of the investments held by the Receivership Defendants. In  
24 other instances, we have undertaken efforts to liquidate and settle investments,  
25 although such efforts have not yet come to fruition. Highlights of our efforts to  
26 liquidate assets and investments during this period include the following:

27

28 a. My staff and I negotiated an agreement whereby the estate

1 received \$725,000.00 from the construction lender CapitalSource Finance LLC on  
2 the club at Big Bear Village, together with an interest in the project's future profits,  
3 if any.

4  
5 b. In my capacity as state court receiver over the Schlarmann  
6 receivership estate assets, I obtained approval to sell 31 Quiznos franchise stores.  
7 To date, nine stores have been sold resulting in net proceeds to the estate of  
8 approximately \$1,300,000.00. Another seven stores are under a letter of intent for  
9 sale or are in escrow.

10  
11 c. My staff and I completed a settlement with Valley of the Sun  
12 Cosmetics, generating payment to the estate of \$150,000.00.

13  
14 d. My staff and I completed a sale of the receivership estate's  
15 interest in the Bike Board Company, generating \$60,000.00 for the estate.

16  
17 e. My staff and I negotiated for full and immediate repayment of  
18 the amounts loaned to and invested in Direct PT, National Nursing and  
19 Rehabilitation, Restorative Health Care and UHC, Inc., with a total recovery of  
20 \$909,282.66 to be paid by February 15, 2005.

21  
22 f. My staff and I have undertaken substantial efforts to sell the  
23 Northwoods Resort Hotel and Conference Center located in Big Bear, California  
24 ("Northwoods"). These efforts have resulted in the successful negotiation of a  
25 contract to sell Northwoods for \$9,250,000.00 which is the subject of a concurrent  
26 motion to approve the sale and overbidding procedures. I anticipate that a sale will  
27 close by March 31, 2005, and the estate will receive net proceeds of at least \$8.9  
28 million.

1           7.     As a result of our ongoing efforts, I believe that a minimum of \$16  
2 million will be available for distribution to investors beginning by June, 2005, after  
3 claims filing and allowance procedures are implemented.  
4

5           8.     During this time frame, my in-house counsel, Linda Candler, was  
6 extensively involved in the litigation which arose out of the sale of Physical Therapy  
7 Dynamics, Inc. and Centre for Hand Therapy, Inc. to Rivien Health Aquatic, Inc.  
8 which has resulted in a tentative agreement whereby the selling entities and the  
9 buyer drop all claims against one another and execute full general mutual releases.  
10 She was also responsible for an extensive review of documents produced by Fitness  
11 Care, Inc. and interviewing its president, James Sullivan, as well as reviewing  
12 records and deposing various individuals in connection with Fitness Care. As set  
13 forth in my last report, Fitness Care operated as a start-up incubator to acquire,  
14 restructure and spin-off companies including Valley of the Sun Cosmetics, Magnum  
15 Sports International, Novelties USA and TechNiGlove, International.  
16

17           9.     During this time frame, my outside law firm of Frandzel Robins Bloom  
18 & Csato, L.C., performed numerous assignments, as more particularly set forth in  
19 the accompanying declaration of Gary Owen Caris.  
20

21           10.    In light of the extensive, intensive and successful work performed by  
22 me and my staff, I believe the fees and costs that have been incurred by me, my staff  
23 and my professionals are reasonable and should be approved and authorized for  
24 payment. I would respectfully request that this Court approve the payment of the  
25 Receiver's and counsel's fees and expenses for the period from July 1, 2004 through  
26 December 31, 2004 as more particularly set forth in the motion and the supporting  
27 exhibits.  
28




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I declare under penalty of perjury that the foregoing is true and correct and  
that this declaration was executed on February 3rd, 2005 at

Los Angeles, California

  
ROBB EVANS, Declarant



1           b.     We prepared the successful ex parte application for permission  
2 for the Receiver to accept the appointment as state court receiver over the assets of  
3 Schlarmann, and subsequently prepared and appeared on the Receiver's successful  
4 motion in the Riverside Superior Court pursuant to which the Receiver was  
5 appointed as receiver over the Schlarmann interests.

6  
7           c.     We participated in the negotiating and documenting of settlement  
8 and appeared at the successful motion to approve the settlement between the  
9 Receiver and CapitalSource, the lender on the Club at Big Bear Village.

10  
11           d.     We prepared and appeared on the Receiver's successful motion  
12 approving his settlement with Bike Board and Valley of the Sun.

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14           e.     We prepared the Receiver's successful ex parte application for  
15 order shortening time and motion for approval of the settlement pertaining to Direct  
16 PT, National Nursing and Rehabilitation, Restorative Health Care, and UHC, Inc.

17  
18           f.     We extensively dealt with counsel for Quiznos and various  
19 landlords on a variety of subjects pertaining to the receivership estate's interests in  
20 and liquidation of 31 franchises, and the valuable Quiznos areas directorships. Our  
21 firm also prepared successful ex parte applications permitting the Receiver to issue  
22 receiver certificates to enable it to borrow from Quiznos on an interim basis and to  
23 enable the Receiver to commence the process of selling the franchises in an orderly  
24 manner to preserve their going concern value. The Frandzel Firm also reviewed and  
25 drafted various documentation facilitating the sale of franchises.

26  
27           g.     We extensively negotiated and documented a settlement  
28 between the Receiver and the Chapter 7 Trustee of Leslee Heath, to be heard

1 concurrently with this motion, which provides for efficient procedures regarding  
2 the management and administration of the receivership and bankruptcy estates.

3  
4 h. We successfully opposed the motion brought by B&B  
5 Contractors, Inc. seeking the modification of the preliminary injunction to prosecute  
6 its state court lawsuit.

7  
8 5. I have been employed by the Frandzel firm for over 25 years and am  
9 familiar with the methods and procedures used to create, record and maintain billing  
10 records for the firm's clients. The billing summaries attached hereto as Exhibit 10  
11 are prepared from computerized time records prepared contemporaneously with the  
12 services rendered by each attorney and paralegal billing time to this matter. These  
13 computerized records are prepared in the ordinary course of business by the  
14 attorneys and paralegals employed by the firm who have a business duty to  
15 accurately record their time spent and services rendered on the matters on which  
16 they perform work. The time records are transferred into a computerized billing  
17 program which generates monthly invoices under the supervision of the firm's  
18 accounting department. Based on my experience with the firm, I believe the firm's  
19 methods and procedures for recording and accounting for time and services for its  
20 clients is reliable and accurate.

21  
22 I declare under penalty of perjury that the foregoing is true and correct and  
23 that this declaration was executed this 3 day of February 2005, at Los Angeles,  
24 California.

25  
26   
27 GARY OWEN CARIS, Declarant  
28

**INTENTIONALLY LEFT BLANK**

**Robb Evans, Receiver of D. W. Heath & Associates, Inc. et al.  
 Receivership Collections & Administrative Expenses by Month  
 From Inception (May 4, 2004) to December 31, 2004**

Collections	Previously Reported and Approved	Total											
		Jul 04	Aug 04	Sep 04	Dec 04	Nov 04	Dec 04	7/1/04 - 12/31/04	TOTAL				
Funds transferred from Manfee PFC Equities	61,701.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	61,701.02
Funds transferred from PC Management Inc.	670,260.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	670,260.00
Funds transferred from D.W. Heath & Associates	15,582.96	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	15,582.96
Aquatic Rehab	44,962.89	397,319.71	41,103.41	39,424.61	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	588,137.02
Direct PFC, Inc.	1,595.83	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,595.83
Management & Business Associates	4,248.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,248.90
National Nursing & Rehab, Inc.	416.66	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	416.66
NADM Equities LP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Proactive Money Management, Inc	722.79	0.00	0.00	966.08	567.78	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,596.63
Schlemann & Associates	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Schlemann (Princ Knox)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
QIF Corporate Income Fund I	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bear Manor Mortgage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PSR Corporate Income Fund I	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Schlemann (QSD II)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Schlemann (QSD I)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Schlemann (PSR II)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
11M1 Income Fund LP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Auridge Mortgage Account	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Northwoods Preferred Income Fun	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Northwoods II Mortgage Fund	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mortgage Planners Income Fund	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Investment Management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Northwoods Mortgage Fund	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mortgage Loan Income Fund	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Fixed Income Mortgage Fund	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
QIF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
QSD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Funds on hold on Big Bear Manor Cabin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Central Diagnostic Services Inc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Valley of the Sun Settlement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Funds from Capital Source Fin.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Sale of PEKE:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Interest Income	0.00	787.63	1,485.37	1,586.71	1,870.91	2,667.91	3,764.25	12,018.84	12,018.84	12,018.84	12,018.84	12,018.84	12,018.84
Commission Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Share transfer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Store opening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Royalties on sales	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Commission Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Trademark International, Inc	1,000,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000,000.00
The Alkenwood Group	8,200,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8,200,000.00
ITTL Equities LP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Trecker	1,688,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,688,200.00
Miscellaneous Income	5,608.12	18,091.90	29.24	6,207.42	2,017.38	191,860.84	290.00	398,150.77	2,110,658.89	2,110,658.89	2,110,658.89	2,110,658.89	
Total Collections	1,406,908.66	877,349.98	248,275.93	155,400.79	832,781.38	354,109.02	211,798.51	2,310,215.86	10,717,887.72	10,717,887.72	10,717,887.72	10,717,887.72	

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**Robb Evans, Receiver of D. Heath & Associates, Inc. et al.  
 Receivership Collections & Administrative Expenses by Month  
 From Inception (May 4, 2004) to December 31, 2004**

	Previously Reported and Approved	Total											
		Jul 04	Aug 04	Sep 04	Oct 04	Nov 04	Dec 04	12/31/04	TOTAL				
<b>Expenses</b>													
<b>Pre-Receiverhip Expenses</b>													
Payroll	16,026.34	6,000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16,026.34	
Payroll Tax	7,347.27	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7,347.27	
Other	429.57	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	429.57	
<b>Total Pre-Receiverhip Expenses</b>	<b>24,213.42</b>	<b>6,000</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>24,213.42</b>	
<b>Asset Preservation/Operative Exp.</b>													
Equipment Rental	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Marketing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Bank Service Charges	0.00	0.00	0.00	64.18	0.00	0.00	0.00	0.00	0.00	0.00	0.00	64.18	
Commission	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Trucks/Leases	0.00	0.00	0.00	6,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,000.00	
Postage/Delivery	0.00	0.00	0.00	516.99	0.00	0.00	0.00	0.00	0.00	0.00	0.00	516.99	
Out of Pocket	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Mileage	0.00	0.00	0.00	26.62	0.00	0.00	0.00	0.00	0.00	0.00	0.00	26.62	
Out of Pocket - Other	0.00	0.00	0.00	423.54	0.00	0.00	0.00	0.00	0.00	0.00	0.00	423.54	
<b>Total Out of Pocket</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>449.16</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>449.16</b>	
<b>Contract Labor</b>													
Appraisal/Survey	0.00	0.00	0.00	0.00	5,315.00	0.00	0.00	0.00	0.00	0.00	0.00	5,315.00	
Office Supplies	0.00	0.00	0.00	0.00	3,300.00	0.00	0.00	0.00	0.00	0.00	0.00	3,300.00	
QCAL Management	0.00	0.00	0.00	0.00	151.24	0.00	0.00	0.00	0.00	0.00	0.00	151.24	
Prestige Resort Development	0.00	0.00	0.00	0.00	20,547.50	0.00	0.00	0.00	0.00	0.00	0.00	20,547.50	
Vehicle Registration	0.00	0.00	0.00	0.00	20,163.13	0.00	0.00	0.00	0.00	0.00	0.00	20,163.13	
Telephone	0.00	0.00	0.00	0.00	508.85	0.00	0.00	0.00	0.00	0.00	0.00	508.85	
Corporate Credit Card	0.00	0.00	0.00	0.00	309.06	0.00	0.00	0.00	0.00	0.00	0.00	309.06	
Maintenance & Repair	0.00	0.00	0.00	0.00	2,503.99	0.00	0.00	0.00	0.00	0.00	0.00	2,503.99	
Professional Services	0.00	0.00	0.00	0.00	56.93	0.00	0.00	0.00	0.00	0.00	0.00	56.93	
Utilities	0.00	0.00	0.00	0.00	2,530.00	0.00	0.00	0.00	0.00	0.00	0.00	2,530.00	
Insurance	0.00	0.00	0.00	0.00	2,533.32	0.00	0.00	0.00	0.00	0.00	0.00	2,533.32	
Mortgage Payments	0.00	0.00	0.00	0.00	2,915.07	0.00	0.00	0.00	0.00	0.00	0.00	2,915.07	
Workers Comp. Insurance	0.00	0.00	0.00	0.00	92,957.04	0.00	0.00	0.00	0.00	0.00	0.00	92,957.04	
Employer Benefits	0.00	0.00	0.00	0.00	110.31	0.00	0.00	0.00	0.00	0.00	0.00	110.31	
Employer Payroll taxes	0.00	0.00	0.00	0.00	586.92	0.00	0.00	0.00	0.00	0.00	0.00	586.92	
Payroll	117.84	148.50	16,007.42	40,534.72	19,562.52	4,026.28	1,014.52	1,281.21	1,897.85	1,572.50	1,572.50	117,840.33	
Rent/Storage	7,984.50	0.00	0.00	5,070.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13,054.50	
Document Reproduction	896.64	130.40	0.00	162.73	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,189.77	
Bookkeeping	1,572.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,572.50	
Miscellaneous													
Payroll Processing	54.61	25.00	75.00	30.00	164.00	0.00	0.00	0.00	0.00	0.00	0.00	328.61	
Miscellaneous - Other	6,208.60	4,000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10,208.60	
<b>Total Miscellaneous</b>	<b>6,263.21</b>	<b>4,025.00</b>	<b>75.00</b>	<b>30.00</b>	<b>164.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>10,257.21</b>	
<b>Total Asset Preservation/Operative Exp.</b>	<b>17,586.92</b>	<b>35,247.96</b>	<b>119,291.72</b>	<b>158,447.16</b>	<b>110,986.28</b>	<b>34,612.93</b>	<b>9,457.82</b>	<b>527,497.17</b>	<b>215,486.29</b>				

**Robb Evans, Receiver of D. Wheat & Associates, Inc. et al.  
Receivability Collections & Administrative Expenses by Month**  
From Inception (May 4, 2004) to December 31, 2004

	Previously Reported and Approved	Total												
		Jul 04	Aug 04	Sep 04	Oct 04	Nov 04	Dec 04	7/1/04 - 12/31/04	TOTAL					
<b>Receiver Expenses</b>														
Receiver's Fee	17,713.00	4,840.00	2,189.00	1,620.00	1,014.00	1,430.00	638.00	12,419.00	50,151.00					
Project Coordination & Management	17,700.00	5,688.00	3,304.00	2,932.00	948.00	1,164.00	532.00	16,608.00	34,580.00					
Financial Reconciliation & Accounting	31,462.00	10,988.00	26,422.00	20,746.00	10,394.00	3,338.00	6,200.00	84,466.00	11,530,000					
Asset Evaluation & Collection	46,208.00	17,618.50	12,572.50	8,689.00	5,124.00	4,336.00	10,394.00	58,344.00	104,712.00					
Database Maintenance & Reconstruction	12,930.00	1,600.00	1,640.00	1,230.00	780.00	980.00	2,590.00	8,230.00	30,250.00					
Investigation Staff	3,085.00	2,373.00	1,351.00	1,008.00	567.00	413.00	497.00	6,290.00	12,191.00					
Support Staff	12,386.34	6,483.65	3,461.38	3,020.45	2,346.59	2,256.79	1,660.64	19,778.50	32,364.84					
<b>Legal Fees</b>														
Cox Castor Nicholson	0.00	0.00	0.00	0.00	0.00	0.00	165.00	165.00	165.00					
Robert W. Biesch	0.00	0.00	0.00	0.00	690.00	0.00	460.00	1,150.00	1,150.00					
Fransdel Robins Blument & Casio	13,612.05	37,167.65	37,957.25	32,560.65	22,940.55	14,069.10	17,315.10	136,998.30	172,611.35					
L. Candler	24,400.80	5,720.00	10,340.00	13,160.00	6,160.00	2,520.00	10,140.00	48,480.00	72,880.00					
Legal Costs	1,433.24	3,186.86	4,331.58	4,987.60	4,083.13	1,115.13	1,591.20	19,778.01	21,169.75					
Total Legal Fees	9,465.79	46,074.51	57,608.83	30,208.35	33,982.98	14,724.43	30,471.80	228,470.31	367,956.10					
<b>Out of Pocket Expenses</b>														
Occupancy & Equipment Rental	3,535.38	803.78	3,609.23	2,566.95	1,838.64	1,361.78	530.98	11,515.79	4,191.79					
Office Telephone & Supplies	4,984.11	991.43	381.41	184.49	514.09	336.96	918.85	2,291.87	15,627.25					
Postage/Delivery	453.44	376.00	260.76	465.64	365.65	577.17	163.24	2,089.46	2,468.90					
Investor mailing expenses	0.00	0.00	0.00	1,346.42	0.00	0.00	0.00	1,346.42	1,346.42					
Tax Preparation	0.00	0.00	0.00	0.00	0.00	0.00	340.00	340.00	340.00					
Miscellaneous	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Accounting Software	499.73	0.00	0.00	0.00	0.00	0.00	0.00	499.73	699.73					
Carden/Asen search	606.09	146.67	19.30	458.71	33.03	224.45	0.00	882.36	1,488.15					
Moving Expenses	497.69	653.33	0.00	0.00	0.00	0.00	0.00	653.33	402.36					
Website Hosting	110.00	0.00	30.00	0.00	30.00	60.00	0.00	150.00	360.00					
Bank Service Charges	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Total Miscellaneous	1,913.51	31.24	19.30	318.71	73.03	204.45	0.00	429.00	429.00					
Total Receiver Expenses	192,623.57	105,909.88	109,919.10	95,240.30	58,778.84	30,491.58	53,171.91	453,888.21	648,515.76					
<b>Total Expenses</b>	334,427.91	159,238.54	229,200.82	233,595.46	169,675.62	62,101.51	149,973.63	983,287.39	1,318,215.49					
<b>Net Fund Balance</b>	1,172,540.75	338,111.44	19,515.11	728,123.23	663,006.78	492,084.51	91,733.91	1,526,427.48	2,698,908.23					



1 **PROOF OF SERVICE**

2 I, the undersigned, declare and certify as follows:

3 I am over the age of eighteen years, not a party to the within action and  
4 employed in the County of Los Angeles, State of California. I am employed in the  
5 office of FRANDZEL ROBINS BLOOM & CSATO, L.C., members of the Bar of  
6 the above-entitled Court, and I made the service referred to below at their direction.  
7 My business address is 6500 Wilshire Boulevard, Seventeenth Floor, Los Angeles,  
8 California 90048-4920.

9 On **FEBRUARY 4, 2005**, I served true copy(ies) of the **NOTICE OF  
10 MOTION AND MOTION FOR ORDER APPROVING PAYMENT OF  
11 RECEIVER'S AND PROFESSIONALS' FEES AND EXPENSES FOR THE  
12 PERIOD FROM JULY 1, 2004 THROUGH DECEMBER 31, 2004  
13 DECLARATIONS OF ROBB EVANS AND GARY OWEN CARIS IN  
14 SUPPORT THEREOF**, the original(s) of which is(are) affixed hereto, to the  
15 party(ies) listed on the attached service list.

16  **BY MAIL:** I am "readily familiar" with the firm's practice of collection and  
17 processing correspondence for mailing with the United States Postal Service.  
18 Under that practice, it would be deposited with the United States Postal  
19 Service that same day in the ordinary course of business. Such document(s)  
20 were placed in envelopes addressed to the person(s) served hereunder for  
21 collection and mailing with postage thereon fully prepaid at Los Angeles,  
22 California, on that same day following ordinary business practices.

23  **BY FACSIMILE:** At approximately \_\_\_\_\_, I caused said document(s) to be  
24 transmitted by facsimile. The telephone number of the sending facsimile  
25 machine was (323) 651-2577. The name(s) and facsimile machine telephone  
26 number(s) of the person(s) served are set forth in the service list. The  
27 document was transmitted by facsimile transmission, and the sending  
28 facsimile machine properly issued a transmission report confirming that the  
transmission was complete and without error.

I certify under penalty of perjury under the laws of the State of California and  
the United States of America that the foregoing is true and correct.

Executed on **FEBRUARY 4, 2005**, at Los Angeles, California.

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23 ANNETTE M. SMITH

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**SERVICE LIST**

Securities and Exchange Commission v. D.W. Heath & Associates, Inc., et al.  
U.S.D.C. Case No. CV 04-02949

David S. Brown, Esq. Molly White, Esq. Securities and Exchange Commission 5670 Wilshire Boulevard, 11th Floor Los Angeles, CA 90036-3648 Tel: (323) 965-3841 Fax: (323) 965-3908	Attorneys for Plaintiff Securities and Exchange Commission
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