

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 by Receiver for Order Approving
Second Distribution;
Memorandum of Points and Authorities and Declaration of
Brick Kane in Support Thereof

Filed July 17, 2006

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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.

CASE NO. CV 04-02949 JFW (Ex)

**NOTICE OF MOTION AND MOTION
BY RECEIVER FOR ORDER
APPROVING SECOND
DISTRIBUTION; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION OF BRICK KANE IN
SUPPORT THEREOF**

Date: August 7, 2006

Time: 1:30 p.m.

Place: Courtroom 16

312 N. Spring Street
Los Angeles, CA

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21 PLEASE TAKE NOTICE that on August 7, 2006; at 1:30 p.m., or as soon
22 thereafter as counsel may be heard in Courtroom 16 of the above-entitled court
23 located at 312 N. Spring Street, Los Angeles, California, Robb Evans, as permanent
24 receiver of D. W. Heath & Associates, Inc., Private Capital Management, Inc.
25 (“PCM”), Private Collateral Management, Inc. and PCM Fixed Income Fund I,
26 LLC and their subsidiaries and affiliates (collectively, the “Heath Receivership
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1 Defendants”) and as Receiver over the Schlarmann Interests (“Receiver”), will
2 and does hereby move the Court for the following relief:

3 1. An order approving the Receiver’s proposed second distribution on
4 Allowed Investor Claims against the receivership estate of the Heath Receivership
5 Defendants and the Schlarmann Interests in the sum of not less than \$4 million
6 representing 3.41% of Allowed Investor Claims (“Second Distribution”);

7 2. An order authorizing the Receiver to reserve and hold undistributed
8 receivership funds equal to not less than \$101,470.40 representing 3.41% of
9 potential non-investor claims, including those claims that remain unresolved
10 (“Non-Investor Claims”), bringing the total amount of funds reserved for potential
11 Non-Investor Claims to not less than \$558,236, pending further hearing and
12 determination of the amount of the Allowed Claims of such Non-Investor Claims
13 against the receivership estate and whether such Non-Investor Claims should be
14 subordinated to Allowed Investor Claims; and

15 3. An order authorizing the Receiver to make a Second Distribution in
16 an amount higher than \$4 million, in the Receiver’s sole discretion and judgment,
17 provided that the Receiver reserves funds on account of potential Non-Investor
18 Claims in an amount equal to the percentage distribution paid on Allowed Investor
19 Claims under the Second Distribution.

20 PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant
21 to Local Rules 66-7 and 66-8, and is based upon this notice of motion and motion,
22 the separate notice of hearing on the Motion served pursuant to the Court’s prior
23 order limiting notice in the matter,¹ the accompanying memorandum of points and
24 authorities and declaration of Brick Kane in support hereof, and upon such other
25 _____

26 ¹ Order: (1) Approving Receiver’s Report for the Period July 12, 2004 through
27 December 31, 2004; (2) Approving Receiver’s Proposed Claims Filing and
28 Allowance Procedures; and (3) Granting an Order Limiting Notice Under Local
Rule 66-7 in Connection with Administrative and Similar Motions Under Local
Rule 66-7 entered March 4, 2005.

1 pleadings, records and files of this Court in connection with this matter, and upon
2 such further oral and documentary evidence and arguments as may be presented at
3 or before the time of the hearing on the Motion.

4 PLEASE TAKE FURTHER NOTICE that the Motion is served in
5 accordance with the Limited Notice Order. Pursuant to the Limited Notice Order,
6 this Motion is posted on the Receiver's website at www.heath-receiver.com, where
7 it may be viewed in its entirety. Copies of this Motion will be provided to any
8 interested party upon receipt of a written request which may be sent to: Robb Evans
9 & Associates LLC, 11450 Sheldon Street, Sun Valley, California 91352-1121,
10 facsimile number (818) 768-8802.

11
12 DATED: July 14, 2006

McKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES
ERIN M. JACKSON

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16 By:



GARY OWEN CARIS
Attorneys for Permanent Receiver,
ROBB EVANS

I.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION AND STATEMENT OF FACTS

This action was filed by the Securities and Exchange Commission (“SEC”) against the Receivership Defendants as well as Daniel William 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 entered May 4, 2004. Thereafter, the Receiver was appointed as permanent receiver pursuant to the Stipulation and Order Appointing a Permanent Receiver entered May 19, 2004.

On July 2, 2004, the Riverside County District Attorney initiated a criminal action against Heath, O’Brien, Heath’s father, John William Heath, and Larre Jaye Schlarman (“Schlarman”), in the action entitled People of the State of California v. Daniel William Heath, et al., Case No. RIF 117775 pending in the Superior Court of California, County of Riverside (“Criminal Action”). The claims asserted in the Criminal Action are subject to the state “Aggravated White Collar Crime Enhancement” provisions of the California Penal Code, pursuant to which the District Attorneys’ office has sought and obtained a temporary restraining order prohibiting the disposition or transfer of assets by any of the criminal defendants. In addition, on July 21, 2004, the Riverside Superior Court issued its Order Appointing Robb Evans as Receiver of the Schlarman Interests Pursuant to Penal Code section 186.11 (“July 21 Receivership Order”). The July 21, 2004 Receivership Order was subsequently amended by order entered November 19, 2004 in the Criminal Action to expand the scope of assets subject to the receivership to include certain real property containing avocado groves located in Bonsall, California (“Amended Schlarman Order”). The July 21, 2004 Receivership Order and the Amended Schlarman Order are referred to collectively

1 herein as the “Schlarmann Receivership Order.” Pursuant to the Schlarmann
2 Receivership Order, the Receiver has been appointed Receiver over all of the
3 Quizno’s Entities and the Hotel Entities, as those terms are defined in the
4 Schlarmann Receivership Order, and the Bonsall property.

5 Judgments have been entered against the Receivership Defendants as well
6 as against Heath in this civil action in the principal amount of \$109,334,158. The
7 Receiver’s reports filed in this case set forth the Receiver’s conclusions as to the
8 lack of financial basis for the transactions and investments solicited from the
9 victims of the investment fraud perpetrated by the defendants and further support
10 the conclusion that funds paid to earlier investors as “interest” or “profits” were
11 paid with funds from later investors. These findings and conclusions demonstrate
12 that this fraudulent investment scheme operated in effect as a Ponzi-type scheme
13 and that the investment entities were insolvent at all times as a result, with
14 obligations owed by the entities exceeding the assets available to repay them.

15 On February 28, 2005, the Court in this action conducted a hearing on
16 motions brought by the Receiver seeking to have administration and supervision of
17 the Schlarmann Interests receivership vested in this Court and on a motion seeking
18 approval of the Receiver’s proposed claims filing and allowance procedure (the
19 “Claims Procedures Motion”). The motion regarding the administration of the
20 Schlarmann Interests receivership was granted as reflected in the Order: (1)
21 Approving Stipulation with Chapter 7 Trustee re Administration of Assets,
22 Withdrawal of Reference and Reservation of Rights Over Proceeds; and (2)
23 Authorizing Expansion of Receivership to Include Schlarmann Interests entered
24 March 3, 2005.

25 Only one creditor filed opposition to the Claims Procedures Motion. That
26 creditor, Clarence Morris, asserted that he was entitled to a priority claim payable
27 ahead of other receivership claimants from the proceeds of a deposit made shortly
28 before the imposition of the asset freeze against Daniel Heath. The Receiver filed a

1 reply to the Morris opposition, and the Court overruled the Morris objection. The
2 Receiver's proposed claims filing and allowance procedures were granted by Court
3 order entered March 4, 2005 (the "Claims Procedures Order").

4 Pursuant to the Claims Procedures Order the Receiver has implemented
5 claims filing and allowance procedures. The Receiver determined the claim
6 amount of each investor and the amount owed to non-investor creditors and
7 provided each investor and non-investor creditor claimant with notice of the
8 Receiver's calculation of their claim. They were given the requisite 30 days to
9 object to the proposed claim amount during which time the Receiver received
10 hundreds of responses to the claims notices. The Receiver eventually successfully
11 resolved all investor objections regarding the amounts of Allowed Investor Claims,
12 but several Non-Investor Claims remain unresolved. There are a total of
13 \$117,472,307 in Allowed Investor Claims. With respect to Non-Investor Creditors,
14 there are \$2,975,671.64 potential Non-Investor Claims.

15 On October 20, 2005, the Receiver filed a motion seeking an order: (1)
16 Approving Receiver's Plan for Initial Distribution on Allowed Investor Claims;
17 (2) Disallowing Claim of Clarence Morris as Priority Claim; (3) Determining
18 Amount of Allowed Claim of Peter and Heike Stadler; and (4) Authorizing
19 Reserve of Funds without Distribution on Account of Non-Investor Creditor
20 Claims ("Initial Distribution Motion"). The Court granted the relief requested by
21 Order entered November 17, 2005 ("Initial Distribution Order").

22 The Initial Distribution Order resolved the last of the disputed investor
23 claims, the claims of Clarence Morris and Peter and Heike Stadler. The Initial
24 Distribution Order also approved the Receiver's initial distribution plan, which
25 provided for the pro rata distribution of no less than \$13 million on Allowed
26 Investor Claims. The Initial Distribution Order further authorized the Receiver to
27 reserve and hold undistributed receivership assets sufficient to fund a pro rata
28 distribution to Non-Investor Claims were they to share in distribution with

1 Allowed Investor Claims, with such sums held pending further order of the Court.
2 The Receiver's actual initial distribution on Allowed Investor Claims was
3 \$18,028,912.65 representing 15.35% of Allowed Investor Claims of
4 \$117,472,307. Accordingly, the Receiver reserved and continues to reserve
5 \$456,765.60 representing 15.35% of potential Non-Investor Claims of
6 \$2,975,671.64.

7 For the initial distribution, the Receiver proposed to withhold distribution to
8 Non-Investor Claims for several reasons including the fact that of the total
9 potential Non-Investor Claims, the Receiver estimated that the majority in dollar
10 amount of the claims were disputed, contingent and/or otherwise unresolved,
11 including the claims of Jeff St. Thomas, Anne Walker, Elliott Goldman and Gulf
12 Insurance Company (collectively "Disputed Non-Investor Claims"). As the
13 Disputed Non-Investor Claims remain unresolved, the Receiver proposes to
14 continue to withhold distribution on Non-Investor Claims and to reserve funds in
15 an amount sufficient to provide for a pro rata distribution were they to share in the
16 distribution with Allowed Investor Claims.²

17 By this Motion, the Receiver seeks an order providing for a second
18 distribution of no less than \$4 million on a pro rata basis on Allowed Investor
19 Claims only, bringing the total distributions on Allowed Investor Claims to
20 approximately \$22 million, or approximately 18.73% of Allowed Investor Claims.
21 The Receiver further requests approval to increase the amount of reserved funds
22 for Non-Investor Claims by an amount equal to the percentage distribution paid on
23 Allowed Investor Claims, with such sums held pending further order of the Court.
24 Based on a \$4 million distribution on Allowed Investor Claims, the amount of
25 additional funds reserved for Non-Investor Claims would be \$101,470.40, or
26 3.41% of potential Non-Investor Claims of \$2,975,671.64, bringing the total

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28 ² The Receiver anticipates resolution of the Disputed Non-Investor Claims or
seeking a Court order determining those claims prior to making a third distribution.

1 amount of reserved funds for Non-Investor Claims to not less than \$558,236. The
2 Receiver requests approval to distribute more than \$4 million on Allowed Investor
3 Claims should he have sufficient funds to do so and provided he reserves
4 additional funds sufficient to make a pro rata distribution on Non-Investor Claims.

5 II.

6 **THE RECEIVER PROPOSES A SECOND DISTRIBUTION OF** 7 **NO LESS THAN \$4 MILLION ON ALLOWED INVESTOR** 8 **CLAIMS**

9 A. **Courts Have Broad Authority To Adopt Distribution Plans of** 10 **Receivership Assets**

11 “[A] primary purpose of equity receiverships is to promote orderly and
12 efficient administration of the estate by the district court for the benefit of
13 creditors.” S.E.C. v. Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986); See also, S.E.C.
14 v. Wencke, 783 F.2d 829, 837 (9th Cir. 1986) (“The primary purpose of allowing
15 courts to establish receiverships in securities fraud actions is to prevent further
16 dissipation of the assets of the defrauded investors . . .”). Accordingly, courts are
17 granted “broad powers” and “wide discretion” in supervising and fashioning
18 appropriate relief in an equity receivership to achieve this purpose. S.E.C. v.
19 Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992); S.E.C. v. Hardy, 803 F.2d at 1037;
20 Liberte Capital Group v. Capwill, 229 F. Supp. 2d 799, 802 (N.D. Ohio 2002) *aff’d*,
21 2004 U.S. App. LEXIS 10107 (6th Cir. May 19, 2004); See also, McFarland v.
22 Winnebago South Inc., 863 F. Supp. 1025, 1034 (W.D. Mo. 1994) (“A federal
23 district court presiding over an equity receivership has extremely broad power to
24 supervise the receivership and protect receivership assets.”).

25 With respect to a plan to distribute receivership assets, reasonably
26 expeditious and efficient procedures will generally be upheld so long as they are
27 also fair and equitable. (See, Liberte Capital Group v. Capwill, 229 F. Supp. 2d at
28 804 (“As a court sitting in equity, this Court is governed by a fundamental principle

1 that the method of distribution should be equitable and fair.”); See also, S.E.C. v.
2 Hardy, 803 F.2d at 1038-39 (“the rights of creditors of a receivership must be
3 balanced against the need for expeditious administration of the receivership; a
4 district court in overseeing a receivership must ‘make rules which are practicable
5 as well as equitable’ (quoting First Empire Bank-New York v. FDIC, 572 F.2d
6 1361, 1368 (9th Cir.), *cert. denied*, 439 U.S. 919, 58 L. Ed. 2d 265, 99 S. Ct. 293
7 (1978)).

8 The pro rata distribution plan proposed by the Receiver treats similarly
9 situated investor creditors alike by dividing the receivership assets available for
10 distribution among the investor creditors according to the Allowed Claims of such
11 creditors. The plan is consistent with the Court’s previously approved claims
12 filing and allowance procedures in this case.

13 The Receiver in this case has proposed a second distribution plan which
14 provides for pro rata distribution of the receivership assets among the Allowed
15 Investor Claims and seeks to reserve the funds necessary to pay a pro rata 3.41%
16 distribution on Non-Investor Claims to be added to the funds already in reserve
17 for potential Non-Investor Claims, with such sums held pending further order of
18 the Court and determination of the amount and priority of the Non-Investor
19 Claims. The Receiver contends that under the facts and circumstances of certain
20 cases, grounds may exist to subordinate some or all of the Non-Investor Claims,
21 that such claims may be deemed not to represent claims of “similarly situated”
22 creditors to the investors, and that the majority of Non-Investor Claims in dollar
23 amount remain unresolved, contingent and/or disputed, warranting withholding of
24 distributions on those claims at this time.

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III.

CONCLUSION

Based on the foregoing, the Receiver respectfully requests that the Court grant relief as sought herein.

DATED: July 14, 2006

McKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES
ERIN M. JACKSON

By: 
GARY OWEN CARIS
Attorneys for Permanent Receiver,
ROBB EVANS

1 **DECLARATION OF BRICK KANE**

2 I, Brick Kane, declare:

3 1. I am a Deputy to Robb Evans, who has been appointed as permanent
4 receiver of D.W. Heath & Associates, inc., Private Capital Management, Inc.,
5 Private Collateral Management, Inc. and PCM Fixed Income Fund I, LLC and their
6 subsidiaries and affiliates (collectively, the “Heath Receivership Defendants”) and
7 as Receiver over the Schlarmann Interests (“Receiver”) and am a principal in Robb
8 Evans & Associates LLC. I have personal knowledge of the matters set forth in this
9 declaration, and if I were called upon to testify as to these matters, I could and
10 would competently testify based upon my personal knowledge.

11 2. The Receiver was initially appointed as temporary receiver in this
12 matter pursuant to this Court’s Stipulation and Order Appointing Robb Evans
13 Temporary Receiver entered May 4, 2004. Thereafter, the Receiver was appointed
14 as permanent receiver pursuant to the Stipulation and Order Appointing a
15 Permanent Receiver entered May 19, 2004.

16 3. On July 2, 2004, the Riverside County District Attorney initiated a
17 criminal action against Heath, O’Brien, Heath’s father, John William Heath, and
18 Larre Jaye Schlarmann (“Schlarmann”), in the action entitled People of the State of
19 California v. Daniel William Heath, et al., Case No. RIF 117775 pending in the
20 Superior Court of California, County of Riverside (“Criminal Action”). The claims
21 asserted in the Criminal Action are subject to the state “Aggravated White Collar
22 Crime Enhancement” provisions of the California Penal Code, pursuant to which
23 the District Attorneys’ office has sought and obtained a temporary restraining order
24 prohibiting the disposition or transfer of assets by any of the criminal defendants.
25 In addition, on July 21, 2004, the Riverside Superior Court issued its Order
26 Appointing Robb Evans as Receiver of the Schlarmann Interests Pursuant to Penal
27 Code section 186.11 (“July 21 Receivership Order”). The July 21, 2004
28 Receivership Order was subsequently amended by order entered November 19,

1 2004 in the Criminal Action to expand the scope of assets subject to the
2 receivership to include certain real property containing avocado groves located in
3 Bonsall, California (“Amended Schlarmann Order”). The July 21, 2004
4 Receivership Order and the Amended Schlarmann Order are referred to collectively
5 herein as the “Schlarmann Receivership Order.” Pursuant to the Schlarmann
6 Receivership Order, the Receiver has been appointed Receiver over all of the
7 Quizno’s Entities and the Hotel Entities, as those terms are defined in the
8 Schlarmann Receivership Order, and the Bonsall property.

9 4. I participated in the preparation of the Receiver’s Reports of Activities
10 previously filed with the Court and approved by Court orders in this case, including
11 the Receiver’s Report of Activities for the Period of May 15, 2004 Through July 9,
12 2004 filed July 14, 2004 and the Receiver’s Report of Activities for the Period of
13 July 12, 2004 Through December 31, 2004 filed January 21, 2005. The reports
14 describe the lack of financial basis for the transactions and investments solicited
15 from the victims of the investment fraud perpetrated by the defendants and further
16 support the conclusion that funds paid to earlier investors as “interests” or “profits”
17 were paid with funds solicited from later investors. The findings in the reports
18 indicate that Heath Receivership Defendants operated a fraudulent investment
19 scheme in effect as a Ponzi-type scheme and that the investment entities were
20 insolvent at all times as a result, with obligations owed by the entities exceeding the
21 assets available to repay them. Judgments have been entered against the
22 Receivership Defendants as well as against Heath in this civil action in the
23 principal amount of \$109,334,158.

24 5. On February 28, 2005, the Court in this action conducted a hearing on
25 motions brought by the Receiver seeking to have administration and supervision of
26 the Schlarmann Interests receivership vested in this Court and on a motion seeking
27 approval of the Receiver’s proposed claims filing and allowance procedure (the
28 “Claims Procedures Motion”). The motion regarding the administration of the

1 Schlarmann Interests receivership was granted as reflected in the Order: (1)
2 Approving Stipulation with Chapter 7 Trustee re Administration of Assets,
3 Withdrawal of Reference and Reservation of Rights Over Proceeds; and (2)
4 Authorizing Expansion of Receivership to Include Schlarmann Interests entered
5 March 3, 2005.

6 6. Only one creditor filed opposition to the Claims Procedures Motion.
7 That creditor, Clarence Morris, asserted that he was entitled to a priority claim
8 payable ahead of other receivership claimants from the proceeds of a deposit made
9 shortly before the imposition of the asset freeze against Daniel Heath. The
10 Receiver filed a reply to the Morris opposition, and the Court overruled the Morris
11 objection. The Receiver's proposed claims filing and allowance procedures were
12 granted by the Court order entered March 4, 2005 (the "Claims Procedures Order").

13 7. I supervised and participated in the implementation of the Claims
14 Procedures Order in which the Receiver determined the claim amount of each
15 investor and the amount owed to non-investor creditors and provided each investor
16 and non-investor creditor claimant with notice of the Receiver's calculation of their
17 claim. They were given the requisite 30 days to object to the proposed claim
18 amount during which time the Receiver received hundreds of responses to the
19 claims notices.

20 8. Based on the review and reconciliation, I calculate that there are
21 \$117,472,307 in Allowed Investor Claims against the receivership estate. I also
22 calculate there are \$2,975,671.64 in potential Non-Investor Claims.

23 9. On October 20, 2005, the Receiver filed a motion seeking an order:
24 (1) Approving Receiver's Plan for Initial Distribution on Allowed Investor
25 Claims; (2) Disallowing Claim of Clarence Morris as Priority Claim; (3)
26 Determining Amount of Allowed Claim of Peter and Heike Stadler; and (4)
27 Authorizing Reserve of Funds without Distribution on Account of Non-Investor
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1 Creditor Claims (“Initial Distribution Motion”). The Court granted the relief
2 requested by Order entered November 17, 2005 (“Initial Distribution Order”).

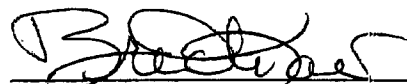
3 10. The Initial Distribution Order resolved the last of the disputed
4 investor claims, the claims of Clarence Morris and Peter and Heike Stadler. The
5 Initial Distribution Order also approved the Receiver’s initial distribution plan,
6 which provided for the pro rata distribution of no less than \$13 million on
7 Allowed Investor Claims. The Initial Distribution Order further authorized the
8 Receiver to reserve and hold undistributed receivership assets sufficient to fund a
9 pro rata distribution to Non-Investor Claims were they to share in distribution
10 with Allowed Investor Claims, with such sums held pending further order of the
11 Court. I have reviewed the Receiver’s accounting and have determined that the
12 Receiver’s actual initial distribution on Allowed Investor Claims was
13 \$18,028,912.65 representing 15.35% of Allowed Investor Claims of
14 \$117,472,307. The Receiver reserved and continues to reserve \$456,765.60
15 representing 15.35% of potential Non-Investor Claims of \$2,975,671.64.

16 11. For the initial distribution, the Receiver proposed to withhold
17 distribution to Non-Investor Claims for several reasons including the fact that of
18 the total potential Non-Investor Claims, the Receiver estimated that the majority
19 in dollar amount of the claims were disputed, contingent and/or otherwise
20 unresolved, including the claims of Jeff St. Thomas, Anne Walker, Elliott
21 Goldman and Gulf Insurance Company (collectively “Disputed Non-Investor
22 Claims”). As the Disputed Non-Investor Claims remain unresolved, the Receiver
23 proposes to continue to withhold distribution on Non-Investor Claims and to
24 reserve funds in an amount sufficient to provide for a pro rata distribution were
25 they to share in the distribution with Allowed Investor Claims. The Receiver
26 anticipates resolution of the Disputed Non-Investor Claims or seeking a Court order
27 determining those claims prior to making a third distribution.

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1 12. The Receiver seeks to make a second distribution of no less than \$4
2 million on a pro rata basis on Allowed Investor Claims only, bringing the total
3 distributions on Allowed Investor Claims to approximately \$22 million, or
4 approximately 18.73% of Allowed Investor Claims. The Receiver further requests
5 approval to increase the amount of reserved funds for Non-Investor Claims by an
6 amount equal to the percentage distribution paid on Allowed Investor Claims, with
7 such sums held pending further order of the Court. Based on a \$4 million
8 distribution on Allowed Investor Claims, the amount of additional funds reserved
9 for Non-Investor Claims would be \$101,470.40, or 3.41% of potential Non-Investo
10 Claims of \$2,975,671.64, bringing the total amount of reserved funds for Non-
11 Investor Claims to not less than \$558,236. The Receiver requests approval to
12 distribute more than \$4 million on Allowed Investor Claims should he have
13 sufficient funds to do so and provided he reserves additional funds sufficient to
14 make a pro rata distribution on Non-Investor Claims.

15
16 I declare under penalty of perjury that the foregoing is true and correct and
17 that this declaration was executed on this 13 day of July 2006 at Sun Valley,
18 California.

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22 BRICK KANE

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **444 South Flower Street, Los Angeles, California 90071.**

On July 14, 2006, I served the **NOTICE OF MOTION AND MOTION BY RECEIVER FOR ORDER APPROVING SECOND DISTRIBUTION; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF BRICK KANE IN SUPPORT THEREOF** on the interested parties in this action by placing the **true copy/original** thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

SEE ATTACHED MAILING LIST.

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service.

The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of such business.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 14, 2006 at Los Angeles, California



Signature

Pamela A. Coates
Print Name

SERVICE LIST

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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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Burbank, CA 91505
Tel: (818) 558-1717
Fax: (818) 526-7672

Advisory Counsel for Defendant
Daniel William Heath

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Oswald & Yap, APC
16148 San Canyon Avenue
Irvine, CA 92618
Tel: (949) 788-8900
Fax: (949) 788-8980

Attorney for Defendant
Denis Timothy O'Brien

R.L. Goodrich, Chapter 7 Trustee
3600 Lime Street, Suite 416
Riverside, CA 92501
Tel: (951) 341-9300
Fax: (951) 341-9309

Bankruptcy Trustee

Jeffrey W. Broker, Esq.
18191 Von Karman Avenue, Suite 470
Irvine, CA 92612
Tel: (949) 222-2000
Fax: (949) 222-2022

Attorney for Debtor

Norman Hanover, Esq.
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