

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 and Authorizing Payment of Receiver's and Professionals'
Fees and Expenses [October 1, 2006 Through March 31, 2007];
Memorandum of Points and Authorities; Declarations of Robb Evans
and Gary Owen Caris in Support Thereof

Filed May 25, 2007

FILED

1 GARY OWEN CARIS
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2007 MAY 25 PM 2:42

CLERK OF COURT
BY _____

6 Attorneys for Permanent Receiver
7 ROBB EVANS

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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 FOR ORDER
APPROVING AND AUTHORIZING
PAYMENT OF RECEIVER'S AND
PROFESSIONALS' FEES AND
EXPENSES [OCTOBER 1, 2006
THROUGH MARCH 31, 2007];
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS
OF ROBB EVANS AND GARY
OWEN CARIS IN SUPPORT
THEREOF**

DATE: June 18, 2007
TIME: 1:30 p.m.
DEPT.: Courtroom 16

COPY

MCKENNA LONG &
ALDRIDGE LLP
ATTORNEYS AT LAW
LOS ANGELES

1 PLEASE TAKE NOTICE that on June 18, 2007 at 1:30 p.m. or as soon
2 thereafter as counsel may be heard in Courtroom 16 of the above-entitled Court,
3 located at 312 N. Spring Street, Los Angeles, California, Robb Evans 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"), will and does hereby move
8 the Court for the following relief:

9 (1) An order approving and authorizing the payment of the fees and
10 expenses of the Receiver, the Receiver's staff, and the Receiver's counsel for the
11 six month period from October 1, 2006 through March 31, 2007 ("Seventh Expense
12 Period"), including payment of the fees of the Receiver, the Receiver's deputies,
13 agents, staff and professionals, and reimbursement of costs incurred during the
14 Seventh Expense Period. The fees and expenses of the Receiver and his staff
15 incurred during the Seventh Expense Period total \$45,944.10 and his legal fees and
16 expenses, including those of outside counsel, incurred during the Seventh Expense
17 Period total \$24,371.23.

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, the
20 separate notice of hearing on the Motion served pursuant to the Court's prior order
21 limiting notice in the matter,¹ the accompanying memorandum of points and
22 authorities and declarations of Robb Evans and Gary Owen Caris, the Appendix of
23 Exhibits served and filed herewith, and upon such other pleadings and oral and
24 documentary evidence as may be presented at or before the time of hearing.

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 PLEASE TAKE FURTHER NOTICE that this Motion is served in
2 accordance with the Limited Notice Order. Pursuant to the Limited Notice Order,
3 this Motion, the memorandum and declarations but exclusive of voluminous
4 exhibits, is posted on the Receiver's website at www.heath-receiver.com, where it
5 may be viewed by any interested party. Copies of this Motion will be provided to
6 any interested party upon receipt of a written request, which may be sent to: Robb
7 Evans & Associates LLC, 11450 Sheldon Street, Sun Valley, CA 91352-1121,
8 Facsimile No. (818) 768-8802.

9
10 Dated: May 25, 2007

Respectfully submitted,

11 MCKENNA LONG & ALDRIDGE LLP
12 GARY OWEN CARIS
13 LESLEY ANNE HAWES

14 By: 
15 Gary Owen Caris

16 Attorney for Permanent Receiver,
17 **ROBB EVANS**

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On April 28, 2004, this action was filed by the Securities and Exchange
4 Commission ("SEC") against Daniel Heath ("Heath"), Denis Timothy O'Brien
5 ("O'Brien") and the entities D.W. Heath & Associates, Inc. ("Heath & Associates"),
6 Private Capital Management, Inc. ("PCM"), Private Collateral Management, Inc.
7 ("Collateral"), and PCM Fixed Income Fund I, LLC ("Fund").

8 A. Receivership Orders

9 Shortly after this action was instituted, the SEC also sought and obtained a
10 temporary restraining order as to all defendants and appointment of Robb Evans as
11 a temporary receiver over Heath & Associates, PCM, Collateral, Fund and their
12 subsidiaries and affiliates. The SEC and Heath subsequently entered into a
13 Stipulation and Order Appointing a Permanent Receiver filed May 18, 2004 in the
14 SEC Action by which the Receiver has been appointed Permanent Receiver over
15 the Heath Receivership Entities.

16 On July 2, 2004, the Riverside County District Attorney initiated a criminal
17 action against Heath, O'Brien, Heath's father, John William Heath, and Larre Jaye
18 Schlarmann ("Schlarmann"), in the action entitled People of the State of California
19 v. Daniel William Heath, et al., Case No. RIF 117775 pending in the Superior
20 Court of California, County of Riverside ("Criminal Action"). On July 21, 2004,
21 the Riverside Superior Court issued its Order Appointing Robb Evans as Receiver
22 of the Schlarmann Interests Pursuant to Penal Code section 186.11 ("July 21
23 Receivership Order"). The July 21, 2004 Receivership Order was subsequently
24 amended by order entered November 19, 2004 in the Criminal Action to expand the
25 scope of assets subject to the receivership to include certain real property located in
26 Bonsall, California ("Amended Schlarmann Order"). The July 21, 2004
27 Receivership Order and the Amended Schlarmann Order are referred to collectively
28 herein as the "Schlarmann Receivership Order." Pursuant to the Schlarmann

1 Receivership Order, the Receiver has been appointed Receiver over all of the
2 Quizno's Entities and the Hotel Entities, as those terms are defined in the
3 Schlarmann Receivership Order, and the Bonsall property.

4 The Receiver subsequently sought and obtained orders from the state court in
5 the Criminal Action and an order of this Court providing that the responsibility for
6 the administration and supervision of the receivership estate of the Schlarmann
7 Interests be transferred to this Court. This Court's order authorizing the
8 administration of the Schlarmann Interests by this Court was entered on March 3,
9 2005.

10 **B. Prior Expense Periods**

11 The Court has previously approved and authorized for payment the fees and
12 expenses of the Receiver, the Receiver's staff, and the Receiver's counsel for the
13 periods from May 3, 2004 through June 30, 2004 ("First Expense Period"), July 1,
14 2004 through December 31, 2004 ("Second Expense Period"), January 1, 2005
15 through June 30, 2005 ("Third Expense Period"), July 1, 2005 through November
16 30, 2005 ("Fourth Expense Period"), December 1, 2005 through April 30, 2006
17 ("Fifth Expense Period") and May 1, 2006 through September 30, 2006 ("Sixth
18 Expense Period").

19 **C. The Receiver's Current Motion**

20 By this Motion, the Receiver seeks an order approving and authorizing
21 payment of fees and expenses of the Receiver, the Receiver's staff, and the
22 Receiver's counsel for the six-month period from October 1, 2006 through March
23 31, 2007 ("Seventh Expense Period"). These expenses are detailed in Exhibit 1 to
24 the declaration of Robb Evans attached hereto and Exhibits 1 through 7 of the
25 Appendix of Exhibits accompanying this Motion.

1 **II. THE RECEIVER SEEKS APPROVAL OF THE PAYMENT OF**
2 **RECEIVER'S AND PROFESSIONALS' FEES AND EXPENSES FOR**
3 **THE SEVENTH EXPENSE PERIOD FROM OCTOBER 1, 2006**
4 **THROUGH MARCH 31, 2007**

5 The Receiver seeks an order authorizing payment of fees and expenses of the
6 Receiver, the Receiver's staff, and the Receiver's counsel for the Seventh Expense
7 Period. During the time frame covered by the Seventh Expense Period, the
8 Receiver and his staff engaged in various administrative activities relating to the
9 receivership estate of the Heath Receivership Defendants and the Schlarmann
10 Interests, which included:

- 11 1. Continuing to wind up the liquidation of the remaining assets of value,
12 including the Quizno's franchises, Techniglove and various real estate assets, all as
13 more particularly set forth below;
- 14 2. Continuing to perform a myriad of accounting services, including
15 reconciliation of the general ledger for the receivership entities to ensure the
16 accuracy of transactions posted to the receivership accounts;
- 17 3. Communicating with investors; and
- 18 4. Communicating with various counsel involved in class action litigation
19 against Fiserv Trust Company and coordinating the production of documents and
20 taking of depositions in connection with the litigation.

21 To date, the Receiver has collected over \$31.3 million in funds for the
22 receivership estate through the Seventh Expense Period. Of this amount,
23 approximately \$22 million has been distributed to claimants. While this represents
24 the vast majority of the amounts that will be available for distribution, the Receiver
25 can advise the Court that at least one more distribution will be made to creditors as
26 a result of ongoing liquidation of real property assets, the settlement with the
27 Chapter 7 trustee of Leslee Heath, collections from the Techniglove settlement, and
28 the remaining liquidation of Quizno's franchise stores, and miscellaneous

1 additional collections. It is anticipated that at least another \$4 million will be
2 distributed. A motion to approve a third distribution is anticipated to be filed in the
3 near future.

4 **A. Liquidation and Disposition of Receivership Assets**

5 The following paragraphs highlight the status of the remaining business
6 assets since the last expense period and the recoveries which have come to fruition
7 during the time frame covered by the Seventh Expense Period:

8 1. Settlement with the Chapter 7 Trustee of Leslee Heath

9 On November 20, 2006, this Court approved the settlement agreement
10 between the Receiver and Robert L. Goodrich in his capacity as Chapter 7 Trustee
11 of the bankruptcy estate of Leslee Jean Heath. This settlement agreement
12 concerned the proceeds from the sale of Leslee and Daniel Heath's three parcels of
13 real property² and the proceeds of the Rivien Note held by the Receiver. The
14 approval of the settlement agreement allowed the Receiver to retain \$1,030,619
15 previously paid over by the Chapter 7 Trustee to the Receiver representing one-half
16 of the net proceeds from the sale of those three parcels of real property. In addition,
17 all of the proceeds of the Rivien Note and related tax refunds and other rights,
18 claims and interests associated with the Rivien Note in the amount of \$797,949.85
19 were retained by the Receiver. Additionally, pursuant to the settlement a payment
20 was made by the Trustee to the Receiver in the amount of \$600,000 in December
21 2006.

22 2. Quizno's-Related Assets and Entities

23 As previously reported, this Court authorized the Receiver to accept an
24 appointment over the Schlarmann Interests in the Criminal Action pursuant to
25 which the Receiver was authorized to conduct a liquidation of 31 Quizno's
26

27 ² These are 15845 Berkley Avenue, Chino Hills, California ("Chino Hills
28 Property"), 203 North Eureka, Big Bear Lake, California ("Big Bear Property") and
32 Pelican Point, Newport Beach, California ("Pelican Point Property").

1 franchise stores owned by the Receivership Defendants. Of the 31 stores, 28 stores
2 have been sold, two stores have been closed and one store is in escrow to be sold.

3 3. Techniglove International, Inc.

4 As reported by the Receiver in the Sixth Expense Report, Techniglove was a
5 company that received substantial and ongoing funding from Heath from the
6 proceeds of receivership entities. The company manufactures industrial high-grade
7 latex gloves for export to North America, Japan and Europe. In 2001, PCM loaned
8 Techniglove an additional \$551,000 to invest in a subsidiary company, Flexitech,
9 located in Malaysia. The loan was converted to equity and the Receiver was
10 advised that share certificates were issued to Techniglove in March 2004. Flexitech
11 went public as Medi-Flex, Limited on November 8, 2004.

12 Previously, the Receiver filed a motion before this Court for determination
13 that Techniglove was a receivership entity and for other relief. Thereafter,
14 Techniglove filed for voluntary Chapter 11 protection. Subsequently, the Receiver
15 and Techniglove entered into negotiations which resulted in a settlement being
16 reached and approved by the Court during the period covered by the Sixth Report.
17 Under the settlement, Techniglove was to pay the Receiver a total of \$1,800,000.
18 While Techniglove initially fell behind in the payments due under the settlement,
19 Techniglove was able to ultimately pay the entire \$1,800,000 as of April 11, 2007.³

20 4. Real Property Assets

21 As set forth in the Seventh Report, the Receiver took control of four
22 residential lots located in Big Bear which are subject to the Schlarmann
23 Receivership Order. At one point, all four properties were in escrow, however, the
24 three properties located at 924 and 934 Pine Knot Avenue and 918 Cameron Court
25 fell through escrow. The Receiver sold 944 Pine Knot Avenue in December 2006
26 at a price above appraised value. The net sale proceeds were \$119,996.67.

27 _____
28 ³ As of March 31, 2007, a total of \$1,576,833.50 had been paid to the Receiver.

1 In addition, the Receiver sold real property previously owned by John Heath
2 (Heath's father) located at 1809 Sachs Avenue in West Covina, California. The net
3 sale proceeds were \$85,300.46.

4 5. Coastal Diagnostic Services

5 As set forth in the Seventh Report, Heath was 33% owner of Coastal
6 Diagnostic Services, a MRI imaging and evaluation firm that is no longer operating.
7 A medical collection specialist is collecting the receivables. One third of net
8 collections are forwarded to the Receiver. Payments remitted to the Receiver for
9 2006 were \$44,000 and thus far in 2007 payments were \$3,000. Payments have
10 totaled \$134,500 since collection efforts began in 2004. The remaining receivables
11 are due for workers' compensation claims, personal injury insured claims, and
12 uninsured medical claims. Almost all claims are in litigation. Based on the
13 evaluation of the collection specialist, and the age of the receivables, collection
14 prospects are diminishing.

15 6. Remaining Business Investments and/or Assets

16 As previously reported, the Receiver expects minimal recovery from the
17 remainder of the business assets of the receivership estate. The Receiver has been
18 receiving payments on its unsecured claim in the confirmed plan of reorganization
19 of Design Solutions, Inc. and anticipated a total of approximately \$20,000 on its
20 unsecured claim over five years. The company, however, continues to struggle
21 post-bankruptcy. Thus, it is unknown how much of the \$20,000 will be repaid; full
22 recovery appears unlikely,

23 7. Fiserv Trust Company Litigation

24 The Receiver has been coordinating the production of documents with parties
25 involved in class action litigation against Fiserv Trust Company, United States
26 District Court, Central District of California, Case No. 05-CV-03124-ABC. Fiserv
27 acted as an IRA custodian in connection with hundreds of investments in this
28 matter. The parties to the litigation have sought documents from the Receiver and

1 requested the depositions of Receiver employees. As discussions evolved
2 regarding the production of documents and the depositions of Receiver employees,
3 it was apparent that these requests could become expensive for the receivership
4 estate. However, with negotiations commencing in the Seventh Expense Period
5 and completed in April 2007, the Receiver entered into a stipulated agreement
6 approved by District Court Judge Collins, whereby Fiserv and Plaintiffs agreed to
7 pay all reasonable costs and fees associated with the Receiver's production of
8 documents and the depositions of Robb Evans, Brick Kane, and Kent Johnson in
9 the litigation, including attorneys' fees, Receiver's fees, and costs associated with
10 identifying, gathering, copying and producing documents.

11 **B. Receiver's and Counsel's Services**

12 By this Motion, the Receiver seeks an order approving and authorizing
13 payment of fees and expenses of the Receiver, the Receiver's staff, and the
14 Receiver's counsel for the six-month period from October 1, 2006 through March
15 31, 2007. The fees and costs of the Receiver for which approval is requested are
16 specified in the summary entitled "Receivership Collections and Administrative
17 Expenses by Month" attached as Exhibit 1 to the Declaration of Robb Evans. The
18 fees and costs of the Receiver are itemized by the Receiver's fees (Appendix, Ex.
19 1); project coordination and management staff fees (Appendix, Ex. 2); financial
20 reconstruction and accounting staff fees (Appendix, Ex. 3); asset evaluation and
21 collection staff fees (Appendix, Ex. 4); database maintenance and reconstruction
22 staff fee claims (Appendix, Ex. 5); and internal legal fees (Appendix, Ex. 6). The
23 fees and expenses of the Receiver's outside counsel, McKenna Long & Aldridge
24 LLP ("McKenna Firm") are attached to the Appendix as Exhibit 7.

25 In addition to the itemized fees set forth in Exhibits 1 through 7 of the
26 Appendix, the summary entitled Receivership Collections and Administrative
27 Expenses by Month, Exhibit 1 to the Declaration of Robb Evans, identifies the
28 balance of the fees and costs sought, specifically \$7,795.23 for the fees of clerical

1 staff who do not prepare billing summaries (and whose rates are all less than \$45.00
2 per hour) and \$7,772.87 in costs of the Receiver.

3 As specified in detail in Exhibit 1 to the Declaration of Robb Evans and in
4 Exhibits 1 through 7 of the Appendix of Exhibits, the Receiver has incurred
5 \$70,315.33 in fees and expenses for the Seventh Expense Period, comprised of the
6 Receiver's fees and expenses of \$45,944.10 and legal fees and costs of \$24,371.23,
7 including both his in-house and outside counsel.

8 To assist the Court in evaluating the services performed, the Receiver advises
9 the Court of the primary areas of responsibility assumed by various members of the
10 Receiver's staff so that the Court can generally ascertain the services rendered that
11 are the subject of the entries:

12 Brick Kane: Responsible for investor communications and primarily
13 responsible for Quizno's litigation and settlement, distributions to investors,
14 communication with counsel regarding discovery requests, and settlement
15 with the Leslee Heath bankruptcy trustee.

16 Anita Jen: Responsible for general receivership accounting activities and
17 handling tax issues.

18 Carl DeCius: Primarily responsible for general ledger reconciliation for the
19 receivership entities and ensuring the accuracy of transactions posted to the
20 receivership accounts.

21 Ed Roop: Primarily responsible for information technology matters,
22 including creating and updating the investor database.

23 Lillian Lee: Responsible for general receivership accounting activities,
24 including preparing and maintaining the investor database, responding to
25 claimant inquiries, and issuing checks.

26 Kenton Johnson: Responsible for investor communications, primarily
27 responsible for Big Bear lots sale strategies, and responsible for other asset
28 analysis and collection strategies.

1 Earl Lanna: Responsible for asset evaluation and collections.

2 Srinivasa Krishnan: Primarily responsible for analysis and disposition of
3 Heath investment interests, including in particular Techniglove.

4 1. Services of Receiver

5 During the Seventh Expense Period, the Receiver's expenses were reduced
6 significantly as the estate enters its latter stages of collection and liquidation
7 activity. The most labor intensive aspect of the Receiver's work centered on
8 financial reconstruction and accounting services. During this Seventh Expense
9 Period, the Receiver's staff continued to reconcile and update the complex database
10 pertaining to the receivership entities, including performing general ledger
11 reconciliation work, posting new payables, payroll entries, tax deposits, and
12 expenses.

13 In addition, the Receiver and his principal deputies continued to oversee the
14 liquidation of Quizno's franchise stores. The Receiver and his principal deputies
15 and staff also were responsible for developing strategies for the liquidation of the
16 remaining real estate assets and for selling the properties at 944 Pine Knot Avenue
17 and 1809 E. Sachs Avenue and other miscellaneous assets, and to continue to
18 monitor collection of the Techniglove settlement payments. The Receiver, in
19 conjunction with his counsel, dealt with various document and discovery requests
20 and entered into a stipulated agreement for reasonable costs and fees in connection
21 with the Fiserv litigation. These services will be reimbursed by the parties to that
22 action, as noted above.

23 2. Services of Receiver's Counsel

24 (a) McKenna Firm

25 During the Seventh Expense Period, the Receiver's general receivership and
26 litigation counsel, the McKenna Firm, prepared the motion to approve the
27 settlement agreement with Leslee Heath's Chapter 7 Trustee and attended the
28 hearing. The Receiver's counsel also prepared and attended the hearing on a

1 motion to approve the sale of the 944 Pine Knot Avenue property. Further, the
2 Receiver's counsel monitored the sale of 1809 E. Sachs Avenue property.
3 Additionally, a motion to approve the Receiver's Sixth Report and Seventh Report
4 and approve the Receiver's Sixth Request for payment of fees and costs was also
5 prepared. Further, the Receiver's counsel continued to monitor progress in
6 collection of the Techniglove settlement and the payment of transfer fees in
7 connection with the sale of Quizno's stores. In addition, the Receiver's counsel
8 advised the Receiver with respect to pending discovery requests made in connection
9 with the Fiserv litigation. Finally, the Receiver's counsel negotiated a stipulated
10 agreement regarding payment of all reasonable costs and fees associated with
11 Receiver attending depositions and producing documents for the Fiserv litigation,
12 which will significantly reduce expense to the receivership estate.

13 (b) Receiver's In-House Counsel

14 The Receiver's in-house counsel, Linda Candler, performed legal services in
15 the amount of \$400.00. During the Seventh Expense Period, Ms. Candler reviewed
16 documents and had communications regarding the claim against Aquatic Rehab.

17 (c) Perkins Coie Brown & Bain

18 The Receiver's legal fees and costs also included an amount of \$120.00 for
19 the services of Perkins Coie Brown & Bain ("Perkins Firm"). The Receiver
20 retained the Perkins Firm to serve as local bankruptcy counsel in connection with
21 the Coast Energy and Bach bankruptcy cases pending in Phoenix, Arizona.

22 In light of the successful and cost-effective work performed during the
23 Seventh Expense Period, the Receiver submits that his fees and costs and those of
24 his professionals are reasonable and should be approved and authorized for
25 payment in their entirety.

26 **III. CONCLUSION**

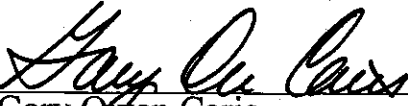
27 For the foregoing reasons, the Receiver respectfully requests that the Court
28 grant this motion and issue an order approving and authorizing the payment of the

1 fees and expenses of the Receiver, the Receiver's staff, and the Receiver's counsel
2 incurred during the Seventh Expense Period.

3 Dated: May 25, 2007

Respectfully submitted,

4 MCKENNA LONG & ALDRIDGE LLP
5 GARY OWEN CARIS
6 LESLEY ANNE HAWES

7 By: 
8 Gary Owen Caris

9 Attorneys for Permanent Receiver
10 **ROBB EVANS**

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DECLARATION OF ROBB EVANS

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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, LLC and their subsidiaries and affiliates (collectively, the "Heath Receivership Defendants") and as Receiver over the Schlarmann Interests ("Receiver"), 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 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. Thereafter, I was appointed the permanent receiver in this matter by this Court pursuant to the Stipulation and Order Appointing a Permanent Receiver filed May 18, 2004.

3. 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 Schlarmann ("Schlarmann"), 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"). By order issued by the Riverside Superior Court on July 21, 2004 ("July 21 Receivership Order"), and with the approval of this Court, I was also appointed receiver over the Schlarmann Interests pursuant to California Penal Code section 186.11. The July 21 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 located in Bonsall, California

1 (“Amended Schlarmann Order”). The July 21, 2004 Receivership Order and the
2 Amended Schlarmann Order are referred to collectively for convenience as the
3 “Schlarmann Receivership Order.” The assets covered by the Schlarmann
4 Receivership Order include the Quizno’s Entities and the Hotel Entities, as those
5 terms are defined in the Schlarmann Receivership Order, and the Bonsall property.

6 4. On July 15, 2004, Heath’s wife, Leslee Jane Heath (“Debtor” or “Mrs.
7 Heath”) filed a voluntary petition under Chapter 7 of the Bankruptcy Code.

8 5. I am seeking an order approving and authorizing payment of my fees
9 and expenses, as well as those of my staff, and counsel for the six-month period of
10 October 1, 2006 through March 31, 2007 (“Seventh Expense Period”). The fees
11 and costs for which approval is requested are specified in the summary entitled
12 “Receivership Collections and Administrative Expenses by Month” attached hereto
13 as Exhibit 1 to this declaration. The fees and costs of the Receiver are then
14 itemized by the Receiver’s fees (Appendix, Ex. 1); project coordination and
15 management staff fees (Appendix, Ex. 2); financial reconstruction and accounting
16 staff fees (Appendix, Ex. 3); asset evaluation and collection staff fees (Appendix,
17 Ex. 4); database maintenance and reconstruction staff fees (Appendix, Ex. 5); and
18 internal legal fees (Appendix, Ex. 6). These bills have been redacted where
19 appropriate to preserve the attorney-client privilege or to otherwise protect the
20 Receiver and the estate from inappropriate disclosures. The fees and expenses of
21 the Receiver’s outside counsel, McKenna Long & Aldridge LLP (“McKenna
22 Firm”) are attached to the Appendix as Exhibit 7. As specified in detail in Exhibits
23 1 through 7, included in the Appendix of Exhibits, I have incurred \$70,315.33 in
24 fees and expenses for the Seventh Expense Period, comprised of Receiver’s fees
25 and expenses of \$45,944.10 and legal fees and costs of \$24,371.23, including both
26 my in-house and outside counsel.

27 6. To assist the Court in evaluating the services performed, the Receiver
28 advises the Court of the primary areas of responsibility assumed by various

1 members of my staff so that the Court can generally ascertain the services rendered
2 that are the subject of the entries:

3 Brick Kane: Responsible for investor communications and primarily
4 responsible for Quizno's litigation and settlement, distributions to investors,
5 communication with counsel regarding discovery requests, and settlement
6 with the Leslee Heath bankruptcy trustee.

7 Anita Jen: Responsible for general receivership accounting activities and
8 handling tax issues.

9 Carl DeCius: Primarily responsible for general ledger reconciliation for the
10 receivership entities and ensuring the accuracy of transactions posted to the
11 receivership accounts.

12 Ed Roop: Primarily responsible for information technology matters,
13 including creating and updating the investor database.

14 Lillian Lee: Responsible for general receivership accounting activities,
15 including preparing and maintaining the investor database, responding to
16 claimant inquiries, and issuing checks.

17 Kenton Johnson: Responsible for investor communications, primarily
18 responsible for Big Bear lots sale strategies, and responsible for other asset
19 analysis and collection strategies.

20 Earl Lanna: Responsible for asset evaluation and collections.

21 Srinivasa Krishnan: Primarily responsible for analysis and disposition of
22 Heath investment interests, including in particular Techniglove.

23 During the period of the Seventh Expense Period, my staff and I engaged in
24 ongoing administrative activities related to the receivership estate of the Heath
25 Receivership Defendants and the Schlarmann Interests, which included:

26 A. Continuing to wind up the liquidation of the remaining assets of value,
27 including the Quizno's franchises, Techniglove and various real estate assets, all as
28 more particularly set forth below;

- 1 B. Continuing to perform a myriad of accounting services, including
2 reconciliation of the general ledger for the receivership entities to ensure the
3 accuracy of transactions posted to the receivership accounts;
- 4 C. Communicating with investors; and
- 5 D. Communicating with various counsel involved in class action litigation
6 against Fiserv Trust Company and coordinating the production of documents and
7 taking of depositions in connection with the litigation.

8 7. To date, the Receiver has collected over \$31.3 million in funds for the
9 receivership estate through the Seventh Expense Period. Of this amount,
10 approximately \$22 million has been distributed to claimants. While this represents
11 the vast majority of the amounts that will be available for distribution, the Receiver
12 can advise the Court that at least one more distribution will be made to creditors as
13 a result of ongoing liquidation of real property assets, the recent settlement with the
14 Chapter 7 trustee of Leslee Heath, collections from the Techniglove settlement, and
15 the remaining liquidation of Quizno's franchise stores, and miscellaneous
16 additional collections. It is anticipated that at least another \$4 million will be
17 distributed. A motion to approve a third distribution is anticipated to be filed in the
18 near future.

19 8. The following paragraphs highlight the status of the remaining
20 business assets since the last report and the expected recoveries which have come to
21 fruition during the time frame covered by the Seventh Expense Period:

22 Settlement with the Chapter 7 Trustee of Leslee Heath

23 9. On November 20, 2006, this Court approved the settlement agreement
24 between the Receiver and Robert L. Goodrich in his capacity as Chapter 7 Trustee
25 of the bankruptcy estate of Leslee Jean Heath. This settlement agreement concerned
26 the proceeds from the sale of Leslee and Daniel Heath's three parcels of real
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1 property⁴ and the proceeds of the Rivien Note held by the Receiver. The approval
2 of the settlement agreement allowed the Receiver to retain \$1,030,619 previously
3 paid over by the Chapter 7 Trustee to the Receiver representing one-half of the net
4 proceeds from the sale of those three parcels of real property. In addition, all of the
5 proceeds of the Rivien Note and related tax refunds and other rights, claims and
6 interests associated with the Rivien Note in the amount of \$797,949.85 were
7 retained by the Receiver. Additionally, pursuant to the settlement, a payment was
8 made by the Trustee to the Receiver in the amount of \$600,000 in December 2006.

9 Quizno's-Related Assets and Entities

10 10. As previously reported, this Court authorized the Receiver to accept an
11 appointment over the Schlarmann Interests in the Criminal Action pursuant to
12 which the Receiver was authorized to conduct a liquidation of 31 Quizno's
13 franchise stores owned by the Receivership Defendants. Of the 31 stores, 28 stores
14 have been sold, two stores have been closed and one store is in escrow to be sold.

15 Techniglove International, Inc.

16 11. As reported by the Receiver in the Sixth Expense Report, Techniglove
17 was a company that received substantial and ongoing funding from Heath from the
18 proceeds of receivership entities. The company manufactures industrial high-grade
19 latex gloves for export to North America, Japan and Europe. In 2001, PCM loaned
20 Techniglove an additional \$551,000 to invest in a subsidiary company, Flexitech,
21 located in Malaysia. The loan was converted to equity and the Receiver was
22 advised that share certificates were issued to Techniglove in March 2004. Flexitech
23 went public as Medi-Flex, Limited on November 8, 2004.

24 Previously, the Receiver filed a motion before this Court for determination
25 that Techniglove was a receivership entity and for other relief. Thereafter,
26

27 ⁴ These are 15845 Berkley Avenue, Chino Hills, California ("Chino Hills
28 Property"), 203 North Eureka, Big Bear Lake, California ("Big Bear Property") and
32 Pelican Point, Newport Beach, California ("Pelican Point Property").

1 Techniglove filed for voluntary Chapter 11 protection. Subsequently, the Receiver
2 and Techniglove entered into negotiations which resulted in a settlement being
3 reached and approved by the Court during the period covered by the Sixth Report.
4 Under the settlement, Techniglove was to pay the Receiver a total of \$1,800,000.
5 While Techniglove initially fell behind in the payments due under the settlement,
6 Techniglove was able to ultimately pay the entire \$1,800,000 as of April 11, 2007.
7 As of March 31, 2007, a total of \$1,576,833.50 had been paid to the Receiver.

8 Real Property Assets

9 12. As set forth in the Seventh Report, the Receiver took control of four
10 residential lots located in Big Bear which are subject to the Schlarman
11 Receivership Order. At one point, all four properties were in escrow, however, the
12 three properties located at 924 and 934 Pine Knot Avenue and 918 Cameron Court
13 fell through escrow. The Receiver sold 944 Pine Knot Avenue in December 2006
14 at a price above appraised value. The net sale proceeds were \$119,996.67.

15 In addition, the Receiver sold real property previously owned by John Heath
16 (Heath's father) located at 1809 Sachs Avenue in West Covina, California. The net
17 sale proceeds were \$85,300.46.

18 Coastal Diagnostic Services

19 13. As set forth in the Seventh Report, Heath was 33% owner of Coastal
20 Diagnostic Services, a MRI imaging and evaluation firm that is no longer operating.
21 A medical collection specialist is collecting the receivables. One third of net
22 collections are forwarded to the Receiver. Payments remitted to the Receiver for
23 2006 were \$44,000 and thus far in 2007 payments were \$3,000. Payments have
24 totaled \$134,500 since collection efforts began in 2004. The remaining receivables
25 are due for workers' compensation claims, personal injury insured claims, and
26 uninsured medical claims. Almost all claims are in litigation. Based on the
27 evaluation of the collection specialist, and the age of the receivables, collection
28 prospects are diminishing.

1 Remaining Business Investments and/or Assets

2 14. As previously reported, the Receiver expects minimal recovery from
3 the remainder of the business assets of the receivership estate. The Receiver has
4 been receiving payments on its unsecured claim in the confirmed plan of
5 reorganization of Design Solutions, Inc. and anticipates a total of approximately
6 \$20,000 on its unsecured claim over five years. The company continues to struggle
7 post-bankruptcy. It is unknown how much of the \$20,000 will be repaid; however,
8 full recovery appears unlikely.

9 Fiserv Trust Company Litigation

10 15. The Receiver has been coordinating the production of documents with
11 parties involved in class action litigation against Fiserv Trust Company, United
12 States District Court, Central District of California, Case No. 05-CV-03124-ABC.
13 Fiserv acted as an IRA custodian in connection with hundreds of investments in this
14 matter. The parties to the litigation have sought documents from the Receiver and
15 requested the depositions of Receiver employees. As discussions evolved
16 regarding the production of documents and the depositions of Receiver employees,
17 it was apparent that these requests could become expensive for the receivership
18 estate. However, with negotiations commencing in the Seventh Expense Period
19 and completed in April 2007, the Receiver entered into a stipulated agreement
20 approved by District Court Judge Collins, whereby Fiserv and Plaintiffs agreed to
21 pay all reasonable costs and fees associated with the Receiver's production of
22 documents and the depositions of Robb Evans, Brick Kane, and Kent Johnson in
23 the litigation, including attorneys' fees, Receiver's fees, and costs associated with
24 identifying, gathering, copying and producing documents.

25 16. During the Seventh Expense Period, the Receiver's expenses were
26 reduced significantly as the estate enters its latter stages of collection and
27 liquidation activity. The most labor intensive aspect of the Receiver's work
28 centered on financial reconstruction and accounting services. During this Seventh

1 Expense Period, the Receiver's staff continued to reconcile and update the complex
2 database pertaining to the receivership entities, including performing general ledger
3 reconciliation work, posting new payables, payroll entries, tax deposits, and
4 expenses.

5 17. The Receiver's in-house counsel, Linda Candler, performed legal
6 services in the amount of \$400.00. During the Seventh Expense Period, Ms.
7 Candler reviewed documents and had communications regarding the claim against
8 Aquatic Rehab.

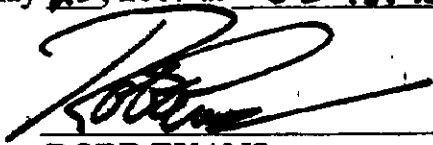
9 18. In addition, my principal deputies and I continued to oversee the
10 liquidation of Quizno's franchise stores. My principal deputies, staff and I also
11 were responsible for developing strategies for the liquidation of the remaining real
12 estate assets and for selling the properties at 944 Pine Knot Avenue and 1809 E.
13 Sachs Avenue and other miscellaneous assets, and to continue to monitor collection
14 of the Techniglove settlement payments. In conjunction with my counsel, we dealt
15 with various document and discovery requests and negotiated an agreement for
16 reasonable costs and fees associated in connection with Fiserv litigation.

17 19. In light of the services performed by the Receiver, deputies and staff
18 during the Seventh Expense Period, I believe the fees and costs that have been
19 incurred by my staff, my professionals and I are reasonable and should be approved
20 and authorized for payment. I respectfully request that this Court approve the
21 payment of the Receiver's fees and expenses, and fees and expenses of the
22 Receiver's staff and the Receiver's counsel for the period from October 1, 2006
23 through March 31, 2007 as more particularly set forth in the Motion and the
24 supporting exhibits.

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I declare under penalty of perjury that the foregoing is true and correct and
that this declaration was executed on May 25, 2007 at Cambridge
California.



ROBB EVANS