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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 D.W. HEATH & ASSOCIATES, INC.;
18 PCM FIXED INCOME FUND I, LLC;
19 PRIVATE CAPITAL MANAGEMENT,
20 INC.; PRIVATE COLLATERAL
21 MANAGEMENT, INC.; DANIEL
22 WILLIAM HEATH; AND DENIS
23 TIMOTHY O'BRIEN,

24 Defendants.

Case No. CV 04-02949 JFW (Ex)

STIPULATION AND
[PROPOSED] ORDER
APPOINTING ROBB EVANS
TEMPORARY RECEIVER

25 STIPULATION

26 Plaintiff Securities and Exchange Commission ("Commission") and
27 Defendants Daniel William Heath ("Heath"), Denis Timothy O'Brien ("O'Brien"),
28 D.W. Heath & Associates, Inc. ("Heath & Associates"), Private Capital
Management, Inc. ("PCM"), Private Collateral Management, Inc. ("Private
Collateral Management"), and the PCM Fixed Income Fund I, LLC (the "PCM

1 Fund”) (“defendants”), by and through their counsel, stipulate and agree as
2 follows:

- 3 A. This Court has jurisdiction over the parties to, and the subject matter of, this
4 action.
- 5 B. The Commission filed an *Ex Parte* Application For A Temporary
6 Restraining Order and Orders: (1) Freezing Assets; (2) Appointing a
7 Temporary Receiver; (3) Granting Expedited Discovery; (4) Prohibiting The
8 Destruction Of Documents, (5) Requiring Accountings; And Order To
9 Show Cause Re Preliminary Injunction And Appointment Of A Permanent
10 Receiver (the “Application”).
- 11 C. On April 29, 2004, the Court granted a temporary restraining order and
12 orders freezing assets, prohibiting the destruction of documents, authorizing
13 expedited discovery, and requiring accountings, and ordered to show cause
14 why a preliminary injunction should not issue, and denied the Commission’s
15 request for a temporary receiver.
- 16 D. The Court set a hearing on the Commission’s application for a temporary
17 receiver on Monday, May 3, 2004, at 1:30 p.m, and ordered Defendants to
18 appear before the Honorable John F. Walter, Judge of the United States
19 District Court for the Central District of California, Courtroom 16, 312 N.
20 Spring Street, Los Angeles, California.
- 21 E. The Commission noticed the depositions of Heath and O’Brien for
22 Saturday, May 1, 2004, at 10 a.m. and 3 p.m., respectively, as permitted by
23 the Court’s April 29, 2004 order granting expedited discovery.
- 24 F. Counsel for Heath and O’Brien each have indicated that if Heath or O’Brien
25 were to appear for deposition, because of the lack of time to prepare for the
26 deposition given the short notice, Heath and O’Brien each would assert their
27 Fifth Amendment Privilege against self-incrimination in response to all
28 questions related to the allegations in the Commission’s complaint.

1 G. Defendants do not oppose the appointment of a temporary receiver over
2 Heath & Associates, PCM, Private Collateral Management, and the PCM
3 Fund until further order of this Court.

4 H. The parties will reschedule the depositions of Heath and O'Brien for a
5 mutually convenient time to take place before the preliminary injunction
6 hearing which is currently set for May 10, 2004, at 1:30 p.m.

7 I. Without, admitting or denying the allegations in the Commission's
8 Complaint, each of the defendants consent to the following order:

9 **ORDER**

10 The Court, having considered the Commission's Complaint, its Application,
11 the Memorandum Of Points And Authorities, the Declarations and other
12 documents filed in support of the Application, and all other evidence and
13 argument presented regarding the Application, finds that this Court has
14 jurisdiction over the parties to, and the subject matter of, this action.

15 **WHEREFORE, IT IS HEREBY ORDERED**, for good cause shown, as follows:

16
17 **I.**

18 IT IS ORDERED that Robb Evans is appointed as temporary receiver of
19 Heath & Associates, PCM, Private Collateral Management, PCM Fund, and their
20 subsidiaries and affiliates, with full powers of an equity receiver, including, but
21 not limited to, full power over all funds, assets, collateral, premises (whether
22 owned, leased, occupied, or otherwise controlled), choses in action, books,
23 records, papers and other real or personal property, including notes, deeds of trust
24 and other interests in real property, belonging to, being managed by, or in the
25 possession of or control of Heath & Associates, PCM, Private Collateral
26 Management, PCM Fund, and any of their subsidiaries and affiliates, and that such
27 temporary receiver is immediately authorized, empowered and directed:

28 A. to have access to and to collect and take custody, control, possession,

1 and charge of all funds, assets, collateral, premises (whether owned,
2 leased, occupied, or otherwise controlled), choses in action, books,
3 records, papers and other real or personal property, including notes,
4 deeds of trust and other interests in real property, of Heath &
5 Associates, PCM, Private Collateral Management, PCM Fund, and
6 their subsidiaries and affiliates, with full power to sue, foreclose,
7 marshal, sell, liquidate, collect, receive, and take into possession all
8 such property;

9 B. to have control of, and to be added as the sole authorized signatory
10 for all accounts of Heath & Associates, PCM, Private Collateral
11 Management, PCM Fund, and their subsidiaries and affiliates,
12 including all accounts over which Heath & Associates, PCM, Private
13 Collateral Management, PCM Fund, and any of their officers,
14 employees or agents, have signatory authority, at any bank, title
15 company, escrow agent, financial institution or brokerage firm which
16 has possession, custody or control of any assets or funds of Heath &
17 Associates, PCM, Private Collateral Management, PCM Fund, or
18 which maintains accounts over which Heath & Associates, PCM,
19 Private Collateral Management, PCM Fund, and/or any of their
20 officers, employees or agents have signatory authority;

21 C. to conduct such investigation and discovery as may be necessary to
22 locate and account for all of the assets of, or managed by, Heath &
23 Associates, PCM, Private Collateral Management, PCM Fund, and
24 their affiliates and to engage and employ attorneys, accountants and
25 other persons to assist in such investigation and discovery;

26 D. to take such action as is necessary and appropriate to preserve and
27 take control of and to prevent the dissipation, concealment, or
28 disposition of any assets of, or managed by, Heath & Associates,

1 PCM, Private Collateral Management, PCM Fund, and their affiliates;
2 E. to make an accounting, as soon as practicable, to this Court and the
3 Commission of the assets and financial condition of Heath &
4 Associates, PCM, Private Collateral Management, and PCM Fund,
5 and the assets under their management, including all notes, deeds of
6 trust and other interests in real property, and to file the accounting
7 with the Court and deliver copies thereof to all parties;
8 F. to make such payments and disbursements from the funds and assets
9 taken into custody, control, and possession or thereafter received by
10 him, and to incur, or authorize the making of such agreements as may
11 be necessary and advisable in discharging his duties as temporary
12 receiver;
13 G. to employ attorneys, accountants, and others to investigate, advise
14 and, where appropriate, to institute, pursue, and prosecute all claims
15 and causes of action of whatever kind and nature which may now or
16 hereafter exist as a result of the activities of present or past employees
17 or agents of Heath & Associates, PCM, Private Collateral
18 Management, and PCM Fund;
19 H. to have access to and monitor all mail of Heath & Associates, PCM,
20 Private Collateral Management, and PCM Fund, in order to review
21 such mail which he deems relevant to the business of Heath &
22 Associates, PCM, Private Collateral Management, and PCM Fund,
23 and the discharging of his duties as temporary receiver; and
24 I. to exercise all of the lawful powers of Heath & Associates, PCM,
25 Private Collateral Management, PCM Fund, and their officers,
26 directors, employees, representatives, or persons who exercise similar
27 powers and perform similar duties.

28 II.

1 IT IS FURTHER ORDERED that defendants Heath, O'Brien, Heath &
2 Associates, PCM, Private Collateral Management, and PCM Fund, and their
3 officers, agents, servants, employees and attorneys, and any other persons who are
4 in eustody, possession or control of any assets, collateral, books, records, papers,
5 notes, deeds of trust and other interests in real property, or other property of, or
6 managed by, Heath & Associates, PCM, Private Collateral Management, and/or
7 PCM Fund shall forthwith give access to and control of such property to the
8 temporary receiver.

9 III.

10 IT IS FURTHER ORDERED that no officer, agent, servant, employee, or
11 attorney of Heath, O'Brien, Heath & Associates, PCM, Private Collateral
12 Management, and PCM Fund, or their subsidiaries or affiliates shall take any
13 action or purport to take any action, in the name of or on behalf of Heath &
14 Associates, PCM, Private Collateral Management, PCM Fund, or any of their
15 subsidiaries and affiliates, without the written consent of the temporary receiver or
16 order of this Court.

17 IV.

18 IT IS FURTHER ORDERED that, except by leave of this Court, during the
19 pendency of this receivership, all clients, investors, trust beneficiaries, note
20 holders, creditors, claimants, lessors, and all other persons or entities seeking
21 relief of any kind, in law or in equity, from Heath & Associates, PCM, Private
22 Collateral Management, PCM Fund, or their affiliates and subsidiaries, and all
23 persons acting on behalf of any such investor, trust beneficiary, note holder,
24 creditor, claimant, lessor, or other person, including sheriffs, marshals, servants,
25 agents, employees, and attorneys, are hereby temporarily restrained and enjoined
26 from, directly or indirectly, with respect to Heath & Associates, PCM, Private
27 Collateral Management, and PCM Fund, and their subsidiaries and affiliates:

28 A. commencing, prosecuting, continuing or enforcing any suit or

1 proceeding (other than the present action by the Commission) against
2 Heath & Associates, PCM, Private Collateral Management, or PCM
3 Fund or any of their subsidiaries and affiliates;

4 B. using self-help or executing or issuing or causing the execution or
5 issuance of any court attachment, subpoena, replevin, execution or
6 other process for the purpose of impounding or taking possession of
7 or interfering with or creating or enforcing a lien upon any property
8 or property interests owned by or in the possession of Heath &
9 Associates, PCM, Private Collateral Management, or PCM Fund, and
10 any of their subsidiaries or affiliates, wherever situated; and

11 C. doing any act or thing whatsoever to interfere with taking control,
12 possession or management by the temporary receiver appointed
13 hereunder of the property and assets owned, controlled or in the
14 possession of Heath & Associates, PCM, Private Collateral
15 Management, or PCM Fund, any subsidiaries or affiliates, or in any
16 way to interfere with or harass the temporary receiver, or his
17 attorneys, accountants, employees or agents or to interfere in any
18 manner with the discharge of the temporary receiver's duties and
19 responsibilities hereunder.

20 V.

21 IT IS FURTHER ORDERED that defendants Heath, O'Brien, Heath &
22 Associates, PCM, Private Collateral Management, and PCM Fund, and their
23 subsidiaries and affiliates and their officers, agents, servants, employees and
24 attorneys, shall cooperate with and assist the temporary receiver, his attorneys,
25 accountants, employees and agents and shall take no action, directly or indirectly,
26 to hinder, obstruct, or otherwise interfere with the temporary receiver, his
27 attorneys, accountants, employees or agents or to in the conduct of the temporary
28 receiver's duties or to interfere in any manner, directly or indirectly, with the

1 custody, possession, management, or control by the temporary receiver of the
2 funds, assets, collateral, premises, and choses in action described above.

3 VI.

4 IT IS FURTHER ORDERED that defendants Heath & Associates, PCM,
5 Private Collateral Management, and PCM Fund shall pay the costs, fees and
6 expenses of the temporary receiver incurred in connection with the performance of
7 his duties described in this Order, including the costs and expenses of those
8 persons who may be engaged or employed by the temporary receiver to assist him
9 in carrying out his duties and obligations. All applications for costs, fees and
10 expenses for services rendered in connection with the temporary receivership other
11 than routine and necessary business expenses in conducting the temporary
12 receivership, such as salaries, rent and any and all other reasonable operating and
13 liquidating expenses, shall be made by application setting forth in reasonable
14 detail the nature of the services and shall be heard by the Court.

15 VII.

16 IT IS FURTHER ORDERED that no bond shall be required in connection
17 with the appointment of the temporary receiver. Except for an act of gross
18 negligence, the temporary receiver shall not be liable for any loss or damage
19 incurred by any of the defendants, their officers, agents, servants, employees and
20 attorneys or any other person, by reason of any act performed or omitted to be
21 performed by the temporary receiver in connection with the discharge of his
22 duties and responsibilities.

23 VIII.

24 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over
25 this action for the purpose of implementing and carrying out the terms of all orders
26 and decrees which may be entered herein and to entertain any suitable application

27 /

28 /

1 or motion for additional relief within the jurisdiction of this Court.

2 SO AGREED AND STIPULATED:

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4 DATED: 4-30, 2004

5 
JOSE F. SANCHEZ
6 Attorneys for Plaintiff
Securities and Exchange Commission

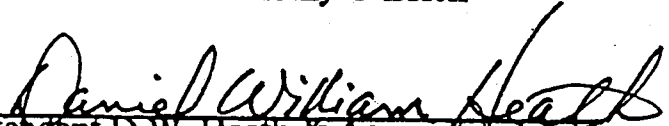
7
8 DATED: 4-30, 2004

9 
Defendant Daniel William Heath


10 DATED: _____, 2004

11 Defendant Denis Timothy O'Brien

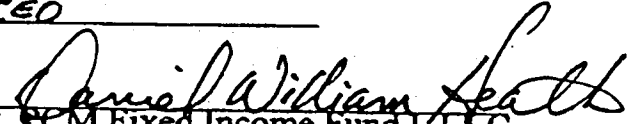
12
13 DATED: 4-30, 2004

14 
Defendant D.W. Heath & Associates, Inc.
By: Daniel William Heath
15 Its: CEO


16 DATED: 4-30, 2004

17 
Defendant Private Capital Management, Inc.
By: Daniel William Heath
18 Its: CEO

19 DATED: 4-30, 2004

20 
Defendant FCM Fixed Income Fund I, LLC
By: Daniel William Heath
21 Its: Mgt.

22 DATED: 4-30, 2004

23 
Private Collateral Management, Inc.
By: Daniel William Heath
24 Its: CEO

25 IT IS SO ORDERED.

26 DATED: 5/4, 2004

27 JOHN F. WALTER
The Honorable John F. Walter
28 UNITED STATES DISTRICT JUDGE

1 or motion for additional relief within the jurisdiction of this Court.

2 SO AGREED AND STIPULATED:

3
4
5 DATED: _____, 2004

JOSE F. SANCHEZ
Attorneys for Plaintiff
Securities and Exchange Commission

6
7
8 DATED: _____, 2004

Defendant Daniel William Heath

9
10 DATED: 4-30-, 2004

D.T.O.B.
Defendant Denis Timothy O'Brien

11
12
13 DATED: _____, 2004

Defendant D.W. Heath & Associates, Inc.
By: Daniel William Heath
Its: _____

14
15
16 DATED: _____, 2004

Defendant Private Capital Management, Inc.
By: Daniel William Heath
Its: _____

17
18
19 DATED: _____, 2004

Defendant PCM Fixed Income Fund I, LLC
By: Daniel William Heath
Its: _____

20
21
22 DATED: _____, 2004

Private Collateral Management, Inc.
By: Daniel William Heath
Its: _____

23
24
25 IT IS SO ORDERED.

26 DATED: _____, 2004

The Honorable John F. Walter
UNITED STATES DISTRICT JUDGE