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Scan U.S. DISTRICT COURT
MAY 18 2004
CENTRAL DISTRICT OF CALIFORNIA
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2004 MAY 17 AM 10:00
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIFORNIA
LOS ANGELES

BY 

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

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 D.W. HEATH & ASSOCIATE, INC.,
PRIVATE CAPITAL MANAGEMENT,
17 INC., PRIVATE COLLATERAL
MANAGEMENT, INC., PCM FIXED
18 INCOME FUND I, LLC, DANIEL
WILLIAM HEATH AND DENIS
19 TIMOTHY O'BRIEN,

20 Defendants.

Case No. CV 04-02949 JFW (Ex)

21 **STIPULATION AND**
[PROPOSED] ORDER
APPOINTING A
PERMANENT RECEIVER

DOCKETED ON CM
MAY 19 2004
BY _____ 002

22 **STIPULATION**

23 Plaintiff Securities and Exchange Commission ("Commission") and
24 Defendants Daniel William Heath ("Heath"), Denis Timothy O'Brien ("O'Brien"),
25 D.W. Heath & Associates, Inc. ("Heath & Associates"), Private Capital
26 Management, Inc. ("PCM"), Private Collateral Management, Inc. ("Private
27 Collateral Management"), and the PCM Fixed Income Fund I, LLC (the "PCM
28 Fund") (collectively "defendants") stipulate and agree as follows:

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- 1 A. This Court has jurisdiction over the parties to, and the subject matter of, this
2 action.
- 3 B. The Commission filed an *Ex Parte* Application for a Temporary Restraining
4 Order and Orders: (1) Freezing Assets; (2) Appointing a Temporary
5 Receiver; (3) Granting Expedited Discovery; (4) Prohibiting the Destruction
6 of Documents, (5) Requiring Accountings; and Order to Show Cause re
7 Preliminary Injunction and Appointment of a Permanent Receiver (the
8 "Application").
- 9 C. On April 29, 2004, without notice to defendants, the Court granted a
10 temporary restraining order and orders freezing assets, prohibiting the
11 destruction of documents, authorizing expedited discovery, and requiring
12 accountings, and ordered to show cause why a preliminary injunction
13 should not issue and why a receiver should not be appointed.
- 14 D. The Court set a hearing on the appointment of a temporary receiver for May
15 3, 2004.
- 16 E. On May 3, 2004, with defendants' consent, the Court ordered the
17 appointment of Robb Evans as temporary receiver over Heath & Associates,
18 PCM, Private Collateral Management, and the PCM Fund until further order
19 of this Court;
- 20 F. On May 6, 2004, with defendants' consent, the Court granted a preliminary
21 injunction and orders freezing assets, prohibiting the destruction of
22 documents, authorizing expedited discovery, and requiring accountings, and
23 ordered to show cause why a permanent receiver should not be appointed.
- 24 G. The Court set a hearing on the appointment of a permanent receiver for May
25 17, 2004, at 1:30 p.m., which the Court rescheduled, on its own motion, to
26 May 20, 2004, at 10:00 a.m.
- 27 H. Defendants do not oppose the appointment of a permanent receiver over
28 Heath & Associates, PCM, Private Collateral Management, and the PCM

1 Fund, and each consent to the following order:

2 **ORDER**

3 The Court, having considered the Commission's Complaint, its Application,
4 the Memorandum Of Points And Authorities, the Declarations and other
5 documents filed in support of its Application, and all other evidence and argument
6 presented regarding the Application, and finding that the Commission has
7 demonstrated a probability of success on the merits and a possibility of dissipation
8 of assets in this case, and the defendants having consented to this order, without
9 admitting or denying the allegations in the Commission's Complaint, and without
10 waiver of any of defendants' rights and privileges, including without limitation,
11 the Fifth Amendment Privilege against self-incrimination, IT IS HEREBY
12 ORDERED, for good cause shown, as follows:

13 **I.**

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

- 24 A. to have access to and to collect and take custody, control, possession,
25 and charge of all funds, assets, collateral, premises (whether owned,
26 leased, occupied, or otherwise controlled), choses in action, books,
27 records, papers and other real or personal property, including notes,
28 deeds of trust and other interests in real property, of Heath &

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1 Associates, PCM, Private Collateral Management, PCM Fund, and
2 their subsidiaries and affiliates, with full power to sue, foreclose,
3 marshal, sell, liquidate, collect, receive, and take into possession all
4 such property;

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

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

22 D. to take such action as is necessary and appropriate to preserve and
23 take control of and to prevent the dissipation, concealment, or
24 disposition of any assets of, or managed by, Heath & Associates,
25 PCM, Private Collateral Management, PCM Fund, and their affiliates;

26 E. to make an accounting, as soon as practicable, to this Court and the
27 Commission of the assets and financial condition of Heath &
28 Associates, PCM, Private Collateral Management, and PCM Fund,

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1 and the assets under their management, including all notes, deeds of
2 trust and other interests in real property, and to file the accounting
3 with the Court and deliver copies thereof to all parties;

4 F. to make such payments and disbursements from the funds and assets
5 taken into custody, control, and possession or thereafter received by
6 him, and to incur, or authorize the making of such agreements as may
7 be necessary and advisable in discharging his duties as permanent
8 receiver;

9 G. to employ attorneys, accountants, and others to investigate, advise
10 and, where appropriate, to institute, pursue, and prosecute all claims
11 and causes of action of whatever kind and nature which may now or
12 hereafter exist as a result of the activities of present or past employees
13 or agents of Heath & Associates, PCM, Private Collateral
14 Management, and PCM Fund;

15 H. to have access to and monitor all mail of Heath & Associates, PCM,
16 Private Collateral Management, and PCM Fund, in order to review
17 such mail which he deems relevant to the business of Heath &
18 Associates, PCM, Private Collateral Management, and PCM Fund,
19 and the discharging of his duties as permanent receiver; and

20 I. to exercise all of the lawful powers of Heath & Associates, PCM,
21 Private Collateral Management, PCM Fund, and their officers,
22 directors, employees, representatives, or persons who exercise similar
23 powers and perform similar duties.

24 **II.**

25 IT IS FURTHER ORDERED that defendants Heath, O'Brien, Heath &
26 Associates, PCM, Private Collateral Management, PCM Fund, any of their
27 subsidiaries and affiliates, and their officers, agents, servants, employees and
28 attorneys, and any other persons who are in custody, possession or control of any

1 assets, collateral, books, records, papers, notes, deeds of trust and other interests in
2 real property, or other property of, or managed by, Heath & Associates, PCM,
3 Private Collateral Management, PCM Fund, and/or their subsidiaries and affiliates
4 shall forthwith give access to and control of such property to the receiver.

5 **III.**

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

13 **IV.**

14 IT IS FURTHER ORDERED that, except by leave of this Court, during the
15 pendency of this receivership, all clients, investors, trust beneficiaries, note
16 holders, creditors, claimants, lessors, including but not limited to Capital Source
17 Finance LLC, and all other persons or entities seeking relief of any kind, in law or
18 in equity from Heath & Associates, PCM, Private Collateral Management, PCM
19 Fund, or their affiliates and subsidiaries, and all persons acting on behalf of any
20 such investor, trust beneficiary, note holder, creditor, claimant, lessor, or other
21 person, including sheriffs, marshals, servants, agents, employees, and attorneys,
22 are hereby preliminarily restrained and enjoined from, directly or indirectly, with
23 respect to Heath & Associates, PCM, Private Collateral Management, and PCM
24 Fund, and their subsidiaries and affiliates:

- 25 A. commencing, prosecuting, continuing or enforcing any suit or
26 proceeding (other than the present action by the Commission) against
27 Heath & Associates, PCM, Private Collateral Management, or PCM
28 Fund or any of their subsidiaries and affiliates;

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

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

17 V.

18 IT IS FURTHER ORDERED that defendants Heath, O'Brien, Heath &
19 Associates, PCM, Private Collateral Management, and PCM Fund, and their
20 subsidiaries and affiliates and their officers, agents, servants, employees and
21 attorneys, shall cooperate with and assist the permanent receiver, his attorneys,
22 accountants, employees and agents and shall take no action, directly or indirectly,
23 to hinder, obstruct, or otherwise interfere with the permanent receiver, his
24 attorneys, accountants, employees or agents or to in the conduct of the permanent
25 receiver's duties or to interfere in any manner, directly or indirectly, with the
26 custody, possession, management, or control by the permanent receiver of the
27 funds, assets, collateral, premises, and choses in action described above.

28 VI.

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

12 **VII.**

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

20 **VIII.**

21 IT IS FURTHER ORDERED that representatives of the Commission are
22 authorized to have continuing access to inspect or copy any or all of the corporate
23 books and records and other documents of Heath & Associates, PCM, Private
24 Collateral Management, and PCM Fund and their subsidiaries and affiliates, and to
25 inspect their funds, property, assets and collateral, wherever located.

26 **IX.**

27 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over
28 this action for the purpose of implementing and carrying out the terms of all orders

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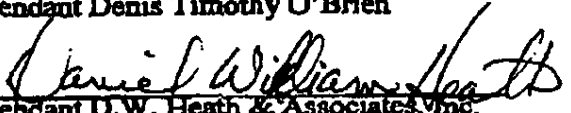
1 and decrees which may be entered herein and to entertain any suitable application
2 or motion for additional relief within the jurisdiction of this Court.


3 SO AGREED AND STIPULATED:

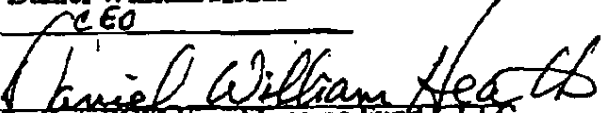
4
5 DATED: 5/14/04, 2004 
6 JOSE F. SANCHEZ / DAVID S. BROWN
7 Attorney for Plaintiff
8 Securities and Exchange Commission


9
10 DATED: 5-13-, 2004 
11 Defendant Daniel William Heath

12 DATED: _____, 2004
13 Defendant Denis Timothy O'Brien

14 DATED: 5-13-, 2004 
15 Defendant D.W. Heath & Associates, Inc.
16 By: Daniel William Heath
17 Its: CEO

18 DATED: 5-13-, 2004 
19 Defendant Private Capital Management, Inc.
20 By: Daniel William Heath
21 Its: CEO

22 DATED: 5-13-, 2004 
23 Defendant PCM Fixed Income Fund I, LLC
24 By: Daniel William Heath
25 Its: MGR.

26 DATED: 5-13-, 2004 
27 Private Collateral Management, Inc.
28 By: Daniel William Heath
Its: CEO

IT IS SO ORDERED.

29 DATED: 5/28/04, 2004 
30 The Honorable John F. Walter
31 UNITED STATES DISTRICT JUDGE

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msg 12 04 10:52a

Donald G. Davis

310-301-3370

P. 33

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1 and decrees which may be covered herein and to entertain any suitable application
2 or motion for additional relief within the jurisdiction of this Court.

3 SO AGREED AND STIPULATED:

4
5 DATED: _____, 2004

JOSE F. SANCHEZ
Attorney for Plaintiff
Securities and Exchange Commission

6
7
8 DATED: 5-13-, 2004

Daniel William Heath
Defendant Daniel William Heath

9
10 DATED: 5-13, 2004

D. T. O'Brien
Defendant Doms Timothy O'Brien

11
12 DATED: 5-13-, 2004

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

13
14
15 DATED: 5-13-, 2004

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

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17
18 DATED: 5-13-, 2004

Daniel William Heath
Defendant P.C.M. Funds Income Fund 1, LLC
By: Daniel William Heath
Its: CEO

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20
21 DATED: 5-13-, 2004

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

22
23
24 IT IS SO ORDERED.

25
26 DATED: _____, 2004

The Honorable John F. Walter
UNITED STATES DISTRICT JUDGE

1 Approved as to form and content:

2 DATED: 5/14, 2004



David Beriman
Donald G. Davis
Attorneys for Defendant Daniel William Heath

5 DATED: 5/14, 2004



Steven L. Krongold
Thomas H. Bienert
Bienert & Krongold
Attorneys for Defendant Denis Timothy O'Brien

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1 **PROOF OF SERVICE**

2 I am over the age of 18 years and not a party to this action. My business address
3 is:

4 U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire
5 Boulevard, 11th Floor, Los Angeles, California 90036.

6 Telephone: (323) 965-3998 Fax: (323) 965-3908

7 On May 17, 2004, I served the document entitled **STIPULATION AND
8 [PROPOSED] ORDER APPOINTING A PERMANENT RECEIVER** upon
9 the parties to this action addressed as stated on the attached service list:

10 **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for
11 collection and mailing today following ordinary business practices. I am
12 readily familiar with this agency's practice for collection and processing of
13 correspondence for mailing; such correspondence would be deposited with
14 the U.S. Postal Service on the same day in the ordinary course of business.

15 **PERSONAL DEPOSIT IN MAIL:** By placing in sealed
16 envelope(s), which I personally deposited with the U.S. Postal
17 Service. Each such envelope was deposited with the U.S. Postal
18 Service at Los Angeles, California, with first class postage thereon
19 fully prepaid.

20 **EXPRESS U.S. MAIL:** Each such envelope was deposited in a
21 facility regularly maintained at the U.S. Postal Service for receipt of
22 Express Mail at Los Angeles, California, with Express Mail postage
23 paid.

24 **PERSONAL SERVICE:** I caused to be personally delivered each such
25 envelope by hand to the office of the addressee in the attached service list.

26 **FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by
27 Federal Express with delivery fees paid or provided for, which I deposited
28 in a facility regularly maintained by Federal Express or delivered to a
Federal Express courier, at Los Angeles, California.

FACSIMILE (by agreement of parties only): By transmitting the
document by facsimile transmission. The transmission was reported as
complete and without error.

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

25 Date: May 17, 2004

Magnolia M. Marcelo
MAGNOLIA M. MARCELO

1 **SEC v. D.W. HEATH & ASSOCIATES, INC., et al.**
2 **United States District Court - Central District of California**
3 **Case No. CV 04-02949 JFW (Ex)**
 (LA-2581)

SCANNED

4 SERVICE LIST

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 Facsimile: (310) 301-3370
 Attorney for Defendant Daniel William Heath

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15 Bienert & Krongold
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18 Stephens & Kray
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 Attorneys for Defendant Denis Timothy O'Brien

21 **Robb Evans, Receiver (also served by facsimile)**
22 Robb Evans & Associates
23 11450 Sheldon Street
 Sun Valley, CA 91352-1121
 Facsimile: (818) 768-8802
 Court-Appointed Temporary Receiver

24 **Gary Owen Caris, Esq. (also served by facsimile)**
25 Lesley Anne Hawes, Esq.
26 Frandzel Robins Bloom & Csato, L.C.
27 6500 Wilshire Boulevard, 17th Floor
 Los Angeles, CA 90048-4920
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 Attorneys for Court-Appointed Temporary Receiver Robb Evans