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2005 MAY 23 PM 2:27

BY *[Signature]*

[Signature]
FILED
CLERK, U.S. DISTRICT COURT
MAY 24 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
SCANNED

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

D.W. HEATH & ASSOCIATES, INC.;
PRIVATE CAPITAL MANAGEMENT,
INC.; PRIVATE COLLATERAL
MANAGEMENT, INC.; PCM FIXED
INCOME FUND I, LLC; DANIEL
WILLIAM HEATH; AND DENIS
TIMOTHY O'BRIEN,

Defendant.

Case No. CV 04 02949 JFW (Ex)

**[PROPOSED] FINAL JUDGMENT
OF PERMANENT INJUNCTION
AND OTHER RELIEF AGAINST
DEFENDANT DANIEL WILLIAM
HEATH**

ENTERED
CLERK, U.S. DISTRICT COURT
MAY 25 2005
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

THIS COURT'S NOTICE OF ENTRY
IS REQUIRED BY FRCP RULE 77(G)

227
MAY 25 2005

SCANNED

1 Plaintiff Securities and Exchange Commission (“Commission”), having
2 filed and served upon Defendant Daniel W. Heath (“Defendant”) a Summons and
3 First Amended Complaint in this action; and Defendant Heath having entered a
4 general appearance, consented to the Court’s jurisdiction over Defendant and the
5 subject matter of this action, consented to entry of this Final Judgment without
6 admitting or denying the allegations of the First Amended Complaint (except as to
7 jurisdiction), waived findings of fact and conclusions of law, and waived any right
8 to appeal from this Final Judgment:

9 **I.**

10 IT IS ORDERED, ADJUDGED, AND DECREED that Defendant Heath
11 and his officers, agents, servants, employees, attorneys, subsidiaries and affiliates,
12 and those persons in active concert or participation with him, who receive actual
13 notice of this Final Judgment, by personal service or otherwise, and each of them,
14 be and hereby are permanently restrained and enjoined from, directly or indirectly,
15 making use of any means or instruments of transportation or communication in
16 interstate commerce or of the mails, to sell, to offer to sell, or to offer to buy any
17 security; or carrying or causing securities to be carried through the mails or in
18 interstate commerce, by any means or instruments of transportation, for the
19 purpose of sale or delivery after sale, in violation of Sections 5(a) and 5(c) of the
20 Securities Act, 15 U.S.C. §§ 77(e)(a) and 77(e)(c).

21 **II.**

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
23 Defendant Heath, and his officers, agents, servants, employees, attorneys,
24 subsidiaries and affiliates, and those persons in active concert or participation with
25 any of them, who receive actual notice of this Final Judgment, by personal service
26 or otherwise, and each of them, be and hereby are permanently restrained and
27 enjoined from, directly or indirectly, in the offer or sale of any securities, by the
28 use of any means or instruments of transportation or communication in interstate

1 commerce or by use of the mails:

- 2 A. employing any device, scheme or artifice to defraud;
- 3 B. obtaining money or property by means of any untrue statement
4 of a material fact or any omission of a material fact necessary
5 in order to make the statements made, in light of the
6 circumstances under which they were made, not misleading; or
- 7 C. engaging in any transaction, practice, or course of business
8 which operates or would operate as a fraud or deceit upon the
9 purchaser

10 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

11 **III.**

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
13 Defendant Heath and his officers, agents, servants, employees, attorneys,
14 subsidiaries and affiliates, and those persons in active concert or participation with
15 any of them who receive actual notice of this Final Judgment, by personal service
16 or otherwise, and each of them, be and hereby are permanently restrained and
17 enjoined from, directly or indirectly, in connection with the purchase or sale of any
18 security, by the use of any means or instrumentality of interstate commerce, or of
19 the mails, or of any facility of any national securities exchange:

- 20 A. employing any device, scheme, or artifice to defraud;
- 21 B. making any untrue statement of a material fact or omitting to
22 state a material fact necessary in order to make the statements
23 made, in the light of the circumstances under which they were
24 made, not misleading; or
- 25 C. engaging in any act, practice, or course of business which
26 operates or would operate as a fraud or deceit upon any person

27 in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule
28 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

1 IV.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
3 Defendant Heath and his officers, agents, servants, employees, attorneys,
4 subsidiaries and affiliates, and those persons in active concert or participation with
5 any of them, who receive actual notice of this Order, by personal service or
6 otherwise, and each of them, be and hereby are permanently restrained and
7 enjoined from making use of the mails or any means or instrumentality of
8 interstate commerce to effect any transactions in, or to induce or attempt to induce
9 the purchase or sale of, any security, without being registered as a broker and/or
10 dealer pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), in
11 violation of Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

12 V.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that
14 Defendant Heath is liable for disgorgement of \$106,031,605, representing the
15 gains as a result of the conduct alleged in the First Amended Complaint, together
16 with prejudgment interest thereon in the amount of \$3,302,553. Defendant shall
17 satisfy this obligation by paying \$109,334,158 within ten business days to the
18 receiver in this action, Robb Evans, with Robb Evans & Associates, LLC, 11450
19 Sheldon Street, Sun Valley, CA 91352, and specifying that payment is made
20 pursuant to this Final Judgment. Defendant Heath shall simultaneously transmit
21 photocopies of each such payment and letter to the Commission's counsel in this
22 action. By making this payment, Defendant Heath relinquishes all legal and
23 equitable right, title, and interest in such payments, and no part of the funds shall
24 be returned to Defendant Heath. Defendant Heath shall pay post-judgment interest
25 on any delinquent amounts pursuant to 28 U.S.C. § 1961.

26 VI.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
28 provisions of the Consent previously filed in connection with this Final Judgment

SCANNED

1 are incorporated herein with the same force and effect as if fully set forth herein
2 and that Defendant Heath shall comply with this Consent.

3 **VII.**

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the asset
5 freeze provided for in paragraphs VI. and VII. of the May 6, 2004 Stipulation and
6 Preliminary Injunction and Orders: (1) Freezing Assets; (2) Appointing a
7 Permanent Receiver; (3) Prohibiting the Destruction of Documents; (4) Requiring
8 Accountings, shall remain in full force and effect, until further order of this Court.

9 **VIII.**

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
11 that during the pendency of this action against any defendant, Defendant Heath
12 shall remain subject to the discovery provisions of the Federal Rules of Civil
13 Procedure which apply to parties, and, in addition, that Defendant Heath agrees
14 and undertakes, without service of a subpoena, to appear for his deposition or to
15 testify as a witness at any trial of this action or at any related proceeding. Failure
16 to comply with the foregoing will subject Defendant Heath to the remedies and
17 sanctions set forth in Rule 37 of the Federal Rules of Civil Procedure and all other
18 available remedies.

19 **IX.**

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this
21 Court shall retain jurisdiction over this action for all purposes, including
22 implementing and carrying out the terms of this Judgment and all other orders
23 which may be entered herein, and to entertain any suitable application or motion
24 for additional relief within the jurisdiction of this Court.

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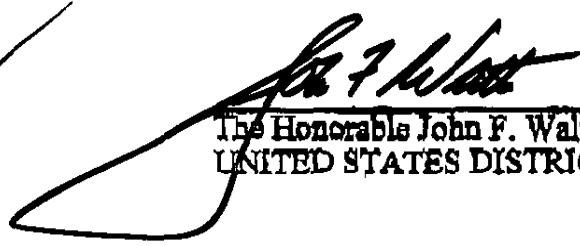
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There being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment without further notice.

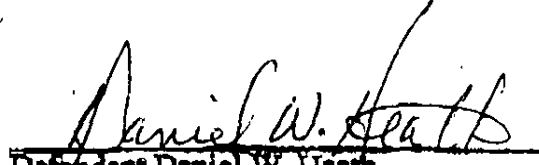
IT IS SO ORDERED.

DATED: 5/24/05



The Honorable John F. Walter
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

DATED: 5/20/ 2005


Defendant Daniel W. Heath
IN PRO PER

DATED: 5/17 2005


Harry D. Bernstein
Attorney for Defendant
Daniel W. Heath
ADVISORY ATTORNEY FOR
Heath in pro-per

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
Boulevard, 11th Floor, Los Angeles, California 90036.

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

6 On May 23, 2005, I served the document entitled **[PROPOSED] FINAL**
7 **JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF**
8 **AGAINST DEFENDANT DANIEL WILLIAM HEATH** upon the parties to
this action addressed as stated on the attached service list:

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

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

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

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

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

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

23 **(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
24 penalty of perjury that the foregoing is true and correct

25 Date: May 23, 2005

26 Magnolia M. Marcelo
MAGNOLIA M. MARCELO

SCANNED

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

5 Daniel W. Heath
6 Booking No. 200427981
7 R.P.D.C.
8 P. O. Box 710
 Riverside, CA 92507
 In Pro Per

9 Barry O. Bernstein, Esq.
10 Attorney at Law
11 3727 W. Magnolia Boulevard, Suite 767
12 Burbank, CA 91505
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15 Michael A. Oswald, Esq.
16 Oswald & Yap, APC
17 16148 Sand Canyon Avenue
18 Irvine, CA 92618
19 Telephone: (949) 788-8900
20 Facsimile: (949) 788-8980
 Attorney for Defendant Denis Timothy O'Brien

21 Attn: Brick Kane
22 Robb Evans, Receiver
23 Robb Evans & Associates
24 11450 Sheldon Street
25 Sun Valley, CA 91352-1121
26 Facsimile: (818) 768-8802
 Court-Appointed Permanent Receiver

27 Gary Owen Caris, Esq.
28 Lesley Anne Hawes, Esq.
 Frandzel Robins Bloom & Csato, L.C.
 6500 Wilshire Boulevard, 17th Floor
 Los Angeles, CA 90048-4920
 Facsimile: (323) 651-2577
 Attorneys for Court-Appointed Receiver Robb Evans

 F. Elliot Goldman, Esq.
 Law Office of F. Elliot Goldman
 420 S. Brea Boulevard
 Brea, CA 92821
 Creditor