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FILED  
CLERK, U.S. DISTRICT COURT  
MAR - 8 2005  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY  
NOTE CHANGES MADE BY THE COURT

LODGED  
CLERK, U.S. DISTRICT COURT  
FEB 28 2005  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

**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 DENIS T. O'BRIEN**

DOCKETED ON CM  
MAR 9 2005  
BY \_\_\_\_\_ 006

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SCANNED

1 Plaintiff Securities and Exchange Commission ("Commission"), having  
2 filed and served upon Defendant Denis T. O'Brien ("Defendant") a Summons and  
3 the First Amended Complaint in this action; and Defendant O'Brien having entered  
4 a 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 O'Brien  
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 O'Brien, 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

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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 O'Brien 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.

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1 IV.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
3 Defendant O'Brien 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 O'Brien is liable for disgorgement of \$2,526,157, representing profits  
15 gained as a result of the conduct alleged in the First Amended Complaint, together  
16 with prejudgment interest thereon in the amount of \$34,582. Defendant shall  
17 satisfy this obligation by paying \$2,560,739 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 O'Brien 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 O'Brien 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 O'Brien. Defendant O'Brien shall pay post-judgment  
25 interest 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 filed concurrently with this Final Judgment are

SCANNED

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

3 **VII.**

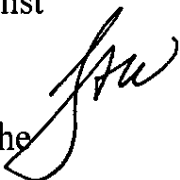
4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the asset  
5 freeze provided for in paragraphs VI. and VII. of the May 6, 2004 Stipulation and  
6 Preliminary Injunction and Orders: (1) Freezing Assets; (2) Appointing a  
7 Permanent Receiver; (3) Prohibiting the Destruction of Documents; (4) Requiring  
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 O'Brien  
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 O'Brien 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 O'Brien 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, to resolve the Commission's pending claims against  
24 Defendant O'Brien for ~~disgorgement, prejudgment interest,~~ and civil penalties,  
25 and to entertain any suitable application or motion for additional relief within the  
26 jurisdiction of this Court.



27 **X.**

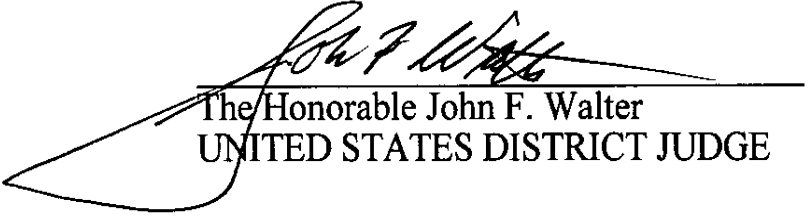
28 There being no just reason for delay, the Clerk of the Court is hereby

SCANNED

1 directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter  
2 this Final Judgment without further notice.

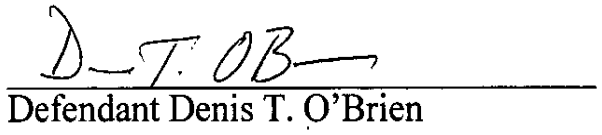
3 IT IS SO ORDERED.

4  
5 DATED: 3/8/05

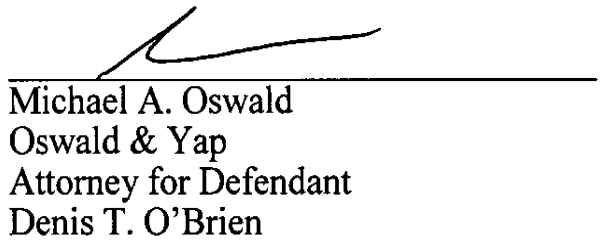
  
The Honorable John F. Walter  
UNITED STATES DISTRICT JUDGE

8 APPROVED AS TO FORM AND CONTENT:

10  
11 DATED: 2-25-05, 2005

  
Defendant Denis T. O'Brien

15 DATED: 2-25, 2005

  
Michael A. Oswald  
Oswald & Yap  
Attorney for Defendant  
Denis T. O'Brien

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**PROOF OF SERVICE**

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

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11<sup>th</sup> Floor, Los Angeles, California 90036.

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

On February 28, 2005, I served the document entitled **[PROPOSED] FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANT DENIS T. O'BRIEN** upon the parties to this action addressed as stated on the attached service list:

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

**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 Service at Los Angeles, California, with first class postage thereon fully prepaid.

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

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

**FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited 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

Date: February 28, 2005

*Magnolia M. Marcelo*  
MAGNOLIA M. MARCELO

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

SCANNED

SERVICE LIST

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

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Facsimile: (949) 788-8980  
***Attorney for Defendant Denis Timothy O'Brien***

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

Gary Owen Caris, Esq.  
Lesley Anne Hawes, Esq.  
Frاندzel 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***