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Receiver for MAK 1 Enterprises Group, LLC, et al.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MOHIT A. KHANNA and MAK 1
ENTERPRISES GROUP, LLC,

Defendants,

And

FIRST OPPORTUNITIES MANAGEMENT
GROUP, INC., and SHARANJIT K.
KHANNA aka SHARANJIT K. GREWAL,

Relief Defendants.

Case No.: 09cv1784 BEN (CAB)

PRELIMINARY REPORT OF RECEIVER

DEPT: Courtroom 11
JUDGE: Honorable Roger T. Benitez

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PRELIMINARY REPORT OF RECEIVER

I.

Introduction

On August 18, 2009, this Court entered Temporary Restraining Orders (“TROs”) in this matter (the “SEC Action”) and in the related action, *U.S. Commodity Futures Trading Commission v. MAK 1 Enterprises Group, LLC, et al.*, Case No. 09cv1783 BEN (CAB) (the “CFTC Action”). By those TROs, the Court appointed La Bella & McNamara, LLP as Temporary Receiver of Defendant MAK 1 Enterprises Group, LLC (“MAK 1”), Mohit Khanna and First Opportunities Management. The terms of the TROs were subsequently incorporated in Preliminary Injunctions entered in both cases on September 3, 2009. Under the Preliminary Injunctions, Charles La Bella of La Bella & McNamara, LLP was appointed Receiver.

We submit this Preliminary Report to advise the Court of our initial actions and preliminary observations.

II.

Receivership Activities

A. Facilities

At approximately 9:30 a.m. on the morning of August 20, 2009, we took possession of the MAK 1 offices in San Diego. We coordinated our efforts with the FBI and the U.S. Postal Service which executed search warrants on the office prior to our possession.

The MAK 1 office is a decidedly modest 500 square foot space for one person and an assistant. The office was leased month-to-month from an executive suites provider. The office was vacant—no Mohit Khanna; no staff; no computers; no investor files; indeed, no files of any kind. We later learned that the office had been vacated over the weekend of August 15-16.

On August 20, 2009, we also appeared at the home/office of MAK 1 attorney Gustav Bujkovsky and took possession of MAK 1 and Mohit Khanna records located there.

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1 On Friday August 28, 2009, we were finally able to secure Mr. Khanna's cooperation
 2 in providing access to the family's principal residence in San Diego where we did locate a
 3 limited number of MAK 1 related documents.

4 **B. Bank Accounts**

5 Immediately after receiving the TRO, the SEC served multiple banks in order to
 6 freeze assets. The following chart summarizes the accounts we are now aware of, including
 7 those that are frozen.

<u>Bank Name</u>	<u>Account Name</u>	<u>Account No. (last 4 digits)</u>	<u>Frozen As Of</u>
Union Bank of California	MAK 1 Enterprises Group, LLC	6132	8/19/09
Union Bank of California	MAK 1 Enterprises Group, LLC	6586	8/19/09
Union Bank of California	MAK 1 Enterprises Group, LLC	0011	8/19/09
Union Bank of California	MAK 1 Enterprises Group, LLC	0490	8/19/09
Union Bank of California	MAK 1 Enterprises Group, LLC	0496	8/19/09
Union Bank of California	2008 Khanna Family Trust	8634	8/19/09
Union Bank of California	2008 Khanna Family Trust	7893	8/19/09
Union Bank of California	MAK 1 Enterprises Group, LLC	0326	8/19/09
Union Bank of California	Mohit Khanna	0865	8/19/09
Union Bank of California	Mohit Khanna	0970	8/19/09
Union Bank of California	First Opportunities Management Group, LLC	6655	8/19/09
Union Bank of California	First Opportunities Management Group, LLC	6353	8/19/09
Union Bank of California	2005 Khanna Family Trust	0865	8/19/09
Union Bank of California	2005 Khanna Family Trust	3384	8/19/09
Union Bank of California	2005 Khanna Family Trust	3376	8/19/09
Union Bank of California	2005 Khanna Family Trust	8009	8/19/09
Union Bank of California	2005 Khanna Family Trust	8568	8/19/09
Union Bank of California	Mohit Khanna	3328	8/19/09
Union Bank of California	Trustee for Mischa K. Khanna	0309	8/19/09
Union Bank of California	Sharanjit Khanna	0970	8/19/09
Wachovia	2005 Khanna Family Trust	7635	8/19/09
Wachovia	2005 Khanna Family Trust	7648	8/19/09

1	Wachovia	MAK 1 Enterprises Group, LLC	7540	8/19/09
2	Wachovia	MAK 1 Enterprises Group, LLC	7553	8/19/09
3	Wells Fargo Bank	MAK 1 Enterprises Group, LLC	0247	8/19/09
4	California Bank & Trust	MAK 1 Enterprises Group, LLC	0520	8/19/09
5	Sunrise Bank of San Diego	MAK 1 Enterprises Group, LLC	1787	8/19/09
6	Bank of America	MAK 1 Enterprises Group, LLC	0404	8/19/09
7	Bank of America	First Opportunities Management Group, LLC	1871	8/19/09
8	San Diego National Bank	Sharanjit Khanna		8/19/09

8 In total, MAK 1 accounts identified and frozen to date have total cash deposits of
9 \$2,100. The Khanna personal accounts identified and frozen to date have total cash deposits
10 of \$48,000. We are continuing to investigate to determine if there are other accounts,
11 including possible offshore accounts.

12 C. Other Assets

13 The Khannas and their families do appear to own certain assets, including residential
14 real estate properties and small businesses. All appear to be heavily encumbered. We are
15 taking steps to prevent any dissipation of these assets and to evaluate their value and
16 liquidity.

17 Some assets of this receivership may be litigation claims against third parties,
18 including accountants, insurance brokers, and investors who received "profits." We are
19 currently reviewing and analyzing all such possible claims.

20 D. Forensic Accountants

21 We have engaged the accounting firm of van Adelsberg Goddard & Schomberg, LLP
22 to reconstruct, as needed, the investor accounts and financial activity of MAK 1. To date, we
23 have neither located nor been provided orderly accounting records of MAK 1. If such
24 records are not located, we will address the challenge of undertaking a cost-effective forensic
25 reconstruction of investor accounts.

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1 **E. Compliance With TRO and Preliminary Injunction**

2 The MAK 1 business appears to have been disbanded for some time before the
3 issuance of the TROs. Hence, this was not a situation which required the Receiver to take
4 operational control and shut down or re-direct the business as needed to comply with the
5 Court's orders. We have taken control of what little remains of the business—all available
6 MAK 1 records, and the website. The computers and investor files that belonged to the
7 business have not yet been located - it appears that someone removed them from the MAK 1
8 offices before we arrived there on August 20, 2009. In fact, until Friday, August 28, 2009,
9 we were unable to locate MAK 1's principal, Mr. Khanna.

10 **F. Cooperation of Defendants And Relief Defendants**

11 The Defendants and Relief Defendants have not fully cooperated to this point. This
12 lack of cooperation has complicated and increased the expense of the Receiver's work. Most
13 importantly, it has slowed our efforts toward an orderly identification and recovery of assets.

14 On August 26, 2009, the Court granted the *Ex Parte* motions of the Receiver, the
15 CFTC, and the SEC for an Order to Show Cause Re Contempt as to Mr. Khanna and ordered
16 Mr. Khanna to appear for deposition on Friday, August 28, 2009 and Mrs. Khanna within 72
17 hours. Both appeared for their depositions as ordered, but invoked their Fifth Amendment
18 privilege against self-incrimination during those depositions. A hearing on the Order to Show
19 Cause re Contempt was held on September 3, 2009, but the Court made no final ruling and
20 set another hearing for September 24, 2009.

21 Since his deposition, Mr. Khanna and his counsel have met with the Receiver's staff,
22 in person and by telephone conference. They have provided us passwords to certain bank
23 accounts and the MAK 1 website, information about automobiles (leased and owned), and
24 access to the Khanna's residence and storage unit. We have also learned that the primary
25 computer used by the MAK 1 business was an HP Pavilion computer, but that Mr. Khanna
26 does not know its location and last saw it in the MAK 1 office on July 13, 2009.

27 Mr. Khanna has also confirmed to us that a handwritten summary of investor
28 accounts produced to us on August 20, 2009 was, in fact, his work product, based on MAK

1 1's Quicken accounting system (now "missing" along with the computer on which it is
2 stored). Mr. Khanna was helpful in interpreting and updating some information on that
3 schedule, but relied on his memory, not actual source documents. As such, we have not yet
4 been able to confirm the completeness or accuracy of this schedule.

5 As noted above, we have secured some documents and information from MAK 1
6 attorney Gustav Bujkovsky.

7 In the end, the cooperation most needed by the receivership now is the immediate
8 production of the missing HP computer and investor files.

9 **G. Communication With Investors**

10 We have launched a Receiver's website at www.mak1receiver.com as a vehicle to
11 advise investors about the receivership and the status of the SEC and CFTC cases. The
12 website includes an email address to which investors can send questions and provide
13 information through info@mak1receiver.com.

14 The voicemail message at the MAK 1 office now alerts all callers to the receivership
15 and directs them to the Receiver's website.

16 **III.**

17 **Other Litigation**

18 MAK 1 and its principals are the subject of multiple lawsuits in multiple jurisdictions.
19 We have identified the following pending and threatened lawsuits:

- 20 • *Nijjar v. Khanna*, L.A. Super. Ct., Pomona Case No. KC055433;
- 21 • *Beer v. MAK 1*, S.D. Super. Ct. Case No. 37-2009-00086930-CU-BC-CTL;
- 22 • *Robert Andrew & Co, Inc. v. Mak 1*, L.A. Super. Ct., Central District Case No.
23 BC 411329;
- 24 • *Promontory Associates v. Mak 1*, S.D. Super. Ct. Case No - Central Division
25 Case No. 37-2009-00043738-CL-UD-CTL;
- 26 • *GMBA, LLC., Cont Egra Capital, LLC, Contegra Asset Management AG v.*
27 *Mak 1 & Khanna*, District Court of Harris County 334th Judicial District
28 (Texas)

- 1 • *Spees v. Khana*, C.D. Cal. Case No. CV09-4734 SJO (AJWx);
- 2 • *Essa Kawaja v. Mak 1*, 295th Judicial District Court of Harris County, Texas;
- 3 • *Nored v. MAK 1*, Orange County Super. Ct.;
- 4 • *Nowakowski v. MAK 1*, San Diego Super. Ct.

5 We have placed the Plaintiffs in all of these cases on notice of the TROs and
6 Preliminary Injunctions and the litigation stay orders contained therein. We generally
7 discourage individual investors from bringing their own suits as such suits can be duplicative
8 and dissipate assets available for the overall pool of funds to be returned to investors by the
9 receivership.

10 IV.

11 Investor Data Base

12 Defendants' lack of full cooperation, and the unexplained disappearance of the
13 primary MAK 1 computer, have hindered our ability to accurately and reliably report on the
14 number of investors and their respective capital accounts within MAK 1. Nonetheless, we
15 are currently building an investor data base from all available sources. Our very preliminary
16 summary, based on incomplete and unaudited documents, indicates as follows:
17 approximately 200 investors invested approximately \$32 million with overall net losses of
18 approximately \$8 million; 11 large investors invested \$500,000 or more each with the largest
19 single investor at \$2.1 million; approximately 50 of the 200 investors actually received
20 "profits" totaling nearly \$5 million; a small group of investors and non-investors received
21 commissions totaling approximately \$3.5 million. We must caution that this information is
22 very preliminary and unconfirmed—it is reported here as the best information now available
23 to us.

24 Our initial review of the business does confirm that MAK 1 was offering investment
25 contracts with incredible returns - it was routinely "crediting", but not necessarily paying,
26 interest to client accounts calculated at 40-50% for short term (2 to 8 week) positions. For
27 example, one investor placed \$2 million with MAK 1 on a 50-day contract with a guaranteed
28 return of 46%. The account statement (available on the MAK 1 website) was automatically

1 “credited” \$18,400 per day; at the end of the 50 days, the account “value” had theoretically
2 grown from \$2 million to \$2.9 million. As we now know, however, these credits and growth
3 in value were pure fiction.

4 V.

5 **Receiver’s Mission**

6 The Receiver’s primary mission is to assemble all available assets to serve as a fund
7 from which money will be returned to investors with provable losses in MAK 1. We are
8 simultaneously pursuing the two components of that mission—marshalling assets and
9 building an investor data base—and will regularly update the Court and investors as we
10 progress.

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12 Dated: September 9, 2009

/s/ Charles G. La Bella _____
Charles G. La Bella
Court Appointed Receiver

PROOF OF SERVICE

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SEC v. MAK 1 Enterprises Group, et al.
United States District Court of the Southern District of California
Case Number: 09cv1784 BEN (CAB)

I, Allison M. Myers, declare as follows:

I am an employee of a member of the bar of this Court at whose direction was made in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 401 West "A" Street, Suite 1150, San Diego, California 92101.

On September 9, 2009, I served the foregoing document(s) described as:

• **PRELIMINARY REPORT OF RECEIVER**

on interested parties in this action by sending the original true copy(ies) thereof as follows:

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Counsel for Defendants

16 By Email/ ECF by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them via email as indicated above

17 By Email: I caused the documents to be sent to the persons at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

18 By First Class Mail: I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with United States postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on that date following ordinary business practices.

19 By Personal Service: I served the documents referenced above by placing them in an envelope or package addressed to the person(s) at the addresses listed and providing them to a professional messenger for service on this date.

20 By Overnight Delivery: I am readily familiar with the firm's practice of collection and processing correspondence for mailing with Overnite Express and Federal Express. Under that practice, it would be deposited with Overnite Express and/or Federal Express on that same day thereon fully prepaid at San Diego California in the ordinary course of business.

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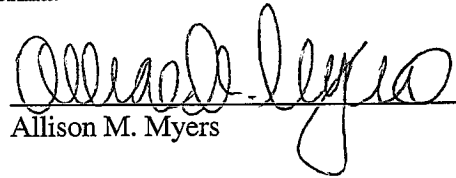
The envelope was sealed and placed for collection and mailing on that date following ordinary business practices.

By Facsimile: Based on agreement of the parties to accept service by fax transmission, I faxed the documents on this date to the person(s) at the fax numbers listed. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(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.

Executed September 9, 2009 in San Diego, California.


Allison M. Myers