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11  
12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14  
15 SECURITIES AND EXCHANGE  
COMMISSION,

16 Plaintiff,

17 v.

18 MOHIT A. KHANNA, et al.,

19 Defendants.

) Case Nos. 09cv1784 BEN (WVG)  
09cv1783 BEN (WVG)

) **RECEIVER'S FINAL ACCOUNT  
AND REPORT**

) JUDGE: Hon. Roger T. Benitez  
DEPT: Courtroom 5A

) Complaint Filed: August 17, 2009  
Trial Date: None

20  
21 U.S. COMMODITY FUTURES  
TRADING COMMISSION, et al.,

22 Plaintiffs,

23 v.

24 MOHIT A. KHANNA, et al.,

25 Defendants.

1           The work of this receivership is now complete. The two underlying civil  
2 cases brought by the Securities and Exchange Commission (Case No. 09cv1784  
3 BEN (WVG) (“SEC Case”)) and the U.S. Commodity Futures Trading  
4 Commission/California Department of Corporations (Case No. 09cv1783 BEN  
5 (WVG) (“CFTC Case”)) have been resolved by consent judgments as to all  
6 Defendants and Relief Defendants. We have assembled the limited assets of the  
7 Receivership Defendants, completed available cost-effective recoveries on claims  
8 against third parties, including clawback claims against investors with profits, and  
9 distributed \$4,255,333 to investors with approved claims, representing a 27.4%  
10 recovery.

11           Accordingly, the Receiver submits this Final Account and Report and has  
12 this date filed an Application to Discharge the Receiver and Approve a Final Fee  
13 Application.

14 **I. SEC and CFTC/DOC Actions, Appointment of Receiver**

15           This action was commenced with the filing on August 17, 2009 of the  
16 Complaints in the SEC Case (SEC Case, ECF No. 1) and the CFTC Case (CFTC  
17 Case, ECF No. 1). The SEC Complaint named Defendants Mohit A. Khanna  
18 (“Khanna”) and MAK 1 Enterprises Group, LLC (“MAK 1”) and Relief  
19 Defendants First Opportunities Management Group, Inc. (“FOMG”) and Sharanjit  
20 K. Khanna (Khanna’s wife, who was later named a Defendant in the SEC’s First  
21 Amended Complaint (SEC Case, ECF No. 42), filed September 21, 2009). The  
22 CFTC Complaint named Khanna and MAK 1 as Defendants and FOMG as a  
23 Relief Defendant. Temporary Restraining Orders (“TROs”) were entered in both  
24 cases on August 18, 2009 – both appointed La Bella & McNamara LLP as  
25 Temporary Receiver. The terms of the TROs were later incorporated in  
26 Preliminary Injunctions entered September 3, 2009 (the “Receiver Orders,” SEC  
27 Case, ECF No. 27; CFTC Case, ECF No. 22) and confirmed the appointment of  
28 Charles La Bella of La Bella & McNamara LLP, as Receiver. By Orders entered

1 on November 1, 2010 (SEC Case, ECF No. 168; CFTC Case, ECF No. 94),  
2 Thomas W. McNamara was substituted as Receiver upon Mr. La Bella's return to  
3 government service.

4 Final Judgments of Monetary Relief were entered in the SEC Case on  
5 March 21, 2011 as to Defendants MAK 1 (\$39,244,879, SEC Case, ECF No.  
6 179), Khanna (\$17,743,666, SEC Case, ECF No. 180) and Sharanjit Khanna  
7 (\$3,653,395, SEC Case, ECF No. 181), and Relief Defendant FOMG  
8 (disgorgement of all assets, SEC Case, ECF No. 182).

9 Consent Orders of Permanent Injunction and Other Statutory and Equitable  
10 Relief were entered in the CFTC Case on December 28, 2009 as to Defendants  
11 Khanna (CFTC Case, ECF No. 51) and MAK 1 (CFTC Case, ECF No. 52). A  
12 Supplemental Order Assessing Restitution and a Civil Monetary Penalty as to  
13 Khanna and MAK 1 was entered on January 16, 2013 (CFTC Case, ECF No. 122)  
14 ordering restitution of \$15.5 million (less amounts recovered by the Receiver) and  
15 a civil monetary penalty of \$18 million.

16 On March 18, 2013, the Court entered an Order closing the cases and  
17 retaining post-judgment jurisdiction over the receivership (SEC Case, ECF No.  
18 215; CFTC Case, ECF No. 130).

## 19 **II. Criminal Cases**

20 Khanna and MAK 1 attorney Gus Bujkovsky ultimately pled guilty to  
21 criminal charges and were sentenced to jail. Khanna was sentenced in November,  
22 2010 to 41 months in federal prison and ordered to make restitution on charges of  
23 conspiracy to commit mail/wire fraud and income tax evasion. *U.S. v. Khanna*,  
24 U.S.D.C. (S.D. Cal.), Case No. 10cr2271-LAB.

25 Mr. Bujkovsky was sentenced in January, 2011 to 12 months in federal  
26 prison for obstruction of justice (for false statements to SEC staff in connection  
27 with the MAK 1 investigation) and income tax evasion. *U.S. v. Gustav G.*  
28 *Bujkovsky*, U.S.D.C. (S.D. Cal.), Case No. 10cr3467-LAB.

1 **III. Receivership Events and Accounting**

2 In our prior reports and fee applications,<sup>1</sup> we have detailed our findings on  
3 the MAK 1 fraud and our efforts, on multiple fronts, to recover funds for return to  
4 defrauded investors. For purposes of this Final Account and Report, we provide a  
5 capsule summary of those findings.

6 **A. MAK 1 – Ponzi Scheme**

7 At its launch in 2002, MAK 1 sold itself as an informal investment pool for  
8 family and friends. It ultimately evolved, however, into a fraudulent enterprise.  
9 Investor capital placed with the MAK 1 entity now in receivership (formed in July  
10 2007) was not invested, but was disbursed out to other investors, to commissions,  
11 to Khanna and his family, or to operating expenses. Monthly account statements  
12 and actual investor distributions included completely fictional gains. The  
13 operation was premised on the phony promise of high guaranteed returns. It was  
14 bolstered by an informal coterie of commissioned sales representatives and strong  
15 word-of-mouth promotion by investors not yet aware that their gains were  
16 illusory.

17 From its formation in July 2007 until imposition of the Receivership in  
18 August, 2009, approximately 200 investors deposited \$35 million in to MAK 1.  
19 The pace of investor deposits escalated in early 2008 as new investors  
20 (representing approximately \$23 million) were delivered by referral sources who  
21 received commissions on new capital. This \$35 million in investor funds  
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23 \_\_\_\_\_  
24 <sup>1</sup> Reports: Preliminary Report, filed Sept. 9, 2009 (ECF Nos. 32 and  
25 25); First Interim Report, filed April 9, 2010 (ECF Nos. 116 and 69); Second  
26 Interim Report, filed March 3, 2011 (ECF Nos. 176 and 102); Third Interim  
Report, filed July 19, 2011 (ECF Nos. 190 and 106); Supplemental Report, filed  
February 23, 2012 (ECF Nos. 201 and 116); and Fourth Interim Report, filed  
November 20, 2012 (ECF Nos. 205 and 119).

27 Fee Applications: First Interim, filed October 16, 2009 (ECF Nos. 60 and  
28 36); Second Interim, filed April 2, 2010 (ECF Nos. 114 and 67); Third Interim,  
filed July 22, 2010 (ECF Nos. 151 and 91); Fourth Interim, filed May 10, 2011  
(continued...)

1 evaporated quickly—\$27.1 million in investor distributions (as illusory gains,  
2 interest, or return of capital); \$3.8 million in commissions paid to referral sources,  
3 some of whom were also investors; \$3.1 million to or for the benefit of Khanna  
4 and his family; and the balance of approximately \$1 million to “operating  
5 expenses.”

6 Like all Ponzi schemes, MAK 1 ultimately failed when it could not raise  
7 new investor money fast enough to cover the combined cash drain of high  
8 commissions, oversized returns to select investors, withdrawing investors, and its  
9 “operating expenses.” Investor losses confirmed through the receivership claims  
10 process were confirmed at \$15.5 million. Typical of Ponzi schemes, many of the  
11 biggest losers, dollar and percentage-wise, were investors who placed funds with  
12 MAK 1 near the end.

13 **B. MAK 1 Accounting**

14 The first challenge of this receivership was to trace the cash and confirm  
15 the cash-in/cash-out status of each investor. This procedure was complicated by  
16 multiple factors, including: the MAK 1 house computer (which housed the  
17 Quicken accounting system) and all hard copy investor files were removed from  
18 the MAK 1 offices prior to the Receiver’s appointment and were never found;  
19 many transactions (deposits and distributions) were made in cash or by wire  
20 transfers and cashier’s checks with minimal identifiers; distributions were often  
21 made to third parties on behalf of investors (*e.g.*, one investor paid for his new  
22 BMW through a wire from MAK 1 direct to the dealer); MAK 1 did no investor  
23 tax reporting for 2007 or 2008; and some investors represented a group of  
24 investors with no notice to MAK 1 as to the members of the group. We were  
25 ultimately able, however, to complete a forensic reconstruction of investor  
26

(...continued)

27 (ECF Nos. 184 and 103); Fifth Interim, filed November 30, 2011 (ECF Nos. 196  
28 and 112); and Sixth Interim, filed February 5, 2013 (ECF Nos. 208 and 123).

1 activity and overall MAK 1 financial results for the period July 2007 through July  
2 2009. While this accounting was an expensive front-loaded cost of the  
3 receivership, it allowed us to confirm investor losses at a reasonably early stage  
4 and to identify investors with profits as to whom clawback claims could be  
5 asserted.

### 6 **C. Assets and Claims**

7 We took initial possession of the offices of MAK 1 in San Diego on August  
8 20, 2009. The small office was leased on a month-to-month basis from an  
9 executive suites provider. Upon our arrival, the office was vacant with no files,  
10 no computers, no personnel, and no Khanna, whom we were told was in India.  
11 MAK 1 had aggregate liquid funds of less than \$2,000 in frozen bank accounts.  
12 We later determined that the bank account with the most substantial MAK 1 funds  
13 was the “trust account” of MAK 1 attorney Gustav Bujkovsky – we ultimately  
14 secured \$260,000 from that account and return of \$50,000 that had been paid from  
15 that account as a retainer to criminal counsel for Khanna. Sharanjit Khanna also  
16 had personal accounts frozen with aggregate balances of \$74,000. \$68,000 of  
17 those funds were ultimately released to the receivership through a stipulation with  
18 the SEC and Sharanjit Khanna, pursuant to her consent judgment with the SEC.

19 We found no evidence of secret accounts, including off-shore accounts.  
20 Khanna did make at least one trip to Switzerland to meet new prospects, but we  
21 did not find evidence that he or MAK 1 opened bank accounts there. MAK 1  
22 Bahamas Ltd. was also formed as a corporation in July 2009, but it never  
23 conducted any business or opened any known bank accounts.

24 While the Khannas enjoyed a nice lifestyle with all the overt signs of  
25 affluence—residence in an upscale gated community, foreign automobiles, nice  
26 vacations—it was an illusion. The houses had no equity (victims of large cash-  
27 out refinancings and market declines), the cars were leased, monthly expenses  
28 were paid with investor funds, and there were no actual investments, just

1 expenses. They did have some modest personal property, including, jewelry and  
2 furniture, which we liquidated on the best terms possible. FOMG did operate a  
3 small Pak & Post franchise store in Lake Elsinore, California, but this business  
4 had no equity or discernable operating profits.

5 Given the Defendants' lack of significant assets, the primary source of  
6 funds for investor recovery has been disgorgement claims to recover profits  
7 and/or commissions paid to investors and third party referrers ("clawback  
8 claims"). The final universe of clawback claims and the many challenges related  
9 to achieving recovery on them were described in detail in our Third Interim  
10 Report, filed July 19, 2011 (SEC Case, ECF 190; CFTC Case, ECF No. 106).

11 Given the wide diversity of the clawback universe as to size of claim,  
12 geographic location (multiple states and some foreign companies), ability to pay  
13 (numerous claims were negated by bankruptcy filings and others were reduced  
14 based on verified inability to pay), and inclination to settle, each claim presented a  
15 unique combination of challenges. The primary challenge was to achieve the best  
16 possible "cost-effective" result – judgments and/or protracted litigation against  
17 judgment-proof defendants would provide no net benefit to the receivership. We  
18 therefore, evaluated our litigation options and completed settlements on the best  
19 possible practical terms.

20 We filed three separate clawback cases – *La Bella v. Makkar*, Case No.  
21 10cv0760-JM (POR), filed April 12, 2010; *La Bella v. Ahn, et al.*, Case No.  
22 10cv1760-BEN (WVG), filed August 23, 2010; and *McNamara v. Lee, et al.*,  
23 Case No. 11cv1344-BEN (WVG), filed June 16, 2011. We ultimately collected  
24 \$4,307,847 on these claims which tracked our initial expectations. We also  
25 secured default judgments against clawback Defendants who did not respond to  
26 the Complaint, although several of these judgments were discharged through  
27 bankruptcy. The others were essentially uncollectible; we were able to sell them  
28 for a modest amount through an auction.

1           The SEC and the Receiver also brought separate civil actions against Mr.  
2 Bujkovsky and his wife Betty Hansen. *SEC v. Bujkovsky, et al.*, U.S.D.C. (S.D.  
3 Cal.), Case No. 10cv1965-BEN; *La Bella v. Bujkovsky, et al.*, U.S.D.C. (S.D.  
4 Cal.), Case No. 10cv0743-BEN. The SEC case was resolved through consent  
5 judgments against Mr. Bujkovsky in November, 2010 (permanent injunction and  
6 disgorgement in an amount to be determined) and against Betty Hansen in March,  
7 2011 (disgorgement and interest totaling \$163,495 to be paid to the Receiver).  
8 The Receiver's case, which also named Palomar Cleaners (a Bujkovsky-  
9 controlled business), did secure \$9,650 from Palomar's successor, but the  
10 remainder of the case was dismissed without prejudice to reflect the reality that  
11 the Bujkovskys had no assets from which to satisfy any judgments, particularly  
12 since Mr. Bujkovsky was then in jail.

13           **D. Contempt Proceedings**

14           The Receiver participated in three contempt applications. In August, 2009,  
15 the Court granted the Ex Parte motions of the Receiver, the CFTC, and the SEC  
16 for an order to show cause on contempt as to Khanna and ordered Mr. and Mrs.  
17 Khanna to appear for depositions and to cooperate with the Receiver in the  
18 preparation of an accounting. Khanna did thereafter cooperate with the  
19 Receiver's staff in completing the reconstruction of a MAK 1 accounting and an  
20 investor cash-in/cash-out data base.

21           In January 2010, the Receiver filed an order to show cause for contempt as  
22 to Mr. Bujkovsky for disbursing MAK 1 funds after the date of the freeze order,  
23 including \$50,000 paid to Khanna's criminal defense lawyer (which was later  
24 returned to the receivership). By an Order dated February 11, 2010, the Court  
25 held Bujkovsky in contempt and he ultimately delivered an additional \$60,000 to  
26 the receivership.

27           In May 2010, the Receiver filed a motion for an order to show cause for  
28 contempt as to attorney Phillip Greer, who was representing a MAK 1 investor



1 and was continuing to pursue litigation and the appointment of a receiver in state  
2 court against Khanna and others in violation of this Court's Preliminary  
3 Injunction. The Court ordered Mr. Greer to stop prosecution of the state court  
4 action, cooperate with the Receiver, and reimburse the receivership its legal fees  
5 for the contempt motion.

6 **E. Distributions to Investors**

7 By an Order entered August 8, 2011 (SEC Case, ECF No. 191, CFTC Case,  
8 ECF No. 107), the Court approved a first interim distribution of \$1.5 million and  
9 a claims procedure for the final determination of claims. Pursuant to those  
10 procedures, on September 16, 2011, the Receiver submitted Final  
11 Recommendations on Investor Claims totaling \$15,580,413 (SEC Case, ECF No.  
12 195; CFTC Case, ECF No. 111), which were deemed approved after no  
13 objections were filed. (The total claims amount was later reduced to \$15,530,413  
14 when a claim of \$50,000 was released in settlement of a family member's  
15 clawback claim.) The August 8, 2011 Order also authorized the Receiver to  
16 "make additional pro rata distributions in the future which shall be in such  
17 amounts and at such time as the Receiver deems appropriate."

18 The Receiver has implemented five distributions to investors: First  
19 Distribution, October 2011 (\$1,553,041); Second Distribution, January 2012  
20 (\$931,824); Third Distribution, May 2012 (\$776,520); Fourth Distribution,  
21 November 2012 (\$660,042); and Fifth Distribution, November 2013 (\$333,903).  
22 These distributions total \$4,255,333 and reflect an investor recovery of 27.4%,  
23 which is consistent with our earliest projection of an investor recovery of 15-30%.

24 Despite our best efforts, the receivership may experience some obstacles to  
25 actual delivery of distributions to all investors (death, divorce, relocation, address  
26 changes, etc.) or insuring that all investors who receive distributions promptly  
27 deposit them. As such, the submitted proposed order provides that if after 180

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1 days any funds remain undistributed, despite the Receiver's best efforts, those  
2 funds shall be delivered to the agencies who brought these cases.

3 **F. Receivership Accounting**

4 The SEC Standardized Fund Accounting Report for the receivership from  
5 inception on August 18, 2009 through December 9, 2013 is attached as Exhibit A.  
6 That Report shows receipts of \$5,194,459.72 less disbursements of \$5,171,836.61  
7 for net cash as of the date of this Final Account and Report of \$22,623.11. The  
8 Final Fee Application seeks approval to pay final invoices for the Receiver,  
9 counsel, and accountants totaling \$16,020.95 which would reduce cash assets to  
10 \$6,602.16, to be held as a reserve as set forth in the Application for Discharge.

11 Receipts in the receivership derived from multiple sources: recoveries from  
12 clawback targets (\$4,309,858); recoveries from MAK 1 service providers  
13 (\$405,402); recoveries from MAK 1's former attorney Gus Bujkovsky  
14 (\$269,650); frozen MAK 1 bank accounts and refunds (\$5,040); cash delivered by  
15 Khanna (\$550); cash from frozen accounts of Sharanjit Khanna (\$68,910); the  
16 collection of rents (\$63,081); return of retainer paid to criminal defense attorney  
17 (\$50,000); and the liquidation of business and personal property (\$21,967).

18 The primary category of disbursements is \$4,255,333 in distributions to  
19 investors. There also have been operating expenses of \$916,503 composed of  
20 bank charges (\$417), taxes (\$4,409), asset investigation costs (\$9,236), website  
21 costs (\$1,134), on-site labor (\$535), telephone (\$135), and professional fees of  
22 \$900,636 to the Receiver, the receiver's counsel, and the receiver's accountant.  
23 All these professional fees were approved by the Court based on six fee  
24 applications approved by Orders entered January 13, 2010 (SEC Case, ECF No.  
25 83; CFTC Case, ECF No. 53); May 6, 2010 (SEC Case, ECF No. 129; CFTC  
26 Case, ECF No. 81); August 30, 2010 (SEC Case, ECF No. 160; CFTC Case, ECF  
27 No. 92); June 14, 2011 (SEC Case, ECF No. 187; CFTC Case, ECF No. 104);

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1 March 1, 2012 (SEC Case, ECF No. 202; CFTC Case, ECF No. 117); and March  
2 18, 2013 (SEC Case, ECF No. 214; CFTC Case, ECF No. 129).

3 **IV. Discharge of the Receiver**

4 The Receiver has completed his duties as set forth in the Preliminary  
5 Injunctions of September 3, 2009 (SEC Case, ECF No. 22; CFTC Case, ECF No.  
6 27). Accordingly, the Receiver respectfully requests to be discharged with an  
7 Order providing for the following:

- 8 1. The Receiver's Final Account and Report is hereby accepted and  
9 approved.
- 10 2. The Receiver's final application for fees and expenses for the period  
11 December 1, 2012 through November 15, 2013 is hereby approved  
12 and the Receiver is authorized to make payment of the invoices in  
13 that Application.
- 14 3. The Receiver's acts, transactions, and actions during his  
15 administration as disclosed in the pleadings filed with the Court in  
16 this matter are confirmed and approved as being in the best interests  
17 of the receivership estate.
- 18 4. Receiver Thomas W. McNamara, and his predecessor Receiver,  
19 Charles G. La Bella, are hereby discharged.
- 20 5. Receiver Thomas W. McNamara, and his predecessor Receiver,  
21 Charles G. La Bella, are released and exonerated from all further  
22 duties, liabilities and responsibilities as Receiver herein. Mr.  
23 McNamara and Mr. La Bella and the professionals retained by them  
24 as Receiver shall have no personal liability of any nature for any act,  
25 omission or matter pertaining to the receivership.
- 26 6. The Receiver is authorized to hold back a reserve of \$6,602.16 to  
27 cover final administrative fees and costs of the receivership and may  
28 expend those funds without further order of the Court.

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- 7. The Receiver shall deliver any unexpended or undistributed funds remaining 180 days after entry of this Order to the agencies that brought these actions. These funds shall include any unexpended funds from the reserve in Paragraph 6 above and any distributions to approved investors that are not negotiated by the investors within 180 days after the entry of this Order or whom the Receiver has been unable to locate during this period despite his best efforts.
- 8. The receivership is terminated.
- 9. The Receiver's bond is exonerated.

Dated: December 9, 2013

Respectfully submitted,

By: /s/ Thomas W. McNamara  
Thomas W. McNamara  
Receiver