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SOUTHERN DISTRICT OF CALIFORNIA

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by and through the California Corporations Commissioner**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**U.S. COMMODITY FUTURES TRADING)
COMMISSION and THE PEOPLE OF THE)
STATE OF CALIFORNIA, by and through the)
CALIFORNIA CORPORATIONS)
COMMISSIONER,)**

Case No. 09-cv-01783-BEN-CAB

Plaintiffs,

**SUPPLEMENTAL ORDER ASSESSING
RESTITUTION AND A CIVIL
MONETARY PENALTY**

vs.

**MOHIT A. KHANNA, an individual, and MAK)
I ENTERPRISES GROUP, LLC, a Nevada)
limited liability company,)**

Defendants; and

**FIRST OPPORTUNITIES MANAGEMENT)
GROUP, INC., a Nevada corporation,)**

Relief Defendant.

Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

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1. On August 17, 2009, Plaintiff U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC") and the State of California, by and through the California Corporations Commissioner, (collectively "Plaintiffs") filed a Complaint against Defendants Mohit Khanna and MAK 1 Enterprises Group, LLC ("MAK 1" and collectively "Defendants") for Permanent Injunction, Civil Penalties, and Other Equitable Relief, for violations of Sections 4b(a)(2)(A)-(C) of the Commodity Exchange Act ("CEA" or "Act") as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C)) and of provisions of the California Commodity Law of 1990 (Cal. Corp. Code Sections 29520 and 29536).

The Court entered a Consent Order of Permanent Injunction and for Other Statutory and Equitable Relief against Defendants on December 28, 2009.

I. CONSENTS AND AGREEMENTS

To resolve the remaining issues of the amounts of restitution and civil monetary penalty, as provided in the Consent Order, without any further judicial proceedings, Defendants:

1. Consent to the entry of this Supplemental Consent Order of Permanent Injunction and Other Relief Against Mohit A. Khanna and MAK 1 ("Supplemental Consent Order");
2. Affirm that they have read and agreed to this Supplemental Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Plaintiffs or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Supplemental Consent Order;
3. Acknowledge(s) service of the summons and Complaint;

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4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;

5. Admit the jurisdiction of the Plaintiffs over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;

6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);

7. Waive:

(a) any and all claims they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2011), relating to, or arising from, this action;

(b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Supplemental Consent Order; and

(d) any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of enforcing the terms and conditions of the Permanent Injunction and Supplemental Consent Order and for any other purpose relevant to this action even if Defendants now or in the future reside outside the jurisdiction of this Court;

Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

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9. Agree that they will not oppose enforcement of this Supplemental Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint, or creating or tending to create the impression that the Complaint and/or this Supplemental Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Plaintiffs are not a party. Defendants shall undertake all steps necessary to ensure that their agents or employees under their authority or control understand and comply with this agreement; and

11. By consenting to the entry of this Supplemental Consent Order, neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Supplemental Consent Order, except as to jurisdiction and venue, which they admit. Further, Defendants agree and intend that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Supplemental Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendants; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Supplemental Consent Order.

12. Agree to provide immediate notice to this Court and the Plaintiffs by certified mail, in the manner required by paragraph 24 of Part VI of this Supplemental Consent Order, of Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

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2 any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the
3 United States, and
4

5 13. Agree that no provision of this Supplemental Consent Order shall in any way
6 limit or impair the ability of any other person or entity to seek any legal or equitable remedy
7 against Defendants in any other proceeding. The Court, being fully advised in the premises,
8 finds there is good cause for entry of this Supplemental Consent Order and that there is no just
9 reason for delay. The Court therefore directs the entry of Findings of Fact, Conclusions of Law
10 and a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7
11 U.S.C. § 13a-1, as set forth herein.
12

13 III. FINDINGS AND CONCLUSIONS

14 14. The Findings of Fact and Conclusions of Law contained in Permanent Injunction are
15 incorporated herein by reference and given preclusive effect as provided in the Permanent
16 Injunction.
17

18 IV. RESTITUTION, DISGORGEMENT AND CIVIL MONETARY PENALTY

19 IT IS HEREBY ORDERED that DEFENDANTS shall comply fully with the following
20 terms, conditions, and obligations relating to the payment of restitution, disgorgement and civil
21 monetary penalty:
22

23 A. Restitution

24 15. Defendants shall pay restitution in the amount of \$15,530,419.90, to be offset by
25 amounts recovered by the Receiver ("Restitution Obligation"), plus post-judgment interest.
26 Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry
27

28 Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

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2 of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the
3 date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.
4

5 16. Upon the termination of the receivership estate, the Receiver shall provide the
6 Commission with a report detailing the disbursement of funds to Defendants customers. The
7 Receiver shall transmit this report under a cover letter that identifies the name and docket
8 number of this proceeding to the Chief Financial Officer, Commodity Futures Trading
9 Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.
10

11 17. The amounts payable to each Customer shall not limit the ability of any Customer
12 from proving that a greater amount is owed from Defendants, or any other person or entity, and
13 nothing herein shall be construed in any way to limit or abridge the rights of any Customer that
14 exist under state or common law.

15 18. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Customer of
16 Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this
17 Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of
18 any portion of the restitution that has not been paid by Defendants to ensure continued
19 compliance with any provision of this Consent Order and to hold Defendants in contempt for any
20 violations of any provision of this Consent Order.
21

22 19. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants
23 Restitution Obligation, such funds shall be transferred to the Receiver for disbursement in
24 accordance with the procedures set forth above.

25 **B. Civil Monetary Penalty**

26 20. Defendants shall, jointly and severally, pay a civil monetary penalty in the amount of
27 Eighteen million dollars, \$18,000,000.00 ("CMP Obligation"), plus post-judgment interest,
28 Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

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2 within thirty (30) days of the date of the entry of this Consent Order. Post-judgment interest
3 shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and
4 shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent
5 Order pursuant to 28 U.S.C. § 1961 (2006).
6

7 **21. Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal**
8 **money order, certified check, bank cashier's check, or bank money order. If payment is to be**
9 **made other than by electronic funds transfer, then the payment shall be made payable to the**
10 **Commodity Futures Trading Commission and sent to the address below:**

11 **Commodity Futures Trading Commission**
12 **Division of Enforcement**
13 **ATTN: Accounts Receivables – AMZ 340**
14 **E-mail Box: 9-AMC-AMZ-AR-CFTC**
15 **DOT/FAA/MMAC**
16 **6500 S. MacArthur Blvd.**
17 **Oklahoma City, OK 73169**
18 **Telephone: (405) 954-5644**

19 **If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst or her**
20 **successor at the address above to receive payment instructions and shall fully comply with those**
21 **instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter**
22 **that identifies Defendants and the name and docket number of this proceeding. Defendants shall**
23 **simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial**
24 **Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street,**
25 **NW, Washington, D.C. 20581**

26 **C. Provisions Related to Monetary Sanctions**

27 **22. Partial Satisfaction: Any acceptance by the Plaintiffs or the Receiver of partial**
28 **payment of Defendants Restitution Obligation or CMP Obligation shall not be deemed a waiver**

Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

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2 of their obligation to make further payments pursuant to this Consent Order, or a waiver of the
3 Plaintiffs' right to seek to compel payment of any remaining balance.
4

5 **D. Cooperation**

6 **23. Defendants shall cooperate fully and expeditiously with the Plaintiffs and any other**
7 **governmental agency in this action, and in any investigation, civil litigation, or administrative**
8 **matter related to the subject matter of this action or any current or future Commission**
9 **investigation related thereto.**
10

11 **VI. MISCELLANEOUS PROVISIONS**

12 **24. Notice: All notices required to be given by any provision in this Consent Order shall**
13 **be sent certified mail, return receipt requested, as follows:**
14

15 **Notice to CFTC:**

16 **Gretchen L. Lowe**
17 **Associate Director**
18 **U.S. CFTC**
19 **1155 21st St, NW**
20 **Washington, DC 20581**

21 **All such notices to the CFTC shall reference the name and docket number of this action.**

22 **25. Change of Address/Phone: Until such time as Defendants satisfy in full their**
23 **Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants shall**
24 **provide written notice to the Commission by certified mail of any change to his telephone**
25 **number and mailing address within ten (10) calendar days of the change.**

26 **26. Entire Agreement and Amendments: This Consent Order incorporates all of the**
27 **terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to**
28

Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

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2 amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing;
3 (b) signed by all parties hereto; and (c) approved by order of this Court.
4

5 **27. Invalidation:** If any provision of this Consent Order or if the application of any
6 provision or circumstance is held invalid, then the remainder of this Consent Order and the
7 application of the provision to any other person or circumstance shall not be affected by the
8 holding.

9 **28. Waiver:** The failure of any party to this Consent Order or of any Customer at any
10 time to require performance of any provision of this Consent Order shall in no manner affect the
11 right of the party or Customer at a later time to enforce the same or any other provision of this
12 Consent Order. No waiver in one or more instances of the breach of any provision contained in
13 this Consent Order shall be deemed to be or construed as a further or continuing waiver of such
14 breach or waiver of the breach of any other provision of this Consent Order.
15

16 **29. Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this
17 action to ensure compliance with this Consent Order and for all other purposes related to this
18 action, including any motion by Defendants to modify or for relief from the terms of this
19 Consent Order.
20

21 **30. Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief
22 provisions of this Consent Order shall be binding upon Defendants, upon any person under their
23 authority or control, and upon any person who receives actual notice of this Consent Order, by
24 personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or
25 participation with Defendants.

26 **31. Counterparts and Facsimile Execution:** This Consent Order may be executed in two
27 or more counterparts, all of which shall be considered one and the same agreement and shall
28 Supplemental Order Assessing Restitution and a Civil Monetary 09-cv-01783-BEN-CAB

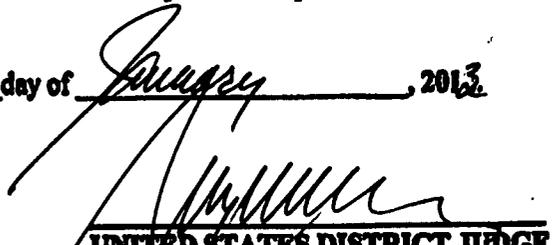
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become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

32. Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Supplemental Consent Order Assessing Restitution, Disgorgement And A Civil Monetary Penalty Against Mohit A. Khanna and MAK 1 Enterprises Group, LLC.*

IT IS SO ORDERED on this 16 day of January, 2013.


UNITED STATES DISTRICT JUDGE

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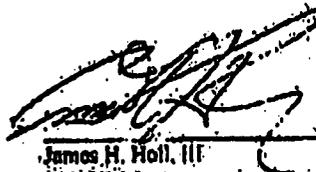
CONSENTED TO AND APPROVED BY:


Mohit A. Kabanra KHANNA

Date: 1/24/2012


Receiver for MAK 1 Enterprises Group, LLC

Date: 1/14/13



James H. Holl, III
Chief Trial Attorney
U.S. Commodity Futures Trading Commission
1155 21st St, NW
Washington, DC 20581
jholl@cftc.gov

Dated 1/14/13


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ALAN S. WEINGER
Deputy Commissioner
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