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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)	Case No.
CALIFORNIA CORPORATIONS)	
COMMISSIONER,)	
)	COMPLAINT FOR INJUNCTIVE AND
)	OTHER EQUITABLE RELIEF AND
Plaintiffs,)	FOR CIVIL PENALTIES UNDER THE
)	COMMODITY EXCHANGE ACT, AS
vs.)	AMENDED, 7 U.S.C. §§ 1-et seq; AND
)	CALIFORNIA CORPORATIONS CODE
MOHIT A. KHANNA, an individual, and MAK)	§§ 29520 AND 29536
1 ENTERPRISES GROUP, LLC, a Nevada)	
limited liability company,)	
)	
)	
Defendants; and)	
)	
FIRST OPPORTUNITIES MANAGEMENT)	
GROUP, INC., a Nevada corporation,)	
)	
Relief Defendant.)	

1 **SUMMARY**

2 1. Since at least 2002, and continuing through the present (“relevant period”),
3 defendants Mohit A. Khanna (“Khanna”) and MAK 1 Enterprises Group, LLC (“MAK 1”)
4 (collectively, “Defendants”), directly and through their officers, employees and their agents,
5 have fraudulently operated a foreign currency trading firm. Defendants fraudulently solicited at
6 least \$16.4 million from at least 122 members of the general public for the purported purpose of
7 trading managed accounts and/or a pooled investment in connection with agreements, contracts
8 or transactions in foreign currency that are margined or leveraged (“pooled forex”) and operated
9 and managed by Defendants. Although Defendants have been in operation since 2002, most of
10 the known clients invested with Defendants after November 2008.
11

12 2. In soliciting prospective clients, Defendants, directly and through others, made the
13 following fraudulent misrepresentations and omissions, among others, (1) double-digit returns
14 over a short period of time, such as returns of 40% to 50%, were guaranteed; (2) client
15 investments were protected against loss by MAK 1 insurance policies; (3) Defendants managed
16 \$50 million in assets; 4) Defendants were experienced traders with a consistent six-year track
17 record of double-digit returns; 5) failed to adequately disclose the risks of trading off-exchange
18 leveraged foreign currency contracts; and (5) failed to disclose that, in 2004, Khanna was barred
19 from associating with any member of National Associations of Securities Dealers (“NASD”),
20 now known as Financial Industry Regulatory Authority, for allegedly luring investments from
21 clients through alleged false misrepresentations.
22

23 3. Despite their claims of \$50 million under management and reports of gains to
24 clients, Defendants have not met redemption requests or returned funds to many MAK 1 clients.
25 Instead, Defendants issued redemption checks, many of which were returned for insufficient
26 funds. Around late April 2009, as many clients began expressing concern about their
27 investments, Defendants ceased communicating with them.
28

1 4. Upon information and belief, Defendants operated a “Ponzi” scheme by paying so-
2 called returns to clients with those clients’ own money or the money of other clients. In doing
3 so, Defendants misappropriated funds. Upon information and belief, Defendants also
4 misappropriated client funds for personal use and channeled a portion of these misappropriated
5 funds from MAK 1 bank accounts into a bank account in the name of another Khanna business,
6 relief defendant First Opportunities Management Group, Inc. (“First Opportunities”). First
7 Opportunities provided no legitimate services to MAK 1 or its clients and otherwise has no
8 legitimate entitlement to or interest in MAK 1 client funds.

9
10 5. To conceal their fraud, Defendants issued, or cause to be issued, false account
11 statements to clients reflecting the promised returns based on Defendants’ purportedly successful
12 trading of foreign currency contracts. Upon information and belief, Defendants’ false account
13 statements conceal their misappropriation, lack of trading and/or trading losses.

14
15 6. By virtue of this conduct and the further conduct described herein, Defendants have
16 engaged, are engaging, or are about to engage in acts and practices in violation of the anti-fraud
17 provisions of Sections 4b(a)(2)(A)-(C) of the Commodity Exchange Act (“CEA” or “Act”) as
18 amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII
19 (the CFTC Reauthorization Act of 2008 (“CRA”)), § 13102, 122 Stat. 1651 (enacted June 18,
20 2008), to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C)).

21
22 7. Khanna and other MAK 1 employees, officers and agents committed the acts alleged
23 herein within the course and scope of their employment, office or agency at MAK 1. Therefore,
24 MAK 1 is liable pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and
25 Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2009), as principal for its
26 employees, agents, or officers’ violation of the Act.

27
28 8. Khanna is a controlling person of MAK 1 and did not act in good faith or knowingly
induced MAK 1’s alleged violative acts. Therefore, pursuant to Section 13(b) of the Act, 7

1 U.S.C. § 13c(b) (2006), Khanna is liable for MAK1’s violations of the Act.

2 9. Relief defendant First Opportunities received ill-gotten gains from Defendants’
3 fraudulent conduct and provided no legitimate services to MAK 1 or its clients and otherwise has
4 no legitimate entitlement to or interest in MAK 1 client funds. Therefore, the Relief Defendant
5 must disgorge all ill-gotten gains.
6

7 10. Defendants’ conduct is also in violation of provisions of the California Commodity
8 Law of 1990 (Cal. Corp. Code Sections 29520 and 29536).

9 11. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and
10 Section 2(c)(2)(C)(i)-(iii) of the Act as amended by the CRA, to be codified at 7 U.S.C. §
11 2(c)(2)(C)(i)-(iii), plaintiff, the U.S. Commodity Futures Trading Commission (“Commission”),
12 and pursuant to Section 6d of the Act, 7 U.S.C. § 13a-2 (2006), and California Corporations
13 Code Sec. 29540, and 29544, Plaintiff People of the State of California, by and through the
14 California Corporations Commissioner (“State of California”) (collectively, “Plaintiffs”) bring
15 this action to enjoin the unlawful acts and practices of Defendants, to compel their compliance
16 with the provisions of the Act, and to enjoin them from engaging in certain commodity or
17 foreign currency related activities. In addition, Plaintiffs seek restitution, disgorgement, civil
18 penalties, an accounting and such other equitable relief as the Court may deem necessary or
19 appropriate, including trading and registration bans.
20
21

22 12. Unless restrained and enjoined by this Court, Defendants are likely to continue to
23 engage in the acts and practices alleged in this Complaint and similar acts and practices, as more
24 fully described below.
25

26 **II.**

27 **JURISDICTION AND VENUE**

28 13. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), authorizes the Commission to

1 seek injunctive relief against any person whenever it shall appear to the Commission that such
2 person has engaged, is engaging, or is about to engage in any act or practice constituting a
3 violation of any provision of the Act or any rule, regulation or order thereunder.

4
5 14. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7
6 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(C)(i)-(iii) of the Act as amended by CRA, to be
7 codified at 7 U.S.C. § 2(c)(2)(C)(i)-(iii).

8 15. Section 6d(1) of the CEA, 7 U.S.C. § 13a-2 (2006), provides that, whenever it shall
9 appear to the attorney general of any State, the administrator of the securities laws of any State,
10 or such other official as a State may designate, that the interests of residents of the State have
11 been, are being, or may be threatened or adversely affected because of such violations of the
12 CEA, the State may bring a suit in the district courts of the United States to enjoin such acts or
13 practices and to enforce compliance with the CEA, or to obtain such other and further relief as
14 the court deems appropriate, including the state law claims brought pursuant to Sections 29520
15 and 29536 of the California Commodity Law of 1990 and in conformity with Section 12(e) of
16 the CEA, 7 U.S.C. § 16(e) (2006). This Court has supplemental jurisdiction over the state law
17 claims pursuant to 28 U.S.C. § 1367(a).
18

19 16. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C.
20 § 13a-1(e) (2006), in that the Defendants are found in, inhabit, or transact business in this
21 District, and the acts and practices in violation of the Act have occurred, are occurring, or are
22 about to occur in this District.
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III.

THE PARTIES

A. Plaintiffs

17. The U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 1 et seq. (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2009).

18. Plaintiff People of the State of California, by and through the California Corporations Commissioner (“Commissioner”), brings this action on behalf of the people of California in the public interest. The Commissioner, as head of the California Department of Corporations, is empowered by legislative enactment to protect the people of California from unlawful commodity and securities transactions and activities.

B. Defendants

19. MAK 1 Enterprises Group, LLC is a Nevada limited liability corporation, formed in June 2007, but now in default, and actively registered to do business in California. MAK 1 operates out of San Diego, California, and is engaged in the business of soliciting and accepting funds from individuals to pool together for the purpose of trading off-exchange foreign currency contracts on behalf of those individuals. MAK 1 has never been registered with the Commission in any capacity. MAK 1 is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities. At least some, if not all, of MAK 1’s clients are not “eligible contract participants” as that term is defined in the Act. *See* Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2006) (an “eligible contract participant,” as relevant here, is an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or

1 reasonably likely to be incurred, by the individual”).

2 20. Mohit A. Khanna is an individual who maintains an address in San Diego,
3 California. Khanna holds himself out as the Chief Executive Officer of MAK 1, and through
4 MAK 1, is engaged in the business of soliciting and accepting funds from individuals to pool
5 together for the purpose of trading off-exchange foreign currency contracts on their behalf. In
6 2004, pursuant to a consent agreement, the NASD barred Khanna, then a registered
7 representative, from association with any NASD member in any capacity based on consented to
8 findings that Khanna falsely represented to public customers that his firm would refund sales
9 charges when mutual funds were sold after the customer had purchased approximately \$1.4
10 million of shares and that after he made those false representations, customers purchased an
11 additional \$400,000 of shares. Khanna is not a financial institution, registered broker dealer,
12 insurance company, financial holding company, or investment bank holding company, and is not
13 an associated person of such entities. Khanna has never been registered with the Commission in
14 any capacity.
15

16
17 **C. Relief Defendant**

18 21. First Opportunities Management Group, Inc. is a Nevada corporation, formed in
19 June 2007 but now in default, and actively registered to do business in California. Khanna is the
20 President of First Opportunities. First Opportunities is not a financial institution, registered
21 broker dealer, insurance company, financial holding company, or investment bank holding
22 company, and is not an associated person of such entities. First Opportunities has never been
23 registered with the Commission in any capacity.
24

1 IV.

2 **FACTS**

3 **Defendants Fraudulently Solicited Individuals to Open Managed Accounts and to**
4 **Participate in a Pool to Trade Foreign Currency Contracts**

5 22. During the relevant period, Defendants, directly and through their officers,
6 employees, and agents, fraudulently solicited and accepted at least \$16.4 million, if not
7 significantly more, from, at least 122 individuals located primarily in southern California to trade
8 for or on behalf of such individuals, managed accounts and/or a pooled investment in connection
9 with agreements, contracts or transactions in foreign currency that are margined or leveraged.
10 Many of the MAK 1 clients invested with MAK 1 after November 2008. However, Defendants
11 have been in operation since at least 2002.

13 23. Defendants, directly and through others, solicited individuals to trade pooled forex
14 through direct solicitations, word-of-mouth, a prospectus and other written solicitations.

15 24. Khanna holds himself out as MAK 1's Chief Executive Officer and investment
16 manager. He solicited clients directly, executed customer and other agreements in the name of
17 MAK 1, communicated with MAK 1 clients concerning their investments and redemptions
18 requests, and, as the sole signatory, controlled MAK 1 bank accounts.

20 25. Defendants, directly and through others, met with prospective clients. In those
21 meetings, Khanna and others explained that Defendants offered trading in pooled forex. Khanna
22 also told prospective clients that he had several years of experience trading at a large investment
23 firm and used a proprietary trading system.

24 26. Defendants offered short term participation in the pool, typically for 21 to 30-day
25 terms with guaranteed returns of 45% or more.

27 27. After clients made their initial investments, Defendants quickly showed them
28 purported returns and pressured them to roll-over or continue their investments. Based on

1 Defendants' representations that initial investments were profitable, many of the known clients
2 reinvested their purported profits and made additional investments under existing or new terms.

3 28. In their oral solicitations, Defendants emphasized that clients' principal and interest
4 were guaranteed, Federal Deposit Insurance Corporation and Securities Investor Protection
5 Corporation insured, and further protected by a MAK 1 insurance policy. Defendants also touted
6 the use of the MAK 1 automated trading platform, purportedly developed by Khanna. Khanna
7 told at least one prospective client that his trading earned such high returns because he had
8 enough money in reserves to cover all investments.

9
10 29. In these solicitations, Defendants did not disclose the risks of trading pooled forex.

11 30. In his solicitations of at least one prospective client, Khanna claimed to have
12 approximately 125 clients and \$50 million under management. At other times, apparent agents
13 of Defendants stated that Defendants have \$500 million or more in assets under management.

14
15 31. Defendants provided prospective and existing clients with a prospectus and
16 disclosure document entitled, "Prospectus and Disclosure Document MAK 1 Enterprises Group,
17 LLC Asset Management Account" ("Prospectus"). Defendants also made the Prospectus
18 available on MAK 1's website, www.mak1enterprises.com.

19 32. The Prospectus provided that MAK 1 was the general partner and trading advisor of
20 each Series of the MAK 1 Asset Management Account investment. MAK 1 clients understood
21 that Khanna directed any purported trading.

22
23 33. In the Prospectus, MAK 1 claims to offer a "series of individual foreign currency
24 CD units: CSFSB, DBALXB, BGTUSA," but does not otherwise define these units. According
25 to the Prospectus, each series trades in the U.S. and foreign currency markets using the trading
26 system developed by MAK 1, and "[e]ach Series is a leveraged investment managed by an
27 experienced, professional trading advisor and it trades in a wide range of currencies." As
28 evidenced by the Prospectus, the foreign currency transactions offered by Defendants did not

1 provide for delivery within two days or create an enforceable obligation to deliver between a
2 seller and a buyer that had the ability to deliver and accept delivery.

3 34. The Prospectus downplays the risks of trading leveraged foreign currency contracts,
4 stating that the MAK 1 “Asset Management Account” is “not volatile” and “the net asset value
5 [of the investment] does not fluctuate.” The Prospectus also reiterates Defendants’ oral promises
6 that “you [the investor] will not lose all of your investment in each series.” In setting forth
7 potential market risk and the “possible total loss of an investment”, the Prospectus states that
8 “currency CD contracts do not have a high degree of price variability and are not subject to
9 occasional rapid and substantial changes.”
10

11 35. The Prospectus includes a performance record for the Asset Management Account
12 (i.e., the pool) since the account’s purported inception in 2002. The performance record shows
13 consistent profitable returns with steady growth from 8% in 2002 to 27% in 2008. Defendants
14 boast of achieving such consistent double-digit returns over six years even in down markets.
15 Upon information and belief, this performance record is false. For instance, in a 2009
16 application for a personal foreign currency trading account which he never funded, Khanna
17 represented he had only one year of experience trading foreign currency and not six, as the
18 Prospectus would have prospective clients believe.
19

20 36. The Prospectus provides that MAK 1 is entitled to management fees and operating
21 fees.
22

23 37. Defendants did not disclose in their oral solicitations of prospective or existing
24 clients, in the Prospectus or otherwise that, in 2004, Khanna was barred from the securities
25 industry by the NASD in connection with alleged false representations to public customers.
26 MAK 1 clients executed client agreements with Khanna signing the agreements on behalf of
27 MAK 1. The agreements typically have a contract period of 30 days, set forth the trading period,
28 provide a guaranteed rate of return, at times as high as 20%, 40 % or 50%, state that principal

1 and interest is guaranteed and include a date for funds to be returned to the clients.

2 38. Defendants provided at least some of the clients with a Certificate of Liability of
3 Insurance (“Certificate”) to purportedly show that the client investments were protected against
4 loss by the insurance policy. Many clients understood this and Khanna’s oral representations to
5 mean that their investments were insured against loss. However, the insurance broker who
6 issued the Certificate informed clients that the policy does not cover client investments.
7

8 39. Defendants instructed prospective clients to make checks payable, or send wires, to
9 MAK 1. Defendants also accepted cash.

10 40. Prospective and existing clients relied upon all of the misrepresentations and
11 omissions described above in deciding to invest, reinvest and/or remain invested with
12 Defendants.
13

14 41. After securing the initial investments, Defendants continually urged clients to make
15 additional investments and to “roll-over” their accounts into longer term contracts, which many
16 did. In at least one instance, Defendants began soliciting additional investments only one week
17 after the initial investment and showing the client a positive return.

18 **Defendants’ Known Bank Accounts and Trading Accounts Do Not Support Claims**

19 42. The complete picture regarding the location and disposition of client funds is
20 unknown.
21

22 43. Khanna personally opened the MAK 1 bank accounts and, in at least one account
23 application, described MAK 1 as a computer business. Khanna had signatory authority and
24 control over these accounts.

25 44. As of the end of July 2009, known MAK 1 bank accounts had minimal to no funds
26 in them.
27

28 45. Khanna transferred MAK 1 client funds to First Opportunities, which also is a
Nevada corporation incorporated in June 2007. Khanna is the president of First Opportunities

1 and the mailing address of First Opportunity is the same as MAK 1. Upon information and
2 belief, First Opportunity did not provide any legitimate services to MAK 1 clients and had no
3 legitimate entitlement to any MAK 1 clients' funds it received.

4 46. From the First Opportunities bank accounts, Khanna paid for apparent personal
5 expenses, including multiple cars and at least one mortgage.

6
7 47. The extent of any trading by Defendants, if any, is unknown. However, Defendants
8 never traded foreign currency contracts in any trading accounts at any registered Futures
9 Commission Merchant ("FCM") in the United States. No trading accounts were found in the
10 name of MAK 1 or under the control of Defendants and for the benefit of clients.

11 48. Khanna commenced an application to open a foreign currency trading account in his
12 own name at an FCM in February 2009 but did not complete the application and never funded
13 that account. In late April 2009, as he was making excuses for not returning clients' funds,
14 Khanna opened a foreign currency trading account in his own name at another FCM. He has not
15 funded that account but, on July 27, 2009, Khanna informed the FCM to say he would be
16 transferring \$100,000 to fund the account

17
18 **Defendants Concealed Fraud by Issuing False Account Statements**

19 49. Defendants provided clients with Internet access to their account statements.
20 Clients' account statements consistently show substantial returns on their interests in the pool.

21 50. In early 2009, some clients requested distributions of their purported profits reflected
22 on their account statements. Defendants were either late in sending distribution checks, failed to
23 respond, or sent checks that were returned for insufficient funds.

24 51. As clients made repeated demands for their funds, Khanna offered varying excuses
25 and used delaying tactics, usually blaming purportedly recently implemented banking regulations
26 that prevented release of funds or paperwork or accounting problems to explain why checks were
27 failing to clear.
28

1 52. To reassure clients, Khanna sent an email on February 29, 2009, stating that the
2 company has grown and prospered over the course of the past six years despite the negative
3 market conditions. Khanna attached a letter to the email, dated February 26, 2009, from
4 Defendants' purported long time accountant, in which the accountant represented he had
5 reviewed MAK 1 financial information, including corporate records, and they represented that
6 Khanna had \$50 million in his bank account. Khanna stated in the email, "I hope this
7 information was a source of comfort to you, and it provides a source of great pride for me."

9 53. Nevertheless, actual statements for the same account show that, at the close of
10 business on February 26, 2009, the account had a total of approximately \$43,000. In fact,
11 recently, the average balance was only approximately \$197,000. Further evidence that this
12 account did not have the amount Defendants claimed it to have is that, despite these claims and
13 that Defendants were providing account statements showing positive returns, Defendants were
14 not meeting redemption requests.

16 54. Upon information and belief, although claiming to trade overseas, Khanna provided
17 his purported accountant trading account statements showing profitable trading for an account he
18 purportedly held at a formerly registered FCM, which were false. Neither MAK 1 nor Khanna
19 ever held an account at that FCM, or traded accounts at any FCMs. Upon information and belief,
20 Khanna also provided falsified bank records to the accountant showing \$50 million in assets.

22 55. In one April 16, 2009 email correspondence, Khanna represented that older clients
23 had received their capital and a "generous return" while "relatively new clients" had not. In that
24 email, he continued to blame banking regulations and holding periods as his reason for not
25 making refunds. Based on available bank records, upon information and belief, Khanna used
26 other client funds to make payments and to make purported returns to older clients.

27 56. When challenged by clients about the guarantee and insurance against loss of
28 principal and interest, Defendants provided at least certain clients with a copy of the purported

1 insurance policy MAK 1 had and told clients that protected their principal and interest. Contrary
2 to Defendants' representations, the insurance policy did not cover customer investments with
3 MAK 1.

4 57. Defendants' clients cannot reach Defendants and their demands for funds to be
5 returned have not been met.

6 58. During the relevant period, Khanna has maintained a lavish lifestyle.

7 59. Upon information and belief, Defendants have misappropriated clients funds to
8 return funds to some clients and for personal use.

9
10 **V.**

11 **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

12 **COUNT ONE**

13 **VIOLATIONS OF SECTIONS 4b(a)(2)(A)-(C) OF THE ACT**
14 **AS AMENDED BY THE CRA and REGULATIONS 1.1(b) and 1.2:**
15 **FRAUD MISAPPROPRIATION AND FALSE STATEMENTS**

16 60. Paragraphs 1 through 61 are re-alleged and incorporated herein.

17 61. Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at
18 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

19 for any person, in or in connection with any order to make, or the making
20 of, any contract of sale of any commodity for future delivery, or other
21 agreement, contract, or transaction subject to paragraphs (1) and (2) of
22 section 5a(g), that is made, or to be made, for or on behalf of, or with, any
23 other person, other than on or subject to the rules of a designated contract
24 market – (A) to cheat or defraud or attempt to cheat or defraud the other
25 person; (B) willfully to make or cause to be made to the other person any
26 false report or statement or willfully to enter or cause to be entered for the
27 other person any false record; [or] (C) willfully to deceive or attempt to
28 deceive the other person by any means whatsoever in regard to any order
or contract or the disposition or execution of any order or contract, or in
regard to any act of agency performed, with respect to any order or
contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA apply to the forex
transactions, agreements or contracts offered by Defendants. Section 2(c)(2)(C)(iv) of the Act as

1 amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

2 62. By the conduct alleged herein, Defendants cheated or defrauded or attempted to
3 cheat or defraud other persons; issued or caused to be issued false statements; and willfully
4 deceived or attempted to deceive other persons in connection with offering of, or entering into
5 the margined or leveraged foreign currency transactions alleged herein, for or on behalf of such
6 persons, by fraudulently soliciting prospective and existing clients by, making material
7 misrepresentations and omissions, including but not limited to guaranteeing monthly profitable
8 returns, falsely claiming to have \$50 million in assets, misrepresenting that MAK 1 and Khanna
9 were experienced foreign currency traders, failing to adequately disclose the risks of trading off-
10 exchange leveraged foreign currency contracts, and failing to disclose Khanna's ban from the
11 securities industry, misappropriating client funds, and making oral and written false statements
12 or reports to customers concerning their investments, all in violation of Sections 4b(a)(2)(A) and
13 (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

14 63. As set forth above, in or in connection with margined or leveraged foreign currency
15 contracts, transactions or agreements made or to be made, for or on behalf of other persons,
16 Defendants willfully made or caused to be made false reports or statements to clients or
17 prospective clients by, among other things, knowingly providing clients fraudulent monthly
18 account statements or balances that misrepresented the value of customers' accounts and
19 customers' holdings, in violation of Section 4b(a)(2)(B) of the Act as amended by the CRA, to
20 be codified at 7 U.S.C. § 6b(a)(2)(B).

21 64. Defendants engaged in the acts and practices described above knowingly or with
22 reckless disregard for the truth.

23 65. Each act of fraudulent solicitation, misappropriation and false statement or report,
24 including but not limited to those specifically alleged herein, is alleged as separate and distinct
25 violations of the Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at
26
27
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1 7 U.S.C. §§ 6b(a)(2)(A)-(C).

2 66. The foregoing acts of fraudulent solicitation, misappropriation and false statements
3 by Khanna and others occurred within the scope of their employment, office or agency with
4 MAK 1. Therefore, MAK 1 is liable for Khanna and others' violations of the Act, as alleged in
5 this count, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and
6 Regulation 1.2, 17 C.F.R. § 1.2 (2009).
7

8 **VI.**

9 **STATE OF CALIFORNIA COUNTS FOR VIOLATIONS OF STATE LAW**

10 **COUNT TWO**

11 **VIOLATIONS OF CAL. CORPORATIONS CODE SECTION 29520**

12
13 67. Plaintiffs incorporate by reference paragraphs 1 through 61 of this complaint as
14 though fully set forth herein.

15 68. California Corporations Code ("CCC") Section 29520 provides as follows:

16 Except as otherwise provided in Section 29530, 29531, or 29532, no
17 person shall sell or purchase or offer to sell or purchase any commodity
18 under any commodity contract or under any commodity option, or offer to
19 enter into, or enter into, as seller or purchaser any commodity contract or
any commodity option.

20 69. According to CCC Section 29504, in relevant part, "'Commodity' means ... any
21 foreign currency"

22 70. A "commodity contract" is defined in CCC Section 29505, in relevant part, as "any
23 account, agreement, or contract for the purchase or sale, primarily for speculation or investment
24 purposes and not for use or consumption by the offeree or purchaser, of one or more
25 commodities" (emphasis added).
26

27 71. Defendants, and each of them, offered to sell and sold or purchased commodities and
28 entered into commodity contracts in California, and in particular the Southern California area,

1 including Sand Diego and Los Angeles, and their transactions fail to qualify under any
2 exceptions or exemptions in violation of CC Section 29520.

3 72. Unless enjoined by this Court, defendants will continue to violate CCC Section
4 29520.
5

6 **COUNT THREE**

7 **WILLFUL OMISSION OF MATERIAL FACTS AND WILLFUL MAKING OF**
8 **UNTRUE STATEMENTS UNDER CCC SECTION 29536**

9
10 73. Plaintiffs incorporate by reference paragraphs 1 through 61 of this complaint as
11 though fully set forth herein.

12 74. CCC Section 29536 provides:

13 It is unlawful for any person, directly or indirectly, in connection with the
14 purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into,
15 or the entry into, a commodity, commodity contract, or commodity option to do
16 any of the following:

- 17 a) To willfully employ any device, scheme, or artifice to defraud.
- 18 b) To willfully make any false report, enter any false record, make any
19 untrue statement of a material fact, or omit to state a material fact
20 necessary in order to make the statements made, in the light of the
21 circumstances under which they were made, not misleading.
- 22 c) To willfully engage in any transaction, act, practice, or course of business
23 which operates or would operate as a fraud or deceit upon any persons.
- 24 d) To willfully misappropriate or convert the funds, security, or property of
25 any other person.

26 75. Defendants willfully omitted and willfully made untrue statements of material facts
27 and engaged in fraudulent schemes in connection with the purchase and sale of, the offer to sell,
28 the offer to purchase, the offer to enter into, and the entry into, commodities and commodity
contracts in violation of CCC Section 29536.

VII.

1 **RELIEF REQUESTED**

2 WHEREFORE, the Plaintiffs respectfully request that this Court, as authorized by
3 Section 6c of the CEA, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers enter:

- 4 a) an order finding the Defendants violated Sections 4b(a)(2)(A)-(C) of the Act
5 as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);
- 6
- 7 b) an order of permanent injunction prohibiting the Defendants from engaging in
8 conduct violative of the Sections of the Act that they were found to have
9 violated;
- 10 c) an order finding that the Defendants violated CCC Sections 29520 and 29536;
- 11 d) an order of permanent injunction prohibiting the Defendants from engaging in
12 conduct violative of the Sections of the CCC that they were found to have
13 violated;
- 14 e) an order of permanent injunction enjoining Defendants and all persons insofar
15 as they are acting in the capacity of their agents, servants, employees,
16 successors, assigns, and attorneys, and all persons insofar as they are acting in
17 active concert or participation with them who receive actual notice of such
18 order by personal service or otherwise, from engaging, directly or indirectly:
- 19 1. in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as
20 amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);
 - 21 2. trading on or subject to the rules of any registered entity (as that
22 term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
 - 23 3. entering into any transactions involving commodity futures,
24 options on commodity futures, commodity options (as that term is
25 defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009))
26 (“commodity options”), and/or foreign currency (as described in
27 Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the
28 CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i))
29 (“forex contracts”) for their own personal account or for any account
30 in which they have a direct or indirect interest;
 - 31 4. having any commodity futures, options on commodity futures,
32 commodity options, and/or forex contracts traded on their behalf;
 - 33 5. controlling or directing the trading for or on behalf of any other
34 person or entity, whether by power of attorney or otherwise, in any
35 account involving commodity futures, options on commodity futures,

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commodity options, and/or forex contracts;

6. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

7. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

8. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

f) an order directing the Defendants and Relief Defendant to disgorge, pursuant to such procedure as the Court may order, all ill-gotten gains and/or benefits received from the acts or practices that constitute violations of the Act, as described herein, and interest thereon from the date of such violations;

g) an order directing the Defendants to make full restitution, including post-judgment interest, to every client whose funds were received as a result of acts and practices that constituted violations of the Act, described herein, and interest thereon from the date of such violations;

h) an order directing the Defendants to each pay a civil monetary penalty of not more than the higher of \$140,000 for each violation of the Act committed on or after October 23, 2008, or \$130,000 for each violation of the Act occurring before October 23, 2008 or triple the monetary gain to the Defendants, plus post-judgment interest;

i) an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

j) such other and further remedial ancillary relief as the Court may deem appropriate.

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Dated: [], 2009

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