

ORIGINAL

Priority	<input checked="" type="checkbox"/>
Send	<input checked="" type="checkbox"/>
Enter	<input checked="" type="checkbox"/>
Closed	<input checked="" type="checkbox"/>
JS-5/JS-6	<input checked="" type="checkbox"/>
JS-2/JS-3	<input type="checkbox"/>
Scan Only	<input type="checkbox"/>

1 JOSE F. SANCHEZ, Cal. Bar No. 161362
 Email: sanchezj@sec.gov
 2 CAROL LALLY, Cal. Bar No. 226392
 Email: lallyc@sec.gov

3 Attorneys for Plaintiff
 4 Securities and Exchange Commission
 Randall R. Lee, Regional Director
 5 Briane Nelson Mitchell, Associate Regional Director
 5670 Wilshire Boulevard, 11th Floor
 6 Los Angeles, California 90036
 Telephone: (323) 965-3998
 7 Facsimile: (323) 965-3908

FILED
 DEPUTY
 JUN - 5 2006
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

16 MX FACTORS, LLC; BBH
 17 RESOURCES, LLC; JTL FINANCIAL
 GROUP, LLC; RICHARD M.
 18 HARKLESS; DANIEL BERARDI;
 THOMAS HAWKESWORTH; and
 19 RANDALL W. HARDING,

Defendants.

Case No. EDCV 04-223 VAP (SGLx)

**[PROPOSED] FINAL
 JUDGMENT AGAINST
 DEFENDANTS DANIEL
 BERARDI, THOMAS
 HAWKESWORTH, AND
 RANDALL W. HARDING
 ORDERING DISGORGEMENT,
 PREJUDGMENT INTEREST,
 AND CIVIL PENALTIES**

ENTERED
 JUN - 6 2006
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 EASTERN DIVISION
 BY [Signature] DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

DOCKETED ON CM
 JUN - 6 2006
 BY [Signature] 044 286

LOGGED #

2006 MAY 30 PM 1:31
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 RIVERSIDE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 The motion of plaintiff, Securities and Exchange Commission
2 (“Commission”), pursuant to Rule 56, Fed. R. Civ. P., for summary judgment
3 setting disgorgement, prejudgment interest, and civil penalties (the “Motion”)
4 against defendants Daniel Berardi, Thomas Hawkesworth, and Randall W.
5 Harding, came before the Court for hearing on May 8, 2006. The Court, having
6 considered the Commission’s motion, the Memoranda of Points and Authorities,
7 the Proposed Statement of Uncontroverted Facts and Conclusions of Law, the
8 declarations including exhibits relating thereto, previous orders issued by this
9 Court in this action, and other documents filed in support of the motion, and all
10 other evidence and argument presented regarding the Motion, orders as follows:

11 I.

12 IT IS ORDERED that the Commission’s motion for summary judgment
13 against Berardi, Hawkesworth and Harding is hereby GRANTED.

14 II.

15 IT IS FURTHER ORDERED that Berardi and Hawkesworth shall be liable
16 for disgorgement and prejudgment interest as follows:

17 A. Berardi and Hawkesworth shall be jointly and severally liable with
18 each other for disgorgement of \$10,597,791.42, representing profits
19 gained as a result of the conduct alleged in the Complaint, together
20 with prejudgment interest thereon in the amount of \$379,333.94, for a
21 total of \$10,977,125.36. The disgorgement amount of
22 \$10,597,791.42 reflects credits totaling \$2,672,583.15, for proceeds
23 previously collected by the Receiver.

24 B. Berardi and Hawkesworth shall be liable for the \$10,597,791.42 in
25 disgorgement and \$379,333.94 in prejudgment interest ordered in
26 subparagraph A above jointly and severally with defendant Richard
27 Harkless (“Harkless”), who was ordered to pay this same amount as a
28 portion of the total disgorgement and prejudgment interest ordered in

1 the Final Judgment Against Defendant Richard M. Harkless issued by
2 the Court on November 15, 2005 (the "Harkless Final Judgment").

3 C. Any payments or other credits applied to the total disgorgement and
4 prejudgment interest amount ordered by the Court in the Harkless
5 Final Judgment shall be applied first to the amount above
6 \$10,597,791.42 in disgorgement and \$379,333.94 in prejudgment
7 interest, or that portion of Harkless's liability that is not joint and
8 several with Berardi and Hawkesworth.

9 D. Berardi and Hawkesworth shall satisfy their disgorgement and
10 prejudgment interest obligation by paying \$10,977,125.36 within
11 thirty (30) days following the date of entry of this Judgment in the
12 form of a cashier's check, certified check or postal order payable to
13 the Court-appointed Receiver for Mx Factors, LLC, Robb Evans,
14 Robb Evans & Associates, LLC, 11450 Sheldon Street, Sun Valley,
15 CA 91352-1121, under cover of a letter that identifies the defendant,
16 the name and the case number of this litigation, and the court. Copies
17 of this cover letter and the means of payment shall be transmitted
18 simultaneously to counsel for the Commission in this action at its
19 Pacific Regional Office, 5670 Wilshire Boulevard, 11th Floor, Los
20 Angeles, California 90036. By making any payment, Berardi and
21 Hawkesworth relinquish all legal and equitable right, title, and
22 interest in such funds, and no part of the funds shall be returned to
23 Berardi or Hawkesworth.

24 E. If Berardi and Hawkesworth fail to pay \$10,977,125.36 within thirty
25 (30) days following the date of entry of this Judgment, the Receiver
26 in this case may institute and prosecute all actions and take such other
27 steps reasonable and appropriate to enforce and collect this amount
28 under this Judgment.

1 F. Berardi and Hawkesworth shall pay post-judgment interest on any
2 delinquent amounts pursuant to 28 U.S.C. § 1961.

3 III.

4 IT IS FURTHER ORDERED that Berardi shall pay a third-tier civil penalty
5 in the amount of \$120,000 pursuant to Section 20(d) of the Securities Act and
6 Section 21(d)(3) of the Exchange Act. Berardi shall make this payment within ten
7 (10) business days after entry of this Judgment by certified check, bank cashier's
8 check, or United States postal money order payable to the Securities & Exchange
9 Commission. The payment shall be delivered or mailed to the Office of Financial
10 Management, Securities & Exchange Commission, Operations Center, 6432
11 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, under cover of a
12 letter that identifies the defendant, the name and the case number of this litigation,
13 and the court. Copies of this cover letter and the means of payment shall be
14 transmitted simultaneously to counsel for the Commission in this action at its
15 Pacific Regional Office, 5670 Wilshire Boulevard, 11th Floor, Los Angeles,
16 California 90036. Berardi shall pay post-judgment interest on any delinquent
17 amounts pursuant to 28 U.S.C. § 1961.

18 IV.

19 IT IS FURTHER ORDERED that Hawkesworth shall pay a third-tier civil
20 penalty in the amount of \$120,000 pursuant to Section 20(d) of the Securities Act
21 and Section 21(d)(3) of the Exchange Act. Hawkesworth shall make this payment
22 within ten (10) business days after entry of this Judgment by certified check, bank
23 cashier's check, or United States postal money order payable to the Securities &
24 Exchange Commission. The payment shall be delivered or mailed to the Office of
25 Financial Management, Securities & Exchange Commission, Operations Center,
26 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, under cover
27 of a letter that identifies the defendant, the name and the case number of this
28 litigation, and the court. Copies of this cover letter and the means of payment shall

1 be transmitted simultaneously to counsel for the Commission in this action at its
2 Pacific Regional Office, 5670 Wilshire Boulevard, 11th Floor, Los Angeles,
3 California 90036. Hawkesworth shall pay post-judgment interest on any
4 delinquent amounts pursuant to 28 U.S.C. § 1961.

5 V.

6 IT IS FURTHER ORDERED that Harding shall be liable for disgorgement
7 and prejudgment interest as follows:

- 8 A. Harding shall be liable for disgorgement of \$16,782,672.24,
9 representing profits gained as a result of the conduct alleged in the
10 Complaint, together with prejudgment interest thereon in the amount
11 of \$600,718.85, for a total of \$17,383,391.09. The disgorgement
12 amount of \$16,782,672.24 reflects credits totaling \$923,988.76, for
13 proceeds previously collected by the Receiver.
- 14 B. Harding shall be liable for the \$16,782,672.24 in disgorgement and
15 \$600,718.85 in prejudgment interest ordered in subparagraph A above
16 jointly and severally with defendant Richard Harkless, who was
17 ordered to pay this same amount as part of the disgorgement in the
18 Final Judgment Against Defendant Richard M. Harkless issued by the
19 Court on November 15, 2005.
- 20 C. Any payments or other credits applied to the total disgorgement and
21 prejudgment interest amount ordered by the Court in the Harkless
22 Final Judgment shall be applied first to the amount above
23 \$16,782,672.24 in disgorgement and \$600,718.85 in prejudgment
24 interest, or that portion of Harkless's liability that is not joint and
25 several with Harding.
- 26 D. Harding shall satisfy his disgorgement and prejudgment interest
27 obligation by paying \$17,383,391.09 within thirty (30) days following
28 the date of entry of this Judgment in the form of a cashier's check,

1 certified check or postal order payable to the Court-appointed
2 Receiver for Mx Factors, LLC, Robb Evans, Robb Evans &
3 Associates, LLC, 11450 Sheldon Street, Sun Valley, CA 91352-1121,
4 under cover of a letter that identifies the defendant, the name and the
5 case number of this litigation, and the court. Copies of this cover
6 letter and the means of payment shall be transmitted simultaneously to
7 counsel for the Commission in this action at its Pacific Regional
8 Office, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California
9 90036. By making this payment, Harding relinquishes all legal and
10 equitable right, title, and interest in such funds, and no part of the
11 funds shall be returned to Harding.

12 E. If Harding fails to pay \$17,383,391.09 within thirty (30) days
13 following the date of entry of this Judgment, the Receiver in this case
14 may institute and prosecute all actions and take such other steps
15 reasonable and appropriate to enforce and collect this amount under
16 this Judgment.

17 F. Harding shall pay post-judgment interest on any delinquent amounts
18 pursuant to 28 U.S.C. § 1961.

19 VI.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Harding
21 shall pay a third tier civil penalty in the amount of \$120,000 pursuant to Section
22 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Harding
23 shall make this payment within ten (10) business days after entry of this Judgment
24 by certified check, bank cashier's check, or United States postal money order
25 payable to the Securities & Exchange Commission. The payment shall be
26 delivered or mailed to the Office of Financial Management, Securities & Exchange
27 Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,
28 Alexandria, Virginia 22312, under cover of a letter that identifies the defendant,

1 the name and the case number of this litigation, and the court. Copies of this cover
2 letter and the means of payment shall be transmitted simultaneously to counsel for
3 the Commission in this action at its Pacific Regional Office, 5670 Wilshire
4 Boulevard, 11th Floor, Los Angeles, California 90036. Harding shall pay post-
5 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

6 **VII.**

7 IT IS FURTHER ORDERED that Berardi, Hawkesworth, Harding, and their
8 agents, servants, employees and attorneys, shall continue to cooperate with and
9 assist the Receiver appointed in this case and shall take no action, directly or
10 indirectly, to hinder, obstruct, or otherwise interfere with the Receiver or his
11 attorneys, accountants, employees or agents, in the conduct of his duties or to
12 interfere in any manner, directly or indirectly, with the custody, possession,
13 management, or control by the Receiver of the funds, assets, collateral, premises,
14 and choses in action belonging to, being managed by or in the possession of or
15 control of Mx Factors, LLC, BBH Resources, LLC, or JTL Financial Group, LLC,
16 or any of their subsidiaries and affiliates, until they fully satisfy this Final
17 Judgment or until further order of this Court.

18 **VIII.**

19 IT IS FURTHER ORDERED that the Commission and/or the Receiver may
20 propose a plan to distribute funds paid by Defendants in satisfaction of this Final
21 Judgment subject to the Court's approval. The amounts ordered to be paid as civil
22 penalties pursuant to this Final Judgment shall be treated as penalties paid to the
23 government for all purposes, including tax purposes.

24 ///
25 ///
26 ///
27 ///
28 ///

IX.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for all purposes, including the purpose of implementing and carrying out the terms of this Final Judgment and all other orders and decrees that have been and may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IT IS SO ORDERED.

DATED: June 2, 2006

Virginia A. Phillips
HONORABLE VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036. Telephone: (323) 965-3998 Fax: (323) 965-3908

On May 30, 2006, I served the document entitled **[PROPOSED] FINAL JUDGMENT AGAINST DEFENDANTS DANIEL BERARDI, THOMAS HAWKESWORTH, AND RANDALL W. HARDING ORDERING DISGORGEMENT, PREJUDGMENT INTEREST, AND CIVIL PENALTIES** upon the parties to this action addressed as stated on the attached service list:

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

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

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

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

FEDERAL EXPRESS: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FACSIMILE: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Date: May 30, 2006

Magnolia M. Marcelo
MAGNOLIA M. MARCELO

SEC v. Mx FACTORS, LLC, et al.
United States District Court - Central District of California
Case No. EDCV 04-223 VAP (SGLx)
(LA-2790)

SERVICE LIST

John W. Cotton, Esq. (served by U.S. Mail only)
Cotton & Gundzik, LLP
801 S. Figueroa Street, 14th Floor
Los Angeles, CA 90017
Facsimile: (213) 623-6699
Attorney for Defendants Daniel Berardi and Thomas Hawkesworth

Randall W. Harding (served by U.S. Mail only)
420 McKinley Street
Suite 111-390
Corona, CA 92879
Pro Se

Richard M. Harkless (served by U.S. Mail only)
6185 Magnolia Avenue, #342
Riverside, CA 92506-2524

Richard M. Harkless (served by U.S. Mail only)
511 San Ysidro Boulevard
PMB 8394
San Ysidro, CA 92173

Robb Evans, Receiver (served by U.S. Mail only)
Robb Evans & Associates LLC
11450 Sheldon Street
Sun Valley, CA 91352-1121
Facsimile: (818) 768-8802

Gary Owen Caris, Esq. (served by U.S. Mail only)
McKenna, Long & Aldridge, LLP
444 South Flower Street, 8th Floor
Los Angeles, CA 90071
Facsimile: (213) 243-6330
Attorney for Receiver

Frank W. Nemecek, Esq. (served by U.S. Mail only)
Nemecek & Cole
15260 Ventura Boulevard, Suite 920
Sherman Oaks, CA 91403
Facsimile: (818)501-0328