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CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION BY DEPUTY

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
RIVERSIDE

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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 EASTERN DIVISION

13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 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,

20 Defendants.

Case No. EDCV 04-223 VAP (SGLx)

21 AMENDED [PROPOSED] FINAL
22 JUDGMENT AGAINST
23 DEFENDANT RICHARD M.
24 HARKLESS

25 DOCKETED ON CM
26 FEB - 7 2006
27 BY JEC 075
28

(248)

1 The motion of plaintiff, Securities and Exchange Commission
2 ("Commission"), pursuant to Rule 56, Fed. R. Civ. P., for summary judgment
3 against defendant Richard M. Harkless ("Harkless"), came before the Court for
4 hearing on October 3, 2005. The Court, having considered the Commission's
5 motions, the Memoranda of Points and Authorities, the declarations including
6 exhibits relating thereto, the Statements of Uncontroverted Facts and Conclusions
7 of Law, and other documents filed in support of the motions, and all other evidence
8 and argument presented regarding the motions, finds that:

9 I.

10 IT IS ORDERED that the Commission's motion for summary judgment
11 against Harkless is hereby GRANTED.

12 II.

13 IT IS FURTHER ORDERED that Harkless, and his officers, agents,
14 servants, employees, attorneys, subsidiaries and affiliates, and those persons in
15 active concert or participation with any of them, who receive actual notice of this
16 Order, by personal service or otherwise, and each of them, be and hereby are
17 ~~permanently~~ ^{permanently} ~~preliminarily~~ restrained and enjoined from, directly or indirectly, making use of
18 any means or instruments of transportation or communication in interstate
19 commerce or of the mails, to sell, to offer to sell, or to offer to buy any security; or
20 carrying or causing securities to be carried through the mails or in interstate
21 commerce, by any means or instruments of transportation, for the purpose of sale
22 or delivery after sale, in violation of Sections 5(a) and 5(c) of the Securities Act, 15
23 U.S.C. §§ 77(e)(a) and 77(e)(c).

24 III.

25 IT IS FURTHER ORDERED that Harkless, and his officers, agents,
26 servants, employees, attorneys, subsidiaries and affiliates, and those persons in
27 active concert or participation with any of them, who receive actual notice of this
28 Order, by personal service or otherwise, and each of them, be and hereby are

1 ~~preliminarily~~ ^{permanently} restrained and enjoined from, directly or indirectly, in the offer or
2 sale of any securities, by the use of any means or instruments of transportation or
3 communication in interstate commerce or by use of the mails:

- 4 A. employing any device, scheme or artifice to defraud;
- 5 B. obtaining money or property by means of any untrue statement of a
6 material fact or any omission to state a material fact necessary in order
7 to make the statements made, in light of the circumstances under
8 which they were made, not misleading; or
- 9 C. engaging in any transaction, practice, or course of business which
10 operates or would operate as a fraud or deceit upon the purchaser
11 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

12 IV.

13 IT IS FURTHER ORDERED that Harkless, and his officers, agents,
14 servants, employees, attorneys, subsidiaries and affiliates, and those persons in
15 active concert or participation with any of them who receive actual notice of this
16 Order, by personal service or otherwise, and each of them, be and hereby are
17 ~~preliminarily~~ ^{permanently} restrained and enjoined from, directly or indirectly, in connection
18 with the purchase or sale of any security, by the use of any means or
19 instrumentality of interstate commerce, or of the mails, or of any facility of any
20 national securities exchange:

- 21 A. employing any device, scheme, or artifice to defraud;
- 22 B. making any untrue statement of a material fact or omitting to state a
23 material fact necessary in order to make the statements made, in the
24 light of the circumstances under which they were made, not
25 misleading; or
- 26 C. engaging in any act, practice, or course of business which operates or
27 would operate as a fraud or deceit upon any person

28 in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule

1 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

2 V.

3 IT IS FURTHER ORDERED that Harkless is liable for disgorgement of
 4 \$39.1 million, together with prejudgment interest thereon in the amount of
 5 \$3,401,948.02, totaling ^{42,501,948.02} ~~\$42,401,948.02~~. Harkless shall satisfy this obligation by
 6 paying ^{42,501,948.02} ~~\$42,401,948.02~~ within thirty (30) days of this Judgment in the form of a
 7 cashier's check, certified check or postal order payable to the Court-appointed
 8 Receiver for Mx Factors, LLC, Robb Evans, Robb Evans & Associates, LLC,
 9 11450 Sheldon Street, Sun Valley, CA 91352-1121, under cover of a letter that
 10 identifies the defendant, the name and case number of this litigation, and the court.
 11 Copies of this cover letter and the means of payment shall be transmitted
 12 simultaneously to counsel for the Commission in this action at its Pacific Regional
 13 Office. By making this payment, Harkless relinquishes all legal and equitable
 14 right, title, and interest in such funds, and no part of the funds shall be returned to
 15 Harkless.

16 VI.

17 IT IS FURTHER ORDERED that Harkless shall pay a third tier civil penalty
 18 in the amount of \$120,000 pursuant to Section 20(d) of the Securities Act and
 19 Section 21(d)(3) of the Exchange Act. Pursuant to Section 308 of the Sarbanes-
 20 Oxley Act of 2002 and upon application of the Commission and approval of the
 21 Court, Harkless shall make this payment within ten (10) business days after entry
 22 of this Judgment by certified check, bank cashier's check, or United States postal
 23 money order payable to the Receiver, and shall be transmitted to Robb Evans,
 24 Robb-Evans & Associates, LLC, 11450 Sheldon Street, Sun Valley, CA 91352-
 25 1121, under cover of a letter that identifies the defendant, the name and case
 26 number of this litigation, and the court. Copies of this cover letter and the means
 27 of payment shall be transmitted simultaneously to counsel for the Commission in
 28 this action at its Pacific Regional Office.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission and/or the Receiver may propose a plan to distribute funds paid by the Defendants in satisfaction of this Final Judgment subject to the Court's approval. Such a plan may provide that the funds shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes.

VIII.

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: February 6, 2006

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

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 January 9, 2006, I served the document entitled **AMENDED [PROPOSED] FINAL JUDGMENT AGAINST DEFENDANT RICHARD M. HARKLESS**

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: January 9, 2006



SONIA SALGADO

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

4 **SERVICE LIST**

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 Pro Se

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14 **Richard M. Harkless (served by U.S. Mail only)**
15 511 San Ysidro Boulevard
 PMB 8394
 San Ysidro, CA 92173

16 **Robb Evans, Receiver (served by U.S. Mail only)**
17 Robb Evans & Associates LLC
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19 **Gary Owen Caris, Esq. (served by U.S. Mail only)**
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 Attorney for Receiver

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23 Nemecek & Cole
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