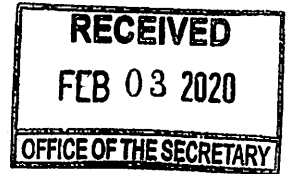


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-19222

In the Matter of

NICHOLI MANDRACKEN,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION AND MEMORANDUM OF LAW**  
**SUPPORTING ENTRY OF DEFAULT JUDGMENT AGAINST**  
**RESPONDENT NICHOLI MANDRACKEN**

David D. Whipple  
Securities and Exchange Commission  
Salt Lake Regional Office  
351 S. West Temple, Suite 6.100  
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Counsel for the Division of Enforcement

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
MOTION FOR DEFAULT JUDGMENT .....	1
BRIEF IN SUPPORT .....	1
I.    BACKGROUND .....	1
II.   ARGUMENT .....	2

**TABLE OF AUTHORITIES**

<b><u>SECURITIES AND EXCHANGE COMMISSION DECISIONS</u></b>	<b><u>PAGE</u></b>
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5th Cir. 1979) .....	3
<i>SEC v. Jersey Consulting LLC et al</i> , Case No. 2:18-cv-155 .....	1, 3

<b><u>STATUTES AND RULES OF PRACTICE</u></b>	<b><u>PAGE</u></b>
Securities Act of 1933, 15 U.S.C. § 77a <i>et seq.</i> :	
§ 5; U.S.C. § 77e .....	1, 2
§ 17(a); U.S.C. § 77q(a) .....	1, 2
Securities Exchange Act of 1934, 15 U.S.C. § 78a <i>et seq.</i> :	
§10(b); 15 U.S.C. § 78j(b) .....	1, 2
§15(a); 15 U.S.C. § 78o(a) .....	1
§15(b)(6); 15 U.S.C. § 78o(b)(6) .....	3
Code of Federal Regulations	
17 C.F.R. § 201.155(a) .....	1, 2
17 C.F.R. § 201.220(b) .....	2
17 C.F.R. § 201.220(f) .....	1, 2
17 C.F.R. § 201.141(a)(2)(i) .....	2
17 C.F.R. § 240.10b-5 .....	1, 2

## **MOTION FOR DEFAULT JUDGMENT**

The Division of Enforcement (“Division” or “DOE”) respectfully submits this Motion for Default Judgment, pursuant to Rules 155(a) and 220(f) of the Commission’s Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), requesting that a default judgment be entered against Respondent Nicholi Mandracken (“Mandracken” or “Respondent”). The Division respectfully requests that the Commission order that Respondent be barred from: (a) associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and (b) participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

### **BRIEF IN SUPPORT**

#### **I. BACKGROUND**

On March 12, 2019, a final judgment was entered by consent against Respondent, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e and 77q(a)] and Sections 10(b) and 15(a) of the Securities and Exchange Act of 1934 (“Exchange Act”) [ 15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b–5 thereunder [17 C.F.R. § 240.10b-5], in the civil action titled *SEC v. Jersey Consulting LLC, et al.*, 2:18cv155, in the United States District Court for District of Utah. *See* Exhibit 1 (Final Judgment).

This follow-on administrative proceeding was instituted on June 27, 2019. On August 31, 2019, service of the Order Instituting Proceedings (“OIP”) was effected on Respondent. *See* Exhibit 2 (affidavit of service).

Respondent has thus far failed to file an answer.

## II. ARGUMENT

Respondent was properly served under Commission Rule of Practice 141. Subpart (a)(2)(i) of Rule 141 provides, in part, “[n]otice of a proceeding shall be made to an individual by delivering a copy of the order instituting proceedings to the individual . . . Delivery means – . . . handing a copy of the order to the individual; . . .” *See* 17 C.F.R. § 201.141(a)(2)(i).

Having been properly served, Respondent was required by Commission Rule of Practice 220 to file an Answer to the allegations contained in the OIP within twenty (20) days after service of the OIP. *See* 17 C.F.R. § 201.220(b) and § IV, ¶ 2 of the OIP (directing Respondent to file an Answer within 20 days of service). To date, Respondent has failed to do so. As a result, he may be deemed in default and the allegations contained in the OIP may be deemed true. *See* 17 C.F.R. §§ 201.155(a)(2) and 201.220(f) and § IV, ¶ 4 of the OIP.

Consequently, the Division respectfully requests that the following allegations concerning Respondent in the OIP be deemed true:

1. On March 12, 2019, a final judgment was entered by consent against Respondent, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled *SEC v. Jersey Consulting LLC, et al.*, 2:18cv155, in the United States District Court for District of Utah.
2. The Commission’s complaint in the injunctive action alleged that, in connection with the sale of Jersey Consulting, LLC securities, Respondent misrepresented to investors that Jersey Consulting, LLC had a commercially viable technology, failed to disclose that Jersey was owned and operated by a convicted felon and had no material revenues, otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. The complaint also alleged that Respondent offered and sold securities of Jersey in unregistered transactions and did so without registering with the Commission as a broker during the period of his solicitation of Jersey securities.
3. From at least January 2015 through January 2018, Respondent, through his entity U Turn Marketing, Inc., received transaction-based compensation of 20-30% arising from investor purchases of Jersey securities.

*See* OIP § II.D. and Exhibit 1 (Final Judgment).

In view of the injunction entered against Respondent and the serious allegation that prompted it, Respondent should be barred from: (a) associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and (b) participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. These remedies are provided for in Section 15(b)(6) of the Exchange Act. *See* 15 U.S.C. § 78o(b)(6).

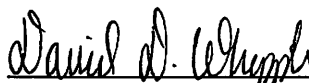
Imposition of such remedies is in the public interest. In determining whether a remedial sanction is in the public interest, the Court should look to several factors: “the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of *scienter* involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of the his conduct, and the likelihood that defendant’s occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979).

The facts here establish that, for approximately three years, Respondent, who neither registered with the Commission as a broker or dealer nor associated with a broker or dealer registered with the Commission, was an active participant in an ongoing fraud that imposed financial losses on investors that he solicited and that Respondent engaged in misrepresentations and omissions in his communications with said investors. Through this conduct, Respondent, through his business entity, received transaction-based compensation of 20-30% of the amount invested by the investors he solicited. Respondent has offered no assurances against future

misconduct, and his failure to participate in this proceeding suggests that he does not respect the federal securities laws or recognize the wrongful nature of his conduct. Accordingly, the Division believes the Respondent's conduct justifies the imposition of the aforementioned bars and respectfully requests that the Commission grant this relief.

Dated: January 31, 2020

Respectfully submitted,



David D. Whipple (UT Bar No. 17347)  
Counsel for the Division of Enforcement  
351 S. West Temple, Suite 6.100  
Salt Lake City, UT 84101  
Telephone: (801) 524-5796  
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Service List

Pursuant to Rules 150 and 151 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing, along with the attached Exhibits 1 and 2, was served on each of the following, on January 31, 2020, in the manner indicated below.

Vanessa Countryman, Secretary

Office of the Secretary

100 F. Street, N.E.

Washington, DC 20549


*Via Facsimile (703-813-9793), United Parcel Service, and APFilings@sec.gov*

Nicholi Mandracken

[REDACTED]

Alpine, CA [REDACTED]

*Via United Parcel Service and [REDACTED]@gmail.com*

  
\_\_\_\_\_  
David D. Whipple



# **EXHIBIT 1**

FILED  
2019 MAR 12 AM 11:27  
CLERK  
U.S. DISTRICT COURT

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Securities and Exchange Commission  
351 South West Temple, Suite 6.100  
Salt Lake City, Utah 84101  
Tel. 801-524-5796

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

SECURITIES AND EXCHANGE  
COMMISSION,

PLAINTIFF,

v.

JERSEY CONSULTING LLC, a Nevada  
limited liability company, MARC ANDREW  
TAGER, an individual, MATTHEW EARL  
MANGUM, an individual, SUZANNE  
AILEEN GAGNIER, an individual,  
KENNETH STEPHEN GROSS, an individual,  
JEFFREY ROWLAND LEBARTON, an  
individual, JONATHAN EDWARD  
SHOUCAIR, an individual, EDWARD DEAN  
GOSS, an individual, DANA KENTON  
HARRLOE, an individual, and NICHOLI  
MANDRACKEN, an individual,  
DEFENDANTS; and

PREMIER MARKETING SOLUTIONS,  
INC., a California corporation, EQUITY  
FIRST PROPERTIES INC., a California  
corporation, EEE MEDIA, INC., a California  
corporation, XYZ LEADS, INC., a Wyoming  
corporation, U TURN MARKETING, INC., a  
Florida corporation, MATTHEW JACOB  
FREITAS, an individual, ROXANE MARIE  
GROSS, an individual, and CHRISTINE L.  
SHOUCAIR, an individual,  
RELIEF DEFENDANTS.

**FINAL JUDGMENT AS TO  
DEFENDANT NICHOLI  
MANDRACKEN**

Case No.: 2:18-cv-00155

Judge: Bruce S. Jenkins

The Securities and Exchange Commission having filed a Complaint and Defendant Nicholi Mandracken having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VIII); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or

participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;  
or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 15 of the Exchange Act [15 U.S.C.

§ 78o(a)], through use of the means or instruments of transportation or communication in interstate commerce or the mails, acting as a broker and/or effecting transactions in, and inducing or attempting to induce the purchase or sale of, securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) without being registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

V.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from soliciting, accepting, or depositing any monies obtained from actual or prospective investors whether directly or indirectly, including, but not limited to, through any entity owned or controlled by him.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$130,616.60, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$2,641.01. Defendant shall satisfy this obligation by paying \$133,257.61 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch

6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Nicholi Mandracken as a defendant in this action; and specifying that payment is made pursuant to this Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, 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. To preserve the deterrent effect of the

civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Final Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Nicholi Mandracken shall pay a civil penalty in the amount of \$37,500<sup>00</sup> pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Defendant shall make this payment within 14 days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F Street, NE, Stop 6042, Washington DC 20549, and shall be accompanied by a letter identifying Nicholi Mandracken as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment



interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

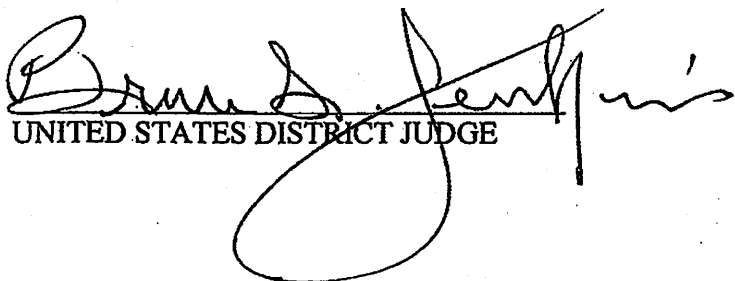
IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: 3/12, 2019

  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT 2**

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

Case Number: SL - 02796

In Re:  
Mandracken, Nicholi

For:  
U.S. Securities and Exchange Commission  
100 F St NE  
Washington, DC 20549

Received by Cavalier CPS to be served on Nicholi Mandracken, [REDACTED], CA [REDACTED]

I, Carl Herman Walker, do hereby affirm that on the 31st day of August, 2019 at 8:55 am, I:

Served Letter from the Secretary of the Commission; Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing; Rule 230 Letter personally to Nicholi Mandracken at [REDACTED], Alpine, CA [REDACTED].

I am a natural person over the age of eighteen and am not a party to or otherwise interested in the subject matter in controversy. I am a private process server authorized to serve this process in accordance with relevant law. Under penalty of perjury, I declare that the foregoing is true and correct.

 9-5-19  
\_\_\_\_\_  
Carl Herman Walker Date  
Process Server

Cavalier CPS  
823-C S King Street  
Leesburg, VA 20175  
(703) 431-7085

Our Job Serial Number: CAV-2019011319  
Ref: SLRO-69026

