

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 14-cv-23336-MORENO/O’SULLIVAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ABATEMENT CORP. HOLDING COMPANY LIMITED,

Defendant, and

BRENDA M. DAVIS
INTERNATIONAL BALANCED FUND,

Relief Defendants.

**PLAINTIFF SECURITIES & EXCHANGE COMMISSION’S UNOPPOSED MOTION
FOR ORDER TO APPROVE STEP TWO DISTRIBUTION AND DISBURSE FUNDS TO
THE DISTRIBUTION AGENT FOR DISTRIBUTION TO HARMED INVESTORS**

The United States Securities and Exchange Commission (“SEC” or “Commission”) in coordination with the appointed Distribution Agent, Kurtzman Carson Consultants LLC (“KCC” or “Distribution Agent”), respectfully moves the Court to enter an Order approving the Step Two distribution and authorizing a second disbursement of funds to the Distribution Agent for distribution to harmed investors as provided for in Step Two of the Distribution Plan (“Plan”) (D.E. 56-2).

I. BACKGROUND

On September 10, 2014, the Commission filed its Complaint against Defendant Abatement Corp. Holding Company Limited (“Abatement”), and Relief Defendants Brenda

M. Davis (“Davis”) and International Balanced Fund (“IBF”). The Complaint alleged that Abatement, through its former principal, Joseph Laurer (who died prior to the filing of this action), operated a Ponzi scheme, in which approximately fifty (50) investors invested over \$4.6 million in IBF and another fund controlled by Abatement. The Complaint alleged, inter alia, that Laurer and Abatement violated Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and 17 C.F.R. § 240.10b-5. The Complaint also alleged that Laurer misappropriated more than \$1.2 million of investor funds to funnel money and property to Davis, his wife.

Final Judgment was entered against Abatement and IBF on October 29, 2014. Abatement was ordered to pay a total of \$3,761,736.15 and IBF to pay a total of \$1,137,852.62 in disgorgement and prejudgment interest. Final Judgment was entered March 31, 2015 against Davis for disgorgement and prejudgment interest of \$525,000.

Following entry of judgment against Abatement and IBF, the staff coordinated the turnover of the frozen funds totaling \$103,172 held domestically in IBF’s account at Bank of America and Abatement’s account at O’Brien, a futures brokerage to the SEC. The staff also had secured the turnover of Davis’ frozen funds in the full amount of \$525,000.

The SEC engaged local counsel in Turks and Caicos to initiate proceedings to domesticate the judgment against Abatement and liquidate the frozen assets held there. On May 20, 2015, the Court appointed KCC as the Distribution Agent. KCC was engaged to act as receiver, if necessary, for the Abatement assets and help implement the liquidation of the frozen assets held at TCBC. On about July 15, 2015, \$821,777.09 was repatriated to the U.S.

In total, the SEC has collected \$1,449,949.55 and is holding these funds in an interest-bearing account at the U.S. Treasury. This sum plus any interest earned, minus taxes, fees and administrative expenses paid constitute the amount available for distribution to harmed investors (the “Distribution Fund”).¹ KCC, as the Distribution Agent, is overseeing the administration and distribution of the Distribution Fund pursuant to the terms of the Plan approved by the Court on April 11, 2016.

II. DISTRIBUTION IMPLEMENTATION

The Plan provides for the Distribution Fund to be disbursed to injured investors in a two-step process. (D.E. 56-2 at ¶ 15). Pursuant to the Plan, KCC sent each of the 33 eligible injured investors a portion of his, her or its *pro rata* share of the Abatement Distribution Fund (“Step One Distribution”) on September 16, 2016. (D.E. 59) The Step One Distribution was calculated at 80.00% of each injured investor’s total eligible *pro rata* share of the Abatement Distribution Fund. Exhibit A, Declaration of Daniel Marotto (“Declaration”), at ¶ 2. *See* D.E. 56-4 for the list of payments mailed.

In preparation of the Step One Distribution, the address for one investor, who had been identified in the defendants’ records during the investigation, could not be located and no payment was mailed. As set forth in the Declaration at ¶ 3, the Distribution Agent completed comprehensive outreach and address search efforts in order to identify the contact information of that one remaining injured investor, but no address or contact information was identified. Consequently, with no viable contact information for this investor, the allocated Step One Distribution amount remains in the Distribution Fund, and that investor is not included in either the first or second distributions. The Step Two Distribution will distribute the balance of the Distribution Fund to the remaining 32 injured

investors. Declaration at ¶ 3. *See* Exhibit B hereto, “20% Payment Schedule”, where the un-located investor is Investor #19.

After the Step One Distribution was implemented, pursuant to paragraphs 9 and 10 of the Plan, one injured investor presented additional purchase transactions that were not included in his original investment loss total, and thus not reflected in the calculations used to determine their Step One Distribution Amount. Declaration at ¶ 4. These additional transactions were compiled, quantified and evaluated by KCC and with the Commission Staff. The additional transactions were deemed eligible and are now included in that investor’s adjusted investment loss total. As a result, the investor’s investment loss total increased and calculates to a greater *pro rata* share of the total Abatement Distribution Fund. *See* Exhibit B hereto where the investor with the additional documented losses is Investor #20.

Under the Distribution plan and as set forth in the Declaration of the Distribution Agent, Daniel Marotto, the Step One payments have been distributed and cashed; thus, Step One is completed. In addition, the Distribution Agent has adjusted the calculations of payments in light of the additional documentation submitted and the investor that can’t be located. A new *pro rata* percentage amount has been recalculated for all eligible Identified Investors by dividing each investor’s Total Investment Loss amount by the sum of all investors’ Total Investment Loss amounts.

In recalculating Step Two, moreover, the net Abatement Distribution Fund available to be distributed has increased from \$1,382,000 to \$1,403,980. This increase is due to plan administration efficiencies achieved resulting in lower fees for Plan administration and lower fees for tax compliance. The Step Two Distribution will result in a larger distribution for all harmed investors than originally estimated at the time of Step One.

The investors who received a Step One payment will receive a Step Two payment calculated as the investor's revised *pro rata* share percentage multiplied by the revised Abatement Distribution Plan total (\$1, 403,980) less the Step One payment already received. The final calculations and Step Two payments are set forth in Exhibit B.

WHEREFORE, for all the foregoing reasons, the Commission respectfully requests that the Step Two calculations and payment amounts be approved and that this court authorize the transfer of funds in the amount of \$ 302,842.63 to the Distribution Agent for distribution to the injured investors as set forth in Exhibit B. A proposed order is submitted herewith.

Dated: April____, 2017

Respectfully submitted,

____s/ Nancy Chase Burton_____
Nancy Chase Burton
Attorney for Plaintiff
Securities and Exchange
Commission
100 F Street, N.E.
Washington, DC 20549-5876
Telephone: (202) 551-4425
Facsimile: (202) 772- 9363
Email: burtonn@sec.gov

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on April 4, 2017, the foregoing document was filed electronically with the Clerk of Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the Service List below, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel of record or *pro se* parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Nancy Chase Burton

Nancy Chase Burton

SERVICELIST

Abatement Corp. Holding Company
Limited First Egeria Company Limited
Suite 202
Taino Place
Grand Turk
Turks and Caicos Islands
TKCA1ZZ

International Balanced Fund
c/o The Company Corporation
Registered Agent
2711 Centerville Rd., Suite 400
Wilmington, DE 19808

Pro se

Pro se

Via First-Class Mail International

Via First-Class Mail

Leonard H. Bloom, Esq.
Alexandra Mora, Esq.
Akerman LLP
One Southeast Third Avenue, Suite
2500 Miami, FL 33131-1714

Counsel for Relief Defendant
Brenda M. Davis

Via CM/ECF

EXHIBIT B**ADJUSTED 20% PAYMENT SCHEDULE
SCHEDULE OF IDENTIFIED HARMED INVESTORS**

No.	Revised Pro Rata Share	Revised Total Distribution Payment	Payment Cashed	Payment Balance to Receive
1	8.5%	\$ 118,865.66	\$ 95,953.12	\$ 22,912.54
2	4.1%	57,224.07	46,193.56	11,030.51
3	0.2%	3,233.32	2,610.06	623.25
4	1.6%	22,861.75	18,454.92	4,406.83
5	0.7%	10,471.51	8,453.02	2,018.49
6	1.4%	20,208.23	16,312.89	3,895.34
7	0.4%	5,511.34	4,448.97	1,062.36
8	1.0%	13,530.30	10,922.20	2,608.10
9	3.1%	43,825.21	35,377.47	8,447.75
10	6.1%	85,894.59	69,337.55	16,557.04
11	8.1%	114,268.36	92,241.99	22,026.36
12	1.5%	20,869.59	16,846.77	4,022.82
13	6.2%	86,938.43	70,180.18	16,758.25
14	4.4%	62,259.13	50,258.06	12,001.07
15	3.4%	48,353.86	39,033.18	9,320.69
16	2.5%	34,683.96	27,998.28	6,685.68
17	0.0%	55.11	44.49	10.62
18	1.0%	14,571.97	11,763.08	2,808.89
19	0.0%	-	-	-
20	4.3%	59,991.34	16,215.91	43,775.43
21	0.4%	5,143.91	4,152.37	991.54
22	1.5%	21,665.60	17,489.34	4,176.26
23	0.2%	3,453.77	2,788.02	665.75
24	7.9%	110,249.07	88,997.47	21,251.61
25	4.5%	63,817.82	51,516.30	12,301.52
26	2.0%	27,556.68	22,244.85	5,311.82
27	3.5%	49,831.55	40,226.02	9,605.53
28	0.9%	12,524.80	10,110.52	2,414.28
29	1.2%	16,276.81	13,139.29	3,137.52
30	5.7%	80,181.02	64,725.33	15,455.69
31	6.0%	83,871.70	67,704.59	16,167.11
32	3.1%	43,327.72	34,975.87	8,351.85
33	4.4%	62,461.80	50,421.67	12,040.13
TOTAL	100%	\$ 1,403,980.00	\$ 1,101,137.37	\$ 302,842.63

Note 1> Line 19 is the investor that could not be identified.

Note 2> Line 20 is the investor who produced additional investment documentation.