

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

A.C.L.N., LTD., *et al.*,

Defendants.

**Civil Action No.
1:02-CV-7988 (LAP)**

**PLAINTIFF’S NOTICE OF MOTION, MOTION, AND
MEMORANDUM IN SUPPORT FOR AN ORDER AUTHORIZING
SECOND DISBURSEMENT TO CERTAIN ELIGIBLE CLAIMANTS**

NOTICE

PLEASE TAKE NOTICE, that based upon the Securities and Exchange Commission’s (“SEC” or “Commission”) Motion for an Order Authorizing a Second Disbursement, the declaration of the Distribution Agent executed on November 27, 2018 by Stephanie Amin-Giwner, Manager of Client Services, for Epiq;¹ the Proposed Order submitted herewith; all prior proceedings held herein; and pursuant to the Distribution Plan approved by this Court on April 3, 2013, Plaintiff SEC will move this Court, at a date and time to be determined by the Court, before the Honorable Loretta A. Preska, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an order authorizing a disbursement of remaining funds as stated in the motion below.

¹ Garden City Group, LLC (“GCG”) was acquired by Epiq Class Action and Claims, Inc. (“Epiq”) on June 15, 2018 and is now continuing as part of Epiq. The Distribution Agent’s engagement with the SEC is not impacted, nor is there any anticipated impact on its ability to carry out its duties as Distribution Agent in this case.

MOTION

The Commission seeks an order authorizing the disbursement of the funds now remaining in the ACLN Distribution Fund, less a reserve for taxes and expenses, to certain Eligible Claimants, in accordance with the terms of the Distribution Plan and this Motion.

MEMORANDUM

I. Procedural Background

On October 18, 2002, this Court entered a Final Judgment against Defendants BDO International (Cyprus), Minas Ioannou and Christakis Ioannou (DE ##2-4). On September 16, 2004, Final Judgments were entered against Defendants Abderrazak “Aldo” Labiad (DE #26) and A.C.L.N, Ltd. (DE #28), and Relief Defendant Scandinavian Car Carriers A/S (DE #27). On November 17, 2005, a Final Judgment was entered against Defendants Joseph J.H. Bisschops, Emerald Sea Marine, Inc., Pearlrose Holdings International, S.A. and Scott Investments, and Relief Defendants Sergui, Ltd., Pandoa Shipping, S.A., DCC Limited, Maverick Commercial, Inc., and Westbound Development Corp. (DE #34). In total, the Defendants and Relief Defendants were ordered to pay in excess of \$122 million in disgorgement. Only a portion of this amount has been recovered. By May 18, 2011, a total of \$28,265,287.11 (the “ACLN Distribution Fund”) had been paid to the Clerk of this Court and deposited into two Court Registry Investment “CRIS” accounts numbered 1:02-cv-07988-1 and 1:02-cv-07988-2, under the case name designation “SEC v. A.C.L.N. Ltd., et al.”

By Order dated March 28, 2012 (DE #49), this Court appointed GCG as the Distribution Agent of the ACLN Distribution Fund. On April 3, 2013, the Court approved the Distribution Plan (DE #62).

II. Second Disbursement of ACLN Distribution Fund

Pursuant to the March 26, 2015 Order to Transfer Funds to the Distribution Agent for Disbursement to Eligible Claimants and Authorize the Payment of Taxes, Fees and Expenses (the “Disbursement Order”) (DE #89), the funds were transferred on April 9, 2015 to an escrow account at Signature Bank. GCG conducted an initial disbursement of the Distribution Fund to Eligible Claimants (the “Initial Disbursement”) in accordance with the Distribution Plan. On April 29, 2015, 2,826 claims were paid via check or wire totaling \$29,746,415.26. *See* Declaration of Stephanie Amin-Giwner, attached hereto as Exhibit A.

After the Initial Disbursement, GCG monitored the status of all checks issued. As a result of GCG’s follow-up efforts, as of November 20, 2018, payments totaling \$27,490,714.76, or approximately 92.4% of the amount disbursed in the Initial Disbursement, have been cashed by or successfully wired to Eligible Claimants. Exhibit A at ¶ 4. As of November 20, 2018, \$2,240,769.87 remains in the ACLN Distribution Fund.² In addition, GCG received six (6) claims after the filing deadline had passed and the Initial Disbursement payee list was finalized (“Late Claims”). Of these six (6) Late Claims, only three (3) claims are in good standing, and otherwise eligible to receive a payment from the ACLN Distribution Fund.

The Commission recommends that the remaining balance in the ACLN Distribution Fund, less a reserve of approximately \$209,000 for taxes, the fees and expenses of the Tax

² The \$2,240,769.87 escrow account balance is the remainder of the original funding of \$29,945,231.27, \$20,848.49 in interest, \$2,189,753.49 in uncashed and undeliverable checks, \$65,943.78 in checks returned by Eligible Claimants, and tax refunds of \$10.92. Since the Initial Disbursement, checks totaling \$25,553,966.70 and \$4,192,421.07 in wire payments have been successfully issued from the account. Other account disbursements include payment to GCG, with SEC staff approval, for a total of \$221,660.96, \$4,500 in bank escrow fees, \$8,434.17 in tax service fees, and \$35.18 in tax liability. Interest will continue to accrue on the escrow balance until distribution checks are presented for payment.

Administrator and the fees and expenses of the Distribution Agent (the “Reserve”), be disbursed on a *pro rata* basis to all Eligible Claimants who cashed their Initial Disbursement checks and will receive at least \$25.00 from the remaining funds (the “Second Disbursement”). The Commission also recommends that the three (3) late claimants whose claims are deemed eligible receive a disbursement of both his or her initial and second disbursement amounts. Conducting the Second Disbursement would provide investors who receive payments from both disbursements with a total rate of return of approximately 21.5%.

In order to encourage Eligible Claimants to cash their Second Disbursement checks promptly, and to avoid or reduce future expenses relating to unpaid Second Disbursement checks, GCG recommends that all Second Disbursement checks bear the notation “CASH PROMPTLY, VOID IF NOT CASHED WITHIN 60 DAYS.” The funds allocated to all stale-dated checks will remain in the ACLN Distribution Fund. Finally, the Distribution Agent recommends, and SEC staff concurs, that no later than one hundred eighty (180) days after the issuance of the Second Disbursement, if funds remain in the ACLN Distribution Fund such that it is deemed cost-effective, after consultation with SEC staff, that the Distribution Agent be authorized to conduct a further disbursement to those Eligible Claimants who cashed their Second Disbursement check and will receive a payment greater than or equal to \$25.00.

III. Requested Disbursement Order

The Commission, therefore, respectfully requests that the Court issue an order authorizing the Distribution Agent to make a Second Disbursement disbursing the remaining balance of the ACLN Distribution Fund, less the Reserve, to Eligible Claimants who cashed their initial disbursement check and will receive a payment greater than or equal to \$25.00 and disbursing the initial and second disbursement amounts to the three (3) late claimants with

otherwise eligible claims.³ And in the event, there are sufficient funds remaining one hundred eighty (180) days after issuance of the Second Disbursement, authorize the Distribution Agent to make a further disbursement in accordance with the requirements of the Second Disbursement and with the Distribution Plan.

Unless otherwise ordered by the Court, one (1) year after the final accounting of the ACLN Distribution Fund, after consultation with Commission staff, the Distribution Agent may destroy the paper copies of the Proof of Claim Forms and all supporting documentation, if electronic copies of all documents exist. Six (6) years after the final accounting, in consultation with Commission staff, a decision will be made regarding the destruction of electronic copies.

WHEREFORE, for all the foregoing reasons, the Commission respectfully requests that this Court enter the proposed Order and grant such other relief as it deems just and proper.

Dated: December 6, 2018

Respectfully submitted,

/s/ Nancy Chase Burton
Nancy Chase Burton
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³ The Distribution Agent has executed an escrow agreement with Signature Bank for the deposit of the ACLN Distribution Fund for disbursement.

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the forgoing Motion, Declaration and proposed Order to the ECF registrants herein by electronically transmitting them using the ECF System for filing and transmittal of a Notice of Electronic Filing on this 6th day of December, 2018.

 /s/
Nancy Chase Burton

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
	:	
Plaintiff,	:	Civil Action No.
v.	:	1:02-CV-7988 (LAP)
	:	
A.C.L.N., LTD., et al.,	:	
	:	
Defendants.	:	
	:	

DECLARATION OF DISTRIBUTION AGENT

As representative of the Distribution Agent of the A.C.L.N. Distribution Fund, (the “Distribution Fund”) I, Stephanie Amin-Giwner, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. On March 28, 2012, Garden City Group (“GCG”) was appointed distribution Agent of the ACLN Distribution Fund. I am the Manager of Client Services, for Epiq¹ the court-appointed Distribution Agent² of the Distribution Fund created in the above-captioned matter. I submit this Declaration in support of the Securities and Exchange Commission’s (“Commission”) Motion for an Order Authorizing a Second Disbursement of Distribution Fund. The following statements are based on my personal knowledge and information provided to me by other experienced GCG employees working under my supervision.

¹ Garden City Group, LLC (“GCG”) was acquired by Epiq Class Action and Claims, Inc. (“Epiq”) on June 15, 2018 and is now continuing as part of Epiq. The Distribution Agent’s engagement with the SEC is not impacted, nor is there any anticipated impact on its ability to carry out its duties as Distribution Agent in this case.

² All capitalized terms used not otherwise defined herein shall have the meanings ascribed to them in the Distribution Plan approved by the Court on April 3, 2013 (the “Plan”). (DE #62)

2. Pursuant to the Order to Transfer Funds to the Distribution Agent for Disbursement to Eligible Claimants and Authorize the Payment of Taxes, Fees and Expenses, dated March 26, 2015 (the “Disbursement Order”) (DE #89), GCG conducted a disbursement of the Distribution Fund to Eligible Claimants (the “Initial Disbursement”) on April 29, 2015. Pursuant to the Disbursement Order, a total of 2,826 claims were disbursed via check or wire totaling \$29,746,415.26.

3. After the Initial Disbursement, GCG monitored the status of all checks issued. As is GCG’s standard practice, to ensure that the maximum number of checks is cashed, GCG implemented a calling campaign to follow-up with Eligible Claimants whose checks were initially uncashed, either because they were returned to GCG as undeliverable or because the Eligible Claimant simply had not cashed the check. If the Eligible Claimant did not provide a telephone number, GCG used various local and national directories to locate telephone numbers. GCG also performed a National Change of Address search for Eligible Claimants whose checks were returned to GCG by the United States Postal Service as undeliverable. In connection with GCG’s calling campaign, GCG urged Eligible Claimants to cash their checks and offered Eligible Claimants the opportunity to have their checks reissued if they lost or damaged their check or otherwise required a new check. GCG reissued a check upon written instructions from an Eligible Claimant, and requested that the Eligible Claimant return the first check where appropriate. If a check was deemed lost, GCG voided the initial check prior to reissuing a substitute check.

4. As a result of GCG’s follow-up efforts, as of November 20, 2018, payments totaling \$27,490,714.76, or approximately 92.4% of the amount distributed in the Initial Disbursement, has been cashed by or successfully wired to Eligible Claimants. As of November

20, 2018, \$2,240,769.87 remains in the account established by the Distribution Agent for the Distribution Fund.³

LATE CLAIMS

5. Since the Initial Disbursement, GCG has continued to receive and process late claims. As of November 20, 2018, GCG has received six (6) late claims. Of these six (6) late claims, three (3) claims are in good standing and three (3) claims are ineligible. GCG has conferred with Commission staff and determined to accept the three (3) late claims that are otherwise, in good standing. These three (3) late, but eligible, claims have a total Eligible Loss Amount of \$170,970 and 3 of these claims will receive initial disbursement payments above the \$25 *de minimis* totaling \$35,012.81.

6. According to the Court-approved Plan of Allocation, each Eligible Claimant shall receive a *pro rata* share of the Net Distribution Fund, which shall be the Eligible Claimant's Eligible Loss Amount divided by the sum total of the Eligible Loss Amounts of all Eligible Claimants, multiplied by the total amount in the Net Distribution Fund.

SECOND DISBURSEMENT

7. As set forth above, pursuant to the Plan, the Distribution Fund was disbursed to all Eligible Claimants in the Initial Disbursement. All uncashed Initial Disbursement checks are now stale-dated and have been voided pursuant to paragraph 3.32 of the Distribution Plan. The funds remaining from those stale-dated checks are available for re-disbursement.

8. The available balance in the Distribution Fund, less payment to the late, but

³ The \$2,240,769.87 escrow account balance is the remainder of the original funding of \$29,945,231.27, \$20,848.49 in interest, \$2,189,753.49 in uncashed and undeliverable checks, \$65,943.78 in checks returned by Eligible Claimants, and tax refunds of \$10.92; Since the Initial Disbursement, checks totaling \$25,553,966.70 and \$4,192,421.07 in wire payments have been successfully issued from the account. Other account disbursements include payment to GCG, with SEC staff approval, for a total of \$221,660.96, \$4,500 in bank escrow fees, \$8,434.17 in tax service fees, and \$35.18 in tax liability. Interest will continue to accrue on the escrow balance until distribution checks are presented for payment.

eligible claimants and the approximate reserve for taxes and the fees and expenses of the Tax Administrator and the Distribution Agent, totals \$2,032,106.76. GCG, in consultation with the Commission, recommends that the available balance in the Fair Fund be disbursed on a *pro rata* basis to all Eligible Claimants who cashed their Initial Disbursement checks and will receive at least \$25.00 along with a commensurate disbursement to the claimants who filed late but otherwise valid claims (the “Second Disbursement”). All of the distribution payments are set forth in the list of Eligible Claimants and their disbursement amounts (the “Final Payee List”) provided to SEC staff. Conducting the Second Disbursement would provide investors who receive payments from both disbursements with a total rate of return of approximately 21.5%, composed of approximately 20% from the Initial Disbursement and 1.5% from the Second Disbursement.

9. In order to encourage Eligible Claimants to cash their Second Disbursement checks promptly, and to avoid or reduce future expenses relating to unpaid Second Disbursement checks, GCG recommends that all Second Disbursement checks bear the notation “CASH PROMPTLY, VOID IF NOT CASHED WITHIN 60 DAYS.” The funds allocated to all stale-dated checks will remain in the Distribution Fund.

10. Pursuant to paragraph 3.34 of the Distribution Plan, the stub accompanying checks in the Second Disbursement will include a statement characterizing the disbursement, a statement that the tax treatment of the disbursement is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the disbursement, and GCG’s contact information if the Eligible Claimant has any questions regarding the disbursement.

11. GCG also recommends that no later than one hundred eighty (180) days after the issuance of the Second Disbursement, if cost effective, as determined in consultation with

Commission staff, this Court authorize an additional disbursement of any available remaining funds to Eligible Claimants who cashed their Second Disbursement check and will receive a payment exceeding the \$25.00 *de minimis*.

Executed on December 4, 2018 in Lake Success, New York.


Stephanie Amin-Giwner