

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 19-2214
	:	
HENRY FORD f/k/a CLEOTHUS LEFTY	:	
JACKSON and FALLCATCHER, INC.	:	
Defendants.	:	

ORDER

The Securities and Exchange Commission has filed an Uncontested Motion to Appoint Distribution Agent and for Approval of Distribution Plan. (Doc. No. 52.) The Plan allocates disgorgement funds of approximately \$2.3 million to 61 investors on a *pro rata* basis. Because the Plan is reasonable and adequate, I will approve it and appoint the SEC’s proposed Distribution Agent.

I. FACTUAL AND LEGAL BACKGROUND

On May 22, 2019, the SEC filed a Complaint against Defendants Henry Ford (formerly known as Cleothus Lefty Jackson) and Fallcatcher, Inc., alleging that Defendants sold shares of Fallcatcher’s stock to investors, misrepresenting interest that large insurers and state governments had purportedly shown in Fallcatcher’s technology. (Compl., Doc. No. 1.) Fallcatcher offered biometric devices and software that purportedly would prevent medical billing fraud by patients receiving treatments for drug addictions. (*Id.* at 2.) To entice prospective investors, Ford falsely stated that at least two major insurers and five state health agencies had offered to begin pilot programs with Fallcatcher’s technology. (*Id.*) Ford also provided investors with a fabricated letter from a major insurance company expressing interest in such a program. (*Id.*) In August and September 2018, Fallcatcher and Ford raised approximately \$5 million from 61 investors. (*Id.*;

Doc. No. 52-1 at 2.)

On February 26, 2020, I approved two Consent Judgments against Ford and Fallcatcher, ordering Ford to pay to the SEC \$1,901,643.66, which included \$539,140.58 in disgorgement, and ordering Fallcatcher to pay \$2,295,320.87 in disgorgement. (Doc. Nos. 38-1, 38-2, 40-41.) The SEC has received \$2,267,805.27, of which Fallcatcher has been credited with \$2,263,696.11 and Ford the remaining \$4,109.16. (Doc. No. 52-1 at 3.) On November 12, 2020, I granted the SEC's Uncontested Motion to Establish a Fair Fund, Appoint a Tax Administrator, and Authorize Payment of Future Tax-Related Fees, Expenses, and Obligations. (Doc. No. 53.) In a second Motion, the SEC seeks approval of its proposed Distribution Plan. (Doc. No. 52-1.) Defendants do not object.

Investors had until December 6, 2020 by which to file objections to the Plan. One day later, on December 7, 2020, *pro se* investor Ryan Grand submitted objections to the plan. (Doc. Nos. 54-1, 54-2.) The SEC responded, and Grand filed a reply. (Doc. Nos. 56-57.)

II. LEGAL STANDARDS

I have broad discretion to determine whether a distribution plan is “fair and reasonable.” SEC v. Wang, 944 F.2d 80, 81 (2d Cir. 1991). “A district court's ‘principal obligation’ in approving a plan of allocation ‘is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.’” Sullivan v. DB Invs., Inc., 667 F.3d 273, 326 (3d Cir. 2011) (quoting Walsh v. Great Atl. & Pac. Tea Co., Inc., 726 F.2d 956, 964 (3d Cir. 1983)); see also Wang, 944 F.2d at 85 (“[O]nce the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end.”).

III. DISCUSSION

Because the SEC has received only about half the money owed to investors, the Commission proposes distributing the funds on a *pro rata* basis to each of the sixty-one investors, none of whom was involved in the misconduct detailed in the Complaint or served as an officer or director of Fallcatcher (with the exception of one investor who was invited to be a Fallcatcher director but was not involved in the misconduct). (Doc. No. 52-1 at 5.) The SEC has outlined its methodology for calculating the distribution amount: it will divide each investor's net loss over the total amount of loss, and allocate funds accordingly. (Proposed Distribution Plan, Doc. No. 52-2.) After the Plan is approved, the Third Party engaged to assist the Distribution Agent—JND Legal Administration—will send a Notice to each eligible investor by mail or email, which will include (1) a copy of the Court's Order approving the Plan, (2) the Distribution Plan itself, (3) a finalized Distribution Chart setting out the amount due to each investor, and (4) a request for contact information. (Id. at 8.) Investors will be given 14 days to file objections with the Court. (Id.)

The Third Party will then prepare a final list including names of investors, amounts owed, and other pertinent information regarding investor payouts. (Id. at 9.) The Distribution Agent will then petition the Court to direct the SEC to create a check for the total amount to be transferred to an Escrow Account established by the Third-Party assisting the Distribution Agent. The Escrow Account shall be opened at a commercial bank. (Id.) From the Escrow Account, the Third-Party will issue a check to each investor according to his or her *pro rata* share. (Id.) Taxes, investment fees, and reasonable fees and expenses of the Tax Administrator and Third Party assisting the Distribution Agent will be paid from the Fair Fund upon the Court's approval. (Id. at 10.) Once

distribution is complete, the Distribution Agent will submit a “final report” to the Court. (*Id.* at 12.) Should any funds remain, they will be disbursed to the United States Treasury. (*Id.*)

I am satisfied that the Distribution Plan is fair and reasonable. *Pro rata* distributions—like those proposed here—are considered reasonable. See SEC v. Infinity Grp. Co., 226 F. App'x 217, 218 (3d Cir. 2007) (“Since then, the Courts of Appeals repeatedly have recognized that *pro rata* distribution of a defrauder's assets to multiple victims of the fraud is appropriate and that District Courts act within their discretion in approving such distributions.”); Commodity Futures Trading Comm'n v. Eustace, 2008 WL 471574, at *7 (E.D. Pa. Feb. 19, 2008); SEC v. Quan, 870 F.3d 754, 762 (8th Cir. 2017) (“Courts have ‘routinely endorsed’ the *pro rata* distribution of assets to investors as the most fair and equitable approach in fraud cases.”).

I am also satisfied that Noel Gittens, Trial Counsel of the Commission’s Office of Distributions—and listed Counsel in this case—is an appropriate Distribution Agent. Mr. Gittens will not be paid for his services as Distribution Agent (other than his regular SEC salary). (Doc. No. 52-1 at 6.) As the Commission notes, a third-party Distribution Agent would add additional expense to the detriment of investors, especially given the limited number of claimants at issue, all of whom are already known to the SEC. I also find it fair and reasonable for Mr. Gittens to retain a third-party, JND Legal Administration, to help with administrative tasks, for which it will receive a \$15,000 flat fee.

Finally, I will overrule Grand’s objections. Grand, who is *pro se*, did not invest in the security offerings at issue in this litigation. Rather, he invested \$80,000 in 2017 (before the August and September 2018 events detailed in the instant Complaint), and in a different (predecessor) Fallcatcher entity than the Delaware corporation that is the Defendant in the instant action. (Doc. Nos. 54, 56-57.) Grand argues that he should nonetheless receive compensation under the

Distribution Plan, as he invested based on material misrepresentations Ford made, and “did not have [the] benefit of having a formal Private Placement Offering Memorandum or any other information indicating that [the information provided by Ford] was not correct.” (Doc. No. 57 at 3.) Grand thus “invested based solely on Ford’s misrepresentations.” (Id.) Grand asserts that the 61 investor victims identified here, in contrast, were provided a Private Placement Offering Memorandum to review and were told in a meeting that Fallcatcher had made no contracts and received no interest in its products. (Id.) I understand Grand’s argument to be that he suffered a greater fraud than the 61 identified investor victims, and thus he should receive compensation.

Although Grand may also have been defrauded by Fallcatcher, he was not a victim of the conduct at issue in this litigation. (See generally Complaint, Doc. No. 1.) He is thus not an investor victim in this action, and I will overrule his Objections.

IV. CONCLUSION

In sum, I have found the Distribution Plan to be fair and reasonable. I will thus approve it in full and appoint the SEC’s chosen Distribution Agent.

AND NOW, this 22nd day of February, 2021, upon consideration of the SEC’s Motion for an Order Appointing a Distribution Agent and Approving the Distribution Plan (Doc. No. 52), it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED**;
2. Noel Gittens, a Commission employee, is appointed as Distribution Agent;
3. The Fair Fund will be distributed in accordance with the Distribution Plan, which is approved by this Court;
4. The Distribution Agent shall perform such functions as are necessary to implement and administer the approved Distribution Plan, pursuant to which monies in the Fair Fund (plus

accrued interest, minus tax obligations, investment fees, and the fees and expenses of the Tax Administrator and the Third-Party who will be assisting the Distribution Agent with administrative tasks in connection with implementing the Distribution Plan) shall be distributed to Eligible Investors on a pro rata basis, as provided for in the Distribution Plan;

5. The Distribution Agent shall be deemed to be acting within the scope of his employment with the Commission in administering this Fair Fund. In carrying out his duties, the Distribution Agent may be assisted by the Third-Party and other Commission staff acting under his supervision;

6. The Distribution Agent shall receive no compensation for the services performed in administering the Fair Fund, other than his regular salary as an employee of the Commission;

7. The Distribution Agent shall coordinate with the Court-appointed Tax Administrator, Miller Kaplan Arase LLP, to ensure that the Fair Fund, a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations pertaining to QSFs, 26 C.F.R. §§ 1.468B-1 through 5, complies with the legal and regulatory requirements imposed on distributions from the Fair Fund;

8. The Distribution Agent may be removed *sua sponte* at any time by the Court or upon motion of the Commission and replaced with a successor;

9. The Distribution Agent and his designees, agents, and assistants are not required to post a bond, and shall not be liable to any person for their actions hereunder, except on a finding of willful disregard of duty; and

10. The Distribution Agent will submit a final report describing the distribution made to the Court prior to seeking termination of the Fair Fund and discharge of the Distribution Agent. In the unlikely event that a check is not cashed, those funds, upon approval by the Court,

will be transferred to the U.S. Treasury.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.