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**UNITED STATES DISTRICT COURT
for the
DISTRICT OF NEW JERSEY**

	:	
SECURITIES AND EXCHANGE	:	05-CV-5040 (RMB)
COMMISSION,	:	
	:	Motion Day: January 2, 2018
Plaintiff,	:	
	:	
v.	:	Motion for an Order Directing
	:	Turnover of Assets and
THE ESTATE OF DONALD	:	Authorizing an Additional
MATTHEW GRETH, David J.	:	Distribution
Greth, Administrator, et al.	:	
	:	
Defendants.	:	
	:	

For the reasons set forth in the accompanying Memorandum, Plaintiff Securities and Exchange Commission (“SEC”) hereby moves this Court for an Order in the form attached, directing Wells Fargo Bank, N.A. to turn over all assets

in account number [REDACTED] 7517 to the SEC no earlier than January 2, 2018 *and* no later than five (5) business days from the entry of this Order; and authorizing an additional distribution pursuant to the previously approved Final Plan of Distribution (Dkt. No. 63), procedurally adjusted to maximize the amount disbursed to Eligible Investors.

The Estate of Donald Matthew Greth, represented by its Administrator, David J. Greth, does not oppose this motion.

Dated: December 5, 2017

Respectfully submitted,

s/Catherine E. Pappas
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**UNITED STATES DISTRICT COURT
for the
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SECURITIES AND EXCHANGE	:
COMMISSION,	:
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Plaintiff,	:
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v.	:
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THE ESTATE OF DONALD	:
MATTHEW GRETH, David J.	:
Greth, Administrator, et al.	:
	:
Defendants.	:

05-CV-5040 (RMB)

Motion Day: January 2, 2018

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN
ORDER DIRECTING TURNOVER OF ASSETS AND AUTHORIZING AN
ADDITIONAL DISTRIBUTION**

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I. SUMMARY

David J. Greth, the Administrator of the Estate of Donald Matthew Greth (the “Administrator”), has alerted the SEC to an additional asset of Donald Matthew Greth recently discovered – an IRA Account (the “IRA Account”) at Wells Fargo Bank, N.A. (“Wells Fargo”) holding just under \$27,000. The SEC now seeks to collect and distribute the funds in the IRA Account (the “Fund”) to defrauded investors.¹ To this end, the SEC has moved the Court for an Order directing Wells Fargo Bank, N.A. (“Wells Fargo”) to turn over the Fund to the SEC;² and authorizing the SEC to distribute the Fund pursuant to the previously approved Final Plan of Distribution (the “Final Plan”) (Dkt. No. 63), procedurally adjusted to complete the distribution within calendar year 2018 and thereby maximize the amount disbursed to Eligible Investors. The SEC respectfully submits this Memorandum in support of its motion.

¹ On October 23, 2017, the Administrator informed the undersigned that he does not oppose the relief requested by the SEC.

² The requested turnover order includes the full financial account of the custodian of the asset. To comply with Fed. Rule Civ. P. 5.2(a) and Local Civil Rule 5.2(17), the SEC has filed a redacted proposed order with this motion; and simultaneously provided to the Court, and moved the Court to seal, an unredacted version of that Order, if signed by the Court, for service on the asset custodian.

II. BACKGROUND

A. Procedural History

On October 21, 2005, the SEC filed this action (the “Civil Action”) against Donald Matthew Greth (“Greth”) and Brenda B. Melton (“Melton”) (collectively, the “Defendants”). In its Complaint, the SEC alleged that, from at least June 2003 through 2005, Greth and Melton engaged in a fraudulent scheme to deceive investors by misrepresenting and omitting material facts in connection with the offer and sale of shares in a fictitious “Christian” investment fund purportedly run by Greth. The SEC further alleged that the Defendants conducted a Ponzi scheme, using money obtained from new investors to pay prior investors and to enrich themselves.

At the same time that it filed the Civil Action, the SEC sought and obtained from the Court a Temporary Restraining Order that, among other things, froze all of the Defendants’ assets (the “TRO”). Dkt. No. 2. The TRO was extended indefinitely by two orders of preliminary injunction and other relief (the “Preliminary Injunctions”), entered by the Court on October 31, 2005, upon the consent of each defendant.

On or about October 30, 2005, Greth died. On January 27, 2006, this Court granted the SEC’s motion to substitute Greth’s estate (the “Estate”) in the place of defendant Greth so that the SEC could pursue its disgorgement remedy against

certain frozen assets. Dkt. No. 11. On February 23, 2007, with the consent of the Estate, the Court entered Final Judgment against the Estate (the “Estate Judgment”), ordering the Estate to pay \$1,377,984, comprised of \$1,272,874 in disgorgement and \$105,110 in prejudgment interest. Dkt. No. 26.

In an Order entered on April 23, 2007 upon motion of the Commission (the “April Order”), the Court, in relevant part, directed:

all assets held under the name of Donald Matthew Greth, or in which Donald Matthew Greth purportedly had an interest at the time of his death (collectively, the “Assets at Issue”), up to and including the amount of \$1,377,984, are and shall be held in constructive trust for the victims of the scheme to defraud further described in the Complaint filed in [this action].

Dkt. No. 33. The Court ordered Wachovia Bank N.A. (“Wachovia”), and Bank of America, N.A. to transfer assets in Greth’s name previously frozen by the TRO and the Preliminary Injunction to the Court, to be placed into an interest bearing account with the Court Registry Investment System (the “CRIS Account”) and held in constructive trust for distribution in this action.

On May 25, 2007, upon the consent of defendant Melton, given without admitting or denying the allegations in the Complaint, the Court entered a Final Judgment against Melton (the “Melton Judgment”), in relevant part ordering Melton to pay disgorgement and prejudgment interests of \$42,622.16; but waiving all but payment of \$18,981.74, plus any interest accrued in frozen financial accounts. Dkt. No. 41. In partial satisfaction of the monetary judgment, the Melton Order directed

Provident Bank and Wachovia to transfer to the CRIS Account all assets in Melton's name previously frozen by the TRO and the Preliminary Injunction.

B. The Distribution

On September 4, 2007, upon the SEC's motion, this Court approved a Plan of Distribution (the "Final Plan", attached as Exhibit A) to distribute the funds collected in (partial) satisfaction of the Estate Judgment and the Melton Judgment. Dkt. No. 63. The Court also appointed the undersigned as distribution agent (the "Distribution Agent"). At the time, the SEC sought to distribute approximately \$554,000, comprised of approximately \$533,000 collected on the Estate Judgment, \$19,000 collected on the Melton Judgment, and \$2,000 in interest. The Final Plan proposed to distribute the collections, net administrative expenses, *pro rata* to defrauded investors, returning to investors approximately 37% of their out-of-pocket losses using a "rising tide" methodology. *See* Dkt. No. 57-1. Ultimately, the Distribution Agent distributed approximately \$513,000 to 230 investors after paying approximately \$42,000 in expenses, including \$35,000 to Estate counsel (the "Prior Distribution"). Dkt. No. 67.

C. The Tax Administrator

On May 7, 2007, upon motion of the Commission, the Court entered an Order appointing Damasco & Associates LLP ("Damasco"), a certified public accounting firm located in San Francisco, California, as tax administrator to execute all income

tax reporting requirements of the Fund (“Tax Administrator Order”). Dkt. No. 39. Damasco completed its work as the Tax Administrator in connection with the First Distribution.

Miller Kaplan Arase LLP (“Miller Kaplan”)³ has since acquired Damasco. By Order dated October 31, 2017, this Court appointed Miller Kaplan as tax administrator to execute all income tax reporting requirements with respect to this supplemental distribution. Dkt. No. 70.

D. The Additional Collection and Proposed Distribution

The IRA account is valued at approximately \$27,000 (the “Fund”).⁴ The SEC proposes to distribute the Fund pursuant to the Final Plan, technically and procedurally adjusted as follows:

1. All references to Damasco & Associates LLP are replaced by Miller Kaplan Arase LLP pursuant to the Order of this Court (Dkt. No. 70);
2. The Distribution Agent’s contact information is revised to:

Catherine E. Pappas, Esq.
Senior Adviser
Securities and Exchange Commission

³ As of October 1, 2016, Damasco & Associates LLP, became a part of Miller Kaplan Arase LLP.

⁴ The IRA Account was account [REDACTED] 7517 at Wells Fargo in the name of Donald M. Greth. Wells Fargo has since informed the SEC that it has changed the name of the account to the “Estate of Donald M. Greth” and put a hold on the account pending further Order of this Court. Wells Fargo has further informed the SEC that reference to the former account number and name will suffice on any turnover order.

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3. The Tax Administrator's contact information is revised to:

Jude Damasco
judedamasco@millerkaplan.com
Miller Kaplan Arase LLP
Two Embarcadero Center, Suite 2280
San Francisco, CA 94111

4. The Fund shall be held by the SEC. All references to the CRIS account are revised to an SEC Account, and all references to the Clerk shall be references to the SEC. By way of mechanics of the additional distribution, the Distribution Agent will provide to the SEC's Office of Financial Management ("OFM") a file containing the names, addresses and amounts to be disbursed to Eligible Investors upon which the OFM will cause checks to be issued to the Eligible Investors in the amounts of their *pro rata* distribution under the Final Plan;
5. In order to minimize tax related fees, which will increase if the distribution continues over multiple calendar years, the SEC intends to complete the distribution within calendar year 2018.⁵ To this end, the

⁵ If this distribution starts in 2017 and/or continues into 2019, the distribution will incur at least an additional \$650 in tax administration fees and NJ taxes. To maximize the amount of the Fund going to Eligible Investors by minimizing costs, the SEC intends to obtain the Fund and complete the distribution in 2018. This means that the Distribution Agent will not authorize the issuance of any *new* checks in 2019, although checks issued in 2018 will be honored through their

Plan is modified as follows:

- a. any Eligible Investor who cannot be located by the Distribution Agent *prior to* distribution through the use of “reasonable efforts” as defined in the Final Plan⁶ shall be disallowed to receive a distribution payment and that investor’s *pro rata* share shall be returned to the Fund;⁷
- b. Subject to c., below, any Eligible Investor whose check is returned or remains uncashed beyond its expiration date and who cannot be located by the Distribution Agent through the use of “reasonable efforts” as defined in the Final Plan in sufficient time for a replacement check to be issued by December 31, 2018, shall not be reissued.
- c. The Distribution Agent is under no obligation to cause to be re-

expiration date in 2019.

⁶ Under the Final Plan, “reasonable efforts” is defined as use of commercial computer databases regularly available to the Division of Enforcement of the SEC. Dkt. No. 61-3, ¶ 44.a.

⁷ Because the checks will issue from the United States Treasury without cover correspondence, the SEC intends to send to investors eligible for this supplemental distribution a Notice by receipted mail, including this filing. If the Notice is returned or the SEC is otherwise made aware of deficiencies in its contact information, the SEC will use “reasonable efforts” to locate the otherwise Eligible Investor. If unsuccessful, the investor will be deemed ineligible for this distribution and their respective distribution will be returned to the Fund for distribution to Eligible Investors.

sent, redelivered, or reissued returned checks mailed to a last known address or checks that remain uncashed beyond the check expiration date. No checks shall be issued (or reissued) after December 31, 2018. After completion of the contemplated distribution and payment of all Fund Expenses, the Distribution Agent, without further Order of the Court, will notify OFM and direct all remaining money in the Fund, including any amounts returned to the Fund or uncashed by Eligible Investors, to the United States Treasury;

6. Fund Expenses are adjusted as follows:

Dates incurred	Payee	Description	Amount
2018	Miller Kaplan	Tax Administrator fees	\$500
2018	Miller Kaplan	Non-fixed fee expenses and services	\$200
2018	NJ Division of Taxation	Taxes	\$500
Total			\$1,200

III. DISCUSSION

The SEC seeks from the Court an Order directing Wells Fargo to turn over the IRA Account to the SEC in (partial) satisfaction of the Estate Judgment and

authorizing the SEC to distribute the Fund pursuant to the Final Plan, adjusted to maximize the amount disbursed to Eligible Investors.

A. The Assets at Issue Should be Turned Over to the SEC Pursuant to this Court's Prior Order and in (Partial) Satisfaction of the Outstanding Disgorgement Judgment against the Estate.

Under the Estate Judgment, the Estate is liable to pay \$1,377,984, comprised of \$1,272,874 in disgorgement and \$105,110 in prejudgment interest. Dkt. No. 26. Crediting, *arguendo*, the Estate Judgment with all collections other than that from Melton, over \$800,000 remains outstanding. Accordingly, under this Court's April 23, 2007 Order, the IRA Account, an asset of Greth at the time of his death, is held in constructive trust for the victims of Greth's scheme to defraud and should be turned over to the SEC for distribution.

Alternatively, the IRA Account of the deceased should be turned over the SEC as payment on a debt, in partial satisfaction of the SEC's disgorgement judgment against the Estate.⁸ Notably, the Administrator, who is also Greth's

⁸ Although an IRA of a deceased individual might be afforded some protection under NJ law (*see* N.J. Stat. Ann. § 25:2-1), this Court can ignore such protections in the context of an SEC disgorgement order. *See SEC v. Solow*, 682 F. Supp. 2d 1312, 1326 (S.D. Fl. 2010) and the cases cited therein. *See also SEC v. Aragon Capital Advisors, LLC*, Civ. Act. No. 07-919 (FM), 2011 U.S. Dist. LEXIS 82531, *24-25 (S.D.N.Y. Jul. 26, 2011) (notwithstanding claimed New Jersey and federal law protection of IRAs, contempt appropriate where Defendant failed to use his IRA accounts to satisfy the disgorgement judgment against him).

brother, does not object to this motion, or the distribution of the Fund to injured investors.

B. Distribution in Accordance with the Final Plan as Modified is Appropriate.

This Court previously approved the Final Plan, thus finding it to be fair and reasonable. Dkt. No. 57. *See SEC v. Quan*, 870 F.3d 754, 762 (8th Cir. 2017) *Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) (the primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable), *quoting SEC v. Wealth Management, LLC*, 628 F.3d 323, 332 (7th Cir. 2010). *See also SEC v. Stinson*, Civil Action No. 10-3130, 2015 U.S. Dist. LEXIS 1817, *9 (E.D. Pa. Jan. 8, 2015) (a court may approve a distribution plan that is fair and reasonable). Under the Final Plan, the Distribution Agent has authority to perform another distribution without further Court order. Final Plan ¶¶ 56 *et seq.* However, the passage of time necessitated the appointment of a new tax administrator, and the size of the Fund makes appropriate certain procedural amendments to minimize the costs of the distribution and maximize its impact on Eligible Investors.

The Fund holds approximately \$27,000 and only some investors (those with the greatest losses) will receive a modest distribution under the Final Plan methodology. In order to ensure that as much of the Fund as possible is disbursed to

Eligible Investors, the SEC proposes to initiate the distribution in early 2018 and complete the distribution in the same calendar year, thereby minimizing taxes and tax compliance costs. Such a compressed schedule limits the amount of time available to find Eligible Investors who do not cash their checks. Accordingly, the SEC proposes to: (1) limit the distribution to otherwise Eligible Investors under the Final Plan who can be located with some certainty prior to the distribution; and (2) limiting any subsequent outreach to that which will result in check issuance before the end of 2018.

The SEC also proposes certain conforming and logistic modifications, including adjusting the name and address of the Tax Administrator, the address of the Distribution Agent, the identity of the Fund custodian, and the anticipated expenses.

These modifications to the Final Plan affect only the implementation of the Final Plan, and do not affect the methodology or loss amounts previously approved by this Court. They are fair and reasonable in view of the small amount to be distributed and the objective of maximizing the return to harmed investors. The SEC respectfully requests that this Court approve the additional distribution in accordance with the adjusted Final Plan.

IV. CONCLUSION

For the foregoing reasons, the SEC respectfully requests that this Court grant the relief requested in the Motion.

Dated: December 5, 2017

Respectfully submitted,

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