

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

MURDOCH SECURITY & INVESTIGATIONS,  
INC., ROBERT GOLDSTEIN, and WILLIAM  
VASSELL,

Defendants

Civil Action No. 11-cv-7076  
(JGK)

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S NOTICE OF MOTION,  
MOTION AND MEMORANDUM IN SUPPORT OF AN ORDER AUTHORIZING THE  
DISTRIBUTION AGENT TO DISTRIBUTE THE RESIDUAL FAIR FUND TO ELIGIBLE  
INVESTORS

NOTICE

PLEASE TAKE NOTICE, that based upon the accompanying Affidavit of Daniel J. Marotto ("Affidavit") in Support of the Securities and Exchange Commission's ("Commission") Motion for an Order Authorizing the Distribution Agent to Distribute the Residual Fair Fund to Eligible Investors executed on October 23, 2018, the Proposed Order submitted herewith, and all prior proceedings had herein, and pursuant to the Plan of Distribution approved by this Court on December 21, 2015, ("Distribution Plan"), Plaintiff Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Judge John G. Koeltl, at the United States Courthouse for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, 10007-1312, for an order

authorizing the Distribution Agent to distribute the residual Fair Fund, after deducting taxes, fees, and expenses of the tax administrator and fees and expenses of the fund administrator, to Eligible Investors .

### MOTION

The Commission respectfully requests that the Court enter an Order authorizing the Distribution Agent<sup>1</sup>, Kurtzman Carson Consultants, LLC (“KCC”), to distribute the residual Fair Fund, after deducting taxes, fees, and expenses of the tax administrator and fees and expenses of the fund administrator, to Eligible Investors as provided for in the Distribution Plan approved by this Court on December 21, 2015. The SEC has submitted a proposed order to the Court contemporaneously with the filing of this Motion.

### MEMORANDUM

#### Procedural Background

On February 17, 2012, the SEC amended its complaint filed on October 7, 2011 against Murdoch Security & Investigations, Inc. (“MSI”) and its two principal officers, Robert Goldstein (“Goldstein”) and William Vassell (“Vassell”) (collectively, the “Defendants”). The amended complaint alleged that, from at least October 2010 through approximately August 2011, the Defendants violated the anti-fraud provisions of the federal securities laws when they raised more than \$1 million, through the illegal sale of MSI unregistered offering and sale of securities from noteholders, who were promised 22% annual interest on their investments. The amended complaint further alleged that MSI, through Goldstein, misrepresented material facts to investors about the security company, including boasts of highly lucrative overseas operations when, in fact, MSI lacked any international business whatsoever.

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the approved Plan.

On November 15, 2012, Goldstein and Vassell were ordered to pay a total of \$857,500.00 in disgorgement, prejudgment interest, and penalties. The Clerk was ordered to hold the funds in an interest bearing account with the Court Registry Investment System (collectively, the “Fund”), pending further order of the Court. The Commission voluntarily dismissed its claims against MSI. To date, \$750,000 has been paid and the Commission is unlikely to collect any additional funds.

On July 17, 2014, the Court appointed Damasco & Associates LLP<sup>2</sup> as the Tax Administrator to fulfill the tax obligations of the Fund.

On March 10, 2015, the Court established a Fair Fund for the \$750,000.00 paid by Goldstein and for any future funds paid by Vassell, and appointed KCC as the Distribution Agent to oversee the administration and distribution of the Fair Fund to harmed investors.

On December 14, 2015, the SEC filed a motion for order to approve the proposed distribution plan, together with the proposed distribution plan (“Distribution Plan”).

On December 21, 2015, the Court approved the Distribution Plan. The Distribution Plan provides that the distribution of the Fair Fund shall be made on a pro rata basis to the 92 Eligible Distribution Fund Recipients that were identified by the Distribution Agent, who were harmed by the Defendants’ misconduct and suffered a net loss. The detailed methodology for allocating the Fair Fund is described in paragraphs 12-16 of the Distribution Plan.

On August 11, 2016, the Commission filed a motion for an order directing the Clerk of Court to turn over the Fair Fund funds to the Distribution Agent for disbursement to Eligible Distribution Fund Recipients in accordance with the Distribution Plan.

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<sup>2</sup> As of October 1, 2016, Damasco and Associates, LLP became part of Miller Kaplan Arase LLP. The firm’s engagement with the SEC is not impacted, nor is there any anticipated impact on the firm’s ability to carry out its duties as Tax Administrator in this case.

On August 12, 2016, the Court entered an order granting the Commission's Motion.

Disbursement of Net Available Fair Fund

In accordance with the Order to Establish Fair Fund and Appoint a Distribution Agent (Dkt. No. 64), beginning in September of 2016, KCC distributed the Net Available Fund ("NAF") to Harmed Investors, which consisted of 74 checks totaling \$470,345.81 or approximately 66.77% of the NAF. As of the date of the attached Affidavit (Exhibit A), 71 distribution checks have been cashed, representing a total of \$469,646.13 or approximately 99.85% of the initial distribution; and, after the outreach efforts described below, three distribution checks remain outstanding representing \$699.68. No addresses were identified for nineteen Harmed Investors. This group of Harmed Investors was allocated \$234,082 of the NAF at the time of the initial distribution calculation. The sum total of uncashed checks from the initial distribution and the NAF allocated to unidentified Harmed Investors is approximately \$234,781.

Since May of 2015, KCC has undertaken additional efforts to identify the contact information associated with Harmed Investors that did not have an address and to assist Harmed Investors with outstanding checks that exceeded the check stale date; including: (a) mailing confirmation outreach letters to the Harmed Investors that were identified during a name and address search; (b) reviewing and amending address information for checks that were returned by the US Postal Service for incomplete or not current addresses; (c) mailing notice outreach letters to both the address on file and to any additional address(es) provided by the SEC; (d) sending an email to the identified unique email addresses advising Harmed Investors of their outstanding check; (e) identifying phone numbers for and calling harmed investors who had not yet cashed their checks; (f) completing an obituary search by researching geology, possible

legacy connections, and local media archives; and (g) researching court records for an appointed executorship, court records of the deceased individual and probate or a small estate affidavit. In addition KCC advised Harmed Investors on how to request a reissue for misplaced or stale dated checks.

A total of three outreach letters were sent to the Harmed Investors who did not cash their checks and the letters were returned without a forwarding address. Using a third-party database, KCC located an additional possible alternative address for one of those Harmed Investors and proactively reissued their distribution payment to the alternative address that was found. The remaining two investors are confirmed deceased and the estates are closed with no known successor identifying party.

As a result of the outreach efforts described above, of the three distribution checks that remained outstanding as of May 16, 2018, KCC has processed a total of eleven reissue requests that have cashed representing \$73,944.24.

Assuming all recently issued and reissued checks that remain un-cashed, a reserve of \$8,500 for tax liability incurred, and tax and administration services, there will be approximately \$225,000 remaining to redistribute to Harmed Investors.

If the Court approves the estimated tax liabilities, and checks expected to negotiate are segregated and reserved, KCC will distribute the net remaining funds, after deducting taxes, fees, and expenses of the tax administrator and fees and expenses of the fund administrator, to the 71 Harmed Investors that have cashed their distribution checks. KCC is prepared to make the proposed redistribution within two weeks of this Court ordering that it proceed.

Pursuant to the Distribution Plan, KCC has prepared and submitted to the Commission Staff a list of Eligible Distribution Fund Recipients and payment amounts to each (the "Payee

List”).<sup>3</sup> Each Eligible Distribution Fund Recipient will receive a *pro rata* share of the SEC v. Murdoch Fair Fund available for distribution. The payee List and the Affidavit have been reviewed by the undersigned Commission Counsel, who has no objections.

**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: October 24, 2018

Respectfully submitted,

/s/ Michael S. Lim

Michael S. Lim

Attorney for Plaintiff

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<sup>3</sup> The Final Payee List shall, upon request, be made available to the Court under seal.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2018, I caused the foregoing document to be electronically filed with the clerk of court for the U.S. District Court, Southern District of New York, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Michael S. Lim  
Michael S. Lim