

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
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Plaintiff,	:	
	:	
v.	:	
	:	
MYRON WEINER,	:	Civil Action No. 11-CV-05731
	:	Judge Dora Lizette Irizarry
Defendant.	:	Magistrate Judge Robert M. Levy
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**PLAINTIFF’S MOTION TO TRANSFER FUNDS TO THE DISTRIBUTION AGENT  
FOR DISBURSEMENT TO AUTHORIZED CLAIMANTS**

**INTRODUCTION**

1. The plaintiff Securities and Exchange Commission (“SEC” or the “Commission”) respectfully moves the Court to enter an Order (1) authorizing the Commission to transfer the funds being held by the SEC under the case name designation “*U.S. Securities and Exchange Commission v. Myron Weiner, et al.*, 11 CV 5731 (DLI-JO) (EDNY)” to the Court-appointed Distribution Agent, Analytics Consulting, LLC (“Analytics”) for distribution to Authorized Claimants<sup>1</sup> pursuant to the Plan of Distribution; and (2) directing Analytics to deposit these funds pursuant to Paragraph 32 of the Plan of Distribution and to distribute these funds in accordance with the terms of the Plan of Distribution. The Commission’s motion, if granted, will result in the disbursement of \$153,778.97, from the Commission’s account in this matter to Analytics for distribution to Authorized Claimants.

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<sup>1</sup> Capitalized terms are as defined in the Plan of Distribution.

2. The Commission filed a complaint against the defendant Myron Weiner (“Weiner” or “Defendant”) on November 22, 2011. In its complaint, the Commission alleged that Weiner sold eight (8) million shares of Spongetech Delivery Systems, Inc. (“Spongetech”) stock to the investing public in violation of the registration requirements of Section 5 of the Securities Act of 1933 (“Securities Act”). Weiner purchased the Spongetech shares from a Spongetech affiliate at a discounted price of five (5) cents, and then sold the shares into the public market less than three months later for 20 cents, for a profit of \$1,215,057.96. These transactions were not registered with the Commission, and these transactions did not satisfy any exemption from the registration requirements.

3. On December 19, 2011, the Court entered final judgment against Weiner making him liable for disgorgement of \$1,215,057.96, representing profits gained as a result of his conduct, together with prejudgment interest thereon in the amount of \$80,135, and a civil penalty in the amount of \$50,000 pursuant to Section 20(d) of the Securities Act [15U.S.C. § 77t(d)]. Pursuant to the final judgment, Defendant’s obligation of disgorgement, prejudgment interest, and civil penalty was deemed satisfied by the Internal Revenue Service’s (“IRS”) release to the Commission of \$1,345,192 of the funds seized by the IRS agents on or about June 13, 2011 pursuant to a Stipulation of Settlement entered into by Defendant on November 30, 2011 in a forfeiture proceeding before the Court. Pursuant to the final judgment, on April 16, 2012, the Commission received \$1,345,192 from the IRS, and that amount is currently being held by the Commission at the U.S. Department of the Treasury (“U.S. Treasury”) under the case name designation “SEC v. Myron Weiner” (these funds constitute the “Fair Fund”).

4. The Fair Fund constitutes a Qualified Settlement Fund (QSF) under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

5. On September 24, 2013, the Court appointed Damasco & Associates, LLP (Damasco/MKA)<sup>2</sup>, as Tax Administrator with respect to the funds which constitute the Fair Fund.

6. On March 26, 2015, the Court appointed Analytics as the Distribution Agent and established the Fair Fund.

7. On June 18, 2015, the Commission filed a motion requesting that the Court approve a plan of distribution, together with the plan of distribution (“Plan of Distribution”). On February 10, 2016, the Court granted the motion and approved the Plan of Distribution.

**Funds should be Transferred to Analytics for Distribution to Authorized Claimants**

8. Pursuant to Paragraph 30 of the Plan of Distribution, Analytics has provided a final payee list to the Commission staff<sup>3</sup> listing the names of Authorized Claimants, and the Eligible Loss Amount of each Authorized Claimant. There are 26 Authorized Claimants on the final payee list. The aggregate total Eligible Loss Amount of all approved Claims is \$153,778.97, the Net Available Settlement Fund<sup>4</sup> is \$1,345,192.00 and the *pro rata* is calculated

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<sup>2</sup> As of October 1, 2016, Damasco and Associates LLP became a part of Miller Kaplan Arase LLC. The firm’s engagement with the SEC and its ability to carry out its duties as appointed Tax Administrator for this case has not changed.

<sup>3</sup> The final payee list contains non-public information. As such, a “blind” redacted payee list is attached as part of this filing. The final payee list containing the non-public information is available separately to the Court upon request.

<sup>4</sup> The “Net Available Settlement Fund” means the Distribution Fund, plus accumulated interest and earnings thereon, less fees and costs of administering the Distribution Fund and implementing the Distribution Plan, and less any taxes that may be assessed against the Distribution Fund.

to 100%. The total amount of the payments to all Authorized Claimants on the final payee list is \$153,778.97. Analytics has submitted the Affidavit of Christopher Amon in support of this Motion, which provides a detailed explanation of the procedures that Analytics used to develop the list of Authorized Claimants (the “Affidavit”), filed herewith. Pursuant to Paragraph 30 of the Plan of Distribution, the staff of the Commission has reviewed the Affidavit and the final payee list, has no objections, and thus now moves the Court to transfer funds to Analytics for distribution pursuant to the Plan of Distribution.

9. Analytics is now in a position to distribute checks to the Authorized Claimants as defined in the Plan of Distribution. In order to do so, subject to the Court’s approval of this motion, and pursuant to Paragraph 32 of the Plan of Distribution, Analytics will establish an escrow account in the name of and bearing the Employer Identification Number of the Qualified Settlement Fund, as custodian for the distributees of the Plan of Distribution. The name of each account shall be “QSF, SEC v Myron Weiner with EIN No.xx-xxxxxxx,” as custodian for the benefit of investors allocated a distribution from the Plan of Distribution in “*U.S. Securities and Exchange Commission v. Myron Weiner, et al.*, 11 CV 5731 (DLI-JO) (EDNY)” (the “Distribution Fund Escrow Account”). Analytics will also establish a separate deposit account (e.g. controlled distribution account, managed distribution account, linking checking and investment account) titled as set forth above for the purpose of funding checks to be distributed to Authorized Claimants by Analytics pursuant to the Plan of Distribution. Accordingly, the Commission respectfully requests that the Court enter an order authorizing the Commission to transfer the funds being held by the SEC for this matter, in the amount of \$153,778.97 to Analytics for distribution to Authorized Claimants pursuant to the Plan of Distribution.

**WHEREFORE**, the Commission respectfully requests that this Court enter the attached

Proposed Order and grant such other relief as the Court deems just and proper.

Dated: Miami, Florida  
November 30, 2017

/s/ Sondra H. Panahi  
SONDRA H. PANAHI  
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**CERTIFICATE OF SERVICE**

I, Sondra H. Panahi, hereby certify that, on November 30, 2017, I caused a copy of the foregoing document to be filed with the Court's CM/ECF system, which will automatically send a copy of the document to all counsel of record, , and to the person listed below by First Class U.S. Mail on the 30<sup>th</sup> day of November 2017:

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/s/ Sondra H. Panahi  
Sondra H. Panahi