



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
ONE PENN CENTER
1617 JFK BLVD., STE. 520
PHILADELPHIA, PA 19103

October 13, 2022

BY ECF

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**RE: *Securities and Exchange Commission v. O'Rourke, et al.*, No. 19-CV-4137
(KAM)**

Dear Judge Matsumoto:

I am counsel for the Securities and Exchange Commission ("SEC") in the above-referenced case. I am filing this letter pursuant to section III.B.1 of your Honor's Chamber Practices to ask that the Court schedule a pre-motion conference to address the SEC's anticipated motion for an Order to Transfer Funds for Distribution. The SEC seeks this relief in accordance with paragraph 57 of the distribution plan approved by this Court (the "Plan", ECF No. 95), which provides that, upon the SEC staff's receipt of certain documents from the Distribution Agent, the SEC will petition the Court for authority to disburse the aggregate amount of Distribution Payments,¹ including any withholding amounts, to the Distribution Agent for distribution to Eligible Claimants pursuant to the Plan. The SEC has contacted defense counsel, both of whom have indicated that they do not object to the relief sought. In view of the nature of the relief sought and the lack of defense counsel objection to that relief, I have attached the proposed Order to Transfer Funds for Distribution and the Declaration of the Distribution Agent supporting the relief requested in the event that the Court determines a conference and/or motion practice unnecessary.

Background

By Complaint filed on July 17, 2019, the Commission alleged that, from approximately May 2016 through July 2018, Garrett O'Rourke ("O'Rourke") and Michael Black ("Black") (collectively, the "Defendants") schemed to sell the stock of AV1 Group, Inc., EnviroTechnologies International, Inc., and other publicly traded companies to investors through false and misleading statements and high pressure stock promotional campaigns. (ECF No. 1). The SEC also alleged that the defendants disguised their control over some or all of the

¹ Capitalized terms not defined herein are used as defined in the Plan.

companies and their stock, thereby circumventing their obligations to register the stock with the SEC pursuant to Section 5 of the Securities Act of 1933 and conduct sales in accordance with the governing registration regulations. The SEC charged the defendants, variously, with violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

The matter has been resolved against O'Rourke. By amended final order entered by consent on December 7, 2020, the Court ordered O'Rourke, among other things, to pay disgorgement and prejudgment interest aggregating to \$5,763,719. ECF No. 79. The SEC has collected this monetary relief in full and the collections are held in an interest-bearing account at the U.S. Treasury's Bureau of Fiscal Service (the "Distribution Fund"). Accrued interest is added to the Distribution Fund.²

On March 4, 2021, the Court appointed Miller Kaplan Arase LLP as the tax administrator for the Distribution Fund, and appointed JND Legal Administration as distribution agent to assist in overseeing the administration of the Distribution Fund pursuant to the Plan and related Court Orders. ECF No. 89. By Order dated May 26, 2021, the Court approved the Plan. ECF No. 95.

Relief Requested

The Plan provides that, upon the SEC's receipt, review, and acceptance of: 1) the Payee List; 2) the declaration attached hereto, providing, among other things, reasonable assurances about the accuracy and completeness of the Payee List; and 3) written confirmation of the Escrow Funds Pledge; the SEC will petition the Court for authority to disburse the aggregate amount of Distribution Payments, including tax withholding, to the Distribution Agent for distribution to Eligible Claimants pursuant to the Plan. Plan, ¶ 57. The SEC has received, reviewed, and accepted the referenced documents and, in accordance with the Plan, the SEC requests that the Court issue an Order to Transfer Funds for Distribution in the form attached.

Proposed Briefing Schedule

The SEC does not anticipate any objection or response from Defendants to this Motion. The SEC proposes to file its motion, with accompanying memorandum and proposed Order, by October 21, 2022, after which the Defendants have until October 28, 2022, to file any opposition. The SEC will file any reply by November 4, 2022.

² The matter is still pending with respect to Black and the SEC likely will seek to add any additional collections in this matter to the Distribution Fund if received before the Distribution Fund is terminated. Moreover, the SEC anticipates that collections in related SEC enforcement actions, if timely, may be directed to the Distribution Fund for distribution.

Conclusion

The Commission respectfully requests that the Court, if appropriate, schedule a telephonic pre-motion conference at which to discuss this request.

Respectfully submitted,

s/Catherine E. Pappas
Catherine E. Pappas
Senior Adviser
Securities and Exchange Commission
Admitted Pro Hac Vice, ECF No. 82
215-597-0657
pappasc@sec.gov

cc: Roland Riopelle (counsel for defendant O'Rourke) via ECF
Marc Nurik (counsel for defendant Black) via email, marc@nuriklaw.com

Att: Proposed Order
Declaration of Distribution Agent

Attachment 1 (Proposed Order)

Attachment 2 (Declaration of Distribution Agent)

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**GARRETT O'ROURKE and
MICHAEL J. BLACK,**

Defendants.

Case No.: 19-CV-4137 (KAM)

Declaration of Luiggy Segura

I, Luiggy Segura, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am a Vice President of Operations for JND Legal Administration (“JND” or “Distribution Agent”), the Court-appointed Distribution Agent in the captioned action (the “Distribution Fund”). I submit this Declaration in support of the Securities and Exchange Commission's (the "SEC") Motion for an Order to Transfer Funds for Distribution.

2. The following statements are based on my personal knowledge and information provided to me by other experienced JND employees working under my supervision. If called to testify regarding the facts in this declaration, I could do so competently.

PREPARATION AND MAILING OF THE CLAIM PACKET

3. Beginning on July 12, 2021, JND mailed over 15,400 copies of the Claims Packet:¹ a) to the Distribution Agent’s list of banks, brokers, and other nominees; b) to other institutions and individuals identified by the Distribution Agent’s outreach process that may have records of, or may be, Potential Claimants; and c) in fulfillment of various Claims Packet requests received.

¹Capitalized terms used but not defined in this Declaration are used as defined in the Plan of Distribution. The Plan of Distribution is available at www.OrourkeDistributionFund.com.

4. JND established a website at www.OrourkeDistributionFund.com, operational as of April 20, 2021; a toll-free number, operational as of March 29, 2021; and a dedicated email address, operational as of April 1, 2021.

5. Beginning on July 16, 2021, within five (5) days of the initial mailing of the Claims Packets, JND caused the Summary Notice to be published on PR Newswire once a week for three consecutive weeks.

6. JND attempted to locate anyone whose Claims Packet was returned and re-mailed the Claims Packet to those located.

PROCEDURES FOLLOWED IN ACCEPTING AND REJECTING CLAIMS

7. In accordance with the Plan, the Claims Bar Date was set at one hundred twenty days from the initial mailing of the Claims Packet, or November 9, 2021.

8. JND reviewed Claim Forms for eligibility under the Plan, including for exclusion as Excluded Parties in accordance with paragraph 5(m).

9. In accordance with the Plan, paragraphs 42-44, JND issued Determination Notices to all Potential Claimants who filed Claim Forms, setting forth its conclusions concerning their claim and alerting those with deficient or denied claims to the deficiency or basis for denial. Potential Claimants who submitted deficient or denied claims were given thirty days in which to cure the deficiency or seek reconsideration of the denial. The Distribution Agent sent Final Determination Notices to all Potential Claimants who responded to the Determination Notice in an attempt to cure a deficiency or to seek reconsideration of a rejected claim.

DISPOSITION OF CLAIMS

10. JND received a total of 426 Claim Forms. Applying the *de minimis* provision discussed in paragraph 20 of the Plan, JND determined that 264 of the claims submitted are eligible for a Distribution Payment, with an aggregate Eligible Loss Amount of \$4,277,379.40.

11. Upon consultation with the Tax Administrator, JND has determined that a reserve of \$58,500.00 for administrative fees, expenses, and taxes is necessary to complete the distribution (the “Reserve”).

12. As of August 30, 2022, the Distribution Fund holds \$5,648,601.44. After offsetting the Reserve, the Net Available Distribution Fund holds \$5,590,101.44.

13. In accordance with the Plan, paragraph 49, JND has established an Escrow Account and a Deposit Account at The Huntington National Bank, N.A. (the “Bank”).

14. JND has prepared the payee information in accordance with paragraph 54 of the Plan (the “Payee List”) along with this Declaration. The Payee List: (a) was compiled in accordance with the Plan; (b) is accurate as to Eligible Claimants’ names, addresses, and Eligible Loss Amounts; and (c) provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment and tax withholding, as applicable, for each Eligible Claimant. JND has further obtained the Pledge Notice from the Bank in accordance with the Plan, paragraphs 56 and 58.

15. As provided in the Plan, because the Net Available Distribution Fund exceeds the sum of the Eligible Loss Amounts of all Eligible Claimants, each Eligible Claimant will receive a Distribution Payment equal to the amount of his, her, or its Eligible Loss Amount plus an additional amount to compensate each Eligible Claimant for the time value of their respective Eligible Loss Amount (“Reasonable Interest”). Reasonable Interest was calculated by the SEC and provided to

the Distribution Agent for each relevant security, using the Short-Term Applicable Federal Rate

20. JND will use its best efforts to locate and reissue checks or payments to Eligible Claimant plus three percent (3%), compounded quarterly from the respective Relevant Period End Date

reflected on Exhibit A of the Plan through September 30, 2022, the approximate date of disbursement. The Distribution Agent applied the appropriate Reasonable Interest to each security on which the Eligible Claimant had a Recognized Loss, consulted with the Tax Administrator concerning tax withholding amounts, and determined each Eligible Claimant's Distribution Payment amount.

16. The Payee List is comprised of 264 Eligible Claimants with Distribution Payments comprised of their Eligible Loss Amount plus Reasonable Interest, less any withholding amount to be directed to state or federal tax authorities. Eligible Claimants' Eligible Loss Amounts aggregate to \$4,277,379.40; Reasonable Interest aggregates to \$789,762.81; and tax withholding aggregates to \$3,889.16. The total amount to be transferred to the Escrow Account, comprised of Distribution Payments and withholding amounts, is \$5,067,142.21.

17. The Distribution Agent has confirmed that none of the 264 Eligible Claimants are precluded from payment under the Office of Foreign Assets Control sanctions list.

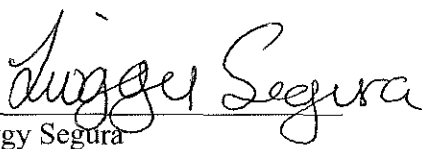
18. Upon the transfer of the funds into the Escrow Account, JND will use its best efforts to commence mailing Distribution Payment checks and effect wire transfers within fifteen (15) business days.

19. All funds shall remain in the Escrow Account, separate from Bank assets, until needed to satisfy a presented check or issue a wire. All checks presented for payment will be subject to "positive pay with payee verification" controls before being honored by the Bank.

20. JND will use its best efforts to locate and reissue checks or payments to Eligible Claimant whose checks are not delivered and will perform outreach on uncashed checks or returned wires.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2022 in New Hyde Park, New York.


Luiggy Segura
Vice President - Operations

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GARRETT O'ROURKE and
MICHAEL J. BLACK,

Defendants.

Case No.: 19-CV-4137 (KAM)

(Proposed) Order to Transfer Funds for Distribution

The Court having reviewed the Securities and Exchange Commission's (the "SEC") Motion for an Order to Transfer Funds For Distribution and all accompanying papers, including the Declaration of Luiggy Segura, Vice President of Operations for the Distribution Agent, JND Legal Administration (the "Distribution Agent");

AND having reviewed any related filings;

AND the Distribution Agent having provided to the SEC a Payee List, Declaration, and Pledge Notice in accordance with the plan of distribution approved by this Court (the "Plan");

AND having considered all arguments presented and for good cause shown;

IT IS HEREBY ORDERED that:

1. In accordance with directions to be provided to the SEC staff by the Distribution Agent appointed in this matter, the SEC shall transfer \$5,067,142.21 for deposit into the escrow account established by the Distribution Agent at The Huntington National Bank; and

2. The Distribution Agent shall distribute those funds to Eligible Claimants in accordance with the Plan.

Dated: _____, 2022

Kiyo A. Matsumoto
U.S. District Judge