



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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PHILADELPHIA, PA 19103

October 25, 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. This letter is responsive to the Docket Order dated October 21, 2022, in which the Court seeks clarification of the amount sought to be transferred for distribution. The amount set forth in the proposed Order (ECF No. 102-1), \$5,067,142.21, is correct for the reasons set forth below. In sum, that amount, which is less than the total amount ordered and paid by Mr. O'Rourke, is the amount required to fully compensate all claimants with approved claims under the distribution plan as approved by this Court (ECF No. 95, the "Plan").

As set forth in the attached (revised) Declaration ("Declaration"),¹ the Distribution Agent received a total of 426 completed Claim Forms². Declaration ¶ 10. After reviewing Claim Forms in accordance with the Plan, and providing to claimants the opportunity to supplement their submissions and/or request reconsideration of their claims through the determination process described in paragraphs 42-46 of the Plan, the Distribution Agent denied 161 claims because the claimant failed to establish a Recognized Loss under the Plan, and 1 claim after applying the *de minimis* provision discussed in paragraph 20 of the Plan. Declaration, ¶¶ 9-10.

In total, 264 of the claims submitted are eligible for a Distribution Payment, with an aggregate Eligible Loss Amount of \$4,277,379.40. Declaration, ¶ 10. After offsetting a reserve for administrative fees, expenses, and taxes, the Net Available Distribution Fund holds \$5,590,101.44. Declaration ¶ 12. Because the Net Available Fair Fund exceeds the aggregate

¹ The attached Declaration is similar to that filed in connection with the staff's October 13, 2022 letter (ECF 102), but has been revised to include, in paragraph 10, the statistics in this paragraph; and to correct a .pdf conversion issue in paragraph 15 of the Declaration of Distribution Agent previously filed (ECF 102-2).

² Capitalized terms used in this document but not defined are used as defined in the Plan.

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 them for the time value of their respective Eligible Loss Amount (“Reasonable Interest”). Declaration ¶ 15, Plan ¶19. The resulting Payee List is comprised of 264 Eligible Claimants with an aggregate Eligible Loss Amount of \$4,277,379.40 and Reasonable Interest of \$789,762.81, requiring the transfer of \$5,067,142.21 for distribution. Declaration ¶ 16.

Consistent with the Plan, ¶ 82, the SEC anticipates applying to the Court after the completion of distribution(s) to send any residual to the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act. Equity recognizes that, if distribution to a victim is not feasible, disgorged funds may be deposited with the Treasury. *SEC v. Spartan Secs. Gr., Ltd.*, 19-cv-448-VMC-CPT, ___ F. Supp. 3d ___, 2022 WL 3224008, at *9-10 (M.D. Fla. Aug. 10, 2022). That is the appropriate course in this case because the total amount paid by Mr. O’Rourke exceeds the amount necessary to fully compensate Eligible Claimants for the harm suffered. *See SEC v. Macquarie Capital, LLC*, 15-cv-02304-DLC (S.D.N.Y. 2021) (ECF Nos. 35-37, investors fully compensated and residual directed to the U.S. Treasury); *SEC v. Buck*, 17-cv-03984-JRS-TAB (S.D. Ind., April 2021) (ECF Nos. 16-17, investors fully compensated and residual directed to the U.S. Treasury).

Respectfully submitted,

s/Catherine E. Pappas
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Securities and Exchange Commission
Admitted Pro Hac Vice, ECF No. 82
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Att: (Revised) Declaration of Luiggy Segura (October 25, 2022).

cc: Counsel via ECF

**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 completed Claim Forms. After reviewing in accordance with the Plan and application of the deficiency process described in the prior paragraph, JND denied 161 of those claims because the claimant failed to establish a Recognized Loss under the Plan, and 1 claim after applying the *de minimis* provision discussed in paragraph 20 of the Plan. JND has determined a total of 264 of the claims submitted to be 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 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.

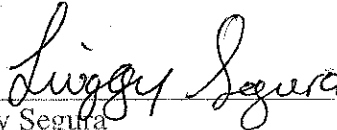
18. Upon the transfer of the funds into the Escrow Account, JND will use its best efforts to commence mailing Distribution Payment checks and effect wire transfers within fifteen (15) business days.

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 October 25, 2022 in New Hyde Park, New York.



Luiggy Segura
Vice President - Operations