

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

EVOQUA WATER TECHNOLOGIES CORP.
AND IMRAN PAREKH,

Defendants.

Civil No. 1:23-cv-00105-MSM-PAS

**PLAINTIFF’S MOTION FOR AN ORDER APPOINTING A DISTRIBUTION AGENT
AND AUTHORIZING THE SEC TO APPROVE PAYMENTS OF FEES AND
EXPENSES OF THE DISTRIBUTION AGENT WITHOUT FURTHER COURT ORDER**

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) respectfully moves this Court for an Order: (i) appointing Analytics Consulting LLC (“Analytics”) as distribution agent (“Distribution Agent”) for the Fair Fund, and (ii) authorizing the Commission to approve and arrange for payment of fees and expenses of the Distribution Agent from the Fair Fund without further Court order. The Commission submits a proposed order contemporaneously herewith.

Background

On March 13, 2023, the SEC filed its Complaint against Evoqua Water Technologies Corporation (“Evoqua”) and Imran Parekh (“Parekh”) (collectively, “Defendants”). [Dkt. No. 1]. According to the Complaint, from at least the fourth quarter of 2016 through August 2018, Parekh, as the Finance Director of one of Evoqua's divisions, engaged in fraudulent accounting practices that resulted in Evoqua improperly reporting materially false revenue amounts in its financial statements filed with the Commission. The SEC's complaint alleged that Parekh

inflated the revenue Evoqua reported quarterly and at year-end by counting revenue from sales much earlier than accounting principles permitted. The complaint alleged that Parekh improperly accounted for so-called "bill-and-hold" transactions, for which Evoqua recognized revenue from the sale of filtration products earlier than permitted and without meeting the criteria found in accounting principles to be able to immediately recognize the revenue.

The complaint further alleged that negligent conduct at Evoqua's corporate level in managing the financial reporting and accounting controls processes facilitated Parekh's improper accounting practices. As a result of the fraudulent scheme, the complaint alleges, Evoqua improperly reported nearly \$12 million of additional expected revenue for its fiscal year 2017 in its registration statement and its initial public offering (IPO) Prospectus filed with the Commission; that the misconduct continued through Evoqua's first year as a public company, resulting in inaccurate books and records and material misstatements of Evoqua's financial condition in subsequent filings with the Commission; and that by failing to disclose to investors (or in filings with the Commission) that Evoqua reported uncompleted sales as revenue by misapplying bill-and-hold accounting criteria, Evoqua misled investors and potential investors about the true financial picture of the company.

Evoqua consented to the entry of a final judgment, which the Court entered on July 10, 2023, that permanently enjoined it from violating the antifraud provisions of Section 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act"), along with the periodic reporting, books and records, and internal controls provisions of the Securities and Exchange Act of 1934 ("Exchange Act"). Among other things, the final judgment also ordered Evoqua to pay a civil penalty of \$8.5 million. [Dkt. No. 11].

Parekh consented to the entry of two separate judgments against him (together with the judgment entered against Evoqua, the “Final Judgments”). The first judgment, entered by the Court on July 10, 2023, permanently enjoined him from violating the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10(b)(5) thereunder; from aiding and abetting the periodic reporting, books and records, and internal controls provisions of the Exchange Act; and from knowingly circumventing an issuer's system of accounting controls or knowingly falsifying an issuer's books and records in violation of the Exchange Act. [Dkt. No. 10]. The second judgment, entered by the Court on March 15, 2024, among other relief, ordered Parekh to pay disgorgement of \$5,489; prejudgment interest of \$1,342; and a civil penalty of \$40,000. [Dkt. No. 13].

Defendants have made full payment to the Commission. The funds are being held in an SEC-designated account with the United States Department of the Treasury.

On May 20, 2024, the Court established a Fair Fund so that the penalties, disgorgement and prejudgment interest collected can be distributed to harmed investors. [Dkt. No. 16]. On the same day, the Court appointed Miller Kaplan Arase LLP as Tax Administrator for the Fair Fund. *Id.*

A. The Court Should Appoint Analytics as Distribution Agent

The Commission requests an Order appointing Analytics as the Distribution Agent for the Fair Fund to facilitate the development of a distribution plan and the ultimate handling of any distribution in this case. If appointed, Analytics will work with the Commission’s staff in formulating a distribution plan and obtaining the Court’s approval of the plan, as well as determining the identities of injured investors and investor harm, establishing a claims process to evaluate and verify claims, fielding inquiries from investors and overseeing the ultimate

distribution of the Fair Fund. Once a distribution plan is approved, Analytics will submit quarterly progress reports to the Commission staff. In addition, Analytics will account to the Commission staff for all monies in the Distribution Fund, including the status of all distribution payments. When the distribution of funds has been completed, a final accounting report in a format to be provided by Commission staff will be submitted for court approval.

Analytics is well-qualified for the tasks required of a distribution agent and will be fair, efficient, cost-effective, and timely in its efforts. Analytics has over 50 years of experience in the administration and distribution of securities class action cases and has handled numerous large distributions for the Commission in the past. Analytics has extensive experience in drafting and finalizing distribution plans, defining eligibility and the measure of damages, collecting, and validating information from claimants, remitting payments and handling all related audit, review and reporting processes.

B. The Court Should Authorize the Commission to Pay Distribution Agent Fees and Expenses

To make timely payment to the Distribution Agent for services provided, the Commission further requests that the Commission staff be authorized to approve and arrange for payment of fees and expenses of the Distribution Agent from the Fair Fund without further Court order. The Commission staff follows a rigorous process for reviewing and approving invoices before payment is made. The Commission's Office of Distributions requires and reviews, in a multi-step process, detailed invoices from the Distribution Agent that describes the work performed, the billing rate, and the time expended on each task. If the Court authorizes the Commission staff to approve and arrange for payment of all future Distribution Agent fees and expenses from the Fair Fund without further Court order, the Commission staff will use its expertise in distributions and knowledge of this specific distribution to review all proposed charges. The

SEC staff will approve and arrange for payment only of appropriate and properly documented fees and expenses of the Distribution Agent. All payments of Distribution Agent fees and expenses will be reported to this Court in the final accounting of the Fair Fund once the distribution is complete.

WHEREFORE, for all the foregoing reasons, the SEC respectfully requests that this Court enter the attached proposed Order and grant such other relief as the Court deems just and proper.

Dated: June __, 2024

Respectfully submitted,

s/ Amy A. Sumner

Amy A. Sumner
Attorney for Plaintiff
Securities and Exchange Commission
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
Telephone: (303) 844-1089
Facsimile: (303) 295-0538
Email: sumnera@sec.gov

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**ORDER APPOINTING A DISTRIBUTION AGENT AND AUTHORIZING THE SEC TO
APPROVE PAYMENTS OF FEES AND EXPENSES OF DISTRIBUTION AGENT
WITHOUT FURTHER COURT ORDER**

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (“Commission” or “SEC”) to Appoint a Distribution Agent and Authorize the SEC to Approve Payments of Fees and Expenses of the Distribution Agent without Further Court Order (the “Motion”) and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is GRANTED.
2. Analytics Consulting LLC. (“Analytics”) is appointed Distribution Agent for the Fair Fund to assist in overseeing the administration and the distribution plan to be approved by this Court. Analytics shall coordinate with the Court-appointed Tax Administrator, Miller Kaplan Arase LLP, to ensure that the Fair Fund, a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations, 26 C.F.R. §§ 1.468B-1 through 5, complies with all related legal and regulatory requirements, including but not limited to, satisfying any reporting or withholding requirements imposed on distributions from the QSF.

3. Analytics may be removed *ua sponte* at any time by the Court or upon motion of the Commission and replaced with a successor. In the event Analytics decides to resign, it will first give written notice to the Court and to the Commission's counsel of such intention, and the resignation, if permitted, will not be effective until the Court appoints a successor.

4. The Commission is authorized to approve and arrange payment of all fees and expenses of the Distribution Agent directly from the Fair Fund without further order of this Court. All payments of the fees and expenses of the Distribution Agent shall be reported to the Court in a final accounting.

IT IS SO ORDERED.

Dated:

United States District Court Judge