

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	Case No. 1:09-cv-01906
	:	(JSG)
v.	:	
	:	
BRANTLEY CAPITAL MANAGEMENT, LLC et al.	:	
	:	
Defendants.	:	
	:	

**MOTION TO AUTHORIZE A SECOND DISTRIBUTION TO CERTAIN
ELIGIBLE CLAIMANTS**

The Securities and Exchange Commission (“Commission”) respectfully requests that the Court enter an order authorizing the Distribution Agent to conduct a second distribution from the approximately \$104,280.29 remaining in the Distribution Fund to certain Eligible Claimants.¹

Background

The Commission filed its Complaint against Brantley Capital Management, LLC (“Brantley Capital”), Robert Pinkas (“Pinkas”), and Tab Keplinger (“Keplinger”) on August 13, 2009 (DE1). By order dated October 13, 2009, the Court entered Final Judgment as to Keplinger pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. (DE 15). Pursuant to the Final Judgment, Keplinger paid \$50,000 to the Commission, who remitted the funds to the United States Treasury. By separate orders dated September 28, 2010, the Court entered Final Judgments as to Brantley Capital and Pinkas

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Distribution Plan approved by the Court.

(DE 56 and DE 57). The judgment against Brantley Capital did not include a monetary liability. Pursuant to the judgment against him, Pinkas paid a total of \$957,729 in disgorgement, prejudgment interest, and civil penalty to the Clerk of this Court (the “Distribution Fund”).

On May 15, 2013, the Commission moved the Court to create a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the purpose of distributing the money paid by Pinkas to injured investors. The Commission also requested that the Court appoint Epiq Systems Class Action & Claims Solutions (“Epiq”) as the Distribution Agent (DE 73). Subsequently, on July 8, 2013, the Commission filed a motion requesting the Court approve a plan to distribute the Distribution Fund to Eligible Claimants (the “Distribution Plan”) (DE 77). By separate orders dated July 29, 2013, the Court granted the Commission’s motions by establishing a Fair Fund and appointing Epiq to serve as the Distribution Agent for the Distribution Fund (DE 80) and approving the Distribution Plan with a slight modification to Paragraph 6.2. Pursuant to this paragraph, Brantley may seek reimbursement of its expenses associated with the investigation once all of the distribution payments have been distributed as ordered by the Court (DE 81).

On December 1, 2014, the Court entered an order that, among other things, transferred the Distribution Fund to the Distribution Agent for disbursement to Eligible Claimants (DE86). Pursuant to this order, on or about January 8, 2015, a total of 583 claims were paid by check or wire totaling \$835,231.09 (“Initial Distribution”).

After the Initial Distribution, Epiq monitored the status of all payments issued and attempted to follow-up with Eligible Claimants who did not negotiate their payments.

Overall, thirty-six (36) payments totaling \$104,280.29 were not negotiated.

Second Disbursement of the Distribution Fund

The Distribution Plan does not contemplate a second distribution. As provided in Paragraph 4.30 of the Distribution Plan, if any funds remain in excess of the reserve for taxes, fees and expenses after the distribution to Eligible Claimants occurs, any excess funds shall be paid to the Commission for transfer to the United States Treasury. Since approximately \$104,280.29 remains in the Distribution Fund, the Distribution Agent has indicated in its Affidavit that it believes a second distribution is feasible after taking into account a reserve for taxes, and fees and expenses of the Tax Administrator and Distribution Agent. Therefore, the Commission requests and the Distribution Agent recommends that the Court authorize a distribution of the residual funds to the 243 Eligible Claimants who negotiated their Initial Distribution payment and who will receive at least the Minimum Distribution Amount of \$10. Based on estimated figures from the Distribution Agent, if this distribution occurs, Eligible Claimants will receive an additional 2.2% of their total recognized loss, bringing the maximum total recovery to 67%.²

The proposed terms of the second distribution are as follows:

- The distributable amount will consist of the remaining funds in the Distribution Fund less a reserve of \$8,128.79 for taxes and Tax Administrator fees and expenses plus \$14,286.00 for Distribution Agent fees and expenses as provided in the Affidavit.

² This percentage also reflects any funds received in the related class action.

- Only Eligible Claimants who received a disbursement from the Distribution Fund and who negotiated payment will be eligible to receive a distribution. All disbursements will be *pro rata* and the Minimum Distribution Amount will be \$10.00.
- All checks will bear the notation “VOID IF NOT NEGOTIATED WITHIN 60 DAYS.” Checks that are not negotiated within this period will be voided and the issuing financial institution will be instructed to stop payment on those checks. Where an Eligible Claimant’s check has not been negotiated within the sixty (60) day period and has been voided, that Eligible Claimant’s claim will be extinguished upon the occurrence of the stale date and all such funds will remain in the Distribution Fund.
- After the second distribution occurs, if determined by the Distribution Agent and Commission staff to be cost effective, the Distribution Agent will be authorized to conduct further distributions of any remaining funds in the Distribution Fund to Eligible Claimants who negotiated their previous payment.
- Upon final distribution of payments, the Commission will file a motion with the Court for the disposition of all remaining funds in accord with paragraphs 4.30 and 6.2 of the Distribution Plan.
- All other terms and conditions of the Distribution Plan will remain in full effect to the extent applicable.

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

Dated: May 6, 2016

Respectfully submitted,

/s/ Nancy Chase Burton
Nancy Chase Burton (CO Bar # 10615)
Attorney for Plaintiff
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5876
Telephone: (202) 551-4425
Facsimile: (703) 772-9363
Email: burtonn@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2016, a copy of the foregoing Plaintiff Securities and Exchange Commission's Motion to Authorize a Second Distribution to Certain Eligible Claimants and its accompanying proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

s/ Nancy Chase Burton
Nancy Chase Burton