

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

DAVID RONALD ALLEN, et al.,

Defendants.

**Civil Action No.
3:11-CV-882-O**

**SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR AN ORDER
CONSOLIDATING FUNDS, DIRECTING FINAL JUDGMENT PAYMENTS
TO THE SEC, APPROVING A DISTRIBUTION PLAN,
AND APPOINTING A DISTRIBUTION AGENT**

The Plaintiff Securities and Exchange Commission (the “SEC”) respectfully moves this Court for an Order consolidating funds; directing final judgment payments to the SEC; approving the SEC’s plan to distribute funds under its jurisdiction in this matter, including accrued interest; and appointing Catherine E. Pappas, an SEC employee, as the Distribution Agent (the “Motion”). By the Motion, the SEC seeks an Order facilitating the distribution of approximately \$1.1 million, less administrative costs, to claimants previously identified by the Court-appointed receiver (the “Receiver”), using the Court-approved methodology underlying the Receiver’s prior distribution.

Wherefore, for the reasons set forth in the accompanying memorandum and related papers, the SEC seeks entry of the proposed judgment submitted with this Motion.

Dated: August 7, 2019

Respectfully submitted,

s/Catherine E. Pappas

Catherine E. Pappas

PA Bar No. 56544

Securities and Exchange Commission

One Penn Center

1617 JFK Blvd., Ste. 520

Philadelphia, Pa. 19103

Tel: (215) 597-0657

Fax: (215) 597-2740

Email: pappasc@sec.gov

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**SECURITIES AND EXCHANGE COMMISSION'S
CERTIFICATE OF INABILITY TO
CONFER PURSUANT TO LOCAL RULE 7.1 WITH ATTACHED INVESTOR NOTICE**

Pursuant to Local Rule 7.1(b)(3), the Securities and Exchange Commission (“SEC”) respectfully submits this Certificate explaining why it did not confer with an attorney for each party affected by the requested relief to determine whether the motion is opposed. Although not officially “parties,” the requested relief arguably affects some or all of the persons or entities identified by the Court-appointed Receiver as claimants (“Identified Claimants”) and it was impracticable for counsel for the SEC to confer with each.

By way of further information, prior to the filing of the accompanying Motion, the SEC sent notice in the form of the Attachment to this Certificate (the “Investor Notice”) to the last known addresses of the Identified Claimants. The Investor Notice, among other things, informed Identified Claimants of the SEC’s intent to recommend to the Court a second distribution that will use the claim determinations and distribution methodology previously approved by this Court, identified a public website on which the SEC will post its filings in this case and any other

updates, and requested completion of a Questionnaire that, among other things, sought confirmation of Internet access. The SEC will send a copy of the Motion and accompanying papers to those Identified Claimants who responded to the Investor Notice that they do not have access to the Internet, but the SEC will otherwise rely on its posting of the filing on the public website as notice to investors of the filing of the Motion.

Dated: August 7, 2019

Respectfully submitted,

s/Catherine E. Pappas
Catherine E. Pappas
PA Bar No. 56544
Securities and Exchange Commission
One Penn Center
1617 JFK Blvd., Ste. 520
Philadelphia, Pa. 19103
Tel: (215) 597-0657
Fax: (215) 597-2740
Email: pappasc@sec.gov

Att: Investor Notice (with attachments A & C, but omitting Exhibit B (Dkt. No. 331))

Attachment to Local Rule 7.1 Certification
(Investor Notice with Attachments A and C only)

UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE
COMMISSION,

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3:11-CV-882-O

INVESTOR NOTICE

TO:

INVESTOR NAME:
INVESTOR NUMBER:

PLEASE READ THIS INVESTOR NOTICE IN ITS ENTIRETY

You are receiving this notice because the Investor set forth in the subject line above (“Investor”) has been identified as a claimant by the Receiver appointed by the Court (the “Receiver”) in the captioned action. If you are not the Investor, you have been identified as the contact for the Investor. By this Notice, the Securities and Exchange Commission (the “SEC”) is informing you of a possible second distribution in this matter and seeking from you certain information (*see* Exhibit A) that you must provide in order to be considered for a distribution. **Your receipt of this Investor Notice and/or your provision of the requested information DOES NOT mean that the Investor will receive a distribution; that determination will be made if and when the Court approves a distribution, in the manner approved by the Court.**

BACKGROUND AND A POSSIBLE SECOND DISTRIBUTION

By way of background, in 2011 the SEC filed the captioned action in the U.S. District Court for the Northern District of Texas (Dallas Division) against China Voice Holding Corp. (“China Voice”), David Ronald Allen, William F. Burbank IV, and multiple other defendants and relief defendants, alleging that Allen, Burbank, and China Voice engaged in a series of false

and misleading statements and material omissions to investors about China Voice's financial condition. You can access the amended complaint here:

<https://www.sec.gov/litigation/complaints/2011/comp22006.pdf>

In January 2012, the Court established a receivership estate comprised of the assets of the defendants and the relief defendants and appointed the Receiver. Pursuant to a claims process, the Receiver identified over 130 claimants to the receivership. The Receiver recommended to the Court, and the Court approved, a plan of distribution setting forth the methodology by which the Receiver would determine which of the identified claimants would receive a distribution ("Receiver's Plan"). A copy of the Receiver's Request for First Interim Distribution (Dkt. No. 331) is attached as Exhibit B. Pursuant to the Receiver's Plan, the Receiver distributed approximately \$995,000 to ninety-four (94) investors. The Court has since terminated the receivership and the Receiver has transferred all remaining assets to the SEC.

The SEC now holds over \$1 million that it hopes to distribute. To this end, the SEC intends to recommend to the Court a second distribution that will use the methodology and claims determinations previously approved by the Court in connection with the Receiver's Plan.¹ See Exhibit C, pp. 9-12.

You will be able to view updates, including the SEC's filings with respect to a second distribution and any Court Orders regarding the same, at the following public website:

<https://www.sec.gov/divisions/enforce/claims/china-voice-holding.htm>

INFORMATION REQUIRED FROM YOU IN ORDER FOR THE INVESTOR TO BE CONSIDERED IN CONNECTION WITH A SECOND DISTRIBUTION

The Investor information provided to the SEC by the Receiver, such as the full name, address, and IRA custodian for identified claimants, may not be current. To ensure that any distribution is properly directed, you **MUST** fully complete and sign the Questionnaire attached as Exhibit A and return it to the address set forth below **no later than June 12, 2019**. If the information that you supply on the Questionnaire changes after you submit it to the SEC, please promptly provide the new information to the SEC at the address set forth below. **Failure to return the completed and executed questionnaire by June 12, 2019 may result in a determination that the Investor is ineligible to receive a distribution payment.**

Securities and Exchange Commission
Catherine E. Pappas, Esq.
c/o Office of Distributions
100 F Street, N.E.
Mail Stop 5876
Washington, D.C. 20549

Alternatively, you may submit the completed and signed Questionnaire by email to:

¹ Under the SEC's proposal, there will be no new claims process; the SEC will use the claim determinations made by the Receiver and approved by the Court.

ENFOfficeofDistributions@sec.gov

Please include “*SEC v. Allen*, 3:11-CV-882-O (N.D. Tx.)” in the subject line of the email and, **FOR YOUR PROTECTION**, please **email the completed and executed Questionnaire in encrypted form**, such as by saving it as a password protected .pdf file and attaching it to your email, and sending the password in a **separate** electronic mail. If you have any doubts about your ability to send the email securely, please return the Questionnaire to the SEC by mail as described above.

Failure to return the completed and executed questionnaire by June 12, 2019 may result in a determination that the Investor is ineligible to receive a distribution payment.

TAX CONSEQUENCES OF DISTRIBUTION PAYMENTS

Attached as Exhibit C is a document entitled “Tax Consequences of Distribution Payments” that provides a description of potential tax consequences if you are determined eligible for a distribution. Please retain this document and, if you receive a distribution, provide it to your tax professional or review it if you prepare your own taxes. Please note that the information set forth in Exhibit C is not, and should not be relied upon as tax advice; you should consult your tax adviser as to the specific tax consequences of a distribution to you.

Dated: May 13, 2019



Catherine E. Pappas, Esq.
Senior Adviser
Securities and Exchange Commission

Att:

Exhibit A: Questionnaire with included Reissue Non-IRA Distribution Form
Exhibit B: Docket No. 331, Receiver’s Request for First Interim Distribution
Exhibit C: Tax Consequences of Distribution Payments

EXHIBIT A

QUESTIONNAIRE

(Please carefully review the directions, fill out completely, sign and return to the SEC)

1. Name and Contact information of Person Signing Below:

Full Name:

Address:

Phone Number:

Email Address:

Relation to Investor:

2. Investor Information (the precise name of the person or entity to which a distribution should be directed, i.e. the payee on the check.) If you provide below a name different from the Investor identified on the first page of the Investor Notice, **YOU MUST** provide documentation for the change, such as a marriage license if the change is to a married name; proof of death and beneficiary if the change is due to an Investor's death; and proof of dissolution and beneficiary if a Trust has been dissolved. **If the Investor on the Investor Notice is an IRA account and you are seeking a distribution directly to you as opposed to the identified, or a different, IRA account**, you must also return the attached "Reissue Non-IRA Distribution Form" completed and executed.

Investor/ Distribution Payee Name:

Investor/ Distribution Payee Social Security or Tax Identification Number:

Investor Address and Contact Information (if different than that in 1. above):

Contact and Address:

Phone Number:

Email Address:

3. IRA/ 401K/ Defined Benefit Plan Information.

You MUST complete this section if you are seeking payment to an IRA, 401K, Defined Benefit Plan. The Custodian holds the account for your benefit, and any payment will be directed to the custodian for your benefit. Examples of some custodians: Equity Trust Company, Quest Trust Company, IRA Plus-Southwest, LLC, Charles Schwab, etc.

Custodian Name: _____

Custodian Tax Identification Number: _____

Custodian Contact Name and Phone number: _____

Account Name (e.g. fbo John Smith IRA Acct No. 33382A)

4. I do do not (check one) have access to the Internet and can cannot **(check one)** access <https://www.sec.gov/divisions/enforce/claims/china-voice-holding.htm> for notifications regarding any distribution in this matter.

Date: _____, 2019

Signature: _____

Printed Name: _____

Reissue Non-IRA Distribution Form
(Complete if you invested through an IRA Account but are seeking to have the Distribution Paid Directly to you and not to an IRA Account)

This form is being provided in connection with a possible addition distribution in *SEC v. Allen*, 3:11-CV-882-O (N.D. Tx.). After reviewing the information on this form, complete section A and sign your request below under section B.

Return delivery options:

- Follow the directions in the Investor Notice

A. Account Holder Information:				
Account Holder Name (First, M.I., Last)	/ / Date of Birth			
Street Address (Physical Address)	APT #	City	State	ZIP
- - Social Security Number	State of Residence			

B. SIGNATURE – I understand that there is 20% federal tax withholding required on this distribution, and depending on my state of residency, I may also be subject to state tax withholding. I understand that I will receive IRS Form 1099-R reporting this amount. I hereby affirm that the information given is true and correct, and authorize the Distribution Agent to make the distribution according to the instructions on this form.

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct social security number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (including a U.S. resident alien), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank.

Exemption from FATCA reporting code (if any) _____.

You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of Account Holder	Printed Name	Date
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EXHIBIT C
(Exhibit B (Dkt. 331) deliberately omitted)

SEC v. Allen Distribution Fund
3:11-CV-882-O (N.D. Tx.)

Tax Consequences of Distribution Payments

If you are found eligible for a distribution pursuant to a plan of distribution approved by the Court, the United States Securities and Exchange Commission (“SEC”) may direct the United States Treasury to issue a distribution to you in the action identified above. The payment would issue from a Distribution Fund established by the SEC in *SEC v. Allen, et al.* in the United States District Court for the Northern District of Texas (Case No. 3:11-cv-882-O). Distributions will be calculated, and eligibility for a distribution will be determined, pursuant to the Court-approved plan of distribution.

The Distribution Fund is a “Qualified Settlement Fund” (“QSF”) as defined in Section 468B(g) of the Internal Revenue Code, 26 U.S.C. Section 468B(g), as amended, and the Treasury regulations promulgated thereunder, 26 C.F.R. 1.468B-1 et seq. A distribution from the Distribution Fund has tax consequences.

Generally, a distribution is not income to you to the extent of your basis in your investment(s). However, you must reduce your basis by the amount of the distribution. If the distribution exceeds your tax basis in your investment, then the excess is includable in your income as capital gain. Any such capital gain is long-term capital gain unless you disposed of your investment before holding it for longer than one year. If you do not have reasonable access to records indicating the tax basis of your investment, then you may assume that your tax basis is zero and that the entire distribution is includable in your income as capital gain. ***The QSF is not required to – and will not – issue a Form 1099 to you with respect to the distribution.***

IRA, QRP, or Other Tax Deferred Vehicle. If you held your investment in an individual retirement account (“IRA”), qualified retirement plan (“QRP”), or other tax deferred vehicle, the distribution payment, if one is made, will be made payable to the trustee or custodian of your IRA or QRP. If the payment comes to you, you should direct it to the trustee or custodian of your IRA or QRP for deposit into your IRA or QRP account. ***Caution: If the check is cashed or the payment deposited in any account other than an account eligible to receive the payment, it may be subject to income tax and a 10% penalty.***

Please note that the parties to this matter, the Fund Administrator, and the Tax Administrator ***cannot*** provide tax advice to investors determined eligible to receive a distribution. The information contained herein is being provided for informational purposes only to assist you in determining the United States (“U.S.”) federal income tax consequences of a distribution payment if you are a citizen or resident of the U.S. The tax consequences of a distribution may vary depending on your individual circumstances. The information provided herein may not be applicable if you are a nonresident alien of the U.S. or a FATCA-subject payee and it does not address the alternative minimum tax provisions of federal tax law, state, local and non-U.S. tax rules, or the effect of possible changes in laws. ***THE INFORMATION CONTAINED HEREIN IS NOT AND SHOULD NOT BE RELIED UPON AS TAX ADVICE. CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE SPECIFIC TAX CONSEQUENCES OF THE DISTRIBUTION TO YOU.***

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2019, I electronically filed the foregoing motion and accompanying papers with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

s/Catherine E. Pappas
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