

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
 COMMISSION)
)
)
 Plaintiff,)
)
 v.)
)
 COLLINS & AIKMAN)
 CORPORATION, DAVID A.)
 STOCKMAN, J. MICHAEL STEPP,)
 GERALD E. JONES, DAVID R.)
 COSGROVE, ELKIN B. MCCALLUM,)
 PAUL C. BARNABA, JOHN G.)
 GALANTE, CHRISTOPHER M.)
 WILLIAMS, AND THOMAS V.)
 GOUGHERTY,)
)
 Defendants.)

Case No. 1:07-cv-02419 (JMF)

**NOTICE OF MOTION FOR AN ORDER APPROVING
DISTRIBUTION PLAN FOR COLLINS & AIKMAN FAIR FUND**

PLEASE TAKE NOTICE, that based upon the accompanying Motion, Proposed Order, and all other papers and proceedings herein, Plaintiff U.S. Securities and Exchange Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Jesse M. Furman, United States District Judge for the Southern District of New York, at the United States Courthouse, 40 Centre Street, Room 2202, New York, NY 10007, for an Order Approving Distribution Plan for Collins & Aikman Fair Fund in this matter.

Respectfully submitted,

/s/ Noel Gittens

Noel Gittens (Mass. Bar No. 556682)

Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

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Dated: March 4, 2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
SECURITIES AND EXCHANGE)	
COMMISSION)	
)	
Plaintiff,)	
)	
v.)	
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COLLINS & AIKMAN CORPORATION,)	Case No. 1:07-cv-02419 (JMF)
DAVID A. STOCKMAN, J. MICHAEL)	
STEPP, GERALD E. JONES, DAVID R.)	
COSGROVE, ELKIN B. MCCALLUM,)	
PAUL C. BARNABA, JOHN G.)	
GALANTE, CHRISTOPHER M.)	
WILLIAMS, AND THOMAS V.)	
GOUGHERTY,)	
)	
Defendants.)	
_____)	

**PLAINTIFF’S MOTION AND MEMORANDUM OF LAW
IN SUPPORT OF AN ORDER APPROVING DISTRIBUTION PLAN
FOR COLLINS & AIKMAN FAIR FUND**

MOTION

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”) respectfully moves the Court to enter an Order approving the Commission’s distribution plan (the “Plan”) to distribute the approximately \$2.8 million collected in the above-captioned matter to harmed investors.

MEMORANDUM OF LAW

I. BACKGROUND

On March 26, 2007, the SEC filed a Complaint against Collins & Aikman Corporation (“Collins & Aikman” or “C&A”), David A. Stockman (“Stockman”), J. Michael Stepp (“Stepp”), Gerald E. Jones (“Jones”), David R. Cosgrove (“Cosgrove”), Elkin B. McCallum (“McCallum”),

Paul C. Barnaba (“Barnaba”), John G. Galante (“Galante”), Christopher M. Williams (“Williams”), and Thomas V. Gougherty (“Gougherty”) (collectively, the “Defendants”). The SEC alleged that, for more than three years, from the fourth quarter of 2001 until early 2005, the Defendants fraudulently inflated the quarterly earnings of C&A by engaging in numerous improper “round trip” transactions, improperly recognized income from numerous supplier rebates, and improperly recorded discounts on equipment purchases as rebates. As part of the scheme, the Defendants used false documents to justify the accounting treatment of the fraudulent transactions.

On April 20, 2010, the Court entered a Final Judgment as to Defendant Stockman, ordering him to pay disgorgement and prejudgment interest of \$2.4 million and a civil penalty of \$400,000 to the Court. On or about April 28, 2010, Defendant Stockman paid \$2.8 million to the Clerk of the Court, and the funds were deposited into the Court Registry Investment System (“CRIS”).

By Order dated December 2, 2019, a Fair Fund (“Fair Fund”) was established for the \$2.8 million, along with accrued interest and earnings thereon, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and Miller Kaplan Arase LLP was appointed as the Tax Administrator to fulfill the tax obligations of the Fair Fund. (Dkt. No 191). By Order dated December 3, 2019, the Court appointed Epiq Class Action & Claims Solutions, Inc. (“EPIQ”) as the Distribution Agent for the Fair Fund to assist in overseeing the administration and distribution of the Fair Fund in coordination with the Commission staff.¹ (Dkt No. 193).

The Fair Fund is comprised of the \$2.8 million paid by Defendant Stockman, plus interest

¹ EPIQ served as the Claims Administrator in two previous related class actions (collectively, the “Class Actions”) – *In re Collins & Aikman Corporation Securities Litigation Settlement* Civil Action No. 2:06-cv-13555, (E.D. MI) (“Collins I”) and *In re Collins & Aikman Corporation Securities Litigation*, Civil Action No. 2:03-cv-71173-GER, (E.D. MI) (“Collins II”). As such, the Commission expects to leverage EPIQ’s administration of these Class Actions, including its possession of relevant investor data, to realize cost savings and time efficiencies with respect to this distribution.

earned on the monies invested in the CRIS account, along with any additions thereto as may be provided by future Court order or agreement in related cases or otherwise.

II. ARGUMENT

A. The Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989). Courts have historically deferred to the Commission's decision regarding whether and how to distribute disgorgement and prejudgment interest. *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). The Court's review of a proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) (citing *Wang*, 944 F.2d at 85 (“[u]nless the consent decree specifically provides otherwise[,] once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end.”)) For the reasons articulated below, the Commission submits that the Plan constitutes a fair and reasonable allocation of the funds available for distribution, and should be approved.

B. The Commission's Plan Provides a Fair and Reasonable Allocation of the Fair Fund

The Commission's principal goal in fashioning a distribution plan for the Fair Fund was to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the injury that investors suffered as a result of the Defendants' actions as detailed

in the complaint. As such, the Commission desires to do a distribution as cost-effectively as possible to the harmed investors.

Under the Plan, EPIQ will determine, subject to review by the Commission staff: (1) the Eligible Claimants who will be compensated,² (2) the total amount of all Eligible Claimants' harm; (3) the *pro rata* distribution amount to be paid to each Eligible Claimant; and (4) that the Eligible Claimants were not officers or directors of the Defendants (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities) and were not directly involved in any of the conduct detailed in the complaint. The Commission's Plan calculates payments to all Eligible Claimants on a *pro rata* basis, and thereby allocates the available funds fairly and reasonably, in a manner proportional to the economic harm they sustained.

C. The Court Should Approve the Plan

The Commission seeks approval of its Plan (attached hereto as Exhibit A) to distribute the funds collected in this matter. The Plan contemplates that the Fair Fund (less a reserve for taxes, fees and expenses of the Tax Administrator,³ fees and expenses of the Distribution Agent, and other administrative costs) will, subject to the Court's approval of the Plan, be distributed to Eligible Claimants on a *pro rata* basis for the harm caused by the Defendants' conduct.

III. CONCLUSION

WHEREFORE, the Commission respectfully request that this Court enter an Order Approving Distribution Plan for Collins & Aikman Fair Fund, and grant such other relief that the Court deems just and proper.

² The Plan contemplates that distributions will be made to: approved claimants in the related class actions referenced above; class action claimants who were denied recovery for procedural reasons (e.g. late filings beyond the claims bar date); as well as new claimants who did not participate in the class actions.

³ See Dkt No. 116

Attachment: Exhibit A - Distribution Plan

Respectfully submitted,

/s/ Noel Gittens

Noel Gittens (Mass. Bar No. 556682)

Attorney for Plaintiff

U.S. SECURITIES AND EXCHANGE COMMISSION

100 F. Street N.E.

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Dated: March 4, 2020

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2020, a copy of the Plaintiff Securities and Exchange Commission's Motion for Order Approving Distribution Plan for Collins & Aikman Fair Fund along with the 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/ Noel Gittens

Noel Gittens (Mass. Bar No. 556682)

Attorney for Plaintiff

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UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

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COLLINS & AIKMAN CORPORATION,
DAVID A. STOCKMAN, J. MICHAEL
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COSGROVE, ELKIN B. MCCALLUM,
PAUL C. BARNABA, JOHN G. GALANTE,
CHRISTOPHER M. WILLIAMS, and
THOMAS V. GOUGHERTY,

Defendants.

Civil Action No.
1:07-cv-02419-JMF

DISTRIBUTION PLAN FOR COLLINS & AIKMAN FAIR FUND

A. Introduction

1. On March 26, 2007, the Securities and Exchange Commission (“SEC” or “Commission”) filed a complaint (“Complaint”) alleging that Collins & Aikman Corporation (“Collins & Aikman” or the “Company”), David A. Stockman, J. Michael Stepp, David R. Cosgrove, Elkin B. McCallum, Paul C. Barnaba, John G. Galante, Gerald E. Jones, Christopher M. Williams, and Thomas V. Gougherty (collectively, the “Defendants”) violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 10b-5, 12b-20, 13a-11, and 13a-13 thereunder.¹ The Complaint alleges that for more than three years from the fourth quarter of 2001 until early 2005, Collins & Aikman and several of its former officers and employees, entered into numerous

¹ Dkt No. 1.

improper “round-trip” transactions with Elkin B. McCallum (“McCallum”), a member of Collins & Aikman’s Board of Directors and a supplier to the Company, knowing that they were intended to improperly inflate Collins & Aikman’s earnings and provide Collins & Aikman with false documents to justify the improper accounting. The Complaint further alleged that Collins & Aikman also inflated its quarterly earnings by improperly recognizing in income numerous rebates received from suppliers in return for anticipated future business and other benefits and improperly recorded discounts on equipment as rebates for past purchases of non-capital goods or services. According to the Complaint, Collins & Aikman and its executives knowingly or recklessly played important roles in connection with the McCallum round-trip transactions, the supplier rebate scheme, or both.

2. On April 20, 2010, the Court entered a Final Judgment as to Defendant Stockman, ordering him to pay disgorgement and prejudgment interest of \$2.4 million and a civil penalty of \$400,000 to the Court.² On or about April 28, 2010, Defendant Stockman paid \$2.8 million to the Clerk of the Court and the funds were deposited into the Court Registry Investment System (“CRIS”).

3. By order dated December 2, 2019, a Fair Fund (“Fair Fund”) was established for the \$2.8 million, along with any accrued interest and earnings thereon, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and a Tax Administrator, Miller Kaplan Arase LLP, was appointed to fulfill the tax obligations of the Fair Fund.³ By order dated December 3, 2019, the Court appointed Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the Distribution Agent for the Fair Fund to assist in overseeing the administration and the distribution of the Fair Fund in

² Dkt. No. 182.

³ Dkt. No. 191.

coordination with Commission staff, pursuant to the terms of a distribution plan to be approved by this Court.⁴

4. This Distribution Plan (the “Plan”) sets forth the methods and procedures for distributing the Fair Fund. The distribution methodology allocates the Fair Fund amongst Eligible Claimants (defined below) based on the Plan of Allocation herein.

B. Definitions

As used herein, the following definitions shall apply.

5. “**Claim Deficiency Notice**” shall mean the notice sent by the Distribution Agent to Potentially Eligible Claimants whose claims are deficient in one or more ways (*e.g.*, failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason(s) for the deficiency and provide the opportunity to cure such deficiency. A Claim Deficiency Notice shall be provided no later than sixty (60) days after the Claims Bar Date. Subject to certain extensions provided for in this Plan, the deadline to cure deficiencies shall be thirty (30) days from the date of the Claim Deficiency Notice.

6. “**Claimant**” shall mean anyone who files a claim, including all Class Action Authorized Claimants, Class Action Deficient Claimants, and Potentially Eligible Claimants.

7. “**Claims Bar Date**” shall mean the date by which a Proof of Claim Form must be postmarked by or, if not sent by U.S. mail, received by the Distribution Agent to avoid the barring of any right of any Claimant to participate in any distribution from the Fair Fund. The Claims Bar Date shall be ninety (90) days after the Distribution Agent’s initial mailing of the Notices. Proof of Claim Forms postmarked or, if not sent by U.S. mail, received after the Claims Bar Date will not be reviewed and evaluated, unless SEC staff so directs the Distribution Agent.

⁴ Dkt. No. 193.

8. **“Claims Determination Date”** shall mean the date on or before which the Distribution Agent shall mail Determination Notices to each Claimant who has filed a new or modified Proof of Claim Form. The Claims Determination Date shall be no later than two hundred ten (210) days following the Claims Bar Date.

9. **“Claim Packet”** shall mean the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants known to the Distribution Agent or those people who requests such materials. The Distribution Agent, in consultation with the Commission staff, shall prepare the Claim Packet, which shall include, at a minimum, a copy of the Distribution Plan Notice and a Proof of Claim Form (together with instructions for completing the Proof of Claim Form).

10. **“Class Actions”** shall mean *In re Collins & Aikman Corporation Securities Litigation Settlement* Civil Action No. 2:06-cv-13555, (E.D. MI) (“Collins I”) and *In re Collins & Aikman Corporation Securities Litigation*, Civil Action No. 2:03-cv-71173-GER, (E.D. MI) (“Collins II”).

11. **“Class Action Authorized Claimants”** shall mean individuals or entities who filed approved claims in one or both of the Class Actions. Class Action Authorized Claimants are automatically deemed Eligible Claimants with respect only to those transactions as to which a claim was previously authorized in one or both of the Class Actions. Class Action Authorized Claimants may submit a modified Proof of Claim Form to include additional transactions. Class Action Authorized Claimants who do not wish to modify their claims are not required to submit a Proof of Claim Form.

12. **“Class Action Authorized Claimant Notice”** shall mean the Notice that is sent to Class Action Authorized Claimants. This Notice shall inform Class Action Authorized Claimants

that they will automatically be deemed an Eligible Claimant under the Plan with respect to the transactions in the Class Action(s) for which their claim was previously approved, so long as their Distribution Payment equals or exceeds the Minimum Distribution Amount. This notice shall also inform Class Action Authorized Claimants that should they wish to modify the claim they filed in connection with the Class Actions, they may do so by submitting a revised Proof of Claim, along with documentation supporting the additional transactions; all such amendments will be reviewed for eligibility in accordance with this Plan.

13. **“Class Action Deficient Claimants”** shall mean persons or entities who filed claims in the Class Action(s) whose claims were determined to be deficient and who failed to cure such deficiencies in the Class Action(s).

14. **“Class Action Deficient Claim Notice”** shall mean the Notice that is sent to Class Action Deficient Claimants. This Notice shall inform Class Action Deficient Claimants that they will have an opportunity to cure the deficiencies in their Class Action(s) claim(s) by providing the required information and/or documentation. If receipt of such information and/or documentation cures their claims, Class Action Deficient Claimants will be deemed Eligible Claimants under the Plan.

15. **“Court”** shall mean the United States District Court for the Southern District of New York.

16. **“Days”** shall mean calendar days, unless otherwise specified herein.

17. **“Determination Notice”** shall mean the notice, mailed by United States First Class Mail, to each Claimant who has filed a new or modified Proof of Claim Form setting forth the Distribution Agent’s determination concerning the eligibility of such claim.

18. **“Distribution Agent”** shall mean Epiq, the firm appointed by the Court to administer the Plan.

19. **“Distribution Payment”** shall mean the payment to an Eligible Claimant in accordance with the terms of this Plan.

20. **“Eligible Claimants”** mean persons (other than Excluded Parties) who purchased or otherwise acquired Eligible Securities during the Relevant Period including all Class Action Authorized Claimants, who have a Recognized Claim equal to or greater than the Minimum Distribution Amount.

21. **“Eligible Securities”** means Collins & Aikman common stock, purchased or otherwise acquired during the period from February 21, 2002 through May 17, 2005.

22. **“Excluded Parties”** shall mean (a) any defendant named in the Complaint or in the Class Action(s); (b) members of the immediate family of the individual defendants named in the Complaint or in the Class Action(s); (c) any firm, trust, partnership, corporation, present or former officer, director or other individual or entity in which any of the defendants named in the Complaint or in the Class Action(s) have a controlling interest or which is related to or affiliated with any of the defendants named in the Complaint or in the Class Action(s); (d) the legal representatives, heirs, successors-in-interest or assigns of any such excluded persons or entities; and (e) persons or entities whose only acquisition of Eligible Securities during the Relevant Period was via gift or inheritance if the person from which the Eligible Securities were received did not themselves acquire the Eligible Securities during the Relevant Period. The Proof of Claim Form will require all Claimants, other than Class Action Authorized Claimants who do not amend their claims, to certify that that they are not an Excluded Party.

23. **Fair Fund** shall refer to the Fair Fund established by the Court's December 2, 2019 Order, together with any interest earned on those funds or any additions thereto as may be provided by future Court order or agreement in related cases or otherwise.

24. **Market Loss** shall mean the amount by which the actual out-of-pocket purchase or acquisition price is greater than the actual sale or holding price of Collins & Aikman common stock.

25. **Market Profit** shall mean the amount by which the actual out-of-pocket purchase or acquisition price is less than the actual sale or holding price of Collins & Aikman common stock.

26. **Minimum Distribution Amount** shall mean the specified dollar amount that a Distribution Payment must equal or exceed in order for a distribution to be made to an Eligible Claimant. No Eligible Claimant shall receive a distribution unless his, her, or its Distribution Payment is equal to or greater than \$10.00.

27. **Net Available Fair Fund** shall mean the Fair Fund, less any taxes that may be assessed against the Fair Fund and any approved fees and expenses of the Tax Administrator and Distribution Agent.

28. **Net Market Loss** shall mean any market loss that occurs from the trading of Collins & Aikman common stock during the Recovery Period.

29. **Net Market Profit** shall mean any market profit that occurs from the trading of Collins & Aikman common stock during the Recovery Period

30. **Notice** shall mean the Class Action Authorized Claimant Notice, the Class Action Deficient Claim Notice or the Potentially Eligible Claimant Notice (collectively, the "Notices").

31. **“Payee List”** shall mean a list of Eligible Claimants and the amount of each Eligible Claimant’s Recognized Claim.

32. **“Plan of Allocation”** shall be the methodology used to calculate a Recognized Claim amount for an Eligible Claimant set forth in Exhibit A attached hereto. The Plan of Allocation is substantially similar to the plans of allocation used in the Class Actions.

33. **“Potentially Eligible Claimants”** shall mean those persons whose names and addresses are in Epiq’s Class Action database, but who never filed a claim in the Class Action(s) and other persons asserting that they have possible eligible claims to recover from the Fair Fund.

34. **“Potentially Eligible Claimant Notice”** shall mean the notice mailed to Potentially Eligible Claimants. This notice shall inform all Potentially Eligible Claimants that they must submit a Proof of Claim Form and supporting documentation in order to participate in the distribution of the Fair Fund.

35. **“Pro Rata”** is a computation intended to measure Eligible Claimants’ claims against one another. Should the total Recognized Claims of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *Pro Rata* distribution formula. The Distribution Agent shall determine the *Pro Rata* by dividing the total of all Recognized Claims of all Eligible Claimants by the total amount in the Net Available Fair Fund.

36. **“Pro Rata Share”** shall mean each Eligible Claimant’s award will be calculated by multiplying the Eligible Claimant’s Recognized Claim by the *Pro Rata* amount.

37. **“Proof of Claim Form”** shall mean the form designed by the Distribution Agent in accordance with the terms of the Plan for the filing of a claim, which form shall require, at a minimum, sufficient documentation of all claimed transactions. Proof of Claim Forms will be

available on the website established in connection with the Fair Fund. Claimants may also obtain a Proof of Claim Form from the Distribution Agent via mail, email, or by calling the toll-free helpline established for the Fair Fund.

38. **“Recognized Claim”** shall be the Eligible Claimant’s compensable allocation amount, provided it is equal to or greater than the Minimum Distribution Amount, calculated pursuant to the methodology of the Plan of Allocation as set forth in Exhibit A attached hereto. Recognized Claim is not Market Loss or Net Market Loss. Rather, it is a calculation to arrive at a loss figure for purposes of calculating an Eligible Claimant’s *Pro Rata Share*.

39. **“Relevant Period”** means the period of time from February 21, 2002 through May 17, 2005.

40. **“Summary Notice”** shall mean the notice published in Investor’s Business Daily and via PRNewswire. Such notice (the text of which shall be approved by the Commission staff) shall include, at a minimum, a statement that the Fair Fund was established for the benefit of investors who traded in the Eligible Securities during the Relevant Period, the means of submitting a Proof of Claim Form, and the Claims Bar Date.

41. **“Tax Administrator”** shall mean Miller Kaplan Arase LLP, the firm appointed by the Court on December 2, 2019.

C. Allocation of the Fair Fund amongst Eligible Claimants

42. The Net Available Fair Fund shall be distributed to Eligible Claimants as provided under the terms of the Plan of Allocation, attached hereto as Exhibit A.

43. Should the total Recognized Claims of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula, provided that an Eligible Claimant’s Distribution Payment

equals or exceeds the Minimum Distribution Amount.

D. Administration of the Claims Procedures

General Administration Provisions

44. The Distribution Agent shall oversee the administration of the claims, procedures, and distribution as provided in the Plan. The Distribution Agent shall review all submitted claims and supporting documentation and make determinations under the criteria established herein as to the eligibility of Claimants to recover monies and the amount of money to be distributed from the Net Available Fair Fund to each Eligible Claimant. Any claim asserted by a Class Action Deficient Claimant or a Potentially Eligible Claimant shall be in writing and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence that the Distribution Agent deems necessary or appropriate, including, but not limited to, if available, account statements and trade confirmations.

45. The recipient of Eligible Securities as a gift, transfer, inheritance, devise or operation of law shall be eligible to file a Proof of Claim Form and participate in the distribution of the Fair Fund only to the extent the particular donor or decedent as the actual purchaser of Eligible Securities would have been eligible. The recipient of Eligible Securities during the Relevant Period by gift, transfer, inheritance, devise, or operation of law shall not otherwise be eligible to file a Proof of Claim Form with respect to such securities, and shall not be deemed the assignee of any claim relating to the purchase of such securities unless specifically so provided in the instrument of gift or assignment. However, the donee and the donor may not both make a claim with regard to the same Eligible Securities. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

46. Regarding claims on behalf of a retirement plan covered by Section 3(3) of ERISA,

29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and for which such claims are properly made by the custodian or fiduciary of the retirement plan and not by the retirement plan's participants, the Distribution Agent shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of retirement plan participants and the number of shares owned by each retirement plan participant, if that information is known to the Distribution Agent or provided to the Distribution Agent. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner consistent with its fiduciary duties and the account or retirement plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Eligible Claimants, the Distribution Agent shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent prior to the Claims Bar Date.

47. The Distribution Agent shall take reasonable and appropriate steps to distribute the Fair Fund according to this Plan. The Distribution Agent will inform Commission staff of any changes needed to this Plan. Upon agreement with Commission staff, the Distribution Agent may implement immaterial changes to this Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Court approval is required prior to implementation by amending the Plan.

48. The Distribution Agent may extend any procedural deadline contained in this Plan for good cause shown, if agreed upon by the Commission staff.

The Notices Process

49. Within forty-five (45) days following the entry by the Court of its order approving the Plan, the Distribution Agent shall:

- a. design each of the Notices, which shall be submitted to Commission staff for review and approval;
- b. create a mailing and claims database of all Class Action Authorized Claimants, Class Action Deficient Claimants and Potentially Eligible Claimants based on the Distribution Agent's records in the Class Actions;
- c. run a National Change of Address ("NCOA") search to retrieve updated addresses for all records in the database;
- d. mail by United States First Class Mail a Notice, as applicable, to each Class Action Authorized Claimant, each Class Action Deficient Claimant, and each Potentially Eligible Claimant known to the Distribution Agent;
- e. establish a specific website constructed for the administration of the Fair Fund (www.SECvCollinsandAikmanFairFund.com), which will contain the approved Plan, the Notices, the Proof of Claim Form and other relevant documents;
- f. provide a copy of the Plan and Notices to Commission staff for posting to its website and request that the Commission establish a link to the Fair Fund's website;
- g. establish and maintain a traditional mailing address and an email address, which will be listed on all correspondence from the Distribution Agent;
- h. establish a toll-free telephone call-in number (833-991-1534) by which Claimants can obtain information about the Fair Fund; and
- i. publish a copy of Summary Notice, approved by Commission staff, in the Investor's Business Daily and disseminate the Summary Notice via

PRNewswire, on a single occasion, within five (5) days of the date of the mailing of the Notices.

50. On an on-going basis, after the first Notices are mailed but before the Claims Bar Date, the Distribution Agent shall continue to supply the Notices to persons who contact the Distribution Agent requesting a copy via mail, phone or e-mail.

51. The Distribution Agent shall attempt to locate anyone whose Notice has been returned by the United States Postal Service (“USPS”) as undeliverable by conducting an NCOA search. The Distribution Agent shall immediately re-mail any returned undelivered mail for which the USPS has provided a forwarding address.

52. The Distribution Agent may engage a third-party search firm to conduct more rigorous searches for persons whose Notice is returned as undeliverable. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable after consultation with the Commission staff.

53. Unless extended in consultation with the Commission staff, the claims filing period shall be no more than ninety (90) days from the earliest postmarked date of the Notices.

54. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Class Action Authorized Claimant who chooses to modify their Class Action approved claim(s) must submit documentation to the Distribution Agent supporting their modified claim. Further, any Class Action Deficient Claimant must submit to the Distribution Agent all required supporting documentation to cure their deficient Class Action claim(s), and any Potentially Eligible Claimant who did not file a claim in the Class Action(s) must submit to the Distribution Agent a properly completed Proof of Claim Form together with all required supporting documentation. The Distribution Agent may extend the Claims Bar Date for any Claimant for good cause shown, with

approval by Commission staff, in which event such extension shall constitute the Claims Bar Date for such Claimant. Such decisions of the Distribution Agent and Commission staff are final and not subject to challenge. The burden shall be upon each Claimant to ensure that its Proof of Claim Form has been timely received by the Distribution Agent.

Review of Claims and Notification

55. All Proof of Claim Forms must be postmarked by the Claims Bar Date, addressed as follows:

SEC v. Collins & Aikman Fair Fund
P.O. Box 10668
Dublin, OH 43017-9368

56. The Distribution Agent shall review each new or amended Proof of Claim Form received to determine the validity and amount of such claim, together with any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Claimant, other than Class Action Authorized Claimants who do not modify their claims, shall have the burden of proof to establish the validity and amount of his, her or its claim, and that he, she or it qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

57. The Distribution Agent shall provide a Claim Deficiency Notice to each Claimant who files a new or modified Proof of Claim that is deficient, in whole or in part. The Claim Deficiency Notice will set forth the reason(s) why the claim is deficient and instructions on how to cure the deficiency.

58. Any claimant who has received a Claim Deficiency Notice shall have thirty (30) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim

Deficiency Notice.

59. Any Claimant, other than Class Action Authorized Claimants who do not modify their claims, who has failed to file an appropriate Proof of Claim in a timely manner, or who has failed to timely cure a deficiency identified in a Claim Deficiency Notice, is not permitted to object to the barring or denial of his, her or its claim on the basis that:

- a. the Distribution Agent failed to mail, or to properly mail, or that such Claimant failed to receive, a copy of the Notice, Proof of Claim Form, Claim Deficiency Notice, or the relevant Determination Notice;
- b. the Distribution Agent failed to record properly the receipt of an initial Proof of Claim Form, or a revised Proof of Claim Form to cure deficiencies, or the requisite supporting documentation; or
- c. a Claimant's name and/or proper contact information was not properly recorded in the Distribution Agent's records.

60. On or before the Claims Determination Date, the Distribution Agent shall mail by United States First Class Mail a Determination Notice to each Claimant who has filed a new or modified Proof of Claim Form with the Distribution Agent, setting forth the Distribution Agent's conclusion concerning such claim. In the event a claim is denied, in whole or in part, the Distribution Agent will state the reason for such denial. All determinations made by the Distribution Agent in accordance with the Plan shall be final.

61. All Claimants have the burden of providing the Distribution Agent with any changes to his, her or its name or mailing address.

Plan of Allocation

62. After the preliminary calculations have been made, any Eligible Claimant whose

Distribution Payment would be less than the Minimum Distribution Amount will be removed from the pool of Eligible Claimants.

63. Final calculations will then be made for all remaining Eligible Claimants on a *Pro Rata* Share basis to arrive at their Recognized Claim.

Provisions for the Tax Administrator

64. The Fair Fund is a Qualified Settlement Fund within the meaning of Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of the QSF, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- a. obtaining a taxpayer identification number;
- b. timely requesting funds necessary for the timely payment of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- c. fulfilling any information reporting or withholding requirements required for distributions from the Net Available Fair Fund.

65. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA").

66. All taxes will be paid from the Fair Fund, subject to the review and approval of Commission staff.

Provisions for the Distribution Agent

67. The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided such Institutions are not excluded pursuant to other provisions of the Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under the Plan.

68. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund, which shall be paid from the Fair Fund, upon Court approval (including any such fees and expenses incurred by agents, consultants or third-parties retained by the Distribution Agent in furtherance of its duties). The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Fair Fund on a quarterly basis directly to Commission staff.

69. The Distribution Agent may be removed *sua sponte* at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.

Procedures for Distributing the Net Available Fair Fund

70. The Distribution Agent shall distribute the Net Available Fair Fund to all Eligible Claimants only after all timely submitted Proof of Claim Forms have been processed and all Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above.

71. The Distribution Agent shall prepare a Payee List. The total Recognized Claim

recorded in the Payee List will be in an amount adjusted for reserves for the fees and expenses of the Tax Administrator and Distribution Agent and taxes, as requested by the Tax Administrator and approved by Commission staff.

72. The Distribution Agent will also provide a “reasonable assurances letter” to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the Plan; (b) is accurate as to Eligible Claimants’ names, addresses, and their Recognized Claim; and (c) provides all information necessary to make to each Eligible Claimant a payment equal to the amount of the applicable Recognized Claim for such Eligible Claimant.

73. Upon receipt of the Payee List and reasonable assurances letter, the Commission staff will seek an order from the Court to disburse the funds identified in the Payee List in accordance with the provisions of the Plan. Upon issuance of an order to disburse by the Court, Commission staff will direct the transfer of funds to the “Escrow Account.” The Distribution Agent shall then distribute the funds to Eligible Claimants as provided for in the Plan.

74. Prior to disbursement of the Net Available Fair Fund, the Distribution Agent will establish account(s) described in the following paragraph at a United States commercial bank (the “Bank”), that is acceptable to the Commission staff.

75. The Distribution Agent shall establish with the bank an Escrow Account pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the Commission staff, in the name of and bearing the Employer Identification Number (“EIN”) of the QSF as described above. The Distribution Agent shall also establish with the Bank a separate “Deposit Account” (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding distribution payments to be distributed to Eligible Claimants by the Distribution Agent pursuant to the Plan. The name of each account shall be in the following

form: SEC v Collins and Aikman Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *SEC v, Collins & Aikman Corporation et al.* – Civ. Act. No. 01:07-cv-02419-SAS (S.D.N.Y.).

76. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, and tax obligations, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States government. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a quarterly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

77. The Distribution Agent shall deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with the Commission staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Deposit Accounts.

78. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls (*e.g.* check number and check amount) before they are honored by the Bank, at which time funds will be transferred from

the Escrow Account to the distribution account to pay the approved checks.

79. All payments to Eligible Claimants shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after one hundred twenty (120) days; and (d) contact information for the Distribution Agent, to be used in the event of any questions regarding the distribution. Any such information letter or other mailing to recipients characterizing their distributions shall be submitted to the Commission staff and Tax Administrator for review and approval. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from a Fair Fund overseen by the Commission to compensate investors for harm as a result of securities law violations.

80. The Distribution Agent, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law and any Orders issued by, the Court; and/or any investor information provided by the Court or Commission staff.

81. The submission of a Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant is not intended to be a release of an Eligible Claimant's rights and claims against any party.

82. All checks will bear a stale date of one hundred twenty (120) days from the date of the check. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. An Eligible Claimant's claim will be extinguished if he, she or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund. If a check reissue has been requested before the stale

date, such request is governed by the following section.

Uncashed Checks and Reissues

83. The Distribution Agent shall use its best efforts to make use of reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service, and will reissue checks to Eligible Claimants who are located to the extent a new address is identified. Such reissued checks will be void at the later of one hundred twenty (120) days from the issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after one hundred twenty (120) days from the date of the original issuance without approval from the Commission staff. Where new address information is not available after a diligent search (and in no event later than one hundred twenty (120) days after the initial mailing of the original check), the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check.

84. The Distribution Agent shall reissue checks to Eligible Claimants upon the receipt of a valid written request from an Eligible Claimant. In cases where an Eligible Claimant is unable to endorse a disbursement check as written (*e.g.*, name change as a result of marriage, divorce or death), and the Eligible Claimant or its lawful representative requests the reissuance of a disbursement check under a different name, the Distribution Agent will request, and must receive, documentation supporting the change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If such change request is properly documented, the Distribution Agent will issue an appropriately redrawn check to the requesting party. Such reissued checks will be void at the later of one hundred twenty (120) days from the issuance of the original check or sixty (60) days from the reissuance, and in no event will a check

be reissued after one hundred twenty (120) days from the date of the original issuance without the approval of Commission staff.

85. In addition, the Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow up on the status of uncashed Distribution Payments over \$100.00 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

Residual Funds

86. Approximately one year following initial distribution, after all taxes of the Net Available Fair Fund have been satisfied, if there are remaining funds from uncashed checks the Commission staff may at its discretion seek Court approval to distribute those residual funds to Eligible Claimants, if any, who filed claims with the Distribution Agent after the Claims Bar Date or who were late in curing a previously rejected claim. The late Eligible Claimants will receive a Distribution Payment up to the Recognized Claim that would have been received if the claim had been filed on time.

87. If any funds remain after the payment of claims that were filed late or cured after the Claims Bar Date, or if no such claims exist, Commission staff may at its discretion seek Court approval to allocate those residual funds on a *pro rata* basis to all Eligible Claimants who cashed a distribution check or received a wire and who would receive at least the Minimum Distribution Amount from such additional distribution.

88. If, after consultation between the Distribution Agent and Commission staff, any further distribution is not deemed cost effective, the remaining funds may be transmitted to the Commission for transfer to the U.S. Treasury after all reports and accountings have been

completed, as provided below.

Filing of Reports and Accountings

89. The Distribution Agent shall provide to the Commission staff and file with the Court a progress report and a quarterly account statement in a format to be provided by Commission staff, within forty-five (45) days of the Court approval of this Plan, and shall provide to Commission staff and file additional reports and quarterly account statements within twenty (20) days after the end of every calendar quarter. Such progress reports shall inform the Court and the Commission staff of the activities and status of the Fair Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Fair Fund, including among other things, an interim accounting of all monies in the Fair Fund.

90. When the final distribution is completed, the Distribution Agent shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. The Distribution Agent shall make arrangement for the final payment of taxes, submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan in a format provided by the Commission staff, and arrange to have any remaining funds paid to the Commission for transfer to the U.S. Treasury.

Termination of the Fair Fund

91. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after each of the following has occurred: A final report and accounting has been submitted to and approved by the Court; all taxes and fees have been paid; and all remaining funds have been transferred to the Commission for transfer to the U.S. Treasury.

92. Once the Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

Document Retention and Wrap-Up

93. Pursuant to Commission direction, the Distribution Agent will either turn over to the Commission or destroy all documents, including documents in any media, six (6) years after the approval of the final accounting. In addition, the Distribution Agent will shut down the toll-free number and website established specifically for the administration of the Fair Fund upon the transfer of any remaining funds to the Commission.

ATTACHMENT A

PLAN OF ALLOCATION

This Plan of Allocation provides for distribution of the Fair Fund to Eligible Claimants on a *Pro Rata* basis. The Fair Fund will be distributed to Eligible Claimants as described below:

1. For shares of Eligible Securities purchase or otherwise acquired between February 21, 2002 through May 17, 2005,⁵ inclusive, the Recognized Claim will be calculated as set forth below:

- a. For shares sold on or before August 15, 2005, the Recognized Claim shall be the difference between the purchase price paid and the sale price received.
- b. For shares held at the close of trading on August 15, 2005, the Recognized Claim shall be the purchase price paid.

2. An Eligible Claimant's Recognized Claim under the Plan of Allocation will be the sum of his, her or its Recognized Claim amounts.

3. A Recognized Claim amount shall be calculated for each purchase or acquisition of Collins & Aikman common stock during the Relevant Period that is listed in the Proof of Claim Form and for which adequate documentation is provided. If a Recognized Claim amount calculates to a negative number or zero under the formula above, that Recognized Claim amount will be zero.

⁵ Collins & Aikman common stock was adjusted by a one-for-two and one-half reverse stock split effective May 29, 2002, the number of shares purchased prior to May 29, 2002 will be divided by 2.5 and the price per share will be multiplied by 2.5 prior to applying the formulae herein.

4. In the event an Eligible Claimant has more than one purchase or sale of Collins & Aikman common stock, all purchases and sales shall be matched on a First In First Out (FIFO) basis: Relevant Period sales will be matched first against any Collins & Aikman common stock held at the beginning of the Relevant Period and then against purchases in chronological order.

5. In the event that there is an opening short position in Collins & Aikman common stock, the earliest Class Period purchases of Collins & Aikman common stock shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

6. Purchase price paid and sale price received will not include commissions and other fees.

7. If an Eligible Claimant had a Net Market Profit from his, her or its transactions in Collins & Aikman common stock during the Relevant Period, the value of his, her or its Recognized Claim will be zero.

8. If an Eligible Claimant suffered Market Loss on his, her or its transactions in Collins & Aikman common stock during the Relevant Period, but that Market Loss was less than the Eligible Claimant's Recognized Claim calculated above, then the Eligible Claimant's Recognized Claim will be limited to the Net Market Loss.

9. For purposes of determining whether an Eligible Claimant had a Market Profit from his, her or its overall transactions in Collins & Aikman common stock during the Relevant Period or suffered a Market Loss, the Distribution Agent shall: (a) total the amount paid for all Collins & Aikman common stock purchased during the Relevant Period (the "Total Purchase Amount"); (b) match any sales of Collins & Aikman common stock during the Relevant Period first against the opening position in the stock (the proceeds of those sales will not be considered for purposes

of calculating gains or losses); (c) total the amount received for sales of the remaining shares of Collins & Aikman common stock sold during the Relevant Period; and (d) ascribe a \$0.079 per share holding value for the number of shares of Collins & Aikman common stock purchased during the Relevant Period and still held at the close of trading on August 15, 2002. The difference between the Total Purchase Amount, the sum of the sales proceeds, and the holding value will be deemed an Eligible Claimant's Net Market Profit or Net Market Loss on his, her or its overall transactions in Collins & Aikman common stock during the Relevant Period.

10. If the sale date for a share of Collins & Aikman common stock falls before the purchase date then the share has a Recognized Claim of \$0.00.