

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)	
SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff)	
)	
v.)	1:03-cv-01496-RMC
)	
DISCOVER CAPITAL HOLDINGS)	
CORP., et al.,)	
)	
Defendants)	

**UNOPPOSED MOTION TO TRANSFER FUNDS FROM THE COURT
REGISTRY TO THE DISCOVER CAPITAL CUSTODIAL ACCOUNT FOR FINAL
DISTRIBUTION AND FOR APPROVAL OF FINAL DISTRIBUTION PLAN**

Venable LLP (“Venable”), appointed Distribution Agent in 2016¹ in the above-captioned matter, files this Unopposed Motion to Transfer Funds from the Court Registry to the Discover Capital Custodial Account for Final Distribution and for Approval of Final Distribution Plan and in support of such states as follows:

1. On March 9, 2017, Venable, with approval of the SEC, sought, and received, Court approval to make a supplemental distribution to Claimants totaling \$363,194.58.² (ECF Dkt. No. 168). To date, Venable has successfully distributed \$278,775.48 of these funds to 39 of the 48 Claimants.

¹ On February 10, 2016, this Court granted the Commission’s motion to appoint the law firm of Venable LLP to replace Nancy Grunberg, formerly of Venable LLP, to act as Distribution Agent for the purposes of distributing all funds collected in the matter and deposited in the Court Registry in accordance with the Court’s July 10, 2006 Order.

² Venable had previously distributed more than \$600,000 to Claimants. (ECF Dkt. No. 168).

2. Seven of the remaining Claimants are deceased, and despite diligent efforts, Venable has been unable to locate representatives or beneficiaries of their estates. One Claimant appears to reside outside of the United States. Venable has not received any response to our attempts to contact the Claimant to deliver its share of the distribution funds. Finally, one Claimant has not cashed the distribution check Venable delivered to him. We have attempted to contact this Claimant multiple times, but we have received no response, and the check expired on October 2, 2017.

3. At this point, \$74,251.32 in funds remains in the Discover Capital Custodial Account and approximately \$110,000 in funds remains in the Court Registry, for a total of \$184,251.32. Of this amount, approximately \$17,000 in post-judgment interest belongs to the U.S. Treasury.

4. Venable has worked with Damasco & Associates (“Damasco”), the Tax Administrator appointed in this matter,³ to determine the amount of funds that should be held in reserve to cover the Fund’s estimated tax liabilities and Damasco’s estimated fees to finalize its services for the Fund. This includes, but is not limited to preparation and filing of additional tax returns, preparation of the Consolidated Final Accounting Report, and information reporting services relating to the final distribution. Should administration of the Fund continue into 2018, which is reasonably likely at this time, Damasco estimates \$12,500 should be held in reserve to cover taxes and its fees.

5. Venable also seeks approval, through a contemporaneously filed Motion to Authorize Payment of Fees and Expenses to Distribution Agent, to distribute funds to cover its fees and costs incurred in administering the Fund and distributing funds to Claimants for 2016 and

³ Damasco is now a part of Miller Kaplan Arase LLP.

2017. Over this period, Venable has incurred \$34,166.64 for developing a distribution plan, working with the SEC and the Tax Administrator to administer the Fund, working with Claimants, and engaging in motions practice to administer the Fund and facilitate distribution of funds. This work has been done at rates set per the July 10, 2006 Order of the Court. (ECF Dkt. No. 141). Venable anticipates that final administration of the Fund will require approximately \$11,000 in legal fees and costs. Thus, Venable requests that \$45,000 be withheld from the final distribution for Venable's fees and expenses for our additional services through completion of our assignment in this matter. The SEC has received copies of invoices in support of the Motion to Authorize Payment of Fees and Expenses to Distribution Agent and has no objection.

6. Accounting for those funds to be held in reserve or distributed to the U.S. Treasury as described above, approximately \$109,751.32 is available to be distributed to Claimants. Venable has allocated the remaining funds among Claimants in a proposed payment plan that is attached hereto as **Exhibit A**. This includes a pro rata distribution to the 39 Claimants from the supplemental distribution who have been located and have confirmed receipt of the supplemental distribution by depositing their checks. If these Claimants cash these distribution checks, they will have obtained up to approximately 66% of their investments. In no event will any Claimant receive more than 100% of their investment.

7. In order for Venable to distribute the additional funds to Claimants in accordance with **Exhibit A**, \$35,500.00 in funds from the Court Registry must be transferred to the Discover Capital Custodial Account.

8. Upon Court approval, Venable will undertake good faith efforts to distribute the remaining funds to Claimants.

9. Each check delivered to a Claimant is valid for one hundred and eighty (180) days. After the expiration of that period (180 days), Venable shall submit a final report to the Court that includes a final accounting of any monies remaining. Should any funds remain uncashed after the final distribution, and in addition to reserve funds not used for Damasco's and Venable's fees and costs, such funds will be remitted to the U.S. Treasury.

10. Venable has conferred with counsel for the SEC, who consents and has no objection to this Motion.

11. Venable now requests that the Court direct the Clerk of Court to direct Treasury to transfer \$35,500.00 in funds from the Court Registry to the Discover Capital Custodial Account and seeks authorization to distribute funds as detailed in the payment plan set forth in **Exhibit A**.

CONCLUSION

WHEREFORE, Venable respectfully requests the Court grant its motion and direct the Clerk of Court to direct Treasury to transfer \$35,500.00 in funds from the Court Registry to the Discover Capital Custodial Account maintained by Venable and authorize distribution to Claimants pursuant to **Exhibit A**.

Dated: January 5, 2018

Respectfully Submitted,

/s/
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CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing were served on January 5, 2018, by ECF, on the following:

Nancy Burton
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Executed on January 5, 2018

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