



A proposed order has been submitted herewith.

Date : June 18, 2015 1 1 1 Respectfully submitted,

/s/ Susan S. Pecaro

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## I. d BACKGROUND

On April 1, 2002, the SEC filed a Complaint, and on April 3, 2002, an Amended Complaint, against Dennis Herula and eight other defendants (the “Defendants”) alleging that they violate the anti-fraud provisions of the federal securities laws by misappropriating investor funds and by participating in the fraudulent offering of securities in connection with a sham “training program” (Dkt. Nos. 1, 4). During 1999 and 2000, the Defendants raised over \$51.75 million from five investors through Brite Business, S.A. and later through Brite Business Corporation (“Brite Business”). The five investors include Rasheed Mohamed Mahran Al Bloushi (“Al Bloushi”), who invested \$7.5 million; Rheume Holdings, Ltd. (“Rheume”), an entity owned by Robert Fitzhenry (“Fitzhenry”) and his wife, which invested \$12.5 million; Bill Britt (“Britt”), who invested \$10 million; Four Star Financial Services, Inc. (“Four Star”), which invested \$11.75 million; and Trignon, an entity which invested \$10 million.

Of the \$51.75 million invested with Brite Business, over \$32 million was eventually returned to investors; however, approximately \$19.8 million in principal was not returned. More specifically, while Britt, Four Star, and Trignon had their investments returned, Al Bloushi originally received back only \$200,000 of his \$7.5 million investment and Rheume received back none of its \$12.5 million investment. Contrary to representations made to Rheume and Al Bloushi, these funds were dissipated by the Defendants and others.<sup>1</sup>

In addition, Herula made misrepresentations to convince Malcolm Monlezun (“Monlezun”), a sixth investor, to transfer \$1 million from that investor’s account at Herula’s brokerage firm, Raymond James Financial Services, Inc. (“RJFS”), to an account controlled by Herula’s wife,

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<sup>1</sup> See Declaration of Bradford Ali dated 6/22/09 (“Ali Decl.”), attached as Exhibit A to Memorandum in Support of the SEC’s Motion to Make an Initial Distribution of Funds to Victims, Dkt. No. 314.

Defendant Perry Lee Capalbo (“Capalbo”). Although Herula eventually repaid Mooleszun 125,934.30 in purported “interest” payments, Herula and Capalbo misappropriated the remainder of those funds. Thus, as a result of the overall scheme, Fi zhenry lost 12.5 million; Al Bloushi lost 7.3 million; and Mooleszun lost 874,065.70 (collectively the “Investor Victims”).

Through various Final Judgments against the Defendants, a total of 1,295,527.49 was in the Court Registry Investment System (“CRIS”) account (the “Distribution Fund”) as of June 23, 2009. In the initial distribution, the SEC distributed 1,283,500 of the Investor Victims and the remainder of the Distribution Fund (approximately 12,000) was reserved in the CRIS account to cover tax obligations and fees that arose pending the further recovery of funds and the anticipated subsequent distribution (“tax reserve”).<sup>2</sup> The balance in the CRIS account is 4,339.77.

The Court entered a Final Judgment by consent against the Fife Estates on December 30, 2005 (Dkt. No. 257). Rather than wait for the settlement of the Fife Estates or the receipt of additional funds, the SEC moved to make an initial distribution of the remaining Investor Victims of the amount in the Distribution Fund with the understanding that the SEC would seek to make another distribution if and when it received funds from the Fife Estates or any other additional funds. By its order, the SEC requested that the Court order the Clerk to disburse checks to the Investor Victims in this case on a pro-rata basis, i.e., in an amount proportionate to their outstanding losses. The SEC’s affidavit determined that the three remaining Investor Victims had outstanding losses in the amounts reflected in the chart below: \$

<sup>2</sup> As the result of a parallel SEC administrative proceeding against Herula’s brokerage firm, RJFS, the SEC made a distribution of 6,518,606 of Fi zhenry on November 17, 2006 and on November 27, 2006, a distribution of 569,917 was made to Mooleszun. In addition, on June 8, 2004, RJFS paid 2.5 million to Rheaume to resolve an action brought by Rheaume.

	Outstanding Loss	% of Total Loss	Total Distribution
Al Bloush	\$ 7,300,000	65.85%	\$ 845,185
F tzhentry	\$ 3,481,394	31.41%	\$ 403,147
Monlezun:	<u>\$ 304,149</u>	<u>2.74%</u>	<u>\$ 35,168</u>
	\$ 11,085,543	100%	\$ 1,283,500

In August and December, 2014, the SEC received, in two separate payments, a total of \$285,512.50 in disgorgement from the Fife Estate. The funds were obtained as the result of a decree from the New York County Surrogate's Court approving the final accounting with respect to Mr. Fife's estate.

**II. THE DISTRIBUTION FUND**

The Distribution Funds comprise of the funds received from the Fife Estate held at the Commission, plus the funds remaining in the CRIS account, minus the tax reserve necessary to pay the tax fees and expenses related to the second distribution. The Commission staff has verified that the balance of the Distribution Funds approximately \$285,512.50 and is held at the Commission in a non-interest bearing account.

In addition, there is \$4,339.77 remaining in the CRIS account from the tax reserve that was established in connection with the total distribution. The Commission staff requests that those funds be transferred to the SEC to be combined with the funds held at the Commission from the Fife Estate. The Commission staff does not anticipate receiving any additional funds in this matter.

The court appointed tax administrator, Damasco & Associates, LLP ("Damasco"), has informed the Commission staff that \$3,750 should be reserved to cover tax related fees and expenses related to the second distribution. The Commission staff requests authorization to review, approve and pay all future fees and expenses of the Qualf Settlement Fund without

further refer to the Court. The Commission staff also requests authorization to disburse any remaining funds, after such fees and expenses are paid, to the Investor Victims pursuant to the plan of Allocation instead of to the U.S. Department of the Treasury ("U.S. Treasury"), with out further refer to the Court.

### III. THE SECOND DISTRIBUTION PLAN OF ALLOCATION

Upon approval by the Court, the Commission staff will use the assets and earnings of the net Distribution Fund to provide pro-rata payments to the three remaining Investor Victims. The Commission staff has determined the amount to be distributed by applying the same percentage of loss utilized in calculating the initial distribution to the current outstanding losses of each Investor Victim. The Commission staff has determined that Al Blushi has \$6,454,815 in outstanding losses and has 65.85% of the total losses; Fitzhenry has \$3,078,247 in outstanding losses and 31.41% of the total losses; and Monlezun, \$268,981 in outstanding losses and 2.74% of the total losses of \$9,802,043. By applying the same percentage of total losses used to calculate the initial distribution, the Commission staff determines that in the second distribution, Al Blushi will receive \$188,398.35; Fitzhenry will receive \$89,864.72; and Monlezun will receive \$7,839.20. See Declaration of Artur Minkin, attached as Exhibit A. P

The standard applied by courts in assessing a plan of distribution is whether it is "fair and reasonable." *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991) (Court will approve plan if "fair and reasonable"). Courts have accorded the Commission wide discretion in the development of plans to distribute disgorged funds. *Id.* at 88. The Commission staff believes it fair and reasonable to distribute the funds received from the Fife Estate to the three Investor Victims on a pro-rata basis, using the same percentage of total loss ratio methodology that was employed in the initial distribution.

The Distribution Fund will be distributed through the U.S. Treasury's Bureau of the Fiscal Service ("BFS"), which will mail checks or process electronic payments to each payee. The Commission staff will compile the payee information and prepare a payment file in a Commission-approved format to make the distributions through the Commission's Office of Financial Management ("OFM"). Checks issued by the U.S. Treasury will state on their face "this check is void after one (1) year."

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

Dated: June 18, 2015

Respectfully submitted,

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