

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DIKE BOONE NERREN,

Defendant.

No. 4:20-CV-965-ALM

**ORDER APPROVING A DISTRIBUTION PLAN FOR THE DIKE BOONE NERREN
FAIR FUND**

The Court, having considered Plaintiff's Motion for an Order Approving a Distribution Plan for the Dike Boone Nerren Fair Fund (the "Motion" - Dkt. #8), the Memorandum of Law in Support and the Distribution Plan, and for good cause shown, the Court **GRANTS** the Motion and approves in its entirety the Distribution Plan appended hereto. The Distribution Plan shall govern the administration and distribution of the Fair Fund previously established by Order entered February 14, 2022.

IT IS SO ORDERED.

SIGNED this 9th day of November, 2022.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DIKE BOONE NERREN,

Defendant.

No. 4:20-CV-965

DISTRIBUTION PLAN

I. OVERVIEW

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of civil money penalties paid by Dike Boone Nerren (the “Defendant”) in this proceeding.

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Defendant’s conduct alleged in the Complaint, in connection with the Defendant’s misappropriation of investor funds, which were invested to acquire and develop a single family subdivision for a real estate project in McKinney, Texas (the “McKinney Project”), and the ultimate foreclosure of the McKinney Project caused by the Defendant’s misappropriation of the funds, resulting in a total loss for all investors. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors, or their lawful successors, will be compensated for their losses in investor membership units in Sapient Fund II, LLC and limited partnership units in Vintage Place Fund, LP (the “Securities”) that were purchased between November 2015 and May 2017 (the “Relevant Period”). Based on information obtained by the SEC during its investigation and the review and analysis of applicable records, the SEC has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process.

3. The SEC has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over its implementation.

II. BACKGROUND

4. The SEC filed its Complaint on December 21, 2020, in which it alleged that the Defendant and others raised money from November 2015 through May 2017 to fund the McKinney Project by selling membership units in Sapient Fund II, LLC and limited partnership units in Vintage Place Fund, LP using private placement memoranda (“PPMs”). The PPMs stated that investor funds would be used solely in connection with the acquisition and development of the McKinley Project, and through two securities offerings the Defendant and others raised \$1.4 million

for the McKinney Project. The Complaint alleges that between January 5 and May 9, 2016, the Defendant diverted a total of \$450,000 of investor funds to another unrelated project. It alleges that in February 2017, the developer for the McKinney Project confronted the Defendant about the missing \$450,000, and that in March 2017, the Defendant began to return the diverted funds to the McKinney Project accounts, but that the repayment process took more than two years. Finally, the Complaint alleges that the McKinney Project experienced financial difficulties caused by the missing funds, and that in May 2020, the lender for the McKinney Project instituted foreclosure proceedings resulting in a total loss to the investors. The McKinney Project developer has stated that the McKinney Project would have been successfully completed but for the Defendant's diversion of \$450,000 from the project in 2016. Final judgment was entered against the Defendant on March 25, 2021, and he was ordered to pay a penalty of \$37,500.

5. The Court granted the SEC's motion on February 14, 2022, establishing a Fair Fund, appointing Miller Kaplan Arase LLP ("Miller Kaplan") as the Tax Administrator, and appointing Allison Moon, an SEC employee, as the Distribution Agent of the Fair Fund ("Distribution Agent"). Dkt No. 7.

6. To date, the Defendant has paid a total of \$37,500.00. The Fair Fund has been deposited in a Commission-designated account at the United States Department of the Treasury's Bureau of Fiscal Service for investment.

III. DEFINITIONS

As used in this Plan, the following definitions will apply:

7. **"Administrative Costs"** shall mean any administrative costs and expenses, including, without limitation, tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

8. **"Distribution Payment"** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

9. **"Eligible Claimant"** means a Preliminary Claimant who has a Recognized Loss, as calculated in accordance with the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

10. **"Excluded Party"** shall mean: (a) the Defendant, or Defendant's advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, siblings, children, or controlled entities and (b) any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, or devise.

11. **"Fair Fund"** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendant's violations alleged in the Complaint.

12. **"Final Determination Notice"** means the written notice sent by the Distribution Agent to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of her resolution of the dispute; and

to (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 29, except for those whose Plan Notice were returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

13. “**Net Available Fair Fund**” means the Fair Fund, plus any interest or earnings, less Administrative Costs.

14. “**Payee**” means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

15. “**Person**” means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

16. “**Plan Notice**” means a written notice from the Distribution Agent to each Preliminary Claimant regarding the Court’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the SEC’s website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its preliminary Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

17. “**Plan of Allocation**” means the methodology by which a Preliminary Claimant’s Recognized Loss is calculated. The Plan of Allocation is attached as Exhibit A.

18. “**Preliminary Claimant**” means a Person, or their lawful successors, identified by the Distribution Agent based on her review and analysis of applicable records obtained by the SEC during its investigation, who may have suffered losses in investor membership units in the Securities that were purchased during the Relevant Period.

19. “**Recognized Loss**” means the amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation.

20. “**Relevant Period**” is between November 2015 and May 2017.

21. “**Securities**” means membership units in Sapient Fund II, LLC and limited partnership units in Vintage Place Fund, LP.

22. “**Unresponsive Preliminary Claimant**” means a Preliminary Claimant whose address the Distribution Agent has not been able to verify and/or who does not timely respond to the Distribution Agent’s attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

IV. TAX COMPLIANCE

23. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund.

24. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under 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 such 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) Requesting funds necessary for the timely payment of all applicable taxes, the 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 imposed on distributions from the Fair Fund.

V. DISTRIBUTION AGENT

25. Pursuant to the Court’s order of February 14, 2022 (Dkt. No. 7), Allison Moon will serve as the Distribution Agent for the Fair Fund. As a SEC employee, the Distribution Agent shall receive no compensation other than her regular salary as a SEC employee for her services in administering the Fair Fund.

26. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Court to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible.

27. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan. If a change is deemed to be material by the Distribution Agent, Court approval is required prior to implementation by amending the Plan.

28. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause.

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

29. Using information obtained during its investigation, the SEC has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of their investment in the Securities during the Relevant Period.

Procedures for Locating and Notifying Preliminary Claimants

30. Within twenty-one (21) days of Court approval of the Plan, the Distribution Agent will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

Undeliverable Mail

31. If any mailing is returned as undeliverable, the Distribution Agent will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Distribution Agent will then resend it the Preliminary Claimant's new address within twenty-one (21) days of receipt of the returned mail. If the mailing is returned again, and the Distribution Agent, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

32. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Distribution Agent.

Procedures to Request Plan Notice

33. Any Person who does not receive a Plan Notice, as described in paragraph 29, but who is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent within twenty-one (21) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant and to provide supporting documentation evidencing the basis for designating the Person as a Preliminary Claimant. If the Distribution Agent determines that the Person should have received a Plan Notice, the Distribution Agent will send the Person a Plan Notice within twenty-one (21) days of receiving the Person's documentation.

Failure to Respond to Plan Notice

34. If a Preliminary Claimant is requested to respond and fails to respond within thirty (30) days from the initial mailing of the Plan Notice, the Distribution Agent will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or email. The second attempt will in no event take place more than forty-five (45) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Distribution Agent's contact attempts as described in this paragraph, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Dispute Process

35. Disputes will be limited to the amount of the Preliminary Claimant's Recognized Loss. Within thirty (30) days of the initial mailing of the Plan Notice, the Distribution Agent must receive a written communication detailing any dispute along with any supporting documentation. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute, as well as, any supporting documentation.

Final Determination Notices

36. Within sixty (60) days of the initial mailing of the Plan Notices, the Distribution Agent will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 35 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 34 above, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

Distribution Methodology

37. The Distribution Agent will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

38. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant's Recognized Loss, in accordance with the Plan of Allocation, calculates to a distribution amount less than \$10.00, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$10.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than \$10.00 will be deemed a Payee and receive a Distribution Payment.

Establishment of a Reserve

39. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

40. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 52 below.

Preparation of the Payment File

41. Within ninety (90) days of Court approval of the Plan, the Distribution Agent will compile the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List").

Distribution of the Fair Fund

42. After preparation of the Payee List, the SEC will petition the Court for authority to disburse funds from the Net Available Fair Fund for distribution to Payees in accordance with the Payee List. The SEC will mail checks or electronically transfer funds to each Payee as instructed by the Distribution Agent in accordance with the Payee List.

43. All checks will bear a stale date of one (1) year from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the SEC will stop payment on those checks. A Payee'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, except as provided in paragraph 47.

44. All Distribution Payments will 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 Payee and that the Payee 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 on the stale date and may only be reissued at the Fund Administrator's discretion for up to sixty (60) days after the stale date; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator.

45. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

46. The Distribution Agent shall use her best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Distribution Agent as "undeliverable." If new address information becomes available, the Distribution Agent will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than the stale date), or if the distribution check is returned again, the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent is unable to find a Payee's correct address, the Distribution Agent, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

47. The Distribution Agent will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if the request is received or postmarked prior to the initial stale date. The Distribution Agent may also reissue checks or electronic payments if a written request is received within sixty (60) days after the initial stale date, and the Preliminary Claimant shows that his, her, its failure to request a reissuance by the stale date was due to excusable neglect. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented,

the Distribution Agent will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void on the stale date of the original check, or sixty (60) days from the reissuance date, whichever is later.

48. The Distribution Agent will maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible. The Distribution Agent is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

49. The Distribution Agent will make and document her best efforts to contact Payees to follow up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

Receipt of Additional Funds

50. Should any additional funds be received pursuant to SEC or Court order, agreement, or otherwise, prior to the Court’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan.

Disposition of Undistributed Funds

51. If funds remain following the initial distribution and payment of all Administrative Costs, the Distribution Agent may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court Order.

52. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the SEC, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

53. All funds remaining in the Residual that are infeasible to distribute to investors will be held pending a final accounting.

Administrative Costs

54. All Administrative Costs will be paid from the Fair Fund in accordance with a Court order.

Accountings

55. Upon completion of all distributions to Payees and payment of all Administrative Costs, pursuant to the procedures described above, the Distribution Agent will prepare a final accounting on an SEC standardized form. The final accounting report will include a recommendation as to the disposition of the Residual. Upon completion of the final accounting, the

SEC staff will petition this Court seeking approval of the final accounting and recommending disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).¹ If distribution of the Residual to investors is infeasible, the SEC may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.²

Termination of the Fair Fund

56. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format, has been approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has approved the Commission's recommendation as to the final disposition of the Residual.

57. Once the Distribution Agent has prepared the final accounting, she will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

58. Once the Fair Fund has been terminated, no additional payments will be made whatsoever.

¹ Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply "to any action or proceeding that is pending on, or commenced on or after, the date of" the NDAA's enactment. NDAA, Section 6501(b).

² Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors based on their losses in investor membership units in Sapiient Fund II, LLC and limited partnership units in Vintage Place Fund, LP (the “Securities”) that were purchased between November 2015 and May 2017 (the “Relevant Period”). Based upon records obtained by the SEC during its investigation, the Distribution Agent has identified those investors, or their lawful successors, who may have suffered losses on the Securities during the Relevant Period due to the misconduct of the Defendant (the “Preliminary Claimants”). Investors who did not purchase Securities in connection with the Defendant’s offerings are ineligible to recover under this Plan.

For the purposes of this Plan, the Distribution Agent will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as the sum of their purchase amounts in the Securities during the Relevant Period.

If the Recognized Loss calculates to a gain, then the Recognized Loss will be \$0.00.

To avoid payment of a windfall, the Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct alleged in the Complaint that was received from another source (e.g., class action settlement), to the extent known by the Distribution Agent.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

Additional Provisions

Allocation of Funds: Since the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her, or its “*Pro Rata Share*” of the Net Available Fair Fund. The distribution amount will be subject to the “Minimum Distribution Amount.”

Pro Rata Share: A *Pro Rata Share* computation is intended to measure Eligible Claimants’ Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant’s *Pro Rata Share* as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. If an Eligible Claimant’s distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment equal to his, her, or its distribution amount. In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss.