



DIVISION OF
ENFORCEMENT

OFFICE OF
DISTRIBUTIONS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
ONE PENN CENTER
1617 JFK BLVD., STE. 520
PHILADELPHIA, PA 19103

CATHERINE E. PAPPAS
SENIOR ADVISER
DIRECT DIAL: (215) 597-0657
FACSIMILE: (215) 597-2740
PAPPASC@SEC.GOV

April 8, 2021

BY ECF

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**RE: *Securities and Exchange Commission v. O'Rourke, et al.*, No. 19-CV-4137
(KAM)**

Dear Judge Matsumoto:

I am counsel for the Securities and Exchange Commission ("SEC") in the above-referenced case. I am filing this letter pursuant to section III.B.1 of your Honor's Chamber Practices to ask that the Court schedule a pre-motion conference to address the SEC's anticipated motion for an Order to show cause why the Court should not approve the SEC's proposed plan of distribution (the "Plan"). The SEC seeks this relief in order to provide to harmed investors (and other interested parties) the opportunity to object to the Plan. The SEC has contacted defense counsel, both of whom have indicated that they do not object to the relief sought. In view of the nature of the relief sought and the lack of defense counsel objection to that relief, I have attached the proposed Order to Show Cause and my Declaration pursuant to Local Rule 6.1(d) in the event that the Court determines a conference and/or motion practice unnecessary.

Background:

By Complaint filed on July 17, 2019, the Commission alleged that, from approximately May 2016 through July 2018, Garrett O'Rourke ("O'Rourke") and Michael Black ("Black") (collectively, the "Defendants") schemed to sell the stock of AV1 Group, Inc., EnviroTechnologies International, Inc., and other publicly traded companies to investors through false and misleading statements and high pressure stock promotional campaigns. (ECF No. 1). The SEC also alleged that the defendants disguised their control over some or all of the companies and their stock, thereby circumventing their obligations to register the stock with the SEC pursuant to Section 5 of the Securities Act of 1933 and conduct sales in accordance with the governing registration regulations. The SEC charged the defendants, variously, with violations

of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

The matter has since been resolved against O'Rourke. By amended final order entered by consent on December 7, 2020, the Court ordered O'Rourke, among other things, to pay disgorgement and prejudgment interest aggregating to \$5,763,719. ECF No. 79 (the "O'Rourke Order"). The SEC has collected this monetary relief in full and holds over \$5.7 million in an interest-bearing account at the U.S. Treasury's Bureau of Fiscal Service (the "Distribution Fund"). Accrued interest will be added to the Distribution Fund.¹ The O'Rourke Order provides that the SEC may propose a plan to distribute the collected funds.

On March 4, 2021, the Court appointed Miller Kaplan Arase LLP as the tax administrator for the Distribution Fund, and appointed JND Legal Administration as distribution agent to assist in overseeing the administration of the Distribution Fund pursuant to the terms of a court-approved distribution plan and related Court Orders. ECF No. 89.

Relief Requested

The SEC seeks an Order to show cause why the Court should not approve the Plan. Because any distribution in this matter will be done through a claims process and, until the claims process is completed, the SEC will not know the identity of harmed investors, the SEC has no practical means by which to directly inform harmed investors of its application to the Court to approve a plan by which they may be compensated. The SEC believes the best alternative to individual notice in this situation is the entry of an Order to show cause, by which harmed investors will have the opportunity to communicate objections, if any, to the Plan. In accordance with Local Rule 6.1(d), no previous application for the relief requested or any similar relief has been made.

A proposed Order is attached (the "Order"). Upon completion of the steps set forth in the Order, if no objections to the Plan are timely submitted, the SEC will file a notice so advising the Court, accompanied by a copy of the Plan and a proposed Order approving the Plan. If objections are timely received, the SEC shall file them, with sensitive information redacted, together with its response served by electronic, First Class, or Overnight Mail upon all parties and any objecting investor, along with the Plan or an amended Plan, as appropriate.

Proposed Briefing Schedule

The SEC does not anticipate any objection or response from Defendants to this Motion. The SEC proposes to file its motion, with accompanying memorandum and proposed Order, by April 14, 2021, after which the Defendants have until April 21, 2021, to file any opposition. The SEC will file any reply by April 28, 2021.

¹ The matter is still pending with respect to Black and the SEC likely will seek to add any additional collections in this matter to the Distribution Fund if the Distribution Fund has not yet been distributed. Moreover, the SEC anticipates that collections in related SEC enforcement actions, if timely, may be directed to the Distribution Fund for distribution.

Conclusion

The Commission respectfully requests that the Court, if appropriate, schedule a telephonic pre-motion conference at which to discuss this request.

Respectfully submitted,

s/Catherine E. Pappas
Catherine E. Pappas

cc: all counsel via ECF

Att: Proposed Order to Show Cause
Declaration of Catherine E. Pappas under Local Rule 6.1(d)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**GARRETT O'ROURKE and
MICHAEL J. BLACK,**

Defendants.

Case No.: 19-CV-4137 (KAM)

**Declaration of Catherine E. Pappas
Under Local Rule 6.1(d)**

I, Catherine E. Pappas, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a member in good standing of the bars of the State of New Jersey and the Commonwealth of Pennsylvania and appear in this case *pro hac vice* (ECF 82, 86). I am employed by Plaintiff Securities and Exchange Commission (the "SEC") as a Senior Adviser. I make this declaration pursuant to Local Rule 6.1(d) to show that good and sufficient reason exists to issue an Order to Show Cause in connection with the approval of the SEC's proposed distribution plan (the "Plan").
2. No previous application for the relief requested herein or any similar relief has been made.
3. The SEC seeks an order to show cause to provide to harmed investors the opportunity to object to the Plan. Because any distribution in this matter will be done through a claims process and, until the claims process is completed, the SEC will not know the identity of harmed investors, the SEC has no practical means by which to directly inform harmed investors of its application to the Court to approve the Plan. The SEC believes the best alternative to individual

notice in this situation is the entry of the proposed Order to Show Cause, by which harmed investors will have the opportunity to communicate objections, if any, to the Plan.

4. If the Court grants the Motion and enters the proposed Order to Show Cause, upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice with Court, so notifying the Court and responding to any objections; and provide to the Court a proposed Order approving the Plan or an amended plan, as appropriate.

I declare, under penalty of perjury that the foregoing is true and correct.

Executed on: April 8, 2021

s/ Catherine E. Pappas
Catherine E. Pappas

CERTIFICATE OF SERVICE

I hereby certify that, on April 8, 2021, a true and correct copy of the foregoing document was filed through the Court's CM/ECF system, and accordingly, the document will be sent electronically to counsel for the defendants, both of whom are participants registered to receive electronic notice in this case.

s/ Catherine E. Pappas
Catherine E. Pappas

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**GARRETT O'ROURKE and
MICHAEL J. BLACK,**

Defendants.

Case No.: 19-CV-4137 (KAM)

(Proposed) Order to Show Cause

Plaintiff Securities and Exchange Commission (the "SEC") having filed a Motion for an Order to Show Cause why the Court should not approve the SEC's proposed plan of distribution (the "Proposed Plan") for collections in this matter (the "Motion"), and for good cause shown,

IT IS HEREBY ORDERED that the Motion is **GRANTED**.

I.

IT IS FURTHER ORDERED THAT:

- a) Within two business days of the issuance of this Order, JND Legal Administration ("JND" or "Distribution Agent"), the appointed Distribution Agent for collections in this matter (the "Distribution Fund"), shall publish this Order on the website established for this case: www.OrourkeDistributionFund.com (the "Distribution Fund Website"), along with a copy of the Proposed Plan;
- b) Within 5 business days of this Order, JND shall cause a summary notice to be published on an internet based newswire service; and
- c) Within 2 business days of this Order, the SEC shall publish this Order on the SEC's public webpage for this matter:

<https://www.sec.gov/divisions/enforce/claims/orourke-black.htm> (the “SEC Webpage”), along with a copy of the Proposed Plan.

Publication as described, along with the publication of this Order through the Court’s ECF system, shall constitute and suffice as notice of the Proposed Plan and the opportunity to object to interested parties.

II.

IT IS FURTHER ORDERED THAT individuals and entities who purchased the following securities during the period(s) set forth in the table below (“Potential Claimant”), or other interested parties, within thirty (30) days from the entry of this Order (the “Objection Due Date”), shall show cause, if there is any, why this Court should not enter an Order approving the Proposed Plan.

Company Name	Trading Symbol	Relevant Period Start Date (inclusive)	Relevant Period End Date (inclusive)
AV1 Group, Inc.	AVOP	5/4/2016	10/19/2016
EnviroTechnologies International, Inc.	ETII	2/1/2017	6/30/2017
EnviroTechnologies International, Inc.	ETII	1/30/2018	5/10/2018
Cyberfort Software, Inc.	CYBF	6/29/2018	8/15/2018
Link Reservations, Inc.	LRSV	10/7/2016	2/9/2017
BioHemp International, Inc.	BKIT	5/10/2019	7/16/2019

Objections shall be made by correspondence received by JND, no later than 11:59 p.m. PST on the Objection Due Date, at the following electronic mail address:

Info@OroukeDistributionFund.com

The correspondence must clearly state that the submitting entity is a Potential Claimant as defined above, or otherwise state fully and clearly the entity’s interest in this matter, and the

entity's objection(s) to the Proposed Plan. The submitting entity must include all documentation necessary to support the objection. Any and all factual assertions must be concluded with the following declaration, if true, followed by the submitting person's signature and the date of signature:

I declare pursuant to 28 U.S.C. §1746, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

All correspondence must include current contact information for the submitting person, including, if available, an email address and mobile telephone number. Objections will be publicly filed by the SEC with the Court, as further set forth below in Section IV.

To the extent a submitting entity seeks to include in their submission sensitive information such as a social security number, financial account number, or home address, they should encrypt the submission prior to sending, sending the password in a separate email, or submit it pursuant to the next paragraph.

If a submitting entity is unable to submit their objection by email, they may send it addressed as set forth below. The submission must be received by the Distribution Agent no later than the Objection Due Date.

O'Rourke Distribution Fund
c/o JND Legal Administration
PO Box 91401
Seattle, WA 98111

Failure to timely submit an objection in accordance with this section will result in the objection being waived. Proof of timely receipt by the Distribution Agent will be the burden of the submitting entity.

III.

IT IS FURTHER ORDERED that, if no objections to the Proposed Plan are timely submitted, the SEC shall:

a) File a notice so advising the Court (the “Notice”), accompanied by a copy of the Proposed Plan, as well as a proposed Order approving the Proposed Plan.

b) Post a copy of the Notice, Proposed Plan, and proposed Order on the SEC Webpage. JND also shall post a copy of the Notice, Proposed Plan, and proposed Order on the Distribution Fund Website. Upon receipt of such notice from the SEC, the Court may enter an Order approving the Proposed Plan without further notice or passage of time.

IV.

IT IS FURTHER ORDERED THAT, if objections are timely received pursuant to this Order, the SEC shall file them, with sensitive information redacted, together with its response, within 50 days of the entry of this Order, with copies of its response served by electronic, First Class, or Overnight Mail upon any objecting party. The SEC may propose an amended plan if and as appropriate. If the SEC proposes an amended plan, the amended plan, and any accompanying filings, will be made available to all Potential Claimants and interested parties through the SEC Webpage and the Distribution Fund Website. Such publication, along with the publication through the Court’s ECF system, shall constitute and suffice as notice of the amended plan. No further objection period will be provided unless expressly ordered by the Court.

If the Court deems it necessary or appropriate, the Court may conduct a hearing before approving the Proposed (or amended) Plan. Notice of a hearing shall be provided through the Court Docket, the SEC Webpage, and the Distribution Fund Website, and if and as otherwise ordered by the Court.

SO ORDERED, this ____ date of _____, 2021,

Kiyo A. Matsumoto
U.S. District Judge