(Remaining) Counsel of Record:
Michael S. Lim
Nancy Ellen Tyler
Michael James Roessner
100 F Street, NE
Washington, D.C. 20549
Telephone: (202) 551-4659
Facsimile: (202) 772-9363
(Counsel for Securities and Exchange Commission)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **DANIEL RIVERA, MATTHEW RIVERA AND ROBBINS LANE PROPERTIES INC.** **Defendants,** **and** **DANIEL RIVERA INC. and RIVERA & ASSOCIATES (A/K/A STRATEGIC WEALTH PARTNERS OF NEW JERSEY)** **Relief Defendants.**	**CASE NO. 3:16-cv-01636-FLW-DEA** **Motion Day: July 16, 2018**

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR AN ORDER TO ESTABLISH FAIR FUND, APPOINT PLAN ADMINISTRATOR, AND APPROVE THE DISTRIBUTION PLAN

Plaintiff Securities and Exchange Commission ("the Commission") moves the Court to: 1) establish a Fair Fund ("Fair Fund") under Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246]; 2) appoint a Plan Administrator; and 3) approve the Commission's proposed plan to distribute funds already paid by Defendants in this action and any future funds paid by Defendants or Relief Defendants to harmed investors (the "Distribution Plan").

Background

On March 24, 2016, the Commission filed a complaint (the "Complaint") against Daniel Rivera ("Rivera"), Matthew Rivera ("M. Rivera"), Robbins Lane Properties Inc. ("Robbins Lane') (collectively, "Defendants"), and Daniel Rivera Inc. ("Rivera Inc.") and Rivera & Associates (a/k/a Strategic Wealth Partners of New Jersey) ("Rivera & Associates") (collectively, "Relief Defendants"). The Complaint alleged that, from 2008 through at least 2014, the Defendants violated federal securities laws by engaging in an approximately $2.7 million Ponzi scheme that targeted approximately 30, largely elderly and unsophisticated investors over a period of about six years. Rivera told investors that they would share in the profits

of Robbins Lane, a Pennsylvania real estate venture that purportedly bought, redeveloped and sold properties. In fact Robbins Lane had no operations, no employees, and no ability to provide income to investors. Instead of investing in real estate, hundreds of thousands of dollars of investor funds were used, among other things, to pay other investors, to pay entities affiliated with Rivera, and for personal and non-business expenses.

On March 28, 2016, the Court entered a final judgment ("Final Judgment") against the Defendants and Relief Defendants (Dkt. No. 3). The Final Judgment permanently enjoined Rivera from violating Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933 (the "Securities Act"), and required him to pay a total of $2,092,703 in disgorgement, prejudgment interest, and penalties (Dkt. No. 3). The Final Judgment also permanently enjoined M. Rivera and Robbins Lane from violating Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, and Sections 17(a)(1) and (3) of the Securities Act, and required M. Rivera to pay a total of $120,013 in disgorgement, prejudgment interest, and penalties. The Final Judgment further ordered the Relief Defendants to pay $591,488 in disgorgement and prejudgment interest. The Commission was ordered to hold all funds, together with interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

On February 20, 2018, the Court entered an order that appointed Miller Kaplan Arase LLP as the Tax Administrator to fulfill the tax obligations of the Fund (Dkt. No. 18).

As of April 10, 2018, the Fund consists of $238,138.22 and any future funds paid, pursuant to the Defendants' and Relief Defendants' Final Judgment, will be added to the Fund.

THE COURT SHOULD ESTABLISH A FAIR FUND

The Final Judgment against Defendants and Relief Defendants states that the Commission may propose a plan to distribute the funds collected. The Commission now moves the Court to establish a Fair Fund for the funds already paid by Defendants and any future funds to be paid by Defendants and Relief Defendants, , pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, which provides in relevant part:

> If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation. *See* 15 U.S.C. § 7246(a).

The Commission brought this action under the securities laws and the Final Judgment required the Defendants and Relief Defendants to pay a total of $2,212,716 in disgorgement, prejudgment interest, and civil penalties. The Defendants and Relief Defendants have paid a total of $226,189.93 in disgorgement, prejudgment interest, and penalties to the Commission.

As of April 10, 2018, the Fund balance is $238,138.22. Accordingly, the requirements of Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, have been satisfied, and the Court should establish a Fair Fund to facilitate the distribution of the funds in the Fair Fund to investors harmed by Defendants' conduct.

THE COURT SHOULD APPOINT A PLAN ADMINISTRATOR

The Court should appoint Michael S. Lim, a Commission employee, as Plan Administrator to implement the proposed Distribution Plan, as described in Exhibit 1. As the harmed investors are few in number and are known, the appointment of a Commission employee will avoid the costs and expenses that would ordinarily be incurred by appointing a third-party administrator.

THE COURT SHOULD APPROVE A DISTRIBUTION PLAN

The Commission seeks approval of its proposed Distribution Plan the funds already collected from Defendants and any future funds to be paid by Defendants and Relief Defendants. The Distribution Plan provides for a distribution to certain

individuals (the "Eligible Recipients") who were harmed by the Defendants because Rivera, M. Rivera and entities they controlled engaged in a fraudulent Ponzi scheme and misappropriated investor funds for their personal benefit. As of April 10, 2018, $238,138.22 has been collected by the Commission and the Commission is continuing in its efforts to collect the balance outstanding pursuant to the Final Judgment. The Distribution Plan, subject to Court approval, contemplates that approximately $238,138.22, plus any interest, minus any tax obligations and fees and expenses of the tax administrator, will be distributed to Eligible Recipients on a *pro rata* basis for the harm created by Rivera's and M. Rivera's conduct. Commission staff also plans to distribute any future funds received, plus interest, less any taxes and fees to the tax administrator and any other administrative expenses, on a *pro rata* basis to Eligible Recipients as those future funds are received on an annual basis under the compromise payment plan.

THE PROPOSED PLAN OF DISTRIBUTION

The Commission proposes the following methodology (see Exhibit 1) to determine the distribution of the corpus of the Fair Fund and any future payments received into the Fair Fund pursuant to the Defendant's payment plan:

(Step 1) Determine each Eligible Recipient's loss ("Eligible Recipient's Loss") and calculate total losses suffered by all harmed Eligible Recipients by adding up each Eligible Recipient's Loss ("Total Losses");

(Step 2) Divide each Eligible Recipient's Loss by the Total Losses. This fractional result represents the Eligible Recipient's proportion of losses to the pool of total losses ("Eligible Recipient's Proportional Loss"); and

(Step 3) Multiply each Eligible Recipient's Proportional Loss by the Fair Fund, plus interest, less any reserve for taxes and fees of the tax administrator and any other administrative expenses ("Net Fair Fund"). The resulting figure represents the amount of the Net Fair Fund to be distributed to that Eligible Recipient ("Eligible Recipient's *Pro Rata* Share").

ARGUMENT

Generally, courts have broad discretion to approve plans to distribute funds collected in SEC enforcement actions. *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991). In evaluating a proposed distribution plan, a court should "decide whether, in the aggregate, the plan is equitable and reasonable." *Id.* "Unless the consent decree specifically provides otherwise, once the District Court satisfies itself that the distribution of proceeds in a proposed Securities and Exchange Commission disgorgement plan is fair and reasonable, its review is at an end." *Id.* at 85.

As the amount of money lost by Eligible Recipients is significantly more than the amount of funds that were collected for disbursement, the payments to investors will be calculated on a *pro rata* basis as described in the proposed methodology above. Any future payments paid pursuant to the Final Judgment

will be added to the Fair Fund. The Commission believes that the proposed Distribution Plan for the Fair Fund should be approved as equitable and reasonable.

CONCLUSION

For the reasons stated above, the Commission hereby moves the Court to:

(1) establish a Fair Fund;

(2) appoint Commission employee, Michael S. Lim, as Plan Administrator of the Fair Fund; and

(3) approve the Commission's proposed Distribution Plan, attached as Exhibit 1.

Attachments: Exhibit 1 – Proposed Distribution Plan

Exhibit 2 – Proposed Order

Dated: June 20, 2018

Respectfully submitted,

s/ Michael S. Lim
Michael S. Lim
UNITED STATES SECURITIES
AND EXCHANGE COMMISSION
100 F Street, NE, Mail Stop 5876
Washington, D.C. 20548-5876
202-551-4659
limm@sec.gov
Attorney for Plaintiff

Designated Unites States Attorney to receive service of all notices or papers:

David E. Dauenheimer
Deputy Chief, Civil Division
United States Attorney's Office
District of New Jersey
970 Broad Street, Suite 700
Newark, NJ 07102-2534
Telephone: 973-645-2925
E-mail: david.dauenheimer2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2018, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court for the District of New Jersey, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

I further certify that I served the above motion on the following interested persons via UPS overnight mail:

Daniel Rivera
3A Montauk Place
Staten Island, New York 10314

Scott Kelly
Counsel for New York Community Bank, N.A.
25550 Chagrin Boulevard
Cleveland, Ohio 44122-4640

s/ Michael S. Lim
Michael S. Lim

EXHIBIT INDEX

EXHIBIT 1: JUNE 20, 2018 PROPOSED DISTRIBUTION PLAN
SUBMITTED ON THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S BEHALF BY ATTORNEY MICHAEL S. LIM, DESCRIBING THE PROPOSED DISTRIBUTION OF FUNDS COLLECTED FROM DEFENDANTS IN THIS ACTION.

EXHIBIT 2: JUNE 20, 2018 PROPOSED ORDER
SUBMITTED ON THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S BEHALF BY ATTORNEY MICHAEL S. LIM.

EXHIBIT 1: JUNE 20, 2018 PROPOSED DISTRIBUTION PLAN

PROPOSED PLAN OF DISTRIBUTION

I. Purpose

Under this Distribution Plan ("Plan"), the Fair Fund, plus interest, less any reserve for taxes, fees and other expenses of administering the Plan (the "Net Fair Fund"), will be distributed to Eligible Investors as set forth in Section V below.

II. Distribution Agent

The Commission has proposed that Michael S. Lim, a Commission employee, be appointed as the administrator of the Fair Fund (the "Distribution Agent"). The Distribution Agent will, among other things: oversee the administration of the Fair Fund, obtain mailing information for the Eligible Investors as defined in Section V below, distribute money from the assets of the Fair Fund in accordance with the Plan, resolve disputes, prepare a final accounting with assistance from the tax administrator, and provide the tax administrator with funds to pay tax liabilities and tax compliance fees and costs.

III. Qualified Settlement Fund

The Fair Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

IV. Tax Administrator

On February 20, 2018, the Court entered an order that appointed Miller Kaplan Arase LLP as the Tax Administrator ("Tax Administrator") to fulfill the tax obligations of the Fair Fund. The Distribution Agent will cooperate with the Tax Administrator in providing information necessary to accomplish income tax compliance of the QSF. The Tax Administrator will be compensated for all reasonable costs and expenses from the Fair Fund in accordance with its Engagement Letter Agreement with the Commission. The Fair Fund's taxes will be paid out of the Fair Fund.

V. Specification of Eligible Investors

Except as noted below, eligible investors are individuals who invested money in Robbins Lane Properties Inc. ("Robbins Lane") and who suffered a net loss ("Eligible Investors"). Investors ineligible to participate in this Plan are the Defendants, any relatives or business associates of the Defendants, and any individuals or entities who worked for the Defendants at any time.

VI. No claims-made process

The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

VII. Methodology for Determining Distribution Amounts

The Commission staff will determine the amount to be distributed to each Eligible Investor as follows. First, the Distribution Agent will total the actual principal invested by each Eligible Investor in Robbins Lane. Second, the Distribution Agent will subtract from this total amount all actual payments an Eligible Investor received from Robbins Lane and from other Defendants or Relief Defendants, including redemptions, withdrawals, and any other payments. This resulting total is an Eligible Investor's net loss amount ("Net Loss Amount"). Third, the Distribution Agent will add the Net Loss Amounts for each Eligible Investor and compare this amount to the Net Fair Fund. If, as anticipated, the total Net Loss Amounts exceed the approximate Net Fair Fund, the Distribution Agent will determine the percentage of the total Net Loss Amounts that is represented by each Eligible Investor's Net Loss Amount. The resulting percentage for each Eligible Investor is the investor's pro rata share ("Pro Rata Share"). Finally, the Net Fair Fund will be multiplied by each Eligible Investor's Pro Rata Share to determine an estimated net distribution amount ("Estimated Net Distribution Amount") for each Eligible Investor.

If an Eligible Investor is removed ("Removed Eligible Investor") from the distribution (for reasons described in Section VIII below), that Removed Eligible Investor's Estimated Net Distribution Amount will be added to the Net Fair Fund (as defined in Section I). A recalculation will then take place to determine each

remaining Eligible Investor's Estimated Net Distribution Amount. The recalculation will involve multiplying the Net Fair Fund by each remaining Eligible Investor's Pro Rata Share to determine a Net Distribution Amount for each remaining Eligible Investor.

VIII. Procedures for Locating and Notifying Eligible Investors

Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, Commission staff has identified approximately 30 Eligible Investors. Within thirty (30) days of the Court's approval of the Plan, the Distribution Agent will send each Eligible Investor a notice by electronic mail, United States Postal Service, or other mail delivery service regarding the Court's approval of the Plan, including as appropriate, a statement characterizing the distribution, a link to the Plan on the Commission's website and instructions for requesting a copy of the Plan, the number assigned to that Eligible Investor on the chart in order to determine his or her Net Loss Amount (as defined in Section VII) and Estimated Net Distribution Amount (as defined in Section VII), a description of the tax information reporting and other related tax matters, and the name of the Distribution Agent, to contact with questions regarding the distribution (the "Plan Notice"). Eligible Investors will be asked to confirm the Estimated Net Distribution Amount or provide documentation if they disagree with the Estimated Net Distribution Amount (as

defined in Section VII). The Distribution Agent will coordinate with the Tax Administrator to request contact and other information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund, including compliance with the Foreign Account Tax Compliance Act ("FATCA").

If a Plan Notice is returned as undeliverable within sixty (60) days of approval of the Plan, the Distribution Agent will make all reasonable efforts to ascertain an Eligible Investor's correct address. The Distribution Agent will then resend the Plan Notice to the Eligible Investor's new address within thirty (30) days of receipt of the returned Plan Notice. If the Plan Notice is returned again, the Eligible Investor will be removed ("Removed Eligible Investor") from the distribution and that particular Removed Eligible Investor's Estimated Net Distribution Amount (as defined in Section VII) will be added to the Net Fair Fund (as defined in Section VII) and become part of the recalculation described above in Section VII.

If an Eligible Investor fails to respond within sixty (60) days from approval of the Plan, the Distribution Agent will then make no fewer than two (2) attempts to contact the Eligible Investor telephonically or by email. The second attempt will to the extent possible take place no more than seventy-five (75) days from approval of the Plan. If an Eligible Investor fails to respond to the Distribution

Agent's contact attempts, such Eligible Investor will not receive a distribution (and becomes a Removed Eligible Investor) and the Estimated Net Distribution Amount (as defined in Section VII) that such Removed Eligible Investor would have received will be included in the Net Fair Fund (as defined in Section I) available to those Eligible Investors who responded to the Distribution Agent, and the Distribution Agent will recalculate the Estimated Net Distribution Amount pursuant to Section VII. In no event, however, will an Eligible Investor receive a distribution payment that exceeds the amount of his or her Net Loss Amount.

Any funds from the Net Fair Fund (as defined in Section I) that cannot be distributed for any reason will become part of the Residual Account, described in Section XIV below, and reported in the final accounting.

IX. Distribution Timing

The Distribution Agent will use his best efforts to start the Commission disbursement approval process within one hundred fifty (150) days of the Plan's approval.

X. Bureau of the Fiscal Service; Validation and Approval of Disbursement of the Fair Fund

The Fair Fund disbursement to Eligible Investors will be implemented by the Commission and disbursed through the U.S. Treasury's Bureau of the Fiscal Service ("BFS"); checks will be mailed or distribution payments will be electronically transferred to each Eligible Investor as instructed by the Distribution

Agent, working with other Commission staff. The Distribution Agent will prepare and submit to the Commission staff a list of Eligible Investors and total Recognize Loss amounts for each (the "Final Payee List"). The Final Payee List contains the names and addresses of the payees. At the Court's request, the Commission will file an unredacted copy of the Final Payee List under seal. The Distribution Agent will compile the information and prepare a payment file in a Commission-approved format for submission to the Commission to make the disbursements through BFS. The Distribution Agent will seek further order of this Court for disbursement of the Fair Fund.

The Distribution Agent will work with BFS to obtain information about uncashed checks, 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 also is responsible for accounting for all payments. Checks issued by BFS shall state on their face that they are valid for one year. If any checks issued are not cashed within the one year time period, the Distribution Agent will work with BFS to identify all uncashed checks.

XI. Expenses of Administration

All taxes and the reasonable costs and fees of the Tax Administrator, third-party professionals and service providers incurred in the performance of their

duties, and BFS investment fees, will be paid from the Fair Fund, subject to the review and approval of the Court.

XII. Amendments and Procedural Deadline Extensions

The Distribution Agent will take reasonable and appropriate steps to distribute funds from the Net Fair Fund according to the Plan. The Commission will seek Court approval of any changes to the Plan that are determined to be material. Immaterial changes may be made by the Distribution Agent. For good cause shown, the Distribution Agent may extend any of the procedural dates set forth in the Plan.

XIII. Procedures to Request Plan Notice

A person that does not receive a Plan Notice and believes that he or she should have received a Plan Notice after becoming aware of the Plan (*e.g.*, through other Eligible Investors or on www.sec.gov) must submit documentation to the Distribution Agent, to establish that the individual is in fact eligible to receive a Plan Notice within seventy-five (75) days after the Court's approval of the Plan. The Distribution Agent will contact the individual within twenty-one (21) days of receiving the individual's documentation with a determination of his or her eligibility if the Distribution Agent determines that the individual should have received a Plan Notice.

XIV. Disposition of Undistributed Funds

A residual account within the Fair Fund will be established for any amounts remaining after distribution of the Net Fair Fund to Eligible Investors has occurred ("Residual Account"). The Residual Account will include as applicable funds reserved for future taxes and related expenses, funds from checks that have not been cashed, that were not delivered or that were returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties. All funds remaining in the Residual Account will be transferred to the U.S. Treasury after the final accounting (as described in Section XV below) is approved by the Court.

XV. Approval of Final Accounting, Discharge of the Distribution Agent, and Termination of Fair Fund

Following the distribution of the Net Fair Fund to Eligible Investors, the Distribution Agent will make arrangements for the final payment of taxes and Tax Administrator fees and will submit a final accounting to the Court.

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) a final report and accounting has been submitted to and approved by the Court; and (b) all taxes and fees have been paid.

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

EXHIBIT 2: MAY 20, 2018 PROPOSED ORDER

(Remaining) Counsel of Record:

Michael S. Lim
Nancy Ellen Tyler
Michael James Roessner
100 F Street, NE
Washington, D.C. 20549
Telephone: (202) 551-4659
Facsimile: (202) 772-9363
(Counsel for Securities and Exchange Commission)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **DANIEL RIVERA, MATTHEW RIVERA AND ROBBINS LANE PROPERTIES INC.** **Defendants,** **and** **DANIEL RIVERA INC. and RIVERA & ASSOCIATES (A/K/A STRATEGIC WEALTH PARTNERS OF NEW JERSEY)** **Relief Defendants.**	**CASE NO. 3:16-cv-01636-FLW-DEA**

[PROPOSED] ORDER ESTABLISHING A FAIR FUND, APPOINTING PLAN ADMINISTRATOR AND APPROVING DISTRIBUTION PLAN

The Court, having reviewed the Securities and Exchange Commission's Motion for an Order to 1) establish a Fair Fund; 2) appoint a Plan Administrator; and 3) approve the Commission's plan to distribute funds collected and to be collected from Defendants and Relief Defendants in this action, and all accompanying papers, and for good cause shown,

IT IS HEREBY ORDERED, that:

1. The Motion to Establish a Fair Fund, Appoint a Plan Administrator, and Approve the Distribution Plan is **GRANTED.**

Dated: _____

_____
UNITED STATES DISTRICT JUDGE