

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

MAGDALENA TAVELLA,  
ANDRES HORACIO FICICCHIA, GONZALO  
GARCIA BLAYA, LUCIA MARIANA  
HERNANDO, CECILIA DE LORENZO,  
ADRIANA ROSA BAGATTIN,  
DANIELA PATRICIA GOLDMAN,  
MARIANO PABLO FERRARI, MARIANO  
GRACIARENA, and  
FERNANDO LOUREYRO,

Defendants.

Civil Action No. 13-CIV-4609

Judge Naomi Reice Buchwald

**DISTRIBUTION PLAN**

**I. Introduction**

1. On, July 3, 2013, the Commission filed a complaint alleging, *inter alia*, that Defendants violated Section 5(a) and 5(c) of the Securities Act of 1933 by selling almost \$34 million worth of securities in Biozoom, Inc. unlawfully to the public as no registration statement was in effect for the Selling Defendants' resale of securities and no exemption from registration was applicable. The Commission sought an asset freeze covering the Selling Defendants' Biozoom shares as almost half of the ill-gotten profits had been transferred out of the United States and it was feared that dissipation of assets was likely to continue.
2. On July 9, 2013 the Court entered a Temporary Restraining Order ("TRO") freezing the brokerage accounts of the defendants holding Biozoom shares and any accounts held by

financial institutions or brokers that have the proceeds of the Biozoom sales on behalf of the defendants.

3. By order dated January 9, 2015, Final Judgment against the Defendants was entered pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and it was ordered that the Defendants pay the following amount in Disgorgement and civil penalties:

<b>Defendant</b>	<b>Disgorgement</b>	<b>Civil Penalty</b>	<b>Total</b>
Magdalena Tavella	\$3,107,819	\$160,000	\$3,267,819
Andres Horacio Ficicchia	\$1,948,339	\$160,000	\$2,108,339
Gonzalo Garcia Blaya	\$3,008,200	\$160,000	\$3,168,200
Lucia Mariana Hernando	\$5,042,771	\$160,000	\$5,202,771
Cecilia De Lorenzo	\$4,801,536	\$160,000	\$4,961,536
Adriana Rosa Bagattin	\$6,216,380	\$160,000	\$6,376,380
Daniela Patricia Goldman	\$3,764,306	\$160,000	\$3,924,306
Mariano Pablo Ferrari	\$5,447,450	\$160,000	\$5,607,450

4. Furthermore, in partial satisfaction of the amounts owed by Defendants, Defendants' accounts that were frozen pursuant to the TRO were ordered to be turned over. To date the Commission recovered from the frozen assets a total of \$16,117,936. The Commission invested \$16,022,574 with United States Department of the Treasury at the Bureau of the Fiscal Service ("BFS"). Any investment fees of the BFS will be paid by the Fair Fund.
5. It is doubtful, but possible, that additional funds will be recovered from the Defendants from various foreign sources. However, repatriation of these funds to the United States could be

very difficult and may never occur. Should any additional money be collected in this matter, Commission staff will evaluate whether it is feasible to make such a distribution.

6. By Order dated August 25, 2015, the Court created a Fair Fund pursuant to Section 308(a) of Sarbanes-Oxley, as amended, to return funds to injured investors and appointed Kurtzman Carson Consultants, LLC (“KCC”) (“Distribution Agent”) to serve as the Distribution Agent to oversee all aspects of the administration and distribution of the Fair Fund in accordance with the terms of a distribution plan to be approved by the Court, and in coordination with the Commission staff.
7. This Distribution Plan was developed jointly by the Distribution Agent and the Commission staff in accordance with practices and procedures customary in Fair Fund administrations. This Distribution Plan governs the administration and distribution of the Fair Fund, and sets forth the method and procedures for distributing the assets of the Fair Fund to certain Biozoom investors harmed by the misconduct.

## **II. Definitions**

8. As used in this Distribution Plan, the following definitions shall apply:
  - a. “**Biozoom Fair Fund**” or “**Fair Fund**” refers to the fund created by the Court pursuant to the provisions of Sarbanes-Oxley, as amended, and pursuant to the Final Judgment for the benefit of investors harmed by investing in Biozoom Common Stock as described in the Complaint, plus any accumulated interest or earnings thereon or any additions thereto as may be provided by future Court order or agreement in related cases or otherwise. The Fair Fund currently is composed of frozen assets of \$16,117,936, representing \$16,078,536 in disgorgement, \$26,558 in penalties, and \$12,842 in interest.

- b. “**Check-cashing Period**” means the ninety (90) days following the mailing of Distribution Payment checks to Eligible Claimants in accordance with this Distribution Plan.
- c. “**Claim Deficiency Notice**” means the notice sent by the Distribution Agent to a Potential Claimant whose claim is deficient in one or more ways (e.g., failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potential Claimant of the reason(s) for the deficiency and the opportunity to cure such deficiency. Subject to certain extensions provided for in this Plan, the deadline to cure deficiencies shall be twenty (20) days from the date of the Claim Deficiency Notice.
- d. “**Days**” means calendar days, unless otherwise specified herein.
- e. “**Distribution Agent**” refers to KCC (collectively with all employees, agents, consultants, or independent contractors of such firm), which has been appointed by the Court to administer and distribute the Fair Fund in accordance with the terms of this Distribution Plan and the Court’s orders.
- f. “**Distribution De Minimis Amount**” shall mean the minimum preliminary calculation amount of \$10.00. No Eligible Claimant shall receive a distribution payment unless the preliminary calculation is equal to or greater than \$10.00.
- g. “**Distribution Payment**” means the payment to an Eligible Claimant in accordance with the terms of this Distribution Plan.
- h. “**Distribution Plan**” means this Distribution Plan in the form approved by the Court.

- i. “**Eligible Claimant**” means a Potential Claimant (other than Excluded Parties) who suffered a loss as a result of purchase transactions in Eligible Securities during the Relevant Period and who is determined by the Distribution Agent to be eligible for a Distribution Payment from the Fair Fund.
- j. “**Eligible Loss Amount**” is the amount of loss an Eligible Claimant incurred through the investment in Eligible Securities during the Relevant Period calculated in accordance with the Plan of Allocation.
- k. “**Eligible Securities**” refers to shares of Biozoom, Inc. traded on the Over the Counter Bulletin Board and registered with the Commission. Transactions in common stock during the Relevant Period that are pursuant to, or in connection with, a swap, an option or other derivative will not be eligible for a recovery.
- l. “**Excluded Parties**” shall mean defendants, Biozoom, Inc. and all other entities or individuals who improperly helped in establishing a market for, and escalating the price of, Biozoom stock, based on the stock trading of those entities or individuals. The Proof of Claim Form will require all Potential Claimants to certify that that they are not an Excluded Party.
- m. “**Fair Fund Notice**” means a written notice from the Distribution Agent to Potential Claimants informing them of the Fair Fund and its eligibility requirements, and explaining how to submit a claim. The Fair Fund Notice will be both mailed and published according to the schedule detailed herein.
- n. “**Filing Deadline**” means the date established in accordance with this Distribution Plan by which Proof of Claim Forms must be postmarked or submitted electronically in order to receive consideration under the Distribution Plan. Subject

to certain extensions provided for in this Distribution Plan, the Filing Deadline will be ninety (90) days from the initial notice mailing.

- o. “**Notice Packet**” means the materials relevant to submitting a claim that may be provided to Potential Claimants known to the Distribution Agent or to those who obtain such materials through a website or other appropriate delivery mechanisms. These materials will include a copy of the Fair Fund Notice and a Proof of Claim Form (together with instructions for completion of the Proof of Claim Form).
- p. “**Net Available Fair Fund**” means the Fair Fund, less any amounts expended for tax obligations, fees and expenses of the Distribution Agent and Tax Administrator, and BFS fees in accordance with this Distribution Plan.
- q. “**Notice of Publication**” means the publication of the Fair Fund Notice, or a notice closely resembling the Fair Fund Notice, in print, *PR Newswire*, or internet media in a manner deemed appropriate by the Distribution Agent and not unacceptable to the Commission staff. Such notice (the text of which shall be approved by the Commission staff) shall include, at a minimum, a statement that the Fair Fund relates to purchases of Eligible Securities during the Relevant Period and the means of obtaining a Notice Packet.
- r. “**Person**” means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.
- s. “**Plan of Allocation**” means the methodology by which a Potential Claimant’s Eligible Loss Amount is calculated. The Plan of Allocation is set forth in Appendix I and attached hereto.

- t. “**Potential Claimants**” means those Persons, or their lawful successors, identified by the Distribution Agent as having possible claims to recover from the Net Available Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Net Available Fair Fund under this Distribution Plan.
- u. “**Proof of Claim Form**” means the form designed by the Distribution Agent for the filing of claims in accordance with the terms of this Distribution Plan. The Proof of Claim Form will require, at a minimum, sufficient documentation reflecting any Potential Claimant’s purchases and dispositions of Eligible Securities during the Relevant Period.
- v. “**Recognized Claim**” shall be the Eligible Claimant’s compensable allocation amount calculated pursuant to the methodology of the Plan of Allocation.
- w. “**Rejection Notice**” shall mean the notice sent by the Distribution Agent to a Potentially Eligible Claimant stating the Distribution Agent’s determination that the Eligible Claimant’s claim is not eligible to receive any distribution.
- x. “**Relevant Period**” for the purposes of this Distribution Plan means the period of time commencing on May 16, 2013 and continuing until June 25, 2013, inclusive.
- y. “**Request for Reconsideration Deadline**” shall mean the date established in accordance with this Plan by which a Potentially Eligible Claimant’s dispute of a Rejection Notice must be filed to challenge the Rejection Notice. Subject to certain extensions provided for in this Plan, the deadline to file such requests shall be twenty (20) days from the date of Rejection Notice.

- z. **“Tax Administrator”** means Damasco & Associates, LLP, the firm appointed by the Court on May 19, 2015 as the Tax Administrator in this action.

### **III. Administration of the Fair Fund**

#### **A. Identification of and Notice to Potential Claimants**

9. The Distribution Agent will, insofar as is practicable, use its best efforts to identify Potential Claimants from a review of trading records and account information provided by the defendants, the transfer agent for Biozoom, clearing firms, registered broker-dealers, market makers, investment advisors and other sources. The Distribution Agent will coordinate with Commission staff to send document requests to any of aforementioned entities to identify investors who purchased Biozoom stock during the period May 16, 2013 and continuing until June 25, 2013, inclusive.
10. In order to ensure a timely mailing to Potential Claimants, the transfer agent or any other entity described in paragraph 8 shall deliver the requested documents to the Distribution Agent no later than fifteen (15) days from the date the document request is received. The Company and/or its representatives shall also provide assistance to the Distribution Agent as necessary to obtain information from the transfer agent and/or Depository Trust and Clearing Corporation regarding banks and brokers that traded in Eligible Securities during the Relevant Period.

11. The Distribution Agent will create a mailing database consisting of the records provided by Biozoom's transfer agent or other entities described in paragraph 9, provided by the SEC, or otherwise obtained by the Distribution Agent.
12. The Distribution Agent will design and submit a Notice Packet, including a Fair Fund Notice and a Proof of Claim Form, to the Commission staff for review and approval.
13. Before commencing any mailing, the Distribution Agent will run a National Change of Address search to obtain updated addresses for all Potential Claimants recorded in the database.
14. The Distribution Agent will commence mailing the Fair Fund Notice to all Potential Claimants known to the Distribution Agent within sixty (60) days following the entry by this Court of an Order approving this Distribution Plan ("Initial Mailing") or after the last document request is received (as described in paragraph 9), whichever is later. Each Fair Fund Notice will notify the Potential Claimant of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Proof of Claim Form by request or from the Fair Fund website, and provide instructions for submitting a claim.
15. The Distribution Agent will mail notices to the Distribution Agent's list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process ("record holders") that may have records of holders of Eligible Securities during the Relevant Period. The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Eligible Securities:

- a. Notify the respective beneficial owners within fourteen (14) days of receipt of the Distribution Agent's notice so that beneficial owners may timely file a claim. The burden will be on the record holders to ensure the Notice Packets and other relevant materials are properly disseminated to their customers; and/or
  - b. Provide the Distribution Agent within fourteen (14) days, a list of last known names and addresses for all beneficial owners for whom the record holders purchased Eligible Securities during the Relevant Period so that the Distribution Agent can communicate with them directly.
16. Claims Packets will be available on the Fair Fund website to brokerages and other institutions that hold Eligible Securities in "street name" for the benefit of their customers who are the beneficial owners of the securities. The Distribution Agent will promptly provide a Notice Packet to any Potential Claimant upon request. Additionally, the Distribution Agent shall continue to supply the Notice Packet to Potential Claimants who contact the Distribution Agent requesting a copy via mail, phone, or e-mail.
17. Within ten (10) days of the Initial Mailing of the Fair Fund Notice, the Distribution Agent will carry out the Notice of Publication, which will notify the public of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Proof of Claim Form by request or from the Fair Fund website, and provide instructions for submitting a claim.
18. The Distribution Agent will establish and maintain a website devoted solely to the Fair Fund. The Fair Fund website, located at [www.BiozoomFairFund.com](http://www.BiozoomFairFund.com), will make available a copy of the Fair Fund Notice, the approved Distribution Plan, court documents, and will provide

information regarding the claims process and eligibility requirements for participation in the Fair Fund. The website will also include a copy of a Proof of Claim process or substance that the Distribution Agent believes will be beneficial to Potential Claimants. The Commission staff retains the right to review and approve any material posted on the Fair Fund website.

19. The Distribution Agent will establish and maintain a toll-free telephone number for Potential Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours, 9:00 a.m. to 8:00 p.m., Eastern Standard Time, or, outside of such hours, to hear prerecorded information about the Fair Fund. The Distribution Agent will advise the Commission staff of the toll-free telephone number. The Distribution Agent will also establish and maintain a traditional mailing address and an email address to enable Potential Claimants to correspond with the Distribution Agent.
20. The Distribution Agent will attempt to locate any Potential Claimant whose mailing is returned by the United States Postal Service (“USPS”) as “undeliverable.” The Distribution Agent will utilize all means reasonably available to obtain updated addresses in response to undeliverable notices, and forward any returned mail for which an updated address is provided or obtained. Additionally, the Distribution Agent may engage a third-party search firm to conduct more rigorous searches for missing Potential Claimants. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable after consultation with the staff of the Commission.

## **B. Claims Process**

21. The Claims Filing Deadline will be clearly identified in all materials as the first business date following the calendar date ninety (90) days from the Initial Mailing. To avoid being barred from asserting a claim, each Potential Claimant must submit to the Distribution Agent a properly completed Proof of Claim Form reflecting such Potential Claimant's claim, together with all required supporting documentation postmarked on or before the Claims Filing Deadline. A Proof of Claim Form that is postmarked after the Claims Deadline will be marked as "late" and only accepted, if after consulting with the Commission staff, the processing of these claims will not delay the distribution process, unless the deadline is extended by the Distribution Agent after consultation with Commission staff. Any extension will be published on the Fair Fund website.
22. The burden to ensure the Proof of Claim Form is properly and timely postmarked and to prove receipt of the claim by the Distribution Agent will be upon the Potential Claimant; therefore Potential Claimants will be instructed to submit their claims in a manner that will enable them to prove receipt of the claim by the Distribution Agent.
23. Proof of Claim Forms must be properly filled out per the instructions provided by the Distribution Agent, and must be accompanied by such documentary evidence as the Distribution Agent deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third party documentary evidence of purchases and dispositions of Eligible Securities during the Relevant Period, as well as holdings of Eligible Securities at pertinent dates.
24. The Distribution Agent will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing the claim data and supporting documentation (or the lack thereof), verifying the claim, and calculating each

Potential Claimant's Eligible Loss Amount pursuant to the Plan of Allocation. Each Potential Claimant will have the burden of proof to establish the validity and amount of his or her claim, and that he or she qualifies as an Eligible Claimant. The Distribution Agent will have the right to request, and the Potential Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

**C. Deficiency and Claim Determination Processes**

25. The Distribution Agent will provide a Claim Deficiency Notice to each Potential Claimant who has filed a Proof of Claim Form with the Distribution Agent that is deficient in whole or in part, setting forth the Distribution Agent's conclusions concerning such claim.
26. The Claim Deficiency Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (e.g., failure to provide required information or documentation). The Claim Deficiency Notice will also notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Any Potential Claimant with a deficient claim will have twenty (20) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.
27. In the event the claim is denied, in whole or in part, the Rejection Notice will state the reason for such denial. Any Potential Claimant seeking reconsideration of a rejected claim must advise the Distribution Agent in writing within twenty (20) days of the date of the Rejection Notice. All requests for reconsideration must include the necessary documentation to

substantiate the basis upon which the Potential Claimant is requesting reconsideration of their claim.

28. The Distribution Agent may consider requests for review of any claim determination presented by Potential Claimants. Potential Claimants who request review must provide a reason for the request and documents supporting their claim. The Distribution Agent will investigate the request for review, and within thirty (30) days of receipt of the written request, the Distribution Agent will notify the Potential Claimant of the final resolution of the review. The Distribution Agent will notify the Commission of any request for review that does not result in the resolution of the claim. The Distribution Agent will have the authority to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the Distribution Plan in any dispute, request for review, or request to cure a deficient claim will be final and not subject to appeal.
29. The Potential Claimant has the burden of notifying the Distribution Agent of a change in his or her current address and other contact information, and of ensuring that such information is properly reflected in the Distribution Agent's records.
30. The receipt of Eligible Securities by gift, inheritance, devise, or by operation of law will not be deemed to be a purchase of Eligible Securities, nor will it be deemed an assignment of any claim relating to the purchase of such securities unless specifically so provided in the instrument of inheritance. However, the recipient of Eligible Securities as a gift, inheritance, devise or by operation of law will be eligible to file a Proof of Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of this Distribution Plan. Only one claim may be submitted with regard to the

same transactions in Eligible Securities, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

31. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include individual retirement accounts, and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will issue any payments on such claims directly to the administrator, custodian, or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account, or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potential Claimants, the Distribution Agent will endeavor to distribute funds directly to the beneficial accountholders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent.

#### **IV. Third-Party Review**

32. After the Distribution Agent has completed the process of analyzing the claims and determining claim amounts in accordance with this Distribution Plan, and prior to the distribution of any funds, the Distribution Agent will engage an independent, third-party firm, not unacceptable to Commission staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan of Allocation. The Distribution Agent will communicate the results of

the review to Commission staff together with any written analysis or reports related to the review, and, upon request, will make the firm available to the Commission staff to respond to questions concerning the review.”

**V. Establishment of the Escrow Account**

33. Prior to disbursement of the Fair Fund, the Distribution Agent will establish accounts described as follows at a U.S. commercial bank (“Bank”), not unacceptable to Commission staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Fair Fund will be held in the Escrow Account until the time of distribution. The Distribution Agent will also establish a separate deposit account (e.g., controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants. The accounts shall be in the name of and bearing the Employer Identification Number of the Fair Fund as custodian for the distributees of the Distribution Plan. The name of each account will be in the following form: “SEC v. Biozoom Distribution Fund, as custodian for the benefit of investors allocated a distribution pursuant to the Biozoom Distribution Plan.
34. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States (“U.S.”) Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to

meet the cash liquidity requirements for payments to Eligible Claimants or tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or investments in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest 100% of their assets in short-term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided, however, that the AAA-rated Money Market Mutual Funds’ investments in short term U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

35. In consultation with the staff of the Commission, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Fair Fund.
36. All interest earned will accrue for the benefit of the Fair Fund.
37. Upon receipt of the monies from the SEC into the Escrow Account, the Distribution Agent will provide a signed receipt to the Commission staff within ten (10) business days. The Commission staff will file the receipt with the Court.
38. Upon transfer from the SEC, the assets of the Fair Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of checks. All Fair Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and

amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank's confirmation that a presented check matches the relevant "positive pay" criteria.

39. The Distribution Agent will provide copies of the bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and will assist the Tax Administrator in obtaining any other statements, as necessary.

## **VI. Distribution**

40. The Net Available Fair Fund will be distributed to Eligible Claimants as provided under the terms of this Distribution Plan. An Eligible Claimant's Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Appendix I to this Distribution Plan, will be used to determine the amount of their Distribution Payment.
41. The Distribution Agent will disburse the Net Available Fair Fund to all Eligible Claimants, in one or more tranches, once all Proof of Claim Forms have been processed and all Potential Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth herein.
42. Within forty-five (45) days following the expiration date of the last Claim Deficiency Notice and/or Rejection Notice, the Distribution Agent will prepare a list of all Eligible Claimants, the Eligible Loss Amount, and the Distribution Payment of each Eligible Claimant ("Payment File"). The Distribution Agent will also prepare the relevant materials to effect a distribution, including recommending an estimated distributable amount from the Net Fair

Fund. The Distribution Agent will retain a prudent reserve to pay any federal, state, or local taxes payable in connection with the Fair Fund.

43. After receipt and acceptance of the Payment File, the Commission staff will petition the Court for authority to disburse the entire balance of the Net Fair Fund from the Commission to the Distribution Agent for distribution to Eligible Claimants pursuant to the Distribution Plan. In conjunction with any motion seeking approval of a distribution, the Payment File will, upon request, be made available to the Court under seal.
44. Following the Court's approval of the Commission's petition for the authority to distribute the Net Available Fair Fund to Eligible Claimants as provided for in this Distribution Plan, the Distribution Agent will commence the distribution to Eligible Claimants as promptly as possible.
45. Should the total amount of the Eligible Loss Amounts of all Eligible Claimants exceed the Net Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a pro rata distribution formula. This formula will be the fraction of the Eligible Loss Amount of each Eligible Claimant divided by the aggregate Eligible Loss Amounts of all Eligible Claimants. No Distribution Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds the Distribution De Minimis Amount.
46. The Distribution Agent in its exclusive discretion may, but will have no obligation to, aggregate accounts held by a person in the same legal capacity in determining Eligible Loss Amounts and Distribution Payment amounts.
47. Checks will be issued by the Distribution Agent from the Distribution Account set up at the Bank. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this Check-cashing

Period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below. Where an Eligible Claimant's check is not negotiated within the Check-cashing Period and has been voided by the Distribution Agent, that Eligible Claimant's claim will be extinguished. All such funds will remain in the Fair Fund.

48. Payments to Eligible Claimants will be accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
- b. A statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued;
- c. A statement that reissued checks will expire on thirty (30) days from the date of the reissued check;
- d. A statement that the tax treatment of the distribution is the responsibility of each Eligible Claimant and that the Eligible Claimant should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and
- e. Contact information for the Distribution Agent for questions regarding the Distribution Payment.

49. Distribution checks and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of their investment in Biozoom. Any such communication, letter or other mailing to Eligible Claimants characterizing the distribution will be submitted to the Commission staff and the Tax Administrator for review and approval.

50. Wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments to filers. Wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff. Wire transfers will be executed in U.S. dollars, unless otherwise agreed to with the Commission Staff.
51. Under no circumstances will the Distribution Agent, its employees, or its agents incur any liability to any Person for making a distribution in accordance with the Order of the Court approving the distribution and the schedules of Eligible Claimants, and all Persons shall be enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Fair Fund, such Eligible Claimant will be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and shall be barred from prosecuting or asserting any such claims.

## **VII. Post Distribution**

### **A. Handling of Returned or Un-cashed Checks**

52. The Distribution Agent is authorized to reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void thirty (30) days from the reissuance.

53. The Distribution Agent will research and attempt to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address. The Distribution Agent will mail a reissued check to the updated address, subject to the time limits detailed herein.
54. In cases where an Eligible Claimant is unable to endorse a Distribution Payment (e.g., as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Claimant or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent. If such change is properly documented in the sole discretion of the Distribution Agent, the Distribution Agent will issue an appropriately redrawn Distribution Payment, subject to the time limits detailed herein.
55. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow up on the status of un-cashed Distribution Payments per thresholds agreed to with the Commission staff (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of un-cashed checks at the request of Commission staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

**B. Disposition of Remaining Funds**

56. If, after the distribution is complete, all tax obligations of the Fair Fund have been satisfied, and funds remain in the Fair Fund, the Commission staff, in consultation with the

Distribution Agent, will return, via wire, the remaining funds to the Commission for transfer to the United States Treasury.

### **VIII. The Distribution Agent**

57. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Distribution Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements; advising Potential Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Potential Claimant eligibility; advising Potential Claimants of final claim determinations; and disbursing the Fair Fund in accordance with this Distribution Plan.
58. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Distribution Plan upon agreement with Commission staff. If a change is deemed to be material by Commission staff, Court approval is required prior to implementation by amending the Distribution Plan.
59. The Distribution Agent may extend any procedural deadline contained in the Distribution Plan for good cause shown, if agreed upon by the Commission staff.

60. The Distribution Agent is authorized to enter into agreements with institutions (“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.
61. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants, or third parties retained by the Distribution Agent in furtherance of its duties). The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Fair Fund on a monthly basis directly to Commission staff.
62. In the interests of paying the administration fees timely, distributing funds expeditiously, and conserving resources of both the Court and the SEC, the Commission now requests authorization for its staff to review, approve and pay all future fees and expenses of the Distribution Agent from the Distribution Fund, without further application or order from the Court. All such payments of fees and expenses will be tracked and reported to the Court in a final accounting.
63. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the staff of the Commission and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.

64. The Distribution Agent will retain all claims materials in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission. In addition, the Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund three (3) months after the closing of the Escrow and Distribution Accounts, or at such earlier time as the Distribution Agent determines with concurrence of the Commission staff.

### **IX. Tax Compliance**

65. The Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), as amended. 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. Regs. § 1.468B-1 to § 1.468B-5, including, but not limited to:

- a. Obtaining a taxpayer identification number;
- b. Submitting requests for funds from the Fair Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns; and
- c. Satisfying any information, reporting, or withholding requirements in connection with the distribution of the Fair Fund.

66. When the Fair Fund is transferred to the Escrow Account for distribution, the Distribution Agent will tender to the Tax Administrator funds necessary to pay taxes upon the request of

the Tax Administrator. The SEC will approve and arrange payment of the tax obligations without further approval of the Court.

67. All fees, costs and expenses of the Tax Administrator will be paid by the Fair Fund as part of the cost of the administration of the Fair Fund. Any taxes on interest earned by the Fair Fund will be paid by the Fair Fund.

**X. Fair Fund Reporting and Accounting**

68. The Distribution Agent will provide to Commission staff a quarterly status report within forty-five (45) days of Court approval of this Distribution Plan, and will provide additional reports and quarterly account statements within thirty (30) days after the end of every quarter thereafter as detailed below. The Commission staff shall provide this report to the Court upon request.

69. Once the money has been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the Commission staff, shall be submitted with the status report by the Distribution Agent.

70. The status report and quarterly account statement will inform the Court and the staff of the Commission of the activities and status of the Fair Fund during the relevant reporting period, and once funds are transferred to the Distribution Agent will specify, at a minimum:

- a. The location of the account(s) comprising the Fair Fund; and
- b. An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Eligible Claimants under this Distribution Plan, and

any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan.

71. The Distribution Agent will prepare a final report and final accounting, in a format to be provided by the Commission staff, when the Fair Fund administration is complete. In compiling the final accounting, the Distribution Agent will coordinate with the Tax Administrator. The Commission staff will file the final report and final accounting with the Court.
72. Commission staff, or other relevant party, shall provide the Distribution Agent with any and all account information relating to the Fair Fund that may be required to meet reporting obligations; including providing copies of any account statements that the Distribution Agent may request.

#### **XI. Termination of the Fair Fund**

73. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Distribution Accounts will be transferred to the Commission.
74. 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 report and accounting has been submitted to and approved by the Court;
  - b. All taxes have been paid; and
  - c. All remaining funds have been transferred to the Commission.
75. Once the Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

**XII. Limitation of Liability**

76. The Court reserves the right to amend this Distribution Plan from time to time; and retains exclusive jurisdiction over all claims arising in connection with this Distribution Plan, including, but not limited to, claims against the Distribution Agent asserting liability for violation of any duty imposed by this Distribution Plan or other Court order.

77. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission, on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in connection with the Distribution Plan and all Potential Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Distribution Plan.

78. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant will not affect an Eligible Claimant's rights and claims as against any party (other than the Distribution Agent), including, without limitation, Biozoom and Biozoom's past or present directors, officers, employees, affiliates, nominees, creditors, advisors, and agents.

**XIII. Notice and Comment Period**

79. Notice of the Distribution Plan will be published on the website established by the Distribution Agent for this matter at [www.BiozoomFairFund.com](http://www.BiozoomFairFund.com). Any person or entity wishing to comment on the Distribution Plan must do so in writing by submitting their comments within thirty (30) calendar days of the date of notice to the Distribution Agent.

## **Appendix I – Biozoom Fair Fund Plan of Allocation**

### **Overview**

Only Biozoom, Inc. (“Biozoom”; OTCBB ticker: BIZM; CUSIP: 09072T100) common shares purchased in the United States during the Relevant Period are eligible for damages if sold at a loss or continue to be held. The Relevant Period for this Distribution Plan is on or between May 16, 2013 and June 25, 2013 until 11:59 p.m. EDT. The U.S. Securities and Exchange Commission (“SEC” or “Commission”) suspended trading on June 25, 2013. The total net number of shares damaged is estimated to be at least 14.07 million shares.

The SEC and Fund Administrator have conferred with a damages consultant and developed the Plan of Allocation to calculate how Potential Claimants will share in the Fair Fund. Defendants have had, and will have, no involvement or responsibility for the terms or application of the Plan of Allocation.

The objective of the Plan of Allocation is to equitably distribute the Fair Fund to those investors who suffered economic losses as a result of the violations of the federal securities laws. The Plan of Allocation reflects the damages expert’s analysis, including a review of publicly available information regarding Biozoom and an analysis of the price movements of Biozoom common stock and the price performance of relevant market and peer indices during the Relevant Period. The Plan of Allocation is not a formal damages analysis.

The calculations made pursuant to the Plan of Allocation are not intended to be estimates of the amounts that investors might have been able to recover. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Potential Claimants. The computations under the Plan of Allocation are only a method to weigh the claim of a harmed investor against all other Potential Claimants for the purposes of making *pro rata* allocations of the Fair Fund.

The Plan of Allocation generally measures the amount of loss that an investor can claim for purposes of making *pro rata* allocations of the Fair Fund to Potential Claimants. In this case, no registration statements were in effect for the Selling Defendants' resale of securities, thus in violation of Section 5 of the Securities Act of 1933. Biozoom began issuing a series of press releases and a stock promotional campaign from May 16, 2013 to June 21, 2013, which increased the company's stock price and trading volume. Prior to May 16, 2013, no shares in Biozoom had traded. Accordingly, in order to have a loss, Biozoom common stock must have been purchased or acquired during the Relevant Period and sold or held through the filing deadline.

### **Calculation of Recognized Loss Amounts**

The sum of an investor's Recognized Loss Amounts (as calculated below) will be the investor's "Recognized Claim."

For investors who held shares of Biozoom common stock at the beginning of the Relevant Period, or who made multiple purchases, acquisitions, or sales during the Relevant Period, the first-in, first-out (“FIFO”) method will be applied to such holdings, purchases, and sales for purposes of calculating a Recognized Loss (as defined below). Under the FIFO method, shares of Biozoom common stock sold during the Relevant Period will be matched first against shares held at the beginning of the Relevant Period. The sale of any remaining shares will then be matched in chronological order against shares purchased during the Relevant Period.

A “Recognized Loss” Amount will be calculated for each investor, as listed in the claim form and for which adequate documentation is provided. To the extent there are sufficient funds in the Fair Fund, each investor will receive an amount equal to the investor’s Recognized Claim. If, however, as expected, the amount in the Fair Fund is not sufficient to permit payment of the Recognized Claim of each investor, then each Investor will be paid the percentage of the Fair Fund that each investor’s Recognized Claim bears to the total of the Recognized Claims of all investors – thus, the investor’s *pro rata* share of the Fair Fund.

An investor’s Recognized Loss will be calculated as follows (where the prices mentioned exclude all fees and commissions).

For shares of common stock purchased between May 16, 2013 and June 25, 2013, inclusive:

- A. For each share sold on or before June 25, 2013, the Recognized Loss for each such share shall be 50% of the difference between the actual purchase price paid (“PPP”) for each such share *minus* the actual sale price received (“SPR”).
- B. For each share sold after June 25, 2013 through the filing deadline, the Recognized Loss for each such share shall be *the lesser of* :
- 1) the actual PPP per share *minus* \$0.0001 per share; *or*
  - 2) the actual PPP per share *minus* the actual SPR.
- C. For each share held as of close of trading as of the filing deadline, the Recognized Loss for each such share shall be the actual PPP of each such share *minus* \$0.0001 per share.

### **Additional Provisions**

If an investor has more than one purchase/acquisition or sale of Biozoom common stock during the Relevant Period, all purchases/acquisitions and sales shall be matched on a FIFO basis. Relevant Period sales will be matched first against any holdings at the beginning of the Relevant Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Relevant Period. Sales of Biozoom common stock during the Relevant Period which have been matched against Biozoom common stock purchased or acquired prior to the Relevant Period will not be used in the calculation of an investor’s Recognized Loss.

An investor's transactions resulting in a gain will be netted against the investor's transactions resulting in a loss to arrive at the Recognized Loss.

Purchases or acquisitions and sales of Biozoom common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of Biozoom common stock during the Relevant Period shall not be deemed a purchase, acquisition or sale of these shares of Biozoom common stock for the calculation of an Eligible Claimant's Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such shares of Biozoom common stock unless (i) the donor or decedent purchased or acquired such shares of Biozoom common stock during the Relevant Period; (ii) no Proof of Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares of Biozoom common stock; and (iii) it is specifically so provided in the instrument of gift or assignment. In such instances, the recipient must provide documentation of the original purchase in addition to the transfer.

In the event that a Claimant has an opening short position in Biozoom common stock, the earliest Relevant Period purchases or acquisitions shall be matched against such opening short position. The date of a "short sale" is deemed to be the date of sale of Biozoom common stock. The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the Biozoom common stock. Any gains from short selling are to be considered as offsets to any Recognized Loss. Any losses from short selling will have a Recognized Loss of zero.

An investor's Recognized Claim shall be the amount used to calculate the investor's *pro rata* share of the Fair Fund. If the sum total of Recognized Claims of all investors who are entitled to receive payment out of the Fair Fund is greater than the Fair Fund, each investor shall receive his, her, or its *pro rata* share of the Fair Fund. The *pro rata* share shall be the investor's Recognized Claim divided by the total of the Recognized Claims of all investors, multiplied by the total amount in the Fair Fund.

A payment to any investor that would amount to less than \$10.00 in total will not be included in the calculation of the Fair Fund and no payment to these Investors will be distributed.

If the Fair Fund exceeds the sum total amount of the Recognized Claims of all investors entitled to receive payment out of the Fair Fund, the excess amount in the Fair Fund shall be distributed to the U.S Treasury.