

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

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION TO APPROVE
DISTRIBUTION PLAN AND TRANSFER FUNDS**

Plaintiff Securities and Exchange Commission (the "Commission") hereby moves to:

- 1) Approve the Commission's proposed plan to distribute funds paid by Defendants, and any future funds to be paid by Defendants, to harmed investors (the "Distribution Plan");
- 2) Approve the transfer funds previously paid to the Commission by Defendants, less any applicable fees, to an escrow account created by Kurtzman Carson Consultants, LLC ("KCC") as a Distribution Agent ("Distribution Agent").

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 claimants 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 Distribution Plan. The Commission believes that the proposed Distribution Plan for the Distribution Fund should be approved as fair and reasonable.

In further support of its motion, the SEC states as follows:

PROCEDURAL BACKGROUND

On July 3, 2013, the Commission filed a complaint alleging that Defendants violated Section 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) by selling securities without a registration statement in effect for a penny stock company (“Biozoom”) traded on the Over-the-Counter Bulletin Board (“OTCBB”).

On July 17, 2013 the Court granted a Temporary Restraining Order (“TRO”) (Dkt. #16) to freeze brokerage accounts of the defendants holding Biozoom shares and any accounts held by financial institutions or brokers that have proceeds of the Biozoom sales on behalf of the defendants.

On January 9, 2015, the Court entered a Final Judgment against all eight Defendants (Dkt. #69) in which they were found liable for total disgorgement of \$33,336,801 and civil penalties of \$160,000 each, for a total civil penalty amount of \$1,280,000. Defendants were ordered to satisfy the total obligation of \$34,616,801 by paying the Commission within ten days after entry of the Final Judgment.

On May 13, 2015, the Commission filed a motion seeking the appointment of Damasco & Associates LLP as Tax Administrator for the Distribution Fund and to authorize payment of future

tax obligations and tax administrator fees and expenses (Dkt. #74). The Court granted this motion on May 19, 2015 (Dkt. 75).

On August 20, 2015, the Commission filed a motion seeking the appointment of KCC as Distribution Agent and the establishment of a Distribution Fund. (Dkt. #77) The Court granted this motion on August 25, 2015 (Dkt. #78). The Distribution Agent will distribute funds received as a result of the TRO or paid by Defendants to injured investors as described in the Distribution Plan.

Pursuant to court order, entities with funds and shares in Biozoom held in Defendants' accounts transferred those assets to the Commission as partial satisfaction. Approximately \$16,117,936 was turned over pursuant to the TRO.

The Final Judgment against Defendants states that the Commission may propose a plan to distribute the funds collected from them. The Commission now moves the Court to transfer the total amount held with United States Department of the Treasury at the Bureau of the Fiscal Service ("BFS") in this matter to the Distribution Agent. The Commission now moves the Court to approve the distribution plan so that the funds already paid by Defendants, and any future funds to be paid by Defendants, can be distributed to injured investors harmed by the Defendant's conduct.

APPROVAL OF DISTRIBUTION PLAN

The Commission seeks approval of its proposed Distribution Plan to distribute the funds already collected from Defendants. The Distribution Plan provides for a distribution to certain individuals (the "Eligible Claimants") who were harmed by the Defendants because Defendants had sold securities without a registration statement in effect for Biozoom. The Distribution Plan contemplates that a total of approximately \$16,022,574, less any tax obligations and fees and expenses of the Tax Administrator, will be distributed to Eligible Claimants on a *pro rata* basis for the harm created by Defendant's conduct. Commission staff also plans to distribute any future

funds received, less any tax obligations and fees and expenses of the Tax Administrator, on a *pro rata* basis to Eligible Claimants when and if those future funds are received.

TRANSFER OF THE FUNDS TO THE DISTRIBUTION AGENT

As described above, Defendants \$16,022,574, less any tax obligations and fees and expenses of the Tax Administrator was paid as partial satisfaction and is being held with BFS. The staff respectfully requests that the Court order the transfer of funds from the BFS, less any applicable fees, to an escrow account created by KCC as the Distribution Agent for this matter.

CONCLUSION

For the reasons stated above, the Commission moves the Court to 1) approve the Commission's plan to distribute funds collected from Defendants and 2) transfer the total amount held by BFS in this matter, less any applicable fees, to the Distribution Agent for distribution to harmed investors pursuant to the Distribution Plan.

Dated: June 9, 2016

Respectfully Submitted,

/s/ Michael S. Lim

Michael Lim

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