

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLORADO**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	09-cv-01114 (MSK-KLM)
	:	
v.	:	ECF Case
	:	
WELLS FARGO BANK, N.A.,	:	
JUSTIN WILLIAM RIFKIN,	:	
PATRICK V. LOOPER,	:	
RICHARD G. PACHECO, and	:	
	:	
Defendants.	:	
	:	
	:	
	:	

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S NOTICE OF MOTION,  
MOTION AND MEMORANDUM IN SUPPORT OF ORDER FOR DISTRIBUTION OF  
FAIR FUND**

**NOTICE**

**PLEASE TAKE NOTICE**, that based upon the accompanying Affidavit of Michael S. Lim (“Affidavit”) in Support of the Securities and Exchange Commission’s (“Commission”) Motion for Distribution of Fair Fund executed on December 28, 2016, the Proposed Order submitted herewith, and all prior proceedings had herein, and pursuant to the Plan of Distribution approved by this Court on September 8, 2016 (“Distribution Plan”), Plaintiff Securities and Exchange Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Judge Marcia S. Krieger, at the United States Courthouse for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 19<sup>th</sup> Street, Denver, Colorado 80294-3589, for an order:

1. Authorizing the distribution of the Fair Fund, less any payment of any tax obligations, fees, and expenses of the Tax Administrator, post-judgment interest that is to be sent to Treasury, and Court registry fees and expenses, of approximately \$35,057.91, to forty-seven Eligible Recipients under the Distribution Plan in accordance with the procedures described in the Order Approving Distribution Plan from funds held by the Commission under the case name designation “*Wellco Energy Fair Fund*” (“Fair Fund”).
2. Directing the Plan Administrator to re-distribute funds from those Eligible Recipients who could not be located, have not responded, or have not provided Form W-9 tax information to the Plan Administrator by January 31, 2017, and re-distribute those funds to the remaining Eligible Recipients.
3. Directing the Clerk of the Court to issue a check to the SEC from the CRIS account number 09-cv-01114, under the case name designation “SEC v. Wellco Energy L.L.C., et al.” for all of the funds in the CRIS account representing the Fair Fund, minus court registry fees.

### **MOTION**

In accordance with the Distribution Plan approved by this Court on September 8, 2016, the Commission respectfully requests that the Court enter an Order:

1. Authorizing the distribution of the Fair Fund, less any payment of any tax obligations, fees, and expenses of the Tax Administrator, post-judgment interest that is to be sent to Treasury, and Court registry fees and expenses, of approximately \$35,057.91, to forty-seven Eligible Recipients under the Distribution Plan in accordance with the

procedures described in the Order Approving Distribution Plan from funds held by the Commission under the case name designation “*Wellco Energy Fair Fund*” (“Fair Fund”).

2. Directing the Plan Administrator to re-distribute funds from those Eligible Recipients who could not be located, have not responded, or have not provided Form W-9 tax information to the Plan Administrator by January 31, 2017, and re-distribute those funds to the remaining Eligible Recipients.
3. Directing the Clerk of the Court to issue a check to the SEC from the CRIS account number 09-cv-01114, under the case name designation “SEC v. Wellco Energy L.L.C., et al.” for all of the funds in the CRIS account representing the Fair Fund, minus court registry fees.

## **MEMORANDUM**

### **Procedural Background**

On September 14, 2009, the Commission filed a Complaint alleging that Defendants violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Rule 10b-5 thereunder, and with respect to Rifkin, Looper, Pacheco and White violating Section 15(a) of the Exchange Act by offering and selling securities in the form of fractional interests in oil and gas wells through boiler room cold-calls to investors in which they misrepresented Wellco’s role in operating the wells, Rifkin’s experience in producing oil and gas, and how investors’ funds were to be used. Defendants engaged in the business of selling securities for the accounts of others but did not register as brokers with the Commission. Additionally, Defendants sold the securities even though they did not file a required registration statement with the Commission which would have

disclosed information about the nature of Wellco's business and its financial statements. The complaint sought permanent injunctions, disgorgement, prejudgment interest, and civil penalties from Defendants.

On February 5, 2016, the SEC filed a motion seeking the appointment of a Tax Administrator for the Distribution Fund and to authorize payment of future tax obligations and tax administrator fees and expenses (Dkt. #88). The Court granted this motion on February 5, 2016 (Dkt. #89). The Commission moves the Court to transfer the total amount held in the Court's registry in this matter to the Commission. The Commission will distribute to injured investors as described below.

Rifkin submitted an Offer of Settlement which the Commission accepted on January 11, 2012. Pursuant to Section 15(b)(6) of the Exchange Act, Rifkin was barred from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization and barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. Reapplication for association by Rifkin is subject to applicable laws and regulations governing the reentry process and reentry may be conditioned upon a number of factors, including but not limited to, satisfaction of the disgorgement ordered, arbitration awards and any restitution ordered by a self-regulatory organization.

On August 31, 2011, a Final Judgment was entered against Wellco and Rifkin (Dkt. #80). Rifkin was permanently enjoined from future violations of Sections 5(a), 5(c), 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and rule 10b-5 thereunder.

Wellco and Rifkin were held jointly and severally liable for disgorgement in the amount of \$782,751, prejudgment interest in the amount of \$46,875 and a civil penalty in the amount of \$782,751. Wellco and Rifkin were to satisfy the obligation by paying \$1,612,377 within fourteen (14) days after entry of the Final Judgment. Wellco and Rifkin also had \$40,123.88 in bank accounts frozen to be paid into the registry of the Court upon a later motion by the Commission. A receipt indicating that \$39,927.51 was transferred into the registry of the Court was filed on October 11, 2011 (Dkt. #84). As of May 11, 2016, there is \$56.24 in accrued interest in the Court Registry Investment System (“CRIS”). The \$39,927.51 payment is comprised of \$39,751.67 of disgorgement and \$175.84 of post-judgment interest. Post-judgment interest will be sent to the United States Treasury and is not part of the proposed distribution. It is possible that the Commission may collect additional money from Wellco and Rifkin. If, and when the Commission collects additional money, Commission staff will evaluate whether an additional distribution of funds to harmed investors is feasible.

On March 25, 2010, a Permanent Injunction and Final Judgment was entered against Looper (Dkt. #67). Looper was found liable for disgorgement in the amount of \$107,200 and prejudgment interest in the amount of \$4,133.82 for a total amount of \$111,333.82. Based on sworn representations in the Statement of Financial Condition dated June 15, 2009, and other documents and information submitted to the Commission, the Court did not order Looper to pay a civil penalty and payment of \$111,333.82 representing disgorgement and prejudgment interest was waived.

On March 25, 2010, a Permanent Injunction and Final Judgment was entered against Pacheco (Dkt. #68). Pacheco was found liable for disgorgement in the amount of \$69,250 and prejudgment interest in the amount of \$1,944.44 for a total amount of \$71,194.44. Based on

sworn representations in the Statement of Financial Condition dated June 15, 2009, and other documents and information submitted to the Commission, the Court did not order Pacheco to pay a civil penalty and payment of \$71,194.44 representing disgorgement and prejudgment interest was waived.

On August 31, 2011, a Final Judgment was entered against White (Dkt. #80) which permanently enjoined him from future violations of Sections 5(a), 5(c), 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and rule 10b-5 thereunder. White was found liable for disgorgement in the amount of \$64,618, prejudgment interest in the amount of \$3,296 and a civil penalty in the amount of \$64,618. White had fourteen (14) days within to satisfy the total obligation amount of \$132,525. White has not paid any money to date. It is possible that the Commission may collect money from White. If, and when the Commission collects additional money, Commission staff will evaluate whether an additional distribution of funds to harmed investors is feasible.

On May 23, 2016, the SEC filed a motion to appoint plan administrator, approve distribution plan and transfer funds (Dkt. #97). The Court granted this motion on September 8, 2016, and appointed Michael S. Lim, a Commission employee, as Plan Administrator, to oversee the administration and distribution of the Fund pursuant to the terms of the Distribution Plan (Dkt.#101).

After this Court issued an Order Approving the Distribution Plan, the Plan Administrator mailed investor notices on September 12, 2016 and investors were given thirty days to submit objections. Of the forty-eight Eligible Recipients, five notices were returned to the Plan Administrator as undeliverable. The Plan Administrator located additional addresses for the five Eligible Recipients whose notices were returned and mailed two investor notices again on

September 14, 2016, two notices on September 16, 2016 and one notice on September 28, 2016. Of the five Eligible Recipients whose notices were undeliverable, one has been returned as undeliverable (“Undeliverable Recipient”). As to that Undeliverable Recipient, the Plan Administrator used the telephone number and address from records, and searched the Internet to identify current contact information. After reviewing records in this case, the Plan Administrator does not possess email addresses for the Undeliverable Recipient to be able to contact him by mail. As such, the distribution that would have been allocated to that Undeliverable Recipient is being reallocated to the other Eligible Recipients on a *pro rata* basis. For the other four Eligible Recipients whose notices were returned and mailed again, the Plan Administrator will make additional efforts to contact those investors. If those remaining four Eligible Recipients do not respond by January 31, 2017 with the required W-9 Form information, the Plan Administrator proposes that the distribution payment that would have gone to those four Eligible Recipients be reallocated to the remaining Eligible Recipients on a *pro rata* basis. Because the Eligible Recipients have losses much greater than the net Distribution Fund, no Eligible Recipient will receive a windfall from a potential reallocation of distribution funds from those investors who have not responded or have not provided adequate Form W-9 information.

Pursuant to the Distribution Plan approved by this Court on September 8, 2016, investors were given thirty days to submit objections. The thirty days have now passed and the Plan Administrator reports no objections were received regarding the court approved Distribution Plan.

The SEC now seeks an order directing the Plan Administrator to distribute the net Distribution Fund, less applicable Court registry fees, to the Eligible Recipients under the Distribution Plan in accordance with the procedures described in the Order Approving

Distribution Plan from funds held by the Commission under the case name designation “*Wellco Energy Fair Fund*.” The SEC further seeks an order directing the Plan Administrator to re-distribute funds from those Eligible Recipients who could not be located, have not responded, or have not provided Form W-9 tax information to the Plan Administrator by January 31, 2017, and re-distribute those funds to the remaining Eligible Recipients.

**Disbursement of Distribution Fund**

Pursuant to the Distribution Plan, the Plan Administrator has prepared and submitted to the Commission staff a list of Eligible Recipients, the amount of the asserted claim of each Eligible Recipients, and the Approved Claim for each Eligible Recipients (the “Final Payee List”).<sup>1</sup> Each Eligible Recipient will receive a *pro rata* share of the net Distribution Fund available for distribution.

**WHEREFORE**, for all the foregoing reasons, the Commission respectfully requests that this Court enter the proposed Order and grant such other relief as it deems just and proper.

Dated: December 28, 2016

Respectfully Submitted,

/s/ Michael Shueyee Lim  
Michael Shueyee Lim  
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Securities and Exchange Commission  
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<sup>1</sup> The Final Payee List shall, upon request, be made available to the Court under seal.