

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

-----X  
SECURITIES AND EXCHANGE COMMISSION, :  
 :  
 : **Plaintiff,** :  
 : **03 Civ. 5490 (SAS)**  
 :  
 **v.** :  
 :  
 :  
 **TECUMSEH HOLDINGS CORPORATION,** :  
 **TECUMSEH TRADEVEST LLC,** :  
 **S.B. CANTOR & CO., INC., JOHN L. MILLING,** :  
 **GERARD A. McCALLION,** :  
 **ANTHONY M. PALOVCHIK, and DALE CARONE,** :  
 :  
 : **Defendants,** :  
 : **- and -** :  
 :  
 :  
 **TECUMSEH ALPHA FUND LP,** :  
 **TECUMSEH ALPHA LLC, and** :  
 **STRACQ, INC.,** :  
 :  
 : **Relief Defendants.** :  
-----X

**DECLARATION OF NANCY A. BROWN  
IN SUPPORT OF THE COMMISSION'S MOTION  
FOR AN ORDER AUTHORIZING THE CREATION OF A FAIR FUND,  
APPROVING PLAN OF DISTRIBUTION AFTER NOTICE TO INVESTORS,  
AND FOR A SCHEDULING ORDER**

I, Nancy A. Brown, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the bar of the State of New York and of this Court. I am employed by Plaintiff Securities and Exchange Commission (the "Commission") in the Commission's New York Regional Office as Senior Trial Counsel. I make this declaration in support of the Commission's Motion for an Order (i) authorizing the Commission to create a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a); and (ii) approving the Commission's Proposed Plan of Distribution (the "Proposed Plan") after notice

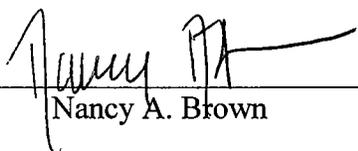
to investors, submission of objections, if any, and a hearing; and an Order setting a schedule for circulation of the Proposed Plan, filing of objections, and a hearing on the Commission's Motion for approval of the Proposed Plan. Appended hereto as Exhibit A is the Commission's Proposed Plan.

2. On March 9, 2009, the Court entered a Final Judgment on consent of the Receiver against Defendants Tecumseh Holdings Corp., Tecumseh Tradevest LLC and Cantor by which those entities, inter alia, consented to a Judgment against them by which Tecumseh was ordered liable for \$7,271,134 in disgorgement, and Cantor was ordered jointly and severally liable with Tecumseh to disgorge \$850,000 of this amount. (Docket Entry 75.) No payments on these judgments have been made and these entities are defunct.

3. On January 26, 2011, the Court entered Final Judgment against Defendant Milling, enjoining him from further violations of the antifraud provisions of the federal securities laws, enjoined him from further violations of Section 5 of the Securities Act, and ordered him liable, jointly and severally with Tecumseh, for disgorgement of \$7,242,167, and individually for \$3,466,346.48 in prejudgment interest and \$116,500 in civil penalties. (Docket Entry 128.) To date, Milling has made no payments on this Final Judgment.

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

Executed on April 29, 2011  
New York, New York

  
\_\_\_\_\_  
Nancy A. Brown

# **EXHIBIT A**



Tecumseh Holdings Corporation, et al.” These amounts constitute a Fair Fund that is to be distributed in accordance with the Fair Funds provision of Section 308(a) of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley Act”), if the Court so orders. This Proposed Plan sets forth the method and procedures for distributing the Fair Fund.

**B. Background**

1. The Commission instituted this action on July 24, 2003 against Defendants and Relief Defendants. At the time it filed its Complaint, the Commission also sought a Temporary Restraining Order, Preliminary Injunction, Asset Freeze and other relief, including the appointment of a receiver. By Order to Show Cause, entered July 25, 2003, the Court granted Plaintiff’s application for a Temporary Restraining Order, including an Asset Freeze, and appointed a Receiver. On consent of Defendants who appeared, the Court entered a Preliminary Injunction Order on September 5, 2003. On Defendant Milling’s motion, the case was stayed until August 2008.

2. As alleged in the Complaint, Tecumseh and Tradevest conducted a nationwide cold-calling campaign to sell unregistered securities of Tecumseh and Tradevest. From 2000 until July 2003, Tecumseh and Tradevest raised at least \$10 million from approximately five hundred investors. Tecumseh, Tradevest and Milling, a securities lawyer who acted as Tecumseh’s CEO and was primarily responsible for drafting Tecumseh’s fraudulent offering materials, acted with the assistance of Defendants Cantor, a New Jersey-based broker-dealer that Tecumseh controlled; McCallion, Cantor’s President; Palovchik, Tecumseh’s Vice President, Carone, manager of Tecumseh’s California office; and others working with them.

3. Defendants Tecumseh, Tradevest and Milling induced investors to acquire securities of Tecumseh and Tradevest by means of a host of material misrepresentations.

Through offering memoranda and other materials, these Defendants (a) touted false and misleading profit projections; (b) promised some investors “returns on investment” or “dividends” without disclosing that Tecumseh and Cantor had no earnings to distribute and that any such payments necessarily come from capital, including funds raised from other investors; and (c) made materially misleading statements concerning NASD approval for Tecumseh’s acquisition of Cantor, a registered broker-dealer and a member of NASD. Tecumseh, Tradevest and Milling knew or acted in reckless disregard of the fact that their representations to investors concerning these matters were materially false and misleading.

4. The Commission charged Defendants Tecumseh, Tradevest and Milling with violations of the antifraud provisions of the federal securities laws, Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 10b-5 thereunder. It charged Defendants McCallion and Palovchik with aiding and abetting Tecumseh’s and Milling’s violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and charged Defendants Tecumseh, Tradevest, Milling, Cantor and Carone with violations of the securities registration provisions, Sections 5(a) and 5(c) of the Securities Act. Further, the Complaint charged Cantor with violations of the broker-dealer books and records provisions, Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder, and Milling with aiding and abetting those violations. The Complaint charged Carone with violations of the broker registration provisions, Section 15(a) of the Exchange Act. Finally, the Complaint alleged that Alpha Fund (a hedge fund for which Tecumseh acted as sole Manager), Alpha LLC (the General Partner of Alpha Fund), and Stracq, Inc. (“Stracq”) (a corporation in which Tecumseh infused investor funds) were Relief Defendants which had received proceeds of the fraud in which they had no legitimate interest.

5. On April 11, 2005, the Court entered a Final Judgment on consent against Relief Defendant Stracq, pursuant to which Stracq agreed to pay disgorgement of \$660,000 to the Receiver. On March 9, 2009, the Court entered a Final Judgment on consent against Defendant McCallion, pursuant to which McCallion was enjoined from further violations of the antifraud provisions of the federal securities laws, was permanently barred from participation in any penny stock offering and was ordered liable for \$1 in disgorgement and \$40,000 in civil penalty, and ordered to remit \$40,001 to the Clerk of the Court for deposit in the CRIS. Also on March 9, 2009, the Court entered a Final Judgment on consent of the Receiver against Defendants Tecumseh, Tradevest and Cantor, by which Defendants Tecumseh and Tradevest were enjoined from further violations of the antifraud provisions of the federal securities laws, all three Defendants were enjoined from further violations of Sections 5(a) and 5(c) of the Securities Act, and Defendant Cantor was enjoined from further violations of Section 17(a) of the Exchange Act, and Rules 17a-3 and 17a-4 thereunder. All three Defendants were further permanently barred from participation in any penny stock offering. Tecumseh was ordered liable for \$7,271,134 in disgorgement, and Cantor was ordered jointly and severally liable with Tecumseh to disgorge \$850,000 of this amount. No payments on these judgments have been received and the entities are defunct. On January 26, 2011, the Court entered Final Judgment against Defendant Milling, enjoining him from further violations of the antifraud provisions of the federal securities laws, enjoined him from further violations of Section 5 of the Securities Act, and ordered him liable, jointly and severally with Tecumseh, for disgorgement of \$7,242,167, and individually for \$3,466,346.48 in prejudgment interest and \$116,500 in civil penalties. To date, Milling has made no payments on this Final Judgment.

6. On March 6, 2009, the Commission filed a Notice of Dismissal without prejudice, pursuant to Fed. R. Civ. P. 41(a), against Relief Defendants Tecumseh Alpha Fund LP and Tecumseh Alpha LLC.

7. On May 27, 2008, the Court entered a Partial Final Consent Judgment against Defendant Carone by which it enjoined him from further violations of Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act, and permanently barred him from participation in any penny stock offering. The Court ordered Carone to pay disgorgement of all ill-gotten gains, prejudgment interest thereon and a civil penalty in amounts to be determined upon motion of the Commission. The Commission's motion for such relief is now pending before the Court.

8. On November 7, 2008, the Court entered a Consent Judgment against Defendant Palovchik by which it enjoined him from further violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, barred him from participation in any penny stock offering and ordered him to pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty in amounts to be determined upon motion of the Commission. The Commission's motion for such relief is now pending before the Court.

9. By Order entered March 30, 2009, the Court appointed Damasco & Associates LLP, a certified public accounting firm located in Half Moon Bay, California, as tax administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the funds under the Court's jurisdiction in this case. As of February 28, 2011, there was more than \$700,000 in the CRIS account for this case.

**C. Definitions**

As used in this Plan, the following definitions shall apply:

1. “Administration Costs” means the costs incurred in planning, administering and conducting the distribution of the Fair Fund, including all taxes, fees owed to the Court and any reasonable fees, costs and expenses incurred by the Fund Administrator, Tax Administrator, or any Escrow Agent appointed pursuant to this Plan.

2. “Approved Claim” means a Tentative Claim that exceeds the De Minimis Amount.

3. “Claim Objection” means an objection filed with the Court and served on the Commission prior to the Claim Objection Cutoff by any person wishing to dispute the amount of his, her or its Approved Claim or the lack of an Approved Claim.

4. “Claim Objection Cutoff” means the date 60 days after the Distribution Check mailing date by which any Claim Objection must be filed with the Court and served on the Fund Administrator and the Commission. The Claim Objection Cutoff shall be posted on the Tecumseh Fair Fund Website.

5. “Commission” means the United States Securities and Exchange Commission or its Staff.

6. “Court” means the United States District Court for the Southern District of New York.

7. “De Minimis Amount” means \$25.

8. “Distributable Amount” means the amount determined by the Fund Administrator, as approved by the Court, available to be distributed in the General Distribution.

9. “Distribution” means the disbursement of monies from the Fair Fund to Eligible Claimants pursuant to this Distribution Plan.

10. “Distribution Account” means a non-interest bearing checking account or accounts established by the Fund Administrator to receive the monies from the Fair Fund that are scheduled to be disbursed to Eligible Claimants.

11. “Distribution Check” means the check mailed to an Eligible Claimant in the amount of his, her or its Approved Claim.

12. “Distribution Plan” means the Distribution Plan as approved by the Court.

13. “Distribution Plan Notice” means the notice to Potentially Eligible Claimants that they may be eligible for a distribution pursuant to this Distribution Plan.

14. “Eligible Claimant” means a Tecumseh Investor who, as determined by the Fund Administrator, is eligible for a distribution from the Fair Fund because the investor 1) purchased securities issued from Tecumseh or Tradevest between June 2000 and July 2003; and 2) is not an Excluded Party.

15. “Excluded Party” means any Defendant, associate of any Defendant, or any member of a Defendant’s family. The Fund Administrator, in consultation with the Commission, shall determine each Excluded Party; this determination may be appealed through the Claim Objection procedures discussed below. Excluded Parties are not eligible for a distribution from the Fair Fund.

16. “Fair Fund” means the fund established pursuant to Section 308(a) of the Sarbanes-Oxley Act and includes all amounts paid into any court account established in this action, including without limitation the CRIS account, representing the disgorgement,

prejudgment interest and civil penalties paid by Defendants or Relief Defendants, minus necessary expenses.

17. “Final Determination” means the date by which the Court enters an order containing final adjudication of all Claim Objections submitted. In the event that no Claim Objections are submitted, no Final Determination will be necessary.

18. “Fund Administrator” means the independent party appointed by the Court to carry out the duties specified in Section J, below, and as further specified in this Plan. The Fund Administrator will report directly to the Court.

19. “General Distribution” means the Distribution of Approved Claim amounts to Eligible Investors.

20. “Investment Amount” means the principal amount invested by a Potentially Eligible Claimant in Tecumseh Securities, less any distributions received to date.

21. “Plan Date” refers to the date of entry of a Court order approving the Distribution Plan.

22. “Potentially Eligible Claimant” means any Tecumseh Investor who: 1) purchased Tecumseh Securities from either Tecumseh or Tradevest between June 2000 through July 2003; 2) has or asserts possible claims to the Fair Fund under the Distribution Plan; and 3) is not an Excluded Party.

23. “Remaining Distributable Amount” means the amounts remaining in the Fair Fund, after the General Distribution and Final Determination by the Court of Claim Objections, available for a potential Supplemental Distribution, as determined by the Fund Administrator according to Section I., below.

24. “Stale Date” means the date 90 days after the mailing date of any Distribution Check issued in any Distribution pursuant to this Plan.

25. “Supplemental Distribution” means the potential Distribution to certain Eligible Claimants that may take place if sufficient distributable funds exist after the General Distribution is complete.

26. “Tax Administrator” means Damasco & Associates LLP, a certified public accounting firm located in Half Moon Bay, California, whose appointment was approved by Order of the Court, entered March 30, 2009.

27. “Tecumseh Fair Fund Website” means the external website established by the Fund Administrator to communicate with Tecumseh Investors concerning the Distribution.

28. “Tecumseh Investor” means any person or entity who purchased Tecumseh Securities between June 2000 and July 2003 who is not an Excluded Party.

29. “Tecumseh Securities” means any security issued by Tecumseh or Tradevest between June 2000 and July 2003.

30. “Tentative Claim” means the amount proposed to be distributed to a Potentially Eligible Claimant.

**D. Notice to Tecumseh Investors**

1. Prior to approval of the Plan, the Commission and/or the Fund Administrator will have:

a. Identified some or all Tecumseh Investors and their mailing addresses through the use of Tecumseh’s records and other sources of information reasonably available to the Fund Administrator or the Commission staff; and

b. Pursuant to a scheduling order of the Court, mailed to known Tecumseh Investors a copy of the proposed Plan, together with the information the Commission will have determined is necessary to inform Tecumseh Investors of their potential right to receive funds from the Fair Fund should the Plan be approved.

2. Within 30 days of the Plan Date:

a. The Commission shall post the Distribution Plan Notice on the Commission's website at: <http://www.sec.gov/divisions/enforce/claims.htm> to alert Tecumseh Investors of their potential right to receive funds from the Fair Fund. The Commission's website shall include a link to the Distribution Plan and the Tecumseh Fair Fund Website.

b. The Fund Administrator shall establish:

i. The Tecumseh Fair Fund Website, an external website to be located at [www.tecumsehfairfund.com](http://www.tecumsehfairfund.com), or a similarly-named URL, to perform as a portal for information concerning this Plan and the Distribution. The website shall be updated with downloadable versions of the Distribution Plan Notice, the Distribution Plan, relevant Plan deadlines, the contact information for the Fund Administrator, and other pertinent information within a reasonable time after such information becomes available. The content of the Tecumseh Fair Fund Website will be approved by the Commission. The Fund Administrator and the Commission shall establish a link to this website from their respective websites.

ii. A toll-free telephone call-in number by which Tecumseh Investors and other persons can obtain information about the Plan and the Distribution.

**E. Identification of Potentially Eligible Claimants**

1. All Tecumseh Investors identified by the Fund Administrator who are not Excluded Parties will become Potentially Eligible Claimants.

2. In connection with the procedures for Notice to Tecumseh Investors, the Commission and/or the Fund Administrator will have identified certain Potentially Eligible Claimants and their mailing addresses, and will also have identified Excluded Parties.

3. To the extent that presently available records do not allow the Fund Administrator to determine eligibility and principal investment amounts of a Tecumseh Investor, the Fund Administrator, in coordination with the Commission, shall undertake reasonable efforts to supplement the records. Such efforts may include requesting records or affirmations from Tecumseh Investors. It shall be the burden of such Tecumseh Investors to provide documentation requested by the Fund Administrator necessary to allow the Fund Administrator to determine eligibility and principal investment amounts.

**F. Determination of Approved Claims**

1. The allocation methodology in this Plan seeks to achieve the prompt, fair, and efficient distribution of the Fair Fund to those victims who suffered a loss, greater than the De Minimis amount of \$25, as a result of their investment in Tecumseh Securities.

2. Because the amount of the Fair Fund available for distribution will be less than the total principal amount invested by all Potentially Eligible Claimants, the Plan contemplates that a single General Distribution will allocate most or all of the Distributable Amount to Eligible Claimants on a *pro rata* basis based on their Investment Amount. A Supplemental Distribution, oriented toward satisfying all or part of losses not compensated in the General

Distribution, may occur if there are sufficient funds remaining in the Fair Fund after the General Distribution.

3. Within 60 days of the Plan Date, the Fund Administrator shall recommend to the Court the Distributable Amount in the Fair Fund. The Distributable Amount shall be based on the Fair Fund balance available in the CRIS less any amount necessary to be held in reserve to pay Administration Costs, to be determined by the Fund Administrator in consultation with the Tax Administrator and taking into account the interest earned on the Fair Fund, the funds available in the Administration Costs Account and the sum of all Tentative Claims that do not meet or exceed the De Minimis Amount, as described below.

4. The Fund Administrator will calculate each Potentially Eligible Claimant's Tentative Claim by dividing the Distributable Amount by the total Investment Amounts of all Tecumseh Investors and multiplying that result by the Investment Amount of the Potentially Eligible Claimant.

5. A Potentially Eligible Claimant whose Tentative Claim does not meet or exceed the De Minimis Amount will not become an Eligible Claimant and will not receive a Distribution. However, the sum of all Tentative Claims that do not meet or exceed the De Minimis Amount will be added to the Fair Fund balance for distribution on a *pro rata* basis to all Potentially Eligible Claimants. If, after such amounts are re-allocated to such Potentially Eligible Claimants' Tentative Claims, any Potentially Eligible Claimant's Tentative Claim that exceeds the De Minimis Amount shall become an Eligible Claimant and his Tentative Claim shall become an Approved Claim.

6. A Potentially Eligible Claimant whose Tentative Claim meets or exceeds the De Minimis Amount shall become an Eligible Claimant and the Tentative Claim shall become an

Approved Claim. In the General Distribution, the Fund Administrator will disburse a Distribution Check to each Eligible Claimant in the amount of the Approved Claim, pursuant to the procedures provided in this Plan.

**G. General Distribution**

1. Within 90 days of an entry of an order approving the Distributable Amount, the Fund Administrator shall complete its determination of Approved Claims and shall petition the Court for (a) the authority to carry out the General Distribution from the Fair Fund of the Approved Claims to the Eligible Claimants; and (b) an Order directing the Clerk of the Court to issue a check from the CRIS payable to the Fund Administrator in the amount necessary to pay the Approved Claims. The petition shall include a list of all Eligible Claimants, their Approved Claims and the total amount to be disbursed from the Fair Fund in the General Distribution.

2. Upon receipt of the monies from the Clerk, the Fund Administrator shall promptly deposit the funds in a non-interest bearing Distribution Account or in multiple such accounts as may be necessary to ensure that the entire amount deposited is insured by the Federal Deposit Insurance Corporation.

3. Within 15 days following the receipt by the Fund Administrator of the Fair Fund monies from the Clerk, the Fund Administrator shall issue Distribution Checks to each Eligible Claimant in the amount of the Approved Claim. All Distribution Checks shall be mailed with a packet consisting of the following:

- a. Any document or disclosure that may be required by the Tax Administrator concerning the potential tax implications of the Distribution; and
- b. A letter, the contents of which shall be approved by the Commission, stating the amount of the Approved Claim; that the payment is a distribution of the Fair

Fund established by the Court in this action on motion of the Commission, in accordance with Section 308(a) of the Sarbanes-Oxley Act; that the Distribution Check will be void after 90 days; and the toll-free telephone number to contact with any questions regarding the Distribution.

4. In the event that a Distribution Check was mailed to an Eligible Claimant's last known address and is returned as undeliverable with no forwarding address, the Fund Administrator shall undertake good faith efforts until the Stale Date to locate an updated address for the Eligible Claimant and/or contact the Eligible Claimant to ensure that the intended recipient has a reasonable opportunity to participate in the Distribution.

5. Forty-five (45) days after the Distribution Checks are mailed, the Fund Administrator shall obtain information from the issuing financial institution concerning checks that have not been negotiated but have not been returned as undeliverable or requested to be reissued. The Fund Administrator shall undertake good faith efforts until the Stale Date to contact such Eligible Claimants to ensure that the intended recipients have a reasonable opportunity to participate in the Distribution.

6. Distribution Checks that are undeliverable or are not negotiated by the Stale Date despite the reasonable efforts of the Fund Administrator shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. If an Eligible Claimant's check has not been negotiated as of the Stale Date and has been voided by the Fund Administrator, those funds will be considered abandoned and shall revert to the Fair Fund.

#### **H. Claim Objection Procedure**

1. Any Tecumseh Investor who wishes to dispute for any reason the amount of an Approved Claim shall file a Claim Objection with the Court and serve a copy of such objection

on the Fund Administrator and the Commission. A Claim Objection shall include the basis for the dispute and must be filed by the Claim Objection Cutoff, which shall be 60 days after the Distribution Check mailing date and which date shall be posted on the Tecumseh Fair Fund Website.

2. Within 30 days after the Claim Objection Cutoff, the Fund Administrator and/or the Commission shall file responses to any Claim Objections filed.

**I. Possible Supplemental Distribution**

1. Within 30 days following the entry of Orders of the Court issuing a Final Determination of Claim Objections received in conjunction with the General Distribution, or within 60 days after the Stale Date of the last check issued in the General Distribution, whichever is later, the Fund Administrator shall, in consultation with the Commission, take the following steps:

- a. make a determination of the Remaining Distributable Amount, based on the balances, if any, available in the CRIS and the Distribution Account, less any amount, to be determined by the Fund Administrator, necessary to pay Administration Costs.
- b. make a determination as to whether the Remaining Distributable Amount is sufficient to make a Supplemental Distribution.
- c. if the Remaining Distributable Amount is sufficient to make an additional distribution, petition the Court for: an Order authorizing a Supplemental Distribution, including with such petition a list of Eligible Claimants and their Supplemental Claims, calculated as described in subparagraphs i-iii, below; and an Order directing the Clerk of the Court to issue a check from the CRIS payable

to the Fund Administrator in any such amount as is available and necessary to pay the Supplemental Claims.

- i. Only Tecumseh Investors who were Eligible Claimants and who negotiated their Distribution Checks during the General Distribution may be eligible for a Supplemental Distribution.
- ii. The Fund Administrator will determine each such Eligible Claimant's *pro rata* share of the total amount in Approved Claims actually disbursed during the General Distribution, including through the Claim Objection process.
- iii. The Fund Administrator will then take such Eligible Claimant's *pro rata* share and multiply it by the Remaining Distributable Amount to determine the Supplemental Claim.

2. Within 30 days following the entry of Orders of the Court issuing a Final Determination of Claim Objections received in conjunction with the General Distribution, or within 60 days after the Stale Date of the last check issued in the General Distribution, whichever is later, if the Remaining Distributable Amount is not sufficient to make a Supplemental Distribution, the Commission will move the Court for an Order authorizing the Fund Administrator to remit the Remaining Distributable Amount to the United States Treasury.

3. Within 30 days after entry of a Court Order approving the disbursement of the Supplemental Distribution, the Fund Administrator shall carry out the procedures outlined in Section G., above, to the extent relevant and necessary to effectuate the Supplemental Distribution. Any Distribution Checks mailed in a Supplemental Distribution need not be accompanied by a copy of the Plan or a Distribution Disclosure.

4. Any Eligible Claimant wishing to dispute the amounts awarded or not awarded in the Supplemental Distribution shall file a Claim Objection with the Court and serve a copy of such Claim Objection on the Fund Administrator and the Commission, including in such Objection the basis for the dispute, no later than 60 days after the Order approving the Supplemental Distribution. The Fund Administrator and/or the Commission shall file responses to any Objections filed within 90 days of the Order approving the Supplemental Distribution.

**J. The Fund Administrator**

1. Upon entry of the Court's Order approving the appointment of the Fund Administrator, the Fund Administrator shall have the following rights and responsibilities:
  - a. The Fund Administrator, in consultation with the Commission staff, shall oversee the administration of the procedures, claims, and distributions as provided in the Distribution Plan.
  - b. The Fund Administrator shall file with the Court the Commission's required quarterly Standardized Fund Accounting Report ("SFAR").
  - c. Within 90 days after the entry of an Order issuing Final Determinations on any Claim Objections, or after the latest Stale Date of any Distribution Check if no Claim Objections are filed, the Fund Administrator shall file its final report and SFAR. Upon the Fund Administrator's filing of its final report and SFAR, and upon application by the Commission, the Fund Administrator shall be discharged by Court order.
  - d. The Fund Administrator shall provide the Tax Administrator with any information needed relevant to the performance of its responsibilities as Tax Administrator, including the preparation and filing of any necessary

tax returns and calculation of the amount of taxes due. The Fund Administrator may pay taxes and the Tax Administrator's fees related to its performance out of the Fair Fund upon the Commission's application to the Court and pursuant to further order of the Court.

- e. The Fund Administrator is entitled to receive compensation from the Fair Fund at the Fund Administrator's standard hourly rates, and other reasonable and documented costs and expenses incurred in performance of the Fund Administrator's duties under this Plan. The Fund Administrator may pay all such compensation, fees and costs out of the Fair Fund upon application to the Court and pursuant to further order of the Court.
- f. The Fund Administrator is excused from all legal requirements to post a bond or give an undertaking of any type in connection with the Fund Administrator's duties and obligations under the Plan.
- g. The Fund Administrator is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for good faith compliance with any order, rule, law, judgment, or decree, including the orders of this Court. In no event shall the Fund Administrator or the Commission be liable for information provided or not provided by Defendants, any Tecumseh Investor, or any other individual who asserts a claim. The Court retains exclusive jurisdiction over all claims arising in connection with the Distribution, including, but not limited to, claims against the Fund Administrator asserting liability for violation of any duty imposed under this Distribution Plan.

- h. The Fund Administrator shall provide no tax advice to any Eligible Claimant. Each Eligible Claimant shall be responsible for obtaining his, her or its own tax advice with respect to any Distribution from the Fair Fund.
- i. The Fund Administrator may be removed at any time by the Court, and replaced with a successor. In the event the Fund Administrator decides to resign, the Fund Administrator shall first give written notice to the Commission and the Court of such intention to resign, and the resignation shall not be effective until the Court has appointed a successor. The Fund Administrator shall then follow instructions provided by its successor to the Court.

**K. Administration Costs**

- 1. Administration Costs are to be paid from the Fair Fund as directed by the Court after application by the Commission and/or Fund Administrator.

**L. Adjustments and Amendments**

- 1. To carry out the purposes of the Distribution Plan, the Fund Administrator may make adjustments to the Distribution Plan, consistent with the purposes and intent of the Distribution Plan, as may be agreed upon between the Fund Administrator and the Commission.
- 2. The Commission reserves the right to propose amendments to the Distribution Plan at the request of the Fund Administrator, or on its own initiative. The Court retains jurisdiction over this matter for the purpose of ruling on any such proposed amendments and for any and all other matters that may arise under or relate to the Distribution Plan.

**M. Remittance to Treasury**

If for any reason, monies remain in the Distribution Account after six months from the latest Stale Date of any Distribution Check, and after the return to Tecumseh of any excess Administration Costs Deposit as described in Section L., above, the Fund Administrator shall, after consultation with the Commission and without further order of the Court, pay such funds to the Commission for deposit into the United States Treasury. Payments pursuant to this paragraph shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Office of Financial Management, 100 F Street NE, Mail Stop 6042, Washington, D.C. 20549, and shall be accompanied by a letter identifying the Fund Administrator; setting forth the title and civil action number of this action and the name of this Court; and indicating that payment is made pursuant to this Plan and the Court's Order approving this Plan and that the funds are being paid for deposit by the Comptroller, Securities and Exchange Commission, into the United States Treasury. The Fund Administrator shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. Upon receipt of such funds from the Fund Administrator the Commission's Office of

Financial Management shall promptly remit the funds to the United States Treasury.

Dated: New York, New York  
April 29, 2011

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

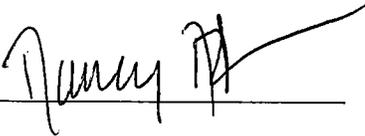


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Nancy A. Brown  
New York Regional Office  
Securities and Exchange Commission  
3 World Financial Center  
New York, New York 10281  
(212) 336-1023  
Attorneys for Plaintiff

Certificate of Service

I hereby certify that I caused the foregoing Declaration of Nancy A. Brown, and the Exhibit thereto, executed April 29, 2011, to be served on the Receiver in this action, Robert Knuts, Esq., by emailing a copy of the same to him at [rknuts@parkjenson.com](mailto:rknuts@parkjenson.com) this 29<sup>th</sup> day of April 2011.

A handwritten signature in black ink, appearing to read "Nancy A. Brown", is written over a horizontal line. The signature is stylized and includes a long, sweeping flourish extending to the right.

Nancy A. Brown