

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

VITESSE SEMICONDUCTOR CORPORATION,
et al.,

Defendants.

10-cv-09239 (JSR)

ECF Case

MOTION AND
MEMORANDUM IN
SUPPORT OF ORDER TO
THE CLERK OF THE
COURT TO TURNOVER
FUNDS ON DEPOSIT WITH
THE COURT REGISTRY
TO THE DISTRIBUTION
AGENT

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION AND
MEMORANDUM IN SUPPORT OF ORDER TO THE CLERK OF THE COURT TO
TURN OVER FUNDS ON DEPOSIT WITH THE COURT REGISTRY TO THE
DISTRIBUTION AGENT**

Plaintiff, the United States Securities and Exchange Commission (the “Commission” or “SEC”), respectfully requests that the Court enter an Order for the Clerk of Court:

1. Directing the Clerk of the Court to issue a check to the distribution agent, Berdon Claims Administration LLC (hereafter “Distribution Agent”) from the CRIS account number 10-cv-09239, under the case name designation “*SEC v. Vitesse Semiconductor Corporation, et al.*” for all of the funds in the CRIS accounts representing the SEC v. Vitesse

Semiconductor Distribution Fund (“Fair Fund” or “Fund”), the approximate principal balance being \$2,989,989.00, plus accrued interest minus court registry fees; and

2. Directing the Distribution Agent to:
 - a. Deposit these funds pursuant to Paragraph 28 of the Distribution Plan; and
 - b. Distribute these funds to Eligible Recipients in accordance with the terms of the Distribution Plan.

MEMORANDUM

Procedural Background

On January 11, 2016, this Court ordered that a Fair Fund be established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, from the funds paid by Defendants in this matter (“Fair Fund”). Berdon Claims Administration LLC (“Berdon”) was appointed to serve as the Distribution Agent for the Fair Fund to assist in overseeing the administration and distribution of the Fair Fund in coordination with Commission staff, pursuant to the terms of the distribution plan (“Distribution Plan”) approved by this Court on October 25, 2016, which adopted the same distribution plan approved in the settled class action, *See Grasso v. Vitesse Semiconductor Corporation, et al.*, Case No. 06-2639-R (CTx) (C.D. Cal.). The SEC now seeks an order directing the clerk of the court to turnover funds on deposit with the court registry to the Berdon, the Distribution Agent, to be distributed in accordance with the distribution plan approved in the class action settlement. Berdon will then combine the funds from the SEC and the class action to make a single distribution to eligible recipients.

Transfer of CRIS Account

The Commission requests that the Court authorize transfer of the Distribution Fund, plus interest, less court registry fees, (the “Net Distribution Fund”) to be transferred to the

Distribution Agent for distribution to the Eligible Recipients. If the Court so Orders, the transfer shall be made by check payable to Berdon Claims Administration LLC. The Commission requests that the Court authorize the Distribution Agent to deposit the Net Distribution Fund into an escrow account maintained by the Distribution Agent at Signature Bank. The Distribution Agent shall supply a signed receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies.

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: January 18, 2017

Respectfully Submitted,

s/ Michael Shueyee Lim
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