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

5. The Distribution Agent is **DISCHARGED**.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
U.S.D.J.



\$100,000 in civil penalties in full satisfaction of the Final Judgment, and Hologram paid \$22,419.26 in disgorgement and pre-judgment interest in full satisfaction of the Final Judgment. The total sum of \$122,419.26 was deposited into an interest-bearing account at the U.S. Treasury on April 11, 2020. *See* Consolidated Final Accounting Report (“Final Accounting”), attached as Ex. 1. at 5. As of March 3, 2023, those funds have been held in a non-interest-bearing account at the U.S. Treasury. *Id.*

3. Upon entry of the Court’s order dated February 24, 2022 (Dkt. No. 41) establishing a Fair Fund and approving the SEC’s proposed distribution plan, I, working under the supervision of the Distribution Agent and with other SEC staff, began the process of paying each Eligible Harmed Investor their Investment Loss. Because the Fair Fund held an amount in excess of what was necessary to pay each Eligible Harmed Investor, the Distribution Agent, working with SEC staff, determined to include Reasonable Interest in the Distribution Payments.

4. The Distribution Agent distributed \$32,352.96 to all but one of the investors identified on Appendix A to the Plan, with each payment consisting of the Eligible Harmed Investor’s calculated Investment Loss plus Reasonable Interest. *See* Ex. 1 at 2. The Distribution Agent paid approximately \$6,973.10 in Administrative Costs, consisting of Tax Administrator Fees, bank fees, and federal income taxes. *See* Ex. 2 (Plan) at 2. The Fair Fund also earned investment interest of \$2,235.42. *Id.* I have confirmed from SEC staff and records that all payments were distributed between April 11, 2022, and June 8, 2022, and were cashed no later than June 16, 2022.<sup>2</sup>

5. The SEC was unable to make a distribution to Investor No. 15, because despite

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<sup>2</sup> With respect to two Eligible Harmed Investors, Investor Nos. 69 and 198, the checks paid to them were offset by amounts paid for their benefit to government creditors, pursuant to the U.S. Treasury’s offset program, in the amounts of \$840.34 and \$85.75, respectively.

my repeated attempts from March 2022 to March 2023, while working with the Distribution Agent, to reach Investor No. 15 by telephone and email to obtain the necessary and required information to be able to complete the distribution (after he had initially used that email to communicate with me) Investor No. 15 failed to provide that information, or respond to my communications. *See* email chain attached hereto as Exhibit 3.<sup>3</sup> Therefore, the Distribution Agent, working in conjunction with other SEC staff, considers Investor No. 15 to be an Unresponsive Investor and has excluded that investor from the distribution. A copy of the instant motion papers will be sent to Investor No. 15 at his last-known mailing address, and to the email address which Investor No. 15 had previously used to communicate with me, on the same day this motion is filed.

6. All Eligible Harmed Investors have received their Distribution Payments, thereby compensating them for 100% of their Investment Losses, plus Reasonable Interest. After these distributions and Administrative Costs were paid, plus interest accrued in the Fair Fund, \$85,328.62 remains in the Fair Fund.

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

Dated: June 7, 2024  
New York, NY

/s/Yitzchok Klug  
Yitzchok Klug

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<sup>3</sup>Investor No. 15's name and other personally-identifying information have been redacted from Exhibit 3.

# EXHIBIT 1





## Consolidated Financial Accounting Report on the Cash Basis for Sec v David Distribution Fund

### Table of Contents

Page 1	Consolidated Financial Accounting Report (CFAR)
Page 2	Exhibit A, Summary of Detail by Account Managers
Page 3	Exhibit B, OFM Detail by Account
Page 6	OFM Tranche Information (Section E re: Distributions)
Page 7	Exhibit C, Tax Administrator's Detail by Account

Section Line

<b>CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS for</b>			
<b>A</b>	1	<b>DISTRIBUTION FUND</b>	<b>SEC V DAVID DISTRIBUTION FUND</b>
	2	<b>SEC Action Number</b>	<b>SEC-NY-09595-B</b>
	3	<b>AP File No. / Case Number</b>	<b>1:19-cv-09013</b>
		<b>Period Covered in this Report:</b>	
	4	<b>From</b>	<b>4/10/2020</b>
	5	<b>To</b>	<b>11/30/2023</b>
<b>B</b>		<b>Increases in Fund Balance</b>	
	1	Contributions/Deposits	\$ 122,419.26
	2	Investment/Interest Income	2,235.42
	3	Other	-
		Subtotal Funds Received	<hr/> \$ 124,654.68
<b>C</b>		<b>Decreases in Fund Balance</b>	
	1	Gross Distributions to Claimants/Investors	
		Less Returned & Cancelled Checks	
			<hr/> (32,352.96)
		Distributions to Claimants/Investors, Net	(32,352.96)
		Payments to Other than Claimants/Investors:	
	2	Plan Administration Fees and Costs	-
	3	Tax Administrator Fees and Expenses	(6,537.41)
	4	Investment/Bank Fees	(5.69)
		Income Tax Payments, Net of Refunds	
	5	Federal	(430.00)
	6	District of Columbia/State	-
	7	Other	-
		Subtotal Disbursements	<hr/> (6,973.10)
<b>D</b>		<b>Ending Balance</b>	<hr/> <b>\$ 85,328.62</b> <hr/>

Section	Line	SUMMARY OF DETAIL by ACCOUNTS by ACCOUNT MANAGERS for CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS for			
A	1	DISTRIBUTION FUND	SEC V DAVID DISTRIBUTION FUND		
	2	SEC Action Number	SEC-NY-09595-B		
	3	AP File No. / Case Number	1:19-cv-09013		
		Period Covered in this Report:			
	4	From 4/10/2020			
5	To 11/30/2023				
		OFM	Tax Admin.	Total	
B	Increases in Fund Balance				
	1	Contributions/Deposits	122,419.26	-	122,419.26
	2	Investment/Interest Income	2,235.42	-	2,235.42
	3	Other	-	-	-
		Subtotal Funds Received			
		124,654.68	-	124,654.68	
C	Decreases in Fund Balance				
	1	Distributions to Claimants/Investors, Net	(32,352.96)	-	(32,352.96)
	Payments to Other than Claimants/Investors:				
	2	Plan Administration Fees and Costs	-	-	-
	3	Tax Administrator Fees and Expenses	(6,537.41)	-	(6,537.41)
	4	Investment/Bank Fees	(5.69)	-	(5.69)
	Income Tax Payments, Net of Refunds				
	5	Federal	-	(430.00)	(430.00)
	6	District of Columbia/State	-	-	-
7	Other	-	-	-	
		Subtotal Disbursements			
		(38,896.06)	(430.00)	(39,326.06)	
Trf	Transfers				
	1	To Plan Administrator	-	-	-
	2	From Plan Administrator	-	-	-
	3	To Tax Administrator	(430.00)	-	(430.00)
	4	From Tax Administrator	-	-	-
	5	Between Accounts Held by Account Manager	-	-	-
	6	To SEC	-	-	-
	7	From SEC	-	430.00	430.00
		Subtotal Transfers			
		(430.00)	430.00	-	
D	Ending Balance		85,328.62	-	85,328.62
E	Fund Information: Tranches from Inception				
	See OFM Exhibit for Detailed Information				

Section Line OFFICE OF FINANCIAL MANAGEMENT DETAIL by ACCOUNT fo  
 CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS fo  
**A** 1 **DISTRIBUTION FUND** SEC V DAVID DISTRIBUTION FUND  
 2 **SEC Action Number** SEC-NY-09595-B  
 3 **AP File No. / Case Number** 1:19-cv-09013  
**Period Covered in this Report:**  
 4 **From** 4/10/2020  
 5 **To** 11/30/2023

BFS	OFM
Bureau Fiscal Services (BFS)	Non-interest Bearing Deposit Fund Account
SEC-NY-09595-B	

	DESCRIPTION	DATE	AMOUNT	AMOUNT	TOTAL
<b>B</b>	<b>1</b>	<u>CONTRIBUTIONS/DEPOSITS</u>			
	Settlement	4/10/2020		122,419.26	122,419.26
	Total to Line B 1		-	122,419.26	122,419.26
<b>B</b>	<b>2</b>	<u>INVESTMENT/INTEREST EARNINGS</u>			
	Total Earnings Posted to Account Annual Total	2020	82.40		82.40
	Total Earnings Posted to Account Annual Total	2021	51.14		51.14
	Total Earnings Posted to Account Annual Total	2022	1,421.45		1,421.45
	Total Earnings Posted to Account Annual Total	2023	680.43		680.43
	Total to Line B 2		2,235.42	-	2,235.42
<b>B</b>	<b>3</b>	<u>OTHER INCREASES IN FUND BALANCE</u>			
	Total to Line B 3		-	-	-
<b>C</b>	<b>1</b>	<u>DISBURSEMENTS TO INVESTORS</u>			
	Disbursements to Investors, Net by Year	2022		(32,352.96)	(32,352.96)
	Total to Line C 1		-	(32,352.96)	(32,352.96)
<b>C</b>	<b>2</b>	<u>PLAN ADMINISTRATION FEES and COSTS</u>			
	Total to Line C 2		-	-	-

Section	Line	OFFICE OF FINANCIAL MANAGEMENT DETAIL by ACCOUNT for CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS for					
A	1	DISTRIBUTION FUND		SEC V DAVID DISTRIBUTION FUND			
	2	SEC Action Number		SEC-NY-09595-B			
	3	AP File No. / Case Number		1:19-cv-09013			
	Period Covered in this Report:						
	4	From	4/10/2020				
5	To	11/30/2023					
			BFS	OFM			
			Bureau Fiscal Services (BFS)	Non-interest Bearing Deposit Fund Account			
			SEC-NY-09595-B				
		DESCRIPTION	DATE	AMOUNT	AMOUNT	TOTAL	
C	3	<u>TAX ADMINISTRATOR FEES &amp; BONDS</u>					
		Bonds:					
		Bond Fees	3/21/2022		(0.38)	(0.38)	
						-	
		Total Bond Fees Paid		-	(0.38)	(0.38)	
		Tax Administrator Fees:					
		Miller Kaplan Arase LLP Fees	4/2/2021		(2,782.40)	(2,782.40)	
		Miller Kaplan Arase LLP Fees	10/25/2022		(1,787.31)	(1,787.31)	
		Miller Kaplan Arase LLP Fees	7/21/2023		(1,967.32)	(1,967.32)	
						-	
		Total Tax Administrator Fees Paid		-	(6,537.03)	(6,537.03)	
		Total to Line C 3		-	(6,537.41)	(6,537.41)	
	C	4	<u>INVESTMENT EXPENSES including BUREAU OF PUBLIC DEBT (BFS) FEES or COURT REGISTRY INVESTMENT SYSTEM (CRIS) FEES</u>				
			BFS Fees Paid; Funds Withdrawn	2020		(1.21)	(1.21)
			BFS Fees Paid; Funds Withdrawn	2021		(2.06)	(2.06)
		BFS Fees Paid; Funds Withdrawn	2022		(2.10)	(2.10)	
		BFS Fees Paid; Funds Withdrawn	2023		(0.32)	(0.32)	
						-	
		Total to Line C 4		-	(5.69)	(5.69)	
C		5	<u>FEDERAL TAX (PAYMENTS) / REFUNDS</u>				
							-
		Total to Line C 5		-	-	-	
C	6	<u>DISTRICT OF COLUMBIA (DC) &amp; STATE TAX PAYMENTS</u>					
						-	
	Total to Line C 6		-	-	-		
C	7	<u>OTHER DECREASES IN FUND BALANCE</u>					
						-	
	Total to Line C 7		-	-	-		

Section Line **OFFICE OF FINANCIAL MANAGEMENT DETAIL by ACCOUNT fo**  
**CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS fo**  
**A 1 DISTRIBUTION FUND SEC V DAVID DISTRIBUTION FUND**  
**2 SEC Action Number SEC-NY-09595-B**  
**3 AP File No. / Case Number 1:19-cv-09013**  
**Period Covered in this Report:**  
**4 From 4/10/2020**  
**5 To 11/30/2023**

BFS	OFM
Bureau Fiscal Services (BFS)	Non-interest Bearing Deposit Fund Account
SEC-NY-09595-B	

	DESCRIPTION	DATE	AMOUNT	AMOUNT	TOTAL
<b>TRF</b>	<b>TRANSFERS BETWEEN ACCOUNTS</b>				
	1 To Plan Administrator:				-
	Total Transfers to Plan Administrator		-	-	-
2 From Plan Administrator:					-
	Total Transfers from Plan Administrator		-	-	-
3 To Tax Administrator:					
	Transfer re: Income Tax Payments	3/22/2021		(30.00)	(30.00)
	Transfer re: Income Tax Payments	4/5/2023		(400.00)	(400.00)
	Total Transfers to Tax Administrator		-	(430.00)	(430.00)
4 From Tax Administrator:					-
	Total Transfers from Tax Administrator		-	-	-
5 Between Accounts Held by this Account Manager:					
	Funds invested BFS	4/11/2020	122,223.39	(122,223.39)	-
	Funds Withdrawn from BFS	3/31/2021	(3,000.00)	3,000.00	-
	Funds Withdrawn from BFS	3/31/2022	(33,000.00)	33,000.00	-
	Funds Withdrawn from BFS	10/14/2022	(1,000.00)	1,000.00	-
	Funds Withdrawn from BFS	3/3/2023	(87,458.81)	87,458.81	-
	Total Transfers Between Accounts Herein		(2,235.42)	2,235.42	-
	Total Transfers, Net		(2,235.42)	1,805.42	(430.00)

Section Line OFFICE OF FINANCIAL MANAGEMENT DETAIL by ACCOUNT fo  
 CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS fo  
**A** 1 DISTRIBUTION FUND SEC V DAVID DISTRIBUTION FUND  
 2 SEC Action Number SEC-NY-09595-B  
 3 AP File No. / Case Number 1:19-cv-09013  
 Period Covered in this Report:  
 4 From 4/10/2020  
 5 To 11/30/2023

BFS	OFM
Bureau Fiscal Services (BFS)	Non-interest Bearing Deposit Fund Account
SEC-NY-09595-B	

DESCRIPTION	DATE	AMOUNT	AMOUNT	TOTAL
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**SUM** SUMMARY and RECONCILIATION to ENDING ACCOUNT BALANCES

Total Increases	Section B	2,235.42	122,419.26	124,654.68
Less: Total Decreases	Section C	-	(38,896.06)	(38,896.06)
Total Transfers Between Accounts	TRF	(2,235.42)	1,805.42	(430.00)
Ending Balance		-	85,328.62	85,328.62

**E** Fund Information: Tranches from Inception

Distributions				
# Issued	Date	Gross Payments	Returned/Cancelled	Net Distributed
1 (23 payees)	4/7/2022	(32,352.96)	\$	(32,352.96)
Total		(32,352.96)	-	(32,352.96)

**H** Prepared by:

1 \_\_\_\_\_  
 (entity name)

2 \_\_\_\_\_  
 (signature)

\_\_\_\_\_  
 (printed name)

3 \_\_\_\_\_  
 (title)

\_\_\_\_\_  
 (date)



Section Line TAX ADMINISTRATOR'S DETAIL by ACCOUNT for  
**A** 1 CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS for  
 2 DISTRIBUTION FUND SEC V DAVID DISTRIBUTION FUND  
 3 SEC Action Number SEC-NY-09595-B  
 AP File No. / Case Number 1:19-cv-09013  
 Period Covered in this Report:  
 4 From 4/10/2020  
 5 To 11/30/2023

Miller Kaplan  
 Arase LLP  
 SEC Client Trust  
 Account

	DESCRIPTION	DATE	AMOUNT	TOTAL
<b>B</b>	1	<u>CONTRIBUTIONS/DEPOSITS</u>		
				-
	Total to Line B 1		-	-
<b>B</b>	2	<u>INVESTMENT/INTEREST EARNINGS</u>		
				-
	Total to Line B 2		-	-
<b>B</b>	3	<u>OTHER INCREASES IN FUND BALANCE</u>		
				-
	Total to Line B 3		-	-
<b>C</b>	1	<u>DISBURSEMENTS TO INVESTORS</u>		
				-
	Total to Line C 1		-	-

Section Line **TAX ADMINISTRATOR'S DETAIL by ACCOUNT for**  
**CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS for**  
**A 1 DISTRIBUTION FUND SEC V DAVID DISTRIBUTION FUND**  
**2 SEC Action Number SEC-NY-09595-B**  
**3 AP File No. / Case Number 1:19-cv-09013**  
**Period Covered in this Report:**  
**4 From 4/10/2020**  
**5 To 11/30/2023**

Miller Kaplan  
 Arase LLP  
 SEC Client Trust  
 Account

	DESCRIPTION	DATE	AMOUNT	TOTAL
<b>C 2</b>	<u>PLAN ADMINISTRATION FEES and COSTS</u>			
	Total to Line C 2		-	-
<b>C 3</b>	<u>TAX ADMINISTRATOR FEES &amp; BONDS</u>			
	Bonds:			
	Total Bond Fees Paid		-	-
	Tax Administrator Fees:			
	Total Tax Administrator Fees Paid		-	-
	Total to Line C 3		-	-
<b>C 4</b>	<u>INVESTMENT EXPENSES including</u> <u>BUREAU OF PUBLIC DEBT (BPD) FEES or</u> <u>COURT REGISTRY INVESTMENT SYSTEM (CRIS) FEES</u>			
	Total to Line C 4		-	-
<b>C 5</b>	<u>FEDERAL TAX (PAYMENTS) / REFUNDS</u>			
	2020 Federal Income Tax	3/22/2021	(30.00)	(30.00)
	2023 1st Quarter Estimated Federal Income Tax	4/10/2023	(400.00)	(400.00)
	Total to Line C 5		(430.00)	(430.00)

Section Line **TAX ADMINISTRATOR'S DETAIL by ACCOUNT for**  
**CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS for**  
**A 1 DISTRIBUTION FUND SEC V DAVID DISTRIBUTION FUND**  
**2 SEC Action Number SEC-NY-09595-B**  
**3 AP File No. / Case Number 1:19-cv-09013**  
**Period Covered in this Report:**  
**4 From 4/10/2020**  
**5 To 11/30/2023**

Miller Kaplan  
 Arase LLP  
 SEC Client Trust  
 Account

	DESCRIPTION	DATE	AMOUNT	TOTAL
<b>C</b>	<b>6</b>	<u>DISTRICT OF COLUMBIA (DC) &amp; STATE TAX PAYMENTS</u>		
	Total to Line C 6		-	-
<b>C</b>	<b>7</b>	<u>OTHER DECREASES IN FUND BALANCE</u>		
	Total to Line C 7		-	-
<b>TRF</b>	<u>TRANSFERS BETWEEN ACCOUNTS</u>			
	<b>1</b>	To Plan Administrator:		
	Total Transfers to Plan Administrator		-	-
	<b>2</b>	From Plan Administrator:		
	Total Transfers from Plan Administrator		-	-
	<b>5</b>	Between Accounts Held by this Account Manager:		
	Total Transfers Between Accounts Herein		-	-
	<b>6</b>	To SEC:		
	Total Transfers to SEC		-	-


Section Line **TAX ADMINISTRATOR'S DETAIL by ACCOUNT for**  
**CONSOLIDATED FINAL ACCOUNTING REPORT on the CASH BASIS for**  
**A 1 DISTRIBUTION FUND SEC V DAVID DISTRIBUTION FUND**  
**2 SEC Action Number SEC-NY-09595-B**  
**3 AP File No. / Case Number 1:19-cv-09013**  
**Period Covered in this Report:**  
**4 From 4/10/2020**  
**5 To 11/30/2023**

			Miller Kaplan Arase LLP SEC Client Trust Account	
	DESCRIPTION	DATE	AMOUNT	TOTAL
7	From SEC:			
	Transfer re: Income Tax Payments	3/22/2021	30.00	30.00
	Transfer re: Income Tax Payments	4/5/2023	400.00	400.00
			-	-
	Total Transfers from SEC		430.00	430.00
	Total Transfers, Net		430.00	430.00

**SUM** SUMMARY and RECONCILIATION to ENDING ACCOUNT BALANCES

Total Increases	Section B	-	-
Less: Total Decreases	Section C	(430.00)	(430.00)
Total Transfers Between Accounts	TRF	430.00	430.00
Ending Balance		-	-

**H** Prepared by:

1	Miller Kaplan Arase LLP fka Damasco & Associates LLP	
	(tax administrator)	
2		Nicholas A. Sanchez
	(signature)	(printed name)
3	Tax Administrator	2/16/24
	(title)	(date)

# EXHIBIT 2

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
	:
	:
v.	:
	:
ALKIVIADES DAVID and	:
HOLOGRAM USA NETWORKS INC.,	:
	:
Defendants.	:
-----X	

No. 19 Civ. 9013 (JSR)  
ECF CASE

**PROPOSED DISTRIBUTION PLAN**

1. The Securities and Exchange Commission (the “Commission” or the “SEC”) submits this Distribution Plan (the “Plan”) to distribute the disgorgement, pre-judgment interest, and civil penalty paid by Defendants Hologram USA Networks Inc. (“Hologram”) and Alkiviades David (“David”) (collectively, the “Defendants”) to investors harmed by the actions described in the Amended Complaint.

2. The Commission incorporates by reference the background and history of this matter as set forth in the accompanying Memorandum in Support of its Motion for an Order Establishing a Fair Fund, Approving a Distribution Plan, and Appointing a Distribution Agent dated April 28, 2021 (the “Memorandum”).

3. By Order entered May 8, 2020 (DE 36), this Court appointed Miller Kaplan Arase LLP as tax administrator for all funds under the Court’s jurisdiction in this case (the “Tax Administrator”) and authorized payment of tax related obligations, fees, and expenses from those funds without further Court Order.

### **The Fair Fund**

4. The Commission currently holds approximately \$119,223.39 in an interest-bearing account at the U.S. Treasury's Bureau of Fiscal Service ("BFS"), comprised of the \$100,000 civil penalty paid by David, the disgorgement and pre-judgment interest paid by Hologram, plus accrued interest, less any Administrative Costs<sup>1</sup> paid to date. If and when the Court establishes a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the "Fair Fund"), the Fair Fund, net a reserve for Administrative Costs (the "Net Available Fair Fund"), will be distributed for the benefit of Eligible Harmed Investors pursuant to the Plan.<sup>2</sup>

### **The Distribution Agent**

5. Richard G. Primoff, a Commission employee, will serve as Distribution Agent in connection with the Plan.

6. The Distribution Agent:

(a) shall receive no compensation for the services performed in administering the Fair Fund, other than his regular salary as an employee of the SEC;

(b) shall perform such functions as are necessary to implement and administer the Plan. In performing these functions, the Distribution Agent shall be deemed to be acting within the scope of his employment with the Commission.

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<sup>1</sup> Capitalized terms not immediately defined are defined below.

<sup>2</sup> If the Court does not establish a Fair Fund but approves the Plan, the distribution fund will hold \$22,419.26 plus accrued interest (the "Distribution Fund"); the "Net Available Distribution Fund" will be the Distribution Fund net a reserve for Administrative Costs; "Distribution Fund" and "Net Available Distribution" will substitute for the reference to "Fair Fund" and "Net Available Fair Fund" as used herein; any distribution will be *pro rata* (see ¶ 15) as opposed to the full compensation plus reasonable interest set forth on Appendix A.



In carrying out his duties, the Distribution Agent may be assisted by other Commission staff acting under his supervision;

(c) shall coordinate with the Tax Administrator to ensure that the Fair Fund, a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations pertaining to QSFs, 26 C.F.R. §§ 1.468B-1 through 1.468B-5, complies with all related legal and regulatory requirements, including without limitation, satisfying any reporting or withholding requirements imposed on distributions from the Fair Fund; and

(d) with his designees, agents and assistants, shall not be required to post a bond, and shall not be liable to any person for their actions hereunder, except on a finding of willful disregard of duty.

### **Definitions**

7. The following definitions apply to the terms as used in the Plan:

(a) **Administrative Costs** are the costs and obligations associated with the Fair Fund and the Plan, including investment costs, taxes, and tax related fees and expenses. All Administrative Costs shall be paid out of the Fair Fund.

(b) **Distribution Payment** is the payment made to an Eligible Harmed Investor in accordance with the Plan.

(c) **De Minimis Amount** is \$20. No Distribution Payment shall be made under the Plan for less than the *De Minimis* Amount.

(d) **Eligible Harmed Investor** is any Harmed Investor who is determined eligible for a Distribution Payment under the methodology described in ¶¶ 8-9, below, and whose Distribution Payment equals or exceeds the *De*

*Minimis* Amount.

(e) **Excluded Party(ies)** are (i) Unresponsive Investors; (ii) Hologram, its agents, affiliates, assigns, subsidiaries, successors-in-interest, and any entity in which Hologram has a controlling interest; (iii) David, his spouse, agents, affiliates, heirs, assigns, household members, and successors-in-interest; (iv) an Investor whose Investment, in whole or in part, was funded by Hologram or David; (v) any entity controlled by Hologram or David or in whose Investment Hologram or David had or has an interest; and (vi) any purchaser or assignee of a Eligible Harmed Investor's right to obtain a recovery from the Fair Fund for value; provided, however, that this provision (vi) shall not be construed to exclude those Eligible Harmed Investors who obtained such a right by gift, inheritance, or devise or operation of law.

(f) **Harmed Investor** is an Investor who is not an Excluded Party and whose Recovery is less than their Investment.

(g) **Investment** refers to the aggregate out-of-pocket investment made by an Investor in Hologram. It does not include any interest, dividend, or paper profit.

(h) **Investor** refers to persons or entities that invested in Hologram.

(i) **Investor Notice** is the notice that the Commission sent to the last known physical and/or email address of each potential investor except those from whom the Commission staff had obtained written or testimonial confirmation that they are not a Harmed Investor, and any Investors for whom the Commission staff has been unable to locate or contact, despite reasonable efforts.

(j) **Net Available Fair Fund** is the Fair Fund less Administrative Costs.

(k) **Recovery(ies)** is the aggregate amount of an Investment previously recovered by an Investor, whether through refund from Defendants, or otherwise.

(l) **Investment Loss** is the difference between each Harmed Investor's Investment and Recovery.

(m) **Stale Date** is the date on which Distribution Payment checks expire.

(n) **Unresponsive Investor** is any Investor from whom information was sought in the Investor Notice and/or otherwise by the Commission staff and/or the Distribution Agent or his agents, and who does not timely provide information necessary to the distribution; and any Investor whom the Commission staff and/or the Distribution Agent have been unable to contact or locate, despite reasonable efforts. For purposes of the Plan, locating Investors through the use of commercial databases regularly available to the Division of Enforcement of the SEC, last known contact information, and the information provided in response to the Investor Notice, constitutes "reasonable efforts."

**Methodology for Identifying Eligible Harmed Investors and Calculating Distribution Payments.**

8. The objective of the methodology described below is to distribute the Net Available Fair Fund so that each Eligible Harmed Investor will receive a Distribution Payment equal to his or her Investment Loss.

9. Each Eligible Harmed Investor will receive a Distribution Payment equal to the amount set forth on the chart attached as Appendix A.<sup>3</sup> The Distribution Payment was determined as follows:

(a) The Distribution Agent determined the amount of the Net Available Fair Fund;

(b) The Distribution Agent created a list of Harmed Investors who are not Excluded Parties (the “Preliminary List”), using the information obtained during the SEC investigation and in response to the Investor Notice;

(c) Using the Preliminary List, the Distribution Agent then calculated each Harmed Investor’s Investment Loss.

(d) Because the Net Available Fair Fund has funds in excess of that necessary to pay each Harmed Investor a Distribution Payment equal to the amount of their Investment Loss plus an additional amount to compensate each Eligible Harmed Investor for the time value of their respective Investment Loss (“Reasonable Interest”),<sup>4</sup> the Distribution Agent has included Reasonable Interest in the Distribution Payments;

(e) If for any Harmed Investor, the Distribution Payment is less than the *De Minimis* Amount, the Distribution Agent removed that Harmed Investor from the Preliminary List;

---

<sup>3</sup> In order to maintain Harmed Investor privacy, Harmed Investors are identified on Appendix A by an investor number that was communicated to them in the Investor Notice.

<sup>4</sup> “Reasonable Interest” will be calculated by the Commission’s Division of Economic and Risk Analysis (“DERA”) at a rate determined to be appropriate under the facts and circumstances of this case, compounded quarterly from the approximate date of the loss through the approximate date of the disbursement of the Distribution Fund.

(f) The Distribution Agent then deemed each remaining Harmed Investor on the Preliminary List an Eligible Harmed Investor eligible to receive a Distribution Payment equal to that set forth on Appendix A.

**Administration of the Fair Fund**

10. Prior to distributing any funds to Eligible Harmed Investors, the Distribution Agent will reserve or pay, as appropriate, any unpaid Administrative Costs.

11. Investors who relocate after being contacted by the Distribution Agent must promptly provide to the Distribution Agent new contact information in order to be considered for eligibility, or remain eligible, for a distribution.

12. The Net Available Fair Fund will be distributed to Eligible Harmed Investors in accordance with Appendix A and pursuant to the methodology described in ¶¶ 8-9, above. The Distribution Agent will make a payment to each Eligible Harmed Investor through BFS by electronically transferring funds through the Automated Clearing House or mailing a check to the payee. The Distribution Agent will compile the information, prepare a payment file, and verify the payment file's completeness and accuracy for submission to Commission staff who, without further Court Order, will make the disbursements through BFS. At or about the time that the Distribution Agent submits a payment file to BFS, the Distribution Agent will prepare and send to the last known physical and/or email address of each Eligible Harmed Investor a communication that includes, if and as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting and other related tax matters; and (c) the name of a person to contact with questions concerning the distribution. The communication will clearly indicate that the money is being distributed in connection with the captioned case.

13. Checks that are not negotiated prior to the Stale Date shall be voided, and the distribution amount returned to the Fair Fund for disposition in accordance with the Plan. Electronic payments will be made only to cash equivalent accounts (*e.g.*, checking or savings accounts). No checks will be issued or reissued, or payments made to investors, after 12 months from the date of original or initial issuance.

### **Disposition of Remaining Funds after Distribution**

14. A residual within the Distribution Fund (the “Residual”) will be established for any amounts remaining after completion of the Distribution Payments described above and the payment of incurred Administrative Costs. The residual may include, among other things, collections after the initial distribution, funds reserved for future Administrative Costs, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payments that were not delivered or accepted upon delivery, and tax refunds. After all Administrative Costs have been paid, all funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission, pending a final accounting. Upon completion of the final accounting the Commission staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>5</sup>

---

<sup>5</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

15. If feasible, the Distribution Agent may, in his discretion, distribute the Residual, net a reserve for Administrative Costs (the “Net Residual”), in accordance with the Plan, to any Eligible Harmed Investors located or identified as eligible after the initial distribution, who provide documentation subsequent to the initial distribution, or who failed to negotiate the checks or receive the payment issued in the immediately preceding distribution (“Residual Distributees”), up to the Eligible Harmed Investors’ Investment Loss plus Reasonable Interest. If the Net Residual is less than the aggregate Investment Loss Amount of the Residual Distributees, each Residual Distributee will receive a Distribution Payment equal to the Net Residual multiplied by the ratio of the Residual Distributee’s Investment Loss to the aggregate Investment Losses of all Residual Distributees (“*Pro Rata*”).

Final Accounting and Termination of the Fair Fund

16. Upon completion of all distributions under the Plan, the payment of all Administrative Costs, and the completion of a final report and accounting, the Distribution Agent will seek an Order from the Court, as appropriate, approving the final accounting; discharging the Distribution Agent; transferring the remaining Residual, and any amounts returned to the Fair Fund in the future, to the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act; and terminating the Fair Fund.

17. 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 Administrative Costs have been paid; and
- (c) The remaining Residual has been disposed of consistent with this

Court's Order.

18. Once the Distribution Fund has been terminated, no additional payments will be made whatsoever.

**Miscellaneous**

19. The Distribution Agent and the Tax Administrator are entitled to rely on all outstanding rules of law and Court orders.

20. All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

21. The Distribution Agent may implement immaterial changes to this Plan to effectuate its general purposes.

22. The Court reserves the right to amend the Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to the Plan.



# EXHIBIT 3

## Primoff, Richard

---

**From:** Klug, Yitzchok  
**Sent:** Wednesday, March 1, 2023 5:12 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Hologram USA

Mr. [REDACTED],

I am following up on my prior emails to you, below. We are closing this distribution matter, and if we do not receive from you the information we have previously requested by March 31, 2023, any claim of yours for a distribution will be foreclosed. Should you provide the requested information, please also clarify whether your name is [REDACTED], [REDACTED] or [REDACTED].

Thank you.



Yitzchok Klug  
U.S. Securities and Exchange Commission  
Division of Enforcement  
New York Regional Office  
100 Pearl Street, Suite 20-100  
New York, NY 10004  
(212) 336-0112  
(347) 421-3410 - Cell  
[klugy@sec.gov](mailto:klugy@sec.gov)

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**From:** Klug, Yitzchok  
**Sent:** Tuesday, March 22, 2022 10:51 AM  
**To:** [REDACTED] >  
**Cc:** [REDACTED]  
**Subject:** RE: Hologram USA

Mr. [REDACTED] – I need to process the distributions to investors. If I don't hear from you soon, I will not be able to include you on the list. Please call me.

---

**From:** Klug, Yitzchok <[KLUGY@SEC.GOV](mailto:KLUGY@SEC.GOV)>  
**Sent:** Friday, March 18, 2022 10:39 AM

To: [REDACTED]  
Subject: Re: Hologram USA

Mr. [REDACTED]

I just tried calling you on the 347-261-0550 number and the recording says the number is out of service.

I don't understand why you haven't sent me your information yet. You could at least have taken a photo of the document I sent you and emailed or texted it to me. You could have put it in an envelope and mailed it to me.

I'm puzzled by your lack of cooperation.

Yitzchok Klug

Sent from my iPhone

On Mar 16, 2022, at 12:38 AM, [REDACTED] > wrote:

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello and good night mr Klug my apologies just getting in but will take care of tomorrow asap is there a fax number I can send to once it's done? Thanks in advance

Sent from my iPhone

On Mar 15, 2022, at 2:53 AM, [REDACTED] > wrote:

I'm sorry MR Cluke I know it's late I'm just getting in to check my email!  
Question the pdf is  
That docusign? Or something on that platform? If so send it to the email thanks in advance sorry for the delay but we will get it done my promise, and you have only been patient and in control thru it all so KUDOS to you Mr Cluke and the courts tell the judge I said thank her or him or him or her seriously you and your team went way beyond for me and I appreciate you the courts and all involved for



understanding thanks

Sent from my iPhone

On Mar 14, 2022, at 12:20 PM, Klug, Yitzchok  
<[KLUGY@sec.gov](mailto:KLUGY@sec.gov)> wrote:

Do you also have a way to scan it as a PDF on your phone?

---

**From:** [REDACTED] >  
**Sent:** Monday, March 14, 2022 12:17 PM  
**To:** Klug, Yitzchok <[KLUGY@SEC.GOV](mailto:KLUGY@SEC.GOV)>  
**Subject:** Re: Hologram USA

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Mr Cluke I see the document but can't sign it do I  
print the page sign it that way take a picture and send to your email  
? Is that ok or no thanks in advance

Sent from my iPhone

On Mar 4, 2022, at 11:11 AM, Klug, Yitzchok  
<[KLUGY@sec.gov](mailto:KLUGY@sec.gov)> wrote:

Mr. [REDACTED],

Thank you for responding to my email. We have tried to  
get in touch with you several times by phone and email.  
As we just discussed on the phone, I need certain  
information from you before we can arrange for a  
refund in this matter. Please fill out the information on  
the attached page and send it back to me as soon as  
possible. My contact information appears below. If you  
have any questions, please call me at (347) 421-3410.

Thank you.



Yitzchok Klug  
U.S. Securities and Exchange Commission  
Division of Enforcement  
New York Regional Office  
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(212) 336-0112  
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**From:** [REDACTED] >  
**Sent:** Thursday, March 3, 2022 3:04 AM  
**To:** Klug, Yitzchok <[KLUGY@SEC.GOV](mailto:KLUGY@SEC.GOV)>  
**Subject:** Re: Hologram USA

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mr KLUG hope all is well I've been through so much since the last time we spoke my niece still hasn't showed up or been found I've lost my business not to mention many many family and friends most due to covid so I'm so sorry about the delay please call 347 261 0550 at your convenience again I'm sorry but things are not good at this time thanks in advance

Sent from my iPhone

On Mar 2, 2022, at 1:53 PM, Klug,  
Yitzchok <[KLUGY@sec.gov](mailto:KLUGY@sec.gov)> wrote:

Mr. [REDACTED],

I have tried unsuccessfully to call and text you these last few days. Please reply to my email as soon as you can or call me on my cell phone at (347) 421-3410.

Thank you,

Yitz Klug

-----  
<image001.png>

Yitzchok Klug  
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Commission  
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## **PRELIMINARY STATEMENT**

In accordance with paragraph 16 of the Court-approved distribution plan (the “Plan”) (Dkt. Nos. 37-2 and 41), Plaintiff Securities and Exchange Commission (the “SEC”) respectfully submits this corrected memorandum in support of its motion for an Order: (1) approving the final accounting (“Final Accounting”) attached as Exhibit 1 to the accompanying Declaration of Yitzchok Klug dated June 7, 2024 (the “Klug Decl.”); (2) terminating the Fair Fund; (3) discharging the Distribution Agent; and (4) consistent with equitable principles, directing the SEC to remit any remaining funds, and any funds returned to the Fair Fund in the future, to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (“the Exchange Act”) [15 U.S.C. § 78u-6(g)(3)].<sup>1</sup> As discussed below, with one exception relating to an Unresponsive Investor, the Distribution Agent has completed the distribution and all investors listed on Appendix A (Dkt. No. 37-3) to the Court-approved Plan (Dkt. No. 37-2, attached as Klug Decl. Ex. 2) have been fully compensated for their Investment Loss plus Reasonable Interest.<sup>2</sup> All Administrative Costs have been paid, and the Residual of \$85,328.62 remains in the Fair Fund. Further distribution of the Residual to Eligible Harmed Investors is infeasible. Accordingly, the relief requested is appropriate.

## **RELEVANT PROCEDURAL HISTORY**

On September 27, 2019, the SEC filed this action (the “Civil Action”) against Defendants Alkiviades David (“David”) and Hologram USA Networks Inc. (“Hologram,” and, with David, the “Defendants”). (Dkt. No. 1.) On December 2, 2019, the SEC filed an Amended Complaint.

---

<sup>1</sup> The SEC has filed this corrected memorandum of law to include a Table of Contents and Table of Authorities that were inadvertently omitted from the SEC’s supporting memorandum of law filed on June 7, 2024 (Dkt. No. 44), and to correct several typographical errors to record and case citations.

<sup>2</sup> Capitalized terms not defined in this memorandum are used as defined in the Plan.

(Dkt. No. 22.) The Amended Complaint alleged that, from late November 2017 until late March 2018, Defendants engaged in a fraudulent scheme to induce the investing public to buy securities issued by Hologram and its subsidiary in unlawfully unregistered offerings and that Defendants used materially false and misleading representations about Hologram's business to do so.

On March 19, 2020, the Court entered final consent Judgments against Hologram and David, which respectively ordered Hologram to pay \$22,419.26, comprised of \$20,000 in disgorgement and \$2,419.26 in prejudgment interest, and David to pay a civil penalty of \$100,000. (Dkt. Nos. 34, 35.) Defendants paid in full, and the money was deposited in an SEC-designated interest-bearing account at the U.S. Treasury from April 11, 2020, to March 3, 2023, after which the money was held in an account that did not accrue interest. (Klug. Decl. ¶ 2.) The Fair Fund earned investment interest of \$2,235.42. (Klug. Decl. ¶ 4 and Ex. 1 at 3.) On May 7, 2020, the Court appointed Miller Kaplan Arase LLP ("Miller Kaplan") as the Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns for all funds under the Court's jurisdiction in this matter. (Dkt. No. 36.) The Court also authorized payment of tax obligations and the Tax Administrator's fees and expenses without further order of the Court. (Dkt. No. 36.)

On February 24, 2022, upon the SEC's motion (Dkt. No. 37), the Court entered an order (Dkt. No. 41, the "Order") establishing a Fair Fund for all funds under the Court's jurisdiction in this matter (the "Fair Fund") and approving the SEC's proposed distribution plan (Dkt. No. 37-2, attached as Klug Decl. Ex. 2) to distribute the funds collected in satisfaction of the Judgments. (Dkt. No. 41.) The Order also appointed the undersigned as the Distribution Agent. (Dkt. No. 41.)

**RELEVANT FACTS: THE DISTRIBUTION AND FINAL ACCOUNTING**

The Court-approved Plan proposed to distribute the Fair Fund, less Administrative Costs, to identified investors who were harmed by the Defendants' conduct described in the Amended Complaint. The Plan was designed to distribute the Net Available Fair Fund so that each Eligible Harmed Investor identified in Appendix A to the Plan would receive a Distribution Payment equal to his or her Investment Loss. (Klug Decl. Ex. 2.) It excluded from the definition of Harmed Investor, and thus Eligible Harmed Investor, any investor who is an Unresponsive Investor. The Plan defines an Unresponsive Investor as any Investor "from whom information was sought in the Investor Notice and/or otherwise by the [SEC] staff and/or the Distribution Agent or his agents, and who does not timely provide information necessary to the distribution." (Klug Decl. Ex. 2 at ¶ 7(d), (e), (f), (n).)

Because the balance of the Net Available Fair Fund exceeded the amount necessary to pay each Eligible Harmed Investor their Investment Loss in full, the Distribution Agent included Reasonable Interest in the Distribution Payments. (Klug Decl. Ex. 2 at ¶ 9(d).) From April 11 through June 8, 2022, the Distribution Agent distributed \$32,352.96 to 23 of the 24 investors identified in Appendix A as Eligible Harmed Investors. (Klug Decl. ¶ 4.) Each payment consisted of the Eligible Harmed Investor's calculated Investment Loss plus Reasonable Interest. With respect to two Eligible Harmed Investors, Investor Nos. 69 and 198, the checks paid to them were offset by amounts paid for their benefit to government creditors, pursuant to the U.S. Treasury's offset program, in the amount of \$840.34, and \$85.75, respectively. (Klug Decl. ¶ 4. at n.) The Distribution Agent has confirmed that all payments distributed were cashed by Eligible Harmed Investors on or before June 16, 2022. (Klug Decl. ¶ 4.)

The Distribution Agent has not made a distribution to Investor No. 15. Despite repeated attempts between March 2022 and March 2023 by the SEC staff, working with and under the

supervision of the Distribution Agent, to contact Investor No. 15 by telephone and through an email address that the investor previously used to communicate with the SEC staff, Investor No. 15 failed to provide the SEC with information necessary to issue a distribution payment. (Klug Decl. ¶ 5.) For these reasons, the Distribution Agent, in consultation with other SEC staff, determined Investor No. 15 to be an Unresponsive Investor (Klug Decl. Ex. 2 at ¶ 7(n)) and Excluded Party ineligible to receive a distribution payment. (Klug Decl. Ex. 2 at ¶ 7(e)(i)).<sup>3</sup> (Klug Decl. ¶ 5.) Otherwise, all Eligible Harmed Investors identified on Appendix A to the Plan have received their Distribution Payments, thereby compensating them for 100% of their Investment Losses, plus Reasonable Interest. The Distribution Agent has completed his duties under the Plan. Distribution of the Fair Fund is now complete. The Tax Administrator has prepared the Consolidated Final Accounting Report (“CFAR”) (Klug Decl. Ex. 1), which the SEC has submitted herewith to the Court for approval. The CFAR includes a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Fair Fund.

As described in the CFAR, the Fair Fund began with \$122,419.26 collected from the Defendants and earned \$2,235.42 in interest, for a total of \$124,654.68. (Klug Decl. Ex. 1.) The Distribution Agent distributed \$32,352.96 to Eligible Harmed Investors, paid \$6,543.10 in administrative fees, and paid \$430 in taxes. (Klug Decl. Ex. 1.) The Fair Fund has an ending balance of \$85,328.62. (Klug Decl. Ex. 1.)

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<sup>3</sup> The SEC will send a copy of the instant motion papers to Investor No. 15’s last known mail and email addresses on the same day it files these papers by ECF, and file a certificate of service.

## ARGUMENT

All Eligible Harmed Investors have been fully compensated for their Investment Losses and Reasonable Interest; further distributions are thus infeasible because they would result in a windfall to those investors. Therefore, in accordance with paragraphs 16-18 of the Plan, the SEC respectfully requests that the Court enter an order, in substantially the form accompanying the Motion, approving the Final Accounting, discharging the Distribution Agent, terminating the Distribution Fund, and ordering that the Residual of the Fair Fund, and any funds returned to the Fair Fund in the future, be sent to the U.S. Treasury for the reasons set forth below.

First, the SEC respectfully requests that the Court order that the Residual and any funds returned to the Fair Fund in the future be sent to the U.S. Treasury under Exchange Act Section 21F(g)(3), 15 U.S.C. § 78u-6(g)(3). As discussed above, the Distribution Agent has distributed \$32,352.96 to all Eligible Harmed Investors, compensating them for 100% of their Investment Loss, plus Reasonable Interest. Exchange Act Section 21F(g)(1) of the Exchange Act provides that “[t]here is established in the Treasury of the United States a fund to be known as the ‘Securities and Exchange Commission Investor Protection Fund.’” 15 U.S.C. § 78u-6(g)(1). Exchange Act Section 21F(g)(3)(ii) further provides as follows:

There shall be deposited into or credited to the [Securities and Exchange Commission Investor Protection Fund] an amount equal to ... any monetary sanction added to a disgorgement fund or other fund under Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the Fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds \$200,000,000.

15 U.S.C. § 78u-6(g)(3)(ii). In addition, Exchange Act Section 21F(g)(3)(iii) provides that all investment income earned on monies in the Fair Fund shall also be deposited into or credited to the Securities and Exchange Commission Investor Protection Fund. 15 U.S.C. § 78u-6(g)(3)(iii).

Insofar as all Eligible Harmed Investors have been fully compensated, the transfer of the Residual to the U.S. Treasury is consistent with the Supreme Court’s decision in *Liu v. SEC*, 591 U.S. 71 (2020), and with the statutory scheme. Disgorgement is ordered to reflect the “foundational principle” that “it would be inequitable that a wrongdoer should make a profit out of his own wrong.” *Liu*, 591 U.S. at 79-80. The Supreme Court in *Liu* criticized the practice of distributing funds disgorged under Exchange Act Section 21(d)(5)’s equitable relief provision [15 U.S.C. § 78u(d)(5)] to the Treasury “*instead of*” to “known victims.” 591 U.S. at 85, 87-88 (emphasis added); *see also SEC v. Stone*, No. 22 Civ. 3553, 2023 WL 6387276, at \*10 (S.D.N.Y. Sept. 29, 2023) (noting that the issue *Liu* questioned was the practice of distributing funds to the Treasury “*instead of*” to victims). However, it left open the question of whether disgorgement funds can be deposited with the Treasury when it is infeasible to distribute the collected funds to investors, allowing “the lower courts [to] evaluate in the first instance whether that order would indeed be for the benefit of investors as required by [15 U.S.C.] § 78u(d)(5) and consistent with equitable principles.” 591 U.S. at 90; *see also SEC v. Govil*, 86 F.4th 89, 98 n.7 (2d Cir. 2023) (recognizing that *Liu* left “open” the question of whether disgorged funds may be sent to the Treasury under Section 78u(d)(5) when distribution to victims is infeasible and not reaching that question where, among other things, the SEC “wished disgorgement funds to be directed to investors”).

“Courts have held, post-*Liu*, that disgorgement may still be ordered even if funds need to be sent to the Treasury because it is infeasible to return funds to individual investors.” *SEC v. O’Brien*, 674 F. Supp. 3d 85, 103 (S.D.N.Y. 2023) (Cote, J.) (citing *SEC v. Bronson*, 602 F. Supp. 3d 599, 618 (S.D.N.Y. 2022)), *aff’d*, No. 23-1071, 2023 WL 28137222 (June 3, 2024) (summary order). Moreover, Exchange Act Section 21F(g)(3) expressly contemplates that disgorgement funds that are “not distributed to [] victims” through a Fair Fund “shall be deposited

into or credited to” a fund at the Treasury, 15 U.S.C. § 78u-6(g)(3)(A)(ii), and courts have distributed residual funds consistent with that statutory command. *See, e.g., SEC v. Murray*, No. 3:12-cv-1288 (EMC), ECF 239 (N.D.C.A. Oct. 23, 2023); *SEC v. Symbol Techs., Inc.*, No. 2:04-cv-2276 (JMA), ECF 400 (E.D.N.Y. Aug. 15, 2022); *SEC v. Haddad*, No. 3:18-cv-55 (KAD), ECF 29 (D. Conn. Aug. 27, 2021); *SEC v. Macquarie Capital (USA), Inc.*, No. 1:15-cv-2304 (DLC), ECF 37 (S.D.N.Y. July 20, 2021); *SEC v. Nortel Networks Corp.*, No. 1:07-cv-8851 (LAP), ECF 114 (S.D.N.Y. July 2, 2021); *SEC v. Buck*, No. 1:17-cv-3984 (JRS), ECF 17 (S.D. Ind. Apr. 22, 2021).<sup>4</sup>

Pursuant to the Plan, the Fair Fund shall be eligible for termination after all the following have occurred: (a) a final report and accounting has been submitted to, and approved by, the Court; (b) all Administrative Costs have been paid; and (c) the Residual has been disposed of consistent with this Court’s Order. (Plan at ¶ 17.) The Plan provides that the SEC staff will complete, and file a motion to approve, the final accounting, including a recommendation as to the final disposition of the Residual, consistent with *Liu*, and if distribution of the Residual is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Exchange Act Section 21F(g)(3). (Plan at ¶ 14.)

Accordingly, the SEC respectfully requests that the Court: (1) approve the final accounting included as Klug Decl. Ex. 1; (2) direct the Commission to transfer the Residual, and any funds returned to the Fair Fund in the future, to the general fund of the U.S. Treasury subject

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<sup>4</sup> Post-*Liu* amendments to the Exchange Act confirm courts’ authority to order disgorgement in “any action or proceeding brought by the Commission under any provision of the securities laws.” Section 6501 of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, codified at 15 U.S.C. § 78u(d)(7); *see SEC v. Ahmed*, 72 F.4th 379, 395-96 (2d Cir. 2023). The proposed distribution is consistent with these amendments to the extent they are relevant.



to Exchange Act Section 21F(g)(3); (3) terminate the Fair Fund; and (4) discharge the Distribution Agent. A proposed Order has been submitted with the SEC's Notice of Motion.

#### **IV. CONCLUSION**

For the foregoing reasons, the SEC respectfully requests that the Court grant the SEC's Motion in its entirety and enter the proposed Order.

Dated: June 10, 2024  
New York, NY

s/ Richard G. Primoff  
Richard G. Primoff  
Yitzchok Klug  
Attorney for Plaintiff  
U.S. Securities and Exchange Commission  
100 Pearl Street, Ste. 20-100  
New York, N.Y. 10004-2616  
Phone: (212) 336-0148  
[primoffr@sec.gov](mailto:primoffr@sec.gov)

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

-----X  
**SECURITIES AND EXCHANGE  
COMMISSION,**

:

:

:

19 Civ. 9013 (JSR)

**Plaintiff,**

:

**-against-**

:

:

**ALKIVIADES DAVID and HOLOGRAM USA  
NETWORKS INC.,**

:

:

**Defendants.**

:

-----X

**CERTIFICATE OF SERVICE**

I, Richard G. Primoff, employed as a Senior Trial Counsel of plaintiff Securities and Exchange Commission (“SEC”), do hereby certify that true and correct copies of the SEC’s Notice of Motion with annexed proposed Order, Memorandum of Law dated June 7, 2024 and Declaration of Yitzchok Klug dated June 7, 2024 (“Klug Declaration”) and exhibits annexed thereto (Dkt. Nos. 42-44, collectively, the “Motion Papers”), in support of the SEC’s motion for an order approving the final accounting, remitting funds to the U.S. Treasury, terminating the Fair Fund and discharging the Distribution Agent, were served on Investor No. 15 as follows:<sup>1</sup>

1. On June 7, 2024, I emailed copies of the Motion Papers to Investor No. 15 to the email address with which Investor No. 15 had previously used to communicate with the SEC staff (*see* Klug Declaration ¶ 5 and Ex. 3), as well as to a second email address the SEC’s records indicated related to that investor, and which the SEC staff had also used in its emails to Investor No. 15. Attached hereto as Exhibit 1 is a copy of my June 7, 2024 email to Investor No. 15 (without attachments, and with the email addresses and Investor No. 15’s name redacted). Attached hereto as Exhibit 2 is a redacted bounce-back message I received shortly after sending

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<sup>1</sup> Investor No. 15 is the Unresponsive Investor referenced in paragraph 5 of the Klug Declaration (Dkt. No. 43).

my email, indicating that the email was not delivered to the first email address, which Investor No. 15 had previously used to communicate with the SEC staff. I did not receive a bounce-back message from the second email address to which I sent the Motion Papers.

2. In addition, on June 7, 2024, I served Investor No. 15 with the Motion Papers by UPS next-day delivery service, to the following last-known mailing address in the SEC's records for that investor:

70 E. 52<sup>nd</sup> Street  
Basement Office  
Brooklyn, NY 11203-1973

Attached hereto as Exhibit 3 is a copy of the UPS shipping notification, tracking number, and tracking detail reflecting this UPS shipment to Investor No. 15, redacted to remove that investor's name.

Dated: June 7, 2024  
New York, New York

s/Richard G. Primoff  
Richard G. Primoff

# EXHIBIT 1

**Primoff, Richard**

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**From:** Primoff, Richard  
**Sent:** Friday, June 7, 2024 11:58 AM  
**To:** [REDACTED]  
**Cc:** Klug, Yitzchok  
**Subject:** SEC v. David, et al. (19 Civ. 9013) (JSR)  
**Attachments:** DE 43. Klug Decl. with Exs. 1-3.pdf; DE 42 Notice of Motion with proposed order to terminate fair fund and other relief.pdf; DE 44. SEC Mem. in support of motion to approve final accounting.terminate FF.remit funds.discharge dist. agent.pdf

[REDACTED] Attached please find the SEC's motion papers filed with the Court today, consisting of: (1) the SEC's notice of motion to approve the final accounting, terminate the Fair Fund established in this case, remit remaining funds to the U.S. Treasury and discharge the distribution agent, with an annexed proposed order; (2) the Declaration of Yitzchok Klug in support of the SEC's motion; and (3) the SEC's memorandum of law in support of its motion. Copies of the attached are also being sent to you today by UPS.

Very truly yours,

Richard G. Primoff  
Senior Trial Counsel  
SECURITIES AND EXCHANGE COMMISSION  
New York Regional Office  
100 Pearl Street, Ste. 20-100  
New York, NY 10004-2616  
(212) 336-0148

# EXHIBIT 2

## Primoff, Richard

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**From:** Mail Delivery System <MAILER-DAEMON@D2-IP01.SEC.GOV>  
**To:** [REDACTED]  
**Sent:** Friday, June 7, 2024 11:58 AM  
**Subject:** Undeliverable: SEC v. David, et al. (19 Civ. 9013) (JSR)

### Delivery has failed to these recipients or groups:

[REDACTED]  
A problem occurred while delivering your message to this email address. Try sending your message again.

The following organization rejected your message: [142.250.31.26].

### Diagnostic information for administrators:

Generating server: D2-IP01.SEC.GOV

[REDACTED]  
[142.250.31.26]

Remote server returned '554 5.0.0 <[142.250.31.26] #5.0.0 smtp; 5.1.0 - Unknown address error 550-"5.1.1 The email account that you tried to reach does not exist. Please try\n5.1.1 double-checking the recipient's email address for typos or\n5.1.1 unnecessary spaces. For more information, go to\n5.1.1 https://support.google.com/mail/?p=NoSuchUser af79cd13be357-795333a881fsi408584885a.779 - gsmtp" (delivery attempts: 0)>'

### Original message headers:

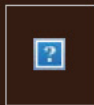
X-CSE-ConnectionGUID: gTCpKXAEQnSwNSht6TbhBg==  
X-CSE-MsgGUID: ZOfJN6qSSyqNHB4rphflaw==  
X-IronPort-AV: E=McAfee;i="6600,9927,11096"; a="208898320"  
X-IronPort-AV: E=Sophos;i="6.08,221,1712635200";  
d="pdf'?scan'208,217";a="208898320"  
X-Amp-Result: LOWRISK  
X-Amp-File-Uploaded: False  
X-IronPort-DK-Sig: SEC\_GOV\_2048  
Received: from unknown (HELO sec.gov) ([172.24.44.46])  
by D2-IP01.SEC.GOV with ESMTP/TLS/ECDHE-RSA-AES256-GCM-SHA384; 07 Jun 2024 11:58:13 -  
0400  
Received: from D2-WP-16EXCH01.AD.SEC.GOV (172.24.1.81) by  
D2-WP-16EXCH02.AD.SEC.GOV (172.24.1.82) with Microsoft SMTP Server  
(version=TLS1\_2, cipher=TLS\_ECDHE\_RSA\_WITH\_AES\_256\_GCM\_SHA384) id  
15.1.2507.39; Fri, 7 Jun 2024 11:58:11 -0400  
Received: from GCC02-DM3-obe.outbound.protection.outlook.com (172.24.196.30)  
by D2-WP-16EXCH01.AD.SEC.GOV (172.24.1.81) with Microsoft SMTP Server  
(version=TLS1\_2, cipher=TLS\_ECDHE\_RSA\_WITH\_AES\_256\_GCM\_SHA384) id  
15.1.2507.39 via Frontend Transport; Fri, 7 Jun 2024 11:58:11 -0400  
Received: from MW4PR09MB9646.namprd09.prod.outlook.com (2603:10b6:303:1f1::5)

# EXHIBIT 3



**From:** [UPS](#)  
**To:** [Primoff, Richard](#)  
**Subject:** UPS Ship Notification, Tracking Number 1Z88R5V40190074169  
**Date:** Thursday, June 6, 2024 11:36:57 AM

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



To get an estimated delivery time for most UPS packages, click Continue

**You have a package coming.**

Scheduled Delivery Date: Friday, 06/07/2024

Continue

UPS My Choice for home



Change Delivery

Manage Preferences

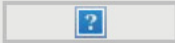
View Delivery Planner

This message was sent to you at the request of SEC NEW YORK REGION to notify you that the shipment information below has been transmitted to UPS. The physical package may or may not have actually been tendered to UPS for shipment. To verify the actual transit status of your shipment, click on the tracking link below.

## Shipment Details

<b>From:</b>	SEC NEW YORK REGION
<b>Tracking Number:</b>	<a href="#">1Z88R5V40190074169</a>
<b>Ship To:</b>	<div>██████████</div> 70 E. 52nd Street Basement Office BROOKLYN, NY 112031973 US
<b>UPS Service:</b>	UPS NEXT DAY AIR
<b>Number of Packages:</b>	1

**Package Weight:** 2.0 LBS  
**Scheduled Delivery:** 06/07/2024



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