

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	No. 19 Civ. 9013 (JSR)
	:	
v.	:	ECF CASE
	:	
ALKIVIADES DAVID and	:	
HOLOGRAM USA NETWORKS INC.,	:	
	:	
Defendants.	:	
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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 Costs¹ 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.²

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.

¹ Capitalized terms not immediately defined are defined below.

² 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.³ 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”),⁴ 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;

³ 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.

⁴ “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”).⁵

⁵ 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.

APPENDIX A

Appendix A

Investor Number	Investment	Recovery	Investment Loss	Reasonable Interest	Distribution Payment
15	\$2,400	\$1,600	\$800	\$40.34	\$840.34
49	\$800	\$400	\$400	\$20.17	\$420.17
68	\$400	\$0	\$400	\$20.17	\$420.17
69	\$800	\$0	\$800	\$40.34	\$840.34
72	\$400	\$0	\$400	\$20.17	\$420.17
77	\$400	\$0	\$400	\$20.17	\$420.17
81	\$400	\$0	\$400	\$20.17	\$420.17
93	\$4,000	\$0	\$4,000	\$201.68	\$4,201.68
97	\$400	\$0	\$400	\$20.17	\$420.17
98	\$400	\$0	\$400	\$20.17	\$420.17 ¹
101	\$800	\$400	\$400	\$20.17	\$420.17 ²
106	\$1,400	\$400	\$1,000	\$50.42	\$1,050.42
121	\$400	\$0	\$400	\$20.17	\$420.17
128	\$400	\$0	\$400	\$20.17	\$420.17
129	\$2,400	\$0	\$2,400	\$121.00	\$2,521.00
144	\$2,000	\$0	\$2,000	\$100.84	\$2,100.84
145	\$10,000	\$5,000	\$5,000	\$252.10	\$5,252.10
155	\$400	\$0	\$400	\$20.17	\$420.17
163	\$400	\$0	\$400	\$20.17	\$420.17
169	\$800	\$0	\$800	\$40.34	\$840.34
178	\$400	\$0	\$400	\$20.17	\$420.17
184	\$1,600	\$0	\$1,600	\$80.67	\$1,680.67
192	\$1,800	\$1,000	\$800	\$40.34	\$840.34
198	\$5,000	\$0	\$5,000	\$252.10	\$5,252.10
200	\$1,000	\$0	\$1,000	\$50.42	\$1,050.42
204	\$2,000	\$0	\$2,000	\$100.84	\$2,100.84

¹ This individual is not presently an Eligible Harmed Investor, and no distribution is contemplated, unless the Commission staff is able to obtain confirmed contact information for this individual.

² This individual is not presently an Eligible Harmed Investor, and no distribution is contemplated, unless the Commission staff is able to obtain confirmed contact information for this individual.