

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

Case No: 6:09-cv-1638-GAP-LHP

K & L INTERNATIONAL
ENTERPRISES, INC., LAWRENCE A.
POWALISZ, ENZYME
ENVIROMENTAL SOLUTIONS, INC.
and JARED E. HOCHSTEDLER,

Defendants

ORDER

Upon consideration of Plaintiff's Motion to Approve Distribution Plan (Doc. No. 123), the Distribution Plan at Doc. No. 123-1 is hereby **APPROVED**. It is therefore

ORDERED that the United States Securities and Exchange Commission implement the plan and report to the Court as provided therein.

DONE and **ORDERED** in Chambers, Orlando, Florida on April 4, 2023.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

DISTRIBUTION PLAN

I. OVERVIEW

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “Commission”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by K&L International Enterprises, Inc., Signature Leisure, Inc., Signature Worldwide Advisors, LLC, Stephen W. Carnes, Lawrence A. Powalisz, Enzyme Environmental Solutions, Inc., and Jared E. Hochstedler (collectively, the “Defendants”) in this proceeding.

2. As described more specifically below, the Plan seeks to compensate investors who were harmed, by the Defendants’ conduct alleged in the Complaint, in connection with Defendants’ sales of large numbers of unregistered shares of microcap securities into the over-the-counter market. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated based on their losses on transactions in the shares of Enzyme Environmental Solutions, Inc. (stock symbol EESO), Cross Atlantic Commodities, Inc. (stock symbol CXAC), Revenge Designs, Inc. (stock symbol RVGD), and International Power, Ltd. (stock symbol IPWG or IPWGE) (the “Securities”) on certain trading days defined for each of the Securities from September 1, 2007 through July 31, 2009 (the “Relevant Period”).

3. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over its implementation.

II. BACKGROUND

4. This case involves the defendants’ violations of the registration provisions of the securities laws from approximately September 2007 through July 2009. The SEC’s complaint alleged that Defendants entered into a series of convertible promissory notes with several issuers in a scheme to evade securities registration requirements. Over the course of seven months, from May through September 2010, the Court entered final judgments against all seven defendants. From May 19, 2010 through November 25, 2013, four of the defendants made payments towards the monetary relief the Court ordered. Defendants’ total payment amounts were as follows: Carnes \$945,903.98; K&L and Powalisz \$800,000.00; K&L \$500,000.00; Powalisz \$854,851.33; Hochstedler \$65,000.00. These payments totaled \$3,165,755.31. The funds were initially held in the Court’s Registry Investment System, but were later transferred to the SEC to be deposited with the United States Department of the Treasury. On February 7, 2023, the Court granted the SEC’s motion to establish a Fair Fund, and appointed Miller Kaplan Arase, LLP (“Miller Kaplan” or “Tax Administrator”) as Tax Administrator for the Fair Fund. Dkt. 119. On March 21, 2023, Rust Consulting, Inc. (“Rust”) was appointed as distribution agent with responsibility to administer the Fair Fund distribution. Dkt. 122.

5. The Fair Fund has been deposited at the United States Department of the Treasury for investment.

III. DEFINITIONS

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

6. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Distribution Agent, tax obligations, and investment and banking costs.

7. **“Claim Form”** means the form designed by the Distribution Agent, in consultation with the Commission staff, for the filing of claims in accordance with this Plan. The claim form will require, at a minimum, sufficient documentation reflecting any Preliminary Claimant’s purchases and dispositions of Securities during the Relevant Period such that eligibility under the Plan can be determined, tax identification and other related information from the Preliminary Claimant as determined necessary by the Distribution Agent in coordination with the Tax Administrator, and a certification that the Preliminary Claimant is not an Excluded Party.

8. **“Claim Status Notice”** means the notice sent by the Distribution Agent within ninety (90) days of the Claims Bar Date to all Preliminary Claimants that submitted a deficient Claim Form. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency and in the event the claim is denied, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

9. **“Claims Bar Date”** means the date established in accordance with this Plan by which a Preliminary Claimant’s Claim Form must be postmarked or submitted electronically in order to receive consideration under the Plan. The Claims Bar Date shall be one hundred twenty (120) days after the initial mailing of the Claims Packet. Claim Forms submitted by Preliminary Claimants postmarked or received after the Claims Bar Date will not be accepted unless the Distribution Agent is directed to do so by the Commission staff.

10. **“Claims Packet”** means the materials relevant to submitting a claim that will be provided to Preliminary Claimants. The Claims Packet will include, at a minimum, a copy of the Plan Notice and a Claim Form (together with instructions for completion of the Claim Form).

11. **“Determination Notice”** shall mean the written notice sent by the Distribution Agent to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Distribution Agent’s final ruling regarding the eligibility status of the claim.

12. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

13. **“Eligible Claimant”** means a Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation.

14. **“Excluded Party”** shall mean:

- (a) The Defendants;
- (b) Present or former officers or directors of Defendants or any assigns, creditors, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities;
- (c) Any employee or former employee of the Defendants or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct alleged in the Complaint;
- (d) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct alleged in the Complaint or any related Commission action;
- (e) Any firm, trust, corporation, officer, or other entity in which Defendants has or had a controlling interest;
- (f) The Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent; or
- (g) Any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

The Claim Form will require claimants to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Fair Fund.

15. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’ violations alleged in the Complaint.

16. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

17. **“Payee”** means an Eligible Claimant whose Recognized Loss calculates, in accordance with the Plan of Allocation, to a distribution amount equal to or greater than \$10.00 who will receive a Distribution Payment.

18. **“Person”** means natural individuals as well as legal entities such as corporations,

partnerships, or limited liability companies.

19. “**Plan Notice**” means a written notice from the Distribution Agent to Preliminary Claimants informing them of the Fair Fund; the Plan and its eligibility requirements; explaining how to submit a Claim Form, including instructions for any online claims process; and how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund’s website. The Plan Notice will also be available on the Fair Fund’s website maintained by the Distribution Agent.

20. “**Plan of Allocation**” means the methodology used by the Distribution Agent to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

21. “**Preliminary Claimant**” shall mean a Person, or their lawful successors, identified by the Distribution Agent as having possible claim to recover from the Fair Fund under this Plan, or a Person asserting prior to the Claims Bar Date that he, she, or it has a possible claim to recover from the Fair Fund under this Plan, as a result of transactions in the Securities during the Relevant Period.

22. “**Recognized Loss**” means the amount of loss calculated in accordance with the Plan of Allocation.

23. “**Relevant Period**” means the period of time between September 1, 2007 and July 31, 2009. Table 1 of Exhibit A presents the set of trading dates eligible for consideration in the loss calculation for each of the Securities.

24. “**Securities**” refers to shares of these microcap stocks traded over-the-counter during certain date ranges in the Relevant Period: Enzyme Environmental Solutions, Inc. (stock symbol EESO), Cross Atlantic Commodities, Inc. (stock symbol CXAC), Revenge Designs, Inc. (stock symbol RVGD), and International Power, Ltd. (stock symbol IPWG or IPWGE).

25. “**Summary Notice**” means the notice published in print or internet media that shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, the means of obtaining a Claims Packet, and the Claims Bar Date. The Summary Notice will be published within ten days of the initial mailing of the Claims Packet.

26. “**Third-Party Filer**” means a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to submit and submits a claim(s) on behalf of one or more Preliminary Claimants. Third-Party Filer does not include assignees or purchasers of claims, which are excluded from receiving Distribution Payments.

IV. TAX COMPLIANCE

27. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund.

28. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

V. DISTRIBUTION AGENT

29. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; establishing a website and staffing a call center to address inquiries regarding the Plan; disseminating the Claims Packet; preparing accountings; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible.

30. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Court approval is required prior to implementation by amending the Plan.

31. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

32. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in connection with the Plan and all Preliminary Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting

any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Plan.

33. The Distribution Agent is authorized to enter into agreements with third-parties as may be appropriate or necessary in the administration of the Fair Fund, provided such third-parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third-parties shall be deemed to be agents of the Distribution Agent under this Plan.

34. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.

VI. ADMINISTRATION OF THE FAIR FUND

Identification of and Notification to Preliminary Claimants

35. The Distribution Agent will, insofar as practicable, use its best efforts to identify Preliminary Claimants from a review of trading records, obtaining records from registered broker-dealers and investment advisors, and seeking information from any other source available to it. The Distribution Agent may also engage a third-party firm, after consultation with and approval of the Commission staff, to assist in identifying Preliminary Claimants in order to maximize the participation rate in the Fair Fund of investors in the Securities.

36. Within sixty (60) days after Commission approval of the Plan, the Distribution Agent shall:

- (a) design and submit a Claims Packet, including the Plan Notice and the Claim Form, to the Commission staff for review and approval;
- (b) create a mailing and claim database of all Preliminary Claimants based upon information identified by the Distribution Agent;
- (c) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date;
- (d) Mail a Claims Packet to each Preliminary Claimant identified by the Distribution Agent and to the Distribution Agent's list of banks, brokers, and other nominees in accordance with paragraph 41 below;
- (e) establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website will make available a copy of the approved Plan; provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions;

include in downloadable form, the Claim Form and other related materials; and such other information the Distribution Agent believes will be beneficial to Preliminary Claimants;

- (f) establish and maintain a toll-free telephone number for Preliminary Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The toll-free number will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Fair Fund's website; and
- (g) establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Fair Fund's website.

37. The Distribution Agent will publish the Summary Notice within ten days of the initial mailing of the Claims Packet.

38. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website, any material mailed, and any scripts used in connection with any communication with Preliminary Claimants.

39. In all materials that refer to the Claims Bar Date, the filing deadline will be clearly identified with the calendar date, which is one hundred twenty (120) days from the date of the initial mailing of the Claims Packet.

40. The Distribution Agent will promptly provide a Claims Packet to any Preliminary Claimant upon request made via mail, phone, or email prior to the Claims Bar Date.

41. The Distribution Agent will send by mail, email, or other means, the Claims Packet to the Distribution Agent's list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process, that may have records of the Securities during the Relevant Period (collectively, the "Nominees or Custodians"). The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Securities:

- (a) within fourteen (14) days of the Nominees' or Custodians' receipt of the Claims Packet, notify and send the Claims Packet to the respective beneficial owners, and as requested, provide to the beneficial owners a Claims Packet, so that the beneficial owners may timely file a claim. The burden will be on the Nominees or Custodians to ensure the claims process information, including, if requested, the Claims Packet and other relevant materials, is properly disseminated to the beneficial owners; and/or
- (b) provide to the Distribution Agent, within fourteen (14) days of receipt of the Claims Packet, a list of last known names and addresses for all beneficial

owners for whom/which they purchased, as the record holder, the Securities during the Relevant Period, so that the Distribution Agent can communicate with the beneficial owners directly.

42. At the discretion of the Distribution Agent, in consultation with the Commission staff, a reasonable number of additional copies of the Claims Packet shall be made available to any Nominee or Custodian requesting it for the purpose of distribution to beneficial owners.

43. Requests to the Distribution Agent for additional copies of the Claims Packet in excess of 500 are subject to approval by the Distribution Agent, in consultation with the Commission staff.

44. Documented reasonable out-of-pocket expenses incurred by the Nominees or the Custodians, which would not have been incurred but for compliance with paragraph 41 above, shall be reimbursed from the Fair Fund. The amount of such expenses allowed will be at the discretion of the Distribution Agent, in consultation with the Commission staff. Unless otherwise determined by the Distribution Agent in consultation with the Commission staff, out-of-pocket expenses based on the following rates will be considered reasonable:

- (a) a maximum of \$0.08 per Claims Packet, plus postage at the pre-sort postage rate per Claims Packet actually mailed;
- (b) a maximum of \$0.05 per email of Plan Notice and Claim Form link disseminated; or
- (c) \$0.20 per name, address, and email address provided to the Distribution Agent, up to a maximum of amount of \$1,500.00.

45. The Distribution Agent will attempt to locate any Preliminary Claimant whose mailing is returned as “undeliverable” and will document all such efforts. The Distribution Agent shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to obtain updated addresses in response to “undeliverable” notices, and forward any returned mail for which an updated address is provided or obtained. The Distribution Agent will make available, upon request by the Commission staff, a list of all Preliminary Claimants whose Claims Packet have been returned as “undeliverable” due to incorrect addresses and for which the Distribution Agent has been unable to locate current addresses.

Filing a Claim

46. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Preliminary Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Preliminary Claimant’s claim, together with all required supporting documentation as the Distribution Agent, in its discretion, deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third-party documentary evidence of purchases and dispositions of Securities during the Relevant Period, as well as holdings of Securities at pertinent dates.

47. Electronic claims submission is encouraged; the Plan Notice will include directions on how Preliminary Claimants can submit their claims electronically via the Fair Fund's website. If using the web-based claim filing option, a Preliminary Claimant must submit his, her, or its claim to the Distribution Agent by 11:59 p.m. Eastern Standard Time on the Claims Bar Date. The Plan Notice will also include directions for submission of claims if the Preliminary Claimant is unable to submit his, her, or its claim electronically.

48. The burden will be upon the Preliminary Claimant to ensure that his, her or its Claim Form has been properly and timely received by the Distribution Agent. A Claim Form that is postmarked or otherwise received after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent for good cause shown, after consultation with the Commission staff.

49. All Claim Forms and supporting documentation necessary to determine a Preliminary Claimant's eligibility to receive a distribution from the Fair Fund under the terms of the Plan must be verified by a declaration executed by the Preliminary Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Preliminary Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Preliminary Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

50. When submitting claims to the Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Distribution Agent in this matter. Third-Party Filers that do not comply with the template and format provided by the Distribution Agent may be rejected. Third-Party Filers must also submit a signed master proof of claim and release, as well as proof of authority to file on behalf of the claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim.

51. Each Third-Party Filer must establish the validity and amount of each claim in its submission. Third-Party Filers must submit such supporting documentary evidence of purchases, dispositions, and holdings of Securities as the Distribution Agent deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the Preliminary Claimant (beneficial account owner) and its TIN (for individuals) or EIN (for companies), sufficient contact information to confirm the identity of the beneficial owner, and documentation from the original bank, broker or other institution of purchases and dispositions of Securities (account statements, confirmations and other documentation of purchases and dispositions), as well as holdings of the Securities on pertinent dates. Documentation generated by the Third-Party Filer as well as affidavits in lieu of supporting documentation will not be accepted unless, for good cause, the Distribution Agent determines it acceptable. The Distribution Agent will have the right to request, and the Third-Party Filer will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed necessary by the Distribution Agent to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Distribution Agent will result in rejection of the affected claim(s). The determination of the Distribution Agent to reject a claim for insufficient documentation, as reflected on the Determination Notice, is final and within the discretion of the

Distribution Agent.

52. The receipt of Securities by gift, inheritance, devise, or operation of law will not be deemed to be a purchase of Securities, nor will it be deemed an assignment of any claim relating to the purchase of such Securities unless specifically so provided in the instrument of inheritance. However, the recipient of Securities as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of the Plan. Only one claim may be submitted with regard to the same transactions in Securities, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

53. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will distribute any payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

54. The Preliminary Claimant has the burden of notifying the Distribution Agent of a change in his, her or its current address and other contact information, and of ensuring that such information is properly reflected on the Distribution Agent's records.

Review of Claims and Deficiency Process

55. The Distribution Agent will review all claim submissions and determine the eligibility of each Preliminary Claimant to participate in the Fair Fund by reviewing claim data and supporting documentation (or the lack thereof) and verifying the claim. Each Preliminary Claimant will have the burden of proof to establish the validity and amount of his, her or its claim. The Distribution Agent will have the right to request, and the Preliminary Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

56. The Distribution Agent will provide a Claim Status Notice within ninety (90) days of the Claims Bar Date to each Preliminary Claimant who has filed a deficient Claim Form with the Distribution Agent. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (*e.g.*, failure to provide required information or documentation). In the event the claim is denied, in whole or in part, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

57. Any Preliminary Claimant with a deficient claim will have forty-five (45) days from the date of the Claim Status Notice to cure any deficiencies identified in the Claim Status

Notice.

58. Any Preliminary Claimant seeking reconsideration of a denied claim must advise the Distribution Agent in writing within thirty (30) days of the date of the Claim Status Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of his, her, or its claim.

59. The Distribution Agent will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

Claims Eligibility Determination

60. Within one hundred fifty (150) days of the Claims Bar Date, the Distribution Agent will complete all claims determinations and send a written notice to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide to each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status of the claim.

61. The Distribution Agent may consider disputes of an Eligible Claimant's Recognized Loss calculation, if presented in writing to the Distribution Agent within thirty (30) days of the date of the Determination Notice. The Distribution Agent will consult with Commission staff as appropriate. The Distribution Agent will notify the Eligible Claimant in writing with twenty-one (21) days of receiving a dispute of its determination, which will constitute the Distribution Agent's final ruling regarding the loss calculations for the claim.

Distribution Methodology

62. Any Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation, will be deemed an Eligible Claimant. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than \$10.00 will be deemed a Payee and receive a Distribution Payment.

Establishment of a Reserve

63. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

64. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 90 below.

Preparation of the Payment File

65. Within seventy-five (75) days following the date of the Determination Notices described above in paragraph 60, the Distribution Agent will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the “Payee List”). The Distribution Agent will also provide a Declaration to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees’ names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the percentage of the Payee’s Recognized Loss being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage to include all prior disbursements; (e) the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

66. Prior to the disbursement of funds from the Net Available Fair Fund, the Distribution Agent will establish an escrow account (the “Escrow Account”) with a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. 208.43 and that is not unacceptable to the Commission staff (the “Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff.

67. The Distribution Agent, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”), insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

68. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the “Escrow Property”), shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees, tax obligations, and/or fees of the Tax Administrator and/or Distribution Agent, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

69. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

70. The Distribution Agent shall deposit or invest funds in the Escrow and Distribution

Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with Commission staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Distribution Account.

71. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Cost associated with the Escrow and Distribution Accounts will be the responsibility of the Distribution Agent, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

Distribution of the Fair Fund

72. The Distribution Agent will seek to distribute the Net Available Fair Fund to all Payees only after all Claim Forms have been processed and all Preliminary Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth herein.

73. Upon the Commission's staff's receipt, review, and acceptance of the Payee List and Declaration from the Distribution Agent, the Commission will petition the Court for authority to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Distribution Agent in accordance with the Plan. The Payee List shall, upon request, be made available to the Court under seal. All disbursements will be made pursuant to a Court Order.

74. Upon issuance of an order to disburse by this Court, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Distribution Agent will then use its best efforts to commence mailing Distribution Payment checks and/or effect wire transfers within twenty (20) business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

75. All Distribution Payments will be issued by the Distribution Agent from the Distribution Account. All checks will bear a stale date of ninety (90) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraphs 83 – 85.

76. All payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment

will be submitted to the Tax Administrator and Commission staff for review and approval.

77. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

78. Distribution Payments must be made by check or electronic payment payable to the Payee (the beneficial account owner). A Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment. Any other payment arrangement must be discussed with the Distribution Agent in consultation with the Commission staff and must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

79. If, after discussion with the Distribution Agent in consultation with the Commission staff, and authorization by the Payee(s), a Distribution Payment is to be made to a Third-Party Filer to distribute to the Payee(s), the Third-Party Filer will be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management. The certification, as part of the Claim Form, will be available on the Fair Fund website and upon request from the Distribution Agent. All such Third-Party Filers must have an auditable mechanism available to the Distribution Agent and the Commission staff to confirm that each Payee received the Distribution Payment directed to them.

80. The submission of a Claim Form and the receipt and acceptance of a Distribution Payment by a Payee is not intended to be a release of a Payee's rights and claims against any party.

81. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments to filers of claims on behalf of twenty (20) or more Payees. Wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff.

82. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee's Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

83. The Distribution Agent shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Distribution Agent as "undeliverable." If new address information becomes available, the Distribution Agent will reissue the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than ninety (90) days after the initial mailing of the original check) or if the distribution check is

returned again, the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent is unable to find a Payee's correct address, the Distribution Agent, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

84. The Distribution Agent will reissue checks to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of ninety (90) days from issuance of the original check or forty-five (45) days from the reissuance, and in no event will a check be reissued after ninety (90) days from the date of the original issuance without the approval of Commission staff.

85. The Distribution Agent will make reasonable efforts to contact Payees who have failed to negotiate their Distribution Payment check and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks subject to the time limits detailed herein.

Administrative Costs

86. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants or third-parties retained by the Distribution Agent in furtherance of its duties), which shall be paid from the Fair Fund. The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Fair Fund on a monthly basis directly to Commission staff. Pursuant to the Order appointing the Distribution Agent, the Commission will approve and pay the fees and expenses incurred by Rust. Dkt. 122.

87. Pursuant to the Court's Order entered on February 7, 2023, the Tax Administrator will invoice all taxes and fees and expenses for the administration of the Fair Fund directly to Commission staff. Once Commission staff has reviewed and approved of the payment of the invoice(s) of the Tax Administrator, Commission staff will pay those taxes and fees and expenses of the Tax Administrator from the Fair Fund, without further Court Order.

88. Any other Administrative Costs shall be paid from the Fair Fund, pursuant to a Court Order and shall be reflected in the final accounting referenced below. All Administrative Costs will be paid from the Fair Fund in accordance with a Court order.

Disposition of Undistributed Funds

89. If funds remain following the initial distribution and payment of all Administrative Costs, the Distribution Agent, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court Order.

90. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund (the “Residual”). The Residual may include funds from, among other things, amounts remaining the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties.

91. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and held pending a final accounting.

Filing of Reports and Accountings

92. The Distribution Agent shall provide to Commission staff, a progress report, pursuant to and in a format to be provided by Commission staff, within forty-five (45) days of Court approval of this Plan, and shall provide additional progress reports within twenty (20) days after the end of every quarter thereafter, and a final report when its duties are completed. The Commission staff or the Distribution Agent shall file these reports with the Court.

93. The progress reports shall inform the Court and the Commission staff of the activities and status of Fair Fund during the relevant reporting period, and once funds are transferred to the Bank it will specify, at a minimum: (a) the location of the account(s) comprising the Fair Fund; and (b) an interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Payees, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Plan.

94. Upon completion of all distributions to Payees and payment of all Administrative Costs, pursuant to the procedures described above, the Distribution Agent will submit to the Commission staff a final accounting, on a standardized form provided by the Commission staff. The Distribution Agent will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).¹ If distribution of the Residual to investors is infeasible, the Commission may recommend the transfer of the Residual to the general fund of

¹ Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.²

Receipt of Additional Funds

95. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Court's termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan.

Wind-down and Document Retention

96. The Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at such earlier time as the Distribution Agent determines with the concurrence of the Commission staff.

97. The Distribution Agent will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six (6) years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Pursuant to the Commission staff's direction, the Distribution Agent will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

98. 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 accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Distribution Agent and approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has approved the Commission's recommendation as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).

99. Once the Commission staff has reviewed and accepted the final accounting, the Commission will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

100. Once the Fair Fund has been terminated, no additional payments will be made whatsoever.

² 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 Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors based on their losses in transactions of certain microcap securities due to the Defendants' selling large numbers of unregistered shares of these securities into the market. Investors will be compensated based on their losses on shares of Enzyme Environmental Solutions, Inc. (stock symbol EESO), Cross Atlantic Commodities, Inc. (stock symbol CXAC), Revenge Designs, Inc. (stock symbol RVGD), and International Power, Ltd. (stock symbol IPWG or IPWGE) (the "Securities") purchased on certain trading days between September 1, 2007 and July 31, 2009 (the "Relevant Period") defined for each of the Securities.

Defendants sold large numbers of shares of the Securities into their respective markets on numerous trading dates during the Relevant Period. Commission staff economists identified the most affected "Eligible Trading Dates" for each of the Securities based on the number of shares sold by the Defendants, the percentage of daily trading volume those shares accounted for, the impact on the trading price, the number of affected stock symbols, and the size of the Net Available Fair Fund. Investors who did not purchase shares of the Securities on the respective Eligible Trading Dates or who are an Excluded Party³ are ineligible to recover under this Plan.

The Distribution Agent will calculate each Preliminary Claimant's amount of loss ("Recognized Loss") as follows:

- A. For each Eligible Trading Date for each of the Securities,
 - a. Calculate "Net Loss" as the dollar value of all shares bought minus the dollar value of shares sold;
 - b. If the Net Loss is negative, reflecting a gain, set the Net Loss to zero.
- B. Calculate "Recognized Loss" as the sum the Net Losses across all Eligible Trading Dates for all Securities.

Additional Provisions

Prices & Dates: All prices mentioned in the calculations exclude all taxes, fees and commissions. Purchases/acquisitions and sales shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.

Acquisitions: The receipt or grant of the Securities to the Eligible Claimant by gift, devise, inheritance, or operation of law during the Relevant Period is not considered an eligible purchase if the original purchase did not occur on an Eligible Trading Date. Shares acquired on days other than Eligible Trading Dates will be excluded from the Recognized Loss calculation.

³ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

Options and Derivatives: Only common shares of the Securities are eligible for recovery under this Plan. Option contracts to purchase or sell the Securities, as well as transactions in the Securities that are in connection with a swap or other derivative, are not securities eligible for recovery under the Plan and will be excluded from the Recognized Loss calculation.

Short Sales: Purchases made to cover a short position are ineligible for recovery under this Plan and will be excluded from the Recognized Loss calculation.

Allocation of Funds: If the Net Available Fair Fund, as defined in the Plan, is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its Recognized Loss, plus "Reasonable Interest" if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its "*Pro Rata Share*" of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the "Minimum Distribution Amount."

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Recognized Losses in full, the Distribution Agent, in consultation with the Commission staff, may include reasonable interest in the distribution amount to compensate Eligible Claimants for the time value of their respective Recognized Losses. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant's Reasonable Interest amount will be equal to his, her or its *Pro Rata Share* of the excess funds.

Pro Rata Share: A *Pro Rata Share* computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant's *Pro Rata Share* as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount (inclusive of Reasonable Interest, if any) that equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment equal to his, her, or its distribution amount.

Table 1: Eligible Trading Dates for Recognized Loss Calculation

CXAC	EESO	IPWG / IPWGE	RVGD
4/24/2008	2/28/2008	2/13/2009	12/21/2007
5/12/2008	3/11/2008	2/17/2009	12/26/2007
5/30/2008	4/16/2008	2/18/2009	12/28/2007
6/27/2008	4/23/2008	2/19/2009	1/7/2008
7/14/2008	5/13/2008	2/20/2009	1/8/2008
7/30/2008	5/20/2008	2/25/2009	1/10/2008
9/2/2008	5/21/2008	2/26/2009	4/11/2008
9/16/2008	6/9/2008	3/2/2009	5/28/2008
10/1/2008	6/12/2008	3/4/2009	5/30/2008
10/15/2008	7/8/2008	3/13/2009	6/16/2008
10/20/2008	7/9/2008	3/17/2009	6/19/2008
10/21/2008	7/21/2008	3/19/2009	7/18/2008
10/30/2008	7/28/2008	4/2/2009	7/22/2008
11/3/2008	8/20/2008	4/3/2009	7/28/2008
11/5/2008	9/8/2008	4/6/2009	7/29/2008
11/10/2008	9/29/2008	4/8/2009	8/6/2008
11/21/2008	11/18/2008	5/15/2009	9/2/2008
11/24/2008	12/9/2008	5/18/2009	9/8/2008
11/28/2008	12/12/2008	5/19/2009	9/9/2008
12/8/2008	6/9/2009	5/21/2009	12/10/2008