UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. EVOQUA WATER TECHNOLOGIES CORP. AND IMRAN PAREKH, Defendants.	Civil No. 1:23-cv-00105-MSM-PAS

PLAINTIFF'S MOTION FOR AN ORDER APPROVING DISTRIBUTION PLAN

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") respectfully moves this Court for an Order approving the Commission's distribution plan ("Plan"). The Commission submits a proposed order contemporaneously herewith.

Factual and Procedural Background

On March 13, 2023, the SEC filed its Complaint against Evoqua Water Technologies Corporation ("Evoqua") and Imran Parekh ("Parekh") (collectively, "Defendants"). [Dkt. No. 1]. According to the Complaint, from at least the fourth quarter of 2016 through August 2018, Parekh, as the Finance Director of one of Evoqua's divisions, engaged in fraudulent accounting practices that resulted in Evoqua improperly reporting materially false revenue amounts in its financial statements filed with the Commission. The SEC's complaint alleged that Parekh inflated the revenue Evoqua reported quarterly and at year-end by counting revenue from sales much earlier than accounting principles permitted. The Complaint alleged that Parekh improperly accounted for so-called "bill-and-hold" transactions, for which Evoqua recognized

revenue from the sale of filtration products earlier than permitted and without meeting the criteria found in accounting principles to be able to immediately recognize the revenue.

The Complaint further alleged that negligent conduct at Evoqua's corporate level in managing the financial reporting and accounting controls processes facilitated Parekh's improper accounting practices. As a result of the fraudulent scheme, the complaint alleges, Evoqua improperly reported nearly $12 million of additional expected revenue for its fiscal year 2017 in its registration statement and its initial public offering (IPO) Prospectus filed with the Commission; that the misconduct continued through Evoqua's first year as a public company, resulting in inaccurate books and records and material misstatements of Evoqua's financial condition in subsequent filings with the Commission; and that by failing to disclose to investors (or in filings with the Commission) that Evoqua reported uncompleted sales as revenue by misapplying bill-and-hold accounting criteria, Evoqua misled investors and potential investors about the true financial picture of the company.

Evoqua consented to the entry of a final judgment, which the Court entered on July 10, 2023, that permanently enjoined it from violating the antifraud provisions of Section 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act"), along with the periodic reporting, books and records, and internal controls provisions of the Securities and Exchange Act of 1934 ("Exchange Act"). Among other things, the final judgment also ordered Evoqua to pay a civil penalty of $8.5 million. [Dkt. No. 11].

Parekh consented to the entry of two separate judgments against him (together with the judgment entered against Evoqua, the "Final Judgments"). The first judgment, entered by the Court on July 10, 2023, permanently enjoined him from violating the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10(b)(5)

thereunder; from aiding and abetting the periodic reporting, books and records, and internal controls provisions of the Exchange Act; and from knowingly circumventing an issuer's system of accounting controls or knowingly falsifying an issuer's books and records in violation of the Exchange Act. [Dkt. No. 10]. The second judgment, entered by the Court on March 15, 2024, among other relief, ordered Parekh to pay disgorgement of $5,489; prejudgment interest of $1,342; and a civil penalty of $40,000. [Dkt. No. 13].

Defendants have made full payment to the Commission. The funds are being held in an SEC-designated account with the United States Department of the Treasury.

On May 20, 2024, the Court established a Fair Fund so that the penalties, disgorgement, and prejudgment interest collected can be distributed to harmed investors. [Dkt. No. 16]. On the same day, the Court appointed Miller Kaplan Arase LLP as Tax Administrator for the Fair Fund. *Id*.

On June 25, 2024, the Court appointed Analytics Consulting, LLC ("Analytics"), as Distribution Agent for the Fair Fund. The Court also approved payment of Analytics' fees and expenses without further order of the Court. [Dkt. No. 18].

The Court Should Approve the Distribution Plan

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See, e.g.*, *SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989). The court's review of a proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of*

Unsecured Creditors of WorldCom, Inc. v. SEC, 467 F.3d 73, 82 (2d Cir. 2006) ("unless the consent decree specifically provides otherwise[,] once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end" (citing *Wang*, 944 F.2d at 85)).

For the reasons articulated below, the Commission submits that the Plan, attached as Exhibit A, constitutes a fair and reasonable allocation of the funds available for distribution and should be approved.

The Commission's Distribution Plan Provides a Fair and Reasonable Allocation of the Fair Fund

The Commission seeks approval of its Plan to distribute the Fair Fund plus any interest earned less a reserve for taxes, fees and expenses of the tax administrator, distribution agent, administrative costs, and investment and banking fees ("Net Available Fair Fund"). The Plan provides for a distribution to investors who were harmed by the Defendants' conduct alleged in the Complaint in connection with fraudulent accounting practices that resulted in Evoqua improperly reporting materially false revenue amounts in its financial statements filed with the Commission. Specifically, investors will be compensated for their losses on shares of Evoqua common stock (the "Security") that were purchased on or after November 1, 2017, and held through the close of trading on October 29, 2018.

The Fair Fund will be distributed to Eligible Claimants[1] who suffered a loss on shares of Evoqua common stock due to the misconduct of the Defendants. Pursuant to the Plan of Allocation, attached as Attachment A to the Plan, the Distribution Agent will calculate Recognized Losses based on artificial inflation in the price of the Security over various date ranges surrounding corrective disclosures and average closing prices of the Security. If the Net

[1] Capitalized terms not otherwise defined have the same meaning as defined in the Distribution Plan.

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* Percentage" of the Net Available Fair Fund. A minimum distribution amount of $20.00 will be imposed, and if an Eligible Claimant's Distribution Payment is less than $20.00, the Eligible Claimant will not be eligible for a distribution and that Eligible Claimant's distribution amount will be reallocated to other Eligible Claimants whose distribution amounts are greater than or equal to the minimum distribution amount.

Upon completion of the distribution, the SEC staff will file a motion with this Court to approve the final accounting, including a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7)[2] of the Exchange Act and *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the SEC staff may recommend that the monies be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.[3] In moving this Court to approve the final accounting, the SEC staff will also seek from the Court an Order that discharges the Distribution Agent and terminates the Fair Fund.

[2] 15 U.S.C. § § 78u(d)(3), (5), and (7). 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).

[3]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.

WHEREFORE, for all the foregoing reasons, the SEC respectfully requests that this Court enter the attached proposed Order and grant such other relief as the Court deems just and proper.

Dated: October 3, 2024

Respectfully submitted,

s/ *Amy A. Sumner*

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