UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION **Plaintiff,** **v.** **HERMAN'S WORLD OF SPORTS, INC., THOMAS J. DZWILEWSKI, MICHAEL EISEMANN, AND LOUIS MONTAINO,** **Defendants.**	**Civil Action No. 05-cv-00438**

DISTRIBUTION PLAN

I. OVERVIEW

1. This Distribution Plan (the "Plan") was developed by the Securities and Exchange Commission (the "SEC" or "Commission") in accordance with practices and procedures customary in Fair Fund and Distribution Fund administrations. This Plan provides for the distribution of a Distribution Fund, comprised of amounts collected from Defendant Herman's World of Sports, Inc. in connection with 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, as a result of the Defendants' fraudulent misrepresentations in the offer and sale of the stock of Herman's World of Sports, Inc. ("Herman's Sports" or "HWOS") through unregistered offerings. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses, due to the Defendants' misconduct, on the purchase of Herman's Sports common stock (the "Security") during the period from February 1, 2001, through March 25, 2003, both dates inclusive (the "Relevant Period"). Based on information obtained by the Commission during and after its investigation and litigation, and the review and analysis of applicable records, the Commission has reasonably concluded that it has all records necessary to calculate each investor's harm. As a result, the Distribution Fund is not being distributed according to a claims-made process.

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

II. BACKGROUND

4. On January 26, 2005, the SEC filed the Complaint against Herman's Sports, Thomas J. Dzwilewski ("Dzwilewski"), Michael Eisemann ("Eisemann"), and Louis Montaino ("Montaino") (collectively, the "Defendants"). [Dkt No. 1]. The SEC alleged that from February 2001 to March 2003, Eisemann, HWOS's Vice President of Investor Relations at the time, and Montaino, a former registered representative, raised at least $641,500 from at least 59 investors in a fraudulent offering.

5. On February 15, 2005, the Court entered Final Consent Judgments against HWOS and Dzwilewski. [Dkt. Nos. 9, 10]. The Court held HWOS and Dzwilewski jointly and severally liable for disgorgement of $641,500, representing money raised as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $22,185.65, for a total of $663,685.65, together with post-judgment interest thereon pursuant to a payment plan set forth in the Final Judgment and concluding 720 days following entry of the Final Judgment. (Final Judgment as to Dzwilewski). *Id*. In addition, the Court ordered Dzwilewski to pay a $30,000 civil penalty. [Dkt No. 9].

6. On September 20, 2005, the Court entered a Final Consent Judgment as to Montaino and ordered Montaino to disgorge $62,500 plus pre-judgment interest thereon of $3,677.12, and to pay a civil penalty in the amount of $37,500, for a total of $103,677.12. [Dkt. No. 27].

7. Also on September 20, 2005, the Court entered a Final Consent Judgment as to Eisemann and ordered Eisemann to disgorge $76,200 plus pre-judgment interest thereon of $8,224.10 and to pay a civil penalty in the amount of $40,000, for a total of $124,424.10. [Dkt. No. 28].

8. On or about February 28, 2005, Herman's Sports paid $50,000 into the Court Registry Investment System ("CRIS"), where the funds have remained in an interest-bearing account. On November 27, 2024, the Court granted the SEC's motion to turn over the funds on deposit in the CRIS and any further amounts collected to the SEC. [Dkt. No. 36]. The Distribution Fund is comprised of the $50,000 paid by the Defendants plus accrued interest, for a total of $66,376.61. The Distribution Fund has been deposited in an SEC-designated account at the United States Department of the Treasury for investment and any accrued interest will be added to the Distribution Fund.

III. DEFINITIONS

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

9. **"Administrative Costs"** shall mean any administrative costs and expenses, including without limitation, tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

10. "**Certification Date**" means the date established in accordance with this Plan by which a Preliminary Claimant's Certification Form must be postmarked or submitted

electronically to be eligible to participate in this distribution. The Certification Date shall be 60 days from the mailing of the Plan Notice.

11. "**Certification Form**" means the form that must be completed and signed by each Preliminary Claimant attesting to their name, mailing address, and sufficient information to confirm their tax identification and status. The Certification Form will also require confirmation of the Recognized Loss listed on the Certification Form included with the mailed Plan Notice. If the Preliminary Claimant disagrees with the amount of Recognized Loss listed on the Certification Form, the Preliminary Claimant may dispute their Recognized Loss in accordance with Paragraph 41. By signing the Certification Form, the Preliminary Claimant swears or affirms that all information provided in connection with their claim, including all transactions claimed, is accurate and complete to the best of their knowledge and that they are not an Excluded Party as defined in Paragraph 15. If a Preliminary Claimant fails to submit a Certification Form by the Certification Date, the Preliminary Claimant may not be eligible to receive a Distribution Payment.

12. "**Determination Notice**" means the notice sent by the Distribution Agent within 30 days of the Certification Date to any Preliminary Claimant whose Certification Form is deficient, in whole or in part. The Determination Notice will provide the reason(s) for the deficiency and in the event the Preliminary Claimant has been deemed an Excluded Party, the Determination Notice will state the reason(s) for such. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency or request reconsideration of the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

13. "**Distribution Payment**" means a payment from the Distribution Fund to a Payee in accordance with the terms of this Plan.

14. **"Eligible Claimant"** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

15. **"Excluded Party"** shall mean: (a) any Defendant, or Defendant's advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Distribution Agent, and those Persons assisting the Distribution Agent in her role as the Distribution Agent; and (c) any purchaser or assignee of another Person's right to obtain a recovery from the Distribution 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.

16. **"Final Determination Notice"** means the written notice sent by the Distribution Agent to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of his resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in Paragraph 20, except for those whose Plan Notice were returned as "undeliverable," notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Distribution Agent's final ruling

regarding the status of the claim.

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

18. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than $20.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

19. “**Person**” means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

20. “**Plan Notice**” means a written notice from the Distribution Agent to each Preliminary Claimant regarding the Court’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its preliminary Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

21. “**Plan of Allocation**” means the methodology by which a Preliminary Claimant’s Recognized Loss is calculated. The Plan of Allocation is attached as Exhibit A.

22. “**Preliminary Claimant**” means a Person, or their lawful successors, identified by the Distribution Agent based on her review and analysis of applicable records obtained by the Commission during and after its investigation and litigation, who may have suffered a loss as a result of the Defendants’ misconduct in the Security during the Relevant Period.

23. “**Recognized Loss**” means the amount invested in the Security during the Relevant Period, as derived by the Distribution Agent from records obtained by the Commission during and after its investigation.

24. “**Relevant Period**” is from February 1, 2001, through March 25, 2003, both dates inclusive.

25. “**Security**” means the common stock of Herman's World of Sports, Inc.

26. “**Unresponsive Preliminary Claimant**” means (a) a Preliminary Claimant whose address the Distribution Agent is not able to verify by the Certification Date; or (b) a Preliminary Claimant who does not timely return the Certification Form, any other information or documentation requested in the Plan Notice, or information or documentation requested in a Determination Notice. Unresponsive Preliminary Claimants will not be eligible for a Distribution Payment.

IV. TAX COMPLIANCE

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

28. The Distribution 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 Distribution Fund.

V. DISTRIBUTION AGENT

29. Sondra Panahi, a Commission employee and Trial Counsel for the Commission, will be the distribution agent for the Distribution Fund ("Distribution Agent"). As a Commission employee, the Distribution Agent shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Distribution Fund.

30. The Distribution Agent will be responsible for administering the Distribution Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Court 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 Distribution Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible. The Distribution Agent will engage a third-party (the "Third-Party"), to assist the Distribution Agent in performing some of the tasks identified above and administrative tasks associated with implementing the Plan, including, but not limited to, verifying contact information for Preliminary Claimants, identifying the heirs and successors of harmed investors, maintaining a dedicated e-mail address with e-mail support, disbursing payments in accordance with the Plan, and researching and reconciling errors and reissuing payments. The Third-Party may charge reasonable fees for its services and seek reimbursement of expenses related to the implementation of the Plan. The Third-Party's fees and expenses will be paid from the Distribution Fund as an Administrative Cost, pursuant to a cost proposal submitted to and approved by the Commission staff.

31. 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.

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

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

33. Using information obtained during and after its investigation and litigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of the Defendants' misconduct.

Procedures for Locating and Notifying Preliminary Claimants

34. Within 45 days of Court approval of the Plan, the Third-Party will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

Undeliverable Mail

35. If any mailing is returned as undeliverable, the Third-Party will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Third-Party will then resend it the Preliminary Claimant's new address within 60 days of receipt of the returned mail. If the mailing is returned again, and the Distribution Agent and Third-Party, despite best practicable efforts, are unable to find a Preliminary Claimant's correct address, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

36. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Distribution Agent.

Procedures to Request Plan Notice

37. Any Person who does not receive a Plan Notice, but who is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent within 60 days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive

communications. The Distribution Agent will send the Person a Plan Notice within 30 days of receiving the Person's documentation, if the Distribution Agent determines that the Person should have received a Plan Notice.

Certification Requirement and Failure to Respond to Plan Notice

38. To maintain classification as a Preliminary Claimant, a completed Certification Form, together with all supporting documentation as requested in the Plan Notice, must be signed by the Preliminary Claimant and returned to the Distribution Agent by the Certification Date. The Certification Form must be executed by the Preliminary Claimant, unless the Distribution Agent accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Preliminary Claimant's behalf. Those authorized to act on behalf of a Preliminary Claimant will be eligible to participate in the distribution to the same extent the original investor would have been eligible under the terms of the Plan.

39. The Distribution Agent will review all Certification Forms. Each Preliminary Claimant has the burden of proof to establish their identity as a Preliminary Claimant or their successor. The Distribution Agent may request, and the Preliminary Claimant has the burden of providing, any additional information and/or documentation deemed relevant by the Distribution Agent.

40. If a Preliminary Claimant fails to return the Certification Form or any requested supporting documentation within 60 days from the initial mailing of the Plan Notice, the Distribution will make no fewer than two attempts to contact the Preliminary Claimant by mail, telephone or email, if known. The second attempt will in no event take place more than 90 days from the initial mailing of the Determination Notice.

Dispute Process

41. Disputes will be limited to calculation of Recognized Loss. If a Preliminary Claimant disagrees with the Recognized Loss listed in the Plan Notice, such dispute must be detailed on the Certification Form and returned to the Distribution Agent along with any supporting documentation by the Certification Date. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

Review of Certification Forms and Deficiency Process

42. The Distribution Agent will provide a Determination Notice within 30 days of the Certification Date to any Preliminary Claimant whose Certification Form is deficient, in whole or in part. The Determination Notice will provide the reason(s) for the deficiency and in the event the Preliminary Claimant is determined to be an Excluded Party, the Determination Notice will state the reason(s) for such. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency or request reconsideration of the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

43. Any Preliminary Claimant with a deficient Certification Form or missing required documentation will have 30 days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

44. Any Preliminary Claimant seeking reconsideration of the Distribution Agent 's determination made in the Determination Notice must advise the Distribution Agent in writing within 30 days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of the Distribution Agent's determination.

45. The Distribution Agent has the authority, in her sole discretion, to waive technical deficiencies in the Certification Form.

Final Determination Notices

46. The Distribution Agent will make her final eligibility determination only after reviewing timely responses received to the Determination Notices and investigating any disputes indicated on the Certification Forms regarding the amount of Recognized Loss listed in the Plan Notices.

47. Within 90 days of the Certification Date, the Distribution Agent will send a Final Determination Notice to notify each Preliminary Claimant of her final eligibility determination. The Final Determination Notice will notify each Preliminary Claimant that they have been determined to be either (a) an Eligible Claimant and confirm their calculated amount of Recognized Loss; or (b) an Unresponsive Preliminary Claimant or an Excluded Party and are not eligible for a distribution. The Distribution Agent will not send a Final Determination Notice to a Preliminary Claimant if their Plan Notice was returned as "undeliverable." The Final Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status and loss calculation and is not subject to appeal.

Distribution Methodology

48. The Distribution Agent will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant. All Eligible Claimants whose distribution amount is equal to or greater than $20.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee and receive a Distribution Payment.

Establishment of a Reserve

49. 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").

50. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in Paragraph 65 below.

Preparation of the Payment File

51. Within 240 days of Court approval of the Plan, the Distribution Agent will compile the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List"). The Payee List will be accompanied by a representation 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 if applicable, includes the total amount of such funds to be withheld for taxes or bank fees ; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

52. Prior to the disbursement of funds from the Net Available Distribution Fund, the Third-Party will establish an escrow account at a commercial bank not unacceptable to the Commission staff (the "Bank"), pursuant to an escrow agreement (the "Escrow Agreement") provided by the Commission staff.

Distribution of the Distribution Fund

53. After preparation of the Payee List, the Commission will petition the Court for authority to disburse funds from the Net Available Distribution Fund to the Bank in accordance with the Payee List for distribution by the Third-Party in accordance with the Plan. Pursuant to the order, the funds will be transferred to the Bank, and the Third-Party will be responsible for issuing Distribution Payments to Payees in accordance with the Payee List. For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the Payee's bank account in accordance with written instructions provided to the Bank by the Third-Party.

54. All checks will bear a stale date of 120 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 Distribution Fund, except as provided in Paragraphs 59-62.

55. All Distribution 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 120 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.

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

57. 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.

58. Bank fees charged by the intermediary or designation bank selected by the Payee may reduce a Payee's Distribution Payment.

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

59. The Third-Party 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 Third-Party as "undeliverable." If new address information becomes available, the Third-Party will repackage 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 120 days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Third-Party shall instruct the issuing financial institution to stop payment on such check. If the Third-Party is unable to find a Payee's correct address, the Third-Party, in his discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Distribution Fund for distribution, if feasible, to the remaining Payees.

60. The Third-Party will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if 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 Third-Party will request, and must receive, documentation to support the requested change. The Third-Party will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Third-Party, such change request is properly documented, the Third-Party will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of 120 days from issuance of the original check or 60 days from the reissuance, and in no event will a check be reissued after 120 from the date of the original issuance without the approval of Commission staff.

61. The Third-Party will work with issuing financial institution and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Third-Party is responsible for researching and reconciling errors and reissuing payments when possible. The Third-Party is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Distribution Fund.

62. The Third-Party will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over $100 (other than those returned as "undeliverable") and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Third-Party may reissue such checks, subject to the time limits detailed herein.

Receipt of Additional Funds

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

Disposition of Undistributed Funds

64. 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.

65. A residual within the Distribution Fund will be established for any amounts remaining after the final disbursement to Payees from the Distribution Fund and the payment of all Administrative Costs (the "Residual"). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

66. 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.

Administrative Costs

67. All Administrative Costs will be paid from the Distribution Fund in accordance with a Court order.

Filing of Reports and Accountings

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

Termination of the Distribution Fund

69. The Distribution 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).

70. 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 Distribution Fund.

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

[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).

[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[3] is designed to compensate investors for their losses, due to the Defendants' misconduct, on the purchase of Herman's Sports common stock (the "Security") during the period from February 1, 2001, through March 25, 2003, both dates inclusive (the "Relevant Period"). Investors who did not purchase the Security during the Relevant Period, or who did not suffer any losses as a result of the Defendants' violative conduct, or who are an Excluded Party, are ineligible to recover under this Plan.

The Distribution Agent has identified those investors, or their lawful successor who may have suffered losses as a result of the Defendants' misconduct (the "Preliminary Claimants"). The Distribution Agent will calculate each Preliminary Claimant's basis for loss ("Recognized Loss") as the amount invested in the Security during the Relevant Period, as derived by the Distribution Agent from records obtained by the Commission during and after its investigation and litigation.

Any Preliminary Claimant who suffered a Recognized Loss, pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, will be deemed an Eligible Claimant.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

Additional Provisions

Allocation of Funds: As the Net Available Distribution 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 Distribution Fund.

Pro Rata Percentage: A *Pro Rata* Percentage computation is intended to measure Eligible Claimants' Recognized Losses against one another. An Eligible Claimant's *Pro Rata* Percentage will be calculated 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 $20.00. An Eligible Claimant whose distribution amount is less than this will be deemed ineligible and his, her or its distribution amount may be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

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

<u>Payee</u>: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

<u>Distribution Payment</u>: Each Payee will receive a Distribution Payment equal to his, her, or its calculated distribution amount. In no event will a Payee receive from the Distribution Fund more than his, her, or its Recognized Loss.