

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

United Development Funding III, LP, et al.,

Defendants.

**Civil Action No.
3:18-CV-01735-L**

**MOTION FOR AN ORDER TO DISBURSE WITH
ATTACHED CERTIFICATE PURSUANT TO LOCAL RULE 7.1,
DECLARATION, AND PROPOSED ORDER**

In accordance with the plan of distribution approved by this Court on October 24, 2021 (the “Plan”), Plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully submits this Motion for an Order to Disburse and, in particular: (1) directing the SEC, in accordance with directions to be provided by the Distribution Agent, to transfer \$8,280,362.06 to the Escrow Account established by the Distribution Agent at The Huntington National Bank, N.A.; and (2) directing the Distribution Agent to distribute those funds in accordance with the Plan.

Accompanying this Motion is a Certification Pursuant to Local Rule 7.1, and a supporting Memorandum with an attached Declaration from a representative of the Distribution Agent.

WHEREFORE, the SEC respectfully requests that the Court enter an Order substantially in the form attached as Exhibit A to this Motion.

Dated: September 8, 2023

Respectfully submitted,

s/ Catherine E. Pappas
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ATT: Rule 7.1 Certification
Exhibit A: Proposed Order

**UNITED STATES DISTRICT COURT
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**SECURITIES AND EXCHANGE COMMISSION'S
CERTIFICATE OF INABILITY TO
CONFER PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(b)(3), the Securities and Exchange Commission (“SEC”) respectfully submits this certificate explaining why it did not confer with an attorney for each party affected by the requested relief to determine whether this motion is opposed.

The only remaining interested parties—the harmed investors—were given the opportunity to object to the proposed plan of distribution, which has since been approved as uncontested (ECF No. 28, (the “Plan”). The SEC submits that no further conference is necessary; the requested relief—the disbursement of funds—is the necessary next step to the implementation of the Plan.

By way of further information, although the SEC has served the motion on counsel for the defendants, the SEC has not contacted counsel for the defendants for their respective position because Final Judgment has been entered against all defendants to this matter (ECF Nos. 10-15) and the current motion does not affect those final judgments. By the terms of the judgments,

those that paid monetary relief relinquished “all legal and equitable right, title, and interest in,” the funds paid. ECF No. 11, Section V; ECF No. 15, Section VI.

Dated: September 8, 2023

Respectfully submitted,

s/ Catherine E. Pappas
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Exhibit A

(Proposed Order)

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
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Securities and Exchange Commission,

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Defendants.

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3:18-CV-01735-L**

**(Proposed) Order to
Disburse**

The Court having reviewed the Securities and Exchange Commission's (the "SEC") Motion for an Order to Disburse, with accompanying Memorandum in Support and Declaration, and any related filings;

AND having considered all arguments presented, and for good cause shown;

IT IS HEREBY ORDERED that:

1. In accordance with directions to be provided to the SEC staff by the Distribution Agent appointed in this matter, the SEC shall transfer \$8,280,362.06 to the Escrow Account established by the Distribution Agent at The Huntington National Bank pursuant to paragraph 33 of the distribution plan approved by the Court (the "Plan"); and

2. The Distribution Agent shall distribute those funds in accordance with the Plan.

Dated: _____, 2023

Sam A. Lindsay
U.S. District Judge

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**Memorandum in Support of
Motion for an Order to
Disburse**

Introduction

In accordance with paragraph 35 of the Court-approved distribution plan¹ (the “Plan”), the Plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully submits this memorandum in support of its Motion for an order directing the disbursement of funds to harmed investors and, more particularly: (1) directing the SEC to transfer \$8,280,362.06 to the Escrow Account² established by the Distribution Agent at The Huntington National Bank, N.A. (the “Bank”) pursuant to directions to be provided to the SEC staff by the Distribution Agent; and (2) directing the Distribution Agent to distribute those funds to in accordance with the Plan.

¹ ECF No. 28.

² Capitalized terms not defined herein are used as defined in the distribution plan approved by this Court, available at <https://www.sec.gov/divisions/enforce/claims/docs/united-order-approving-distribution-plan-100421.pdf> . See ECF No. 28.

I. Background

A. *Procedural History*

On July 3, 2018, the SEC filed this action against United Development Funding III, LP (“UDF III”), UDF IV, Hollis Greenlaw (“Greenlaw”), Benjamin Wissink (“Wissink”), Theodore Etter (“Etter”), Cara Obert (“Obert”), and David Hanson (“Hanson”) (collectively, the “Defendants”). ECF No. 1. The SEC alleged, in relevant part, that from at least January 2011 through December 2015, the UDF family of investment funds (“UDF”) used money from UDF IV to pay distributions to investors in in UDF III and to pay down UDF III loans, without adequately disclosing to investors, among other things, the use of funds. ECF No. 1, ¶¶ 1, 33. According to the Complaint, UDF caused UDF III to pay its investors at least \$67 million of distributions using funds from UDF IV. ECF No. 1, ¶ 3. The SEC further alleged that this use of UDF IV funds to pay down UDF III loans and to make distributions to UDF III investors was not adequately disclosed in the annual reports on Forms 10-K filed by UDF III and UDF IV during that period. ECF No. 1, ¶ 33. The SEC alleged that the Defendants, variously, violated Sections 17(a)(2) and (3) of the Securities Act of 1933 and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 and Rules 12b-20, 13a-1, 13a-13, and 13a-14 thereunder.

The action has been resolved against all the defendants by final judgments entered by consent on July 31, 2018 (the “Final Judgments”). ECF Nos. 10-15. By the Final Judgments, the Court ordered the individual defendants to pay, in the aggregate, \$8,275,000.00 in disgorgement, prejudgment interest, and civil penalties. *Id.* The Defendants have paid in full.

By Order dated July 16, 2019, this Court established the UDF Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. §7246(a)] so that the SEC could distribute the collected civil penalties with collected disgorgement and prejudgment interest. ECF No. 18. By the same Order, the Court appointed Miller Kaplan Arase LLP as tax administrator for the UDF Fair Fund (the “Tax Administrator”) and authorized the SEC staff to pay taxes and tax administration costs and expenses from the UDF Fair Fund without further Court order. *Id.*

By Order dated May 28, 2021, the Court appointed Strategic Claims Services (“Strategic”) to act as distribution agent for the UDF Fair Fund and authorized the SEC to pay administrative costs and expenses without further Court order. ECF No. 23.

By Order entered October 4, 2021, after the completion of procedures set forth in an Order to Show Cause,³ the Court approved the Plan. ECF No. 28.

B. *The UDF Fair Fund*

The UDF Fair Fund currently holds over \$8.4 million, comprised of the Defendants’ payments in satisfaction of the Final Judgments, and accrued interest. It resides in an interest-bearing account at the U.S. Treasury.

II. Strategic’s Identification of Potentially Eligible Investors, Outreach to Supplement the Investor Records, and Calculation of Distribution Payments

As described below and, in more detail in the accompanying Declaration of Josephine Bravata (Exhibit 1), Strategic has notified Potentially Eligible Investors of the Plan; completed the additional outreach necessary to supplement the Investor Records obtained in the Class

³ ECF No. 26.

Action and by the SEC from the Defendants and others; evaluated the eligibility of Potentially Eligible Investors; and calculated the Distribution Payments of Eligible Investors.

In accordance with paragraph 26 of the Plan, in August 2021, Strategic established, specific to this matter: a website (UdfFairFund.com), a toll-free number, a traditional mailing address, and a dedicated email address. Exhibit 1, ¶ 6. On November 18, 2021, Strategic caused the Summary Notice to be published nationally over Globe Newswire. Exhibit 1, ¶ 7.

Beginning on October 4, 2021, Strategic created a database of Potentially Eligible Investors (the “Investor Database”). Exhibit 1, ¶ 5. Strategic mailed a notice packet (the “Notice Packet”) to 11,139 Potentially Eligible Investors from which SCS sought supplemental information. Strategic requested a response to the Notice Packet, postmarked no later than 60 days from mailing (the “Response Date”). *Id.* At the same time, Strategic sent out postcard notices (the “Postcard Notices”) to 10,538 Potentially Eligible Investors from which Strategic did not need supplemental information. *Id.* Strategic attempted to locate anyone whose Notice Packet or Postcard Notice was returned and re-mailed the notice to those that it was able to locate. Exhibit 1, ¶ 8. Upon the passing of the Response Date, Strategic reviewed all responses and supplemented the Investor Database. Exhibit 1, ¶ 9. Strategic ultimately identified 20,891 Potentially Eligible Investors. *Id.*

Upon completing all updates to the Investor Database, Strategic determined and excluded all Excluded Parties in accordance with the Plan, ¶7.g. Exhibit 1, ¶ 10. Based on the Claims information obtained in the Class Action, supplemented by information obtained by the SEC from the Defendants and others, and by responses to the Notice Packets, Strategic calculated each Potentially Eligible Investors’ Eligible Loss Amount and potential Distribution Payment.

Exhibit 1, ¶ 11. Upon completing its calculations, Strategic excluded all Potentially Eligible Investors with a potential Distribution Payment less than \$10.00. *Id.*

Strategic ultimately determined 19,781 of the 20,891 Potentially Eligible Investors to be eligible for a Distribution Payment (Eligible Investors), with an aggregate Eligible Loss Amount of \$67,486,611.64. Exhibit 1, ¶ 12.

III. The Proposed Distribution and the Requested Relief

As of July 31, 2023, the UDF Fair Fund held \$8,466,135.51. Exhibit 1, ¶ 14. In accordance with the Plan, paragraph 31, and in consultation with the Tax Administrator, Strategic has set aside a reserve of \$185,773.45 for Administrative Costs, leaving a Net Available Fair Fund of \$8,280,362.06. Exhibit 1, ¶¶ 13-14. In accordance with paragraphs 33 and 34 of the Plan, Strategic has established an Escrow Account and Distribution Account at The Huntington National Bank (the “Bank”). Exhibit 1, ¶ 15.

Strategic has prepared and submitted to the SEC staff the Payee List, including the names, addresses, Eligible Loss Amounts, tax withholding amounts, and Distribution Payments of all Eligible Investors. Exhibit 1, ¶ 16. Strategic has represented that the Payee List: (a) was compiled in accordance with the Plan; (b) is accurate as to the information contained therein, including the Eligible Investors’ names, address, and Eligible Loss Amount; and (c) provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment for such Eligible Investor. Exhibit 1, ¶ 17. Because the amount of the UDF Fair Fund is less than the aggregate Eligible Loss Amounts of all Eligible Investors, and subject to the tax withholding discussed below, the Distribution Payment calculated for each Eligible Investor is equal to the Net Available Fair Fund multiplied by the ratio of their Eligible Loss Amount to the aggregate Eligible Loss Amounts of all Eligible Investors. Plan, ¶ 24, Exhibit 1, ¶ 18. This

calculation results in the compensation of each Eligible Investor for 12.27% of their Eligible Loss Amount. Exhibit 1, ¶ 18.

The Payee List is comprised of 19,781 Eligible Investors. Each Eligible Investor's final Distribution Payment is offset by withholding amount(s) to be directed to state or federal tax authorities, if any. Eligible Investors' final Distribution Payments aggregate to \$8,275,062.06, and the aggregate tax withholding to be sent to the Tax Administrator for transmission to the IRS is \$5,300; there is no state tax withholding. Exhibit 1, ¶ 19. The total amount to be transferred to the Escrow Account is \$8,280,362.06.

The undersigned SEC counsel has reviewed and accepted the Payee List and the Declaration. In accordance with ¶35 of the Plan, and because all conditions precedent have been completed, the SEC now asks this Court for an Order directing the SEC to transfer \$8,280,362.06 to the Escrow Account in accordance with directions to be provided by Strategic, for distribution in accordance with the Plan. Strategic will use its best efforts to commence mailing Distribution Payment checks or effect electronic payments within twenty (20) business days of the transfer of the funds to the Bank. Exhibit 1, ¶ 21. All funds shall remain in the Escrow Account, separate from Bank assets, until needed to satisfy a presented check or issue a wire. Exhibit 1, ¶ 22. All checks presented for payment will be subject to "positive pay" controls before being honored by the Bank. *Id.* Strategic will use its best efforts to locate and reissue checks to Eligible Investors whose checks are not delivered and will perform outreach on uncashed checks or returned electronic payments.

Upon completion of the distribution and any subsequent distribution(s) in accordance with the Plan, the SEC will move the Court, as appropriate, for an Order, *inter alia*, approving a final accounting, discharging the Distribution Agent, and Terminating the Fair Fund.

IV. Conclusion

For all the foregoing reasons, the SEC respectfully requests that the Court issue an Order substantially in the form accompanying the Motion and grant such other relief as the Court deems appropriate.

Dated: September 8, 2023

Respectfully submitted,

s/ Catherine E. Pappas
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*Attorney for Plaintiff Securities and
Exchange Commission*

Att: Exhibit 1 (Declaration of Josephine Bravata)

Exhibit 1 to Memorandum

(Declaration)

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Declaration of

Josephine Bravata

I, Josephine Bravata, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am a Quality Assurance Manager for Strategic Claims Services (“Strategic”), the Court-appointed Distribution Agent for the UDF Fair Fund. I submit this Declaration in support of the Securities and Exchange Commission's (the "SEC") Motion for an Order to Disburse.

2. The following statements are based on my personal knowledge and information provided to me by other experienced Strategic employees working under my supervision. If called to testify regarding the facts in this declaration, I could do so competently.

PREPARATION AND MAILING OF NOTICE PACKETS

3. In accordance with the Plan, paragraph 17, the UDF Fair Fund is not being distributed pursuant to claims process. Rather, because of the overlap between the Potentially Eligible Investors¹ in this action and the defined class in the Class Action, Strategic, which is also the court-appointed claims administrator in the Class Action, used the claims information obtained in the Class Action to identify Potentially Eligible Investors, supplemented by information obtained by the SEC from the Defendants and others.

4. In accordance with paragraph 18 of the Plan and as described below, Strategic sought from certain Potentially Eligible Investors additional information necessary to evaluate their eligibility and losses, including Opt-Out Investors, the filers of untimely claims in the Class Action, and others.

5. Beginning on October 4, 2021, Strategic created a database of Potentially Eligible Investors (the “Investor Database”). Strategic mailed a notice packet (the “Notice Packet”) to 11,138 Potentially Eligible Investors from which SCS sought supplemental information. Strategic requested a response to the Notice Packet, postmarked no later than 60 days from mailing (the “Response Date”). At the same time, Strategic sent out postcard notices (the “Postcard Notices”) to 10,583 Potentially Eligible Investors from which Strategic did not need supplemental information.

6. Strategic further established a website at udffairfund.com, operational as of August 6, 2021; a toll-free number, operational as of August 5, 2021; a traditional mailing address, operational as of August 5, 2021; and a dedicated email address, operational as of August 5, 2021.

¹ Capitalized terms not otherwise defined in this memorandum are used as defined in the Court-approved distribution plan, available at <https://udffairfund.com/wp-content/uploads/2021/10/28-Order-approving-distribution-plan.pdf>.

7. On November 18, 2021, Strategic caused the Summary Notice to be published nationally once over Globe Newswire.

8. Strategic attempted to locate anyone whose Notice Packet or Postcard Notice was returned and re-mailed the notice to those located.

9. Upon the passing of the Response Date, Strategic reviewed all responses and supplemented the Investor Database. Strategic ultimately identified 20,891 Potentially Eligible Investors.

PROCEDURES FOLLOWED IN DETERMINING ELIGIBLE INVESTORS AND QUANTIFYING DISTRIBUTION PAYMENTS

10. Upon completing all updates to the Investor Database, Strategic determined and excluded all Excluded Parties in accordance with the Plan, ¶7.g.

11. Based on the Claims information obtained in the Class Action, supplemented by information obtained by the SEC from the Defendants and others, and by responses to the Notice Packets, Strategic calculated each Potentially Eligible Investors' Eligible Loss Amount and potential Distribution Payment. Upon completing its calculations, Strategic excluded all Potentially Eligible Investors with a potential Distribution Payment less than \$10.00.

12. Upon completing the foregoing, Strategic determined 19,781 of the 20,891 Potentially Eligible Investors to be eligible for a Distribution Payment ("Eligible Investors"), with an aggregate Eligible Loss Amount of \$67,486,611.64.

13. Upon consultation with the Tax Administrator, Strategic has determined that a reserve of \$185,773.45 for administrative fees, expenses, and taxes is necessary to complete the distribution (the "Reserve").

14. As of July 31, 2023, the UDF Fair Fund holds \$8,466,135.51. The Net Available Fair Fund (the UDF Fair Fund less the Reserve) is valued at \$8,280,362.06.

15. In accordance with the Plan, ¶¶ 33-34, Strategic has established an Escrow Account and a Distribution Account at The Huntington National Bank, N.A. (the “Bank”).

16. Strategic has compiled and submitted to the SEC a Payee List in accordance with ¶ 32 of the Plan, along with this Declaration. The Payee List includes the names, addresses, Eligible Loss Amounts, tax withholding amounts, and Distribution Payments of all Eligible Investors.

17. The Payee List was compiled in accordance with the Plan; is accurate as to the information contained therein, including the Investors’ names, addresses, and Eligible Loss Amounts; and provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment for each Eligible Investor.

18. Strategic has determined each Eligible Investor’s Distribution Payment in accordance with the Plan, ¶¶ 19-25. Because the amount of the UDF Fair Fund is less than the aggregate Eligible Loss Amounts, and subject to the tax withholding discussed below, the Distribution Payment calculated for each Eligible Investor is equal to the Net Available Fair Fund multiplied by the ratio of their Eligible Loss Amount to the aggregate Eligible Loss Amounts of all Eligible Investors. Plan, ¶ 24. This calculation results in the compensation of each Eligible Investor for 12.27% of their Eligible Loss Amount.

19. The Payee List is comprised of 19,781 Eligible Investors. Each Eligible Investor’s final Distribution Payment is offset by withholding amount(s) to be directed to state or federal tax authorities, if any. Eligible Investors’ final Distribution Payments aggregate to \$8,275,062.06, and tax withholding to be sent to the Tax Administrator for transmission to the IRS aggregates to \$5,300.00; there is no state tax withholding. The total amount to be transferred to the Escrow Account is \$8,280,362.06.

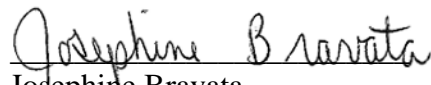
20. As of September 6, 2023, Strategic has confirmed that none of the 19,781 Eligible Investors are precluded from payment under the Office of Foreign Assets Controls Sanctions list. Strategic will reconfirm this prior to directing the issuance of payments. Strategic will check again immediately before sending out any Distribution Payments.

21. Upon the transfer of the \$8,280,362.06 to the Bank, Strategic will distribute the transferred funds in accordance with the Plan. Strategic will use its best efforts to commence mailing Distribution Payment checks or effect other methods of payment within twenty (20) business days of the transfer of the funds to the Bank.

22. All funds shall remain in the Escrow Account, separate from Bank assets, until needed to satisfy a presented check or issue a wire. All checks presented for payment will be subject to “positive pay with payee verification” controls before being honored by the Bank.

23. Strategic will use its best efforts to locate and reissue checks to Eligible Investors whose checks are not delivered and will perform outreach on uncashed checks or returned wires. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 7, 2023


Josephine Bravata

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2023, I electronically filed the foregoing Motion for an Order to Disburse and accompanying papers with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system will send a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. I further certify that on the same date, I caused the foregoing to be served by U.S. Mail and email to the counsel as follows:

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