

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

1:18-CV-08480-CM

Plaintiff,

- against -

SEAWORLD ENTERTAINMENT AND JAMES ATCHISON,

ECF CASE

Defendants.

SECURITIES AND EXCHANGE COMMISSION,

1:18-CV-08482-CM

Plaintiff,

- against-

FREDERICK D. JACOBS,

ECF CASE

Defendant.

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S NOTICE OF MOTION,
IN SUPPORT OF ORDER APPROVING THE DISBURSMENT OF THE FAIR FUND**

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the accompanying Motion, Memorandum, and Proposed Order, and all other papers and proceedings herein, Plaintiff Securities and Exchange Commission will move this Court, the Honorable Colleen McMahon, for an Order: i) directing the Commission to transfer funds held under the case name designation "SEC v. SeaWorld Entertainment Inc." totaling \$5,047,681,63 to the Distribution Agent, JND Legal Administration ("JND" or the "Distribution Agent") for deposit in the Escrow Account established in accordance with Paragraph 71 of the approved Distribution Plan and ii) directing the

Distribution Agent to disburse funds to Eligible Claimants identified on the Payee List in accordance with the terms of the Distribution Plan.

Respectfully Submitted,

/s/ Keshia W. Ellis _____

Keshia W. Ellis
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2024, a copy of the foregoing Plaintiff Securities and Exchange Commission's Motion and Memorandum of Law for Approval of Proposed Distribution Plan and its accompanying Proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Plaintiff,

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Defendant.

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION IN SUPPORT
OF ORDER APPROVING THE DISBURSMENT OF THE FAIR FUND**

MOTION

Plaintiff Securities and Exchange Commission (the "SEC" or "Commission") respectfully moves this Court for an Order: i) directing the Commission to transfer funds held under the case name designation "SEC v. SeaWorld Entertainment Inc." totaling \$5,047,681.63 to the Distribution Agent, JND Legal Administration ("JND" or the "Distribution Agent") for deposit in the Escrow Account established in accordance with Paragraph 71 of the approved Distribution Plan, and ii) directing the Distribution Agent to disburse funds to Eligible Claimants identified on the Payee List in accordance with the terms of the Distribution Plan to compensate

harm investors for their losses on shares of SeaWorld Entertainment (“SeaWorld”) common stock, purchased or acquired during the Relevant Period, as a result of misleading statements and/or omissions regarding the impact of the documentary film *Blackfish* on SeaWorld’s reputation and business. A proposed order granting this Motion is included as Exhibit B. For the reasons set forth below, the Commission respectfully submits that its Motion should be granted in its entirety.

Respectfully Submitted,

/s/ Keshia W. Ellis

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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

1:18-CV-08480-CM

Plaintiff,

- against -

SEAWORLD ENTERTAINMENT AND JAMES ATCHISON,

ECF CASE

Defendants.

SECURITIES AND EXCHANGE COMMISSION,

1:18-CV-08482-CM

Plaintiff,

- against-

FREDERICK D. JACOBS,

ECF CASE

Defendant.

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MEMORANDUM IN
SUPPORT OF ORDER APPROVING THE DISBURSMENT OF THE FAIR FUND**

MEMORANDUM OF LAW

I. Background

On September 18, 2018, the SEC filed a complaint (the “Complaint”) (Dkt. No. 1) against SeaWorld, and SeaWorld’s former Chief Executive Officer, James Atchison (“Atchison”). The Complaint alleged that SeaWorld and Atchison made untrue and misleading statements or omissions in SEC filings, earnings releases and calls, and other statements to the press regarding the documentary film *Blackfish*’s impact on the company’s reputation and business (i.e., “*Blackfish* effect”). (Dkt. No. 1 at 2). Furthermore, according to

the Complaint, from January through March 2014, Atchison sold SeaWorld stock pursuant to a Rule 10b5-1 trading plan he had entered into prior to the Relevant Period. (Dkt. No. 1 at 3). SeaWorld's stock price was inflated as a result of Atchison's false and misleading statements, allowing him to avoid losses of approximately \$730,860 on his sales. (*Id.*).

On the same day, the SEC filed an additional Complaint, against SeaWorld's former Vice President of Communications, Fred Jacobs ("Jacobs" and, together with SeaWorld and Atchison, "Defendants"), (Jacobs Dkt. No. 1). The SEC alleged that Jacobs, on January 13, 2014, just prior to selling his SeaWorld stock, made an untrue statement of material fact and/or omitted material facts from his statement. (Jacobs Dkt. No. 1 at 2). By selling his stock, Jacobs avoided losses of approximately \$84,885 on his sales. (Jacobs Dkt. No. 1 at 5).

On October 4, 2018, SeaWorld, Atchison, and Jacobs, without admitting or denying the allegations in the Complaint, consented to the entry of final judgments ("Final Judgments"). The Court ordered SeaWorld to pay a civil penalty of \$4,000,000 (Dkt. No. 11); Atchison to pay disgorgement of \$730,860 plus prejudgment interest thereon of \$119,323 and a civil penalty of \$150,000 (Dkt. No. 10); and Jacobs to pay disgorgement of \$84,885 plus prejudgment interest thereon in the amount of \$14,270. (Jacobs Dkt. No. 7). On December 4, 2020, the Court entered an Order consolidating the two civil actions for the purpose of distributing the funds paid by the Defendants to harmed investors and established a Fair Fund. (Dkt. No. 15).

The SEC collected a total of \$5,099,338.00 from the Defendants pursuant to the Final Judgments. The Fair Fund consists of the funds collected from the Defendants plus accrued interest and deposited in an interest-bearing account at the U.S. Treasury. As of July 31, 2024, the Fair Fund has a balance of \$5,516,681.63.

On December 15, 2020, the Court appointed Miller Kaplan Arase LLP ("Miller Kaplan")

as the tax administrator (“Tax Administrator”) and JND Legal Administration as the distribution agent (“Distribution Agent”) of the Fair Fund; and authorized the SEC staff to pay the tax obligations, Tax Administrator fees, and fees and expenses of the Distribution Agent from the Fair Fund without further Court Order (Dkt. No. 17).

On May 15, 2023, the SEC filed a motion to approve the Distribution Plan (Dkt. No. 18). On May 22, 2023, the Court entered an Order approving the Distribution Plan (Dkt. No. 18-1).

Following the Court’s approval of the Distribution Plan, the Distribution Agent conducted a notice and claims process as contemplated in the Distribution Plan. *See* Declaration of Luiggy Segura (“Segura Declaration”), at ¶¶ 3-10 (attached as Exhibit A hereto).

The Distribution Plan provides that the distribution of the Net Available Fair Fund balance shall be made to those investors who purchased or acquired SeaWorld common stock during the Relevant Period and suffered a loss as calculated in accordance with the Plan of Allocation. As of July 31, 2024, the Fair Fund balance is \$5,516,681.63. The Net Available Fair Fund is defined in the Distribution Plan as the Fair Fund balance plus any accrued interest and earnings minus Administrative Costs. As stated in Exhibit A, upon consultation with the Tax Administrator, the Distribution Agent determined that a reserve of \$468,900, to cover administrative fees, expenses, and taxes, is necessary to complete the distribution. (*See* Ex. A at 3, ¶12). The Net Available Fair Fund balance to be transferred to the Escrow Account established by the Distribution Agent is \$5,047,681.63, consisting of the Distribution Payments of \$5,036,737.63 plus tax withholding of \$10,944.00. (*See* Exhibit A at 3, ¶17).

II. Disbursement of the Fair Fund

Pursuant to the Distribution Plan, JND has completed the outreach and claims determination process and has submitted a Payee List to Commission staff. The Segura

Declaration, attached as Exhibit A hereto, details the procedures that the Distribution Agent used to process claims and prepare the Payee List. Pursuant to the Distribution Plan, the Payee List will be made available to the Court upon request and under seal. Payees are defined in the Distribution Plan as Eligible Claimants whose distribution amount equals or exceeds the Minimum Distribution Amount of \$10.00 designated in the Distribution Plan. There are 1,452 Eligible Claimants on the Payee List with total Recognized Losses of \$272,177,106.45. (*See* Ex. A at 3, ¶11). The total Eligible Loss Amount exceeds the balance of the Net Available Fair Fund. Therefore, the Eligible Claimants will receive *pro rata* payment amounts calculated in accordance with the Plan of Allocation of the Distribution Plan. (Dkt. No. 18-1).

Subject to the Court's approval, the Distribution Agent will issue distribution payments totaling \$5,036,737.66 to the Eligible Claimants identified on the Payee List in accordance with the Distribution Plan. Distribution payments to the Payees will range from \$10.04 to \$258,940.47 and will compensate the Payees for 1.85% of their Recognized Losses.

The Commission respectfully requests that the Court order that \$5,047,681.63 be transferred to the Distribution Agent and that these funds be distributed to Eligible Claimants pursuant to the Distribution Plan.

CONCLUSION

Accordingly, for the foregoing reasons stated above, the Commission respectfully requests that this Court enter the attached Proposed Order and grant such other relief as the Court deems just and proper.

Dated: September 11, 2024.

Respectfully Submitted,

/s/ Keshia W. Ellis

Keshia Ellis
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Michigan Bar #P65146
Attorney for Plaintiff

Attachments:

Exhibit A: Declaration of Luiggy Segura

Exhibit B: Proposed Order

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2024, a copy of the foregoing Plaintiff Securities and Exchange Commission's Motion and Memorandum of Law for Approval of Proposed Distribution Plan and its accompanying Proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| SECURITIES AND EXCHANGE COMMISSION, | 1:18-CV-08480 |
| Plaintiff, | |
| - against - | |
| SEAWORLD ENTERTAINMENT AND JAMES ATCHISON, | ECF CASE |
| Defendants. | |
| SECURITIES AND EXCHANGE COMMISSION, | 1:18-CV-08482 |
| Plaintiff, | |
| - against- | |
| FREDERICK D. JACOBS, | ECF CASE |
| Defendant. | |

DECLARATION OF LUIGGY SEGURA

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

1. I am the Vice President of Securities Operations for JND Legal Administration (“JND” or “Distribution Agent”), the Court-appointed Distribution Agent in the above-captioned matter. I submit this Declaration in support of the Securities and Exchange Commission’s (the “SEC”) Motion for an Order to Transfer Funds for Distribution.

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

PREPARATION AND MAILING OF THE CLAIM PACKET

3. Beginning on July 21, 2023, JND mailed over 30,294 copies of the Claims Packet¹ to individual investors, including Preliminary Claimants identified and provided to the Distribution

¹Capitalized terms used but not defined in this Declaration are used as defined in the Distribution Plan, approved May 22, 2023, (the “Plan”). The Plan is available at www.SeaWorldFairFund.com.

Agent by the SEC; to the Distribution Agent's list of banks, brokers, and other nominees; to other institutions and individuals identified during the Distribution Agent's outreach process; and in fulfillment of requests for Claims Packet.

4. JND attempted to locate any Preliminary Claimant whose Claims Packet was returned as "undeliverable" and re-mailed the Claims Packet to those for whom an updated address could be obtained.

5. In accordance with paragraph 40 of the Plan, by July 21, 2023, JND had established a website devoted to the Fair Fund at www.SeaWorldFairFund.com, a toll-free number (855) 533-0228, a dedicated P.O. Box, and a dedicated email address, info@SeaWorldFairFund.com. JND continues to maintain each of these.

6. In accordance with paragraph 41 of the Plan, JND caused the Summary Notice to be published twice on PR Newswire, initially on July 31, 2023, and again on October 9, 2023.

PROCEDURES FOLLOWED IN ACCEPTING AND REJECTING CLAIMS

7. The Claims Bar Date was set at ninety days (90) from the initial mailing of the Claims Packet, falling on October 19, 2023.

8. JND reviewed each Claim Form to determine the Preliminary Claimant's eligibility under the Plan. Any Preliminary Claimant found to be an Excluded Party as defined in paragraph 18 of the Plan would not be deemed an Eligible Claimant. There were no Excluded Parties found.

9. In accordance with paragraphs 59-63 of the Plan, JND issued Claim Status Notices to Preliminary Claimants whose Claim Forms were deficient or denied, informing them of the reason(s) therefore, and offering the opportunity to respond. The notified Preliminary Claimants were given thirty days (30) in which to cure the deficiency, request reconsideration, or dispute the determination. JND processed all responses to Claim Status Notices and updated each Preliminary Claimant's records accordingly.

10. In accordance with paragraphs 64-65 of the Plan, JND also issued Determination Notices to all Preliminary Claimants who filed Claim Forms, setting forth JND's conclusions concerning the eligibility status of the claim and further informing those determined to be Eligible Claimants with their calculated Recognized Losses. Eligible Claimants who wished to dispute a Recognized Loss calculation were able to do so by presenting the dispute in writing to JND within thirty (30) days of the date of the Determination Notice. JND did not receive any disputes.

DISPOSITION OF CLAIMS

11. JND received a total of 4,080 Claim Forms. Applying the *de minimis* provision discussed in paragraph 67 of the Plan, JND determined that 1,452 of the claims submitted are eligible for a Distribution Payment, with an aggregate Recognized Loss of \$272,177,106.45, as set forth in the attached chart (“Distribution Chart”). The amount to be distributed to these Eligible Claimants, after accounting for tax withholdings, is \$5,036,737.66.

12. Upon consultation with the Tax Administrator, JND has determined that a reserve of \$468,900 for administrative fees, expenses, and taxes is necessary to complete the distribution (the “Reserve”).

13. As of July 31, 2024, the Fair Fund holds \$5,516,681.63. After offsetting the Reserve, the Net Available Fair Fund holds \$5,047,681.63.

14. In accordance with paragraphs 71-73 of the Plan, JND has established an Escrow Account and a Distribution Account at The Huntington National Bank, N.A. (the “Bank”).

15. JND has prepared the payee information in accordance with paragraph 70 of the Plan (the “Payee List”) along with this Declaration. The Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees’ names, addresses, and 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; and (e) provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment and tax withholding, as applicable, for each Payee.

16. As provided in the Plan of Allocation, because the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant will receive a *Pro-Rata* Share of the Net Available Fair Fund.

17. The Payee List includes 1,452 Payees with Distribution Payments comprised of their Recognized Losses, less any withholding amount to be directed to state and/or federal tax authorities. In total, all Eligible Claimants’ Recognized Losses aggregate to \$272,177,106.45. The total amount to be transferred to the Escrow Account is \$5,047,681.66, comprised of Distribution Payments of \$5,036,737.66 and tax withholdings of \$10,944.00. The \$0.03 difference between the Net Available Fair Fund and the amount needed for Distribution Payments is due to the rounding of the payment amounts.

18. There are three (3) otherwise Eligible Claimants whose net distribution amount after taxes are withheld is \$1,287.62 that are precluded from payment under the Office of Foreign Assets Control sanctions list until the Distribution Agent is able to determine that these Claimants are not actual matches to this list. The Distribution Agent has reached out to obtain additional information from these Claimants. These payment amounts are included in the total amount to be transferred as well as the \$8.00 which is part of the tax withholding.

19. Upon the transfer of the funds into the Escrow Account, JND will use its best efforts to commence mailing Distribution Payment checks and effect wire transfers within ten (10) business days.

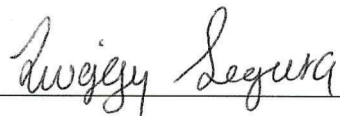
20. All Distribution Payments will be issued by the Distribution Agent from the Distribution Account. All checks will bear a stale date of one hundred twenty (120) days for the date of issuance.

21. 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.

22. JND will use its best efforts to locate and reissue checks or payments to Payees whose checks are returned as “undeliverable” and will perform outreach on uncashed checks or returned wires according to paragraphs 88-90 of the Plan. Reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after one hundred twenty (120) days from the date of the original issuance without the approval of Commission staff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 6, 2024, in New Hyde Park, New York.

A handwritten signature in cursive script, reading "Luiggy Segura", is written over a horizontal line.

Luiggy Segura
Vice President – Operations