

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

U.S. COMMODITY FUTURES  
TRADING COMMISSION,  
Plaintiff,

v.

Case No. 09-cv-3332 (MJD/FLN)

TREVOR COOK et al.,  
Defendants,

R.J. ZAYED,  
Receiver.

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UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,  
Plaintiff,

v.

Case No. 09-cv-3333 (MJD/FLN)

TREVOR G. COOK, et al.,  
Defendants,

R.J. ZAYED,  
Receiver.

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UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,  
Plaintiff,

v.

Case No. 11-cv-574 (MJD/FLN)

JASON BO-ALAN BECKMAN, et al.,  
Defendants,

R.J. ZAYED,  
Receiver.

**MOTION FOR ORDER APPROVING SIXTH INTERIM DISTRIBUTION AND  
THIRD AMENDED FINAL CLAIMS LIST**

R.J. Zayed, Receiver in the cases of *CFTC v. Cook, et al.*, 09-cv-3332 (D. Minn. 2009), *SEC v. Cook, et al.*, 09-cv-3333 (D. Minn. 2009), and *SEC v. Beckman, et al.*, 11-cv-574 (D. Minn. 2011), respectfully moves this Court for the entry of an Order approving the Receiver's plan for a Sixth Interim Distribution and entering the Third Amended Final Claims List as the final claim amounts for civil restitution in the civil cases of *SEC v. Cook et al.*, 09-cv-3333 (D. Minn.), *CFTC v. Cook et al.*, 09-cv-3332 (D. Minn.) and *SEC v. Beckman et al.*, 11-cv-574 (D. Minn.).

**A. Funds for Proposed Sixth Interim Distribution**

The Receiver requests the Court's permission to distribute the proceeds from his partial settlement of his pending lawsuit in Panama, totaling approximately \$1,000,000 in this proposed Sixth Interim Distribution.<sup>1</sup> The Panamanian lawsuit stems from Cook's use of Receivership funds for two real estate ventures in Panama City, Panama. *See generally Fourth Status Report of Receiver R.J. Zayed*, 09-cv-3332 Docket 348 § C (Jul. 16, 2010). The first venture involved a condominium development called The Vineyards. The second venture involved plans to build a casino complex called the Panama Bay Hotel & Casino. Neither project ever came to fruition, despite the millions in Receivership dollars that Cook sent to Panama. In November 2009, a lawsuit was

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<sup>1</sup> The settlement amount totaled \$1,000,000. After Panamanian taxes, fees and transmission charges, the deposit to the Receiver's account from the settlement was \$998,622.96. The Receiver proposes to distribute the full \$998,622.96, plus \$1,698.56 from the Receiver's account, for a total of \$1,000,321.52. Distributions to investors with debts outstanding to the Receivership will be made in the form of credits, bringing the total distribution of funds and credits to \$1,000,567.03.

commenced for the return of the Receivership funds that were funneled toward these two projects.

Last year, the Receiver reached a settlement agreement with Panama Oxford Investment, S.A. ("Panama Oxford"), the entity from which Cook attempted to purchase the Panama Bay Hotel & Casino land, in exchange for a cash payment of \$1,000,000. (Declaration of Joseph M. Kaczrowski ("Kaczrowski Decl."), ¶ 5.) On or about January 14, 2014, the settlement funds were finally received in the Receiver's bank account. (*Id.* ¶ 6.) The Receiver now seeks to distribute those settlement funds to the victims of this fraud. The Receiver's case against the other defendants in the Panamanian litigation is still pending.

**B. Third Amended Final Claims List**

The Receiver seeks to distribute the Panama settlement funds to the individuals set forth on the proposed Third Amended Final Claims List, which is submitted as Exhibit A to the Declaration of Joseph M. Kaczrowski filed herewith. This proposed claims list sets forth the recognized claim amounts for 736 investors of this fraud.<sup>2</sup> These claim amounts are used as the basis for calculating each investor's *pro rata* share of the civil restitution distributed by the Receiver. The proposed Third Amended Claims list makes two kinds of updates from the Second Amended Final Claims List, which was entered by the Court on March 23, 2012. *Order Entering Second Amended Final Claims List*, 09-cv-3333 Docket 952 (Mar. 23, 2012).

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<sup>2</sup> To protect the private financial information of the investors, each claim in Exhibit A is identified by number. The names and addresses of the individuals associated with these claims are being provided to the Court for *in camera* review.

The first update is made in accordance with the Receiver's settlement agreements with clawback defendants David Buysse, Steven and Pamela Cheney, Walter Defiel, Terry Frahm, Steven and Jenene Fredell, Michael and Jennifer Heise, Michael and Cynthia Hillesheim, Larry Hopfenspirger, Steven Kautzman, James McIntosh, George and Karen Morrisset, and Reynold Sundstrom (collectively, "the Berg Investors") and Dot Anderson, which were approved by the Court last year. *See Redacted Order*, 09-cv-3332 Docket 990 (Feb. 22, 2013); *Redacted Order*, 09-cv-3332 Docket 994 (Feb. 22, 2013); *Redacted Order*, 09-cv-3332 Docket 991 (Feb. 22, 2013); *Redacted Order*, 09-cv-3332 Docket 995 (Feb. 22, 2013); *Redacted Order*, 09-cv-3332 Docket 993 (Feb. 22, 2013); *Redacted Order*, 09-cv-3332 Docket 992 (Feb. 22, 2013); *Order*, 09-cv-3332 Docket 1000 (Feb. 25, 2013). The Settlement Agreements with the Berg Investors provide that they will be added to the Final Claims List and included in distributions after the Fifth Interim Distribution. *See, e.g., Settlement Agreement and Mutual Release*, 09-cv-3333 Docket 1030-1 ¶ 6 (Jan. 25, 2013). Similarly, the Settlement Agreement with Dot Anderson provides that she will be entitled to a *pro rata* share of future distributions after the next (Fifth) distribution. *See Settlement Agreement*, 09-cv-3333 Docket 1030-13 ¶ 5 (Jan. 25, 2013). Accordingly, the Third Amended Claims list adds these individuals to the claims list.

The second update to the claims list incorporates a number of clerical changes that have previously been approved by the Court. (Kaczrowski Decl. ¶ 3.)

With these additions, the total of all Recognized Claims in these cases is \$160,597,075.32. (Kaczrowski Decl. ¶ 2 Ex. A.)

### C. Proposed Sixth Interim Distribution

The Receiver proposes to make a *pro rata* distribution, in the form of checks and credits, of \$1,000,567.03 to claimants identified on the proposed Third Amended Final Claims List. *See supra* § A. The distribution rate for the Receiver's proposed Sixth Interim Distribution will be approximately 0.7%, which will bring the total distribution rate to-date to approximately 6.2 cents for every dollar lost to the fraud (6.2%). The Receiver's payments to victims in the proposed Sixth Interim Distribution will range from \$34.50 to \$40,081.02, with an average distribution amount of \$1,391.27. (Kaczrowski Decl. ¶ 7.) With the proposed Sixth Interim Distribution, the Receiver's total distribution to victims of the fraud to-date will be over \$9 million.

Consistent with the Receiver's prior interim distributions (and the law of restitution generally), claimants who have recovered lost funds from sources other than the Receiver and have an overall recovery that exceeds the median distribution rate to all victims in these cases will be excluded from this distribution or have their *pro rata* shares proportionately reduced so that the Receiver's distributions do not put any investor ahead of the others in terms of recoveries. *See Order Approving Partial Settlement with FINRA Claimants, Releasing Certain Funds from Escrow and Approving Third Interim Distribution*, 09-cv-3333 Docket 933, ¶ 5(e) (Feb. 24, 2012); *see generally* 18 U.S.C. § 3664(j)(2) (explaining that a victim's restitution is reduced by subsequent recoveries); *see also Order Approving Settlement Agreement and Granting Partial Lift of Asset Freeze to Permit Payment of Settlement*, 09-cv-3332 Docket 975 (Jan. 2, 2013); *Order Approving Settlement Agreement and Granting Partial Lift of Asset Freeze*, 09-cv-574 Docket 382

(Apr. 19, 2013); *Order Approving Fifth Interim Distribution*, 09-cv-3332 Docket 1024 (Jun. 7, 2013).

This motion is based on the notice of motion, the Court's Orders approving the Receiver's Settlement Agreements with the Investor Respondents, the pleadings and papers on file in this action, the Receiver's prior motions and memoranda in support of his earlier Interim Distributions and the Court's Orders relating to same, the Court's Orders appointing the Receiver and defining his duties, the Proposed Order submitted herewith, and such other evidence and argument as may be presented to the Court before or at the time of the hearing.

WHEREFORE, the Receiver respectfully requests that the Third Amended Final Claims List and the Receiver's plan for a Sixth Interim Distribution be approved.

Dated: January 14, 2014

Respectfully submitted,

*R.J. Zayed*

R.J. Zayed, Receiver

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