

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

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff,

v.

**CHRISTOPHER A. FAULKNER;
HOMES INC.; HOMESINC
RENAISSANCE, LLC; MATTHEW
RAPOPORT; AND EARL NELSON
DAVENPORT;**

Defendants.

Civil Action No. 3:17-cv-2405-B

**PLAINTIFF’S MOTION FOR AN ORDER CREATING A FAIR FUND, APPOINTING
A TAX ADMINISTRATOR, AUTHORIZING PAYMENT OF THE TAX
OBLIGATIONS AND RELATED FEES AND EXPENSES WITHOUT FURTHER
COURT ORDER, AND AUTHORIZING LIMITED DISCOVERY
TO IDENTIFY A POSSIBLE INVESTOR**

Plaintiff Securities and Exchange Commission (the “SEC”) respectfully moves this Court for an Order with respect to funds under the Court’s jurisdiction in this case: (i) establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes Oxley Act of 2002, 15 U.S.C. §7246(a); (ii) appointing Miller Kaplan Arase LLP (“Miller Kaplan”), a certified public accounting firm with an office in San Francisco, CA, as tax administrator (“Tax Administrator”) of the Fair Fund to execute all income tax reporting requirements of the Fair Fund; (iii) authorizing the SEC to approve and arrange for the payment of the tax obligations of the Fair Fund, and related fees and expenses of the Tax Administrator, from the Fair Fund without further Court order; and (iv) authorizing the SEC conduct limited discovery in the form of a subpoena to PNC Bank, N.A. to

obtain the last known contact information of the purchaser of PNC Bank, N.A. Cashier's Check No. 2702852, dated June 19, 2017, who is believed to be an investor.

WHEREFORE, for the reasons set forth in the accompanying memorandum, the SEC respectfully requests that this Court enter the attached proposed Order and grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Catherine E. Pappas

Catherine E. Pappas

PA Bar No. 56544

Admitted *Pro Hac Vice*, ECF No. 67

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Securities and Exchange Commission

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*Attorney for Plaintiff Securities and
Exchange Commission*

Dated: October 18, 2023

**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 to explain why it did not confer with an attorney for each party affected by the requested relief to determine whether the motion is opposed. Final Judgments have been entered against all Defendants to this action, and by the judgments imposing monetary relief, the Defendants relinquished all legal and equitable right, title and interest in funds paid or collected. ECF Nos. 52, 53, and 63. Accordingly, they have no interest in the disposition of collected funds, and the current motion is the first step to distributing collected funds to harmed investors.

Although not officially “parties,” the harmed investors are those most affected by the relief sought in the current Motion. The SEC has not conferred with each potential harmed investor, but the relief sought is the first step to distributing funds to harmed investors, which presumably is something they each would desire.

Respectfully submitted,

/s/Catherine E. Pappas

Catherine E. Pappas

PA Bar No. 56544

Admitted *Pro Hac Vice*, ECF No. 67

Email: pappasc@sec.gov

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*Attorney for Plaintiff Securities and
Exchange Commission*

Dated: October 18, 2023

CERTIFICATE OF SERVICE

I, Catherine E. Pappas, hereby certify that, on October 18, 2023, I caused the foregoing motion and accompanying papers to be electronically filed with the clerk of the court for the U.S. District Court of Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sends a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

The foregoing motion and accompanying papers are also being sent by first class mail to the below defendant:

Earl Nelson Davenport
3475 Carmona Ave.
Los Angeles, CA 90016-4661

/s/ Catherine E. Pappas
Catherine E. Pappas

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE
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Defendants.

**ORDER CREATING A FAIR FUND, APPOINTING A TAX ADMINISTRATOR,
AUTHORIZING PAYMENT OF THE TAX OBLIGATIONS AND RELATED FEES
AND EXPENSES WITHOUT FURTHER COURT ORDER, AND AUTHORIZING
LIMITED DISCOVERY TO IDENTIFY A POSSIBLE INVESTOR**

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (the “SEC”) for an Order establishing a Fair Fund; appointing Miller Kaplan Arase LLP (“Miller Kaplan”) as tax administrator (“Tax Administrator”); authorizing payment of the tax obligations of the Fair Fund, and related fees and expenses of the Tax Administrator, without further Court order; and authorizing limited discovery to identify a possible investor (the “Motion”);

AND for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is **GRANTED**.

Fair Fund

2. A Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of

2002 [15 U.S.C. § 7246] for the penalty funds collected in the captioned matter (the “Fair Fund”). Any interest or earnings on the Fair Fund, and any additional timely collections or receipt of funds directed to the Fair Fund, will be added to, and become a part of, the Fair Fund to be used for the benefit of harmed investors.

Tax Administrator and Payment of Tax Related Obligations

3. Miller Kaplan is appointed Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, for the Fair Fund.

4. Miller Kaplan shall be designated the Tax Administrator of the Fair Fund, pursuant to Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, and shall satisfy the administrative requirements imposed by those regulations, including but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Fair Fund, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Fair Fund. Upon request, the Tax Administrator shall provide copies of any filings to the SEC’s counsel of record.

5. The Tax Administrator shall, at such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Fair Fund, submit a request to the SEC’s counsel of record for payment from the Fair Fund of any tax obligations of the Fair Fund.

6. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the SEC for the Tax Years 2022 through 2024. The Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a request to the SEC’s counsel of record for payment of fees and expenses from the Fair Fund.

7. The SEC is authorized to approve and arrange payment of all tax obligations owed

by the Fair Fund and the fees and expenses of the Tax Administrator directly from the Fair Fund without further approval of this Court. All payments for taxes, and the fees and expenses of the Tax Administrator, shall be reported to the Court in a final accounting.

Limited Discovery

8. The SEC is authorized to conduct limited discovery in the form of a subpoena to PNC Bank, N.A. to obtain the last known contact information of the purchaser of PNC Bank, N.A. Cashier's Check No. 2702852 dated June 19, 2017.

IT IS SO ORDERED.

Dated: _____

Hon. Jane J. Boyle
United States District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**SECURITIES AND EXCHANGE
COMMISSION**

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**CHRISTOPHER A. FAULKNER;
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RAPOPORT; AND EARL NELSON
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Defendants.

Civil Action No. 3:17-cv-2405-B

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN ORDER
CREATING A FAIR FUND, APPOINTING A TAX ADMINISTRATOR,
AUTHORIZING PAYMENT OF THE TAX OBLIGATIONS AND RELATED FEES
AND EXPENSES WITHOUT FURTHER COURT ORDER, AND AUTHORIZING
LIMITED DISCOVERY TO IDENTIFY A POSSIBLE INVESTOR**

Plaintiff Securities and Exchange Commission (the “SEC”) respectfully submits this memorandum in support of its motion for an Order with respect to funds under the Court’s jurisdiction in this case (the “Distribution Fund”): (i) establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes Oxley Act of 2002, 15 U.S.C. §7246(a); (ii) appointing Miller Kaplan Arase LLP (“Miller Kaplan”), a certified public accounting firm with an office in San Francisco, CA, as tax administrator (“Tax Administrator”) of the Fair Fund to execute all income tax reporting requirements of the Fair Fund; (iii) authorizing the SEC to approve and arrange for the payment of the tax obligations of the Fair Fund and related fees and expenses of the Tax Administrator from the Fair Fund without further Court order; and (iv) authorizing the SEC to

conduct limited discovery in the form of a subpoena to PNC Bank, N.A. (“PNC Bank”) to obtain contact information for a possible harmed investor who purchased a cashier’s check.

The SEC seeks the creation of a Fair Fund to maximize the amount available for distribution to harmed investors by adding collected civil penalties to collected disgorgement and prejudgment interest. The appointment of a tax administrator, and authorization to pay tax obligations and tax administration costs, are necessary to ensure that funds are maintained and distributed in compliance with federal and state tax laws, and that payments are timely made to avoid interest and penalties. All such payments will be reflected in a final accounting submitted to the Court for approval. Finally, and further to the reference to a possible distribution in the final judgments entered in this case, the SEC requests authority to conduct limited discovery in the form of a subpoena to PNC Bank to obtain the last known contact information of the purchaser of PNC Bank Cashier Check No. 2702852, dated June 19, 2017 (the “Cashier’s Check”). The SEC believes the purchaser is a harmed investor and would like to include that individual in future contacts regarding a possible distribution.

Background

On September 11, 2017, the SEC filed a Complaint against Christopher A. Faulkner (“Faulkner”), Homes Inc. (“Homes”), HOMESINC Renaissance, LLC (“Renaissance”), Matthew Rapoport (“Rapoport”), and Earl Nelson Davenport (“Davenport”) (collectively, the “Defendants”). ECF No. 2. The SEC alleged that, since the fall of 2016, Faulkner, Rapoport, and others under their direction duped investors into purportedly funding real estate projects by, among other things, misrepresenting that Homes (a) had a proven and extensive track record of offering and selling passive real estate investments to investors; (b) used investor funds for the acquisition, renovation, and re-sale of residential real estate in Southern California; and (c)

consistently produced double digit returns to its investors. *Id.* at ¶ 1. The SEC further alleged that Faulkner and Rapoport touted these misrepresentations in marketing materials about Homes’s unregistered securities offering, Renaissance; and hired Davenport to lead sales efforts to telephonically solicit investments in Renaissance from investors across the country. *Id.* at ¶ 4. The SEC alleged that, since March 2017, Homes raised at least \$168,750 as part of the unregistered offering of Renaissance, and that none of the investor funds had been used for real estate transactions and activities. *Id.* at ¶ 5. The SEC charged the Defendants with violations of the antifraud provisions of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77a *et seq.*, and the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, as well as registration violations under Section 5 of the Securities Act, 15 U.S.C. § 77e. *Id.* at ¶ 7.

The Court has entered final judgments against all the individual Defendants (collectively, the “Final Judgments”),¹ and the SEC voluntarily dismissed its claims against Homes and Renaissance. ECF Nos. 52, 53, 60, 61, and 62. The Final Judgments order Faulkner to disgorge \$59,998.00 and pay prejudgment interest of \$593.05 and a civil penalty of \$218,750; Rapoport to disgorge \$2,500.00 and pay prejudgment interest of \$67.15 and a civil penalty of \$40,000; and Davenport to pay a civil penalty of \$207,183.00. ECF Nos. 52, 53, and 63, respectively. The Final Judgments further provide that the SEC may propose a plan, subject to Court approval, to distribute funds paid by the Defendants and that the Court retains jurisdiction over the administration of any distribution. *Id.*

The SEC has collected over \$56,500 on the Final Judgments, which includes approximately \$54,000 in civil penalties. The Distribution Fund is held in an SEC-designated,

¹ Both Faulkner and Rapoport consented to the entry of final judgments against them (ECF Nos. 52 and 53); final judgment against Davenport (ECF No. 63) was entered upon the SEC’s motion.

interest-bearing account with the United States Department of the Treasury. Additional collections on the Final Judgments, funds directed to the Distribution Fund by Court or SEC Order or otherwise, and accrued interest will be added to, and become a part of, the Distribution Fund. The SEC anticipates proposing a plan of distribution to the Court for the distribution of the Distribution Fund to identified harmed investors.

Creation of a Fair Fund

The creation of a Fair Fund is a precursor to proposing for Court approval a plan to distribute civil penalties, along with disgorgement and prejudgment interest, to victims of the violations of the securities laws. If and when the Court approves the present motion, the SEC will work with the Court-appointed Tax Administrator to develop a distribution plan to submit for Court approval.

Preliminary calculations reflect that harm to investors in this case exceeds the approximately \$2,500 in collected disgorgement and prejudgment interest. Accordingly, to maximize the relief available to harmed investors, the SEC respectfully requests that the Court establish a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7246(a)] so that the approximately \$54,000 in collected civil penalties can be added to the disgorgement and prejudgment interest and be distributed to harmed investors. Section 308(a) provides, in relevant part:

If, in any judicial or administrative action brought by the [SEC] under the securities laws, the [SEC] obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the [SEC], be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

15 U.S.C. § 7246(a).

The SEC brought this action under the federal securities laws and this Court has ordered payment of civil penalties exceeding \$465,000 in addition to approximately \$63,000 in ordered disgorgement and prejudgment interest. Section 308(a)'s requirements have thus been satisfied, and the creation of a Fair Fund for the benefit of harmed investors is appropriate so that the approximately \$54,000 in collected civil penalties can be added to the disgorgement and prejudgment interest and distributed to harmed investors.

Appointment of a Tax Administrator

The Distribution Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A tax administrator, on behalf of the Distribution Fund, should be appointed and authorized to take all necessary steps to enable the Distribution Fund to obtain and maintain the status of a taxable QSF. The reasonable costs, fees, and other expenses incurred in the performance of the tax administrator's duties should be paid from the Distribution Fund.

The SEC recommends the appointment of Miller Kaplan as Tax Administrator for the QSF. Miller Kaplan is experienced in the taxation of QSFs and has agreed to reasonable fees for its services.² In summary, Miller Kaplan will provide the following services for a fixed fee of \$1,850, or \$925 if the QSF holds \$120,000 or less or is opened and closed in the same year:

1. obtain a federal employer tax identification number for each QSF;

² Miller Kaplan is one of the firms that the SEC has engaged to render tax consulting services on its behalf for QSFs established in administrative proceedings for calendar years 2022 through 2024 at agreed upon rates. *See* Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-by-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022). As part of Miller Kaplan's engagement with the SEC, Miller Kaplan has agreed to render those same services at the agreed upon rates for calendar years 2022 through 2024, for any QSF it is appointed to serve as the tax administrator, including appointments made by a Court in civil actions brought by the SEC in federal district court.

2. prepare and file federal and state income tax returns, as required;
3. when required, calculate quarterly estimated tax payments, and provide information to the SEC so that payments may be made timely;
4. make arrangements with the SEC staff to pay the tax liability of the QSF;
5. calculate and recommend retention of a reserve for penalties and interest to be assessed as a result of any late filing of tax returns and/or late payment of taxes;
6. determine and comply with information reporting obligations of the QSF for payments to vendors; and
7. all administrative tasks necessary to the foregoing services.

Additional tax compliance services would be provided at the SEC's request and billed in accordance with Miller Kaplan's agreement with the SEC.

Miller Kaplan has served as a tax administrator for numerous QSFs requiring compliance similar to the Distribution Fund. The SEC staff now respectfully requests that the Court appoint Miller Kaplan as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Distribution Fund.

**Authorization to Pay the Tax Obligations of the Distribution Fund and
Tax Administrator Fees and Expenses**

In order to meet tax payment deadlines, avoid the assessment of late payment penalties, and make timely payment to the Tax Administrator for services provided, the SEC further requests that SEC staff be authorized to approve and arrange for the payment of all tax obligations of the QSF and reasonable related fees and expenses of the Tax Administrator from the Distribution Fund without further Court order. The SEC staff follows a rigorous process for reviewing and approving invoices before payment is made. The SEC's Office of Distributions requires and reviews, in a multi-step process, detailed invoices from the Tax Administrator that

describe the work performed, the billing rate, and the time expended on each task. If the Court authorizes the SEC staff to approve and arrange for the payment of taxes and related fees and expenses of the Tax Administrator without further Court order, the SEC staff will use its expertise in distributions and knowledge of this specific distribution to review all proposed charges. The SEC staff will approve and arrange for payment only of appropriate and properly documented taxes and related fees and expenses of the Tax Administrator. Authorizing such approval and arrangement of payment ensures timely and efficient payment of taxes, reduces the risk of late tax payments and penalties, and ensures timely payment of the related fees and expenses of the Tax Administrator. All tax payments and tax administration fees and expenses will be reported to this Court in the final accounting of the Distribution Fund once all Court authorized distributions have been completed.

Authority to Conduct Limited Discovery to Identify a Possible Harmed Investor

Federal Rule of Civil Procedure (“FRCP”) 69(a) permits discovery in aid of the judgment or execution as provided by the Federal Rules of Civil Procedure and/or state laws. FRCP 26 provides that, starting after the parties have first conferred, parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party and proportional to the needs of the case. FRCP 26(b), (d). Under these rules, this Court has the authority to order limited discovery to aid the SEC’s efforts to identify harmed investors and propose a distribution plan to the Court, as anticipated in the Final Judgments. *Cf. Iris Connex, LLC v. Dell, Inc.*, 235 F. Supp. 3d 826, 832-833, 837 (E.D. Tex. 2017) (acknowledging the rarity of post-judgment discovery, the court permitted targeted, post-judgment, discovery in support of allegations of misuse of the judicial system).

The Final Judgments provide:

The Commission may propose a plan to distribute the Fund subject to the Court's approval. ... The Court shall retain jurisdiction over the administration of any distribution of the fund.

ECF Nos. 52 (p. 6), 53 (p. 5), and 63 (p.3), respectively.

Pursuant to the Final Judgments, the SEC is in the process of identifying harmed investors, quantifying losses, and drafting a plan. In so doing, the SEC has been unable to identify the purchaser of the Cashier's Check, which appears to be an investment.³ The SEC has contacted PNC Bank, which requires a subpoena to identify the purchaser of that check. Given the specific nature of the information sought and PNC's unique role as the holder of this information, the SEC seeks authority to conduct limited discovery in the form of a subpoena to PNC Bank seeking last known contact information about the purchaser of the Cashier's Check.⁴ The request is for limited, account identifying information and thus, not burdensome; and the response will assist in completion of a plan for the distribution of funds collected in this matter to harmed investors. As such, they are both in aid of the Final Judgments and relevant to the SEC's claims. Moreover, the request is proportionate to the needs of this case—the SEC has previously tried, without success, to obtain this (and other) information from the Defendants. The request of PNC Bank would be minimal- provision of the last known contact information for the purchaser of the Cashier's Check. With this information, the SEC will be able to contact the purchaser to

³ Although the Cashier's Check has the name of the "remitter," the name is a common name and research results in hundreds of "hits" all over the country.

⁴ The SEC would only be seeking identifying information about the purchaser of the cashier's check for purposes of contacting that purchaser. *See* 12 U.S.C. §3413(g) (the notice requirements of this chapter... shall not apply when a Government authority [by subpoena] and for a legitimate law enforcement inquiry, is seeking only the name, address, ... of customers associated [with a financial transaction]).

learn the nature of the payment and determine whether the purchaser suffered a loss as a result of the Defendants' violations and eligible to participate the proposed distribution.

Conclusion

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.

Respectfully submitted,

/s/ Catherine E. Pappas

Catherine E. Pappas

PA Bar No. 56544

Admitted *Pro Hac Vice*, ECF No. 67

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