

**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 TO SHOW CAUSE**

Plaintiff, the Securities & Exchange Commission (the “SEC”), respectfully submits this Motion for an Order to Show Cause why the Court should not approve the SEC’s proposed distribution plan (“Plan”), which provides for the distribution of approximately \$61,000 to compensate investors in HOMESINC Renaissance, LLC for losses caused by the conduct described in the Complaint in the captioned matter (the “Plan”). A proposed order to show cause, with the Plan attached, is included with this Motion.

Accompanying this Motion is a Memorandum setting forth the grounds for approving the Plan. Upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice informing the Court that the steps have been completed; responding to any objections; and providing either a proposed Order approving the Plan or an amended plan, as appropriate.

**WHEREFORE**, the SEC respectfully requests that the Court enter an Order to Show Cause substantially in the form accompanying this Motion.

Respectfully submitted,

/s/Catherine E. Pappas

Catherine E. Pappas

PA Bar No. 56544

Admitted *Pro Hac Vice*, ECF No. 67

Email: pappasc@sec.gov

Securities and Exchange Commission

One Penn Center

1617 JFK Blvd., Ste. 520

Philadelphia, Pa. 19103

Tel: (215) 597-0657

Fax: (215) 597-2740

*Attorney for Plaintiff Securities and  
Exchange Commission*

Dated: March 8, 2024

**SECURITIES AND EXCHANGE COMMISSION'S  
CERTIFICATE REGARDING CONFERENCE  
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 the Fair Fund.

The current Motion for an Order to Show Cause is the first step to approval of a plan to distribute collected funds to harmed investors. Although not officially “parties,” the harmed investors are directly affected by the relief sought in the current motion. The SEC is not required to confer with each potential harmed investor; however, it is seeking an Order to Show Cause to provide to those investors the opportunity to object to the provisions of the proposed distribution plan. If the Court enters the proposed Order to Show Cause, the SEC staff will send a copy of the Order to Show Cause, with the attached proposed plan, to the last known physical or

electronic mail address of the individuals and entities that it has identified as possible investors in HOMESINC Renaissance, LLC as described in the Complaint.

Dated: March 8, 2024

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*

**CERTIFICATE OF SERVICE**

I, Catherine E. Pappas, hereby certify that, on March 8, 2024, 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  
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**SECURITIES AND EXCHANGE  
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**Plaintiff,**

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**Defendants.**

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

**(Proposed) ORDER TO SHOW CAUSE**

Plaintiff Securities and Exchange Commission (the “SEC”) having filed a Motion for an Order to Show Cause why the Court should not approve the SEC’s proposed plan of distribution (the “Proposed Plan”) for the Fair Fund established in this matter (the “Fair Fund,” ECF No. 71), and for good cause shown,

**IT IS HEREBY ORDERED** that the Motion for an Order to Show Cause is **GRANTED.**

**I.**

**IT IS FURTHER ORDERED THAT**, within five business days of the issuance of this Order:

- a) The SEC shall publish this Order on the SEC’s public webpage for this matter (<https://www.sec.gov/enforce/homesinc-rennaissance-llc-christopher-a-faulkner-et-al>) (the “SEC Webpage”) along with a copy of the Proposed Plan.

- b) The SEC shall send a copy of this Order, along with a copy of the Proposed Plan, by electronic or physical mail to the last known address of the individuals or entities that it has identified as possible investors in HOMESINC Renaissance, LLC, as described in the Complaint.

Publication as described above, along with the publication of this Order through the Court's ECF system, shall constitute notice of the Proposed Plan to interested parties and the opportunity to object.

## II.

**IT IS FURTHER ORDERED THAT** individuals and entities who invested in HOMESINC Renaissance between March 1, 2017, and September 11, 2017, inclusive, or other interested parties (hereinafter "Submitting Person(s)"), within thirty (30) days from the entry of this Order (the "Objection Due Date"), shall show cause, if there is any, why this Court should not enter an Order approving the Proposed Plan. Objections shall be made by correspondence received no later than 11:59 p.m. on the Objection Due Date at the following electronic mail address:

SECvHomesInc@sec.gov

The correspondence must state fully and clearly the Submitting Person's interest in this matter, and the objection(s) to the Proposed Plan. The Submitting Person must include all documentation necessary to support the objection. All factual assertions must be concluded with the following declaration, if true, followed by the Submitting Person's signature and the date of signature:

I declare pursuant to 28 U.S.C. §1746, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

All correspondence must include current contact information for the Submitting Person,

including, if available, an email address and mobile telephone number. Objections will be publicly filed by the SEC with the Court, as further set forth below in Section IV.

**To the extent a Submitting Person seeks to include in their submission sensitive information such as a social security number, financial account number, or home address, they should encrypt the submission prior to sending, sending the password in a separate email, or submit it pursuant to the next paragraph.** If a Submitting Person is unable to submit their objection {securely} by email, they may send it addressed as set forth below. The submission must be received by the Addressee no later than the Objection Due Date.

Catherine E. Pappas/ Brian Beirne  
SEC v. Homes Inc. et al.  
SEC Office of Distributions  
100 F Street NE, room 5551.07  
Washington, DC 20549

Failure to timely submit an objection in accordance with this Section II. will result in the objection being waived. Proof of timely receipt by the Addressee will be the burden of the Submitting Person.

### **III.**

**IT IS FURTHER ORDERED that,** if no objections to the Proposed Plan are timely submitted, the SEC shall:

- a) File a notice so advising the Court (the “Notice”), accompanied by a copy of the Proposed Plan, as well as a proposed Order approving the Proposed Plan.
- b) Post a copy of the Notice, Proposed Plan, and proposed Order on the SEC Webpage.

Upon receipt of such notice from the SEC, the Court may enter an Order Approving the Proposed Plan without further notice or passage of time.

**IV.**

**IT IS FURTHER ORDERED THAT**, if objections are timely received pursuant to this Order, the SEC shall file them, with sensitive information redacted, together with its response, within sixty (60) days of the entry of this Order, with copies of its response served by electronic, First Class, or Overnight Mail upon any objecting Submitting Person.

The SEC may propose an amended plan if and as appropriate. If the SEC proposes an amended plan, the amended plan, and any accompanying filings, will be made available to all interested potential investors and Submitting Persons through the SEC Webpage, and sent to the last known physical or electronic mail address of the individuals and entities that it has identified as potential investors in HOMESINC Renaissance, LLC. as described in the Complaint. Such publication, along with the publication through the Court's ECF system, shall constitute notice of the amended plan. No additional objection period will be provided unless expressly ordered by the Court.

If the Court deems it necessary or appropriate, the Court may conduct a hearing before approving the Proposed (or amended) Plan. Notice of a hearing shall be provided through the Court Docket and the SEC Webpage, and if and as otherwise ordered by the Court.

**SO ORDERED**, this \_\_\_\_ date of \_\_\_\_\_, 2024,

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Hon. Jane J. Boyle  
United States District Court Judge

Att: Attachment A (Proposed Plan)

**Attachment A**

Proposed Plan

**UNITED STATES DISTRICT COURT  
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**Civil Action No. 3:17-cv-2405-G**

**(PROPOSED) DISTRIBUTION PLAN**

**I. OVERVIEW**

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by, and/or collected from, certain of the Defendants.

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Defendants’ conduct alleged in the Complaint, in connection with their fraudulent and unregistered offering of interests in HOMESINC Renaissance, LLC (“Renaissance”). As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses from investments in Renaissance (the “Security”) made between March 1, 2017, and September 11, 2017, inclusive (the “Relevant Period”). Based on information obtained by the SEC during its investigation, litigation, and otherwise, the SEC has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process.

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

## II. BACKGROUND

4. On September 11, 2017, the SEC filed a Complaint against Christopher A. Faulkner (“Faulkner”), Homes Inc. (“Homes”), 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’ 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.

5. The Court has entered final judgments against all the individual Defendants (collectively, the “Final Judgments”),<sup>1</sup> and the SEC voluntarily dismissed its claims against Homes and Renaissance. ECF Nos. 52, 53, 60, 61, and 62. The Final Judgments, in relevant part, 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 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.

6. By Order entered February 14, 2024, the Court established the Fair Fund pursuant to Section 308(a) of the Sarbanes Oxley Act of 2002, 15 U.S.C. §7246(a) so that collected civil penalties, along with collected disgorgement and prejudgment interest, can be distributed to harmed investors; appointed Miller Kaplan Arase LLP as tax administrator (“Tax Administrator”) of the Fair Fund; and authorized limited discovery to locate a possible investor in the form of a subpoena to a bank. ECF No. 71.

7. The Fair Fund of approximately \$61,0000 is comprised payments by or collections from the Defendants on the Final Judgments, plus accrued interest. The Fair Fund is held in an SEC-designated, interest-bearing account with the United States Department of the Treasury (the “U.S. Treasury”). Additional collections on the Final Judgments and funds directed to the Fair Fund by Court or SEC Order, or otherwise, will first be applied to the appropriate Final Judgment as outstanding disgorgement, then civil penalty, prejudgment interest, and post-judgment interest, in that order.

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<sup>1</sup> Both Faulkner and Davenport 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.

### III. DEFINITIONS

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

8. **“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. Administrative Costs shall be paid from the Fair Fund.

9. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

10. **“Eligible Claimant”** means a Preliminary Claimant who is determined to have suffered a Recognized Loss pursuant to the Plan of Allocation and who is neither an Excluded Party nor an Unresponsive Preliminary Claimant.

11. **“Excluded Party”** means: (a) the Defendants, and Defendants’ agents, nominees, assigns, heirs, spouses, parents, children, successors in interest, or controlled entities; and (b) any purchaser or assignee of another Person’s claim to obtain a recovery from the Fair Fund for value provided, however, that this provision shall not be construed to exclude those Persons who obtained the claim by gift, inheritance, or devise.

12. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’ violations alleged in the Complaint. Additional collections on the Final Judgments, funds directed to the Fair Fund by Court or SEC Order or otherwise, and accrued interest will be added to, and become a part of, the Fair Fund.

13. **“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 preliminarily calculated Investment and/or Recovery notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 18, 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.

14. **“Investment”** shall mean the Preliminary Claimant’s aggregate out-of-pocket investment in the Security during the Relevant Period, exclusive of any interest, dividend, or other (purported) profit.

15. **“Net Available Fair Fund”** means the Fair Fund less Administrative Costs.

16. **“Payee”** means an Eligible Claimant whose distribution amount, calculated in accordance with the Plan of Allocation is equal to or greater than \$10.00 and who will receive a Distribution Payment.

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

18. “**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; a link to the approved Plan posted on the SEC’s website and 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 preliminarily calculated Investment and Recovery; 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.

19. “**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.

20. “**Preliminary Claimant**” means a Person, or their lawful successors, identified by the Distribution Agent based on its review and analysis of applicable records obtained by the SEC during its investigation, litigation, and otherwise, who may have suffered a loss on investment(s) in the Security during the Relevant Period.

21. “**Recognized Loss**” means the amount of loss calculated in accordance with the Plan of Allocation.

22. “**Recovery**” shall mean the aggregate amount of the Investment recovered by the Preliminary Claimant, whether through redemptions, periodic withdrawals, interest or dividend payments, distribution(s), settlements, or otherwise, including without limitation, any recovery of forfeited funds in connection with any related administrative forfeiture proceedings.

23. “**Relevant Period**” is between March 1, 2017, and September 11, 2017, inclusive.

24. “**Security**” means an investment in HOMESINC Renaissance, LLC.

25. “**Unresponsive Preliminary Claimant**” means a Preliminary Claimant whose address the Distribution Agent has not been able to verify and/or who does not timely respond to the Distribution Agent’s attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

#### IV. TAX COMPLIANCE

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

27. The Fair 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 Fair Fund.

## **V. DISTRIBUTION AGENT**

28. Catherine E. Pappas will be the distribution agent for the Fair Fund (“Distribution Agent”). As an SEC employee, the Distribution Agent shall receive no compensation, other than her regular salary as an SEC employee, for her services in administering the Fair Fund.

29. The Distribution Agent will be responsible for administering the Fair 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 and/or reviewing accountings; cooperating with the Tax Administrator appointed by the SEC 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); directing the disbursement of the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and causing payments to be reissued, when possible.

30. 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 SEC staff. If a change is deemed to be material by the SEC staff, Court approval is required prior to implementation by amending the Plan.

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

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

32. Using information obtained during its investigation, litigation, and otherwise, the SEC has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss on investments in the Security during the Relevant Time.

### Procedures for Locating and Notifying Preliminary Claimants

33. Within thirty (30) days of Court approval of the Plan, the Distribution Agent will send the Plan Notice to each Preliminary Claimant's last known email address and/or mailing address.

### Undeliverable Mail

34. If any mailing is returned as undeliverable, the Distribution Agent will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Distribution Agent will then resend it to the Preliminary Claimant's new address within fifteen (15) days of receipt of the returned mail. If the mailing is returned again, and the Distribution Agent, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Distribution Agent, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

35. 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

36. Any Person who does not receive a Plan Notice, as described in paragraph 18, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent within forty-five (45) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. If the Distribution Agent determines that the Person should have received a Plan Notice, the Distribution Agent will send the Person a Plan Notice within fifteen (15) days of receiving the Person's documentation.

### Failure to Respond to Plan Notice

37. If a Preliminary Claimant is requested to respond and fails to respond within the deadline set forth in the Plan Notice, the Distribution Agent will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or email. If no telephone number or email address is known, the Distribution Agent will make one additional attempt to contact the Preliminary Claimant by correspondence sent to the Preliminary Claimant's last known address. The final attempt will in no event take place no more than forty-five (45) days from the initial

mailing of the Plan Notice to that Preliminary Claimant. If a Preliminary Claimant fails to respond to the Distribution Agent's contact attempts as described in this paragraph, the Distribution Agent, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

#### Dispute Process

38. Disputes will be limited to the preliminary calculation of a Preliminary Claimant's Investment and Recovery set forth in the Plan Notice. No later than the deadline set forth in the Plan Notice, the Distribution Agent must receive a written communication detailing any dispute along with any supporting documentation. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

#### Final Determination Notices

39. Within forty-five (45) days of the deadline set forth in the final mailing of Plan Notices, the Distribution Agent will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 38 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 37 above, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

#### Distribution Methodology

40. 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 neither an Excluded Party nor an Unresponsive Preliminary Claimant, will be an Eligible Claimant. Any Eligible Claimants whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, will be a Payee and will receive a Distribution Payment.

#### Establishment of a Reserve

41. 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").

42. 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 55, below.

Preparation of the Payment File

43. Within one hundred and eighty (180) days of Court approval of the Plan, the Distribution Agent will compile the Payee information, including the name, address, calculated Recognized Loss, amount of tax withholding, and the amount of the Distribution Payment for each Payee (the “Payee List”).

Distribution of the Fair Fund

44. After preparation of the Payee List, the SEC will petition the Court for authority to disburse funds from the Net Available Fair Fund for distribution to Payees in accordance with the Plan and will direct the issuance of checks or the electronic transfer of funds to each Payee in accordance with the Payee List and the Court’s order. The Payee List shall, upon request, be made available to the Court under seal. Checks or electronic transfers will issue from the U.S. Treasury to each Payee in accordance with the Court's order.

45. All checks will bear a stale date of one (1) year from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Distribution Agent will instruct the U.S. Treasury 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 Fair Fund, except as provided in paragraph 49.

46. 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 one (1) year 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 SEC staff for review and approval.

47. 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 from securities law violations.

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

48. The Distribution Agent 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 Distribution Agent as “undeliverable.” If new address information becomes available, the Distribution Agent will direct the distribution check to the new address. If new address information is not available after a diligent search (and in no event no later than one (1) year after the date of the original check) or if the distribution check is returned again, the check shall be voided, and the Distribution Agent shall instruct the U.S. Treasury to stop payment on such check. If the Distribution Agent is unable to find a Payee’s correct address, the Distribution

Agent, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

49. The Distribution Agent will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if submitted to the Distribution Agent 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 their lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void one (1) year from the date of the reissued check. In no event will a check be reissued after one (1) year from the date of the original check or payment without the approval of SEC staff.

50. The Distribution Agent will work with the SEC staff to maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent, working with the SEC staff, is responsible for researching and reconciling errors and directing the reissuance of payments when possible. The Distribution Agent, working with the SEC staff, is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

51. The Distribution Agent will make and document her best efforts to contact Payees to follow-up on the status of uncashed distribution checks (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of SEC staff. The Distribution Agent may direct the reissuance of such checks, subject to the time limits detailed herein.

52. 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 a Payee’s Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

#### Receipt of Additional Funds

53. Should any additional funds be received pursuant to SEC or Court order, agreement, or otherwise, prior to the Court’s termination of the Fair Fund, such funds will be added to, and become a part of the Fair Fund, and will be distributed, if feasible, in accordance with the Plan.

### Disposition of Undistributed Funds

54. If funds remain following the initial distribution and payment of all Administrative Costs, the Distribution Agent may seek to conduct subsequent distribution(s) of any available remaining funds, if feasible. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court Order.

55. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair 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 SEC, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

56. All funds remaining in the Residual that are infeasible to distribute to investors will be held by the SEC pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>2</sup> If distribution of the Residual to investors is infeasible, the SEC staff 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.<sup>3</sup>

### Filing of Reports and Accountings

57. Upon completion of all distributions to Payees and payment of all Administrative Costs, pursuant to the procedures described above, the Tax Administrator and the Distribution Agent will work with the SEC staff to create a final accounting on a standardized form provided by the SEC staff.

### Termination of the Fair Fund

58. Once the SEC staff has reviewed and accepted the final accounting, the SEC staff will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

59. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all the following have occurred:

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<sup>2</sup> 15 U.S.C. § § 78u(d)(3), (5), and (7). 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).

<sup>3</sup> 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 Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

- a. A final report and accounting have been submitted to and approved by the Court;
- b. All Administrative Costs have been paid; and
- c. The Court has approved the SEC staff's recommendation as to the final disposition of the Residual consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>4</sup>

60. Once the Fair Fund has been terminated, no additional payments will be made whatsoever.

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<sup>4</sup> See footnote 2.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors for their losses from investments in HOMESINC Renaissance, LLC (the “Security”) made between March 1, 2017, and September 11, 2017, inclusive (the “Relevant Period”). Investors who did not invest in the Security during the Relevant Period are ineligible to recover under this Plan. Based upon records obtained by the SEC during its investigation, litigation, and otherwise, the Distribution Agent has identified those investors, or their lawful successors, who may have suffered losses from investments in the Security made during the Relevant Period (the “Preliminary Claimants”).

The Distribution Agent will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as his, her, or its Investment less his, her, or its Recovery.

If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

Any Preliminary Claimant who suffered a Recognized Loss greater than \$0.00 pursuant to this Plan of Allocation and who is neither an Excluded Party nor an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

The Distribution Agent will identify Payees and the amount to be distributed to each Payee in accordance with the “rising tide” methodology:

- (a) The Distribution Agent will create a list of Eligible Claimants (the “Preliminary List”).
- (b) The Distribution Agent will calculate the “Individual Recovery Ratio” for each Eligible Claimant on the Preliminary List as the claimant’s Recovery divided by his, her, or its Investment.
- (c) Using the Preliminary List, the Distribution Agent will calculate the “Equal Recovery Ratio” as the sum of the Recoveries for all Eligible Claimants plus the amount of the Net Available Distribution Fund, divided by the sum of the Investments for all Eligible Claimants.
- (d) An Eligible Claimant whose Individual Recovery Ratio exceeds the Equal Recovery Ratio will be removed from the Preliminary List and deemed ineligible to receive a distribution under this Plan of Allocation.
- (e) The Distribution Agent will re-calculate the Equal Recovery Ratio for the remaining Eligible Claimants as in step (c) and exclude Eligible Claimants whose Individual Recovery Ratios exceed the re-calculated Equal Recovery Ratio as in step (d) iteratively, until all remaining Eligible Claimants have Individual Recovery Ratios less than or equal to the re-calculated Equal Recovery Ratio.

- (f) The Distribution Agent will calculate the “Tentative Distribution” for each remaining Eligible Claimant by multiplying the final Equal Recovery Ratio by the Eligible Claimant’s Investment and subtracting from that amount the Eligible Claimant’s Recovery.
- (g) An Eligible Claimant whose Tentative Distribution (plus Reasonable Interest, if applicable) is less than the “Minimum Distribution Amount” of \$10.00 will be removed from the Preliminary List, be deemed ineligible to receive a distribution, and steps (e) and (f) will be repeated until each remaining Eligible Claimant’s Tentative Distribution is equal to or greater than the Minimum Distribution Amount.
- (h) The Eligible Claimants remaining on the Preliminary List will be Payees and the respective Tentative Distribution amounts will be the Distribution Payments directed to them.

### **Additional Provisions**

Subsequent Distributions: In the event of subsequent distributions, the steps in the rising tide calculations in paragraphs (a) through (h) set forth above will be repeated. Any Eligible Claimant who was removed from the Preliminary List in a previous distribution and deemed ineligible pursuant to paragraphs (d) or (g) above will be reconsidered in any subsequent distribution. The amount of any Distribution Payment paid to a Payee in a previous distribution will be considered a Recovery for the Eligible Claimant in each subsequent distribution.

Reasonable Interest: If all Payees have achieved an Individual Recovery Ratio of 100% and sufficient funds remain, the Distribution Agent, in consultation with the SEC staff, may pay Payees for the time value of his, her, or its respective Recognized Loss as calculated in connection with the initial distribution. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay the full amount of Reasonable Interest calculated for each Eligible Claimant, each Payee will receive Reasonable Interest from the excess funds in the proportion of the Distribution Payment calculated for him, her, or it, to the aggregate of Distribution Payments calculated for all other Payees.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest, if any). If an Eligible Claimant’s distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment equal to his, her, or its calculated distribution amount.

Distribution Payment Limitation: In no event will a Payee receive from the Distribution Fund more than his, her, or its Recognized Loss in any distribution, nor will the sum of the Distribution Payments through subsequent rounds, if any, exceed the Recognized Loss calculated in the initial distribution, plus Reasonable Interest, if any.

**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 MEMORANDUM IN SUPPORT  
OF ENTRY OF AN ORDER  
APPROVING A DISTRIBUTION PLAN**

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**I. Introduction**

Plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully submits this memorandum in support of its proposed distribution plan (the “Plan”) to distribute funds paid or collected in this action (the “Fair Fund”) to compensate investors who suffered losses from their investment(s) in HOMESINC Renaissance, LLC (“Renaissance”) as described in the Complaint.<sup>1</sup> The SEC is simultaneously seeking, by the accompanying motion, the entry of an Order to Show Cause to give interested persons or entities the opportunity to object to the Plan (the “Motion”). If the Court grants the Motion and enters the proposed Order to Show Cause, the SEC will file a notice (the “Notice”) and/or a response upon the completion of the steps set forth in the Order to Show Cause, notifying the Court as to the completion of those steps and responding to any objections; and will provide a proposed Order approving the Plan or an amended plan, as appropriate. By this memorandum the SEC provides to the Court the factual and legal basis for approving the Plan.

**II. Background**

**A. The Civil Action**

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 convinced investors into purportedly funding real estate projects by, among other things, misrepresenting that Homes (a) had a proven and extensive track record of

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<sup>1</sup> The Plan is attached as Exhibit 1 to the accompanying Motion for an Order to Show Cause. As discussed below, the Fair Fund currently holds approximately \$61,000.

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' 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"),<sup>2</sup> 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 collected on the Final Judgments, and that the Court retains jurisdiction over the administration of any distribution. *Id.*

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<sup>2</sup> 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.

By Order entered February 14, 2024, the Court established the Fair Fund pursuant to Section 308(a) of the Sarbanes Oxley Act of 2002, 15 U.S.C. §7246(a); appointed Miller Kaplan Arase LLP as tax administrator (“Tax Administrator”) of the Fair Fund; and authorized limited discovery in the form of a subpoena to a bank to locate a possible investor. ECF No. 71.

**B. The Fair Fund**

The Fair Fund holds over \$61,000, comprised of payments and/or collections on the Final Judgments and accrued interest. The Fair Fund is held in an SEC-designated, interest-bearing account with the United States Department of the Treasury and accrued interest will be added to, and become a part of, the Fair Fund.<sup>3</sup> Under the Plan, and to maximize the amount available for distribution to harmed investors, additional collections on the Final Judgments and funds directed to the Fair Fund by Court or SEC Order or otherwise, will be first applied to the appropriate Final Judgment as outstanding disgorgement, then civil penalty, prejudgment interest, and post-judgment interest, in that order.<sup>4</sup>

**C. Investors and Investor Losses**

Through its review of bank records and other information obtained during and after its investigation of this matter (the “Records”), including information obtained pursuant to this Court’s Order permitting limited discovery (ECF No. 71), the SEC has identified ten investors who, based on preliminary calculations, suffered a loss because of their investment in Renaissance between March 1, 2017, through September 11, 2017 (“Preliminary Claimants”). Preliminary calculations show that investor losses, offset by prior Recoveries (discussed below) range from (approximately) \$2,000 to \$25,000 with a median harm amount of \$8,300.

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<sup>3</sup> Plan ¶ 12.

<sup>4</sup> Plan ¶ 7.

**D. Prior Recoveries**

The FBI previously distributed \$108,609.29 to seven Preliminary Claimants who filed petitions for recovery in a related administrative forfeiture procedure (the “Forfeiture Recoveries”), compensating those investors for approximately 67% of their losses for the conduct described in the Complaint.

**III. The Plan**

**A. Definitions and Preliminary Matters**

Preliminary Claimants under the Plan are those individuals or entities who may have suffered a loss from investment(s) in Renaissance made during the period March 1, 2017 through September 11, 2017, inclusive (the “Relevant Period”).<sup>5</sup> Only those who are not Excluded Parties or Unresponsive Preliminary Claimants, and who have suffered a Recognized Loss as calculated under the Plan, will be Eligible Claimants.<sup>6</sup> Exclusions include the Defendants as well as their agents, nominees, assigns, heirs, spouses, parents, children, successors in interest, or controlled entities.<sup>7</sup> The Plan also excludes from payment any entity that has purchased for value a Preliminary Claimant’s claim and seeks to obtain a recovery from the Fair Fund, as well as Unresponsive Preliminary Claimants.<sup>8</sup> Payees are those Eligible Claimants who are determined to receive a Distribution Payment under the Plan of Allocation.<sup>9</sup>

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<sup>5</sup> Plan ¶¶ 20, 23. The Relevant Period starts at the beginning of the Renaissance offering and ends upon the public filing of the Complaint in this action.

<sup>6</sup> Plan ¶¶ 10, 11, 25.

<sup>7</sup> Plan ¶ 11.

<sup>8</sup> *Id.*

<sup>9</sup> Plan ¶ 16.

A Preliminary Claimant's Investment is their aggregate out-of-pocket investment in Renaissance during the Relevant Period, exclusive of any interest, dividend, or other (purported) profit.<sup>10</sup> Their Recovery is the aggregate amount of the Investment recovered by the Preliminary Claimant, whether through redemptions, periodic withdrawals, interest or dividend payments, distribution(s), settlements, or otherwise, including the Forfeiture Recoveries.<sup>11</sup> Under the Plan, Preliminary Claimants will be given an opportunity to dispute preliminary calculations of their Investment and Recovery.<sup>12</sup>

**B. The Plan of Allocation**

In the Plan, the SEC proposes using the "rising tide" methodology to calculate Distribution Payments.<sup>13</sup> Under this methodology, any Recoveries previously obtained by Preliminary Claimants, including the Forfeiture Recoveries, are considered distributions. Any Preliminary Claimant who has previously recovered a specific calculated percent of their Investment will not get a distribution until those who have previously Recovered none of their Investment recoup that calculated percent, referenced as the equal recovery rate.<sup>14</sup>

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<sup>10</sup> Plan ¶ 14.

<sup>11</sup> Plan ¶ 22.

<sup>12</sup> Plan ¶ 38.

<sup>13</sup> Plan, Exhibit A.

<sup>14</sup> The equal recovery rate is the highest percentage recovery that can be shared by all investors. It is determined by first calculating the amount of funds necessary to bring the investor with the largest percent of loss to the same level as the investor in the next loss tier. The calculation is repeated as many times as necessary until all investors reach the same loss tier, and that loss tier serves as the minimum recovery of all the investors—the equal recovery rate.

Using the rising tide approach and based on preliminary calculations,<sup>15</sup> all ten Preliminary Claimants would get a Distribution Payment that would bring their respective aggregate Recoveries to approximately 74% of their Investments. By way of illustration, the chart below reflects the use of the rising tide methodology to compare the estimated Distribution Payments for two hypothetical Preliminary Claimants: Investor A, who Invested \$10,000 and Recovered nothing (0%), and Investor B, who Invested \$10,000 and Recovered \$7,000 (approximately. 67%). By the rising tide methodology, Investor A would receive a Distribution Payment of \$7,000, and Investor B would receive a Distribution Payment of \$316. After receipt of the Distribution Payments, both would have Recovered 70% of their Investment.

Line	Line Identification	Investor A	Investor B
1	Investment	\$ 10,000.00	\$ 10,000.00
2	Recovery Ratio (rounded)	70%	70%
3	Amount Necessary for 53% Recovery (Line 1*Line 2)	\$ 7,000.00	\$ 7,000.00
4	Recovery	\$ -	\$ 6,684.00
5	Percent Recovered (Line 4/ Line 1 as a percent)	0%	67%
6	(Est.) Distribution Payment (Line 3-Line 4)	\$ 7,000.00	\$ 316.00
7	Final Percent Recovered with Distribution Payment ((Line 4+Line 6)/Line 1 as a percent)	70%	70%

The SEC alternatively considered the net loss methodology. The net loss methodology results in all Preliminary Claimants receiving a distribution, but there is a significant disparity in

<sup>15</sup> The SEC expects that the numbers will change based on, among other things, interest accrued on the Fair Fund prior to distribution, the final calculation of a reserve for Administrative Costs, and possible objections from investors to preliminarily calculated Investments and Recoveries.

final Recovery rates, with Recoveries ranging from 49% to 84%. By way of illustration, under the net loss methodology, hypothetical Investor A would receive a Distribution Payment of \$4,933.61 and Investor B would receive a Distribution Payment of \$1,655.88. After the Distribution Payment, Investor A would have Recovered 49.94% of their Investment, whereas Investor B would have Recovered 83.40% of their Investment.

Line	Line Identification	Investor A	Investor B
1	Investment	\$ 10,000.00	\$ 10,000.00
2	Recovery	\$ -	\$ 6,684.00
3	Net Loss (Line 1-Line 2)	\$ 10,000.00	\$ 3,316.00
4	Pro Rata Percentage (Net Available Distribution Amount (est. \$55,000)/ aggregate Net Losses (approx. 110,000))	49.94%	49.94%
5	(Est.) Distribution Payment (Line 3 * Line 4)	\$ 4,993.61	\$ 1,655.88
6	Total Recovery with Distribution Payment (Line 5+Line 2)	\$ 4,993.61	\$ 8,339.88
7	Percent Total Recovery with Distribution Payment (Line 6/Line 1, as a percent)	49.94%	83.40%

Based on the results set forth above, and as further discussed below, the SEC believes the rising tide methodology results in the most equitable distribution of the Fair Fund.

### C. Additional Provisions

In order to minimize administrative costs, the Plan proposes the undersigned, a Senior Adviser in the SEC's Division of Enforcement, as the distribution agent for the Fair Fund (the "Distribution Agent"), to perform all activities necessary to distribute the Fair Fund in accordance with the Plan.<sup>16</sup> The Distribution Agent will receive no compensation for the services performed in administering the Fair Fund other than her regular salary as an employee

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<sup>16</sup> Plan ¶ 28.

of the SEC.<sup>17</sup> In the absence of Distribution Agent costs, the SEC expects Administrative Costs will only include taxes, tax administration costs, and investment costs of the Fair Fund while held by the SEC in an interest-bearing account at the U.S. Treasury.

If the Plan is approved, the Distribution Agent will, among other things, disseminate the Plan Notice, review and resolve any disputes of preliminarily calculated Investments and Recoveries, work with the Tax Administrator to establish a Reserve for Administrative Costs, work with SEC staff to perform final calculations in accordance with the Plan of Allocation, and petition the Court for authority to disburse the funds to Payees.<sup>18</sup>

The SEC contemplates one distribution of the Net Available Fair Fund. Notwithstanding, if sufficient funds remain in the Fair Fund after one or more distribution(s) and/or if additional funds are paid or collected in this action, the Distribution Agent may determine additional distribution(s) feasible, and seek authority from this Court to make additional distributions.<sup>19</sup> As explained in the Plan (Exhibit A, “Subsequent Distributions”), persons excluded in prior distributions because their Recovery exceeded the Equal Recovery Ratio or because their distribution amount was less than the Minimum Distribution Amount may be determined to be eligible in a subsequent distribution pursuant to the Rising Tide methodology.<sup>20</sup> The amount of any Distribution Payment paid to a Payee in a previous distribution will be considered a Recovery for the Eligible Claimant in each subsequent distribution.<sup>21</sup>

Upon completion of the final distribution, the SEC staff will file a motion with this Court to approve the final accounting, including a recommendation as to the final disposition of the Residual

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<sup>17</sup> *Id.*

<sup>18</sup> *See, e.g.*, Plan ¶¶ 29, 41, 43, 44, and Exhibit A.

<sup>19</sup> Plan ¶ 54.

<sup>20</sup> Plan, Exhibit A (“Subsequent Distributions”).

<sup>21</sup> *Id.*

consistent with Sections 21(d)(3), (5), and (7) of the Exchange Act<sup>22</sup> and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>23</sup> If distribution of the Residual to investors is infeasible, the SEC staff may recommend that the monies be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>24</sup> In moving this Court to approve the final accounting, the SEC staff will also seek from the Court an Order that discharges the Distribution Agent and terminates the Fair Fund.<sup>25</sup>

**IV. The Plan is Fair and Reasonable and Should be Approved.**

The goal of the Plan is to compensate harmed investors. The Court should approve the Plan because it fairly and reasonably allocates collected funds among harmed investors.

A district court has broad discretion in approving a plan for distribution, and that determination is reviewed for abuse of discretion. *SEC v. Great White Marine & Rec., Inc.*, 428 F.3d 553, 556 (5th Cir. 2005) (the district court has broad powers and wide discretion in equitable distributions and such decisions are reviewed for abuse of discretion); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (in the context of the approval of a Receiver's plan of distribution). *See also SEC v. Quan*, 870 F.3d 754, 762 (8th Cir. 2017); *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010); *SEC v. Malek*, 397 Fed. Appx. 711, 715 (2d Cir. 2010), *citing SEC v. Loewenson*, 290 F.3d 80, 87 (2d Cir. 2002); *WorldCom, Inc. v.*

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<sup>22</sup> 15 U.S.C. § § 78u(d)(3), (5), and (7). 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).

<sup>23</sup> Plan, ¶¶ 55-60.

<sup>24</sup> 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 Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

<sup>25</sup> Plan ¶ 58.

*SEC*, 467 F.3d 73, 84 (2d Cir. 2006). The job of the district court is to ensure that the proposed plan of distribution is fair and reasonable. *SEC v. Faulkner*, Civ. Act. No. 3:16-CV-1735-D, 2020 U.S. Dist. LEXIS 74150, \*16, 34 (N.D. Tex. Apr. 28, 2020) (in the context of a receivership; quoting *Wealth Mgmt.*, 628 F.3d at 332); *SEC v. Terax Energy, Inc.*, Civ. Act. No. 3:07-CV-1554-BD, 2009 U.S. Dist. LEXIS 100897, \*6 (N.D. Tx. Oct. 28, 2009) (Kaplan, J.). See also *Quan*, 2017 U.S. App. LEXIS 16663, \*16; *Wealth Mgmt.*, 628 F.3d at 332; *WorldCom*, 467 F.3d at 83-85 (because the SEC is fulfilling a statutory role in determining how to distribute recovered funds to investors, it is entitled to the deference of a “fair and reasonable” standard—that the plan fairly and reasonably distributes limited funds among the potential claimants).

In this case, the SEC proposes using the rising tide methodology to ensure that those Preliminary Claimants who have Recovered some of their Investment through the Forfeiture Recoveries do not get additional funds through the SEC distribution until those who have Recovered none of their Investment receive some of that investment back.<sup>26</sup> The SEC believes this methodology to be the most fair and reasonable approach to distribution under the circumstances here—limited funds, and several Preliminary Claimants having recovered a significant portion (approximately 67%) their Investment through the Forfeiture Payments, while some have recovered nothing. See *SEC v. Torchia*, 14-cv-3904-wsd, 2017 U.S. Dist. LEXIS 156524, \*28-30 (N.D. Ga. Aug. 7, 2017) (approving a receiver’s plan and approving the rising tide methodology as equitable where, among other things, the rising tide would result in a 29.8% recovery and other methodologies would result in some investors recovering “as little as 16.2% of their investment”), *rev’d on other grounds*, 922 F.3d 1307 (11th Cir. 2019). See also *SEC v. Alleca*, 12-cv-3261-wsd, 2017 U.S. Dist. LEXIS 153660, \*12, \*36 (N.D. Ga. Sep. 21, 2017)

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<sup>26</sup> Plan, Exhibit A.

(finding a rising tide allocation to be a fair and equitable method of distributing receivership assets, citing *Torchia* and *SEC v. Detroit Mem'l Partners, LLC*, 13-cv-1817-wsd, 2016 U.S. Dist. LEXIS 154474 (N.D. Ga. Nov. 8, 2016)); *Detroit Mem'l Partners*, 2016 U.S. Dist. LEXIS 154474, at \*36, quoting *SEC v. Huber*, 702 F.3d 903, 906 (7th Cir. 2012) (“Rising tide appears to be the method most commonly used (and judicially approved) for apportioning receivership assets”). Cf. *SEC v. Amerifirst Funding, Inc.*, 07-cv-1188-D, 2008 U.S. Dist. LEXIS 20044, \*18-19 (N.D. Tx. Mar. 13, 2008) (Fitzwater, J.) (where the Court rejected the rising tide approach in favor of a net loss approach upon the Receiver’s recommendation where the recoveries were small and comprised of interest only, and some investors would receive nothing under the distribution). The SEC believes, under the present circumstances, that the rising tide distribution methodology will result in a more fair and reasonable distribution than would the alternative (net loss) approach. Based on preliminary calculations, all identified harmed investors would receive a payment under both methodologies, but the rising tide methodology would equalize each investor’s Recovery to approximately 70% of their Investment, whereas the net loss approach would result in disparate Recoveries ranging from 49% to 84%.

The remainder of the Plan is also fair and reasonable. District courts have discretion to exclude claimants involved in the underlying scheme. See *SEC v. Pension Fund*, 377 Fed. Appx. 957, 963 (11th Cir. 2010) (no abuse of discretion to exclude directors and sales agents from distributions); *SEC v. McGinn, Smith & Co.*, Civ. Action No. 1:10-457 (GLS/CFH), 2019 U.S. Dist. LEXIS 35678, \*6-7 (N.D.N.Y. Mar. 6, 2019) (and the cases cited therein). The Defendants who benefitted from the underlying misconduct should not benefit from this distribution, either directly or indirectly. The Plan also excludes those who are not harmed investors and who seek to capitalize on the distribution by purchasing for value a Preliminary Claimant’s purported right

to a Distribution Payment. Finally, for reasons of practicality and efficiency, the Plan excludes Preliminary Claimants who do not timely provide necessary information. The remaining provisions of the Plan provide for the careful and orderly distribution of the Fair Fund and reporting of the results to the Court.

**V. Conclusion**

For the reasons set for above, the SEC believes that the Plan fairly and reasonably distributes the Fair Fund to investors harmed by the conduct underlying the Complaint and respectfully requests that the Court approve the Plan.

Respectfully submitted,

/s/ Catherine E. Pappas

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