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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

MATTHEW MORAVEC,

Defendant.

Case No. [22-cv-09044-TLT](#)

**ORDER GRANTING REQUEST TO  
ESTABLISH A FAIR FUND, APPOINT  
A TAX ADMINISTRATOR, AND  
APPROVAL OF PAYMENT OF TAX  
OBLIGATIONS AND FEES WITHOUT  
FURTHER COURT ORDER**

ECF 13, 14

On December 21, 2022, the Securities and Exchange Commission (“SEC”) filed Complaint against Defendant Matthew Moravec (“Defendant”) and simultaneously filed Defendant’s Consent to the entry of a final judgment. ECF 1, 6. The Court entered a final judgment as to Defendant Moravec finding him liable for disgorgement of \$407,103.00, together with prejudgment interest of \$72,209.00, and a civil penalty. ECF 11.

Before the Court is the SEC’s Motion for an Order Establishing a Fair Fund, including Post-Judgment Interest in the Fair Fund, Appointing a Tax Administrator, and Authorizing the SEC to Approve Payment of the Tax Obligations of the Fair Fund and Related Fees and Expenses of the Tax Administrator without Further Court Order. ECF 13. This motion is a precursor for the appointment of a distribution agent and proposal of a distribution plan for court approval. Defendant was served notice. *See* ECF 16. The time for filing an opposition to the SEC’s motion has passed and no oppositions have been filed.

The Court finds this matter appropriate for resolution without oral argument. (By rule or order, the court may provide for submitting and determining motions on briefs, without opposition and without oral hearings.); L. R. 7(1)(b) (authorizing courts to dispense with oral argument on any motion except where an oral hearing is required by statute).

United States District Court  
Northern District of California

1 For the reasons stated below, Motion for an Order Establishing a Fair Fund, including Post-  
2 Judgment Interest in the Fair Fund, Appointing a Tax Administrator, and Authorizing the SEC to  
3 Approve Payment of the Tax Obligations of the Fair Fund and Related Fees and Expenses of the  
4 Tax Administrator without Further Court Order is hereby **GRANTED**.

5 **I. THE COURT APPROVES THE ESTABLISHMENT OF FAIR FUND.**

6 Pursuant to Section 308(a) of the Sarbanes-Oxley Act, the SEC seeks to establish a fair fund  
7 to facilitate ultimate distribution of penalties that Defendant has paid to date pursuant to the final  
8 judgment entered on January 30, 2023. *See* ECF 6, 11. The creation of the Fair Fund is a necessary  
9 precursor to appointing a distribution agent, proposing a plan of distribution for court approval, and  
10 ultimately distributing any funds.

11 The Commission holds \$574,402.82 paid by the Defendant pursuant to the Final Judgment  
12 in an SEC-designated account with the United States Department of the Treasury (the “Fund”), and  
13 any accrued interest will be added to the Fund. An additional \$6,352.88 in post-judgment interest  
14 has been collected from the Defendant.

15 The Fair Fund will be comprised of disgorgement, prejudgment interest, and civil penalties  
16 collected pursuant to the Final Judgment. The SEC also requires that the Fair Fund include all post-  
17 judgment interest collected in this matter including future post-judgment interest amounts. The  
18 Court **GRANTS** request for the establishment of a Fair Fund with the inclusion of all post-judgment  
19 interest in the Fair Fund to ensure ultimate distribution of funds to the victims.

20 **II. THE COURT APPROVES THE APPOINTMENT OF TAX ADMINISTRATOR**  
21 **MILLER KAPLAN.**

22 The Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal  
23 Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through  
24 1.468B5. A tax administrator, on behalf of the Fair Fund, must be appointed and authorized to take  
25 all necessary steps to enable the Fair Fund to obtain and maintain the status of a taxable QSF.  
26 Further, the reasonable costs, fees, and other expenses incurred in the performance of the tax  
27 administrator’s duties must be paid from the Fair Fund.  
28

1 The SEC proposes the appointment of Miller Kaplan as Tax Administrator for the QSF.  
2 Miller Kaplan is one of the firms that the SEC has engaged to render tax consulting services on its  
3 behalf for QSFs established in administrative proceedings for calendar years 2022 through 2024 at  
4 agreed upon rates. Miller Kaplan has served as a tax administrator for numerous QSFs requiring  
5 compliance similar to the Fair Fund.

6 The Court **GRANTS** the appointment of Miller Kaplan as Tax Administrator of the QSF.  
7 With respect to the Fair Fund under this Court’s jurisdiction, Miller Kaplan will execute all income  
8 tax reporting requirements, including the preparation and filing of tax returns.

9 **III. THE COURT GRANTS THE SEC’S REQUEST TO PAY TAX OBLIGATIONS OF**  
10 **THE FAIR FUND AND TAX ADMINISTRATOR FEES AND EXPENSES**  
11 **WITHOUT FURTHER COURT APPROVAL.**

12 The SEC has requested that SEC staff be authorized to approve and arrange for the payment  
13 of all tax obligations of the QSF and reasonable related fees and expenses of the Tax Administrator  
14 from the Fair Fund without further Court order. The SEC contends that this will allow the SEC to  
15 meet tax payment deadlines, avoid the assessment of late payment penalties, and make timely  
16 payment to the Tax Administrator for services provided.

17 The SEC staff follows a rigorous process for reviewing and approving invoices before  
18 payment is made. The SEC’s Office of Distributions requires and reviews, in a multi-step process,  
19 detailed invoices from the Tax Administrator that describe the work performed, the billing rate, and  
20 the time expended on each task.

21 The SEC further commits to reporting all tax payments and tax administration fees and  
22 expenses in the final accounting of the Fair Fund once all Court authorized distributions have been  
23 completed. The Court **GRANTS** the SEC’s request.

24 **IV. CONCLUSION**

25 The SEC has submitted a limited motion that seeks only to establish a Fair Fund, including  
26 Post-Judgment Interest in the Fair Fund; appoint a Tax Administrator; and authorize the SEC to  
27 approve payment of the tax obligations of the Fair Fund and related fees and expenses of the Tax  
28 Administrator without further Court order. This motion is a precursor to appointing a distribution

1 agent and proposing a plan of distribution for court approval. The Court **GRANTS** the unopposed  
2 motion in its entirety.

3 This order resolves ECF 13.

4 **IT IS SO ORDERED.**

5 Dated: September 24, 2024

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8 TRINA L. THOMPSON  
9 United States District Judge  
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Northern District of California