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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16 **Southern Division**

17 **SECURITIES AND EXCHANGE**  
18 **COMMISSION**

19 Plaintiff,

20 v.

21 **ENERGY & ENVIRONMENTAL**  
22 **INVESTMENTS, LLC, et al.**

23 Defendants.

Case No. 23-cv-00338-FWS-JDE

**NOTICE OF UNOPPOSED  
MOTION AND UNOPPOSED  
MOTION FOR AN ORDER  
CREATING A FAIR FUND,  
APPOINTING A TAX  
ADMINISTRATOR, AND  
AUTHORIZING FUTURE  
PAYMENT OF TAX  
OBLIGATIONS, AND FEES  
AND EXPENSES**

Date: November 16, 2023

Time: 10:00 am

Crtrm: 10D

Judge: Hon. Fred W. Slaughter

24 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

25 PLEASE TAKE NOTICE that, on November 16, 2023, at 10:00 a.m. or as  
26 soon thereafter as possible, in Courtroom 10D of the United States District Court  
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28

1 for the Central District of California, Southern Division, located at 411 W. Fourth  
2 Street, Santa Ana, CA 92701, the Plaintiff, the Securities and Exchange  
3 Commission (the “SEC”) will move this Court for an Order granting the following  
4 relief: (1) establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes-  
5 Oxley Act of 2002 [15 U.S.C. § 7246(a)] (the “Fair Fund”); (2) appointing Heffler,  
6 Radetich & Saitta, LLP (“HRS”) as tax administrator (“Tax Administrator”) for the  
7 Fair Fund; and (3) authorizing the SEC to approve and direct the payment of taxes  
8 and related tax administration fees and expenses from the Fair Fund without  
9 further Court Order.

10 The SEC’s motion is based upon the accompanying Memorandum; the  
11 filings and record in this action; and any other evidence or argument the SEC may  
12 present in support of the motion. In order to oppose the motion, you must file with  
13 the Court and serve on the SEC a written opposition no later than October 26,  
14 2023.

15 This motion is made following the conference of counsel pursuant to Local  
16 Rule 7-3, which took place by electronic mail and telephonically between October  
17 5, 2023, and October 13, 2023. Counsel for the Defendants have informed the  
18 SEC that their clients do not object to the relief sought by this motion. **No party**  
19 **requests a hearing on the Motion.**

20  
21 Dated: October 17, 2023

22 Respectfully submitted,

23 /s/ Catherine E. Pappas  
24 CATHERINE E. PAPPAS (*pro hac*  
25 *vice*, ECF No. 25)  
26 Attorney for Plaintiff,  
27 **SECURITIES AND EXCHANGE**  
28 **COMMISSION**

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that, on October 17, 2023, I caused the  
3 foregoing Notice of Motion for an Order Creating a Fair Fund, Appointing a Tax  
4 Administrator, and Authorizing Future Payment of Tax Obligations and Fees and  
5 Expenses to be electronically filed with the clerk of the court for the U.S. District  
6 Court of the Central District of California, using the electronic case filing system  
7 of the court. The electronic case filing system sends a “Notice of Electronic Filing”  
8 to all attorneys of record who have consented in writing to accept this Notice as  
9 service of this document by electronic means. I further certify the I have caused  
10 copies of the filing to be sent by electronic mail to the following counsel, who  
11 represented the defendants in connection with their consents to judgment in this  
12 matter. See ECF Nos. 5-8.

13  
14 Robert Hartmann, Esq.  
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17 [bob@hartmannlawfirm.net](mailto:bob@hartmannlawfirm.net)  
*Counsel for Narysa Sardari Luddy*

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19 19800 MacArthur Blvd., Suite 300  
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22 *Counsel for Amir A. Sardari,*  
*Energy and Environmental Investments, LLC, and*  
*Energy and Environment, Inc.*

23  
24  
25 /s/Catherine E. Pappas

26 \_\_\_\_\_  
Catherine E. Pappas

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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17 **Southern Division**

18 **SECURITIES AND EXCHANGE**  
19 **COMMISSION**

20 Plaintiff,

21 v.

22 **ENERGY & ENVIRONMENTAL**  
23 **INVESTMENTS, LLC, et al.,**

24 Defendants.

Case No. 23-cv-00338-FWS-JDE

**MEMORANDUM IN SUPPORT**  
**OF MOTION FOR AN ORDER**  
**CREATING A FAIR FUND,**  
**APPOINTING A TAX**  
**ADMINISTRATOR, AND**  
**AUTHORIZING FUTURE**  
**PAYMENT OF TAX**  
**OBLIGATIONS AND FEES AND**  
**EXPENSES**

25 Plaintiff Securities and Exchange Commission (the “SEC”) respectfully  
26 submits this memorandum in support of its Motion for an Order with respect to  
27 funds under the Court’s jurisdiction in this case (the “Distribution Fund”): (i)  
28 creating a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002,  
15 U.S.C. § 7246(a); (ii) appointing Heffler, Radetich & Saitta, LLP (“HRS”), a

1 certified public accounting firm with an office in Philadelphia, PA, as tax  
2 administrator (“Tax Administrator”) of the Distribution Fund, to execute all  
3 income tax reporting requirements of the Distribution Fund; and (iii) authorizing  
4 the SEC to approve and arrange for the payment of the tax obligations of the  
5 Distribution Fund and related fees and expenses of the Tax Administrator from the  
6 Distribution Fund without further Court order. The creation of the Fair Fund will  
7 enable the SEC to distribute to harmed investors collected civil penalties along  
8 with collected disgorgement and prejudgment interest. The appointment of a tax  
9 administrator is necessary to ensure that the funds are maintained and distributed in  
10 compliance with federal and state tax laws.

### 11 Background

12 On February 24, 2023, the SEC filed a Complaint against Energy &  
13 Environmental Investments, LLC (“EE LLC”); Energy & Environment, Inc. (“EE  
14 Inc.”); Amir A. Sardari (“Sardari”); and Narysa Sardari Luddy (“Luddy”)  
15 (collectively, the “Defendants”), alleging that, from March 2011 through April  
16 2020, they perpetrated an offering fraud, raising \$9.3 million from over 200  
17 investors nationwide. ECF No. 1. The SEC alleged that EE LLC fraudulently  
18 offered and sold securities from a call center based in Orange County, California,  
19 claiming it would use the money to acquire and develop clean energy projects with  
20 an emphasis on the oil and gas sector. *Id.* at ¶ 5. The SEC alleged that, in fact, the  
21 Defendants spent investor funds on the call center’s payroll, marketing, personal  
22 expenses, and to pay other investors in a Ponzi-like scheme. *Id.* at ¶ 6. The SEC  
23 charged the Defendants with violations of the antifraud provisions of the Securities  
24 Act of 1933, 15 U.S.C. § 77a *et seq.*, and the Securities Exchange Act of 1934, 15  
25 U.S.C. § 78a *et seq.* *Id.* at ¶¶ 10, 11.

26 On May 19, 2023, the Court entered final judgments by consent against each  
27 of the Defendants (the “Final Judgments”), ordering, in relevant part:  
28

1 1. EE LLC to disgorge \$3,414,836.23 and pay prejudgment interest of  
2 \$977,948.76 and a civil penalty of \$1,035,909.00 within thirty (30) days of  
3 the entry of judgment, ECF No. 20;

4 2. EE Inc. to pay a civil penalty of \$200,000 within thirty (30) days of  
5 the entry of judgment, ECF No. 21; and

6 3. Luddy to disgorge \$1,009,191.86 and pay prejudgment interest of  
7 \$289,014.72 within thirty (30) days of the entry of judgment, ECF No. 23.<sup>1</sup>

8 Each final judgment ordering monetary relief provides that the SEC shall hold the  
9 funds and that the SEC may propose a plan to distribute collected funds pursuant to  
10 the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15  
11 U.S.C. § 7246(a). ECF Nos. 20 § V., 21 § V, and 23 § V.

12 The SEC currently holds \$550,000.00 paid by the Defendants pursuant to the  
13 Final Judgments, which includes \$200,000 in paid civil penalty (the “Distribution  
14 Fund”). The Distribution Fund is held in an SEC-designated account with the  
15 United States Department of the Treasury. Additional collections; any funds  
16 directed to the Distribution Fund pursuant to Court or SEC order, or otherwise; and  
17 any interest accrued; will be added to, and become a part of, the Distribution Fund.

### 18 **Creation of a Fair Fund**

19 The creation of a Fair Fund is a precursor to proposing for Court approval a  
20 plan to distribute collected civil penalties along with collected disgorgement and  
21 prejudgment interest, to victims of the violations of the securities laws. Harm to  
22 investors in this case may exceed \$8 million. In order to maximize the relief  
23 available to harmed investors, the SEC respectfully requests that the Court  
24 establish a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002  
25

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26 <sup>1</sup> The final judgment entered by consent against Sardari did not impose any monetary  
27 sanctions. ECF No. 22.

1 [15 U.S.C. § 7246] so that the \$200,000 in civil penalties collected in this case can  
2 be distributed along with the \$350,000 in collected disgorgement.

3 Section 308(a) provides, in relevant part:

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

13 15 U.S.C. § 7246(a). The SEC brought this action under the federal securities laws  
14 and this Court has ordered payment of civil penalties exceeding \$1.2 million in  
15 addition to disgorgement, some of which has been collected and is being held by  
16 the SEC. Section 308(a)'s requirements have thus been satisfied, and the creation  
17 of a Fair Fund for the benefit of harmed investors is appropriate so that collected  
18 civil penalties can be distributed to more fully compensate harmed investors.

### 19 **Appointment of a Tax Administrator**

20 The Distribution Fund is a Qualified Settlement Fund ("QSF") under Section  
21 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related  
22 regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A tax administrator should  
23 be appointed and authorized to take all necessary steps to enable the Distribution  
24 Fund to obtain and maintain the status of a taxable QSF. The reasonable costs,  
25 fees, and other expenses incurred in the performance of the tax administrator's  
26 duties will be paid from the Distribution Fund.

27 The SEC recommends the appointment of HRS as Tax Administrator for the  
28 QSF. HRS is experienced in the taxation of QSFs and has agreed to reasonable

1 fees for its services.<sup>2</sup> In summary, HRS will provide the following services for a  
2 fixed fee of \$2,000, or \$900 if the QSF holds \$120,000 or less or is opened and  
3 closed in the same year:

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

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

17 HRS has served as a tax administrator for several QSFs requiring  
18 compliance similar to the Distribution Fund. The SEC staff respectfully requests  
19 that the Court appoint HRS as Tax Administrator for the Distribution Fund so that  
20

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21  
22 <sup>2</sup> HRS is one of the firms that the SEC has engaged to render tax consulting  
23 services on its behalf for QSFs established in administrative proceedings for  
24 calendar years 2022 through 2024 at agreed upon rates. *See* Omnibus Order  
25 Directing the Engagement of Two Tax Administrators for Appointment on a Case-  
26 by-Case Basis in Administrative Proceedings that Establish Distribution Funds,  
27 Exchange Act Rel. No. 94845 (May 4, 2022). As part of HRS's engagement with  
28 the SEC, HRS has agreed to render those same services at the agreed upon rates 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.

1 it can execute all income tax reporting requirements of the Distribution Fund,  
2 including the preparation and filing of tax returns.

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

5 In an effort to meet tax payment deadlines, avoid the assessment of late  
6 payment penalties, and make timely payment to the Tax Administrator for services  
7 provided, the SEC further requests that SEC staff be authorized to approve and  
8 arrange for the payment of all tax obligations of the QSF and reasonable related  
9 fees and expenses of the Tax Administrator from the Distribution Fund without  
10 further Court order. The SEC staff follows a rigorous process for reviewing and  
11 approving invoices before payment is made. The SEC's Office of Distributions  
12 requires and reviews, in a multi-step process, detailed invoices from the Tax  
13 Administrator that describe the work performed, the billing rate, and the time  
14 expended on each task.

15 If the Court authorizes the SEC staff to approve and arrange for the payment  
16 of taxes and related fees and expenses of the Tax Administrator without further  
17 Court order, the SEC staff will use its expertise in distributions and knowledge of  
18 this specific distribution to review all proposed charges. The SEC staff will  
19 approve and arrange for payment only of appropriate and properly documented  
20 taxes and related fees and expenses of the Tax Administrator. Authorizing such  
21 approval and arrangement of payment ensures both timely and efficient payment of  
22 taxes, thereby reducing the risk of late tax payments and penalties; and timely  
23 payment of the related fees and expenses of the Tax Administrator. All tax  
24 payments and tax administration fees and expenses will be reported to this Court in  
25 the final accounting of the Distribution Fund once all Court authorized  
26 distributions have been completed.

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**Conclusion**

For all the foregoing reasons, the SEC respectfully requests that this Court enter an Order substantially in the form of that included with the Motion and grant such other relief as the Court deems just and proper.

**Certificate of Compliance Pursuant to L.R. 11-6.2**

The undersigned, counsel of record for Plaintiff, Securities and Exchange Commission, certifies that this brief contains 1820 words, which complies with the word limit of L.R. 11-6.1.

Respectfully submitted,

/s/ Catherine E. Pappas  
CATHERINE E. PAPPAS (*pro hac*  
*vice*, ECF No. 25)  
Attorney for Plaintiff,  
SECURITIES AND EXCHANGE  
COMMISSION

Dated: October 17, 2023

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
Southern Division**

SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

v.

ENERGY & ENVIRONMENTAL  
INVESTMENTS, LLC, et al.

Defendants.

Case No. 23-cv-00338-FWS-JDE

**[PROPOSED] ORDER CREATING  
A FAIR FUND, APPOINTING A  
TAX ADMINISTRATOR, AND  
AUTHORIZING FUTURE  
PAYMENT OF TAX  
OBLIGATIONS, AND FEES AND  
EXPENSES**

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (“SEC”) for an Order creating a Fair Fund, appointing Heffler, Radetich & Saitta, LLP (“HRS”) as tax administrator (“Tax Administrator”), and authorizing future payment of the tax obligations and related fees and expenses of the Tax Administrator (the “Motion”), hereby finds good cause and the Motion is **GRANTED.**

**IT IS HEREBY ORDERED THAT:**

**Fair Fund**

1. A Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7246] for the 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**

1  
2           2.     HRS is appointed Tax Administrator to execute all income tax  
3 reporting requirements, including the preparation and filing of tax returns, for the  
4 Fair Fund

5           3.     HRS shall be designated the Tax Administrator of the Fair Fund,  
6 pursuant to Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. §  
7 468B(g), and related regulations, and shall satisfy the administrative requirements  
8 imposed by those regulations, including but not limited to (a) obtaining a taxpayer  
9 identification number, (b) filing applicable federal, state, and local tax returns and  
10 paying taxes reported thereon out of the Fair Fund, and (c) satisfying any  
11 information, reporting, or withholding requirements imposed on distributions from  
12 the Fair Fund. Upon request, the Tax Administrator shall provide copies of any  
13 filings to the SEC’s counsel of record.

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

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

1           6.     The SEC is authorized to approve and arrange payment of all tax  
2 obligations owed by the Fair Fund and the fees and expenses of the Tax  
3 Administrator directly from the Fair Fund without further approval of this Court.  
4 All payments for taxes and the fees and expenses of the Tax Administrator shall be  
5 reported to the Court in a final accounting.

6  
7 **IT IS SO ORDERED.**

8 Dated: \_\_\_\_\_, 2023

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11 HON. FRED W. SLAUGHTER  
12 United States District Court Judge  
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