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

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

19 **Plaintiff,**

20 **v.**

21 **RENEW SPINAL CARE,**
22 **INC., et al.**

23 **Defendants.**

24 **Case No. 2:20-cv-03676-RGK-PVC**

25 **Notice of Unopposed Motion and**
26 **Motion for an Order Appointing a**
27 **Tax Administrator, and**
28 **Authorizing Future Payment of**
Tax Obligations and Fees and
Expenses

Date: November 13, 2023
Time: 9:00 a.m.
Ctrm: 850
Judge: Hon. R. Gary Klausner

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiff, the Securities and Exchange Commission (the “SEC”) will move this Court, on November 13, 2023, at 9:00

1 a.m. or as soon thereafter as possible, in Courtroom 850 of the United States
2 District Court for the Central District of California, Western Division, located at
3 350 W. 1st Street, Suite 4311, Los Angeles, CA 90012-4565, for an Order
4 granting the following relief: (1) appointing Heffler, Radetich & Saitta, LLP
5 (“HRS”), a certified public accounting firm with an office in Philadelphia, PA, as
6 tax administrator (“Tax Administrator”) of all funds under the jurisdiction of this
7 Court (the “Distribution Fund”), to execute all income tax reporting requirements
8 of the Distribution Fund; and (2) authorizing the SEC to approve and arrange for
9 the payment of the tax obligations of the Distribution Fund and related fees and
10 expenses of the Tax Administrator from the Distribution Fund without further
11 Court order. The grounds for the motion are set forth in the accompanying
12 Memorandum in Support.

13 This motion is made following the conference of counsel pursuant to Local
14 Rule 7-3, which took place by electronic mail and telephonically between
15 Wednesday, October 4, 2023, and Tuesday, October 10, 2023. Counsel for the
16 Defendants have informed the SEC that their clients do not object to the relief
17 sought by this motion and waive oral argument. **No party requests a hearing on**
18 **the Motion.**

19
20
21 Dated: October 12, 2023

Respectfully submitted,

22 /s/ Catherine E. Pappas

23 Catherine E. Pappas (*pro hac vice*, ECF No. 17)
24 Kathryn C. Wanner (Cal. Bar No. 269310), Local
25 Counsel

26 Attorneys for Plaintiff,
27 SECURITIES AND EXCHANGE COMMISSION

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Case No. 2:20-cv-03676-RGK-PVC

MEMORANDUM IN SUPPORT
OF THE SEC’S UNOPPOSED
MOTION FOR AN ORDER
APPOINTING A TAX
ADMINISTRATOR AND
AUTHORIZING FUTURE
PAYMENT OF TAX
OBLIGATIONS AND FEES AND
EXPENSES

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22
23
24 In anticipation of moving this Court to approve a plan of distribution, the
25 Plaintiff Securities and Exchange Commission (the “SEC” or the “Commission”)
26 respectfully submits this memorandum in support of its motion for an Order with
27 respect to funds under the Court’s jurisdiction in this case (the “Distribution Fund”):
28

1 (i) appointing Heffler, Radetich & Saitta, LLP (“HRS”), a certified public
2 accounting firm with an office in Philadelphia, PA, as tax administrator (“Tax
3 Administrator”) of the Distribution Fund, to execute all income tax reporting
4 requirements of the Distribution Fund; and (ii) authorizing the SEC to approve and
5 arrange for the payment of the tax obligations of the Distribution Fund and related
6 fees and expenses of the Tax Administrator from the Distribution Fund without
7 further Court order. The appointment of a tax administrator is necessary to ensure
8 that the Distribution Fund is maintained and distributed in compliance with federal
9 and state tax laws; the fees, expenses, and tax payment authorization will ensure
10 prompt and timely payment of the obligations of the Distribution Fund.

11 Counsel for the Defendants have informed the undersigned that their clients
12 do not oppose the relief sought by the proposed order, and that they waive oral
13 argument.

14 **I. BACKGROUND**

15 On April 22, 2020, the SEC filed a Complaint against Renew Spinal Care, Inc.
16 (“Renew”); Laserscopic Medical Clinic, LLC (“Laserscopic”); Joe Samuel
17 Bailey (“Bailey”); Barry Edward Mitchell (“Mitchell”); Laurence Grossnickle
18 (“Grossnickle”); and Charles Clement Goubert, Jr. (“Goubert,” and collectively with
19 the others, the “Defendants”). The SEC alleged that, between February 2016 and
20 June 2018, the Defendants raised approximately \$15 million from at least 200
21 investors in thirteen fraudulent unregistered securities offerings that promised to use
22 investor funds to establish and market twenty-nine Minimally Invasive Spinal
23 Surgery (“MISS”) centers across the country. ECF No. 1, ¶4. The SEC alleged that
24 the offerings were fraudulent in multiple respects, including that Renew never
25 established a single investor-funded, Renew-branded clinic. *Id.*, ¶5. The SEC
26 further alleged that Bailey, through Renew and Laserscopic, misused nearly \$5
27 million of investor funds, and paid success marketing fees to investors using loans

1 and the funds of other investors. Id. The SEC charged the Defendants, variously,
2 with violations of Sections 5(a), 5(c), 17(a)(1), 17(a)(2), and 17(a)(3) of the
3 Securities Act of 1933 (15 U.S.C. §§77(3), 77q(a)(1)-(3)), Section 10(b) of the
4 Securities Exchange Act of 1934 (15 U.S. C. §78j(b)) and Rules 10b-5(a), (c)
5 thereunder (17 C.F.R. §§240.10b-5(a), (c)). Id., ¶ 7.

6 On May 12, 2020, upon consent of the Defendants, the Court entered final
7 judgment against all of the Defendants. ECF No. 15. In relevant part, the Court
8 ordered:

- 9 • Renew, Laserscopic, and Bailey, jointly and severally, to pay
10 disgorgement of \$4,950,000 and prejudgment interest of \$410,476;
11 and each to pay a civil penalty in the amount of \$189,427;
- 12 • Mitchell to pay disgorgement of \$634,123.23, prejudgment interest
13 of \$61,230.72, and a civil penalty of 189,427;
- 14 • Grossnickle to pay disgorgement of \$210,031.09, prejudgment
15 interest of \$20,280.52, and a civil penalty of \$189,427; and
- 16 • Goubert to pay disgorgement of \$69,089.17, prejudgment interest
17 of \$6,671.22, and a civil penalty of \$189,427.

18 The SEC holds over \$78,000 paid by the Defendants pursuant to the Final
19 Judgment, comprising the Distribution Fund. The Distribution Fund is held in an
20 SEC-designated account with the United States Department of the Treasury and will
21 be distributed to harmed investors pursuant to a distribution plan to be approved by
22 this Court. Additional collections; accrued interest; and additional funds directed to
23 the Distribution Fund by Court or SEC order, agreement, or otherwise; shall be
24 added to, and become a part of, the Distribution Fund.

1 fixed fee of \$2,000, or \$900 if the QSF holds \$120,000 or less or is opened and
2 closed in the same year:

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

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

16 HRS has served as a tax administrator for several QSFs requiring
17 compliance similar to the Distribution Fund. The SEC staff respectfully requests
18 that the Court appoint HRS as Tax Administrator for the Distribution Fund so that
19 it can execute all income tax reporting requirements of the Distribution Fund,
20 including the preparation and filing of tax returns.

21 B. **Authorization to Pay the Tax Obligations of the Distribution Fund and**
22 **Tax Administrator Fees and Expenses**

23 In an effort to meet tax payment deadlines, avoid the assessment of late
24 payment penalties, and make timely payment to the Tax Administrator for services
25 provided, the SEC further requests that SEC staff be authorized to approve and
26 arrange for the payment of all tax obligations of the QSF and reasonable related fees
27 and expenses of the Tax Administrator from the Distribution Fund without further
28

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

5 If the Court authorizes the SEC staff to approve and arrange for the payment
6 of taxes and related fees and expenses of the Tax Administrator without further Court
7 order, the SEC staff will use its expertise in distributions and knowledge of this
8 specific distribution to review all proposed charges. The SEC staff will approve and
9 arrange for payment only of appropriate and properly documented taxes and related
10 fees and expenses of the Tax Administrator. Authorizing such approval and
11 arrangement of payment ensures both timely and efficient payment of taxes, thereby
12 reducing the risk of late tax payments and penalties; and timely payment of the
13 related fees and expenses of the Tax Administrator. All tax payments and tax
14 administration fees and expenses will be reported to this Court in the final
15 accounting of the Distribution Fund once all Court-authorized distributions have
16 been completed.

17 **III. CONCLUSION**

18 For all the foregoing reasons, the SEC respectfully requests that this Court
19 enter the attached proposed Order and grant such other relief as the Court deems just
20 and proper.

1
2 **UNITED STATES DISTRICT COURT**
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11 **Defendants.**

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[PROPOSED] ORDER
APPOINTING A TAX
ADMINISTRATOR AND
AUTHORIZING FUTURE
PAYMENT OF TAX
OBLIGATIONS AND FEES AND
EXPENSES

12
13 The Court, having reviewed the Motion of Plaintiff Securities and Exchange
14 Commission (“SEC”) for an Order appointing Heffler, Radetich & Saitta, LLP
15 (“HRS”) as tax administrator (“Tax Administrator”) and authorizing payment of
16 the tax obligations and related fees and expenses of the Tax Administrator (the
17 “Motion”); and for good cause shown;

18 **IT IS HEREBY ORDERED THAT:**

19 1. The Motion is **GRANTED**.

20 **Tax Administrator**

21 2. HRS is appointed Tax Administrator to execute all income tax reporting
22 requirements, including the preparation and filing of tax returns, for all funds under
23 the Court’s jurisdiction in this case (the “Distribution Fund”).

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

6 4. The Tax Administrator shall, at such times as the Tax Administrator
7 deems necessary to fulfill the tax obligations of the Distribution Fund, submit a
8 request to the SEC's counsel of record for payment from the Distribution Fund of
9 any tax obligations of the Distribution Fund.

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

15 6. The SEC is authorized to approve and arrange payment of all tax
16 obligations owed by the Distribution Fund and the fees and expenses of the Tax
17 Administrator directly from the Distribution Fund without further approval of this
18 Court. All payments for taxes and the fees and expenses of the Tax Administrator
19 shall be reported to the Court in a final accounting.

20
21 **IT IS SO ORDERED.**

22
23 Dated: _____, 2023

24
25 _____
26 The Honorable R. Gary Klausner
27 United States District Court Judge