No. 25-7107

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

THOMAS F. CASEY AND GOLDEN GENESIS, INC.,

Defendants-Appellants.

On Appeal from the United States District Court
For the Southern District of California
No. 3:22-cv-00483-RSH-AHG
Hon. Robert S. Huie

APPELLANTS' OPENING BRIEF

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1-1, Appellant Golden Genesis, Inc. states that there is no parent corporation or any publicly held corporation that owns 10% or more of its stock.

Date: May 13, 2026

BONA LAW PC

s/Luke Hasskamp
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Attorney for Appellants Thomas F. Casey and Golden Genesis, Inc.

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INTRODUCTION

The district court tried a securities fraud case on a single disputed element—scienter—and admitted evidence designed to show the jury that Appellant Tom Casey was the kind of person who commits securities fraud, while simultaneously barring Casey from offering his genuine, transaction-based belief that the instruments were not securities. The result was a trial in which the jury's assessment of intent was distorted by prior-act evidence while Casey's principal good-faith explanation was curtailed.

The question for the jury was whether Casey, the CEO of a startup blood-plasma collection company called Golden Genesis, acted with the knowing or reckless intent required for securities fraud. Representing himself pro se at trial, Casey tried to maintain that he believed in good faith, based on the structure of the transactions, that the notes were commercial obligations rather than investment securities, and that any discrepancies in the security arrangement reflected genuine confusion about a complex financing structure a third party had arranged, not deliberate deception.

Two evidentiary rulings operated together in a manner that materially affected the jury's consideration of scienter. On one side, the district court admitted evidence of a prior SEC enforcement action against Casey—an action arising decades earlier from different circumstances—under the purported rubric of showing knowledge or absence of mistake. Yet in closing argument, the SEC pressed the prior action directly, urging the jury to use it as evidence bearing on Casey's knowledge and intent in a manner that substantially risked propensity reasoning.

On the other side, the district court excluded evidence Casey offered to explain his state of mind: his good-faith belief, grounded in the structure of the transactions, that the notes were secured commercial loans rather than securities, and the Nevada state court orders that reinforced the plausibility of that belief. The court excluded this evidence as legally immaterial, but in doing so conflated Casey's factual understanding of how the transactions were structured, which bears directly on scienter, with the separate legal determination of whether the instruments qualified as securities under *Reves*. Those are distinct inquiries.

These were not independent errors affecting separate aspects of the case. They were mirror images aimed at the same target: the jury's assessment of what Casey knew and believed when he arranged the financing the SEC characterized as fraud. The result was a trial in which the jury heard evidence of Casey's prior SEC settlement while being denied evidence of his actual understanding of the transactions at issue. Casey was left without the defense the district court had itself identified as raising a genuine factual dispute on summary judgment.

Two additional errors compound the prejudice: the court imposed a civil penalty of more than $3.5 million on Golden Genesis without individualized *Murphy*-factor analysis, and it determined on summary judgment that the notes were securities by resolving genuinely disputed facts against Casey.

For these reasons, this Court should reverse the judgments against Casey and Golden Genesis, vacate the penalties imposed, and remand for further proceedings.

JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction under 15 U.S.C. §§ 77v(a) and 78aa(a) and 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291.

On March 25, 2024, the district court granted partial summary judgment against Casey and Golden Genesis. 1-ER-50. On June 24, 2025, following a five-day jury trial, the jury found Casey liable on the SEC's remaining claims. 1-ER-44. On September 10, 2025, the court entered final judgment against Casey. 1-ER-28. On September 11, 2025, the court entered default judgment and final judgment against Golden Genesis. 1-ER-2, 1-ER-8. Those judgments disposed of all claims and are final orders appealable under 28 U.S.C. § 1291.

Because the SEC is a party, Appellants had sixty days to appeal. Fed. R. App. P. 4(a)(1)(B). Casey and Golden Genesis filed their notice of appeal on November 7, 2025, 57 days after the last judgment. 5-ER-1021. The appeal is timely.

STATUTORY AND REGULATORY AUTHORITIES

All relevant statutory authorities appear in the Addendum to this brief.

ISSUES PRESENTED

I. Did the district court abuse its discretion by admitting evidence of a prior SEC enforcement action against Casey where the purported non-propensity purpose was not established by sufficient proof and the risk of unfair prejudice substantially outweighed any probative value? And did that error, considered cumulatively with the simultaneous exclusion of Casey's good-faith defense evidence, require reversal because the erroneously admitted evidence went to the only element in dispute and the jury was denied evidence that would have countered it?

II. Did the court abuse its discretion by excluding Casey's good-faith belief—based on the structure of the transactions—that the promissory notes were commercial obligations rather than securities, where that belief was directly material to scienter, the only disputed element, and the exclusion rested on a legal premise that *Tarallo* does not support: that a defendant's factual understanding of how a transaction was structured is irrelevant because securities classification is a legal question? And did the additional exclusion of Nevada state court orders—in which Nevada courts had analyzed these specific

promissory notes and found them outside Nevada's securities laws—compound that error, where those orders were relevant to Casey's state of mind independent of their legal effect on the federal *Reves* classification?

III. Did the court err in imposing a $3,562,251 civil penalty against Golden Genesis by applying the *Murphy* factors without conducting an individualized analysis of Golden Genesis as a distinct respondent? The court's analysis consisted entirely of findings made against Casey that were then imputed to the entity, without any independent assessment of Golden Genesis's financial condition, capacity to pay, or distinct culpability as a separate respondent.

IV. Did the court err in granting summary judgment on the *Reves* securities classification where genuinely disputed facts bearing on the reasonable-expectations factor and the alternative-regulatory-scheme factor were resolved against the non-moving party? On the reasonable-expectations factor, the court declared a neutral result rather than crediting the brochure's express disclaimer that the presentation did not imply a securities offering. On the alternative-regulatory-scheme factor, the court declined to treat Nevada state court

decisions as evidence of a cognizable regulatory scheme, when those decisions were evidence creating a genuine factual dispute.

STATEMENT OF THE CASE

A. The Investment Arrangement and the Promissory Note Structure

Casey is the founder, chairman, and chief executive officer of Golden Genesis, a Nevada corporation he incorporated in March 2016 to pursue a blood-plasma anti-aging therapy. Unable to attract venture capital funding, Casey turned to an alternative financing arrangement. In 2016, he entered into a consulting agreement with Retire Happy, LLC, a Las Vegas-based company whose principal, Julie Minuskin, recruited retirees as investors through Provident Trust Group, LLC, a self-directed IRA custodian. 4-ER-799; 2-ER-241 ¶¶ 122–125. Under the arrangement, Retire Happy identified prospective investors, directed them to open self-directed IRAs with Provident Trust, and channeled those retirement funds to Golden Genesis through promissory notes. 2-ER-232 ¶ 66; 2-ER-241 ¶¶ 122–125. Golden Genesis agreed to pay Retire Happy a commission equal to 12% of the gross amount raised, which it did not disclose to investors. 4-ER-799–800; 2-ER-232 ¶ 66.

Casey prepared a ten-page promotional brochure for Golden Genesis and provided it to Minuskin in April 2016 to solicit investors. 2-ER-231 ¶¶ 59–60; 4-ER-801–11. The brochure represented that investors would receive 10% annual interest payable monthly, that principal would be repaid in two years, and that the loans would be "secured by a promissory note and a UCC-1 Financing Statement on all assets of Golden Genesis, Inc., including equipment, inventory . . . receivables, intellectual property, patents, and bank accounts." 4-ER-808. Neither Casey nor Golden Genesis ever filed a UCC-1 financing statement on the assets of Golden Genesis. 2-ER-242 ¶¶ 128–129. Casey included the UCC-1 language in the brochure because at the time he believed the notes would be secured by Golden Genesis's assets. 2-ER-231 ¶ 62. The brochure was the only document Casey provided to Minuskin about Golden Genesis, and Casey was not aware of what representations Retire Happy made to prospective investors. 2-ER-231 ¶¶ 60–61.

For the promissory notes, Retire Happy, not Golden Genesis, drafted the note template and provided the notes to Golden Genesis as PDFs it could sign or not sign. 2-ER-228 ¶¶ 38–40. The notes named

Provident Trust Group as "Holder" and provided: "This note is secured by a UCC-1 Financing Statement on all assets of Holder, including, but not limited to, equipment, inventory, receivables, intellectual property, patents, and bank accounts." 5-ER-963–65; 5-ER-1006–11; 5-ER-1012-17. When Casey saw the notes with Provident named as the secured party, the parties jointly stipulated, "he was in a state of shock. He did not look a gift horse in the mouth," and believed thereafter that "Provident, not Golden Genesis, was responsible for ensuring that the security interest on the Golden Genesis Promissory Notes was made available or documented." 2-ER-232 ¶ 63.

The note structure Casey encountered was not novel to Provident. In January and February 2015—more than a year before Golden Genesis was incorporated—Provident executed two promissory notes as Holder for ADOMANI Inc., a startup electric vehicle company, using the identical form: Provident Trust named as Holder at its Las Vegas address, "interest payable monthly," and a security interest clause stating "This note is secured by a UCC-1 Financing Statement on all assets of Holder." 5-ER-960–62; 5-ER-966–68. DiRicco, who had arranged the ADOMANI financing through Retire Happy, showed

Casey the ADOMANI note at their March 2016 meeting and suggested Casey pursue the same arrangement for Golden Genesis. 4-ER-612:19–614:9; 4-ER-632:3–636:1. Casey's belief in the Provident collateral structure was grounded in a concrete, already-executed transaction that Provident had authorized, signed, and processed for a different borrower through the same Retire Happy channel.

Between April 2016 and August 2019, Golden Genesis raised approximately $10.3 million from 238 investors through 238 promissory notes. 5-ER-914–27. Golden Genesis had no revenues in 2016 or 2017 and wholly inadequate revenues in 2018 and 2019. 4-ER-812–819. Casey understood that Golden Genesis's only ability to pay lenders was through the loans that it received. 1-ER-68; 2-ER-242 ¶ 131. During that period, approximately $2.1 million of investor funds was used to make interest payments to earlier investors. 5-ER-928–37. Casey also paid himself, his then-girlfriend, and her son salaries totaling approximately $1.3 million from investor funds over those four years, including $836,269 to Casey. 5-ER-942–43; 4-ER-720:12–721:10. DiRicco, without authorization from investors, withdrew $2.5 million of investor funds in January 2017, purportedly for an outside investment.

4-ER-820–22. The scheme collapsed in late 2018 when Retire Happy could no longer find new investors. Investors lost over $8 million in principal. 5-ER-914–27; 5-ER-928–37.

Casey also did not mention his own prior regulatory history. In 1998, the SEC filed a civil action against Casey arising from his tenure as chairman and CEO of Audre Recognition Systems, Inc., a document imaging and optical character recognition software company. 4-ER-853–65; 5-ER-944–54; 2-ER-240 ¶ 119. The complaint alleged Casey had taken an undisclosed personal loan of $908,000 from Audre and signed materially false SEC filings. 4-ER-853–64; 2-ER-240 ¶ 119. Casey, without admitting or denying the allegations, consented to a permanent injunction against future violations of the antifraud provisions of the Securities Act and the Exchange Act. 4-ER-865–70; 2-ER-240 ¶ 120. The 1998 consent also required Casey not to publicly deny the complaint's allegations. 4-ER-869 ¶ 11. Bound by that clause, Casey omitted Audre's name from the Golden Genesis brochure, though he touted his experience at the company in the executive management section. 4-ER-645:8–20; 4-ER-801–11. Casey also did not mention DiRicco's two federal criminal convictions or his resignation from the

California State Bar with disciplinary charges pending. 2-ER-235 ¶¶ 83–87; 3-ER-419:20–421:19.

Nevada state courts adjudicated parallel investor actions against Casey and Golden Genesis arising from the same promissory notes. In January 2022, the Eighth Judicial District Court of Nevada dismissed one such action against Casey for lack of personal jurisdiction. 5-ER-983–95. The same court also dismissed claims against Golden Genesis for lack of standing, finding that Provident Trust, as Holder of the notes, was the real party in interest. 5-ER-996–1005. A separate Nevada state court applied the Nevada Uniform Securities Act to the Golden Genesis notes and found them exempt from that Act's registration requirements. 5-ER-969–82. These orders became the subject of MIL No. 4 and were excluded from trial.

B. The Summary Judgment Ruling

The SEC filed this action on April 8, 2022, asserting claims for securities fraud under Section 10(b) of the Exchange Act and Rule 10b-5 (Claim One), Section 17(a) of the Securities Act (Claim Three), and unregistered sale of securities under Section 5 of the Securities Act

(Claim Seven). 2-ER-257–89. The SEC moved for summary judgment on all three claims. 2-ER-253–56.

On March 25, 2024, the district court granted summary judgment on Claim Seven and denied it on Claims One and Three. 1-ER-50–71. On the threshold question of whether the promissory notes were securities, the court applied the family-resemblance test of *Reves v. Ernst & Young*, 494 U.S. 56 (1990), found Factors 1 and 2 favored the SEC, declared Factor 3 “neutral” rather than resolving the genuine evidentiary tension in Casey’s favor, and found Factor 4 insufficient because the Nevada adjudications did not constitute a comprehensive alternative regulatory framework. 1-ER-58–61. The court concluded the notes were securities as a matter of law and granted summary judgment on Claim Seven. 1-ER-62, 69.

On the antifraud claims, the court denied summary judgment because scienter was genuinely disputed. As to the UCC-1 question, the court found “a reasonable juror might conclude that Casey believed that retirees . . . would be told something consistent with the notes that the retirees thereafter signed—namely, that the notes were secured by the assets of Provident.” 1-ER-67. Scienter remained a question for the jury.

C. Counsel Withdrawal, Default of Golden Genesis, and Pretrial MIL Rulings

Casey and Golden Genesis were represented by the same law firm, Markun Zusman & Compton LLP. In December 2024, that firm moved to withdraw, citing Casey's termination of the representation. 2-ER-212–220. The court granted withdrawal on January 29, 2025, and set a February 10, 2025 deadline for Golden Genesis to retain new counsel. 2-ER-203. No attorney appeared for Golden Genesis, so the court struck Golden Genesis's answer and the clerk entered default against it. 1-ER-46–49. Casey proceeded pro se.

On April 3, 2025, the court held a combined final pretrial conference and motions in limine hearing. 3-ER-322–40. MIL No. 1 sought admission under Rule 404(b)(2) of three exhibits relating to the 1998 Audre enforcement action: the SEC's complaint (4-ER-853–64), Casey's consent (4-ER-865–70), and the final judgment of permanent injunction (4-ER-871–74). The SEC argued these materials showed Casey's knowledge that his Golden Genesis conduct constituted securities fraud, and that his omission of Audre's name from the Golden Genesis brochure was itself a material omission bearing on scienter. The SEC also argued investors would have declined to invest had they

known of Casey's regulatory history. The court granted MIL No. 1. 3-ER-324:18–325:7.

MIL No. 3 sought to preclude Casey from asserting a good-faith defense that he did not believe the promissory notes were securities. The court granted the motion: "I'm going to grant SEC Motion In Limine No. 3. Specifically I'm precluding Mr. Casey from arguing to the jury that he did not believe that the notes were securities. I've already determined as a matter of law that they are securities. So whether Mr. Casey believed that they were securities or didn't believe they were securities, that's irrelevant." 3-ER-332:2–8, 335:3–6. The court acknowledged it was "a separate question" whether Casey believed the notes were secured by the UCC-1, but did not preserve Casey's ability to develop that transactional-understanding defense at trial. 3-ER-332:9–11.

MIL No. 4 sought exclusion of the three Nevada state court orders Casey had listed as defense exhibits. The court excluded all three on hearsay grounds and on the basis that the securities classification was law of the case. 3-ER-336:23–337:11.

D. The Trial

Trial commenced on June 16, 2025. Casey appeared pro se. The SEC's case-in-chief occupied Days 1 through 3 and the morning of Day 4. The SEC called three investor witnesses, each of whom testified they: (i) had invested retirement savings in reliance on representations of security and ten-percent returns; (ii) had not been told about the twelve-percent commissions paid to Retire Happy; (iii) would not have invested had they known of Casey's and DiRicco's regulatory histories; and (iv) lost their principal. 3-ER-350–412; 3-ER-422–499; 3-ER-552–590; 4-ER-591–610. One witness testified that after interest payments stopped she called Casey to ask whether he was running a Ponzi scheme, and he denied it. 3-ER-578:7–22.

Kathryn Campbell, Vice President of Provident Trust, testified Provident: (i) was a passive custodian holding title to IRA investments solely for tax purposes; (ii) did not draft promissory notes; (iii) did not agree to secure the Golden Genesis notes with its own assets; and (iv) considered the notes unsecured in the absence of a filed UCC-1. 3-ER-500–554.

The SEC's direct examination of Casey consumed most of Days 2 and 3. Under examination, Casey acknowledged the UCC-1 security language in the brochure was inconsistent with Golden Genesis's actual situation. 4-ER-626–630. He acknowledged he had done nothing to disclose the 12% commissions to investors. 4-ER-637–643. During Day 3, the SEC moved to admit Exhibits 101, 103, and 104 as certified public records. 4-ER-646:17–25. The SEC's counsel then examined Casey on each document before the jury, reading the consent's paragraph 11 no-public-denial clause into the record. 4-ER-648:7–23. The Audre Form 8-K in which the company's auditors, Coopers & Lybrand, announced they could no longer rely on management's representations, was also admitted. 4-ER-652–53; 5-ER-944–54.

Forensic accountant Duane Campbell of FTI Consulting testified as the SEC's expert on Days 3 and 4. He reviewed Golden Genesis's financial records and testified about its revenues, interest payments, and expenses. 4-ER-667–748; 5-ER-914–934.

The effect of MIL No. 3 was felt throughout Casey's examination and closing argument. At the April 3 hearing, the court had made clear Casey could not argue to the jury that he never believed the notes were

securities: "If what you're saying from your mindset is, 'I didn't believe they were securities,' 'I don't believe they are securities,' the answer is no. That's not relevant to the issues in dispute for trial." 3-ER-334:9–14. That preclusion carried forward to trial. During the Day 4 jury instructions conference, Casey sought to revisit the issue but the ruling stood. Casey also sought to argue the circumstances of the 1998 consent but was told that argument was limited to what was in the evidence at trial. 4-ER-662–65.

After the SEC rested, Casey made a Rule 50 motion, which the court denied. 4-ER-748–49; 4-ER-758.

In its closing argument, SEC's counsel devoted substantial time to the Audre enforcement materials. He told the jury the reason the 1998 final judgment carried no monetary penalty was that Casey had submitted a financial affidavit claiming he lacked assets to pay. 4-ER-762:4–8. He argued the reason Casey had omitted Audre's name from the Golden Genesis brochure was specifically to prevent investors from finding the prior enforcement action. 4-ER-760:5–761:25. He also used the January 2018 email (5-ER-885–94)—in which Casey had written that the notes were "secured by . . . a UCC-1 on all assets of GG"—to

counter the Provident Trust security narrative. 4-ER-765–69. Casey delivered a closing argument from a prepared text, during which SEC's counsel raised numerous objections for attempting to argue facts not in the trial record, including his account of the Audre circumstances and the 1995 disclosure he contended preceded the SEC's 1998 complaint. 4-ER-770–72.

On June 24, 2025, following two hours of deliberations, the jury returned a verdict finding Casey liable on both claims. 1-ER-44–45.

E. Post-Trial Proceedings and Judgment

Following trial, the SEC moved for a permanent injunction, officer and director bar, and civil monetary penalties, applying the *Murphy* factors across each remedy. 2-ER-156–59; 2-ER-127–155. Casey then moved for reconsideration of the summary judgment order, a new trial, or certification of an interlocutory appeal, on the ground that the promissory notes were not securities. 2-ER-73–89.

On September 10, 2025, the court denied Casey's motion and granted the SEC's in full. 1-ER-35–43. The court denied reconsideration in a single paragraph, noting Casey's motion was "a reprisal of arguments he has already made and that the Court has previously

rejected" and that the trial evidence was "fully consistent" with the prior securities classification analysis. 1-ER-39. It denied the new trial request in one sentence, finding no basis other than the securities classification contention. 1-ER-39.

The court imposed a permanent injunction against future violations of Section 10(b), Rule 10b-5, and Section 17(a); a permanent officer and director bar; and a civil monetary penalty of $2,616,451, composed of a Tier 1 penalty of $10,000 for each of the 238 investor victims ($2,380,000 total) and a single Tier 3 individual maximum penalty of $236,451 for the fraud violations. 1-ER-39–43; 1-ER-28–34.

On September 11, 2025, the court entered default judgment against Golden Genesis and a separate final judgment against it. 1-ER-8–27; 1-ER-2–7. The civil penalty imposed on Golden Genesis was $3,562,251, composed of the same 238-victim Tier 1 calculation ($2,380,000) plus a Tier 3 entity-maximum penalty of $1,182,251. That penalty was imposed in the court's remedies order by cross-reference to the *Murphy* factor analysis applied to Casey individually, without independent examination of those factors as applied to Golden Genesis as a distinct respondent. 1-ER-8–27; 1-ER-2–7.

SUMMARY OF THE ARGUMENT

Issue 1

Under Federal Rule of Evidence 404(b)(2), prior-act evidence may be admitted only for a specific non-propensity purpose, and only when its probative value is not substantially outweighed by the risk of unfair prejudice. *United States v. Bailey*, 696 F.3d 794 (9th Cir. 2012). When the prior act and the charged conduct involve the same alleged wrongdoing, the ostensible non-propensity purpose is most suspect, because the evidence invites the jury to reason directly from character to conduct, which is the very inference Rule 404(b) forbids.

The admission also implicated Rule 408 because the consent and judgment were compromise documents offered, in substance, to prove prior wrongdoing. And it failed Rule 403 because the prejudice—amplified by four unsanitized exhibits, a delayed limiting instruction that did not address the consciousness-of-guilt inference, and the SEC's closing argument—substantially outweighed any probative value.

Issue 2

In *United States v. Tarallo*, 380 F.3d 1174 (9th Cir. 2004), this Court distinguished two categories of belief evidence. Category (i) is a

defendant's legal conclusion that his instruments were not securities and irrelevant once classification is decided. Category (ii) is a defendant's factual understanding of how the transactions were structured—evidence that speaks directly to knowing or reckless intent. *Id.* at 1181–82. The district court excluded Casey's Category (ii) evidence—his factual understanding of how the Provident Trust security arrangement worked—on the ground that belief about securities classification is legally irrelevant, conflating the two categories.

The court compounded the error by excluding three Nevada state court orders as hearsay. Those orders were not offered for the correctness of their legal conclusions but instead offered to show the existence of judicial determinations that reinforced Casey's factual understanding of the instruments—a non-hearsay purpose at the core of any good-faith belief defense.

These two errors are each independently sufficient to require reversal. Their combination makes that conclusion inescapable. Under *United States v. Lloyd*, 807 F.3d 1128 (9th Cir. 2015), multiple trial errors that together were more likely than not to have affected the

verdict require reversal regardless of whether any single error independently meets that standard. Here, the two errors were mirror images, operating simultaneously and in opposite directions on the only disputed element. The jury heard that Casey had previously been the subject of an SEC enforcement action resolved by a consent judgment—entered on a neither-admit-nor-deny basis—but was denied the evidence of his actual understanding of the transactions at issue. That combination was more likely than not to have determined the outcome on the only question that mattered.

Issue 3

Under *SEC v. Husain*, 70 F.4th 1173 (9th Cir. 2023), and *SEC v. Murphy*, 50 F.4th 832 (9th Cir. 2022) (*Murphy II*), civil penalties must be calibrated to each defendant through a discrete examination of the *Murphy* factors as applied. The court imposed the $3,562,251 Golden Genesis penalty in a single paragraph, cross-referencing the analysis applied to Casey without independent examination of those factors as applied to the entity. Imputation establishes the predicate for liability; it does not discharge the obligation to conduct that analysis for a distinct respondent—an obligation that is most acute when, as here, a

statutory-maximum Tier 3 penalty is imposed on a corporate entity whose entire exposure rests on conduct attributed to its principal.

Issue 4

The district court ruled on summary judgment the Golden Genesis promissory notes were securities under the *Reves* family-resemblance test. Genuinely disputed facts bearing on the *Reves* factors must be resolved in the non-moving party's favor. As to the third factor, the court acknowledged a genuine dispute—marketing language and interest rate versus the brochure's express securities disclaimer—then resolved it by declaring the factor "neutral." By weighing the disclaimer against the marketing language and arriving at that neutral result, the court resolved a factual dispute rather than construing it in favor of the non-moving party. As to the fourth factor, the court declined to credit two Nevada state court decisions applying state securities law and the Uniform Commercial Code to these specific instruments, again without viewing that framework in the light most favorable to the non-moving party.

ARGUMENT

I. THE COURT IMPROPERLY ADMITTED EVIDENCE OF CASEY'S 1998 SEC SETTLEMENT

A. Standard of Review

A district court's evidentiary rulings are reviewed for abuse of discretion. *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008). An evidentiary error requires reversal if it "more probably than not" affected the verdict. *United States v. Bailey*, 696 F.3d 794, 803 (9th Cir. 2012).

B. The Audre Materials Were Inadmissible Under Rule 404(b) and *Bailey*

Rule 404(b)(1) prohibits admission of prior-act evidence "to prove a person's character to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). Rule 404(b)(2) creates a narrow exception permitting prior-act evidence only when offered for a "specific purpose" such as proving "knowledge" or "intent." Fed. R. Evid. 404(b)(2). Under *Bailey*, prior-act evidence offered under Rule 404(b) must satisfy four threshold requirements before surviving Rule 403 balancing: (1) the evidence tends to prove a material point; (2) the other act is not too remote in time; (3) the

evidence is sufficient to support a finding that the defendant committed the other act; and (4) if admitted to prove intent, the act is similar to the offense charged. *United States v. Bailey*, 696 F.3d 794, 799 (9th Cir. 2012) (citation omitted).

Even when these criteria are satisfied, the court must separately determine under Rule 403 that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Id.* at 799–800.

1. The Audre Materials are Not Sufficient Evidence of the Prior Act

The Audre materials introduced at trial consisted of: (i) Exhibit 101 (the 1998 SEC complaint alleging Casey concealed an $908,000 personal loan from Audre Recognition Systems, Inc.) (4-ER-853–64); (ii) Exhibit 103 (Casey's consent to entry of a neither-admit-nor-deny permanent injunction) (4-ER-865–70); (iii) Exhibit 104 (the final judgment entered on that consent) (4-ER-871–74); and (iv) Exhibit 240 (an Audre Form 8-K disclosing the company's outside auditors had resigned and could no longer rely on management's representations) (5-ER-944–54).

The Audre settlement resolved conduct from 1993 and 1994—more than two decades before the Golden Genesis notes were sold—and arose from a different factual context: alleged undisclosed self-dealing through a personal loan from a publicly traded company that Casey controlled. By contrast, the charged conduct here involves alleged misrepresentations and omissions in connection with the offer and sale of promissory notes to retail investors.

Bailey is on point. There, this Court reversed the admission of a prior SEC civil complaint and settlement under Rule 404(b), holding the government failed to satisfy the rule's foundational requirements, each of which applies with equal force here. 696 F.3d at 800–01.

First, where a defendant settles without any admission of liability, the settlement does not supply proof that the prior conduct occurred. Instead, it confirms the absence of any such proof. *Id.* at 800. A defendant "may settle a case for a variety of reasons. He may have committed the conduct alleged in the complaint or he may not have—but having settled the claim, there is no way to know." *Id.* Casey's consent (4-ER-865–70) is expressly a neither-admit-nor-deny resolution, and the final judgment (4-ER-871–74) was entered on that basis. Using

those documents as substantive proof that Casey committed the prior conduct would substantially undermine the distinction between a settlement and an adjudication. Nor does supplementing the settlement documents with the underlying complaint cure the deficiency. *See Bailey*, 696 F.3d at 800–01.

Second, and more fundamentally, a complaint is "merely an accusation of conduct and not, of course, proof that the conduct alleged occurred." *Bailey*, 696 F.3d at 801. Exhibit 101 (4-ER-853–64) is precisely that: an unproven pleading filed by the SEC in 1998. No factfinder ever determined Casey committed the alleged acts. Admitting it "may have permitted the jurors to succumb to the simplistic reasoning that if the defendant was accused of the conduct, it probably or actually occurred." *Bailey*, 696 F.3d at 801. Such inferences are impermissible.

2. The Audre Conduct Was Too Remote and Factually Dissimilar to Satisfy *Bailey*'s Remaining Prongs

The Audre conduct also fails *Bailey*'s second and fourth prongs. On remoteness, the conduct at issue in the 1998 complaint occurred in 1993 and 1994—more than twenty years before the Golden Genesis

notes were sold. *Bailey* treats temporal remoteness as an important limit on the probative value of prior-act evidence. 696 F.3d at 799.

Bailey also requires that "the act is similar to the offense charged." *Id.* The Audre conduct, alleged undisclosed self-dealing, was not similar to the charged misrepresentations to retail investors about a UCC-1 security structure.

3. The "Knowledge" Label Does Not Cure the Foundational Deficiency

The SEC argued the Audre materials were admissible not to show propensity but to demonstrate Casey's "knowledge" of securities-law obligations. *Bailey* squarely rejected that maneuver:

> [A] complaint would not establish knowledge even if the prosecution had purported to use it only for that reason. All a complaint establishes is knowledge of what a plaintiff claims. It does not establish the truth of either the facts asserted in the complaint, or of the law asserted in the complaint.

696 F.3d at 802.

Because the 1998 complaint was never proved and no allegations were conceded, it "could not have established knowledge of the law." *Id.* The knowledge label does not transform an accusation-and-settlement into proof of the underlying act, and it does not rescue dissimilar, remote conduct from the character-evidence prohibition.

C. Exhibits 101, 103, and 104 Should Have Been Barred by Rule 408 as Compromise Documents

1. Rule 408 Strongly Supports Exclusion of Exhibits 103 and 104

Rule 408 prohibits admission of evidence of a compromise when offered "to prove or disprove the validity or amount of a disputed claim." Fed. R. Evid. 408(a). This Court has applied Rule 408's framework to federal consent decrees and confirmed the Rule "has been interpreted to bar admission of civil consent decrees to prove the governments' allegations." *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1055 (9th Cir. 2015).

Exhibits 103 (4-ER-865–70) and 104 (4-ER-871–74)—Casey's neither-admit-nor-deny consent and the judgment entered on it, *see Powell v. SEC*, 149 F.4th 1029, 1034–35 (9th Cir. 2025) (describing the SEC's neither-admit-nor-deny settlement policy)—are precisely the instruments Rule 408 and *Motorola* cover. The SEC offered them to prove Casey had previously committed securities fraud and therefore knew his conduct at Golden Genesis was fraudulent.

Motorola recognized a limited notice rationale—i.e., that a defendant was aware regulators considered certain conduct questionable enough to investigate—but not use of a consent as

substantive proof that the defendant committed prior securities fraud or therefore acted with scienter in later conduct. 795 F.3d at 1055.

Here, the SEC used the Audre materials to suggest Casey had committed prior securities fraud and therefore acted with scienter at Golden Genesis. The closing argument makes the actual purpose plain. 4-ER-760–61.

Yet the SEC's consciousness-of-guilt inference is contradicted by the record. Audre's Form 10-K/A, filed with the SEC on June 20, 1995, publicly disclosed the $908,783 loan in Item 13, described it as repaid in full with interest at a rate equaling or exceeding the company's own returns, and identified it as approved by a majority of disinterested directors. 5-ER-1018–20. The transaction the SEC characterized as concealed self-dealing had been in a public SEC filing for three years. Moreover, Paragraph 11 of the consent contained an express compliance clause: Casey agreed not to "take any action or make any public statements denying, directly or indirectly, any allegation in the Complaint." 4-ER-869 ¶ 11. The jury was asked to infer guilt from a silence that both the public record and the consent itself explained.

2. *Kramas* and *Jensen* Independently Require Exclusion Under Rule 403

Even if Rule 408 did not categorically bar Exhibits 103 and 104, this Court's decisions directly addressing neither-admit-nor-deny SEC consent decrees require exclusion under Rule 403.

SEC v. Jensen, 835 F.3d 1100 (9th Cir. 2016), is particularly instructive because it involved the same type of SEC neither-admit-nor-deny injunction introduced here. There, this Court affirmed exclusion of a prior consent decree in which the defendant had agreed to a permanent injunction without admitting or denying liability—precisely the posture of Exhibits 103 and 104. 4-865–70; 4-ER-871–74. The Court held the decree was "both unfairly prejudicial and not particularly probative" because "the two-decades-old injunction" contained no adjudicated finding of wrongdoing and because admitting it "would run the risk of 'permitting the jurors to succumb to the simplistic reasoning that if the defendant was accused of the conduct, it probably or actually occurred.'" *Id.* at 1116–17 (quoting *Bailey*, 696 F.3d at 801).

That risk is at its apex here, where the prior and current charges were brought by the same plaintiff under the same statutes, and where the jury received no instruction explaining that a neither-admit-nor-

deny settlement is not an adjudication of wrongdoing. *Jensen* reaffirmed what this Court established in *Kramas v. Security Gas & Oil Inc.*, 672 F.2d 766, 772 (9th Cir. 1982), where exclusion of a prior SEC consent decree was affirmed on the same grounds: because the decree "involved no finding of culpability and no judgment of wrongdoing," its probative value was "limited" while "the prejudicial impact of the evidence upon the jury was obviously substantial." The Audre consent and judgment present the identical imbalance.

D. The Audre Materials Were Independently Excludable Under Rule 403

Jensen identified ten years as the relevant policy threshold, drawing on Rule 609(b)(1)'s presumption against admitting remote felony convictions and the SEC's own regulation at 17 C.F.R. § 229.401(f), concluding "the probative value of prior bad acts is diminished after ten years." 835 F.3d at 1116. The Audre materials exceed that benchmark by more than a decade: the Audre complaint was filed in 1998—eighteen years before the 2016 offering. The Audre materials arose at a different company, in a different industry, and—as discussed in Section C above—consisted of a no-admission settlement. This was not evidence of culpability. *See Jensen*, 835 F.3d at 1116

(affirming exclusion of prior SEC consent decree and injunction on Rule 403 grounds).

Against evidence this attenuated, the Court's sliding-scale standard governs: "Where the probative value is slight, moderate prejudice is unacceptable." *United States v. Ramirez-Robles*, 386 F.3d 1234, 1243 (9th Cir. 2004). Three compounding features of the admission here demonstrate that the prejudice was far more than moderate.

First, the jury received four full, unredacted exhibits with no sanitization. Under *United States v. Weiland*, 420 F.3d 1062, 1078 (9th Cir. 2005), admitting multiple documents from the same prior proceeding compounds prejudice. Each additional exhibit reinforces the inference the defendant committed the prior act. *See also United States v. Sine*, 493 F.3d 1021, 1041 (9th Cir. 2007) (presenting adverse factual findings from a related civil proceeding "ran far too great a risk of unfairly prejudicing the defendant"). No such precautions were taken here.

Second, the SEC used the Audre materials in closing for a purpose—consciousness of guilt—that exceeded the framing the court

had authorized, and Casey was prevented from offering the explanation the consent itself supplied, as discussed above. 4-ER-760–71, 770–72.

Third, the limiting instruction was both delayed and substantively inadequate. The instruction was not delivered until the final jury charge—after the SEC had already argued the consciousness-of-guilt inference to the jury without any corrective framework. 4-ER-791–92. Under *Musladin v. Lamarque*, 555 F.3d 830, 846–47 (9th Cir. 2009), the rationale for a limiting instruction evaporates once "the prosecutor drew the jury's attention to the damaging statement and invited them to draw the precise inference that a limiting instruction would have forbidden." This Court consistently credits contemporaneous instructions as reducing prejudice and treats post-argument instructions as weaker correctives. *United States v. Thornhill*, 940 F.3d 1114, 1122-23 (9th Cir. 2019); *United States v. Hanson*, 936 F.3d 876, 882 (9th Cir. 2019).

The instruction's content compounded its late delivery. It authorized consideration of the Audre materials only for whether Casey made material misrepresentations in describing his business background and his failure to disclose DiRicco's role—a disclosure-

obligation theory. 4-ER-791:15–792:20. It said nothing about the consciousness-of-guilt inference the SEC had argued, nothing about the legal significance of a neither-admit-nor-deny settlement (a stipulated fact; 2-ER-240 ¶120), and nothing about the contractual clause in Exhibit 103 that explained Casey's silence. 4-ER-865 ¶11. Nor did it say anything about Audre's disclosure in 1995. A limiting instruction cannot cure prejudice from an inference it does not address. *Musladin*, 555 F.3d at 846–47. Where, as here, the government argues prior acts as character evidence at closing before any limiting instruction is delivered, vacatur is warranted. *United States v. Charley*, 1 F.4th 637, 651 (9th Cir. 2021) ("Even where evidence of other acts is admissible, it is impermissible for the Government to argue that such evidence reflects the defendant's character."). The risk of simplistic jury reasoning *Jensen* identified carries unusual force here.

E. The Erroneous Admission of the Audre Materials Was Not Harmless

Review begins with a presumption of prejudice, and the burden of demonstrating harmlessness rests on the SEC as the party that benefitted from the erroneous admission. *Obrey v. Johnson*, 400 F.3d 691, 701 (9th Cir. 2005); *Sidibe v. Sutter Health*, 103 F.4th 675 (9th Cir.

2024) ("the party benefitting from the error . . . has the burden of persuasion to prove that the jury would have reached the same verdict even if the evidence had been admitted"). The standard asks whether it is more probable than not that the error did not materially affect the verdict. *Bailey*, 696 F.3d at 803.

The admission was not harmless because the Audre materials were deployed as key proof of the one element the jury had to decide. Scienter was the central disputed element at trial. The district court denied summary judgment on Claims One and Three specifically because "Defendants dispute only the scienter element" and genuine issues of material fact precluded resolution as a matter of law. 1-ER-62. Thus, no element of the fraud claims was judicially removed from the jury's consideration, and the court submitted both claims without any narrowing instruction. 4-ER-778:24–797:13. The SEC itself, in its MIL No. 3 brief, characterized scienter as "the only issue for the jury to determine." 2-ER-206–07. By positioning the Audre settlement as a window into Casey's state of mind, the SEC relied heavily on the erroneously admitted evidence in arguing the only seriously disputed element at trial.

SEC counsel devoted substantial argument to the Audre materials, walking the jury through Exhibits 101, 103, 104, and 240 in sequence and arguing that Casey's intentional omission of the "Audre" name from the Golden Genesis sales brochure proved consciousness of guilt and scienter for the charged conduct. 4-ER-760:5–763:12. In the SEC's own words:

> He mentions the names of all of these companies but one, Audre Recognition Systems. He testified that he intentionally left that—the name of that company off. . . . [T]he reason he doesn't mention the name of this company is not because it's not a healthcare company but because it's a company that if you got on the Internet and started searching for Thomas Casey, you would find the SEC's prior action against him. That's why he doesn't disclose the name of this company, and he knows it.

4-ER-760:20–761:12.

The SEC then returned to Exhibit 240 to argue the auditor resignation confirmed the gravity of the prior misconduct and corroborated Casey's awareness of wrongdoing. 4-ER-762:9–763:18. The argument occupied a significant portion of the SEC's scienter presentation. Under *Bailey*, when erroneously admitted evidence is made the centerpiece of closing argument on the dispositive element, the proponent cannot credibly maintain that the error was harmless.

696 F.3d at 803–05. The court in *Bailey* reversed on precisely this basis, noting the prosecution "made numerous references to the prior complaint during his closing argument" and that "closing argument matters . . . a great deal." *Id.* at 805 (quoting *United States v. Kojayan*, 8 F.3d 1315, 1323 (9th Cir. 1993)).

The limiting instruction is not a sufficient answer. The court did not instruct the jury until the final jury charge on Day 5—after the SEC had already made the consciousness-of-guilt argument without any corrective framework in place. 4-ER-791:12–792:20. The instruction's content did not cure that deficiency. Its permitted-purpose clause authorized the jury to consider the prior-proceedings evidence "only for the purposes of deciding whether Mr. Casey, in describing his role at Golden Genesis, his business background, and his failure to disclose Mr. DiRicco's role at Golden Genesis and Mr. DiRicco's regulatory and criminal history made material misrepresentations by failing to disclose material facts necessary to make the statements that were made, in light of the circumstances under which they were made, not misleading." 4-ER-791:18–25. Its propensity prohibition told the jury it could not use the evidence "as proof that Mr. Casey has a bad character

or any propensity to commit violations of the securities laws." 4-ER-792:11–13.

The SEC's argument did not fit neatly within either part of the limiting instruction. It did not argue disclosure-omission materiality. It argued that Casey's deliberate concealment of the Audre name proved he *knew* his Golden Genesis conduct was fraudulent—a consciousness-of-guilt inference directed at scienter. 4-ER-760:21–761:4. That inference was authorized by neither clause and addressed by neither clause. A limiting instruction delivered after closing argument, rather than contemporaneously with the evidence, provides materially weaker protection even for the inferences it does address. *See United States v. Sauza-Martinez*, 217 F.3d 754, 760 (9th Cir. 2000) ("the district court was obligated to offer a limiting instruction sua sponte when the directly incriminating testimony was admitted").

F. Casey Fairly Preserved These Objections

Casey objected in writing to the Audre materials, renewed his objections at the April 3 MIL hearing, and expressly invoked his appellate rights at the outset of trial. 3-ER-346:4–347:2. The district court's ruling granting the SEC's motion was explicit and definitive, 3-

ER-324:18-325:7, and where a ruling is definitive and thoroughly explored, “no further action is required to preserve for appeal the issue of admissibility.” *Palmerin v. City of Riverside*, 794 F.2d 1409, 1413 (9th Cir. 1986).

Casey’s trial responses do not constitute waiver. When the court asked, “Any objection, Mr. Casey?” as to Exhibits 101, 103, and 104, Casey responded “No, sir.” 4-ER-646:17–22. When the court asked the same question as to Exhibit 240, Casey stated “I find it objectionable. But, yeah, no objection.” 4-ER-652:18–653:1. Those responses did not amount to an intentional relinquishment of the objections previously litigated and ruled upon. Waiver requires evidence that the defendant was aware of the right he was relinquishing and relinquished it anyway, and no such evidence exists here. *United States v. Depue*, 912 F.3d 1227, 1233 (9th Cir. 2019) (en banc). As a pro se litigant who had fully litigated the motion in limine, Casey was not required to repeat the words “I object” when the court and the SEC already knew the basis for his objection. *Chess v. Dovey*, 790 F.3d 961, 964 (9th Cir. 2015).

II. THE DISTRICT COURT IMPROPERLY PRECLUDED CASEY'S GOOD-FAITH BELIEF DEFENSE

Scienter—whether Casey knew his specific representations to investors were false, or acted with conscious recklessness as to their truth—was the only genuinely contested element at trial. The district court denied summary judgment on the antifraud claims precisely because Casey's belief about the Provident Trust collateral structure created a genuine dispute on that element. But before trial, the court granted two motions in limine that stripped Casey of his ability to contest it: MIL No. 3, precluding him from presenting his honest belief that his representations about the Provident collateral structure were accurate, and MIL No. 4, excluding the three Nevada state court orders that corroborated his asserted belief. Together, the rulings denied Casey any meaningful opportunity to contest the only element the jury was actually required to decide.

The court's error was categorical. Casey's defense was not that the notes failed the statutory definition of a security—a legal classification question. It was that he honestly believed his specific representations to investors about the Provident collateral structure were accurate. That question—whether Casey's factual belief about his own representations

was genuine—belonged to the jury, and the court's securities-classification ruling said nothing about it.

A. Standard of Review

A district court's evidentiary rulings are reviewed for abuse of discretion. *Sprint/United Mgmt.*, 552 U.S. at 384. When an evidentiary ruling rests on a legal error, the legal question is reviewed *de novo*, and the abuse of discretion necessarily follows from the legal error. *United States v. Moran,* 493 F.3d 1002, 1010 (9th Cir. 2007) (reviewing *de novo* the legal question whether excluded evidence was central to a good-faith defense). Erroneous exclusion of evidence is reversible unless the SEC shows it is more probable than not the jury would have reached the same verdict absent the error. *Obrey*, 400 F.3d at 701.

B. The District Court Erroneously Precluded Casey from Presenting His Good-Faith Belief Defense

1. Good Faith is a Defense to Securities Fraud and Must Reach the Jury

In a civil SEC enforcement action, scienter is a "subjective inquiry" turning on "the defendant's actual state of mind" and that scienter requires "something more egregious than even 'white heart/empty head' good faith." *Gebhart v. SEC*, 595 F.3d 1034, 1042 (9th Cir. 2010) (quotation omitted). It follows that a defendant's honest

belief in the truthfulness of his specific representations to investors is relevant to scienter and, if genuine, constitutes a complete defense. *United States v. Tarallo*, 380 F.3d 1174, 1181 (9th Cir. 2004); *Gebhart*, 595 F.3d at 1043.

2. This Court Recognizes Two Distinct Categories of Defendant Belief

This Court distinguishes between two legally significant categories of defendant belief in securities fraud cases, and understanding that distinction is essential to evaluating MIL No. 3.

Category (i) is belief about legal classification—the contention that an instrument is not a "security" as a matter of statutory definition.

Category (ii) is belief about the factual accuracy of specific representations—the defendant's honest conviction that what he told investors was true. This belief is directly relevant to scienter and constitutes a complete defense if honestly held. *Tarallo*, 380 F.3d at 1181; *Gebhart*, 595 F.3d at 1042–43. A defendant who honestly believed his representations were accurate lacked knowledge of any "act which is false"—the very state of mind Category (ii) protects.

3. MIL No. 3 Conflated Category (i) with Category (ii), Precluding a Defense the Court's Prior Ruling had Found Sufficient to Create a Genuine Dispute

The district court granted MIL No. 3 by reasoning: "I've already determined as a matter of law that they are securities. So whether Mr. Casey believed that they were securities or didn't believe they were securities, that's irrelevant." 3-ER-332:2–8. That reasoning conflates the court's legal classification ruling—which resolved a Category (i) question—with Casey's right to contest scienter through Category (ii) evidence. Whether the notes are securities as a matter of law answers a fundamentally different question than whether Casey knew his specific representations about the collateral structure were false.

What makes the error undeniable is that the court itself acknowledged the distinction in the same breath it collapsed it: "Now, it's a separate question as to whether you believed they were secured, secured by UCC1. That's a different question." 3-ER-332:9–11. The court recognized the correct legal boundary between Category (i) and Category (ii) and then issued a ruling that, by its own terms, rested entirely on the Category (i) determination. The Category (ii) defense—Casey's belief about the truthfulness of his representations concerning

the Provident collateral structure—was not addressed by the court's stated reasoning and yet was foreclosed by the ruling's practical operation.

The ruling rested on a legal conflation between those distinct forms of belief evidence. A court that identifies the correct legal boundary and then issues a ruling that crosses it has applied the wrong legal standard regardless of how the ruling is framed.

Casey's defense was the Category (ii) belief the court itself articulated at the summary judgment hearing: his conviction that Provident's execution of the promissory note as "Holder" had superseded his earlier representations about Golden Genesis assets, that Provident had accepted responsibility for the security-interest documentation, and that what investors were told about the collateral was therefore consistent with the executed note form. 3-ER-299:2–17. Casey repeatedly maintained that his role in the note structure was as borrower: DiRicco transmitted the closing documents to Casey on March 31, 2016, instructing him to sign "on the line above your name . . . as the Borrower," while Minuskin retained control over individualized lender amounts and names. 4-ER-833, 837.

That is precisely the belief *Tarallo* protects: honest conviction that the specific representations made to specific investors were true. When the court found at summary judgment that this belief created a genuine dispute precluding judgment on scienter, it implicitly confirmed the belief was legally cognizable under *Tarallo* and *Gebhart*. When it granted MIL No. 3 fourteen months later, it suppressed the very defense it had held the jury was entitled to evaluate.

The ADOMANI notes confirm the objective foundation of that belief. Exhibits 295 and 504 are promissory notes Provident executed as Holder for ADOMANI Inc. in January and February 2015, a full year before Golden Genesis existed. 5-ER-960–62; 5-ER-966–68. Both contain word-for-word the same UCC-1 security interest language at issue here. Both were signed by a Provident-authorized representative and processed through Retire Happy. When DiRicco showed Casey an ADOMANI note before introducing him to Retire Happy, he was not showing him a speculative arrangement. Instead, this was a Provident-executed instrument in a form Provident had already accepted and signed for another borrower. Casey's belief that the Provident structure provided genuine collateral security was therefore not idiosyncratic or

manufactured after the fact. It was formed by reference to a transaction the record confirms Provident had already completed on identical terms.

C. The District Court Erred in Excluding the Nevada State Court Orders

The district court separately excluded Defense Exhibits 510, 511, and 512—three Nevada state court orders arising from investor lawsuits over these exact promissory notes—under Rules 402 and 403, concluding they were "outside the scope of what the jury in the case will consider." 3-ER-336:24-337:11. That ruling was legally erroneous and compounded MIL No. 3 by eliminating the best available documentary corroboration of the very belief MIL No. 3 had already precluded Casey from arguing.

The most significant of the three orders is Exhibit 511, which contains a substantive legal holding that NRS 90.530(7) exempts from Nevada's securities registration requirement promissory notes secured by a "personal property security agreement," and that the Golden Genesis notes qualified for that exemption because each was "secured by a UCC-1 Financing Statement on all assets of Holder [i.e., Provident Trust], including, but not limited to, equipment, inventory, receivable,

intellectual property, patents and bank accounts." 5-ER-983–95; 5-ER-991 ¶43. Exhibit 510 found that Provident Trust was the "holder" of the notes and had "guaranteed Plaintiffs repayment . . . by pledging all of its billions of dollars in assets as collateral"—a factual finding by a court of competent jurisdiction that Provident's role was precisely as Casey had represented it to investors. 5-ER-969–81. Both parties stipulated to JUF No. 170: "[t]wo Nevada Courts signed orders prepared by Casey's counsel on their law firm's letter head, which included findings that the Golden Genesis, Inc. Promissory Notes were not securities." 2-ER-249 ¶ 170.

1. The Nevada Orders were Admissible as Evidence of the Objective Plausibility of Casey's Subjective Belief

The orders were relevant under Rule 401 and admissible for a non-hearsay purpose. Casey was not offering them to prove that the notes were in fact not securities, that Provident in fact pledged its assets, or that any other matter asserted within the orders was true. He offered them to corroborate the objective plausibility of his subjective belief about the collateral structure.

That is a non-hearsay purpose. Evidence offered to show the state of mind of the offeror—specifically, that a belief he held was objectively reasonable rather than fabricated or irrational—is not offered for the truth of any matter asserted in the document. A defendant who knows a court of competent jurisdiction applied the governing state securities exemption statute to these exact instruments and found them exempt had objective support for his belief that the instruments were structured as secured commercial loans. That the court so held makes his belief more plausible; it does not prove the truth of any statement within the orders themselves.

2. The Rule 403 Analysis was an Abuse of Discretion

The probative value of the Nevada orders was substantial. They corroborated Casey's good-faith belief, directed at the only genuinely contested element remaining for the jury. Judicial orders are not inflammatory, do not carry the inherent risk of unfair prejudice associated with criminal-conduct evidence, and present no risk of the emotional reasoning that Rule 403 is designed to prevent.

Any jury confusion about the relationship between Nevada state securities law and federal securities law was addressable through a

limiting instruction directing the jury to consider the orders only for evaluating Casey's good-faith belief—not as a determination of federal law or as binding precedent. The district court's failure to consider this alternative before resorting to wholesale exclusion was independently an abuse of discretion. *Obrey*, 400 F.3d at 699 ("The trial court should have first addressed these concerns with the parties through other, less restrictive means.").

3. The SEC's Reliance on *United States v. Sine*

The SEC argued in its MIL No. 4 memorandum that the Nevada orders should be excluded as hearsay under *United States v. Sine*, 493 F.3d 1021 (9th Cir. 2007), on the theory that judicial findings of fact made in other cases are hearsay likely to be given undue weight by jurors. That reliance was misplaced.

Sine's concern was fundamentally different. *Sine* addressed adverse judicial credibility findings—a civil judge's assessment of a witness's veracity—offered by the *government* in a subsequent criminal trial to bolster a government witness. The risk *Sine* identified is that jurors will defer to a judge's credibility assessment and effectively surrender their independent evaluation of the witness. That risk is

absent here. Casey sought to offer legal rulings and factual findings in his own favor to corroborate his good-faith testimony. The concern in *Sine*—that jurors would defer to another court's credibility findings—was materially different from the limited state-of-mind purpose for which Casey offered these orders.

D. The Compounding Effect of MIL Nos. 3 and 4 on the Only Genuinely Contested Element

MIL No. 3 restricted the defense theory, and MIL No. 4 excluded the principal evidence supporting it. Together, they created an impossible evidentiary position: Casey's scienter was vigorously prosecuted over five trial days, his testimony about his own beliefs was severely constrained, and documentary evidence corroborating those beliefs was removed from the jury's consideration.

Under the cumulative-error framework, the combination of MIL Nos. 3 and 4 operating jointly on the same scienter element is assessed holistically. *See Parle v. Runnels*, 505 F.3d 922, 930 (9th Cir. 2007) (holding that the "cumulative effect" of erroneous evidentiary rulings rendered the defendant's trial unfair); *United States v. Lloyd*, 807 F.3d 1128, 1168 (9th Cir. 2015) (quotations omitted). The paired errors are more damaging in combination than either is alone because they

foreclosed the defense at two distinct levels: the argument itself, and the evidence that would have supported it. A defendant left without both is not merely disadvantaged. He is effectively denied the ability to contest the element entirely.

The jury instruction asymmetry underscores the prejudice. The court instructed the jury to consider Casey's prior legal proceedings as evidence bearing on whether Casey made material misrepresentations in describing his role at Golden Genesis, his business background, and his failure to disclose DiRicco's role and regulatory and criminal history. 4-ER-791–92. Yet the charge contained no counterweight instruction permitting the jury to consider Casey's good-faith belief about the Provident collateral structure. The jury was thus directed toward a specific inference adverse to Casey while being denied any instruction supporting the inference favorable to him. That asymmetry in the charge directly reflected, and amplified, the asymmetry created by MIL Nos. 3 and 4.

E. The Errors Were Not Harmless

The stipulated record demonstrates that the suppressed defense was genuine, objectively reasonable, and acknowledged by the SEC

itself. JUF No. 149 establishes that Casey believed Provident, not Golden Genesis, was responsible for ensuring the security interest was documented—a belief the SEC did not dispute at summary judgment, arguing only that acting on it was reckless. 2-ER-245–46 ¶149; 3-ER-297:3–298:6. Provident's own public website described promissory notes as "alternative assets" held "outside of the traditional investment world of publicly traded assets," which provided Casey objective institutional context for his understanding of the instruments' character. 3-ER-502–03; 5-ER-970–71. JUF No. 170 establishes that two Nevada courts applied the governing state securities exemption statute to these exact instruments and found them exempt—a fact the SEC stipulated to, then obtained MIL No. 4 to exclude. 2-ER-249 ¶ 170. A defense supported by the opposing party's own stipulations is not one the jury would inevitably have rejected had it been permitted to hear it.

Scienter was the only genuinely contested element. Erroneous exclusion of evidence going to the sole contested element is the paradigm case of non-harmless error. *Obrey*, 400 F.3d at 701-02.

The cumulative effect of MIL Nos. 3 and 4 reinforces this conclusion. The combined operation of both rulings on the sole contested

element—paired with a jury charge that contained no good-faith instruction and directed the jury to adverse prior-acts evidence without counterweight—forecloses any reasonable conclusion that the verdict would have been the same. *Parle*, 505 F.3d at 930.

III. THE DISTRICT COURT ERRED BY FAILING TO CONDUCT AN INDIVIDUALIZED *MURPHY*-FACTOR ANALYSIS FOR GOLDEN GENESIS

A. Standard of Review

This Court reviews civil penalty determinations for abuse of discretion. *Murphy II*, 50 F.4th at 842. A court abuses its discretion when it rests on clearly erroneous findings or misapplies the law to the facts in a manner that amounts to an error of law. *Husain*, 70 F.4th at 1182–86 (reversing penalty determination where district court failed to conduct the required individualized inquiry).

B. The District Court Failed to Conduct an Individualized *Murphy*-Factor Scienter Analysis for a Corporation Whose Entire Scienter is Derivative

A district court must perform an "individualized inquiry" into the *Murphy* factors, assessed against "the totality of the circumstances" surrounding each defendant and its violations. *Murphy II*, 50 F.4th at 849. *Husain* reinforced that this analysis is "subjective" and "turns on the defendant's actual state of mind," and reversed a penalty

determination where the district court failed to individualize on an adequate record. 70 F.4th at 1185.

The statutory command is unambiguous: the penalty "shall be determined by the court in light of the facts and circumstances." 15 U.S.C. §§ 77t(d)(2)(A), 78u(d)(3)(B). The five *Murphy* factors—(1) the degree of scienter involved; (2) the isolated or recurrent nature of the infraction; (3) the defendant's recognition of the wrongful nature of the conduct; (4) the likelihood of future violations; and (5) the sincerity of assurances against future violations, *Murphy II*, 50 F.4th at 841-42—implement that statutory directive. They require engagement with the record specific to the defendant at issue, not a formula applied in common to an undifferentiated group.

1. The District Court's Boilerplate Analysis

The district court's penalty analysis for Golden Genesis occupied a single paragraph in its order granting default judgment. 1-ER-26. After reciting the applicable penalty tiers, the court said: "[t]he *Murphy* factors, discussed above, support the SEC's request." *Id.* The factors "discussed above" were not discussed in a Golden Genesis–specific context. They were discussed in the injunction section of the same order

in relation to defendants Julie Minuskin and Joshua Stoll—two individuals whose defaults arose from years of complete non-participation in the litigation and who had no connection to the Casey trial record.

The court then recited three boilerplate conclusions: Golden Genesis's violations "involved a high degree of scienter, recurrent wrongful conduct, and a likelihood of future violation." *Id.* The entire trial-record engagement for Golden Genesis consisted of one sentence: that "Golden Genesis's principal Thomas Casey maintained at trial that neither he nor Golden Genesis did anything wrong." *Id.* That single observation—accurate as far as it goes—pertains to *Murphy* factor 3 (recognition of wrongfulness) and addresses only one of five factors. The remaining four factors received no record citation and no individualized analysis of any kind.

2. The Derivative Nature of Golden Genesis's Scienter Made Individualized Analysis Especially Important

The need for individualized analysis was particularly acute here because of the derivative character of Golden Genesis's liability. The SEC conceded that "Casey's acts and intent are imputed to Golden

Genesis." 2-ER-101 n.2. Golden Genesis has no independent organizational fault, no separate officers who acted with scienter apart from Casey, and no distinct corporate conduct beyond Casey's own. The imputation doctrine establishes the fact of scienter. It does not establish its degree. Imputation answers the question of attribution. It does not dispense with the court's obligation to determine what degree of scienter the trial record reflects and to engage with the evidence bearing on that question.

That obligation was especially weighty here because the degree and character of Casey's scienter—and therefore Golden Genesis's imputed scienter—was vigorously contested at trial and had been identified as a genuine dispute before trial. In its March 25, 2024 summary judgment order, the district court found that a reasonable juror could conclude Casey believed whatever representations he had made about security had been superseded by the promissory note structure, and that granting summary judgment on scienter was not warranted. 1-ER-66–67.

At the summary judgment hearing, the court was still more direct: after the SEC's counsel confirmed that "Casey believed that Provident—

not Golden Genesis—was responsible for ensuring that the security interest on the notes was made available or documented," the court stated that the SEC's "own agreement has taken knowing conduct off the table" and that recklessness was "enough" to satisfy the standard. 3-ER-303:21–305:2. The court understood, before the case went to the jury, that the only viable scienter theory for Casey—and therefore for Golden Genesis—was recklessness. The Dkt. 163 boilerplate finding of "high degree of scienter" for Golden Genesis, supported by nothing but a cross-reference to the Minuskin and Stoll injunction analysis, is irreconcilable with the court's pre-trial characterization of the very scienter question at issue. 1-ER-26.

The jury's verdict does not supply the factual anchor the court omitted. The jury returned a binary finding that Casey violated the securities laws. It made no finding on the degree, character, or intensity of his scienter. Standard civil securities instructions do not ask the jury whether conduct was knowing as opposed to reckless, or high-degree as opposed to low-degree. The absence of any such jury finding made the district court's obligation to assess scienter degree on the trial record

not merely appropriate but obligatory. That obligation cannot be discharged by reference to a verdict that did not address the question.

3. The Court's Selective Engagement With the Record Confirms the Deficiency

The court's selective use of the trial record independently confirms the deficiency. For *Murphy* factor 3, the court reached into the trial record and cited Casey's refusal at trial to acknowledge wrongdoing. 1-ER-26. Yet for every other factor, the court treated Golden Genesis as if the trial had never occurred. It applied boilerplate language identical to what it used for Minuskin and Stoll, defendants who never appeared at trial and whose scienter was assessed entirely on complaint allegations. That selective reliance is not the "facts and circumstances" analysis required. The inconsistency is internal to the order itself: the court affirmatively cited Casey's trial conduct—his refusal to acknowledge wrongdoing—as support for the maximum on factor 3, while treating Golden Genesis as though the trial had never occurred for every other factor. 1-ER-20, 26.

On factor 4 (likelihood of future violations), Exhibits 120 and 121—California Secretary of State Statements of Information for Spectrum Plasma, Inc., the renamed Golden Genesis, admitted without

objection at trial—established that the corporate entity remained active, still maintained by Casey as CEO at the same address, and still operating as a blood bank through at least March 2024. 4-ER-878-83. A court that cites Casey's trial testimony to support the maximum on factor 3 while ignoring admitted trial exhibits bearing on factor 4 has not engaged in the individualized analysis *Husain* requires.

The same failure infected the factor 1 analysis. The record contained substantial evidence that investor funds went to operating the business rather than to personal enrichment: approximately 20% of funds raised—$2,080,518—was returned to investors; 13% went to Casey and family as salary; and the balance funded blood-center operations and modest reported revenues of $145,805 in 2018 and $136,463 in 2019. 5-ER-942–43; 5-ER-928–37; 4-ER-812–19.

Exhibit 189, documenting twenty bank accounts associated with DiRicco's pre-existing financial network predating the Golden Genesis offering by at least a year, supported the inference that Casey operated within an established infrastructure he did not design—a fact the court acknowledged on summary judgment when it observed this "would be an atypical Ponzi scheme where the person that runs the scheme

doesn't get anything out of it." 3-ER-308:9–11; 5-ER-912–13. The boilerplate "high degree of scienter" finding contains no reference to any of this evidence.

C. The Default Judgment Context Does Not Excuse the Failure to Engage the Trial Record

The SEC may argue that because Golden Genesis defaulted, the well-pleaded facts in the complaint are treated as admitted, including allegations of high-degree scienter, and that the *Murphy*-factor inquiry is therefore satisfied. That argument fails for two independent reasons.

First, the well-pleaded-facts rule operates on a different question. Default may establish liability and the tier qualification for the penalty—that the conduct involved fraud and resulted in substantial losses. But the amount of the penalty within the applicable tier is a distinct and subsequent determination, governed by the mandate that it "shall be determined by the court in light of the facts and circumstances." 15 U.S.C. §§ 77t(d)(2)(A), 78u(d)(3)(B). *Husain* and *Murphy II* make clear that the Murphy-factor inquiry is a separate proceeding from the liability determination. A rule that equates default admission of liability allegations with a sufficient basis for the statutory maximum would eliminate the *Murphy*-factor inquiry entirely for every

defaulting corporate defendant—a result inconsistent with the statute and with this Court's precedents.

Second, and more fundamentally, when a trial record bearing directly on the *Murphy*-factor questions has been developed before the same court, complaint allegations that predate the trial cannot override what the record actually shows. That record bears directly on each *Murphy* factor for the defendant whose scienter is entirely imputed from the trial record. A court that ignores available evidence bearing on penalty determination and relies instead on complaint allegations does not satisfy the "facts and circumstances" standard—it risks substituting pleadings for the individualized factual assessment required.

D. The Penalty is Independently Inconsistent with the Court's Adjudication of the Identically Situated Principal

A reinforcing basis for reversal lies in the consistency principle recognized in *In re First T.D. & Investment, Inc.*, 253 F.3d 520, 532–33 (9th Cir. 2001), which holds that entering a default judgment that is "incongruous and unfair" relative to the court's adjudication of similarly situated defendants in the same action is an abuse of discretion. Consistent with that principle, this Court has held that a court should

wait until after trial before entering a default judgment against a corporate defendant whose principal is simultaneously litigating the identical claims. *Garamendi v. Henin*, 683 F.3d 1069, 1082-83 (9th Cir. 2012).

The district court followed that procedure here—entering the Golden Genesis default judgment on September 11, 2025, after the jury verdict on June 24, 2025—specifically so the trial record would inform the adjudication. Having waited for the trial to develop the record, the court could not then ignore what the trial revealed. The court applied the *Murphy* factors rigorously to Casey and imposed a single third-tier penalty of $236,451, the statutory maximum for one violation. 1-ER-43. It then applied those same factors to Golden Genesis for the same fraud claims on the same trial record and imposed $1,182,251—five times Casey's fraud penalty—without a sentence of individualized analysis explaining the disparity. 1-ER-26. That outcome satisfies *Garamendi*'s form while violating *First T.D.*'s substance.

IV. THE DISTRICT COURT ERRED IN CLASSIFYING THE GOLDEN GENESIS PROMISSORY NOTES AS SECURITIES

On summary judgment, the district court held the Golden Genesis promissory notes were securities as a matter of law under *Reves v. Ernst & Young*, 494 U.S. 56 (1990). Casey challenges that ruling on two grounds. ***First***, the *Reves* classification rested on genuinely disputed facts the court was required to resolve in Casey's favor. ***Second***, the factor-by-factor analysis was flawed in ways that, considered as a whole under *Reves*, 494 U.S. at 67, and *SEC v. Wallenbrock*, 313 F.3d 532, 537 (9th Cir. 2002), render the legal conclusion unsupportable.

A. Standard of Review

Whether a promissory note is a security under *Reves* is a question of law reviewed de novo. *McNabb v. SEC*, 298 F.3d 1126, 1130 (9th Cir. 2002). Where the underlying factual predicates are genuinely disputed, however, the securities classification is a question for the jury and summary judgment is improper. *Great W. Bank & Tr. v. Kotz*, 532 F.2d 1252, 1254-55 (9th Cir. 1976).

B. The District Court Applied an Incorrect Summary Judgment Standard

The *Reves* classification question should not have been resolved at summary judgment.

1. The Court's Scienter Ruling and Its *Reves* Classification are Irreconcilable

The same order that resolved the *Reves* issue as a matter of law also recognized unresolved factual disputes concerning Casey's understanding of the transaction structure, calling them "genuinely disputed." 1-ER-66–67. The court found "a reasonable juror might conclude that Casey believed that retirees . . . would be told something consistent with the notes that the retirees thereafter signed," and that this belief might negate scienter. 1-ER-67.

Reves Factors 1, 3, and 4 all turn on the same transaction-structure facts the court found too disputed to resolve on scienter: who drafted the notes, what the Provident arrangement communicated to participants, and whether it constituted the secured commercial instrument Casey believed it to be. A ruling cannot coherently hold that transactional facts are insufficiently settled to resolve scienter while simultaneously treating those same facts as sufficiently undisputed to classify the instrument as a matter of law.

2. The Undisputed-Facts Prerequisite was Not Satisfied

If a party identifies disputed facts that are material to determining whether a security has been purchased, the question becomes one of fact and should be resolved by a jury. *Kotz*, 532 F.2d at 1255.

That prerequisite was not satisfied here, as the court's own Factor 3 finding confirms: the court held that the reasonable-expectations factor "favors neither party." 1-ER-60. A finding that the factor favored neither side reflected competing inferences from the record evidence—not undisputed facts from which a legal conclusion follows. Because *Reves* requires holistic balancing of all four factors, a factor resting on genuinely contested inferences means the overall factual predicates for the classification are not established.

A concrete illustration confirms the dispute was live. The summary judgment order stated: "[t]hese promissory notes were drafted by Provident, rather than by Golden Genesis." 1-ER-66. At the summary judgment hearing, SEC counsel told the court: "It's not undisputed that Provident Trust drafted those instruments. I wouldn't want the Court to walk away with that belief." 3-ER-300:10–18. At the

motions in limine hearing, SEC counsel acknowledged the SJ finding "did not cite to the record." 3-ER-326–27. And the SEC's post-trial brief abandoned the Provident-as-drafter theory entirely, attributing authorship instead to "DiRicco and Casey." 2-ER-145. A finding that the proponent repudiated before trial, and disavowed again after trial, is difficult to characterize as an undisputed factual predicate supporting summary judgment.

C. The *Reves* Factors Do Not Support a Security Classification as a Matter of Law

Under *Reves* and *Wallenbrock*, the four factors are not assessed in isolation. They are considered as a whole and failure to satisfy any one factor is not dispositive. *Reves*, 494 U.S. at 66–67; *Wallenbrock*, 313 F.3d at 537.

1. Factor 1 (Motivation)

The district court found Factor 1 favored the SEC based on the 10% annual interest rate and the general-business-use purpose of the notes, and this finding reflects the weight of Ninth Circuit authority. *See McNabb*, 298 F.3d at 1129 (11–17% rates); *Wallenbrock*, 313 F.3d at 538 (20% rate). Casey does not contest this finding.

2. Factor 2 (Plan of Distribution)

The district court found Factor 2 favored the SEC based on volume and multi-state distribution to unscreened Retire Happy clients. The appropriate outcome under *McNabb*'s balancing approach is neutral.

Distribution of the Golden Genesis notes was structurally confined to Retire Happy's existing client base; no notes were publicly advertised, the note instruments contained no transfer or trading provisions, and the borrower did not know individual lender identities until notes were signed. 2-ER-245–46 ¶¶ 148, 151–52; 5-ER-963–65; 3-ER-293:21–294:25. Unlike *Wallenbrock*, where the seller "put no limitations on who could purchase the notes, offering them to any member of the general public," 313 F.3d at 539, the structural channel restrictions here yield at most a neutral factor.

3. Factor 3 (Reasonable Expectations)

The district court found Factor 3 "favors neither party." 1-ER-60. That finding operates against the SEC under the one-way ratchet doctrine: Factor 3 can push an instrument into security status where the other factors might not, but the SEC's failure to satisfy it does not

weigh against finding the instrument a security. *Stoiber v. SEC*, 161 F.3d 745, 751 (D.C. Cir. 1998), *adopted by McNabb*, 298 F.3d at 1132.

The court acknowledged the brochure's explicit disclaimer—"THIS PRESENTATION BELONGS EXCLUSIVELY TO GOLDEN GENESIS, INC., A NEVADA CORPORATION. IT DOES NOT IMPLY AN OFFERING OF SECURITIES"—and concluded that Factor 3 favored neither party. 4-ER-811; 1-ER-60.

The trial record reinforces that finding: the note instruments used only the terms "Lender," "Borrower," and "Holder" throughout; 5-ER-963–65; Provident's vice president testified that Provident holds "all alternative assets"—a category she defined to include promissory notes, in contrast to publicly traded stocks and bonds—and does not make securities-classification determinations about its account holders' investments, 3-ER-502–04; and the Direction of Investment form stated the investor was "responsible for the selection, due diligence, management, review, and retention of all investments." 5-ER-895–908.

The comparative record reinforces the neutrality of this factor. The two ADOMANI promissory notes executed by Provident as Holder in January and February 2015 are structurally identical to the Golden

Genesis notes: same Provident-as-Holder designation, same UCC-1 security interest clause, same monthly interest structure. 5-ER-960–62, 966–68. The SEC never contended those instruments were unregistered securities. That the same note form, processed through the same custodial infrastructure, was not treated as a securities offering for ADOMANI confirms that a reasonable investor presented with instruments of this form would not necessarily understand them as securities.

4. Factor 4 (Alternative Regulatory Scheme)

Casey does not contend that Nevada's Uniform Commercial Code alone constitutes the kind of comprehensive alternative regulatory scheme required to displace the securities laws. But the summary judgment order inadequately analyzed the two-part argument actually presented. Defense counsel made two distinct points: (1) Nevada's Uniform Securities Act specifically classifies instruments of this character as non-securities under state law; and (2) Nevada courts had adjudicated claims arising from these exact instruments under state commercial law. 3-ER-316:21–319:18. The SJ order collapsed both into

"UCC only" without separately engaging the Nevada statutory classification component.

The summary judgment order also failed to separately analyze the risk-reduction value of the Provident security arrangement under Factor 4. *Reves* identifies genuine collateralization as a factor that can significantly reduce an instrument's risk. 494 U.S. at 57, 69. *Wallenbrock*'s Factor 4 analysis turned on the fictional nature of the purported collateral—the seller "did not purchase or own any receivables" and "investors had no way of reaching the assets." 313 F.3d at 539–40. Here, the note instruments stated that each note was "secured by UCC-1 Financing Statement on all assets of Holder." 2-ER-246–47. Whether that arrangement constituted a genuine risk-reducing factor—as distinct from the statutory classification question—was never addressed. That omission was an independent analytical gap.

5. The Holistic *Reves* Balance

Assessed holistically: Factor 1 favored the SEC; Factor 2 was at most neutral; Factor 3 was neutral, reflecting the SEC's failure to satisfy the one-way ratchet; and Factor 4 rested on an analysis that collapsed two distinct arguments and left the collateral risk-reduction

question unaddressed. On this record, the *Reves* balance could not properly be resolved against Golden Genesis on summary judgment.

CONCLUSION

For the foregoing reasons, Casey and Golden Genesis respectfully request the following relief:

Issue Four. If this Court concludes the Golden Genesis promissory notes were not securities as a matter of law, it should vacate all judgments against both appellants and remand with instructions to enter judgment in their favor. If this Court instead concludes that genuinely disputed facts precluded summary judgment on the securities classification, it should vacate the summary judgment order, the final judgment against Casey, and the default judgment and final judgment against Golden Genesis, and remand for further proceedings.

Issues One and Two. If this Court does not reverse on Issue Four, it should reverse the final judgment against Casey and remand for a new trial on the antifraud claims, with instructions that (1) the Audre enforcement materials are excluded from evidence; and (2) Casey be permitted to present his good-faith belief that his specific representations about the Provident Trust collateral structure were

accurate, including through introduction of the Nevada state court orders corroborating that belief.

Issue Three. Independent of the outcome on Issues One, Two, and Four, this Court should vacate the fraud penalty imposed against Golden Genesis and remand for an individualized analysis that engages the trial record as applied to Golden Genesis as a distinct respondent. If this Court reverses on Issues One, Two, or Four in a manner that eliminates the predicate for the Tier 3 penalty, that penalty falls with the underlying liability determination.

Date: May 13, 2026

BONA LAW PC

s/Luke Hasskamp
Luke Hasskamp

Attorney for Appellants Thomas F. Casey and Golden Genesis, Inc.

Statement of Related Cases Pursuant to Circuit Rule 28-2.6

I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

> *United States Securities and Exchange Commission vs. Dennis R. DiRicco,* Court of Appeals No. 25-2079. DiRicco was a co-defendant in the district court proceeding below, Case No. 3:22-cv-00483-RSH (S.D. Cal.). DiRicco arranged the financing structure at issue in this appeal, served as an officer of Golden Genesis, and his regulatory and criminal history was placed before the jury in this case. The two appeals arise from the same district court action and the same underlying facts.

Date: May 13, 2026

BONA LAW PC

s/Luke Hasskamp
Luke Hasskamp

Attorney for Appellants Thomas F. Casey and Golden Genesis, Inc.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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