

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF FINANCIAL PROTECTION
AND INNOVATION,

Complainant,

v.

ANDREW L. PENN and DARCI PENN,

Respondents.

Agency Case No. 37973

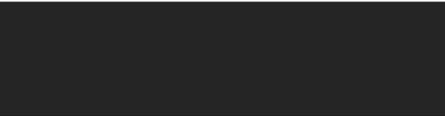
OAH No. 2025030370

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Financial Protection and Innovation as its Decision in the above-entitled matter.

This Decision shall become effective on January 24, 2026.

IT IS SO ORDERED THIS 26th day of December 2025.



KHALIL MOHSENI
Commissioner of Financial Protection and Innovation

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PROPOSED DECISION

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on August 25, 26, and 28, 2025, via videoconference.

Melissa Acevedo, Senior Counsel, and Ryan M. Cassidy, Counsel, represented complainant the Commissioner of Financial Protection and Innovation (Commissioner).

Seth Weinstein, Esq., of the Law Offices of Seth Weinstein, P.C., represented respondent Darci Penn, who was present throughout the proceedings. Respondent Andrew L. Penn did not appear and was not represented during the hearing.

During the hearing, pursuant to Government Code section 11425.20, subdivision (a)(1), the ALJ redacted a mortgage account number appearing on pages B58–B59, and a bank account number appearing on pages B281–B282.

Concurrently with this proposed decision, the ALJ issued a protective order sealing certain exhibits containing the names of respondents' minor children and respondent Darci Penn's personal financial information and medical records.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 28, 2025.

SUMMARY

The Commissioner seeks to hold respondent Darci Penn equally responsible for her husband's violation of the securities laws by alleging she aided, abetted, and provided substantial assistance to the scheme. The Commissioner failed to prove this allegation by a preponderance of the evidence. Thus, the Commissioner's orders directing respondent Darci Penn to desist and refrain from violating the securities laws and pay restitution and administrative penalties are dismissed.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Commissioner administers and enforces the Corporate Securities Law of 1968 (Corp. Code, §§ 25000–25707) (CSL), which covers the offer and sale of securities in California. (Corp. Code, §§ 25005, 25530.) (All undesignated statutory references are to the Corporations Code.) The Commissioner is the head of the Department of Financial Protection and Innovation (DFPI). (Fin. Code, §§ 125, 320.)

2. On June 11, 2024, Mary Ann Smith, Deputy Commissioner of the Enforcement Division of the DFPI, filed a Desist and Refrain Order and Claim for Ancillary Relief (D&R Order) against respondents Andrew L. Penn and Darci Penn. (Ex. A, pp. A3–A7.) Along with the D&R Order, respondents were also served with a Notice of Intention to Issue an Order Levying Administrative Penalties under section 25233 and a Statement in Support of Order Levying Administrative Penalties (together, Notice of Intention). (*Id.* at pp. A8–A14.)

3. Respondent Darci Penn timely submitted a Notice of Defense to the D&R Order and the Notice of Intention. (Ex. 2, pp. A31–A33.) Respondent Andrew L. Penn did not submit a Notice of Defense to the D&R Order or the Notice of Intention. The ALJ took Official Notice that the D&R Order and Notice of Intention as to Andrew L. Penn were uncontested and are now final. (See Gov. Code, § 11520.)

Allegations Against Respondents

4. As quoted below, the D&R Order alleges that:

5. Beginning in or about November 2019, respondent Andrew L. Penn offered and/or sold securities, in the form of Private Investment Agreements - investment contracts - in California through telephone calls and email correspondence.

6. The securities were offered or sold in this state in issuer transactions. The [DFPI] has not issued a permit or other form of qualification authorizing any person to offer or sell the above-described securities, in this state.

7. Andrew L. Penn provided investors with a "Private Investment Agreement" that indicated that he would use the proceeds from the sales of these securities to acquire, hold, and sell artworks.

8. Darci Penn substantially assisted Andrew L. Penn by soliciting prospective investors through telephone calls and in-person conversations to invest in these securities.

9. Andrew L. Penn sold these securities to at least six investors, residing in California and elsewhere, in at least 12 separate transactions [,] raising at least \$622,275.00.

10. In connection with the offers and sales of these securities, Andrew L. Penn and Darci Penn made, or caused to be made, misrepresentations of material fact to investors and potential investors, including that:

- a. The investment was "Fully Guaranteed" with a "guaranteed return" of "40% over a term of 19 months" or "guaranteed return of 22.8% ["];
- b. The investor would receive semi-annual payments;
- c. The investment had "Zero Risk ["]; and
- d. The client had sole discretion "to determine how the proceeds are allocated," at the end of the contracted term.

11. In fact, none of these statements were true. At least five of the investors never received any payments. One investor did receive a portion of the original deposit after asking for a refund but received no profits. At least six investors have made multiple requests for a refund from the Penn's [sic] but have been unsuccessful.

5. The D&R Order alleges respondents violated sections 25110 and 25401. The D&R's theory of liability as to Mrs. Penn is that, although she did not offer or sell any securities, she is liable to the same extent as Mr. Penn because she aided, abetted, and provided substantial assistance to his unlawful scheme as prohibited by section 25403. The D&R Order orders respondents, under section 25532, to desist and refrain from

further offer or sale in the State of California of securities in the form of investment contracts, unless and until qualification has been made under said law or unless exempt.

(Ex. 1, p. A5.) The D&R Order also orders respondents, under section 25532, to desist and refrain from

offering or selling or buying or offering to buy any security in the State of California, including but not limited to investment contracts, by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(Id. at p. A6.)

6. The D&R Order further orders respondents to pay, jointly and severally, ancillary relief of \$622,275 under section 25532, subdivision (e). The Notice of Intention prays for an order levying administrative penalties totaling \$148,500 against respondents, jointly and severally, under section 25252, subdivision (a).

The Investment Scheme and the Investors

THE DFPI'S RECORDS

7. Neither Mr. Penn nor Mrs. Penn had: (1) any qualification or permit authorizing the offer or sale of securities in California; (2) made any application for such a qualification or permit from the DFPI; or (3) received any notice of exemption from the qualification or permitting requirement from the DFPI, at any time. (Ex. 9.)

[REDACTED]

8. [REDACTED] went to college with Mrs. Penn and met Mr. Penn through her. [REDACTED] and Mrs. Penn were close; they were both in each other's bridal parties and had children around the same time. [REDACTED] understanding from speaking with Mrs. Penn was that Mr. Penn went to college for financial planning and money management.

9. Around 2019, [REDACTED] noticed the Penns were doing well financially and were taking expensive vacations. Mrs. Penn told [REDACTED] about Mr. Penn's success investing in art alongside his regular job and mentioned he was assisting his family with investing in art as well. [REDACTED] had cash available that she and her husband intended to use to purchase a rental property, which Mrs. Penn knew about at the time. (See Ex. PP.)

10. [REDACTED] told Mrs. Penn she was interested in investing with Mr. Penn and asked Mrs. Penn to connect them. Mrs. Penn connected Mr. Penn to [REDACTED] by text message in November 2019. (Ex. 10.) In a long series of text messages, Mr. Penn explained how the investment worked: Mr. Penn only purchased "pre-sold" pieces of fine art "for an already known and guaranteed return," which allowed Mr. Penn to "enter the deal with zero risk." (Ex. 11.) According to Mr. Penn's text messages, the "buyer deposits, into an escrow account 50% of the sale price upon acceptance. Then before it ships to its final destination, the other 50% gets deposited." (*Ibid.*) Mr. Penn tempered this representations about risk by explaining that the "only scenario where risk is a factor is if the buyer pays the 50% deposit and then backs out before depositing the other 50%," but that labeling this as a "risk" was deceiving because in that situation Mr. Penn would retain the 50 percent deposit and would still own the piece of fine art. (*Ibid.*) Mr. Penn even stated he hoped this outcome would

occur because in that case the "return skyrockets to 75%." (*Ibid.*) Mr. Penn then laid out two deal scenarios, each of which would take about ten and one-half weeks to be consummated and had investment returns of around 21 to 23 percent. (*Ibid.*)

██████████ responded, saying she would share the information with her husband and asked to set up a conversation with the three of them the next day. (*Ibid.*)

Mr. Penn explained to Mr. and ██████████ in later conversations that, once a sale was completed, the couple had the options of withdrawing their investment and the profits, withdrawing just the profits, or rolling the money over into a new investment.

11. Between November 2019 and December 2021, the ██████████ gave Mr. Penn \$326,775 to invest. (Ex. 8, pp. A283, A315, A375, A403, A413, A424.) The ██████████ sent this money by six wire transfers. Mr. Penn instructed ██████████ to wire the money to an account at Bank of America with the names "Andrew Penn/Darci Gruenfeld" (Gruenfeld is Mrs. Penn's maiden name) and with an account number ending in 4773 (the BofA Account). (Ex. 12.) In the ██████████ bank records, some of these wire transfers note that the recipient was "Andrew Penn," and do not mention Mrs. Penn. (Ex. 14, pp. A879, A880, A882.)

12. ██████████ believed they made 10 investments in fine art purchases with Mr. Penn—some of these investments used capital from the wire transfers, while others used a combination of previously unrealized gains and new capital from wire transfers. ██████████ believed their net profit from these investments, including reinvestment of unrealized profits from previous investments, was \$133,709.32. (Ex. 16.)

13. In August 2021, ██████████ requested to withdraw \$250,000 of the capital and profits Mr. Penn was holding. In making this request, ██████████ mistakenly included Mrs. Penn in a group text with Mr. Penn, rather than including

[REDACTED] (Ex. OO.) Despite requesting their money from Mr. Penn several times, the Jasmynes have received no money back from him. [REDACTED] testified she was put at ease about the risk of the investment because their money was deposited into an account that she believed Mr. and Mrs. Penn jointly owned. [REDACTED] also testified she asked Mrs. Penn on several occasions whether these investments were "real" after making them, and Mrs. Penn confirmed they were real.

[REDACTED]

14. [REDACTED] was Mr. Penn's high school football coach, but the two lost touch after high school. By coincidence, Mrs. Penn became friendly with Mr. Sabolie's wife, [REDACTED] because their children went to preschool together in 2017. [REDACTED] met Mr. Penn at that time. Mrs. Penn was a "room mom" for their children's preschool class and Mr. Penn was the class's parent treasurer. The parents of each child in the class were expected to make a nominal contribution to the class's fund for parties and teacher gifts, with the parent treasurer holding those funds. Mr. Penn claimed at the end of the school year in 2019 that he made a profit from investing money that was collected for the class fund. He then wrote each family a check for an amount greater than their contribution.

15. In December 2019, the Penns, [REDACTED] and two other couples went to an event at Descanso Gardens in La Cañada. During that event, the husbands and the wives split off into two groups. While the groups were separated, Mr. Penn solicited the other husbands about investing in fine art. Mr. Penn's solicitation was similar to the solicitation described previously—[REDACTED] would provide capital to invest in the buying and selling of fine art directed by Mr. Penn, there would be a guaranteed return within 90 days of about 23 percent, and at the end of the

investment term, ██████████ could reinvest all or part of the profits or withdraw the profits. (See Ex. 6, pp. A148–A149.)

16. ██████████ testified that, a few weeks after this solicitation in January 2020, Mrs. Penn contacted her via text message to ask whether she was interested in investing with Mr. Penn and claimed the investment carried “no risk.” ██████████ conceded, however, that she no longer had a copy of this text message and that text message was not introduced into evidence. ██████████ also alleged Mrs. Penn told her that if ██████████ invested with Mr. Penn, they could use the profits to pay for much-needed home remodeling.

17. ██████████ decided to invest with Mr. Penn. During his testimony, ██████████ stated he initially gave Mr. Penn \$1,600 to invest, although a declaration made by ██████████ stated the initial investment was \$1,800. (See Ex. QQ.) When Mr. Penn provided a return of \$600 on that investment, ██████████ was persuaded to invest a larger sum, this time \$10,000. Mr. Penn represented to ██████████ that this larger investment would earn a greater return than if the capital was in a bank account only earning interest. In December 2019, ██████████ wrote a check to Mr. Penn for \$3,000, and he wrote another check to Mr. Penn in April 2020 for \$7,000. (Exs. II, JJ.)

18. In February 2020, the Penns visited ██████████ home. The purpose of the visit was for Mr. Penn to discuss ██████████ household finances and the possibility of them obtaining a home equity loan. (Ex. 6, pp. A140, A150–A151.) Investing in fine art was not discussed during this visit. The parties dispute whether Mrs. Penn sat at the table with Mr. Penn and ██████████ while this discussion took place or whether Mrs. Penn was elsewhere in ██████████ home at the time. On Mr. Penn’s advice, ██████████ obtained a home equity loan and used the loan proceeds to invest with Mr. Penn.

19. On February 12, 2021, ██████████ sent Mr. Penn \$50,000 in investment capital via wire transfer to the BofA Account, as instructed by Mr. Penn. (Ex. 18, p. A887; Ex. 8, p. A441.) The wiring instructions provided by Mr. Penn did not list Mrs. Penn as an owner of the BofA Account. (Ex. 17, p. A885.) Mr. Penn alone was listed as the recipient of the wire transfer in ██████████ bank records. (Ex. 18, pp. A887–A888.) In June 2021, ██████████ sent Mr. Penn \$35,000 via wire transfer to the BofA Account for a new art investment. (Ex. 8, p. A466; Ex. 17, p. A885; Ex. 18, p. A888.) As with the previous wire transfer, only Mr. Penn was listed as the recipient of the wire transfer in ██████████ bank records. (Ex. 18, p. A888.)

20. After receiving this last wire transfer, ██████████ had trouble contacting Mr. Penn and his updates about their investments became scant. Mr. Penn's excuses for why he was difficult to contact became more and more incredible, including that he had lost or broken his cell phone three to four times. ██████████ asked ██████████ to contact Mrs. Penn to request that Mr. Penn call them back about their investments. Eventually, ██████████ requested a refund of their money from Mr. Penn. ██████████ received wire transfers from Mr. Penn in October 2021, July 2022, and August 2022, totaling \$22,451. (Ex. 18, pp. A889–A890.) They also received one transfer of \$654 from Mr. Penn via the Venmo money transfer service, and ██████████ received \$2,000 in cash from Mr. Penn. (Ex. 6, p. A151.) ██████████ losses from investing with Mr. Penn total \$71,395. (*Ibid.*)

[REDACTED]

21. [REDACTED] went to middle school with Mrs. Penn. Both [REDACTED] and her husband went to high school with Mr. and Mrs. Penn, but they did not become close until 2015 when Mrs. Wilson and Mrs. Penn had their first-born children around the same time.

22. [REDACTED] knew Mr. Penn to be an investment advisor working at MassMutual. In June 2022, Mr. Penn made an in-person solicitation to [REDACTED] to invest in the buying and selling of fine art. (Ex. 6, p. A130.) Mr. Penn claimed the investment was fully guaranteed, had zero risk, and would yield a return of 22.8 percent in 90 days. (*Ibid.*) In Mr. Penn's solicitation, he claimed [REDACTED] would have the option of re-investing, partially re-investing, or withdrawing completely from his investment at the end of the term. (*Ibid.*) In December 2022, Mr. Penn and Mr. Wilson entered into a Private Investment Agreement for which [REDACTED] would invest \$100,000 towards the purchase and sale of "The Girl with Balloon" by the artist Banksy. (*Id.* at p. A133.) [REDACTED] wired the entire investment amount to the BofA Account. (*Id.* at p. A136; Ex. 8, p. A777.) [REDACTED] bank records show only Mr. Penn as the recipient of the wire transfer. (Ex. 6, p. A136.)

23. According to [REDACTED] Mr. Penn became very uncommunicative after receiving the investment money, and so she contacted Mrs. Penn via telephone in December 2022. During that conversation, Mrs. Penn told [REDACTED] that Mr. Penn's

¹ Only [REDACTED] testified at the hearing. Pursuant to Government Code section 11514, subdivision (a), [REDACTED] declaration was given "the same effect as other hearsay evidence."

investments were legitimate and that he was, in fact, a buyer and seller of fine art. Mrs. Penn also said Mr. Penn lost his cell phone or broke it, which was why he was difficult to contact. These representations set [REDACTED] at ease that the investment was legitimate, and [REDACTED] and Mrs. Penn even joked about [REDACTED] unease by text message after they ended the call.

24. [REDACTED] and Mrs. Penn communicated by telephone and text message in February 2023, after it had become clear Mr. Penn had defrauded the investors. During those conversations, Mrs. Penn admitted she saw "red flags" in Mr. Penn in November 2022, including a pattern of Mr. Penn "falling off the radar" with multiple friends and being difficult to contact. Mrs. Penn also told Mrs. Wilson that, after they spoke in December 2022, Mrs. Penn told Mr. Penn, "don't take their money too." At the time of their February 2023 telephone call, Mrs. Penn told [REDACTED] that the Wilsons likely were not going to get their money back. [REDACTED] have not received any returns on their \$100,000 investment, or their investment capital, after the 90-day investment period lapsed.

[REDACTED]

25. [REDACTED] have known Mr. Penn since high school. Mr. Penn and [REDACTED] played high school football together. [REDACTED] knew Mr. Penn had worked as a financial adviser for UBS Financial Services in the past and had a securities license. The Penns and [REDACTED] went to dinner together in

² Neither Mr. nor [REDACTED] testified at the hearing. Pursuant to Government Code section 11514, subdivision (a), [REDACTED] declaration was given "the same effect as other hearsay evidence."

July 2021 in Malibu. During that dinner, Mr. Penn solicited ██████████ to invest in the buying and selling of fine art. This solicitation was substantially similar to his solicitation of other investors, including claims of a guaranteed return of 20-30 percent within 120 to 150 days, as well as the option to reinvest all or some of the profits, or withdraw the investment capital and profits entirely at the end of the investment term. Following that dinner, ██████████ and Mr. Penn corresponded by text message over the next several months regarding additional investments and the terms of those investments. (Ex. 6, pp. A108–A111, A114–A115, A117–A119, A122–A124, A127.)

26. Between July 2021 and July 2022, ██████████ gave Mr. Penn \$141,000 to invest. (Ex. 6, pp. A90–A91, A922.) ██████████ sent this money by wire transfer on three occasions to the BofA Account. (Ex. 6, pp. A93, A96, A99; Ex. 8, pp. A489, A503, A523.) In July and August 2022, ██████████ sent money to Mr. Penn at the BofA Account using a series of transfers using the Zelle money transfer service. (Ex. 6, pp. A104, A106; Ex. 8, pp. A701–A702.) For each of these wire or money transfers, Mr. Penn was listed as the recipient in ██████████ bank statements. (Ex. 6, pp. A93, A96, A99, A104, A106.)

27. ██████████ believed they made eight investments in fine art purchases with Mr. Penn—some of these investments required capital provided by ██████████ while others used a combination of previously unrealized gains and new capital. ██████████ believed their net profit from these investments, including reinvestment of unrealized profits from previous investments, was \$238,489.15. (Ex. 6, p. A129.) ██████████ have received only \$3,148 back from Mr. Penn, despite asking for refunds from Mr. and Mrs. Penn. (*Id.* at p. A922.)

[REDACTED]

28. [REDACTED] was a nanny for the Penns from summer 2019 through summer 2021. [REDACTED] was closer to Mrs. Penn, as Mrs. Penn was chiefly responsible for taking care of the children and other household matters, while Mr. Penn was the family's income earner. [REDACTED] understanding was that Mr. Penn worked as a financial advisor at a firm but did fine art deals as more of a "side hustle" and "passion project," which later became his only income stream. [REDACTED] observed both Mr. and Mrs. Penn discussing these art deals while in the house. For example, Mrs. Penn would say she wanted to purchase an expensive purse and would ask Mr. Penn when the next art deal was closing and for how much.

29. While working in the Penns' Calabasas home, [REDACTED] made daily observations of the trappings of the Penns' wealth, including jewelry, watches, and designer goods. Mr. Penn also disclosed to [REDACTED] that his family's American Express bill was over \$100,000 in one month. Sometime after becoming close, Mrs. Penn encouraged [REDACTED] to speak with Mr. Penn about receiving assistance from him to invest. [REDACTED] needed this encouragement because she did not have a close relationship with Mr. Penn to broach this subject on her own.

30. Mr. Penn agreed to include [REDACTED] in a fine art investment. Mr. Penn made claims about the investment to [REDACTED] similar to those discussed herein, including that Mr. Penn dealt in pre-sold art and thus the transactions incurred no risk and that she would be provided a guaranteed return of \$3,000 per year on her investment of \$5,000. Based on these representations, in April 2020, [REDACTED] agreed to invest \$5,000 with Mr. Penn. Mr. Penn accepted \$2,455 via Venmo money transfer for a portion of the investment and took the balance out of Mrs. Bussi-Sotille's weekly wage as the family's nanny. (Ex. 24.)

31. Based on the Penns' lavish lifestyle and apparent success, ██████████ ██████████ believed this to be a safe investment. Yet Mr. Penn never provided any investment returns to ██████████ and thus, she has lost \$5,000 investing with Mr. Penn.

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32. ██████████ and his wife ██████████ live on the same cul-de-sac as the Penns and have been their neighbors since 2011. In July 2022, ██████████ received an odd text message from Mr. Penn alluding to a meeting Mr. Penn had with a different person named ██████████ and a "John and Steve" about an investment deal with a guaranteed 40 percent return. (Ex. 19, p. A891.) When ██████████ asked Mr. Penn about that text message, Mr. Penn explained he had two people named "Elan B" as contacts in his cell phone, and he mistakenly sent the message to ██████████ (*Id.* at pp. A892–A893.) The next day, however, Mr. Penn messaged ██████████ again saying ██████████ could also take part in the investment deal mentioned in the text message. Over a series of text messages, Mr. Penn explained that the investment deal would receive a "40% net return on amount invested" in fine art after 19 months. Mr. Penn's sales pitch to ██████████ was similar to the pitch he gave to other investors, namely, that he could "pre-sell" pieces of fine art with guaranteed investment returns. (*Id.* at pp. A893–A897.) ██████████ entered into a Private Investment Agreement with Mr. Penn dated August 11, 2022, which guaranteed a final payout amount of \$130,000 on an investment of \$100,000. (Ex. 20.)

33. Mr. Penn gave ██████████ instructions to wire the investment money into the BofA Account. (Ex. 19, p. A896.) These instructions only listed Mr. Penn as the owner of the BofA Account. (*Ibid.*) ██████████ wired \$100,000 to that account on August 11, 2022. (Ex. 8, p. A703; Ex. 21, p. A911.) ██████████ account transaction

history only lists Mr. Penn as a recipient of the wire, not Mrs. Penn. (Ex. 21, p. A911.) Mr. Penn never provided any of the promised investment returns, nor did he return any of the money invested by ██████████ upon request. ██████████ conceded on cross-examination that he never spoke to Mrs. Penn at any time about investing with Mr. Penn.

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34. ██████████ is Mrs. Penn's younger brother. ██████████ first invested with Mr. Penn in 2017. At that time, ██████████ told Mr. Penn he wanted to purchase an engagement ring for his girlfriend but could not afford the ring he desired. Mr. Penn offered to cover the difference between the purchase price of the ring and the money ██████████ had if ██████████ invested money with him. ██████████ agreed and gave Mr. Penn \$3,000 to invest. ██████████ understood that Mr. Penn was investing that money in the stock market. On a date not established by the evidence, Mr. Penn returned the \$3,000 to ██████████

35. Based on Mr. Penn's supposed success investing the initial \$3,000, ██████████ decided to invest in the stock market again with Mr. Penn two to three years later. This time he invested \$90,000, which was all his savings at the time. About two years after this, Mr. Penn also solicited ██████████ to invest in fine art. Mr. Penn represented to ██████████ that these investments were receiving consistent 20 percent returns. Based on this representation, ██████████ invested an additional \$60,000 with Mr. Penn for a total of \$150,000. (Ex. 8, pp. A283, A365, A423.) At least \$90,000 of this money was wired into the BofA Account. (*Ibid.*)

36. ██████████ received \$30,000 back from Mr. Penn. (Ex. 8, pp. A317, A600, A701–A703 [showing outgoing payments to ██████████ from the BofA

Account].) In January 2023, [REDACTED] asked to pull the rest of the money out that he invested with Mr. Penn, because it became obvious that Mr. Penn was avoiding him. At various times, Mr. Penn gave excuses for why he was unavailable to speak with [REDACTED] (such as that his phone was broken) or why [REDACTED] money was unavailable (such as Mr. Penn being a victim of fraud multiple times).

37. [REDACTED] made all these investments without his sister's knowledge. He never spoke to Mrs. Penn about these investments until January 2023, when the scheme began to unravel and when it became difficult to contact Mr. Penn. Mrs. Penn was confused upon learning about [REDACTED] investments. [REDACTED] last contact with Mr. Penn was in mid-2023, when Mr. Penn sent him a text message saying something like "money coming soon is that OK," to which [REDACTED] did not respond. [REDACTED] received no more money from Mr. Penn after receiving this text message.

[REDACTED]

38. [REDACTED] is the mother of Darci Penn and [REDACTED]. [REDACTED] has known Mr. Penn since her daughter began dating him in high school. Additionally, she was aware Mr. Penn had worked at various financial services firms such as Wells Fargo and MassMutual as an investment advisor. In 2021, [REDACTED] gave \$25,000 to Mr. Penn to invest in what she thought was a portfolio of near-liquid-type investments. She wanted to make near-liquid investments in case she needed to access that money quickly in her old age. [REDACTED] remembers receiving a statement from Mr. Penn at one time stating the money she invested had grown to \$26,000, but there was no investment agreement or other contract underlying the investment.

39. Of the \$25,000 she invested with Mr. Penn, ██████████ received \$16,500 back in distributions from Mr. Penn—\$8,500 is still outstanding and has not been returned to her. ██████████ did not speak to her daughter about investing with Mr. Penn before doing so. Rather, she invested based solely on her discussions with Mr. Penn and only mentioned those investments to Mrs. Penn after making them. A few months before January 2023, ██████████ began to have concerns about the safety of her investment because Mr. Penn claimed to have been defrauded multiple times as an excuse for why the invested money was unavailable. ██████████ heard from others that Mr. Penn's investment scheme also included his parents, grandmother, and uncle.

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40. ██████████ is a family friend of the ██████████ and has known Mrs. Penn since she was a child. ██████████ met Mr. Penn through Mrs. Penn. ██████████ learned about Mr. Penn's fine art investments through Mrs. Penn's father. ██████████ husband contacted Mr. Penn to invest in fine art in late 2020. All of the conversations ██████████ husband had with Mr. Penn were over the telephone because ██████████ and her husband live in northern California. ██████████ and her husband invested \$5,000 by check issued to Mr. Penn, but received no formal investment agreement or contract. Mrs. Penn was not involved in ██████████ investment with Mr. Penn at any point.

41. The money ██████████ and her husband invested with Mr. Penn was never returned. They both began to grow anxious about the safety of their investment when Mr. Penn would not return their calls. Their suspicions were confirmed when Mrs. Penn's father told them that there were problems with Mr. Penn's investments and that people were losing their money.

[REDACTED]

42. [REDACTED] was a nanny for the Penns from 2021 to 2023. Initially, [REDACTED] did not notice anything amiss with Mr. Penn. He was the one responsible for paying her and he controlled the family's finances more generally. [REDACTED] noticed that only Mr. Penn had the key to the home's mailbox, and he would not allow Mrs. Penn to check the mail. [REDACTED] also observed Mrs. Penn had to ask for Mr. Penn's permission to make most purchases.

43. Close to the end of [REDACTED] tenure working for the Penns, Mr. Penn occasionally began missing her assigned payday. Mr. Penn proffered excuses such as his bank account being hacked and his money being inaccessible as reasons for why he could not pay [REDACTED] on time. Around this time, Mr. Penn also sent an unsolicited offer to [REDACTED] to invest in fine art via text message. Mr. Penn made representations to [REDACTED] similar to those discussed herein, including the ability to roll over profits from her investment or withdraw her capital at any time. But because Mr. Penn wanted [REDACTED] to invest everything in her bank account, approximately \$25,000, this made her uncomfortable and she did not invest. According to [REDACTED] she did not reveal to Mrs. Penn that Mr. Penn had made this solicitation until January 2023 after Mr. Penn's investment scheme began to unravel.

44. [REDACTED] is Mrs. Penn's former elementary school teacher and is a long-time family friend of [REDACTED]. According to [REDACTED] Mr. Penn solicited her daughter to invest in fine art via text message. Although [REDACTED] daughter also knew other people in Mr. Penn's extended circle of friends and family who invested with him, she decided against it. There is no evidence Mrs. Penn was involved in or aware of this solicitation.

45. ██████████ met Mrs. Penn in 2017 when their daughters were in the same nursery school class, and they became very close thereafter. Around March or April 2020, ██████████ was with the Penns' at their home. While Mrs. Penn was in the garage and Mr. Penn and ██████████ were alone in the kitchen, Mr. Penn solicited ██████████ to invest in fine art. ██████████ demurred and told Mr. Penn her husband handles the family's investing. Mr. Penn asked ██████████ if she would discuss the idea with her husband, and ██████████ agreed. Ultimately, ██████████ and her husband did not invest with Mr. Penn, and ██████████ did not mention the solicitation to Mrs. Penn until later. Upon learning of the solicitation, Mrs. Penn responded that she did not know much about Mr. Penn's fine art investments.

46. Some of the victims who testified in the Commissioner's case-in-chief are parties to an adversary proceeding against Mrs. Penn in her bankruptcy case. They submitted declarations supporting their claims in that proceeding. (See Exs. PP, QQ, SS.)

Mrs. Penn's Evidence

MRS. PENN'S RELATIONSHIP WITH MR. PENN

47. Mr. and Mrs. Penn began dating in high school and continued their relationship while he attended the University of California-Los Angeles and she attended Pierce College and then California State University-Northridge. Mrs. Penn graduated with a degree in communications in 2008. She worked in various retail positions while attending college and then began working in an administrative role at her mother's insurance company. Mrs. Penn has no background in finance, but she does have a license to work in the insurance industry issued by the California Department of Insurance.

48. Mr. Penn held various jobs in the financial services industry after he graduated from college, including at Wells Fargo and UBS. According to Mrs. Penn, Mr. Penn was struggling in his career around the time their first child was born in 2015, but by the end of 2016, she thought he was doing better because he was less worried about money and the family took a nice vacation. In 2017, Mrs. Penn learned Mr. Penn was investing outside of his normal employment when he told her he was investing his family's money. Mr. Penn told Mrs. Penn nothing else about those investments, and she did not ask. Mr. Penn made it clear to Mrs. Penn that his investments were "confidential," and he would not discuss a client's confidential information with her. At some point after this, Mr. Penn quit his job and began working for himself.

49. In late 2018 or early 2019, Mrs. Penn learned Mr. Penn was investing in fine art. Mr. Penn told Mrs. Penn he met someone on an online art forum, and the two of them intended to form a partnership to buy and sell art. After Mr. Penn began investing in fine art, Mrs. Penn noticed the family's finances improved dramatically. The Penns renovated most of their home, took fancier vacations, paid multiple nannies to help supervise their children, and Mr. Penn purchased jewelry for himself and Mrs. Penn. Aside from pieces of art Mr. Penn purchased for himself that were displayed in the home, Mrs. Penn never saw any art pieces Mr. Penn purportedly bought and sold for investment purposes.

50. Despite the family's growing affluence, Mr. Penn never allowed Mrs. Penn to handle any aspect of the family's finances. Instead, her duties around the home were limited to housework and raising their children. Mr. Penn paid the family's mortgage and bills. Mr. Penn controlled the family's bank account—the BofA Account—and would not give Mrs. Penn the login credentials to access the account online. According to Mrs. Penn, the bank account Mr. Penn used was an account at

Bank of America that he has had since high school. Notably, the account was called a "UCLA Alumni Assn" account in some of the bank statements, and only Mr. Penn attended UCLA. (Ex. 8, p. A181.) Mrs. Penn was listed as a joint owner of the BofA Account as early as 2017, although the signature card from 2017 lists her married name, "Darci Penn," as the joint owner, while later bank statements use her maiden name, "Darci [REDACTED]" (*Id.* at pp. A179–A180.)

51. Similarly, although Mrs. Penn had an American Express card she could use to make purchases, Mr. Penn did not allow her to access the card's online banking features. Mrs. Penn believed she was merely an "authorized user" of the BofA Account and the American Express card and thus did not have the same level of control over those accounts as Mr. Penn did. According to Mrs. Penn, Mr. Penn's reason for limiting her access to these accounts was because he was constantly nervous about fraud. Mr. Penn also exercised complete control over the family's mail and mailbox, which was locked with a key. Mr. Penn told Mrs. Penn he had to hide the mailbox key and control the mailbox because he was afraid Mrs. Penn would throw important documents away in her attempt to keep the home uncluttered.

52. Around the time of COVID, Mr. Penn became more controlling, secretive, and physically abusive towards Mrs. Penn. One example of Mr. Penn's secrecy was that Mrs. Penn noticed that several items of her jewelry went missing, and when questioned about this, Mr. Penn claimed he took those items, including her wedding ring, and placed them in a safe deposit box for safekeeping. In January 2023, Mrs. Penn became suspicious that Mr. Penn's investments were not legitimate because many friends and acquaintances reached out to her trying to contact Mr. Penn about their investments and their inability to withdraw money from those investments. Mrs. Penn moved out of the couple's home with the children around this time.

53. After explaining her suspicions to her mother, Mrs. Penn and [REDACTED] went to their local Bank of America branch in mid-January 2023 to see if she could gain access to the BofA Account and the safe deposit box. During that visit, Mrs. Penn learned for the first time she was not just an “authorized user” of the bank account, but a joint account holder with access equal to Mr. Penn’s. Mrs. Penn and her mother reviewed monthly statements for the BofA Account, which appeared to show money going into the account from various sources, but not going out to make art investments. Bank employees told the pair that they could not access the safe deposit box that day because Mrs. Penn did not have the key and it was close to closing time, but that they could return on a different day to access it. Mrs. Penn returned several months later to attempt to access the safe deposit box again but learned that the Franchise Tax Board had seized the box. Mrs. Penn does not know whether there was anything of value in the box at the time it was seized, but she no longer has any of the items Mr. Penn supposedly stored there.

54. Around the time of the visit to the bank in January 2023, [REDACTED] encouraged Mrs. Penn to obtain a copy of her credit report. After doing so, Mrs. Penn discovered the couple’s mortgage was in arrears by over \$100,000 and had not been paid in over two years. This required the Penns to enter into a loan modification to prevent foreclosure; the couple signed the loan modification agreement on April 5, 2023. (Ex. K, pp. B52–B56.) That same day, Mr. Penn drafted a letter (notarized by the same notary who notarized the loan modification agreement) in which he alleged Mrs. Penn did not know about any investment agreements he entered into with third parties. (Ex. D.) According to Mrs. Penn, Mr. Penn wrote this letter so she could “stay protected in all of this” as she had nothing to do with Mr. Penn’s investments.

55. On April 24, 2023, Mrs. Penn began marriage dissolution proceedings. (Ex. A.) In May 2023, an emergency protective order was entered in Mrs. Penn's favor and against Mr. Penn after the couple had an altercation at their home in which Mr. Penn forcefully opened a car door and struck her. (Ex. B.)

56. Later in May 2023, Mrs. Penn moved back into the couple's Calabasas home while Mr. Penn was no longer living there. She discovered pieces of unopened mail and correspondence hidden throughout the house, including drawers, locked cabinets, and even in the house's pool equipment. (Ex. O.) This unopened mail included, for example, notices from their lender that their home mortgage was in arrears, thousands of dollars of unpaid utility bills, unpaid vehicle and vehicle insurance bills, and a bill for an unpaid storage unit. (Ex. K, pp. B58–B59; Exs. J-2; L; N; O-2.) Mrs. Penn also discovered the couple's automobile insurance company denied a claim of loss after Mr. Penn had an accident in June 2020 because the policy had been cancelled due to non-payment months before. (Ex. J.) Also included in these documents were statements from MassMutual showing that Mr. Penn had taken out life insurance policies on his mother and Mrs. Penn, but had taken loans against the policies leaving them with a significantly reduced cash value. (Ex. I.)

57. Mrs. Penn also discovered pawn shop transaction receipts from the last few years in which expensive goods, such as gold-diamond earrings and bracelets, diamond rings, and multiple Hermès and Chanel bags, were pledged for loans. (Ex. P.) Mrs. Penn denied pawning these items and claimed she tried to call the pawn shops about these transactions, but was rebuffed because she was not the person who pledged the merchandise. Although the Commissioner argued it was unclear who engaged in these transactions because none of the contract duplicates entered into evidence were signed, the evidence suggests Mr. Penn was the borrower. His name

alone appears as the pledger/borrower on some documents. (*Id.* at pp. B81, B93.) Moreover, other pawn documents list Mrs. Penn as a party with “3rd Party Authorization” to perform various actions with respect to the pledged collateral—the pledge agreement makes it clear that the authorized third party cannot be the borrower on the pledge agreement, suggesting Mr. Penn was the borrower. (*Id.* at pp. B94–B101 [listing Mrs. Penn as authorized third party on multiple pawn transactions].) Moreover, one pawn agreement for a “gentleman’s wristwatch” in the amount of \$125,000 was entered into on October 4, 2021. (*Id.* at p. B82.) The BofA Account received a wire in that amount from “Angelo’s Pawn Shop II” that day. (Ex. 8, p. A523.) This occurred before 2023 when Mrs. Penn discovered for the first time she had access to the BofA Account.

58. Mr. Penn’s fraud has been ruinous for Mrs. Penn. She filed for bankruptcy, and those proceedings are ongoing. The only major asset Mrs. Penn still has is her interest in the family home in Calabasas. The BofA Account was “force closed” in November 2023 with a balance of \$137.76. (Ex. H.) Over the past two years, Mrs. Penn has reported adjusted gross income of \$8,144 and \$16,781, respectively, on her federal income taxes. (Exs. Q, R.) As of March 2025, she had approximately \$1,300 in her bank account. (Ex. G.) Mrs. Penn’s father and mother now provide most of the support for Mrs. Penn and her four children. This includes paying Mrs. Penn’s mortgage and utilities and for their grandchildren’s activities, such as karate class. The Gruenfelds also allow Mrs. Penn to use one of their vehicles, a Rivian SUV. Mrs. Penn began dating someone who now lives with her, and he also provides some support for Mrs. Penn and her children.

59. Although a court ordered Mr. Penn to pay spousal and child support to Mrs. Penn beginning in July 2024, Mr. Penn has not paid any spousal or child support

to Mrs. Penn. (Exs. E, LL.) Aside from knowing that Mr. Penn, from time to time, attends supervised psychotherapy appointments in which their children are also present but Mrs. Penn is not, she has no knowledge of Mr. Penn's current whereabouts.

MRS. PENN'S TESTIMONY ABOUT THE INVESTORS

60. Mrs. Penn testified she felt awful that the investors lost their money but denied being involved in any of Mr. Penn's investment solicitations. With respect to the Jasmynes' investments with Mr. Penn, Mrs. Penn's testimony was consistent with ██████████ that it was ██████████ who brought up the Penns' growing wealth and asked how they obtained it. But Mrs. Penn claimed she did not provide any specific details about Mr. Penn's art deals to ██████████. Although Mrs. Penn connected ██████████ Mr. Penn (Ex. 10), she did not know that ██████████ invested with him until 2020, when the Jasmynes gave her a birthday gift to thank her for making that connection.

61. After Mr. Penn's fraud was discovered, ██████████ and Mrs. Penn stayed in communication by text message for a time. In those communications, ██████████ offered to have Mrs. Penn bring her children over to ██████████ home to play so Mrs. Penn could have a break. (Ex. X, pp. B208, B210.) In those messages, ██████████ also conceded Mrs. Penn "was doing everything [she could]" to assist with unraveling the scope of Mr. Penn's fraud and that Mr. Penn put Mrs. Penn "in a fucking terrible position," and that Mrs. Jasmine's "heart truly hurts for [Mrs. Penn] and the kids." (*Id.* at p. B210.)

62. As for ██████████ investments with Mr. Penn, Mrs. Penn testified she did not learn Mr. Penn had solicited Mr. Sabolic to invest at the event at Descanso Gardens until later when ██████████ told her the couple was considering Mr. Penn's

offer. After Mr. Penn's fraud was discovered, [REDACTED] and Mrs. Penn stayed in communication by text message for a time. In those text messages, [REDACTED] said the situation was difficult for her because, although she loved Mrs. Penn, she was "so angry at what [Mr. Penn] has done." (Ex. W, p. B201.) [REDACTED] also said in those text messages that she was "sorry this has happened to [Mrs. Penn], us and the many other people [Mrs. Penn] told [Mrs. Sabolic] about." (*Id.* at p. B202.) Later in the same text message thread, Mrs. Sabolic said

When I go back and read those messages and [Mr. Penn] is acting like he never said anything [sic] of things he did say to me on the phone is really upsetting. I feel like I've been lied to and just made to be a complete fool. . . . No matter how good [Mr. Penn] made it sound and whether it was true or not we just should not have done it and now have to live with that. I truly feel sad and empathy for what your [sic] are having to deal with now finding out that someone you love and have been with for so long lied and deceived you.

(*Id.* at p. B204.)

63. Regarding the Wilsons' investments with Mr. Penn, Mrs. Penn testified she never spoke with Mr. or Mrs. Wilson about investing with Mr. Penn. Rather, she only discovered the Wilsons made investments with Mr. Penn in December 2022 when Mrs. Wilson called Mrs. Penn to ask why Mr. Penn was uncommunicative and to affirm the legitimacy of the investments. After Mrs. Penn got off that telephone call, she asked Mr. Penn not to take any more money from their friends or involve them any further in his investing business.

64. After Mr. Penn's fraud was discovered, Mrs. Wilson and Mrs. Penn stayed in communication by text message for a time. In those text messages, Mrs. Wilson said she felt bad about Mrs. Penn's situation and acknowledged Mrs. Penn was "living a nightmare." (Ex. T, pp. B188–B189.) Mrs. Wilson also asked Mrs. Penn to have Mr. Penn contact Mr. Wilson about their investments. Mr. Penn later claimed to have contacted Mr. Wilson, but Mrs. Wilson confirmed, however, that Mr. Penn had not communicated with Mr. Wilson in the past few months. (*Id.* at pp. B190–B192.)

65. Concerning the Fujitakis's investments with Mr. Penn, Mrs. Penn testified she remembered going to a dinner in Malibu with Mr. Penn and the Fujitakis during which Mr. Penn boasted about how well his investments were doing. Mrs. Penn claimed she was uninvolved with the conversation about investing. Mrs. Penn considered the Fujitakis to be more Mr. Penn's friends than hers because Mr. Penn knew Mr. Fujitaki from playing football with him in high school.

66. With respect to [REDACTED] Mrs. Penn conceded [REDACTED] likely got the impression the Penns were wealthy and successful based on the Penns' outward signs of wealth. Mr. Penn frequently boasted about his investment success around Mrs. Bussi-Sotille, but Mrs. Penn denied ever being present for discussions between Mr. Penn and Mrs. Bussi-Sotille regarding investing in fine art. Rather, Mrs. Penn did not know that Mrs. Bussi-Sotille invested with Mr. Penn until after the investment occurred when Mrs. Bussi-Sotille texted Mrs. Penn after Mr. Penn became uncommunicative.

67. In a series of text messages beginning in February 2023, Mrs. Penn and [REDACTED] discussed the unraveling of Mr. Penn's investment scheme. [REDACTED] expressed shock and disappointment about the loss of the money she invested. When Mrs. Bussi-Sotille asked Mrs. Penn for information about the loss,

Mrs. Penn could not provide any further details. Although [REDACTED] also expressed sympathy for Mrs. Penn in that series of text messages, [REDACTED] testified her expressed sympathy was not genuine. Instead, Mrs. Bussi-Sotille was just trying to obtain any information she could from Mrs. Penn. Despite Mrs. Penn not knowing that [REDACTED] sympathy was a put-on, Mrs. Penn offered to provide [REDACTED] name and information to anyone who planned to sue Mr. Penn, including Mr. Penn's uncle, whom she understood was also a victim of Mr. Penn's fraud. (Ex. MM.)

Evaluation of Evidence

ASSESSING CREDIBILITY

68. Evidence Code section 780 provides some guidance in assessing a witness's credibility. Under section 780, witness credibility can be evaluated based on the following factors: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, the attitude of the witness toward the proceeding in which the testimony has been given, and admissions of untruthfulness at the proceedings.

69. Fact finders have broad discretion in determining whether evidence is credible. They are permitted to "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted" (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67); to "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of

testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material" (*id.* at pp. 67-68, quoting from *Nevarov v. Caldwell* (1958) 161 Cal.App.2d 762, 777); and even to reject uncontradicted testimony. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890). Discrepancies in a witness's testimony, or between a witness's testimony and that of others, do not necessarily mean the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal.App.3d 865, 879.) A fact finder also may disbelieve any or all testimony of an impeached witness. (*Wallace v. Pacific Electric Ry. Co.* (1930) 105 Cal.App. 664, 671.)

70. Despite the victims' allegations that Mrs. Penn was involved in the scheme, it is clear that many victims did not believe her to be involved even after discovering Mr. Penn's fraud. [REDACTED] all communicated with Mrs. Penn shortly after Mr. Penn's scheme unraveled and expressed dismay at *Mr. Penn's* actions, but appeared to harbor no ill will towards Mrs. Penn and ascribed her no blame for their losses. (Factual Findings 61–62, 64.) But because none of the victims know Mr. Penn's current whereabouts—and he did not participate in these proceedings—Mrs. Penn is the only remaining face of his fraud. It appears as though these victims' attitudes toward Mrs. Penn have soured over time, apparently because her assets may be the only readily available source of restitution for their losses. These witnesses' testimony appeared to be affected by this bias.

71. Conversely, Mrs. Penn's testimony appeared credible, candid, and articulate, even when discussing matters obviously troubling to her, such as the circumstances of her discovery of Mr. Penn's fraud, her current precarious financial position, and the effect her ongoing marriage dissolution proceedings have had on her and her children.

scheme was unlawful. Rather, the totality of the evidence shows Mrs. Penn genuinely believed, based on his years of experience working for financial firms and the family's growing wealth, that Mr. Penn had become a successful investor in fine art, as discussed below.

[REDACTED]

75. The Commissioner's most compelling evidence of Mrs. Penn's direct involvement in Mr. Penn's investment scheme was [REDACTED] testimony that Mrs. Penn sent her a text message asking if [REDACTED] were interested in investing with Mr. Penn and claiming Mr. Penn's investments carried no risk. But Mrs. Penn did not admit to sending this text message, and no record of this text message was admitted into evidence. And other inconsistencies in testimony and statements made by [REDACTED] undermine the believability of this testimony.

76. [REDACTED] testified she received this text message from Mrs. Penn "a few weeks" after Mr. Penn solicited [REDACTED] at Descanso Gardens in December 2019. [REDACTED] declaration was drafted for this hearing and her declaration submitted in Mrs. Penn's bankruptcy case both state Mrs. Penn sent this text message in January 2020. (Ex. 6, p. A150; Ex. QQ, p. B308.) But [REDACTED] gave Mr. Penn a \$3,000 check dated December 8, 2019, providing Mr. Penn with investment capital. (Factual Finding 17.) If Mrs. Penn solicited [REDACTED] in January 2020, this alleged solicitation could not have been the basis for [REDACTED] initial investment with Mr. Penn, as their declarations suggest, because they had already provided money to Mr. Penn in December 2019.

77. Moreover, [REDACTED] declaration from Mrs. Penn's bankruptcy case states [REDACTED] made a \$1,800 investment with Mr. Penn "as set forth in

[Mrs. Penn's] text message[.]” (Ex. QQ, p. B308.) But neither [REDACTED] declarations prepared for this hearing mention anything about an investment of \$1,800. (See Ex. 6, pp. A140–A141, A150–A151.) [REDACTED] testified he provided \$1,600, not \$1,800, to Mr. Penn as an initial investment. (Factual Finding 17.) No bank records were offered at the hearing to resolve this discrepancy.

78. In addition, [REDACTED] hearing declarations also state that, in January 2020, [REDACTED] wrote personal checks “to Andrew and Darci Penn, totaling \$11,500.” (Ex. 6, pp. A140–A141, A150–A151.) [REDACTED] declaration from Mrs. Penn’s bankruptcy case does not mention anything about an investment of \$11,500. (Ex. QQ, pp. B308–B309.) And the only evidence submitted of any checks written by [REDACTED] were made out to Mr. Penn alone, one for \$3,000 in December 2019 and one for \$7,000 in April 2020. (Factual Finding 17.) These various inconsistencies call into question the accuracy of the [REDACTED] recollection of events surrounding their solicitation into Mr. Penn’s scheme and Mrs. Penn’s alleged involvement in it.

[REDACTED]

79. With respect to the [REDACTED] admitted that *she* first inquired about investing with Mr. Penn after seeing the Penns’ growing wealth. As a consequence of [REDACTED] inquiry, Mrs. Penn connected the Jasmynes to Mr. Penn. (Factual Findings 9–10, 60.) The record does not support a finding that Mrs. Penn made any representations about the risk of Mr. Penn’s investments or the investment terms, or that she knew nothing about how the investments worked generally. [REDACTED] testified that Mrs. Penn repeatedly assured her of the legitimacy of the investments after the Jasmynes made them (Factual Finding 13), but as noted above, it

is reasonable to conclude that Mrs. Penn actually believed Mr. Penn's investments were legitimate and that he was a buyer and seller of fine art at the time.

80. [REDACTED] also testified she was put at ease about the legitimacy of Mr. Penn's investments because both Mr. and Mrs. Penn's names were on the bank account in which they sent investment capital. (Factual Finding 13.) But it is entirely possible Mr. Penn included Mrs. Penn's name on the wiring instructions for exactly this reason, as it was he who provided the wire instructions to the [REDACTED] and [REDACTED] was much closer to Mrs. Penn. The credible evidence does not support a finding Mrs. Penn knew her name was included in Mr. Penn's wire instructions.

[REDACTED]

81. The credible evidence does not establish Mrs. Penn was involved in the initial solicitation of Mr. Wilson or knew anything about [REDACTED] investment with Mr. Penn until after it occurred. [REDACTED] declaration makes a conclusory statement that he "sent Andrew and Darci Penn \$100,000" (Ex 6, p. A130), but it is not clear what evidence supports the claim that Mrs. Penn received any investment capital from the Wilsons. Mrs. Penn was not a party to the Private Investment Agreement between Mr. Penn and [REDACTED] (Factual Finding 22.) And [REDACTED] bank records show only Mr. Penn as a recipient of the wire transfer with [REDACTED] investment capital. (*Ibid.*) The evidentiary record also does not establish [REDACTED] knew the BofA Account was jointly owned by the Penns at the time he sent the money.

82. Instead, the reasonable inferences drawn from credible evidence establish Mrs. Penn's involvement was limited to affirming the legitimacy of Mr. Penn's investments after the fact to [REDACTED] after Mr. Penn became uncommunicative. (Factual Findings 23, 62.) But again, a reasonable inference drawn from the credible

evidence is that Mrs. Penn actually believed Mr. Penn's investments were legitimate and that he was a buyer and seller of fine art at the time. This conclusion is also not necessarily inconsistent with Mrs. Penn's statement to Mr. Penn after her telephone call with [REDACTED] demanding he stop taking their friends' money, given the difficulties that her friends were appearing to have with her husband's supposedly legitimate investments. (Factual Finding 24.)

[REDACTED]

83. The credible evidence does not establish Mrs. Penn was involved in the [REDACTED] investments with Mr. Penn. Mrs. Penn credibly testified she considered the [REDACTED] to be merely acquaintances because they were more Mr. Penn's friends than hers. (Factual Findings 25, 65.) In her hearing declaration, [REDACTED] claims Mr. and Mrs. Penn together "explained that the investment opportunity was safe and there was zero risk," while the four were at dinner, but makes no other specific allegations about Mrs. Penn's involvement. (Ex. 6, p. A89.) Nevertheless, the remainder of [REDACTED] declaration, and the long series of text messages between Mr. Penn and [REDACTED] establish that Mr. Penn was the only person with any specific information about the investment scheme, including its risk, returns, and timing. (Factual Finding 25.) At hearing, Mrs. Penn also credibly rebutted [REDACTED] claims by testifying she was present at the time of Mr. Penn's solicitation but did not participate in it. (Factual Finding 65.)

[REDACTED]

84. With respect to [REDACTED] the credible evidence establishes Mrs. Penn encouraged [REDACTED] to discuss investing in fine art with Mr. Penn. But the credible evidence does not establish Mrs. Penn made any representations

about the risk, terms of investment, or the nature of the investment. (Factual Findings 28–29, 66.) As discussed above, a reasonable inference drawn from the credible evidence is that Mrs. Penn believed Mr. Penn’s investments were legitimate and she had no reason to suspect otherwise. Mrs. Penn did not discover that [REDACTED] had invested with Mr. Penn until after the investment occurred, and when she did learn about that investment, Mrs. Penn received [REDACTED] information to share with others interested in seeking legal recourse against Mr. Penn. (Factual Findings 66–67.)

BofA Account Ownership and Financial Control

85. Several victim declarations drafted for this hearing, and declarations submitted in Mrs. Penn’s bankruptcy case, make conclusory claims that Mrs. Penn was involved in Mr. Penn’s scheme because the victims wrote checks to Mr. and Mrs. Penn or wired money to the BofA Account jointly owned by the Penns. (See, e.g., Ex. 6, pp. A89–A90, A130–A131, A140, A150–A151.) But aside from the Jasmines (as addressed above), there is no credible evidence any of the victims knew Mrs. Penn was a joint owner of the BofA Account at the time they gave money to Mr. Penn, whether by wire transfer or check. Instead, the victims all either wrote checks to Mr. Penn or wired money using his name as the recipient, without mentioning Mrs. Penn. (Factual Findings 11, 17, 19, 22, 26, 30, 33.)

86. Evidence of Mrs. Penn’s joint ownership of the BofA Account is not indicative of involvement in Mr. Penn’s scheme. Mr. Penn exercised near absolute control and dominion over the family’s financial affairs and related communications. (Factual Findings 42, 50–53.) Mrs. Penn believed she was merely an “authorized user” of the BofA account. At all relevant times when Mr. Penn executed his fraudulent scheme, Ms. Penn was ignorant about her joint ownership status of the BofA Account.

Ms. Penn learned the truth only after Mr. Penn's scheme unraveled in January 2023. (Factual Finding 51.)

87. Mr. Penn's deception of Ms. Penn about their financial affairs was pervasive. Mrs. Penn did not know the couple's mortgage was in arrears over \$100,000 or that utility and insurance bills were unpaid. Unbeknownst to Mrs. Penn, Mr. Penn also pawned her jewelry, including her engagement ring, and other goods, to keep the scheme afloat. (Factual Findings 52, 56–58.) Mr. Penn's deception about the couple's finances is also consistent with other evidence proffered by Mrs. Penn that the unraveling of the scheme was the key event leading to the Penns' separation and her initiation of marriage dissolution proceedings. (Factual Findings 52, 56–58.)

Other Evidence

88. It also was reasonable for Mrs. Penn not to know, and have no reason to know, Mr. Penn's investment scheme was a fraud simply because she never saw any of the works of art Mr. Penn was supposedly selling investments in. Mrs. Penn and others provided evidence about the supposedly confidential nature of Mr. Penn's art investments. (Factual Finding 49.) Mrs. Penn credibly testified that Mr. Penn spent time on online art forums and purchased pieces of art for himself that he displayed around the house. (*Ibid.*) But given the prices of the art and the well-known artists supposedly involved in the investments, it would not be unreasonable for Mrs. Penn to believe Mr. Penn would not want to bring or store that art in their home.

89. Finally, the ALJ gave no weight to Mr. Penn's statement exonerating Mrs. Penn. (See Factual Finding 54.) Both the Commissioner and Mrs. Penn successfully undermined Mr. Penn's credibility and truthfulness on the issue of his investments. And Mrs. Penn's own testimony shows that Mr. Penn drafted this letter solely to

protect Mrs. Penn from potential legal liability stemming from his investment scheme. Thus, the unreliability of the statements in Mr. Penn's letter is evident. But Mrs. Penn's defense did not entirely rely on Mr. Penn's letter exonerating her. And the totality of the evidence submitted shows Mrs. Penn's involvement in Mr. Penn's scheme was incidental and tied almost entirely to her status as Mr. Penn's spouse, rather than as an accomplice who knowingly participated in the scheme and wanted it to succeed.

LEGAL CONCLUSIONS

Applicable Law

1. Section 25110 provides

It is unlawful for any person to offer or sell in this state any security in an issuer transaction . . . unless such sale has been qualified under Section 25111, 25112 or 25113 . . . unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

In other words, to prove a violation of section 25110, the Commissioner must show: (1) the offer or sale; (2) of a security; (3) occurring in California; (4) involving an issuer transaction; and (5) that the offer was not qualified with the DFPI.

2. The CSL defines "sale" or "sell" as "every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value," which includes "any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities." (§ 25107, subd. (a).) The CSL defines "offer" or "offer to sell" to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value." (*Id.*, subd. (b).)

3. The law defines "security" as, among other things, any "investment contract." (§ 25019.) Whether a particular instrument constitutes a security must be resolved on a case-by-case basis, taking into consideration the underlying facts and the purposes of the CSL. (*People v. Schock* (1984) 152 Cal.App.3d 379, 385.) As the CSL was patterned after the federal Securities Act of 1933, federal decisions interpreting that act are also useful in determining whether an instrument is a security. (*Id.* at p. 387.) As stated by the United States Supreme Court in *SEC v. W.J. Howey Co.* (1946) 328 U.S. 293, 301, courts should look to "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others."

4. The CSL defines "issuer" to include a "person who issues or proposes to issue any security," and a "non-issuer transaction" to include "any transaction not directly or indirectly for the benefit of the issuer." (§§ 25110, subd. (a); 25011.) Taken together, an issuer transaction is one that is directly or indirectly for the benefit of the issuer.

5. Section 25401 provides

It is unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

6. Subdivision (b) of section 25403 provides

Any person that knowingly provides substantial assistance to another person in violation of any provision of this division or any rule or order thereunder shall be deemed to be in violation of that provision, rule, or order to the same extent as the person to whom the assistance was provided.

Burden and Standard of Proof

7. Absent a statute to the contrary, the burden of proof in administrative proceedings rests on the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 500.) Thus, the burden of proof regarding the allegations in the D&R Order against Mr. and Mrs. Penn rests with the Commissioner. The standard of proof is a preponderance of the evidence (Evid. Code, § 115.)

Analysis

THE ELEMENTS OF A VIOLATION OF SECTION 25403

8. As noted above, the sole claim the Commissioner has made against Mrs. Penn is that she violated section 25403, subdivision (b), by aiding, abetting, and providing substantial assistance to Mr. Penn's unlawful investment scheme. Section 25403 is "penal in nature" and prohibits aiding and abetting violations of the CSL. (*Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 255; *Overstock.com, Inc. v. Goldman Sachs & Co.* (2014) 231 Cal.App.4th 513, 534.)

9. Section 25403 is nearly identical to a federal statute, Title 15 United States Code section 78t, subsection (e). That subsection provides that

any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

Given the paucity of California court cases discussing liability under subdivision (b) of section 25403, cases interpreting aiding and abetting liability under federal law will be considered. (See Legal Conclusion 3.)

10. The elements of a claim for aiding and abetting a violation of federal securities laws are: (1) the existence of an independent primary violation; (2) knowledge or reckless disregard by the alleged aider and abettor of the primary violation and of his or her own role in furthering it; and (3) "substantial assistance" in

the commission of the primary violation. (*SEC v. Safeguard Metals LLC* (C.D. Cal., May 2, 2025, No. 2:22-CV-00693 JFW (SKx)) 2025 WL 1276004, at *5.)

11. As for the scienter requirement of an aiding and abetting claim under federal law, “liability cannot rest on the proposition that the person ‘should have known’ he was assisting violations of the securities laws,” and instead knowledge or recklessness must be established. (*Howard v. SEC* (D.C. Cir. 2004) 376 F.3d 1136, 1143.) The Commissioner argued that California law departs from federal law on this point, and that under *People v. Simon* (1995) 9 Cal.4th 493, it is sufficient to find Mrs. Penn liable under section 25403 if she knew or should have known that Mr. Penn was violating the CSL. Setting aside for the moment that *Simon* interprets section 25401 and not section 25403, the ALJ will assume, without deciding, that the Commissioner’s position is correct.

12. Substantial assistance occurs when the third party (1) associates himself or herself with the venture, (2) participates in it as in something that they wish to bring about, and (3) seeks to make the venture succeed by their action. (*SEC v. Premier Holding Corporation* (C.D. Cal., Dec. 10, 2019, No. CV 18-00813-CJC(KESx)) 2019 WL 8167920, at *7 [citing *SEC v. Apuzzo* (2d Cir. 2012) 689 F.3d 204, 214].) “A defendant provides substantial assistance only if [he] affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed.” (*SEC v. Aragon Capital Advisors, LLC* (S.D.N.Y., July 26, 2011, No. 07 CIV.919 FM) 2011 WL 3278907, at *17 [citation omitted].) “A defendant’s inaction may be sufficient to establish substantial assistance if it was “designed intentionally to aid the primary fraud or it was in conscious or reckless violation of a duty to act.” (*Ibid.* [citation omitted].)

13. Courts cannot consider the three elements of aiding and abetting in isolation from one another because “[s]atisfaction of the knowledge requirement will depend on the theory of primary liability, and there may be a nexus between the degree of knowledge and the requirement that the alleged aider and abettor render substantial assistance.” (*SEC v. Espuelas* (S.D.N.Y. 2012) 905 F.Supp.2d 507, 517 [quoting *SEC v. DiBella* (2d Cir. 2009) 587 F.3d 553, 566].) In other words, “[s]cienter and substantial assistance are to be considered in tandem, as ‘a high degree of knowledge may lessen the [regulator’s] burden in proving substantial assistance, just as a high degree of substantial assistance may lessen the [regulator’s] burden in proving scienter.’” (*SEC v. Farnsworth* (S.D.N.Y. 2023) 692 F.Supp.3d 157, 191 [quoting *Apuzzo, supra*, 689 F.3d at p. 215].)

CAUSE DOES NOT EXIST TO AFFIRM THE D&R ORDER AGAINST DARCI PENN

Existence of a Primary Violation

14. Mr. Penn’s liability for violating sections 25110 and 25401 was established for purposes of these proceedings because the D&R Order as to him is now final, but the Commissioner also proved those claims substantively during the case against Mrs. Penn. With respect to section 25110, Mr. Penn both offered and sold a security, here, an investment contract in fine art. The investment contract was indeed a security because Mr. Penn received money from the investors to invest in a common enterprise, and the profits would solely result from Mr. Penn’s efforts and not the investors’. (See Factual Findings 10, 15, 22, 25, 30, 32.) Mr. Penn’s sales and solicitations occurred in California. (*Ibid.*) And there is no dispute that these offers and investments were not qualified with the DFPI. (Factual Finding 7.)

15. Similarly, the Commissioner proved Mr. Penn sold those securities by using untrue statements of material facts in violation of section 25401. Mr. Penn made several investors believe their investments in fine art involved no risk and generated fanciful, guaranteed returns. (Factual Findings 10, 15, 22, 25, 30, 32.) In truth, it is not clear whether Mr. Penn used any of the money he received to purchase or sell fine art, and, at least on this record, it appears much more likely he used the money to finance a lavish lifestyle for his family and provide token investment returns to investors as bait to continue with larger investments—a classic Ponzi scheme. (Factual Findings 13, 20, 24, 27, 31, 33.)

16. In sum, the Commissioner proved by a preponderance of the evidence that Mr. Penn engaged in two primary violations of state securities laws, here, violations of sections 25110 and 25401.

Whether Mrs. Penn Knew or Should Have Known of the Primary Violations and Her Role in Furthering Them

17. But the Commissioner has not proven by a preponderance of the evidence that Mrs. Penn knew or should have known Mr. Penn's investments were unlawful or that he made misstatements to investors to obtain their investment capital. Mrs. Penn's knowledge about Mr. Penn's investment activities was low and was generally limited to knowing he invested in fine art and that his investments appeared to substantially grow her family's wealth. (Factual Findings 70–89.)

Whether Mrs. Penn Provided Substantial Assistance in the Commission of the Primary Violations

18. Even assuming the Commissioner had proven Mrs. Penn knew or should have known about her role in furthering Mr. Penn's unlawful investment scheme, the

Commissioner also has not shown by a preponderance of the evidence that Mrs. Penn provided substantial assistance to the scheme. "A defendant may not stumble into aiding and abetting liability by inadvertently helping another in a criminal scheme unknown to the defendant; rather, a defendant must "willfully associate [herself] with the criminal venture and seek to make it succeed through some action on [her] part. (*U.S. v. Hanson* (10th Cir. 1994) 41 F.3d 580, 582–583 [brackets in original].) As discussed above, Mrs. Penn's assistance to the scheme, to the extent she provided any, was incidental to her relationship with Mr. Penn and the investors he sought to defraud. (Factual Findings 70–89.)

Conclusion

19. There is no doubt Mrs. Penn benefited from Mr. Penn's securities fraud. She led a lavish lifestyle and enjoyed expensive luxury jewelry and purses, lavish vacations, and a beautifully renovated home in a tony Los Angeles suburb. Unbeknownst to Mrs. Penn, however, Mr. Penn was financing that lifestyle by defrauding family, friends, and other acquaintances out of hundreds of thousands of dollars over several years. But absent a showing of scienter—that is, that Mrs. Penn knew or should have known Mr. Penn was engaging in violations of California's securities laws—ordering her to desist and refrain or requiring her to pay restitution and administrative penalties is not warranted. (*Durham v. Kelly* (9th Cir. 1987) 810 F.2d 1500, 1505 [inappropriate to hold person responsible for spouse's security fraud violations if she did not have knowledge or provide substantial assistance to the spouse].)

ORDER

The Desist and Refrain Order and Claim for Ancillary Relief and the Notice of Intention to Issue an Order Levying Administrative Penalties against respondent Darci Penn are dismissed.

DATE: 09/18/2025



TAYLOR STEINBACHER
Administrative Law Judge
Office of Administrative Hearings