UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
-against-	:	
	:	21 Civ. 6814 (AKH)
GPL VENTURES LLC, GPL MANAGEMENT LLC, ALEXANDER J. DILLON, COSMIN I. PANAIT, HEMPAMERICANA, INC., SALVADOR E. ROSILLO, SEASIDE ADVISORS, LLC, and LAWRENCE B. ADAMS,	:	
Defendants.	:	

BRIEF OF INVESTOR CHOICE ADVOCATES NETWORK AS AMICUS CURIAE IN SUPPORT OF GPL DEFENDANTS' MOTION TO VACATE, MODIFY, SET ASIDE, OR CORRECT THE JUDGMENT

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IDENTITY AND INTEREST OF AMICUS CURIAE

Investor Choice Advocates Network ("ICAN") is a nonprofit public-interest litigation organization committed to serving as a legal advocate and voice for small investors and entrepreneurs seeking to enter the capital markets. Through its advocacy, ICAN seeks to draw official attention among the judiciary and regulatory bodies to the serious challenges facing investors and entrepreneurs in accessing capital markets.[1]

ICAN previously filed an *amicus curiae* brief in *SEC v. Keener*, No. 22-14237 (11th Cir. June 7, 2023), addressing the precise dealer-registration enforcement campaign that produced the Judgment in this case. ICAN warned that an unchecked expansion of the Section 15(a) dealer definition would chill legitimate microcap capital formation, and that registration-violation disgorgement untethered to investor harm was bad public policy. The intervening three years have largely vindicated those concerns. The Securities and Exchange Commission has now publicly disavowed the very enforcement theory it used to obtain the Judgment in this case, dismissing with prejudice eight materially identical actions against private investors in convertible notes. *See* Morris Decl. Exhs. 1–8.

ICAN has also filed *amicus curiae* briefs addressing the disgorgement remedy in SEC enforcement actions. *See* Brief of *Amicus Curiae* Investor Choice Advocates Network, *SEC v. Spartan Securities Group, Ltd.*, No. 22-13129 (11th Cir. Jan. 24, 2023); Brief of *Amicus Curiae* Investor Choice Advocates Network in Support of Petitioner, *Sripetch v. SEC*, No. 25-466 (U.S. Mar. 2026). The questions raised by the GPL Defendants' motion sit squarely within the body of issues on which ICAN has spoken publicly and consistently.

[1]Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), applied here by analogy, amicus curiae states that no party or party's counsel authored this brief in whole or in part, and no party, party's counsel, or any person other than amicus curiae or its counsel contributed money intended to fund the preparation or submission of this brief.

ICAN files this brief to address two issues that, in its respectful view, warrant separate amicus treatment: first, the systemic harm to small investors and entrepreneurs that flows from *asymmetric reversal* — the practice of disavowing an enforcement theory prospectively while preserving its financial fruits in already-settled cases; and second, the depth of the doctrinal defects underlying the now-disavowed theory, including the unresolved question whether convertible redeemable notes are "securities" under *Reves v. Ernst & Young*, 494 U.S. 56 (1990); the post-*Loper Bright* framework recently illustrated by the Second Circuit in *SEC v. Amah*, 2026 U.S. App. LEXIS 5399 (2d Cir. Feb. 24, 2026) (summary order); and the independent constitutional and statutory infirmity of disgorgement-to-Treasury in registration-only cases that lack any identified victim or pecuniary harm.

SUMMARY OF ARGUMENT

The GPL Defendants' motion presents the Court with a question of national importance for federal securities enforcement: whether the Commission may disavow an enforcement theory prospectively while keeping the disgorgement proceeds it extracted from defendants who, lacking the resources or appetite to litigate, were compelled to stipulate. ICAN respectfully submits that the answer must be no — not as a matter of the GPL Defendants' individual rights alone, but as a matter of basic regulatory rule-of-law and market integrity. The asymmetry the Commission has manufactured — dismissing eight live cases with prejudice while retaining $31 million obtained from these Defendants on identical allegations — creates a one-way ratchet that uniquely harms the small-investor and small-entrepreneur communities ICAN serves. It rewards aggressive enforcement theories tested risk-free against the least-resourced defendants, and it gives the Commission incentive to coerce stipulations during periods of doctrinal uncertainty knowing that subsequent reversals will not reach settled cases.

The Court need not balance equity in the abstract. The doctrinal defects underlying the now-disavowed theory run deeper than the GPL Defendants' motion has needed to develop. There is a substantial unresolved question whether the convertible redeemable notes at issue are "securities" under *Reves v. Ernst & Young*, 494 U.S. 56 (1990) — a defect that would deprive the Commission of subject-matter jurisdiction over the Section 15(a) claims independent of any dealer-registration question. The Second Circuit's recent decision in *SEC v. Amah*, 2026 U.S. App. LEXIS 5399 (2d Cir. Feb. 24, 2026) (summary order), confirms that, post-*Loper Bright*, a district court must conduct independent statutory analysis when the Commission's case rests on its own interpretation of an ambiguous statute. And the disgorgement here — ordered to be paid not to victims (there are none) but to the United States Treasury — converts "equitable" disgorgement into what is functionally a penalty, in tension with *Liu v. SEC*, 591 U.S. 71 (2020), and *Kokesh v. SEC*, 581 U.S. 455 (2017), and untethered from the statutory penalty caps Congress prescribed in 15 U.S.C. § 78u(d)(3). For each of these reasons — separately and cumulatively — the GPL Defendants' motion should be granted.

ARGUMENT

I. ALLOWING THE COMMISSION TO DISAVOW ITS CONVERTIBLE-NOTE DEALER THEORY PROSPECTIVELY WHILE RETAINING THE FRUITS OF THAT THEORY IN ALREADY-SETTLED CASES CREATES A ONE-WAY RATCHET THAT UNIQUELY HARMS THE SMALL-INVESTOR AND SMALL-ENTREPRENEUR COMMUNITIES ICAN SERVES.

The convertible-note dealer-registration theory under which the Judgment in this case was obtained is the product of a regulation-by-enforcement campaign — a sustained agency practice of advancing novel statutory theories through litigation rather than rulemaking and prevailing against private market participants who lacked the resources to mount full appellate challenges. Beginning May 22, 2025, the Commission, under new leadership, has stopped filing such cases prospectively and has dismissed with prejudice eight pending enforcement actions against seven

materially identical defendants — "in the exercise of its discretion and as a policy matter." See Morris Decl. Exhs. 1–8. The Commissioners themselves have characterized the prior enforcement campaign as a departure from "85 years" of settled understanding under which private investors in convertible notes had no reason to believe their activity could trigger dealer registration obligations. *See* Statement of Comm'r Mark T. Uyeda, Statement on *GHS Investments LLC Settlement* (Aug. 18, 2024) ("Prior to 2017, investors in convertible, variable rate notes had no reason to believe that their activity could trigger dealer registration obligations."). The Commission has accordingly taken extraordinary steps in pending litigation to undo the very results its enforcement program produced — in one case asking the Eighth Circuit to remand a summary judgment *the Commission itself had won* so that the trial court could grant the defendants relief. *See* Memo. ISO Mtn. to Vacate at 12.

The Commission's prospective course-correction is welcome but, by itself, incomplete. A change in agency leadership can stop new cases from being filed; it cannot un-file the legacy judgments already entered, nor can it reach the disgorgement proceeds those judgments produced. Only this Court can do that. The question this motion presents is whether the Court should exercise its Rule 60(b) authority to address the financial product of the disavowed campaign — the $31 million in disgorgement and prejudgment interest the Commission obtained from the GPL Defendants on materially identical allegations — in the same way the Commission has now itself addressed materially identical pending cases. ICAN respectfully submits that it should. The asymmetry that otherwise results — active litigants released from materially identical allegations while settled defendants remain bound — is the predictable legacy of a regulation-by-enforcement approach that depended, in significant part, on the inability of private market participants to fund full appellate challenges. It falls hardest on the small investors and entrepreneurs ICAN exists to

advocate for, and on whom asset freezes leave settlement as a "matter of survival," not a "choice." Panait Decl. ¶ 14.

A. The Capital-Formation Concerns ICAN Articulated in *Keener* Have Been Borne Out, and the Commission Has Now Publicly Acknowledged the Underlying Doctrinal Error.

When ICAN filed its *amicus curiae* brief in *SEC v. Keener* three years ago, it warned that the Commission's expanding interpretation of "dealer" under Section 15(a) was "chill[ing] legitimate microcap capital formation" and discouraging "willing participants" from financing smaller reporting companies. *See* Brief of *Amicus Curiae* Investor Choice Advocates Network, *SEC v. Keener*, No. 22-14237 (11th Cir. June 7, 2023), at 3–7. The brief urged the court to reject the Commission's effort to "regulat[e] through (selective) litigation rather than through the process of rulemaking and comment." *Id.* at 3.

Three years on, both the predictions and the warnings have been substantiated. The SEC's own Office of the Advocate for Small Business Capital Formation has reported each year since 2022 that the number of small exchange-listed public companies in the United States continues to decline, with regulatory cost identified as a primary driver. *See* Office of the Advocate for Small Business Capital Formation, *Annual Report for the 2024 Fiscal Year* (Dec. 2024). Even within the OTC Markets venue, where smaller issuers have historically relied on convertible note financing as a critical funding channel, market participants have observed an exodus of U.S. issuers; international companies now represent more than 90% of OTC Markets total dollar volume. Commissioners Peirce and Uyeda warned in their February 2024 statements opposing the Final Dealer Rule that the Commission's expanded reading of Section 15(a) would "drive market participants out of legitimate activity" — a prediction the subsequent dismissal program implicitly accepted. *See* Statement of Comm'r Hester M. Peirce, *Statement on Further Definition of "Dealer" and "Government Securities Dealer"* (Feb. 6, 2024).

The Commission did, in fact, attempt to formalize its expanded reading through rulemaking — the Final Dealer Rule adopted in February 2024. That Rule was vacated less than nine months later. *See Nat'l Ass'n of Priv. Fund Mgrs. v. SEC*, No. 4:24-cv-00250-O (N.D. Tex. Nov. 21, 2024). Two sitting Commissioners had publicly opposed the Rule before adoption, on the same statutory and policy grounds ICAN had urged in *Keener*. *See* Statement of Comm'r Hester M. Peirce, *Statement on Further Definition of "Dealer" and "Government Securities Dealer"* (Feb. 6, 2024); Statement of Comm'r Mark T. Uyeda, *Dissent from Further Definition of "Dealer" and "Government Securities Dealer"* (Feb. 6, 2024). Following Judge O'Connor's vacatur and a change in the Commission's composition, the Commission undertook the systemic dismissal of pending convertible-note dealer cases that frames the present motion. *See* Morris Decl. Exhs. 1–8.

These developments make plain what the GPL Defendants' motion already documents: the prior enforcement campaign reflected a regulation-by-enforcement approach that bypassed the rulemaking process Congress contemplated. The Commission's 2024 attempt to formalize the expanded dealer reading through rulemaking was vacated by Judge O'Connor; the dismissal program followed. Commissioner Crenshaw's dissent from the dismissal program does not defend the underlying enforcement theory on the merits; she argues only that prior victories should stand on the basis of finality. *See* Statement of Comm'r Caroline A. Crenshaw, 'Tis the Season for Dismissals: Statement on Ending "Dealer" Lawsuits (May 22, 2025). That posture inadvertently confirms the asymmetry this motion presents: even within the Commission, the question is no longer whether the prior theory was correct, but whether defendants who already paid should be left bound by judgments the Commission would not now seek to obtain.

B. Asymmetric Reversal — Disavowing an Enforcement Theory Prospectively While Preserving Its Fruits in Settled Cases — Is a Doctrinally Distinct Harm That Falls Hardest on the Communities ICAN Serves.

The harm at issue is structural. The regulation-by-enforcement approach that produced the Judgment in this case followed a pattern that the prospective dismissal program does not, by itself, remediate:

> (i) novel, doctrinally aggressive theories were advanced against private market participants without first being tested through the notice-and-comment rulemaking Congress prescribed;
>
> (ii) defendants without the resources or appetite to litigate were extracted into stipulated judgments and disgorgement orders during periods of doctrinal uncertainty — often, as here, after asset freezes left settlement the only practical option;
>
> (iii) defendants with resources sufficient to litigate were permitted to take their challenges to judgment and appeal while the underlying theory was tested in court — culminating in Judge O'Connor's vacatur of the Final Dealer Rule and the Commission's subsequent decision not to defend it;
>
> (iv) the current Commission, recognizing the result, dismissed the live cases — but took no parallel action with respect to the proceeds already extracted from settled defendants like the GPL Defendants here.

The Commission's prospective dismissal program is welcome and appropriate. But agency posture changes with each Chair. Investigations opened years ago continue to be pursued by career staff after a transition; some (but not all) cases filed under prior leadership continue to be litigated by the same teams who designed them; and even a Commission that declines to file new cases of a particular type cannot reach pre-existing judgments. That is why the institutional check this motion invokes — the Court's authority under Rule 60(b) — is not a substitute for agency reform but a necessary complement to it. Where an enforcement theory has been disavowed prospectively, the Court's exercise of Rule 60(b) is the durable mechanism by which the disavowal reaches the proceeds extracted while the theory was being tested.

The market participants harmed by this asymmetry are not, and were never, the major regulated entities that can absorb litigation costs and ride out doctrinal cycles. They are precisely the small investors and entrepreneurs ICAN serves: lenders to smaller reporting companies, micro-

cap funders, and other private market participants who cannot fund years of federal litigation against the Commission and for whom asset freezes — like the freezes obtained against the GPL Defendants — leave settlement as a "matter of survival," not a "choice." Panait Decl. ¶ 14.

The GPL Defendants' papers establish the asymmetry as applied to these Defendants. The systemic point ICAN urges this Court to recognize is that the asymmetry is not a one-off product of this case. It is the predictable output of a regulatory model that, if left uncorrected here, will recur. The Commission's 2025 dismissal program covered eight cases. The cases not dismissed are not dismissed because the underlying theory is sound; they are not dismissed because they have already produced final judgments. Whether those judgments persist, therefore, turns on whether the courts that entered them are willing to revisit them under Rule 60(b) when intervening law and the Commission's own change of position warrant. If the answer in the trial courts is uniformly no, the asymmetry is permanent: every prior enforcement campaign that produced a wave of stipulated settlements — and every future one — will leave behind a permanent windfall to the United States Treasury, even after the underlying theory has been disavowed by the agency that pursued it. That outcome cannot be reconciled with rule-of-law-based federal securities enforcement, and it is squarely contrary to the small-investor and small-entrepreneur welfare ICAN exists to advance.

C. Rule 60(b)(6)'s "Extraordinary Circumstances" Standard Is the Doctrinal Mechanism by Which Courts Correct Asymmetric Reversal.

Rule 60(b)(6) authorizes relief from a final judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). The "extraordinary circumstances" standard the Second Circuit applies under this provision, *see Nemaizer v. Baker*, 793 F.2d 58, 63 (2d Cir. 1986), is properly read to encompass exactly the kind of post-judgment regulatory reversal the Commission has effected here. The GPL Defendants' motion canvasses that authority. ICAN writes only to

underscore an institutional point: when the agency that procured a judgment has, by its own subsequent conduct, treated identically situated defendants as if they did not violate the law, denying Rule 60(b)(6) relief converts the rule into a one-way ratchet — favorable to defendants only when, by accident of timing, their cases were not yet final at the moment of reversal.

These same facts independently satisfy the less demanding standard of Rule 60(b)(5), which requires only a showing that "applying [the judgment] prospectively is no longer equitable." *See Horne v. Flores*, 557 U.S. 433, 447 (2009). Because the Commission has now determined that materially identical conduct does not violate Section 15(a), no ongoing or threatened violation of law remains to which prospective enforcement of the judgment could attach.

The Commission's own institutional posture confirms that its post-2025 dismissals are not mere prosecutorial discretion of the kind ordinarily insufficient to disturb a final judgment. The *Auctus* dismissal stipulation, *see* Morris Decl. Exh. 7, recites that "in the exercise of its discretion and as a policy matter, the Commission believes the dismissal of this case with prejudice ... is appropriate" — language adopted *after* the Commission won summary judgment in cases like *Carebourn Capital*, and adopted across all eight dismissed cases. The Commission's insistence on dismissals *with prejudice*, and on EAJA waivers in some cases, is not consistent with a discretionary deferral; it is consistent with a considered institutional judgment that the prior theory was wrong. *Cf. Nat'l Ass'n of Priv. Fund Mgrs. v. SEC*, No. 4:24-cv-00250-O (N.D. Tex. Nov. 21, 2024) (vacating the very rulemaking that would have codified the prior theory).

The Court need not, and ICAN does not urge that it should, articulate a freestanding rule that *every* agency policy reversal warrants Rule 60(b)(6) relief. The narrower point is that an agency's combined disavowal of (i) the underlying enforcement theory, (ii) the corresponding rulemaking, and (iii) the live litigation built on that theory, all coupled with affirmative steps to

undo summary judgments the agency itself had won — is the rare set of circumstances Rule 60(b)(6) is designed to reach. Permitting the Judgment to stand in this case while the Commission unwinds materially identical cases against materially identical defendants is the asymmetric outcome Rule 60(b)(6) exists to prevent.

II. THE NOW-DISAVOWED THEORY WAS DOCTRINALLY INFIRM ON GROUNDS THE GPL DEFENDANTS' MOTION DOES NOT DEVELOP, AND *POST-LOPER BRIGHT* THE SECOND CIRCUIT'S DECISION IN *AMAH* MERITS INDEPENDENT STATUTORY ANALYSIS.

The Commission's post-judgment course-correction was not a matter of mere prosecutorial discretion. It reflected the convergence of multiple doctrinal infirmities in the underlying enforcement theory, each of which independently warrants relief. ICAN highlights three that the GPL Defendants' motion does not develop, and that bear directly on the equitable analysis under Rule 60(b).

A. There Is a Substantial Unresolved Question Whether the Convertible Redeemable Notes at Issue Are "Securities" Under *Reves*.

Section 15(a) requires registration only by a person acting as a "dealer" in "securities." 15 U.S.C. § 78o(a)(1). If the convertible redeemable notes at issue here are not "securities" within the meaning of the Exchange Act, the Commission lacks subject-matter jurisdiction under Section 15(a) altogether — a defect entirely independent of the dealer/trader question, and one that has not been resolved at the appellate level.

The Supreme Court's framework is *Reves v. Ernst & Young*, 494 U.S. 56 (1990). *Reves* begins with a presumption that a "note" is a security, but instructs courts to apply a four-factor "family resemblance" test to determine whether the presumption is rebutted: (i) the motivations of the buyer and seller, (ii) the plan of distribution, (iii) the reasonable expectations of the investing public, and (iv) the existence of an alternative regulatory regime that reduces the risk of the instrument. *Id.* at 65–67. The instruments at issue here — short-term, redeemable convertible notes

issued by smaller reporting companies to private lenders, with conversion mechanics tied to a discount to market price and short holding periods — sit uneasily within the *Reves* presumption. The seller's motivation is to obtain financing it cannot raise through traditional channels; the buyer's motivation is, in substantial part, to lend money at a return calibrated to the issuer's creditworthiness; the "plan of distribution" is private, restricted, and exempt from registration under Rule 144; the "investing public" never sees the note itself; and the activity is regulated, in many states, under usury and lending laws.

The New York Court of Appeals applied *Reves* — in answer to certified questions from the Second Circuit — to convertible redeemable notes substantially identical to those at issue here and held that they are properly analyzed as "loans" subject to state usury law. *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320, 179 N.E.3d 612 (2021). The Second Circuit, on receipt of that answer, applied the holding to invalidate notes substantially identical to the GPL Defendants' instruments. *See Adar Bays, LLC v. GeneSYS ID, Inc.*, 28 F.4th 379 (2d Cir. 2022). The *Adar Bays* line of authority does not, of course, conclusively resolve the federal-law question whether such notes are "securities." But it powerfully reinforces the *Reves* "family resemblance" analysis: state-law treatment of an instrument as a loan, governed by usury rules, weighs against treating the same instrument as a federal security. That is precisely the kind of "alternative regulatory regime" the fourth *Reves* factor recognizes. 494 U.S. at 67. *See generally* Ernest E. Badway & Abigail S. Badway, *The "Dealerization" of America: The SEC's Misplaced Attempt at Broker-Dealer Registration for All*, 69 N.Y.L. Sch. L. Rev. 79 (2024–25).

ICAN does not ask the Court to resolve in this posture whether the convertible redeemable notes at issue are securities under federal law; that is not what the GPL Defendants' motion presents. ICAN urges only that the existence of a substantial, unresolved question on that point —

a question the Commission's own post-2025 conduct in materially identical cases tacitly acknowledges — supplies an additional, independent reason to grant Rule 60(b) relief. The Judgment in this case rests on the assumption that Section 15(a) was triggered. If that assumption rests on shifting jurisdictional ground, the equity calculus on a Rule 60(b)(6) motion shifts with it.

B. Post-*Loper Bright*, the Second Circuit's Decision in *Amah* Illustrates the Independent Statutory Analysis Required When the Commission's Case Rests on Its Own Interpretation of Section 15(a).

The Judgment in this case was entered on May 25, 2023, *see* Memo. ISO Mtn. to Vacate at 8 — more than a year before the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), eliminated *Chevron* deference and required courts to exercise their independent judgment in interpreting ambiguous statutes. *Loper Bright* alone is, as the GPL Defendants' motion explains, an intervening change in the law of judicial review that bears directly on whether the Section 15(a) theory underlying the Judgment can withstand independent statutory analysis. ICAN writes to develop a related point.

Earlier this year, the Second Circuit applied *Loper Bright* in an SEC enforcement action and vacated a summary judgment that had relied on the Commission's interpretation of an Exchange Act provision — even though the defendant had not pressed a *Loper Bright* challenge below. *See SEC v. Amah*, 2026 U.S. App. LEXIS 5399 (2d Cir. Feb. 24, 2026) (summary order). Although *Amah* is a non-precedential summary order with no binding force, *see* 2d Cir. Local Rule 32.1.1, it illustrates how Second Circuit panels are not applying *Loper Bright* in SEC enforcement appeals. The controlling authority on this motion is *Loper Bright* itself; *Amah* simply corroborates what follows from it.

First, *Loper Bright* requires that a reviewing court conduct its own statutory analysis when the Commission's case rests on the Commission's interpretation of an ambiguous statute. *See Loper Bright*, 603 U.S. at 412–13. *Amah* confirms that this requirement applies with full force in

an Enforcement setting. The mere invocation of a prior interpretation is not enough; the Commission must establish the correct reading of the statute, on the merits, without deference. *See id.* The dealer-definition theory underlying the Judgment in this case is precisely such an interpretive theory — the Commission's reading of Section 15(a)(1) and the statutory definition of "dealer" under 15 U.S.C. § 78c(a)(5)(A). The Commission has now reaffirmed, by its own conduct in dismissing materially identical cases and in publicly walking away from the Final Dealer Rule, that the contested interpretation is not the better reading of the statute. Independent statutory analysis post-*Loper Bright* should reach the same result.

Second, *Amah* illustrates that procedural barriers may yield where the agency's case rests on a now-undeferred reading of an ambiguous statute. The *Amah* defendant proceeded *pro se* and never cited *Loper Bright* in his briefing; the Second Circuit nevertheless vacated and remanded, instructing the district court to consider appointing counsel because of "the complexity of the legal issues." That posture is not unique to *Amah*. Novel statutory theories often survive appellate review precisely because the defendants against whom they are tested cannot afford the legal resources required to fully challenge them. The GPL Defendants' stipulation — entered into not as a "choice" but as "a matter of survival" under an SEC-obtained asset freeze, *see* Panait Decl. ¶ 14 — reflects the same structural asymmetry. *A fortiori*, a settled defendant who entered into a stipulated judgment based on the same now-disavowed statutory reading should not be foreclosed by waiver from obtaining Rule 60(b) relief on the same intervening-law ground. The *Amah* panel's willingness to look past the procedural barrier reflects the Court's recognition that *Loper Bright* works a fundamental change in the legal framework, not merely an incremental shift in deference doctrine.

Third, Amah is illustrative of how district courts in this Circuit are now expected to approach SEC enforcement cases that turn on contested interpretations of the Exchange Act. The *Amah* panel did not merely set aside the prior judgment; it remanded so that the district court could conduct independent statutory analysis. That same methodological imperative applies to the Section 15(a) theory at the heart of this case. The Court is not asked to defer; the Court is asked to revisit a judgment entered against the backdrop of legal premises the Supreme Court and the Second Circuit have since substantially altered.

C. Disgorgement-to-Treasury in This Registration-Only Case, Where No Victim or Pecuniary Harm Has Been Identified, Converts "Equitable Disgorgement" Into a Penalty.

Under *Liu v. SEC*, 591 U.S. 71 (2020), an SEC disgorgement award qualifies as "equitable relief" under 15 U.S.C. § 78u(d)(5) "when it does not exceed a wrongdoer's net profits and is awarded for victims." *Id.* at 76. *Liu* identified three traditional limitations on equitable disgorgement: it must be (1) returned to victims, (2) limited to net profits, and (3) calibrated to wrongdoers' own gains, not joint-and-several. *Id.* at 77–79, 89–91. The Second Circuit, applying *Liu* in a registration-violation case, held that a Section 15(a)-type disgorgement award requires the SEC to demonstrate "some causal link between the unregistered status of the defendant and pecuniary harm to the investors who participated in the offering." *SEC v. Govil*, 86 F.4th 89, 102 (2d Cir. 2023). On remand, the district court conducted exactly the kind of fact-intensive, expert-driven analysis *Govil* contemplates: it heard evidence from a financial-economics expert who performed an event study isolating the price impact of the violation; it identified specific investors who had purchased at specific prices and incurred specific losses traceable to the violation; and it ordered disgorgement only to the extent of those quantified losses. *See SEC v. Govil*, No. 12 Civ. 7088 (S.D.N.Y. Jan. 20, 2026).

No comparable analysis exists in this case. The Commission did not identify victims; it has not done so in any of the convertible-note dealer cases. There are no "identified investors" within the meaning of *Liu* and *Govil*. There is no expert event study. There is no causal link between the Defendants' alleged failure to register as dealers and any quantified pecuniary harm to any investor. The Distribution Agent appointed at Dkt. 145 has, on the present record, no recipients to whom to distribute. The Commission's contemplated next step — distribution of $31 million to the United States Treasury — is the inevitable consequence.

That outcome cannot be reconciled with *Liu*, with *Govil*, or with the statutory framework Congress enacted for SEC remedies. The Court need not predict the outcome of *Sripetch v. SEC*, No. 25-466 (U.S.), to so conclude. Three points follow.

First, *Govil* is binding authority in this Circuit. Its requirement of a causal link between the violation and pecuniary harm is the law of the Second Circuit until the Supreme Court holds otherwise. The Ninth Circuit's contrary decision in *SEC v. Sripetch*, though now under Supreme Court review, has no application here, and the panel decision in the Eleventh Circuit in *SEC v. Spartan Securities Group, Ltd.*, No. 22-13129 (11th Cir. Jan. 16, 2026), arose in a Section 10(b) fraud context distinct from the registration-only context this case presents.

Second, and independently of *Govil*, a disgorgement award that cannot be returned to victims and is instead paid to the Treasury fits uneasily within the equitable framework *Liu* contemplates. The Supreme Court has long distinguished equitable disgorgement, which restores wrongful gains, from punitive sanctions, which deter and punish. *See Kokesh v. SEC*, 581 U.S. 455, 463–67 (2017). Where a disgorgement award has no equitable function — because there is no victim to be made whole and no causal nexus to harm — it is functionally a penalty. *See Liu*,

591 U.S. at 89 ("When the source of the SEC's authority is the equitable powers of the courts, those powers are necessarily limited.").

Congress has prescribed the maximum civil penalties available to the Commission under Section 78u(d)(3). 15 U.S.C. § 78u(d)(3). Allowing the Commission to retain $31 million — paid to the Treasury, not to victims — in a Section 15(a)-only case to which the statutory penalty caps would apply circumvents those caps and converts the equitable disgorgement remedy into an alternative, uncapped punitive instrument. That cannot be right. *See Tull v. United States*, 481 U.S. 412, 422 (1987) (where a remedy is punitive, the Seventh Amendment may require a jury determination of liability and the amount). Justice Gorsuch flagged precisely this concern at oral argument in *Sripetch*: "If you want a legal penalty, then the Seventh Amendment might have something to say about it." Tr. of Oral Arg. at 51, *Sripetch v. SEC*, No. 25-466 (U.S. Apr. 20, 2026).

Third, retention of the $31 million by the Treasury would compound, not cure, the constitutional and equitable infirmity at the heart of this motion. The GPL Defendants did not commit fraud; the Commission has acknowledged that materially identical defendants did not violate Section 15(a); the underlying convertible-note instruments may not even be "securities" within the meaning of *Reves*. To permit the Commission to retain the proceeds of an enforcement program it has now disavowed, in a posture in which the funds cannot be returned to identifiable victims, is to use the equity power of the federal courts to underwrite an enforcement model the agency has publicly walked away from. ICAN respectfully submits that the equity power is not properly extended to that end. *See generally* Brief of *Amicus Curiae* Investor Choice Advocates Network, *SEC v. Spartan Securities Group, Ltd.*, No. 22-13129 (11th Cir. Jan. 24, 2023); Brief of

Amicus Curiae Investor Choice Advocates Network in Support of Petitioner, *Sripetch v. SEC*, No. 25-466 (U.S. Mar. 2026).

CONCLUSION

For the foregoing reasons, and the reasons stated in the GPL Defendants' memorandum in support of their motion, amicus curiae Investor Choice Advocates Network respectfully urges the Court to grant the motion to vacate, modify, set aside, or correct the Judgment. Upon vacatur, the equitable course is the return of disgorgement proceeds to the GPL Defendants rather than their continued retention in Treasury limbo, as courts in this District have ordered on materially identical facts. *See SEC v. Adodankis*, No. 12 Civ. 409 (SAS) (S.D.N.Y. Jan. 26, 2016), ECF No. 141 (vacating final judgment and ordering SEC to return funds defendants previously paid pursuant to that judgment). ICAN further requests that the Court direct that no additional distributions of disgorgement proceeds be made to the United States Treasury pending resolution of the motion.

Respectfully submitted,

Dated: New York, New York
May 15, 2026

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