

UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22214

In the Matter of

EVAN H. KATZ

Respondent.

**RESPONDENT EVAN H. KATZ'S REPLY IN FURTHER SUPPORT OF HIS RULE 154
MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM AND NEWLY
DISCOVERED MATERIAL EVIDENCE IN FURTHER SUPPORT OF HIS PENDING
MOTION FOR RECONSIDERATION AND, IN THE ALTERNATIVE, MODIFICATION**

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Preliminary Statement

The Commission should grant leave to consider the August 14, 2026 supplement before deciding Katz's pending motion for reconsideration and, alternatively, modification. The threshold question is specific and narrow: whether the Commission should decide that still-pending motion on a record that includes additional specific, contemporaneous third-party documents that Katz did not know existed—and had never had access to or read—until August 7, 2026 and moved to submit only several business days later. Those materials supply a concrete documentary account of how a prospective institutional investor reached the genuine accounting firm after receiving communications from an impersonator, as well as the genuine accounting firm's own account of the events. Their significance is not at all exhausted by the proposition that an audit was forged. Rather, they permit the Commission to assess (i) the information available to different participants, including Katz, (ii) the means by which the impersonation was uncovered, and (iii) the relevance of that sequence to the individualized relief already requested. The Division has now fully responded to the materials. Accordingly, the Commission's receiving and considering them prejudices nothing about their ultimate weight or the merits of the pending motion. Rather, it simply permits the Commission to decide that motion on the fullest and most complete relevant evidentiary record. Accordingly, given the documents' relevance and Katz's exceptionally prompt filing, the Commission should exercise its discretion to do so.

In its opposition papers, the Division identifies a distinction within Exhibit A that deserves a direct answer. Katz indeed was included in the March 14, 2023 correspondence with the purported auditor. However, he was not included in the later March 29, 2023 communication with the genuine firm. Opp. 4, 7; Aug. 14 Decl. ¶ 4 & Ex. A.¹ Accordingly, and contrary to the Division’s assertion, Katz’s prior receiving in March 2023 of an impersonator’s assurance is not the same event and thing as his just now receiving in August 2026 the subsequent communication identifying the apparent impersonation. Katz’s accompanying reply declaration makes that distinction further explicit. Accordingly, the earlier messages remain part of the exhibit and therefore should be considered.

Contrary to the Division’s opposition, (i) receiving this evidence and (ii) deciding what relief it ultimately warrants are entirely distinct and totally separate questions. That is, the Commission can accept and consider relevant evidence that only recently became available to Katz while fully preserving the demanding standard that is applicable to disturbing a settled order, here Katz’s requested personalized relief based on, *inter alia*, his (a) lack of scienter, and (b) very substantial—one could say massive—multiyear (2024-2026) post-Order remediation and investor protection. Nothing about the Commission’s receiving the evidence relaxes that standard; but, conversely, nothing about that standard requires the Commission to ignore relevant admissible evidence before deciding a motion. Indeed, a recent order expressly permitted a supplemental affidavit

¹ “Opp.” refers to the Division’s September 4, 2026 opposition; “Aug. 14 Mot.” to the continuously paginated August 14 memorandum; and “June 12 Mem.” to the memorandum within the June 12 motion package. Exhibits A–D accompany the August 14 declaration. Exhibit page references count pages within each exhibit, excluding cover sheets. “Supp. Jenkins Decl.” is the June 10, 2026 declaration submitted with the June 12 motion. Other page references use the document’s printed pagination.

while a request to clarify or modify a settled bar was pending. *Roberto Mejill-Tellado*, Advisers Act Release No. 6962, at 1–2 (May 1, 2026). That procedural course promotes a fully informed decision while preserving the rebuttable presumption and high bar of settlement finality. Katz asks for precisely that: consideration of the newly available evidence, with the Division’s objections already fully presented, before the Commission rules on the pending motion for reconsideration and, in the alternative, modification.

The requested disposition here therefore is concrete, specific and limited, namely: (i) accept the supplemental materials, (ii) preserve the protection requested for Exhibits A and D, (iii) obtain a focused factual response from Enforcement only insofar as the Commission finds it necessary, and (iv) only then decide the pending June 12, 2026 motion on that complete and full evidentiary record. The June 12 motion preserves both appropriate modification of findings and relief from the penalty, interest, and cease-and-desist provision. Aug. 14 Mot. 26–29; June 12 Mem. 9–10. Accepting this newly available evidence neither grants that substantive relief in advance nor relinquishes any part of the relief already sought. Rather, it simply ensures that the Commission decides the pending motion with the new evidence—and a complete evidentiary record—before it.

I. The Commission can receive the supplement without treating it as a second reconsideration motion.

The procedural sequence here matters. Specifically, the Commission entered the settled order on September 27, 2024. *Evan H. Katz*, Securities Act Release No. 11312 (the “OIP”). On June 3, 2026, it denied Katz’s application to vacate that order. *Evan H. Katz*, Securities Act Release No. 11422 (the “June 3 Order”). Katz filed his pending

motion for reconsideration and, in the alternative, modification on June 12, 2026, within Rule 470(b)'s ten-day period as to the June 3 Order. The Division opposed modification on June 26; Katz replied on July 7. The Division acknowledges that the motion remains pending. Opp. 4. The pending August 14 motion requests permission to supplement that pending matter with newly available relevant documents that Katz states he first obtained on August 7, that is, just several business days before he filed his Rule 154 motion. Aug. 14 Decl. ¶¶ 3–4, 8.

Rule 154 supplies the procedure for requesting leave; it does not itself supply a substantive entitlement to reopen a settled order. 17 C.F.R. § 201.154(a). Rule 470 supplies the reconsideration procedure, including its time limit and its provision for a Commission-requested response. 17 C.F.R. § 201.470(b). The Commission's August 19, 2026 order established September 23, 2026 as the deadline for this reply. *Evan H. Katz*, Securities Act Release No. 11435, at 2 (Aug. 19, 2026). That scheduling order permits this reply; Katz does not treat it as a ruling granting the underlying motion for leave.

Daniels Corporate Advisory Company, Inc., Exchange Act Release No. 105740, at 1–2 (June 22, 2026), does not bar the requested supplementation. There, the respondent (i) failed to oppose summary disposition, (ii) subsequently offered unsupported assertions, and then (iii) submitted another document repeating similar assertions. The Commission rejected that second submission as untimely and inconsistent with the rule permitting one reconsideration motion. *Daniels* establishes that the pendency of a first motion does not itself create an unrestricted right to file another reconsideration submission. Katz, however, asserts no such right here.

Rather, in stark contrast, Katz’s request presents the additional material features that were conspicuously missing in *Daniels*, namely: (i) an express application for leave, (ii) identifying particular newly available (to Katz) third-party documents, (iii) a sworn date of first access, (iv) their asserted relevance and bearing on relief already pending, and (v) his prompt filing of his motion—within several business days—to add the newly available documents to the evidentiary record before the Commission. That is, Katz does not claim a new ten-day reconsideration period or an unrestricted right to add arguments. Rather, he solely—and much more limitedly—asks the Commission just to exercise its discretion over a proposed supplement of newly available relevant documents. Moreover, the June 12, 2026 motion separately requests modification of the settled order; the Division’s incorrect treatment of the current papers and motions as a “third attempt” does not address that pending branch independently. Opp. 5–6 & n.3.

Mejill-Tellado illustrates the relevant procedural distinction. In considering a request to clarify or modify an existing bar, the Commission directed additional briefing on the correct standard and granted leave to file a supplemental affidavit. Release No. 6962, at 2. The affidavit motion there was unopposed, and the order did not grant modification. Its relevance is correspondingly precise, namely: receipt of evidence and identification of the governing standard both can precede the merits decision. The Commission also exercised discretion to consider an untimely supplement to a pending reconsideration motion in *Michael T. Studer & Castle Securities Corp.*, Exchange Act Release No. 50786, n.2 (Nov. 30, 2004), while ultimately denying reconsideration. *Studer* concerned review of NASD action, rather than a settled order, but directly

demonstrates that a later supplement need not be treated as a categorically prohibited second motion.

Similarly, *Suzanne Marie Capellini*, Exchange Act Release No. 105917, at 1–2 & n.2 (July 15, 2026), accepted supplemental reply briefing over opposition while expressly reserving merits, waiver, forfeiture, and exhaustion issues. *Capellini* involved a FINRA appeal, not a settled enforcement order. However, its procedural relevance, applicable here, is that granting leave can preserve the defenses on which a later merits decision may turn.

The Division also objects that substantial portions of the August memorandum repeat earlier arguments. Opp. 5–6. But that does not justify excluding the newly available relevant documents. Indeed, some background necessarily repeats the existing record because materiality only can be shown by explaining how newly accessible evidence bears on issues already briefed and pending. The Commission can give repeated background only its proper contextual weight while focusing on and receiving the genuinely additional newly accessible third-party documents. The relevant question is not whether every sentence in the submission is new; rather, it is whether the newly submitted evidence adds material information that the Commission should have—and thereby makes a more complete evidentiary record—before deciding the pending motion.

II. The exhibits should be evaluated according to their contents and the additional evidentiary information that each one adds.

Taken together, the exhibits do much more than just reconfirm the already-known and undisputed fact that the Kamboj brothers’ purported audit indeed was forged.

Specifically, Exhibit A reflects and shows the distinction between the impersonator's assurances and the later communication to the genuine accounting and audit firm; Exhibit D supplies the genuine firm's own account; and Exhibits B and C provide chronology and context without independently establishing precisely when the SEC first learned of the Kamboj brothers' audit forgery and auditor impersonation. Accordingly, their significance should be assessed according to those distinct additional factual and evidentiary contributions.

A. Exhibit A separates the impersonator's assurances from the later genuine accounting and audit firm communication.

The Division correctly observes that Katz appears in the March 14, 2023 messages included in Exhibit A. Specifically, the prospective institutional investor's inquiry identifies Katz as its source of the referral, and the impersonator's response copies him and the Kamboj brothers. Opp. 7; Ex. A at 1–3. However, Katz's August 14, 2026 declaration identified the March 29, 2023 communication and clearly pointed out and stated that he was not copied on "this communication." Aug. 14 Decl. ¶ 4. That statement concerns the later communication, not every message that is reproduced beneath it. Reply Decl. ¶¶ 2–4.

This distinction both answers the asserted discrepancy and likewise also identifies the document's contribution. Specifically, the earlier correspondence presents the supposed auditor's confirmation through the false channel. However, the later message—to which Katz had access only very recently—goes to the genuine firm, refers to the audit as supplied by a "fake e-mailer," and does not include Katz. Ex. A at 1; Opp.

4, 7. Accordingly, those are completely different communications conveying entirely different information to different recipients. So, the exhibit supports the narrower proposition that the institutional diligence process reached the genuine audit firm through a subsequent March 29, 2023 communication on which both the investor and the actual auditor intentionally did not copy Katz, that he therefore did not receive, and that he did not know existed, or have access to, until August 7, 2026. It clearly does not establish that Katz received that later information merely because he received the earlier prior messages.

The Division argues that the institution's success in reaching the genuine firm shows why Katz should have done more himself.² Opp. 7. That argument, however, goes to the weight and ultimate significance of Exhibit A; it is not a reason to exclude it altogether, and thereby to preclude the Commission from (i) considering relevant evidence and (ii) having a complete evidentiary record before it. The OIP's existing findings remain part of the record. But Exhibit A adds materially more specific evidence about what the false channel told Katz, what information emerged only when the institution reached the genuine firm, and whether Katz too contemporaneously or thereabouts received that later information in 2023 (to which he only gained access on August 7, 2026). The Commission should assess and have the benefit of that fuller and more

² However, as Katz's August 14, 2026 motion already emphasized, the Kamboj brothers' highly sophisticated fraud "successfully deceived dozens of additional highly experienced investment and due diligence professionals as well." Aug. 14 Mot. at 7. Moreover, the existing record further reflects that Katz retained substantial global and national professional service providers—including a "Big Four" audit firm, major outside "AmLaw" and other large law firms, and a multinational trillion-dollar fund administrator—none of which expert firms ever reported detecting the fraud or even any suspicions concerning the Kamboj brothers. Sept. 22, 2025 Mot. to Vacate at 3; Sept. 19, 2025 Katz Decl. ¶¶ 7–8. Accordingly, the fact that just one institution out of dozens ultimately uncovered the impersonation hardly establishes that the fraud was obvious or readily detectable. Indeed, and to the contrary, the fact that the Kamboj brothers' fraud was detected by only one investor out of dozens of investors and experienced investment and due diligence professionals strongly suggests that the Kamboj brothers' fraud was not at all easily detectable, and that Katz was not negligent for failing to detect a fraud that dozens of other experienced professionals likewise did not detect either.

complete factual sequence when deciding the pending motion and relief already requested. The fact that evidence may be consistent with an existing finding does not make it immaterial and irrelevant to relative culpability, sanctions, or discretionary modification and relief.

Nor is Exhibit A offered to rewrite what occurred in 2021 or 2022. Rather, its relevance and significance lies in the later detection sequence, the sophisticated means by which the deception persisted, and the information that actually was available to Katz as events unfolded. And those matters bear directly on the circumstances and degree of culpability, Katz's later response to the fraud—including his vast multiyear remediation and investor protection—and the Commission's discretionary assessment of the findings and sanctions that remain pending and at issue. Treating the document as immaterial unless it independently answers every OIP finding—as Enforcement states or intimates—would ask the wrong question.

B. Exhibit D contains the genuine audit firm's account, and is not merely a statement that Katz was not its client.

The Division describes Exhibit D as mere confirmation that the relevant persons and entities were not audit clients of the Australian firm. Opp. 5, 8. The letter, however, does much more than that, because it also provides the genuine firm's dated account of how the matter came to its attention and of the purported audit and associated communications. Ex. D at 1–2. It therefore supplies source evidence against which the sequence in Exhibit A can be checked. Accordingly, its corroboration is relevant to reliability and chronology even though the fact of forgery was already included in the OIP.

Moreover, the Commission can examine that account without accepting a larger inference about SEC knowledge. Exhibit D is a December 18, 2023 response to the Australian Securities and Investments Commission; it does not establish when the SEC or its New York Regional Office (“NYRO”) first received the information. Aug. 14 Decl. ¶¶ 8–9, 11. Nor does a December response, by itself, establish that it was the first communication about the matter. Katz offers the letter for what it records, with its existing confidentiality protection, and requests verification of any additional agency chronology only if that chronology matters to the Commission’s decision on his pending motion for reconsideration and, in the alternative, modification.

C. Exhibits B and C supply context; they do not independently prove early SEC knowledge.

Exhibits B and C are Katz’s own 2023 correspondence and already were known to him. Aug. 14 Decl. ¶ 3. Exhibit B records the prospective investor’s decision to withdraw and Katz’s repeated requests for an explanation. Exhibit C records the April 11, 2023 contact with SEC examination staff. Aug. 14 Decl. ¶¶ 5–6 & Exs. B–C. As previously noted, they both are included and discussed solely because they provide context for the newly discovered evidence; neither is itself offered as newly discovered evidence in its own right.

Nonetheless, their limited contextual relevance is quite real. Because read with the recently obtained third-party documents, Exhibit B helps distinguish (i) critical audit forgery information that an institutional investor learned and possessed from (ii) information that it communicated to Katz, or that it notably deliberately chose to hide

from Katz, and not communicate to Katz; Exhibit C locates the commencement of a documented SEC interaction. The proximity of those events strongly suggests, but does not prove, a transmission between the institution and the SEC, or show how and what SEC personnel knew and when they knew it. And the reply relies on no presumption that the Division of Examinations and the Division of Enforcement possessed identical information at identical times.

Katz's August papers sometimes characterize early SEC knowledge categorically, while the declaration also states that Katz presently cannot definitely prove its exact date or source. Aug. 14 Decl. ¶¶ 9, 11–12. For decision, the distinction should be explicit: early SEC knowledge is a very strong inference that Katz asks the Commission to test, not an already proven fact conclusively established solely by Exhibits A–D. The documented February 22, 2024 disclosure to Katz rests on his testimony; any materially earlier March–April 2023 or other receipt by the agency must be established separately. *Id.* ¶¶ 6–7, 9. And the documents' independent evidentiary value does not disappear in the highly unlikely event that further very strong inference ultimately is unproved.

III. The timing and materiality showing supports discretionary consideration, subject to the demanding standard for merits relief.

Those two issues and questions are distinct, and therefore should remain and be considered separately.

A. First access, reasonable discoverability, and prompt presentation are separate questions.

Feeley & Willcox Asset Management Corp., Securities Act Release No. 8303, nn.17–21 and accompanying text (Oct. 9, 2003), does not defeat supplementation

here. Feeley requires that evidence offered on reconsideration not merely be newly assembled from material reasonably available earlier. There, the Commission rejected a post-decision declaration and repayment schedule prepared from records presumably available before decision, and it rejected reliance on Rule 452 after the Commission had issued its decision. Katz, however, does not invoke Rule 452 or offer a retrospective compilation of his own records.

To the contrary, the August declaration identifies a materially and highly different provenance, namely: specific third-party source documents that were first personally available, accessed, obtained, and reviewed by Katz on August 7, 2026, in connection with the Delaware liquidation. It states that Katz necessarily therefore did not possess or review those documents when he filed either his two-month-prior June 12 motion or his one-month-prior July 7 reply. It also identifies Katz's Delaware counsel's August 13, 2026 report concerning their receipt by the trustee from the SEC and their confidential status. Aug. 14 Decl. ¶ 3. Katz promptly sought leave on August 14, just several business days after his stated first access. Accordingly and in stark contrast to *Feeley*, Katz has made a prompt presentation of identified just-accessed third-party source materials, rather than a retrospective compilation of Katz's own records.

On August 7, 2026, Katz first learned that the two documents existed when he reviewed them in papers submitted by the Liquidating Trustee. Before then, he had neither possessed nor known of the March 29, 2023 communication in Exhibit A or the genuine accounting firm's December 18, 2023 response in Exhibit D. Reply Decl. ¶ 5. This precisely explains why these particular documents were not sought or produced

earlier. And Katz's eventual learning of the underlying Kamboj brothers' forgery did not in any manner establish his knowledge of these distinct and separate third-party communications. Katz's discovery through the trustee's papers, the absence of any prior possession or awareness by him, and his prompt August 14, 2026 application—just several business days after access—together all strongly support receiving the supplement.

Moreover, and again in stark contrast to *Feeley*, here the Division already has received the proposed materials and fully briefed their significance. Opp. 4–10. Accordingly, the adversarial process therefore already has occurred. So, the Commission therefore can receive the supplement without prejudicing any objection to weight, diligence, or ultimate relief. Put differently, the Division has had the opportunity to argue why the evidence should not change the result; however, the Division's arguments regarding weight and the ultimate merits do not justify keeping the recently accessed relevant evidence entirely out of the record—and having a less-than-complete evidentiary record before the Commission—when it decides Katz's pending motion for tailored relief.

B. Finality requires compelling circumstances for relief; however, it does not make the contents of the proposed supplement irrelevant or moot.

The June 3, 2026 Order denied Katz's effort to vacate his prior settled order based on substantial Commission policy changes, gross disproportionality and unfairness, substantial hardship, challenges to the settled findings, and very substantial post-Order remediation. June 3 Order 3–7. That ruling and *Richard D. Feldmann*, Exchange Act Release No. 77803, at 4–6 & n.15 (May 10, 2016), establish that finality imposes a demanding standard for ultimate modification or monetary relief. Katz does not ask Rule

154 to relax that standard. Rather, he asks the Commission to apply it after receiving and considering specific third-party evidence that he did not even know existed until August 7, 2026, and then promptly presented to the Commission just several business days later. A rebuttable presumption of finality governs the ultimate disposition; however, it does not require the Commission to decide a still-pending motion on an unnecessarily incomplete record.

The settlement waivers likewise remain relevant to the ultimate relief analysis. Offer of Settlement § III (Sept. 6, 2024); June 3 Order 3–4. However, the present request is not an ordinary appeal or an attempt to evade those waivers. Rather, it is a request for discretionary consideration of newly available evidence in a motion that already is pending and before the Commission. Recognizing the findings’ present force while that request is pending preserves the distinction between compliance with the existing order and the Commission’s authority to reconsider or modify it; it does not withdraw the findings relief expressly preserved in the moving papers.

Nor do *Sandeep Aggarwal*, Exchange Act Release No. 104987, at 2, 4–8 (Mar. 13, 2026), or the *Certain Off-Channel Communications Settled Orders*, Exchange Act Release No. 102860, at 2–6 (Apr. 14, 2025), and Release No. 103330, at 2–3 (June 26, 2025), require exclusion of the proposed supplement. Because those decisions underscore settlement finality and reject relief based merely on later developments or more favorable treatment received by others. Here, Katz’s Rule 154 motion rests on something materially different, namely: (i) newly accessed third-party source evidence in his own case, (ii) first discovered by Katz on August 7, 2026, and then (iii) promptly

presented by him to the Commission just several business days later, and (iv) while his reconsideration/modification motion remains pending. Accordingly, while those authorities perhaps might inform the Commission's ultimate merits analysis, they do not supply a reason to decide that pending motion without the new evidence and on an unnecessarily less-than-complete evidentiary record.

Katz's proposed supplement should be judged precisely on this basis. His present evidentiary contention concerns newly accessed third-party source records in this case, their bearing on the degree and circumstances of his culpability (or lack thereof), and their relationship to Katz's well-documented and very substantial multiyear course of remediation and investor protection that he has performed for more than two years (2024-2026), and mostly after the Order. It does not depend on another respondent's more favorable bargain or on the absence of further violations. Rather, the relevant Rule 154 question is (i) whether the added evidence is sufficiently relevant and material to be considered before the Commission rules, not (ii) whether it already proves entitlement to ultimate relief, which are two entirely different questions that the Division's opposition incorrectly conflates into one single compound question. The Commission can reject the latter after considering the evidence; however, it should not answer the former by assuming the latter away.

The distinction between new evidence of historical events and a later change in circumstances remains important, but it also confirms why the two entirely distinct issues should not be conflated and collapsed. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383–85, 391 (1992), concerns modification of prospective

institutional-reform relief upon a significant change in facts or law, with a suitably tailored remedy. The Commission uses that framework by analogy; the Federal Rules do not govern this administrative proceeding. *Aggarwal*, at 4. Here, the newly accessible 2023 documents bear on the reconsideration and evidentiary questions; Katz's later 2024-2026 remediation and investor protection bears separately on modification of prospective relief. Neither category eliminates the applicable finality standard, but neither is rendered irrelevant by it.

IV. The new documents and continuing substantial post-Order remediation and investor assistance support individualized modification and relief.

The OIP and the documentary record clearly attribute the forgeries and their concealment solely to the Kamboj brothers and/or persons acting at their direction. OIP ¶¶ 1, 6. In stark contrast, its findings against Katz solely concern negligence-based violations of Sections 17(a)(2) and 17(a)(3); it makes no finding of a scienter-based violation by him. *Id.* ¶ 14; Opp. 3. Those distinctions matter directly to proportionality and relative culpability. The OIP's additional findings concerning verification, marketing, and awards remain part of the record. OIP ¶¶ 7–11. But those existing findings do not make the newly discovered evidence immaterial to the Commission's individualized assessment of culpability, sanctions, proportionality and requested modification. Put simply, Rule 154 does not require a new document to negate every existing finding before the Commission may consider it.

Once the threshold for relief is addressed, the Commission's own framework explains why the additional proffered documents and detail could matter here. Specifically because the Commission's individual-cooperation policy expressly considers many factors

that are the subject of Katz's pending motion for reconsideration or, in the alternative, modification, notably including: (i) culpability relative to other participants, (ii) scienter or lack thereof, (iii) steps to prevent violations from continuing, (iv) assistance to victims and authorities, and (v) the prospect of future violations. 17 C.F.R. § 202.12(c)(1)–(4), (d). These policy considerations and factors are not interchangeable with whether a violation can be established in the first place. The same policy preserves case-specific discretion and creates no enforceable right. *Id.*, Note to § 202.12. Katz relies on the Commission's policy as an informative and relevant framework for discretionary judgment and relief, not as an independent exception to the rebuttable presumption of settlement finality.

The Commission already credited prompt remediation when accepting the settlement. OIP ¶ 15; Opp. 3, 5–6. That, however, does not make the fuller remediation record immaterial. The March 2024 communications with the administrator predate the OIP; their value is additive and corroborative because they further document Katz's investor-protective warning about a possible unauthorized account and his successful efforts to secure protective action. Sept. 19, 2025 Katz Decl., Ex. G at 1–3. That is, the point is not to relabel pre-Order conduct as post-Order conduct, but, rather, to present to the Commission a complete and full record of Katz's continuing 2022-2024 investor-protection conduct and efforts alongside his genuinely post-Order 2024-2026 mitigation and investor-protection conduct and efforts.

The later work also has separate additional support. In his signed June 10, 2026 supplemental declaration, Delaware counsel David A. Jenkins describes Katz's continued provision of documents and factual assistance after Jenkins's January 2025

declaration. Jenkins identifies Katz as the principal, and sometimes only, source of necessary information and explains how his assistance made the liquidation process less difficult, less expensive, and less time-consuming. Supp. Jenkins Decl. ¶¶ 7–10. Jenkins distinguishes his own observations from Katz’s report of additional hours, and states that he is unaware of Katz receiving any payment at all for any of his two years of efforts and work on the liquidation. Id. ¶¶ 2, 9. This is concrete, well-documented, very substantial and multiyear additional post-Order respondent remediation and assistance in an investor-recovery process, not merely an assertion of good character or routine compliance with an SEC order.

The five signed fund investor letters addressed to the Commission already submitted likewise warrant substantial weight. Sept. 19, 2025 Katz Decl., Exs. B–F. They support leniency and describe appreciation for Katz’s implementation of many best practices and investor protections, as well as his communications and extensive efforts to protect, preserve and return investor assets. Their role is not to adjudicate negligence or speak for every investor. Rather, their material significance is that actual affected investors—whose interests the Commission’s remedies are designed to protect—have very favorably described and greatly credited Katz’s numerous best practices, his extensive investor protection work, and his substantial asset-preservation efforts, and have asked for leniency (indeed, the vacating of the entire Order). Considered with Jenkins’s well-documented and extensive independent professional account, and his contemporaneous records, those experiences can and should inform the Commission’s individualized public-interest judgment.

Taken together, these newly accessible and newly discovered materials permit a more individualized assessment of (i) the person found negligent in unknowingly being caught up in a highly sophisticated and very hard-to-detect fraud that was engineered by his former colleagues at his prior firm, (ii) the specific information that he did or did not receive, and (iii) his very sustained and well-documented multiyear post-Order remediation, investor protection and recovery work. The materiality question is whether those circumstances could affect the Commission's discretionary judgment under the governing standard. Requiring that each newly accessible exhibit itself independently disprove negligence—as the Division requests or intimates—is an entirely improper standard, because it would screen out evidence that is relevant to that judgment before the judgment is even considered and made.

To the contrary, the remedies—and prospective modification and relief—require a distinct analysis after the evidence is received. A civil penalty must be in the public interest. Securities Act § 8A(g)(1)(B), 15 U.S.C. § 77h-1(g)(1)(B). Ability-to-pay evidence may be considered under Section 8A(g)(3) and Rule 630. 15 U.S.C. § 77h-1(g)(3); 17 C.F.R. § 201.630. The Division's acknowledgment of full payment in July 2026 also changes the collection posture. Opp. 4. None of those points diminishes the threshold relevance of evidence bearing on (a) relative culpability, (b) remediation, (c) investor protection, (d) proportionality, and (e) future risk. Katz preserves the monetary relief requested without treating past payment as a waiver of his pending motion.

For cease-and-desist relief, *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, § VI (Jan. 19, 2001), considers (i) state of mind, (ii) recurrence, (iii)

investor harm, (iv) opportunities for future violations, and (v) the remedial function of the order in the context of other sanctions. Those are precisely the kinds of individualized factors to which the newly supplemented record speaks. Katz therefore respectfully asks the Commission to grant reconsideration, modification and relief based on his well-documented implementation of many substantial investor safeguards and industry best practices, supplemented by his multiyear and many hundreds of hours doing ongoing and very substantial post-Order remediation and investor protection, considered along with the additional source evidence. Taken cumulatively, that evidence supports the particular modification already sought under the applicable compelling-circumstances standard.

V. Confidentiality permits a protected, focused inquiry if the Commission finds one necessary.

The Division argues that Katz's theory depends on an obligation to disclose investigative findings to him during the investigation, when he was himself a subject of inquiry. Opp. 9–10. It does not. Katz's Rule 154 request does not require the Commission to find that staff violated a duty to warn, acted improperly, or legally caused the Fund's losses. Aug. 14 Mot. 23–24; Aug. 14 Decl. ¶ 13. Rather, the threshold issue is whether the newly available documents and the chronology that they illuminate may materially inform the pending application. A duty-to-warn debate therefore is entirely irrelevant to—and does not address nor answer—the pending Rule 154 question before the Commission.

Rather, two distinct questions remain: (i) what information existed and when, and (ii) whether withholding or disclosing it was proper. Katz seeks the former to the extent that it materially informs the pending application. Whether disclosure was

legally required is an entirely separate question and cannot establish that the chronology is irrelevant. Nor would proof of earlier staff knowledge automatically establish a right to modification. Rather, its significance is that it may materially inform (i) the actual information sequence, (ii) Katz's repeated and ongoing good-faith 2023 inquiries to both NYRO and also the institutional investor regarding whether anything was wrong at the fund, so that he could take action to protect investors, and (iii) Katz's massive multiyear investor protection response when Enforcement finally told him in 2024. That inquiry evaluates the factual record; it does not transfer Katz's settled verification obligations to the agency.

Section 24(b) restricts disclosure outside the Commission in the circumstances the statute specifies; and it expressly distinguishes communications within the Commission. 15 U.S.C. § 78x(b). Section 24(c) provides for authorized confidential disclosures, and Section 24(d) protects qualifying records obtained from foreign securities authorities against compelled disclosure. *Id.* § 78x(c)–(d). Rule 203.2 likewise treats investigative information as nonpublic. 17 C.F.R. § 203.2. These provisions protect confidentiality. However, they do not categorically prevent the Commission from confidentially considering lawfully available evidence in resolving a motion before it.

Indeed, Rule 322 supplies a procedure for protecting confidential material, including maintenance under seal while a protective-order motion is pending. 17 C.F.R. § 201.322(a)–(e). In this regard, Katz's August 14, 2026 protective-order motion requests protection for Exhibits A and D from public disclosure. The reply preserves that request and does not seek broader circulation, an override of a foreign-source restriction, or production of privileged investigative advice. The public discussion identifies only the documents' general nature and their relevance and significance to the pending motion.

The Division further argues that no rule authorizes the eight-category chronology requested in the motion. Opp. 10. Rule 154, however, authorizes a request for an order. Although it does not create a free-standing discovery entitlement, Katz does not need one for the narrower relief requested; rather, the Commission itself can direct Enforcement to provide a response needed to resolve a matter properly before it. Indeed, Rule 470(b) expressly contemplates a Commission-requested response, and *Mejill-Tellado* demonstrates the use of additional briefing to resolve a pending modification request. Release No. 6962, at 2. A Commission-directed identification of the documentary basis for a material factual position is not party discovery into internal deliberations; it is a focused means of ensuring that the Commission has the factual chronology that it considers necessary in order to decide the pending motion.

Katz maintains the chronology request, subject to the Commission's own judgment about relevance, burden, and lawful disclosure. If the Commission considers the full request unnecessary, a narrower response could identify whether and when the agency first received a genuine-firm repudiation or other reliable confirmation of the impersonation before February 22, 2024, with an appropriate source identification and any specific objection to disclosure. The Commission can set the time and scope of that response. The proposed fourteen-day schedule need not be a condition of receiving the exhibits. Aug. 14 Mot. 25–26; Proposed Order ¶¶ 2–5.

Any additional factual response can preserve an appropriate opportunity for the parties to address it. But the chronology inquiry is not a condition of receiving Exhibits A and D. Because even if the Commission concludes that no further inquiry is necessary, it still can and should accept and consider those exhibits for the information they themselves supply. That narrower disposition alone would permit the Commission

to decide the pending June 12 motion on a more complete record without prejudging any merits issue.

Conclusion

Katz respectfully requests that the Commission grant the August 14 motion for leave, receive the supplemental memorandum, declaration, and exhibits for their proper evidentiary purposes, and maintain the protection requested for Exhibits A and D. The immediate Rule 154 question does not require the Commission to decide the ultimate merits of the June 12 motion. Rather, it requires only that the Commission decide that still-pending motion on the fullest relevant record after receiving promptly presented third-party evidence that Katz did not know existed until August 7, 2026 and that the Division has now fully addressed. Katz further requests the focused factual inquiry proposed in the motion insofar as the Commission finds it necessary, or an appropriately narrower response, before disposition of the pending June 12 motion.

Dated: September 23, 2026
New York City, New York

Respectfully submitted,

/s/

Evan H. Katz, Respondent *Pro Se*
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UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22214

In the Matter of

EVAN H. KATZ

Respondent.

REPLY DECLARATION OF EVAN H. KATZ IN SUPPORT OF HIS RULE 154 MOTION

I, Evan H. Katz, declare, under penalty of perjury, as follows:

1. I am the Respondent. I submit this declaration in support of my reply on the August 14, 2026 motion for leave to supplement the record. Except for information expressly identified as reported to me, I state facts within my personal knowledge.

2. Paragraph 4 of my August 14 declaration identifies a March 29, 2023 communication in Exhibit A and states that I was not copied or blind copied on “this communication.” I clarify and confirm that statement in response to the Division’s discussion of the exhibit.

3. Exhibit A reproduces earlier March 14, 2023 messages identifying me as a recipient, including the purported accounting firm’s response. My statement concerned the March 29 communication, not every message in the exhibit. The earlier messages and their recipient fields remain part of Exhibit A.

4. The March 29 communication is a later message to the genuine accounting firm concerning the purported audit and apparent impersonation. I was not copied or blind copied on it. I did not have access to it or review it until August 7, 2026.

5. On August 7, 2026, I first learned of and reviewed the March 29, 2023 communication in Exhibit A and the genuine accounting firm's December 18, 2023 response in Exhibit D in papers submitted by the Liquidating Trustee in the Fund's Delaware liquidation proceeding. Before that review, I never had possessed either document and did not know that either existed. I sought leave to submit them on August 14, 2026, just several business days after discovering them and first reading them. These statements concern those two documents, not the earlier messages in Exhibit A that copied me.

6. On August 13, 2026, my Delaware counsel told me that the Liquidating Trustee's counsel had advised in writing that the Trustee obtained these documents from the SEC and understood that the SEC regarded them as confidential.

7. I do not know exactly when or from what source the SEC's New York Regional Office ("NYRO") first received information establishing the forgery or impersonation. Aug. 14 Decl. ¶¶ 9, 11. The documents do not themselves establish that date. My chronology request does not rest on personal observation of the SEC's earlier receipt of information.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 23, 2026,
in New York City, New York

/s/

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UNITED STATES OF AMERICA
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File No. 3-22214

In the Matter of

EVAN H. KATZ

Respondent.

CONSOLIDATED CERTIFICATE OF COMPLIANCE AND SERVICE

1. Compliance with the word limit

I certify under Rule of Practice 154(c), 17 C.F.R. § 201.154(c), that Respondent Evan H. Katz's Reply in Further Support of His Rule 154 Motion contains 6,228 words, excluding the table of contents and table of authorities. The count includes the caption, headings, signature block, and record-citation footnote. It does not exceed the 7,000-word limit.

I relied on an automated count of the document's visible text, with words separated by whitespace. No substantive portion of the reply was excluded from that count.

2. Sensitive personal information

Pursuant to Rule of Practice 151(e)(3), 17 C.F.R. § 201.151(e)(3), I certify that the reply brief, reply declaration, and this consolidated certificate omit or redact all sensitive personal information required to be omitted or redacted under that rule. Contact information permitted by the rule is retained.

This public submission does not reproduce the protected exhibits previously submitted separately with the August 14, 2026 motion. It preserves the pending request for confidential treatment of Exhibits A and D.

3. Certification under Rule 153

I have read the reply brief, reply declaration, and this consolidated certificate. To the best of my knowledge, information, and belief, formed after reasonable inquiry, these papers are well grounded in fact and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication. I make this certification pursuant to 17 C.F.R. § 201.153(b).

4. Service

Pursuant to Rules of Practice 150 and 151(d), 17 C.F.R. §§ 201.150 and 201.151(d), I certify that on September 23, 2026, I served true and correct copies of the Rule 154 reply brief, the reply declaration of Evan H. Katz, and this consolidated certificate by electronic mail on the following counsel for the Division of Enforcement:

Christopher J. Dunnigan — dunnigancj@sec.gov
Travis Hill — hilltr@sec.gov
Division of Enforcement
Securities and Exchange Commission

My signature below applies to all four certifications above.

Dated: September 23, 2026

/s/

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