13-55043, 13-55295

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,

v.

FRANCIS E. WILDE, MARK A. GELAZELA, BRUCE H. HAGLUND,
Defendants-Appellants,

MAUREEN WILDE
Relief Defendant-Appellant,

STEVEN E. WOODS, MATRIX HOLDINGS LLC, BMW MAJESTIC LLC, IDLYC HOLDINGS TRUST LLC, and IDLYC HOLDINGS TRUST,
Defendants,

IBALANCE LLC, and SHILLELAGH CAPITAL CORPORATION,
Relief Defendants.

On Appeal from the United States District Court
for the Central District of California

BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION, APPELLEE

ANNE K. SMALL
General Counsel

MICHAEL A. CONLEY
Deputy General Counsel

JOHN W. AVERY
Deputy Solicitor

DAVID D. LISITZA
Senior Litigation Counsel

PAUL G. ALVAREZ
Senior Counsel

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9040
(202) 551-5038 (Alvarez)

COUNTERSTATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary to address the issues in this appeal because the legal principles governing the dispositive issues have been authoritatively decided. Oral argument therefore would not significantly aid the Court in its decisional process. *See* Fed. R. App. P. 34(a)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER AUTHORITIES

13-55043, 13-55295

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,

v.

FRANCIS E. WILDE, MARK A. GELAZELA, BRUCE H. HAGLUND,
Defendants-Appellants,

MAUREEN WILDE
Relief Defendant-Appellant,

STEVEN E. WOODS, MATRIX HOLDINGS LLC, BMW MAJESTIC LLC, IDLYC HOLDINGS TRUST LLC, and IDLYC HOLDINGS TRUST,
Defendants,

IBALANCE LLC, and SHILLELAGH CAPITAL CORPORATION,
Relief Defendants.

On Appeal from the United States District Court
for the Central District of California

BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION, APPELLEE

PRELIMINARY STATEMENT

This is a civil law enforcement action brought by the Securities and Exchange Commission against the various perpetrators of a prime bank scheme—a well-known type of securities fraud—who duped investors into making $11 million worth of investments in financial instruments that do not exist. Investors were falsely promised that

they would receive outsized returns from prime bank instruments at virtually no risk. But undisputed evidence established that the underlying prime bank instruments did not exist, that such extraordinary returns were not available, and that Defendants stole millions of dollars from investors for their personal use.

Francis Wilde violated antifraud provisions of the federal securities laws, and aided and abetted the fraud, by orchestrating the prime bank scheme. Mark Gelazela violated the antifraud provisions by lying to investors while soliciting their investments in the prime bank scheme, and he violated the broker-dealer registration requirements by soliciting those investments without registering as a broker. Bruce Haglund aided and abetted what he knew was a fraud by lending his reputation as an attorney to provide undeserved credibility to the scheme and by divvying up and distributing the spoils of the scheme. Maureen Wilde received funds from the prime bank scheme to which she was not entitled. Because no rational jury could conclude otherwise, the district court properly granted summary judgment in favor of the Commission on all of its claims.

COUNTERSTATEMENT OF JURISDICTION

The district court had jurisdiction over this civil law enforcement action under Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78u(d), 78u(e), and 78aa. The district court entered final judgment on December 18, 2012. Defendants filed timely notices of appeal. Fed. R. App. P. 4(a)(4)(B)(i). This Court has jurisdiction under 28 U.S.C. 1291.

COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. Whether the district court correctly granted summary judgment on the Commission's securities fraud claims where there is no dispute that Francis Wilde and Gelazela knowingly or recklessly sold securities purporting to offer investment in prime bank instruments that did not in fact exist, promised unachievable returns, misappropriated investor funds, and lied to investors about the status of their investment.

2. Whether the district court correctly granted summary judgment on the Commission's claims that Francis Wilde and Haglund aided and abetted their co-defendants' securities law violations where Francis Wilde and Haglund were aware of these violations and their roles in furthering them and substantially assisted in the violations.

3. Whether the district court correctly granted summary judgment on the Commission's claims that Francis Wilde and Gelazela offered or sold securities on an unregistered basis given that it is undisputed that they indirectly or directly offered or sold securities where no registration statement was in effect, and it is undisputed that they never demonstrated an exemption from registration.

4. Whether the district court correctly granted summary judgment on the Commission's claim that Gelazela unlawfully acted as an unregistered broker where there is no dispute that he engaged in the business of inducing the purchase of securities without registering with the Commission as a broker.

5. Whether the district court acted within its broad discretion in ordering Gelazela and Maureen Wilde to disgorge their ill-gotten gains.

COUNTERSTATEMENT OF THE CASE

A. Nature of the Case

This consolidated appeal arises out of a civil law enforcement action brought by the Commission against Defendants Francis Wilde, Mark Gelazela, Bruce Haglund, Steven Woods, Matrix Holdings LLC (controlled by Francis Wilde), IDLYC Holdings Trust LLC (controlled by Gelazela), IDLYC Holdings Trust (controlled by Gelazela), and BMW Majestic LLC (controlled by Woods); and against Relief Defendants Maureen Wilde (Francis Wilde's wife), Shillelagh Capital Corporation (controlled by Francis Wilde), and IBalance LLC (controlled by Gelazela). *See SEC v. Francis E. Wilde, et al.*, 8:11-cv-00315-DOC-AJW (C.D. Cal.) (Carter, J.), E.R. 506-19.[1]

After holding three hearings and reviewing all submissions, the district court granted summary judgment in favor of the Commission on all of its claims. E.R. 100. The district court permanently enjoined all Defendants from violating the federal securities laws at issue, and

[1] "E.R. __" refers to the excerpts of record the Commission filed with this brief, pursuant to Circuit Rule 30-1.7. "Br. __" refers to the respective briefs filed by the appellants.

permanently barred Francis Wilde ("Wilde") and Haglund from serving as an officer or director of a public company. E.R. 96-97, 100. The court also ordered Defendants to pay disgorgement and civil penalties, and ordered the Relief Defendants to disgorge their ill-gotten gains. E.R. 97-99. Only Wilde, Gelazela, Haglund, and Maureen Wilde appeal from the final judgment, appearing *pro se*.[2]

The district court found that Wilde, Gelazela, Woods, and the four corporate Defendants they controlled violated the antifraud provisions of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5, by knowingly or recklessly making materially false statements in connection with the offer and sale of securities. E.R. 82-88. The court also found that Wilde and Haglund violated Section 20(e) of the Exchange Act, 15 U.S.C. 78t(e), by aiding and abetting the antifraud violations at issue in this case. E.R. 88, 93. In addition, the

---

[2] The district court also entered judgments against Defendants Matrix Holdings, IDLYC Holdings Trust LLC, IDLYC Holdings Trust, and BMW Majestic; and Relief Defendants Shillelagh Capital and IBalance—none of whom are present here. This Court dismissed appeals by IDLYC Holdings Trust LLC, IDLYC Holdings Trust, and IBalance because these entities improperly appeared *pro se*. *See* May 22, 2013 Order, 13-55043, Appellate Dkt. 8.

court found that Wilde, Gelazela, Woods, and the four corporate defendants they controlled violated Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. 77e(a) and 77e(c), by offering and selling securities on an unregistered basis. E.R. 93-95. The district court also concluded that Gelazela and Woods violated Section 15(a) of the Exchange Act, 15 U.S.C. 78*o*(a), by engaging in activities that constitute broker conduct, such as soliciting potential investors to purchase securities, without registering as a broker with the Commission. E.R. 95-96. Finally, the court found that Relief Defendants Maureen Wilde and two other corporate entities controlled by defendants had no legitimate claim to any investor funds they received. E.R. 96.

B. Facts

Defendants bilked investors out of more than $11 million in a fraudulent prime bank investment scheme. The scheme purportedly pooled investor funds to purchase high value financial instruments from "first class international prime banks" that would return exorbitant profits ranging from 13,000% to 260,000% annually. E.R. 142; Gelazela Br. 5-6. In reality, Defendants did not use investors' money to purchase prime bank instruments because such investment instruments do not

exist. E.R. 215-16, 258-60, 280 Instead, Defendants stole millions of dollars from investors while repeatedly lying to investors about the status of their investments.

As detailed below, each defendant played a role this prime bank scheme. Wilde was the scheme's mastermind. Of the over $11 million raised from investors, Wilde (through his company, Matrix Holdings) directed that over $3.1 million in investor money be used to satisfy his personal expenses, including the more than $800,000 he transferred to his wife Maureen Wilde. E.R. 132, 226-27, 271-75, 297-304, 320-28. Gelazela made over $1 million by promoting the scheme through his IDLYC Holdings entities and personally raised over $5 million from 18 investors to whom he continued to lie even after this enforcement action was filed. E.R. 131, 243-46, 329-461.[3] Haglund was an attorney who not only lent his reputation to the prime bank scheme to make the investments appear legitimate when he knew they were not, but also divided investor funds among himself and the other fraud perpetrators and paid returns owed to previous investors with new

[3] Woods (through his entity, BMW Majestic) made over $500,000 by successfully soliciting six investors who invested a total of $1.1 million in the scheme. E.R. 131, 462-505.

investors' capital. E.R. 131-32, 155-56, 194, 207-08, 211, 261-62, 278-79.

1. Defendants raised over $11 million from investors by falsely promising excessive returns from nonexistent prime bank instruments.

In April 2008, Wilde convinced Newport Titan Ltd. ("Newport") to enter into a contract providing that Newport would invest a $4.8 million bond in exchange for Wilde's promise to use Newport's investment to obtain $100 million worth of prime bank instruments. Wilde promised to provide Newport an astronomical return on investment of 250% within one week ($12 million), and an additional 18.8% over the course of the next six months. E.R. 306-07. This represented an annual return rate of 13,000%. E.R. 142.[4]

In October 2009, Wilde recruited Gelazela, Woods, and Haglund to help him implement an even more ambitious phase of the prime bank scheme. E.R. 232, 239. Between October 2009 and mid-March 2010, Gelazela and Woods (through their corporate entities) obtained another $6.3 million from 24 additional investors. E.R. 131. Defendants signed

[4] Despite its name, Newport Titan was a small company established for the sole purpose of "protecting the collateral interest" in a $4.8 million bond owned by Arlene Hazelrigg. E.R. 282.

contracts with these investors promising to use the investors' money to obtain over a billion dollars' worth of prime bank instruments that would provide exorbitant annual returns of 200,000%. E.R. 142, 329-505. For example, Gelazela convinced one investor to provide $300,000 in return for $200 million after 40 weeks (E.R. 206) and promised another investor that his $1.5 million investment would yield a return of $150 million *per week* for 40 weeks (E.R. 197-98).

Throughout the scheme, Wilde, Gelazela, and Woods (and the corporate defendants they controlled) solicited money from these investors despite being aware that prime bank instruments did not exist. For instance, Wilde raised millions from investors by repeatedly touting his ability to obtain interests in prime bank instruments, knowing that he had never obtained such an interest. E.R. 195, 199, 211, 305-07. Wilde, Gelazela, and Woods never told investors that Wilde had never been successful in obtaining the types of purported prime bank instruments that they claimed would serve as the basis for the investment. E.R. 305-07. For his part, Gelazela admitted that, before he solicited investors, he had reviewed the Commission's warnings about prime bank schemes on the Commission's website,

which stated that such investments were frauds and did not exist. E.R. 237-38.[5] Wilde, Gelazela, and Woods also falsely assured investors that they had the necessary knowledge, capability, and banking relationships to successfully obtain such financial instruments. E.R. 189, 195, 199, 200-02, 211, 290-96.

Wilde, Gelazela, and Woods were able to convince investors that their investments in the scheme were safe, in part, because Haglund lent his reputation as an attorney to the scheme and served as the "escrow agent" for investor funds and transfers. E.R. 131-32, 155-56, 194, 207-08, 211. Haglund himself was aware of the Commission's warnings that prime bank instruments do not exist and that investments in them are promoted by fraud artists. E.R. 133, 222-23. Indeed, Haglund had personal experience with prime bank frauds, having previously served as an escrow attorney for a different, failed

[5] Since 1993, the Commission has issued bulletins alerting the public of the dangers associated with prime bank frauds, and noting that investments in such instruments are bogus. The Commission's prime bank fraud bulletins are currently located online at: www.sec.gov/divisions/enforce/primebank.shtml, and www.sec.gov/divisions/enforce/primebank/howtheywork.shtml. *See* E.R. 183-84.

prime bank scheme in 2007, and he knew that the scheme's collapse resulted in substantial investor losses. E.R. 133, 219-21.[6]

2. Defendants misappropriated investors' funds instead of making investments and paying returns.

Not one dollar of investors' funds was used to purchase an interest in prime bank instruments, of course, because it is impossible to make such an investment. E.R. 132, 215-16, 226-27, 258-60, 280, 320-28. Instead, Defendants pocketed and squandered investor funds.

For instance, Wilde misused and misappropriated Newport's entire $4.8 million investment. Wilde first used Newport's bond to obtain a line of credit and then proceeded to transfer $3.7 million from that line of credit to individuals who had previously been involved with Wilde in an earlier prime bank scheme. E.R. 269, 272-74. Without telling Newport, Wilde then sold Newport's bond for $5.9 million (E.R. 270-71, 297-304, 308-10, 311, 312-19), used some of the proceeds to settle his line of credit, and pocketed the remaining $2.1 million (E.R. 271, 297-304, 308-10, 312-19). Wilde then completely dissipated this

---

[6] As a result of Haglund's involvement in this previous prime bank scheme, he was the subject of an investor complaint to the State Bar of California. E.R. 133, 221.

$2.1 million by paying $1.5 million worth of creditors' claims against a failing company Wilde controlled, Riptide Worldwide, Inc. (E.R. 271-75, 297-304), and spending $600,000 on personal expenses including:

- over $80,000 to purchase a new Land Rover. E.R. 273-74, 299.
- over $20,000 to pay for his parents' nursing home. E.R. 300, 304.
- $19,000 in payments to his wife, Relief Defendant Maureen Wilde. E.R. 297, 299, 302, 303.
- $100,000 to Defendant Woods for a home loan. E.R. 274.

None of these expenditures were disclosed to Newport. E.R. 271-75.

Wilde, Gelazela, Woods, and the corporate-entity defendants also misappropriated $6.3 million from the other 24 investors. Rather than buying purported prime bank instruments as promised, or even making any kind of legitimate investment, Defendants divided over $3.7 million of the investors' capital among themselves. E.R. 202, 250, 277, 287-89, 329-505. Pursuant to agreements between themselves that they did not reveal to investors, Wilde directed Haglund to wire $1,150,000 to Gelazela, $472,500 to Haglund, and $565,000 to Woods. E.R. 132, 226-27, 287-89, 320-28. At Wilde's direction, Haglund also wired approximately $1.6 million in investor funds to pay Wilde's personal expenses, including:

- approximately $800,000 to the bank account of his wife, Relief Defendant Maureen Wilde.
- over $300,000 to Shillelagh Capital Corporation, an entity under Wilde's control and a defendant below.
- $200,000 to Wilde's European bank account.
- $55,000 to pay for his parents' nursing home.

E.R. 132, 226-27, 320-28. Wilde dissipated, rather than invested, the remainder of the investors' funds by transferring them to various non-defendant persons and entities. E.R. 132, 226-27, 320-28.

Each investor's money was wired from Haglund's trust account soon after it was deposited. E.R. 132, 261-62, 278-79. Investors were not told that their principal investments were paid out to Defendants and other entities rather than invested, let alone that their investments were used to pay for such personal expenses. E.R. 132, 190-93, 198-99, 202-04, 211, 261-62, 278-79.

3. Defendants lied to investors about the status of their investment even after the Commission began its fraud investigation.

After inducing investors to invest in fictitious prime bank instruments with false promises and instead misappropriating investor funds, defendants then lied to investors about the status of their

investment. For instance, over four months after Wilde sold Newport's bond and dissipated virtually all of the money from its sale, Wilde falsely assured Newport that its bond remained encumbered. E.R. 269, 275-76. In fact, Wilde did not reveal that he had sold the bond until April 2010 during a deposition in another, unrelated proceeding. E.R. 267-68. And in the spring of 2010, Wilde lied to investors about the progress of their prime bank investments, and falsely represented to them that they would receive an advance payment plus interest. E.R. 209-11, 214-16.

Gelazela and Woods told investors throughout the course of the scheme that prime bank instruments had been obtained, and they attributed delays in paying returns to various phony excuses, including the Chinese New Year. E.R. 154-55, 213-14, 234, 242, 254, 284, 285-86. Gelazela acknowledged in an email to Wilde that he regularly lied to customers about their investments, stating that he had "long ago exhausted all of the possible delays [sic] scenarios with the clients (and believe me, after having been in this business a long time, we have quite a collection that we have heard over the years and have been regurgitating)." E.R. 253-55, 285-86. In fact, Gelazela managed to

convince four new victims to invest an additional $2.5 million in the scheme *after* acknowledging elsewhere that he had received no proof that Wilde had ever acquired a prime bank instrument. E.R. 254-55. And even after Gelazela received a Commission subpoena investigating this prime bank scheme, Gelazela continued to falsely assure investors that they would receive their initial funds back, plus ten percent interest. E.R. 240-42.

Haglund likewise engaged in substantial wrongdoing even after the Commission subpoenaed him in connection with this case. Haglund—at Wilde's direction—made $10,000 payments to two earlier investors using funds received from a new investor. E.R. 228-29, 320-28. Haglund later acknowledged that these types of payments typically are called a "Ponzi scheme." E.R. 228. Haglund also admitted that he "should have known" that Wilde was committing a violation of the securities laws. E.R. 228-29; *see also* E.R. 92-93.

4. Investors lost virtually all of their money and obtained no legitimate returns.

With the exception of the two investors who received the $10,000 Ponzi payments from new investors (E.R. 228-29, 320-28) and one investor to whom Gelazela returned $150,000—only after the investor

purportedly "threaten[ed]" Gelazela and "showed up" at his home (E.R. 241)—every investor in Defendants' prime bank scheme lost his entire investment, and none received any promised returns. E.R. 132, 202, 207, 210, 260, 278, 280. In total, investors lost more than $11 million. E.R. 132, 260, 278, 280, 283.

C. Course of Proceedings

1. The Commission's complaint alleged multiple securities law violations.

On February 24, 2011, the Commission filed its complaint alleging that Wilde, Gelazela, Woods, and the four corporate entities they controlled committed securities fraud; that Wilde and Haglund aided and abetted securities fraud; that Wilde, Gelazela, Woods, and their corporate entities offered and sold securities on an unregistered basis; and that Gelazela and Woods acted as unregistered brokers. The Commission sought injunctive relief, civil penalties, and disgorgement of ill-gotten gains from the violators and from the Relief Defendants, including Maureen Wilde. E.R. 118-23.

2. The district court granted summary judgment in favor of the Commission on all of its claims.

In September 2012, the Commission moved for summary judgment on all of its claims. The Commission made an affirmative

showing based on Defendants' admissions, documents, emails to and from Defendants, deposition testimony, and an expert report by Professor James E. Byrne of the George Mason University School of Law, who "has been accepted as an expert on commercial and financial investment fraud" in approximately "20 federal and eight state courts in the United States as well as in foreign courts." *SEC v. Milan Grp., Inc.*, 962 F. Supp. 2d 182, 194 (D.D.C. 2014).

Defendants opposed summary judgment, claiming that the purported investment programs existed and were legitimate; that the purported investments they offered were not securities; that they never misled investors; and that they made good faith efforts to generate the returns they promised investors. In support of their arguments, Defendants submitted only their respective memoranda of law containing unfounded arguments and factual assertions. E.R. 76-77.

Gelazela also submitted to the district court a series of exhibits—the same exhibits he has presented to this Court. (*See* Gelazela Br. Exhs. A-N.) Although Gelazela did not file these exhibits with his summary judgment opposition brief, the district court received them, considered them, and allowed Gelazela the opportunity during three

separate hearings to discuss those exhibits at length. *See* E.R. 513-14 (docket entries for Oct. 15, 2012, Nov. 2, 2012, and Nov. 15, 2012 Hearings, Dkt. Nos. [44], [46], and [55]).

Following those three hearings, the district court, on December 17, 2012, granted summary judgment in favor of the Commission on all claims against all defendants. After considering all the evidence, the court held that the Commission's "comprehensive" evidence showed that "there is no genuine issue of material fact regarding Defendants' violation of federal securities laws and Relief Defendants' liability for the ill-gotten gains obtained through Defendants' illegal conduct." E.R. 79. The court further concluded that "[n]o opposition document has shown that such a genuine issue exists." (*Id.)* The court noted that defendants' assertions were often "contrary" to their own prior sworn testimony (E.R. 76) and that their declarations were "vague" and "unsupported" (E.R. 76-77).

With regard to the Commission's claim that Wilde, Gelazela, Woods, and the four corporate entities they controlled committed securities fraud in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5, the district court

concluded that there was no genuine dispute that the investment in prime bank instruments that they offered and sold was an "investment contract" and thus a "security" under the Securities Act and the Exchange Act (E.R.79-80) and that they "knowingly or recklessly" made "material misrepresentations and omissions" and engaged in a "fraudulent practice to misappropriate investors' money." E.R. 82, 84, 88. The court also pointed to Professor Byrne's conclusion that the prime bank instruments at issue were "not legitimate" and "patently fictitious." E.R. 88, 157.

The court concluded that Haglund and Wilde were liable as aiders and abettors of securities fraud in violation of Section 20(e) of the Exchange Act because "undisputed evidence demonstrates that Haglund and Wilde, knowing of the primary violation[s by their co-defendants] and their respective roles in the fraudulent scheme, substantially assisted in it." E.R. 89.

The court concluded that Wilde, Gelazela, Woods, and their corporate entities offered and sold securities on an unregistered basis in violation of Sections 5(a) and 5(c) of the Securities Act because it was undisputed that they were necessary participants and substantial

factors in the indirect or direct offer or sale of securities where no registration was in effect. E.R. 94-95. The court concluded that Defendants were not entitled to an exemption under Section 5 because they did not prove—or even claim—that their offers and sales qualified for any exemption from registration. E.R. 95.

The district court also held that there was no genuine dispute that Gelazela and Woods failed to register as a broker as required by Exchange Act Section 15(a) because it is undisputed they effected transactions in, or induced the purchase of, securities but failed to register with the Commission as a broker in connection with those transactions. E.R. 95.

3. The district court ordered injunctive relief, disgorgement, and civil penalties.

As relief, the court permanently enjoined all Defendants from violating the federal securities laws at issue and permanently barred Wilde and Haglund from serving as an officer or director of a public company. The court ordered that Wilde and Matrix Holdings were jointly and severally liable for disgorgement in the amount of $13,589,505.56 (including prejudgment interest); and that Gelazela, Woods, Haglund, IDLYC Holdings Trust LLC, IDLYC Holdings Trust,

and BMW Majestic were jointly and severally liable for disgorgement of $6,744,083.49 of that $13,589,505.56. The court also ordered that Defendants pay civil penalties equaling their respective disgorgement amounts. E.R. 99. Finding that the relief defendants, including Maureen Wilde, had no legitimate claim to investor funds obtained by fraud (E.R. 23), the court required the Relief Defendants to disgorge the following amounts—Maureen Wilde ($896,912.85), Shillelagh Capital Corporation ($350,975.06), and IBalance LLC ($1,088,473.79). E.R. 97-98.

STANDARD OF REVIEW

This Court reviews the granting of summary judgment *de novo*. *See SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1084 (9th Cir. 2010). Summary judgment is appropriate, and the district court's decision should be affirmed, if there "is no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a). There is no genuine dispute of material fact if the record taken as a whole "could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). To establish a dispute of material fact, the non-moving party "must do more than

simply show that there is some metaphysical doubt as to the material facts." *Id.* at 586. Rather, the non-moving party must show "specific facts showing that there is a genuine issue for trial." *Celotex v. Catrett*, 477 U.S. 317, 324 (1986). In a civil case, these standards apply equally to *pro se* litigants. *See Bias v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007).

"[A] district court has broad equity powers to order the disgorgement of 'ill-gotten gains' obtained through the violation of the securities laws." *SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998). Accordingly, a district court's disgorgement order is reviewed for an abuse of discretion. *Id.* at 1190.

SUMMARY OF THE ARGUMENT

1. The district court properly granted summary judgment to the Commission on all of its securities law claims.

First, there is no genuine dispute that Wilde and Gelazela executed an illegal prime bank scheme, an infamous form of securities fraud, that defrauded investors of over $11 million. Wilde and Gelazela sold securities interests in purported prime bank instruments that they knew, or were reckless in not knowing, did not exist; promised

impossibly high investment returns; misappropriated investor funds; and lied to investors about the status of their investments.

Second, there is no genuine dispute that Wilde and Haglund aided and abetted their co-defendants' securities fraud. The undisputed material facts establish that Wilde devised the scheme and controlled other defendants whose fraud liability is unchallenged. And the undisputed facts likewise show that Haglund knew that his co-defendants were operating a fraud but nevertheless lent his reputation and services as an attorney to their scheme, including by transferring investor funds to pay personal expenses and by making Ponzi-payments from new investors directly to earlier investors.

Third, Wilde and Gelazela offered or sold securities on an unregistered basis, and no rational jury could conclude otherwise. It is undisputed that they were necessary participants and substantial factors in the indirect or direct offer or sale of securities where no registration was in effect. And it is undisputed that neither Wilde nor Gelazela established an exemption from registration.

Fourth, there is no genuine dispute that Gelazela unlawfully acted as an unregistered broker. It is undisputed that Gelazela, without

registering with the Commission, earned over $1 million in transaction-based compensation by actively soliciting 18 investors to invest over $5 million in this prime bank scheme.

2. The district court acted within its discretion by ordering Gelazela and Maureen Wilde to disgorge their ill-gotten gains. The district court did not abuse its discretion by holding Gelazela jointly and severally liable for all the profits that he and his co-defendants gained from their collaboration to defraud investors. The district court also did not abuse its discretion by requiring Relief Defendant Maureen Wilde to disgorge all the fraudulently obtained investor funds that her husband Francis Wilde transferred to her.

ARGUMENT

I. The district court properly granted summary judgment for the Commission.

A. There is no genuine dispute that Wilde and Gelazela violated the antifraud provisions of the federal securities laws.

The district court properly concluded that the "uncontroverted facts" show that Wilde and Gelazela "knowingly or recklessly" engaged in a "fraudulent practice to misappropriate investors' money" and "made material misrepresentations and omissions" in violation of

Section 17(a), Section 10(b), and Rule 10b-5. E.R. 82. Where proper, as here, this Court has affirmed summary judgment on the Commission's fraud claims. *See*, *e.g.*, *Platforms Wireless*, 617 F.3d 1072; *SEC v. Whitworth Energy Res., Ltd.*, 243 F.3d 549, at *1-*2 (9th Cir. 2000).

"Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5, prohibit fraudulent conduct or practices in connection with the offer or sale of securities." *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 855 (9th Cir. 2001). These antifraud provisions forbid making a material misstatement or omission in connection with such an offer or sale. *Id.* at 855-56. Violations of Section 17(a)(1), Section 10(b), and Rule 10b-5 require scienter, which can be satisfied by recklessness. *Id.* at 856. Sections 17(a)(2) and (3) require a showing of negligence. *Id.*

1. Undisputed evidence establishes that Wilde and Gelazela engaged in deceptive conduct, including making material misrepresentations to investors.

Wilde and Gelazela indisputably engaged in four kinds of deceit, each of which is sufficient to affirm summary judgment: (1) they promised to invest in prime bank instruments that do not exist;

(2) they promised investors impossibly high returns; (3) instead of making the promised investments, they misappropriated investors' funds; and (4) they lied to investors about the status of their investments. Defendants do not dispute that these deceptive acts and the subject of each of these misrepresentations is "so obviously important to an investor, that reasonable minds cannot differ on the question of materiality." *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976) (concluding that "the ultimate issue of materiality [was] appropriately resolved as a matter of law by summary judgment") (internal citations omitted).

a. Wilde and Gelazela promised to invest in prime bank instruments, but there is no dispute that such investments do not exist.

As the district court concluded below, "'prime bank' investments do not exist." E.R. 81. This Court likewise has recognized that "the very notion of a 'prime bank note' was fictitious." *United States v. Rude*, 88 F.3d 1538, 1548-49 (9th Cir. 1996) (affirming convictions for wire fraud); *see also United States v. Howick*, 263 F.3d 1056, 1066 (9th Cir. 2001) ("fictitious" financial instruments "have been called many names, including prime bank notes, prime bank derivatives, prime bank

guarantees * * *."), quoting 141 Cong. Rec. S9533-34. Judge Posner similarly concluded in *SEC v. Lauer* that an investment in purported prime bank instruments is a "complete and barefaced" fraud because such instruments "do not exist." 52 F.3d 667, 669-70 (7th Cir. 1995).[7] The Commission has long warned the public that prime bank instruments and the markets in which they allegedly trade do not exist. *See* E.R. 183-85; *supra* n.5.

The Commission also presented unrebutted evidence that the specific prime bank instruments in which Wilde and Gelazela promised to make investments do not exist. It is undisputed that no investor money was spent to acquire any legitimate financial instruments. E.R. 132, 226-27, 320-28. It is undisputed that Wilde did not provide investors or his co-defendants any genuine proof that the investments

---

[7] *Accord SEC v. Gottlieb*, 88 Fed. App'x. 476, 477 (2d Cir. 2004) ("no one" is experienced in trading prime bank instruments because they have "no meaning and no import"); *United States v. Bollin*, 264 F.3d 391, 400-02 (4th Cir. 2001) (investment in prime bank instruments are "complete frauds" because they "do not exist"); *United States v. Gravatt*, 951 F.2d 350, at*2 (6th Cir. 1991) ("there are no such things" as "'prime bank notes'"); *United States v. Keiser*, 578 F.3d 897, 900 (8th Cir. 2009) (prime bank instruments are "fictitious"); *United States v. Dazey*, 403 F.3d 1147, 1156-57, 1171 (10th Cir. 2005) (prime bank instruments "do not exist").

occurred. Indeed, Gelazela noted "the absence of any visible movement on [Wilde's] end" and admitted that he never received from Wilde any account statements, copies, or evidence of bank guarantees. E.R. 253-55, 285-86. It also is undisputed that the only payments investors received were the two $10,000 Ponzi payments that Wilde directed Haglund to pay to old investors using funds from new investors, and the $150,000 that Gelazela returned under duress. E.R. 132, 228-29, 241, 260, 278, 280, 320-28.

The expert report of Professor James E. Byrne also concluded that the investments offered and sold by Wilde and Gelazela are "not legitimate." E.R. 138, 139, 157. Based on the particular materials defendants' used in this scheme, Professor Byrne concluded that investments sold by Wilde and Gelazela are "classic instances of Prime Bank or High Yield Investment Schemes" which "do not exist in legitimate finance," but "exist and are perpetrated to enable those planning and promoting them and their confederates to obtain investors' funds." E.R. 138, 140.

Although the district court "accepted into [the] record" and "considered" at a hearing (Gelazela Br. 9, *supra* at 18-19) the various

documents defendants attach to their brief that they claim establish a material dispute about the existence of investments in prime bank instruments (*id.* at 11-12 & Exhs. A-F), the court correctly concluded that "[n]o opposition document has shown" that a "genuine issue exists" (E.R. 79). These unauthenticated materials "may not be relied upon to defeat a motion for summary judgment" because no one attested to the legitimacy or accuracy of any statement they contain. *Canada v. Blain's Helicopters, Inc.,* 831 F.2d 920, 925 (9th Cir. 1987). Moreover, these documents contain serious typographical errors and misspellings that, as Professor Byrne noted, connote a "lack of degree of professionalism that would be expected" if the large transactions described therein were legitimate (E.R. 146-50). *See*, *e.g.*, Gelazela Br. Exh. F, at 1 ("Email [HSBC representative] for further advise to Mr.King Teik Choon"; "to the account of your client account name: Mr. Hing Teik Choon"; "the said instrument will be released and deliveredas above stated"), at 3 ("following the terms, conditions, limiteations"), at 5 ("that you are authorised by your client to answer uder our request") (errors in original).

Furthermore, Defendants' materials purport to relate to prime bank instruments generally, but, unlike Professor Byrne's report, they fail to set forth any "specific facts" concerning the particular representations and investments at issue here. *Celotex*, 477 U.S. at 324. For example, despite Gelazela's assertion, Defendants did not submit any "expert testimony" that the prime bank instruments they promised to invest in exist (Gelazela Br. 11, discussing Ex. A). Rather, defendants proffered a printout from the Internet that does "not affirmatively show [the author's] personal knowledge of specific facts," and is thus "insufficient" to establish a genuine dispute of fact. *Casey v. Lewis*, 4 F.3d 1516, 1527 (9th Cir. 1993). The remaining exhibits (Exhs. B-E)—additional Internet printouts of dubious origin—suffer the same fatal defect. *Id.*

Finally, Defendants advance a distinction between fraudulent and nonexistent prime bank instruments from *domestic* banks, versus legitimate prime bank instruments purportedly available "*outside* of the United States." (Wilde Br. 6, original emphasis; *see also* Gelazela Br. 11-12.) Any such distinction is groundless. As this Court concluded in *Rude*, "*international*" prime bank transactions also are "fictitious." 88

F.3d at 1542, 1548-49.[8] The prime bank instruments that the Seventh Circuit determined "do not exist" in *Lauer*, 52 F.3d at 670, were, like the instruments here, represented by their promoters to be "*International* Financial Investments" issued by the "top 100 *World* Prime Banks." *SEC v. Lauer*, 864 F. Supp. 784, 786 (N.D. Ill. 1994).[9] As Professor Byrne's expert report explained, Wilde and Gelazela included references to "international" financial institutions in their promotional materials only to "lend[] credibility to the scheme," and "[s]uch references are common in Prime Bank Investment Schemes" because they "enable fraudsters to tap the credibility of the international financial system." E.R. 139-40, 144. Professor Byrne further noted that various international regulatory bodies have issued public warnings about prime bank schemes. E.R. 141.

---

[8] All emphasis is added unless otherwise noted.

[9] *See also Dazey*, 403 F.3d at 1156-57, 1171 (prime bank "*international* investment program was completely bogus" because prime bank instruments representing obligations of "major *world* banks" simply "do not exist"); *Keiser*, 578 F.3d at 900 (prime bank instruments purportedly issued by the "*world's* leading banks" are "fictitious").

b. Wilde and Gelazela promised impossibly high returns.

Even if it were possible to invest in prime bank instruments, the 13,000% to 260,000% annual returns that Wilde and Gelazela promised were unachievable. *See supra* at 7. As Professor Byrne explained, Wilde and Gelazela offered "extraordinary returns that would not be commensurate with returns on legitimate investments." E.R. 142; *see also* E.R. 138, 143. Courts have thus affirmed fraud liability for materially false statements about purported "low-risk investments that were virtually certain to yield a high return." *Meadows v. SEC*, 119 F.3d 1219, 1226 (5th Cir. 1997); *SEC v. George*, 426 F.3d 786, 793-94 (6th Cir. 2005) (same, affirming summary judgment). Defendants did not dispute this analysis or offer evidence that such returns could legitimately be achieved.

c. Wilde and Gelazela misappropriated investors' funds instead of investing them as promised.

Even if Defendants had attempted to make legitimate investments with achievable returns, the undisputed fact that Wilde and Gelazela misappropriated investors' funds establishes that their promises were materially false. "[S]pen[ding] investor funds on

personal expenses" instead of investing them constitutes "securities fraud." *George*, 426 F.3d at 795; *accord SEC v. Infinity Grp. Co.*, 212 F.3d 180, 192 (3d Cir. 2000). Of the $11 million in investor funds received, Wilde misappropriated over $3 million, and Gelazela misappropriated over $1 million, rather than investing the money as promised. *See supra* at 8.

Wilde and Gelazela assert that they properly disclosed to investors that they would be charged "costs paid to third parties." (Gelazela Br. 13, *see also* Wilde Br. 7-8). But investor funds undisputedly were spent on items such as nursing home expenses and a new Land Rover (*supra* at 13-14), not on "costs" associated with investing. And there is no dispute that Wilde and Gelazela were counterparties, not "third parties," to the investment contracts. E.R. 305-07, 329-461. Moreover, siphoning such large costs from investors' principal rather than from returns contradicted Defendants' very promise that they were going to *invest* the money. *See generally* E.R. 329-505; *see also* Gelazela Br. 6-7. In any event, it is undisputed that the extent of such hefty "costs" was never disclosed to investors. E.R. 202, 247, 250, 251-52, 287-89.

d. Wilde and Gelazela lied to investors about the status of their investments.

When the promised returns failed to materialize, Wilde and Gelazela lied to investors by falsely assuring them that returns on their investments were merely delayed. *See supra* at 14-16. Gelazela even wrote to Wilde to tell him that they had "long ago exhausted all of the possible delays [sic] scenarios" that they had been "collect[ing]" and "regurgitating" over the years. E.R. 253-55, 285-86. As Professor Byrne noted in his expert report, such false excuses "are a typical and necessary feature of every Prime Bank Investment Scheme" (E.R. 153-54), because they are defendants' attempt to "postpone[e]" the "reckoning when the investment invariably fails" (E.R. 140).

2. There is no genuine dispute that Defendants offered and sold securities.

There is no genuine dispute that Defendants offered and sold securities under the federal securities laws, even though the prime bank instruments purportedly underlying those securities did not, in fact, exist. *See Lincoln Nat'l Bank v. Herber*, 604 F.2d 1038, 1040 (7th Cir. 1979) (the securities laws apply to schemes involving counterfeit or

nonexistent securities); *Seeman v. United States*, 90 F.2d 88, 89 (5th Cir. 1937) (same).

Contrary to defendants' contentions (Wilde Br. 9-11, Gelazela Br. 15, 17-18.), the contracts they entered with investors are "investment contracts," which are included in the definition of a "security." *See* Section 2(a)(1) of the Securities Act, 15 U.S.C. 77b(a)(1); Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Courts have repeatedly concluded that contracts to invest in a prime bank scheme are "investment contracts." As Judge Posner explained in *SEC v. Lauer*, an investment in purported prime bank instruments is "properly classified as an investment contract." 52 F.3d at 670-71; *accord SEC v. Deyon*, 977 F. Supp. 510, 516–17 (D. Me. 1997), *aff'd*, 201 F.3d 428 (1st Cir. 1998); *SEC v. Pinckney*, 923 F. Supp. 76, 80-83 (E.D.N.C. 1996) (applying Ninth Circuit standards); *SEC v. Bremont*, 954 F. Supp. 726, 732 (S.D.N.Y. 1997); *Milan*, 962 F. Supp. 2d at 199.

The district court correctly concluded that the undisputed facts demonstrate that investments in Defendants' prime bank schemes are "as a matter of law, investment contracts, and thus securities." E.R. 79-80. An "investment contract" includes any interest where there is an

"(1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits produced by the efforts of others." *SEC v. R.G. Reynolds Enterprises, Inc.*, 952 F.2d 1125, 1130 (9th Cir. 1991), applying *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946). Applying this standard, it is undisputed that defendants' victims *invested* $11 million. E.R. 131, 305-07. There is no dispute that there was a *common enterprise* given that both investors and Defendants contracted to receive a percentage of the profits. *See* E.R. 231, 236, 260; 329-505. That there was a common enterprise is further established by the undisputed fact that potential investors were told that it was "like investing your money into a hedge fund, a pool of investors" where they would be "pa[id] back *pro rata* based on what you've invested out of what we make" E.R. 236. Finally, there is no dispute that investors expected profits solely from *defendants' efforts* in obtaining returns from prime bank instruments. E.R. 190, 206, 283, 305-07, 329-505.

Wilde and Gelazela argue that they told investors they were paying for "'call option' fees" on financial instruments, not "securities." Francis Wilde Br. 11; Gelazela Br. 16, 18. This argument fails because "the name given to an instrument is not dispositive" in determining

whether it constitutes a security. *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 850 (1975). Courts "must examine the substance—the economic realities of the transaction—rather than the names that may have been employed by the parties" to determine whether the interest qualifies as a security. *Id.* at 851-52; *accord Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967); *Howey*, 328 U.S. at 298. The undisputed economic realities establish that, regardless of Defendants' labels, the interests they offered and sold were "securities."

3. There is no genuine dispute regarding Wilde's and Gelazela's scienter.

The district court also correctly found that "uncontroverted facts" about Wilde and Gelazela "clearly prove scienter—that is, at a minimum, that [they] acted recklessly." E.R. 80-88. "[R]eckless conduct" is defined as "an extreme departure from the standards of ordinary care" which "presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990) (*en banc*).

a. Undisputed evidence establishes Wilde's and Gelazela's scienter.

No rational jury could conclude that Wilde and Gelazela lacked scienter. *First*, each "acted at least recklessly" because he "failed to verify the legitimacy of the investment[s]" he promoted and sold. *George*, 426 F.3d at 795. As Professor Byrne concluded, the "transactions reflected in the [defendants' promotional] materials are so patently fictitious that any person who held themselves out as being knowledgeable about such programs is either deliberately making a false statement or is acting recklessly in disregard of its patently fictitious character." E.R. 157. Indeed, from April 2008 through March 2010, Wilde raised over $11 million from investors by repeatedly touting his ability to obtain interests in prime bank instruments even though he undisputedly knew that he had never obtained such an interest. *Supra* at 7-16. And Gelazela raised millions of dollars for the prime bank scheme even though, as he admitted, he had previously reviewed the Commission's warnings about "bogus 'prime bank' scams" promoted by "fraud artists" who "mislead investors." E.R. 237-38.

Second, each at least recklessly promised investors astronomical and unattainable rates of return. E.R. 197, 198, 206, 305-07, 329-505.

Promises of such outsized returns are inherently reckless and obviously dangerous to investors. *See George*, 426 F.3d at 793-94; *Meadows*, 119 F.3d at 1226.

Third, Wilde and Gelazela each knowingly pocketed large portions of investor funds, a "fact that itself establishes the requisite state of mind for committing securities fraud." *George*, 426 F.3d at 795; *accord Infinity Grp.*, 212 F.3d at 192. It is undisputed (*supra* at 8) that Wilde knowingly spent over $3 million of "investor funds on personal expenses." *George*, 426 F.3d at 795. Regarding Gelazela, it is undisputed that he knowingly misappropriated over $1 million of investors' funds rather than invest it as promised. E.R. 132, 226-27, 320-28.

Finally, Wilde and Gelazela each knowingly lied to investors about the status of their investments. There is no dispute that Wilde knew that he had already sold Newport's bond and squandered the proceeds when he assured Newport that its bond remained unencumbered. *Supra* at 12-13. And, in an email to Wilde, Gelazela acknowledged that he repeatedly lied to investors about the status of

their investments until his prodigious "collection" of lies was "exhausted." E.R. 253-55, 285-86; *supra* at 15-16.

b. Wilde's and Gelazela's "good faith" arguments fail.

There is no genuine dispute that Wilde's and Gelazela's assertions that they had a "good faith" belief that their representations were true and their actions were proper are meritless. Wilde Br. 10- 12; Gelazela Br. 22. A "good faith" defense is foreclosed where, as here, the defendant knew that his statement was false or misleading. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 211 n.31 (1976). Good faith also does not "preclude a finding of recklessness," and is nullified by a defendant's "active participat[ion]" in the fraud. *Infinity Grp.*, 212 F.3d at 192; *accord Gebhart v. SEC*, 595 F.3d 1034, 1042 (9th Cir. 2009) (a defendant who "kn[ows] his or her statements were false" acts with scienter, notwithstanding the defendant's assertion that he acted in "good faith").

Here, it is undisputed that Wilde and Gelazela knew their statements were misleading because they sold investments they knew did not exist and actively participated in the fraud by misappropriating

funds and lying about the status of the investors' investments. This does not constitute "good faith" conduct.

To the extent that Gelazela suggests that there is a genuine dispute about his scienter because he simply repeated Wilde's lies in good faith (Gelazela Br. 14)— the "I am just a copying machine defense" (*SEC v. Lyttle*, 538 F.3d 601, 604 (7th Cir. 2008))—that is to no avail because "[o]ne doesn't have to be the inventor of a lie to be responsible for knowingly repeating it to a dupe." *Id.*

c. Wilde's and Gelazela's assertions that they themselves were defrauded do not create a genuine dispute about their scienter.

Wilde and Gelazela assert that they themselves were victims of unnamed persons who took investor money that Wilde purportedly entrusted to them, and that this raises a genuine dispute regarding their scienter. (Francis Wilde Br. 10-12; Gelazela Br. 22, mentioning "the unfortunate fact that Mr. Wilde, and subsequently Mr. Gelazela, were 'ripped off.'") But neither Wilde nor Gelazela presented to the district court any evidence to support this assertion. *See United States v. Baldwin*, 414 F.3d 791, 797 (7th Cir. 2005) (rejecting prime bank

fraudster's claim that he had "been a victim of the fraud rather than its perpetrator").

Even if they had presented such evidence, an "honor among thieves" defense that other persons "defrauded *them*" as part of a prime bank scheme would "not exonerate them." *Lyttle*, 538 F.3d at 604-05, original emphasis. Assuming that Wilde and Gelazela were somehow defrauded *after* Wilde had "invested" the money, it would remain undisputed that Wilde and Gelazela knowingly and recklessly made material misrepresentations to investors *before* the unnamed parties purportedly stole the investors' funds, at the *same* time they also misappropriated investors' funds, and *much later* when they did not tell investors that their monies had been stolen. *See supra* at 7-16. Indeed, a fraudster was held liable for inducing investment in a prime bank scheme even though, at the same time, he was being defrauded by other individuals' prime bank scheme. *See United States v. Polichemi*, 219 F.3d 698, 702 (7th Cir. 2000); *United States v. Polichemi*, No. 94-CR-555, 1996 WL 332680, at *1 (N.D. Ill. June 14, 1996).

B. There is no dispute that Wilde and Haglund aided and abetted their co-defendants' antifraud violations.

The district court found Wilde and Haglund liable under Section 20(e) of the Exchange Act for aiding and abetting the securities fraud committed by co-defendants Gelazela, Woods, Matrix Holdings, IDLYC Holdings Trust LLC, IDLYC Holdings Trust, and BMW Majestic. E.R. 88-93. In the Ninth Circuit, a defendant is liable for aiding and abetting a violation of the securities laws if "(1) [a defendant] violated the relevant securities laws; (2) [the aider and abettor] had knowledge of the primary violation and of his or her own role in furthering it; and (3) [the aider and abettor] provided substantial assistance in the primary violation." *Ponce v. SEC*, 345 F.3d 722, 737 (9th Cir. 2003).

Here, as the district court correctly concluded, "undisputed evidence demonstrates that Haglund and Wilde, knowing of the primary violation[s by their co-defendants] and their respective roles in the fraudulent scheme, substantially assisted in it." E.R. 88-93. Wilde and Haglund do not challenge this conclusion, beyond arguing that investments in prime bank instruments exist and are not "securities." (Wilde Br. 6-7, 10-11; Haglund Br. 7, 10-11.) But as the Commission explained (*see supra* 27-32, 35-38), there is no merit to either argument.

As discussed below, in all other unchallenged respects the district court's conclusion was correct.

1. There is no dispute that Wilde aided and abetted securities fraud.

It is undisputed that Wilde "devised this prime bank scheme." E.R. 82; *see also* 129, 206-12, 227-28, 231-33, 239, 305-07. Wilde "arranged" for Gelazela and other liable defendants to promote the scheme. E.R. 83-84; *see also* E.R. 206-12, 231-33, 239. Wilde also controlled defendant Matrix Holdings (E.R. 82), and Matrix Holdings does not challenge the district court's judgment finding it liable for securities fraud (E.R. 1-4, 82-84 & *supra* n.2).

2. There is no dispute that Haglund aided and abetted securities fraud.

No reasonable jury could conclude that Haglund lacked knowledge of his co-defendants' fraud. Haglund had previously served as an attorney for a separate, failed prime bank scheme in which—as he knew from a complaint filed against him with the California bar—nearly all investors lost their money. *Supra* at 11 & n.6. Haglund admits that he became aware of the Commission's warnings about securities offerings purporting to invest in prime bank instruments "prior to" working with

his co-defendants and did nothing to investigate his co-defendants' offerings. E.R. 222-23, *supra* at 11.

Nor could a reasonable jury conclude that Haglund lacked knowledge of his own role in furthering this fraud. Haglund transferred investor funds to his co-defendants and himself even though, as the district court found, "Haglund knew that amounts representing a substantial portion of the investments flowing into the trust account were being paid out in fees, not for purchases of financial instruments." E.R. 90; *see also* E.R. 133. It also is undisputed that Haglund was aware that the $472,500 he received, purportedly for "legal fees," bore no rational relationship to the value of the ministerial services he rendered (*e.g.*, wiring funds to and from a bank account). E.R. 218, 224, 225. Haglund even admitted that he "should have known" that Wilde was committing a violation of the securities laws. E.R. 228; *see also* E.R. 92.

Haglund indisputably provided substantial assistance in the commission of his co-defendants' securities fraud. Haglund provided substantial assistance in enticing investors because, as Professor Byrne's expert report concluded, Haglund's "willingness to lend his

reputation as an attorney and to receive invested funds was perhaps the most critical reason for the success of the scheme in obtaining investor funds." E.R. 155-56. As soon as those funds were put into his attorney trust account, Haglund wired them to pay Wilde's personal expenses (*supra* at 13-14) and divided them among his other co-defendants (*supra* at 13-14). Haglund also conceded that he transferred funds directly from new investors to two earlier-stage investors (E.R. 228-29, 320-28; Haglund Br. 6)—transfers the district court properly characterized as "Ponzi-payments" (E.R. 92-93).

As in the proceedings below, Haglund here "does not dispute the SEC's evidence on any of these elements" and offers "only conclusory, uncorroborated denials of liability." E.R. 90-91.

C. There is no genuine dispute that Wilde and Gelazela unlawfully offered and sold securities on an unregistered basis in violation of Section 5.

The district court correctly concluded that the undisputed material facts establish that Wilde and Gelazela offered and sold securities on an unregistered basis in violation of Sections 5(a) and 5(c) of the Securities Act. E.R. 93-95. These provisions make it unlawful to offer or sell a security "if a registration statement has not been filed as

to that security, unless the transaction qualifies for an exemption from registration." *Platforms Wireless*, 617 F.3d at 1085 (affirming summary judgment on the Commission's Section 5 claim); *SEC v. Murphy*, 626 F.2d 633, 640-41 (9th Cir. 1980) (same). Proof of scienter is not required to establish a Section 5 violation. *See SEC v. Phan*, 500 F.3d 895, 902 (9th Cir. 2007). Registration ensures that prospective investors receive "full and fair disclosure." *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 n.10 (1953); *see also Platforms Wireless*, 617 F.3d at 1090.

Wilde's and Gelazela's sole challenge to the district court's conclusion is that they did not offer or sell "securities." (Wilde Br. 10-11; Gelazela Br. 18.) But as explained, Wilde and Gelazela offered and sold "investment contracts" that constitute "securities." *See supra* at 35-38. Wilde and Gelazela do not dispute that no registration was in effect as to these securities. E.R. 185-87. They also do not challenge the district court's sound conclusion (E.R. 94) that both Wilde and Gelazela were indisputably necessary participants and substantial factors in offering and selling millions of dollars in securities on an unregistered basis to at least 24 investors. *See supra* at 7-16; *Murphy*,

626 F.2d at 648, 652. Wilde and Gelazela do not dispute the district court's conclusion that they "have not proffered an exemption" from registration (E.R. 95), let alone proven that one applies, and therefore fail to carry their burden of establishing any exemption, *Murphy*, 626 F.2d at 641.

D. There is no genuine dispute that Gelazela unlawfully acted as an unregistered broker.

The district court properly concluded that there is no dispute that Gelazela acted as a broker but failed to register as such with the Commission under Section 15(a) of the Exchange Act. (E.R. 95.) The registration of brokers ensures that "necessary standards may be established with respect to training, experience, and records" for those who act as intermediaries between the investing public and the securities markets. *Eastside Church of Christ v. National Plan, Inc.*, 391 F.2d 357, 362 (5th Cir. 1968).

Section 15(a) provides that it is "unlawful for any broker" to "induce or attempt to induce the purchase or sale of, any security" unless the broker is registered with the Commission or associated with a registered firm. 15 U.S.C. 78*o*(a). A broker is defined as "any person engaged in the business of effecting transactions in securities for the

account of others." Exchange Act Section 3(a)(4), 15 U.S.C. 78c(a)(4). Courts and the Commission have applied a number of factors in determining whether a person acts as a broker, including whether the person actively solicited investors, participated with regularity in securities transactions, and received transaction-based compensation. *See George*, 426 F.3d at 797 (affirming summary judgment on the Commission's Section 15(a) claim); *In re Kemprowski*, SEC Rel. No. 34-35058, 1994 WL 684628, at *2 (Dec. 8, 1994). Scienter is not required under Section 15(a)(1). *See SEC v. Radical Bunny, LLC*, No. 09-1560, 2011 WL 1458698, at *6 (D. Ariz. Apr. 12, 2011), *aff'd*, 532 Fed. App'x 775 (9th Cir. 2013).

Once again, Gelazela's only challenge to the district court's conclusion is that he did not engage in broker conduct with regard to "securities" (Gelazela Br. 15, 17-18.) But as explained, the investments in this prime bank scheme that Gelazela induced are "investment contracts," an express type of security. *See supra* at 35-38. It is undisputed that Gelazela unlawfully acted as an unregistered broker with regard to these securities because Gelazela failed to register as a broker or otherwise associate with a registered brokerage firm (Gelazela

Br. 17); actively solicited 18 investors who invested over $5 million in the prime bank scheme (E.R. 131, 243-46, 329-461); and received transaction-based compensation from each sale he induced, totaling over $1 million (E.R. 132, 226-27, 250, 277, 287-89, 320-28, 329-461). *See George*, 426 F.3d at 797.

II. The district court acted within its discretion in ordering disgorgement.

Gelazela and Maureen Wilde challenge the district court's respective disgorgement rulings against them. Gelazela Br. 7, 21; Maureen Wilde Br. 5, 10. But a district court has "broad equity powers" to order the disgorgement of "ill-gotten gains obtained through the violation of the securities laws." *First Pacific*, 142 F.3d at 1191; *accord Platforms Wireless*, 617 F.3d at 1096. As discussed below, the district court acted within its broad discretion in holding Gelazela jointly and severally liable with his cohorts for disgorgement of investor funds, because a district court has broad discretion to order joint and several liability where, as here, "two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws." *Platforms Wireless*, 617 F.3d at 1098 (affirming joint

and several liability); *accord First Pacific*, 142 F.3d at 11191-92; *SEC v. JT Wallenbrock & Assoc.*, 440 F.3d 1109, 1117 (9th Cir. 2006). The district court also had discretion to order Relief Defendant Maureen Wilde to disgorge the funds she received from the prime bank scheme because, even if she was not aware of the fraud, she was not entitled to such funds.

A. The district court had discretion to hold Gelazela jointly and severally liable for disgorgement.

The district court acted within its discretion in holding Gelazela jointly and severally liable for $6,744,083.49, including prejudgment interest, with Defendants Wilde, Haglund, Woods, Matrix Holdings, BMW Majestic, IDLYC Holdings Trust LLC, and IDLYC Holdings Trust. E.R. 97-98. This represents the total amount these Defendants fraudulently obtained from 24 investors between October 2009 and March 2010, the period during which Gelazela was involved in the fraud. E.R. 131. Gelazela raises three meritless challenges to the district court's discretion to make this disgorgement determination.

First, Gelazela argues that he should not be held jointly and severally liable for disgorgement because he did not collaborate with his co-defendants. (Gelazela Br. 21.) But it is undisputed that these co-

defendants "collaborate[d] to violate the securities laws" (E.R. 97) because (1) Gelazela, Wilde, Haglund, and their other co-defendants worked together to accomplish the same fraudulent prime bank scheme; (2) Gelazela controlled two of the co-defendants (the IDLYC entities, (*supra* at 5)) found liable for securities fraud; and (3) another co-defendant, Haglund, aided and abetted Gelazela's fraud (*supra* at 44-47). Accordingly, the district court did not abuse its discretion in concluding that Gelazela and his co-defendants should be held jointly and severally liable for $6.2 million in disgorgement, plus interest.

Second, Gelazela asserts that he kept for himself only $333,333 in investor funds, and therefore should be liable only for that amount. (Gelazela Br. 21, and Exh. N.) Gelazela claims that he gave investor funds that he improperly received to other non-defendants rather than spending it on himself (Gelazela Br. 7), but " '[t]he manner in which [the defendant] chose to spend the illegally obtained funds has no relevance to the disgorgement calculation.' " *Platforms Wireless*, 617 F.3d at 1097-98, quoting *JT Wallenbrock*, 440 F.3d at 1116. Because Gelazela "control[led] the distribution of illegally obtained funds," the district court had discretion to hold him "liable for the funds he [ ] dissipated. . .

as well as the funds he [ ] retained." *Platforms Wireless*, 617 F.3d at 1097-98 (explaining that this Court has "never held that a personal financial benefit is a prerequisite for joint and several liability").

Third, Gelazela argues that disgorgement should be offset by the $150,000 he repaid to an investor (Gelazela Br. 7), but the district court deducted this payment from its disgorgement calculation. *See* E.R. 98 (holding IBalance liable for only $1 million in disgorgement); *see supra* at 16-17.

B. The district court had discretion to require Maureen Wilde to disgorge her ill-gotten gains.

The district court had discretion to order Relief Defendant Maureen Wilde to disgorge the $829,000 in fraudulently obtained investor funds her husband Francis Wilde transferred to her, plus $67,412.85 in prejudgment interest on that amount. E.R. 98. It is undisputed that Maureen Wilde did not provide any services or consideration in exchange for these sums. E.R. 132, 226-27, 248-49, 263, 320-28. Although Maureen Wilde contends that she did not engage in, or have knowledge of, any fraudulent scheme (Maureen Wilde Br. 5, 10), "ample authority supports the proposition that the broad equitable powers of the federal courts can be employed to recover ill-gotten gains

for the benefit of the victims of wrongdoing, whether held by the original wrongdoer or by one who has received the proceeds after the wrong." *SEC v. Colello*, 139 F.3d 674, 676-77 (9th Cir. 1998); *see also JT Wallenbrock*, 440 F.3d at 1117 n.15. The district court had discretion to require Maureen Wilde to disgorge the fraud proceeds that her husband improperly funneled to her in order to "effect full relief in the marshaling of assets that are the fruit of the underlying fraud." *Id.*

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the district court.

Respectfully submitted,

ANNE K. SMALL
General Counsel

MICHAEL A. CONLEY
Deputy General Counsel

JOHN W. AVERY
Deputy Solicitor

DAVID D. LISITZA
Senior Litigation Counsel

/s/ Paul Gerard Alvarez

PAUL G. ALVAREZ
Senior Counsel

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9040
(202) 551-5038 (Alvarez)
alvarezp@sec.gov

May 2014

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, according to the word processing program with which it was prepared (Word 2010), this brief contains 10,546 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and this brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because the brief uses a 14-point proportionally spaced typeface.

/s/ Paul Gerard Alvarez

PAUL GERARD ALVAREZ
Attorney for Appellee,
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I certify that today, May 27, 2014, a copy of the foregoing Brief of the Securities and Exchange Commission, Appellee, was filed with the Court's CM/ECF system, and served by UPS on defendants-appellants, Mark A. Gelazela, Francis Wilde, Maureen Wilde, and Bruce Haglund at the following respective addresses:

Mark A. Gelazela
333 Washington Blvd.
Marina Del Rey, CA 90292
Appearing *pro se*
(No. 13-55043)

Francis Wilde
508 W. Lookout Drive
Richardson, TX 75080
Appearing *pro se*
(No. 13-55295)

Bruce H. Haglund
9110 Irvine Center Drive
Irvine, CA 92618
Appearing *pro se*
(No. 13-55295)

Maureen Wilde
508 W. Lookout Drive
Richardson, TX 75080
Appearing *pro se*
(No. 13-55295)

/s/ Paul Gerard Alvarez

PAUL GERARD ALVAREZ
Attorney for Appellee,
Securities and Exchange Commission

STATEMENT OF RELATED CASES

The Commission is not aware of the existence of any related cases, as defined by Circuit Rule 28-2.6, pending before this Court.

/s/ Paul Gerard Alvarez

PAUL GERARD ALVAREZ
Attorney for Appellee,
Securities and Exchange Commission