UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
v.
FREDERICK TAYTON DENCER, *et al.*,
Defendants.

Case No. 2:24-cv-10622-CV (PDx)

ORDER DENYING MOTION TO DISMISS AMENDED COMPLAINT

[DOC. # 44]

On June 27, 2025, Defendants Frederick Tayton Dencer ("Tayt Dencer"), Luke Abelard Dencer ("Luke Dencer," and together with Tayt Dencer, the "Dencers"), Standard Holdings, Inc. ("Standard Holdings"), and Standard Huaxia, Ltd. ("Huaxia") (collectively, the "Standard Holdings Defendants") filed a motion to dismiss Plaintiff U.S. Securities and Exchange Commission's (the "SEC") Amended Complaint pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6). Doc. # 44 ("Motion").[1] On July 25, 2025, the SEC opposed the Motion. Doc. # 47. On August 15, 2025, the Standard Holdings Defendants filed a reply. Doc. # 48. The Court granted the SEC leave to file a surreply and has considered it. Doc. ## 50, 52.

On August 21, 2025, the Court found the Motion appropriate for decision without oral argument and took it under submission. Doc. # 49; *see also* Fed. R. Civ. P. 78(b); C.D. Cal. L. Civ. R. 7-15. After consideration of all filings related to the Motion, for the reasons below the Motion is DENIED.[2]

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[1] The Standard Holdings Defendants also request judicial notice, or consideration under the incorporation-by-reference doctrine, of the form Huaxia subscription agreement and two promissory notes issued to Investor 1. Doc. # 44-5. The SEC does not oppose that request. Under Local Rule 7-12, failure to oppose may be deemed consent to the granting of the request. C.D. Cal. L. Civ. R. 7-12. The request is granted and the Court will consider these documents under the incorporation-by-reference doctrine because the Amended Complaint refers to the subscription agreements and notes and because those documents form part of the basis for the SEC's claims. The Amended Complaint expressly references the Huaxia subscription agreements in connection with the alleged offering of Huaxia stock and alleged representations about segregation and issuance of shares. *See, e.g.*, Doc. # 39 ¶¶ 7(b), 29, 36, 42, 68, 75, 81, 84, 105, 130. It also expressly references Investor 1's two promissory notes and the alleged use of the funds raised through those notes. *Id.* ¶¶ 34, 51–52, 120. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002–03 (9th Cir. 2018); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). But the Court does not necessarily accept the Standard Holdings Defendants' interpretation of those documents and does not treat these documents as defeating well-pleaded allegations unless they directly contradict those allegations. *See Khoja*, 899 F.3d at 1003.

[2] After the Motion was fully briefed and taken under submission, the Standard Holdings Defendants moved for leave to file a twelve-page supplemental brief, the SEC opposed, and the Standard Holdings Defendants filed a reply brief. Doc. ## 93, 95, 97. The Court has broad discretion to manage motion practice and to decline additional briefing beyond that authorized by the Local Rules. *See Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002) (affirming the district court's refusal to consider a supplemental opposition filed after completion of the briefing schedule and in violation of local briefing requirements); C.D. Cal. L. Civ. R. 7-10. Additional briefing would not materially assist the Court. The Standard Holdings Defendants did not submit the proposed brief or identify intervening

I. INTRODUCTION

The SEC filed this action on December 10, 2024, and filed the operative Amended Complaint on June 10, 2025. Doc. ## 1, 39. The Amended Complaint names the Standard Holdings Defendants and defendant Dennis Edward Butler. Doc. # 39 ¶¶ 14–21.

The SEC alleges that, from late 2017 through at least 2023, the Standard Holdings Defendants raised more than $17 million from approximately 40 investors through offerings of promissory notes and common stock connected to a purported streaming-content business targeting China. *Id.* ¶¶ 5–6, 34. According to the SEC, the Standard Holdings Defendants sold shares that had not been created or issued, represented that investor funds would be used and safeguarded for specified business purposes, diverted millions of dollars for the Dencers' personal benefit, and used some later investment proceeds to make payments to earlier investors. *Id.* ¶¶ 6–9, 35, 101–08, 138–39.

The Amended Complaint asserts claims against the Standard Holdings Defendants under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5, and Section 17(a) of the Securities Act of 1933 ("Securities Act"). *Id.* ¶¶ 137–46. It also asserts control-person claims against Tayt and Luke Dencer under Section 20(a) of the Exchange Act. *Id.* ¶¶ 147–51.[3]

The Court has subject-matter jurisdiction under Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a).

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controlling authority; their proposed discussion of misappropriation and scheme liability substantially revisits arguments already briefed, while their references to "sovereign-adjacent" and "mid-stream" transactions identify new theories without specifying the authorities on which they rely or explaining their application to the allegations at issue. *See* Doc. # 93 at 3–7; Doc. # 95 at 6–10. The substitution of counsel, without more, does not warrant reopening briefing. The motion for leave (Doc. # 93) is therefore DENIED, and the August 28, 2026 hearing is VACATED.

[3] Separately, the Amended Complaint asserts an unregistered-broker claim against Butler under Section 15(a)(1) of the Exchange Act. *Id.* ¶¶ 152–53. Butler has answered and has not joined the Motion. *See* Doc. # 62.

II. BACKGROUND

A. The Parties and the Purported Streaming Business

The SEC alleges that Tayt Dencer holds himself out as Standard Holdings' executive chairman, while Luke Dencer is its only officer and a director. Doc. # 39 ¶ 23. Luke Dencer is also listed as Huaxia's chief executive officer and only director. *Id.* ¶ 24. Together, the Dencers allegedly founded, operated, and controlled both entities. *Id.* ¶¶ 23–24. Standard Holdings is a Nevada corporation with its principal place of business in Encino, California; Huaxia is a Hong Kong entity formed in May 2018 as Standard Holdings' wholly owned subsidiary. *Id.* ¶¶ 19–20, 24.

According to the Amended Complaint, the Standard Holdings Defendants told investors that the companies were developing an app to stream content into China. *Id.* ¶¶ 5, 25. The plan initially involved music and later shifted toward educational content for children. *Id.* ¶ 25. The Dencers allegedly also told some investors that they intended to take the business public. *Id.* ¶ 26.

The SEC alleges that the Standard Holdings Defendants raised more than $17 million from at least 40 investors through promissory notes and purported Huaxia shares. *Id.* ¶¶ 5, 27, 34. Most investors were located in the United States, and some were elderly. *Id.* ¶ 28. Tayt and Luke Dencer allegedly solicited investors through calls and in-person meetings, and Luke Dencer later provided updates by telephone, text message, and email. *Id.* The Dencers also allegedly directed investors to send money to Standard Holdings bank accounts. Luke Dencer was the signatory on three such accounts, discussed expenditures with Tayt Dencer, and gave Tayt Dencer access through debit cards. *Id.* ¶ 30 & n.1.

The offerings varied in form and timing. About $4.25 million came from Investor 1's two Standard Holdings Notes. Another $8.16 million came from offerings of Class A or Class B Huaxia shares, sometimes paired with promissory notes, through July 2022. Beginning in March 2022, the Standard Holdings Defendants allegedly raised an additional $4.65 million through common or preferred share offerings, including $3 million from one institutional investor and $1.65 million from two investors in 2023. *Id.* ¶ 34. The SEC alleges that, once investors transferred their funds, they no longer controlled how the money was used. *Id.* ¶ 30.

B. The Offerings and Transaction Documents

1. Investor 1's Notes

Investor 1, acting through an entity he owned and controlled, allegedly was the first and largest individual investor in the venture. Doc. # 39 ¶¶ 7(a), 50. In November 2017, he invested $1.25 million in Standard Holdings through a secured promissory note. *Id.* ¶ 51. In March 2018, he invested another $3 million through a second secured promissory note. *Id.* ¶ 52.

Both instruments are titled "Secured Promissory Note," identify Standard Holdings as the payor and Investor 1's entity as the holder, provide for interest at eight percent per year, restrict transfer, and contain integration clauses. Doc. # 44-3 at 2–5; Doc. # 44-4 at 2–5. The November 2017 Note matured on May 29, 2018, and was secured by 1.5 million warrants to purchase Cur Holdings, Inc. common shares. Doc. # 44-3 at 2–3. The March 2018 Note matured on April 21, 2018, was nonrecourse, and was secured by two million Cur Holdings warrants. Doc. # 44-4 at 2–3.[4]

The Notes also recite that Standard Holdings needed "financial support" for projects in which Investor 1 had an interest. Doc. # 44-3 at 2; Doc. # 44-4 at 2. The March 2018 Note adds that the support was needed to accomplish the parties' goals concerning "a major planned financing." Doc. # 44-4 at 2. Luke Dencer signed both Notes for Standard Holdings as CEO. Doc. # 44-3 at 5; Doc. # 44-4 at 6. The SEC alleges that each Note was later purportedly converted into Huaxia shares and that, when soliciting the investments, Tayt Dencer represented that Investor 1's money would be used to develop and launch the streaming business. Doc. # 39 ¶¶ 50–54.

[4] The SEC alleges that Cur Holdings was connected to the Dencers through an earlier music-streaming venture. Doc. # 39 ¶¶ 16, 18. The Court considers that alleged relationship only as background; the present record does not establish the Cur warrants' value or liquidity.

2. Huaxia Share Offerings and Subscription Agreements

Between late 2017 and March 2022, the SEC alleges that approximately 35 investors entered debt and equity transactions for about 9.2 million purported Huaxia Class A and Class B shares. Subscription agreements allegedly documented the share purchases, and some earlier debt interests—including Investor 1's Notes—were later purportedly converted into Huaxia shares. Doc. # 39 ¶¶ 34, 36, 42, 51–52.

The form Subscription Agreement identifies a specified number of Class A common shares, a purchase price, and a percentage of Huaxia's outstanding equity. Doc. # 44-2 at 2. It directs the buyer to wire payment to Huaxia's "segregated account" and states that the funds will remain segregated until the offering is fully subscribed and the shares are issued. *Id.* The Agreement also warns that the investment carries substantial economic risk and that the shares may not be readily resold. It further restricts transfers, states that the buyer had an opportunity to obtain information and ask questions, and disclaims reliance on representations about Huaxia outside the Agreement. *Id.* at 4–5.

C. Alleged Failure to Create or Issue Huaxia Shares

The SEC alleges that, although the Standard Holdings Defendants sold purported Class A and Class B Huaxia shares, Huaxia had not created those share classes and did not issue the purchased shares to most investors. Doc. # 39 ¶¶ 37, 44. When Huaxia was formed, it allegedly created only 10,000 ordinary shares, all owned by Standard Holdings. *Id.* ¶ 37. Those shares were later subdivided into 100 million ordinary shares, but internal capitalization tables allegedly continued to show Standard Holdings as the sole shareholder and stated that further board action was needed to create Class A and Class B shares. *Id.* ¶¶ 37–38.

The SEC further alleges that the Dencers knew of the problem. In October 2019, an attorney for a deceased investor's estate allegedly complained that the investor had never received a stock certificate and demanded the return of $50,000 paid for "securities which were never obtained." *Id.* ¶ 45. The Dencers nevertheless allegedly continued offering and selling the purported shares for more than two years. *Id.*

Huaxia allegedly did not create Class A and Class B common shares until March 14, 2022, after a prospective institutional investor questioned whether the shares had been authorized and issued. *Id.* ¶ 40. The resulting resolution set aside 15 million Class A shares and 500,000 Class B shares to be held by Standard Holdings as nominee for investors. *Id.* When a Standard Holdings employee sought Luke Dencer's signature, the employee allegedly texted that "we were supposed to have had it for three years." *Id.* Luke Dencer then signed the resolution, and he and the employee allegedly backdated it to December 13, 2019. *Id.* Most investors still allegedly never received their shares. *Id.* ¶¶ 41, 44.

D. Alleged Representations About the Use and Custody of Investor Funds

1. Business-Use Representations and Alleged Diversion

As to Investor 1, the SEC alleges that Tayt Dencer represented that his money would be used to develop and launch Standard Holdings' streaming business. Doc. # 39 ¶¶ 50–54. The first $1.25 million transfer entered an account that held only $2,553.01. *Id.* ¶ 57. During the next two weeks, apart from $582.95 in refunds, the account allegedly funded $29,500 in cash and checks to Luke Dencer, $21,331 to a private investigator hired by Tayt Dencer, $8,668.20 at a mattress store, and $120,000 toward Tayt Dencer's restitution obligation in an unrelated criminal matter. *Id.* Within six months, the Dencers allegedly used at least $900,000 of Investor 1's funds for personal expenses. *Id.* ¶¶ 55–59. "[R]ight after Investor 1's first investment of $1.25 million in late November 2017," Tayt Dencer allegedly told a friend (not named in the complaint) that the Standard Holdings checking account used to hold Investor 1's money was Tayt Dencer's personal bank account. *Id.* ¶ 55. And both Dencers allegedly later admitted using investor funds in Standard Holdings accounts for personal expenses in testimony to SEC representatives investigating this case. *See id.* ¶ 58.

The SEC alleges similar written representations to other individual Huaxia investors. Promissory notes allegedly certified that each loan was obtained for business or commercial purposes and that its proceeds would not be used "primarily" for personal, family, household, or agricultural purposes. *Id.* ¶ 64. Offering term sheets identified software development, advertising, a China launch, general corporate purposes, and working capital as intended uses. *Id.* ¶ 65. The SEC alleges that the Dencers instead misappropriated at least $1.9 million from this group of investors. *Id.* ¶¶ 67–74.

The Amended Complaint provides a specific example of this alleged misuse. On June 29, 2020, an investor transferred $40,000 into a Standard Holdings account that previously contained $846.01. *Id.* ¶ 71. Before any other deposit, Luke Dencer allegedly transferred $26,000 to his personal account, paid $3,900 toward his residential rent and $264.12 for car insurance, and sent $900 to a friend with no connection to either company. *Id.* The SEC also alleges payments to Luke Dencer's wife—despite the absence of any employment or contractor agreement—and alleges that the challenged expenditures substantially exceeded the officer compensation reflected in Standard Holdings' financial records. *Id.* ¶¶ 72, 74.

After March 2022, the Standard Holdings Defendants allegedly raised at least $4.55 million from an institutional investor for Huaxia common and preferred shares. *Id.* ¶ 79. During negotiations, the Dencers allegedly told the investor's attorney that the funds would develop and launch Huaxia's streaming business; a Pitch Deck and binding term sheet likewise identified the streaming venture, specified China projects, software costs, working capital, and other corporate purposes. *Id.* ¶¶ 79–85.

The SEC alleges that the Dencers instead spent at least $1 million of investor money, primarily from the institutional investor, on personal expenses. *Id.* ¶¶ 86–88. On the day the institutional investor transferred its initial $3 million, Tayt Dencer allegedly asked Luke Dencer for a screenshot of the funded account to use "for realtors." *Id.* ¶ 87. Less than six weeks later, $101,200 allegedly was paid to a broker for a residential lease signed by Tayt Dencer and his wife, followed by monthly rent payments of $25,000. *Id.*

2. The Segregated-Account Representation

The form Subscription Agreement states that subscription funds would remain in a segregated Huaxia account until the offering was fully subscribed and the shares were issued. Doc. # 44-2 at 2. The SEC alleges that Huaxia never had a bank account and that the proceeds instead entered a Standard Holdings operating account. Doc. # 39 ¶¶ 68–69. There, they allegedly were commingled with approximately $2.1 million from Investor 1 and $585,000 from other sources. *Id.* ¶ 69. The Dencers allegedly used more than $2.5 million from that account for personal expenses, including at least $1.9 million traceable to Huaxia investors, while at least the share-issuance condition remained unsatisfied. *Id.* ¶¶ 68–74.

The SEC further alleges that Luke Dencer controlled the relevant accounts and knew no Huaxia account existed, while Tayt Dencer knew that Huaxia proceeds were deposited into Standard Holdings accounts. *Id.* ¶ 76. Both Dencers allegedly reviewed or approved investment agreements containing the segregation provision. *Id.* ¶ 75.

The SEC also alleges repeated movement between corporate and personal accounts. From September 2018 through March 2022, Luke Dencer allegedly made about 75 wire transfers between a Standard Holdings account and his personal account, netting more than $300,000 to his personal account. *Id.* ¶ 73.

Beginning in early 2023, the Dencers allegedly directed some Huaxia investors to deposit funds into a California attorney's IOLTA account. *Id.* ¶ 31. At their direction, the attorney allegedly transferred the funds to Standard Holdings accounts or spent them directly from the IOLTA account, including for the Dencers' personal expenses. *Id.*

3. The Trust-Account Representation

The SEC alleges that, on February 21, 2018, Tayt Dencer told Investor 1 that $2.5 million of his anticipated $3 million investment would be placed in a trust account titled in Standard Holdings' name to facilitate a contemplated $102 million institutional financing. *Id.* ¶¶ 92–93. No such account allegedly was opened. *Id.* ¶ 94. Instead, more than $2.3 million was wired within weeks to three foreign recipients whose accounts were not titled in Standard Holdings' name. *Id.* ¶¶ 94–98. Tayt Dencer later testified that the money had been stolen by "a criminal group of some kind." *Id.* ¶ 97.

E. Payments to Earlier Investors and Later Communications

The SEC alleges that the Standard Holdings Defendants often failed to repay Huaxia note investors when payment became due and induced some investors to extend their loans in exchange for additional shares or cash payments that were not delivered. *Id.* ¶¶ 109–17. It also alleges that company records show approximately $380,000 in payments to note investors during the relevant period and that the Dencers used later investor funds to make at least some of those payments. *Id.* ¶¶ 101–03.

In December 2019, for example, an investor holding an overdue $200,000 Huaxia note demanded repayment. Luke Dencer allegedly responded that "there is nothing in the account to wire," but stated that he was trying to raise money that could be sent to the investor. Later that day and the following business day, two new investors transferred $10,000 and $3,000, respectively, into a Standard Holdings checking account to purchase Huaxia shares; no other deposits were made during that interval. Luke Dencer then allegedly wired $1,000 from the account to the earlier investor, using funds derived from the two new investments. *Id.* ¶¶ 104–07.

The SEC further alleges that Tayt Dencer made later statements to reassure Investor 1 about the value of his investments. In June 2020, he allegedly represented that Investor 1's investments were worth between $20 million and $63 million without disclosing that the companies had only a few thousand dollars in their accounts, had not launched an app, lacked another revenue source, and were losing money. *Id.* ¶ 118. In December 2022, all four Standard Holdings Defendants entered a Transfer of Investment Interests agreement stating that Investor 1's $5.85 million in debt and equity interests had "little, if any, value"; Investor 1 agreed to sell those interests back for $50,000. *Id.* ¶ 120.

III. LEGAL STANDARD

A. Rules 12(b)(6) and 9(b)

A Rule 12(b)(6) motion tests the complaint's legal sufficiency. To survive dismissal, a complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Court accepts well-pleaded facts as true and draws reasonable inferences in the plaintiff's favor, but it need not accept legal conclusions, conclusory allegations, or unreasonable inferences. *Iqbal*, 556 U.S. at 678–79; *Curry v. Yelp Inc.*, 875 F.3d 1219, 1224 (9th Cir. 2017).

Claims sounding in fraud must also satisfy Rule 9(b), which requires a party to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103–05 (9th Cir. 2003). Ordinarily, the complaint must identify the "who, what, when, where, and how" of the alleged misconduct and explain why it was false or deceptive. *Id.* at 1106. When several defendants are accused of participating in fraud, the complaint must identify each defendant's role. *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007).

Rule 9(b) does not demand "absolute particularity or a recital of the evidence." *United States ex rel. Swoben v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1180 (9th Cir. 2016). A complaint need not plead every transaction in detail if the allegations otherwise identify the misconduct and provide adequate notice. *Id.* (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1998)). A scheme claim satisfies Rule 9(b) when the complaint identifies the scheme's nature, purpose, and effect and each defendant's role. *SEC v. Mikula*, No. 2:22-cv-07096-SB-PLA, 2023 WL 3082364, at *3 (C.D. Cal. Mar. 27, 2023). Knowledge and intent may be alleged generally, but the complaint must include facts making the required mental state plausible. Fed. R. Civ. P. 9(b); *Iqbal*, 556 U.S. at 686–87. In an SEC enforcement action, investor reliance is not an element. *SEC v. Murphy*, 50 F.4th 832, 847 (9th Cir. 2022); *SEC v. Rana Rsch., Inc.*, 8 F.3d 1358, 1363–64 & n.4 (9th Cir. 1993).

B. Misstatement Liability

Rule 10b-5(b) prohibits, in connection with the purchase or sale of securities, making an untrue statement of material fact or omitting a material fact necessary to make the statements made, in light of the circumstances, not misleading. 17 C.F.R. § 240.10b-5(b). It reaches affirmative misstatements and misleading half-truths, but not a pure omission unconnected to an otherwise misleading statement. *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 263–66 (2024). Section 17(a)(2) similarly prohibits obtaining money or property in the offer or sale of securities by means of an untrue statement of material fact or a misleading half-truth. 15 U.S.C. § 77q(a)(2).

Rule 10b-5(b) requires scienter; Section 17(a)(2) requires negligence and additionally requires that the defendant obtain money or property by means of the challenged statement. *Aaron v. SEC*, 446 U.S. 680, 695–97, 701–02 (1980); *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 856 (9th Cir. 2001).

A statement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important or would view the disclosure of the omitted fact as significantly altering the total mix of available information. *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Materiality ordinarily presents a fact-specific question and may be resolved on a motion to dismiss only when reasonable minds could not differ. *SEC v. Phan*, 500 F.3d 895, 908 (9th Cir. 2007); *Fecht v. Price Co.*, 70 F.3d 1078, 1080–82 (9th Cir. 1995).

The complaint must also explain why the statement was false or misleading when made. It may not plead fraud merely by contrasting an earlier statement with later events. *In re Cloudera, Inc. Sec. Litig.*, 121 F.4th 1180, 1187 (9th Cir. 2024). Thus, a later failure to perform a promise does not, without more, establish fraud; a complaint based on promised future performance must allege facts supporting a plausible inference that the promise was false when made. *Reese v. BP Expl. (Alaska) Inc.*, 643

F.3d 681, 691–92 (9th Cir. 2011); *Foster v. Wilson*, 504 F.3d 1046, 1051 (9th Cir. 2007).

C. Scheme Liability

Rule 10b-5(a) prohibits employing a device, scheme, or artifice to defraud, and Rule 10b-5(c) prohibits engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit. 17 C.F.R. § 240.10b-5(a), (c). Sections 17(a)(1) and (3) contain parallel prohibitions governing the offer or sale of securities. 15 U.S.C. § 77q(a)(1), (3).

Rule 10b-5's subsections overlap. Conduct may fall within subsections (a) and (c) even when it also involves a statement actionable under subsection (b). *Lorenzo v. SEC*, 587 U.S. 71, 78–85 (2019); *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687, 709 & n.10 (9th Cir. 2021).[5] A scheme claim must nevertheless plead deception. The complaint must identify conduct that itself operated as a fraud or furthered a deceptive course of business; ordinary or otherwise nondeceptive acts do not become a fraudulent scheme merely because the complaint labels them as such. *See Stoneridge Inv. Partners, LLC v. Sci.-Atlanta, Inc.*, 552 U.S. 148, 158 (2008) (recognizing that "conduct itself can be deceptive"); *Khan v. ChargePoint Holdings, Inc.*, No. 23-cv-06172-NW, 2026 WL 483060, at *4–6 (N.D. Cal. Feb. 20, 2026) (dismissing a scheme theory where the complaint did not explain what made the challenged business decisions deceptive, whether they were concealed, or how they furthered the alleged scheme).

Rule 10b-5(a) and (c) and Section 17(a)(1) require scienter; Section 17(a)(3) requires negligence. *Aaron*, 446 U.S. at 695–97, 701–02; *Dain Rauscher*, 254 F.3d at 856. Scienter means an intent to deceive, manipulate, or defraud and may be established by actual knowledge or conscious recklessness. *Ernst & Ernst v. Hochfelder*, 425 U.S.

[5] Before *Lorenzo*, the Ninth Circuit required a scheme premised on misrepresentations or omissions to include conduct beyond the statements themselves. *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1057–58 (9th Cir. 2011); *Desai v. Deutsche Bank Sec. Ltd.*, 573 F.3d 931, 940–41 (9th Cir. 2009). *Alphabet* states that *Lorenzo* abrogated *WPP*'s contrary holding. 1 F.4th at 709 n.10. The Court therefore does not apply a categorical extra-conduct requirement.

185, 193–94 & n.12 (1976); *Gebhart v. SEC*, 595 F.3d 1034, 1040–42 (9th Cir. 2010); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1093–94 (9th Cir. 2010). Because Section 17(a)(3) requires only negligence, the SEC need not allege that the challenged practice had a fraudulent purpose. The relevant inquiry under that provision is whether the transaction, practice, or course of business operated or would operate as a fraud or deceit upon the purchaser. *See Aaron*, 446 U.S. at 696–97; *SEC v. Prakash*, 718 F. Supp. 3d 1098, 1108–10 (N.D. Cal. 2024).

IV. DISCUSSION

The Standard Holdings Defendants advance several grounds for dismissal: (A) Investor 1's Notes are not securities; (B) the incorporated transaction documents defeat or materially undercut the SEC's theories; (C) the SEC has not alleged an actionable misstatement; (D) the alleged conduct does not amount to a deceptive scheme; and (E) the Amended Complaint does not satisfy Rule 9(b). Doc. # 44 at 14–29; Doc. # 48 at 6–18. They also argue (F) the Section 17(a) claim fails for the same asserted deficiencies as the Section 10(b) and Rule 10b-5 claims, and (G) the Section 20(a) control-person claim fails because the SEC has not adequately pleaded a primary Exchange Act violation. Doc. # 44 at 29.

The Court addresses each of these arguments below and finds that the SEC has adequately pleaded each claim challenged in the Motion.

A. Investor 1's Notes Plausibly Qualify as Securities Under *Reves*

The Standard Holdings Defendants argue that the SEC's claims concerning Investor 1's Notes fail because the Notes are not "securities" within the meaning of the federal securities laws. Doc. # 44 at 16–19; Doc. # 48 at 7–11. The Court disagrees.

Congress defined "security" broadly enough to encompass virtually any instrument sold as an investment, but not so broadly as to create a federal remedy for every fraud involving a financial transaction. *Reves v. Ernst & Young*, 494 U.S. 56, 60–63 (1990). Because a note may serve either an investment purpose or an ordinary commercial or consumer purpose, *Reves* begins with a rebuttable presumption that every note is a security. *Id.* at 63–65. That presumption may be overcome if the note bears a strong family resemblance to a recognized category of nonsecurity notes or, after consideration of the relevant factors, should be placed within a new category of nonsecurity notes. *Id.* at 64–67.

On the present pleadings, Investor 1's Notes do not fall within any recognized category. They are not consumer-financing notes, notes secured by home mortgages, bank character loans, notes secured by accounts receivable, notes formalizing open-account trade debt, or commercial-bank loans for current operations. *See id.* at 65. The closest analogue is a short-term note secured by a lien on a small business or some of its assets. *Id.* The Notes had short maturities and were secured by Standard Holdings' pledged warrants to purchase Cur Holdings stock. But the pleadings do not establish that Standard Holdings was a small business, that the warrants had sufficient value or liquidity to protect Investor 1, or that the Notes served the ordinary commercial-credit function associated with that category. Those formal similarities therefore do not establish, as a matter of law, that the Notes belong to a recognized category of nonsecurity notes.

The Court accordingly applies the four *Reves* factors: (1) the parties' motivations for entering the transactions; (2) the Notes' plan of distribution; (3) the reasonable expectations of the investing public; and (4) whether another regulatory scheme or risk-reducing feature makes application of the securities laws unnecessary. *Id.* at 66–67; *SEC v. J.T. Wallenbrock & Assocs.*, 313 F.3d 532, 537–40 (9th Cir. 2002). No single factor is dispositive; the Court considers them together. *Wallenbrock*, 313 F.3d at 537.

1. Motivations of the Buyer and Seller

The first *Reves* factor examines the objectively apparent motivations of a reasonable seller and buyer of the note. It favors securities treatment when the seller seeks to raise capital for the general use of a business enterprise or to finance substantial investments, and the buyer seeks a profitable return. *Reves*, 494 U.S. at 66. It points toward ordinary commercial or consumer credit when the note finances the purchase of a minor asset or consumer good, addresses a temporary mismatch between operating receipts and expenses, or serves another conventional commercial purpose. *Id.* Courts therefore consider the transaction's economic purpose, rather than relying on the instrument's label or other formal features. *See Wallenbrock*, 313 F.3d at 537–39 (holding that the first factor favored securities treatment where investors supplied cash to finance the seller's business and substantial investments while seeking significant profits, notwithstanding the notes' short-term, secured form).

Here, the SEC's allegations suggest the Standard Holdings Defendants' objectively apparent motivation was to raise capital for the general purpose of their business enterprise. The Amended Complaint alleges that the Dencers solicited Investor 1 by discussing Standard Holdings' streaming venture and that Tayt Dencer told him his initial investments in Standard Holdings and later investments in Huaxia would be used to develop and launch that business. Doc. # 39 ¶¶ 50–54. The Notes themselves state that Standard Holdings was developing several projects in which Investor 1 had an interest and needed "financial support"; the March 2018 Note adds that the support was intended to advance "a major planned financing." Doc. # 44-3 at 2; Doc. # 44-4 at 2. These stated purposes describe capital raised to advance the enterprise and finance a substantial transaction—not credit extended to purchase a consumer good or minor asset, satisfy trade debt, or bridge an identified mismatch in ordinary operating cash flow.

The March 2018 transaction did have a bridge-financing component. Tayt Dencer allegedly told Investor 1 that $2.5 million of his anticipated $3 million investment would facilitate a contemplated $102 million institutional investment, from which Investor 1 would be repaid. Doc. # 39 ¶ 93. But that allegation does not describe a routine current-operations loan of the kind discussed in *McNabb v. SEC*, 298 F.3d 1126, 1131 (9th Cir. 2002). It describes interim capital intended to facilitate a much larger financing for Standard Holdings. That feature gives the transaction some commercial character, but it does not make it comparable to conventional trade credit or a loan addressing a defined, temporary shortfall in operating cash flow.

Investor 1's objectively apparent motivation also points toward investment. Acting through his entity, he advanced $4.25 million in exchange for repayment of principal plus eight-percent interest. Doc. # 39 ¶¶ 50–52; Doc. # 44-3 at 2–3; Doc. # 44-4 at 2. Interest qualifies as "profit" under *Reves*. 494 U.S. at 68 n.4. And the pleadings do not identify a purchase of goods, trade debt, or other noninvestment commercial exchange that the Notes financed. The alleged transaction was an advance of capital to the enterprise in return for a financial return. *See McNabb*, 298 F.3d at 1131–32 (concluding that the first factor favored securities treatment where the notes raised funds for the seller's business rather than addressing an identified mismatch between cash inflows and outflows); *SEC v. R.G. Reynolds Enters., Inc.*, 952 F.2d 1125, 1131 (9th Cir. 1991) (concluding that the first factor favored securities treatment where the seller sought funds to finance substantial investments and the purchasers sought profit through interest payments).

The Standard Holdings Defendants argue that the Dencers' alleged use of some proceeds for personal expenses gave the Notes a consumer purpose. Doc. # 44 at 17. That argument focuses on what allegedly happened after Standard Holdings received the money, not on the economic purpose presented when the parties entered the transactions. A corporate note represented as financing business projects does not become a consumer-financing note because the borrower later diverts some proceeds to personal uses.

On balance, Standard Holdings' alleged capital-raising purpose and Investor 1's expected interest return outweigh the March 2018 transaction's bridge-financing component. The first factor therefore modestly favors the SEC.

2. Plan of Distribution

The second *Reves* factor examines a note's plan of distribution—specifically, whether it was offered in a manner that contemplated "common trading for speculation or investment." *Reves*, 494 U.S. at 66, 68. A broad public offering favors treatment as a security. Limited distribution generally points the other way, but it is not dispositive; courts also consider whether the purchasers were individuals in need of the securities laws' protection or sophisticated financial institutions capable of protecting themselves. *See, e.g., McNabb*, 298 F.3d at 1132 (concluding that the second factor was neutral where ten notes were sold to only six individuals because the limited distribution was offset by the purchasers' need for securities-law protection); *SEC v. Rumbaugh*, No. EDCV 19-1517 PSG (SPx), 2020 WL 2510644, at *4 (C.D. Cal. Feb. 20, 2020) (rejecting the argument that the second factor weighed against securities treatment where notes were sold to five individuals, rather than sophisticated financial institutions, because the purchasers' need for securities-law protection was correspondingly high).

Here, the second factor favors the Standard Holdings Defendants. The Notes arose from two individualized transactions with a single lender acting through his entity. Doc. # 39 ¶¶ 50–52. The Amended Complaint does not allege that the Notes were publicly offered, broadly distributed, or traded in any secondary market. Their distribution was therefore narrower than the distributions considered in *McNabb* and *Rumbaugh*, and the pleadings identify no broader solicitation of these instruments. Although the record does not establish whether Investor 1 was sophisticated or otherwise needed the protection of the securities laws, that uncertainty does not outweigh the Notes' highly limited distribution. The second factor therefore favors the Standard Holdings Defendants.

3. <u>Reasonable Expectations of the Investing Public</u>

The third *Reves* factor asks whether a reasonable member of the investing public would view the Notes as investments. *Reves*, 494 U.S. at 66. The inquiry is objective: the Court considers how the transaction was presented to a reasonable purchaser, not how Investor 1 or the Standard Holdings Defendants may have characterized it after the fact. *See McNabb*, 298 F.3d at 1132 (rejecting the actual purchasers' characterization of the notes as loans because the relevant question was how a reasonable investor would perceive them).

An instrument's title informs that inquiry, but it does not control it. In *Wallenbrock*, the Ninth Circuit concluded that a reasonable purchaser would view the notes as investments because they promised a twenty-percent return and automatically rolled over every three months, even though the issuer did not call them "investments." 313 F.3d at 539. Conversely, affirmative investment framing may reinforce the conclusion that a note would be perceived as a security. *See R.G. Reynolds*, 952 F.2d at 1131 (concluding that letters describing the relevant arrangement as an investment program would lead a reasonable purchaser to regard the financial interest as an investment).

Here, the Notes' formal presentation points toward conventional debt. Each instrument is titled "Secured Promissory Note" and describes Standard Holdings as the "Payor" and Investor 1's entity as the "Holder." Doc. # 44-3 at 2; Doc. # 44-4 at 2. Each calls the transaction a "Loan" and requires Standard Holdings to repay a sum certain, with eight-percent annual interest, by a specified maturity date. Doc. # 44-3 at 2–3; Doc. # 44-4 at 2–3. A reasonable purchaser could understand those terms as documenting an individually negotiated loan.

The alleged solicitation and the Notes' recitals point in the other direction. Tayt Dencer allegedly presented the transaction to Investor 1 as an "investment opportunity" in Standard Holdings and explained that the funds would be used to develop and launch its streaming business. Doc. # 39 ¶¶ 50–52. The Notes themselves state that Standard Holdings was developing projects in which the holder had an interest and needed "financial support." Doc. # 44-3 at 2; Doc. # 44-4 at 2. The March 2018 Note further states Standard Holdings needed financial support to "accomplish the goals of the parties with respect to a major planned financing." Doc. # 44-4 at 2. These contemporaneous descriptions could lead a reasonable purchaser to understand the

Notes as part of a broader investment relationship centered on Standard Holdings' ventures, notwithstanding their conventional debt form.

Neither set of indicators clearly predominates. Unlike the notes in *Wallenbrock*, the Notes did not promise an extraordinary return or provide for automatic rollover. And unlike the arrangement in *R.G. Reynolds*, the written instruments did not describe themselves as an investment program. But the alleged solicitation did more than present a stand-alone commercial loan: it framed the transaction as an investment opportunity in Standard Holdings' streaming venture. Given these mixed objective signals, the third factor does not materially favor either side.

4. <u>Alternative Regulatory Scheme or Risk-Reducing Factors</u>

The fourth *Reves* factor asks whether collateral, insurance, an alternative regulatory regime, or some other protection significantly reduces the instrument's risk and thereby makes application of the securities laws unnecessary. *Reves*, 494 U.S. at 67, 69. The inquiry is not merely whether the holder may sue to enforce the note, as ordinary contract remedies exist in nearly every lending transaction. The question is whether the instrument carries protections substantial enough to substitute for federal securities regulation. *See Wallenbrock*, 313 F.3d at 539–40 (explaining that an alternative regulatory regime must be sufficiently comprehensive to prevent the notes from escaping federal regulation entirely and concluding that state regulation alone was inadequate).

The Standard Holdings Defendants point to the Notes' fixed interest rate, short maturities, pledged collateral, and ordinary contract remedies in arguing that this factor favors dismissal. Doc. # 44 at 18. Upon additional factual development, these features may show that these provisions offered Investor 1 protection, but the pleadings and incorporated documents do not establish that they reduced the Notes' risk enough to make the securities laws unnecessary.

The fixed eight-percent rate defined Investor 1's promised return; it did not secure payment of that return. Doc. # 44-3 at 2; Doc. # 44-4 at 2. The short maturities similarly limited the scheduled duration of the notes. The November 2017 Note matured in approximately six months and the March 2018 Note matured approximately forty-five days after execution. *Id*. Those deadlines established when repayment was due, but they did not themselves ensure that Standard Holdings would have the funds to repay the Notes. *See Shaper v. Zadek*, 557 F. Supp. 3d 969, 982–83 (N.D. Cal. 2021) (treating an eight-percent fixed rate and repayment within 180 days of demand as "arguably" risk-reducing, but concluding that the fourth factor favored securities treatment because the notes were subordinated and lacked the risk-reducing factors specified in *Reves*).

The fact that the Notes involved pledged collateral requires closer examination. The Amended Complaint alleges, and the Notes reflect, that Standard Holdings pledged warrants as collateral. Doc. # 39 ¶¶ 51–52; Doc. # 44-3 at 2–4; Doc. # 44-4 at 2. The incorporated documents do not establish the warrants' value or liquidity, however. Nor do they establish that Investor 1 held a first-priority security or that the collateral was sufficient to cover the outstanding principal. Indeed, the March 2018 Note was expressly nonrecourse. Doc. # 44-4 at 2 (providing that, notwithstanding the Note's default remedies, the Holder would "look solely to the Pledged Collateral or such other collateral, if any," for payment). Thus, the Holder's contractual recourse for repayment was limited to the collateral rather than Standard Holdings' other assets. Because the pleadings and incorporated documents do not establish the pledged collateral's value, the Court cannot conclude as a matter of law that the collateral significantly reduced Investor 1's risk of nonpayment.[6]

The pleadings identify no alternative regulatory regime that would protect Investor 1 absent federal securities regulation. Nothing in the pleadings or incorporated documents indicates that a federal banking regulator or another agency supervised these transactions or had issued guidance addressing this type of individualized note. The Standard Holdings Defendants instead invoke ordinary contract law, but as noted above,

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[6] The March 2018 Note refers to a separate Security and Warrant Pledge Agreement. Doc. # 44-4 at 5. The parties did not submit that agreement with the Motion. The Court therefore does not speculate about its terms.

that does not supply a separate regulatory framework. *Cf. Kirschner v. JP Morgan Chase Bank, N.A.*, 79 F.4th 290, 309–10 (2d Cir. 2023) (concluding that the fourth factor weighed against securities treatment where the notes were secured by a perfected first-priority interest in all of the borrower's tangible and intangible assets and federal banking regulators had issued specific policy guidance addressing syndicated term loans).

Because the Notes provided only limited contractual protection, the adequacy of the pledged collateral is not established, and no alternative regulatory regime appears to govern the transactions, the fourth factor favors the SEC.[7]

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The *Reves* inquiry is not a mechanical tally. Here, the first factor modestly favors the SEC, the second favors Defendants, the third is neutral, and the fourth favors the

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[7] In their Reply, Defendants argue that each Note's sub-nine-month maturity places it within the Securities Act's short-term-note exemption and the Exchange Act's short-term-note exclusion. Doc. # 48 at 8; *see* 15 U.S.C. §§ 77c(a)(3), 78c(a)(10).

The Securities Act argument fails because Section 17(c) makes the exemptions in § 77c inapplicable to claims under Section 17. 15 U.S.C. § 77q(c); *see R.G. Reynolds*, 952 F.2d at 1132 n.9.

The Exchange Act exclusion applies only to commercial paper—"short-term, high quality instruments issued to fund current operations and sold only to highly sophisticated investors." *Wallenbrock*, 313 F.3d at 540–41 (quoting *Reves*, 494 U.S. at 70); *see R.G. Reynolds*, 952 F.2d at 1131–32 (holding that six-month investment notes remained securities because they were not commercial paper). Here, the incorporated documents establish only the Notes' short maturities. They do not establish that the Notes were high-quality instruments: the record does not show Standard Holdings' creditworthiness or the actual value and liquidity of the pledged warrants. Doc. # 44-3 at 2–3; Doc. # 44-4 at 2. Nor do the alleged purposes of the Notes show financing for current operations. The Notes refer generally to financial support for Standard Holdings' projects and a "major planned financing," and the Amended Complaint alleges that Investor 1 understood that the funds would be used to develop and launch the streaming venture—not to cover a temporary mismatch between operating receipts and expenses. Doc. # 39 ¶¶ 50–54, 93; Doc. # 44-3 at 2; Doc. # 44-4 at 2; *see McNabb*, 298 F.3d at 1131–32 (distinguishing current-operations financing from funds raised for general business use). Finally, although Investor 1 invested through an entity he controlled, the Amended Complaint does not describe his financial experience or otherwise establish that he was a highly sophisticated investor. Doc. # 39 ¶ 50; *see Wallenbrock,* 313 F.3d at 540–41 (explaining that the commercial-paper exclusion is limited to instruments sold only to highly sophisticated investors and holding the exclusion inapplicable where that requirement was not met).

SEC. Considered together—and against *Reves*'s presumption—the Notes' loan-like features do not establish as a matter of law that the instruments strongly resemble a recognized category of nonsecurity notes. The SEC has thus plausibly alleged that Investor 1's Notes are securities.[8]

B. The "Disclaimers" in the Incorporated Transaction Documents Do Not Independently Require Dismissal

The Standard Holdings Defendants contend that the Subscription Agreement's nonreliance clause[9] and Investor 1's Notes' integration clauses[10] independently defeat the SEC's misstatement theories. Doc. # 44 at 14–15, 20–21, 25–26; Doc. # 48 at 6–7. The Subscription Agreement separately warns that an investment in Huaxia involved "substantial economic risks," including illiquidity and the risk of a complete loss. Doc. # 44-2 at 4. Although these provisions form part of the context in which a reasonable investor would evaluate the challenged statements, they do not require dismissal as a matter of law.

First, as the Standard Holdings Defendants concede, the SEC is not required to prove reliance. *See* Doc. # 48 at 7; *Murphy*, 50 F.4th at 847 (holding that reliance is not an element of an SEC enforcement action under Section 10(b)); *Rana Rsch.*, 8 F.3d at 1363–64 & n.4 (explaining that reliance is a judicially created limitation on private actions that does not apply when the SEC enforces the securities laws). Accordingly, to the extent the incorporated transaction documents include provisions that would

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[8] The SEC alternatively argues that the broader transactions surrounding the Notes constituted investment contracts under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). Because the instruments at issue are Notes and the *Reves* analysis is sufficient to resolve the Motion, the Court does not reach that alternative theory. *See Reves*, 494 U.S. at 64; *Wallenbrock*, 313 F.3d at 540 n.5.

[9] Doc. # 44-2 at 5 (providing that the buyer "has not relied upon any representation or information (oral or written) . . . other than as stated in this Agreement" and that "[n]o oral or written representations have been made" in connection with the offering).

[10] Doc. # 44-3 at 5 (providing that the November 2017 Note and related pledge agreement "contain the entire agreement of the parties" and supersede prior agreements, understandings, and representations concerning the matters addressed); Doc. # 44-4 at 5 (providing the same as to the March 2018 Note and its related pledge agreement).

foreclose investor reliance in a private action, they would not require dismissal here. *See SEC v. True North Fin. Corp.,* 909 F. Supp. 2d 1073, 1096–97 (D. Minn. 2012).

Second, although the transaction documents form part of the "total mix" of information available to a reasonable investor and may bear on materiality, the provisions identified by the Standard Holdings Defendants do not require dismissal at the pleading stage.[11] A contractual disclaimer or risk warning is relevant, but it must be considered together with the challenged representation and the other information available to investors. Such a provision warrants dismissal only if it addresses the subject of the alleged deception with enough specificity that the challenged representation is not misleading when the materials are read as a whole. *See In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1413–15 (9th Cir. 1994) (explaining that cautionary language must relate directly to the subject on which the investor allegedly was misled); *Provenz v. Miller*, 102 F.3d 1478, 1493–94 (9th Cir. 1996) (concluding that generalized warnings about economic uncertainty did not resolve a claim based on more specific allegedly misleading information).

The provisions here do not address the alleged facts with that degree of specificity. The general risk disclosure warns that the Huaxia investment could be illiquid or lose value. It does not disclose that subscription proceeds allegedly would fund substantial personal expenses or that the represented segregation arrangement allegedly did not exist. The Notes' integration clauses and loan terms likewise do not disclose that funds allegedly represented as business capital would be used for substantial personal expenditures or that funds described as destined for a Standard

[11] *See Basic Inc.*, 485 U.S. at 231–32; *Sneed v. Talphera, Inc.*, 147 F.4th 1123, 1131–34 (9th Cir. 2025) (evaluating an alleged misstatement in its surrounding context and explaining that reasonable investors seek relevant information and attend to caveats and disclaimers); *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 190 (2015) (explaining that a reasonable investor considers surrounding text, including hedges, disclaimers, and apparently conflicting information).

Holdings trust account would instead be transferred to foreign recipients.[12] Nor do those provisions directly contradict the alleged representations.

The incorporated documents therefore remain relevant to the meaning, materiality, and evidentiary weight of the challenged statements, but they do not independently require dismissal at the pleading stage.

C. The SEC Plausibly Alleges Misstatement Liability Under Rule 10b-5(b)

The Standard Holdings Defendants argue that the alleged misstatements at issue here were neither false nor misleading, were immaterial, and/or were not made with scienter. Doc. # 44 at 19–26; Doc. # 48 at 11–15. The Court addresses the three categories of alleged misstatements separately and finds for each that the SEC has plausibly alleged these requirements for misstatement liability under Rule 10b-5(b).

1. <u>Business-Use Representations</u>

The SEC's business-use theory posits that the Standard Holdings Defendants falsely or misleadingly told investors that their money would be used for business purposes (or not used for personal purposes). The SEC identifies business-use representations made to Investor 1, other individual Huaxia investors, and the Institutional Investor. The Court finds that the SEC has plausibly alleged a misstatement liability theory for each of these investor categories.

i. Investor 1

The SEC alleges that Tayt Dencer falsely told Investor 1 that his money would be used to develop and launch Standard Holdings' streaming business. Doc. # 39 ¶¶ 50–54.[13]

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[12] Consistent with *Macquarie*, the Court does not treat the documents' silence on those subjects as independently actionable. 601 U.S. at 263–66. But the SEC's theories here are not based on silence alone; they are also based on affirmative business-use, segregation, and trust-account representations that the allegedly undisclosed facts purportedly rendered false or misleading. *See* Section IV.C. below.

[13] Investor 1's Notes do not foreclose that theory. For the reasons explained in Section IV.B, the Notes' integration clauses define the parties' final contractual obligations, but they do not establish that Tayt Dencer never made the alleged statement or that the statement was true when made. Nor does the absence of an express use-of-proceeds restriction authorize every later expenditure.

Falsity: The timing, nature, and scale of the use of Investor 1's money for personal expenditures plausibly support an inference that the stated business purpose was false or misleading when Investor 1 was solicited. Beginning the day after Investor 1's first transfer, the receiving account allegedly funded cash withdrawals and payments for a private investigator, a mattress purchase, and Tayt Dencer's restitution obligation in an unrelated criminal matter. Doc. # 39 ¶¶ 55–57. The SEC alleges that "right after Investor 1's first investment of the $1.25 million in late November 2017, Tayt Dencer told a friend that the Standard holdings checking account—used to hold investor 1's money—was Tayt Dencer's personal bank account." *Id*. ¶ 55. Within six months, the Dencers allegedly used at least $900,000 of Investor 1's funds for personal expenses—substantially more than the officer compensation reflected in Standard Holdings' records. *Id.* ¶¶ 56, 59. Tayt Dencer allegedly later testified in the SEC's investigation at the time of Investor 1's $4.25 million investments, he and Luke Dencer thought of the Standard Holdings account as their personal account. *Id*. ¶ 55. And both Dencers allegedly admitted using investor funds held in Standard Holdings accounts for personal expenses. *Id.* ¶ 58. Taken together, these allegations support a plausible inference that Tayt Dencer's statement to Investor 1 that his money would be used to develop and launch Standard Holdings' streaming business was false or misleading when it was made.[14]

Materiality: The Court finds that a reasonable investor could consider it important whether approximately $900,000 of a $4.25 million investment presented as business financing would instead be used to pay substantial, undisclosed personal expenses. Accordingly, the SEC has plausibly alleged that the business-use representation to Investor 1 was material.

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[14] While the Standard Holdings Defendants may ultimately establish that particular payments were legitimate business expenses, at this stage the competing characterization of facially personal expenditures presents a factual dispute that cannot be resolved from the pleadings and incorporated documents.

Scienter: The same allegations plausibly support scienter as to Tayt Dencer. He allegedly made the statement, controlled or accessed the account receiving Investor 1's money, described the account as personal, and participated in personal spending that began almost immediately. Doc. # 39 ¶¶ 30, 50–59. At the pleading stage, those allegations support an inference that Tayt Dencer knew, or consciously disregarded a substantial risk, that the stated business purpose did not accurately describe the intended use of Investor 1's funds. *See SEC v. Pocklington*, No. EDCV 18-701 JGB (SPx), 2018 WL 6843663, at *11 (C.D. Cal. Sept. 10, 2018).

The SEC therefore plausibly alleges an actionable business-use representation concerning Investor 1's funds.

ii. Other Individual Huaxia Investors

The SEC alleges that two sets of written representations to other individual Huaxia investors falsely or misleadingly described how their money would be used: (1) promissory notes allegedly certified that each loan was for business or commercial purposes and that its proceeds would not be used "primarily" for personal, family, household, or agricultural purposes (Doc. # 39 ¶ 64) and (2) term sheets identified software development, advertising, the China launch, "general corporate purposes," and "working capital" as intended uses. *Id.* ¶ 65.[15]

***Falsity*:** The Standard Holdings Defendants argue that the wording of these statements precludes a finding of falsity, notwithstanding the Dencers' later personal-seeming expenditures.

First, as for the promissory notes' statement that proceeds would not be used "primarily" for personal, family, household, or agricultural purposes, the Standard Holdings Defendants argue that the word "primarily" permitted some personal use as long as the majority of the aggregate funds raised from the individual Huaxia investors was not spent on these purposes. Doc. # 44 at 22; Doc. # 48 at 12–14. Because the SEC

[15] Paragraph 66 also alleges similar oral representations during telephone calls, but it does not identify a speaker, recipient, date, or particular conversation. The Court therefore does not rely on paragraph 66 as an independent basis for Rule 10b-5(b) liability.

has not alleged that most of the $17 million raised was diverted to personal use, the Standard Holdings Defendants argue that their original statement to the Huaxia investors was not false and their spending does not suggest otherwise. *Id.* But the certifications provided in the promissory notes were transaction-specific. Each note addressed "the loan evidenced by this Note" and "the proceeds thereof." Doc. # 39 ¶ 64. It did not make an aggregate representation about how the Standard Holdings Defendants would use all funds raised from all investors. The overall proportion of investor funds used for personal or nonpersonal purposes therefore does not determine whether the certification in a particular note was false or misleading.

The Amended Complaint also includes a transaction-level example that illustrates why these certifications—at least for certain individual Huaxia investors—were plausibly false or misleading when made. One investor allegedly transferred $40,000 for an investment in Huaxia to a Standard Holdings account. *Id.* ¶ 71. The same day, Luke Dencer transferred this money to a different Standard Holdings checking account, and before another deposit entered the receiving account, Luke Dencer allegedly transferred $26,000 to his personal account and used other portions of this investor's money for residential rent, car insurance, and a payment to a friend who had no connection to Standard Holdings or Huaxia. *Id.* Those expenditures allegedly accounted for more than three-quarters of that investor's contribution. *Id.* The same-day disposition of most of the $40,000 contribution, together with the nature and scale of the other alleged expenditures, permits a plausible inference that statements about the use of the investor funds for corporate purposes were false or misleading when they were made.

Second, the Standard Holdings Defendants argue that the term sheets provided to Huaxia investors were not false or misleading about how their funds would be used, because they explicitly contemplated using the funds for "general corporate purposes" and "working capital"—terms broad enough to encompass compensation and amounts owed under business contracts. Doc. # 44 at 22–23; Doc. # 48 at 13–14.

The phrase "general corporate purposes" is broad enough that, in certain contexts, it may justify spending on salaries and contractual payments for business purposes. *See, e.g.*, *Brady v. Top Ships Inc.*, No. 17-CV-4987 (BMC), 2019 WL 3553999, at *12 (E.D.N.Y. Aug. 5, 2019), *aff'd sub nom. Onel v. Top Ships, Inc.*, 806 F. App'x 64 (2d Cir. 2020). But here, the SEC has alleged personal expenditures that fall outside even the broad "general corporate purposes" label. The personal expenditures the SEC identifies are alleged to substantially exceed the officer compensation reflected in Standard Holdings' records. Doc. # 39 ¶ 74. The SEC has also identified payments for purposes facially unrelated to Standard Holdings' business venture, such as for jewelry, luxury cars, and designer clothes. *Id.* ¶ 70. And the SEC has alleged payments to Luke Dencer's wife, who purportedly had no connection to Standard Holdings' business. *Id.* ¶ 72.

Accordingly, the Court finds that the SEC has plausibly alleged falsity for the business-use representations made to individual Huaxia investors.

Materiality: A reasonable investor could consider it important whether significant portions of funds represented as principally financing Huaxia's business would instead pay substantial, undisclosed personal expenses. *See SEC v. Skinner*, No. 2:21-CV-05273-SB (KSx), 2022 WL 2784811, at *5 (C.D. Cal. June 17, 2022) (concluding that a reasonable investor would consider it important that funds represented as financing real-estate projects instead paid personal expenses, unrelated business costs, and other investors); *Pocklington*, 2018 WL 6843663, at *10–11. The SEC therefore plausibly alleges a material difference between the represented and alleged uses of the proceeds.

Scienter: The Amended Complaint alleges that the Dencers reviewed or approved the relevant investment agreements, controlled or accessed the accounts receiving the proceeds, and admitted to using investor funds held in Standard Holdings accounts for personal expenses. Doc. # 39 ¶¶ 75–76. Those allegations, coupled with the transaction-specific spending described above, plausibly support knowledge or conscious recklessness. *See Pocklington*, 2018 WL 6843663, at *11.

The SEC therefore plausibly alleges actionable written business-use representations to other individual Huaxia investors.

iii. Institutional Investor

The Dencers allegedly told the Institutional Investor's attorney that the investment funds would be used to develop and launch Huaxia's streaming business. Doc. # 39 ¶ 79. A Pitch Deck and binding term sheet likewise presented the investment as capital for that venture and identified strategic projects in China, software-development costs, working capital, and other corporate purposes. *Id.* ¶¶ 80–85.

Falsity: The Standard Holdings Defendants correctly observe that the Amended Complaint does not allege that Huaxia failed to pursue every project described in the Pitch Deck. Doc. # 44 at 20 n.4. The SEC's theory therefore cannot rest on the proposition that the Pitch Deck's project descriptions were necessarily false merely because some portion of the Institutional Investor's funds allegedly were spent elsewhere.

The SEC's theory is narrower, however. It alleges that the communications to the Institutional Investor, considered together, affirmatively presented the investment as capital for Huaxia's streaming venture while failing to disclose that material portions of the proceeds were intended for the Dencers' personal expenses. Doc. # 39 ¶¶ 79–90. That inference does not depend on proving that Huaxia pursued none of the projects described in the Pitch Deck.

The SEC's allegations also show more than a later divergence from the original representation about how the funds would be used. For example, the SEC alleges that on the day the Institutional Investor transferred $3 million to a Standard Holdings account, Tayt Dencer allegedly asked Luke Dencer for a "screen shot of the account with the name on it" so that Tayt Dencer could "Use[] it for realtors[.]" *Id.* ¶ 87. About a month later, $101,200 allegedly was transferred from a Standard Holdings account as the first payment on a residential lease signed by Tayt Dencer and his wife. *Id.* Standard Holdings later paid monthly rent of $25,000 and utilities for the residence, and the alleged personal expenditures materially exceeded the officer compensation reflected in Standard Holdings' records. *Id.* ¶¶ 87–88.

Those allegations plausibly support an inference that the business-use representations to the Institutional Investor did not fairly describe the intended use of material portions of the proceeds when made.

Materiality*:* A reasonable investor could consider it important whether significant portions of capital presented as financing an identified business venture would instead be used to pay substantial, undisclosed residential and family expenses. This is reinforced by the allegation that the Institutional Investor would not have proceeded had its representatives known that its funds would be used for expenses unrelated to Huaxia's business. Doc. # 39 ¶ 90.[16] The Court therefore finds that the SEC has plausibly alleged the materiality of this alleged misrepresentation.

Scienter: The Dencers allegedly personally participated in soliciting and negotiating the investment from the Institutional Investor. *Id.* ¶ 79. Tayt Dencer then allegedly sought proof of the newly funded account for use with realtors on the day the initial $3 million arrived, and Standard Holdings made the $101,200 residential-lease payment shortly thereafter. *Id.* ¶ 87. Those allegations plausibly support an inference that the Dencers knew, or consciously disregarded a substantial risk, that the business-use representations to the Institutional Investor did not accurately disclose the intended use of the proceeds.

[16] Because materiality is judged from the perspective of a reasonable investor, that allegation does not, by itself, establish materiality. It is nevertheless relevant to the inquiry: an actual investor's reaction may help show what information a reasonable investor would consider important, even though the actual investor's subjective view does not control. *See United States v. Reyes*, 660 F.3d 454, 468–70 (9th Cir. 2011) (explaining that materiality is an objective inquiry while considering actual investors' testimony about the importance of the information as evidence supporting materiality). Here, the allegation reinforces—rather than supplies—the objective inference arising from the nature and scale of the alleged undisclosed expenditures.

The SEC therefore plausibly alleges that the business-use representations made to the Institutional Investor were false or misleading when made, material, and made with scienter.

2. The Segregated-Account Representation

The form Subscription Agreement stated that "[s]ubscription funds shall remain in a segregated account of [Huaxia] until the offering is fully subscribed and [Huaxia's] shares has [sic] been issued." Doc. # 44-2 at 2.

Falsity: To determine whether the SEC has plausibly alleged falsity, the Court must assess whether the Amended Complaint plausibly alleges that the segregation representation was false or misleading when made—not merely that the Standard Holdings Defendants later failed to comply with it. *See Reese*, 643 F.3d at 691–92; *Foster*, 504 F.3d at 1051.

The SEC has satisfied this requirement. The Amended Complaint alleges that the represented segregation arrangement was absent from the outset. Huaxia allegedly never had a bank account into which the subscription proceeds could be deposited. Doc. # 39 ¶ 68. Instead, the proceeds allegedly entered a Standard Holdings checking account, where they were commingled with Investor 1's funds and money from other sources. *Id.* ¶ 69.

The timing of the alleged conduct further supports contemporaneous falsity. The Dencers allegedly pitched Huaxia investments between September 2018 and March 2022. *Id.* ¶ 66. The Amended Complaint further alleges that, "[f]rom the start in September 2018," the Dencers also began spending money raised from those investors on personal items. *Id.* ¶ 70. Taken together, these allegations describe more than a later failure to preserve funds in a segregated account. They permit the inference that, when the Subscription Agreements promised that the proceeds would be placed and maintained in a segregated Huaxia account, no such account existed and the proceeds were instead being routed into a commingled Standard Holdings account available for personal expenditures.

The Amended Complaint also connects that alleged arrangement to the Dencers' roles when the Subscription Agreements were used. Luke Dencer allegedly controlled the receiving accounts and knew that Huaxia had no separate bank account. *Id.* ¶ 76. Tayt Dencer allegedly knew that funds raised for Huaxia investments were being deposited into Standard Holdings accounts. *Id.* And both Dencers allegedly reviewed Huaxia investment agreements and approved the final terms of agreements used with many investors. *Id.* ¶ 75. These allegations support the inference that the lack of segregation was not a later departure from an arrangement that once existed, but the arrangement in place when the segregation representation was made.

The SEC therefore plausibly alleges that the segregation representation was false or misleading when made.

Materiality: A reasonable investor could consider it important that the subscription proceeds were not handled as the Subscription Agreement represented. The Agreement stated that the proceeds would remain in a segregated Huaxia account until the offering was fully subscribed and the shares were issued. Doc. # 44-2 at 2. The SEC alleges that no such account existed and that the proceeds instead entered a Standard Holdings checking account, were commingled with other funds, and were spent before the stated conditions were satisfied. Doc. # 39 ¶¶ 68–74.

The Standard Holdings Defendants argue that this difference was immaterial because the segregation requirement was temporary and did not require separate accounts for each investor. Doc. # 48 at 14–15.[17] This argument focuses on the investors' ability to access or transfer their investments, but the segregation provision addressed a different risk: whether the recipient of the subscription proceeds could commingle or spend them before completing the offering and issuing the purchased

[17] To the extent the Standard Holdings Defendants assert that each investor eventually received shares, the Court cannot accept this premise. *See* Doc. # 48 at 14 ("[E]ach investor's shares were issued *after* the sale[.]") (emphasis in original). The Amended Complaint alleges that no Class A common shares were created until at least March 14, 2022, after the relevant investments were made, and that most investors still had not received their shares. Doc. # 39 ¶ 68. At the pleading stage, those allegations—not the contrary factual assertion in the Reply—control.

shares. During that interval, the investors allegedly had surrendered their money but had not yet received their securities. A reasonable investor could consider it important whether the proceeds would remain preserved in the promised account until the stated conditions occurred or instead become immediately available for expenditure. The safeguard's temporary duration defines how long it was supposed to operate; it does not render the safeguard immaterial during that period.

Nor does the SEC's theory depend on a promise to maintain a separate account for each investor. The Agreement required the subscription proceeds to remain in "a segregated account of [Huaxia]." Doc. # 44-2 at 2. The alleged discrepancy is that no segregated Huaxia account existed at all—not that the Standard Holdings Defendants failed to establish individual subaccounts. Thus, although *White Pine* involved a promise of continuing segregation in separate customer accounts, it remains instructive on the narrower point that representations concerning the custody and segregation of investor funds may be material when the funds instead are commingled with operating funds and used for other purposes. *See Commodity Futures Trading Comm'n v. White Pine Tr. Corp.*, No. 04CV2093 J (NLS), 2007 WL 1754819, at *5 (S.D. Cal. Apr. 20, 2007) (concluding that representations concerning segregated customer accounts were material where the funds instead were commingled with operating funds and used for business and personal expenses).

Accordingly, the temporary and pooled nature of the promised segregation may affect the scope of the representation, but it does not establish that the alleged absence of any segregation arrangement was immaterial as a matter of law.

Scienter*:* The SEC alleges that the Dencers reviewed or approved agreements promising segregation while knowing both that Huaxia had no separate bank account and that Huaxia proceeds were being deposited into Standard Holdings accounts. Doc. # 39 ¶¶ 68, 75–76. The Dencers also allegedly controlled or accessed the receiving accounts and admitted using investor funds held there for personal expenses. *Id.* ¶ 76.

Those allegations plausibly support an inference that the Dencers knew, or consciously disregarded a substantial risk, that the represented safeguard did not exist.

The SEC therefore adequately pleads the segregated-account theory.

3. The Trust-Account Representation

The SEC alleges that, on February 21, 2018, Tayt Dencer told Investor 1 that $2.5 million of his anticipated $3 million investment would be placed in a trust account titled in Standard Holdings' name to facilitate a contemplated $102 million financing, from which Investor 1 would be repaid. Doc. # 39 ¶ 93. The SEC further alleges that no account fitting that description was opened. Investor 1's money instead entered a Standard Holdings checking account, and more than $2.3 million was transferred within weeks pursuant to wiring instructions identifying recipients in Mexico, Abu Dhabi, and Hungary. *Id.* ¶¶ 94–98.

Falsity: The relevant question is whether the Amended Complaint plausibly alleges that Tayt Dencer's representation was false or misleading when made—not merely that the contemplated arrangement later failed. A complaint cannot establish contemporaneous falsity through hindsight alone; it must allege facts explaining why the statement was false or misleading at the time it was made. *See Reese*, 643 F.3d at 691–92; *Foster*, 504 F.3d at 1051.

The Standard Holdings Defendants argue that the chronology forecloses that inference. The alleged representation preceded the March 2018 Note, and the foreign transfers occurred only afterward, in late March and early April 2018. Doc. # 44 at 25–26. They emphasize that the March 2018 Note contains no trust-account provision and states that it and the related pledge agreement supersede prior agreements, understandings, and representations concerning the matters addressed. *Id.*; Doc. # 44-4 at 5. In their view, the later transfers therefore show, at most, nonperformance of an earlier representation that did not become part of the parties' final written agreement.

The chronology does not compel dismissal. The Amended Complaint does not rely solely on the fact that the represented account was never opened. It alleges that

Tayt Dencer described a specific arrangement shortly before Investor 1 advanced the money: $2.5 million would be placed in a trust account titled in Standard Holdings' name to facilitate an identified financing. Doc. # 39 ¶ 93. It further alleges that Investor 1's funds instead entered an ordinary Standard Holdings checking account and that most of the money was transferred within weeks under instructions that, before the transfers occurred, identified three foreign recipients whose accounts were not titled in Standard Holdings' name. *Id.* ¶¶ 94–98. The specificity of the representation, the absence of the described account, and the prompt routing of the funds through a materially different arrangement together permit a plausible inference that the represented plan did not reflect Tayt Dencer's contemporaneous intent.

The March 2018 Note is relevant context, but it does not eliminate that inference as a matter of law. Its integration clause may establish that the final written agreement imposed no contractual obligation to maintain a trust account. It does not specifically state that the earlier trust-account arrangement had been abandoned, identify a different custody arrangement, or disclose that most of the funds would be transferred to foreign recipients. Nor does it establish that Tayt Dencer's earlier statement was true when made. The SEC's theory therefore rests on more than a later breach of an unwritten promise.

The Standard Holdings Defendants also assert in Reply that the Dencers intended to place the money in legitimate foreign trust accounts but were deceived by criminals posing as foreign bankers. Doc. # 48 at 15. The Amended Complaint acknowledges Tayt Dencer's testimony that a criminal group ultimately stole the money. Doc. # 39 ¶ 97. But the Reply's additional account—that the recipients represented themselves as trustees or that the identified foreign accounts were presented to the Dencers as trust accounts held for Standard Holdings—does not appear in the Amended Complaint or the incorporated documents. The Court therefore cannot accept that extra-pleading explanation as established fact on a motion to dismiss.

The SEC has accordingly pleaded facts supporting a plausible inference that the trust-account representation was false or misleading when made.

Materiality: The trust-account representation could matter to a reasonable investor. It concerned the custody and control of $2.5 million—most of Investor 1's anticipated $3 million advance—and the mechanism through which the contemplated financing and repayment allegedly would occur. Doc. # 39 ¶ 93. A reasonable investor could consider it important whether those funds would be held in an account titled in Standard Holdings' name for the stated purpose or instead transferred to foreign recipients whose accounts were not titled in the company's name. *Id.* ¶¶ 94–98; *see SEC v. Cross Fin. Servs., Inc.*, 908 F. Supp. 718, 723–24, 729–30 (C.D. Cal. 1995) (finding material representations that investor funds would be placed in a lockbox or escrow account and used for specified financing where the account lacked the represented protection and the funds were used otherwise).

The March 2018 Note forms part of the total mix of information. Its omission of a trust-account term and its integration clause may suggest that the final contract imposed no enforceable duty to maintain such an account. Doc. # 44-4 at 5. But the Note does not specifically retract the alleged earlier representation or disclose the materially different custody arrangement alleged by the SEC. Considering the transaction as a whole, the Court cannot conclude that no reasonable investor would have regarded that difference as important.

The SEC therefore plausibly alleges materiality.

Scienter: The Standard Holdings Defendants argue that the Amended Complaint fails to allege that Tayt Dencer knew, in February 2018, that third parties would later steal the funds. Doc. # 48 at 15. But the SEC need not allege that Tayt Dencer anticipated the precise fraud, identity of the perpetrators, or ultimate loss. The relevant question is narrower: whether he knew, or consciously disregarded a substantial risk, that the money would not be handled as he had represented.

The alleged facts support that inference at the pleading stage. Tayt Dencer allegedly described a specific account arrangement shortly before the investment; no such account was opened; Investor 1's money instead entered a Standard Holdings checking account; and most of it was transferred within weeks pursuant to instructions identifying foreign recipients whose accounts were not titled in Standard Holdings' name. Doc. # 39 ¶¶ 93–98. Those allegations permit an inference that Tayt Dencer knew, or was consciously reckless in not knowing, that the funds would not be held in the Standard Holdings trust account when he told Investor 1 the opposite.

The competing narrative offered by the Standard Holdings Defendants—that Tayt Dencer intended to implement the represented arrangement but was himself deceived—may ultimately prevail after factual development. *See* Doc. # 48 at 15. At this stage, however, the Court cannot select that explanation over the plausible inference arising from the allegations in the Amended Complaint. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (requiring courts to accept well-pleaded factual allegations as true and construe them in the nonmovant's favor).

The SEC therefore plausibly alleges that the trust-account representation was false or misleading when made, material, and made with scienter.

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For the reasons detailed above, the SEC plausibly alleges misstatement liability under Rule 10b-5(b).

D. The SEC Plausibly Alleges Scheme Liability Under Rule 10b-5(a) and (c) and Sections 17(a)(1) and (3)

For the reasons detailed below, the Court finds that the SEC has stated a plausible scheme-liability theory.

1. <u>The Amended Complaint Identifies a Coherent Scheme</u>

The Amended Complaint alleges that the Standard Holdings Defendants raised more than $17 million through promissory notes and offerings of Huaxia shares. In doing so, they allegedly represented that investors would receive specified securities and that their funds would be used or safeguarded in specified ways. Doc. # 39 ¶¶ 27, 34–49, 50–100, 138, 143. After obtaining the money, the Dencers allegedly controlled its disposition and directed substantial amounts to personal expenses and other undisclosed uses. *Id.* ¶¶ 30, 35, 50–100.

The Standard Holdings Defendants contend that this theory leaves them unable to determine whether the SEC alleges that the streaming venture was fictitious or that a legitimate business merely paid its executives excessive compensation. Doc. # 44 at 27–28; Doc. # 48 at 16. But the SEC's theory need not fit either characterization. A legitimate enterprise may be used to carry out fraudulent securities transactions, and the alleged scheme need not encompass every aspect of the enterprise or every dollar raised. *See SEC v. Zandford*, 535 U.S. 813, 819–22 (2002) (holding that otherwise lawful securities sales and the contemporaneous misappropriation of their proceeds could constitute a fraudulent scheme); *Pocklington*, 2018 WL 6843663, at *2–6 (sustaining a scheme claim where the defendants allegedly operated a business, raised more than $14 million, and misappropriated a portion of the proceeds). Here, the SEC alleges that the Standard Holdings Defendants used securities transactions to obtain investor money while the securities and safeguards associated with certain transactions differed from what investors had been told. The Dencers then allegedly directed substantial portions of the proceeds to undisclosed personal uses. Doc. # 39 ¶¶ 36–100, 138, 143.

Nor was the SEC required to allege the precise sum or percentage of investor funds that the Dencers intended to use for personal expenditures. The Amended Complaint identifies the alleged objective: to raise investor money and divert substantial portions of it for the Dencers' personal benefit. *Id.* ¶¶ 138, 143. It identifies the offerings through which the funds were raised. *Id.* ¶¶ 27, 34–49. And it traces the proceeds into accounts controlled by the Dencers, describes how represented safeguards allegedly were bypassed, and identifies the personal expenditures that followed. *Id.* ¶¶ 30, 50–100. Those allegations define a specific course of securities fraud rather than merely characterizing ordinary corporate activity as fraudulent.

2. The SEC Alleges Deceptive Acts in Furtherance of the Scheme

The parties next dispute whether the principal acts identified by the SEC were merely collateral irregularities or plausibly furthered the alleged scheme. The Court first addresses the two principal categories of conduct on which its conclusion rests and then explains why it need not rely on the remaining allegations. For each category, the relevant questions are what allegedly made the conduct deceptive and how it related to the acquisition, control, or disposition of investor funds.

i. Sale of Purported Huaxia Shares and Backdating of the Share-Creation Resolution

The Standard Holdings Defendants argue that the delayed issuance of Huaxia shares did not enable the alleged misappropriation and therefore was disconnected from the asserted scheme. Doc. # 48 at 17. The Amended Complaint, however, alleges more than a delay in delivering certificates for validly authorized shares.

The Standard Holdings Defendants allegedly accepted approximately $12 million for more than 9.2 million specified Class A and Class B Huaxia shares before those share classes had been created. Doc. # 39 ¶¶ 36–40. The transaction documents allegedly identified the number of shares purchased and the corresponding ownership interest. Internal capitalization records, however, showed that all then-existing Huaxia shares remained owned by Standard Holdings and that further corporate action was required to create the Class A and Class B shares. *Id.* ¶¶ 36–39. The Dencers allegedly continued selling the purported shares after receiving a complaint in 2019 that an investor had not received the purchased securities, and most investors allegedly never received their shares. *Id.* ¶¶ 41–45.

The SEC further alleges that, after a prospective institutional investor questioned whether the shares had been authorized, Luke Dencer signed the resolution required to create the Class A and Class B shares and backdated it by more than two years. *Id.* ¶¶ 40–41. Taken as true, these allegations permit the inference that the transaction documents presented the specified share classes—and the ownership percentages they represented—as securities that could be conveyed under the agreements without disclosing that the classes themselves had not yet been created. The backdated resolution then created a corporate record suggesting that the necessary authorization had existed since 2019, before the institutional investor raised the issue. The alleged conduct therefore bears directly on both the acquisition of the subscription proceeds and the later creation of a corporate record concerning the authorization of the shares already sold. *See SEC v. Zouvas*, No. 3:16-cv-0998-CAB (DHB), 2016 WL 6834028, at *6–9 (S.D. Cal. Nov. 21, 2016) (sustaining scheme liability where false attestations and instructions created false appearances concerning share ownership and enabled the shares to be deposited and sold).

The Standard Holdings Defendants may ultimately establish that the failure to create the share classes was an inadvertent corporate defect that they corrected once discovered. But the Amended Complaint alleges that both Dencers knew the classes had not been created, that they continued selling the purported shares after receiving an investor complaint, and that Luke Dencer later signed and backdated the corrective resolution after the institutional investor questioned the shares' authorization. Doc. # 39 ¶¶ 40–45. Those allegations permit a competing inference of deceptive conduct. The Court cannot resolve that factual dispute in the Standard Holdings Defendants' favor on the pleadings.

ii. Failure to Segregate, Commingling, and Diversion of Investor Funds

The Standard Holdings Defendants contend that the failure to segregate the Huaxia proceeds could not have furthered the alleged scheme because segregation was temporary and the proceeds eventually would have been released. Doc. # 48 at 17. The Court has already concluded that the alleged absence of the segregated account plausibly supports misstatement liability. *See* Section IV.C.2 above. The question here is whether the related conduct—the alleged nonsegregation, commingling, and use of the proceeds—also plausibly furthered a deceptive course of conduct. The overlap between those theories is permissible. *See Alphabet*, 1 F.4th at 709 & n.10.

The form Subscription Agreement provided that subscription proceeds would remain in a segregated Huaxia account until the offering was fully subscribed and the shares were issued. Doc. # 44-2 at 2. The SEC alleges that no such account existed and that the proceeds instead entered a Standard Holdings checking account, were commingled with other funds, and were spent while at least the share-issuance condition remained unsatisfied. Doc. # 39 ¶¶ 68–74. The Dencers allegedly controlled or accessed the account and used the money for transfers to personal and family accounts, residential rent, personal credit-card bills, and other expenses unrelated to the represented uses. *Id.* ¶¶ 69–76. If true, bypassing the segregation requirement gave the Dencers access to the proceeds before the Agreement contemplated their release and facilitated the alleged diversion. That the proceeds might later have been released after the stated conditions occurred does not defeat that inference.[18]

The SEC's theory thus rests on more than the sequence in which the events occurred. The alleged custody restriction governed the proceeds when the Standard Holdings Defendants obtained them, and its alleged circumvention placed those same proceeds in an account from which the Dencers allegedly made personal expenditures unbeknownst to the investors. The nonsegregation and diversion therefore were not independent misconduct arising only after the securities transactions had concluded.

iii. The Remaining Alleged Conduct

The Court need not decide whether the remaining conduct identified by the SEC independently supports scheme liability. The scheme claim is adequately supported by

[18] The Standard Holdings Defendants assert in Reply that the shares ultimately were issued. Doc. # 48 at 17. The Amended Complaint, however, alleges that most investors' shares were never issued. Doc. # 39 ¶¶ 41, 44, 68. At the pleading stage, the Court accepts the Amended Complaint's well-pleaded allegations rather than the contrary factual assertion in the Reply.

the alleged sale of uncreated share classes, the backdated resolution, the removal of the segregation safeguard, and the commingling and diversion of proceeds.[19]

3. <u>The SEC Adequately Alleges the Required Mental States</u>

The Amended Complaint plausibly alleges scienter. Tayt Dencer allegedly knew before March 2022 that Huaxia lacked Class A and Class B shares. Luke Dencer allegedly knew that he had not adopted the resolution necessary to create them and later signed and backdated the resolution. Doc. # 39 ¶¶ 40–44.

Both Dencers allegedly reviewed and approved investor agreements, controlled or accessed the accounts receiving investor proceeds, and admitted using investor money for personal expenses. *Id.* ¶¶ 29–31, 55–60, 75–76. Luke Dencer allegedly knew that no separate Huaxia account existed, while Tayt Dencer allegedly knew that Huaxia proceeds were deposited into Standard Holdings accounts. *Id.* ¶ 76. Taken together, those allegations support a plausible inference of knowledge or conscious recklessness. *See Gebhart*, 595 F.3d at 1041–42.

The allegations also permit the Dencers' scienter to be attributed to Standard Holdings and Huaxia. Tayt and Luke Dencer allegedly founded, operated, and controlled the entities and acted on their behalf in soliciting investors, approving transaction documents, issuing the alleged securities, and handling the proceeds. Doc.

[19] The SEC alleges that later investor funds were used to make a $1,000 payment to an earlier investor. Doc. # 39 ¶¶ 101–07. That allegation may provide context for the broader course of conduct, but it does not, standing alone, establish a Ponzi scheme. A defining feature of a Ponzi scheme is the use of later investors' money to make payments to earlier investors in the guise of returns generated by a legitimate business, thereby cultivating an illusion of profitability and inducing further investment. *See In re United Energy Corp.*, 944 F.2d 589, 590 n.1 (9th Cir. 1991); *SEC v. Dalius*, No. CV 18-08497-CJC (Ex), 2019 WL 13178869, at *6–7 (C.D. Cal. Sept. 12, 2019). The Amended Complaint does not allege that the identified payment was represented as a profit or investment return. Likewise, the mere nonpayment of a Note, without more, ordinarily presents a contract claim rather than securities fraud. *See Foster*, 504 F.3d at 1051 (holding that the failure to carry out a promise made in connection with a securities transaction alleged, at most, a breach of contract where the complaint did not allege that the defendant intended not to perform when the promise was made). And although the Amended Complaint alleges that Investor 1 transferred his investment interests back to the Standard Holdings Defendants in December 2022, it does not allege that Tayt Dencer's June 2020 valuation statements induced or otherwise furthered that later transaction. Doc. # 39 ¶¶ 118–20. The Court therefore does not rely on those allegations as independently sufficient scheme acts.

39 ¶¶ 23–30, 123. *See In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471, 475–76 (9th Cir. 2015) (applying ordinary agency principles to attribute a senior officer's scienter to the corporation).

Because these allegations plausibly support the more demanding scienter standard, they also plausibly support negligence under Section 17(a)(3). The SEC therefore states claims for scheme liability under Rule 10b-5(a) and (c) and Sections 17(a)(1) and (3).

E. The SEC's Fraud Theories Satisfy Rule 9(b)

For the reasons below, the Court finds that the SEC has pleaded both its misstatement and scheme liability theories with the particularity Rule 9(b) requires.

1. <u>Misstatement Theories Are Pleaded with Particularity</u>

The Amended Complaint describes each misstatement theory with sufficient precision to permit the Standard Holdings Defendants to provide a meaningful response.

For Investor 1's first two investments, the SEC alleges that Tayt Dencer stated during telephone calls and personal meetings in November 2017 that the funds would be used to develop and launch the streaming business. Doc. # 39 ¶ 50. The pleading identifies the investments that followed and the uses of the proceeds alleged to contradict that representation. *Id.* ¶¶ 51–59.

The allegations concerning the other Huaxia investors principally involve written offering materials. The Amended Complaint quotes the business-use provisions in the promissory notes and term sheets used in offerings between September 2018 and March 2022. *Id.* ¶¶ 63–65. It separately quotes the segregation provision in the form Subscription Agreement. *Id.* ¶ 68. Luke Dencer allegedly signed or authorized investor agreements, and both Dencers allegedly reviewed agreements and approved final terms. *Id.* ¶ 75. The pleading then identifies the account arrangement and expenditures alleged to conflict with the written provisions. *Id.* ¶¶ 67–76.

The Institutional Investor allegations are similarly tied to identified documents and transactions. The Amended Complaint describes the investments made in March

2022 and in February and June 2023. *Id.* ¶¶ 79, 81, 84. It identifies the Pitch Deck, the Binding Term Sheet, and the Use of Proceeds addendum provided in connection with those investments. *Id.* ¶¶ 80, 82–83. It also alleges how the agreements were executed and identifies the expenditures on which the SEC relies. *Id.* ¶¶ 81, 84, 86–88.

The trust-account theory concerns a particular communication. Tayt Dencer allegedly emailed Investor 1 on February 21, 2018, stating that $2.5 million of his anticipated $3 million investment would be placed in a trust account in Standard Holdings' name to facilitate a contemplated $102 million financing and repayment. *Id.* ¶ 93. The pleading identifies where the money allegedly went instead: first to a Standard Holdings checking account and then, in an amount exceeding $2.3 million, to three foreign accounts. *Id.* ¶¶ 94–98.

Taken together, these allegations identify each challenged statement and the communication or document in which it appeared. They also identify the relevant transaction, the Dencers' alleged involvement, and the facts said to make the statement false. This level of detail satisfies Rule 9(b). *See Rumbaugh*, 2020 WL 2510644, at *4–5 (finding particularity where the complaint identified the substance and timing of the challenged statements and the investments to which they related); *SEC v. Left*, No. 2:24-cv-06311-SPG (JCx), 2025 WL 2684201, at *9–10 (C.D. Cal. Apr. 22, 2025) (finding particularity where the complaint alleged the dates, means, content, and factual basis of the challenged statements). The misstatement theories therefore are pleaded with sufficient particularity.

2. <u>The Alleged Scheme and Each Defendant's Alleged Role Are Pleaded with Particularity</u>

The Amended Complaint also satisfies Rule 9(b)'s particularity requirement because it identifies both how the alleged scheme operated and what each Standard Holdings Defendant allegedly did to further it.

A complex scheme need not be pleaded through a transaction-by-transaction recital of the SEC's evidence. *See Mikula*, 2023 WL 3082364, at *5. In *Mikula*, the complaint alleged that securities issuers concealed payments to a promoter by routing the money through middlemen who entered sham consulting arrangements and submitted invoices for services they had not performed. *Id.* at *1–2, *4. The promoter then recommended the issuers' securities while falsely claiming that he had received no compensation. *Id.* at *1, *4. The complaint separately alleged that another defendant acted as the promoter's liaison by negotiating the promoter's share, submitting sham invoices, collecting payments, and distributing the proceeds. *Id.* at *2, *4. Based on those allegations, the court held that the complaint adequately described the scheme's operation and the defendants' respective roles, even though it did not name every middleman or describe every sham invoice in detail. *Id.* at *4–5.

The Amended Complaint provides comparable detail. It alleges that the Standard Holdings Defendants raised more than $17 million through Investor 1's Notes and offerings of Huaxia stock and, in doing so, made representations about the securities investors would receive and the use or safeguarding of their funds. Doc. # 39 ¶¶ 27–35, 138, 143. It identifies the principal offerings, the approximate amount raised and number of investors for each, and the period during which each offering occurred. *Id.* ¶¶ 27, 34.

The Amended Complaint then describes how the alleged scheme unfolded. The Standard Holdings Defendants allegedly sold specified classes of Huaxia shares before those classes had been created and later backdated the resolution creating them. *Id.* ¶¶ 36–45. The pleading traces investor proceeds into Standard Holdings accounts and identifies the segregated and trust accounts that allegedly were promised but never established. *Id.* ¶¶ 50–100. It also identifies specific transfers and personal expenditures and describes an instance in which later investor funds allegedly were used to pay an earlier investor. *Id.* ¶¶ 55–58, 69–73, 86–87, 101–07.

Taken together, these allegations make the SEC's theory clear. The SEC alleges that the securities transactions gave the Standard Holdings Defendants control over investor money; that the securities or safeguards associated with certain transactions did not exist as represented; and that the Dencers redirected portions of the proceeds to undisclosed personal uses. Rule 9(b) did not require the SEC to adopt the Standard Holdings Defendants' proposed dichotomy between a wholly fictitious venture and a legitimate business that paid excessive compensation. Nor did it require the SEC to quantify the precise amount the Dencers allegedly intended to divert or account for every dollar raised. Those matters concern the ultimate scope and proof of the alleged misconduct, not whether the pleading gives adequate notice of the scheme charged. *See Swoben*, 848 F.3d at 1180.

The Amended Complaint also distinguishes the Standard Holdings Defendants' respective roles, as Rule 9(b) requires. *See Swartz*, 476 F.3d at 764–65.

Tayt Dencer allegedly solicited and negotiated with investors, reviewed and approved investment agreements, made the business-use and trust-account representations to Investor 1, accessed the Standard Holdings accounts through Luke Dencer, and used investor proceeds for personal expenses. Doc. # 39 ¶¶ 28–30, 42–43, 50–60, 75–76, 92–100.

Luke Dencer allegedly solicited investors, signed or authorized investment agreements, controlled the accounts receiving investor proceeds, and directed identified transfers. *Id.* ¶¶ 28–30, 42, 57, 71–76, 101–06. He also allegedly used investor funds for his own and his wife's personal expenses and signed and backdated the resolution creating Huaxia's Class A and Class B shares. *Id.* ¶¶ 40–44, 57, 69–73, 76, 86–87.

Standard Holdings allegedly was the borrower under Investor 1's Notes, maintained the accounts into which his and other investors' funds were deposited and pooled. The alleged trust account was to be opened in Standard Holdings' name to facilitate a contemplated institutional investment in Standard Holdings. *Id.* ¶¶ 19, 30, 51–53, 69, 79, 92–100.

Huaxia allegedly accepted subscriptions for the shares, agreed through the transaction documents to issue the purchased securities, and acted as the issuer under the Huaxia stock offerings and related Notes. *Id.* ¶¶ 20, 36, 63–69, 79–84, 109–10.

Taken together, these allegations identify the entities through which the securities were offered and the individuals who solicited the investments and approved the governing documents. They also identify the accounts that received the proceeds and the conduct attributed to each Dencer after the money arrived. As in *Mikula*, the Amended Complaint describes both the mechanics of the alleged scheme and how each defendant allegedly contributed to it. *Mikula*, 2023 WL 3082364, at *4–5.

The Amended Complaint therefore gives each Standard Holdings Defendant adequate notice of the alleged scheme, the transactions and conduct on which it rests, and that defendant's alleged participation. The scheme theory satisfies Rule 9(b).[20]

F. The SEC Plausibly Alleges Misstatement Liability Under Section 17(a)(2)

The same alleged misstatements that support the SEC's Rule 10b-5(b) theory may also support liability under Section 17(a)(2), subject to that provision's additional requirement that the defendant obtain money or property by means of the statement. *See SEC v. Feng*, 935 F.3d 721, 734 (9th Cir. 2019) (considering the same alleged omissions under both provisions and explaining that their operative language substantially overlaps); *see also* Section IV.C above.

Because the Amended Complaint plausibly alleges scienter, it necessarily satisfies Section 17(a)(2)'s lower negligence standard. *See Aaron*, 446 U.S. at 695–97, 701–02 (holding that scienter is required under Section 17(a)(1), but not under Sections 17(a)(2) and (3)); *Dain Rauscher*, 254 F.3d at 856 (holding that negligence is sufficient under Sections 17(a)(2) and (3)).

Section 17(a)(2) also requires that the defendant obtain money or property by means of the challenged statement. 15 U.S.C. § 77q(a)(2); *Rumbaugh*, 2020 WL

[20] This conclusion addresses the particularity with which the alleged scheme and the Standard Holdings Defendants' roles are pleaded. It does not hold that every Standard Holdings Defendant "made" every challenged statement within the meaning of Rule 10b-5(b). *See Janus Cap. Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 142–43 (2011).

2510644, at *7 (denying dismissal where the complaint alleged that the defendants themselves received proceeds from the relevant investments).[21]

The SEC's allegations readily satisfy this requirement as to Standard Holdings and the Dencers. Standard Holdings allegedly received most investor proceeds directly into accounts it controlled. Doc. # 39 ¶¶ 30, 51–52, 68–69, 79–86. Tayt and Luke Dencer allegedly obtained portions of those proceeds—or their direct benefit—through cash withdrawals, transfers to personal accounts, residential expenses, restitution payments, and payments to family members. *Id.* ¶¶ 55–59, 69–74, 86–88. The SEC further alleges that investors transferred the money after receiving the challenged business-use, segregation, or trust-account representations. *Id.* ¶¶ 50–100.

Huaxia presents a closer question because the proceeds allegedly were deposited into Standard Holdings accounts rather than an account in Huaxia's name. But Huaxia allegedly was the issuer and contracting party for the share subscriptions; investors transferred money in response to Huaxia's agreements; and the same principals allegedly controlled both entities and directed Huaxia proceeds into Standard Holdings accounts. *Id.* ¶¶ 20, 23–24, 29–30, 36, 63–69, 75–76, 79–86. Drawing reasonable inferences in the SEC's favor, those allegations plausibly support the conclusion that Standard Holdings received the subscription proceeds on Huaxia's behalf. Because Huaxia allegedly issued the securities and acted through the same principals who controlled the receiving accounts, the Court cannot conclude at the pleading stage that Huaxia failed to obtain those proceeds merely because they were deposited into Standard Holdings accounts. *See SEC v. Norton*, 21 F. Supp. 2d 361, 365–66 (S.D.N.Y. 1998) (denying summary judgment on a Section 17(a)(2) claim where the funds were not transferred directly to the defendant and he did not profit from the transaction, but evidence that he controlled the funds in an escrow account and directed their transfer created a factual question whether he had "obtained money").

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[21] The Standard Holdings Defendants do not separately challenge that element; they argue that the Section 17(a) claim fails with the SEC's underlying fraud theories. Doc. # 44 at 29. The Court addresses this argument for completeness, however.

The SEC therefore plausibly alleges misstatement liability under both Rule 10b-5(b) and Section 17(a)(2).

G. The SEC Adequately Pleads Control-Person Liability Against Tayt Dencer and Luke Dencer

To state a claim under Section 20(a), the SEC must allege a primary violation of the Exchange Act and that the defendant exercised actual power or control over the primary violator. *Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1065 (9th Cir. 2000). The Standard Holdings Defendants seek dismissal only on the basis that the SEC has not pleaded the required primary violation. Doc. # 44 at 29; *see* Doc. # 47 at 30 n.11. Because the SEC has adequately pleaded primary violations of Section 10(b) and Rule 10b-5, and because the Amended Complaint alleges that Tayt and Luke Dencer jointly controlled Standard Holdings and Huaxia, controlled or accessed the companies' bank accounts, and reviewed or approved the investor agreements underlying the alleged violations, the Section 20(a) claim may proceed. Doc. # 39 ¶¶ 148–50; *see Erickson v. Corinthian Colls., Inc.*, No. CV 13-7466-GHK (PJWx), 2015 WL 12732435, at *18 (C.D. Cal. Apr. 22, 2015).

V. CONCLUSION

For the foregoing reasons, the Court DENIES the Standard Holdings Defendants' Motion.

IT IS SO ORDERED.

Dated: August 5, 2026

Cynthia Valenzuela

HON. CYNTHIA VALENZUELA
UNITED STATES DISTRICT JUDGE