NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CHRISTINE PINO, on behalf of herself and all others similarly situated,

Plaintiff,

v.

CARDONE CAPITAL, LLC, GRANT CARDONE, CARDONE EQUITY FUND V, LLC, and CARDONE EQUITY FUND VI, LLC,

Defendants.

Case No. 2:20-cv-08499-JFW (KSx)

CLASS ACTION

STATEMENT OF DECISION GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiff Christine Pino ("Plaintiff" or "Ms. Pino") brings this case against Defendants Cardone Capital, LLC ("Cardone Capital"), Grant Cardone ("Cardone"), Cardone Equity Fund V ("Fund V"), and Cardone Equity Fund VI ("Fund VI") (collectively, "Defendants") for alleged violations of Section 12(a)(2) and 15 of the Securities Act of 1933. Plaintiff now moves to certify a class, under Federal Rules of Civil Procedure 23(a) and (b)(3), of investors who purchased or otherwise acquired interests in Funds V and VI pursuant to their public offerings. Based on the pleadings, the parties' submissions, the record, and caselaw, the Court finds that Plaintiff has satisfied the requirements of Rules 23(a) and 23(b)(3), and **GRANTS** Plaintiff's Motion for the reasons discussed below. The Class is defined as:

> All persons and entities who purchased or otherwise acquired interests in Cardone Equity Fund V and Cardone Equity Fund VI pursuant to their public offerings. Excluded from the Class are defendants and their directors, officers, employees, and agents.

The Court further appoints Ms. Pino as Class Representative and Susman Godfrey L.L.P. as Class Counsel.

I. Factual and Procedural Background[1]

Cardone Capital and its CEO, Cardone, provide real-estate investment opportunities to "everyday investor[s]" through social-media crowdfunding. Second Amended Complaint ("SAC"), Dkt. 127, ¶¶ 4-5. In September 2020, Luis Pino ("Mr. Pino"), an investor in Funds V and VI, filed this lawsuit on behalf of himself and others similarly situated. Dkt. 1. He alleged that Cardone and Cardone Capital made material misrepresentations and omissions in violation of Sections 12(a)(2) and 15 of the Securities Act in connection with the public offerings of Fund V and Fund VI.

The Court dismissed his first amended complaint. Dkt. 94. On appeal, the Ninth

[1] The extensive factual and procedural history is well known to both the Court and the parties and, as a result, the Court only includes the factual and procedural history that is relevant to this Motion.

Circuit affirmed in part and reversed in part, and remanded so that Mr. Pino could replead his claims under the standard for opinion misstatements and omissions in *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175 (2015). *See Pino v. Cardone Cap., LLC*, 55 F.4th 1253 (9th Cir. 2022); *see also Pino v. Cardone Cap., LLC*, 2023 WL 2158802 (9th Cir. Feb. 22, 2023).

In February 2023, Mr. Pino passed away, and the Court substituted his daughter and successor-in-interest, Christine Pino, as lead plaintiff. Dkt. 124. Ms. Pino then filed a second amended complaint ("SAC"), Dkt. 127. In her SAC, she alleges Cardone misled investors in Instagram posts and YouTube videos in three ways. First, Cardone made projections about internal rates of return ("IRR") and distributions that were objectively and subjectively untrue. *See, e.g.*, *id.* ¶¶ 9-17, 57-68. Second, Cardone made misleading omissions. Specifically, in July 2018, the SEC reviewed Fund V's draft offering circular, directed Cardone to remove a projection of a fifteen-percent IRR, and determined that he lacked any basis to make that projection. *Id.* ¶ 55. Cardone removed the projection from Fund V's offering materials, but when he solicited investors on social media months later, he promised the same or even higher returns, and did not inform them about the SEC's contrary determination. *Id.* ¶ 69. Third, Cardone misrepresented who had the obligation for the Funds' debt by stating, in the caption of an Instagram post, "One question you might want to ask is, who is responsible for the debt? The answer is Grant!" *Id.* ¶ 86.

On October 5, 2023, the Court dismissed Plaintiff's SAC, Dkt. 137. On appeal, the Ninth Circuit reversed, holding that Plaintiff had plausibly alleged that all three categories of misrepresentations and omissions above were actionable. See *Pino v. Cardone Cap., LLC*, 139 F.4th 1102, 1110 (9th Cir. 2025) ("*Pino II*").

In December 2025, pursuant to the Court's Amended Scheduling and Case Management Order (Dkt. 146), Plaintiff timely moved for class certification. That Motion is now fully briefed.

II. Legal Standard

Class certification is appropriate when the proposed class satisfies the four prerequisites of Rule 23(a) and at least one of the prongs of Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Under Rule 23(a), certification is appropriate if the elements of numerosity, commonality, typicality, and adequacy are satisfied. Fed. R. Civ. P. 23(a). Plaintiff seeks certification of a class pursuant to Rule 23(b)(3), which also requires a showing of predominance and superiority. Fed. R. Civ. P. 23(b)(3).

III. Discussion

A. The Class Satisfies Numerosity and Commonality

Defendants do not contest that the proposed class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The class has at least 2,172 members, and likely hundreds more. *See* Dkt. 180-30 at 6 (noting that Fund V has 2,172 investors and Fund VI has 1,322 investors). As a result, the Court concludes that Rule 23(a)(1)'s numerosity requirement is satisfied.

Defendants also do not contest that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2); *see Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011). There are many common questions with common answers, including: (1) whether Defendants made misstatements or omissions in their communications to investors; (2) whether those misstatements or omissions were material; (3) whether Defendants subjectively knew that the communications were false; (4) whether Cardone and Cardone Capital are statutory sellers under the Securities Act; and (5) whether Cardone and Cardone Capital are "control persons" under Section 15 of the Securities Act. As a result, the Court concludes that Rule 23(a)(2)'s commonality requirement is met too.

B. Plaintiff is an Adequate Representative

Under Rule 23(a)(4), a representative and her counsel must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy inquiry centers

on two questions: "(1) do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Stanton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Defendants do not argue that Susman Godfrey L.L.P., Plaintiff's counsel, has conflicts with other class members or that it will not prosecute this action vigorously on behalf of the class. As a result, the Court concludes that Susman Godfrey L.L.P., which has prosecuted this case for more than five years, will adequately represent the class.

With respect to Plaintiff, Defendants argue that Ms. Pino is inadequate for several reasons, which are discussed below. However, for the reasons discussed below, the Court does not find any of Defendants' arguments persuasive.

1. Plaintiff's Request That, Following the Opt-Out Period and Post-Judgment, Class Members Have the *Option* to Tender Shares to Receive Rescissory Damages Does Not Defeat Her Adequacy

The Court starts with Defendants' argument that Plaintiff's request for rescissory relief puts her in conflict with the class. To support this claim, Cardone submits with his opposition the declarations of 226 investors in the Funds. Dkt. 195-13, ¶ 6 (Declaration of Andres Fischborn); Dkt. 195-14 (investor declarations). The declarations are substantively identical; each declarant states that he or she "would be harmed by, and would therefore oppose, any result in this lawsuit that would terminate my investment(s) before the end date." *See, e.g.*, Dkt. 195-14 at 3.

The Court gives minimal weight to these declarations. No class member will be forced, against his will, to "terminate" his investment as a result of this lawsuit. Instead, if Plaintiff prevails, investors can *choose* whether to "tender" their shares and receive rescissory damages. 15 U.S.C. § 77*l*(a)(2). In addition, rescission is the default remedy under Section 12(a)(2), *Randall v. Loftsgaarden*, 478 U.S. 647, 655 (1986), and courts regularly certify Section 12(a)(2) class actions, *Pub. Employees' Ret. Sys. of Miss. v. Merrill Lynch*, 277 F.R.D. 97, 101 (S.D.N.Y. 2011). Defendants' argument that a

request for rescission dooms class certification under Section 12(a)(2) is at odds with the statute's plain text and longstanding precedent.

Moreover, the opinions expressed by a small percentage of investor-declarants do not bear on whether Plaintiff is an adequate representative for the class. "Just because a subset of the putative class may not agree with the lawsuit does not mean that certification is foreclosed." *Martinez v. Flower Foods, Inc.*, 2016 WL 10746664, at *9 (C.D. Cal. Feb. 1, 2016). Indeed, the "Ninth Circuit . . . has rejected conflict of interest-based arguments against class certification where some putative class members prefer an allegedly unlawful status quo." *Anderson v. Boyne USA*, 2023 WL 4235827, at **8–9 (D. Mont. June 28, 2023) (collecting cases and certifying class despite class member declarations like those here). Defendants confuse "the question of whether a common injury unites the class with the distinct question of whether all class members agree about how best to *respond* to the injury. It is the former, not the latter, that drives the Rule 23 analysis." *Laumann v. NHL*, 105 F. Supp. 3d 384, 400 (S.D.N.Y. 2015). That is particularly true for a class certified under Rule 23(b)(3), where "any disagreements by potential class members over the premise of the lawsuit can be remedied by the standard opt-out procedure, allowing any dissenting class members to simply remove themselves from the lawsuit." *Zakinov v. Ripple Labs*, 2023 WL 4303644, at *4 (N.D. Cal. June 30, 2023); *Alfred v. Pepperidge Farm*, 322 F.R.D. 519, 541–42 (C.D. Cal. 2017) (same).

The Court also cannot and will not conclude, as a factual matter, that putative class members will prefer to remain invested in the Funds. Defendants claim that the Funds will eventually return more money to investors than they would receive if they obtain rescission under Section 12(a)(2). Dkt. 195 at 16. However, as the Ninth Circuit explained, Defendants' purported evidence -- their own Form 1-Ks – is "self serving" and does not "resolve the factual dispute between the parties" about performance. *Pino II*, 139 F.4th at 1111. In addition, there is no guarantee as to how these investments will perform months and years from now. As Plaintiff's expert explains, "[w]hile the IRR

can be projected at any point during the investment's life, projections are highly sensitive to market timing and valuation assumptions. The actual investment IRR cannot be calculated until the business plan is complete, the property is sold, and all cash flows are realized." Dkt. 184 at ¶ 22.

Furthermore, the Funds' performance today is irrelevant. *Omnicare* only requires "assessing what is true at the time misstatements are made," which in this case is 2019 and 2020. *Pino II*, 139 F.4th at 1111. Ultimately, if the class prevails, investors can choose to exercise their statutory right to rescind their investments, regardless of the Funds' actual performance. The Court cannot presume, based on just 226 investor declarations alone, what thousands of other class members may wish to do with their investments if Defendants are found to have violated the Securities Act.

As a result, the Court concludes that Defendants' argument that Plaintiff's pursuit of statutory relief under Section 12(a)(2) renders her an inadequate representative of the class.

2. Defendants Remaining Adequacy Arguments Also Fail

The Court also finds that Pino has adequate knowledge of this lawsuit to act as class representative. A class plaintiff does not need detailed case knowledge or legal sophistication for adequacy, and can rely on her counsel for that purpose. *See Surowitz v. Hilton Hotels*, 383 U.S. 363, 370–74 (1966). A plaintiff will only be found inadequate based on lack of knowledge if they have "alarming unfamiliarity" with the lawsuit. *Stuart v. Radioshack Corp.*, 2009 WL 281941, at *10 (N.D. Cal. Feb. 5, 2009); *see also In re Emulex Corp. Secs. Litig.*, 210 F.R.D. 717, 721 (C.D. Cal. 2002) (finding Plaintiffs "sufficiently knowledgeable about the case to adequately represent the class, even if they do not have a detailed understanding of the legal terminology or securities law").

Plaintiff's deposition testimony reflects that she fully understands the allegations in this case, including that "Cardone has falsely marketed and advertised to other investors," has reviewed pertinent materials, and is aware of her duties to the class. Dkt. 221-3 at 72:14–24, 77:23–78:1, 153:19–154:25, 278:22–279:17, 280:18–23. Her

testimony also reflects that she has spent significant time on this case, including responding to discovery and sitting for a deposition. *Id.* at 278:22–279:17, 280:18–23. Because she "understands [her] duties and is currently willing and able to perform them," Plaintiff is an adequate representative. *Loc. Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands*, 244 F.3d 1152, 1162 (9th Cir. 2001).

In addition, Plaintiff's representative capacity does not defeat adequacy. A decedent's successor may serve as class representative where, as here, she testified that "she is sufficiently involved in the litigation, understands her role as a class representative, and will adequately represent the interests of the absent class members." *In re Pizza Time Theatre Sec. Litig.*, 112 F.R.D. 15, 22 (N.D. Cal. 1986); *accord Est. of O'Shea through O'Shea v. Am. Solar Sol., Inc.*, 2021 WL 4819311, at *3 (S.D. Cal. Oct. 15, 2021). According to the Funds' subscription agreements, Mr. Pino's investments "inure to the benefit of the parties hereto and to their respective heirs, legal representatives, successors, and assigns." Dkt. 180-31 at 9. As her father's successor-in-interest, Plaintiff is an investor in the Funds and situated the same as any other investor.

The Court is also unpersuaded by Defendants' efforts to contest Plaintiff's adequacy by pointing to statements that her father allegedly made before his death. Cardone claims that he called Mr. Pino and that Mr. Pino told him that he was happy with his investments. Dkt. 195-12 (Declaration of Grant Cardone). Plaintiff disputes this narrative, claiming that her father told her that he was so shocked about this phone call -- which was made out of the blue and outside the presence of counsel -- that he hung up on Cardone. Dkt. 221-3 at 61:5–20. Regardless of which version is true, what Mr. Pino might have said in 2020 has no bearing on Plaintiff's ability to fully and adequately represent the class or whether Cardone violated securities laws.[2]

[2] Cardone's recitation of what Mr. Pino told him is also inadmissible hearsay. *See generally Huff v. White Motor Corp.*, 609 F.2d 286, 291 (7th Cir. 1979).

As a result, the Court concludes that Plaintiff and her counsel are adequate representatives of the Class.

C. Plaintiff's Claims are Typical of the Class

"Under the rule's permissive standards, representatives' claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Castillo v. Bank of Am., N.A.*, 980 F.3d 723, 729 (9th Cir. 2020) (citation omitted). Typicality is readily met in Securities Act cases because "in the context of claims alleging injury based on misrepresentations, the misconduct alleged [as to the named plaintiff] will almost always be the same [as to all class members]: the making of a false or misleading statement." *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145, 162 (2d Cir. 2012). In this case, Plaintiff's claims are not just typical of the class, they are identical. All of the claims arise out of the same course of conduct of the Defendants and are shared by all class members.

Defendants argue that Plaintiff is atypical "[f]or the same reasons" as she is inadequate: because some investors may not want to rescind their investments and because of Mr. Pino's alleged conversation with Cardone in 2020. Dkt. 195 at 15. These arguments fail for the reasons already addressed. As a result, the Court finds that Plaintiff's claims are typical of those of the Class.

Accordingly, the Court concludes that Plaintiff has satisfies each of the requirements of Rule 23(a).

D. The Class Satisfies Rule 23(b)(3)

1. Common Questions of Law and Fact Predominate

"The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating issues.'" *Tyson Foods, Inc. v. Bouaphekeo*, 577 U.S. 442, 453 (2016) (citation omitted). Predominance centers on whether the proposed class is "sufficiently cohesive to warrant adjudication by representation," and "measures the relative weight of the common to individualized claims." *Feller v. Transamerica Life Ins. Co.*, 2017 WL

6496803, at *4 (C.D. Cal. Dec. 11, 2017). "Where 'the liability issues' arising from Securities Act claims are 'common to the class, common questions are held to predominate over individual ones.'" *Tsereteli v. Residential Asset Securitization Trust 2006-A8*, 283 F.R.D. 199, 214 (S.D.N.Y. 2012) (citation omitted).

Courts routinely certify classes alleging violations of Section 12(a)(2) of the Securities Act, because the claim "depends, more than anything else, on establishing that certain statements and omissions common to all the offerings were material misrepresentations: a classic basis for a class action." *Pub. Employees' Retirement Sys. Of Miss.*, 277 F.R.D. at 101 ("As courts have repeatedly found, suits alleging violations of the securities laws, particularly those brought pursuant to Sections 11 and 12(a)(2), are especially amenable to class action resolution."); *In re China Intelligent Lighting & Elecs., Inc. Secs. Litig.*, 2013 WL 5789237, at *6 (C.D. Cal. Oct. 25, 2013) (finding that the "predominance requirement [was] easily met," as "virtually all of the material issues of law and fact [would] be common to the class"). In addition, a Section 12(a)(2) claim does not require proof of investor reliance. Instead, the claim turns only on whether the solicitations contained material misrepresentations or omissions, not on any individual investor's decision-making. *See Pino II*, 55 F.4th at 1260 (quoting *Smolen v. Deloitte, Haskins & Sells*, 921 F.2d 959, 965 (9th Cir. 1990) ("[R]eliance is not an element of a section 12(2) claim.").

This case is no exception. In this case, liability will turn on common answers to common questions, adjudicated using class-wide evidence. Those common questions with common answers that predominate include:

- Whether Defendants' alleged misstatements and omissions were material to investors. Materiality is a common, objective question, susceptible to a single answer for all purchasers. *See Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459-60 (2013) ("As to materiality, therefore, the class is entirely cohesive: It will prevail or fail in unison. In no event will the individual circumstances of particular class members bear on the inquiry"); *Noohi v.*

Johnson & Johnson Consumer, 146 F.4th 854, 868 (9th Cir. 2025) (holding that issues of materiality ideal for certification);

- Whether Cardone's projections about returns and distributions were objectively untrue;
- Whether Cardone knew his projections about IRR and distributions were untrue (*i.e.*, subjective falsity). In this case, the Ninth Circuit has already highlighted one piece of common evidence: Cardone's "*reaction* to the SEC letter -- removing the projections without any rebuttal or comment -- evinces Cardone's subjective disbelief" that investors would actually receive a fifteen-percent IRR. *Pino II*, 139 F.4th at 1110–11. Plaintiff has also identified other common evidence, including Cardone's contemporaneous internal projections for the Funds;
- Whether Cardone and Cardone Capital are statutory "sellers" under Section 12(a). *See Davy v. Paragon Coin, Inc.*, 2020 WL 4460446, at *7 (N.D. Cal. June 24, 2020) (predominance met where one common question is "whether Defendants are sellers"); and
- Whether Cardone and Cardone Capital are "control persons" under Section 15. *See China Intelligent Lighting*, 2013 WL 5789237, at *4 (noting that whether defendants are "control persons" under Section 15 can be resolved on a classwide basis); *Katz v. China Century Dragon Media, Inc.*, 287 F.R.D. 575, 586 (C.D. Cal. 2012) (same).

Damages will also not present any individualized issues, and certainly none that predominates. Rescission, the remedy available to class members who still hold investments in the Funds, is formulaic and can be calculated applying a common method. *See* 15 U.S.C. § 77*l*(a) (investors who still hold the security are entitled to return of the consideration paid, plus interest, less any income received). For that reason, courts routinely find that the calculation of damages is common to the class in a Section 12(a)(2) case. *See, e.g.*, *Tsereteli*, 283 F.R.D. at 207 (because Securities Act damages

are calculated using a statutory formula, "[t]he means of determining them therefore [is] common to all class members").

2. Defendants Present No Evidence of "Actual Knowledge" to Defeat Predominance

Defendants do not contest that the many common issues above can be resolved on a class-wide basis. Instead, Defendants argue that these common issues do not predominate because: (1) some investors *might* have seen the SEC's July 2018 letter prior to investing; and (2) some investors *might* have understood, from the offering circulars, the Funds' debt structure or that investing with Cardone is risky and does not, in fact, guarantee a fifteen-percent IRR or relatedly high distributions. These purported individualized issues do not defeat predominance.

The Ninth Circuit has already considered, and rejected, Defendants' claim that the public nature of the SEC letter bars a Section 12 claim. *See Pino II*, 139 F.4th at 1111-12. Even investors who have "the allegedly omitted, contrary facts in their hands," have a triable omissions claim under the Securities Act, *id.* at 1112, and "investors are not generally required to look beyond a given document to discover what is true and what is not," *Miller v. Thane Int'l*, 519 F.3d 879 (9th Cir. 2008). As a result, investors were not required to search for a letter on the SEC's website, EDGAR, before making an investment decision.

Defendants' argument also fails for lack of evidence. Actual knowledge is an affirmative defense for which Defendants must present evidence to defeat predominance. *See Bos. Ret. Sys. v. Uber Techs.*, 2022 WL 2954937, at *3 (N.D. Cal. July 26, 2022); *In re Vivendi Universal, S.A.*, 381 F. Supp. 2d 158, 175 (S.D.N.Y. 2003); *In re HPE Enterprise Servs.-DXC Tech. Co. Merger Litig.*, 2024 WL 2026977, at *9 (Cal. Sup. Ct. May 2, 2024). A defendant cannot use a defense "for which it has presented no evidence" to defeat predominance. *True Health Chiropractic v. McKesson*, 896 F.3d 923, 931–32 (9th Cir. 2018). In addition, even if Plaintiff had the burden of proof, mere speculation about potential individualized issues cannot defeat

class certification. *See Van v. LLR, Inc.*, 61 F.4th 1053, 1068 (9th Cir. 2023) (holding that "speculation that some class members' claims may be barred on the basis of actual knowledge is not sufficient to defeat certification"); *Tsereteli*, 283 F.R.D. at 213 (rejecting defendant's argument that knowledge issues would predominate because the defendant "ha[d] not provided sufficient evidence that any class member had actual knowledge of the allegedly false or misleading statements").

In this case, Defendants have failed to produce any evidence and, instead, merely offer empty speculation. *See* Dkt. 195 at 17 (claiming, without citation, that investors "no doubt" and "surely" reviewed the SEC's letter). Defendants have not identified a single investor who visited EDGAR and viewed the SEC's finding that Cardone had no basis to project a fifteen-percent IRR. This was not for lack of opportunity: Cardone contacted at least 280 investors, and had over 220 submit declarations, in connection with opposing this Motion. Not one of those declarants mentions seeing the SEC's letter.

In re Lyft Inc. Securities Litigation is instructive. In *in re* Lyft, Lyft opposed class certification by arguing that the alleged omissions -- information about sexual assaults on rides -- were reported in the press before the company's IPO, so individualized inquiries about knowledge predominated. 2021 WL 3711470, at *5 (N.D. Cal. Aug. 20, 2021). The court certified the class nonetheless because: (1) Lyft failed to introduce evidence that "any putative class member knew of the purported omissions"; (2) many common questions still predominated; and (3) "Defendants' assertion that investors had actual knowledge of the alleged misrepresentations and omissions based on these media reports can also be resolved on a class-wide basis." *Id.* at *7. Similarly, in this case, not only is there no evidence investors knew of the SEC letter, but whether an investor of ordinary intelligence would review EDGAR before investing with Cardone is a class-wide issue.

Although Defendants rely heavily on *Vignola v. Fat Brands, Inc.*, 2020 WL 1934976 (C.D. Cal. Mar. 13, 2020), that case has no application here. In *Vignola*, the

allegedly omitted information (about defendants' bankruptcies and delisting on Nasdaq) had been "widely reported in print and online media" in "major publications," including Forbes and the LA Times, for "*over a span of eight years* preceding the IPO." 2020 WL 1934976 at **4–5 (C.D. Cal. Mar. 13, 2020) (emphasis added). The defendants had provided evidence that these were "widely reported" events, including an "expert declaration" analyzing public disclosures. *Id.* at *4. Based on "[t]his evidence," the court concluded individualized knowledge inquiries could be necessary. *Id.* at *5. Notably, every court to consider *Vignola* has since rejected its application -- because, as in this case, the defendant put forward no evidence of "actual knowledge" -- and certified a class. *Lyft*, 2021 WL 3711470 at *7, n.6; *HPE Enterprise Servs.*, 2024 WL 2026977, at *12; *In re Talis Biomedical Corp. Secs. Litig.*, 2024 WL 536303, at *6 (N.D. Cal. Feb. 9, 2024); *Bos. Ret. Sys.*, 2022 WL 2954937, at *3. Indeed, neither Defendants nor the media publicized the existence of a paragraph in an SEC letter available only on EDGAR.

Defendants' second argument -- that individual issues predominate because the Funds' offering circulars clarify or negate any representation made in Cardone's social media posts -- is, in fact, a *common* issue, not an *individual* one. Whether statements in one document (the offering circulars) cure misrepresentations in another (social media) is a question of *materiality* -- and is judged by an objective, reasonable-person standard resolvable on a class-wide basis. *See TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976) (discussing the reasonable-investor standard); *Pino II*, 139 F.4th at 1112–13; *Talis*, 2024 WL 536303, at *6 ("whether [one document] conveyed all of the information that plaintiff alleges was misstated or omitted [in another]" is a question common to the class).

Accordingly, the Court concludes that common questions unite the class and predominate over any individualized questions.

3. Class Adjudication is Superior

Under Rule 23(b)(3)'s superiority prong, "[t]he Court must consider: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *China Intelligent Lighting*, 2013 WL 5789237, at *6 (quoting Fed. R. Civ. P. 23(b)(3)).

In this case, each of these factors is met. First, no individual member of the Class has expressed interest in controlling the prosecution of the case, nor has anyone brought an individual suit. Second, the Class is readily manageable "in light of the overwhelming predominance of common issues in this case and the statutory formulas for the calculation of damages." *Id.* at *7.[3] Third, "proceedings in this District are appropriate," *Katz*, 287 F.R.D. at 589, as this case has already been litigated here for five years and "it is desirable to consolidate this nationwide class action in this Court given the Court's familiarity with the claims," *In re Stec Inc. Secs. Litig.*, 2012 WL 6965372, at *11 (C.D. Cal. Mar. 7, 2012). Fourth, "a class proceeding, rather than what could be hundreds or even thousands of individual actions, will be far more efficient and will thereby reduce litigation costs and promote greater efficiency." *Katz*, 287 F.R.D. at 589.

Defendants do not dispute these four factors but instead argue that a class is not superior to other methods of adjudication because "Mr. Cardone has consistently offered refunds to investors who request them" and "has committed to doing the same

[3] The Court rejects Defendants' argument that rescission will require individual, equitable determinations. Rescission under Section 12(a)(2) is governed by a statutory formula that cannot be modified based on the general "nature of the equitable remedy of rescission." *Randall v. Loftsgaarden*, 478 U.S. 647, 658–59 (1986); *accord Pinter v. Dahl*, 486 U.S. 622, 647 n.23 (1988).

for any investor who wants to redeem their interests now." Dkt. 195 at 21. However, the Ninth Circuit has held that a defendant's voluntary refund program is "not a method for 'adjudicating' the controversy between" the parties and so is "irrelevant to the superiority analysis under Rule 23(b)(3)." *Van*, 61 F.4th at 1062, n.4 (quoting FRCP 23(b)(3)). In addition, there is no evidence from which the Court can conclude that Cardone has or actually will offer the refunds he promises. The last refund Cardone paid is over five years ago, to just eighteen investors, and Cardone has never paid the ten-percent interest he claims to now offer. Dkt. 221-6 at 4.

Defendants also argue that a class is not superior because "a class action will expose class members to rescissory relief that will harm their interests in the Funds." Dkt. 195 at 20. However, as previously discussed, no Class Member will be "expose[d] . . . to rescissory relief," if they do not wish it; they can opt out of the class and decline to tender their interests. In addition, as discussed, the Court cannot decide at this stage the merits argument that Class Members will be better off keeping their investments.

Accordingly, the Court concludes that a class action is superior to other methods of adjudication.

IV. Conclusion

Plaintiff's Motion for Class Certification is **GRANTED**.

The parties are ordered to meet and confer and agree on the form and manner of class notice consistent with this Order, the requirements of Rule 23, and due process, prescribing procedures by which Class members will be provided notice and opportunity to opt out of the Class. The parties shall file a Stipulation detailing the procedures by which Class members will be provided notice and an opportunity to opt out of the Class, along with a proposed Class Notice and any other necessary documents, with the Court on or before April 13, 2026. In the unlikely event that counsel are unable to agree upon the notice and opt-out procedures, the parties shall submit a Joint Statement setting forth their respective positions, including separate

versions of a proposed Class Notice and any other necessary documents, on or before April 13, 2026.

IT IS SO ORDERED.

DATED: March 27, 2026

Hon. John F. Walter
UNITED STATES DISTRICT JUDGE