UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22214

In the Matter of

EVAN H. KATZ,

Respondent.

DIVISION OF ENFORCEMENT'S OPPOSITION TO THE APPLICATION BY RESPONDENT EVAN H. KATZ TO VACATE ORDER INSTITUTING PROCEEDINGS

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December 3, 2025

OS Received 12/03/2025

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The Division of Enforcement ("Division") respectfully submits this Opposition ("Opposition") to the September 30, 2025 Application by Respondent Evan H. Katz ("Katz" or "Respondent") to Vacate Order Instituting Proceedings (the "Application"). The Commission should deny the Application as impermissibly seeking to revisit the settled Order Instituting Proceedings *In the Matter of Evan H. Katz*, A.P. File No. 3-22214, Sec. Act Rel. No. 11312 (Sept. 27, 2024) (the "Settled OIP") and to circumvent the federal district court, which entered a final judgment in April 2025 ordering Katz to comply with the payment obligations set forth in the Settled OIP and which retains jurisdiction to enforce that judgment. The Division also submits the Declaration of Christopher J. Dunnigan, executed December 3, 2025, in opposition to the Application ("Dunnigan Decl.").

As set forth in the Settled OIP, Katz violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (the "Securities Act") by providing investors with forged information relating to the historical returns for his hedge fund's trading strategy. (Settled OIP ¶¶ 1, 14.) Although Katz received the forged materials from his fund's co-founders—and the Settled OIP did not find he had actual knowledge of the forgeries—Katz nonetheless failed to take reasonable steps to verify the forged information in the light of the information available to him. (*Id*. ¶¶ 1, 6, 7.) Ultimately, investors in Katz's fund suffered losses of more than $4 million. (*Id*. ¶ 13.)

In his Application, Katz now seeks to vacate the Settled OIP based on two main arguments: first, that the Settled OIP was the result of "an overaggressive enforcement regime," and second, that the Settled OIP improperly imposed strict liability standards on Katz. As discussed below,

both these arguments lack merit, and Katz fails to make a showing of extraordinary circumstances as required to modify or vacate a settled order.

Furthermore, as a threshold matter, the federal district court action – and not this administrative proceeding – is the appropriate forum for Katz to seek relief from his payment obligations. That is because, in April 2025, as a result of Katz's noncompliance with his payment obligations under the Settled OIP, the United States District Court for the Eastern District of New York (the "District Court") granted an application by the Commission to convert the Settled OIP to a district court judgment, entered a final judgment ordering Katz to make the payments required under the Settled OIP, and expressly retained jurisdiction to enforce those payment obligations. Thus, the Commission lacks authority to vacate Katz's payment obligations or stay the "judgment enforcement action," as Katz requests.

For these reasons and as set forth in more detail below, Katz's Application should be denied in its entirety.

BACKGROUND

I. Relevant Procedural History

On September 27, 2024, the Commission issued the Settled OIP. *In the Matter of Evan H. Katz*, A.P. File No. 3-22214, Sec. Act Rel. No. 11312 (Sept. 27, 2024). Pursuant to Katz's Offer of Settlement, he waived his rights to, among other things, proceedings before a hearing officer, all post-hearing procedures, and judicial review by any court. (Dunnigan Decl. ¶ 4.) At the time of settlement, Katz was represented by the law firm of Sher Termonte LLP. (Dunnigan Decl. ¶ 2.)

The Settled OIP ordered Katz to, *inter alia*, pay a civil penalty of $98,542.97, disgorgement in the amount of $98,542.97, and prejudgment interest of $5,397.83 within 14 days of issuance of

the Settled OIP. (Settled OIP § IV.) Katz failed to fully comply with his payment obligations, making a payment of only $40,000 on October 11, 2024. (Dunnigan Decl. ¶ 5.)

As of March 2025, Katz owed the Commission $166,538.78 under the Settled OIP. (Dunnigan Decl. ¶ 6.) Accordingly, to enforce Katz's payment obligations, on March 31, 2025, the Commission sought to convert the Settled OIP to a district court judgment pursuant to Securities Act Section 20(c) [15 U.S.C. § 77t(c)]. *See SEC v. Katz*, 25-mc-01324-JMA (E.D.N.Y. Apr. 25, 2025) (the "District Court Action") (Dkt. No. 1.)

On April 25, 2025, the District Court entered a final judgment (the "District Court Judgment") against Katz and ordered Katz to pay the amounts ordered in the Settled OIP plus applicable interest. *SEC v. Katz*, 25-mc-01324-JMA (E.D.N.Y. Apr. 25, 2025) (Dkt. No. 17.)

On August 19, 2025, the Commission applied to the District Court for writs of garnishment to secure payments toward the District Court Judgment. *SEC v. Katz*, 25-mc-01324-JMA (E.D.N.Y. Apr. 25, 2025) (Dkt. No. 18.)

On August 22, 2025, the Commission, through its counsel in the District Court Action, agreed with Katz's new counsel that the Commission would "not take additional steps to collect from Mr. Katz provided he complies fully" with the terms of informal payment plan pursuant to which Katz agreed to pay the SEC $27,000 by August 27, 2025, $12,750 by the 26th of each month thereafter for 10 months, and a final payment of all outstanding principal and interest by August 26, 2026. (Dunnigan Decl. ¶ 8 & Ex. A.) The Commission further agreed, through its counsel in the District Court Action, to terminate the August 19, 2025 garnishment application upon proof of the August 27, 2025 payment. (Dunnigan Decl. Ex. A.) This payment plan agreement expressly did "not alter" the District Court Judgment. (*Id*.) Additionally, the agreement

provided that, "should Mr. Katz default at any point, the SEC may reapply [to the District Court] for writs of garnishment." (*Id*.)

On August 27, 2025, Katz made a payment of $27,000 in partial satisfaction of the District Court Judgment. (Dunnigan Decl. ¶ 9). Accordingly, on August 28, 2025, the Commission requested that the District Court terminate the Commission's then-pending garnishment application on the basis that "the parties have agreed to an informal payment plan, and Mr. Katz has made an initial payment pursuant to the plan." *SEC v. Katz*, 25-mc-01324-JMA (E.D.N.Y. Apr. 25, 2025) (Dkt. No. 20.) On August 29, 2025, the District Court granted the Commission's request to withdraw its August 19, 2025 garnishment application. *Id.* (Text Order).

On September 22, 2025, Katz made an additional payment to the SEC of $12,750. (Dunnigan Decl. ¶ 10.) On September 30, 2025, Katz filed the present Application to the Commission to vacate the Settled OIP.

II. Factual Findings in the Settled OIP

The Settled OIP found, among other things, that in June 2021, Katz and two other individuals – Akshay and Dev Kamboj (the "Kamboj brothers") – co-founded a currency trading fund, the Crawford Ventures Absolute Return Fund ("Fund"). (Settled OIP ¶ 8.) The Fund raised more than $16 million from approximately 45 investors. (*Id*. ¶ 13.)

Katz is an attorney and served as the Fund's Chief Operating Officer and General Counsel. (*Id*. ¶ 2.)

The Fund's PPM and marketing materials claimed that the Fund's currency trading strategy would mirror a successful strategy previously used by the Kamboj brothers in Separately Managed Accounts ("SMA"). (*Id*. ¶¶ 1, 5-6, 8.) Specifically, the Kamboj brothers' trading strategy purportedly generated average annual returns on investment of 78.71% between 2018 and 2020 in

at least nine SMAs. (*Id*. ¶ 5.) As proof of the SMA results, the Kamboj brothers provided Katz with an "Audit Report" and a "Performance Audit" (together, the "Forged Documents") purportedly issued by an audit and consulting firm ("the Auditor") based in Australia. (*Id*. ¶¶ 1, 6, 8.) In reality, the Auditor had not audited the SMAs and the Audit Report and the Performance Audit had been forged by the Kamboj Brothers. (*Id*. ¶¶ 1, 6-7.)

The Audit Report did not cover all of the trading underlying the Kamboj brothers' claimed performance, and brokerage statements the Kamboj brothers provided did not reconcile with the equity shown on the Audit Report. (*Id*. ¶ 7.) Nonetheless, and despite expressing misgivings to the Kamboj brothers about their candor, Katz provided the Forged Documents to prospective investors and used the Kamboj brothers' purported trading record to market the Fund and to solicit third-party accolades. (*Id*. ¶¶ 1, 7-11.) In one instance, Katz continued to use a third-party's award to market the Fund to investors after the third-party had retracted the award and directed the Fund to cease and desist from using the award in its marketing materials. (*Id*. ¶11.) In communicating with investors, Katz also vouched for the Fund's purported auditor (who had not audited the Fund), even though he himself had never met the auditor. (*Id*. ¶ 8.)

Although the Kamboj Brothers (who were the source of the Forged Documents) took steps to hide their conduct from Katz, the Settled OIP found that Katz failed to take reasonable steps to verify the Kamboj brothers' trading track record and confirm the legitimacy of the Audit Report and the Performance Audit, in violation of Sections 17(a)(2) and (3) of the Securities Act. (*Id*. ¶¶ 1, 6-11, 14.) For example, the Settled OIP found that Katz's lack of experience in currency trading, his lack of any prior relationship with the Kamboj brothers, and their having introduced themselves via unsolicited email should have caused Katz to take further steps to verify the Kamboj brothers' SMA trading track record. (*Id*. ¶ 7.)

During the Fund's operations, Katz's share of incentive compensation and management fees totaled $98,542.97. (*Id*. ¶ 12.)

ARGUMENT

I. The Commission Lacks Jurisdiction to Vacate Katz's Payment Obligations, Which are the Subject of a District Court Judgment.

As discussed above, after Katz failed to comply with his payment obligations under the Settled OIP, the Commission applied to the United States District Court for the Eastern District of New York to convert the Settled OIP to a final district court judgment pursuant to Securities Act Section 20(c), which authorizes federal district courts to issue "writs of mandamus commanding an person to comply with the provisions of [the Securities Act] or any order of the Commission made in pursuance thereof." *SEC v. Katz*, 25-mc-01324-JMA (E.D.N.Y. Apr. 25, 2025) (Dkt. No. 1). The District Court granted the Commission's application and entered the District Court Judgment on April 25, 2025, ordering Katz to pay the amounts ordered in the Settled OIP plus applicable interest. *Id*. (Dkt. No. 17). The District Court Judgment expressly provided that "[t]he Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment." *Id*. ¶ 7.

Accordingly, the Commission lacks authority or jurisdiction to relieve Katz of his monetary obligations, as set forth in the District Court Judgment. If Katz wishes to apply to the District Court for relief from the District Court Judgment pursuant to Federal Rule of Procedure 60(b), he may attempt to do so, but the Commission cannot vacate Katz's payment obligations, which would require modification of the District Court Judgment.

II. Katz Waived His Right to Further Proceedings.

Katz's Application also fails on procedural grounds because he waived his right to further proceedings pursuant to his Offer of Settlement, which included express waivers of, among other things, "all post-hearing procedures" and "judicial review by a court." *See In the Matter of Daniel C. Masters*, A.P. File No. 3-20051, 2022 WL 1604392, at *3 (citations omitted) (denying motion to vacate settled order because respondent "waived his right to further proceedings when he settled"); *In the Matter of Gregory Bolan*, A.P. File No. 3-16178, 2019 WL 2324336, at *4 (finding that respondent's waiver of hearing, post-hearing procedures, and judicial review by a court "precludes him from challenging his settlement") (quoting *Richard D. Feldman*, Exchange Act Release No. 77803, 2016 WL 2643450, at *3 (May 10, 2016)).

Katz, who is himself a lawyer and who was represented by counsel in connection with his settlement, "does not suggest that his offer to settle was not voluntary, knowing, or informed." *Masters*, 2022 WL 1604392, at *3.

Accordingly, even putting aside the jurisdictional issues discussed above, the Commission should deny the Application in light of Katz's waiver.

III. The Application Fails on the Merits.

In addition to being deficient on jurisdictional and procedural grounds, Katz's Application fails on the merits for the reasons discussed below.

A. Legal Standard

In the context of a motion to vacate a settled order, the Commission regularly looks to the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 60(b)(5), which provides that a party may be relieved from a final judgment where "it is no longer equitable that the judgment should have prospective application." *See In the Matter of Certain Off-Channel*

Communications Settled Orders, Exch. Act Rel. No. 102860, 2025 WL 1101495 at *2 (April 14, 2025).[1]

As the Supreme Court has explained, a party seeking to modify an order under Rule 60(b)(5) on the ground that the order is "no longer equitable" must establish "that a significant change in circumstances warrants revision of the decree." *Id.* (citing *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992)). Modifications may be appropriate, for example, where new factual conditions "make compliance with the decree substantially more onerous"; when the consent decree becomes "unworkable because of unforeseen obstacles"; when enforcement of the decree without modification would be detrimental to the public interest; or when there is a significant change in law. *Id.* (citing *Rufo*, 502. U.S. at 383-92).

Moreover, the "Commission and courts have long emphasized the 'strong interest' in maintaining the 'finality of settlements.'" *In the Matter of Certain Off-Channel Communications Settled Orders*, Exch. Act. Rel. No. 34-103330, 2025 WL 1769830, at *1 (June 26, 2025). Thus, a party seeking to modify a settled order must generally show "compelling" or "extraordinary" circumstances to justify such a modification. *Id.; see also In the Matter of Gregory Bolan*, A.P. File No. 3-16178, 2019 WL 2324336, at *3 (settlements "should be upheld whenever equitable and policy considerations so permit"). Modification under Rule 60(b) is reserved only for "exceptional circumstances" and are "generally not favored." *SEC v. Allaire*, No. 03-cv-4087, 2019 WL 6114484, at *2 (S.D.N.Y. Nov. 18, 2019). Where "a party makes a deliberate, strategic choice to settle, she cannot be relieved of such a choice merely because her assessment of the consequences was incorrect." *United States v. Bank of New York*, 14 F.3d 756, 759 (2d Cir. 1994); *see also*

[1] Katz also contends that Rule 60(b)(5) standard should apply by analogy here. *See* Application at 6.

Sampson v. Radio Corp. of America, 434 F.2d 315, 317 (2d Cir. 1970) ("[A] motion [for relief from a judgment] under [Federal Rule of Civil Procedure] 60(b) cannot be used to avoid the consequences of a party's decision to settle the litigation.")

B. Katz Has Failed to Demonstrate Extraordinary Circumstances

1. Katz's "Overaggressive Enforcement Regime" Argument Does Not Satisfy the Standard for Vacating a Commission Order

Katz argues in summary fashion that the Settled OIP was the product of an "overaggressive enforcement regime" and that "fairness and equity" militate in favor of vacating the Settled OIP because the Commission has dismissed "multiple enforcement actions in the digital assets area" and "stipulated to the dismissal and release of charges against defendants in multiple 'dealer cases'"—neither of which category of cases applies to the Settled OIP. (Settled OIP ¶¶ 5-13.) Most significantly, none of the cases cited by Katz involved modifications to settled orders or consent judgments and, thus, do not implicate the Commission's "strong interest in maintaining the finality of settlements." Quoting *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495 at *1. Furthermore, Katz does not even attempt to tether his argument that the Settled OIP represented an "overzealous" enforcement action to the relevant considerations under Rule 60(b)(5). For example, Katz does not –cannot – identify any new or unforeseen factual conditions that make compliance with the Settled OIP "substantially more onerous" or "unworkable." Nor does Katz identify any significant change in the relevant law. And while Katz makes a conclusory assertion – in the context of his request to stay the "judgment enforcement action" – that the public interest militates against "extending [Section 17(a)] liability to strict liability," this argument is unavailing because, as discussed below, the Settled OIP is based on findings of negligence, not

strict liability. Consequently, Katz fails to make the requisite showing of "extraordinary circumstances" to vacate the Settled OIP.

2. Katz's Strict Liability Argument Does Not Satisfy the Standard for Vacating a Commission Order

Katz's argument that that the Settled OIP improperly employed strict liability standards for determining liability under Sections 17(a)(2) and 17(a)(3) of the Securities Act because "Mr. Katz in fact acted with due care" (*see* Application at 8-9) is meritless. The Commission's findings in the Settled OIP make clear that he acted negligently, by failing to take reasonable steps to confirm the accuracy of fabricated information that he disseminated to investors despite his own misgivings about the Kamboj brothers' candor and the presence of other red flags, such as inconsistencies between the Audit Report and brokerage statements provided by the Kamboj brothers. (Settled OIP, ¶¶ 7-8, 14.)

Katz, of course, could have chosen to litigate this case, present evidence, and argue to the factfinder that he acted with due care, but the possibility that a factfinder might have found in his favor does not relieve Katz of the consequences of having made the strategic choice to settle. *See Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495 at *2-3 ("Settlor's remorse—and a desire to revisit that risk calculus—does not justify upsetting a final, agreed-upon settled order. Otherwise, the key virtue of settling cases—letting the parties move on after they each get some of what they want—would be lost.") (internal quotation marks omitted).

IV. Katz's Request to Stay the "Judgement Enforcement Action" Should Be Denied

Finally, Katz's request that the Commission stay the "judgment enforcement action" (*see* Application at 10) should be denied. As explained above, the District Court retains jurisdiction to enforce the District Court Judgment ordering Katz to comply with his payment obligations under

the Settled OIP. Thus, any request to stay the enforcement of Katz's monetary obligations must be made to the District Court.[2]

In any event, because the Application to vacate the Settled OIP is meritless and should be denied for all the reasons discussed above, Katz's request to hold his payment obligations in abeyance pending determination of the Application should also be denied as moot.

CONCLUSION

For the foregoing reasons, the Division requests that the Application be denied in its entirety.

Dated: December 3, 2025

Respectfully Submitted,

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[2] Pursuant to Federal Rule of Civil Procedure 62, a party seeking to stay enforcement of a district judgment must generally post a bond or other security, a procedure which Katz tries to circumvent by requesting a stay of the "judgment enforcement action" in this proceeding. *See Brooks v. Dash*, Case No. 19-cv-1944(JSR), 2020 WL 2521311, *1 (S.D.N.Y. May 16, 2020) ("The purpose of [FRCP] 62(b) is to ensure that the prevailing party will recover in full, if the decision should be affirmed.")

Certificate of Service

I, Christopher J. Dunnigan, Senior Trial Counsel for the Division of Enforcement, and counsel of record in this matter, hereby certify that, pursuant to Rule 150 of the Securities and Exchange Commission's Rules of Practice and Rules on Fair Funds and Disgorgement Plans that I caused to be served by UPS and email the Opposition of the Division of Enforcement to Application of Respondent Evan H. Hatz to Vacate Order Instituting Proceedings upon Howard Fischer, Esq., Moses & Singer LLP, The Chrysler Building 405 Lexington Avenue New York, NY 10174-1299, counsel of record for Respondent Evan H. Katz.

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