

# Clients & Friends Memo

## No Harm, No Remedy? Supreme Court Poised to Resolve Circuit Split on SEC Disgorgement Authority for Securities Violations

February 9, 2026

On January 9, 2026, the Supreme Court granted certiorari in *Sripetch v. SEC*<sup>1</sup> to resolve whether the Securities and Exchange Commission (SEC) may seek disgorgement—an equitable remedy requiring wrongdoers to return “ill-gotten gains”—without showing that investors suffered pecuniary harm. The case stands to resolve a split between the Second Circuit, which requires a showing of pecuniary harm to investors for disgorgement, and the First and Ninth Circuits, which do not.

Resolution of the question will unify the standards for disgorgement in SEC cases, ensuring that enforceability and exposure do not vary by forum. The stakes are high for both the SEC and would-be defendants: disgorgement yielded approximately \$3.54 billion per year from FY 2020–2024.

### Background

Among the central enforcement mechanisms in the SEC’s arsenal for addressing securities violations is disgorgement. “Disgorgement” is a modern label for an award based on profits attained by a wrongdoer and has been equated to the traditional equitable remedy of restitution.<sup>2</sup> It is recognized as a penalty for violating public law, designed to deter rather than to compensate.<sup>3</sup>

Statutory authority for SEC disgorgement appears in Section 21(d)(5) of the Securities Exchange Act of 1934, enacted as part of the Sarbanes-Oxley Act, which authorizes the SEC to seek “any equitable relief that may be appropriate or necessary for the benefit of investors.”<sup>4</sup> In 2020, the Supreme Court held in *Liu v. SEC* that disgorgement falls within that provision, so long as the amount “does not exceed a wrongdoer’s net profits” and “is awarded for victims.”<sup>5</sup> A year after *Liu*,

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<sup>1</sup> *Sripetch v. SEC*, No. 25-466, 2026 WL 73091 (U.S. Jan. 9, 2026) (“Grant of Certiorari”).

<sup>2</sup> *Liu v. SEC*, 591 U.S. 71, 75–76 & n.1, 79 (2020).

<sup>3</sup> *Kokesh v. SEC*, 581 U.S. 455, 465 (2017).

<sup>4</sup> 15 U.S.C. § 78u(d)(5).

<sup>5</sup> *Liu*, 591 U.S. at 74–75.

Congress enacted Exchange Act Section 21(d)(7), which expressly authorizes “disgorgement” in SEC actions, but leaves unaddressed what limitations apply to that remedy.<sup>6</sup>

*Sripetch* arises from an SEC civil enforcement action against Ongkaruck Sripetch and his associates. The SEC alleged a scheme to inflate stock prices of at least 20 penny stock issuers, generating more than \$6 million in illicit proceeds.<sup>7</sup> In 2020, the SEC charged the defendants with violations of Exchange Act Sections 9(a) and 10(b), Securities Act Sections 5(a), 5(c), and 17(a), Rule 10b-5, as well as aiding and abetting.<sup>8</sup> Ultimately, Sripetch entered a bifurcated consent judgment, admitting the factual allegations, with civil penalties and disgorgement reserved for later determination by the district court.<sup>9</sup> The SEC then sought \$4,115,365.88 in disgorgement.<sup>10</sup> Sripetch opposed, arguing disgorgement requires a showing that victims suffered pecuniary harm, which the SEC had not established.<sup>11</sup> The district court assumed without deciding that pecuniary harm is required, found the SEC had shown it, and ordered \$2,251,923.16 in net profits disgorged.<sup>12</sup> Sripetch appealed.

### **Ninth Circuit Approach: No Pecuniary Loss Needed**

A Ninth Circuit panel affirmed and aligned with the First Circuit, holding that disgorgement does *not* require proof of pecuniary harm to investors.<sup>13</sup> The Court emphasized that disgorgement “is a profits-based remedy” grounded in restitution and unjust enrichment, reflecting the principle that no one should profit from wrongdoing.<sup>14</sup> Disgorgement may be awarded for “an actionable interference” with “legally protected interests,” even absent quantifiable injury.<sup>15</sup> In the Court’s view, a pecuniary-loss requirement would blur the distinction between compensatory damages, which aim to make victims whole, and disgorgement, which strips wrongdoers of ill-gotten gains.<sup>16</sup>

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<sup>6</sup> 15 U.S.C. § 78u(d)(7).

<sup>7</sup> *SEC v. Sripetch*, 2024 WL 1546917, at \*2–4 (S.D. Cal. Apr. 8, 2024).

<sup>8</sup> *Id.* at \*1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*2.

<sup>11</sup> *Id.* at \*4.

<sup>12</sup> *Id.* at \*5, \*7.

<sup>13</sup> *SEC v. Sripetch*, 154 F.4th 980, 989 (9th Cir. 2025) (Circuit Judges Owens, Bennett, and Thomas); *see SEC v. Navellier & Assocs., Inc.*, 108 F.4th 19, 41 n.14 (1st Cir. 2024) (“Neither *Liu* nor our case law . . . require investors to suffer pecuniary harm as a precondition to a disgorgement award.”).

<sup>14</sup> *Sripetch*, 154 F.4th at 982.

<sup>15</sup> *Id.* at 986.

<sup>16</sup> *Id.* at 987.

**Divergence from the Second Circuit**

In so holding, the Ninth Circuit rejected the Second Circuit's contrary rule that pecuniary harm to investors is an absolute prerequisite for disgorgement. The Second Circuit read *Liu*'s statement that equitable disgorgement "is awarded for victims" to mean that a "victim" is one who suffered a financial loss; absent such loss, the investor is not a victim for equitable purposes.<sup>17</sup> The Second Circuit further observed that disgorgement aims to "restore[] the status quo,"<sup>18</sup> but without financial loss, the remedy could "confer[] a windfall" on otherwise unharmed investors.<sup>19</sup>

The Ninth Circuit in *Sripetch* disagreed with the Second Circuit's approach for three main reasons.

*First*, it deemed the Second Circuit's approach to be inconsistent with common law and traditional equity, which do not require pecuniary harm to support disgorgement.<sup>20</sup> At common law, a claimant seeking disgorgement need only show an actionable interference with the claimant's legally protected interests, not financial loss.<sup>21</sup>

*Second*, the Ninth Circuit opined that the Second Circuit erred by reading a pecuniary harm requirement into *Liu*'s reference to restoring the status quo, which in context addressed returning the wrongdoer to the status quo by stripping ill-gotten gains, not returning victims to the status quo by compensating them.<sup>22</sup> The Second Circuit's approach, the Ninth Circuit explained, "ignores the fundamental distinction" between compensatory damages and the restitutionary remedy of disgorgement.<sup>23</sup>

*Finally*, the Ninth Circuit rejected the Second Circuit's analogy to private securities actions (which require economic loss) as inapposite, noting that asymmetry is "by design": loss requirements in private litigation were fashioned by courts, in part, to address abusive litigation by private parties, while SEC enforcement actions are not subject to those concerns.<sup>24</sup> Because of this asymmetry,

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<sup>17</sup> *SEC v. Govil*, 86 F.4th 89, 94, 98, 102, 106 (2d Cir. 2023).

<sup>18</sup> *Id.* at 103 (quoting *Liu*, 591 U.S. at 80).

<sup>19</sup> *Id.* at 103 & n.14.

<sup>20</sup> *Sripetch*, 154 F.4th at 986.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 987.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 988–89.

reading an economic-loss prerequisite into § 78u(d)(5) “would undermine, rather than effectuate, the statutory scheme.”<sup>25</sup>

### Petition for Writ of Certiorari

On October 14, 2025, Sripetch petitioned for certiorari, challenging the Ninth Circuit’s affirmance. Sripetch argued that certiorari was warranted because the circuit split between the Second and Ninth Circuits—the two principal forums for SEC enforcement actions—has left the scope of the SEC’s disgorgement authority in disarray.<sup>26</sup> The SEC defended the Ninth Circuit’s no-pecuniary-harm rule on the merits, arguing disgorgement is a profits-focused remedy under § 78u(d)(5) and is separately authorized under § 78u(d)(7) without a “for the benefit of investors” limitation,<sup>27</sup> yet acknowledged the split and urged review.<sup>28</sup>

On January 9, the Court granted certiorari to resolve the following question: “[w]hether the SEC may seek equitable disgorgement under 15 U.S.C. 78u(d)(5) and (d)(7) without showing investors suffered pecuniary harm.”<sup>29</sup>

### Implications

It is unsurprising that the Supreme Court granted certiorari to resolve whether a pecuniary harm requirement exists for disgorgement. The split between the Second and Ninth Circuits—the two leading circuits for securities litigation nationwide—was reason enough. The more difficult endeavor is predicting how the Court will rule.

If recent jurisprudence is any indication, the Court’s inclination has been to dial back rather than expand the SEC’s disgorgement power. In its 2017 decision in *Kokesh v. SEC*, the Court held that a five-year statute of limitations applies to disgorgement because the remedy constitutes a “penalty” under 28 U.S.C. § 2462, emphasizing that disgorgement is “intended to deter, not to compensate.”<sup>30</sup> And in its 2020 *Liu* decision, the Court rejected the SEC’s expansive view that disgorgement serves primarily to strip wrongdoers of ill-gotten gains and held that it is permissible

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<sup>25</sup> *Id.* at 989.

<sup>26</sup> Petition for Writ of Certiorari at 9, *Sripetch v. SEC*, No. 25-466, 2025 WL 2961029 (Oct. 14, 2025) (“Petition for Writ of Certiorari”).

<sup>27</sup> Brief for the Respondent at 5, 7, *Sripetch v. SEC*, No. 25-466, 2025 WL 3709982 (Dec. 17, 2025) (“Brief for the Respondent”).

<sup>28</sup> *Id.* at 5, 11.

<sup>29</sup> Grant of Certiorari; Petition for Writ of Certiorari at I.

<sup>30</sup> *Kokesh*, 581 U.S. at 465.

only when it does not exceed a wrongdoer's net profits and is awarded for the benefit of victims.<sup>31</sup> The question in *Sripetch*, however, is a more ethereal matter of application: can someone be a "victim"—and can disgorgement be for that person's "benefit"—absent financial loss? That will be the Supreme Court's call.<sup>32</sup>

No matter the outcome, the Court's decision in *Sripetch* will be noteworthy. Disgorgement is a "central feature" of the SEC's enforcement arsenal, as both parties acknowledged in their certiorari briefing.<sup>33</sup> Between FY 2020 and 2024, the SEC obtained an average of \$3.54 billion per year from disgorgement.<sup>34</sup> That figure and the concomitant exposure faced by civil enforcement defendants will either rise or fall depending on whether the Ninth or Second Circuit's approach wins the day. An answer is expected by this summer.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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<sup>31</sup> *Liu*, 591 U.S. at 75.

<sup>32</sup> Notwithstanding *Liu*'s holding that disgorgement must "be awarded for victims," the SEC collected \$6.1 billion in disgorgement in FY 2024, but returned only \$345 million to investors—less than six percent of that total. See Press Release, SEC, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

<sup>33</sup> Brief for the Respondent at 10; Petition for Writ of Certiorari at 3, 16 (explaining that in FY 2024, the SEC obtained \$6.1 billion in disgorgement and prejudgment interest out of \$8.2 billion in total financial remedies).

<sup>34</sup> Press Release, SEC, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186> (\$6.1 billion); Press Release, SEC, SEC Announces Enforcement Results for Fiscal Year 2023 (Nov. 14, 2023), <https://www.sec.gov/newsroom/press-releases/2023-234> (\$3.4 billion); Press Release, SEC, SEC Announces Enforcement Results for FY22 (Nov. 15, 2022), <https://www.sec.gov/newsroom/press-releases/2022-206> (\$2.2 billion); Press Release, SEC, SEC Announces Enforcement Results for FY 2021 (Nov. 18, 2021), <https://www.sec.gov/newsroom/press-releases/2021-238> (\$2.4 billion); Press Release, SEC, SEC Division of Enforcement Publishes Annual Report for Fiscal Year 2020 (Nov. 2, 2020), <https://www.sec.gov/newsroom/press-releases/2020-274> (\$3.6 billion).