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When the Feed Becomes the Offering

Five Lessons from Pino v. Cardone Capital for Social Media Syndicators — and Why the Section 12(a)(2) Rescission Remedy Should Change How Sponsors Market Online

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A NOTE BEFORE YOU READ — *Pino v. Cardone Capital* is active litigation. An investor class was certified in March 2026; the defendants' Rule 23(f) petition for interlocutory review is pending before the Ninth Circuit; and trial is currently scheduled for March 9, 2027.[i] The appellate holdings discussed below arise from the pleading stage, at which courts must accept the complaint's well-pleaded allegations as true. Nothing in this alert is a finding — or a prediction — that any defendant violated the securities laws, and the defendants dispute the allegations.

Accordingly: (i) the recommendations in this alert are **subject to change** as the case proceeds through discovery, trial, appellate, and any regulatory developments; (ii) every recommendation is **highly fact-sensitive**, and no general guidance substitutes for advice on a specific offering; and (iii) the analysis below is based on the **currently published facts** of the litigation, which may change — perhaps materially — as the record develops. Finally, the offering at issue in *Pino* was a **Regulation A+ offering, not a Rule 506(c) private placement**; the doctrine maps onto 506(c) offerings with differences that matter, and we flag them below.

At a Glance

- **Mass promotion can make you a statutory "seller."** A sponsor or founder who promotes an offering to a mass audience — Instagram, YouTube, TikTok, podcasts — can face rescission liability under Section 12(a)(2) of the Securities Act without ever addressing a single investor individually.
- **Casual return talk is actionable.** Statements like "you're gonna walk away with a 15% annualized return" are opinion statements whose sincerity and factual basis will be litigated under the Supreme Court's *Omnicare* framework.
- **Undisclosed regulator pushback is omission fuel.** The most damaging allegation in *Pino* is an SEC letter directing removal of return projections from offering materials — projections the videos allegedly kept making, with the letter never mentioned.

- **Fraud disclaimers do not defeat the claim,** because fraud is not an element of Section 12(a)(2).
- **These claims certify.** The same videos reached every investor; a class was certified in 2026, and trial is set for March 2027.

The Case in Brief

Cardone Capital, LLC is a real estate syndication sponsor founded by Grant Cardone, a social media personality with millions of followers. Through Cardone Equity Fund V and Fund VI, it offered interests in multifamily real estate funds under Regulation A+ — the "mini-IPO" exemption that permits public offerings to retail investors — and marketed the funds principally through Instagram and YouTube.[ii]

Luis Pino, a retiree, alleged that he invested $10,000 after watching Cardone's Instagram videos. The communications at issue, as alleged, included statements that investors were "gonna walk away with a 15% annualized return," embellished with "you can tell the SEC that's what I said it would be"; monthly-distribution projections presented as what investors *would* receive; and, on the funds' leverage, "who is responsible for the debt? The answer is Grant!"[iii] The complaint further alleged that the SEC had sent Cardone Capital a letter directing it to remove annualized-return projections from its offering materials — a fact nowhere disclosed in videos that allegedly continued to feature such projections.[iv]

Mr. Pino filed a putative class action in 2020 in the Central District of California, asserting claims not under the familiar antifraud rule, Rule 10b-5, but under **Sections 12(a)(2) and 15 of the Securities Act of 1933** — a channel selection that, as discussed below, matters enormously. Following Mr. Pino's death, his daughter, Christine Pino, was substituted and now serves as class representative.[v]

What the Ninth Circuit Held

Pino I (2022): A Mass Communication Can "Solicit"

The district court initially dismissed, reasoning that the defendants were not statutory "sellers" under *Pinter v. Dahl* because the videos addressed the public at large rather than Mr. Pino personally. The Ninth Circuit reversed: nothing in Section 12 requires that a solicitation be individually targeted — a person can solicit a purchase "by promoting securities to a mass audience," at least where motivated by his own financial interest.[vi] The court aligned itself with the Eleventh Circuit's holding in *Wildes v. BitConnect* that YouTube promoters of the collapsed BitConnect program were statutory sellers: the Securities Act, both courts observed, provides no free pass for online solicitations and was never frozen in its 1933, newspaper-era media environment.[vii] The Supreme Court declined review in October 2023.[viii]

Pino II (2025): Projections, Omissions, and Disclaimers Under Omnicare

After a second dismissal — this time on the ground that the return statements were non-actionable opinion or optimism — the Ninth Circuit reversed again, applying *Omnicare*'s opinion-liability framework to Section 12(a)(2). The panel held that (i) the return and distribution projections were opinions adequately alleged to be both **subjectively disbelieved** — evidenced in part by Cardone Capital's acquiescence in the SEC's directive to remove them — and objectively untrue; (ii) the **omission of the SEC letter** was an actionable material omission, because a reasonable investor hearing confident return projections would want to know the agency had told the sponsor to stop making them; (iii) an investor's theoretical ability to consult **publicly available filings** does not defeat an omissions claim at the pleading stage; (iv) **disclaimers addressed to "fraud" do not defeat** a Section 12(a)(2) claim, since fraud is not an element; and (v) the "Grant is responsible for the debt" statement was adequately alleged to be a material misstatement.[ix]

2026: Certification, a Pending Appeal, and a Trial Date

In March 2026, Judge John F. Walter certified a class of investors who acquired interests in Funds V and VI through the public offerings.[x] The defendants' Rule 23(f) petition — arguing principally that investors' "actual knowledge" of the truth should be an element of the claim rather than an affirmative defense, and that individualized knowledge inquiries should have defeated predominance — remains pending as of this writing.[xi] Under the court-approved notice, the opt-out deadline passed on July 14, 2026, and trial is scheduled for March 9, 2027.[xii]

The Remedy: Why Plaintiffs Chose Section 12(a)(2)

Section 12(a)(2) gives the purchaser of a security a private right of action against any person who "offers or sells" the security "by means of a prospectus or oral communication" containing a material misstatement or omission. The remedy is **rescission**: tender the security back and recover the purchase price with interest (less income received), or equivalent damages if the security has been sold.[xiii]

What makes the section formidable is what the plaintiff does *not* have to prove: **no scienter, no intent to defraud, no reliance, and no loss causation** as an element of the claim. The defendant may escape only by carrying its own burdens — the statutory **reasonable care** defense (that it did not know, and in the exercise of reasonable care could not have known, of the untruth or omission) or **negative causation** under Section 12(b) (that the loss in value resulted from other causes).[xiv] Compare Rule 10b-5, where the plaintiff must plead scienter with particularity and prove reliance and loss causation.[xv] Plaintiffs who can plead Section 12(a)(2) plead it *instead of* fraud — which is exactly what happened in *Pino*, and why fraud-directed disclaimers accomplished nothing.

HOW THE PRINCIPAL LIABILITY PROVISIONS COMPARE

	§ 11	§ 12(a)(1)	§ 12(a)(2)	§ 17(a)	Rule 10b-5
Reaches	Misstatements in a registration statement	Any sale without registration or a valid exemption	Misstatement or omission in a prospectus or oral offering communication	Fraud or misstatements in the offer or sale	Fraud in connection with any purchase or sale
Private suit?	Yes	Yes	Yes	Generally no (SEC only)	Yes (implied)
State of mind	None required	None — strict liability	None (reasonable-care defense)	Scienter for (a)(1); negligence for (a)(2)–(3)	Scienter, pleaded with particularity
Reliance	Not required	Not required	Not required (plaintiff must lack knowledge of the untruth)	Not required	Required
Remedy	Statutory damages	Rescission	Rescission	SEC remedies	Out-of-pocket damages

The Gustafson Boundary — and Why 506(c) Issuers Should Draw No Comfort

Under *Gustafson v. Alloyd Co.*, Section 12(a)(2) reaches communications in *public* offerings, and most courts hold it inapplicable to purely private placements.[xvi] Cardone's funds were Regulation A+ offerings — public offerings — so the section applied directly. A Rule 506(c) sponsor might conclude the case is therefore someone else's problem. That would be a mistake, for three reasons. *First*, if a 506(c) exemption fails — inadequate accredited-investor verification being the classic route — the offering becomes an unregistered public distribution exposed to **Section 12(a)(1) strict rescission liability**, where the *same* mass-solicitation "seller" doctrine identifies the defendants and no misstatement need be shown at all.[xvii] *Second*, **Rule 10b-5 and Section 17(a)** apply to offering communications regardless of exemption, and district courts have already applied the *Pino*/*Wildes* solicitation doctrine to social media promoters of exempt and crypto offerings.[xviii] *Third*, **state blue-sky antifraud provisions** — with their often-broader seller definitions and "material aid" liability — apply to exempt offerings, and **Section 15** extends liability, jointly and severally, to persons who control a Section 12 seller.[xix] The practical rule after *Pino* is simple: for liability purposes, every public-facing marketing communication is an offering document, whatever the exemption.

Five Lessons for 506(c) Syndicators

Lesson One: Every Post Is an Offering Communication — There Is No "Marketing-Only" Safe Zone

Once mass promotion can make the speaker a statutory seller, the distinction between the "offering documents" and the "marketing" collapses. Every video, reel, post, webinar, and podcast appearance promoting a live or contemplated offering should be pre-cleared by counsel, carry the appropriate legends, and be archived as published. Rule 506(c) *permits* general solicitation; it does not deregulate its content.[xx]

Lesson Two: Never Restate Return Targets Conversationally

Pino II treats informal projections as opinion statements whose sincerity and basis will be litigated. State targeted returns only in materials designed to carry them — alongside their assumptions and risk disclosures — and train every speaker never to restate them casually ("you're gonna walk away with 15%") on camera, on a podcast, or in comment threads. The gap between a disciplined "target" and a conversational "you'll get" is the gap between a defensible projection and an actionable opinion.[xxi]

Lesson Three: Regulator Pushback Must Surface

The single most damaging allegation in *Pino* is the undisclosed SEC letter. Once the staff — federal or state — has objected to a marketing claim, continuing to make the claim without disclosing the objection is itself the actionable omission. Any regulator comment bearing on marketing or offering claims should reach counsel on receipt, be logged and resolved, and be reflected in every subsequent communication for as long as it remains relevant.[xxii]

Lesson Four: Disclaimers Are Not a Substitute for Consistency — and Watch What You Say About the Debt

Because fraud is not an element of Section 12(a)(2), disclaimers directed at fraud do not defeat the claim — and *Pino II* holds that the public availability of corrective information is no defense at the pleading stage. The controls that work are structural: marketing that says nothing the offering documents do not support, qualification-by-the-offering-documents legends, and disciplined precision about leverage, guarantees, downside protection, and personal backing. "Who is responsible for the debt? Grant!" survived dismissal as a material misstatement.[xxiii]

Lesson Five: Plan for Class Treatment and Personal Exposure

Identical mass communications reaching every investor are structurally suited to class certification, as the 2026 order confirms. Founders who appear on camera should expect to be named personally — both as direct sellers and as Section 15 control persons, with the founder's personal accounts inside the compliance perimeter. The perimeter also includes written agreements and compensation disclosure for any engaged promoter (Section 17(b)'s anti-touting rule and the SEC's influencer enforcement reach paid promotion), Rule 506(d) bad-actor diligence on compensated solicitors, rigorous accredited-investor verification files (the failed-exemption path to Section 12(a)(1) runs directly through verification), and confirmation that D&O/E&O coverage and indemnification actually reach offering-communication claims against the manager and its principals.[xxiv]

What Pino Adds to Our Prior Guidance

Readers of our recent alerts will recognize the through-line — and *Pino* sharpens each piece.[xxv] Our Rule 506(c) guide explained that general solicitation is now lawful; *Pino* supplies the liability architecture that polices its content: permitted does not mean unregulated, and the accredited-investor verification discipline we described is itself marketing-liability protection, because a failed exemption converts every public communication into Section 12(a)(1) exposure. Our executive-communications alert on podcast appearances counseled treating the CEO's interview as an offering communication; *Pino* confirms that the speaker personally — not just the issuer — can be the defendant, and that spoken restatements of return targets are precisely what gets litigated. Our pre-solicitation alert addressed *when* public communications may begin; *Pino* adds the content discipline that governs once they do. And our unregistered-finder alert flagged the risks of compensated intermediaries; *Pino* and the SEC's anti-touting enforcement extend the same scrutiny to compensated promoters and influencers. The regulatory backdrop points the same direction: FINRA's influencer-supervision actions and the SEC's Marketing Rule sweeps define the standard of care regulators — and courts — will expect of anyone marketing securities online.[xxvi]

The Bottom Line

The *Pino* line converts a marketing-practices question into a securities-liability regime: mass communications solicit; casual projections are actionable opinions; omissions of regulator pushback are material; disclaimers do not save the speaker; and the resulting claims certify as classes, with principals named personally. For Rule 506(c) syndicators, the runway for *how you may market* has never been broader — and the consequences of *what you say* have never been sharper. We are monitoring the pending Rule 23(f) petition and the run-up to the March 2027 trial and will update this guidance as the record develops.

> *Treat every public-facing communication as an offering document — whatever the exemption — because the plaintiffs' bar now does.*

If you are planning a Rule 506(c) offering, reviewing your marketing and social media practices, or responding to regulator comments on offering communications, we would be pleased to help.

FOR FURTHER INFORMATION

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ENDNOTES

[i] Order Granting Plaintiff's Motion for Class Certification, *Pino v. Cardone Capital, LLC*, No. 2:20-cv-08499-JFW (KSx) (C.D. Cal. Mar. 2026), ECF No. 229; Defendants' Petition for Permission to Appeal Pursuant to Fed. R. Civ. P. 23(f), *Pino v. Cardone Capital, LLC*, No. 26-2252 (9th Cir. filed Apr. 10, 2026); Court-Approved Class Notice, *Pino v. Cardone Capital, LLC*, https://www.cardoneclassaction.com (last visited Aug. 11, 2026) (July 14, 2026 opt-out deadline; March 9, 2027 trial date). All dates and settings are subject to change.

[ii] See 17 C.F.R. §§ 230.251–.263 (Regulation A); *Pino v. Cardone Capital, LLC*, 55 F.4th 1253, 1255–56 (9th Cir. 2022) [hereinafter *Pino I*].

[iii] *Pino I*, 55 F.4th at 1255–56; *Pino v. Cardone Capital, LLC*, No. 23-3512, 2025 WL 1642422, at *1–2 (9th Cir. June 10, 2025) [hereinafter *Pino II*].

[iv] *Pino II*, 2025 WL 1642422, at *2, *5–6.

[v] See Docket, *Christine Pino v. Cardone Capital, LLC*, No. 2:20-cv-08499-JFW (KSx) (C.D. Cal.) (substitution of Christine Pino, as successor to Luis Pino, as named plaintiff and class representative).

[vi] *Pino I*, 55 F.4th at 1257–59 (construing *Pinter v. Dahl*, 486 U.S. 622, 647 (1988), and Securities Act of 1933 § 2(a)(3), 15 U.S.C. § 77b(a)(3)).

[vii] *Wildes v. BitConnect Int'l PLC*, 25 F.4th 1341, 1345–46 (11th Cir. 2022).

[viii] *Cardone Capital, LLC v. Pino*, No. 22-1016 (U.S. Oct. 2, 2023) (mem.) (denying certiorari).

[ix] *Pino II*, 2025 WL 1642422, at *4–8 (applying *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175 (2015)).

[x] Order Granting Plaintiff's Motion for Class Certification, *supra* note 1.

[xi] Defendants' Rule 23(f) Petition, *supra* note 1, at 1–2 (questions presented).

[xii] Court-Approved Class Notice, *supra* note 1.

[xiii] Securities Act of 1933 § 12(a)(2), 15 U.S.C. § 77l(a)(2).

[xiv] 15 U.S.C. § 77l(a)(2), (b); see also Securities Act § 13, 15 U.S.C. § 77m (one-year discovery and three-year repose periods for Securities Act claims).

[xv] 17 C.F.R. § 240.10b-5; *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976) (scienter required); 15 U.S.C. § 78u-4(b) (PSLRA heightened pleading standard).

[xvi] *Gustafson v. Alloyd Co.*, 513 U.S. 561, 584 (1995).

[xvii] Securities Act § 12(a)(1), 15 U.S.C. § 77l(a)(1); *id.* § 5, 15 U.S.C. § 77e; 17 C.F.R. § 230.506(c) (reasonable-verification condition).

[xviii] E.g., *De Ford v. Koutoulas*, No. 6:22-cv-652, 2023 WL 2709816 (M.D. Fla. Mar. 30, 2023) (crypto promoters as statutory sellers based on social media promotion).

[xix] Securities Act § 15, 15 U.S.C. § 77o (control-person liability); *id.* § 17(a), 15 U.S.C. § 77q(a). State securities statutes commonly impose liability on sellers and on persons who "materially aid" a sale; the governing provisions vary by state.

[xx] 17 C.F.R. § 230.506(c); *Pino I*, 55 F.4th at 1257–59.

[xxi] *Pino II*, 2025 WL 1642422, at *4–6; *Omnicare*, 575 U.S. at 184–89.

[xxii] *Pino II*, 2025 WL 1642422, at *5–6.

[xxiii] *Id.* at *6–8.

[xxiv] Securities Act §§ 15, 17(b), 15 U.S.C. §§ 77o, 77q(b); 17 C.F.R. § 230.506(d) (bad-actor disqualification; covered persons include compensated solicitors); SEC Press Release 2022-183, SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security (Oct. 3, 2022); SEC Press Release 2023-34, SEC Charges Paul Pierce for Unlawfully Touting and Making Misleading Statements About Crypto Security (Feb. 17, 2023); SEC Press Release 2023-59, SEC Charges Crypto Entrepreneur Justin Sun and His Companies for Fraud and Other Securities Law Violations (Mar. 22, 2023) (also charging eight celebrities with unlawful touting).

[xxv] SP Legal Advisors PLLC, *Unlocking Capital Through Rule 506(c): A Plain-English Guide to Publicly Marketed Private Offerings* (May 2026); SP Legal Advisors PLLC, *When the CEO Wants to Go on a Podcast: Executive Communications Guidance for Sponsors with a Live or Imminent Reg D Offering* (May 2026); SP Legal Advisors PLLC, *Pre-Solicitation Materials in a Regulation D Offering: How to Gauge Investor Interest Without Tripping the Rules* (June 2026); SP Legal Advisors PLLC, *The Friend Who Wants a Cut: Why Paying Unregistered "Finders" in Regulation D Offerings Triggers Rescission, Bad-Actor Disqualification, and SEC Enforcement* (June 2026), each available from the firm upon request.

[xxvi] FINRA Regulatory Notice 17-18, Guidance on Social Networking Websites and Business Communications (Apr. 2017); FINRA News Release, FINRA Fines M1 Finance $850,000 for Violations Related to Use of Social Media Influencer Program (Mar. 18, 2024); SEC Press Release 2023-173, SEC Sweep into Marketing Rule Violations Continues with Charges Against Nine Investment Advisers (Sept. 11, 2023).