**18.11 Securities—Good Faith Defense to Controlling Person Liability**

The defendant [*insert name*] contends that [he] [she] [*other pronoun*] [it] is not liable to the plaintiff even if [he] [she] [*other pronoun*] [it] was a controlling person because [he] [she] [*other pronoun*] [it] did not induce the violation that led to the plaintiff’s economic injury and [he] [she] [*other pronoun*] [it] acted in good faith. The defendant has the burden of proving each of the following two elements by a preponderance of the evidence:

First, the defendant did not directly or indirectly induce the violation; and

Second, the defendant acted in good faith.

The defendant can prove good faith only by establishing that [he] [she] [*other pronoun*] [it] maintained and enforced a reasonable and proper system of supervision and internal control.

If you find that the defendant has proved each of these two elements, your verdict should be for the defendant. If you find that the defendant has failed to prove either of these elements (or both), your verdict should be for the plaintiff.

**Comment**

*See* 15 U.S.C. § 78t(a) (Section 20(a) of the 1934 Act (Liability of Controlling Persons)); *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1575-76 (9th Cir. 1990) (en banc) (holding that defendant has burden of establishing good faith).

*Revised September 2024*