

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE: FTX COLLAPSE LITIGATION | **MDL Docket** _____

**PETITIONERS', EDWIN GARRISON'S, GREGG PODALSKY'S, SKYLER
LINDEEN'S, ALEXANDER CHERNYAVKSY'S, SUNIL KAVURI'S, GARY
GALLANT'S, AND DAVID NICOL'S MOTION FOR TRANSFER OF RELATED
ACTIONS TO THE SOUTHERN DISTRICT OF FLORIDA**

Petitioners, Edwin Garrison, Gregg Podalsky, Skyler Lindeen, Alexander Chernyavksy, Sunil Kavuri, Gary Gallant, and David Nicol (the "Petitioners") hereby move for entry of an order transferring the Related Actions (described below) to the United States District Court for the Southern District of Florida for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure for the Judicial Panel on Multidistrict Litigation. This Motion is supported by the accompanying Brief and Schedule of Actions. In support of the motion, Petitioners state:

1. To date, Undersigned Counsel have two pending, and already consolidated class action cases related to the collapse of the FTX cryptocurrency trading platform pending before the Honorable K. Michael Moore in the Southern District of Florida, including *Garrison, et al. v. Bankman-Fried, et al.*, No. 1:22-cv-23753-KMM (S.D. Fla.) and *Podalsky, et al. v. Bankman-Fried, et al.*, No. 1:22-cv-23983-KMM (S.D. Fla.). Undersigned Counsel organized and consolidated various different complaints and plaintiffs that were all filed in various state and federal courts in the state of Florida.

2. *Garrison* was filed on November 15, 2022, and is the first-filed FTX-related class action filed in the country, which represents the only putative nationwide class of FTX customers against these 6 FTX Insiders and 12 Brand Ambassadors, and the consolidated proceedings also include representation of a putative global class of FTX customers. Both Complaints are supported

by extensive Expert Testimony, attesting that all FTX interest accounts were the sale of unregistered securities.

3. Undersigned Counsel also filed individual FTX actions in state court in the Eleventh Judicial Circuit in and for Miami-Dade County (“Florida State Actions”), which were also all consolidated on December 5, 2022 in the Complex Business Division before the Honorable Michael Hanzman. The individual Plaintiffs in the Florida State Actions already served discovery, have pending a Motion for Partial Summary Judgment (namely that the individual accounts constitute the sale of unregistered securities) and Judge Hanzman already set an upcoming Case Management Conference.

4. Just this week, Defendants in the Florida State Actions removed those individual cases to the Southern District of Florida, seek to transfer those cases to Judge Moore and Plaintiffs’ Motion to Remand is now pending before Chief Judge Cecilia M. Altonaga in *Norris, et al. v. Thomas Brady, et al.*, No. 1:23-cv-20439-CMA (S.D. Fla.). Both Judge Moore and Chief Judge Altonaga have taken active roles in presiding over these consolidated proceedings.¹

5. Several other FTX putative class actions, against different Defendants, were recently filed in the Northern District of California and the Southern District of California, and these include the following cases:

- a. *Papadakis, et al. v. Bankman-Fried, et al.*, No. 3:23-cv-00024 (N.D. Cal.)
- b. *Jessup v. Bankman-Fried, et al.*, No. 3:22-cv-07666 (N.D. Cal.)

¹ Related litigation against failed cryptocurrency platform Voyager Digital, and various third-party defendants, has been actively litigated in the Southern District of Florida before Chief Judge Cecilia Altonaga and The Honorable Roy Altman, in *Cassidy v. Voyager Digital Ltd., et al.*, Case No. 21-24441-CIV-ALTONAGA/Torres and *Robertson, et al. v. Mark Cuban, et al.*, No. 22-cv-22538-ALTMAN/Reid. A trial date has already been set in the *Robertson* Action. The paramount question in the Voyager litigation is extremely similar to the paramount question in the FTX cases, namely whether the interest bearing accounts and/or each platform’s native cryptocurrency tokens are securities that should have been registered with securities regulators.

- c. *Pierce v. Bankman-Fried, et al.*, No. 3:22-cv-07444 (N.D. Cal.)
- d. *Lam v. Bankman-Fried, et al.*, No. 3:22-cv-07336 (N.D. Cal.)
- e. *Gonzalez v. Silvergate Bank, et al.*, No. 3:22-cv-01981 (S.D. Cal.)
- f. *Sepulveda, et al. v. Silvergate Capital Corp., et al.*, No. 3:22-cv-01901 (S.D. Cal.) (voluntarily dismissed February 9, 2023)
- g. *Husary, et al. Silvergate Capital Corp., et al.*, No. 3:23-cv-00038 (S.D. Cal.) (voluntarily dismissed February 9, 2023)

6. Some other federal FTX claims have been filed, and more subsequently filed “tag-along” actions are anticipated to be filed, in these and possibly other district courts across the country (collectively, the “Related Actions”).

7. As required by 28 U.S.C. § 1407(a), the Related Actions proposed for transfer and coordination “involve[] one or more common questions of fact,” including:

- (a) whether the FTX Entities operated a Ponzi scheme from their domestic headquarters in Miami;
- (b) whether all of the Yield-Bearing Accounts (“YBAs”), native FTT cryptocurrency token, or other assets offered or sold by Defendants were unregistered securities;
- (c) whether Defendants’ participation and/or actions in FTX’s offerings and sales of YBAs violate the provisions of the Securities Act and analogous Florida state securities law;
- (d) the type and measure of damages suffered by Plaintiffs and the Classes;
- (a) whether Defendants’ practices violate the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) and/or analogous and applicable state consumer protection statutes;
- (b) whether Plaintiffs and Class members have sustained monetary loss and the proper measure of that loss;

(c) whether Plaintiffs and Class members are entitled to consequential damages, punitive damages, Florida statutory damages, disgorgement, and/or other legal or equitable appropriate remedies as a result of Defendants' conduct.

8. Almost all of the new cases have been filed over the course of the last four months, and many have yet to be filed, but are anticipated to be filed in the coming weeks and months. Thus, there is sufficient numerosity to support transfer of the Related Actions for coordinated pretrial proceedings.

9. Transfer of the actions will prevent duplication of discovery, eliminate the possibility of conflicting pretrial rulings, and conserve party and judicial resources.

10. The United States District Court for the Southern District of Florida is the most appropriate forum for consolidation of the actions because, *inter alia*, (1) the FTX entities was based in the Southern District of Florida; (2) the Southern District of Florida has extensive experience with cases of this type; and (3) that is the District where *Garrison*, the first-filed, consolidated class action has been actively presided over by Judge Moore, as well as *Norris*, the consolidated Florida State Actions, which are now being actively presided over by Chief Judge Altonaga. Similarly, Judge Altman has substantial experience presiding over similar complex matters, as he is currently presiding over the *Robertson* litigation and is not currently presiding over an MDL. Each of these Judges are highly capable judges who have significant experience in the subject matter of the litigation and all of the legal issues involved.

Accordingly, the Petitioners respectfully requests that the Panel transfer the Related Actions to the Southern District of Florida for consolidation and coordinated pre-trial proceedings.

In re: FTX Collapse Litigation

Dated: February 10, 2023

Respectfully submitted,

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**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE: FTX COLLAPSE LITIGATION

MDL Docket _____

**BRIEF IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS
TO THE SOUTHERN DISTRICT OF FLORIDA PURSUANT TO 28 U.S.C. § 1407
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Petitioners, Edwin Garrison, Gregg Podalsky, Skyler Lindeen, Alexander Chernyavsky, Sunil Kavuri, Gary Gallant, and David Nicol (the “Petitioners”) file this brief in support of their motion to move the Judicial Panel on Multidistrict Litigation (the “Panel”) for transfer to and consolidation or coordination for pretrial purposes of the Related Actions (described below) arising out of the collapse of the FTX cryptocurrency trading platform, to the United States District Court for the Southern District of Florida.

Petitioners are Plaintiffs in the nation’s first-filed class action following the collapse of FTX, *Garrison, et al. v. Bankman-Fried, et al.*, No. 1:22-cv-23753-KMM (S.D. Fla.), was filed in the Southern District of Florida, and which is already consolidated before Judge K. Michael Moore with a Related Action and is proceeding expeditiously and efficiently. Petitioners’ counsel have been coordinating and litigating these issues since their inception and are uniquely positioned to lead this litigation for all affected FTX customers. Petitioners and their counsel have great respect for the Panel and the multidistrict litigation process and vehicle, and believe that, given that actions are now being filed elsewhere in the country against some, but not all, of the defendants in the pending *Garrison* action regarding these same issues in light of developments in the FTX bankruptcy proceedings, *In re: FTX Trading Ltd., et al.*, No. 22-11068 (JTD) (Bankr. Dist. Del.), and in the enforcement actions brought in the Southern District of New York by the CFTC and SEC, *CFTC v. Bankman-Fried, et al.*, No. 22-cv-10503 (S.D.N.Y.) and *SEC v. Bankman-Fried, et*

al., No 22-cv-10501 (S.D.N.Y.) consolidation and transfer to the Southern District of Florida may be the best option for the Panel to ensure that these cases are litigated fully, effectively, and in an orderly fashion.

FACTUAL BACKGROUND

The FTX group of companies (FTX Group or FTX) was founded in 2019 and began as an exchange or marketplace for the trading of crypto assets. FTX was established by Samuel Bankman-Fried, Gary (Zixiao) Wang and Nishad Singh, with operations commencing in May 2019. FTX was purportedly established in order to build a digital asset trading platform and exchange for the purpose of a better user experience, customer protection, and innovative products. FTX built the FTX.com exchange to develop a platform robust enough for professional trading firms and intuitive enough for first-time users.

Until seeking the protection of the Bankruptcy Court, the FTX Entities operated a multi-billion-dollar mobile application cryptocurrency investment service (the “Deceptive FTX Platform”) that placed cryptocurrency trade orders on behalf of users like Plaintiff and Class Members and offered interest bearing cryptocurrency accounts. Everyone now agrees the FTX Disaster is the largest financial fraud in US history. The former FTX CEO is on house arrest pending a federal prosecution, and the new CEO—who helped wind down Enron—concluded the fraud here was worse than Enron and is unprecedented. Billions of dollars have been stolen from investors across the globe. FTX will be involved in federal bankruptcy proceedings for many years and there is no guarantee that any of the victims will be able to see any recovery from those proceedings.

Undersigned Counsel have been investigating and litigating these specific issues for almost two years in the Southern District of Florida. On December 24, 2021, Undersigned Counsel

brought the first (and only) putative nationwide class action complaint against the now-defunct cryptocurrency trading app, Voyager, styled *Mark Cassidy v. Voyager Digital Ltd., et al.*, Case No. 21-24441-CIV-ALTONAGA/Torres (the “*Cassidy* Action”), alleging that the platform owned and operated by Voyager Digital Ltd. (“Voyager”) and Voyager Digital LLC (“VDL”) was an unregulated and unsustainable fraud. In the *Cassidy* Action, plaintiffs also alleged that Defendant Ehrlich, Voyager’s CEO, teamed up with Defendants Cuban and the Dallas Mavericks to promote Voyager, by making false representations and employing other means of deception. As a result, the Voyager plaintiffs and Voyager class members, all sustained losses in excess of \$5 billion.¹ The action was filed with substantial expert support from Dr. Stephen Castell of Castell Consulting and Rich Sanders of CipherBlade, both of whom are extremely well-regarded and are highly knowledgeable of the issues in both the Voyager and FTX litigation. Petitioners and their counsel have retained Castell Consulting and CipherBlade as experts in this litigation as well.

After the *Cassidy* Complaint was filed, the following important actions took place:

- a) the United States Securities and Exchange Commission (SEC) began an enforcement review focused on whether Voyager’s Earn Program Accounts (“EPAs”) constitute unregistered securities;
- b) seven state Attorneys General (New Jersey, Alabama, Kentucky, Oklahoma, Texas, Vermont and Washington) took specific action finding that Voyager was violating their state laws, including issuing “cease and desist” letters to Voyager, finding that the EPA was an unregistered security, prohibiting the crypto-asset broker-dealer

¹ The allegations in the *Cassidy* complaint—and specifically Mark Cuban’s role in promoting Voyager—received national attention. See <https://www.jdsupra.com/legalnews/new-lawsuits-target-cryptocurrency-9604406/> (summarizing the allegations and explaining that “Mark Cuban, owner of the NBA’s Dallas Mavericks, is a major stakeholder in Voyager. The complaint alleges that he made comments at a press conference in which he specifically targeted unsophisticated investors ‘with false and misleading promises of reaping large profits in the cryptocurrency market.’”); <https://www.law.com/dailybusinessreview/2021/12/29/mark-cuban-linked-crypto-platform-hit-with-florida-nationwide-class-action-lawsuit-in-miami-federal-court/?slreturn=20220701214901> (same, in the *Daily Business Review*).

from selling any more unregistered securities (finding that Voyager used these EPAs to raise millions of dollars in revenue worldwide as of March 1, 2022; and

- c) on March 29, 2002, the State of New Jersey Bureau of Securities entered a Cease and Desist Order against Voyager, finding that the EPA was not exempt from registration under the law, and instead that it must be registered—and as a result, Voyager’s stock price tanked by 25% in a day and is down over 80% for the year.²

On July 5, 2022, Voyager Digital Holdings, Inc. and two affiliated debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Voyager Bankruptcy Cases”), which are jointly administered under Case No. 22-10943 before the Honorable Michael E. Wiles in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

On September 28, 2022, Voyager filed a motion in the Voyager Bankruptcy Cases seeking authority to enter into an asset purchase agreement with West Realm Shires Inc., d/b/a FTX US whereby Voyager will sell substantially all of its assets for a purchase price of approximately \$1.422 billion, which includes (i) the value of cryptocurrency on the Voyager platform as of a date to be determined, which, as of September 26, 2022, is estimated to be \$1.311 billion, plus (ii) additional consideration which is estimated to provide at least approximately \$111 million of incremental value to the Debtors’ estates.

There is a real and direct connection between the FTX and Voyager bankruptcies. Everyone involved in the Voyager Bankruptcy Cases thought that the FTX Entities were the *deus ex machina* come to save the day by bailing out Voyager and paying back at least some of the losses the Voyager customers sustained.

² <https://seekingalpha.com/article/4498956-voyager-digital-plunged-25-percent-heres-why> (accessed October 28, 2022); <https://seekingalpha.com/article/4503716-voyager-digital-buy-dip-during-crypto-crash> (accessed February 10, 2023).

Instead, the FTX Entities imploded, their over \$30 billion in value evaporated almost overnight, and the FTX Entities found themselves filing their own emergency Chapter 11 bankruptcy petition in Delaware. The Deceptive FTX Platform maintained by the FTX Entities was truly a house of cards, a Ponzi scheme where the FTX Entities shuffled customer funds between their opaque affiliated entities, using new investor funds obtained through investments in the YBAs and loans to pay interest to the old ones and to attempt to maintain the appearance of liquidity.

Part of the scheme employed by the FTX Entities involved utilizing some of the biggest names in sports and entertainment to raise funds and drive global consumers to invest in the YBAs, which were offered and sold largely from the FTX Entities' domestic base of operations in Miami, Florida, pouring billions of dollars into the Deceptive FTX Platform to keep the whole scheme afloat (the "Brand Ambassadors").

Importantly, although Defendants disclosed their partnerships with the FTX Entities, they never disclosed during their promotional activities for FTX the nature, scope, and amount of compensation they personally received in exchange for the promotion of the Deceptive FTX Platform, which the SEC has explained that a failure to disclose this information would be a violation of the anti-touting provisions of the federal securities laws.³ Moreover, none of these Defendants performed any due diligence prior to marketing these FTX products to the public.

³ <https://www.ubergizmo.com/2017/11/sec-celebrities-disclose-payment-cryptocurrency-endorsements/#:~:text=It%20has%20issued%20a%20statement%20warning%20celebrities%20that,without%20disclosing%20that%20they%E2%80%99ve%20been%20paid%20for%20it> (accessed February 10, 2023).

Defendants’ misrepresentations and omissions made and broadcast around the globe through the television and internet render them liable to Plaintiff and class members for soliciting their purchases of the unregistered YBAs.⁴

Thus, on November 15, 2022, Petitioner Garrison and Undersigned Counsel filed the *Garrison* Action, seeking to hold Defendants—which include the founders and principal insiders of the FTX Entities and its related trading arm, Alameda, as well as a dozen “Brand Ambassadors”⁵—responsible for the many billions of dollars in damages they caused Petitioner Garrison and the putative Nationwide Class and to force Defendants to make them whole. Undersigned counsel then filed additional class actions in the Southern District of Florida on behalf of additional plaintiffs seeking to represent, among other constituencies, a putative Global Class, which was ultimately informally consolidated in the Related Action, *Podalsky, et al. v. Bankman-Fried, et al.*, No. 22-cv-23983 (S.D. Fla.). Judge Moore then *sua sponte* consolidated the *Garrison* and *Podalsky* matters for all purposes, which are now proceeding in the well-organized consolidated *Garrison* matter under a global consolidated amended complaint, which was filed with substantial expert support from CipherBlade, one of the preeminent and most highly regarded cryptocurrency expert witness firms.

⁴ *Wildes v. Bitconnect Int’l PLC*, No. 20-11675 (11th Cir. Feb. 18, 2022) (holding that promoters of cryptocurrency through online videos could be liable for soliciting the purchase of unregistered securities through mass communication, and no “personal solicitation” was necessary for solicitation to be actionable).

⁵ The FTX Insider Defendants include Samuel Bankman-Fried, Sam Trabucco, Caroline Ellison, Nishad Singh, Gary Wang, and Dan Friedberg, while the Brand Ambassador Defendants include Tom Brady, Gisele Bundchen, Stephen Curry, Golden State Warriors, Shaquille O’Neal, Udonis Haslem, David Ortiz, William Trevor Lawrence, Shohei Ohtani, Naomi Osaka, Lawrence Gene David, and Kevin O’Leary. Petitioners anticipate more may be joined into this litigation as it progresses.

Undersigned Counsel also represents individuals who decided to file six individual (non-class action) FTX actions in Florida state court (Florida State Actions), against a number of only Florida-resident Brand Ambassadors, including Tom Brady, Kevin O’Leary, and David Ortiz. Those actions were informally consolidated through the filing of an amended complaint in the action *Norris, et al. v. David Ortiz, et al.*, No. 2022-022900-CA-01 (Fla. 11th Jud. Cir. Ct), which was pending before the Honorable Michael Hanzman in the Complex Business Litigation Division of Miami-Dade County. Shortly after the *Norris* Plaintiffs briefed and filed a motion for partial summary judgment on the issue of whether the YBA was a security required to be registered with securities regulators (supported with substantial expert analysis from Paul Sibenik of CipherBlade), the *Norris* Defendants removed the action to the Southern District of Florida, where it is now pending before Chief Judge Cecilia M. Altonaga.⁶

After Petitioners and their counsel filed *Garrison*, several additional substantially similar putative class actions were filed in the Northern and Southern Districts of California against, *inter alia*, some of the FTX Insider Defendants and Brand Ambassador Defendants. *See* the Schedule of Actions filed concurrently herewith.

The plaintiffs and their counsel in the later-filed Related Actions pending in the Northern District of California, which allege claims against Sam Bankman-Fried, Caroline Ellison, Gary

⁶ Currently pending in the *Norris* action is a motion to remand the case back to state court, where it may be returned to Judge Hanzman’s court. Judge Hanzman is one of the most highly regarded state court judges in the country, who famously presided over the consolidated litigation arising out of the tragic collapse of the Champlain Towers South Condominium, which litigation resulted in over \$1.3 billion in recoveries for the victims and their survivors after only one year of litigation, due to Judge Hanzman’s close and careful supervision of that litigation. Given that there will likely be pending state court litigation regarding these FTX issues, having them presided over by such a well-respected and capable jurist as Judge Hanzman, who can closely coordinate with a federal transferee judge in the Southern District of Florida, would be an ideal scenario to ensure that both actions proceed in an orderly and coordinated fashion.

Wang, Nishad Singh, Sam Trabucco, the Golden State Warriors, and Armanino LLP and Prager Metis CPAs, LLC,⁷ acknowledge that their actions also “all revolve around the collapse of the FTX exchange and seek redress for the billions of dollars of losses incurred by unsuspecting consumers and investors who were tricked by Mr. Bankman-Fried and the other Defendants into storing their money or assets on the FTX exchange.” *Lam v. Bankman-Fried, et al.*, Case No. 3:22-cv-07336, ECF No. 19 at 9. They are seeking to have their actions consolidated for all purposes under the *Lam* action and should therefore appropriately be treated as one action pending in the Northern District of California. *Id.*

The later-filed Related Action pending in the Southern District of California brings claims only against Silvergate Bank (and its parent corporation and President/CEO), alleging it “directly aided and abetted FTX’s fraud and breaches of fiduciary duty via first-hand participation in the commingling of funds, improper transfers, and lending out of customer money.” *Gonzalez v. Silvergate Bank, et al.*, No. 3:22-cv-01901-L-AGS, ECF No. 1 ¶ 4 (S.D. Cal. Dec. 14, 2022).⁸

For these reasons, and as further explained below, Petitioners and Undersigned Counsel are uniquely positioned to aid the Panel through consolidation of the Related Actions for pretrial purposes.

⁷ Armanino and Praeger are the outside auditors who reviewed FTX and FTX.US financials

⁸ On February 9, 2023, two of the three Related Actions pending in the Southern District of California, *Zuleta* and *Husary*, were voluntarily dismissed, leaving *Gonzalez* as the sole pending Related Action in the Southern District of California. Petitioners include *Zuleta* and *Husary* in the Schedule of Actions in an abundance of caution.

LEGAL ARGUMENT**I. TRANSFER AND CONSOLIDATION OF THE RELATED ACTIONS IS APPROPRIATE PURSUANT TO 28 U.S.C. § 1407.**

The Related Actions should be transferred and consolidated or coordinated for pretrial proceedings. Pursuant to 28 U.S.C. § 1407(a), the MDL Panel may transfer and consolidate cases that meet three requirements: (1) the cases “involv[e] one or more common questions of fact;” (2) transfer and consolidation or coordination will further “the convenience of parties and witnesses;” and (3) transfer and consolidation or coordination “will promote the just and efficient conduct of [the] actions.” Here, transfer and consolidation to the Southern District of Florida satisfies each of these objectives.

A. The Related Actions Involve Common Questions of Fact.

The MDL Panel has consistently held that cases involving overlapping factual issues are particularly appropriate for transfer and consolidation or coordination. *See, e.g., In re January 2021 Short Squeeze Trading Litig.*, MDL 2989, 2021 WL 1258399, at *1 (J.P.M.L. Apr. 2, 2021) (transferring related securities cases under § 1407 to the Southern District of Florida because the cases involved common questions of fact and “some of the events central to this litigation” occurred there); *In re Optimal Strategic U.S. Equity Fund Sec. Litig.*, 648 F. Supp. 2d 1388, 1388–89 (J.P.M.L. 2009) (centralizing related securities class actions in the Southern District of Florida where the cases involved common questions of fact, a common defendant was headquartered in Florida, and the first-filed class action was pending).

The basic facts alleged in the Related Actions are virtually the same, as all arise out of the same events—FTX’s business practices in Miami and those of related individuals and entities that promoted the platform and the unregistered securities it offered and sold, and all the fraudulent, deceptive, and/or misleading activities they conducted that culminated in the November 2022

collapse of FTX, including the acts of those who helped to conceal the precarity of FTX's financial situation while it deployed its global scheme. Therefore, based on these overlapping factual issues, the Related Actions should be transferred and consolidated or coordinated in one judicial district.

B. Centralization Will Be More Convenient for the Parties and Witnesses.

Centralization of these lawsuits will save Plaintiffs and Defendants the burden of having to prosecute and defend competing and overlapping class actions in multiple federal districts across the country. Discovery in all of these actions will involve the substantially similar testimony and documentary evidence from the Defendants. Defendants will likely assert similar discovery objections and privileges in each of the pending actions. Consolidation or coordination of these actions will avoid duplicative, redundant, and costly discovery proceedings, and avoid repetitive motion practice and potentially conflicting discovery and other pretrial rulings. *See In re January 2021 Short Squeeze Trading Litig.*, 2021 WL 1258399, at *2 (“Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings (including with respect to class certification); and conserve the resources of the parties, their counsel, and the judiciary.”)

C. Centralization Will Promote the Just and Efficient Conduct of the Related Actions.

Where multiple class actions have been initiated against multiple defendants who are engaged in substantially similar conduct, centralization serves the convenience of parties and witnesses and therefore promotes the just and efficient conduct of the litigation. *See, e.g., In re Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333, 1335-36 (J.P.M.L. 2009) (industrywide centralization); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 398 F. Supp. 2d 1356, 1358 (J.P.M.L. 2005) (consolidating proceedings in fourteen actions and twenty-one potential tag-along actions); *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 780 F. Supp. 2d 1379, 1382 (J.P.M.L. 2011) (consolidating seventeen actions against at least twelve

defendants in one district); *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 626 F. Supp. 2d 1346, 1347 (J.P.M.L. 2009) (consolidating ten actions against numerous defendants in one district).

In addition, transfer and consolidation will promote the just and efficient conduct of the Related Actions because it will eliminate the possibility of conflicting pre-trial rulings. Plaintiffs assert many of the same claims—violations of state securities laws for the offer and sale of unregistered securities, violations of consumer protection statutes, civil conspiracy, common law fraudulent concealment, and declaratory judgment claims—and inconsistent rulings could result if different courts address these claims. *See In re Terrorist Attacks on Sept. 11, 2001*, 295 F. Supp. 2d 1377, 1378 (J.P.M.L. 2003) (noting that transfer is favored where there are overlapping legal issues among the various cases). Dispositive motions and motions for class certification will require the resolution of essentially the same issues of fact and law.

The risk of inconsistent pre-trial rulings is particularly high here due to the presence of the current and potential number of competing and overlapping putative nationwide classes. *See In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968) (“[It] is in the field of class action determinations in related multidistrict civil actions that the potential for conflicting, disorderly, chaotic judicial action is the greatest”); *see also In re Imagitas, Inc., Drivers’ Privacy Prot. Act Litig.*, 486 F. Supp. 2d 1371, 1372 (J.P.M.L. 2007) (centralizing actions that contained “competing class allegations”); *In re IDT Corp. Calling Card Terms Litig.*, 278 F. Supp. 2d 1381, 1381 (J.P.M.L. 2003) (centralizing actions that involved “overlapping putative class actions”).

It is likely that the number of Related Actions filed in the coming weeks, as a result of litigation in the Southern District of Florida, will increase in other jurisdictions. Ordering the transfer and consolidation at this early stage will allow these complex litigations to proceed in an

efficient and coordinated manner. Efficiency is especially important here, where the judicial system is already tasked with unraveling what is likely to be the largest financial fraud in history.

II. THE RELATED CASES SHOULD BE TRANSFERRED TO THE SOUTHERN DISTRICT OF FLORIDA.

The Southern District of Florida is a proper choice for the transferee district because (i) the First-Filed Action, *Garrison, et al. v. Bankman-Fried, et al.*, No. 1:22-cv-23753-KMM (S.D. Fla.), was filed in the Southern District of Florida, which is already consolidated and well-organized before Judge K. Michael Moore with a Related Action and is the most advanced of the Related Actions by far, and three Related Actions (one of which is a state court action that was removed to federal court after consolidating 6 individual state court actions) are currently in the Southern District of Florida; (ii) the Southern District of Florida has the strongest nexus to this litigation; (iii) the Southern District of Florida is well suited to handle the Related Actions in a timely manner; and (iv) Judge Moore and Judge Altonaga, the Chief Judge of the Southern District of Florida who is presiding over a Related Action as well as litigation arising out of the collapse of the related Voyager Digital cryptocurrency platform (with the similar question as to whether all of Voyager's interest-bearing cryptocurrency accounts are "unregistered securities"), are both already acquainted with the subject matter at issue and are exceptionally qualified and experienced with MDL litigation, as well as other judges in the Southern District of Florida with similar experience in these complex matters, such as the Honorable Roy K. Altman, who is also presiding over litigation as to whether certain "Brand Ambassadors" of the Voyager Digital platform substantially participated in the offer or sale of unregistered securities (Voyager's interest-bearing cryptocurrency accounts).

A. The Judges Presiding over Related Actions in the Southern District of Florida are Well-Qualified and Experienced in MDL Litigation and the Related Actions.

As evidenced by the MDL Panel's selection of the Southern District of Florida as the transferee court in numerous MDL actions, the judges in the Southern District of Florida are exceptionally qualified and experienced with MDL litigation. The MDL Panel has consistently acknowledged that MDL experience is an important factor in deciding upon a transferee court.

See In re Chinese-Manufactured Drywall Prods. Liab. Litig., 626 F. Supp. 2d 1346, 1347 (J.P.M.L. 2009) (finding that centralization in the chosen district permits the Panel to “effect the section 1407 assignment to a judge who has extensive experience in multidistrict litigation as well as the ability and temperament to steer this complex litigation on a steady and expeditious course”).

District Court Judge K. Michael Moore, who currently presides over *Garrison*, the nation's first-filed, consolidated class action lawsuit representing nationwide and global classes, has experience presiding over MDL proceedings, including *In re Liquid Toppings Dispensing Sys. ('447) Patent Litig.*, (MDL No. 2832), to which he was assigned as transferee judge while Chief Judge presiding over this District, and in whom the Panel expressed their full confidence. *Id.*, 291 F. Supp. 3d 1378, 1380 (J.P.M.L. 2018) (“We are confident that Chief Judge K. Michael Moore, an experienced transferee judge who presided over the 2012 litigation,³ will steer this controversy on a prudent course.”).

Since receiving and consolidating *Garrison* and *Podalsky*, Judge Moore has fastidiously managed the consolidated docket, overseeing the orderly process of serving 18 different defendants and ensuring that they provide a coordinated response to the allegations in the suit.

District Court Judge Cecilia M. Altonaga, who is the Chief Judge of the Southern District of Florida and currently presides over a Related Action, has experience presiding over MDL proceedings, including *In re: January 2021 Short Squeeze Trading Litigation* (MDL 2989) since

April 2021. In less than two years since that MDL was first formed, Chief Judge Altonaga has adeptly managed those proceedings, significantly culling down the pretrial issues to be determined through several orders dismissing defective claims.

In addition, Judge Altonaga is familiar with the issues relevant to the Related Actions, as she also presides over *Norris, et al. v. Thomas Brady, et al.*, No. 1:23-cv-20439-CMA (S.D. Fla.), individual actions filed in state court in the Eleventh Judicial Circuit in and for Miami-Dade County, which were consolidated and removed to the Southern District of Florida. In *Norris*, Judge Altonaga has taken an early and active role in that Related Action, entering various orders to organize the litigation in that action, including briefing schedules on pending motions, establishing requirements to conduct a joint Rule 16 Scheduling Conference.⁹

Moreover, Judge Altman and Magistrate Judge Lisette M. Reid are presiding over *Robertson, et al. v. Mark Cuban, et al.*, No. 22-cv-22538-ALTMAN/Reid (S.D. Fla.), a similar action against Mark Cuban and his Dallas Mavericks, who were Brand Ambassadors for Voyager. The *Robertson* action, similar to *Garrison*, alleges that these Brand Ambassadors substantially participated in Voyager's offer and sale of interest-bearing cryptocurrency accounts on its trading platform, which accounts are securities required to be registered with securities regulators, such that they are jointly and severally liable for the damages Voyager caused to its customers. *Robertson* was also filed with substantial expert support from Dr. Stephen Castell of Castell Consulting and Rich Sanders of CipherBlade, and the Parties in the *Robertson* action are in the midst of conducting significant discovery into the issues arising from that litigation.

⁹ Chief Judge Altonaga is very familiar with the subject matter of the litigation as she is also the presiding judge over *Cassidy v. Voyager Digital Ltd., et al.*, No. 1:21-cv-24441-CMA, the first-filed nationwide class action against Voyager Digital for similar claims that they engaged in the offer and sale of *unregistered securities* in the form of interest-bearing cryptocurrency accounts much like the ones at issue in the Related Actions.

Judge Altman and Magistrate Judge Reid have prudently steered the *Robertson* litigation. The Parties are operating under an efficient trial order, with trial scheduled to occur in February 2024. The Parties have deposed a number of the Plaintiffs, Defendant Mark Cuban, and plaintiffs in that action are deposing executives of the Dallas Mavericks and Voyager Founder/CEO Stephen Ehrlich in the coming weeks. The Parties have also issued third party subpoenas to other Voyager Brand Ambassadors and other third parties with potentially relevant information for that action, including the law firm Sullivan & Cromwell. Magistrate Judge Reid has been available for numerous discovery hearings, sometimes holding hearings within the same day of a dispute being raised with her, to ensure that discovery proceeds efficiently and effectively. Judge Altman, who does not currently have an MDL pending before him, has worked assiduously to ensure that the action proceeds on an effective pretrial schedule so that the Parties can quickly and efficiently raise their arguments before him and hopefully bring the Action to resolution.¹⁰

Therefore, based on the experience of the Southern District of Florida in MDL actions, the Southern District of Florida is the appropriate transferee forum.

B. Docket Conditions in the Southern District of Florida are More Favorable Than in Other Districts.

According to the most recent Federal Court Management Statistics, the Southern District of Florida ranks as the top district in the entire country in the most significant measure of docket conditions: the median time from filing to disposition in civil cases. The median time from filing to disposition currently stands at 3.6 months, and has not exceeded 5 months for the past thirteen years. Additionally, the Southern District of Florida also stands near the top of the list for median

¹⁰ For instance, when the *Robertson* plaintiffs filed a motion for class certification in that action, Judge Altman denied the motion without prejudice with instruction to refile the motion after the action proceeds past the motion to dismiss phase.

time from filing to trial in civil cases, ranking third nationwide in that measure with a median time of 25 months. The Southern District of Florida, therefore, clearly “enjoys general docket conditions conducive to the efficient resolution of this litigation.” *In re: Skechers Toning Shoe Products Liab. Litig.*, 831 F. Supp. 2d 1367, 1370 (U.S. Jud. Pan. Mult. Lit. 2011). Here, establishing the MDL in an efficient District Court is of paramount importance due to the significant scope, complexity, and widespread damages caused to consumers at issue in the Related Actions.

As the Panel has previously recognized, the Southern District of Florida is “readily accessible.” *In re Enfamil Lipil Marketing & Sales Practices Litig.*, 764 F. Supp. 2d 1356, 1357 (J.P.M.L. 2011). Also, the judges in the Southern District of Florida are exceptionally qualified and experienced with complex litigation. The MDL Panel has consistently acknowledged that such experience is a key factor in deciding upon a transferee court. *See In re Health Management Associates, Inc. Qui Tam Litig. (No. II)*, MDL No. 2524, 2014 WL 1338479, *2 (J.P.M.L. Apr. 3, 2014) (transferring actions to an “experienced jurist”); *In re Biomet M2a Magnum Hip Implant Products Liab. Litig.*, 896 F. Supp. 2d 1339, 1340-41 (J.P.M.L. 2012) (transferring actions to a judge “who is well-versed in the nuances of complex, multidistrict litigation”).

The advantages of establishing the MDL in the Southern District of Florida are magnified when compared to case management metrics in the other potential MDL jurisdictions, the Northern and Southern Districts of California. For instance, these Districts are more heavily burdened and therefore less efficient than the Southern District of Florida. Compared to the Southern District of Florida’s 3.6-month median time from filing to disposition, it takes 10.1 months in the Northern District of California and 7.7 months in the Southern District of California. The difference is even greater for median time from filing to trial, with it taking 25 months in the

Southern District of Florida, 34.7 months in the Northern District of California, and 46.9 months in the Southern District of California.

Another “especially useful basis for comparing the various court dockets” is the percentage of cases over 3 years old. D. Herr, *Multidistrict Litigation Manual: Practice Before the Judicial Panel on Multidistrict Litigation*, § 6:17 at 210-11 (2009). Here again, the Southern District of Florida is by far the more efficient district with only 133 (3.4%) of its cases pending for three years or more. This is particularly impressive when measured against the Northern District of California, where 971 cases (8.6%) have been pending three years or more, and the Southern District of California, where 535 cases (23.2%) have been pending three years or more. One possible explanation for the other districts’ relative inefficiency—and another factor militating in favor of the Southern District of Florida—is that, as of June 30, 2022, each judge in the Southern District of Florida has, on average, 332 pending actions, whereas each judge in the Northern District of California has an average of 890 pending actions, while each judge in the Southern District of California has 457 pending actions.

Establishing the MDL in a District Court with favorable docket conditions and a proven track record of efficiently managing cases is crucial under these circumstances, where at issue is what is likely the largest financial fraud in history, with billions of dollars in investments from average consumers hanging in the balance.

C. The Southern District of Florida has a Strong Nexus to the Litigation.

Finally, there is a strong nexus between the issues in these Related Actions and the Southern District of Florida. The primary conduct at issue in these actions admittedly all emanated from the Southern District of Florida. Although the FTX Entities’ international headquarters was

in the Bahamas, its domestic US base of operations is located in Miami, Florida.¹¹ Moreover, many of the “Brand Ambassador” named Defendants are Florida residents and much of their conduct emanated from this state as well, including Tom Brady, Gisele Bunchden, Kevin O’Leary, David Ortiz, and Udonis Haslem. Miami has become the “hot spot” for crypto companies like FTX, hosting the most investments in crypto startups as well as the largest and most well attended annual Bitcoin Miami 2022 Global Forums. Several crypto companies are based in Miami, in addition to FTX.US, including crypto exchange Blockchain.com, and Ripple, moved their headquarters to Miami. Others, including fellow exchange eToro, expanded their U.S. presence with offices in Miami. FTX is very familiar with Miami, where they signed a deal worth more than \$135 million dollars for the naming rights of the waterfront arena, where 3-time NBA Champions the Miami Heat play. Lastly, the first-filed global and nationwide class actions involving the collapse of the FTX trading platform were filed and are pending in the Southern District of Florida.

Under these circumstances, the Panel previously consolidated and transferred Related Actions to the Southern District of Florida, where events central to the litigation occurred here, some of the defendants are located here, and the first-filed action was located here. *See, e.g., In re January 2021 Short Squeeze Trading Litig.*, MDL 2989, 2021 WL 1258399, at *1 (transferring related securities cases under § 1407 to the Southern District of Florida because the cases involved common questions of fact and “some of the events central to this litigation” occurred there); *In re Optimal Strategic U.S. Equity Fund Sec. Litig.*, 648 F. Supp. 2d at 1388–89 (centralizing related securities class actions in the Southern District of Florida where the cases involved common

¹¹ <https://www.coindesk.com/business/2022/09/27/crypto-exchange-ftx-is-moving-its-us-headquarters-from-chicago-to-miami/> (accessed February 10, 2023).

questions of fact, a common defendant was headquartered in Florida, and the first-filed class action was pending).

Consolidation of the claims in the Related Actions in the Southern District of Florida will achieve efficient use of judicial resources, prevent duplicative discovery, and prevent fraudulent claims.

CONCLUSION

Centralization of the Related Actions will promote the goals of 28 U.S.C. § 1407 by conserving judicial resources, , reducing litigation costs, preventing potentially inconsistent pretrial rulings, eliminating duplicative discovery, and permitting the cases to proceed more efficiently.

Therefore, for the foregoing reasons, Plaintiffs respectfully request that the MDL Panel transfer and consolidate or coordinate all of the Related Actions to the United States District Court for the Southern District of Florida for pretrial purposes.

Dated: February 10, 2023

Respectfully submitted,

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**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE: FTX LITIGATION

MDL Docket _____

SCHEDULE OF ACTIONS

Case Captions	Court	Civil Action No.	Judge
Plaintiffs: Edwin Garrison, Gregg Podalsky, Skyler Lindeen, Alexander Chernyavsky, Gary Gallant and David Nicol Sunil Kavuri Defendant: Samuel Bankman-Fried, Thomas Brady, Gisele Bundchen, Kevin OLeary, Udonis Haslem, David Ortiz, Stephen Curry, Golden State Warriors LLC, Shaquille ONeal, William Trevor Lawrence, Shohei Ohtani, Naomi Osaka and Lawrence Gene David Caroline Ellison, Sam Trabucco, Gary Wang, Nishad Singh, Dan Friedberg,	United States District Court for the Southern District of Florida	1:22-cv-23753 (First Filed Action)	K. Michael Moore
Plaintiffs: Gregg Podalsky, Skyler Lindeen, Alexander Chernyavsky, Gary Gallant and	United States District Court for the Southern District of Florida	1:22-cv-23983 (Consolidated with <i>Garrison v. Bankman-Fried</i>)	K. Michael Moore

<p>David Nicol</p> <p>Defendant: Samuel Bankman-Fried, Thomas Brady, Gisele Bundchen, Kevin OLeary, Udonis Haslem, David Ortiz, Stephen Curry, Golden State Warriors LLC, Shaquille ONeal, William Trevor Lawrence, Shohei Ohtani, Naomi Osaka and Lawrence Gene David Caroline Ellison, Sam Trabucco, Gary Wang, Nishad Singh, Dan Friedberg,</p>			
<p>Plaintiff: Shengyun Huang Michael Livieratos Michael Norris Brandon Rowan Vijeth Shetty Bo Yang</p> <p>Defendant: Thomas Brady, Kevin OLeary, and David Ortiz</p>	<p>United States District Court for the Southern District of Florida</p>	<p>1:23-cv-20439</p>	<p>Cecilia M. Altonaga</p>
<p>Plaintiff: Michael Elliott Jessup</p> <p>Defendant: Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, Gary Wang and Sam Trabucco</p>	<p>United States District Court for the Northern District of California</p>	<p>3:2022-cv-07666 (Motion to Consolidate pending in <i>Lam</i>)</p>	<p>Jacqueline Scott Corley</p>

Plaintiff: Russell Hawkins Defendant: Samuel Bankman-Fried, Caroline Ellison, Zixiao Gary Wang, Nishad Singh, Armanino, LLP and Prager Metis CPAs, LLC	United States District Court for the Northern District of California	3:2022-cv-07620 (Motion to Consolidate pending in <i>Lam</i>)	Jacqueline Scott Corley
Plaintiffs: Stephen T Pierce Defendants: Samuel Bankman-Fried, Caroline Ellison, Zixiao Wang, Nishad Singh, Armanino, LLP and Prager Metis CPA's	United States District Court for the Northern District of California	3:2022-cv-07444 (Motion to Consolidate pending in <i>Lam</i>)	Jacqueline Scott Corley
Plaintiffs: Elliott Lam (petitioner: Michael Elliott Jessup, Stephen T Pierce and Julie Chon Papadakis) Defendants: Sam Bankman-Fried, Caroline Ellison and Golden State Warriors, LLC	United States District Court for the Northern District of California	3:2022-cv-07336 (Motion to Consolidate pending)	Jacqueline Scott Corley
Plaintiffs: Julie Chon Papadakis Defendant: Samuel Bankman-Fried, Caroline Ellison, Zixiao Gary Wang, Nishad Singh, Armanino LLP and Prager Metis CPAs, LLC	United States District Court for the Northern District of California	3:2023-cv-00024 (Motion to Consolidate pending in <i>Lam</i>)	Jacqueline Scott Corley

Plaintiff: Joewy Gonzalez Defendants: Silvergate Bank, Silvergate Capital Corporation, and Alan J. Lane	United States District Court for the Southern District of California	3:2022-cv-01981	Roger T. Benitez
Plaintiffs: Jose Tomas Sepulveda Zuleta, Michael Lehrer, and Tristan Newman Defendants: Silvergate Capital Corporation, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, and Jason Brenier	United States District Court for the Southern District of California	3:2022-cv-01901 (Notice of Voluntary Dismissal Filed February 9, 2023)	Roger T. Benitez
Plaintiffs: Andrawes Husary, Francisco De Tomaso, Soham Bhatia, and Michael Hawwa Defendants: Silvergate Bank, Silvergate Capital Corporation, and Alan J. Lane	United States District Court for the Southern District of California	3:2023-cv-00038 (Notice of Voluntary Dismissal Filed February 9, 2023)	Roger T. Benitez

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE: FTX COLLAPSE LITIGATION

MDL Docket _____

PROOF OF SERVICE

In accordance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, the undersigned hereby certifies that on February 10, 2023, copies of the foregoing a) Motion for Transfer of Related Actions to the Southern District of Florida, b) Brief in Support of Motion for Transfer of Actions to the Southern District of Florida pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings, and c) Schedule of Actions, were filed electronically through the CM/ECF system, and copies of same were sent by Email to all parties on the attached service list. In addition, pursuant to the Rules of Procedure of the U.S. Judicial Panel on Multidistrict Litigation, Rule 3.2(d), copies were served to the Clerk of the Panel, United States Judicial Panel on Multidistrict Litigation, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NW, Room G-255, North Lobby, Washington, DC 20002-8041.

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Wilkie D. Ferguson, Jr. United States Courthouse
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**Norris et al v. Brady et al,
Case No.: 1:23-CV-20439, Chief Judge Cecilia M. Altonaga**

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Garrison et al v. Bankman-Fried et al,
Case No.: 1:22-CV-23753, Judge K. Michael Moore

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This docket is current through 02/10/2023

Today's Date: 2/10/2023

Source: U.S. District Court, Southern District of Florida (Miami)

Court:	U.S. District Court, Southern District of Florida (Miami)
Case Title:	Garrison v. Bankman-Fried et al
Case:	1:22-CV-23753
Judge:	Jud <div>Copy with Reference (Standard)</div>
Date Filed:	11/1 <div>Copy without Reference</div>
Case Status:	JB, REF_DISCOV

CASE INFORMATION

Case Number:	1:22CV23753
Referred To:	Magistrate Judge Jacqueline Becerra
Jury Demand:	Plaintiff
Nature of Suit:	Torts: Other Fraud (370)
Jurisdiction:	Diversity
Cause:	28 USC 1332 - Diversity: Securities Fraud

PARTICIPANT INFORMATION

Expand All

Edwin Garrison

Gregg Podalsky

Skyler Lindeen

Alexander Chernyavsky

Gary Gallant

David Nicol

Sunil Kavuri

Sam Bankman-Fried

Thomas Brady

Gisele Bundchen

Stephen Curry

Golden State Warriors LLC

Shaquille O'Neal

Udonis Haslem

David Ortiz

William Trevor Lawrence

Shohei Ohtani

Naomi Osaka

Lawrence Gene David

Kevin O'Leary

Caroline Ellison

Sam Trabucco

Gary Wang

Nishad Singh

Dan Friedberg

CALENDAR INFORMATION

[View Calendar Information](#)

DOCKET PROCEEDINGS (51)

Entry #:	Date:	Description:	
51	02/10/2023	PAPERLESS ORDER. THIS CAUSE came before the Court upon Motion for Elizabeth A. Greenman to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. ³⁶ . UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion ³⁶ is GRANTED. Elizabeth A. Greenman may appear pro hac vice in this matter on behalf of Defendants Thomas Brady and Gisele Bündchen. The Clerk of Court shall provide electronic notification of all electronic filings to elizabeth.greenman@lw.com. Signed by Judge K. Michael Moore on 2/10/2023. (rfr) (Entered: 02/10/2023)	Send Runner to Court
50	02/10/2023	PAPERLESS ORDER. THIS CAUSE came before the Court upon Motion for Andrew B. Brettler to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically	Send Runner to Court

		Receive Notices of Electronic Filing. ³⁵ . UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion ³⁵ is GRANTED. Andrew B. Brettler may appear pro hac vice in this matter on behalf of Defendant Kevin OLeary. The Clerk of Court shall provide electronic notification of all electronic filings to abrettler@berkbrettler.com. Signed by Judge K. Michael Moore on 2/10/2023. (rfr) (Entered: 02/10/2023)	
49	02/10/2023	PAPERLESS ORDER. THIS CAUSE came before the Court upon the Motion for Coordinated Briefing Schedule for Responses to the Amended Complaint. ⁴⁸ . UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion ⁴⁸ is GRANTED. Any served Defendant shall respond to the Amended Complaint on or before April 14, 2023. Signed by Judge K. Michael Moore on 2/10/2023. (rfr) (Entered: 02/10/2023)	Send Runner to Court
48	02/10/2023	MOTION for Extension of Time --Defendants' Motion for Coordinated Briefing Schedule for Responses to the Amended Complaint re ¹⁶ Amended Complaint/Amended Notice of Removal,, by Thomas Brady, Kevin O'Leary, David Ortiz. Responses due by 2/24/2023 (Carver, Christopher) (Entered: 02/10/2023)	View Add to request
47	02/08/2023	PAPERLESS ORDER. THIS CAUSE came before the Court upon the Notice of Filing Letter (Notice) ²⁹ . Therein, Plaintiffs include a letter from David Boies to the Court. Id. The Local Rules of the Southern District of Florida provides that, Unless invited or directed by the presiding Judge, attorneys and any party represented by an attorney shall not: (a) address or present to the Court in the form of a letter or the like any application requesting relief in any form, citing authorities, or presenting arguments; or (b) furnish the Court with copies of correspondence between or among counsel, or any party represented by an attorney, except when necessary as an exhibit when seeking relief from the Court. Local Rule 5.1(c) above governs the provision of courtesy copies to a Judge. S.D. Fla. L.R. 7.7. Accordingly, UPON CONSIDERATION of the Notice, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Notice ²² is STRICKEN. Signed by Judge K. Michael Moore on 2/8/2023. (rfr) (Entered: 02/08/2023)	Send Runner to Court

46	02/08/2023	WAIVER OF SERVICE Returned Executed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. Sam Bankman-Fried waiver sent on 2/2/2023, response/answer due 4/3/2023. (Moskowitz, Adam) (Entered: 02/08/2023)	View Add to request
45	02/03/2023	Notice of Pending, Refiled, Related or Similar Actions by Thomas Brady, Kevin O'Leary, David Ortiz (Carver, Christopher) (Entered: 02/03/2023)	View Add to request
44	02/02/2023	NOTICE of Attorney Appearance by Tyler Evan Ulrich on behalf of Alexander Chernyavsky, Gary Gallant, Edwin Garrison, Sunil Kavuri, Skyler Lindeen, David Nicol, Gregg Podalsky. Attorney Tyler Evan Ulrich added to party Alexander Chernyavsky (pty:conpla), Attorney Tyler Evan Ulrich added to party Gary Gallant (pty:conpla), Attorney Tyler Evan Ulrich added to party Edwin Garrison(pty:pla), Attorney Tyler Evan Ulrich added to party Sunil Kavuri(pty:conpla), Attorney Tyler Evan Ulrich added to party Skyler Lindeen (pty:conpla), Attorney Tyler Evan Ulrich added to party David Nicol (pty:conpla), Attorney Tyler Evan Ulrich added to party Gregg Podalsky (pty:conpla). (Ulrich, Tyler) (Entered: 02/02/2023)	View Add to request
43	01/31/2023	WAIVER OF SERVICE Returned Executed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. Kevin O'Leary waiver sent on 1/4/2023, response/answer due 3/6/2023. (Moskowitz, Adam) (Entered: 01/31/2023)	View Add to request
42	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Andrew B. Clubok. Filing Fee \$ 200.00 Receipt # AFLSDC-16283248 by Thomas Brady, Gisele Bundchen. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
41	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Jessica Stebbins Bina. Filing Fee \$ 200.00 Receipt # AFLSDC-16283224 by Thomas Brady, Gisele Bundchen. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order) (Martinez, Roberto) (Entered: 01/31/2023)	View Add to request

40	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Michele D. Johnson. Filing Fee \$ 200.00 Receipt # AFLSDC-16282651 by Thomas Brady, Gisele Bundchen. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
39	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Brittany M.J. Record. Filing Fee \$ 200.00 Receipt # AFLSDC-16282613 by Thomas Brady, Gisele Bundchen. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order) (Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
38	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Susan E. Engel. Filing Fee \$ 200.00 Receipt # FLSDC-16282395 by Tom Brady, Gisele Bundchen, Thomas Brady. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM(Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
37	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Marvin Putnam. Filing Fee \$ 200.00 Receipt # FLSDC-16282263 by Tom Brady, Gisele Bundchen, Thomas Brady. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM(Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
36	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Elizabeth A. Greenman. Filing Fee \$ 200.00 Receipt # FLSDC-16282114 by Tom Brady, Gisele Bundchen, Thomas Brady. Responses due by 2/14/2023 Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM(Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
35	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Andrew B. Brettler. Filing Fee \$ 200.00 Receipt # AFLSDC-16281490 by Kevin O'Leary. Responses due by 2/14/2023	View Add to request

		(Attachments: # 1 Certification of Andrew B. Brettler, # 2 Text of Proposed Order)(Neiman, Jeffrey) (Entered: 01/31/2023)	
34	01/31/2023	NOTICE of Attorney Appearance by Brandon Scott Floch on behalf of Kevin O'Leary. Attorney Brandon Scott Floch added to party Kevin O'Leary(pty:dft). (Floch, Brandon) (Entered: 01/31/2023)	View Add to request
33	01/31/2023	NOTICE of Attorney Appearance by Jeffrey Eldridge Marcus on behalf of Kevin O'Leary. Attorney Jeffrey Eldridge Marcus added to party Kevin O'Leary(pty:dft). (Marcus, Jeffrey) (Entered: 01/31/2023)	View Add to request
32	01/31/2023	NOTICE of Attorney Appearance by Jeffrey Adam Neiman on behalf of Kevin O'Leary. Attorney Jeffrey Adam Neiman added to party Kevin O'Leary(pty:dft). (Neiman, Jeffrey) (Entered: 01/31/2023)	View Add to request
31	01/31/2023	NOTICE of Attorney Appearance by Michael Anthony Pineiro on behalf of Kevin O'Leary. Attorney Michael Anthony Pineiro added to party Kevin O'Leary(pty:dft). (Pineiro, Michael) (Entered: 01/31/2023)	View Add to request
30	01/30/2023	NOTICE of Change of Address, Email or Law Firm Name by Katherine Ann Johnson (Johnson, Katherine) (Entered: 01/30/2023)	View Add to request
29	01/30/2023	"STRICKEN" NOTICE by Alexander Chernyavsky, Gary Gallant, Edwin Garrison, Sunil Kavuri, Skyler Lindeen, David Nicol, Gregg Podalsky Letter from David Boies to Judge K. Michael Moore. Attorney Stephen N. Zack added to party Sunil Kavuri(pty:conpla). (Attachments: # 1 Letter from David Boies to Judge K. Michael Moore) (Zack, Stephen) Modified on 2/9/2023 (ls). (per DE # 47) (Entered: 01/30/2023)	View Add to request
28	01/26/2023	Clerk's Notice to Filer re 25 Notice of Attorney Appearance,. Attorney Did Not Associate Themselves ; ERROR - Filing attorney neglected to associate themselves to the case. The Clerk has added the attorney to the case. It is not necessary to refile this document future filings must comply with the CM/ECF Administrative Procedures and Local Rules by filing a Notice of Attorney Appearance and linking themselves to the case. (ls) (Entered: 01/26/2023)	Send Runner to Court
27	01/25/2023	NOTICE of Attorney Appearance by Zachary Andrew Lipshultz on behalf of Tom Brady, Gisele Bundchen, Thomas Brady. Attorney Zachary Andrew Lipshultz added to party Tom Brady(pty:dft), Attorney Zachary Andrew Lipshultz added to party Gisele Bundchen(pty:dft), Attorney Zachary Andrew Lipshultz added to party Thomas Brady(pty:dft), Attorney	View Add to request

		Zachary Andrew Lipshultz added to party Gisele Bundchen(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Lipshultz, Zachary) (Entered: 01/25/2023)	
26	01/25/2023	NOTICE of Attorney Appearance by Stephanie Anne Casey on behalf of Tom Brady, Gisele Bundchen, Thomas Brady. Attorney Stephanie Anne Casey added to party Tom Brady(pty:dft), Attorney Stephanie Anne Casey added to party Gisele Bundchen(pty:dft), Attorney Stephanie Anne Casey added to party Thomas Brady(pty:dft), Attorney Stephanie Anne Casey added to party Gisele Bundchen(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Casey, Stephanie) (Entered: 01/25/2023)	View Add to request
25	01/25/2023	NOTICE of Attorney Appearance by Roberto Martinez on behalf of Tom Brady, Gisele Bundchen. Attorney Roberto Martinez added to party Tom Brady(pty:dft), Attorney Roberto Martinez added to party Gisele Bundchen(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Martinez, Roberto) (Entered: 01/25/2023)	View Add to request
24	01/25/2023	WAIVER OF SERVICE Returned Executed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. David Ortiz waiver sent on 1/11/2023, response/answer due 3/13/2023. (Moskowitz, Adam) (Entered: 01/25/2023)	View Add to request
23	01/24/2023	NOTICE of Attorney Appearance by Katherine Ann Johnson on behalf of David Ortiz. Attorney Katherine Ann Johnson added to party David Ortiz(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Johnson, Katherine) (Entered: 01/24/2023)	View Add to request
22	01/24/2023	NOTICE of Attorney Appearance by Jason Samuel Oletsky on behalf of David Ortiz. Attorney Jason Samuel Oletsky added to party David Ortiz(pty:dft). (Oletsky, Jason) (Entered: 01/24/2023)	View Add to request
21	01/24/2023	NOTICE of Attorney Appearance by Christopher Stephen Carver on behalf of David Ortiz. Attorney Christopher Stephen Carver added to party David Ortiz(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Carver, Christopher) (Entered: 01/24/2023)	View Add to request
20	01/17/2023	WAIVER OF SERVICE Returned Executed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. Gisele Bundchen	View Add to request

		waiver sent on 12/27/2022, response/answer due 2/27/2023. (Moskowitz, Adam) (Entered: 01/17/2023)	
19	01/17/2023	WAIVER OF SERVICE Returned Executed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. Thomas Brady waiver sent on 12/27/2022, response/answer due 2/27/2023. (Moskowitz, Adam) (Entered: 01/17/2023)	View Add to request
18	01/17/2023	WAIVER OF SERVICE Returned Executed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. Lawrence Gene David waiver sent on 12/27/2022, response/answer due 2/27/2023. (Moskowitz, Adam) (Entered: 01/17/2023)	View Add to request
17	01/06/2023	WAIVER OF SERVICE Returned Executed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. Golden State Warriors LLC waiver sent on 1/4/2023, response/answer due 3/6/2023. (Moskowitz, Adam) (Entered: 01/06/2023)	View Add to request
16	12/16/2022	AMENDED COMPLAINT AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL against Sam Bankman-Fried, Thomas Brady, Gisele Bundchen, Stephen Curry, Lawrence Gene David, Caroline Ellison, Dan Friedberg, Golden State Warriors LLC, Udonis Haslem, William Trevor Lawrence, Kevin O'Leary, Shaquille O'Neal, Shohei Ohtani, David Ortiz, Naomi Osaka, Nishad Singh, Sam Trabucco, Gary Wang, filed by Skyler Lindeen, Edwin Garrison, Alexander Chernyavsky, David Nicol, Sunil Kavuri, Gregg Podalsky, Gary Gallant. (Attachments: # 1 Exhibit A)(Moskowitz, Adam) (Entered: 12/16/2022)	View Add to request
15	12/09/2022	Summons Issued as to Sam Bankman-Fried. (ls) (Entered: 12/09/2022)	View Add to request
14	12/08/2022	NOTICE of Voluntary Dismissal PLAINTIFFS NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE by Edwin Garrison (Moskowitz, Adam) (Entered: 12/08/2022)	View Add to request
13	12/08/2022	NOTICE of Filing Proposed Summons(es) by Edwin Garrison (Attachments: # 1 Summon(s)) (Moskowitz, Adam) (Entered: 12/08/2022)	View Add to request
12	12/05/2022	Summons Issued as to Thomas Brady, Gisele Bundchen, Stephen Curry, Lawrence Gene David, Golden State Warriors LLC, Udonis Haslem, William Trevor Lawrence, Kevin O'Leary, Shaquille O'Neal, Shohei Ohtani, David Ortiz, Naomi Osaka. (ls) (Entered: 12/05/2022)	View Add to request

11	12/02/2022	NOTICE of Filing Proposed Summons(es) by Edwin Garrison re 1 Complaint filed by Edwin Garrison (Attachments: # 1 Summon(s), # 2 Summon(s), # 3 Summon(s), # 4 Summon(s), # 5 Summon(s), # 6 Summon(s), # 7 Summon(s), # 8 Summon(s), # 9 Summon(s), # 10 Summon(s), # 11 Summon(s), # 12 Summon(s)) (Moskowitz, Adam) (Entered: 12/02/2022)	View Add to request
10	11/28/2022	PAPERLESS ORDER. THIS CAUSE came before the Court upon the Motion for Alexander Boies to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. 8 . UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion 8 is GRANTED. Alexander Boies may appear pro hac vice in this matter. The Clerk of Court shall provide electronic notification of all electronic filings to aboies@bsfllp.com. Signed by Judge K. Michael Moore on 11/28/2022. (rfr) (Entered: 11/28/2022)	Send Runner to Court
9	11/28/2022	PAPERLESS ORDER. THIS CAUSE came before the Court upon the Motion for David Boies to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. 7 . UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion 7 is GRANTED. David Boies may appear pro hac vice in this matter. The Clerk of Court shall provide electronic notification of all electronic filings to dboies@bsfllp.com. Signed by Judge K. Michael Moore on 11/28/2022. (rfr) (Entered: 11/28/2022)	Send Runner to Court
8	11/23/2022	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Alexander Boies. Filing Fee \$ 200.00 Receipt # AFLSDC-16123609 by Edwin Garrison. Responses due by 12/7/2022 (Attachments: # 1 Text of Proposed Order)(Moskowitz, Adam) (Entered: 11/23/2022)	View Add to request
7	11/23/2022	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for David Boies. Filing Fee \$ 200.00 Receipt # AFLSDC-16123593 by Edwin Garrison. Responses due by 12/7/2022 (Attachments: # 1 Text of Proposed Order)(Moskowitz, Adam) (Entered: 11/23/2022)	View Add to request

6	11/16/2022	<p>PAPERLESS ORDER REFERRING PRETRIAL DISCOVERY MATTERS TO MAGISTRATE JUDGE JACQUELINE BECERRA. PURSUANT to 28 U.S.C. § 636 and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida, the above-captioned Cause is referred to United States Magistrate Judge Jacqueline Becerra to take all necessary and proper action as required by law with respect to any and all pretrial discovery matters. Any motion affecting deadlines set by the Court's Scheduling Order is excluded from this referral, unless specifically referred by separate Order. It is FURTHER ORDERED that the parties shall comply with Magistrate Judge Jacqueline Becerra's discovery procedures. Signed by Judge K. Michael Moore on 11/16/2022. (rfr) (Entered: 11/16/2022)</p>	Send Runner to Court
5	11/16/2022	<p>PAPERLESS PRETRIAL ORDER. This order has been entered upon the filing of the complaint. Plaintiff's counsel is hereby ORDERED to forward to all defendants, upon receipt of a responsive pleading, a copy of this Order. It is further ORDERED that S.D. Fla. L.R. 16.1 shall apply to this case and the parties shall hold a scheduling conference no later than twenty (20) days after the filing of the first responsive pleading by the last responding defendant, or within sixty (60) days after the filing of the complaint, whichever occurs first. However, if all defendants have not been served by the expiration of this deadline, Plaintiff shall move for an enlargement of time to hold the scheduling conference, not to exceed 90 days from the filing of the Complaint. Within ten (10) days of the scheduling conference, counsel shall file a joint scheduling report. Failure of counsel to file a joint scheduling report within the deadlines set forth above may result in dismissal, default, and the imposition of other sanctions including attorney's fees and costs. The parties should note that the time period for filing a joint scheduling report is not tolled by the filing of any other pleading, such as an amended complaint or Rule 12 motion. The scheduling conference may be held via telephone. At the conference, the parties shall comply with the following agenda that the Court adopts from S.D. Fla. L.R. 16.1: (1) Documents (S.D. Fla. L.R. 16.1.B.1 and 2) - The parties shall determine the procedure for exchanging a copy of, or a description by category and location of, all documents and other evidence that is reasonably available and that a party expects to offer or may offer if the need arises. Fed. R. Civ. P. 26(a)(1)(B). (a) Documents include computations of the nature and extent of</p>	Send Runner to Court

any category of damages claimed by the disclosing party unless the computations are privileged or otherwise protected from disclosure. Fed. R. Civ. P. 26(a)(1)(C). (b) Documents include insurance agreements which may be at issue with the satisfaction of the judgment. Fed. R. Civ. P. 26(a)(1)(D). (2) List of Witnesses - The parties shall exchange the name, address and telephone number of each individual known to have knowledge of the facts supporting the material allegations of the pleading filed by the party. Fed. R. Civ. P. 26(a)(1)(A). The parties have a continuing obligation to disclose this information. (3) Discussions and Deadlines (S.D. Fla. L.R. 16.1.B.2) - The parties shall discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. Failure to comply with this Order or to exchange the information listed above may result in sanctions and/or the exclusion of documents or witnesses at the time of trial. S.D. Fla. L.R. 16.1.I. The parties are hereby on notice that this Court requires all filings to be formatted in 12 point Times New Roman font and double spaced, including any footnotes, with one inch margins on all sides. Failure to follow these formatting guidelines may result in the filing being stricken, any opposing filing being granted by default, and the imposition of other sanctions, including attorney's fees and costs. Multiple Plaintiffs or Defendants shall file joint motions with co-parties unless there are clear conflicts of position. If conflicts of position exist, parties shall explain the conflicts in their separate motions. Failure to comply with ANY of these procedures may result in the imposition of appropriate sanctions, including but not limited to, the striking of the motion or dismissal of this action. The parties shall seek extensions of time in a timely fashion. "A motion for extension of time is not self-executing.... Yet, by filing these motions on or near the last day, and then sitting idle pending the Court's disposition of the motion, parties essentially grant their own motion. The Court will not condone this." *Compere v. Nusret Miami, LLC*, 2020 WL 2844888, at *2 (S.D. Fla. May 7, 2020) (internal citations omitted). Pursuant to Administrative Order 2016-70 of the Southern District of Florida and consistent with the Court of Appeals for the Eleventh Circuit's Local Rules and Internal Operating Procedures, within three (3) days of the conclusion of a trial or other proceeding, parties must file via CM/ECF electronic versions of documentary exhibits

		admitted into evidence, including photographs of non-documentary physical exhibits. The Parties are directed to comply with each of the requirements set forth in Administrative Order 2016-70 unless directed otherwise by the Court. Telephonic appearances are not permitted for any purpose. Upon reaching a settlement in this matter the parties are instructed to notify the Court by telephone and to file a Notice of Settlement within twenty-four (24) hours. Signed by Judge K. Michael Moore on 11/16/2022. (rfr) (Entered: 11/16/2022)	
4	11/16/2022	Bar Letter re: Admissions sent to attorney David Boies and Alex Boies, mailing date November 16, 2022, (pt) (Entered: 11/16/2022)	View Add to request
3	11/16/2022	ORDER OF RECUSAL. Magistrate Judge Lauren F. Louis recused. Magistrate Judge Jacqueline Becerra added. Signed by Magistrate Judge Lauren Fleischer Louis on 11/16/2022. See attached document for full details. (vjk) (Main Document 3 replaced on 11/16/2022) (vjk). Modified pdf on 11/16/2022 (vjk). (Entered: 11/16/2022)	View Add to request
2	11/15/2022	Clerks Notice of Judge Assignment to Judge K. Michael Moore. Pursuant to 28 USC 636(c), the parties are hereby notified that the U.S. Magistrate Judge Lauren F. Louis is available to handle any or all proceedings in this case. If agreed, parties should complete and file the Consent form found on our website. It is not necessary to file a document indicating lack of consent. (aao) (Entered: 11/16/2022)	Send Runner to Court
1	11/15/2022	COMPLAINT CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL against All Defendants. Filing fees \$ 402.00 receipt number AFLSDC-16103423, filed by Edwin Garrison. (Attachments: # <u>1</u> Civil Cover Sheet)(Moskowitz, Adam) (Entered: 11/15/2022)	View Add to request

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:22-cv-23753-KMM

EDWIN GARRISON, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

**AMENDED CLASS ACTION
COMPLAINT**

v.

JURY DEMAND

SAM BANKMAN-FRIED, et al.,

Defendants.

/

AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs file this Consolidated Complaint (the only Class Action in the Country), on behalf of themselves, and all other similarly situated US and non-US FTX consumers, against Defendants, who all promoted, assisted in, and/or actively participated in FTX Trading LTD d/b/a FTX's ("FTX Trading") and West Realm Shires Services Inc. d/b/a FTX US's ("FTX US") (collectively, the "FTX Entities"), offer and sale of unregistered securities, identical FTX yield-bearing accounts ("YBAs").

INTRODUCTION

1. Everyone now agrees the FTX Disaster is the largest financial fraud in US history. The former FTX CEO is in jail and the new CEO—who helped wind down Enron—concluded the fraud here was worse than Enron. Billions of dollars have been stolen from investors across the globe. FTX will be involved in federal bankruptcy proceedings for many years and there is no guarantee that any of the victims will be able to see any recovery from those proceedings. This Federal Consolidated Action may be the only avenue for any of the victims to recover any of their damages. This action is specifically brought against persons and celebrities who were specifically

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warned by the SEC back in 2017 (and in many FTC Guidelines), that if these FTX YBA's are found to be "securities," those persons may be liable under state and federal regulations for: (1) promoting an unregistered security, or (2) failing to properly disclose their payments and compensation. Those specific claims have a strict liability standard with no caveat emptor defense.

2. The question of whether the sale of every YBA is (or is not) the sale of "unregistered securities" has practically been answered in the affirmative through various regulatory statements, guidance, and actions issued by the Securities and Exchange Commission and other regulatory entities. For example, on November 1, 2017, in the "SEC Statement Urging Caution Around Celebrity Backed ICOs,"¹

In the SEC's Report of Investigation concerning The DAO,² the Commission warned that virtual tokens or coins sold in ICOs may be securities, and those who offer and sell securities in the United States must comply with the federal securities laws. Any celebrity or other individual who promotes a virtual token or coin that is a security must disclose the nature, scope, and amount of compensation received in exchange for the promotion. A failure to disclose this information is a violation of the anti-touting provisions of the federal securities laws. **Persons making these endorsements may also be liable** for potential violations of the anti-fraud provisions of the federal securities laws, **for participating in an unregistered offer and sale of securities**, and for acting as unregistered brokers. The SEC will continue to focus on these types of promotions to protect investors and to ensure compliance with the securities laws.

3. The SEC and state securities regulators over the past 5 years, have already found liable numerous celebrities, cryptocurrency brokers and exchanges just like FTX for offering this

¹ <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos> (accessed December 16, 2022).

² <https://www.sec.gov/litigation/investreport/34-81207.pdf> (accessed December 16, 2022)

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exact same type of interest-bearing account, finding that exchanges such as BlockFi,³ Voyager,⁴ and Celsius⁵ all offered these same accounts as unregistered securities.

4. A second narrow issue that is common to the entire Proposed Class, whose focus is solely objective, is whether these Defendants violated state consumer laws by failing to abide by any of the FTC’s long established rules and regulations, specifically on what is required for a celebrity endorsement of cryptocurrency.

5. We all need to be clear. This is not a case where Plaintiffs made a “risky” investment in stock or cryptocurrency, or that they lost money speculating on various cryptocurrency projects. Plaintiffs’ claims arise simply from the purchase of and investment in a YBA, a savings type of account with FTX that every customer who signed up for the FTX app received by default, and which, as explained below, was guaranteed to generate returns on their significant holdings in the accounts, regardless of whether those assets were held as USD, legal tender or cryptocurrency, and regardless of whether any trades were made with the assets held in the YBA. In other words, the YBA was portrayed to be like a bank account, something that was “very safe” and “protected.” That is the narrative that Defendants pushed in promoting the offer and sale of the YBAs, which are unregistered securities. For that, Defendants are liable for Plaintiffs’ losses, jointly and severally and to the same extent as if they were themselves the FTX Entities.

³ <https://www.sec.gov/news/press-release/2022-26> (accessed December 16, 2022).

⁴ <https://coingeek.com/6-us-regulators-crackdown-on-voyager-digital-over-interest-bearing-accounts/> (accessed December 16, 2022).

⁵ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjvNvg27j7AhWfRTABHfwzDe4QFnoECAsQAQ&url=https%3A%2F%2Fwww.nj.gov%2Foa%2Fnewsreleases21%2FCelsius-Order-9.17.21.pdf&usq=AOvVaw0Zd94fuhFSsOoGKM-vQ3YI> (accessed December 16, 2022).

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6. Literally overnight, Plaintiffs' assets held in their YBAs on the Deceptive FTX Platform were robbed from them as FTX imploded and former-CEO, Sam Bankman-Fried, filed a Chapter 11 bankruptcy petition in Delaware on an emergency basis. This happened because, as explained by the new CEO of the failed FTX Entities:

I have over 40 years of legal and restructuring experience. I have been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate failures in history. I have supervised situations involving allegations of criminal activity and malfeasance (Enron). I have supervised situations involving novel financial structures (Enron and Residential Capital) and cross-border asset recovery and maximization (Nortel and Overseas Shipholding). Nearly every situation in which I have been involved has been characterized by defects of some sort in internal controls, regulatory compliance, human resources and systems integrity.

Never in my career have I seen such a complete failure of corporate controls and such a **complete absence of trustworthy financial information** as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, **unsophisticated** and **potentially compromised** individuals, **this situation is unprecedented.**

See In re: FTX Trading Ltd, et al., No. 22-11068 (JTD), ECF No. 24, ¶¶ 4–5 (D. Del. Nov. 17, 2022) (emphasis added).

7. The Cryptocurrency National Disaster is growing by the billions almost every day. More crypto companies are filing new federal bankruptcy petitions each day, all running for protection from the billions of dollars of losses they directly caused to thousands of investors here in Florida and across the globe. This is by far the largest securities national disaster, greatly surpassing the Madoff Ponzi Scheme, and could very likely become a complex international litigation disaster, similar to how the hundreds of thousands of asbestos cases swamped all courts across the globe. Unless a workable, coordinated, and organized structure is established now, at the very onset of these proceedings, here in Miami, which served as the epicenter for the crypto

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fraud, the FTX victims will continue to suffer and the only people to benefit will be the professionals in the bankruptcy and civil courts.

8. The Deceptive and failed FTX Platform all emanated from here in Miami, Florida, FTX's domestic headquarters and the host of the largest and most famous International World Cryptocurrency Conventions. FTX's fraudulent scheme was designed to take advantage of unsophisticated investors from across the globe, who utilize mobile apps to make their investments. As a result, consumers around the globe collectively sustained billions of dollars in damages. FTX organized and emanated its fraudulent plan from its worldwide headquarters located here in Miami, Florida. Miami became the "hot spot" for crypto companies, hosting the most investments in crypto startups as well as the annual Bitcoin Miami 2022 Global Forum. Several crypto companies, including crypto exchange Blockchain.com, Ripple and FTX.US, moved their headquarters to Miami. Others, including fellow exchange eToro, expanded their U.S. presence with offices in Miami. FTX was already very familiar with Miami, signing a deal worth more than \$135 million dollars for the naming rights of the waterfront arena, where 3-time NBA Champions the Miami Heat play.

FACTUAL BACKGROUND

9. Undersigned Counsel have been investigated and litigating these specific issues for over a year before this Court. On December 24, 2021, counsel for Plaintiffs and the proposed class members brought the first (and only) putative nationwide class action complaint against the now-defunct cryptocurrency trading app, Voyager, styled *Mark Cassidy v. Voyager Digital Ltd., et al.*, Case No. 21-24441-CIV-ALTONAGA/Torres (the "*Cassidy* Action"), alleging that the platform owned and operated by Voyager Digital Ltd. ("Voyager") and Voyager Digital LLC ("VDL") was an unregulated and unsustainable fraud. In the *Cassidy* Action, plaintiffs also alleged that

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Defendant Ehrlich, Voyager’s CEO, teamed up with Defendants Cuban and the Dallas Mavericks to promote Voyager, by making false representations and employing other means of deception. As a result, the Voyager plaintiffs and Voyager class members, all sustained losses in excess of \$5 billion.

10. The allegations in the *Cassidy* complaint—and specifically Mark Cuban’s role in promoting Voyager—received national attention. *See* <https://www.jdsupra.com/legalnews/new-lawsuits-target-cryptocurrency-9604406/> (summarizing the allegations and explaining that “Mark Cuban, owner of the NBA’s Dallas Mavericks, is a major stakeholder in Voyager. The complaint alleges that he made comments at a press conference in which he specifically targeted unsophisticated investors ‘with false and misleading promises of reaping large profits in the cryptocurrency market.’”); <https://www.law.com/dailybusinessreview/2021/12/29/mark-cuban-linked-crypto-platform-hit-with-florida-nationwide-class-action-lawsuit-in-miami-federal-court/?slreturn=20220701214901> (same, in the *Daily Business Review*).

11. After the *Cassidy* Complaint was filed, the following important actions took place:

- (a) the United States Securities and Exchange Commission (SEC) began an enforcement review focused on whether Voyager’s Earn Program Accounts (“EPAs”) constitute unregistered securities;
- (b) seven state Attorneys General (New Jersey, Alabama, Kentucky, Oklahoma, Texas, Vermont and Washington) took specific action finding that Voyager was violating their state laws, including issuing “cease and desist” letters to Voyager, finding that the EPA was an unregistered security, prohibiting the crypto-asset broker-dealer from selling any more unregistered securities (finding that Voyager used these EPAs to raise millions of dollars in revenue worldwide as of March 1, 2022; and
- (c) on March 29, 2002, the State of New Jersey Bureau of Securities entered a Cease and Desist Order against Voyager, finding that the EPA was not exempt from registration under the law, and instead

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that it must be registered—and as a result, Voyager’s stock price tanked by 25% in a day and is down over 80% for the year.⁶

12. On July 5, 2022, Voyager Digital Holdings, Inc. and two affiliated debtors (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code. Voyager’s bankruptcy cases (the “Voyager Bankruptcy Cases”) are jointly administered under Case No. 22-10943 before the Honorable Michael E. Wiles in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

13. On September 28, 2022, Voyager filed a motion in the Voyager Bankruptcy Cases seeking authority to enter into an asset purchase agreement with West Realm Shires Inc., d/b/a FTX US whereby Voyager will sell substantially all of its assets for a purchase price of approximately \$1.422 billion, which includes (i) the value of cryptocurrency on the Voyager platform as of a date to be determined, which, as of September 26, 2022, is estimated to be \$1.311 billion, plus (ii) additional consideration which is estimated to provide at least approximately \$111 million of incremental value to the Debtors’ estates.

14. Everyone involved in the Voyager Bankruptcy Cases thought that the FTX Entities were the *deus ex machina* come to save the day by bailing out Voyager and paying back at least some of the losses the Voyager customers sustained.

15. Instead, as explained below, the FTX Entities imploded, their over \$30 billion in value evaporated almost overnight, and the FTX Entities found themselves filing their own emergency Chapter 11 bankruptcy petition in Delaware. The Deceptive FTX Platform maintained by the FTX Entities was truly a house of cards, a Ponzi scheme where the FTX Entities shuffled

⁶ <https://seekingalpha.com/article/4498956-voyager-digital-plunged-25-percent-heres-why> (accessed October 28, 2022); <https://seekingalpha.com/article/4503716-voyager-digital-buy-dip-during-crypto-crash> (accessed December 16, 2022).

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customer funds between their opaque affiliated entities, using new investor funds obtained through investments in the YBAs and loans to pay interest to the old ones and to attempt to maintain the appearance of liquidity.

16. Part of the scheme employed by the FTX Entities involved utilizing some of the biggest names in sports and entertainment to raise funds and drive global consumers to invest in the YBAs, which were offered and sold largely from the FTX Entities' domestic base of operations here in Miami, Florida, pouring billions of dollars into the Deceptive FTX Platform to keep the whole scheme afloat.

17. Importantly, although Defendants disclosed their partnerships with the FTX Entities, they have never disclosed the nature, scope, and amount of compensation they personally received in exchange for the promotion of the Deceptive FTX Platform, which the SEC has explained that a failure to disclose this information would be a violation of the anti-touting provisions of the federal securities laws.⁷ Moreover, none of these Defendants performed any due diligence prior to marketing these FTX products to the public.

18. The SEC took action against boxing champ Floyd Mayweather and music producer DJ Khaled after they were paid by cryptocurrency issuers to tweet promotional statements about investing in Initial Coin Offerings (ICOs), ordering them both to pay disgorgement, penalties and interest for promoting investments in ICOs, including one from cryptocurrency issuer Centra Tech,

⁷ <https://www.ubergizmo.com/2017/11/sec-celebrities-disclose-payment-cryptocurrency-endorsements/#:~:text=It%20has%20issued%20a%20statement%20warning%20celebrities%20that,without%20disclosing%20that%20they%E2%80%99ve%20been%20paid%20for%20it> (accessed December 16, 2022).

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Inc., for a combined total of \$767,500 because they failed to disclose that their promotional efforts on Twitter were paid endorsements.⁸

19. Other celebrities similarly accused and prosecuted for failing to disclose their paid endorsements include Kim Kardashian and basketball player Paul Pierce.⁹ According to the Federal Trade Commission, cryptocurrency scams have increased more than ten-fold year-over-year with consumers losing more than \$80 million since October 2020, due in large part to the use of such celebrity endorsements.¹⁰

20. As explained more fully in this Complaint, Defendants' misrepresentations and omissions made and broadcast around the globe through the television and internet render them liable to Plaintiff and class members for soliciting their purchases of the unregistered YBAs. *Wildes v. Bitconnect Int'l PLC*, No. 20-11675 (11th Cir. Feb. 18, 2022) (holding that promoters of cryptocurrency through online videos could be liable for soliciting the purchase of unregistered securities through mass communication, and no "personal solicitation" was necessary for solicitation to be actionable).

21. This action seeks to hold Defendants responsible for the many billions of dollars in damages they caused Plaintiffs and the Class and to force Defendants to make them whole.

PARTIES

22. **Plaintiffs** are all residents of US and/or a foreign government, and all purchased FTX YBAs.

⁸ <https://news.bloomberglaw.com/us-law-week/insights-celebrity-endorsements-and-cryptocurrency-a-cautionary-tale> (accessed December 16, 2022).

⁹ <https://blockbulletin.com/news/altcoins/kim-kardashian-among-other-celebrities-sued-for-promoting-cryptocurrencies/> (accessed December 16, 2022).

¹⁰ <https://florida.foolproofme.org/articles/770-celebrity-cryptocurrency-scam> (accessed December 16, 2022).

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23. **Plaintiff Edwin Garrison** is a citizen and resident of the State of Oklahoma. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Garrison purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Garrison did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Garrison has sustained damages for which Defendants are liable.

24. **Plaintiff Gregg Podalsky** is a citizen and resident of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Podalsky purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Podalsky did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Podalsky has sustained damages for which Defendants are liable.

25. **Plaintiff Skyler Lindeen** is a citizen and resident of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Lindeen purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Lindeen did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those

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misrepresentations and omissions. As a result, Plaintiff Lindeen has sustained damages for which Defendants are liable.

26. **Plaintiff Alexander Chernyavsky** is a citizen and resident of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Chernyavsky purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Chernyavsky did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Chernyavsky has sustained damages for which Defendants are liable.

27. **Plaintiff Sunil Kavuri** is a citizen and resident of the United Kingdom. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Kavuri purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Kavuri did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Kavuri has sustained damages for which Defendants are liable.

28. **Plaintiff Gary Gallant** is a citizen and resident of Canada. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Gallant purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Gallant did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed

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in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Gallant has sustained damages for which Defendants are liable.

29. **Plaintiff David Nicol** is a citizen and resident of Sydney, Australia. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Nicol purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Nicol did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Nicol has sustained damages for which Defendants are liable.

30. **FTX Brand Ambassador Defendants** are all persons and/or companies, that: (1) agreed to serve as "Brand Ambassadors" for FTX, (2) all admittedly advertised and promoted the sale of the FTX YBAs and (3) none of them disclosed, in any of their marketing campaigns and/or advertisements, that they were paid hundreds of millions of dollars by FTX and profited from the sale of FTX YBAs, in clear violation of SEC, FTC and various federal and state regulations.

31. **Defendant Thomas Brady**, NFL quarterback currently playing for the Tampa Bay Buccaneers, is a brand ambassador of FTX, and is a citizen and resident of Miami-Dade County, Florida.

32. **Defendant Gisele Bundchen**, one of the world's highest-paid models and a brand ambassador for FTX, is a citizen and resident of Miami-Dade County, Florida.

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33. **Defendant Kevin O’Leary**, “Mr. Wonderful,” a businessman, television personality appearing regularly on *Shark Tank*, and brand ambassador for FTX, is a citizen and resident of Miami Beach, Florida.

34. **Defendant Udonis Haslem**, an American professional basketball player for the Miami Heat of the NBA and brand ambassador of FTX, is a citizen and resident of Miami-Dade County, Florida.

35. **Defendant David Ortiz**, former designated hitter and first baseman in the MLB and a brand ambassador for FTX, is a citizen and resident of the State of Florida.

36. **Defendant Stephen Curry**, professional basketball player for the Golden State Warriors of the NBA and brand ambassador for FTX, is a citizen and resident of the State of California.

37. **Defendant Golden State Warriors LLC** is a professional basketball team in the NBA that officially launched their partnership with FTX in 2022 with the unveiling of the FTX logo on the court at the Chase Center, and is a corporation operating and existing under the laws of the State of California.

38. **Defendant Shaquille O’Neal**, former professional NBA basketball star, sports analyst, entrepreneur, and FTX brand ambassador, is a citizen and resident of Collin County, Texas.

39. **Defendant William Trevor Lawrence**, the quarterback for the Jacksonville Jaguars of the NFL and a brand ambassador for FTX, is a citizen and resident of the state of Mississippi.

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40. **Defendant Shohei Ohtani**, a professional baseball pitcher, designated hitter and outfielder for the Los Angeles Angels of the MLB and a brand ambassador for FTX, is a citizen and resident of the State of California.

41. **Defendant Naomi Osaka**, a professional tennis player and brand ambassador for FTX, is a citizen and resident of Beverly Hills, California.

42. **Defendant Lawrence Gene David**, an American comedian, writer, actor, television producer, and FTX brand ambassador, is a citizen and resident of Los Angeles, California.

43. **FTX Insider Defendants** are all persons that controlled, assisted and worked at FTX that helped promote, and sell the FTX YBAs but are not personally involved in the FTX restructuring process.

44. **Defendant Caroline Ellison** is the former CEO of Alameda Research, LLC, a trading firm launched by Defendant Sam Bankman-Fried. She oversaw many of the risky bets Alameda took with regard to FTX customers' crypto tokens. Defendant Ellison is a resident of Hong Kong.

45. **Defendant Sam Trabucco**, the former Co-CEO of Alameda Research, LLC, is a citizen and resident of the State of California.

46. **Defendant Gary (Zixiao) Wang**, co-founder of Alameda Research and FTX, upon information and belief is currently residing in the Bahamas.

47. **Defendant Nishad Singh**, the former Director of Engineering of FTX, upon information and belief is currently residing in the Bahamas.

48. **Defendant Dan Friedberg**, the former Chief Compliance Officer of FTX, is a citizen and resident of Seattle, Washington.

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JURISDICTION AND VENUE

49. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A) because this is a class action for a sum exceeding \$1,000,000,000.00 (one billion dollars), exclusive of interest and costs, and in which at least one class member is a citizen of a state different than the Defendants.

50. This Court has personal jurisdiction against Defendants because they conduct substantial and not isolated business in Florida, and/or have otherwise intentionally availed themselves of the Florida consumer market through the promotion, marketing, and sale of FTX's YBAs in Florida, which constitutes committing a tortious act within the state of Florida. Defendants have also marketed and participated and/or assisted in the sale of FTX's unregistered securities to consumers in Florida. Further, Defendants have engaged in a conspiracy in which some of the co-conspirators—including some who are Defendants in this action—committed overt acts in furtherance of the conspiracy in the State of Florida. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants permissible under traditional notions of fair play and substantial justice.

51. Venue is proper in this District under 28 U.S.C. § 1391 because thousands of Class Members either reside in this District; Defendants engaged in business in this District; a substantial part of the events or omissions giving rise to the claims at issue occurred in this District; and because Defendants entered into transactions and/or received substantial profits from Class Members who reside in this District.

52. All conditions precedent to the institution and maintenance of this action have been performed, excused, waived, or have otherwise occurred.

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FACTUAL ALLEGATIONS

A. Background on FTX and its Key Players.

53. Until seeking the protection of the Bankruptcy Court, the FTX Entities operated a multi-billion-dollar mobile application cryptocurrency investment service (the “Deceptive FTX Platform”) that placed cryptocurrency trade orders on behalf of users like Plaintiff and Class Members and offered interest bearing cryptocurrency accounts.

54. Attached as **Exhibit A** is the Expert Report of Paul Sibenik, Lead Case Manager at CipherBlade Blockchain Investigation Agency, which is incorporated into this complaint in its entirety by reference, and additionally as cited.

55. As Sibenik explains, in many ways, centralized cryptocurrency exchanges, including FTX, are analogous to banks albeit for the cryptocurrency industry. Ex. A ¶ 10.

56. More specifically, cryptocurrency exchanges accept deposits of cryptocurrency, and often fiat currency on behalf of their customers. Ex. A ¶ 11. Once that cryptocurrency is received by the exchange then it has dominion and control over those assets. *Id.*

57. The exchange then credits the applicable customer account with the appropriate amount of cryptocurrency or fiat assets the exchange received. Ex. A ¶ 12. This credit can be regarded as a liability of the exchange to its customer. *Id.*

58. If, for example, cryptocurrency was deposited to the customer’s exchange account, the customer could then take that credit received from the exchange, and:

- a) Trade it for another cryptocurrency
- b) Trade it for fiat currency
- c) Leave it as a balance on the exchange account (leaving an open liability of the exchange to the customer)

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d) Withdraw it (withdrawal could be done prior to or after a trade or conversion)

These things could be done in whole or in part. Ledger entries would (and should) be made internally by the exchange to account for changes in positions and applicable balances. Ex. A ¶ 13.

59. The exchange accounts should very much be regarded as being custodial in nature. Ex. A ¶ 14. This means that the customer does not *control* access to the assets ‘in’ their account. *Id.* The customer needs to make a request to the exchange to be able to access and send those balances. *Id.* The exchange then debits the user account and sends the assets. *Id.* Whether or not such requests are processed are dependent on the willingness, ability, and approval of the exchange. *Id.*

60. One major factor the affects the exchange’s ability to process such requests is whether or not they have the assets and/or capital necessary to do so. Ex. A ¶ 15.

61. For any non-yield-bearing account, this *shouldn’t* be a problem, since exchanges *should* have enough assets in custody for the benefit of their customers to cover their liabilities to their customers, and on a 1:1 basis. Ex. A ¶ 16. FTX’s terms of service seems to guarantee this, although FTX clearly violated their own terms of service:

“Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading. As the owner of Digital Assets in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account.”

“None of the Digital Assets in your Account are the property of, or shall or may be loaned to, FTX Trading; FTX Trading does not represent or treat Digital Assets in User’s Accounts as belonging to FTX Trading.”

“You control the Digital Assets held in your Account. At any time, subject to outages, downtime, and other applicable policies (including the Terms),

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you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party.”¹¹

Id.

62. While FTX violated their own terms of service, it would also have been true that some of these claims would have been demonstrably false to begin even if there was hypothetically no wrongdoing on the part of FTX. Ex A ¶ 17. This is because FTX exchange accounts (or any exchange account with any centralized custodial exchange, including Coinbase for example) are custodial in nature. *Id.* This means that the customer does not control access to the assets ‘in’ their account. The customer needs to make a request to the exchange to be able to access and send those balances. It is very much the exchange that controls the assets, not their customer. *Id.* However, it should also be noted that the digital assets aren’t technically ‘in’ the account at all. *Id.* At a technical level, an exchange account cannot hold or store cryptocurrency. *Id.* The account stores a record of a liability or an IOU to the exchange’s customer. *Id.* When a user purchases cryptocurrency on an exchange, they aren’t technically purchasing that cryptocurrency; they are purchasing an IOU for that cryptocurrency. *Id.* Because this concept of buying and storage can be difficult to understand, it’s somewhat common for newcomers to associate such IOUs as being the same as storing cryptocurrency assets ‘on’ their account, even though it’s not technically true. *Id.*

63. With any yield-bearing account, it could generally be expected for an exchange to take those customers and leverage, loan or invest them in some way, and hopefully receive enough assets back to be able to pay out their customers back their principal, in addition to yield or interest earned, when applicable customers attempt to redeem or withdraw those funds. Ex. A ¶ 18.

¹¹ https://help.ftx.com/hc/article_attachments/9719619779348/FTX_Terms_of_Service.pdf (accessed December 16, 2022).

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64. While the existence of such loans associated with assets deposited to yield-bearing accounts was known, the substantial risks associated with such loans, and by extension the yield-bearing accounts in general was not adequately represented, for reasons I will demonstrate later in this report. Ex. A ¶ 19.

65. The main functional differences between banks and cryptocurrency exchanges is such that exchanges are largely unregulated, and that exchanges (and by extension exchange accounts and the users who use them) are subject to a lot of additional risks compared to that of a bank account. Ex. A ¶ 20.

66. Banks are, of course, subject to a variety of capital control requirements to ensure protection of consumer assets. Banks are regulated with regards to the type of assets that they can investment customer assets in. Ex. A ¶ 21. Banks are subject to regular financial audits. Banks have regulatory oversight to ensure the protection of consumer assets. And of course, bank accounts have FDIC insurance so that bank account holders have coverage in case a bank, despite such measures, becomes insolvent. *Id.*

67. Exchanges on the other hand, are not subject to capital control requirements. Ex. A ¶ 22. While almost all exchanges will indicate that they ‘securely’ store all customer assets 1:1 in ‘cold storage,’ there is no regulatory requirement in most jurisdictions (including the US) for exchanges to do so, nor is there any requirement for exchanges to offer any transparency regarding their solvency or use of customer assets to regulators or to the general public. *Id.*

68. Other than by an exchange’s own terms of service (which wasn’t adhered to in this case), exchanges are not prevented from whether they invest customer assets elsewhere, and if so, what types of investments they enter into, or loans they provide, regardless of the inherent level of risk. Ex. A ¶ 23. And exchanges have no requirement to have any type of insurance equivalent to

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FDIC insurance. *Id.* While some exchanges will sometimes claim they have ‘insurance,’ the terms and conditions associated with that insurance are typically completely unknown to investors, and often this insurance will bear little to no resemblance to FDIC insurance; in essence the term ‘insurance’ is used as a marketing ploy to help instill customer confidence in the exchange, even when such confidence may not be warranted. *Id.*

69. Due to the aforementioned reasons and risks surrounding the lack of regulation, as well various types of cybersecurity-related risks that aren’t applicable to banks but are critically important for exchanges, cryptocurrency exchanges are generally not and should not be considered a ‘safe’ place to store assets, whether cryptocurrency assets or fiat assets. Ex. A ¶ 24.

70. The inherent riskiness associated with storing assets on a cryptocurrency exchange is well-known to the vast majority of well-educated and knowledgeable cryptocurrency users. Ex. A ¶ 25. This is evidenced by the frequent expression ‘not your keys, not your coins,’ essentially meaning that if you don’t *control* the cryptocurrency in your account, it’s not really yours. *Id.* ‘Your’ cryptocurrency belongs to the exchange if you elect to store it ‘on’ the exchange, and if they renege or are unable to fulfill their liability to you, you as the beneficial cryptocurrency owner of the cryptocurrency, have effectively lost your money. *Id.*

71. This is further referenced by the extensive track record of the many cryptocurrency exchanges that have shut down and ultimately failed,¹² often in spectacular fashion. Ex. A ¶ 26. The most common reasons for an exchange’s failure include:

- a) The exchange borrowing against customer assets (either to fund business operations or lending them out in an effort to generate a profit) leading to insolvency.
- b) The exchange trading or leveraging customer assets in an effort to generate a profit, leading to insolvency.

¹² <https://www.cryptowisser.com/exchange-graveyard/> (accessed December 16, 2022).

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- c) A hack or theft by an external actor
- d) Embezzlement, or theft by an internal actor, typically founder(s) of the exchange
- e) Disappeared suddenly, for no apparent reason (typically taking customer assets with them).

Id.

72. When exchanges do shut down (and this happens relatively frequently) it rarely happens in an organized and orderly fashion, and it's incredibly rare for customers that had assets on the exchange to get all their assets back; in many cases, they end up getting nothing back. Ex. A ¶ 27.

73. Suffice to say cryptocurrency exchanges are generally not a safe place to store assets, even amongst exchanges that don't offer a yield-bearing program. Ex. A ¶ 28. When exchanges have a yield-bearing program, or otherwise elect to leverage or loan our customer assets (with or without customer consent), it significantly increases the risk of the exchange failing and becoming insolvent. *Id.* Cryptocurrency exchanges can do a variety of things to minimize such risks and improve safety. *Id.* However, what an exchange says, and what they actually do are two different things entirely. *Id.* It is common for CEOs and executives of exchanges that have failed or in the process of failing to describe their exchange as 'safe,' 'secure,' 'well-regulated,' 'compliant,' 'transparent,' or in a good financial position even when the exact opposite is true. *Id.* FTX was not an exception to this trend. One should not assume or believe that an exchange is any of these things just because they say it. *Id.*

74. This is not to suggest that exchanges cannot be a much safer place to store assets. Ex. A ¶ 29. They can be with appropriate regulation and oversight. In fact, it appears that for FTX Japan¹³ specifically, those investors will be made whole or almost whole due to sensical

¹³ <https://www.coindesk.com/consensus-magazine/2022/12/13/japan-was-the-safest-place-to-be-an-ftx-customer/>

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regulations that were put in place in light of the lessons learned from the failures of Mt. Gox and Coincheck exchanges in Japan. *Id.*

Defendant Sam Bankman-Fried

75. The FTX group of companies (FTX Group or FTX) was founded in 2019 and began as an exchange or marketplace for the trading of crypto assets. FTX was established by Samuel Bankman-Fried, Gary (Zixiao) Wang and Nishad Singh, with operations commencing in May 2019. FTX was purportedly established in order to build a digital asset trading platform and exchange for the purpose of a better user experience, customer protection, and innovative products. FTX built the FTX.com exchange to develop a platform robust enough for professional trading firms and intuitive enough for first-time users.

76. Prior to that, The Silicon Valley-born, MIT-educated Bankman-Fried, also known as SBF, launched his quantitative crypto trading firm, Alameda Research, in November 2017,¹⁴ after stints in the charity world and at trading firm Jane Street.¹⁵ Quantitative trading consists of trading strategies based on quantitative analysis, which rely on mathematical computations and number crunching to identify trading opportunities.

Defendants Caroline Ellison and Sam Trabucco

77. By 2018, Defendant Bankman-Fried had persuaded Defendant Ellison to join him at Alameda Research. Defendant Ellison described the recruitment as follows: “This was very much like, ‘oh, yeah, we don’t really know what we’re doing,’” Ellison told Forbes magazine in an interview regarding her initial impressions of Alameda.

¹⁴ <https://www.businessinsider.com/ftx-crypto-king-sam-bankman-fried-rise-and-fall-2022-11> (accessed December 16, 2022).

¹⁵ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=> (accessed December 16, 2022).

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78. In late 2018, the headquarters of Alameda Research was relocated to Hong Kong. The team at Alameda Research included Defendant Bankman-Fried's close friends (and later co-founders for FTX) Nishad Singh and Gary Wang. Defendant Caroline Ellison and Sam Trabucco were also part of the group and upon moving to Hong Kong the group lived like college students and fiercely traded crypto.

79. After Defendant Bankman-Fried established FTX in 2019, Defendant Ellison began taking more responsibility at Alameda Research along with Sam Trabucco, who served as CEO.

80. In October 2021, Ellison was appointed as co-CEO of Alameda with Sam Trabucco after Bankman-Fried resigned from the firm in an effort to put distance between the exchange and trading shop he founded. As co-CEO, Trabucco helped oversee Alameda's expansion beyond its initial market-neutral, but relatively low-profit business as a market maker for low-volume cryptocurrencies into riskier trading strategies, according to a Twitter thread detailing that shift. For instance, he said Alameda traders began exploring yield farming in decentralized finance (DeFi). Ellison became sole CEO in August 2022, following Trabucco's departure from the firm, when he shifted his role from Co-CEO to adviser of the company.¹⁶

81. Leading up to the collapse of FTX, Ellison lived with nine other FTX or Alameda colleagues in Bankman-Fried's \$30 million penthouse in the Bahamas. She reportedly paid SBF rent, and was occasionally in a romantic relationship with him. In 2021, Ellison tweeted about recreational stimulant use. Upon information and belief, Ellison left the Bahamas and moved back to Hong Kong.

¹⁶ <https://www.coindesk.com/business/2022/08/24/co-ceo-of-crypto-trading-firm-alameda-research-sam-trabucco-steps-down/> (accessed December 16, 2022).

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82. “Young people tend to be too risk averse,” Ellison said in a more recent Alameda podcast episode.¹⁷

83. The Wall Street Journal recently reported that Ellison told Alameda staffers in a video call that she was one of four people (along with Sam Bankman-Fried, Gary Wang, and Nishad Singh) who were aware of the decision to send FTX customer funds to Alameda, to help the fund meet its liabilities.¹⁸

Defendant Gary Wang

84. Wang is not like his co-founder Sam Bankman-Fried, who loves fame and putting himself at the center of public attention. In fact, there’s little public information about Wang, who has been described as a shady but critical player in the rise and fall of FTX.

85. Wang met Bankman-Fried at a math camp in high school. Later, they became college roommates at the Massachusetts Institute of Technology, where Wang got degrees in mathematics and computer science and Bankman-Fried received a bachelor’s in physics.¹⁹

86. Before co-founding Alameda Research (and later FTX), Wang worked at Google. He claims to have built a system to aggregate prices across public flight data, according to an introduction on the Future Fund’s website.²⁰ When Bankman-Fried left the Jane Street Hedge Fund to start Alameda in 2017, Wang left the tech giant.

87. The startup has its beginnings in a three-bedroom Berkeley apartment – the downstairs served as its office. The firm shifted to Hong Kong, in part to take advantage of

¹⁷ <https://www.youtube.com/watch?v=zfc9JAgWBs> (accessed December 16, 2022).

¹⁸ <https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238> (accessed December 16, 2022).

¹⁹ <https://blog.ftx.com/blog/raising-the-bar/> (accessed December 16, 2022)

²⁰ <https://ftxfuturefund.org/about/> (accessed December 16, 2022).

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arbitrage opportunities in Asian bitcoin markets – including the price discrepancy between BTC in Japan and BTC everywhere else.

88. It’s there that Wang and Bankman-Fried funneled funds from Alameda to build its bespoke derivatives exchange. Bankman-Fried told Insider that he is not a good coder: “I don’t code. I’m trash. I have not written any of FTX’s code base. That’s all a lot of other really impressive people at FTX. That’s not me at all.”²¹

89. Nishad Singh, the head of engineering at FTX, said Wang was a “really good mentor” who offered suggestions and advice to push things out on short timescales.

90. In the aftermath of FTX’s collapse, and the subsequent \$400 million hack, questions are circulating around who could possibly have abused client funds. Wang is a prominent suspect, as one of the few people with “root access” to the exchange’s code base, according to The Block.²²

91. Wang is also one of the board members of FTX Future Fund – the charity guided by “effective altruism” that aims to “use reason and evidence to do the most good possible for the most people.”

92. Wang, one of the 10 roommates in Bankman-Fried’ luxury penthouse in the Bahamas, is reportedly among the four people cited by Caroline Ellison who knew about the decision to send customer funds to Alameda, according to people who spoke to the Wall Street Journal.²³

²¹ <https://www.businessinsider.com/crypto-trading-billionaire-sam-bankman-fried-ftx-alameda-surprising-facts-2021-12#5-people-often-think-hes-a-programmer-but-hes-not-5> (accessed December 16, 2022).

²² <https://www.theblock.co/post/186476/who-is-billionaire-ftx-co-founder-gary-wang-and-why-is-he-still-committing-code> (accessed December 16, 2022).

²³ https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238?mod=latest_headlines (accessed December 16, 2022).

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93. A few Wang photos are circulating on the internet, though little else is known about the mysterious co-founder who preferred to stay in the shadows as SBF chased the limelight. In a now infamous picture on FTX’s website, CTO Wang is seen with his back facing the camera as he focuses on the monitors in front of him.

94. At the age of 28, Wang topped Forbes’ 2022 list of the world’s billionaires under 30 with a net worth of \$5.9 billion in April. SBF sent his congratulations to Wang in public, tweeting that “I couldn’t be prouder” when the list came out.²⁴

95. Wang is reportedly now “under supervision” by Bahamian authorities along with Bankman-Fried and Singh.²⁵

Defendant Nishad Singh

96. Nishad Singh joined Alameda Research in the early days, when the five-person trading firm was based in a Berkeley, California, apartment. He went from finding and exploiting arbitrage opportunities in crypto markets to being appointed director of engineering at FTX.

97. Singh is thought to be a close confidant of Bankman-Fried, having shared multiple apartments with the FTX founder over the years, including most recently a 10-person luxury penthouse in Nassau, the Bahamas.

²⁴

https://twitter.com/SBF_FTX/status/1511324242612297738?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1511324242612297738%7Ctwgr%5E8e0ce65ea02f827b72be96dde8f9484a3ba3e41c%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.usatoday.com%2Fstory%2Fmoney%2F2022%2F04%2F05%2Fcryptocurrency-ceo-donate-charity%2F7272175001%2F (accessed December 16, 2022).

²⁵ <https://cointelegraph.com/news/sam-bankman-fried-is-under-supervision-in-bahamas-looking-to-flee-to-dubai> (accessed December 16, 2022).

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98. He is rumored to be just one of three people who controlled the keys to the exchange's matching engine, and may have been informed of a plan to backstop losses at Alameda with FTX customer funds.²⁶

99. Although Singh's LinkedIn profile is down and his Twitter account is locked, the University of California, Berkeley graduate talked about why he left his dream job at Facebook to join Alameda Research in a FTX podcast.²⁷

100. "I spent maybe about a month doing weekends and nights at Alameda," he said, discussing a period of time when his "day job" was as a software engineer working on applied machine learning at Facebook. "At some point, it became obvious that was kind of stupid ... so I took some time off and really gave my 100% working at Alameda," Singh said.

101. Singh visited Alameda in the first month of its existence, where he witnessed Bankman-Fried execute a sequence of trades that he described as "super profitable, easy to understand and there were lots available." Feeling inspired, he took a job.

102. In the podcast, Singh said he was also attracted to the company's cultural commitment to effective altruism,²⁸ a movement that "aims to find the best ways to help others," which he discovered in college.

103. Singh is a board member of FTX Future Fund, a part of the FTX Foundation, a philanthropic collective funded principally by Bankman-Fried and other senior FTX executives.

²⁶ https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238?mod=latest_headlines (accessed December 16, 2022).

²⁷ <https://www.youtube.com/watch?v=r10Rq2cUSIQ> (accessed December 16, 2022).

²⁸ <https://www.coindesk.com/layer2/2022/11/11/how-sam-bankman-frieds-effective-altruism-blew-up-ftx/> (accessed December 16, 2022).

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104. “It was pretty clear that everybody working [at Alameda] was highly motivated, was sort of effective altruism-aligned, which mattered a lot to me and was really [a] bright spot. I could learn a lot from them,” Singh said in the podcast.

105. After spending one and a half years as a core Alameda engineer, Singh took a role as the head of engineering at the then-newly launched FTX derivative exchange in 2019, where he was allowed to code with “minimal supervision.” He has provided code to a number of Bankman-Fried-related projects, including the decentralized exchange Serum on Solana.

106. “Nishad was one of my brother’s best friends in high school. He’s shown the fastest and most sustained professional growth I’ve ever witnessed,” Bankman-Fried wrote in a company blog.²⁹ Singh also reportedly built most of FTX’s “technological infrastructure” and managed the development team.

107. Although pitched as a community-run and- organized exchange, people familiar with the matter told CoinDesk the true power over Serum rested with FTX Group, which then held the program’s access keys.³⁰ A similar relationship may be in place at FTX’s core properties.³¹

108. Singh is reportedly now “under supervision” by Bahamian authorities along with Bankman-Fried and Wang.³²

Dan Friedberg

109. Daniel S. Friedberg was the chief compliance officer at FTX, the person who oversaw FTX’s compliance initiatives before it imploded. He joined the firm in March 2020, and

²⁹ <https://blog.ftx.com/blog/raising-the-bar/> (accessed December 16, 2022).

³⁰ <https://www.coindesk.com/business/2022/11/12/ftx-hack-spooks-solana-defi-community-igniting-revolution-at-alameda-controlled-serum-dex/> (accessed December 16, 2022).

³¹ https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238?mod=latest_headlines (accessed December 16, 2022).

³² <https://cointelegraph.com/news/sam-bankman-fried-is-under-supervision-in-bahamas-looking-to-flee-to-dubai> (accessed December 16, 2022).

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was instrumental in perpetuating its nefarious activities, in part by helping to cover up any indications that the FTX scheme was unraveling.

110. Although Friedberg was supposed to be the adult in the room overseeing the operations of the FTX empire, he did so thousands of miles away, remotely, from Seattle, Washington. As FTX’s chief regulatory officer, Friedberg was tasked with monitoring customer protection practices, ensuring product offerings complied with existing rules and overseeing internal audits and reviews. He did none of this.

111. Friedberg has also been tied to an online poker scandal in 2008, where Ultimate Bet’s founder Russ Hamilton was accused of installing a “God mode” on his gambling platform that only certain players had access to – resulting in an estimated \$50 million in misappropriated funds.

112. In a surreptitiously recorded file, Friedberg reportedly advised Hamilton to claim he was a victim of the Ultimate Bets “God mode” scam, and push blame on an unnamed consultant to the company who exploited the site’s servers. The audio recordings were published in 2013 under uncertain circumstances and have not been independently verified by CoinDesk.

113. “I did take this money and I’m not trying to make it right, Dan, so we gotta get that out of the way right away, real quick,” Hamilton allegedly said in the audio recording.³³ Hamilton also founded the World Champion online poker platform.

114. Veteran short seller Marc Cohodes, one of the few to publicly question the rapid rise of FTX before its fall in a September interview with trading-focused webcast Hedgeye,³⁴ had

³³ <http://craakker.blogspot.com/2013/05/pokers-watergate-moment.html> (accessed December 16, 2022).

³⁴ https://app.hedgeye.com/insights/122943-marc-cohodes-ftx-is-dirty-rotten-to-the-core-hedgeye-investing-s?with_category=17-insights (accessed December 16, 2022).

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noted the potential conflicts of hiring someone connected to a cheating scandal to oversee compliance at the \$32 billion FTX exchange.

115. Similarly here, Dan Friedberg in his role as Chief Compliance Officer oversaw both FTX and Alameda, which had its own “god mode,” i.e., Alameda was secretly exempted from FTX’s auto-liquidation protocols.

116. Friedberg’s penchant for duplicity to make legal problems vanish for his corporate paymasters didn’t end with UB’s demise. NBC News recently reported on a 2020 incident involving SBF’s promotion of the Ethereum-based Cover Protocol and the unfortunate experience of one Dave Mastrianni, an investor who was prevented from cashing out his \$400,000 in paper winnings due to “insufficient liquidity” on FTX before the COVER token cratered.³⁵

117. When Mastrianni contacted FTX to accuse SBF of having a “pump and dump” role in the debacle, Friedberg called back with an offer. How would Mastrianni, a graphic artist, like a job creating NFTs for FTX? Friedberg offered Mastrianni an ‘adviser’ contract that would pay him one BTC for 30 days’ work, but it also required Mastrianni to absolve FTX, Alameda, and its affiliates of any responsibility for Mastrianni’s COVER losses.

118. Mastrianni eventually agreed, but while he did receive that one BTC, FTX never accepted any of his artwork. Friedberg later emailed to inform him that the payment “was primarily for your release of all claims” and, with that goal accomplished, FTX had no more reason to maintain this subterfuge.

119. In August, the Federal Deposit Insurance Corporation (FDIC) sent a letter to Friedberg and then-FTX US CEO Brett Harrison to “cease and desist” using marketing language

³⁵ <https://www.nbcnews.com/news/epic-fall-sam-bankman-fried-was-hailed-crypto-genius-clients-saw-smoke-rcna56583> (accessed December 16, 2022).

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that could have been erroneously interpreted as saying that exchange users accounts were ensured by the federal banking regulator. Harrison subsequently deleted the tweet.

120. Before joining FTX, Friedberg was a partner at Fenwick & West LLP, where he led the law firm's cryptocurrency division, according to a now-deprecated LinkedIn page. He received a JD and MBA degree from the University of Wisconsin-Madison.

B. The Rise and Fall of FTX.

121. The FTX.com exchange was extremely successful since its launch. This year around \$15 billion of assets are traded daily on the platform, which now represents approximately 10% of global volume for crypto trading. The FTX team has grown to over 300 globally. Although the FTX Entities' primary international headquarters is in the Bahamas, its domestic US base of operations is located in Miami, Florida.³⁶

122. FTX quickly became one of the most utilized avenues for nascent investors to purchase cryptocurrency. By the time FTX filed for bankruptcy protection, customers had entrusted billions of dollars to it, with estimates ranging from \$10-to-\$50 *billions of dollars*.

123. Bankman-Fried got rich off FTX and Alameda, with the two companies netting \$350 million and \$1 billion in profit, respectively, in 2020 alone, according to Bloomberg.

124. At his peak, Bankman-Fried was worth \$26 billion. At 30, he had become a major political donor, gotten celebrities like the Co-Defendants in this action to vociferously promote FTX, and secured the naming rights to the arena where the NBA's Miami Heat play.³⁷

³⁶ <https://www.coindesk.com/business/2022/09/27/crypto-exchange-ftx-is-moving-its-us-headquarters-from-chicago-to-miami/> (accessed December 16, 2022).

³⁷ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=> (accessed December 16, 2022).

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125. In early November 2022, crypto publication CoinDesk released a bombshell report that called into question just how stable Bankman-Fried’s empire really was.³⁸

126. Bankman-Fried’s cryptocurrency empire was officially broken into two main parts: FTX (his exchange) and Alameda Research (his trading firm), both giants in their respective industries. But even though they are two separate businesses, the division breaks down in a key place: on Alameda’s balance sheet, which was full of FTX – specifically, the FTT token issued by the exchange that grants holders a discount on trading fees on its marketplace. While there is nothing per se untoward or wrong about that, it shows Bankman-Fried’s trading giant Alameda rests on a foundation largely made up of a coin that a sister company invented, not an independent asset like a fiat currency or another crypto. The situation adds to evidence that the ties between FTX and Alameda are unusually close.³⁹

127. After obtaining this information, Changpeng “CZ” Zhao, the CEO of Binance, decided to liquidate roughly \$530 million-worth of FTT. Customers also raced to pull out, and FTX saw an estimated \$6 billion in withdrawals over the course of 72 hours, which it struggled to fulfill.⁴⁰ The value of FTT plunged 32%, but rallied once again with Bankman-Fried’s surprise announcement on Tuesday, November 8th, that Binance would buy FTX, effectively bailing it out.⁴¹

³⁸ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=> (accessed December 16, 2022).

³⁹ <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/> (accessed December 16, 2022).

⁴⁰ <https://markets.businessinsider.com/news/currencies/ftx-6-billion-withdrawals-72-hours-sam-bankman-fried-binance-2022-11> (accessed December 16, 2022).

⁴¹ <https://markets.businessinsider.com/news/currencies/ftx-6-billion-withdrawals-72-hours-sam-bankman-fried-binance-2022-11> (accessed December 16, 2022).

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128. The next day, Binance announced that it was withdrawing from the deal, citing findings during due diligence, as well as reports of mishandled customer funds and the possibility of a federal investigation.⁴² The news sent FTT plunging even further — Bankman-Fried saw 94% of his net worth wiped out in a single day.⁴³ On November 11th, unable to obtain a bailout, FTX filed for Chapter 11 bankruptcy and Bankman-Fried resigned as CEO.⁴⁴

129. Following his resignation, Bankman-Fried issued a 22-tweet-long explanation of where he believed he and the FTX Entities went wrong:⁴⁵



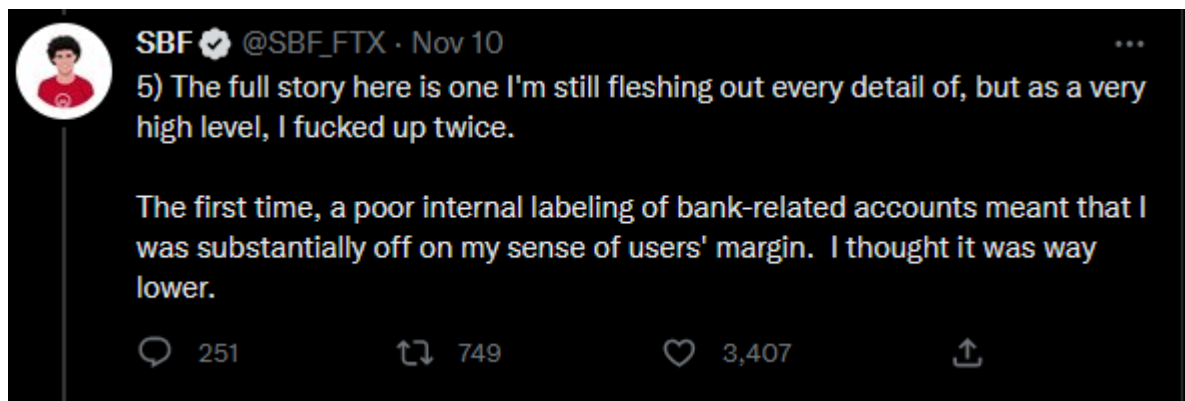
⁴² <https://markets.businessinsider.com/news/currencies/ftx-crash-sec-cftc-probes-asset-liability-shortfall-6-billion-2022-11> (accessed December 16, 2022).

⁴³ <https://www.businessinsider.com/ftx-ceo-crypto-binance-sam-bankman-fried-wealth-wiped-out-2022-11> (accessed December 16, 2022).

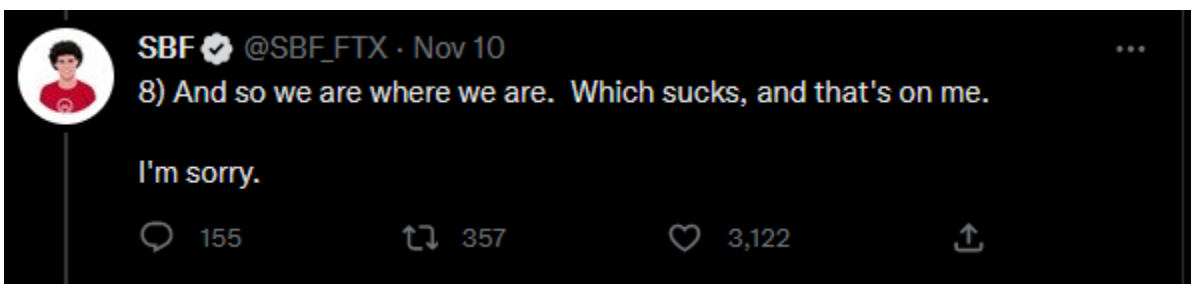
⁴⁴ <https://markets.businessinsider.com/news/currencies/ftx-bankruptcy-sam-bankman-fried-ceo-crypto-binance-alameda-markets-2022-11> (accessed December 16, 2022).

⁴⁵ https://twitter.com/SBF_FTX/status/1590709189370081280 (accessed December 16, 2022).

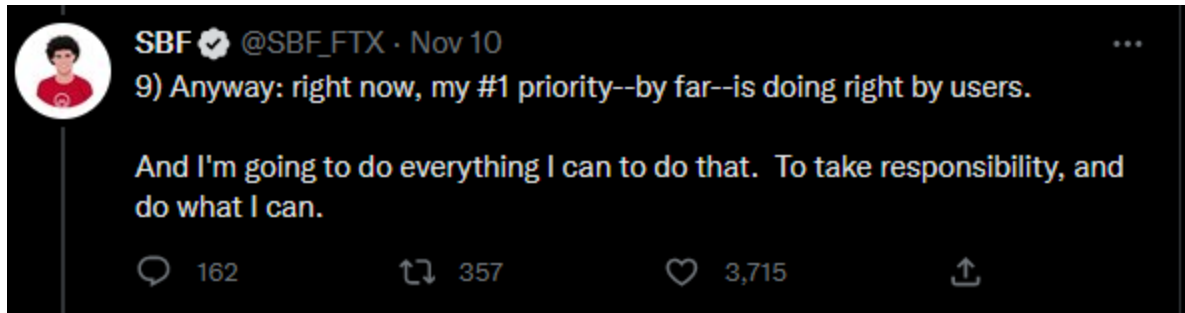
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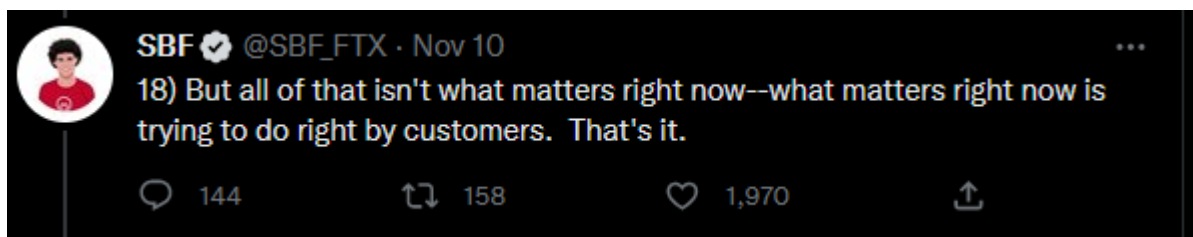
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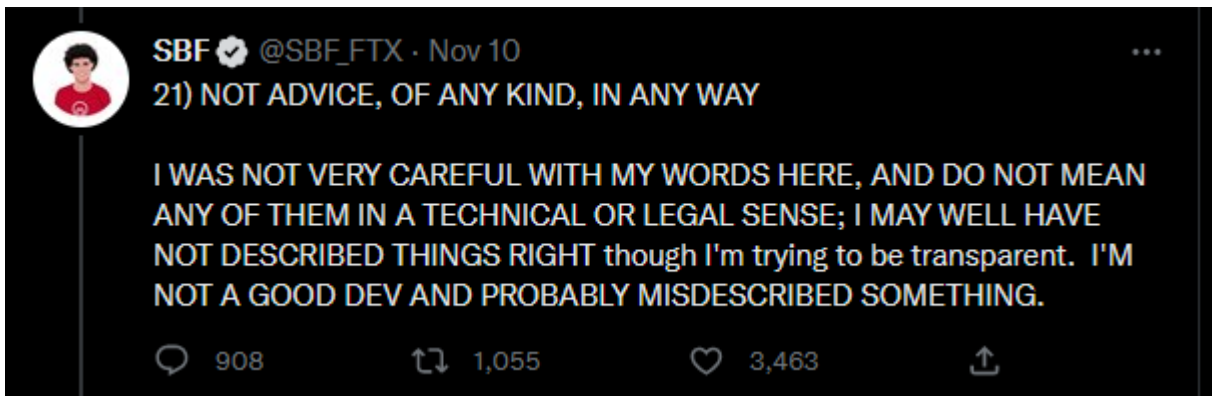
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130. According to a recent Reuters report, however, another explanation contributing to the precarious house of cards that was the Deceptive FTX Platform is that earlier this year, Bankman-Fried secretly transferred *at least \$4 billion* in customer funds from FTX to Alameda without telling anyone, after Alameda was hit with a series of losses, and that the FTX entities lent

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more than *half* of its *\$16 billion* in *customer funds* to Alameda in total, with more than *\$10 billion* in *loans outstanding*.⁴⁶

C. The SEC’s Consistent Approach to Cryptocurrency.

Overview

131. Despite the crypto industry’s cries for “regulatory clarity,” the SEC’s stance on cryptocurrency has been clear and consistent from the beginning. Critics of the SEC’s stance toward cryptocurrency overlook an important aspect of U.S. securities law – securities regulation is not meant to be precise but is instead intentionally drafted to be broad and all-encompassing; clarity is not just uncommon; it is deliberately avoided. This is why the definitions of “security” in Section 2(a)(1) of the Securities Act of 1933 (Securities Act), 15 U.S.C. 77b(a)(1), and Section 3(a)(10) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78c(a)(10), include not only conventional securities, such as “stock[s]” and “bond[s],” but also the more general term “investment contract.”

132. Along these lines, in *Reves v. Ernst & Young*, the Supreme Court stated that:

“The fundamental purpose undergirding the Securities Acts is ‘to eliminate serious abuses in a largely unregulated securities market.’ *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 421 U.S. 849 (1975). **In defining the scope of the market that it wished to regulate, Congress painted with a broad brush. It recognized the virtually limitless scope of human ingenuity, especially in the creation of ‘countless and variable schemes devised by those who seek the use of the money of others on the promise of profits,** *SEC v. W.J. Howey Co.*, 328 U.S. 293, 328 U.S. 299 (1946), and determined that the best way to achieve its goal of protecting investors was ‘to define the term “security” in sufficiently broad and general terms so as to include within that definition the many types of instruments that in our commercial world fall within the ordinary concept of a security.’ . . . Congress therefore did not attempt precisely to cabin the scope of the Securities

⁴⁶ https://markets.businessinsider.com/news/currencies/ftx-crash-client-funds-alameda-binance-sbf-sec-cftc-probe-2022-11?utm_medium=ingest&utm_source=markets (accessed December 16, 2022).

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Acts . . . Rather, it enacted a definition of ‘security’ sufficiently broad to encompass virtually any instrument that might be sold as an investment.” (emphasis added)”⁴⁷

133. Crafted to contemplate not only known securities arrangements at the time, but also any prospective instruments created by those who seek the use of others’ money on the promise of profits, the definition of “security” is broad, sweeping, and designed to be flexible to capture new instruments that share the common characteristics of stocks and bonds. As Supreme Court Justice (and former SEC Commissioner (1935) and Chair (1936-37)) William O. Douglas opined in *Superintendent of Insurance v. Bankers Life and Casualty Co.*:

“We believe that section 10(b) and Rule 10b-5 prohibit all fraudulent schemes in connection with the purchase or sale of securities, whether the artifices employed involve a garden type variety fraud, or present a unique form of deception. Novel or atypical methods should not provide immunity from the securities laws.”

134. Federal courts have already confirmed the SEC’s jurisdiction in numerous crypto-related emergency asset freeze hearings where the issue is always considered and affirmed, same as it has been by hundreds of federal courts across the country since the *Howey* Decision, which the Supreme Court adopted over 75 years ago.⁴⁸ That decision resulted in the *Howey* Test, which is used to determine the presence of an investment contract. The *Howey* Test stipulates that an investment contract exists if there is an “investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.”⁴⁹ The *Howey* Test is the principal method used by the SEC to determine if a given cryptocurrency is a security.

135. The SEC has used multiple distribution channels to share its message and concerns regarding crypto, digital trading platforms, initial coin offerings, and other digital asset products

⁴⁷https://scholar.google.com/scholar_case?case=18068523124125938239&q=Reves+v.+Ernst+%26+Young&hl=en&as_sdt=400006&as_vis=1 (accessed December 16, 2022).

⁴⁸ <https://supreme.justia.com/cases/federal/us/328/293/> (accessed December 16, 2022).

⁴⁹ *Id.*

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and services over the past decade. The SEC first made investors aware of the dangers of investing in cryptocurrency in 2013 when the Office of Investor Education and Advocacy issued an Investor Alert on “Ponzi Schemes Using Virtual Currencies.”⁵⁰

136. A year later, the same office issued an Investor Alert on “Bitcoin and Other Virtual Currency-Related Investments.”⁵¹ In 2017, the Commission took the rare step of releasing a Section 21(a) Report of Investigation that looked at the facts and circumstances of The DAO, which offered and sold approximately 1.15 billion DAO Tokens in exchange for a total of approximately 12 million Ether (“ETH”) over a one-month period in 2016.⁵² The SEC applied the *Howey* Test to the DAO tokens and concluded they were securities under the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”). While The DAO, and DAO tokens, were no longer operational at the time due to a high-profile hack that resulted in the theft of most DAO tokens, the Commission chose to release the report so as “to advise those who would use a Decentralized Autonomous Organization (“DAO Entity”), or other distributed ledger or blockchain-enabled means for capital raising, to take appropriate steps to ensure compliance with the U.S. federal securities laws.”⁵³

137. In 2019, the SEC released a “Framework for “Investment Contract” Analysis of Digital Assets” which provided additional details on when a digital asset has the characteristics of an investment contract and “whether offers and sales of a digital asset are securities transactions.”⁵⁴

⁵⁰ [ia_virtualcurrencies.pdf \(sec.gov\)](https://www.sec.gov/ia/virtualcurrencies.pdf) (accessed December 16, 2022).

⁵¹ [Investor Alert: Bitcoin and Other Virtual Currency-Related Investments | Investor.gov](https://www.sec.gov/investor-alert-bitcoin-and-other-virtual-currency-related-investments) (accessed December 16, 2022).

⁵² <https://www.sec.gov/litigation/investreport/34-81207.pdf> (accessed December 16, 2022).

⁵³ [Report of Investigation Pursuant to Section 21\(a\) of the Securities Exchange Act of 1934: The DAO](https://www.sec.gov/report-investigation-pursuant-to-section-21-a-of-the-securities-exchange-act-of-1934-the-dao) (accessed December 16, 2022).

⁵⁴ [SEC.gov | Framework for “Investment Contract” Analysis of Digital Assets](https://www.sec.gov/framework-for-investment-contract-analysis-of-digital-assets) (accessed December 16, 2022).

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138. In addition, the SEC has publicized its position on cryptocurrency in countless enforcement actions,⁵⁵ multiple speeches,⁵⁶ Congressional testimony,⁵⁷ and several official SEC statements⁵⁸ and proclamations.⁵⁹ Current SEC Chairman, Gary Gensler, has spoken frequently about the perils and illegality of crypto lending platforms and decentralized finance,⁶⁰ warning that their failure to register with the SEC may violate U.S. securities laws.⁶¹ In one interview, Gensler said:

“The law is clear, it’s not about waving a wand. Congress spoke about this in 1934 . . . When a [digital] platform has securities on it, it is an exchange, and it’s a question of whether they’re registered or they’re operating outside of the law and I’ll leave it at that.”⁶²

139. On September 8, 2022, Chair Gensler gave a speech reflecting on the flexibility of the securities laws and the SEC’s consistency in applying these laws to cryptocurrency.⁶³ Gensler noted that of the 10,000 different cryptocurrencies in the market, “the vast majority are securities,” a position that was also held by his predecessor, Jay Clayton.⁶⁴ Gensler went on to note that the SEC has spoken with a “pretty clear voice” when it comes to cryptocurrency “through the DAO

⁵⁵ [SEC.gov | Crypto Assets and Cyber Enforcement Actions](https://www.sec.gov/news/speech/gensler-aspen-security-forum-2021-08-03) (accessed December 16, 2022).

⁵⁶ <https://www.sec.gov/news/speech/gensler-aspen-security-forum-2021-08-03> (accessed December 16, 2022).

⁵⁷ <https://www.sec.gov/news/testimony/gensler-2021-05-26> (accessed December 16, 2022).

⁵⁸ <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11> (accessed December 16, 2022).

⁵⁹ <https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading> (accessed December 16, 2022).

⁶⁰ <https://www.theblock.co/post/113416/gensler-speech-crypto-defi-lending-sec> (accessed December 16, 2022).

⁶¹ <https://ca.finance.yahoo.com/news/crypto-platforms-dont-register-with-sec-outside-the-law-gensler-164215740.html> (accessed December 16, 2022).

⁶² <https://www.theblock.co/post/113416/gensler-speech-crypto-defi-lending-sec> (accessed December 16, 2022).

⁶³ [SEC.gov | Kennedy and Crypto](https://www.sec.gov/news/speech/gensler-aspen-security-forum-2021-08-03) (accessed December 16, 2022).

⁶⁴ *Id.*

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Report, the Munchee Order, and dozens of Enforcement actions, all voted on by the Commission” and that “[n]ot liking the message isn’t the same thing as not receiving it.”⁶⁵

140. The judicial record supports Chair Gensler’s assertions. The SEC has taken over 100 crypto-related enforcement actions and has not lost a single case.⁶⁶

141. What follows are summaries of five cases that will help inform this litigation.

SEC v. KIK

142. In Kik⁶⁷, the SEC’s complaint⁶⁸, filed in the U.S. District Court for the Southern District of New York on June 4, 2019, alleged that Kik sold digital asset securities to U.S. investors without registering their offer and sale as required by the U.S. securities laws. Kik argued that the SEC’s lawsuit against it should be considered “void for vagueness.”⁶⁹

143. The court granted the SEC’s motion for summary judgment on September 30, 2020, finding that undisputed facts established that Kik’s sales of “Kin” tokens were sales of investment contracts (and therefore of securities) and that Kik violated the federal securities laws when it conducted an unregistered offering of securities that did not qualify for any exemption from registration requirements. The court further found that Kik’s private and public token sales were a single integrated offering.

⁶⁵ Id.

⁶⁶ [SEC Cryptocurrency Enforcement: 2021 Update \(cornerstone.com\)](https://www.sec.gov/news/press-release/2021-262) (accessed December 16, 2022).

⁶⁷ <https://www.sec.gov/news/press-release/2020-262> (accessed December 16, 2022).

⁶⁸ <https://www.sec.gov/news/press-release/2019-87> (accessed December 16, 2022).

⁶⁹ <https://www.financemagnates.com/cryptocurrency/news/sec-seeks-to-block-kik-subpoenas-refutes-void-for-vagueness-claim/> (accessed December 16, 2022).

SEC v. Telegram

144. In Telegram,⁷⁰ the SEC filed a complaint⁷¹ on October 11, 2019, alleging that the company had raised capital to finance its business by selling approximately 2.9 billion “Grams” to 171 initial purchasers worldwide. The SEC sought to preliminarily enjoin Telegram from delivering the Grams it sold, which the SEC alleged were securities that had been offered and sold in violation of the registration requirements of the federal securities laws.

145. Telegram argued⁷² that the SEC has “engaged in improper ‘regulation by enforcement’ in this nascent area of the law, failed to provide clear guidance and fair notice of its views as to what conduct constitutes a violation of the federal securities laws, and has now adopted an ad hoc legal position that is contrary to judicial precedent and the publicly expressed views of its own high-ranking officials.”

146. On March 24, 2020, the U.S. District Court for the Southern District of New York issued a preliminary injunction⁷³ barring the delivery of Grams and finding that the SEC had shown a substantial likelihood of proving that Telegram’s sales were part of a larger scheme to distribute the Grams to the secondary public market unlawfully.

147. Without admitting or denying the allegations in the SEC’s complaint, the defendants consented to the entry of a final judgment enjoining them from violating the registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933. The judgment ordered the defendants to disgorge, on a joint and several basis, \$1,224,000,000.00 in ill-gotten gains from the

⁷⁰ <https://www.sec.gov/news/press-release/2020-146> (accessed December 16, 2022).

⁷¹ <https://www.sec.gov/news/press-release/2019-212> (accessed December 16, 2022).

⁷² <https://www.financemagnates.com/cryptocurrency/news/sec-vs-telegram-will-gram-tokens-ever-be-distributed/> (accessed December 16, 2022).

⁷³ [SEC v. Telegram: A Groundbreaking Decision in Cryptocurrency Enforcement? | Insights | Greenberg Traurig LLP \(gtlaw.com\)](#) (accessed December 16, 2022).

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sale of Grams, with credit for the amounts Telegram pays back to initial purchasers of Grams. It also ordered Telegram Group Inc. to pay a civil penalty of \$18,500,000. For the next three years, Telegram is further required to give notice to the SEC staff before participating in the issuance of any digital assets.

SEC v. BlockFi

148. In BlockFi Lending LLC, the first SEC case ever involving a crypto-lending program, on February 22, 2022, the SEC charged BlockFi ⁷⁴with failing to register the offers and sales of its retail crypto-lending product and also charged BlockFi with violating the registration provisions of the Investment Company Act of 1940.

149. BlockFi argued for “increased regulatory clarity” but lost.⁷⁵

150. To settle the SEC’s charges, BlockFi agreed to pay a \$50 million penalty, cease its unregistered offers and sales of the lending product, BlockFi Interest Accounts (BIAs), and bring its business within the provisions of the Investment Company Act within 60 days. BlockFi’s parent company also announced that it intends to register under the Securities Act of 1933 the offer and sale of a new lending product. In parallel actions, BlockFi agreed to pay an additional \$50 million in fines to 32 states to settle similar charges.

SEC Wells Notice to Coinbase

151. In 2021, Coinbase began marketing a cryptocurrency lending product called Lend. The Lend program purported to allow some Coinbase customers to “earn interest on select assets on Coinbase, starting with 4% APY on USD Coin (USDC).”⁷⁶ According to Coinbase, its lawyers

⁷⁴ <https://lnkd.in/d-Xy45ec> (accessed December 16, 2022).

⁷⁵ <https://blockfi.com/pioneering-regulatory-clarity> (accessed December 16, 2022).

⁷⁶ [The SEC has told us it wants to sue us over Lend. We don’t know why. - Blog \(coinbase.com\)](#) (accessed December 16, 2022).

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reached out to the SEC to discuss its Lend product, at which point SEC staff instead served Coinbase with a *Wells* Notice, informing Coinbase of their intention to seek approval from the SEC Commissioners to file a civil enforcement action against Coinbase for violating the federal securities laws.

152. According to Coinbase, the SEC issued the Wells Notice because of Coinbase's failure to file a registration statement with the SEC for the offering of its Lend product, which the SEC believed was a security.⁷⁷

153. The two cases that Coinbase claims the SEC cites as support for its *Wells* Notice are *SEC v. Howey* and *Reves v. Ernst & Young*. *Reves* addressed the question of whether a product is a "note" and hence a security (applying the so-called "Familial Resemblance Test").

154. Under the Lend program, Coinbase customers were clearly investing "money" at Coinbase and placing their faith in Coinbase to generate a profit for them. Lend investors would have no say in how Coinbase runs the Lend program and Coinbase was not going to permit Lend investors to participate in Lend-related decisions. Given these facts, Lend was clearly an investment contract.

155. Under *Reves*, Lend may have also been a "note" and hence a security. Although the term "note" is included in the statutory definition of a security, case law has determined that not every "note" is a security. The definition specifically excludes notes with a term of less than nine months and courts have carved out a range of exemptions over the years for commercial paper type notes such as purchase money loans and privately negotiated bank loans. To reconcile these varying cases, the U.S. Supreme Court in *Reves* established the "family resemblance test," to determine whether a note is a security.

⁷⁷ [*Id.*](#)

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156. Per the “family resemblance test,” a presumption that a note is a security can only be rebutted if the note bears a resemblance to one of the enumerated categories on a judicially developed list of exceptions, as follows: 1) a note delivered in consumer financing; 2) a note secured by a mortgage on a home; 3) a short-term note secured by a lien on a small business or some of its assets; 4) a note evidencing a character loan to a bank customer; 5) a short-term note secured by an assignment of accounts receivable; and 6) a note which simply formalizes an open-account debt incurred in the ordinary course of business (such as a trade payable for office supplies); and vii) a note evidencing loans by commercial banks for current operations.

157. The “family resemblance” analysis requires:

- A consideration of the motivation of the seller and buyer (e.g. is the seller looking for investment and the buyer looking for profit?);
- The plan of distribution of the note (e.g. is the product being marketed as an investment?);
- The expectation of the creditor/investor (e.g. would the investing public reasonably expect the application of the securities laws to the product); and
- The presence of an alternative regulation (e.g. will the product be registered as a banking product and the offered registered as a bank?).

158. Applying the family resemblance test to Lend reveals the presence of a note. First, Coinbase likened the Lend program to that of a savings account, where the Lend customer is looking for a profitable investment and Coinbase is looking for investors. Second, Coinbase marketed the Lend program as an investment. Third, investors (especially disgruntled ones) would certainly expect that securities regulation applies. Fourth, Coinbase is not a bank, so their so-called savings account falls under no other regulatory jurisdiction and protection.

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159. Given the clear facts of this case, Coinbase decided to cancel the Lend program.⁷⁸

D. FTX’s offer and sale of YBAs, which are unregistered securities.

160. Beginning in 2019, the FTX Entities began offering the YBAs to public investors through its Earn program. Plaintiff and other similarly situated individuals invested in FTX’s YBAs.

161. The details of the Earn program are still listed on the FTX website,⁷⁹ and additional information on Earn is described in a declaration submitted in the Voyager Chapter 11 proceedings by Joseph Rotunda, Director of Enforcement of the Texas State Securities Board, on October 14, 2022.⁸⁰

162. Under the section titled “How can I earn yield on my FTX deposits?” on the FTX website, the company describes the Earn program thusly:

“You can now earn yield on your crypto purchases and deposits, as well as your fiat balances, in your FTX app! By opting in and participating in staking your supported assets in your FTX account, you’ll be eligible to earn up to 8% APY on your assets.”⁸¹

163. On the same webpage, the company also states:

The **first \$10,000 USD** value in your deposit wallets will earn **8% APY**. Amounts held **above \$10,000 up to \$100,000 USD** in value (subject to market fluctuations) will earn **5% APY**.⁸²

164. Nowhere on the website does FTX describe how this yield will be generated; readers are given the impression that the yield will come from “staking your supported assets in your FTX account” although nowhere does the company describe what staking actually is.

⁷⁸ [Coinbase cancels Lend program launch after SEC fight - The Verge](#) (accessed December 16, 2022).

⁷⁹ [FTX App Earn – FTX Exchange](#) (accessed December 16, 2022).

⁸⁰ [1175310142280000000134.pdf \(stretto.com\)](#) (accessed December 16, 2022).

⁸¹ [FTX App Earn – FTX Exchange](#) (accessed December 16, 2022).

⁸² *Id.*

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165. Staking is a technical concept that applies to the blockchain consensus mechanism called Proof of Stake, which some cryptocurrencies utilize.⁸³ Staking serves a similar function to cryptocurrency mining, in that it is the process by which a network participant gets selected to add the latest batch of transactions to the blockchain and earn some crypto in exchange. While the exact mechanism will vary from project to project, in general, users will put their token on the line (i.e., “stake”) for a chance to add a new block onto the blockchain in exchange for a reward. Their staked tokens act as a guarantee of the legitimacy of any new transaction they add to the blockchain. The network chooses validators based on the size of their stake and the length of time they’ve held it. Thus, the most invested participants are rewarded. If transactions in a new block are discovered to be invalid, users can have a certain amount of their stake burned by the network, in what is known as a slashing event.⁸⁴

166. Some within the crypto community argue that staking is not a security because it is simply part of the code by which specific cryptocurrencies operate. In other words, some argue that staking programs are different from lending programs because user assets are not actually being “lent” out to third parties. But in September 2022, SEC Chairman Gary Gensler told reporters that “cryptocurrencies and intermediaries that allow holders to ‘stake’ their coins might pass” the *Howey* Test.⁸⁵ According to Gensler, “From the coin’s perspective...that’s another indicia that under the *Howey* test, the investing public is anticipating profits based on the efforts of others.” The Wall Street Journal noted that if an intermediary such as a crypto exchange offers

⁸³ For example, Ethereum, Tezos, Cosmos, Solana, and Cardano all use Proof of Stake.

⁸⁴ The staking definition comes from the Coinbase website: [What is staking? | Coinbase](#) (accessed December 16, 2022).

⁸⁵ [Ether’s New ‘Staking’ Model Could Draw SEC Attention - WSJ](#) (accessed December 16, 2022).

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staking services to its customers, Mr. Gensler said, it “looks very similar—with some changes of labeling—to lending.”⁸⁶

167. Based upon information – included and not included – on the FTX website, it does not appear that the company is adhering to the technical, commonly understood, definition of staking. *See* Ex. A ¶¶ 36–42. The most telling indicator is that the company permits any cryptocurrency listed on their platform to be eligible for staking, even coins that do not use Proof of Stake. *Id.* ¶ 39. The FTX website specifically states that Bitcoin and Dogecoin can generate yield under the Earn program, even though these coins use the Proof of Work consensus mechanism (meaning you CANNOT technically stake Bitcoin or Dogecoin). Therefore, it is not at all clear where the promised yield is coming from.

168. As Mr. Sibenik explains, applying *Howey* to the FTX Earn program reveals that Earn is an investment contract. An investment contract is present because users are clearly entrusting their funds to FTX. Users have to “opt-in” so that FTX may take possession over user assets and deploy them in a manner that will generate yield. As noted above, it is not clear how that yield is generated, but it is clear that FTX is deploying customer assets in a discretionary manner. Therefore, the efforts of FTX are instrumental in generating the users’ yield and of course users have an expectation of profit because FTX is advertising yields of up to 8% APY:

From a securities perspective, the Howey Test defines an investment contract as:

- a. An investment of money
 - i. Cryptocurrency is a medium of exchange and way of transferring value in a measurable and quantifiable way. It is increasingly used as a means of payment, although it is more commonly used as a speculative investment at this point in time. Whether or not cryptocurrency can be defined as ‘money’ is in part a matter of semantics that can vary based on considers the fundamental features of money to be, and what criteria needs to be achieved in order for something to be considered money. Suffice to say, when examining

⁸⁶ *Id.*

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aspects such as fungibility, durability, portability, divisibility, scarcity, transferability, acting as a medium of exchange, acting as a unit of account, and acting as a store of value, it could be argued that some cryptocurrencies fulfill many of these criterion as good as or even better than fiat currencies.

b. In a common enterprise

- i. FTX customer assets are almost always consolidated in wallets operated and controlled by FTX at least initially. These wallets are typically referred to as ‘hot wallets’ or ‘consolidation wallets.’ From these wallets, cryptocurrency can be moved to other FTX-controlled wallets, or it can be used to pay back other customers performing withdrawals, but FTX can and did send (and loan) out such assets to other entities, including Alameda Research ‘Alameda.’ The blockchain’s data contains an immutable and verifiable record of data that shows that FTX customer deposits went into accounts operated by a common enterprise, namely, FTX.

c. With the expectation of profit

- i. FTX customers are promised yield when they participate in the Earn program. And at up to 8% yield, that is a considerable amount that would be considerably in excess to that of a savings account at a bank. But it was also far riskier than investing money in a savings account at a bank. FTX goes out of their way to advertise this yield, and indicate that such earnings are to be calculated on the “investment portfolio” that is stored ‘in’ the FTX app.⁸⁷

d. To be derived from the efforts of others

- i. The FTX Yield-bearing account was portrayed as passive income stream. A customer needs to do nothing more than ensure they are subscribed to the yield program, and that they have deposited assets (of crypto or even fiat) in order to earn the 5% or 8% yield, which they clearly indicate is counted hourly. There is no further work or action needed on the part of the user.
- ii. The work that ‘others’ (namely FTX) would need to do would include, at a baseline, sending transactions. But it would also require FTX to make an effort by leveraging and investing the money elsewhere which could theoretically come about either via giving out loans, employing trading strategies, ‘staking,’ making other investments, or giving out loans to entities (such as Alameda) that would employ such strategies. The primary strategy that FTX

⁸⁷ <https://help.ftx.com/hc/en-us/articles/10573545824532-FTX-App-Earn> (accessed December 16, 2022).

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portrayed to investors was ‘staking’ as I discuss in the following paragraphs.

Ex. A, ¶ 43.

169. The FTX Earn program was most likely a note per *Reves* as well. First, FTX offered Earn to obtain crypto assets for the general use of its business, namely, to run its activities to pay interest to Earn investors, and users purchased YBAs and were automatically opted-in to Earn to receive interest on their crypto assets. Second, Earn was offered and sold to a broad segment of the general public. Third, FTX promoted Earn as an investment; on their website, FTX notes that Earn users will receive “yield earnings” on their “investment portfolio.”⁸⁸ Fourth, no alternative regulatory scheme or other risk reducing factors exist with respect to Earn. Note that the above analysis mirrors that provided by the SEC in their BlockFi order.⁸⁹

FTT Token

170. The FTT token that contributed to FTX’s demise is also an investment contract per the *Howey* Test. FTT is an exchange token created by FTX that entitles holders to benefits on the FTX exchange. According to crypto news site CoinDesk, “such benefits often include trading fee discounts, rebates and early access to token sales held on the platform.”⁹⁰ Exchange tokens can be very profitable for their issuers because the exchanges that issue them tend to keep a significant number of tokens for themselves, which they can pump in price through speeches, social media posts, and other announcements. Economically, exchange tokens are akin to equity, although the holders of exchange tokens have no legal rights or interests in the issuer. As the exchange issuer grows in size and prominence, and trading volume increases on the exchange, the value of the

⁸⁸ [FTX App Earn – FTX Exchange](#) (accessed December 16, 2022).

⁸⁹ <https://www.sec.gov/news/press-release/2022-26> (accessed December 16, 2022).

⁹⁰ <https://www.coindesk.com/learn/what-is-an-exchange-token/> (accessed December 16, 2022).

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exchange token will likely increase. Thus, the value of FTT increased as the FTX exchange became more well-known and utilized.⁹¹

171. FTT passes the *Howey* Test because the token was controlled by FTX; the company could create or destroy FTT at will. And the value of FTT was based upon the success of FTX, therefore the “efforts” of others prong of the *Howey* Test is implicated. It is also clear that investors bought FTT because they thought it would go up in price; this is the same reason why most, if not all, investors buy any given cryptocurrency. In fact, Binance CEO Changpeng “CZ” Zhao agreed to accept FTT tokens as part of FTX’s buyout of Binance’s equity stake in FTX.⁹² Exchange tokens like FTT also functionally resemble the XRP token, which the SEC alleges is an investment contract due to Ripple’s control over the XRP token.⁹³

172. FTX maintains that it does not offer for sale any product that constitutes a “security” under federal or state law. Under federal securities laws as construed by the United States Supreme Court in its decision *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) and by the SEC, an investment contract is a form of security under United States securities laws when (1) the purchaser makes an investment of money or exchanges another item of value (2) in a common enterprise (3) with the reasonable expectation of profits to be derived from the efforts of others.

173. The YBAs were “securities” as defined by the United States securities laws and as interpreted by the Supreme Court, the federal courts, and the SEC. The FTX Entities offered variable interest rewards on crypto assets held in the YBAs on the Deceptive FTX Platform, which rates were determined by the FTX Entities in their sole discretion. In order to generate revenue to

⁹¹ See FTT price history here: <https://coinmarketcap.com/currencies/ftx-token/> (accessed December 16, 2022).

⁹² <https://www.investors.com/news/binance-to-buy-ftx-international-operations-as-liquidity-crunch-sparks-crypto-selloff/> (accessed December 16, 2022).

⁹³ <https://www.sec.gov/news/press-release/2020-338> (accessed December 16, 2022).

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fund the promised interest, the FTX Entities pooled the YBA assets to engage in lending and staking activities from which they derived revenue to pay interest on the YBAs. These activities make the YBAs a “security” under state and federal law.

174. On October 14, 2022, Director of Enforcement of the Texas State Securities Board, Joseph Rotunda, filed a declaration in the Chapter 11 bankruptcy proceedings pending in connection with the collapse of the Voyager Digital cryptocurrency exchange, *In re: Voyager Digital Holdings, Inc., et al.*, Case No. 22-10943 (MEW), ECF No. 536 (Bankr. S.D.N.Y. Oct. 14, 2022), in which he explained how the YBAs are in fact “an offering of unregistered securities in the form of yield-bearing accounts to the residents of the United States.” *Id.*, at 6. In his declaration, the pertinent portions of which are reproduced in full for ease of reference, Rotunda explains:

I am also familiar with FTX Trading LTD (“FTX Trading”) dba FTX as described herein. As more fully explained throughout this declaration, I am aware that FTX Trading, along with West Realm Shires Services Inc. dba FTX US (“FTX US”), may be offering unregistered securities in the form of yield-bearing accounts to residents of the United States. These products appear similar to the yield-bearing depository accounts offered by Voyager Digital LTD et al., and the Enforcement Division is now investigating FTX Trading, FTX US, and their principals, including Sam Bankman-Fried.

I understand that FTX Trading is incorporated in Antigua and Barbuda and headquartered in the Bahamas. It was organized and founded in part by Mr. Bankman-Fried, and FTX Trading appears to be restricting operations in the United States. For example, domestic users accessing the webpage for FTX Trading at ftx.com are presented with a pop-up window that contains a disclaimer that reads in part as follows:

Did you mean to go to FTX US? FTX US is a US licensed cryptocurrency exchange that welcomes American users.

You’re accessing FTX from the United States. You won’t be able to use any of FTX.com’s services, though you’re welcome to look around the site.

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FTX US claims to be regulated as a Money Services Business with FinCEN (No. 31000195443783) and as a money transmitter, a seller of payment instruments and in other non-securities capacities in many different states. It is not, however, registered as a money transmitter or in any other capacity with the Texas Department of Banking and it is not registered as a securities dealer with the Texas State Securities Board.

FTX US owns 75 percent or more of the outstanding equity of FTX Capital Markets (CRD No. 158816) (“FTX Capital”), a firm registered as a broker-dealer with the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority Inc., and 53 state and territorial securities regulators. FTX Capital’s registration as a dealer in Texas became effective on May 7, 2012, and the registration continues to remain in force and effect.

FTX US maintains a website at <https://ftx.us> that contains a webpage for smartphone applications for FTX (formerly Blockfolio)⁹⁴ (the “FTX Trading App”) and FTX US Pro. Users appear able to click a link in this webpage to download the FTX Trading App even when they reside in the United States.

On October 14, 2022, I downloaded and installed the FTX Trading App on my smartphone. I created an account with FTX Trading through the FTX Trading App and linked the FTX account to an existing personal bank account. During the process, I provided my full first and last name and entered my residential address in Austin, Texas. I also accessed hyperlinks in the FTX Trading App that redirected to the Privacy Policy and Terms of Service. Although I was from the United States and was using the application tied to FTX Trading, the Privacy Policy and Terms of Service were from FTX US - not FTX Trading.

I thereafter used the FTX Trading App to initiate the transfer of \$50.00 from my bank account to the FTX account and then transferred .1 ETH from a 3.0 wallet

⁹⁴ Based upon information and belief, FTX Trading acquired Blockfolio LLC (“Blockfolio”) in or around August 2020. At the time, Blockfolio managed a cryptocurrency application. FTX Trading appears to have thereafter rebranded Blockfolio and its smartphone application as FTX. Now, users can download the FTX Trading App from Apple’s App Store or Google’s Google Play Store. Although FTX rebranded Blockfolio, the application listing in Apple’s App Store still shows the application with developed by Blockfolio.

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to the FTX account. The transfer of funds from my bank account to the FTX account will take up to six days to complete but the transfer of ETH was processed within a few minutes.

The FTX Trading App showed that I was eligible to earn a yield on my deposits. It also explained the “Earn program is provided by FTX.US” – not FTX Trading. It also represented that “FTX Earn rewards are available for US users on a promotional basis.”

I recall the FTX Trading App’s default settings were automatically configured to enable the earning of yield. The application also contained a link for additional information about yield. I accessed the link and was redirected to a recent article published by “Blockfolio Rebecca” under help.blockfolio.com. The article began as follows:

You can now earn yield on your crypto purchases and deposits, as well as your fiat balances, in your FTX Trading App! By opting in and participating in staking your supported assets in your FTX account, you’ll be eligible to earn up to 8% APY on your staked assets. THIS APY IS ESTIMATED AND NOT GUARANTEED AS DESCRIBED BELOW.

The article also described the payment of yield. It contained a section titled *How do you calculate APY? Does my balance compound daily?* that read, in part, as follows:

FTX will deposit yield earnings from the staked coins, calculated hourly, on the investment portfolio that is stored in your FTX Trading App. Yield will be compounded on principal and yield you have already earned. Any cryptocurrency that you have deposited on FTX as well as any fiat balance you may have on your account, will earn yield immediately after you have opted into the program.

The first \$10,000 USD value in your deposit wallets will earn 8% APY. Amounts held above \$10,000 up to \$10MM USD in value (subject to market fluctuations) will earn 5% APY. In this scenario, your yield earned on the coins will look something like the examples below the table.

The article also contained a section titled *Is this available in my country?* This section explained that “FTX Trading App Earn is available to FTX Trading App customers that are in one of the FTX permitted jurisdictions.” It contained a

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hyperlink to an article titled *Location Restrictions* published by FTX Crypto Derivatives Exchange under help.ftx.com. This article described various restrictions on operations in certain countries and locations and read in part as follows:

FTX does not onboard or provide services to corporate accounts of entities located in, established in, or a resident of the **United States of America, Cuba, Crimea and Sevastopol, Luhansk People's Republic, Donetsk People's Republic, Iran, Afghanistan, Syria, or North Korea**. FTX also does not onboard corporate accounts located in or a resident of **Antigua or Barbuda**. FTX also does not onboard any users from Ontario, and FTX does not permit non-professional investors from Hong Kong purchasing certain products.

FTX does not onboard or provide services to personal accounts of current residents of the **United States of America, Cuba, Crimea and Sevastopol, Luhansk People's Republic, Donetsk People's Republic, Iran, Afghanistan, Syria, North Korea, or Antigua and Barbuda**. There may be partial restrictions in other jurisdictions, potentially including Hong Kong, Thailand, Malaysia, India and Canada. In addition, FTX does not onboard any users from Ontario, does not permit non-professional investors from Hong Kong purchasing certain products, and does not offer derivatives products to users from Brazil.

FTX serves all Japanese residents via FTX Japan.

(emphasis in original)

Despite the fact I identified myself by name and address, the FTX Trading App now shows that I am earning yield on the ETH. The yield is valued at 8 percent APR.

Based upon my earning of yield and an ongoing investigation by the Enforcement Division of the Texas State Securities Board, the yield program appears to be an investment contract, evidence of indebtedness and note, and as such appears to be regulated as a security in Texas as provided by Section 4001.068 of the Texas Securities Act. At all times material to the opening of this FTX account, FTX Trading and FTX US have not been registered to offer or sell securities in Texas. FTX Trading and FTX US may therefore be violating Section 4004.051 of the Texas Securities Act. Moreover, the yield program described herein has not been registered or permitted for sale in Texas as generally required

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by Section 4003.001 of the Securities Act, and as such FTX Trading and FTX US may be violation Section 4003.001 by offering unregistered or unpermitted securities for sale in Texas. Finally, FTX Trading and FTX US may not be fully disclosing all known material facts to clients prior to opening accounts and earning yield, thereby possibly engaging in fraud and/or making offers containing statements that are materially misleading or otherwise likely to deceive the public. Certain principals of FTX Trading and FTX US may also be violating these statutes and disclosure requirements. Further investigation is necessary to conclude whether FTX Trading, FTX US and others are violating the Securities Act through the acts and practices described in this declaration.

The Enforcement Division of the Texas State Securities Board understands that FTX US placed the highest bid for assets of Voyager Digital LTD et al., a family of companies variously accused of misconduct in connection with the sale of securities similar to the yield program promoted by FTX Trading and FTX US. FTX US is managed by Sam Bankman-Fried (CEO and Founder), Gary Wang (CTO and Founder) and Nishad Singh (Head of Engineering). The same principals hold the same positions at FTX Trading, and I was able to access the yield-earning product after following a link to the FTX Trading App from FTX US's website. The FTX Trading App also indicated the Earn program is provided by FTX US. As such, FTX US should not be permitted to purchase the assets of the debtor unless or until the Securities Commissioner has an opportunity to determine whether FTX US is complying with the law and related and/or affiliated companies, including companies commonly controlled by the same management, are complying with the law.

I hereby authorize the Texas Attorney General's Office and any of its representatives to use this declaration in this bankruptcy proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2022 in Austin, Texas.

/s Joseph Jason Rotunda

By: Joseph Jason Rotunda

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175. Another avenue through which FTX users may have been exposed to a securities transaction was through the basic structure of the platform. Despite cryptocurrency and blockchain's foundational premise being the ability to transmit value peer-to-peer using a trustless and decentralized database that cannot be censured by any third party, cryptocurrency exchanges operate more like traditional banks. When you buy Bitcoin through a centralized cryptocurrency exchange, there is no corresponding transaction to the Bitcoin blockchain. Rather, the exchange simply maintains its own database that indicates which cryptocurrencies it owes to its customers. This is similar to how banks operate. Money deposited in a checking account is not actually "ours." The money becomes the bank's and we are owed a debt by the bank which is governed by the terms and conditions of the account. Cryptocurrency exchanges should then be in custody of enough cryptocurrency on the blockchain to cover what it owes customers. Custody can be done using hot or cold digital wallets (hot wallets are connected to the internet, cold wallets are not) with best practice being for exchanges to hold the majority of cryptocurrency (crypto which they are holding on behalf of customers) in multiple cold wallets. Best practice would also dictate that exchanges hold customer assets in separate wallets from exchange assets, and that each customer's assets would be held in a distinct wallet.

176. According to the first day declaration by John Ray, how FTX kept its crypto is a mystery:

The FTX Group did not keep appropriate books and records, or security controls, with respect to its digital assets. Mr. Bankman-Fried and [Alameda co-founder Gary] Wang controlled access to digital assets of the main businesses in the FTX Group (with the exception of LedgerX, regulated by the CFTC, and certain other regulated and/or licensed subsidiaries). Unacceptable management practices included the use of an unsecured group email account as the root user to access confidential private keys and critically sensitive data for the FTX Group companies around the world, the absence of daily reconciliation of positions on the blockchain, the use of software to conceal the misuse of customer funds, the secret exemption of Alameda from certain aspects of FTX.com's auto-liquidation protocol, and the

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absence of independent governance as between Alameda (owned 90% by Mr. Bankman-Fried and 10% by Mr. Wang) and the Dotcom Silo (in which third parties had invested).

The Debtors have located and secured only a fraction of the digital assets of the FTX Group that they hope to recover in these Chapter 11 Cases. The Debtors have secured in new cold wallets approximately \$740 million of cryptocurrency that the Debtors believe is attributable to either the WRS, Alameda and/or Dotcom Silos. The Debtors have not yet been able to determine how much of this cryptocurrency is allocable to each Silo, or even if such an allocation can be determined. These balances exclude cryptocurrency not currently under the Debtors' control as a result of (a) at least \$372 million of unauthorized transfers initiated on the Petition Date, during which time the Debtors immediately began moving cryptocurrency into cold storage to mitigate the risk to the remaining cryptocurrency that was accessible at the time, (b) the dilutive 'minting' of approximately \$300 million in FTT tokens by an unauthorized source after the Petition Date and (c) the failure of the co-founders and potentially others to identify additional wallets believed to contain Debtor assets.⁹⁵

177. In the declaration, Mr. Ray presents several rough balance sheets for the various FTX silos, while noting that he does not have confidence in them, and that "the information therein may not be correct as of the date stated."⁹⁶ Most telling is a footnote that appears on the balance sheets for the exchange businesses: "Customer custodial fund assets are comprised of fiat customer deposit balances. Balances of customer crypto assets deposited are not presented."⁹⁷ Ray notes that U.S. and overseas exchanges "may have significant liabilities" but that "such liabilities are not reflected in the financial statements prepared while these companies were under the control of Mr. Bankman-Fried."⁹⁸

178. To further complicate matters, recent statements given by Sam Bankman-Fried to the Wall Street Journal (WSJ) suggest that about half of the balance owed by Alameda to FTX was from wire transfers that customers made to FTX via Alameda in the early days before FTX

⁹⁵ 042020648197.pdf (pacер-documents.s3.amazonaws.com) (accessed December 16, 2022).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

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had a bank account.⁹⁹ This money was intended to fund customers’ accounts at FTX. Bankman-Fried claims some customers continued to use that route after FTX had a bank account and that over time, “FTX customers deposited more than \$5 billion in those Alameda accounts.”¹⁰⁰ The WSJ acknowledged that these funds “could have been recorded in two places—both as FTX customer funds and as part of Alameda’s trading positions” and that “such double-counting would have created a huge hole in FTX’s and Alameda’s balance sheets, with assets that weren’t really there.”¹⁰¹

179. The relationship between FTX and Alameda was critical to the exchange’s eventual collapse. After suffering large losses in the wake of several high profile crypto-firm failures in the spring and summer of 2022 (Alameda most likely was exposed to crypto hedge fund Three Arrows Capital), FTX.com lent out some of its customer assets that it did control to Alameda.¹⁰² Presumably, the exchange benefitted from the interest paid by Alameda for the loaned cryptoassets – although some have suggested that the loans were made for free.¹⁰³ Alameda could then use the customer assets as cheap collateral for margined trades with other parties (obtaining collateral from other sources would have been much more expensive).¹⁰⁴ It appears that Alameda did post collateral to secure the loans of customer cryptoassets that it received, but that collateral took the

⁹⁹ https://www.wsj.com/articles/ftx-founder-sam-bankman-fried-says-he-cant-account-for-billions-sent-to-alameda-11670107659?st=g35ia0eu0bjwqzn&reflink=desktopwebshare_permalink (accessed December 16, 2022).

¹⁰⁰ FTX customers deposited more than \$5 billion in those Alameda accounts.

¹⁰¹ *Id.*

¹⁰² <https://newsletter.mollywhite.net/p/the-ftx-collapse-the-latest-revelations> (accessed December 16, 2022).

¹⁰³ <https://www.cnn.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html> (accessed December 16, 2022).

¹⁰⁴ For a more general discussion of the conflicts of interest inherent in these relationships, see <https://www.coppolacomment.com/2022/11/the-ftx-alameda-nexus.html> (accessed December 16, 2022).

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form of FTT tokens. FTT tokens were the so-called “native token” of the FTX exchange: FTX created FTT and issued it to both institutional and retail investors without registering with any regulator or undergoing any audit or other external due diligence. FTX could create unlimited amounts of FTT if it wished.

180. In short, there appear to have been two sets of leveraged transactions involved. First, Alameda borrowed assets from FTX’s customers, providing FTT tokens as collateral for those loans. Second, Alameda engaged in margin trading, essentially borrowing money to execute risky trading strategies: these trades were secured by the assets Alameda had borrowed from FTX customers’ accounts. Leverage makes trades potentially more lucrative, but also makes them more vulnerable to adverse market movements. In an Alameda balance sheet linked to CoinDesk in early November, Alameda’s largest asset holdings were listed as being FTT tokens (it is possible that it received these in a kind of bailout from FTX). Other assets listed on that balance sheet included SOL tokens (issued by the Solana blockchain, in which Sam Bankman-Fried was an early investor) and SRM tokens (issued by the Serum exchange that Sam Bankman-Fried co-founded).¹⁰⁵ Alameda had few assets that hadn’t been created out of thin air by FTX or FTX-related entities.

181. After the CoinDesk report came out on November 2, the CEO of FTX’s rival exchange Binance, Changpeng Zhao, tweeted that Binance was planning to sell off its holdings of FTT. This triggered panic selling of FTT and a run on FTX, thereby ensuring the firm’s swift demise.

¹⁰⁵ <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/> (accessed December 16, 2022).

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182. While we are still learning exactly what happened at FTX and Alameda in the days and months before their collapse, we do know several pieces of information that are relevant to this litigation.

183. First, it is quite possible that fiat currency FTX customers sent to the exchange for the purpose of purchasing cryptocurrency may never have actually resulted in a cryptocurrency transaction. Instead, Alameda may have used those funds to purchase any number of assets, including investing in venture capital firms (Alameda's balance sheet in John Ray's first day declaration list venture capital assets).

184. Second, when customers withdrew cryptoassets from FTX in the past, FTX was likely meeting these withdrawals by selling FTT. However, as the price of FTT fell in the wake of Zhao's tweet, it became increasingly expensive for FTX to convert FTT into other cryptoassets that matched customers' expectations of their portfolio holding – especially as so many FTX customers were seeking to pull their cryptoassets out of the exchange at the same time. Therefore, while customers may have believed they were buying cryptocurrencies that were not securities (i.e., commodities) the economic reality was that they were directly, or indirectly, buying securities in the form of venture capital investments, FTT, SOL, and/or SRM. Another way to think of it is that FTX and all its affiliated entities were essentially economically akin to a venture capital fund, where “investors,” in the form of customers, sent funds to the firm and the firm then did whatever it wanted with these funds, including purchasing securities. Given these facts, it appears that any person who used FTX was engaged in a securities transaction of some kind, knowingly or unknowingly.

185. Thus, as will be illustrated below, the FTX Brand Ambassadors' promotion of “FTX” was necessarily the promotion of unregistered securities.

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E. The Defendants Aggressively Marketed the FTX Platform

186. From its inception, cryptocurrency has been fueled by illicit activity and the crypto sector continues to be rife with frauds and scams. For a detailed breakdown on the illicit use of cryptocurrency, see the U.S. Department of Justice’s report from September 2022 titled: “The Role of Law Enforcement In Detecting, Investigation, And Prosecuting Criminal Activity Related to Digital Assets.”¹⁰⁶ The report was issued pursuant to the March 9, 2022 Executive Order on Ensuring Responsible Development of Digital Assets and is the latest report on cryptocurrency released by DoJ dating back to 2018, all of which detail the dire harms caused by cryptocurrency. DoJ notes that “[t]he rise of the Bitcoin network paralleled the development of Silk Road, AlphaBay, and other illegal online marketplaces...” and the department classified digital asset crime into three categories: “(1) cryptocurrency as a means of payment for, or manner of facilitating, criminal activity; (2) the use of digital assets as a means of concealing illicit financial activity; and (3) crimes involving or affecting the digital assets ecosystem.” The September report details several high-profile cases involving the illicit use of cryptocurrency. One case is the darknet marketplace Silk Road, which accepted payment only in Bitcoin, and was shut down by the FBI in 2013 after having facilitated sales revenue totaling over 9.5 million Bitcoin, equivalent to roughly \$1.2 billion at the time.¹⁰⁷

187. Cryptocurrency is increasingly being used by organized crime syndicates and nation states for illicit purposes. In January 2022, the Government Accountability Office (GAO) issued a report finding that “[v]irtual currency is increasingly used illicitly to facilitate human and

¹⁰⁶ <https://www.justice.gov/opa/pr/justice-department-announces-report-digital-assets-and-launches-nationwide-network> (accessed December 16, 2022).

¹⁰⁷ <https://web.archive.org/web/20140220003018/https://www.cs.columbia.edu/~smb/UlbrichtCriminalComplaint.pdf> (accessed December 16, 2022).

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drug trafficking.”¹⁰⁸ Cryptocurrency is also being used by Iran, Russia, and North Korea to bypass U.S. economic and financial sanctions.¹⁰⁹ According to the United Nations, “money raised by North Korea’s criminal cyber operations are helping to fund the country’s illicit ballistic missile and nuclear programs.”¹¹⁰ North Korea’s brazenness was revealed to the public earlier this year when a well-known “Web 3” video game, Axie Infinity, was hacked and \$620 million in the cryptocurrency ether was stolen. “Chainalysis estimates that North Korea stole approximately \$1 billion in the first nine months of 2022 from decentralized crypto exchanges alone,” one of the reasons why Anne Neuberger, US deputy national security adviser for cyber security, said in July 2022 that North Korea “uses cyber to gain up to a third of their funds for their missile program.”¹¹¹

188. Cryptocurrency has also fueled a surge in ransomware that has victimized American businesses, health care systems, and state and local governments. In May of 2022, the majority staff on the Homeland Security & Governmental Affairs Committee released a startling report on ransomware.¹¹² The report notes that in 2021, “ransomware attacks impacted at least 2,323 local governments, schools, and healthcare providers in the United States” and that the FBI “received 3,729 ransomware complaints with adjusted losses of more than \$49.2 million.” The

¹⁰⁸ [Virtual Currencies: Additional Information Could Improve Federal Agency Efforts to Counter Human and Drug Trafficking \[Reissued with Revisions Feb. 7, 2022\] | U.S. GAO](#) (accessed December 16, 2022).

¹⁰⁹ [Russia Could Use Cryptocurrency to Mitigate U.S. Sanctions - The New York Times \(nytimes.com\)](#) (accessed December 16, 2022), [Iran Plans Uses Crypto for Imports to Get Around Sanctions \(gizmodo.com\)](#) (accessed December 16, 2022), [This is how North Korea uses cutting-edge crypto money laundering to steal millions | MIT Technology Review](#) (accessed December 16, 2022).

¹¹⁰ [How North Korea became a mastermind of crypto cybercrime | Ars Technica](#) (accessed December 16, 2022).

¹¹¹ *Id.*

¹¹² [HSGAC Majority Cryptocurrency Ransomware Report.pdf \(senate.gov\)](#) (accessed December 16, 2022).

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report acknowledges that these numbers underestimate the true scale of the problem because many ransomware victims do not report to authorities. As evidence, they cite data from blockchain analytics company Chainalysis that found “malign actors received at least \$692 million in cryptocurrency extorted as part of ransomware attacks” in 2020. The report notes that “cryptocurrency, typically Bitcoin, has become a near universal form of ransom payment in ransomware attacks, in part, because cryptocurrency enables criminals to extort huge sums of money from victims across diverse sectors with incredible speed.” The link between cryptocurrency and ransomware became clear to the public in the wake of the Colonial Pipeline hack in May 2021, which disrupted gasoline supplies in the southeastern U.S. In the wake of that breach, several commentators argued for a ban, or heavy regulation, of cryptocurrency.¹¹³

189. Everyday consumers have also fallen victim to various cryptocurrency-related scams. The Consumer Financial Protection Bureau (CFPB) published 2,404 cryptocurrency related consumer complaints in its Consumer Complaint Database during 2021, and more than 1,000 cryptocurrency-related complaints during 2022 year-to-date.¹¹⁴ According to the September DoJ report: “The CFPB has also received hundreds of servicemember complaints involving cryptocurrency assets or exchanges in the last 12 months, approximately one-third of which concerned frauds or scams.”¹¹⁵ In June 2022, the Federal Trade Commission issued a report finding that “since the start of 2021 more than 46,000 people have reported losing over \$1 billion in crypto

¹¹³ [Ban Cryptocurrency to Fight Ransomware - WSJ](#) (accessed December 16, 2022).

¹¹⁴ [Justice Department Announces Report on Digital Assets and Launches Nationwide Network | OPA | Department of Justice](#) (accessed December 16, 2022).

¹¹⁵ *Id.*

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to scams – that’s about one out of every four dollars reported lost, more than *any* other payment method.”¹¹⁶ The median individual loss was a staggering \$2,600.

190. Another September 2022 report from the Treasury Department, issued pursuant to the Executive Order, also called out the risks and harms to consumers from cryptocurrency:

“Consumers and investors are exposed to improper conduct in the crypto-asset ecosystem for a variety of reasons, including a lack of transparency as well as the fact that crypto-assets have relatively novel and rapidly developing applications. This leads to frequent instances of operational failures, market manipulation, frauds, thefts, and scams. While the data for populations vulnerable to disparate impacts remains limited, available evidence suggests that crypto-asset products may present heightened risks to these groups, and the potential financial inclusion benefits of crypto-assets largely have yet to materialize.”¹¹⁷

191. There is also a long history of consumer losses associated with centralized exchanges, FTX being the latest. One of the first cryptocurrency exchange failures was Japan-based Mt. Gox in 2014. Mt. Gox was handling over 70% of bitcoin transactions worldwide by the time it ceased operations after the exchange was hacked and the majority of cryptocurrency held by the exchange on behalf of customers was stolen. Creditors to Mt. Gox are still waiting for their funds, a sign that does not bode well for FTX creditors, to the extent they seek recovery directly from the FTX Entities through the bankruptcy proceedings.¹¹⁸

192. All of the above-mentioned problems with cryptocurrency are well known and one of the big reasons why consumers are hesitant to purchase or use cryptocurrency. According to Pew Research, 16% of Americans have invested in cryptocurrency while another 71% are not

¹¹⁶ [Reports show scammers cashing in on crypto craze | Federal Trade Commission \(ftc.gov\)](#) (accessed December 16, 2022).

¹¹⁷ [Crypto-Assets: Implications for Consumers, Investors, and Businesses \(treasury.gov\)](#) (accessed December 16, 2022).

¹¹⁸ [What to Watch in the FTX Bankruptcy as Details Remain Scarce - WSJ](#)

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invested although they have heard at least a little about cryptocurrency.¹¹⁹ For those in the latter group, concerns around fraud and scams are likely playing a role in their resistance to crypto investing.

193. These valid concerns are one reason why crypto firms like FTX turn to celebrity endorsers. The FTX advertising campaign is particularly pernicious because it implicitly acknowledges cryptocurrency’s problems while holding FTX out as the “safe” place to invest in cryptocurrency (note statements by O’Leary, Brady, and Curry, below). These statements were untrue, as FTX turned out to be a house of cards that misappropriated customer assets.

194. FTX’s paid endorser program was clearly designed to use the positive reputation associated with specific celebrities to convince consumers that FTX was a safe place to buy and sell cryptocurrency.

195. As Mr. Sibenik explains, FTX’s brand ambassadors and ad campaigns that utilized those brand ambassadors had a critical role in portraying FTX as being ‘safe’ and ‘compliant.’ Ex. A ¶ 44–49:

In Stephen Curry’s FTX commercial, FTX’s alleged safety is quite blatant stated when he claims

“With FTX, I have everything I need to buy, sell, and trade crypto safely”

Kevin O’Leary, another FTX brand ambassador stated:

“To find crypto investment opportunities that met my own rigorous standards of compliance, I entered into this relationship with FTX. It has some of the best crypto exchange offerings I’ve seen on the market. FTX leverages best-in-class tech to provide a quality trading experience with low fees for both professional and retail investors alike, while at the same time providing the reporting platform that serves both internal and regulatory compliance requirements”

¹¹⁹ [46% of cryptocurrency investors in US say it did worse than expected | Pew Research Center](#)

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Given that FTX continually misappropriated customer assets, didn't have appropriate capital controls or reasonable compliance policies in place, these claims weren't just unfounded; they were downright false.

Mr. O'Leary's assertion that FTX was a compliant exchange is even more damaging than that of the typical celebrity, however. This is because Mr. O'Leary is known for being a *Shark* on the TV show *Shark Tank* whereby Shark's make investments in startups. With those investments comes due diligence. Mrb O'Leary's endorsement of FTX certainly makes it seem that he did appropriate due diligence into FTX, when obviously, whatever due diligence that he did was grossly inadequate.

Mr. O'Leary appears to admit that his own due diligence was inadequate, and that he relied on the due diligence of others:

"I obviously know all the institutional investors in this deal. We all look like idiots. Let's put that on the table. We relied on each other's due diligence, but we also relied on another investment theme that I felt drove a lot of interest in FTX¹²⁰"

Mr. O'Leary is also a strategic investor in Canada's largest cryptocurrency exchange, 'WonderFi.' The name is derived from Mr. O'Leary's nickname, 'Mr. Wonderful.' Mr. O'Leary's involvement in WonderFi could naturally lead one to believe that he knew how to perform adequate due diligence on exchanges, and that he would do so on FTX before investing and acting as a brand ambassador.

196. Other organizations and individuals, with presumably more to gain, did find red flags at FTX and turned down FTX and/or Sam Bankman-Fried's money. The nonprofits Our World Data and MITRE declined offered gifts of \$7.5 million and \$485,000, respectively, from the FTX Future Fund due to undisclosed red flags.¹²¹ In addition, CME Group CEO Terry Duffy allegedly told Sam Bankman-Fried that he was "an absolute fraud" upon having an initial

¹²⁰ <https://dailyhodl.com/2022/12/09/kevin-oleary-says-ftx-collapse-makes-him-and-other-investors-in-the-crypto-exchange-look-like-idiots/>

¹²¹ <https://www.moneyweb.co.za/moneyweb-crypto/sam-bankman-frieds-red-flags-were-seen-in-all-corners-of-his-empire/> (accessed December 16, 2022).

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conversation with Mr. Fried.¹²² Finally, after FTX’s implosion, the FT reported that FTX held talks with Taylor Swift to sponsor the singer’s tour for more than \$100 million.¹²³ While the article does not detail the reasons why Swift declined the FTX offer, it does include the following quote from a person close to the negotiations:

“Taylor would not, and did not, agree to an endorsement deal. The discussion was around a potential tour sponsorship that did not happen.”¹²⁴

197. Based upon the information that has been released by FTX’s new CEO John Ray as part of the company’s bankruptcy filings, it is clear that anyone who bothered to spend 20 minutes reviewing FTX’s operations pre-collapse would have identified significant red flags. In his first day pleading in support of FTX’s chapter 11 petitions, Mr. Ray noted:

“Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals, this situation is unprecedented.”¹²⁵

198. Mr. Ray’s pleading contains a number of troubling findings, among them: 1.) FTX did not have centralized control of its cash, 2.) FTX had no dedicated human resources department, which has hindered Mr. Ray’s team from preparing a complete list of who worked for the FTX Entities, 3.) A lack of disbursement controls that resulted in employees submitting payment requests via on-line chat and these requests being approved by managers responding with

¹²² <https://www.cnbc.com/2022/11/23/absolute-fraud-cmes-terry-duffy-says-he-saw-trouble-before-ftx-collapse-.html> (accessed December 16, 2022).

¹²³ [FTX held talks with Taylor Swift over \\$100mn sponsorship deal | Financial Times](https://www.ft.com/content/123456789) (accessed December 16, 2022).

¹²⁴ *Id.*

¹²⁵ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiokr3C-L7AhWsnGoFHRdBC2kQFnoECBAQAQ&url=https%3A%2F%2Fpacercdocuments.s3.amazonaws.com%2F33%2F188450%2F042020648197.pdf&usg=AOvVaw38wQJwnmP5fFtiyYkNjSG> (accessed December 16, 2022).

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personalized emojis, 4.) Corporate funds were used to purchase homes and personal items for employees, and 5.) A lack of books and records and the absence of lasting records of decision-making.

199. It is hard to imagine that anyone who has done business with FTX, including paid endorsers, would not have personally witnessed one or more of the deficiencies identified by Mr. Ray. All FTX endorsers have extensive business dealings beyond FTX and surely would be able to identify business practices that are unusually problematic. Of course, the same can be said for prominent venture capital (VC) firms that invested in FTX. But these investors are in the business of taking risk and VC firms have an incentive to conduct limited due diligence lest they become known as unfriendly to founders and get locked out of future deals. The same “founder friendly” dynamics played a role in lapse due diligence at WeWork and Theranos.

200. Furthermore, customers were not opting to use FTX because of who their investors were. Instead, many customers relied on the testimonials of paid celebrity endorsers and these celebrities knew why they were being compensated. Indeed, the whole point behind paying celebrities to endorse a product is to increase sales. Thus, celebrities have a moral and legal obligation to know that what they are promoting is unlikely to cause physical or financial damage to customers.

201. In addition to the conduct of Defendant Sam Bankman-Fried, as described in this Complaint, some of the biggest names in sports and entertainment have either invested in FTX or been brand ambassadors for the company. A number of them hyped FTX to their social media fans, driving retail consumer adoption of the Deceptive FTX Platform.

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202. In April 2021, FTX became the first company in the crypto industry to name an arena. This helped lend credibility and recognition to the FTX brand and gave the massive fanbase of basketball exposure to the Deceptive FTX Platform.

203. FTX's explanation for using stars like Brady, Bunchden, and the other Defendants was no secret. "We're the newcomers to the scene," said then-FTX.US President Brett Harrison, referring to the crypto services landscape in the U.S. "The company needs to familiarize consumers with its technology, customer service and offerings, while competing with incumbents like Coinbase Global Inc. or Kraken," Mr. Harrison said. "We know that we had to embark on some kind of mass branding, advertising, sponsorship type work in order to be able to do that," he said.¹²⁶

204. In other words, the FTX Entities needed celebrities like Defendants to continue funneling investors into the FTX Ponzi scheme, and to promote and substantially assist in the sale of the YBAs, which are unregistered securities. Below are representative statements and advertisements Defendants made to drive the offers and/or sales of the YBAs, which Plaintiff and Class Members will supplement as the case progresses and discovery unfolds.

i. Defendants Tom Brady and Gisele Bundchen



¹²⁶

https://www.wsj.com/articles/tom-brady-and-gisele-bundchen-to-star-in-20-million-campaign-for-crypto-exchange-11631116800?mod=article_inline (accessed December 16, 2022).

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205. The star quarterback and the businesswoman and model, then a couple, became FTX ambassadors last year. They also took equity stakes in FTX Trading Ltd.

206. Mr. Brady and Ms. Bündchen also joined the company's \$20-million ad campaign in 2021. They filmed a commercial called "FTX. You In?" showing them telling acquaintances to join the FTX platform. The ad can be viewed here: <https://www.youtube.com/watch?v=uymLJoKFIW8>

207. In a second commercial, Brady is shown executing a trade on the FTX platform on his cellular phone. Brady explains, "I mean trading crypto. FTX is the safest and easiest way to buy and sell crypto. It's the best way to get in the game."

208. In a third commercial, FTX is again depicted using the FTX platform on his cellular phone while walking off a football field. A man asks, "FTX, that's the crypto app right?" Brady responded, "Now its for all kinds of investing. It's better. And I like better."

209. None of these three commercials disclose the fact that Mr. Brady was a paid brand ambassador for FTX or that he owned equity in FTX Trading Ltd.

210. The commercials may be viewed here: https://www.youtube.com/watch?v=_aCGMyrFn-8. The shorter version of the first commercial which aired during the Superbowl may is available here: <https://www.youtube.com/watch?v=4p4z2wsjhmM>.

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ii. Defendant Kevin O’Leary



211. “Mr. Wonderful,” both a brand ambassador and an FTX shareholder, made several public statements designed to induce consumers to invest in the YBAs.

212. “To find crypto investments opportunities that met my own rigorous standards of compliance, I entered into this relationship with @FTX_Official,” Mr. O’Leary said on Twitter last year. Mr. O’Leary *recently deleted the tweet*.

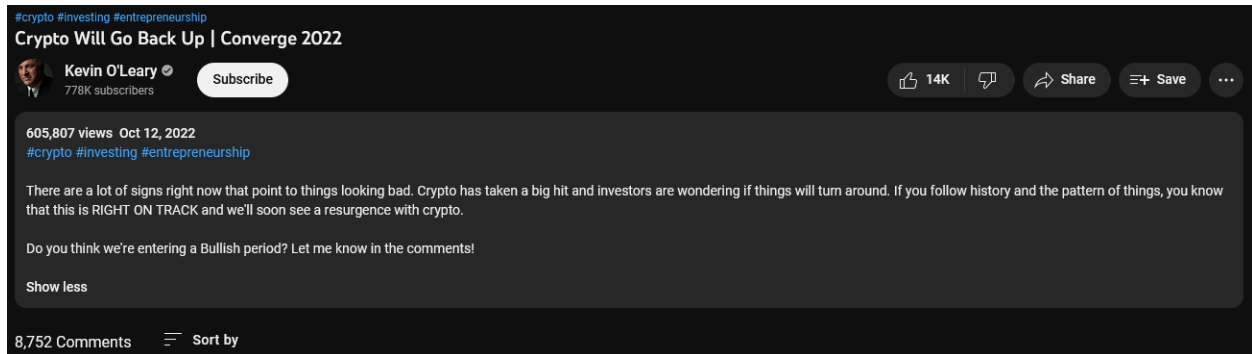
213. He also served as a judge for the FTX Charity Hackathon in Miami in March of 2022.¹²⁷

214. And *very* recently, on October 12, 2022, O’Leary stated confidently that FTX was totally compliant and a safe place to hold assets. O’Leary stated that: “I have to disclose I’m a paid spokesperson to a FTX and shareholder there, too, cause we mentioned him and I’m a big advocate for Sam because he has two parents who are compliance lawyers. If there’s ever a place I could be

¹²⁷ <https://ftxcharityhackathon.com/> (accessed December 16, 2022).

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that I'm not gonna get in trouble it's going to be in FTX so you know that's there they're great people but he gets the job in compliance which is why he's working so hard to get regulation.”¹²⁸



215. He went on to state that “[t]here are a lot of signs right now that point to things looking bad. Crypto has taken a big hit and investors are wondering if things will turn around. If you follow history and the pattern of things, you know that this is RIGHT ON TRACK and we’ll soon see a resurgence with crypto. Do you think we’re entering a Bullish period? Let me know in the comments!”¹²⁹

iii. Defendant Udonis Haslem



¹²⁸ See https://www.youtube.com/watch?v=iwD_zWgyUz8 beginning at 17:32 (accessed December 16, 2022)

¹²⁹ *Id.*

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216. Udonis Haslem, the Captain of the Miami HEAT and Miami legend, became an FTX global ambassador. Much like Brady and Bunchden, Haslem starred in FTX’s “You In, Miami?” ad campaign that launched at the start of the 2021 - 2022 Miami HEAT season.

217. In the ad, which be viewed here: <https://www.youtube.com/watch?v=83FDP53yPa8>, Haslem states “FTX has arrived in 305. So I just got one question: Are you in, Miami?” Others respond “If he’s in, I’m in.” Haslem concludes “Our city. Our team. FTX. You in, Miami?”

iv. Defendant David Ortiz



218. Defendant David Ortiz, who became an FTX brand ambassador and hyped the YBAs in exchange for cryptocurrency and multiple collections of NFTs, also ran his own FTX “You In?” ad, which began running nationwide during the first game of the 2021 World Series. In the ad, which can be found here: <https://www.ispot.tv/ad/qSlm/ftx-big-papi-is-in>, Ortiz is watching a game on the television when he receives a phone call from The Moon. Inspired by the “moonblast” home run scored on the field, The Moon frantically tells David about opportunities

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to get into cryptocurrency with FTX. David decides it's an offer he can't refuse and joins fellow sports stars Stephen Curry and Tom Brady on the platform. FTX announces it is the official crypto exchange of MLB.

v. Defendant Steph Curry



219. Defendant Stephen Curry had his own nationwide ad campaign pushing the Deceptive FTX Platform, known as the “#notanexpert” campaign.¹³⁰ Throughout the ad, Curry repeatedly denies being cast as an expert in cryptocurrency, culminating in his statement that “I’m not an expert, *and I don’t need to be*. With FTX I have everything I need to buy, sell, and trade crypto safely.”¹³¹

220. The purpose of Curry being an ambassador is to expand the reach of the crypto firm and “tout the viability of cryptocurrency to new audiences around the world,” FTX said in a press

¹³⁰ <https://www.youtube.com/watch?v=gsy2N-XI04o> (accessed December 16, 2022).

¹³¹ *Id.*

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release.¹³² In other words, to drive adoption of the Deceptive FTX Platform and to facilitate the sales of unregistered YBAs to unsuspecting and unwitting retail consumers.

221. “I’m excited to partner with a company that demystifies the crypto space and eliminates the intimidation factor for first-time users,” Curry said in the statement, highlighting that “first-time,” inexperienced users were the intended targets of the campaign.¹³³

vi. Defendant Golden State Warriors



Official Crypto Platform and NFT Marketplace
of the **Golden State Warriors**

222. The Golden State Warriors and FTX officially launched their partnership in 2022 with the unveiling of the FTX logo on the court at the Chase Center. As the Warriors’ Official Cryptocurrency Platform and NFT Marketplace, the franchise dropped NFTs on FTX.us beginning in early 2022. The partnership between the Warriors and FTX marked the first international rights

¹³² <https://www.prnewswire.com/news-releases/nba-superstar-stephen-curry-becomes-global-ambassador-and-shareholder-of-leading-cryptocurrency-exchange-ftx-through-long-term-partnership-301370497.html> (accessed December 16, 2022).

¹³³ *Id.*

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partner for the Warriors, meaning the GSW and FTX had a visible market presence, inclusive of logo and likeness, internationally.

223. The deal also included the Warriors' G League team, the Golden Guardians and Warriors Gaming Squad (affiliated esports teams), in-arena signage at Chase Center, and virtual floor signage at Warriors games.¹³⁴

vii. Defendant Shaquille O'Neal

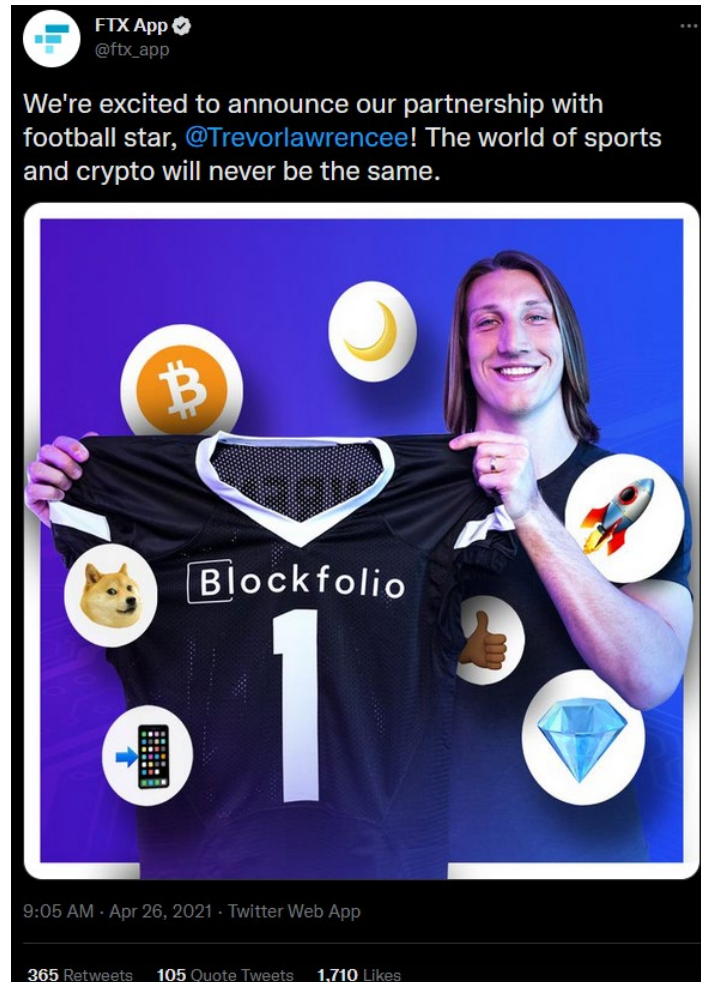


¹³⁴ <https://www.instagram.com/p/CYiBaq8JLx7/> (accessed December 16, 2022).

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224. Defendant Shaquille O’Neal, former professional NBA basketball star, sports analyst, and entrepreneur, also became an FTX ambassador, stating in a video posted on FTX’s Twitter account that “I’m excited to be partnering with FTX to help make crypto accessible for everyone. I’m all in. Are you?”¹³⁵

viii. Defendant Trevor Lawrence



225. Defendant William Trevor Lawrence, the first pick in the 2021 NFL draft and now quarterback for the Jacksonville Jaguars of the NFL, became a brand ambassador for FTX in exchange for unspecified cryptocurrency payments, which sponsorship was announced in April

¹³⁵

https://twitter.com/FTX_Official/status/1532119977381208066?s=20&t=5wTm55FDE6c0cCD9vCndYg (accessed December 16, 2022).

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2021.¹³⁶ The stated purpose of the sponsorship was because “Trevor is someone people can have a personal and human connection with for [FTX] and to the crypto space.”¹³⁷

ix. Defendant Shohei Ohtani



226. The FTX Entities entered into a long-term partnership with global icon and history-making MLB Superstar Shohei Ohtani. In addition to being an FTX global ambassador, Mr. Ohtani received all of his compensation in equity and cryptocurrencies.¹³⁸ In exchange for those

¹³⁶ https://twitter.com/ftx_app/status/1386667859393253376 (accessed December 16, 2022).

¹³⁷ <https://www.forbes.com/sites/chrisacson/2021/04/26/trevor-lawrence-makes-first-investment-move-with-first-of-its-kind-partnership-with-blockfolio/?sh=7190ee6f47ef> (accessed December 16, 2022).

¹³⁸ <https://www.prnewswire.com/news-releases/mlb-superstar-shohei-ohtani-joins-ftx-as-global-ambassador-through-long-term-partnership-301425911.html> (accessed December 16, 2022).

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unspecified payments, Mr. Ohtani served as a spokesperson for FTX to increase awareness of the Deceptive FTX Platform and to drive adoption of and investments in the unregistered YBA securities on a global scale through a variety of initiatives.¹³⁹

x. Defendant Naomi Osaka



227. Defendant Naomi Osaka, a 24-year-old professional tennis player and four-time Grand Slam singles champion, became a brand ambassador for FTX, with the express purpose of “getting more women to start investing in crypto.”¹⁴⁰ Osaka wore the FTX logo on the kit she wore at tournaments, including the 2022 Miami Open.¹⁴¹ In exchange for an equity stake in FTX and payments in unspecified amounts of cryptocurrency, Osaka directed and produced content in association with the FTX Entities designed to promote the offer and sale of the unregistered YBA securities, hoping “she will reach a global audience.”¹⁴²

¹³⁹ *Id.*

¹⁴⁰ <https://coinmarketcap.com/alexandria/article/naomi-osaka-tennis-star-teams-up-with-ftx-and-she-s-getting-paid-in-crypto-too> (accessed December 16, 2022).

¹⁴¹ *Id.*

¹⁴² *Id.*

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228. Osaka confirmed her involvement by tweeting a glitzy new FTX ad to her **1.1 million followers**, which can be viewed here: <https://youtu.be/pkuf8avR50k>. It shows the tennis star competing in a comic strip — and over dramatic music, she says: “They thought they made the rules for us. They thought they could control us. They were wrong.”

229. The video then cuts to a boardroom full of marketing executives talking about the ad in a tongue-in-cheek way — and discussing other ideas... including Osaka heading to the moon. An idea to have a QR code bouncing around the screen (a clear nod to Coinbase’s Super Bowl spot) is dismissed for being “boring.”

230. They settle on letting Osaka speaking for herself — and play a mock-up of the tennis ace giving an interview to a news channel where she says: “I’m Naomi Osaka and I’m proud to partner with FTX. Making cryptocurrency accessible is a goal that FTX and I are striving towards.” The ad ends with the tagline: “Naomi is in. You in?”

xi. Defendant Larry David



231. For his part, the legendary comedian and creator of *Seinfeld* and *Curb Your Enthusiasm*, Larry David, created an ad for the FTX Entities called “Don’t Miss Out on Crypto,”

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which aired during the 2022 Super Bowl, making FTX one of the most retweeted brands during the Super Bowl, and winning the “Most Comical” honorific from *USA Today*’s Ad Meter.¹⁴³

232. The ad—the only Super Bowl commercial David ever appeared in—featured David being a skeptic on such historically important inventions as the wheel, the fork, the toilet, democracy, the light bulb, the dishwasher, the Sony Walkman, and, of course, FTX, and cautioned viewers, “Don’t be like Larry.” The ad can be viewed here: <https://youtu.be/BH5-rSxilxo>

CLASS ACTION ALLEGATIONS

233. As detailed below in the individual counts, Plaintiff brings this lawsuit on behalf of himself and all others similarly situated, pursuant to Rule 23(a), (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil Procedure.

A. Class Definitions

234. Plaintiffs seek to represent the following Global Class, Nationwide Class, and Florida Subclass (collectively, “the Classes”):

- (1) **Global Class**: All persons and entities residing outside of the United States who, within the applicable limitations period, purchased or enrolled in a YBA.
- (2) **Nationwide Class**: All persons or entities in the United States who, within the applicable limitations period, purchased or enrolled in a YBA.

¹⁴³ <https://admeter.usatoday.com/lists/usa-today-ad-meter-replay-ratings-2022-final-results/> (accessed December 16, 2022).

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(3) Florida Subclass: All persons or entities in the state of Florida who, within the applicable limitations period, purchased or enrolled in a YBA.

Excluded from the Classes are Defendants and their officers, directors, affiliates, legal representatives, and employees, the FTX Entities and their officers, directors, affiliates, legal representatives, and employees, any governmental entities, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

235. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes, or to include additional classes or subclasses, before or after the Court determines whether such certification is appropriate as discovery progresses. Plaintiffs seek certification of the Classes in part because all offers of FTX YBAs to Plaintiffs and the Class Members (in which Defendants each substantially participated) were made by FTX from their principal place of business in Miami, Florida, and thus every single offer to sell an FTX YBA stems from a transactional occurrence that emanated from the State of Florida.

B. Numerosity

236. The Classes are comprised of thousands, if not millions, of consumers globally, to whom FTX offered and/or sold YBAs. Moreover, thousands, if not millions, of consumers worldwide have executed trades on the FTX Platform within the applicable limitations period. Membership in the Classes are thus so numerous that joinder of all members is impracticable. The precise number of class members is currently unknown to Plaintiffs but is easily identifiable through other means, such as through FTX's corporate records or self-identification.

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C. Commonality/Predominance

237. This action involves common questions of law and fact, which predominate over any questions affecting individual class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether the YBAs were unregistered securities under federal or Florida law;
- (b) whether Defendants' participation and/or actions in FTX's offerings and sales of YBAs violate the provisions of the Securities Act and Florida securities law.
- (c) the type and measure of damages suffered by Plaintiffs and the Class.
- (a) whether Defendants' practices violate the FDUTPA;
- (b) whether Plaintiffs and Class members have sustained monetary loss and the proper measure of that loss;
- (c) whether Plaintiffs and Class members are entitled to injunctive relief;
- (d) whether Plaintiffs and Class members are entitled to declaratory relief; and
- (e) whether Plaintiffs and Class members are entitled to consequential damages, punitive damages, statutory damages, disgorgement, and/or other legal or equitable appropriate remedies as a result of Defendants' conduct.

D. Typicality

238. Plaintiffs' claims are typical of the claims of the members of the Classes because all members were injured through the uniform misconduct described above, namely that Plaintiffs and all class members were offered and/or sold FTX's YBAs because of Defendants' actions and/or participation in the offering and sale of these unregistered securities, and Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all such members. Further, there are no defenses available to any Defendant that are unique to Plaintiffs.

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E. Adequacy of Representation

239. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Classes. Plaintiffs anticipate no difficulty in the management of this litigation as a class action. To prosecute this case, Plaintiffs have chosen the undersigned law firms, which have the financial and legal resources to meet the substantial costs and legal issues associated with this type of consumer class litigation.

F. Requirements of Fed. R. Civ. P. 23(b)(3)

240. The questions of law or fact common to Plaintiffs' and each Class member's claims predominate over any questions of law or fact affecting only individual members of the Classes. All claims by Plaintiffs and the unnamed members of the Classes are based on the common course of conduct by Defendants (1) in marketing, offering, and/or selling the YBAs, which are unregistered securities, and/or (2) in receiving secret undisclosed compensation for their promotion of the Deceptive FTX Platform.

241. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

242. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the Classes as is in the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

243. A class action is superior to individual actions for the proposed Classes, in part because of the non-exhaustive factors listed below:

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- (a) Joinder of all Class members would create extreme hardship and inconvenience for the affected customers as they reside nationwide and throughout the state;
- (b) Individual claims by Class members are impracticable because the costs to pursue individual claims exceed the value of what any one Class member has at stake. As a result, individual Class members have no interest in prosecuting and controlling separate actions;
- (c) There are no known individual Class members who are interested in individually controlling the prosecution of separate actions;
- (d) The interests of justice will be well served by resolving the common disputes of potential Class members in one forum;
- (e) Individual suits would not be cost effective or economically maintainable as individual actions; and
- (f) The action is manageable as a class action.

H. Requirements of Fed. R. Civ. P. 23(b)(2)

244. Defendants have acted and refused to act on grounds generally applicable to the Classes by engaging in a common course of conduct of aiding and abetting the offering and/or selling the YBAs, which are unregistered securities, thereby making appropriate final injunctive relief or declaratory relief with respect to the classes as a whole.

245. Defendants have acted and refused to act on grounds generally applicable to the Classes by engaging in a common course of conduct of uniformly identical and uniform misrepresentations and omissions in receiving secret undisclosed compensation for their promotion of the Deceptive FTX Platform, thereby making appropriate final injunctive relief or declaratory relief with respect to the classes as a whole.

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I. Requirements of Fed. R. Civ. P. 23(c)(4)

246. As it is clear that one of the predominant issues regarding Defendants' liability is whether the YBAs FTX offered and/or sold are unregistered securities, utilizing Rule 23(c)(4) to certify the Class for a class wide adjudication on this issue would materially advance the disposition of the litigation as a whole.

247. As it is clear that another predominant issue regarding Defendants' liability is whether they have violated the consumer protection and securities laws of Florida in making identical and uniform misrepresentations and omissions regarding the functionality of the Deceptive FTX Platform, and/or in receiving secret undisclosed compensation for their promotion of the Deceptive FTX Platform, utilizing Rule 23(c)(4) to certify the Classes for a class wide adjudication on this issue would materially advance the disposition of the litigation as a whole.

J. Nature of Notice to the Proposed Class.

248. The names and addresses of all Class Members are contained in the business records maintained by FTX and are readily available to FTX. The Class Members are readily and objectively identifiable. Plaintiffs contemplate that notice will be provided to Class Members by e-mail, mail, and published notice.

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COUNT ONE

**Violations of the Florida Statute Section 517.07,
The Florida Securities and Investor Protection Act
(Plaintiffs Individually and on behalf of the Classes)**

249. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–248 above, as if fully set forth herein.

250. Section 517.07(1), Fla. Stat., provides that it is unlawful and a violation for any person to sell or offer to sell a security within the State of Florida unless the security is exempt under Fla. Stat. § 517.051, is sold in a transaction exempt under Fla. Stat. § 517.061, is a federally covered security, or is registered pursuant to Ch. 517, Fla. Stat.

251. Section 517.211 extends liability to any “director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security.”

252. The YBA is a security pursuant to Fla. Stat. § 517.021(22)(a).

253. The YBAs sold and offered for sale to Plaintiff and Class members were not:

- a. exempt from registration under Fla. Stat. § 517.051;
- b. a federal covered security;
- c. registered with the Office of Financial Regulations (OFR); or
- d. sold in a transaction exempt under Fla. Stat. § 517.061.

254. The FTX Entities sold and offered to sell the unregistered YBAs to Plaintiffs and the members of the Class.

255. Defendants are directors, officers, partners and/or agents of the FTX Entities pursuant to Fla. Stat. § 517.211.

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256. The FTX Entities, with Defendants’ material assistance, offered and sold the unregistered YBAs to Plaintiffs and the members of the Class. As a result of this assistance, Defendants violated Fla. Stat. § 517.07 et seq. and Plaintiffs and members of the Class sustained damages as herein described.

COUNT TWO

**For Violations of the Florida Deceptive and Unfair Trade Practices Act,
 § 501.201, Florida Statutes, *et seq.*
 (Plaintiffs Individually and on behalf of the Classes)**

257. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–248 above, as if fully set forth herein.

258. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, section 501.201, Fla. Stat., *et seq.* (“FDUTPA”). The stated purpose of the FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202(2), Fla. Stat.

259. Plaintiffs and Class members are consumers as defined by section 501.203, Fla. Stat. Defendants are engaged in trade or commerce within the meaning of the FDUTPA.

260. Florida Statute section 501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

261. Defendants’ unfair and deceptive practices as described herein are objectively likely to mislead – and have misled – consumers acting reasonably in the circumstances.

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262. Defendants have violated the FDUTPA by engaging in the unfair and deceptive practices as described herein, which offend public policies and are immoral, unethical, unscrupulous and injurious to consumers.

263. Plaintiffs and consumers in the Classes have been aggrieved by Defendants' unfair and deceptive practices and acts of false advertising by paying into the Ponzi scheme that was the Deceptive FTX Platform and in the amount of their lost investments.

264. The harm suffered by Plaintiffs and consumers in the Classes was directly and proximately caused by the deceptive and unfair practices of Defendants, as more fully described herein.

265. Pursuant to sections 501.211(2) and 501.2105, Fla. Stat., Plaintiffs and consumers in the Classes make claims for actual damages, attorneys' fees and costs.

266. Defendants still utilize many of the deceptive acts and practices described above. Plaintiffs and the other members of the Classes have suffered and will continue to suffer irreparable harm if Defendants continue to engage in such deceptive, unfair, and unreasonable practices. Section 501.211(1) entitles Plaintiffs and the Classes to obtain both declaratory or injunctive relief to put an end to Defendants' unfair and deceptive scheme.

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COUNT THREE

**Civil Conspiracy
(Plaintiffs Individually and on behalf of the Classes)**

267. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–248 above, as if fully set forth herein.

268. The FTX Entities and Defendants made numerous misrepresentations and omissions to Plaintiffs and Class Members about the Deceptive FTX Platform in order to induce confidence and to drive consumers to invest in what was ultimately a Ponzi scheme, misleading customers and prospective customers with the false impression that any cryptocurrency assets held on the Deceptive FTX Platform were safe and were not being invested in unregistered securities.

269. The FTX Entities entered into one or more agreements with Defendants with the purpose of making these misrepresentations and/or omissions to induce Plaintiff and consumers to invest in the YBAs and/or use the Deceptive FTX Platform.

270. Defendants engaged in unlawful acts with the FTX Entities, namely, the misrepresentations and omissions made to Plaintiffs and the Classes and the sale of unregistered securities.

271. Defendants' conspiracy substantially assisted or encouraged the wrongdoing conducted by the FTX Entities; further, Defendants had knowledge of such fraud and/or wrongdoing, because of their experience and relationship with the FTX Entities, as described above and as such, knew that the representations made to Plaintiffs were deceitful and fraudulent.

272. Defendants' conspiracy with the FTX Entities to commit fraud caused damages to Plaintiffs and the Classes in the amount of their lost investments.

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COUNT FOUR

Declaratory Judgment

(Declaratory Judgment Act, Florida Statutes §§ 86.011 *et seq.*)

(Plaintiffs Individually and on behalf of the Classes)

273. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1–248 as if fully set forth herein.

274. This Count is asserted against Defendants under Florida Statutes §§ 86.011, *et seq.*

275. There is a bona fide, actual, present and practical need for the declaratory relief requested herein; the declaratory relief prayed for herein deal with a present, ascertained or ascertainable state of facts and a present controversy as to a state of facts; contractual and statutory duties and rights that are dependent upon the facts and the law applicable to the facts; the parties have an actual, present, adverse and antagonistic interest in the subject matter; and the antagonistic and adverse interests are all before the Court by proper process for final resolution.

276. Plaintiffs and the members of the Classes have an obvious and significant interest in this lawsuit.

277. Plaintiffs and members of the Classes purchased YBAs, based in part on justifiable reliance on the Defendants’ misrepresentations and omissions regarding the Deceptive FTX Platform as further described hereinabove.

278. If the true facts had been known, including but not limited to that the YBAs are unregistered securities, the Deceptive FTX Platform does not work as represented, and Defendants were paid exorbitant sums of money to peddle Voyager to the nation, Plaintiffs and the Classes would not have purchased YBAs in the first place.

279. Thus, there is a justiciable controversy over whether the YBAs were sold illegally, and whether the Defendants illegally solicited their purchases from Plaintiff and the Class.

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280. Plaintiff and the Class seek an order declaring that the YBAs were securities required to be registered with the SEC and state regulatory authorities, that the Deceptive FTX Platform did not work as represented, and Defendants were paid exorbitant sums of money to peddle FTX to the nation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment on behalf of themselves and the Classes:

- a. Certifying the Class as requested herein;
- b. Awarding actual, direct and compensatory damages;
- c. Awarding restitution and disgorgement of revenues if warranted;
- d. Awarding declaratory relief as permitted by law or equity, including declaring the Defendants' practices as set forth herein to be unlawful;
- e. Awarding injunctive relief as permitted by law or equity, including enjoining the Defendants from continuing those unlawful practices as set forth herein, and directing the Defendants to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;
- f. Awarding statutory and multiple damages, as appropriate;
- g. Awarding attorneys' fees and costs; and
- h. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as to all claims so triable.

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Dated: December 16, 2022

Respectfully submitted,

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Co-Counsel for Plaintiff and the Class

Exhibit A



CipherBlade

Blockchain Investigation Agency

PRELIMINARY EXPERT REPORT

Matter: FTX Exchange

Written By: Paul Sibenik

Date: 12.16.2022

Introduction

1. In accordance with instructions from Moskowitz Law Firm, PLLC, I have been instructed to prepare a preliminary expert report surrounding FTX Exchange,
2. More specifically, I have been asked to provide a preliminary opinion on FTX 'Earn' accounts, FTT Token, and FTX Exchange in general, as well as the risks that could affect consumers inherent in them. I have furthermore been asked to provide a technical opinion assessing if or how FTX Earn accounts meet the Howey Test.
3. I am the Lead Case Manager at CipherBlade, a leading blockchain forensics and cybercrime investigative firm which consults with blockchain projects, numerous police, law enforcement and regulatory agencies around the world, including the US FBI and US Secret Service, cryptocurrency exchanges, and other organizations. Other CipherBlade staff and I have experience in some of the most high-profile cryptocurrency investigations to date in relation to a wide range of niches including but not limited to cases involving hacking, theft, SIM-Swapping, ransomware, different types of frauds and scams (e.g., involving ICOs, NFTs, investment fraud, Ponzi Schemes), 'rugpulls,' embezzlement, as well as civil matters such as divorce cases and bankruptcy cases. I am recognized as one of the few experts in blockchain forensics and cryptocurrency cybercrime investigation. This work regularly requires the analysis of cryptocurrency transactions, wallets and addresses, alongside gathering and analyzing other data sources.
4. I regularly use blockchain forensics software to assist me in blockchain investigations. My usage of blockchain forensics software in this matter, has, thus far been extremely minimal. However, I expect blockchain forensics to play a more important role in this matter as this case develops and disclosures are obtained. For reference, however, I primarily utilize Chainalysis Reactor, which is the leading blockchain forensics software available and is utilized by various law enforcement agencies around the world, including the FBI, USSS, DHS, and DEA in the United States. Chainalysis Reactor helps professionals to better understand the flow of funds on assets on supported blockchains. It helps to aggregate and manage large amounts of transaction data and addresses to make the data more parsable. It helps professionals like me to better understand which addresses are under the control of the same individuals or entities, and for addresses that are under the control of a service or exchange, it is often able to identify the name of that service or exchange. Furthermore, Chainalysis Reactor also provides Open-Source Intelligence (OSINT) on various cryptocurrency addresses, which can help investigators understand what those addresses may be

associated with or can provide additional context in situations. I have a Chainalysis Reactor Certification (CRC), which is a certification offered by Chainalysis to certify knowledge and understanding of their Reactor forensics tool. I also have the Chainalysis Investigation Specialist Certification (CISC), an additional certification by Chainalysis designed specifically for the most advanced Reactor users, which dives deep into advanced investigative techniques and obfuscation approaches sometimes used by individuals trying to launder ill-gotten cryptocurrency. I furthermore have the Chainalysis Ethereum Investigations Certification (CEIC), a certification program focused on Ethereum, as well as other EVM (Ethereum virtual machine)-compatible cryptocurrencies.

5. Additionally, a large portion of my work involves consulting with blockchain companies in various capacities pertaining to preventative measures they can or should take to reduce risks and mitigate the amount of cybercrime that their company is exposed to. This involves consulting on security practices, including those pertaining to cryptocurrency storage and management. This also involves consulting on matters of compliance so as to significantly mitigate the likelihood and/or frequency of ill-gotten funds being laundered through their service and reduce the amount of various types of fraud, including investment scams, romance scams, impersonation scams, and money muling.
6. A copy of my CV is attached in Appendix A.
7. This is a preliminary report and is subject to change. I reserve the right to amend the views expressed in this report should or when additional information be uncovered or presented to me.
8. Prior to accepting instructions to act in this matter, I made reasonable inquiries to identify any actual or potential conflicts of interest in connection with the parties concerned. No matters arose.

A Primer on Cryptocurrency Exchanges

9. Before delving into the issues at hand, I think it's first pertinent to provide some background information on what cryptocurrency exchanges are, what purpose they serve, and how they operate, in relation to the matter at hand.
10. In many ways, centralized cryptocurrency exchanges, including FTX, are analogous to banks albeit for the cryptocurrency industry.
11. More specifically, cryptocurrency exchanges accept deposits of cryptocurrency, and often fiat currency on behalf of their customers. Once that cryptocurrency is received by the exchange then it has dominion and control over those assets.

12. The exchange then credits the applicable customer account with the appropriate amount of cryptocurrency or fiat assets the exchange received. This credit can be regarded as a liability or IOU of the exchange to its customer.
13. If, for example, cryptocurrency was deposited to the customer's exchange account, the customer could then take that credit received from the exchange, and:
 - a) Trade it for another cryptocurrency
 - b) Trade it for fiat currency
 - c) Leave it as a balance on the exchange account (leaving an open liability of the exchange to the customer)
 - d) Withdraw it (withdrawal could be done prior to or after a trade or conversion)

These things could be done in whole or in part. Ledger entries would (and should) be made internally by the exchange to account for changes in positions and applicable balances.

14. The exchange accounts should very much be regarded as being custodial in nature. This means that the customer does not *control* access to the assets 'in' their account. The customer needs to make a request to the exchange to be able to access and send those balances. The exchange then debits the user account and sends the assets. Whether or not such requests are processed are dependent on the willingness, ability, and approval of the exchange.
15. One major factor that affects the exchange's ability to process such requests is whether or not they have the assets and/or capital necessary to do so.
16. For any non-yield-bearing account, this *shouldn't* be a problem, since exchanges *should* have enough assets in custody for the benefit of their customers to cover their liabilities to their customers, and on a 1:1 basis. FTX's terms of service seems to guarantee this, although FTX clearly violated their own terms of service:

"Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading. As the owner of Digital Assets in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account."

"None of the Digital Assets in your Account are the property of, or shall or may be loaned to, FTX Trading; FTX Trading does not represent or treat Digital Assets in User's Accounts as belonging to FTX Trading."

“You control the Digital Assets held in your Account. At any time, subject to outages, downtime, and other applicable policies (including the Terms), you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party.”¹

17. While FTX violated their own terms of service, it’s would also have been true that some of these claims would have been demonstrably false to begin even if there was hypothetically no wrongdoing on the part of FTX. This is because FTX exchange accounts (or any exchange account with any centralized custodial exchange, including Coinbase for example) are custodial in nature. This means that the customer does not control access to the assets ‘in’ their account. The customer needs to make a request to the exchange to be able to access and send those balances. It is very much the exchange that controls the assets, not their customer. However, it should also be noted that the digital assets aren’t technically ‘in’ the account at all. At a technical level, an exchange account cannot hold or store cryptocurrency. The account stores a record of a liability or an IOU to the exchange’s customer. When a user purchases cryptocurrency on an exchange, they aren’t technically purchasing that cryptocurrency; they are purchasing an IOU for that cryptocurrency. Because this concept of buying and storage can be difficult to understand, it’s somewhat common for newcomers to associate such IOUs as being the same as storing cryptocurrency assets ‘on’ their account, even though it’s not technically true.
18. With any yield-bearing account, it could generally be expected for an exchange to take those customers and leverage, loan or invest them in some way, and hopefully receive enough assets back to be able to pay out their customers back their principal, in addition to yield or interest earned, when applicable customers attempt to redeem or withdraw those funds.
19. While the existence of such loans associated with assets deposited to yield-bearing accounts was known, the substantial risks associated with such loans, and by extension the yield-bearing accounts in general was not adequately represented, for reasons I will demonstrate later in this report.
20. The main functional differences between banks and cryptocurrency exchanges is such that exchanges are largely unregulated, and that exchanges (and by extension exchange accounts and the users who use them) are subject to a lot of additional risks compared to that of a bank account.

¹ https://help.ftx.com/hc/article_attachments/9719619779348/FTX_Terms_of_Service.pdf

21. Banks are, of course, subject to a variety of capital control requirements to ensure protection of consumer assets. Banks are regulated with regards to the type of assets that they can investment customer assets in. Banks are subject to regular financial audits. Banks have regulatory oversight to ensure the protection of consumer assets. And of course, bank accounts have FDIC insurance so that bank account holders have coverage in case a bank, despite such measures, becomes insolvent.
22. Exchanges on the other hand, are not subject to capital control requirements. While almost all exchanges will indicate that they ‘securely’ store all customer assets 1:1 in ‘cold storage,’ there is no regulatory requirement in most jurisdictions (including the US) for exchanges to do so, nor is there any requirement for exchanges to offer any transparency regarding their solvency or use of customer assets to regulators or to the general public.
23. Other than by an exchange’s own terms of service (which wasn’t adhered to in this case), exchanges are not prevented from whether they invest customer assets elsewhere, and if so, what types of investments they enter into, or loans they provide, regardless of the inherent level of risk. And exchanges have no requirement to have any type of insurance equivalent to FDIC insurance. While some exchanges will sometimes claim they have ‘insurance,’ the terms and conditions associated with that insurance are typically completely unknown to investors, and often this insurance will bear little to no resemblance to FDIC insurance; in essence the term ‘insurance’ is used as a marketing ploy to help instill customer confidence in the exchange, even when such confidence may not be warranted.
24. Due to the aforementioned reasons and risks surrounding the lack of regulation, as well various types of cybersecurity-related risks that aren’t applicable to banks but are critically important for exchanges, cryptocurrency exchanges are generally not and should not be considered a ‘safe’ place to store assets, whether cryptocurrency assets or fiat assets.
25. The inherent riskiness associated with storing assets on a cryptocurrency exchange is well-known to the vast majority of well-educated and knowledgeable cryptocurrency users. This is evidenced by the frequent expression ‘not your keys, not your coins,’ essentially meaning that if you don’t *control* the cryptocurrency in your account, it’s not really yours. ‘Your’ cryptocurrency belongs to the exchange if you elect to store it ‘on’ the exchange, and if they renege or are unable to fulfill their liability to you, you as the beneficial cryptocurrency owner of the cryptocurrency, have effectively lost your money.

26. This is further referenced by the extensive track record of the many cryptocurrency exchanges that have shut down and ultimately failed,² often in spectacular fashion. The most common reasons for an exchange's failure include:
- a) The exchange borrowing against customer assets (either to fund business operations or lending them out in an effort to generate a profit) leading to insolvency.
 - b) The exchange trading or leveraging customer assets in an effort to generate a profit, leading to insolvency.
 - c) A hack or theft by an external actor
 - d) Embezzlement, or theft by an internal actor, typically founder(s) of the exchange
 - e) Disappeared suddenly, for no apparent reason (typically taking customer assets with them).
27. When exchanges do shut down (and this happens relatively frequently) it rarely happens in an organized and orderly fashion, and it's incredibly rare for customers that had assets on the exchange to get all their assets back; in many cases, they end up getting nothing back.
28. Suffice to say cryptocurrency exchanges are generally not a safe place to store assets, even amongst exchanges that don't offer a yield-bearing program. When exchanges have a yield-bearing program, or otherwise elect to leverage or loan our customer assets (with or without customer consent), it significantly increases the risk of the exchange failing and becoming insolvent. Cryptocurrency exchanges can do a variety of things to minimize such risks and improve safety. However, what an exchange says, and what they actually do are two different things entirely. It is common for CEOs and executives of exchanges that have failed or in the process of failing to describe their exchange as 'safe,' 'secure,' 'well-regulated,' 'compliant,' 'transparent,' or in a good financial position even when the exact opposite is true. FTX was not an exception to this trend. One should not assume or believe that an exchange is any of these things just because they make such claims.
29. This is not to suggest that exchanges cannot be a much safer place to store assets. They can be with appropriate regulation and oversight. In fact, it appears that for FTX Japan³ specifically, those investors will be made whole or almost whole due to sensical regulations that were put in place in light of the lessons learned from the

² <https://www.cryptowisser.com/exchange-graveyard/>

³ <https://www.coindesk.com/consensus-magazine/2022/12/13/japan-was-the-safest-place-to-be-an-ftx-customer/>

failures of Mt. Gox and Coincheck exchanges in Japan.

FTX Earn Program

30. The FTX Earn program was a yield-bearing account that FTX customers were offered.⁴ It was also offered on FTX.us for US persons.⁵ The FTX website describes it as follows:

“You can now earn yield on your crypto purchases and deposits, as well as your fiat balances, in your FTX app! By opting in and participating in staking your supported assets in your FTX account, you’ll be eligible to earn up to 8% APY on your assets.”

31. The yield that customers were offered is also outlined on the same page – 8% APY (Annual percentage yield) for total collective deposits under \$10,000 USD equivalent, and 5% APY for collective deposits above \$10,000 USD up to \$100,000 USD, and no APY for amounts in excess of \$100,000.

Assets supported	Amount	Rate
All crypto and fiat	Up to \$10,000	8%
All crypto and fiat	All funds after \$10,000, up to \$100,000	5%

Example:

A. I have \$10,000 USD in my account. I will earn **8% APY** on my deposit of USD.

B. I have \$5,000 USD value each of Bitcoin and Dogecoin in my account, plus \$10,000 worth of USD. I will earn 8% APY on the first \$10,000 worth of assets deposited regardless of asset, and 5% APY on the next \$10,000, for an average APY of **6.5%** on my total deposit.

All assets kept in your wallets will earn the same crypto or fiat that is held in the wallet, and will earn at the same rate. In Example B, you will earn 6.5% on both the DOGE and the BTC. **There is no way to designate one coin to earn 8% and the rest at 5% - they will all earn at the same average rate based on how many coins you are holding.**

32. FTX’s Earn program is very similar to that of Voyager’s earn program, and programs offered by Celsius and Blockfi, all of whom have filed for bankruptcy. The differences

⁴ <https://help.ftx.com/hc/en-us/articles/10573545824532-FTX-App-Earn>

⁵ <http://web.archive.org/web/20221018024940/https://help.ftx.us/hc/en-us/articles/9081464675735-FTX-Earn>

between these programs are minimal and involve differences in phrasing ‘yield’ vs ‘interest’ vs ‘rewards,’ the APY offered, the frequency of payout, and the assets that were supported.

33. The FTX website does not describe how, exactly, FTX will generate the applicable yield, and does not indicate what risk factors may be apparent that could result in the inability to pay such yield.
34. The website does suggest term ‘staking’ however as a means of generating yield when they indicate that:

“By opting in and participating in staking your supported assets in your FTX account”

35. This naturally gives the impression that their assets would be used for ‘staking’ without being 100% clear about it.
36. The word ‘staking’ in the context of cryptocurrency is understood to have a technical meaning. ‘Staking’ is associated with a consensus mechanism known as ‘Proof of Stake’(PoS) and relatedly, ‘Delegated Proof of Stake,’(dPos) which *some* cryptocurrencies utilize, but many don’t (such as Bitcoin for example, which uses ‘Proof of Work’ as a consensus mechanism).
37. Staking has a similar purpose for cryptocurrencies that utilize PoS and dPoS as what ‘miners’ are offered from cryptocurrencies that utilize Proof of Work. Individuals involved in staking are responsible for verifying transactions and they used their staked assets (instead of sunk costs associated with expenditure of electricity and equipment) as a way of guaranteeing the transactions they verify and add onto a blockchain are valid. If they try to add an invalid transaction, staked assets are typically burned as punishment, which creates a disincentive to act dishonestly or maliciously. In exchange for staking, users are awarded compensation accordingly in the form of newly issued cryptocurrency.
38. FTX is not itself a cryptocurrency operating on a PoS model; FTX was an exchange. One cannot ‘stake’ assets on an exchange. One can lend them to an exchange though, and theoretically, that exchange could then stake select cryptocurrency assets on behalf of the user (for cryptocurrencies that have Proof of Stake).
39. While there is disagreement over whether or not ‘staking’ is itself a security, the issue is that FTX did often not ‘stake’ customer assets, and indeed in many cases *could not* stake customer assets since not all cryptocurrencies utilize Proof of Stake. Yet the FTX website clearly suggests that ‘all assets’ in the account are subject to applicable

yield, including fiat assets (such as USD), which obviously don't even have a staking mechanism if FTX wanted to utilize it.

40. Rather than 'staking,' it appears that a primary thing FTX was doing was lending customer assets out, even from applicable that weren't part of the 'Earn' program, most notably to Alameda.⁶ There are allegations that Alameda received loans from FTX interest-free.⁷ Sam Bankman-Fried was a primary equity holder of both companies. FTX choosing to lend out assets, whether for free or otherwise, has nothing to do with actual staking of cryptocurrency.
41. The 'staking,' described on the FTX is purposely misleading, and not a representation of what was being offered. Users were not given the ability to 'stake' on FTX. They were given the ability to lend to FTX, and FTX would in turn invest and re-lend those assets out to questionable entities, on questionable terms, and such loans were not appropriately collateralized.
42. That being said, as it appears that even for users that did not subscribe to the Earn program, FTX leveraged and loaned out customer assets anyway to a large degree. It furthermore appears that while there were separate legal entities behind ftx.com and ftx.us, the two entities may not have been operated all that differently from one another, with Sam Bankman-Fried a primary equity holder of each, and just how independent the two entities were from each other is very much a matter of concern.
43. From a securities perspective, the Howey Test defines an investment contract as:
 - a. An investment of money
 - i. Cryptocurrency is a medium of exchange and way of transferring value in a measurable and quantifiable way. It is increasingly used as a means of payment, although it is more commonly used as a speculative investment at this point in time. Whether or not cryptocurrency can be defined as 'money' is in part a matter of semantics that can vary based on considers the fundamental features of money to be, and what criteria needs to be achieved in order for something to be considered money. Suffice to say, when examining aspects such as fungibility, durability, portability, divisibility, scarcity, transferability, acting as a medium of exchange, acting as a unit of account, and acting as a store of value, it could be argued that some cryptocurrencies fulfill many of these criterion as good as or even better than fiat currencies.

⁶ <https://pacер-documents.s3.amazonaws.com/33/188450/042020648197.pdf>

⁷ <https://www.cnbc.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html>

- b. In a common enterprise
 - i. FTX customer assets are almost always consolidated in wallets operated a controlled by FTX at least initially. These wallets are typically referred to as ‘hot wallets’ or ‘consolidation wallets.’ From these wallets, cryptocurrency can be move to other FTX-controlled wallets, or it can be used to pay back other customers performing withdrawals, but FTX can and did send (and loan) out such assets to other entities, including Alameda Research ‘Alameda.’ The blockchains data contains an immutable and verifiable record of data that shows that FTX customer deposits went into accounts operated by a common enterprise, namely, FTX.
- c. With the expectation of profit
 - i. FTX customers are promised yield when they participate in the Earn program. And at up to 8% yield, that is a considerable amount that would be considerably in excess to that of a savings account at a bank. But it was also far riskier than investing money in a savings account at a bank. FTX goes out of their way to advertise this yield, and indicate that such earnings are to be calculated on the “investment portfolio” that is stored ‘in’ the FTX app.⁸
- d. To be derived from the efforts of others
 - i. The FTX Yield-bearing account was portrayed as passive income stream. A customer needs to do nothing more than ensure they are subscribed to the yield program, and that they have deposited assets (of crypto or even fiat) in order to earn the 5% or 8% yield, which they clearly indicate is counted hourly. There is no further work or action needed on the part of the user.
 - ii. The work that ‘others’ (namely FTX) would need to do would including, at a baseline, sending transactions. But it would also require FTX to make an effort by leveraging and investing the money elsewhere which could theoretically come about either via giving out loans, employing trading strategies, ‘staking,’ making other investments, or giving out loans to entities (such as Alameda) that

⁸ <https://help.ftx.com/hc/en-us/articles/10573545824532-FTX-App-Earn>

would employ such strategies. The primary strategy that FTX portrayed to investors was ‘staking’ as I discuss in the following paragraphs.

Importance and Role of Brand Ambassadors

44. FTX's brand ambassadors and ad campaigns that utilized those brand ambassadors had a critical role in portraying FTX as being 'safe' and 'compliant.' In Stephen Curry's FTX commercial, FTX's alleged safety is quite blatant stated when he claims

“With FTX, I have everything I need to buy, sell, and trade crypto safely”

45. Kevin O’Leary, another FTX brand ambassador stated:

“To find crypto investment opportunities that met my own rigorous standards of compliance, I entered into this relationship with FTX. It has some of the best crypto exchange offerings I've seen on the market. FTX leverages best-in-class tech to provide a quality trading experience with low fees for both professional and retail investors alike, while at the same time providing the reporting platform that serves both internal and regulatory compliance requirements”

46. Given that FTX continually misappropriated customer assets, didn’t have appropriate capital controls or reasonable compliance policies in place, these claims weren’t just unfounded; they were downright false.
47. Mr. O’Leary’s assertion that FTX was a compliant exchange is even more damaging than that of the typical celebrity, however. This is because Mr. O’Leary is known for being a *Shark* on the TV show *Shark Tank* whereby Shark’s make investments in startups. With those investments comes due diligence. Mr. O’Leary’s endorsement of FTX certainly makes it seem that he did appropriate due diligence into FTX, when obviously, whatever due diligence that he did was grossly inadequate.
48. Mr. O’Leary appears to admit that his own due diligence was inadequate, and that he relied on the due diligence of others:

“I obviously know all the institutional investors in this deal. We all look like idiots. Let’s put that on the table. We relied on each other’s due diligence, but

we also relied on another investment theme that I felt drove a lot of interest in FTX⁹”

49. Mr. O’Leary is also a strategic investor in what is allegedly Canada’s largest cryptocurrency exchange, ‘WonderFi.’ The name is derived from Mr. O’Leary’s nickname, ‘Mr. Wonderful.’ Mr. O’Leary’s involvement in WonderFi could naturally lead one to believe that he knew how to perform adequate due diligence on exchanges, and that he would do so on FTX before investing and acting as a brand ambassador.

FTX and Representations of Safety and Risks

50. The yield that users could receive as part of the FTX Earn program, as previously mentioned was 8% APY for total collective deposits under \$10,000 USD equivalent, and 5% APY for collective deposits above \$10,000 USD up to \$100,000 USD, and no APY for amounts in excess of \$100,000.
51. This type of yield structure makes no logical sense from a profitability standpoint. Why would a financial institution offer a lender a *lower* yield when they loaned more, and no yield at all beyond a certain threshold? As a business, should they want to pay out lower yields to a smaller number of people than higher yields to a larger number of people?
52. In my opinion, the reasons that FTX had this yield structure was so that they could mitigate their legal risks to customers. Simply put, a customer who loses \$4,000 due to FTX’s misappropriation of funds is very unlikely pursue action against the exchange, such as litigation. A customer who loses \$4 million is much more likely to.
53. FTX did have a legal disclaimer associated with their Earn program, shown below:

⁹ <https://dailyhodl.com/2022/12/09/kevin-oleary-says-ftx-collapse-makes-him-and-other-investors-in-the-crypto-exchange-look-like-idiots/>

Legal Disclaimers and Terms of Service

Services are provided by FTX for its customers.

APY refers to projected yield by staking. This yield is not interest and is not guaranteed, and changes based upon terms of applicable staking programs. FTX transmits value from your account to staking program and ensures that the value is properly transmitted to and from the program. Your customer balance is not a bank account, and is not insured.

Only customers of FTX may be eligible to participate in the yield program. If a customer is eligible and opts into the program, then their assets will be used to generate a fixed yield for the user.

While FTX does not anticipate any problems, it does not guarantee the future or present yield payments in the case of malfunction, although it would not intend to claw back previously received yield. FTX *does* back the principal generating the yield with its own funds and equity. Nevertheless, users should exercise appropriate caution when deciding whether to enable yield for their accounts.

54. FTX again refers to staking numerous times, suggesting this was what they were primarily doing with customer assets, which wasn't true, and indeed wasn't even technically possible for a large portion of the assets that customers deposited.
55. FTX indicated that for customers who opt-in to the Earn program, FTX would take their assets to generate a fixed yield for the user, presumably via 'staking.'
56. The legal disclaimer, and certainly the brand ambassadors grossly misrepresented the level of risk associated with its Earn program. While FTX does indicate that it's 'not a bank account, and is not insured' and that 'users should exercise appropriate caution when deciding whether to enable yield for their accounts,' this hardly seems like a sufficient disclaimer and disclosure that would accurately represent the real level of risk. It certainly does not reveal that funds will be lent to affiliated entities to perform highly questionable and risky trading strategies, the lender will collateral FTT tokens with FTX for safety.
57. The FTX Earn program was clearly represented as being 'opt-in' and not 'opt-out.' However, in a declaration from Joseph Rotunda, the Director of Enforcement at the Texas State Security Board, he describes how he, as a US citizen, went to the FTX website, downloaded the FTX Trading App. He funded his account with \$50, and "the default settings were automatically configured to enable earning of yield."¹⁰ clearly notes that the earn program he was auto-enrolled in was associated with FTX US, not FTX Trading.
58. Thus, FTX's assertion that the FTX.US yield program were strictly opt-in was not true. It's certainly possible that when some US persons registered for FTX, the Earn program might have been opt-in in some cases but based on the series of events

¹⁰ <https://cases.stretto.com/public/x193/11753/PLEADINGS/1175310142280000000134.pdf>

described by Mr. Rotunda, it's clear at the very least that a considerable portion of US persons that registered would have been auto-enrolled in the yield program. This would make it such that those users that were auto-enrolled (and who did not opt-out) appear to have engaged in an unregistered securities transaction as soon as any money was deposited to their account, whether fiat or cryptocurrency.

59. This means it appears that brand ambassadors were promoting a company and application that at least in some cases auto-enrolled US persons in the FTX Earn program which would reasonably be considered a security in my opinion, and which was also being lauded as 'safe' and 'compliant.'

The FTT Token and Alameda

60. The FTT Token was an instrumental part of FTX's demise. FTT Tokens were created and issued by FTX, and FTT provides various benefits to its holders on FTX Exchange. The benefits include, most notably, trading fee discounts, but also ancillary benefits such as early access to token sales on the exchange.
61. It is not uncommon for many of the larger cryptocurrency exchanges to build in contrived 'utility' (such as trading discounts) for tokens that they themselves create because it can be financially lucrative for the exchange, since as the issuer they would typically retain a sizable portion of the tokens, and could elect to sell those tokens at some point, when the price is advantageous.
62. Similar to equity, the financial success of an exchange's token (FTT) is tied to the financial success and popularity of the exchange. This is because as the exchanges gains new customers, more and more customers will naturally want to buy FTT, either so they can have a discount on trading fees, or because they think the price will increase (possibly a result of new customers and demand for FTT). However, the holders of FTT have no legal rights voting rights that they would have with an equity investment.
63. Thus, as the number of customers that exchange has increases, as is often the case in a 'bull market,' the price of FTT could generally be expected to increase in value. However, in a bear market, when there is less demand and interest, and fewer new users signing up, there is naturally a lower demand for FTT that would generally cause the price to decline.
64. It is apparent that FTX (and FTX.us) effectively gave Alameda research an unlimited credit line, and Alameda could then effectively use FTX customer assets in extremely high-risk trading activity and strategies, and loans that ultimately left Alameda in extremely poor financial condition.

65. Alameda research allegedly largely provided FTT tokens (which were presumably issued or given to them by FTX) as collateral to FTX in order to obtain the loans from FTX. However, FTT tokens are highly volatile and ultimately subject to investor confidence in FTX itself. When that confidence and interest in FTX began to wane, the price of FTT started to collapse, and with that, the collateral that was designed to cover Alameda's bad debts.
66. FTX now has a bunch of comparatively worthless FTT on their balance sheet, and the price of that obviously won't recover measurably. Given what FTX's misappropriation of customer assets (both in and outside of the Earn program), investors were essentially invested in FTT tokens in large part even if they didn't know it or buy any directly themselves.

Verifiable FTX Falsehoods

67. It's evident that the FTX group was grossly mismanaged and misappropriated customer funds. It is still the early stages of finding out about all the misconduct. Much of the misconduct that has been revealed thus far and will be revealed in the coming months would not necessarily have been immediately known to brand ambassadors. This begs the question as to what are the falsehoods that were or should have been apparent to FTX brand ambassadors when partnering with FTX initially, well before their collapse?
68. The first, as we've already discussed is the claims regarding staking. Cryptocurrencies like Bitcoin and Dogecoin, which FTX offers, cannot be staked. And fiat currency (which FTX also offered yield on) also cannot be staked. Yet, FTX offers yield for them on the Earn Program. The fact that FTX would not technically be able to stake applicable cryptocurrency assets on behalf of customers as they have said and pay back yield in the same currency / cryptocurrency, was always a giant red flag that was demonstrably false, and which should have been recognized by anyone promoting FTX.
69. The second verifiably false claim by FTX that would have been evident publicly well before their downfall relates to FTX's claim that only the user has control of digital assets in their account:

"You control the Digital Assets held in your Account. At any time, subject to outages, downtime, and other applicable policies (including the Terms), you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party."

As mentioned previously, FTX exchange accounts are custodial in nature. This means that the customer does not control access to the assets ‘in’ their account. The customer needs to make a request to the exchange to be able to access and send those balances. Whether or not such requests are processed are dependent on the willingness, ability and approval of the exchange. It is very much the exchange that *controls* the assets, not their customer.

70. An additional claim in this quote that could also be argued is verifiably false is the assertion that digital assets are held ‘in’ the account at all (even if the exchange wasn’t misappropriating funds). On a technical level, an exchange account cannot hold or store cryptocurrency. However, exchange accounts can store a record of liability for that cryptocurrency, that an exchange may have to its customer. However, because this concept of ‘storage’ can be difficult for people to understand, it’s somewhat common, at least for newcomers and those less educated with cryptocurrency to discern that a balance held on a cryptocurrency exchange account is equivalent to those assets being ‘stored’ on the exchange. What a customer(s) balance is versus what an exchange actually stores in its own custody on behalf of the user should not be assumed to be the same thing; there is no regulation or assurance guaranteeing or requiring that. Only an exchange’s terms of service, which might contain such language, might guarantee that, but even if it does, such terms may not be adhered to (which was the case here).
71. A third major red flag should have been readily apparent is the non-sensical yield structure for customer accounts, which in my opinion was designed in such a way so as to onboard users. As previously mentioned, this was most likely doing to limit legal risks that FTX could incur, since investors who lost smaller amounts of money are much less likely to pursue action than investors that lost considerable amounts of money.
72. A fourth falsehood should have been apparent in Sam Bankman-Fried’s testimony to the US House of Representatives Financial Services committee when he stated:

“There is complete transparency about the positions that are held. There is a robust, consistent risk framework applied”

No, there is not “complete transparency” and the positions that FTXs holds and held. While most cryptocurrency operate on public blockchains, the entities that own specific wallets, who controls specific accounts, and loans that are made by an exchange are not publicly available simply because such blockchains are public, and such information was not disclosed by FTX. And based on John Ray’s affidavit,

FTX's records are so poor it's likely that large swaths of this information won't ever be known.

73. A fifth area of contention that could be said to be demonstrably false (depending on semantics) or at least misleading would be with respect to the FTX Earn program is the use of the term 'wallet.' FTX's page on the Earn program frequently talks about users' wallets (with FTX).

"All assets kept in your wallets will earn the same crypto or fiat that is held in the wallet, and will earn at the same rate"

74. The term 'wallet' is one of the very first terms that cryptocurrency users hear of, which they start to use, but term is frequently misused and misunderstood. The 'wallet' terminology FTX uses perpetuates that misunderstanding.
75. A cryptocurrency wallet is inherently 'self-custodial' meaning that there is no institution holding cryptocurrency on behalf of the user, nor does the user need to seed any permission to have nor hold funds in such a wallet. Only the person who created the wallet has ability to access the wallet (unless the credentials to the wallet were to be breached or otherwise accessed by another party). A cryptocurrency wallet is an auxiliary device or medium that holds or stores private key(s) needed to access or spend cryptocurrency balances that have been allocated to address(es) that are part of the wallet.
76. The mere use of 'wallet' in this context is itself a misnomer, and very misleading, because a user *cannot* have a 'FTX wallet' of theirs. There is no such thing. A user can have wallet(s), and a FTX account, or both, but there is no such thing as an 'FTX Wallet' belonging to the user. FTX Exchange did have and control many different wallets, but for any given customer, FTX Exchange did not hold funds in a unique wallet only for that customer; that's simply not how exchanges work.
77. These are just the obvious falsehood and red flags that would be apparent on the surface. If brand ambassadors obtained information or knowledge about the inner workings of FTX, it's very likely that they would have encountered additional red flags.

// ENDS

Paul Sibenik
Lead Case Manager
CipherBlade



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Podalsky et al v. Bankman-Fried et al

1:22CV23983 (Approx. 9 pages)

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Today's Date: 2/10/2023
Source: U.S. District Court, Southern District of Florida (Miami)

Court:	U.S. District Court, Southern District of Florida (Miami)
Case Title:	Podalsky et al v. Bankman-Fried et al
Case:	1:22-CV-23983
Judge:	Judge K. Michael Moore
Date Filed:	12/07/2022
Date Closed/Terminated:	12/09/2022
Case Status:	CLOSED, LFL

CASE INFORMATION	
Case Number:	1:22CV23983
Jury Demand:	Plaintiff
Nature of Suit:	Torts: Other Fraud (370)
Jurisdiction:	Diversity
Cause:	28 USC 1332 - Diversity: Securities Fraud
Lead Docket:	1:22-CV-23753

PARTICIPANT INFORMATION	Expand All
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Gregg Podalsky

Skyler Lindeen

Alexander Chernyavsky

Gary Gallant

David Nicol

Sunil Kavuri

Edwin Garrison

Sam Bankman-Fried

Tom Brady

Gisele Bundchen

Kevin OLeary

Udonis Haslem

David Ortiz

Caroline Ellison

Sam Trabucco

Gary Wang

Nishad Singh

Dan Friedberg

Stephen Curry

Golden State Warriors LLC

Shaquille O'Neal

William Trevor Lawrence

Shohei Ohtani

Naomi Osaka

Lawrence Gene David

CALENDAR INFORMATION

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DOCKET PROCEEDINGS (16)

Entry #:	Date:	Description:	
15	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Susan E. Engel. Filing Fee \$ 200.00 Receipt # FLSDC-16282395 by Tom Brady, Gisele Bundchen, Thomas Brady. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM(Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
14	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Marvin Putnam. Filing Fee \$ 200.00 Receipt # FLSDC-16282263 by Tom Brady, Gisele Bundchen, Thomas Brady. Responses due by 2/14/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed	View Add to request

		Order)Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM(Martinez, Roberto) (Entered: 01/31/2023)	
13	01/31/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Elizabeth A. Greenman. Filing Fee \$ 200.00 Receipt # FLSDC-16282114 by Tom Brady, Gisele Bundchen, Thomas Brady. Responses due by 2/14/2023 Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM(Martinez, Roberto) (Entered: 01/31/2023)	View Add to request
12	01/25/2023	NOTICE of Attorney Appearance by Zachary Andrew Lipshultz on behalf of Tom Brady, Gisele Bundchen, Thomas Brady. Attorney Zachary Andrew Lipshultz added to party Tom Brady(pty:dft), Attorney Zachary Andrew Lipshultz added to party Gisele Bundchen(pty:dft), Attorney Zachary Andrew Lipshultz added to party Thomas Brady(pty:dft), Attorney Zachary Andrew Lipshultz added to party Gisele Bundchen(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Lipshultz, Zachary) (Entered: 01/25/2023)	View Add to request
11	01/25/2023	NOTICE of Attorney Appearance by Stephanie Anne Casey on behalf of Tom Brady, Gisele Bundchen, Thomas Brady. Attorney Stephanie Anne Casey added to party Tom Brady(pty:dft), Attorney Stephanie Anne Casey added to party Gisele Bundchen(pty:dft), Attorney Stephanie Anne Casey added to party Thomas Brady(pty:dft), Attorney Stephanie Anne Casey added to party Gisele Bundchen(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Casey, Stephanie) (Entered: 01/25/2023)	View Add to request
10	01/25/2023	NOTICE of Attorney Appearance by Roberto Martinez on behalf of Tom Brady, Gisele Bundchen. Attorney Roberto Martinez added to party Tom Brady(pty:dft), Attorney Roberto Martinez added to party Gisele Bundchen(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Martinez, Roberto) (Entered: 01/25/2023)	View Add to request
9	01/24/2023	NOTICE of Attorney Appearance by Katherine Ann Johnson on behalf of David Ortiz. Attorney Katherine Ann Johnson added to party David Ortiz(pty:dft). Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Johnson, Katherine) (Entered: 01/24/2023)	View Add to request
8	01/24/2023	NOTICE of Attorney Appearance by Christopher Stephen Carver on behalf of David Ortiz. Attorney Christopher Stephen Carver added to party David Ortiz(pty:dft).	View Add to request

		Associated Cases: 1:22-cv-23753-KMM, 1:22-cv-23983-KMM (Carver, Christopher) (Entered: 01/24/2023)	
7	12/09/2022	<p>PAPERLESS ORDER CONSOLIDATING CASES. THIS CAUSE came before the Court upon a sua sponte review of the record. Rule 42(a) of the Federal Rules of Civil Procedure allows the Court to consolidate actions that have common questions of law or fact. Fed. R. Civ. P. 42(a). Here, the Court finds that Case Nos. 1:22-cv-23753-KMM and 1:22-cv-23983-KMM have common questions of fact and consolidation is appropriate. Accordingly, Case No. 1:22-cv-23983-KMM is hereby CONSOLIDATED with Case No. 1:22-cv-23753-KMM for all purposes, including trial. The Clerk of the Court is INSTRUCTED to administratively CLOSE Case No. 1:22-cv-23983-KMM. All future filings MUST be made only in the lead case, Case No. 1:22-cv-23753-KMM. All pending motions, if any, in Case No. 1:22-cv-23983-KMM are DENIED AS MOOT. It is further ORDERED that Plaintiff shall file an amended complaint in Case No. 1:22-cv-23753-KMM within seven (7) days of the entry of this Order. The Court further VACATES the pretrial order entered in Case No. 1:22-cv-23983-KMM. Signed by Judge K. Michael Moore on 12/9/2022. (rfr) (Entered: 12/09/2022)</p>	<p>Send Runner to Court</p>
6	12/09/2022	<p>PAPERLESS PRETRIAL ORDER. This order has been entered upon the filing of the complaint. Plaintiff's counsel is hereby ORDERED to forward to all defendants, upon receipt of a responsive pleading, a copy of this Order. It is further ORDERED that S.D. Fla. L.R. 16.1 shall apply to this case and the parties shall hold a scheduling conference no later than twenty (20) days after the filing of the first responsive pleading by the last responding defendant, or within sixty (60) days after the filing of the complaint, whichever occurs first. However, if all defendants have not been served by the expiration of this deadline, Plaintiff shall move for an enlargement of time to hold the scheduling conference, not to exceed 90 days from the filing of the Complaint. Within ten (10) days of the scheduling conference, counsel shall file a joint scheduling report. Failure of counsel to file a joint scheduling report within the deadlines set forth above may result in dismissal, default, and the imposition of other sanctions including attorney's fees and costs. The parties should note that the time period for filing a joint scheduling report is not tolled by the filing of any other pleading, such as an amended complaint or Rule 12 motion. The scheduling conference may be held via telephone. At the conference, the</p>	<p>Send Runner to Court</p>

parties shall comply with the following agenda that the Court adopts from S.D. Fla. L.R. 16.1: (1) Documents (S.D. Fla. L.R. 16.1.B.1 and 2) - The parties shall determine the procedure for exchanging a copy of, or a description by category and location of, all documents and other evidence that is reasonably available and that a party expects to offer or may offer if the need arises. Fed. R. Civ. P. 26(a)(1)(B). (a) Documents include computations of the nature and extent of any category of damages claimed by the disclosing party unless the computations are privileged or otherwise protected from disclosure. Fed. R. Civ. P. 26(a)(1)(C). (b) Documents include insurance agreements which may be at issue with the satisfaction of the judgment. Fed. R. Civ. P. 26(a)(1)(D). (2) List of Witnesses - The parties shall exchange the name, address and telephone number of each individual known to have knowledge of the facts supporting the material allegations of the pleading filed by the party. Fed. R. Civ. P. 26(a)(1)(A). The parties have a continuing obligation to disclose this information. (3) Discussions and Deadlines (S.D. Fla. L.R. 16.1.B.2) - The parties shall discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. Failure to comply with this Order or to exchange the information listed above may result in sanctions and/or the exclusion of documents or witnesses at the time of trial. S.D. Fla. L.R. 16.1.I. The parties are hereby on notice that this Court requires all filings to be formatted in 12 point Times New Roman font and double spaced, including any footnotes, with one inch margins on all sides. Failure to follow these formatting guidelines may result in the filing being stricken, any opposing filing being granted by default, and the imposition of other sanctions, including attorney's fees and costs. Multiple Plaintiffs or Defendants shall file joint motions with co-parties unless there are clear conflicts of position. If conflicts of position exist, parties shall explain the conflicts in their separate motions. Failure to comply with ANY of these procedures may result in the imposition of appropriate sanctions, including but not limited to, the striking of the motion or dismissal of this action. The parties shall seek extensions of time in a timely fashion. "A motion for extension of time is not self-executing.... Yet, by filing these motions on or near the last day, and then sitting idle pending the Court's disposition of the motion, parties essentially grant their own motion. The Court will not

		condone this." <i>Compere v. Nusret Miami, LLC</i> , 2020 WL 2844888, at *2 (S.D. Fla. May 7, 2020) (internal citations omitted). Pursuant to Administrative Order 2016-70 of the Southern District of Florida and consistent with the Court of Appeals for the Eleventh Circuit's Local Rules and Internal Operating Procedures, within three (3) days of the conclusion of a trial or other proceeding, parties must file via CM/ECF electronic versions of documentary exhibits admitted into evidence, including photographs of non-documentary physical exhibits. The Parties are directed to comply with each of the requirements set forth in Administrative Order 2016-70 unless directed otherwise by the Court. Telephonic appearances are not permitted for any purpose. Upon reaching a settlement in this matter the parties are instructed to notify the Court by telephone and to file a Notice of Settlement within twenty-four (24) hours. Signed by Judge K. Michael Moore on 12/9/2022. (rfr) (Entered: 12/09/2022)	
5	12/09/2022	ORDER TRANSFERRING CASE to Judge K. Michael Moore for all further proceedings, accepted and signed on 12/8/2022. Judge Beth Bloom no longer assigned to case. Signed by Judge Beth Bloom on 12/8/2022. See attached document for full details. (ls) (Entered: 12/09/2022)	View Add to request
	12/09/2022	Cases associated. (ls)(per DE # 7) (Entered: 12/09/2022)	Send Runner to Court
4	12/08/2022	AMENDED COMPLAINT and Demand for Jury Trial against All Defendants, filed by Skyler Lindeen, Gregg Podalsky, Alexander Chernyavsky, Gary Gallant, David Nicol, Sunil Kavuri, Edwin Garrison.(Moskowitz, Adam) (Entered: 12/08/2022)	View Add to request
3	12/08/2022	Bar Letter re: Admissions sent to attorney David Boies and Alex Boies, mailing date December 8, 2022, (pt) (Entered: 12/08/2022)	View Add to request
2	12/07/2022	Clerks Notice of Judge Assignment to Judge Beth Bloom. Pursuant to 28 USC 636(c), the parties are hereby notified that the U.S. Magistrate Judge Alicia M. Otazo-Reyes is available to handle any or all proceedings in this case. If agreed, parties should complete and file the Consent form found on our website. It is not necessary to file a document indicating lack of consent. (aao) (Entered: 12/08/2022)	Send Runner to Court
1	12/07/2022	COMPLAINT CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL against All Defendants. Filing fees \$ 402.00 receipt number AFLSDC-16155270, filed by Skyler Lindeen,	View Add to request

		Gregg Podalsky, Alexander Chernyavsky, Gary Gallant, David Nicol. (Attachments: # <u>1</u> Civil Cover Sheet)(Moskowitz, Adam) (Entered: 12/07/2022)	
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:22-cv-23983-BB

GREGG PODALSKY, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiff,

v.

AMENDED CLASS ACTION
COMPLAINT

JURY DEMAND

SAM BANKMAN-FRIED, *et al.*,

Defendants.

/

AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

“Then there’s things that have happened with Voyager and with FTX now—that’s somebody running a company that’s just dumb as fu** greedy. So, what does Sam Bankman do? He just, give me more, give me more, give me more, so I’m gonna borrow money, loan it to my affiliated company, and hope and pretend to myself that the FTT tokens that are in there on my balance sheet are gonna sustain their value.”¹

– Mark Cuban, Nov. 12, 2022



– Defendant Sam Bankman Fried (Former CEO, FTX)

¹ <https://www.yahoo.com/video/ftx-twitter-chaos-embarrassing-athletes-195343800.html> (accessed December 8, 2022).

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Plaintiffs Gregg Podalsky, Skyler Lindeen, Alexander Chernyavsky, Edwin Garrison, Gary Gallant, Sunil Kavuri, and David Nicol (“Plaintiffs”) file this class action complaint on behalf of themselves, and all others similarly situated, against Sam Bankman-Fried, Caroline Ellison, Gary Wang, Nishad Singh, Sam Trabucco, Dan Friedberg, Tom Brady, Gisele Bundchen, Stephen Curry, Golden State Warriors, Shaquille O’Neal, Udonis Haslem, David Ortiz, William Trevor Lawrence, Shohei Ohtani, Naomi Osaka, Lawrence Gene David, and Kevin O’Leary (collectively, “Defendants”), all parties who either controlled, promoted, assisted in, or actively participated in FTX Trading LTD d/b/a FTX’s (“FTX Trading”) and West Realm Shires Services Inc. d/b/a FTX US’s (“FTX US”) (collectively, the “FTX Entities”), offer and sale of unregistered securities in the form of yield-bearing accounts (“YBAs”) to persons and entities residing both inside and outside of the United States, seeking to recover damages, declaratory and/or injunctive relief stemming from the offer and sale of the FTX Entities’ yield-bearing cryptocurrency accounts.²

INTRODUCTION

1. Most experts agree that the FTX Collapse Disaster is the largest and greatest financial fraud in history. The new CEO of FTX, who helped wind down the prior Enron fraud, admitted that what he quickly uncovered in FTX to date, is worse than in the Enron Fraud. Almost \$14 billion dollars is unaccounted for, and certainly billions of dollars have been stolen from investors across the globe. FTX will be involved in federal bankruptcy proceedings for many years to come and there is no guarantee that the victims will be able to see any recovery from those processes.

2. One common and identical question in this case, and in many other cryptocurrency litigation matters, is simply whether the SEC was correct, in finding that all of these YBAs are (or are not) the sale of “unregistered securities.” This question can and should be decided quickly for all of

² Plaintiffs file this Amended Complaint in order to effectively consolidate the class actions brought by Edwin Garrison, the Plaintiff who filed the first class action in the country against Sam Bankman-Fried and others for these claims on behalf of FTX customers who were United States residents, and Sunil Kavuri, who filed a class action on behalf of FTX’s international customers. As this class action is the first one in the country that includes claims against a number of former FTX and Alameda Research insiders on behalf of both United States and International FTX customers, Plaintiffs and their counsel agreed the most expedient and efficient route (particularly because no Defendants have yet been served in any of these federal actions) would be to consolidate these claims through this amended pleading before this Court. This is the similar approach that other FTX investors took with individual Florida state court cases that are now effectively consolidated before the Honorable Michael Hanzman of the Miami-Dade Complex Business Litigation Division, *Michael Norris, et al. v. Thomas Brady, et al.*, No. 2022-022900-CA-01 (Fla. 11th Jud. Cir.).

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the parties, so that all cryptocurrency litigation can be quickly advanced and the victims (and alleged co-conspirators) have a clear and expedited path.

3. Moreover, this question was already practically answered in the affirmative through various regulatory statements, guidance, and actions issued by the Securities and Exchange Commission and other regulatory entities. For example, on November 1, 2017, in the “SEC Statement Urging Caution Around Celebrity Backed ICOs,”³

In the SEC’s Report of Investigation concerning The DAO,⁴ the Commission warned that virtual tokens or coins sold in ICOs may be securities, and those who offer and sell securities in the United States must comply with the federal securities laws. Any celebrity or other individual who promotes a virtual token or coin that is a security must disclose the nature, scope, and amount of compensation received in exchange for the promotion. A failure to disclose this information is a violation of the anti-touting provisions of the federal securities laws. **Persons making these endorsements may also be liable** for potential violations of the anti-fraud provisions of the federal securities laws, **for participating in an unregistered offer and sale of securities**, and for acting as unregistered brokers. The SEC will continue to focus on these types of promotions to protect investors and to ensure compliance with the securities laws.

4. Not only that, but the SEC and state securities regulators have also targeted cryptocurrency brokers and exchanges just like FTX for offering almost this exact same type of interest-bearing account, finding that exchanges such as BlockFi,⁵ Voyager,⁶ and Celsius⁷ all offered these same accounts as unregistered securities.

5. Another narrow issue that is common to the entire class, whose focus is solely objective, is whether these Defendants violated state consumer laws by failing to abide by any of the FTC long established rules and regulations, specifically on what is required for a celebrity endorsement of crypto currency. The answer to just these two, narrow questions will greatly advance litigation

³ <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos> (accessed December 8, 2022).

⁴ <https://www.sec.gov/litigation/investreport/34-81207.pdf> (accessed December 8, 2022)

⁵ <https://www.sec.gov/news/press-release/2022-26> (accessed December 8, 2022).

⁶ <https://coingeek.com/6-us-regulators-crackdown-on-voyager-digital-over-interest-bearing-accounts/> (accessed December 8, 2022).

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<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjvNvg27j7AhWfRTABHfwzDe4QFnoECAsQAQ&url=https%3A%2F%2Fwww.nj.gov%2Ffoag%2Fnewsreleases21%2FCelsius-Order-9.17.21.pdf&usq=AOvVaw0Zd94fuhFSsOoGKM-vQ3YI> (accessed December 8, 2022).

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across the globe relating to the FTX Disaster, help determine who may be liable for aiding and abetting this massive fraud, one way or another and may also help advance (for either side) all of the other pending massive litigation, against other cryptocurrency platforms (such as Voyager) that offered similar YBAs.

6. There can be no dispute that claims in this case must provide for ***strict liability***, and therefore if these YBAs are found to be “securities,” Defendants can simply have no defense to the claims in this action. **The “caveat emptor” defense that Defendants and others are pushing in the press will have no application.**

7. This is not a case where Plaintiffs made a “risky” investment in stock or cryptocurrency, or that they lost money speculating on various cryptocurrency projects. Plaintiffs’ claims arises simply from the purchase of a YBA, an account with FTX that every customer who signed up for the FTX app received by default, and which, as explained below, was guaranteed to generate returns on their significant holdings in the accounts, regardless of whether those assets were held as USD, legal tender or cryptocurrency, and regardless of whether any trades were made with the assets held in the YBA. In other words, the YBA was portrayed to be like a bank account, something that was “very safe” and “protected.” That is the narrative that Defendants pushed in promoting the offer and sale of the YBAs, which are unregistered securities. For that, Defendants are liable for Plaintiffs’ losses, jointly and severally and to the same extent as if they were themselves the FTX Entities.

8. Literally overnight, Plaintiffs’ assets held in their YBAs on the Deceptive FTX Platform were robbed from them as FTX imploded and former-CEO, Sam Bankman-Fried, filed a Chapter 11 bankruptcy petition in Delaware on an emergency basis. This happened because, as explained by the new CEO of the failed FTX Entities:

I have over 40 years of legal and restructuring experience. I have been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate failures in history. I have supervised situations involving allegations of criminal activity and malfeasance (Enron). I have supervised situations involving novel financial structures (Enron and Residential Capital) and cross-border asset recovery and maximization (Nortel and Overseas Shipholding). Nearly every situation in which I have been involved has been characterized by defects of some sort in internal controls, regulatory compliance, human resources and systems integrity.

Never in my career have I seen such a complete failure of corporate controls and such a **complete absence of trustworthy financial information** as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced,

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unsophisticated and potentially compromised individuals, this situation is unprecedented.

See In re: FTX Trading Ltd, et al., No. 22-11068 (JTD), ECF No. 24, ¶¶ 4–5 (D. Del. Nov. 17, 2022) (emphasis added).

9. This should not have happened. Not to Plaintiffs, and not to the thousands of other FTX customers who now find themselves in the same predicament.

10. The Cryptocurrency National Disaster is growing by the billions almost every day. More crypto companies are filing new federal bankruptcy petitions each day, all running for protection from the billions of dollars of losses they directly caused to thousands of investors here in Florida and across the globe. This is by far the largest securities national disaster, greatly surpassing the Madoff Ponzi Scheme, and could very likely become a complex international litigation disaster, similar to how the hundreds of thousands of asbestos cases swamped all courts across the globe. Unless a workable, coordinated, and organized structure is established now, at the very onset of these proceedings, here in Miami, which served as the epicenter for the crypto fraud, the FTX victims will continue to suffer and the only people to benefit will be the professionals in the bankruptcy and civil courts.

11. The Deceptive and failed FTX Platform emanated from Miami, Florida and was based upon false representations and deceptive conduct. FTX's fraudulent scheme was designed to take advantage of unsophisticated investors from across the globe, who utilize mobile apps to make their investments. As a result, consumers around the globe collectively sustained billions of dollars in damages. FTX organized and emanated its fraudulent plan from its worldwide headquarters located here in Miami, Florida. Miami became the "hot spot" for crypto companies, hosting the most investments in crypto startups as well as the annual Bitcoin Miami 2022 Global Forum. Several crypto companies, including crypto exchange Blockchain.com, Ripple and FTX.US, moved their headquarters to Miami. Others, including fellow exchange eToro, expanded their U.S. presence with offices in Miami. FTX was already very familiar with Miami, signing a deal worth more than \$135 million dollars for the naming rights of the waterfront arena, where 3-time NBA Champions the Miami Heat play.

FACTUAL BACKGROUND

12. On December 24, 2021, counsel for Plaintiffs and the proposed class members brought the first (and only) putative nationwide class action complaint against the now-defunct cryptocurrency trading app, Voyager, styled *Mark Cassidy v. Voyager Digital Ltd., et al.*, Case No. 21-24441-CIV-ALTONAGA/Torres (the "*Cassidy* Action"), alleging that the platform owned and

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operated by Voyager Digital Ltd. (“Voyager”) and Voyager Digital LLC (“VDL”) was an unregulated and unsustainable fraud. In the *Cassidy* Action, plaintiffs also alleged that Defendant Ehrlich, Voyager’s CEO, teamed up with Defendants Cuban and the Dallas Mavericks to promote Voyager, by making false representations and employing other means of deception. As a result, the Voyager plaintiffs and Voyager class members, all sustained losses in excess of \$5 billion.

13. The allegations in the *Cassidy* complaint—and specifically Mark Cuban’s role in promoting Voyager—received national attention. *See* <https://www.jdsupra.com/legalnews/new-lawsuits-target-cryptocurrency-9604406/> (summarizing the allegations and explaining that “Mark Cuban, owner of the NBA’s Dallas Mavericks, is a major stakeholder in Voyager. The complaint alleges that he made comments at a press conference in which he specifically targeted unsophisticated investors ‘with false and misleading promises of reaping large profits in the cryptocurrency market.’”); <https://www.law.com/dailybusinessreview/2021/12/29/mark-cuban-linked-crypto-platform-hit-with-florida-nationwide-class-action-lawsuit-in-miami-federal-court/?slreturn=20220701214901> (same, in the *Daily Business Review*).

14. After the *Cassidy* Complaint was filed, the following important actions took place:

- (a) the United States Securities and Exchange Commission (SEC) began an enforcement review focused on whether Voyager’s Earn Program Accounts (“EPAs”) constitute unregistered securities;
- (b) seven state Attorneys General (New Jersey, Alabama, Kentucky, Oklahoma, Texas, Vermont and Washington) took specific action finding that Voyager was violating their state laws, including issuing “cease and desist” letters to Voyager, finding that the EPA was an unregistered security, prohibiting the crypto-asset broker-dealer from selling any more unregistered securities (finding that Voyager used these EPAs to raise millions of dollars in revenue worldwide as of March 1, 2022; and
- (c) on March 29, 2002, the State of New Jersey Bureau of Securities entered a Cease and Desist Order against Voyager, finding that the EPA was not exempt from registration under the law, and instead that it must be registered—and as a result, Voyager’s stock price tanked by 25% in a day and is down over 80% for the year.⁸

⁸ <https://seekingalpha.com/article/4498956-voyager-digital-plunged-25-percent-heres-why> (accessed October 28, 2022); <https://seekingalpha.com/article/4503716-voyager-digital-buy-dip-during-crypto-crash> (accessed December 8, 2022).

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15. On July 5, 2022, Voyager Digital Holdings, Inc. and two affiliated debtors (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code. Voyager’s bankruptcy cases (the “Voyager Bankruptcy Cases”) are jointly administered under Case No. 22-10943 before the Honorable Michael E. Wiles in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

16. On September 28, 2022, Voyager filed a motion in the Voyager Bankruptcy Cases seeking authority to enter into an asset purchase agreement with West Realm Shires Inc., d/b/a FTX US whereby Voyager will sell substantially all of its assets for a purchase price of approximately \$1.422 billion, which includes (i) the value of cryptocurrency on the Voyager platform as of a date to be determined, which, as of September 26, 2022, is estimated to be \$1.311 billion, plus (ii) additional consideration which is estimated to provide at least approximately \$111 million of incremental value to the Debtors’ estates.

17. Everyone involved in the Voyager Bankruptcy Cases thought that the FTX Entities were the *deus ex machina* come to save the day by bailing out Voyager and paying back at least some of the losses the Voyager customers sustained.

18. Instead, as explained below, the FTX Entities imploded, their over \$30 billion in value evaporated almost overnight, and the FTX Entities found themselves filing their own emergency Chapter 11 bankruptcy petition in Delaware. The Deceptive FTX Platform maintained by the FTX Entities was truly a house of cards, a Ponzi scheme where the FTX Entities shuffled customer funds between their opaque affiliated entities, using new investor funds obtained through investments in the YBAs and loans to pay interest to the old ones and to attempt to maintain the appearance of liquidity.

19. Part of the scheme employed by the FTX Entities involved utilizing some of the biggest names in sports and entertainment to raise funds and drive global consumers to invest in the YBAs, which were offered and sold largely from the FTX Entities’ domestic base of operations here in Miami, Florida, pouring billions of dollars into the Deceptive FTX Platform to keep the whole scheme afloat.

20. Importantly, although Defendants disclosed their partnerships with the FTX Entities, they have never disclosed the nature, scope, and amount of compensation they personally received in exchange for the promotion of the Deceptive FTX Platform, which the SEC has explained that a failure to disclose this information would be a violation of the anti-touting provisions of the federal

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securities laws.⁹ Moreover, none of these defendants performed any due diligence prior to marketing these FTX products to the public.

21. The SEC took action against boxing champ Floyd Mayweather and music producer DJ Khaled after they were paid by cryptocurrency issuers to tweet promotional statements about investing in Initial Coin Offerings (ICOs), ordering them both to pay disgorgement, penalties and interest for promoting investments in ICOs, including one from cryptocurrency issuer Centra Tech, Inc, for a combined total of \$767,500 because they failed to disclose that their promotional efforts on Twitter were paid endorsements.¹⁰

22. Other celebrities similarly accused and prosecuted for failing to disclose their paid endorsements include Kim Kardashian and basketball player Paul Pierce.¹¹ According to the Federal Trade Commission, cryptocurrency scams have increased more than ten-fold year-over-year with consumers losing more than \$80 million since October 2020, due in large part to the use of such celebrity endorsements.¹²

23. As explained more fully in this Complaint, Defendants' misrepresentations and omissions made and broadcast around the globe through the television and internet render them liable to Plaintiff and class members for soliciting their purchases of the unregistered YBAs. *Wildes v. Bitconnect Int'l PLC*, No. 20-11675 (11th Cir. Feb. 18, 2022) (holding that promoters of cryptocurrency through online videos could be liable for soliciting the purchase of unregistered securities through mass communication, and no "personal solicitation" was necessary for solicitation to be actionable).

24. This action seeks to hold Defendants responsible for the many billions of dollars in damages they caused Plaintiff and the Class and to force Defendants to make them whole.

⁹ <https://www.ubergizmo.com/2017/11/sec-celebrities-disclose-payment-cryptocurrency-endorsements/#:~:text=It%20has%20issued%20a%20statement%20warning%20celebrities%20that,without%20disclosing%20that%20they%E2%80%99ve%20been%20paid%20for%20it> (accessed December 8, 2022).

¹⁰ <https://news.bloomberglaw.com/us-law-week/insights-celebrity-endorsements-and-cryptocurrency-a-cautionary-tale> (accessed December 8, 2022).

¹¹ <https://blockbulletin.com/news/altcoins/kim-kardashian-among-other-celebrities-sued-for-promoting-cryptocurrencies/> (accessed December 8, 2022).

¹² <https://florida.foolproofme.org/articles/770-celebrity-cryptocurrency-scam> (accessed December 8, 2022).

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PARTIES

25. Plaintiff Gregg Podalsky is a citizen and resident of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Podalsky purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Podalsky did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Podalsky has sustained damages for which Defendants are liable.

26. Plaintiff Skyler Lindeen is a citizen and resident of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Lindeen purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Lindeen did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Lindeen has sustained damages for which Defendants are liable.

27. Plaintiff Alexander Chernyavsky is a citizen and resident of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Chernyavsky purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Chernyavsky did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Chernyavsky has sustained damages for which Defendants are liable.

28. Plaintiff Edwin Garrison is a citizen and resident of the State of Oklahoma. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Garrison purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Garrison did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Garrison has sustained damages for which Defendants are liable.

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29. Plaintiff Gary Gallant is a citizen and resident of Canada. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Gallant purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Gallant did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Gallant has sustained damages for which Defendants are liable.

30. Plaintiff Sunil Kavuri is a citizen and resident of the United Kingdom. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Kavuri purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Kavuri did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Kavuri has sustained damages for which Defendants are liable.

31. Plaintiff David Nicol is a citizen and resident of Sydney, Australia. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Nicol purchased an unregistered security from FTX in the form of a YBA and funded the account with a sufficient amount of crypto assets to earn interest on his holdings. Plaintiff Nicol did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as detailed in this complaint, and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Nicol has sustained damages for which Defendants are liable.

32. Defendant Thomas Brady, NFL quarterback currently playing for the Tampa Bay Buccaneers, is a brand ambassador of FTX, and is a citizen and resident of Miami-Dade County, Florida.

33. Defendant Gisele Bundchen, one of the world's highest-paid models and a brand ambassador for FTX, is a citizen and resident of Miami-Dade County, Florida.

34. Defendant Kevin O'Leary, "Mr. Wonderful," a businessman, television personality appearing regularly on *Shark Tank*, and brand ambassador for FTX, is a citizen and resident of Miami Beach, Florida.

35. Defendant Udonis Haslem, an American professional basketball player for the Miami Heat of the NBA and brand ambassador of FTX, is a citizen and resident of Miami-Dade County, Florida.

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36. Defendant David Ortiz, former designated hitter and first baseman in the MLB and a brand ambassador for FTX, is a citizen and resident of the State of Florida.

37. Defendant Sam Bankman-Fried, founder and former CEO of FTX and former billionaire, is a citizen and resident of the Bahamas.

38. Defendant Caroline Ellison is the former CEO of Alameda Research, LLC, a trading firm launched by Defendant Sam Bankman-Fried. She oversaw many of the risky bets Alameda took with regard to FTX customers' crypto tokens. Defendant Ellison is a resident of Hong Kong.

39. Defendant Sam Trabucco, the former Co-CEO of Alameda Research, LLC, is a citizen and resident of the State of California.

40. Defendant Gary Wang, co-founder of Alameda Research and FTX, upon information and belief is currently residing in the Bahamas.

41. Defendant Nishad Singh, the former Director of Engineering of FTX, upon information and belief is currently residing in the Bahamas.

42. Defendant Dan Friedberg, the former Chief Compliance Officer of FTX, is a citizen and resident of Seattle, Washington.

43. Defendant Stephen Curry, professional basketball player for the Golden State Warriors of the NBA and brand ambassador for FTX, is a citizen and resident of the State of California.

44. Defendant Golden State Warriors LLC is a professional basketball team in the NBA that officially launched their partnership with FTX in 2022 with the unveiling of the FTX logo on the court at the Chase Center, and is a corporation operating and existing under the laws of the State of California.

45. Defendant Shaquille O'Neal, former professional NBA basketball star, sports analyst, entrepreneur, and FTX brand ambassador, is a citizen and resident of Collin County, Texas.

46. Defendant William Trevor Lawrence, the quarterback for the Jacksonville Jaguars of the NFL and a brand ambassador for FTX, is a citizen and resident of the state of Mississippi.

47. Defendant Shohei Ohtani, a professional baseball pitcher, designated hitter and outfielder for the Los Angeles Angels of the MLB and a brand ambassador for FTX, is a citizen and resident of the State of California.

48. Defendant Naomi Osaka, a professional tennis player and brand ambassador for FTX, is a citizen and resident of Beverly Hills, California.

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49. Defendant Lawrence Gene David, an American comedian, writer, actor, television producer, and FTX brand ambassador, is a citizen and resident of Los Angeles, California.

JURISDICTION AND VENUE

50. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A) because this is a class action for a sum exceeding \$5,000,000.00, exclusive of interest and costs, and in which at least one class member is a citizen of a state different than the Defendants.

51. This Court has personal jurisdiction against Defendants because they conduct business in Florida, and/or have otherwise intentionally availed themselves of the Florida consumer market through the promotion, marketing, and sale of FTX's YBAs in Florida, which constitutes committing a tortious act within the state of Florida. Defendants have also marketed and participated and/or assisted in the sale of FTX's unregistered securities to consumers in Florida. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants permissible under traditional notions of fair play and substantial justice.

52. Venue is proper in this District under 28 U.S.C. § 1391 because thousands of Class Members either reside in this District; Defendants engaged in business in this District; a substantial part of the events or omissions giving rise to the claims at issue occurred in this District; and because Defendants entered into transactions and/or received substantial profits from Class Members who reside in this District.

53. All conditions precedent to the institution and maintenance of this action have been performed, excused, waived, or have otherwise occurred.

FACTUAL ALLEGATIONS

A. Background on FTX and its Key Players.

54. Until seeking the protection of the Bankruptcy Court, the FTX Entities operated a multi-billion-dollar mobile application cryptocurrency investment service (the "Deceptive FTX Platform") that placed cryptocurrency trade orders on behalf of users like Plaintiff and Class Members and offered interest bearing cryptocurrency accounts.

Defendant Sam Bankman-Fried

55. The FTX group of companies (FTX Group or FTX) was founded in 2019 and began as an exchange or marketplace for the trading of crypto assets. FTX was established by Samuel Bankman-Fried, Gary (Zixiao) Wang and Nishad Singh, with operations commencing in May 2019. FTX was purportedly established in order to build a digital asset trading platform and exchange for the purpose of a better user experience, customer protection, and innovative products. FTX built the

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FTX.com exchange to develop a platform robust enough for professional trading firms and intuitive enough for first-time users.

56. Prior to that, The Silicon Valley-born, MIT-educated Bankman-Fried, also known as SBF, launched his quantitative crypto trading firm, Alameda Research, in November 2017,¹³ after stints in the charity world and at trading firm Jane Street.¹⁴ Quantitative trading consists of trading strategies based on quantitative analysis, which rely on mathematical computations and number crunching to identify trading opportunities.

Defendants Caroline Ellison and Sam Trabucco

57. By 2018, Defendant Bankman-Fried had persuaded Defendant Ellison to join him at Alameda Research. Defendant Ellison described the recruitment as follows: “This was very much like, ‘oh, yeah, we don’t really know what we’re doing,’” Ellison told Forbes magazine in an interview regarding her initial impressions of Alameda.

58. In late 2018, the headquarters of Alameda Research was relocated to Hong Kong. The team at Alameda Research included Defendant Bankman-Fried’s close friends (and later co-founders for FTX) Nishad Singh and Gary Wang. Defendant Caroline Ellison and Sam Trabucco were also part of the group and upon moving to Hong Kong the group lived like college students and fiercely traded crypto.

59. After Defendant Bankman-Fried established FTX in 2019, Defendant Ellison began taking more responsibility at Alameda Research along with Sam Trabucco, who served as CEO.

60. In October 2021, Ellison was appointed as co-CEO of Alameda with Sam Trabucco after Bankman-Fried resigned from the firm in an effort to put distance between the exchange and trading shop he founded. As co-CEO, Trabucco helped oversee Alameda’s expansion beyond its initial market-neutral, but relatively low-profit business as a market maker for low-volume cryptocurrencies into riskier trading strategies, according to a Twitter thread detailing that shift. For instance, he said Alameda traders began exploring yield farming in decentralized finance (DeFi). Ellison became sole CEO in August 2022, following Trabucco’s departure from the firm, when he shifted his role from Co-CEO to adviser of the company.¹⁵

61. Leading up to the collapse of FTX, Ellison lived with nine other FTX or Alameda colleagues in Bankman-Fried’s \$30 million penthouse in the Bahamas. She reportedly paid SBF rent, and was occasionally

¹³ <https://www.businessinsider.com/ftx-crypto-king-sam-bankman-fried-rise-and-fall-2022-11> (accessed December 8, 2022).

¹⁴ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations> (accessed December 8, 2022).

¹⁵ <https://www.coindesk.com/business/2022/08/24/co-ceo-of-crypto-trading-firm-alameda-research-sam-trabucco-steps-down/> (accessed December 8, 2022).

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in a romantic relationship with him. In 2021, Ellison tweeted about recreational stimulant use. Upon information and belief, Ellison left the Bahamas and moved back to Hong Kong.

62. “Young people tend to be too risk averse,” Ellison said in a more recent Alameda podcast episode.¹⁶

63. The Wall Street Journal recently reported that Ellison told Alameda staffers in a video call that she was one of four people (along with Sam Bankman-Fried, Gary Wang, and Nishad Singh) who were aware of the decision to send FTX customer funds to Alameda, to help the fund meet its liabilities.¹⁷

Defendant Gary Wang

64. Wang is not like his co-founder Sam Bankman-Fried, who loves fame and putting himself at the center of public attention. In fact, there’s little public information about Wang, who has been described as a shady but critical player in the rise and fall of FTX.

65. Wang met Bankman-Fried at a math camp in high school. Later, they became college roommates at the Massachusetts Institute of Technology, where Wang got degrees in mathematics and computer science and Bankman-Fried received a bachelor’s in physics.¹⁸

66. Before co-founding Alameda Research (and later FTX), Wang worked at Google. He claims to have built a system to aggregate prices across public flight data, according to an introduction on the Future Fund’s website.¹⁹ When Bankman-Fried left the Jane Street Hedge Fund to start Alameda in 2017, Wang left the tech giant.

67. The startup has its beginnings in a three-bedroom Berkeley apartment – the downstairs served as its office. The firm shifted to Hong Kong, in part to take advantage of arbitrage opportunities in Asian bitcoin markets – including the price discrepancy between BTC in Japan and BTC everywhere else.

68. It’s there that Wang and Bankman-Fried funneled funds from Alameda to build its bespoke derivatives exchange. Bankman-Fried told Insider that he is not a good coder: “I don’t code. I’m trash. I have not written any of FTX’s code base. That’s all a lot of other really impressive people at FTX. That’s not me at all.”²⁰

¹⁶ <https://www.youtube.com/watch?v=zfc9JAgWBs> (accessed December 8, 2022).

¹⁷ <https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238> (accessed December 8, 2022).

¹⁸ <https://blog.ftx.com/blog/raising-the-bar/> (accessed December 8, 2022)

¹⁹ <https://ftxfuturefund.org/about/> (accessed December 8, 2022).

²⁰ <https://www.businessinsider.com/crypto-trading-billionaire-sam-bankman-fried-ftx-alameda-surprising-facts-2021-12#5-people-often-think-hes-a-programmer-but-hes-not-5> (accessed December 8, 2022).

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69. Nishad Singh, the head of engineering at FTX, said Wang was a “really good mentor” who offered suggestions and advice to push things out on short timescales.

70. In the aftermath of FTX’s collapse, and the subsequent \$400 million hack, questions are circulating around who could possibly have abused client funds. Wang is a prominent suspect, as one of the few people with “root access” to the exchange’s code base, according to The Block.²¹

71. Wang is also one of the board members of FTX Future Fund – the charity guided by “effective altruism” that aims to “use reason and evidence to do the most good possible for the most people.”

72. Wang, one of the 10 roommates in Bankman-Fried’s luxury penthouse in the Bahamas, is reportedly among the four people cited by Caroline Ellison who knew about the decision to send customer funds to Alameda, according to people who spoke to the Wall Street Journal.²²

73. A few Wang photos are circulating on the internet, though little else is known about the mysterious co-founder who preferred to stay in the shadows as SBF chased the limelight. In a now infamous picture on FTX’s website, CTO Wang is seen with his back facing the camera as he focuses on the monitors in front of him.

74. At the age of 28, Wang topped Forbes’ 2022 list of the world’s billionaires under 30 with a net worth of \$5.9 billion in April. SBF sent his congratulations to Wang in public, tweeting that “I couldn’t be prouder” when the list came out.²³

75. Wang is reportedly now “under supervision” by Bahamian authorities along with Bankman-Fried and Singh.²⁴

²¹ <https://www.theblock.co/post/186476/who-is-billionaire-ftx-co-founder-gary-wang-and-why-is-he-still-committing-code> (accessed December 8, 2022).

²² https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238?mod=latest_headlines (accessed December 8, 2022).

²³ https://twitter.com/SBF_FTX/status/1511324242612297738?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1511324242612297738%7Ctwgr%5E8e0ce65ea02f827b72be96dde8f9484a3ba3e41c%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.usatoday.com%2Fstory%2Fmoney%2F2022%2F04%2F05%2Fcryptocurrency-ceo-donate-charity%2F7272175001%2F (accessed December 8, 2022).

²⁴ <https://cointelegraph.com/news/sam-bankman-fried-is-under-supervision-in-bahamas-looking-to-flee-to-dubai> (accessed December 8, 2022).

Defendant Nishad Singh

76. Nishad Singh joined Alameda Research in the early days, when the five-person trading firm was based in a Berkeley, California, apartment. He went from finding and exploiting arbitrage opportunities in crypto markets to being appointed director of engineering at FTX.

77. Singh is thought to be a close confidant of Bankman-Fried, having shared multiple apartments with the FTX founder over the years, including most recently a 10-person luxury penthouse in Nassau, the Bahamas.

78. He is rumored to be just one of three people who controlled the keys to the exchange's matching engine, and may have been informed of a plan to backstop losses at Alameda with FTX customer funds.²⁵

79. Although Singh's LinkedIn profile is down and his Twitter account is locked, the University of California, Berkeley graduate talked about why he left his dream job at Facebook to join Alameda Research in a FTX podcast.²⁶

80. "I spent maybe about a month doing weekends and nights at Alameda," he said, discussing a period of time when his "day job" was as a software engineer working on applied machine learning at Facebook. "At some point, it became obvious that was kind of stupid ... so I took some time off and really gave my 100% working at Alameda," Singh said.

81. Singh visited Alameda in the first month of its existence, where he witnessed Bankman-Fried execute a sequence of trades that he described as "super profitable, easy to understand and there were lots available." Feeling inspired, he took a job.

82. In the podcast, Singh said he was also attracted to the company's cultural commitment to effective altruism,²⁷ a movement that "aims to find the best ways to help others," which he discovered in college.

83. Singh is a board member of FTX Future Fund, a part of the FTX Foundation, a philanthropic collective funded principally by Bankman-Fried and other senior FTX executives.

84. "It was pretty clear that everybody working [at Alameda] was highly motivated, was sort of effective altruism-aligned, which mattered a lot to me and was really [a] bright spot. I could learn a lot from them," Singh said in the podcast.

²⁵ https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238?mod=latest_headlines (accessed December 8, 2022).

²⁶ <https://www.youtube.com/watch?v=rl0Rq2cUSIQ> (accessed December 8, 2022).

²⁷ <https://www.coindesk.com/layer2/2022/11/11/how-sam-bankman-frieds-effective-altruism-blew-up-ftx/> (accessed December 8, 2022).

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85. After spending one and a half years as a core Alameda engineer, Singh took a role as the head of engineering at the then-newly launched FTX derivative exchange in 2019, where he was allowed to code with “minimal supervision.” He has provided code to a number of Bankman-Fried-related projects, including the decentralized exchange Serum on Solana.

86. “Nishad was one of my brother’s best friends in high school. He’s shown the fastest and most sustained professional growth I’ve ever witnessed,” Bankman-Fried wrote in a company blog.²⁸ Singh also reportedly built most of FTX’s “technological infrastructure” and managed the development team.

87. Although pitched as a community-run and- organized exchange, people familiar with the matter told CoinDesk the true power over Serum rested with FTX Group, which then held the program’s access keys.²⁹ A similar relationship may be in place at FTX’s core properties.³⁰

88. Singh is reportedly now “under supervision” by Bahamian authorities along with Bankman-Fried and Wang.³¹

Dan Friedberg

89. Daniel S. Friedberg was the chief compliance officer at FTX, the person who oversaw FTX’s compliance initiatives before it imploded. He joined the firm in March 2020, and was instrumental in perpetuating its nefarious activities, in part by helping to cover up any indications that the FTX scheme was unraveling.

90. Although Friedberg was supposed to be the adult in the room overseeing the operations of the FTX empire, he did so thousands of miles away, remotely, from Seattle, Washington. As FTX’s chief regulatory officer, Friedberg was tasked with monitoring customer protection practices, ensuring product offerings complied with existing rules and overseeing internal audits and reviews. He did none of this.

91. Friedberg has also been tied to an online poker scandal in 2008, where Ultimate Bet’s founder Russ Hamilton was accused of installing a “God mode” on his gambling platform that only certain players had access to – resulting in an estimated \$50 million in misappropriated funds.

²⁸ <https://blog.ftx.com/blog/raising-the-bar/> (accessed December 8, 2022).

²⁹ <https://www.coindesk.com/business/2022/11/12/ftx-hack-spooks-solana-defi-community-igniting-revolution-at-alameda-controlled-serum-dex/> (accessed December 8, 2022).

³⁰ https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238?mod=latest_headlines (accessed December 8, 2022).

³¹ <https://cointelegraph.com/news/sam-bankman-fried-is-under-supervision-in-bahamas-looking-to-flee-to-dubai> (accessed December 8, 2022).

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92. In a surreptitiously recorded file, Friedberg reportedly advised Hamilton to claim he was a victim of the Ultimate Bets “God mode” scam, and push blame on an unnamed consultant to the company who exploited the site’s servers. The audio recordings were published in 2013 under uncertain circumstances and have not been independently verified by CoinDesk.

93. “I did take this money and I’m not trying to make it right, Dan, so we gotta get that out of the way right away, real quick,” Hamilton allegedly said in the audio recording.³² Hamilton also founded the World Champion online poker platform.

94. Veteran short seller Marc Cohodes, one of the few to publicly question the rapid rise of FTX before its fall in a September interview with trading-focused webcast Hedgeye,³³ had noted the potential conflicts of hiring someone connected to a cheating scandal to oversee compliance at the \$32 billion FTX exchange.

95. Similarly here, Dan Friedberg in his role as Chief Compliance Officer oversaw both FTX and Alameda, which had its own “god mode,” i.e., Alameda was secretly exempted from FTX’s auto-liquidation protocols.

96. Friedberg’s penchant for duplicity to make legal problems vanish for his corporate paymasters didn’t end with UB’s demise. NBC News recently reported on a 2020 incident involving SBF’s promotion of the Ethereum-based Cover Protocol and the unfortunate experience of one Dave Mastrianni, an investor who was prevented from cashing out his \$400,000 in paper winnings due to “insufficient liquidity” on FTX before the COVER token cratered.³⁴

97. When Mastrianni contacted FTX to accuse SBF of having a “pump and dump” role in the debacle, Friedberg called back with an offer. How would Mastrianni, a graphic artist, like a job creating NFTs for FTX? Friedberg offered Mastrianni an ‘adviser’ contract that would pay him one BTC for 30 days’ work, but it also required Mastrianni to absolve FTX, Alameda, and its affiliates of any responsibility for Mastrianni’s COVER losses.

98. Mastrianni eventually agreed, but while he did receive that one BTC, FTX never accepted any of his artwork. Friedberg later emailed to inform him that the payment “was primarily

³² <http://craakker.blogspot.com/2013/05/pokers-watergate-moment.html> (accessed December 8, 2022).

³³ https://app.hedgeye.com/insights/122943-marc-cohodes-ftx-is-dirty-rotten-to-the-core-hedgeye-investing-s?with_category=17-insights (accessed December 8, 2022).

³⁴ <https://www.nbcnews.com/news/epic-fall-sam-bankman-fried-was-hailed-crypto-genius-clients-saw-smoke-rcna56583> (accessed December 8, 2022).

for your release of all claims” and, with that goal accomplished, FTX had no more reason to maintain this subterfuge.

99. In August, the Federal Deposit Insurance Corporation (FDIC) sent a letter to Friedberg and then-FTX US CEO Brett Harrison to “cease and desist” using marketing language that could have been erroneously interpreted as saying that exchange users accounts were ensured by the federal banking regulator. Harrison subsequently deleted the tweet.

100. Before joining FTX, Friedberg was a partner at Fenwick & West LLP, where he led the law firm’s cryptocurrency division, according to a now-deprecated LinkedIn page. He received a JD and MBA degree from the University of Wisconsin-Madison.

B. The Rise and Fall of FTX.

101. The FTX.com exchange was extremely successful since its launch. This year around \$15 billion of assets are traded daily on the platform, which now represents approximately 10% of global volume for crypto trading. The FTX team has grown to over 300 globally. Although the FTX Entities’ primary international headquarters is in the Bahamas, its domestic US base of operations is located in Miami, Florida.³⁵

102. FTX quickly became one of the most utilized avenues for nascent investors to purchase cryptocurrency. By the time FTX filed for bankruptcy protection, customers had entrusted billions of dollars to it, with estimates ranging from \$10-to-\$50 *billion dollars*.

103. Bankman-Fried got rich off FTX and Alameda, with the two companies netting \$350 million and \$1 billion in profit, respectively, in 2020 alone, according to Bloomberg.

104. At his peak, Bankman-Fried was worth \$26 billion. At 30, he had become a major political donor, gotten celebrities like the Co-Defendants in this action to vociferously promote FTX, and secured the naming rights to the arena where the NBA’s Miami Heat play.³⁶

105. In early November 2022, crypto publication CoinDesk released a bombshell report that called into question just how stable Bankman-Fried’s empire really was.³⁷

³⁵ <https://www.coindesk.com/business/2022/09/27/crypto-exchange-ftx-is-moving-its-us-headquarters-from-chicago-to-miami/> (accessed December 8, 2022).

³⁶ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=> (accessed December 8, 2022).

³⁷ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=> (accessed December 8, 2022).

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106. Bankman-Fried’s cryptocurrency empire was officially broken into two main parts: FTX (his exchange) and Alameda Research (his trading firm), both giants in their respective industries. But even though they are two separate businesses, the division breaks down in a key place: on Alameda’s balance sheet, which was full of FTX – specifically, the FTT token issued by the exchange that grants holders a discount on trading fees on its marketplace. While there is nothing per se untoward or wrong about that, it shows Bankman-Fried’s trading giant Alameda rests on a foundation largely made up of a coin that a sister company invented, not an independent asset like a fiat currency or another crypto. The situation adds to evidence that the ties between FTX and Alameda are unusually close.³⁸

107. After obtaining this information, Changpeng “CZ” Zhao, the CEO of Binance, decided to liquidate roughly \$530 million-worth of FTT. Customers also raced to pull out, and FTX saw an estimated \$6 billion in withdrawals over the course of 72 hours, which it struggled to fulfill.³⁹ The value of FTT plunged 32%, but rallied once again with Bankman-Fried’s surprise announcement on Tuesday, November 8th, that Binance would buy FTX, effectively bailing it out.⁴⁰

108. The next day, Binance announced that it was withdrawing from the deal, citing findings during due diligence, as well as reports of mishandled customer funds and the possibility of a federal investigation.⁴¹ The news sent FTT plunging even further — Bankman-Fried saw 94% of his net worth wiped out in a single day.⁴² On November 11th, unable to obtain a bailout, FTX filed for Chapter 11 bankruptcy and Bankman-Fried resigned as CEO.⁴³

109. Following his resignation, Bankman-Fried issued a 22-tweet-long explanation of where he believed he and the FTX Entities went wrong:⁴⁴

³⁸ <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/> (accessed December 8, 2022).

³⁹ <https://markets.businessinsider.com/news/currencies/ftx-6-billion-withdrawals-72-hours-sam-bankman-fried-binance-2022-11> (accessed December 8, 2022).

⁴⁰ <https://markets.businessinsider.com/news/currencies/ftx-6-billion-withdrawals-72-hours-sam-bankman-fried-binance-2022-11> (accessed December 8, 2022).

⁴¹ <https://markets.businessinsider.com/news/currencies/ftx-crash-sec-cftc-probes-asset-liability-shortfall-6-billion-2022-11> (accessed December 8, 2022).

⁴² <https://www.businessinsider.com/ftx-ceo-crypto-binance-sam-bankman-fried-wealth-wiped-out-2022-11> (accessed December 8, 2022).

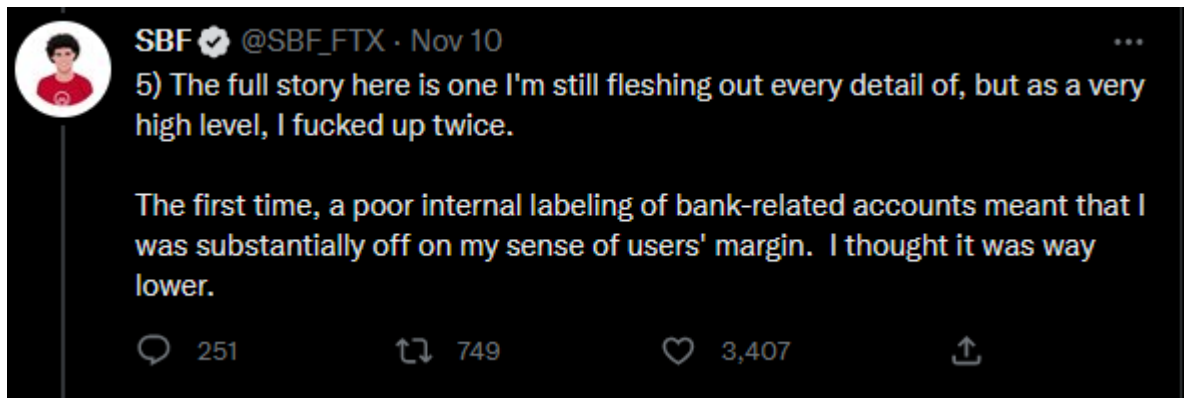
⁴³ <https://markets.businessinsider.com/news/currencies/ftx-bankruptcy-sam-bankman-fried-ceo-crypto-binance-alameda-markets-2022-11> (accessed December 8, 2022).

⁴⁴ https://twitter.com/SBF_FTX/status/1590709189370081280 (accessed December 8, 2022).

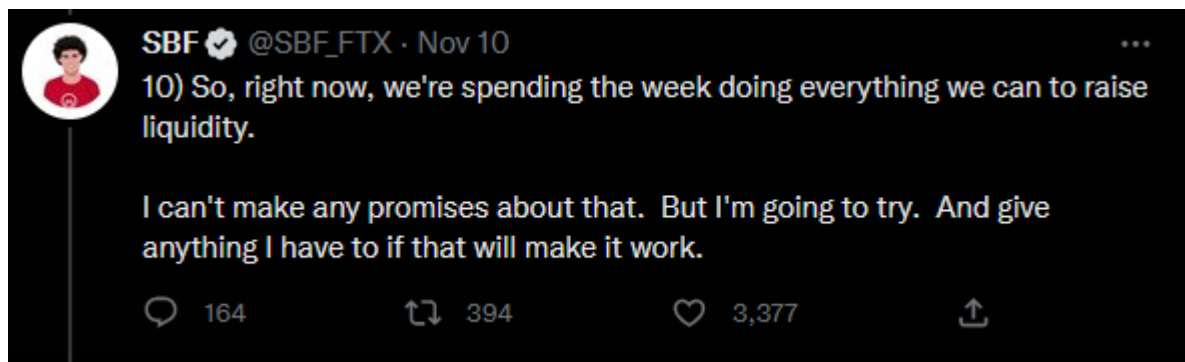
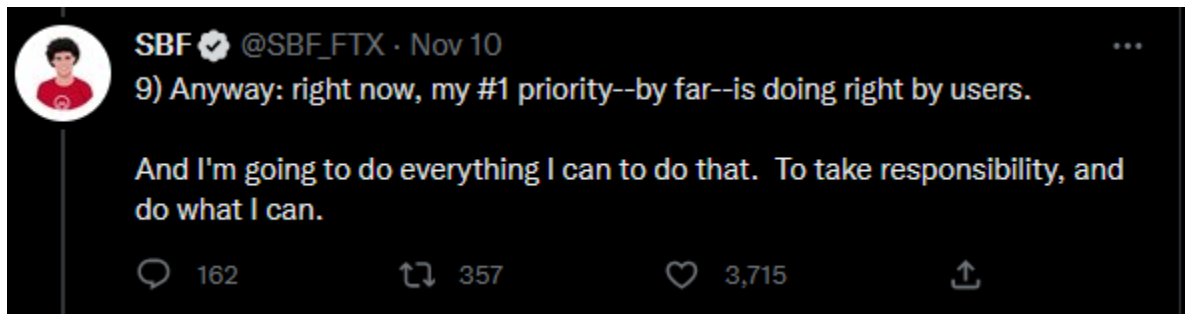
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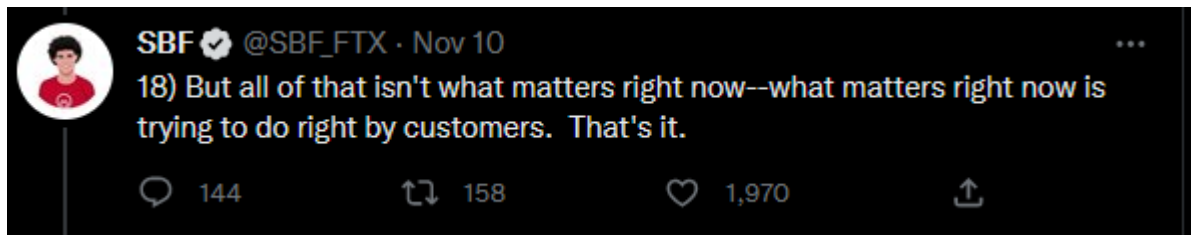
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110. According to a recent Reuters report, however, another explanation contributing to the precarious house of cards that was the Deceptive FTX Platform is that earlier this year, Bankman-Fried secretly transferred **at least \$4 billion** in customer funds from FTX to Alameda without telling anyone, after Alameda was hit with a series of losses, and that the FTX entities lent more than **half** of its **\$16 billion** in **customer funds** to Alameda in total, with more than **\$10 billion in loans outstanding**.⁴⁵

C. FTX’s offer and sale of YBAs, which are unregistered securities.

111. Beginning in 2019, the FTX Entities began offering interest-bearing cryptocurrency accounts to public investors. Plaintiff and other similarly situated individuals invested in FTX’s YBAs.

112. FTX maintains that it does not offer for sale any product that constitutes a “security” under federal or state law. Under federal securities laws as construed by the United States Supreme Court in its decision *SEC v. W.J. Hovey Co.*, 328 U.S. 293 (1946) and by the SEC, an investment contract is a form of security under United States securities laws when (1) the purchaser makes an investment of money or exchanges another item of value (2) in a common enterprise (3) with the reasonable expectation of profits to be derived from the efforts of others.

113. The YBAs were “securities” as defined by the United States securities laws and as interpreted by the Supreme Court, the federal courts, and the SEC. The FTX Entities offered variable interest rewards on crypto assets held in the YBAs on the Deceptive FTX Platform, which rates were determined by the FTX Entities in their sole discretion. In order to generate revenue to fund the promised interest, the FTX Entities pooled the YBA assets to engage in lending and staking activities from which they derived revenue to pay interest on the YBAs. These activities make the YBAs a “security” under state and federal law.

⁴⁵ https://markets.businessinsider.com/news/currencies/ftx-crash-client-funds-alameda-binance-sbf-sec-cftc-probe-2022-11?utm_medium=ingest&utm_source=markets (accessed December 8, 2022).

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114. On October 14, 2022, Director of Enforcement of the Texas State Securities Board, Joseph Rotunda, filed a declaration in the Chapter 11 bankruptcy proceedings pending in connection with the collapse of the Voyager Digital cryptocurrency exchange, *In re: Voyager Digital Holdings, Inc., et al.*, Case No. 22-10943 (MEW), ECF No. 536 (Bankr. S.D.N.Y. Oct. 14, 2022), in which he explained how the YBAs are in fact “an offering of unregistered securities in the form of yield-bearing accounts to the residents of the United States.” *Id.*, at 6. In his declaration, the pertinent portions of which are reproduced in full for ease of reference, Rotunda explains:

I am also familiar with FTX Trading LTD (“FTX Trading”) dba FTX as described herein. As more fully explained throughout this declaration, I am aware that FTX Trading, along with West Realm Shires Services Inc. dba FTX US (“FTX US”), may be offering unregistered securities in the form of yield-bearing accounts to residents of the United States. These products appear similar to the yield-bearing depository accounts offered by Voyager Digital LTD et al., and the Enforcement Division is now investigating FTX Trading, FTX US, and their principals, including Sam Bankman-Fried.

I understand that FTX Trading is incorporated in Antigua and Barbuda and headquartered in the Bahamas. It was organized and founded in part by Mr. Bankman-Fried, and FTX Trading appears to be restricting operations in the United States. For example, domestic users accessing the webpage for FTX Trading at ftx.com are presented with a pop-up window that contains a disclaimer that reads in part as follows:

Did you mean to go to FTX US? FTX US is a US licensed cryptocurrency exchange that welcomes American users.

You’re accessing FTX from the United States. You won’t be able to use any of FTX.com’s services, though you’re welcome to look around the site.

FTX US claims to be regulated as a Money Services Business with FinCEN (No. 31000195443783) and as a money transmitter, a seller of payment instruments and in other non-securities capacities in many different states. It is not, however, registered as a money transmitter or in any other capacity with the Texas Department of Banking and it is not registered as a securities dealer with the Texas State Securities Board.

FTX US owns 75 percent or more of the outstanding equity of FTX Capital Markets (CRD No. 158816) (“FTX Capital”), a firm registered as a broker-dealer with the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority Inc., and 53 state and territorial securities regulators. FTX Capital’s registration as a dealer in Texas became effective on May 7, 2012, and the registration continues to remain in force and effect.

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FTX US maintains a website at <https://ftx.us> that contains a webpage for smartphone applications for FTX (formerly Blockfolio)⁴⁶ (the “FTX Trading App”) and FTX US Pro. Users appear able to click a link in this webpage to download the FTX Trading App even when they reside in the United States.

On October 14, 2022, I downloaded and installed the FTX Trading App on my smartphone. I created an account with FTX Trading through the FTX Trading App and linked the FTX account to an existing personal bank account. During the process, I provided my full first and last name and entered my residential address in Austin, Texas. I also accessed hyperlinks in the FTX Trading App that redirected to the Privacy Policy and Terms of Service. Although I was from the United States and was using the application tied to FTX Trading, the Privacy Policy and Terms of Service were from FTX US - not FTX Trading.

I thereafter used the FTX Trading App to initiate the transfer of \$50.00 from my bank account to the FTX account and then transferred .1 ETH from a 3.0 wallet to the FTX account. The transfer of funds from my bank account to the FTX account will take up to six days to complete but the transfer of ETH was processed within a few minutes.

The FTX Trading App showed that I was eligible to earn a yield on my deposits. It also explained the “Earn program is provided by FTX.US” – not FTX Trading. It also represented that “FTX Earn rewards are available for US users on a promotional basis.”

I recall the FTX Trading App’s default settings were automatically configured to enable the earning of yield. The application also contained a link for additional information about yield. I accessed the link and was redirected to a recent article published by “Blockfolio Rebecca” under help.blockfolio.com. The article began as follows:

You can now earn yield on your crypto purchases and deposits, as well as your fiat balances, in your FTX Trading App! By opting in and participating in staking your supported assets in your FTX account, you’ll be eligible to earn up to 8% APY on your staked assets. THIS APY IS ESTIMATED AND NOT GUARANTEED AS DESCRIBED BELOW.

The article also described the payment of yield. It contained a section titled *How do you calculate APY?* Does my balance compound daily? that read, in part, as follows:

FTX will deposit yield earnings from the staked coins, calculated hourly, on the investment portfolio that is stored in your FTX Trading App. Yield will be compounded on principal and yield you have already earned. Any cryptocurrency

⁴⁶ Based upon information and belief, FTX Trading acquired Blockfolio LLC (“Blockfolio”) in or around August 2020. At the time, Blockfolio managed a cryptocurrency application. FTX Trading appears to have thereafter rebranded Blockfolio and its smartphone application as FTX. Now, users can download the FTX Trading App from Apple’s App Store or Google’s Google Play Store. Although FTX rebranded Blockfolio, the application listing in Apple’s App Store still shows the application with developed by Blockfolio.

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that you have deposited on FTX as well as any fiat balance you may have on your account, will earn yield immediately after you have opted into the program.

The first \$10,000 USD value in your deposit wallets will earn 8% APY. Amounts held above \$10,000 up to \$10MM USD in value (subject to market fluctuations) will earn 5% APY. In this scenario, your yield earned on the coins will look something like the examples below the table.

The article also contained a section titled *Is this available in my country?* This section explained that “FTX Trading App Earn is available to FTX Trading App customers that are in one of the FTX permitted jurisdictions.” It contained a hyperlink to an article titled *Location Restrictions* published by FTX Crypto Derivatives Exchange under help.ftx.com. This article described various restrictions on operations in certain countries and locations and read in part as follows:

FTX does not onboard or provide services to corporate accounts of entities located in, established in, or a resident of the **United States of America, Cuba, Crimea and Sevastopol, Luhansk People’s Republic, Donetsk People’s Republic, Iran, Afghanistan, Syria, or North Korea**. FTX also does not onboard corporate accounts located in or a resident of **Antigua or Barbuda**. FTX also does not onboard any users from Ontario, and FTX does not permit non-professional investors from Hong Kong purchasing certain products.

FTX does not onboard or provide services to personal accounts of current residents of the United States of America, Cuba, Crimea and Sevastopol, Luhansk People’s Republic, Donetsk People’s Republic, Iran, Afghanistan, Syria, North Korea, or Antigua and Barbuda. There may be partial restrictions in other jurisdictions, potentially including Hong Kong, Thailand, Malaysia, India and Canada. In addition, FTX does not onboard any users from Ontario, does not permit non-professional investors from Hong Kong purchasing certain products, and does not offer derivatives products to users from Brazil.

FTX serves all Japanese residents via FTX Japan.

(emphasis in original)

Despite the fact I identified myself by name and address, the FTX Trading App now shows that I am earning yield on the ETH. The yield is valued at 8 percent APR.

Based upon my earning of yield and an ongoing investigation by the Enforcement Division of the Texas State Securities Board, the yield program appears to be an investment contract, evidence of indebtedness and note, and as such appears to be regulated as a security in Texas as provided by Section 4001.068 of the Texas Securities Act. At all times material to the opening of this FTX account, FTX Trading and FTX US have not been registered to offer or sell securities in Texas. FTX Trading and FTX US may therefore be violating Section 4004.051 of the Texas Securities Act. Moreover, the yield program described herein has not been registered or permitted for sale in Texas as generally required by Section 4003.001 of the Securities Act, and as such FTX Trading and FTX US may be violation Section 4003.001 by offering unregistered or unpermitted securities for sale in Texas. Finally, FTX Trading and FTX

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US may not be fully disclosing all known material facts to clients prior to opening accounts and earning yield, thereby possibly engaging in fraud and/or making offers containing statements that are materially misleading or otherwise likely to deceive the public. Certain principals of FTX Trading and FTX US may also be violating these statutes and disclosure requirements. Further investigation is necessary to conclude whether FTX Trading, FTX US and others are violating the Securities Act through the acts and practices described in this declaration.

The Enforcement Division of the Texas State Securities Board understands that FTX US placed the highest bid for assets of Voyager Digital LTD et al., a family of companies variously accused of misconduct in connection with the sale of securities similar to the yield program promoted by FTX Trading and FTX US. FTX US is managed by Sam Bankman-Fried (CEO and Founder), Gary Wang (CTO and Founder) and Nishad Singh (Head of Engineering). The same principals hold the same positions at FTX Trading, and I was able to access the yield-earning product after following a link to the FTX Trading App from FTX US's website. The FTX Trading App also indicated the Earn program is provided by FTX US. As such, FTX US should not be permitted to purchase the assets of the debtor unless or until the Securities Commissioner has an opportunity to determine whether FTX US is complying with the law and related and/or affiliated companies, including companies commonly controlled by the same management, are complying with the law.

I hereby authorize the Texas Attorney General's Office and any of its representatives to use this declaration in this bankruptcy proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2022 in Austin, Texas.

/s Joseph Jason Rotunda

By: Joseph Jason Rotunda

D. The Defendants Aggressively Marketed the FTX Platform

115. In addition to the conduct of Defendant Sam Bankman-Fried, as described in this Complaint, some of the biggest names in sports and entertainment have either invested in FTX or been brand ambassadors for the company. A number of them hyped FTX to their social media fans, driving retail consumer adoption of the Deceptive FTX Platform.

116. In April 2021, FTX became the first company in the crypto industry to name an arena. This helped lend credibility and recognition to the FTX brand and gave the massive fanbase of basketball exposure to the Deceptive FTX Platform.

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117. FTX’s explanation for using stars like Brady, Bunchden, and the other Defendants was no secret. “We’re the newcomers to the scene,” said then-FTX.US President Brett Harrison, referring to the crypto services landscape in the U.S. “The company needs to familiarize consumers with its technology, customer service and offerings, while competing with incumbents like Coinbase Global Inc. or Kraken,” Mr. Harrison said. “We know that we had to embark on some kind of mass branding, advertising, sponsorship type work in order to be able to do that,” he said.⁴⁷

118. In other words, the FTX Entities needed celebrities like Defendants to continue funneling investors into the FTX Ponzi scheme, and to promote and substantially assist in the sale of the YBAs, which are unregistered securities. Below are representative statements and advertisements Defendants made to drive the offers and/or sales of the YBAs, which Plaintiff and Class Members will supplement as the case progresses and discovery unfolds.

i. Defendants Tom Brady and Gisele Bündchen



119. The star quarterback and the businesswoman and model, then a couple, became FTX ambassadors last year. They also took equity stakes in FTX Trading Ltd.

120. Mr. Brady and Ms. Bündchen also joined the company’s \$20-million ad campaign in 2021. They filmed a commercial called “FTX. You In?” showing them telling acquaintances to join the FTX platform. The ad can be viewed here: <https://www.youtube.com/watch?v=uymLJoKFIW8>

⁴⁷ https://www.wsj.com/articles/tom-brady-and-gisele-bundchen-to-star-in-20-million-campaign-for-crypto-exchange-11631116800?mod=article_inline (accessed December 8, 2022).

ii. Defendant Kevin O’Leary



121. “Mr. Wonderful,” both a brand ambassador and an FTX shareholder, made several public statements designed to induce consumers to invest in the YBAs.

122. “To find crypto investments opportunities that met my own rigorous standards of compliance, I entered into this relationship with @FTX_Official,” Mr. O’Leary said on Twitter last year. Mr. O’Leary *recently deleted the tweet*.

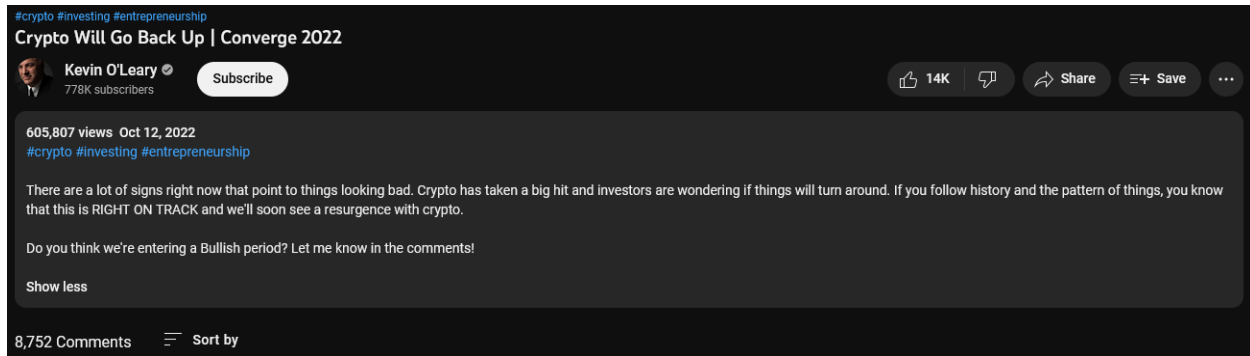
123. He also served as a judge for the FTX Charity Hackathon in Miami in March of 2022.⁴⁸

124. And *very* recently, on October 12, 2022, O’Leary stated confidently that FTX was totally compliant and a safe place to hold assets. O’Leary stated that: “I have to disclose I’m a paid spokesperson to a FTX and shareholder there, too, cause we mentioned him and I’m a big advocate for Sam because he has two parents who are compliance lawyers. If there’s ever a place I could be that I’m not gonna get in trouble it’s going to be in FTX so you know that’s there they’re great people but he gets the job in compliance which is why he’s working so hard to get regulation.”⁴⁹

⁴⁸ <https://ftxcharityhackathon.com/> (accessed December 8, 2022).

⁴⁹ See https://www.youtube.com/watch?v=iwD_zWgyUz8 beginning at 17:32 (accessed December 8, 2022)

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125. He went on to state that “[t]here are a lot of signs right now that point to things looking bad. Crypto has taken a big hit and investors are wondering if things will turn around. If you follow history and the pattern of things, you know that this is RIGHT ON TRACK and we’ll soon see a resurgence with crypto. Do you think we’re entering a Bullish period? Let me know in the comments!”⁵⁰

iii. Defendant Udonis Haslem



126. Udonis Haslem, the Captain of the Miami HEAT and Miami legend, became an FTX global ambassador. Much like Brady and Bunchden, Haslem starred in FTX’s “You In, Miami?” ad campaign that launched at the start of the 2021 - 2022 Miami HEAT season.

127. In the ad, which be viewed here: <https://www.youtube.com/watch?v=83FDP53yPa8>, Haslem states “FTX has arrived in 305. So I just got one question: Are you in, Miami?” Others respond “If he’s in, I’m in.” Haslem concludes “Our city. Our team. FTX. You in, Miami?”

⁵⁰ *Id.*

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iv. Defendant David Ortiz



128. Defendant David Ortiz, who became an FTX brand ambassador and hyped the YBAs in exchange for cryptocurrency and multiple collections of NFTs, also ran his own FTX “You In?” ad, which began running nationwide during the first game of the 2021 World Series.

129. In the ad, which can be found here: <https://www.ispot.tv/ad/qSlm/ftx-big-papi-is-in>, Ortiz is watching a game on the television when he receives a phone call from The Moon. Inspired by the “moonblast” home run scored on the field, The Moon frantically tells David about opportunities to get into cryptocurrency with FTX. David decides it’s an offer he can’t refuse and joins fellow sports stars Stephen Curry and Tom Brady on the platform. FTX announces it is the official crypto exchange of MLB.

v. Defendant Steph Curry



130. Defendant Stephen Curry had his own nationwide ad campaign pushing the Deceptive FTX Platform, known as the “#notanexpert” campaign.⁵¹ Throughout the ad, Curry repeatedly denies being cast as an expert in cryptocurrency, culminating in his statement that “I’m not an expert, *and I don’t need to be*. With FTX I have everything I need to buy, sell, and trade crypto safely.”⁵²

131. The purpose of Curry being an ambassador is to expand the reach of the crypto firm and “tout the viability of cryptocurrency to new audiences around the world,” FTX said in a press release.⁵³ In other words, to drive adoption of the Deceptive FTX Platform and to facilitate the sales of unregistered YBAs to unsuspecting and unwitting retail consumers.

132. “I’m excited to partner with a company that demystifies the crypto space and eliminates the intimidation factor for first-time users,” Curry said in the statement, highlighting that “first-time,” inexperienced users were the intended targets of the campaign.⁵⁴

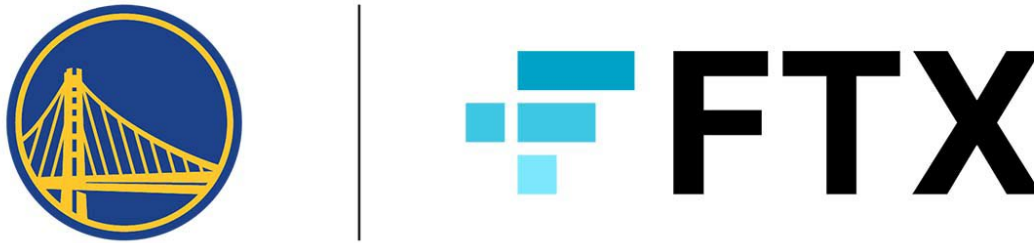
⁵¹ <https://www.youtube.com/watch?v=gsy2N-XI04o> (accessed December 8, 2022).

⁵² *Id.*

⁵³ <https://www.prnewswire.com/news-releases/nba-superstar-stephen-curry-becomes-global-ambassador-and-shareholder-of-leading-cryptocurrency-exchange-ftx-through-long-term-partnership-301370497.html> (accessed December 8, 2022).

⁵⁴ *Id.*

vi. Defendant Golden State Warriors



Official Crypto Platform and NFT Marketplace
 of the **Golden State Warriors**

133. The Golden State Warriors and FTX officially launched their partnership in 2022 with the unveiling of the FTX logo on the court at the Chase Center. As the Warriors' Official Cryptocurrency Platform and NFT Marketplace, the franchise dropped NFTs on FTX.us beginning in early 2022. The partnership between the Warriors and FTX marked the first international rights partner for the Warriors, meaning the GSW and FTX had a visible market presence, inclusive of logo and likeness, internationally.

134. The deal also included the Warriors' G League team, the Golden Guardians and Warriors Gaming Squad (affiliated esports teams), in-arena signage at Chase Center, and virtual floor signage at Warriors games.⁵⁵

⁵⁵ <https://www.instagram.com/p/CYiBaq8JLx7/> (accessed December 8, 2022).

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vii. Defendant Shaquille O’Neal



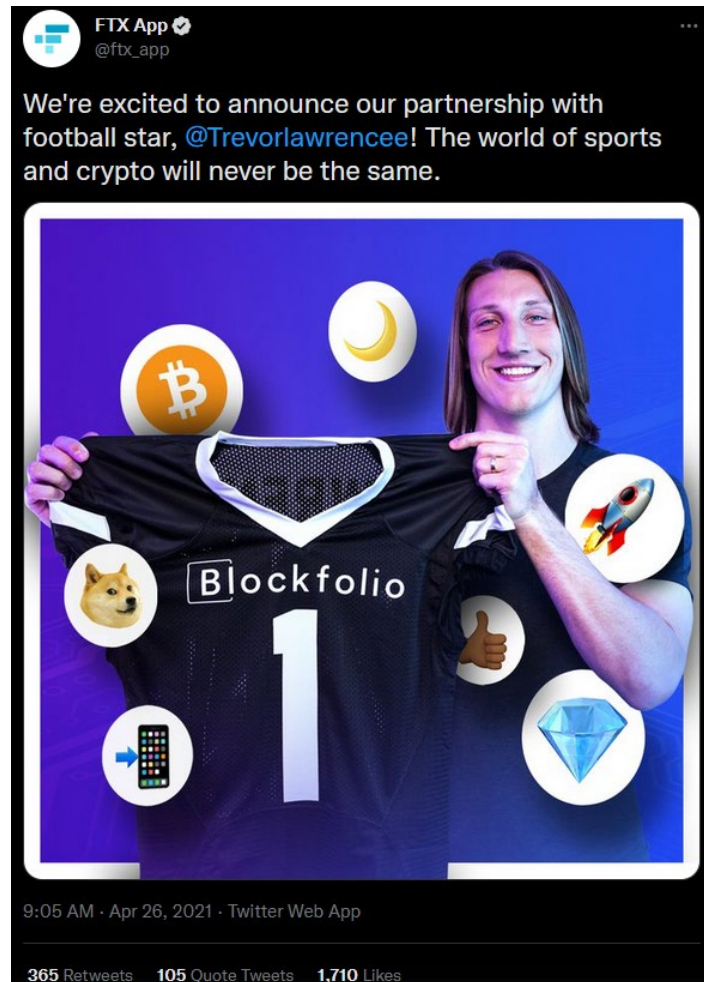
135. Defendant Shaquille O’Neal, former professional NBA basketball star, sports analyst, and entrepreneur, also became an FTX ambassador, stating in a video posted on FTX’s Twitter account that “I’m excited to be partnering with FTX to help make crypto accessible for everyone. I’m all in. Are you?”⁵⁶

⁵⁶

https://twitter.com/FTX_Official/status/1532119977381208066?s=20&t=5wTm55FDE6c0cCD9vCndYg (accessed December 8, 2022).

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viii. Defendant Trevor Lawrence



136. Defendant William Trevor Lawrence, the first pick in the 2021 NFL draft and now quarterback for the Jacksonville Jaguars of the NFL, became a brand ambassador for FTX in exchange for unspecified cryptocurrency payments, which sponsorship was announced in April 2021.⁵⁷ The stated purpose of the sponsorship was because “Trevor is someone people can have a personal and human connection with for [FTX] and to the crypto space.”⁵⁸

⁵⁷ https://twitter.com/ftx_app/status/1386667859393253376 (accessed December 8, 2022).

⁵⁸ <https://www.forbes.com/sites/chrisacson/2021/04/26/trevor-lawrence-makes-first-investment-move-with-first-of-its-kind-partnership-with-blockfolio/?sh=7190ee6f47ef> (accessed December 8, 2022).

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ix. Defendant Shohei Ohtani

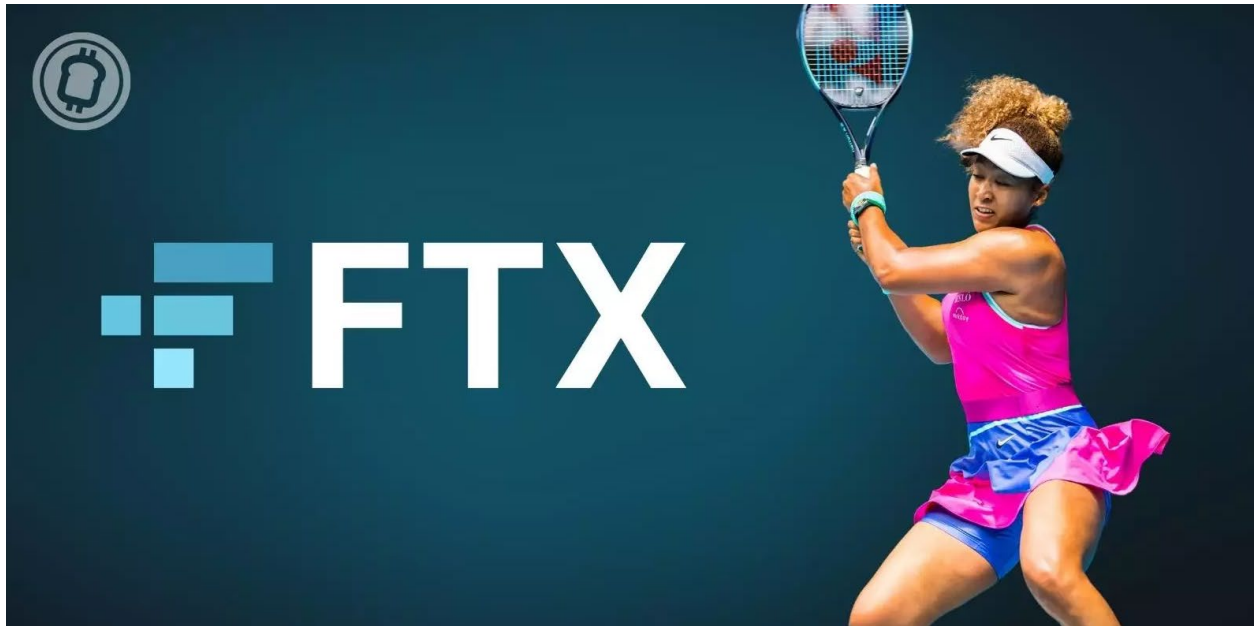


137. The FTX Entities entered into a long-term partnership with global icon and history-making MLB Superstar Shohei Ohtani. In addition to being an FTX global ambassador, Mr. Ohtani received all of his compensation in equity and cryptocurrencies.⁵⁹ In exchange for those unspecified payments, Mr. Ohtani served as a spokesperson for FTX to increase awareness of the Deceptive FTX Platform and to drive adoption of and investments in the unregistered YBA securities on a global scale through a variety of initiatives.⁶⁰

⁵⁹ <https://www.prnewswire.com/news-releases/mlb-superstar-shohei-ohtani-joins-ftx-as-global-ambassador-through-long-term-partnership-301425911.html> (accessed December 8, 2022).

⁶⁰ *Id.*

x. Defendant Naomi Osaka



138. Defendant Naomi Osaka, a 24-year-old professional tennis player and four-time Grand Slam singles champion, became a brand ambassador for FTX, with the express purpose of “getting more women to start investing in crypto.”⁶¹ Osaka wore the FTX logo on the kit she wore at tournaments, including the 2022 Miami Open.⁶² In exchange for an equity stake in FTX and payments in unspecified amounts of cryptocurrency, Osaka directed and produced content in association with the FTX Entities designed to promote the offer and sale of the unregistered YBA securities, hoping “she will reach a global audience.”⁶³

139. Osaka confirmed her involvement by tweeting a glitzy new FTX ad to her **1.1 million followers**, which can be viewed here: <https://youtu.be/pkuf8avR50k>. It shows the tennis star competing in a comic strip — and over dramatic music, she says: “They thought they made the rules for us. They thought they could control us. They were wrong.”

140. The video then cuts to a boardroom full of marketing executives talking about the ad in a tongue-in-cheek way — and discussing other ideas... including Osaka heading to the moon. An idea to have a QR code bouncing around the screen (a clear nod to Coinbase’s Super Bowl spot) is dismissed for being “boring.”

⁶¹ <https://coinmarketcap.com/alexandria/article/naomi-osaka-tennis-star-teams-up-with-ftx-and-she-s-getting-paid-in-crypto-too> (accessed December 8, 2022).

⁶² *Id.*

⁶³ *Id.*

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141. They settle on letting Osaka speaking for herself — and play a mock-up of the tennis ace giving an interview to a news channel where she says: “I’m Naomi Osaka and I’m proud to partner with FTX. Making cryptocurrency accessible is a goal that FTX and I are striving towards.” The ad ends with the tagline: “Naomi is in. You in?”

xi. Defendant Larry David



142. For his part, the legendary comedian and creator of *Seinfeld* and *Curb Your Enthusiasm*, Larry David, created an ad for the FTX Entities called “Don’t Miss Out on Crypto,” which aired during the 2022 Super Bowl, making FTX one of the most retweeted brands during the Super Bowl, and winning the “Most Comical” honorific from *USA Today*’s Ad Meter.⁶⁴

143. The ad—the only Super Bowl commercial David ever appeared in—featured David being a skeptic on such historically important inventions as the wheel, the fork, the toilet, democracy, the light bulb, the dishwasher, the Sony Walkman, and, of course, FTX, and cautioned viewers, “Don’t be like Larry.” The ad can be viewed here: <https://youtu.be/BH5-rSxIxo>

⁶⁴ <https://admeter.usatoday.com/lists/usa-today-ad-meter-replay-ratings-2022-final-results/> (accessed December 8, 2022).

CLASS ACTION ALLEGATIONS

144. As detailed below in the individual counts, Plaintiff brings this lawsuit on behalf of himself and all others similarly situated, pursuant to Rule 23(a), (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil Procedure.

A. Class Definitions

145. Plaintiffs seek to represent the following Global Class, Nationwide Class, and Florida Subclass (collectively, “the Classes”):

- (1) **Global Class**: All persons and entities residing outside of the United States who, within the applicable limitations period, purchased or enrolled in a YBA.
- (2) **Nationwide Class**: All persons or entities in the United States who, within the applicable limitations period, purchased or enrolled in a YBA.
- (3) **Florida Subclass**: All persons or entities in the state of Florida who, within the applicable limitations period, purchased or enrolled in a YBA.

Excluded from the Classes are Defendants and their officers, directors, affiliates, legal representatives, and employees, the FTX Entities and their officers, directors, affiliates, legal representatives, and employees, any governmental entities, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

146. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes, or to include additional classes or subclasses, before or after the Court determines whether such certification is appropriate as discovery progresses. Plaintiffs seek certification of the Classes in part because all offers of FTX YBAs to Plaintiffs and the Class Members (in which Defendants each substantially participated) were made by FTX from their principal place of business in Miami, Florida, and thus every single offer to sell an FTX YBA stems from a transactional occurrence that emanated from the State of Florida.

B. Numerosity

147. The Classes are comprised of thousands, if not millions, of consumers globally, to whom FTX offered and/or sold YBAs. Moreover, thousands, if not millions, of consumers worldwide have executed trades on the FTX Platform within the applicable limitations period. Membership in the Classes are thus so numerous that joinder of all members is impracticable. The precise number of

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class members is currently unknown to Plaintiffs but is easily identifiable through other means, such as through FTX's corporate records or self-identification.

C. Commonality/Predominance

148. This action involves common questions of law and fact, which predominate over any questions affecting individual class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether the YBAs were unregistered securities under federal or Florida law;
- (b) whether Defendants' participation and/or actions in FTX's offerings and sales of YBAs violate the provisions of the Securities Act and Florida securities law.
- (c) the type and measure of damages suffered by Plaintiffs and the Class.
- (a) whether Defendants' practices violate the FDUTPA;
- (b) whether Plaintiffs and Class members have sustained monetary loss and the proper measure of that loss;
- (c) whether Plaintiffs and Class members are entitled to injunctive relief;
- (d) whether Plaintiffs and Class members are entitled to declaratory relief; and
- (e) whether Plaintiffs and Class members are entitled to consequential damages, punitive damages, statutory damages, disgorgement, and/or other legal or equitable appropriate remedies as a result of Defendants' conduct.

D. Typicality

149. Plaintiffs' claims are typical of the claims of the members of the Classes because all members were injured through the uniform misconduct described above, namely that Plaintiffs and all class members were offered and/or sold FTX's YBAs because of Defendants' actions and/or participation in the offering and sale of these unregistered securities, and Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all such members. Further, there are no defenses available to any Defendant that are unique to Plaintiffs.

E. Adequacy of Representation

150. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Classes. Plaintiffs anticipate no difficulty in the management of this litigation as a class action. To prosecute this case, Plaintiffs have chosen the undersigned law firms, which have the financial and

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legal resources to meet the substantial costs and legal issues associated with this type of consumer class litigation.

F. Requirements of Fed. R. Civ. P. 23(b)(3)

151. The questions of law or fact common to Plaintiffs' and each Class member's claims predominate over any questions of law or fact affecting only individual members of the Classes. All claims by Plaintiffs and the unnamed members of the Classes are based on the common course of conduct by Defendants (1) in marketing, offering, and/or selling the YBAs, which are unregistered securities, and/or (2) in receiving secret undisclosed compensation for their promotion of the Deceptive FTX Platform.

152. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

153. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the Classes as is in the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

154. A class action is superior to individual actions for the proposed Classes, in part because of the non-exhaustive factors listed below:

- (a) Joinder of all Class members would create extreme hardship and inconvenience for the affected customers as they reside nationwide and throughout the state;
- (b) Individual claims by Class members are impracticable because the costs to pursue individual claims exceed the value of what any one Class member has at stake. As a result, individual Class members have no interest in prosecuting and controlling separate actions;
- (c) There are no known individual Class members who are interested in individually controlling the prosecution of separate actions;
- (d) The interests of justice will be well served by resolving the common disputes of potential Class members in one forum;
- (e) Individual suits would not be cost effective or economically maintainable as individual actions; and
- (f) The action is manageable as a class action.

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H. Requirements of Fed. R. Civ. P. 23(b)(2)

155. Defendants have acted and refused to act on grounds generally applicable to the Classes by engaging in a common course of conduct of aiding and abetting the offering and/or selling the YBAs, which are unregistered securities, thereby making appropriate final injunctive relief or declaratory relief with respect to the classes as a whole.

156. Defendants have acted and refused to act on grounds generally applicable to the Classes by engaging in a common course of conduct of uniformly identical and uniform misrepresentations and omissions in receiving secret undisclosed compensation for their promotion of the Deceptive FTX Platform, thereby making appropriate final injunctive relief or declaratory relief with respect to the classes as a whole.

I. Requirements of Fed. R. Civ. P. 23(c)(4)

157. As it is clear that one of the predominant issues regarding Defendants' liability is whether the YBAs FTX offered and/or sold are unregistered securities, utilizing Rule 23(c)(4) to certify the Class for a class wide adjudication on this issue would materially advance the disposition of the litigation as a whole.

158. As it is clear that another predominant issue regarding Defendants' liability is whether they have violated the consumer protection and securities laws of Florida in making identical and uniform misrepresentations and omissions regarding the functionality of the Deceptive FTX Platform, and/or in receiving secret undisclosed compensation for their promotion of the Deceptive FTX Platform, utilizing Rule 23(c)(4) to certify the Classes for a class wide adjudication on this issue would materially advance the disposition of the litigation as a whole.

J. Nature of Notice to the Proposed Class.

159. The names and addresses of all Class Members are contained in the business records maintained by FTX and are readily available to FTX. The Class Members are readily and objectively identifiable. Plaintiffs contemplate that notice will be provided to Class Members by e-mail, mail, and published notice.

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COUNT ONE

**Violations of the Florida Statute Section 517.07,
The Florida Securities and Investor Protection Act
(Plaintiffs Individually and on behalf of the Classes)**

160. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–159 above, as if fully set forth herein.

161. Section 517.07(1), Fla. Stat., provides that it is unlawful and a violation for any person to sell or offer to sell a security within the State of Florida unless the security is exempt under Fla. Stat. § 517.051, is sold in a transaction exempt under Fla. Stat. § 517.061, is a federally covered security, or is registered pursuant to Ch. 517, Fla. Stat.

162. Section 517.211 extends liability to any “director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security.”

163. The YBA is a security pursuant to Fla. Stat. § 517.021(22)(a).

164. The YBAs sold and offered for sale to Plaintiff and Class members were not:

- a. exempt from registration under Fla. Stat. § 517.051;
- b. a federal covered security;
- c. registered with the Office of Financial Regulations (OFR); or
- d. sold in a transaction exempt under Fla. Stat. § 517.061.

165. The FTX Entities sold and offered to sell the unregistered YBAs to Plaintiffs and the members of the Class.

166. Defendants are directors, officers, partners and/or agents of the FTX Entities pursuant to Fla. Stat. § 517.211.

167. The FTX Entities, with Defendants’ material assistance, offered and sold the unregistered YBAs to Plaintiffs and the members of the Class. As a result of this assistance, Defendants violated Fla. Stat. § 517.07 et seq. and Plaintiffs and members of the Class sustained damages as herein described.

COUNT TWO

For Violations of the Florida Deceptive and Unfair Trade Practices Act,

§ 501.201, Florida Statutes, *et seq.*

(Plaintiffs Individually and on behalf of the Classes)

168. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–159 above, as if fully set forth herein.

169. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, section 501.201, Fla. Stat., *et seq.* (“FDUTPA”). The stated purpose of the FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202(2), Fla. Stat.

170. Plaintiffs and Class members are consumers as defined by section 501.203, Fla. Stat. Defendants are engaged in trade or commerce within the meaning of the FDUTPA.

171. Florida Statute section 501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

172. Defendants’ unfair and deceptive practices as described herein are objectively likely to mislead – and have misled – consumers acting reasonably in the circumstances.

173. Defendants have violated the FDUTPA by engaging in the unfair and deceptive practices as described herein, which offend public policies and are immoral, unethical, unscrupulous and injurious to consumers.

174. Plaintiffs and consumers in the Classes have been aggrieved by Defendants’ unfair and deceptive practices and acts of false advertising by paying into the Ponzi scheme that was the Deceptive FTX Platform and in the amount of their lost investments.

175. The harm suffered by Plaintiffs and consumers in the Classes was directly and proximately caused by the deceptive and unfair practices of Defendants, as more fully described herein.

176. Pursuant to sections 501.211(2) and 501.2105, Fla. Stat., Plaintiffs and consumers in the Classes make claims for actual damages, attorneys’ fees and costs.

177. Defendants still utilize many of the deceptive acts and practices described above. Plaintiffs and the other members of the Classes have suffered and will continue to suffer irreparable

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harm if Defendants continue to engage in such deceptive, unfair, and unreasonable practices. Section 501.211(1) entitles Plaintiffs and the Classes to obtain both declaratory or injunctive relief to put an end to Defendants' unfair and deceptive scheme.

COUNT THREE

Civil Conspiracy

(Plaintiffs Individually and on behalf of the Classes)

178. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–159 above, as if fully set forth herein.

179. The FTX Entities and Defendants made numerous misrepresentations and omissions to Plaintiffs and Class Members about the Deceptive FTX Platform in order to induce confidence and to drive consumers to invest in what was ultimately a Ponzi scheme, misleading customers and prospective customers with the false impression that any cryptocurrency assets held on the Deceptive FTX Platform were safe and were not being invested in unregistered securities.

180. The FTX Entities entered into one or more agreements with Defendants with the purpose of making these misrepresentations and/or omissions to induce Plaintiff and consumers to invest in the YBAs and/or use the Deceptive FTX Platform.

181. Defendants engaged in unlawful acts with the FTX Entities, namely, the misrepresentations and omissions made to Plaintiffs and the Classes and the sale of unregistered securities.

182. Defendants' conspiracy substantially assisted or encouraged the wrongdoing conducted by the FTX Entities; further, Defendants had knowledge of such fraud and/or wrongdoing, because of their experience and relationship with the FTX Entities, as described above and as such, knew that the representations made to Plaintiffs were deceitful and fraudulent.

183. Defendants' conspiracy with the FTX Entities to commit fraud caused damages to Plaintiffs and the Classes in the amount of their lost investments.

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COUNT FOUR

Declaratory Judgment

(Declaratory Judgment Act, Florida Statutes §§ 86.011 *et seq.*)

(Plaintiffs Individually and on behalf of the Classes)

184. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1–159 as if fully set forth herein.

185. This Count is asserted against Defendants under Florida Statutes §§ 86.011, *et seq.*

186. There is a bona fide, actual, present and practical need for the declaratory relief requested herein; the declaratory relief prayed for herein deal with a present, ascertained or ascertainable state of facts and a present controversy as to a state of facts; contractual and statutory duties and rights that are dependent upon the facts and the law applicable to the facts; the parties have an actual, present, adverse and antagonistic interest in the subject matter; and the antagonistic and adverse interests are all before the Court by proper process for final resolution.

187. Plaintiffs and the members of the Classes have an obvious and significant interest in this lawsuit.

188. Plaintiffs and members of the Classes purchased YBAs, based in part on justifiable reliance on the Defendants’ misrepresentations and omissions regarding the Deceptive FTX Platform as further described hereinabove.

189. If the true facts had been known, including but not limited to that the YBAs are unregistered securities, the Deceptive FTX Platform does not work as represented, and Defendants were paid exorbitant sums of money to peddle Voyager to the nation, Plaintiffs and the Classes would not have purchased YBAs in the first place.

190. Thus, there is a justiciable controversy over whether the YBAs were sold illegally, and whether the Defendants illegally solicited their purchases from Plaintiff and the Class.

191. Plaintiff and the Class seek an order declaring that the YBAs were securities required to be registered with the SEC and state regulatory authorities, that the Deceptive FTX Platform did not work as represented, and Defendants were paid exorbitant sums of money to peddle FTX to the nation.

Gregg Podalsky, et al. v. Samuel Bankman-Fried, et al.
Amended Class Action Complaint and Demand for Jury Trial

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment on behalf of themselves and the Classes:

- a. Certifying the Class as requested herein;
- b. Awarding actual, direct and compensatory damages;
- c. Awarding restitution and disgorgement of revenues if warranted;
- d. Awarding declaratory relief as permitted by law or equity, including declaring the Defendants' practices as set forth herein to be unlawful;
- e. Awarding injunctive relief as permitted by law or equity, including enjoining the Defendants from continuing those unlawful practices as set forth herein, and directing the Defendants to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;
- f. Awarding statutory and multiple damages, as appropriate;
- g. Awarding attorneys' fees and costs; and
- h. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as to all claims so triable.

Gregg Podalsky, et al. v. Samuel Bankman-Fried, et al.
Amended Class Action Complaint and Demand for Jury Trial

Dated: December 8, 2022

Respectfully submitted,

By: /s/ Adam Moskowitz

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David Boies

(*Pro Hac Vice* Application Forthcoming)

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Florida Bar No. 145215

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Co-Counsel for Plaintiff and the Class

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Norris et al v. Brady et al

1:23CV20439 (Approx. 13 pages)

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This docket is current through 02/10/2023

Today's Date: 2/10/2023
Source: U.S. District Court, Southern District of Florida (Miami)

Court:	U.S. District Court, Southern District of Florida (Miami)
Case Title:	Norris et al v. Brady et al
Case:	1:23-CV-20439
Judge:	Chief Judge Cecilia M. Altonaga
Date Filed:	02/03/2023
Other Dockets:	Case in other court: 11th Judicial Circuit, 22-022900-CA-01
Case Status:	MD

CASE INFORMATION	
Case Number:	1:23CV20439
Jury Demand:	Plaintiff
Demand:	\$30,000,000
Nature of Suit:	Other Statutes: Other Statutory Actions (890)
Jurisdiction:	Federal Question
Cause:	28 USC 1441 Notice of Removal-Declaratory Judgment

PARTICIPANT INFORMATION	Expand All
-------------------------	------------

Michael Norris

Brandon Rowan

Michael Livieratos

Shengyun Huang

Vijeth Shetty

Bo Yang

Thomas Brady

Kevin O'Leary

David Ortiz

CALENDAR INFORMATION

[View Calendar Information](#)

DOCKET PROCEEDINGS (27)

Entry #:	Date:	Description:	
27	02/10/2023	MOTION for Extension of Time --Defendants' Motion to Defer or Extend Deadlines set by Orders (ECF Nos. 6 & 7) re 7 Order Requiring Joint Scheduling Report, 6 Status Report Order by Thomas Brady, Kevin O'Leary, David Ortiz. Responses due by 2/24/2023 (Carver, Christopher) (Entered: 02/10/2023)	View Add to request
26	02/08/2023	ORDER granting 25 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Attorney Andrew B. Brettler. Signed by	View Add to request

		Chief Judge Cecilia M. Altonaga on 2/8/2023. See attached document for full details. (ps1) (Entered: 02/08/2023)	
25	02/07/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Andrew B. Brettler. Filing Fee \$ 200.00 Receipt # AFLSDC-16304809 by Kevin O'Leary. Responses due by 2/21/2023 (Attachments: # 1 Certification of Andrew B. Brettler, # 2 Text of Proposed Order)(Neiman, Jeffrey) (Entered: 02/07/2023)	View Add to request
24	02/06/2023	ORDER that Plaintiff, Vijeth Shetty's Motion for Partial Summary Judgment [ECF No. 1-4] and Defendants Motion to Stay [ECF No. 4-1] are DENIED without prejudice. Signed by Chief Judge Cecilia M. Altonaga on 2/6/2023. See attached document for full details. (ps1) (Entered: 02/06/2023)	View Add to request
23	02/06/2023	ORDER that Defendants shall submit a single combined response or separate answers to the Amended Complaint [ECF No. 1-2] within the time allowed for Defendants to respond. Signed by Chief Judge Cecilia M. Altonaga on 2/6/2023. See attached document for full details. (ps1) (Entered: 02/06/2023)	View Add to request
22	02/06/2023	MOTION to Remand to State Court by Shengyun Huang, Michael Livieratos, Michael Norris, Brandon Rowan, Vijeth Shetty, Bo Yang. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Moskowitz, Adam) (Entered: 02/06/2023)	View Add to request
21	02/06/2023	PAPERLESS ORDER granting 14 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Chief Judge Cecilia M. Altonaga (CMA) (Entered: 02/06/2023)	Send Runner to Court
20	02/06/2023	PAPERLESS ORDER granting 13 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Chief Judge Cecilia M. Altonaga (CMA) (Entered: 02/06/2023)	Send Runner to Court
19	02/06/2023	PAPERLESS ORDER granting 12 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Chief Judge Cecilia M. Altonaga (CMA) (Entered: 02/06/2023)	Send Runner to Court
18	02/06/2023	PAPERLESS ORDER granting 11 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Chief Judge Cecilia M. Altonaga (CMA) (Entered: 02/06/2023)	Send Runner to Court

17	02/06/2023	PAPERLESS ORDER granting 10 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Chief Judge Cecilia M. Altonaga (CMA) (Entered: 02/06/2023)	Send Runner to Court
16	02/06/2023	PAPERLESS ORDER granting 9 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Chief Judge Cecilia M. Altonaga (CMA) (Entered: 02/06/2023)	Send Runner to Court
15	02/06/2023	PAPERLESS ORDER granting 8 Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Chief Judge Cecilia M. Altonaga (CMA) (Entered: 02/06/2023)	Send Runner to Court
14	02/03/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Michele D. Johnson. Filing Fee \$ 200.00 Receipt # AFLSDC-16297599 by Thomas Brady. Responses due by 2/17/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 02/03/2023)	View Add to request
13	02/03/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Brittany M.J. Record. Filing Fee \$ 200.00 Receipt # BFLSDC-16297534 by Thomas Brady. Responses due by 2/17/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 02/03/2023)	View Add to request
12	02/03/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Marvin Putnam. Filing Fee \$ 200.00 Receipt # AFLSDC-16297516 by Thomas Brady. Responses due by 2/17/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 02/03/2023)	View Add to request
11	02/03/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Jessica Stebbins Bina. Filing Fee \$ 200.00 Receipt # AFLSDC-16297492 by Thomas Brady. Responses due by 2/17/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 02/03/2023)	View Add to request

10	02/03/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Elizabeth A. Greenman. Filing Fee \$ 200.00 Receipt # AFLSDC-16297333 by Thomas Brady. Responses due by 2/17/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 02/03/2023)	View Add to request
9	02/03/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Andrew B. Clubok. Filing Fee \$ 200.00 Receipt # AFLSDC-16297306 by Thomas Brady. Responses due by 2/17/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 02/03/2023)	View Add to request
8	02/03/2023	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Susan E. Engel. Filing Fee \$ 200.00 Receipt # AFLSDC-16297252 by Thomas Brady. Responses due by 2/17/2023 (Attachments: # 1 Exhibit Certification, # 2 Text of Proposed Order Proposed Order)(Martinez, Roberto) (Entered: 02/03/2023)	View Add to request
7	02/03/2023	Order Requiring Joint Scheduling Report and Certificates of Interested Parties Joint Scheduling Report by 2/13/2023. Signed by Chief Judge Cecilia M. Altonaga on 2/3/2023. See attached document for full details. (ps1) (Entered: 02/03/2023)	View Add to request
6	02/03/2023	ORDER Requiring a Removal Status Report by 2/13/2023. Signed by Chief Judge Cecilia M. Altonaga on 2/3/2023. See attached document for full details. (ps1) (Entered: 02/03/2023)	View Add to request
5	02/03/2023	Bar Letter re: Admissions sent to attorney David Boies, Alex Boies, Andrew Clubok, Susan E. Engel, Brittany M.J. Record, Marvin S. Putnam, Jessica Stebbins Bina, Elizabeth A. Greenman, Michele D. Johnson, Andrew B. Brettler, mailing date February 3, 2023, (pt) (Entered: 02/03/2023)	View Add to request
4	02/03/2023	NOTICE of Compliance with Local Rule 7.2 by Thomas Brady (Attachments: # 1 Exhibit A - Motion to Stay in Favor of First-Filed Federal Action) (Martinez, Roberto) (Entered: 02/03/2023)	View Add to request
3	02/03/2023	Notice of Pending, Refiled, Related or Similar Actions by Thomas Brady (Martinez, Roberto) (Entered: 02/03/2023)	View Add to request

2	02/03/2023	Clerks Notice of Judge Assignment to Chief Judge Cecilia M. Altonaga. Pursuant to 28 USC 636(c), the parties are hereby notified that the U.S. Magistrate Judge Melissa Damian is available to handle any or all proceedings in this case. If agreed, parties should complete and file the Consent form found on our website. It is not necessary to file a document indicating lack of consent. (nwn) (Entered: 02/03/2023)	<div>Send Runner to Court</div>
1	02/03/2023	NOTICE OF REMOVAL (STATE COURT COMPLAINT - Amended Complaint and Demand for Jury Trial) Filing fee \$ 402.00 receipt number AFLSDC-16294798, filed by Thomas Brady, David Ortiz, Kevin O'Leary. (Attachments: # 1 Civil Cover Sheet, # 2 Amended State Court Complaint, # 3 Exhibit Service of Process, # 4 Exhibit Plaintiffs' Motion for Partial Summary Judgment)(Martinez, Roberto) No Answer/Motion To Dismiss Filed. Modified Text/Attachment Description on 2/3/2023 (nwn). (Entered: 02/03/2023)	<div>View</div> <div>Add to request</div>

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IN THE CIRCUIT COURT IN THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

MICHAEL NORRIS, et al.

Plaintiffs,

v.

THOMAS BRADY et al.

Defendants.

COMPLEX BUSINESS DIVISION

CASE NO. 2022-022900-CA-01

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

“Then there’s things that have happened with Voyager *and with FTX now*—that’s somebody running a company that’s *just dumb as fu** greedy*. So, what does Sam Bankman do? He just, give me more, give me more, give me more, so I’m gonna borrow money, loan it to my affiliated company, and hope and pretend to myself that the FTT tokens that are in there on my balance sheet are gonna sustain their value.”¹

– Mark Cuban, Nov. 12, 2022



– Defendant Sam Bankman Fried (Former CEO, FTX)

¹ <https://www.yahoo.com/video/ftx-twitter-chaos-embarrassing-athletes-195343800.html> (accessed December 5, 2022).

Michael Norris, et al. v. Thomas Brady, et al.
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Plaintiffs, (1) Michael Norris, (2) Brandon Rowan, (3) Michael Livieratos, (4) Shengyun Huang, (5) Vijeth Shetty, and (6) Bo Yang (collectively, “Plaintiffs”, that all invested millions of dollars in FTX)², sue Defendants, all Florida residents, Tom Brady, Kevin O’Leary and David Ortiz (collectively, “the Florida Defendants”), who each promoted, assisted in, and actively participated in, FTX Trading LTD d/b/a FTX’s (“FTX Trading”) and West Realm Shires Services Inc. d/b/a FTX US’s (“FTX US”) (collectively, the “FTX Entities”), offer and sale of unregistered securities, in the form of identical Yield-Bearing Accounts (“YBAs”), seeking to recover damages, declaratory and/or injunctive relief stemming from the offer and sale of FTX Trading’s and FTX US’s yield-bearing cryptocurrency accounts.

INTRODUCTION

1. Most experts agree that the FTX Collapse Disaster is the largest and greatest financial fraud in history. The new CEO of FTX, who helped wind down the prior Enron fraud, admitted that what he quickly uncovered in FTX to date, is worse than in the Enron Fraud. Almost \$14 billion dollars is unaccounted for, and certainly billions of dollars have been stolen from investors across the globe. FTX will be involved in federal bankruptcy proceedings for many years to come and there is no guarantee that the victims will be able to see any recovery from those processes.

2. This state complaint is brought by a sampling of those individual injured investors, against only the Florida Defendants, who directly profited from promoting the sale of unregistered securities, and who all admittedly never complied with any of the FTC’s long-established federal regulations, requiring full disclosure for all paid endorsements, especially for touting investment products and, in fact, specifically for promoting cryptocurrency platforms.

3. One common and identical question in this case, and in many other cryptocurrency litigation matters, is simply whether the SEC was initially correct, in finding that all of these YBAs are (or are not) the sale of “unregistered securities.” Based upon this Court’s great prior experience in securities litigation, that question can and should be decided quickly for all of the parties, so that all cryptocurrency litigation can be quickly advanced and the victims (and alleged co-conspirators) have a clear and expedited path.

² Each Named Plaintiff filed their own individual state court complaint before this Court. In an effort to organize and coordinate all of this litigation, Undersigned Counsel joined forces and agreed to file one Consolidated Amended Complaint. None of the Defendants were ever served with any of the original complaints and in fact, counsel for some of the defendants were told about filing of this Consolidated Complaint and agreed to this organized procedure.

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4. This question was already practically answered in the affirmative through various regulatory statements, guidance, and actions issued by the Securities and Exchange Commission and other regulatory entities. For example, the SEC could not have more clearly warned the FTX Brand Ambassadors than it did on November 1, 2017, in the “SEC Statement Urging Caution Around Celebrity Backed ICOs,”³

In the SEC’s Report of Investigation concerning The DAO,⁴ the Commission warned that virtual tokens or coins sold in ICOs may be securities, and those who offer and sell securities in the United States must comply with the federal securities laws. Any celebrity or other individual who promotes a virtual token or coin that is a security must disclose the nature, scope, and amount of compensation received in exchange for the promotion. **A failure to disclose this information is a violation of the anti-touting provisions of the federal securities laws. Persons making these endorsements may also be liable** for potential violations of the anti-fraud provisions of the federal securities laws, **for participating in an unregistered offer and sale of securities**, and for acting as unregistered brokers. The SEC will continue to focus on these types of promotions to protect investors and to ensure compliance with the securities laws.

5. Not only that, but the SEC and state securities regulators have also targeted cryptocurrency brokers and exchanges just like FTX for offering almost this exact same type of interest-bearing account, finding that exchanges such as BlockFi,⁵ Voyager,⁶ and Celsius⁷ all offered these same accounts as unregistered securities.

6. These individual Plaintiffs seek a Declaratory Ruling by this Court, on two specific and very narrow issues, whose focus is solely objective: (1) should the FTX YBA’s, that were identical and provided to every FTX investor, be considered “securities”, under the applicable *Howey* test, and (2) whether the Florida Defendants violated state consumer laws by failing to abide by any of the FTC long established rules and regulations, specifically on what is required for a celebrity endorsement of

³ <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos> (accessed December 5, 2022).

⁴ <https://www.sec.gov/litigation/investreport/34-81207.pdf> (accessed December 5, 2022)

⁵ <https://www.sec.gov/news/press-release/2022-26> (accessed December 5, 2022).

⁶ <https://coingeek.com/6-us-regulators-crackdown-on-voyager-digital-over-interest-bearing-accounts/> (accessed December 5, 2022).

⁷

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjvNvg27j7AhWfRTABHfwzDe4QFnoECAsQAQ&url=https%3A%2F%2Fwww.nj.gov%2Ffoag%2Fnewsreleases21%2FCelsius-Order-9.17.21.pdf&usq=AOvVaw0Zd94fuhFSsOoGKM-vQ3YI> (accessed December 5, 2022).

Michael Norris, et al. v. Thomas Brady, et al.
Amended Complaint and Demand for Jury Trial

crypto currency. The answer to just these two, narrow questions will greatly advance litigation across the globe relating to the FTX Disaster, help determine who may be liable for aiding and abetting this massive fraud, one way or another and may also help advance (for either side) all of the other pending massive litigation, against other cryptocurrency platforms (such as Voyager) that offered similar YBAs.

7. It is important to note that Claims in this case provide for ***strict liability***, and therefore if these YBAs are found to be “securities,” all of the FTX “brand ambassadors” may not have any defense to the claims in this action. The “caveat emptor” defense that Defendants and others are pushing in the press will have no application. Plaintiffs intend to seek an expedited ruling, by way of partial summary judgment or otherwise, that these YBAs legally qualify as “securities,” 20 days after filing this complaint or sooner as allowed by applicable law.

8. It must be repeated that this is not a case where Plaintiffs made a “risky” investment in any stock or cryptocurrency, or that they lost money speculating on various cryptocurrency projects. Plaintiffs’ claim arises simply from the purchase of a YBA, an interest account with FTX that every customer who signed up for the FTX app received by default, and which, as explained below, was guaranteed to generate attractive, interest returns on their significant holdings in the account, regardless of whether those assets were held as USD or cryptocurrency, and regardless of whether any trades were ever made with the assets held in the YBA. In other words, the YBA was portrayed to be better (with more interest) and safer than a bank account (because they had many billions in reserve), something that was “very safe” and “protected.” That is the specific narrative that Defendants pushed in promoting the offer and sale of these YBAs, which are unregistered securities. For that, the Florida Defendants are liable for Plaintiffs’ losses, jointly and severally and to the same extent as if they were themselves the FTX Entities.

9. Literally overnight, Plaintiffs’ assets held in their YBAs on the Deceptive FTX Platform were robbed from them as FTX imploded and former-CEO, Sam Bankman-Fried, filed a Chapter 11 bankruptcy petition in Delaware on an emergency basis. This happened because, as explained by the new CEO of the failed FTX Entities:

I have over 40 years of legal and restructuring experience. I have been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate failures in history. I have supervised situations involving allegations of criminal activity and malfeasance (Enron). I have supervised situations involving novel financial structures (Enron and Residential Capital) and cross-border asset recovery and maximization (Nortel and Overseas Shipholding). Nearly every situation in which I have been involved has been characterized by defects of some sort in internal controls, regulatory compliance, human resources and systems integrity.

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Never in my career have I seen such a complete failure of corporate controls and such a **complete absence of trustworthy financial information** as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, **unsophisticated** and **potentially compromised** individuals, **this situation is unprecedented**.

See In re: FTX Trading Ltd, et al., No. 22-11068 (JTD), ECF No. 24, ¶¶ 4–5 (D. Del. Nov. 17, 2022) (emphasis added).

10. This should not have happened. Not to any of these Plaintiffs, and not to the thousands of other FTX customers who now find themselves in the same predicament.

11. The Cryptocurrency National Disaster is growing by the billions almost every day. More crypto companies are filing new federal bankruptcy petitions each day, all running for protection from the billions of dollars of losses they directly caused to thousands of investors here in Florida and across the country. This is by far the largest securities national disaster, greatly surpassing the Madoff Ponzi Scheme, and could very likely become a complex national litigation disaster, similar to how the hundreds of thousands of asbestos cases swamped all courts across the country. Unless a workable, coordinated, and organized structure is established now, at the very onset of these proceedings, here in Miami, which served as the epicenter for the crypto fraud, the FTX victims will continue to suffer and the only people to benefit will be the professionals in the bankruptcy and civil courts.

12. One common and identical question in this case, and in many other cryptocurrency litigation matters, is simply whether the SEC was initially correct, in finding that all of these YBAs are (or are not) the sale of “unregistered securities.” Based upon this Court’s great prior experience in securities litigation, that question can and should be decided quickly for all of the parties, so that all cryptocurrency litigation can be quickly advanced and the victims (and alleged co-conspirators) have a clear and expedited path.

13. The Deceptive and failed FTX Platform emanated from Miami, Florida (FTX moved its Global Headquarters from Bahamas to Miami) and was based upon false representations and deceptive conduct. Although many incriminating FTX emails and texts have already been destroyed, we located them and they evidence how FTX’s fraudulent scheme was designed to take advantage of unsophisticated investors from across the country, who utilize mobile apps to make their investments. As a result, American consumers collectively sustained at least over \$11 billion dollars in damages. FTX organized and emanated its fraudulent plan from its worldwide headquarters located here in Miami, Florida. Miami became the “hot spot” for crypto companies, hosting the most investments in

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crypto startups as well as the annual Bitcoin Miami 2022 Global Forum. Several crypto companies, including crypto exchange Blockchain.com, Ripple and FTX.US, moved their headquarters to Miami. Others, including fellow exchange eToro, expanded their U.S. presence with offices in Miami. FTX was already very familiar with Miami, signing a deal worth more than \$135 million dollars for the naming rights of the waterfront arena, where 3-time NBA Champions the Miami Heat play.

FACTUAL BACKGROUND

14. On December 24, 2021, Plaintiffs’ counsel brought the first (and only) putative nationwide class action complaint against the now-defunct cryptocurrency trading app, Voyager, styled *Mark Cassidy v. Voyager Digital Ltd., et al.*, Case No. 21-24441-CIV-ALTONAGA/Torres (the “*Cassidy* Action”), alleging that the platform owned and operated by Voyager Digital Ltd. (“Voyager”) and Voyager Digital LLC (“VDL”) was an unregulated and unsustainable fraud. In the *Cassidy* Action, Plaintiffs also alleged that Defendant Ehrlich, Voyager’s CEO, teamed up with Defendants Cuban and the Dallas Mavericks to promote Voyager, by making false representations and employing other means of deception. As a result, the Voyager plaintiff and Voyager class members, all sustained losses in excess of \$5 billion.

15. The allegations in the *Cassidy* complaint—and specifically Mark Cuban’s role in promoting Voyager—received national attention. *See* <https://www.jdsupra.com/legalnews/new-lawsuits-target-cryptocurrency-9604406/> (summarizing the allegations and explaining that “Mark Cuban, owner of the NBA’s Dallas Mavericks, is a major stakeholder in Voyager. The complaint alleges that he made comments at a press conference in which he specifically targeted unsophisticated investors ‘with false and misleading promises of reaping large profits in the cryptocurrency market.’”); <https://www.law.com/dailybusinessreview/2021/12/29/mark-cuban-linked-crypto-platform-hit-with-florida-nationwide-class-action-lawsuit-in-miami-federal-court/?slreturn=20220701214901> (same, in the *Daily Business Review*).

16. After the *Cassidy* Complaint was filed, the following important actions took place:

- (a) the United States Securities and Exchange Commission (SEC) began an enforcement review focused on whether Voyager’s Earn Program Accounts (“EPAs”) constitute unregistered securities;
- (b) seven state Attorneys General (New Jersey, Alabama, Kentucky, Oklahoma, Texas, Vermont and Washington) took specific action finding that Voyager was violating their state laws, including issuing “cease and desist” letters to Voyager, finding that the EPA was an

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unregistered security, prohibiting the crypto-asset broker-dealer from selling any more unregistered securities (finding that Voyager used these EPAs to raise millions of dollars in revenue worldwide as of March 1, 2022; and

- (c) on March 29, 2022, the State of New Jersey Bureau of Securities entered a Cease and Desist Order against Voyager, finding that the EPA was not exempt from registration under the law, and instead that it must be registered—and as a result, Voyager’s stock price tanked by 25% in a day and is down over 80% for the year.⁸

17. On July 5, 2022, Voyager Digital Holdings, Inc. and two affiliated debtors (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code. Voyager’s bankruptcy cases (the “Voyager Bankruptcy Cases”) are jointly administered under Case No. 22-10943 before the Honorable Michael E. Wiles in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

18. On September 28, 2022, Voyager filed a motion in the Voyager Bankruptcy Cases seeking authority to enter into an asset purchase agreement with West Realm Shires Inc., d/b/a FTX US whereby Voyager will sell substantially all of its assets for a purchase price of approximately \$1.422 billion, which includes (i) the value of cryptocurrency on the Voyager platform as of a date to be determined, which, as of September 26, 2022, is estimated to be \$1.311 billion, plus (ii) additional consideration which is estimated to provide at least approximately \$111 million of incremental value to the Debtors’ estates.

19. Everyone involved in the Voyager Bankruptcy Cases thought that the FTX Entities were the *deus ex machina* come to save the day by bailing out Voyager and paying back at least some of the losses the Voyager customers sustained.

20. Instead, as explained below, the FTX Entities imploded, their over \$30 billion in value evaporated almost overnight, and the FTX Entities found themselves filing their own emergency Chapter 11 bankruptcy petition in Delaware. The Deceptive FTX Platform maintained by the FTX Entities was truly a house of cards, a Ponzi scheme where the FTX Entities shuffled customer funds between their opaque affiliated entities, using new investor funds obtained through investments in the YBAs and loans to pay interest to the old ones and to attempt to maintain the appearance of liquidity.

⁸ <https://seekingalpha.com/article/4498956-voyager-digital-plunged-25-percent-heres-why> (accessed October 28, 2022); <https://seekingalpha.com/article/4503716-voyager-digital-buy-dip-during-crypto-crash> (accessed December 5, 2022).

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21. Part of the scheme employed by the FTX Entities involved utilizing some of the biggest names in sports and entertainment—like these Defendants—to raise funds and drive American consumers to invest in the YBAs, which were offered and sold largely from the FTX Entities’ domestic base of operations here in Miami, Florida, pouring billions of dollars into the Deceptive FTX Platform to keep the whole scheme afloat.

22. Importantly, although Defendants disclosed their partnerships with the FTX Entities, they have never disclosed the nature, scope, and amount of compensation they personally received in exchange for the promotion of the Deceptive FTX Platform, which the SEC has explained that a failure to disclose this information would be a violation of the anti-touting provisions of the federal securities laws.⁹ Moreover, none of these defendants performed any due diligence prior to marketing these FTX products to the public.

23. The SEC took action against boxing champ Floyd Mayweather and music producer DJ Khaled after they were paid by cryptocurrency issuers to tweet promotional statements about investing in Initial Coin Offerings (ICOs), ordering them both to pay disgorgement, penalties and interest for promoting investments in ICOs, including one from cryptocurrency issuer Centra Tech, Inc, for a combined total of \$767,500 because they failed to disclose that their promotional efforts on Twitter were paid endorsements.¹⁰

24. Other celebrities similarly accused and prosecuted for failing to disclose their paid endorsements include Kim Kardashian and basketball player Paul Pierce.¹¹ According to the Federal Trade Commission, cryptocurrency scams have increased more than ten-fold year-over-year with consumers losing more than \$80 million since October 2020, due in large part to the use of such celebrity endorsements.¹²

25. As explained more fully in this Complaint, Defendants’ misrepresentations and omissions made and broadcast around the country through the television and internet render them

⁹ <https://www.ubergizmo.com/2017/11/sec-celebrities-disclose-payment-cryptocurrency-endorsements/#:~:text=It%20has%20issued%20a%20statement%20warning%20celebrities%20that,without%20disclosing%20that%20they%E2%80%99ve%20been%20paid%20for%20it> (accessed December 5, 2022).

¹⁰ <https://news.bloomberglaw.com/us-law-week/insights-celebrity-endorsements-and-cryptocurrency-a-cautionary-tale> (accessed December 5, 2022).

¹¹ <https://blockbulletin.com/news/altcoins/kim-kardashian-among-other-celebrities-sued-for-promoting-cryptocurrencies/> (accessed December 5, 2022).

¹² <https://florida.foolproofme.org/articles/770-celebrity-cryptocurrency-scam> (accessed December 5, 2022).

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liable to Plaintiffs and all other FTX customers for soliciting their purchases of the unregistered YBAs. *Wildes v. Bitconnect Int'l PLC*, No. 20-11675 (11th Cir. Feb. 18, 2022) (holding that promoters of cryptocurrency through online videos could be liable for soliciting the purchase of unregistered securities through mass communication, and no “personal solicitation” was necessary for solicitation to be actionable).

26. This action seeks to hold Defendants responsible for Plaintiffs’ damages and for the Court to decide the legal question of whether: (1) the YBA offered and sold to Plaintiffs—the same one offered and sold to millions of other Americans for collectively billions of dollars—constituted an unregistered security, and whether (2) the FTX Florida Defendants (the FTX Brand Ambassadors) violated the Florida consumer protection statute, by violating the long standing FTC (and other) federal and state regulations, on the requirements for touting investment products through celebrity endorsements.

PARTIES

27. Plaintiff Michael Norris is the Plaintiff that filed the original Complaint before this Court. He is a citizen and resident of the State of New Jersey. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Norris purchased an unregistered security from FTX in the form of a YBA and funded the account with sufficient assets to earn interest on his holdings. Plaintiff Norris did so after being exposed to some or all of Defendants’ misrepresentations and omissions regarding the Deceptive FTX Platform, as detailed in this complaint, and purchased the YBA and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Norris has sustained damages for which Defendants are liable.

28. Plaintiff Brandon Rowan is a citizen and resident of the State of Tennessee. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Rowan purchased an unregistered security from FTX in the form of a YBA and funded the account with sufficient assets to earn interest on his holdings. Plaintiff Rowan did so after being exposed to some or all of Defendants’ misrepresentations and omissions regarding the Deceptive FTX Platform, as detailed in this complaint, and purchased the YBA and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Rowan has sustained damages for which Defendants are liable.

29. Plaintiff Michael Livieratos is a citizen and resident of the State of Connecticut. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Livieratos purchased an unregistered security from FTX in the form of a YBA and funded the account with sufficient assets

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to earn interest on his holdings. Plaintiff Livieratos did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform, as detailed in this complaint, and purchased the YBA and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Livieratos has sustained damages for which Defendants are liable.

30. Plaintiff Shengyun Huang is a citizen and resident of the State of Virginia. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Huang purchased an unregistered security from FTX in the form of a YBA and funded the account with sufficient assets to earn interest on his holdings. Plaintiff Huang did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform, as detailed in this complaint, and purchased the YBA and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Huang has sustained damages for which Defendants are liable.

31. Plaintiff Vijeth Shetty was at all relevant times a citizen and resident of the State of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Shetty purchased an unregistered security from FTX in the form of a YBA and funded the account with sufficient assets to earn interest on his holdings. Plaintiff Shetty did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform, as detailed in this complaint, and purchased the YBA and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Shetty has sustained damages for which Defendants are liable.

32. Plaintiff Bo Yang is a citizen and resident of the State of Florida. She is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Yang purchased an unregistered security from FTX in the form of a YBA and funded the account with sufficient assets to earn interest on her holdings. Plaintiff Yang did so after being exposed to some or all of Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform, as detailed in this complaint, and purchased the YBA and/or executed trades on the Deceptive FTX Platform in reliance on those misrepresentations and omissions. As a result, Plaintiff Yang has sustained damages for which Defendants are liable.

33. Defendant Thomas Brady, NFL quarterback currently playing for the Tampa Bay Buccaneers, is a brand ambassador of FTX, and is a citizen and resident of Miami-Dade County, Florida.

34. Defendant Kevin O’Leary, “Mr. Wonderful,” a businessman, television personality appearing regularly on *Shark Tank*, and brand ambassador for FTX, is a citizen and resident of Miami Beach, Florida.

35. Defendant David Ortiz, former designated hitter and first baseman in the MLB and a brand ambassador for FTX, is a citizen and resident of the State of Florida.

JURISDICTION AND VENUE

36. This action seeks, among other things, an expedited declaratory ruling for deciding the legal question of whether the YBA offered and sold to Plaintiffs—the same, exact one offered and sold to millions of other Americans for collectively billions of dollars—constituted an unregistered security. Accordingly, this action is well within the exclusive plenary jurisdiction of the Circuit Court as the amount in controversy far exceeds \$30,000.00, exclusive of interest, costs and attorney’s fees. Moreover, assignment to the Complex Business Litigation Division is proper because the amount in controversy far exceeds \$1 million and involves complex issues.

37. This Court has personal jurisdiction against Defendants because they are all admittedly Florida residents, who also conduct business in Florida, and/or have otherwise intentionally availed themselves of the Florida consumer market through the promotion, marketing, and sale of FTX’s YBAs in Florida, which constitutes committing a tortious act within the state of Florida. Defendants have also marketed and participated and/or assisted in the sale of FTX’s unregistered securities to consumers in Florida. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants permissible under traditional notions of fair play and substantial justice.

38. Venue is proper in this District pursuant to sections 47.011 and 47.051 because Defendants reside in this District; Defendants engaged in business in this District; and a substantial part of the events or omissions giving rise to the claims at issue occurred in this District.

39. All conditions precedent to the institution and maintenance of this action have been performed, excused, waived, or have otherwise occurred.

FACTUAL ALLEGATIONS

A. Background on FTX.

40. Until seeking the protection of the Bankruptcy Court, the FTX Entities operated a multi-billion-dollar mobile application cryptocurrency investment service (the “Deceptive FTX Platform”) that placed cryptocurrency trade orders on behalf of users like Plaintiffs and offered interest bearing cryptocurrency accounts.

41. The FTX group of companies (FTX Group or FTX) was founded in 2019 and began as an exchange or marketplace for the trading of crypto assets. FTX was established by Samuel Bankman-Fried, Gary (Zixiao) Wang and Nishad Singh, with operations commencing in May 2019. FTX was purportedly established in order to build a digital asset trading platform and exchange for the purpose of a better user experience, customer protection, and innovative products. FTX built the FTX.com exchange to develop a platform robust enough for professional trading firms and intuitive enough for first-time users.

42. Prior to that, The Silicon Valley-born, MIT-educated Bankman-Fried, also known as SBF, launched his crypto trading firm, Alameda Research, in 2017,¹³ after stints in the charity world and at trading firm Jane Street.¹⁴

43. The FTX.com exchange was extremely successful since its launch. This year around \$15 billion of assets are traded daily on the platform, which now represents approximately 10% of global volume for crypto trading. The FTX team has grown to over 300 globally. Although the FTX Entities' primary international headquarters is in the Bahamas, its domestic US base of operations is located in Miami, Florida.¹⁵

44. FTX quickly became one of the most utilized avenues for nascent investors to purchase cryptocurrency. By the time FTX filed for bankruptcy protection, customers had entrusted billions of dollars to it, with estimates ranging from \$10-to-\$50 ***billion dollars***.

45. Bankman-Fried got rich off FTX and Alameda, with the two companies netting \$350 million and \$1 billion in profit, respectively, in 2020 alone, according to Bloomberg.

46. At his peak, Bankman-Fried was worth \$26 billion. At 30, he had become a major political donor, gotten celebrities like the Co-Defendants in this action to vociferously promote FTX, and secured the naming rights to the arena where the NBA's Miami Heat play.¹⁶

¹³ <https://www.businessinsider.com/ftx-crypto-king-sam-bankman-fried-rise-and-fall-2022-11> (accessed December 5, 2022).

¹⁴ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations> (accessed December 5, 2022).

¹⁵ <https://www.coindesk.com/business/2022/09/27/crypto-exchange-ftx-is-moving-its-us-headquarters-from-chicago-to-miami/> (accessed December 5, 2022).

¹⁶ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations> (accessed December 5, 2022).

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47. In early November 2022, crypto publication CoinDesk released a bombshell report that called into question just how stable Bankman-Fried’s empire really was.¹⁷

48. Bankman-Fried’s cryptocurrency empire was officially broken into two main parts: FTX (his exchange) and Alameda Research (his trading firm), both giants in their respective industries. But even though they are two separate businesses, the division breaks down in a key place: on Alameda’s balance sheet, which was full of FTX – specifically, the FTT token issued by the exchange that grants holders a discount on trading fees on its marketplace. While there is nothing per se untoward or wrong about that, it shows Bankman-Fried’s trading giant Alameda rests on a foundation largely made up of a coin that a sister company invented, not an independent asset like a fiat currency or another crypto. The situation adds to evidence that the ties between FTX and Alameda are unusually close.¹⁸

49. After obtaining this information, Changpeng “CZ” Zhao, the CEO of Binance, decided to liquidate roughly \$530 million-worth of FTT. Customers also raced to pull out, and FTX saw an estimated \$6 billion in withdrawals over the course of 72 hours, which it struggled to fulfill.¹⁹ The value of FTT plunged 32%, but rallied once again with Bankman-Fried’s surprise announcement on Tuesday, November 8th, that Binance would buy FTX, effectively bailing it out.²⁰

50. The next day, Binance announced that it was withdrawing from the deal, citing findings during due diligence, as well as reports of mishandled customer funds and the possibility of a federal investigation.²¹ The news sent FTT plunging even further — Bankman-Fried saw 94% of his net

¹⁷ <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=> (accessed December 5, 2022).

¹⁸ <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/> (accessed December 5, 2022).

¹⁹ <https://markets.businessinsider.com/news/currencies/ftx-6-billion-withdrawals-72-hours-sam-bankman-fried-binance-2022-11> (accessed December 5, 2022).

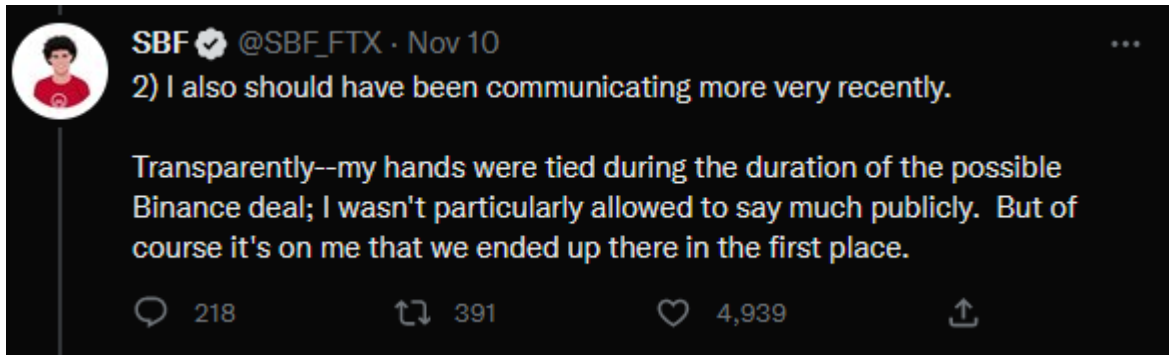
²⁰ <https://markets.businessinsider.com/news/currencies/ftx-6-billion-withdrawals-72-hours-sam-bankman-fried-binance-2022-11> (accessed December 5, 2022).

²¹ <https://markets.businessinsider.com/news/currencies/ftx-crash-sec-cftc-probes-asset-liability-shortfall-6-billion-2022-11> (accessed December 5, 2022).

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worth wiped out in a single day.²² On November 11th, unable to obtain a bailout, FTX filed for Chapter 11 bankruptcy and Bankman-Fried resigned as CEO.²³

51. Following his resignation, Bankman-Fried issued a 22-tweet-long explanation of where he believed he and the FTX Entities went wrong:²⁴



²² <https://www.businessinsider.com/ftx-ceo-crypto-binance-sam-bankman-fried-wealth-wiped-out-2022-11> (accessed December 5, 2022).

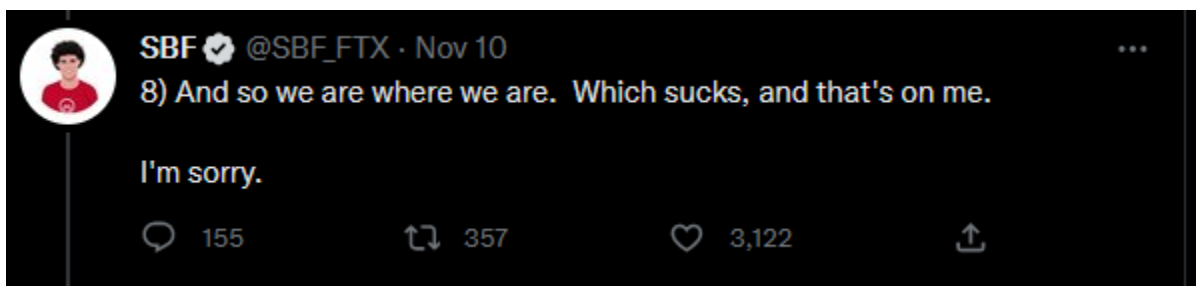
²³ <https://markets.businessinsider.com/news/currencies/ftx-bankruptcy-sam-bankman-fried-ceo-crypto-binance-alameda-markets-2022-11> (accessed December 5, 2022).

²⁴ https://twitter.com/SBF_FTX/status/1590709189370081280 (accessed December 5, 2022).

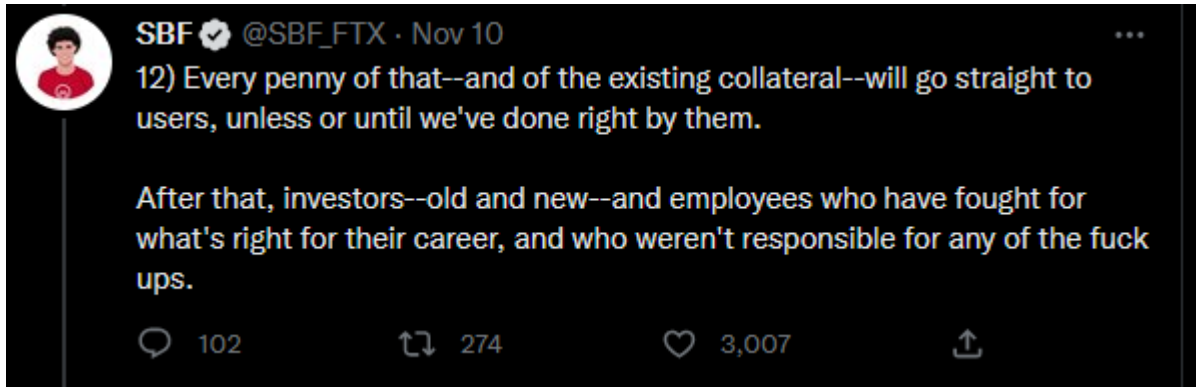
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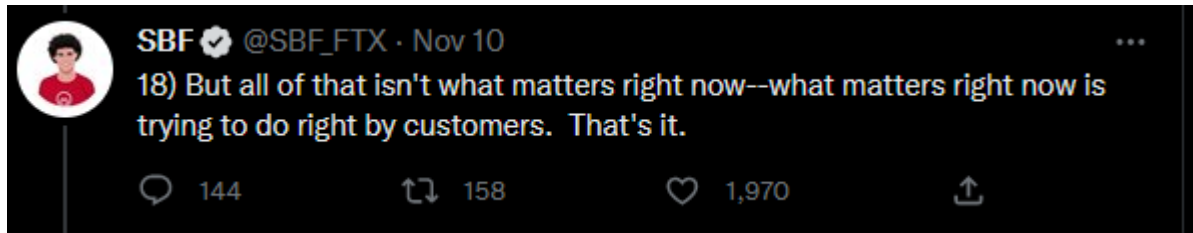
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52. According to a recent Reuters report, however, another explanation contributing to the precarious house of cards that was the Deceptive FTX Platform is that earlier this year, Bankman-Fried secretly transferred **at least \$4 billion** in customer funds from FTX to Alameda without telling anyone, after Alameda was hit with a series of losses, and that the FTX entities lent more than **half** of its **\$16 billion** in **customer funds** to Alameda in total, with more than **\$10 billion in loans outstanding**.²⁵

B. FTX’s offer and sale of YBAs, which are unregistered securities.

53. Beginning in 2019, the FTX Entities began offering interest-bearing cryptocurrency accounts to public investors. Plaintiffs and other similarly situated individuals invested in FTX’s YBAs.

54. FTX maintains that it does not offer for sale any product that constitutes a “security” under federal or state law. Under federal securities laws as construed by the United States Supreme Court in its decision *SEC v. W.J. Hovey Co.*, 328 U.S. 293 (1946) and by the SEC, an investment contract is a form of security under United States securities laws when (1) the purchaser makes an investment of money or exchanges another item of value (2) in a common enterprise (3) with the reasonable expectation of profits to be derived from the efforts of others.

55. The YBAs were “securities” as defined by the United States securities laws and as interpreted by the Supreme Court, the federal courts, and the SEC. The FTX Entities offered variable interest rewards on crypto assets held in the YBAs on the Deceptive FTX Platform, which rates were determined by the FTX Entities in their sole discretion. In order to generate revenue to fund the promised interest, the FTX Entities pooled the YBA assets to engage in lending and staking activities from which they derived revenue to pay interest on the YBAs. These activities make the YBAs a “security” under state and federal law.

²⁵ https://markets.businessinsider.com/news/currencies/ftx-crash-client-funds-alameda-binance-sbf-sec-cftc-probe-2022-11?utm_medium=ingest&utm_source=markets (accessed December 5, 2022).

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56. On October 14, 2022, Director of Enforcement of the Texas State Securities Board, Joseph Rotunda, filed a declaration in the Chapter 11 bankruptcy proceedings pending in connection with the collapse of the Voyager Digital cryptocurrency exchange, *In re: Voyager Digital Holdings, Inc., et al.*, Case No. 22-10943 (MEW), ECF No. 536 (Bankr. S.D.N.Y. Oct. 14, 2022), in which he explained how the YBAs are in fact “an offering of unregistered securities in the form of yield-bearing accounts to the residents of the United States.” *Id.*, at 6. In his declaration, the pertinent portions of which are reproduced in full for ease of reference, Rotunda explains:

I am also familiar with FTX Trading LTD (“FTX Trading”) dba FTX as described herein. As more fully explained throughout this declaration, I am aware that FTX Trading, along with West Realm Shires Services Inc. dba FTX US (“FTX US”), may be offering unregistered securities in the form of yield-bearing accounts to residents of the United States. These products appear similar to the yield-bearing depository accounts offered by Voyager Digital LTD et al., and the Enforcement Division is now investigating FTX Trading, FTX US, and their principals, including Sam Bankman-Fried.

I understand that FTX Trading is incorporated in Antigua and Barbuda and headquartered in the Bahamas. It was organized and founded in part by Mr. Bankman-Fried, and FTX Trading appears to be restricting operations in the United States. For example, domestic users accessing the webpage for FTX Trading at ftx.com are presented with a pop-up window that contains a disclaimer that reads in part as follows:

Did you mean to go to FTX US? FTX US is a US licensed cryptocurrency exchange that welcomes American users.

You’re accessing FTX from the United States. You won’t be able to use any of FTX.com’s services, though you’re welcome to look around the site.

FTX US claims to be regulated as a Money Services Business with FinCEN (No. 31000195443783) and as a money transmitter, a seller of payment instruments and in other non-securities capacities in many different states. It is not, however, registered as a money transmitter or in any other capacity with the Texas Department of Banking and it is not registered as a securities dealer with the Texas State Securities Board.

FTX US owns 75 percent or more of the outstanding equity of FTX Capital Markets (CRD No. 158816) (“FTX Capital”), a firm registered as a broker-dealer with the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority Inc., and 53 state and territorial securities regulators. FTX Capital’s registration as a dealer in Texas became effective on May 7, 2012, and the registration continues to remain in force and effect.

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FTX US maintains a website at <https://ftx.us> that contains a webpage for smartphone applications for FTX (formerly Blockfolio)²⁶ (the “FTX Trading App”) and FTX US Pro. Users appear able to click a link in this webpage to download the FTX Trading App even when they reside in the United States.

On October 14, 2022, I downloaded and installed the FTX Trading App on my smartphone. I created an account with FTX Trading through the FTX Trading App and linked the FTX account to an existing personal bank account. During the process, I provided my full first and last name and entered my residential address in Austin, Texas. I also accessed hyperlinks in the FTX Trading App that redirected to the Privacy Policy and Terms of Service. Although I was from the United States and was using the application tied to FTX Trading, the Privacy Policy and Terms of Service were from FTX US - not FTX Trading.

I thereafter used the FTX Trading App to initiate the transfer of \$50.00 from my bank account to the FTX account and then transferred .1 ETH from a 3.0 wallet to the FTX account. The transfer of funds from my bank account to the FTX account will take up to six days to complete but the transfer of ETH was processed within a few minutes.

The FTX Trading App showed that I was eligible to earn a yield on my deposits. It also explained the “Earn program is provided by FTX.US” – not FTX Trading. It also represented that “FTX Earn rewards are available for US users on a promotional basis.”

I recall the FTX Trading App’s default settings were automatically configured to enable the earning of yield. The application also contained a link for additional information about yield. I accessed the link and was redirected to a recent article published by “Blockfolio Rebecca” under help.blockfolio.com. The article began as follows:

You can now earn yield on your crypto purchases and deposits, as well as your fiat balances, in your FTX Trading App! By opting in and participating in staking your supported assets in your FTX account, you’ll be eligible to earn up to 8% APY on your staked assets. THIS APY IS ESTIMATED AND NOT GUARANTEED AS DESCRIBED BELOW.

The article also described the payment of yield. It contained a section titled *How do you calculate APY?* Does my balance compound daily? that read, in part, as follows:

²⁶ Based upon information and belief, FTX Trading acquired Blockfolio LLC (“Blockfolio”) in or around August 2020. At the time, Blockfolio managed a cryptocurrency application. FTX Trading appears to have thereafter rebranded Blockfolio and its smartphone application as FTX. Now, users can download the FTX Trading App from Apple’s App Store or Google’s Google Play Store. Although FTX rebranded Blockfolio, the application listing in Apple’s App Store still shows the application with developed by Blockfolio.

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FTX will deposit yield earnings from the staked coins, calculated hourly, on the investment portfolio that is stored in your FTX Trading App. Yield will be compounded on principal and yield you have already earned. Any cryptocurrency that you have deposited on FTX as well as any fiat balance you may have on your account, will earn yield immediately after you have opted into the program.

The first \$10,000 USD value in your deposit wallets will earn 8% APY. Amounts held above \$10,000 up to \$10MM USD in value (subject to market fluctuations) will earn 5% APY. In this scenario, your yield earned on the coins will look something like the examples below the table.

The article also contained a section titled Is this available in my country? This section explained that “FTX Trading App Earn is available to FTX Trading App customers that are in one of the FTX permitted jurisdictions.” It contained a hyperlink to an article titled *Location Restrictions* published by FTX Crypto Derivatives Exchange under help.ftx.com. This article described various restrictions on operations in certain countries and locations and read in part as follows:

FTX does not onboard or provide services to corporate accounts of entities located in, established in, or a resident of the **United States of America, Cuba, Crimea and Sevastopol, Luhansk People’s Republic, Donetsk People’s Republic, Iran, Afghanistan, Syria, or North Korea**. FTX also does not onboard corporate accounts located in or a resident of **Antigua or Barbuda**. FTX also does not onboard any users from Ontario, and FTX does not permit non-professional investors from Hong Kong purchasing certain products.

FTX does not onboard or provide services to personal accounts of current residents of the United States of America, Cuba, Crimea and Sevastopol, Luhansk People’s Republic, Donetsk People’s Republic, Iran, Afghanistan, Syria, North Korea, or Antigua and Barbuda. There may be partial restrictions in other jurisdictions, potentially including Hong Kong, Thailand, Malaysia, India and Canada. In addition, FTX does not onboard any users from Ontario, does not permit non-professional investors from Hong Kong purchasing certain products, and does not offer derivatives products to users from Brazil.

FTX serves all Japanese residents via FTX Japan.

(emphasis in original)

Despite the fact I identified myself by name and address, the FTX Trading App now shows that I am earning yield on the ETH. The yield is valued at 8 percent APR.

Based upon my earning of yield and an ongoing investigation by the Enforcement Division of the Texas State Securities Board, the yield program appears to be an investment contract, evidence of indebtedness and note, and as such appears to be regulated as a security in Texas as provided by Section 4001.068 of the Texas Securities Act. At all times material to the opening of this FTX account, FTX Trading and FTX US have not been registered to offer or sell securities in Texas. FTX Trading and FTX US may therefore be violating Section 4004.051 of the Texas Securities Act. Moreover, the yield program described herein has not

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been registered or permitted for sale in Texas as generally required by Section 4003.001 of the Securities Act, and as such FTX Trading and FTX US may be violation Section 4003.001 by offering unregistered or unpermitted securities for sale in Texas. Finally, FTX Trading and FTX US may not be fully disclosing all known material facts to clients prior to opening accounts and earning yield, thereby possibly engaging in fraud and/or making offers containing statements that are materially misleading or otherwise likely to deceive the public. Certain principals of FTX Trading and FTX US may also be violating these statutes and disclosure requirements. Further investigation is necessary to conclude whether FTX Trading, FTX US and others are violating the Securities Act through the acts and practices described in this declaration.

The Enforcement Division of the Texas State Securities Board understands that FTX US placed the highest bid for assets of Voyager Digital LTD et al., a family of companies variously accused of misconduct in connection with the sale of securities similar to the yield program promoted by FTX Trading and FTX US. FTX US is managed by Sam Bankman-Fried (CEO and Founder), Gary Wang (CTO and Founder) and Nishad Singh (Head of Engineering). The same principals hold the same positions at FTX Trading, and I was able to access the yield-earning product after following a link to the FTX Trading App from FTX US's website. The FTX Trading App also indicated the Earn program is provided by FTX US. As such, FTX US should not be permitted to purchase the assets of the debtor unless or until the Securities Commissioner has an opportunity to determine whether FTX US is complying with the law and related and/or affiliated companies, including companies commonly controlled by the same management, are complying with the law.

I hereby authorize the Texas Attorney General's Office and any of its representatives to use this declaration in this bankruptcy proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2022 in Austin, Texas.

/s Joseph Jason Rotunda

By: Joseph Jason Rotunda

C. The Defendants Aggressively Marketed the FTX Platform

57. In addition to the conduct of Sam Bankman-Fried, as described in this Complaint, some of the biggest names in sports and entertainment have been Brand Ambassadors for the company. A number of them hyped FTX directly to their social media fans, driving retail consumer adoption of the Deceptive FTX Platform.

58. In April 2021, FTX became the first company in the crypto industry to name an arena. This helped lend credibility and recognition to the FTX brand and gave the massive fanbase of basketball exposure to the Deceptive FTX Platform.

59. FTX's explanation for using stars like Brady, O'Leary, and others was no secret. "We're the newcomers to the scene," said then-FTX.US President Brett Harrison, referring to the crypto services landscape in the U.S. "The company needs to familiarize consumers with its technology, customer service and offerings, while competing with incumbents like Coinbase Global Inc. or Kraken," Mr. Harrison said. "We know that we had to embark on some kind of mass branding, advertising, sponsorship type work in order to be able to do that," he said.²⁷

60. In other words, the FTX Entities needed celebrities like Defendants to continue funneling investors into the FTX Ponzi scheme, and to promote and substantially assist in the sale of the YBAs, which are unregistered securities. Below are representative statements and advertisements Defendants made to drive the offers and/or sales of the YBAs, which Plaintiffs will supplement as the case progresses and discovery unfolds.

²⁷ https://www.wsj.com/articles/tom-brady-and-gisele-bundchen-to-star-in-20-million-campaign-for-crypto-exchange-11631116800?mod=article_inline (accessed December 5, 2022).

Defendant Tom Brady



61. The star quarterback became an FTX ambassador last year. He also took an equity stake in FTX Trading Ltd.

62. Mr. Brady also joined the company's \$20-million ad campaign in 2021. They filmed a commercial called "FTX. You In?" showing him telling acquaintances to join the FTX platform. The ad can be viewed here: <https://www.youtube.com/watch?v=uymLJoKFIW8>

Defendant Kevin O'Leary



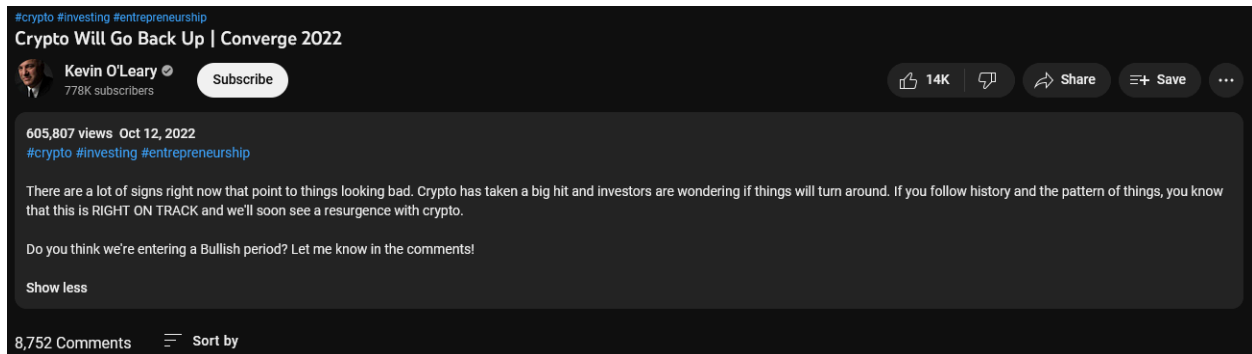
63. "Mr. Wonderful," both a brand ambassador and an FTX shareholder, made several public statements designed to induce consumers to invest in the YBAs.

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64. “To find crypto investments opportunities that met my own rigorous standards of compliance, I entered into this relationship with @FTX_Official,” Mr. O’Leary said on Twitter last year. Mr. O’Leary ***recently deleted the tweet***.

65. He also served as a judge for the FTX Charity Hackathon in Miami in March of 2022.²⁸

66. And *very* recently, on October 12, 2022, O’Leary stated confidently that FTX was totally compliant and a safe place to hold assets. O’Leary stated that: “I have to disclose I’m a paid spokesperson to a FTX and shareholder there, too, cause we mentioned him and I’m a big advocate for Sam because he has two parents who are compliance lawyers. If there’s ever a place I could be that I’m not gonna get in trouble it’s going to be in FTX so you know that’s there they’re great people but he gets the job in compliance which is why he’s working so hard to get regulation.”²⁹



67. He went on to state that “[t]here are a lot of signs right now that point to things looking bad. Crypto has taken a big hit and investors are wondering if things will turn around. If you follow history and the pattern of things, you know that this is RIGHT ON TRACK and we’ll soon see a resurgence with crypto. Do you think we’re entering a Bullish period? Let me know in the comments!”³⁰

²⁸ <https://ftxcharityhackathon.com/> (accessed December 5, 2022).

²⁹ See https://www.youtube.com/watch?v=iwD_zWgyUz8 beginning at 17:32 (accessed December 5, 2022)

³⁰ *Id.*

Defendant David Ortiz



68. Defendant David Ortiz, who became an FTX brand ambassador and hyped the YBAs in exchange for cryptocurrency and multiple collections of NFTs, also ran his own FTX “You In?” ad, which began running nationwide during the first game of the 2021 World Series.

69. In the ad, which can be found here: <https://www.ispot.tv/ad/qSlm/ftx-big-papi-is-in>, Ortiz is watching a game on the television when he receives a phone call from The Moon. Inspired by the “moonblast” home run scored on the field, The Moon frantically tells David about opportunities to get into cryptocurrency with FTX. David decides it's an offer he can't refuse and joins fellow sports stars Stephen Curry and Tom Brady on the platform. FTX announces it is the official crypto exchange of MLB.

COUNT ONE

**Violations of the Florida Statute Section 517.07,
The Florida Securities and Investor Protection Act**

70. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–69 above, as if fully set forth herein.

71. Section 517.07(1), Fla. Stat., provides that it is unlawful and a violation for any person to sell or offer to sell a security within the State of Florida unless the security is exempt under Fla. Stat. § 517.051, is sold in a transaction exempt under Fla. Stat. § 517.061, is a federally covered security, or is registered pursuant to Ch. 517, Fla. Stat.

72. Section 517.211 extends liability to any “director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security.”

73. The YBA is a security pursuant to Fla. Stat. § 517.021(22)(a).

74. The YBAs sold and offered for sale to Plaintiffs was not:

- a. exempt from registration under Fla. Stat. § 517.051;
- b. a federal covered security;
- c. registered with the Office of Financial Regulations (OFR); or
- d. sold in a transaction exempt under Fla. Stat. § 517.061.

75. The FTX Entities sold and offered to sell the unregistered YBAs to Plaintiff.

76. Defendants are directors, officers, partners and/or agents of the FTX Entities pursuant to Fla. Stat. § 517.211.

77. The FTX Entities, with Defendants’ material assistance, offered and sold the unregistered YBAs to Plaintiffs. As a result of this assistance, Defendants violated Fla. Stat. § 517.07 et seq. and Plaintiffs sustained damages as herein described.

COUNT TWO

For Violations of the Florida Deceptive and Unfair Trade Practices Act,

§ 501.201, Florida Statutes, *et seq.*

78. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–69 above, as if fully set forth herein.

79. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, section 501.201, Fla. Stat., *et seq.* (“FDUTPA”). The stated purpose of the FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202(2), Fla. Stat.

80. Plaintiffs are each a consumer as defined by section 501.203, Fla. Stat. Defendants are engaged in trade or commerce within the meaning of the FDUTPA.

81. Florida Statute section 501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

82. Defendants’ unfair and deceptive practices as described herein are objectively likely to mislead – and have misled – consumers acting reasonably in the circumstances.

83. Defendants have violated the FDUTPA by engaging in the unfair and deceptive practices as described herein, which offend public policies and are immoral, unethical, unscrupulous and injurious to consumers.

84. Plaintiffs have been aggrieved by Defendants’ unfair and deceptive practices and acts of false advertising by paying into the Ponzi scheme that was the Deceptive FTX Platform and in the amount of his lost investment.

85. The harm suffered by Plaintiffs was directly and proximately caused by the deceptive and unfair practices of Defendants, as more fully described herein.

86. Pursuant to sections 501.211(2) and 501.2105, Fla. Stat., Plaintiffs make claims for actual damages, attorneys’ fees and costs.

87. Defendants still utilize many of the deceptive acts and practices described above. Plaintiffs have suffered and will continue to suffer irreparable harm if Defendants continue to engage in such deceptive, unfair, and unreasonable practices. Section 501.211(1) entitles Plaintiffs to obtain both declaratory or injunctive relief to put an end to Defendants’ unfair and deceptive scheme.

COUNT THREE

Civil Conspiracy

88. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–69 above, as if fully set forth herein.

89. The FTX Entities and Defendants made numerous misrepresentations and omissions to Plaintiffs about the Deceptive FTX Platform in order to induce confidence and to drive consumers to invest in what was ultimately a Ponzi scheme, misleading customers and prospective customers with the false impression that any cryptocurrency assets held on the Deceptive FTX Platform were safe and were not being invested in unregistered securities.

90. The FTX Entities entered into one or more agreements with Defendants with the purpose of making these misrepresentations and/or omissions to induce Plaintiffs to invest in the YBAs and/or use the Deceptive FTX Platform.

91. Defendants engaged in unlawful acts with the FTX Entities, namely, the misrepresentations and omissions made to Plaintiffs and the sale of unregistered securities.

92. Defendants' conspiracy substantially assisted or encouraged the wrongdoing conducted by the FTX Entities; further, Defendants had knowledge of such fraud and/or wrongdoing, because of their experience and relationship with the FTX Entities, as described above and as such, knew that the representations made to Plaintiffs were deceitful and fraudulent.

93. Defendants' conspiracy with the FTX Entities to commit fraud caused damages to Plaintiffs in the amount of their lost investments.

COUNT FOUR

Declaratory Judgment

(Declaratory Judgment Act, Florida Statutes §§ 86.011 *et seq.*)

94. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1–69 as if fully set forth herein.

95. This Count is asserted against Defendants under Florida Statutes §§ 86.011, *et seq.*

96. There is a bona fide, actual, present and practical need for the declaratory relief requested herein; the declaratory relief prayed for herein deal with a present, ascertained or ascertainable state of facts and a present controversy as to a state of facts; contractual and statutory duties and rights that are dependent upon the facts and the law applicable to the facts; the parties have an actual, present, adverse and antagonistic interest in the subject matter; and the antagonistic and adverse interests are all before the Court by proper process for final resolution.

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97. Plaintiffs have an obvious and significant interest in this lawsuit.

98. Plaintiffs each purchased a YBA, based in part on justifiable reliance on the Defendants' misrepresentations and omissions regarding the Deceptive FTX Platform as further described hereinabove.

99. If the true facts had been known, including but not limited to that the YBAs are unregistered securities, the Deceptive FTX Platform does not work as represented, and Defendants were paid exorbitant sums of money to peddle Voyager to the nation, Plaintiffs would not have purchased a YBA in the first place.

100. Thus, there is a justiciable controversy over whether the YBA was sold illegally, and whether the Defendants illegally solicited their purchases from Plaintiff.

101. Plaintiffs seek an order declaring that the YBAs are securities required to be registered with the SEC and state regulatory authorities, that the Deceptive FTX Platform did not work as represented, and Defendants were paid exorbitant sums of money to peddle FTX to the nation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment:

- a. Awarding actual, direct and compensatory damages;
- b. Awarding restitution and disgorgement of revenues if warranted;
- c. Awarding declaratory relief as permitted by law or equity, including declaring the Defendants' practices as set forth herein to be unlawful, and that the YBA offered and sold to Plaintiffs—the same one offered and sold to millions of other Americans for collectively billions of dollars—constituted an unregistered security;
- d. Awarding injunctive relief as permitted by law or equity, including enjoining the Defendants from continuing those unlawful practices as set forth herein, and directing the Defendants to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;
- e. Awarding statutory and multiple damages, as appropriate;
- f. Awarding attorneys' fees and costs; and
- g. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as to all claims so triable.

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Dated: December 5, 2022

Respectfully submitted,

By: /s/ Adam Moskowitz

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*Michael Norris, et al. v. Thomas Brady, et al.
Amended Complaint and Demand for Jury Trial*

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Co-Counsel for Plaintiffs

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:22-cv-07666-JSC**

Jessup v. Bankman-Fried et al
Assigned to: Judge Jacqueline Scott Corley
Demand: \$5,000,000,000
Relate Case Cases: [3:22-cv-07336-JSC](#)
[3:22-cv-07620-JSC](#)

Date Filed: 12/05/2022
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Cause: 28:1332 Diversity-Fraud

Plaintiff

Michael Elliott Jessup
*individually and on behalf of all others
similarly situated*

represented by **P. Solange Hilfinger-Pardo**
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ATTORNEY TO BE NOTICED

V.

Defendant

Samuel Bankman-Fried
an individual

Defendant

Caroline Ellison
an individual

Defendant

Nishad Singh
an individual

Defendant

Gary Wang
an individual

Defendant

Sam Trabucco
an individual

Date Filed	#	Docket Text
12/05/2022	1	COMPLAINT against Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, Sam Trabucco, Gary Wang (Filing fee \$ 402, receipt number ACANDC-17785799.). Filed by Michael Elliott Jessup. (Attachments: # 1 Civil Cover Sheet)(Logan, Todd) (Filed on 12/5/2022) (Entered: 12/05/2022)
12/05/2022	2	Proposed Summons. (Logan, Todd) (Filed on 12/5/2022) (Entered: 12/05/2022)
12/06/2022	3	Case assigned to Magistrate Judge Donna M. Ryu. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 12/20/2022. (mbc, COURT STAFF) (Filed on 12/6/2022) (Entered: 12/06/2022)
12/06/2022	4	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 3/22/2023. Initial Case Management Conference set for 3/29/2023 01:30 PM in Oakland, Courtroom 4, 3rd Floor. (far, COURT STAFF) (Filed on 12/6/2022) (Entered: 12/06/2022)
12/06/2022		Electronic filing error . ONLY ONE SUMMONS TO BE ISSUED PER CASE, USE AN ATTACHMENT TO SUMMONS IF NEEDED TO LIST ADDITIONAL DEFENDANTS INFORMATION [err201]. This filing will not be processed by the clerks office. Please re-file in its entirety. Re: 2 Proposed Summons filed by Michael Elliott Jessup (far, COURT STAFF) (Filed on 12/6/2022) (Entered: 12/06/2022)
12/06/2022	5	Proposed Summons. (Logan, Todd) (Filed on 12/6/2022) (Entered: 12/06/2022)
12/07/2022	6	Summons Issued as to Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, Sam Trabucco, Gary Wang. (ecg, COURT STAFF) (Filed on 12/7/2022) (Entered: 12/07/2022)
12/14/2022	7	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Michael Elliott Jessup.. (Logan, Todd) (Filed on 12/14/2022) (Entered: 12/14/2022)
12/15/2022	8	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.

		<i>This is a text only docket entry; there is no document associated with this notice. (ig, COURT STAFF) (Filed on 12/15/2022) (Entered: 12/15/2022)</i>
12/16/2022	9	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Vince Chhabria for all further proceedings. Magistrate Judge Donna M. Ryu no longer assigned to case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras . Signed by The Clerk on December 16, 2022. (Attachments: # 1 Notice of Eligibility for Video Recording)(cjl, COURT STAFF) (Filed on 12/16/2022) (Entered: 12/16/2022)
12/19/2022	10	ORDER RELATING CASE. Signed by Judge Jacqueline Scott Corley on 12/19/2022. (22-cv-7444, 22-cv-7620, and 22-cv-7666 are related to this action.) (ahm, COURT STAFF) (Filed on 12/19/2022) Modified on 12/19/2022 (ahm, COURT STAFF). (Entered: 12/19/2022)
12/19/2022	11	CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. Please take notice that the case management conference set for March 2, 2023 is continued to April 6, 2023 at 1:30 p.m. before Judge Jacqueline Scott Corley via a Zoom webinar. Joint Case Management Statement is due by 3/30/2023. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jsc Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names must be sent to the CRD at jsccrd@cand.uscourts.gov no later than noon 4/5/2023. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . (This is a text-only entry generated by the court. There is no document associated with this entry.) (ahm, COURT STAFF) (Filed on 12/19/2022) (Entered: 12/19/2022)
12/19/2022	12	Case Reassigned to Judge Jacqueline Scott Corley. Judge Vince Chhabria no longer assigned to the case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras . (mbc, COURT STAFF) (Filed on 12/19/2022) (Entered: 12/19/2022)
12/20/2022	13	Certificate of Interested Entities by Michael Elliott Jessup (Hilfinger-Pardo, P. Solange) (Filed on 12/20/2022) (Entered: 12/20/2022)

PACER Service Center
Transaction Receipt
02/10/2023 08:03:53

PACER Login:	AdamMoskoadam	Client Code:	FTX
Description:	Docket Report	Search Criteria:	3:22-cv-07666-JSC
Billable Pages:	3	Cost:	0.30

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Counsel for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL ELLIOTT JESSUP, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

SAMUEL BANKMAN-FRIED, an individual,
CAROLINE ELLISON, an individual,
NISHAD SINGH, an individual, GARY
WANG, an individual, and SAM
TRABUCCO, an individual,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

(1) FRAUD;

(2) UNJUST ENRICHMENT; and

(3) CONVERSION.

DEMAND FOR JURY TRIAL

Plaintiff Michael Elliott Jessup, individually and on behalf of a proposed class, brings this Class Action Complaint against Defendants Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, Gary Wang, and Sam Trabucco. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and as to all other matters, upon information and belief.

NATURE OF THE ACTION

1. In just over a decade, the crypto market has become a trillion-dollar industry. These new forms of digital assets and currencies are unlike any form of traditional financial instruments. They are not issued by any governments, not regulated by any central authorities,

1 and essentially any person with specialized hardware and computer software could create them.
2 Young people throughout the world raced to buy crypto in hopes that this new form of “Internet
3 money” could make them rich and, for many, it did. But crypto remained a mystery for most,
4 especially bigger financial institutions and governments. Crypto needed a proper spokesperson
5 who could convince society that cryptocurrencies were smart, stable, and safe investments.
6 That’s where Defendant Samuel Bankman-Fried (or “SBF”) came in, a then twenty-something
7 year-old self-promoted eccentric genius.

8 2. In 2019, Defendant SBF launched a cryptocurrency exchange called FTX, where
9 users could buy and sell crypto and exchange them for traditional currencies, like United States
10 Dollars. SBF successfully convinced millions of users, hedge funds, regulators, and other major
11 institutions that he was the new era of crypto and that they should believe in him and invest in
12 his platform. And it worked. At its peak, FTX became one of the largest crypto exchanges in the
13 world valued at over \$32 billion, with its logo adorning everything from Formula 1 race cars to a
14 Miami basketball arena.

15 3. Not even thirty-years-old at this point, SBF had become the leader of one of the
16 biggest crypto markets in the world, a celebrated philanthropist worth an estimated \$26 billion,
17 and a major political donor who quickly became a power player in Washington.

18 4. But all of this was a mirage that came crashing down on November 11, 2022,
19 when FTX abruptly filed for bankruptcy.

20 5. Overnight, billions of dollars belonging to Plaintiff and the Class evaporated.
21 Users could no longer withdraw their crypto or money. While SBF had been publicly trying to
22 convince users everything was fine, in reality, it was not.

23 6. The days following FTX’s collapse revealed that it was not the traditional crypto
24 market volatility or instability that tanked FTX, but rather one of the most spectacular financial
25 frauds since Bernie Madoff, deliberately carried out by SBF and his inner circle at FTX and
26 Alameda Research (or “Alameda”): Defendants Caroline Ellison, Nishad Singh, Gary Wang, and
27 Sam Trabucco (together, the “Inner Circle”).

28 7. As explained in more detail below, SBF tricked people into thinking FTX was

worth far more than it was and essentially used FTX—and his customers’ deposits, in particular—as his personal slush fund. First, SBF effectively paid investors, employees, and vendors shares of the company in his own crypto currency, FTT, which he controlled and inflated the value of, and loaned out FTX customer deposits to his (supposedly separate) crypto hedge fund, Alameda Research. SBF had even written a secret back door into FTX’s code that allowed him to siphon off customer deposits and move them to Alameda, where he could cover Alameda’s major trading losses. He also regularly used FTX’s assets to fund his own personal investments (like his half billion-dollar investment into Robinhood), purchase \$300 million worth of real estate, and become the second most prolific funder of political candidates after George Soros.

8. In the end, SBF was not the altruistic savior to the crypto industry that he held himself out to be. He instead chose to capitalize on the lack of effective regulatory oversight of the crypto market and defraud his customers out of billions of dollars.

9. Plaintiff Jessup is just one consumer who had crypto invested in FTX and who has lost money as a result of Defendants’ conduct. Accordingly, Jessup brings suit on behalf of himself and all others similarly situated, to seek both monetary and equitable relief for Defendants’ deceptive and unlawful conduct.

PARTIES

10. Plaintiff Michael Elliott Jessup is a natural person and a citizen of the State of California. He resides in Marin, California.

11. Defendant Samuel Bankman-Fried is a natural person and citizen of the United States. Bankman-Fried was co-founder and CEO of FTX, which had offices in Berkeley, California.

12. Defendant Caroline Ellison is a natural person and citizen of the United States. Ellison was co-CEO of Alameda Research, which had offices in Berkeley, California.

13. Defendant Gary Wang is a natural person and citizen of the United States. Wang was co-founder and Chief Technology Officer of FTX, which had offices in Berkeley, California. Wang also co-founded Alameda Research with SBF.

14. Defendant Nishad Singh is a natural person and citizen of the United States. Singh was Director of Engineering at FTX, which had offices in Berkeley, California. Before that, he was Director of Engineering at Alameda Research.

15. Defendant Sam Trabucco is a natural person and citizen of the United States. Trabucco was co-CEO of Alameda Research, which had offices in Berkeley, California.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because (i) at least one member of the Class is a citizen of a different state than Defendants, (ii) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (iii) none of the exceptions under that subsection apply to this action.

17. This Court has personal jurisdiction over Defendants because they conduct business in this District and the unlawful conduct alleged in the Complaint occurred in, was directed to, and/or emanated from this District, including disseminated misrepresentations about FTX and its relationship with Alameda Research throughout the District.

18. Defendants purposefully availed themselves of the benefits of the laws of California in conducting business and transactions in the state. Defendants advertised heavily in California, including on television and with local sponsorships. FTX paid for the naming rights of the University of Berkeley football stadium to have it named FTX Field at California Memorial Stadium and have its logo emblazoned on the field. FTX also partnered with the Golden State Warriors (based out of San Francisco, California) and had its logo appear at games held by the Santa Cruz Warriors. FTX aired an advertisement during the 2022 Superbowl, which was held in California.

19. Defendants instructed customers to deposit funds via wire transfer to Silvergate Bank, a California business entity with its principal place of business in La Jolla, California. Upon information and belief, FTX received hundreds of millions of dollars in deposits customers made through Silvergate. Defendants even instructed some FTX customers to send wire transfers directly to Alameda's accounts at Silvergate.

20. Defendants also sought out investments for FTX and Alameda Research in this

1 state, including from some investment firms in the District, such as Sequoia Capital, which is
2 headquartered in Menlo Park, California.

3 21. Plaintiff was induced to engage in his transactions with FTX in the District.

4 22. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
5 part of the events or omissions giving rise to the unlawful conduct alleged in the Complaint
6 occurred in, was directed to, and/or emanated from this District.

7 **DIVISIONAL ASSIGNMENT**

8 23. Pursuant to Civil Local Rule 3-2(d), this case should be assigned to the San
9 Francisco Division.

10 **GENERAL ALLEGATIONS**

11 **I. FTX's Backstory.**

12 24. Defendants SBF and Wang co-founded FTX in 2019 as a cryptocurrency
13 exchange. SBF developed the FTX exchange to support all major cryptocurrencies, leveraged
14 tokens, and facilitate over-the-counter trading. FTX's stated mission, spearheaded by SBF, was
15 to build a crypto exchange with greater consumer protections and better user experiences.
16 FTX.com offered traders outside the US crypto tokens meant to mirror the performance of
17 specific stocks. By 2019, FTX was handling about \$1 billion daily trades. FTX US, which allows
18 access to US users, also launched equity trading in 2022.

19 25. The company invested millions in ad campaigns and sport and celebrity
20 partnerships to imbue it with a veil of legitimacy. FTX ran a \$30 million Superbowl ad in in
21 2021 featuring comedian Larry David. It purchased naming rights to the Miami Heat arena,
22 along with the naming rights to the University of California Berkeley's football field for \$17.5
23 million in 2021. In April 2022, SBF sat on a stage with Bill Clinton and Tony Blair at an FTX-
24 sponsored crypto conference in the Bahamas.

25 26. SBF held himself out as a liaison between the crypto world and Congress, and
26 even the White House. On December 8, 2021, SBF testified in front of the House Financial
27 Services Committee, touting FTX as a consumer-friendly, safe investment platform. "FTX has
28 designed and offered a platform with a market structure that is risk reducing," he told members

of Congress, while claiming FTX embraced regulatory oversight.¹ In an October 2021 press release, SBF bragged of being able to “partner with investors that prioritize positioning FTX as the world’s most transparent and compliant cryptocurrency exchange.”²

27. This investment in image-setting paid off as many consumers were taken in by the ruse. Consumers believed FTX was safer than alternative cryptocurrency exchanges and that there were regulations in place to protect their investments. In 2021, FTX was handling around 10% of the \$3.4 trillion face value of derivatives traded by crypto investors each month.

28. Consumers were not alone in thinking FTX was on the up and up. FTX was one of the fastest growing crypto exchanges in the world. FTX grew from \$25 billion in value in October 2021, to a \$32 billion valuation by January 2022. FTX’s smaller, United States component, FTX US, reached an \$8 billion valuation in January 2022, raising \$400 million in its first external fundraising round.

29. But less than eleven months later, FTX would come crashing down. To help understand SBF and the Inner Circle’s scheme, a brief introduction to SBF’s supposedly separate hedge fund, Alameda Research follows.

II. Alameda Research.

30. Before FTX, SBF founded the cryptocurrency hedge fund Alameda Research in his apartment in 2017. Gary Wang, a member of the Inner Circle who became CTO of FTX, co-founded the startup with SBF. The two have long had ties, beginning with meeting at a math camp in high school, and going on to be college roommates. When Alameda was first started, they ran the company out of a three-bedroom apartment in Berkeley—the downstairs their dedicated office space. When SBF left Alameda to start FTX, he brought Gary Wang and another member of the Inner Circle, Nishad Singh, with him.

31. In 2021, SBF handed over the reins of Alameda to two relatively inexperienced

¹ *Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States Before the H. Comm. on Fin. Servs.*, 117th Cong. (2021) (Testimony of Sam Bankman-Fried Co-Founder and CEO of FTX), <https://financialservices.house.gov/uploadedfiles/hlrg-117-ba00-wstate-bankman-frieds-20211208.pdf>.

² Harriet Agnew et al., *FTX lures blue-chip investors in funding round, valuing crypto group at \$25bn*, FINANCIAL TIMES (Oct. 21, 2021), <https://www.ft.com/content/56b35970-de1e-41a6-9fb1-b482075e092b>.

traders, Defendants Caroline Ellison and Sam Trabucco. Between the two of them, they only had a few years of experience trading in conventional markets.

32. Trabucco had a penchant for gambling and bragged about how he applied his gambler's instincts to Alameda's crypto trading. Trabucco bragged that he had been banned from multiple casinos for counting cards in blackjack. In a January 2021 Twitter thread, Trabucco claimed, "Bigger is Bigger (when Betting is Better)" in both betting and trading. Trabucco encouraged aggressive trading and embracing risk as co-CEO of Alameda. This risk-loving strategy ultimately led Alameda to make many bad investments that led to its downfall. In August 2022, Trabucco abruptly left Alameda, stepping down as co-CEO just before the house of cards collapsed.

33. SBF claimed there were adequate firewalls between Alameda and FTX. In an August 2022 interview with Bloomberg, SBF stated, "Alameda is a wholly separate entity," and claimed, "They're different offices, like different principal offices. We don't have any shared personnel. We're also not the same company."³ Ellison made similar misrepresentations in September 2022, stating, "[w]e're arm's length and don't get any different treatment from other market makers."⁴ But these, too, were lies.

34. For a period, Wang, Singh, Ellison, and SBF all lived in the same house in the Bahamas. The FTX and Alameda offices in the Bahamas were very nearby. The Inner Circle was socially and romantically entangled, with Ellison and SBF having dated in the past. Wang, Singh, and Ellison were also all on the board of SBF's FTX Foundation. There was nothing arm's length about the relationship between the executives at FTX and Alameda.

35. FTX and Alameda had a history of propping each other up. Even before FTX became embroiled in Alameda's bad bets in 2022, Alameda had loaned FTX money to shelter it from a \$1 billion loss after a customer trade on the exchange blew up. Early in 2021, Alameda

³ Annie Massa et al., *What FTX's Bankman-Fried Said When We Asked Him About Red Flags*, BLOOMBERG NEWS (Nov. 17, 2022), <https://www.bloomberg.com/news/articles/2022-11-18/what-ftx-s-sam-bankman-fried-said-when-we-asked-him-about-red-flags-at-alameda>.

⁴ Annie Massa et al., *Crypto Quant Shop With Ties to FTX Powers Bankman-Fried's Empire*, BLOOMBERG NEWS (Sept. 14, 2022), https://www.bloomberg.com/news/articles/2022-09-14/trading-firm-alameda-research-powers-ftx-ceo-sam-bankman-fried-s-crypto-empire?utm_source=twitter&utm_.

1 took on much of FTX's exposure when a client's leveraged bet on an obscure token broke
2 through the guardrails designed to shield the exchange from sustaining losses when trades went
3 south. This was yet another example of how SBF and the Inner Circle used Alameda and FTX to
4 prop each other up, even while publicly maintaining that the exchange and the hedge fund acted
5 separately.

6 36. Alameda made more than 150 investments across the crypto industry, including in
7 the now-bankrupt crypto broker Voyager Digital. FTX executives also took out billions of
8 dollars in loans from Alameda to fund all manner of activities, from SBF's political contributions
9 to his purchase of a 7.6% stake in Robinhood for \$650 million.

10 **III. SBF and the Inner Circle's Fraud.**

11 37. SBF made sure to get paid at both Alameda and FTX, while outwardly claiming
12 to live a frugal lifestyle. SBF once claimed he lived off \$100,000 a year, when in reality, he was
13 taking in much more. In October 2021, FTX raised over \$420 million from several well-known
14 investors. But instead of making its way to the exchange, \$300 million went to SBF himself
15 when he sold his stake in FTX. This cash out dwarfs the normal amounts startup founders award
16 themselves. SBF attempted to justify this payoff by claiming it was a partial reimbursement for
17 money he spent to buy out Binance's stake in FTX. Instead, this was yet another example of how
18 SBF took money that was meant for the exchange and its customers and used it for himself.

19 38. At age 30, SBF was briefly worth \$26 billion. Alameda Research was reported to
20 have made \$1 billion in profit in 2020, and the newly founded FTX was making \$350 million in
21 profit off trading fees. These profits played into SBF's "effective altruism" endgame, in which he
22 believed himself better situated to solve the world's problems as a billionaire capable of giving
23 away vast sums of his wealth. SBF promised to give away almost all his money, yet as of March
24 2021, he had only given away about 0.1% of his fortune. He claimed he would ramp up his
25 giving once he became more liquid.

26 39. The relationship between FTX and Alameda had always been murky, as described
27 above. In the traditional finance world, there are clear regulations and laws limiting the use of
28 depository funds for trading. In 1933, Congress passed the Glass-Steagall Act which required

1 that commercial banks refrain from investment banking activities. This was to protect depositors
2 from potential losses caused by bank speculation in stocks. But in the crypto world, no such
3 regulations exist to protect customer deposits.

4 40. While it appeared from the outside that SBF was funding his spending and
5 lending in part from profits he made at Alameda, in reality, the hedge fund was surviving only
6 because SBF was loaning Alameda billions of dollars of FTX customer deposits. SBF claimed
7 publicly that Alameda (the hedge fund) and FTX (the exchange) were kept separate. But this was
8 hardly the case. SBF owned more than half of FTX and almost all of Alameda. The two
9 companies shared office space in Berkeley, California, and both were housed in the Bahamas on
10 the same corporate campus. In the Bahamas, Bankman-Fried lived in the same apartment as
11 Alameda CEO Caroline Ellison, along with other roommates.

12 41. In the spring of 2022, the crypto market was shaken by its own Great Recession-
13 like financial crisis. The popular stablecoin (meaning it was supposed to always be worth about
14 \$1) TerraUSD crashed to 2¢. A large crypto hedge fund, Three Arrows Capital, collapsed.
15 Crypto asset prices began to crash, and several crypto companies failed in rapid succession. SBF
16 stepped in and began scooping up distressed crypto companies as a lender of last resort. FTX US
17 bailed out BlockFi Inc., a digital-asset lender, with a \$400 million credit after BlockFi took an
18 \$80 million hit from bad Three Arrows debt. Alameda extended a \$500 million emergency credit
19 line to the crypto brokerage Voyager Digital Ltd. Despite the injection of capital, Voyager went
20 under.

21 42. Ultimately, none of these investments panned out. Alameda had borrowed money
22 to make investments, then got FTX to bail it out to help make payments on those loans. SBF
23 used customer deposits to fund Alameda's bailout without the permission of those customers.
24 Alameda's loan to Voyager was wiped out once the brokerage firm filed for bankruptcy. To help
25 prop up Alameda and its failed investments, SBF transferred at least \$4 billion from FTX to
26 Alameda in 2022. The money SBF transferred from FTX was, in large part, FTX customer
27 deposits.

28 43. SBF transferred these funds without using normal methods that would be

1 traceable by employees outside the Inner Circle. The company's books had a "back door" built-
2 in using bespoke software. This backdoor allowed SBF to alter the company's financial records
3 without alerting other people in the company. Upon information and belief, Defendants Wang,
4 Singh, and Ellison knew about SBF's decision to send customer funds to Alameda.

5 44. Defendants Wang and Singh controlled the code for the exchange's matching
6 engine and funds. SBF also had control of the code, but with subpar skills, he relied on Wang
7 and Singh for their technical know-how. With their control of the code governing funds, they
8 were able to move funds around without others noticing.

9 45. Along with the substantial funds (largely comprised of customer deposits) that
10 were transferred from FTX to Alameda, substantial amounts of money were spent on things not
11 related to the business, as well. This includes approximately \$300 million worth of Bahamas real
12 estate consisting of homes and vacation properties for FTX senior executives. In 2022, SBF
13 spent more than \$40 million on political campaigns, and donated \$5 million to the investigative
14 news outlet ProPublica. At no point did consumers consent or were even made aware that their
15 deposits were being misused in this way.

16 46. What looked from the outside like a wunderkind using a competitive advantage to
17 make billions, was actually a group of inexperienced people mismanaging a multibillion-dollar
18 company. When SBF's ventures failed, he took consumers' deposits and tried to gamble them to
19 recoup his losses.

20 **IV. SBF and the Inner Circle's Misrepresentations.**

21 47. Throughout their time as executives of FTX and Alameda Research, SBF and the
22 Inner Circle made regular and calculated misrepresentations about how FTX customer funds
23 were used, including:

- 24 a. Even as the FTX rouse was coming undone, SBF publicly lied about how customer
25 assets were used to try to prevent people from withdrawing their deposits. On
26 November 7, 2022, SBF tweeted that "FTX has enough to cover all client
27
28

holdings. We don't invest client assets (even in treasuries)."⁵ He said this while knowing FTX had sent billions of dollars in customer deposits to Alameda to be invested.

- b. In July 2022, an FTX US employee tweeted that "direct deposits from employers to FTX US are stored in individually FDIC-insured bank accounts in the users' names" and that "stocks are held in FDIC-insured and SIPC-insured brokerage accounts."⁶ The FDIC subsequently sent FTX a warning letter to stop misrepresenting that FTX accounts were FDIC ensured.
- c. SBF publicly claimed Alameda and FTX were wholly separate entities, even after using a back door to send billions of FTX customer funds to Alameda. Ellison similarly misrepresented that Alameda and FTX were kept at arm's length and that Alameda received the same treatment from FTX as any other exchange, even after having illicitly received billions of FTX customer funds.
- d. In December 2021, and again in May 2022, SBF testified in front of Congress, taking the position that FTX was in favor of regulatory oversight. On October 19, 2022, SBF tweeted that "we need regulatory oversight and customer protection" and "we should establish regulation."⁷ But after he stepped down as CEO, SBF admitted that claiming to want regulation was "just PR." "[F]--- regulators[.] [T]hey make everything worse."⁸ This, too, was a lie SBF and his Inner Circle perpetuated in order to make consumers feel safe depositing their money in FTX.

48. All these misrepresentations had the goal of tricking consumers into believing

⁵ Britney Nguyen, *Sam Bankman-Fried deleted his tweet saying FTX "assets are fine" on the day he announced his Binance deal*, BUSINESS INSIDER (Nov. 9, 2022), <https://www.businessinsider.com/ftx-sam-bankman-fried-deleted-assets-fine-tweet-binance-deal-2022-11>.

⁶ Letter from Fed. Deposit Ins. Corp. to Brett Harrison, Individually and as President of FTX US and Dan Friedberg, Chief Regulatory Officer of FTX US (Aug. 18, 2022), <https://www.fdic.gov/news/press-releases/2022/ftx-harrison-letter.pdf>.

⁷ Samuel Bankman-Fried (@SBF_FTX), TWITTER (Oct. 19, 2022), https://twitter.com/SBF_FTX/status/1582835490515927041.

⁸ Kelsey Piper, *Sam Bankman-Fried tries to explain himself*, VOX (Nov. 16, 2022), <https://www.vox.com/future-perfect/23462333/sam-bankman-fried-ftx-cryptocurrency-effective-altruism-crypto-bahamas-philanthropy>.

depositing money on FTX was a “safe and easy way to get into crypto,” rather than a scheme implemented by SBF and the Inner Circle to funnel money to Alameda.

V. The Fall of FTX.

49. On November 2, 2022, CoinDesk ran a story about a leaked balance sheet from Alameda, which purportedly operated separately from FTX. The leaked document demonstrated a significant portion of Alameda’s assets were in SBF’s crypto token, FTT (issued by FTX). Alameda, despite its supposed sophistication, was invested heavily in a token minted from thin air by SBF.

50. On November 6, 2022, CEO of rival exchange Binance, Chanpeng Zhao tweeted that “[d]ue to recent revelations” it would be selling off its FTT.⁹ A run on the bank followed as consumers desperately attempted to withdraw their assets from FTX. Were FTX simply holding consumers’ assets and functioning as a middleman in trades, it would have had no problem fulfilling customers’ requests to withdraw. But the assets were gone. FTX had to halt customer withdrawals after about \$5 billion worth of withdrawal requests flooded in.

51. On November 7, 2022, SBF tweeted that “FTX is fine. Assets are fine.” He also stated, “FTX has enough to cover all client holdings. We don’t invest client assets (even in treasuries).”¹⁰ These were lies.

52. On November 8, 2022, SBF announced that Binance would be taking over FTX to ensure consumers could regain access to their assets. But one day later, on November 9, 2022, Binance pulled out of the deal. A Binance spokesperson told CoinDesk that “[a]s a result of corporate due diligence, as well as the latest news reports regarding mishandled customer funds and alleged U.S. agency investigations, we have decided that we will not pursue the potential acquisition of FTX.com.”¹¹

53. On November 11, 2022, FTX, FTX US, and Alameda all filed for bankruptcy as

⁹ Chanpeng Zhao (@cz_binance), TWITTER (Nov. 6, 2022 at 7:47 AM), https://twitter.com/cz_binance/status/1589283421704290306?lang=en.

¹⁰ Nguyen, *supra* note 5.

¹¹ Kevin Reynolds, *Binance Walks Away From Deal to Acquire FTX*, COINDESK (Nov. 9, 2022), <https://www.coindesk.com/business/2022/11/09/binance-walks-away-from-ftx-deal-wsj/>.

SBF resigned. A day after FTX filed for bankruptcy, an unauthorized withdrawal of crypto worth more than \$400 million occurred as a result of a hack, leading to more losses. Even weeks after entering Chapter 11, it is unclear exactly where all FTX's missing assets are. At least \$1 billion in FTX customers' funds disappeared from the collapsed exchange. John Ray, who has taken over FTX in an attempt to right the dangerously listing ship, filed a scathing statement that assessed SBF and his leadership of FTX, namely stating that the exchange was controlled by "a very small group of inexperienced, unsophisticated and potentially compromised individuals."¹² What is clear is that SBF took \$10 billion in customer funds from FTX and transferred much of it to its sister trading company, Alameda Research, without customer permission, and now a large portion of that total is missing.

FACTS SPECIFIC TO PLAINTIFF MICHAEL ELLIOTT JESSUP

54. Plaintiff Michael Elliott Jessup joined FTX in 2022. Having seen SBF's public statements (Jessup followed SBF on Twitter), he believed FTX was a safe platform and that SBF was a trustworthy person at the helm of the exchange. This was particularly appealing as SBF's stated mission was to help move the crypto space to become more institutionalized.

55. Trusting that FTX would do the simple task of holding on to his digital assets, Jessup placed nearly two Bitcoins (valued at approximately \$32,000 on November 10, 2022) and about forty Solana (valued at approximately \$1000 on November 10, 2022) in an FTX US account.

56. But that soon changed. As news reports began to reveal trouble with FTX, Jessup grew concerned.

57. Amidst the chaos, Jessup logged on to his FTX US account and attempted to withdraw his assets. But FTX would not allow him to do so. Indeed, a leaked FTX balance sheet indicated that FTX owned exactly zero (0) Bitcoins by the time it filed for bankruptcy.

58. Had Plaintiff Jessup known of SBF's fraud, he would never have deposited his Bitcoin on the FTX exchange.

¹² Eliot Brown et al., *FTX's Sam Bankman-Fried Cashed Out \$300 Million During Funding Spree*, WALL ST. J. (Nov. 18, 2022), <https://www.wsj.com/articles/ftxs-sam-bankman-fried-cashed-out-300-million-during-funding-spree-11668799774>.

CLASS ALLEGATIONS

59. **Class Definition:** Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and a Class of similarly situated individuals, defined as follows:

All persons in the United States who had bitcoins, other cryptocurrency, assets or money stored with FTX on November 10, 2022.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' successors, predecessors, and any entity in which the Defendants have a controlling interest, and their current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

60. **Numerosity:** The exact number of the members of the Class is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, and according to documents filed by FTX in support of its bankruptcy petition, there are likely over one million members in the Class. Members of the Class can be identified through Defendants' records and through third-party discovery.

61. **Commonality and Predominance:** There are many questions of law and fact common to Plaintiff's and the Class's claims, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a. Whether the Defendants' conduct constitutes fraud;
- b. Whether the Defendants' conduct constitutes conversion;
- c. Whether the Defendants' conduct constitutes unjust enrichment.

62. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class in that Plaintiff and the members of the Class were harmed, and face ongoing harm, arising out of Defendants' wrongful conduct.

63. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff's claims are representative of the claims of the other members of the Class, as Plaintiff and each member of the Class lost money they would not have otherwise lost because of Defendants' unlawful conduct. Plaintiff also has no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff. Plaintiff and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor their counsel have any interest adverse to the Class.

64. **Superiority:** This case is also appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy. The harm suffered by the individual members of the Class is likely to have been relatively small compared to the burden and expense of prosecuting individual actions to redress Defendants' wrongful conduct. Absent a class action, it would be difficult for the individual members of the Class to obtain effective relief from Defendants. Even if members of the Class themselves could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties and the Court and require duplicative consideration of the legal and factual issues presented. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

65. Plaintiff reserves the right to revise each of the foregoing allegations based on facts learned through additional investigation and in discovery.

FIRST CAUSE OF ACTION

Fraud

Against Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, Gary Wang, and Sam Trabucco

(On behalf of Plaintiff and the Class)

66. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

1 67. Through SBF's public statements, marketing materials, and advertisements, SBF,
2 Singh, and Wang represented to Plaintiff and the Class that FTX would, *inter alia*, protect their
3 crypto assets, and safely and quickly allow them to buy, sell, trade, or withdraw the same. SBF,
4 Singh, and Wang deliberately withheld from Plaintiff and the Class that their deposits were being
5 transferred to Alameda Research under Ellison and Trabucco's control. Defendants conspired to
6 take Plaintiff and the Class's funds and give them to Ellison and Trabucco without their
7 knowledge or consent.

8 68. SBF, Singh, and Wang never intended to safeguard users' crypto assets.

9 69. Instead, SBF, Singh, and Wang spread deliberate falsehoods, even as the music
10 stopped for FTX. SBF claimed that users' assets were safe, even after he had gambled and
11 otherwise frittered them away.

12 70. SBF, Singh, and Wang's representations to Plaintiff and the members of the Class
13 were knowingly and intentionally false.

14 71. Knowing that consumers are less likely to do business with companies that fail to
15 adequately safeguard and hold their crypto assets or allow them to buy, sell, trade, or withdraw
16 the same, SBF and the Inner Circle made these false representations with the intention that
17 Plaintiff and the members of the Class would rely on them in contracting with FTX and
18 transferring money and cryptocurrency into their accounts.

19 72. SBF made false representations to Plaintiff and the members of the Class online
20 when he tweeted that consumer assets were "fine." This was even after FTX had suspended
21 withdrawals.

22 73. Knowing that users would stop depositing bitcoins and funds in their accounts,
23 and would instead attempt to withdraw funds or close accounts if made aware of the colossal
24 losses of assets FTX faced, SBF and the Inner Circle made the false representations and
25 omissions with the intent that Plaintiff and the members of the Class would rely on them and
26 continue to deposit money and cryptocurrencies into their FTX accounts and not attempt to
27 withdraw funds and/or close accounts.
28

74. Had SBF and the Inner Circle disclosed FTX's true practices and intentions, Plaintiff and the members of the Class would have stopped depositing cash and/or cryptocurrencies into their FTX accounts, immediately taken any available steps to remove their assets from the exchange, or would not have maintained accounts with FTX at all.

75. Accordingly, SBF and the Inner Circle's fraudulent conduct caused Plaintiff and the Class to suffer actual harm in the amount of the difference between the cryptocurrency or fiat currency that was in their FTX accounts at the time it froze all withdrawals and the amount that will be actually returned to them under the liquidation proceedings in FTX's bankruptcy.

76. Defendants intentionally misrepresented facts and deceived Plaintiff and the Class about the safety of their deposits, and concealed material facts known to them with the intention of depriving Plaintiff and the Class of their property.

77. Plaintiff and the Class seek to recover the economic injury and other damages suffered as a result of Defendants' unlawful conduct in the form of the price of the cryptocurrency and fiat currency in their FTX accounts that cannot be recovered. Plaintiff and the Class also seek punitive damages for Defendant's unlawful conduct.

SECOND CAUSE OF ACTION

Unjust Enrichment

**Against Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, Gary Wang, and Sam Trabucco
(On behalf of Plaintiff and the Class)**

78. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

79. Plaintiff and the Class conferred a monetary benefit on SBF, Singh, and Wang in the form of fees paid for FTX's transaction services. Plaintiff and the Class's deposits also helped prop up FTX and make it appear valuable despite the fact that it was severely in the red.

80. Plaintiff and the Class also conferred a monetary benefit on Ellison and Trabucco when Ellison and Trabucco accepted funds that they knew, or should have known, were FTX customer deposits. With Plaintiff and the Class's money, Ellison and Trabucco were able to continue to make risky investments long after Alameda would have otherwise collapsed. Ellison and Trabucco were able to continue receiving compensation for months longer than they would have if Alameda had been forced to declare bankruptcy when it first became insolvent.

81. Defendants appreciate or have knowledge of the benefits conferred upon them by Plaintiff and the Class.

82. Under principles of equity and good conscience, Defendants should not be permitted to retain the transactions fees and compensation they received as a result of their misappropriation of Plaintiff and the Class's assets, because they knowingly concealed material information from Plaintiff and the Class regarding their transaction deposits (i.e., that they would be unable to thereafter withdraw such money from their FTX accounts), which directly resulted in the loss of Plaintiff and the Class's monies stored on the exchange.

83. Defendants had a duty to disclose such material information so Plaintiff and the Class could make an informed decision about whether to leave their assets with FTX.

84. As a result of Defendants' conduct, Plaintiff and the Class suffered damages in the form of the transaction fees they paid for FTX's services and the assets they lost.

85. Plaintiff and the Class Members have no other adequate remedy at law.

86. Plaintiff, individually and on behalf of the Class, seek restitution of all monies Defendants have unjustly received as a result of their conduct alleged herein, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable, as well as all other relief the Court deems necessary to make them whole.

THIRD CAUSE OF ACTION

Conversion

**Against Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, Gary Wang, and Sam Trabucco
(On behalf of Plaintiff and the Class)**

87. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

88. Without Plaintiff or the Class's consent, SBF and the Inner Circle intentionally deprived Plaintiff and the Class of their rightful possession of their crypto assets and fiat currencies stored on FTX.

89. Defendants intentionally, and without authority, assumed and exercised control over Plaintiff and the Class's cryptocurrency and money, interfering with their right to possession of the same, by (a) causing Plaintiff and the Class's FTX accounts to be restrained,

and (b) by causing cryptocurrency and money to be withdrawn from Plaintiff and the Class's FTX accounts and given to Alameda Research.

90. At all relevant times, SBF and the Inner Circle acted with wanton, recklessness and total and deliberate disregard for the personal rights of Plaintiff and the Class.

91. SBF and the Inner Circle's improper restraint of Plaintiff and the Class's cryptocurrency and money, which harmfully interfered with Plaintiff and the Class's rights to control their own property, constitutes conversion.

92. Plaintiff and the Class are entitled to actual damages.

PRAYER FOR RELIEF

Plaintiff Michael Elliott Jessup, individually and on behalf of all others similarly situated, respectfully request that this Court enter an Order:

(a) Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Michael Elliott Jessup as representative of the Class, and appointing his counsel as Class Counsel;

(b) An award of actual damages;

(c) An award of restitution for Defendants' wrongful conduct;

(d) An award of reasonable attorneys' fees and costs;

(e) An award of punitive or exemplary damages; and

(g) Such other and further relief that the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully Submitted,

MICHAEL ELLIOTT JESSUP, individually and
on behalf of all others similarly situated,

Dated: December 5, 2022

By: /s/ Todd Logan
One of Plaintiff's Attorneys

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6 *Counsel for Plaintiff and the Proposed Class*
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Hawkins v. Bankman-Fried et al

3:22CV07620 (Approx. 3 pages)

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Today's Date: 2/10/2023
Source: U.S. District Court, Northern District of California (San Francisco)

Court:	U.S. District Court, Northern District of California (San Francisco)
Case Title:	Hawkins v. Bankman-Fried et al
Case:	3:22-CV-07620
Judge:	Judge Jacqueline Scott Corley
Date Filed:	12/02/2022

CASE INFORMATION	
Case Number:	3:22CV07620
Jury Demand:	Plaintiff
Demand:	\$5,000,000,000
Nature of Suit:	Torts: Other Fraud (370)
Jurisdiction:	Diversity
Cause:	28 USC 1332 Diversity-Fraud

PARTICIPANT INFORMATION	Expand All
Russell Hawkins	

Samuel Bankman-Fried

Caroline Ellison

Zixiao Gary Wang

Nishad Singh

Armanino, LLP

Prager Metis CPAs, LLC

CALENDAR INFORMATION

[View Calendar Information](#)

DOCKET PROCEEDINGS (8)

Entry #:	Date:	Description:	
8	12/19/2022	Case Reassigned to Judge Jacqueline Scott Corley. Magistrate Judge Thomas S. Hixson no longer assigned to the case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras (mbc, COURT STAFF) (Filed on 12/19/2022) (Entered: 12/19/2022)	View Add to request
7	12/19/2022	CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. Please take notice that the case management conference set for March 2, 2023 is continued to April 6, 2023 at 1:30 p.m. before Judge Jacqueline Scott Corley via a Zoom webinar. Joint Case Management Statement is due by 3/30/2023. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jsc Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be	Send Runner to Court

		participating in the argument at the hearing. A list of names must be sent to the CRD at jscrd@cand.uscourts.gov no later than noon 4/5/2023. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . (This is a text-only entry generated by the court. There is no document associated with this entry.) (ahm, COURT STAFF) (Filed on 12/19/2022) (Entered: 12/19/2022)	
6	12/19/2022	ORDER RELATING CASE. Signed by Judge Jacqueline Scott Corley on 12/19/2022. (22-cv-7444, 22-cv-7620, and 22-cv-7666 are related to this action.) (ahm, COURT STAFF) (Filed on 12/19/2022) Modified on 12/19/2022 (ahm, COURT STAFF). (Entered: 12/19/2022)	View Add to request
5	12/05/2022	Summons Issued as to Armanino, LLP, Samuel Bankman-Fried, Caroline Ellison, Prager Metis CPAs, LLC, Nishad Singh, Zixiao Gary Wang. (slh, COURT STAFF) (Filed on 12/5/2022) (Entered: 12/05/2022)	View Add to request
4	12/05/2022	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 2/23/2023. Initial Case Management Conference set for 3/2/2023 10:00 AM in San Francisco, Courtroom G, 15th Floor. (slh, COURT STAFF) (Filed on 12/5/2022) (Entered: 12/05/2022)	View Add to request
3	12/05/2022	Case assigned to Magistrate Judge Thomas S. Hixson. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit E-Filing A New Civil Case at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 12/19/2022. (as, COURT STAFF) (Filed on 12/5/2022) (Entered: 12/05/2022)	Send Runner to Court
2	12/02/2022	Proposed Summons. (Pafiti, Jennifer) (Filed on 12/2/2022) (Entered: 12/02/2022)	View Add to request

1	12/02/2022	CLASS ACTION COMPLAINT against Armanino, LLP, Samuel Bankman-Fried, Caroline Ellison, Prager Metis CPAs, LLC, Nishad Singh, Zixiao Gary Wang (Filing fee \$ 402, receipt number ACANDC-17781354). Filed by Russell Hawkins. (Attachments: # 1 Civil Cover Sheet)(Pafiti, Jennifer) (Filed on 12/2/2022) Modified on 12/5/2022 (slh, COURT STAFF). (Entered: 12/02/2022)	<div>View</div> <div>Add to request</div>
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Attorney for Plaintiff

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUSSELL HAWKINS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SAMUEL BANKMAN-FRIED, CAROLINE
ELLISON, ZIXIAO “GARY” WANG,
NISHAD SINGH, ARMANINO, LLP,
and PRAGER METIS CPAS, LLC,

Defendants.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Russell Hawkins (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents and announcements published by Defendants, analysts’ reports and advisories, and information readily obtainable on the Internet. Plaintiff believes that substantial,

1 additional evidentiary support will exist for the allegations set forth herein after a reasonable
2 opportunity for discovery.

3 NATURE OF THE ACTION

4 1. This is a class action on behalf of a class consisting of all persons and entities other
5 than Defendants that have been unable to withdraw funds deposited into a yield-bearing account
6 (“YBA”) with FTX Trading LTD d/b/a FTX (“FTX or “the Company”) or West Realm Shires
7 Services Inc. d/b/a FTX US (“FTX US”) (collectively, the “FTX Entities”), seeking to recover
8 damages caused by Defendants’ violations of the California Unfair Competition Law, the
9 California False Advertising Law, as well as common law claims for fraudulent concealment, civil
10 conspiracy, and declaratory judgment.
11

12 2. FTX was a cryptocurrency exchange started in 2019 by Defendant Samuel
13 Bankman-Fried (“Bankman-Fried”), who served as its Chief Executive Officer (“CEO”) at all
14 relevant times, FTX’s United States (“U.S.”) affiliate, FTX US, was founded in 2020. The FTX
15 Entities offered a range of trading products, including derivatives, options, volatility products, and
16 leveraged tokens. The FTX Entities also provided spot markets in more than 300 cryptocurrency
17 trading pairs, including the native token FTT/USDT (“FTT Tokens”), thereby enabling FTX
18 customers to trade with leverage and short certain markets by borrowing from other FTX users.
19 Importantly, however, each of the FTX Entities’ terms of service expressly stated that customer
20 assets belonged solely to the customer and would not be transferred to FTX trading.
21

22 3. The FTX Entities constituted one half of Bankman-Fried’s “cryptocurrency
23 empire,” the other being a crypto-trading firm called Alameda Research (“Alameda”), which
24 Bankman-Fried founded in 2017. Bankman-Fried served as CEO of Alameda until 2021, when
25 he was succeeded by Defendant Caroline Ellison (“Ellison”). After stepping down as CEO of
26
27
28

Alameda and at all relevant times thereafter, Bankman-Fried consistently maintained that the FTX Entities and Alameda were separate and distinct.

4. From 2019 to 2022, the FTX Entities and Bankman-Fried undertook a major promotional marketing campaign. The campaign, which included social media posts, interviews, sports partnerships, internet and television advertisements, and naming rights deals, rapidly increased the FTX Entities' valuation, growing from \$1.2 billion to \$32 billion in only three years.

5. In addition to the promotional marketing campaign, throughout 2021 and 2022, Bankman-Fried touted that the FTX Entities had completed several successful GAAP audits. In March 2022, two auditors, Defendants Armanino, LLP ("Armanino") and Prager Metis CPAs, LLC ("Prager Metis"), issued certified reports which purportedly found the FTX Entities to be in good financial health. Further, Armanino and Prager Metis each published statements in support of Bankman-Fried and the FTX Entities in 2021 and 2022, respectively.

6. The FTX Entities' rapid growth abruptly halted on November 2, 2022, when the cryptocurrency publication *CoinDesk* published an article entitled "Divisions in Sam Bankman-Fried's Crypto Empire Blur on His Trading Titan Alameda's Balance Sheet", which questioned the financial health of both Alameda and the FTX Entities, and asserted that Alameda's balance sheet was made up primarily of FTT tokens, indicating that Alameda "rest[ed] on a foundation largely made up of a coin that a sister company invented, not an independent asset like a fiat currency or another crypto."

7. Shortly after the *CoinDesk* article was published, the FTX Entities saw massive customer withdrawals, resulting in a liquidity crisis. Ultimately, Bankman-Fried elected to freeze all withdrawals of customer assets.

8. Then, on November 8, 2022, rival cryptocurrency exchange Binance announced that it had reached a non-binding deal to acquire FTX. However, just one day later, Binance

1 reversed its decision, stating that a review of FTX’s finances uncovered liquidity issues that were
2 “beyond [Binance’s] control or ability to help.”

3 9. On November 10, 2022, Bankman-Fried took to Twitter and issued a series of
4 twenty-two tweets apologizing to customers and attempting to offer an explanation for the crash.

5 10. Finally, on November 12, 2022, *The Wall Street Journal* reported that Bankman-
6 Fried, Ellison, Defendant Zixiao “Gary” Wang (“Wang”), FTX’s Chief Technical Officer, and
7 Defendant Nishad Singh (“Singh”), FTX’s Chief Engineering Officer, were aware that FTX had
8 used customer assets to cover Alameda’s trading losses and repay its outstanding debts.

9 11. Shortly after the foregoing disclosures, Bankman-Fried resigned as CEO of FTX
10 and the FTX Entities and Alameda filed for bankruptcy. In a Delaware Bankruptcy Court filing,
11 FTX’s new CEO John J. Ray III stated that he had never seen “such a complete lack of corporate
12 controls and such a complete absence of trustworthy financial information as occurred here . . . the
13 situation is unprecedented.”
14

15 12. As a result of Defendants’ wrongful acts described herein, Plaintiff and other Class
16 members have suffered significant losses and damages.
17

18 **JURISDICTION AND VENUE**

19 13. The claims asserted herein arise under and pursuant to the California Unfair
20 Competition Law, and the California False Advertising Law, as well as common law claims for
21 fraudulent concealment, civil conspiracy, and declaratory judgment.
22

23 14. This Court has jurisdiction over the subject matter of this action pursuant to 28
24 U.S.C. § 1332(d)(2)(A) because this is a class action for a sum exceeding \$5,000,000.00, exclusive
25 of interest and costs, and in which at least one class member is a citizen of a state different than
26 the Defendants.
27
28

17. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

18. Plaintiff Russell Hawkins, as set forth in the attached Certification, deposited funds into a YBA with the FTX Entities and has since been unable to withdraw his deposited funds.

20. Defendant Ellison is the former CEO of Alameda.

21. Defendant Wang is the co-founder of Alameda and FTX and served as FTX’s Chief Technical Officer.

22. Defendant Singh is the co-founder FTX and served as FTX’s Chief Engineering Officer.

23. Defendants Bankman-Fried, Ellison, Wang, and Singh are sometimes referred to herein as the “Individual Defendants.”

24. Defendant Armanino is an accounting and consulting firm that maintains a principal place of business at 12657 Alcosta Boulevard, Suite 500, San Ramon, California.

25. Defendant Prager Metis is an accounting and consulting firm that maintains five offices in California and maintains its principal place of business at 14 Penn Plaza, Suite 1800, New York, New York, 10122.

26. Defendants Armanino and Prager Metis are sometimes referred to herein as the “Auditor Defendants.”

27. The Individual Defendants and the Auditor Defendants are sometimes collectively, in whole or in part, referred to herein as “Defendants.”

FACTUAL ALLEGATIONS

FTX’s Rise to Success

28. In 2017, Defendants Bankman-Fried and Wang founded Alameda in Berkeley, California. The crypto-trading firm first rose to prominence by arbitraging the price of bitcoin between different markets before venturing into other types of trades and investments in cryptocurrency projects. Bankman-Fried and Wang were later joined by Defendants Ellison and Singh. Bankman-Fried served as CEO of Alameda until 2021, when he was succeeded by Ellison. After stepping down as CEO of Alameda, Bankman-Fried consistently maintained that the FTX Entities and Alameda were separate and distinct.

29. In 2019, Bankman-Fried co-founded FTX, an abbreviation of “futures exchange,” with Wang and Singh. FTX offered investors a range of trading products such as derivatives, options, volatility products, and leveraged tokens. FTX also provided spot markets in more than 300 cryptocurrency trading pairs, including its native token FTT/USDT. One of the attractive features of FTX’s digital assets came from its terms of service, which provided that customer assets belonged *solely* to the customer and would *not* be transferred or otherwise used in FTX’s trading. Indeed, FTX’s terms of service stated, in relevant part:

8.2.6. All Digital Assets are held in your Account on the following basis:

- a) ***Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading.*** As the owner of Digital Assets in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account.
- b) ***None of the Digital Assets in your Account are the property of, or shall or may be loaned to, FTX Trading;*** FTX Trading does not represent or treat Digital Assets in User’s Accounts as belonging to FTX Trading.
- c) ***You control the Digital Assets held in your Account.*** At any time, subject to outages, downtime, and other applicable policies (including the Terms), ***you may withdraw your Digital Assets*** by sending them to a different blockchain address controlled by you or a third party.

(Emphasis added.) Moreover, the FTX US terms of service contained similarly reassuring language, stating, in relevant part:

- a. As part of your FTX.US account, FTX.US provides qualifying users access to accounts for you to store, track, transfer, and manage your balances of cryptocurrency and/or dollars or other supported currency. ***All cryptocurrency or dollars (or other supported currencies) that are held in your account are held by FTX.US for your benefit.***
- b. ***Title to cryptocurrency represented in your FTX.US Account shall at all times remain with you and shall not transfer to FTX.US.***
- c. ***FTX.US does not represent or treat assets in your FTX.US Account as belonging to FTX.US.***

(Emphasis added.)

30. From 2019-2022, the FTX Entities experienced a meteoric rise in success due in no small part to an aggressive promotional campaign. Throughout this period, Bankman-Fried established himself at the forefront of the cryptocurrency space and soon became known and referred to worldwide under the abbreviation “SBF.” Indeed, as Bankman-Fried achieved his celebrity status, he was hailed by some market analysts as the “savior of crypto.” Bankman-Fried burnished this reputation through myriad Twitter posts, television and podcast interviews, and political donations. Significantly, Bankman-Fried described himself as a proponent of a charitable movement called “Effective Altruism” and promised to donate the wealth he was accruing to a variety of charities.

31. During the same period, FTX became one of the largest crypto-trading companies in the world, with nearly \$15 billion in assets being traded on its platform daily. FTX’s marketing efforts involved partnering with popular names in sports and entertainment. Specifically, the FTX Entities secured several celebrity “brand ambassadors” and released a series of internet and television advertisements to promote these partnerships. Further, the FTX Entities entered into various sponsorships and naming rights deals with high profile sports programs such as UC Berkeley Athletics and the Miami Heat.

32. These promotional efforts resulted in a rapid increase in the FTX Entities’ valuation. By July 2021, FTX had attained a valuation of \$18 billion after securing funding from major financial players such as multinational conglomerate SoftBank Capital Group (“Softbank”) and venture capital firm Sequoia Capital, among others. By October 2021, after securing another series of investments, FTX had reached a valuation of \$25 billion. By January 2022, FTX US itself had attained a valuation of \$8 billion after securing funding from investors such as Softbank. Combined, the FTX Entities had attained a valuation exceeding \$32 billion in only three years.

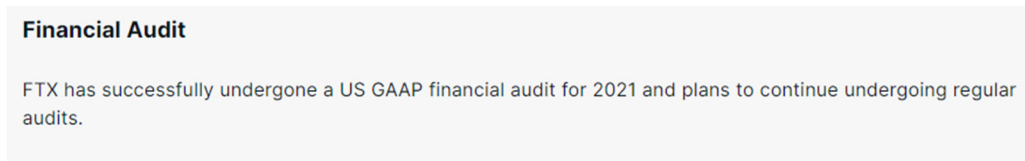
33. In addition to these promotional efforts, throughout 2021 and 2022, Bankman-Fried touted that the FTX Entities had purportedly completed several successful GAAP audits. For example, on July 31, 2021, Bankman-Fried tweeted that FTX was the “first (?) crypto exchange to complete a GAAP audit.”



34. Then, on August 26, 2021, Bankman-Fried tweeted that FTX and FTX US had officially passed US GAAP audits.



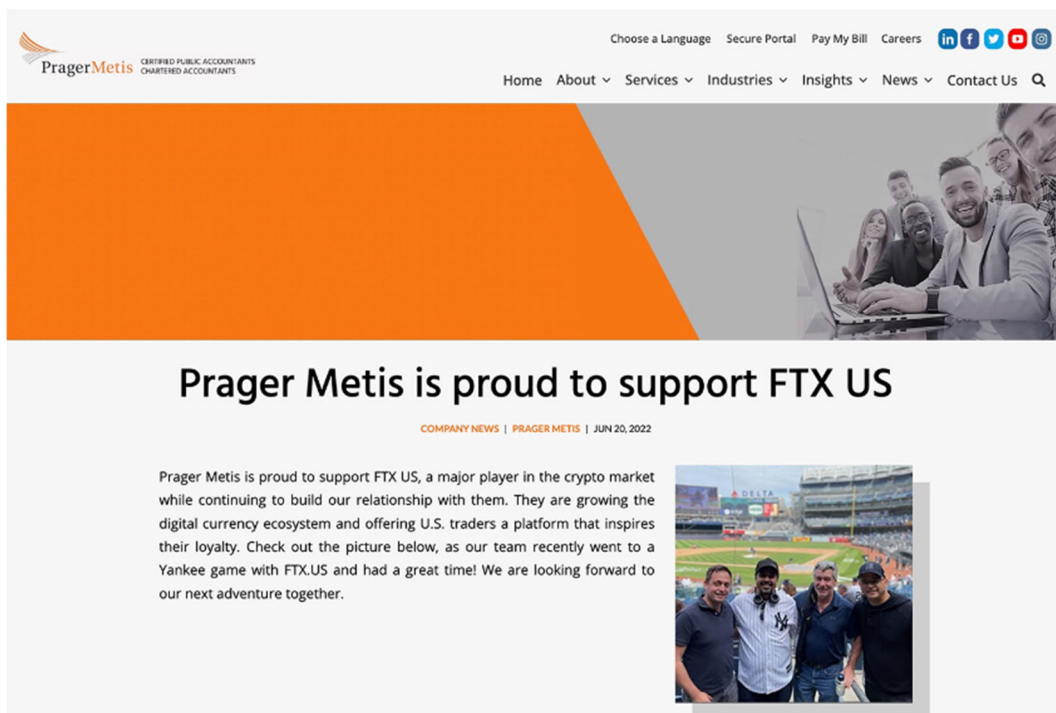
35. In addition, the security policy published on the FTX website affirmed the 2021 audits and stated plans for future audits.



36. In March 2022, Defendants Armanino and Prager Metis, the FTX Entities’ auditors, issued certified reports which found the FTX Entities to be in good financial health. Moreover, Armanino and Prager Metis each went so far as to issue public statements in support of the FTX Entities and Bankman-Fried. First, on December 8, 2021, Armanino tweeted “[l]et’s go buddy!” while tagging Bankman-Fried in advance of his testifying before Congress.



Second, in June 2022, Prager Metis’s website featured a photo stating that the firm was “proud to support FTX US.”



37. The Auditor Defendants’ validation of the FTX Entities through their certified reports and other public statements was crucial to the FTX Entities’ continued growth, as it offered

1 assurance to customers—falsely, as it turned out—that any assets deposited with FTX were in
2 responsible hands.

3 The Truth Emerges

4 38. The FTX Entities' rapid growth abruptly halted on November 2, 2022, when an
5 article published by the cryptocurrency publication *CoinDesk* questioned the financial health of
6 Alameda and the FTX Entities. Specifically, the article, entitled "Divisions in Sam Bankman-
7 Fried's Crypto Empire Blur on His Trading Titan Alameda's Balance Sheet" stated, in relevant
8 part:
9

10 Billionaire Sam Bankman-Fried's cryptocurrency empire is officially broken into
11 two main parts: FTX (his exchange) and Alameda Research (his trading firm), both
12 giants in their respective industries.

13 But even though they are two separate businesses, the division breaks down in a
14 key place: on Alameda's balance sheet, according to a private financial document
15 reviewed by *CoinDesk*. (It is conceivable the document represents just part of
16 Alameda.)

17 That balance sheet is full of FTX – specifically, the FTT token issued by the
18 exchange that grants holders a discount on trading fees on its marketplace. While
19 there is nothing per se untoward or wrong about that, it shows Bankman-Fried's
20 trading giant Alameda rests on a foundation largely made up of a coin that a sister
21 company invented, not an independent asset like a fiat currency or another crypto.
22 The situation adds to evidence that the ties between FTX and Alameda are
23 unusually close.

24 The financials make concrete what industry-watchers already suspect: Alameda is
25 big. As of June 30, the company's assets amounted to \$14.6 billion. Its single
26 biggest asset: \$3.66 billion of "unlocked FTT." The third-largest entry on the assets
27 side of the accounting ledger? A \$2.16 billion pile of "FTT collateral."

28 There are more FTX tokens among its \$8 billion of liabilities: \$292 million of
"locked FTT." (The liabilities are dominated by \$7.4 billion of loans.)

"It's fascinating to see that the majority of the net equity in the Alameda business
is actually FTX's own centrally controlled and printed-out-of-thin-air token," said
Cory Klippsten, CEO of investment platform Swan Bitcoin, who is known for his
critical views of altcoins, which refer to cryptocurrencies other than bitcoin (BTC).

Other significant assets on the balance sheet include \$3.37 billion of “crypto held” and large amounts of the Solana blockchain’s native token: \$292 million of “unlocked SOL,” \$863 million of “locked SOL” and \$41 million of “SOL collateral.” Bankman-Fried was an early investor in Solana. Other tokens mentioned by name are SRM (the token from the Serum decentralized exchange Bankman-Fried co-founded), MAPS, OXY and FIDA. There is also \$134 million of cash and equivalents and a \$2 billion “investment in equity securities.”

Also, token values may be low. In a footnote, Alameda says “locked tokens conservatively treated at 50% of fair value marked to FTX/USD order book.”

Owners of the FTT token get discounts on FTX trading fees, increased commissions on referrals and earn rewards. The value of FTT is maintained by FTX’s rolling program of buying back and burning tokens, a process that eats up a third of the exchange’s trading commissions, which will continue until half of all tokens are burned, according to FTX.

39. Shortly after the *CoinDesk* article was published, the FTX Entities saw massive customer withdrawals, resulting in a liquidity crisis. Ultimately, Bankman-Fried elected to freeze all withdrawals of customer assets.

40. Then, on November 8, 2022, rival cryptocurrency exchange Binance announced that it had reached a non-binding deal to acquire FTX. However, only one day later, Binance announced that “as a result of corporate due diligence” . . . [Binance had] decided that [it would] not pursue the potential acquisition of FTX[]” and that “the issues [were] beyond [Binance’s] control or ability to help.”



As a result of corporate due diligence, as well as the latest news reports regarding mishandled customer funds and alleged US agency investigations, we have decided that we will not pursue the potential acquisition of [FTX.com](https://ftx.com).

















4:00 PM · Nov 9, 2022



In the beginning, our hope was to be able to support FTX's customers to provide liquidity, but the issues are beyond our control or ability to help.

4:00 PM · Nov 9, 2022

41. On November 10, 2022, Bankman-Fried took to Twitter and issued a series of twenty-two tweets apologizing to customers and attempting to offer an explanation for the crash.

<p> SBF  @SBF_FTX</p> <p>1) I'm sorry. That's the biggest thing.</p> <p>I fucked up, and should have done better.</p> <p>9:13 AM · Nov 10, 2022</p>	<p> SBF  @SBF_FTX</p> <p>2) I also should have been communicating more very recently.</p> <p>Transparently--my hands were tied during the duration of the possible Binance deal; I wasn't particularly allowed to say much publicly. But of course it's on me that we ended up there in the first place.</p>
<p> SBF  @SBF_FTX</p> <p>3) So here's an update on where things are.</p> <p>[THIS IS ALL ABOUT FTX INTERNATIONAL, THE NON-US EXCHANGE. FTX US USERS ARE FINE!]</p> <p>[TREAT ALL OF THESE NUMBERS AS ROUGH. THERE ARE APPROXIMATIONS HERE.]</p> <p>9:13 AM · Nov 10, 2022</p>	<p> SBF  @SBF_FTX</p> <p>4) FTX International currently has a total market value of assets/collateral higher than client deposits (moves with prices!).</p> <p>But that's different from liquidity for delivery--as you can tell from the state of withdrawals. The liquidity varies widely, from very to very little.</p> <p>9:13 AM · Nov 10, 2022</p>
<p> SBF  @SBF_FTX</p> <p>5) The full story here is one I'm still fleshing out every detail of, but as a very high level, I fucked up twice.</p> <p>The first time, a poor internal labeling of bank-related accounts meant that I was substantially off on my sense of users' margin. I thought it was way lower.</p> <p>9:13 AM · Nov 10, 2022</p>	<p> SBF  @SBF_FTX</p> <p>6) My sense before:</p> <p>Leverage: 0x USD liquidity ready to deliver: 24x average daily withdrawals</p> <p>Actual:</p> <p>Leverage: 1.7x Liquidity: 0.8x Sunday's withdrawals</p> <p>Because, of course, when it rains, it pours. We saw roughly \$5b of withdrawals on Sunday--the largest by a huge margin.</p> <p>9:13 AM · Nov 10, 2022</p>
<p> SBF  @SBF_FTX</p> <p>7) And so I was off twice.</p> <p>Which tells me a lot of things, both specifically and generally, that I was shit at.</p> <p>And a third time, in not communicating enough. I should have said more. I'm sorry--I was slammed with things to do and didn't give updates to you all.</p> <p>9:13 AM · Nov 10, 2022</p>	<p> SBF  @SBF_FTX</p> <p>8) And so we are where we are. Which sucks, and that's on me.</p> <p>I'm sorry.</p> <p>9:13 AM · Nov 10, 2022</p>

9) Anyway: right now, my #1 priority--by far--is doing right by users.

And I'm going to do everything I can to do that. To take responsibility, and do what I can.

9:13 AM · Nov 10, 2022

11) There are a number of players who we are in talks with, LOIs, term sheets, etc.

We'll see how that ends up.

9:13 AM · Nov 10, 2022

13) Because at the end of the day, I was CEO, which means that "I" was responsible for making sure that things went well. "I", ultimately, should have been on top of everything.

I clearly failed in that. I'm sorry.

9:13 AM · Nov 10, 2022

15) First, one way or another, Alameda Research is winding down trading.

They aren't doing any of the weird things that I see on Twitter--and nothing large at all. And one way or another, soon they won't be trading on FTX anymore.

9:13 AM · Nov 10, 2022

17) All of the stakeholders would have a hard look at FTX governance. I will not be around if I'm not wanted.

All of the stakeholders--investors, regulators, users--would have a large part to play in how it would be run.

Solely trust.

9:13 AM · Nov 10, 2022

19) A few other assorted comments:

This was about FTX International. FTX US, the US based exchange that accepts Americans, was not financially impacted by this shitshow.

It's 100% liquid. Every user could fully withdraw (modulo gas fees etc).

Updates on its future coming.

9:13 AM · Nov 10, 2022

10) So, right now, we're spending the week doing everything we can to raise liquidity.

I can't make any promises about that. But I'm going to try. And give anything I have to if that will make it work.

9:13 AM · Nov 10, 2022

12) Every penny of that--and of the existing collateral--will go straight to users, unless or until we've done right by them.

After that, investors--old and new--and employees who have fought for what's right for their career, and who weren't responsible for any of the fuck ups.

9:13 AM · Nov 10, 2022

14) So, what does this mean going forward?

I'm not sure--that depends on what happens over the next week.

But here are some things I know.

9:13 AM · Nov 10, 2022

16) Second, in any scenario in which FTX continues operating, its first priority will be radical transparency--transparency it probably always should have been giving.

Giving as close to on-chain transparency as it can: so that people know "exactly" what is happening on it.

9:13 AM · Nov 10, 2022

18) But all of that isn't what matters right now--what matters right now is trying to do right by customers. That's it.

9:13 AM · Nov 10, 2022

20) At some point I might have more to say about a particular sparring partner, so to speak.

But you know, glass houses. So for now, all I'll say is:

well played; you won.

9:13 AM · Nov 10, 2022



42. Then, on November 12, 2022, *The Wall Street Journal* published an article entitled “Alameda, FTX Executives Are Said to Have Known FTX Was Using Customer Funds.” The article stated, in relevant part:

Alameda Research’s chief executive and senior FTX officials knew that FTX had lent its customers’ money to Alameda to help it meet its liabilities, according to people familiar with the matter.

Alameda’s troubles helped lead to the bankruptcy of FTX, the crypto exchange founded by Sam Bankman-Fried. Alameda is a trading firm also founded and owned by Mr. Bankman-Fried.

Alameda faced a barrage of demands from lenders after crypto hedge fund Three Arrows Capital collapsed in June, creating losses for crypto brokers such as Voyager Digital Ltd., the people said.

In a video meeting with Alameda employees late Wednesday Hong Kong time, Alameda CEO Caroline Ellison said that she, Mr. Bankman-Fried and two other FTX executives, Nishad Singh and Gary Wang, were aware of the decision to send customer funds to Alameda, according to people familiar with the video. Mr. Singh was FTX’s director of engineering and a former Facebook employee. Mr. Wang, who previously worked at Google, was the chief technology officer of FTX and co-founded the exchange with Mr. Bankman-Fried.

Ms. Ellison said on the call that FTX used customer money to help Alameda meet its liabilities, the people said.

Alameda had taken out loans to fund illiquid venture investments, the people said. On Friday, FTX, Alameda, FTX US and other FTX affiliates filed for bankruptcy protection.

Bankruptcy means that it could be a long time before individual investors and others owed their funds are able to potentially recover any of them, if ever.

43. *The Wall Street Journal* article’s revelation that customer assets were being used to cover Alameda’s trading losses and repay its outstanding debts demonstrated that Defendants had been operating in direct contradiction of the FTX Entities’ terms of service, which explicitly stated that customer assets would not be transferred to FTX trading.

44. Shortly after the foregoing disclosures, Bankman-Fried resigned as CEO of FTX and the FTX Entities and Alameda filed for bankruptcy. In a Delaware Bankruptcy Court filing, FTX’s new CEO John J. Ray III stated that he had never seen “such a complete lack of corporate controls and such a complete absence of trustworthy financial information as occurred here . . . the situation is unprecedented.”

45. Thereafter, on November 30, 2022, Bankman-Fried granted a tele-interview to *New York Times* reporter Andrew Ross Sorkin, during which Bankman-Fried fundamentally accepted responsibility for FTX and Alameda’s failures. Among other statements, Bankman-Fried acknowledged: “*I was responsible for doing the right things and I mean, we didn’t. Like, we messed up big.*”

PLAINTIFF’S CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of a Class, consisting of all those who have been unable to withdraw funds deposited into YBAs with the FTX Entities (the “Class”); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the FTX Entities, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

47. The members of the Class are so numerous that joinder of all members is impracticable. At least tens of thousands of depositors of FTT Tokens are presently unable to

1 withdraw their assets from FTX YBAs. While the exact number of Class members is unknown to
2 Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes
3 that there are hundreds or thousands of members in the proposed Class. Record owners and other
4 members of the Class may be identified from records maintained by the FTX Entities or their
5 transfer agents and may be notified of the pendency of this action by mail, using the form of notice
6 similar to that customarily used in class actions.
7

8 48. Plaintiff's claims are typical of the claims of the members of the Class as all
9 members of the Class are similarly affected by Defendants' wrongful conduct in violation of laws
10 that are complained of herein.

11 49. Plaintiff will fairly and adequately protect the interests of the members of the Class
12 and has retained counsel competent and experienced in class litigation. Plaintiff has no interests
13 antagonistic to or in conflict with those of the Class.
14

15 50. Common questions of law and fact exist as to all members of the Class and
16 predominate over any questions solely affecting individual members of the Class. Among the
17 questions of law and fact common to the Class are:

- 18 • whether the federal or applicable laws were violated by Defendants' acts as
19 alleged herein;
- 20 • whether the YBAs were unregistered securities under federal or applicable law;
- 21 • what the type and measure of damages suffered by Plaintiff and the Class may
22 be;
- 23 • whether Plaintiff and Class members have sustained monetary loss and the proper
24 measure of that loss;
- 25 • whether Plaintiff and Class members are entitled to injunctive and/or declaratory
26 relief;
- 27 • whether Plaintiff and Class members are entitled to consequential damages,
28 punitive damages, statutory damages, disgorgement, and/or other legal or
equitable appropriate remedies as a result of Defendants' conduct.

51. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq. (Individually and on Behalf of the Class)

52. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

53. This Count is asserted against the Individual Defendants and is based upon the California Unfair Competition Law (“UCL”), which prohibits any “unlawful, unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

54. The Individual Defendants’ unfair and deceptive practices described herein are likely to mislead—and clearly have misled—consumers acting reasonably in the circumstances into depositing funds into YBAs with the FTX Entities.

55. Unlawful: The Individual Defendants have advertised the YBAs using false and/or misleading claims, such that the Individual Defendant’s actions as alleged herein violate at least the following laws:

- The False Advertising Law, California Business & Professions Code § 17500, *et seq.*

56. Fraudulent: A practice is “fraudulent” if members of the general public were or are likely to be deceived. The Individual Defendants’ statements regarding the legality, nature and viability of YBAs are deceptive to the public. Further, Defendant Bankman-Fried and the FTX

1 Entities' operation of the FTX Entities and Ponzi-scheme type behavior is further fraudulent and
2 deceptive to the public related to the viability and nature of the FTX Entities.

3 57. Unfair: The UCL gives courts maximum discretion to address improper business
4 practices that are "unfair." The Individual Defendants' collective conduct with respect to the
5 marketing and sale of YBAs is unfair because the Individual Defendants' conduct was immoral,
6 unethical, unscrupulous, or substantially injurious to consumers in inducing them to deposit funds
7 into YBAs with the FTX Entities and the utility of their conduct, if any, does not remotely
8 outweigh the gravity of the harm to its victims. Plaintiff and the Class would not have deposited
9 funds into YBAs with the FTX Entities had they known that the statements were
10 misrepresentations and deliberately deceiving.
11

12 58. Defendant Bankman-Fried and the FTX Entities' conduct with respect to the
13 operation of the FTX Entities is also unfair because the consumer injury is substantial, not
14 outweighed by benefits to consumers or competition, and not one that consumers, can reasonably
15 avoid.
16

17 59. The harm suffered by Plaintiff and the Class was directly and proximately caused
18 by the deceptive and unfair practices of the Individual Defendants related to YBAs and the
19 operation of the FTX Entities, as described herein.
20

21 60. In accordance with California Business & Professions Code § 17203, Plaintiff seeks
22 an order enjoining the Individual Defendants from continuing to conduct business through
23 fraudulent or unlawful acts and practices and to commence a corrective advertising campaign. On
24 behalf of the Class, Plaintiff also seeks an order for the restitution of all monies made into YBAs
25 with the FTX Entities, which were made resulting from acts of fraudulent, unfair, or unlawful
26 competition.
27
28

COUNT II

**Violation of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq.
(Individually and on Behalf of the Class)**

61. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

62. This Count is asserted against Individual Defendants and is based upon California’s False Advertising Law (“FAL”), which prohibits any statement in connection with the sale of goods “which is untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

63. As set forth herein, the Individual Defendants made statements regarding YBAs and the FTX Entities that were untrue or misleading. They publicly represented that the FTX Entities and YBAs were a viable and safe way to invest in crypto, a statement designed to deceive consumers into investing with the FTX Entities.

64. The Individual Defendants’ claims that YBAs and the FTX Entities were viable and safe for investing in crypto are untrue due to the house of cards nature of the FTX Entities’ business and movement of funds, as evidenced by the immense collapse in fall 2022.

65. The Individual Defendants knew, or reasonably should have known, that all these claims relating to the viability and safety of YBAs and the FTX Entities were untrue or misleading. The Individual Defendants failed to adequately inform Plaintiff and the Class of the true nature of YBAs and the FTX Entities.

66. When the true nature of the FTX Entities and YBAs became publicly known in the fall of 2022, the immediate public outrage, bankruptcy proceedings, and government investigation reflected the degree to which consumers and the public at large felt they were deceived by the Individual Defendants and the FTX Entities’ business practices.

67. By reason of the above conduct, the Individual Defendants are liable pursuant to Cal. Bus. & Prof. Code § 17500.

COUNT III

**Fraudulent Concealment
(Individually and on Behalf of the Class)**

68. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

69. This Count is asserted against the Individual Defendants and is based upon the claim of fraudulent concealment under common law.

70. The Individual Defendants omitted an existing fact about the FTX Entities and YBAs when it failed to disclose information regarding the true nature of the FTX Entities and YBAs.

71. The omission is material because Plaintiff and the Class would not have transacted with the FTX Entities had they known true nature of the FTX Entities and YBAs.

72. The Individual Defendants marketed and sold to Plaintiff and the Class despite having knowledge of the true nature of the FTX Entities and YBAs.

73. The Individual Defendants intended that consumers and purchasers would rely on the Individual Defendants' statements regarding the safety and nature of the FTX Entities and YBAs to bolster sales.

74. Plaintiff and the Class were not aware of the true nature and safety of YBAs and the FTX Entities' platform and could not reasonably have discovered those true characteristics.

75. Plaintiff and the Class relied on the Individual Defendants' statements in that they deposited any amount of funds into YBAs with the FTX Entities, which they would not have done had they known the true risky nature of the products.

76. Plaintiff and the Class had the right to rely on the Individual Defendants' statements and omissions that created the false impression that the FTX Entities and YBAs were safe and

1 reliable investment accounts based on reasonable purchaser expectations that the exchange would
2 remain solvent.

3 77. The Individual Defendants had an affirmative duty to disclose the true nature of the
4 FTX Entities and YBAs to potential purchasers and investors because they were in a superior
5 position to know the true nature of the FTX Entities and YBAs.
6

7 78. The Individual Defendants fraudulently concealed the nature of the FTX Entities
8 and YBAs, causing damages to Plaintiff and the class.

9 **COUNT IV**

10 **Civil Conspiracy** 11 **(Individually and on Behalf of the Class)**

12 79. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
13 paragraphs as if fully set forth herein.

14 80. This Count is asserted against all Defendants and is based upon the claim of civil
15 conspiracy under common law.

16 81. The Individual Defendants made innumerable misrepresentations and omissions to
17 Plaintiff and Class Members regarding the nature and safety of the FTX Entities and YBAs in
18 order to induce confidence in the platform and convince consumers to invest in what was a patently
19 misleading and deceptive scheme, thus deceiving consumers and potential customers that their
20 investments in the FTX Entities were safe.
21

22 82. Bankman-Fried entered into at least one agreement with the other Defendants for
23 the express purpose of making misrepresentations or omissions in order to induce and convince
24 Plaintiff and consumers to invest in YBAs and put their money in the FTX Entities.
25

26 83. Defendants engaged in concerted unlawful acts, particularly in the form of
27 misrepresentations and omissions made to Plaintiff and the Class for the purposes of inducing them
28 to invest with the FTX Entities and in YBAs.

84. The conspiracy substantially aided the wrongdoing conducted by the FTX Entities and Bankman-Fried. Additionally, the Auditor Defendants had knowledge of the fraud and wrongdoing by the FTX Entities as a result of their experience and relationship with the FTX Entities, and thus knew or should have known that the representations they made were deceitful and fraudulent.

85. This conspiracy caused damages to Plaintiff and the Class in the amount of the money they invested in the FTX Entities that was lost as a result of the insolvency.

COUNT V

Declaratory Judgment, Cal. Code Civ. Proc. § 1060 (Individually and on Behalf of the Class)

86. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

87. This Count is asserted against the Individual Defendants under Cal. Code Civ. Proc. § 1060.

88. There is a bona fide, actual, and present need for the declaratory relief requested herein; the declaratory relief prayed for herein deals with a present, ascertained or ascertainable state of facts and a present controversy as to that state of facts; contractual and statutory duties and rights are dependent on those facts and law applicable to the facts; the parties have an actual, present, adverse, and directly antagonistic interest in the subject matter; and the antagonistic and adverse interests are all before this Court by proper process for final resolution.

89. Plaintiff and the Class have an obvious and significant interest in the outcome of this lawsuit.

90. Plaintiff and the Class deposited funds into YBAs with the FTX Entities, based in part on justifiable reliance on the Individual Defendants' statements and misrepresentations regarding the nature of YBAs and the FTX Entities' platform.

91. If Plaintiff and the Class knew the true facts surrounding YBAs and the FTX Entities, including but not limited to that YBAs are unregistered securities, Plaintiff and the Class would not have deposited funds into YBAs with the FTX Entities in the first place.

92. Thus, there is a justiciable controversy over whether the YBAs were sold illegally and whether the Defendants illegally solicited their deposits from Plaintiff and the Class.

93. Plaintiff and the Class thus seek an order declaring that the YBAs were unregistered securities and needed to be registered with the SEC and state regulatory authorities, that the FTX Entities did not work as represented, and that the Individual Defendants were paid to misrepresent the FTX Entities and YBAs to the nation at large.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: December 2, 2022

Respectfully submitted,

POMERANTZ LLP

/s/ Jennifer Pafiti

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3:22CV07444 (Approx. 4 pages)

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Today's Date: 2/10/2023

Source: U.S. District Court, Northern District of California (San Francisco)

Court:	U.S. District Court, Northern District of California (San Francisco)
Case Title:	Pierce v. Bankman-Fried et al
Case:	3:22-CV-07444
Judge:	Judge Jacqueline Scott Corley
Date Filed:	11/23/2022
Case Status:	ADRMOP, RELATE

CASE INFORMATION

Case Number:	3:22CV07444
Jury Demand:	Plaintiff
Nature of Suit:	Other Statutes: Racketeer Influenced and Corrupt Organizations (470)
Jurisdiction:	Federal Question
Cause:	18 USC 1962 Racketeering (RICO) Act

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Samuel Bankman-Fried

Caroline Ellison

Zixiao Wang

Nishad Singh

Armanino, LLP

Prager Metis CPA's

CALENDAR INFORMATION

[View Calendar Information](#)

DOCKET PROCEEDINGS (12)

Entry #:	Date:	Description:	
12	12/19/2022	Case Reassigned to Judge Jacqueline Scott Corley. Judge Jeffrey S. White no longer assigned to the case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras . (mbc, COURT STAFF) (Filed on 12/19/2022) (Entered: 12/19/2022)	<div>View</div> <div>Add to request</div>
11	12/19/2022	CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. Please take notice that the case management conference set for March 2, 2023 is continued to April 6, 2023 at 1:30 p.m. before Judge Jacqueline Scott Corley via a Zoom webinar. Joint Case Management Statement is due by 3/30/2023. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jsc Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be	<div>Send Runner to Court</div>

		participating in the argument at the hearing. A list of names must be sent to the CRD at jscrd@cand.uscourts.gov no later than noon 4/5/2023. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . (This is a text-only entry generated by the court. There is no document associated with this entry.) (ahm, COURT STAFF) (Filed on 12/19/2022) (Entered: 12/19/2022)	
10	12/19/2022	ORDER RELATING CASE. Signed by Judge Jacqueline Scott Corley on 12/19/2022. (22-cv-7444, 22-cv-7620, and 22-cv-7666 are related to this action.) (ahm, COURT STAFF) (Filed on 12/19/2022) Modified on 12/19/2022 (ahm, COURT STAFF). (Entered: 12/19/2022)	View Add to request
9	11/23/2022	ORDER SETTING CASE MANAGEMENT CONFERENCE AND REQUIRING JOINT CASE MANAGEMENT CONFERENCE STATEMENT. Signed by Judge Jeffrey S. White on 11/23/2022. Joint Case Management Statement due by 2/17/2023. Initial Case Management Conference set for 2/24/2023 at 11:00 AM - Videoconference Only. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jsw Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names and emails must be sent to the CRD at jswcrd@cand.uscourts.gov no later than 2/23/2023 at 12:00 PM PST. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . (kc, COURT STAFF) (Filed on 11/23/2022) (Entered: 11/23/2022)	View Add to request
8	11/23/2022	ORDER by Judge Jeffrey S. White granting 3 Motion for Pro Hac Vice as to Marshal J. Hoda. (kc, COURT STAFF) (Filed on 11/23/2022) (Entered: 11/23/2022)	View Add to request

7	11/23/2022	Summons Issued as to Armanino, LLP, Samuel Bankman-Fried, Caroline Ellison, Prager Metis CPA's, Nishad Singh, Zixiao Wang. (cv, COURT STAFF) (Filed on 11/23/2022) (Entered: 11/23/2022)	View Add to request
6	11/23/2022	Initial Case Management Scheduling Order with ADR Deadlines: Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras . Case Management Statement due by 2/17/2023. Initial Case Management Conference set for 2/24/2023 11:00 AM in Oakland, Courtroom 5, 2nd Floor. (cv, COURT STAFF) (Filed on 11/23/2022) (Additional attachment(s) added on 11/23/2022: # 1 Notice of Eligibility for Video Recording) (cv, COURT STAFF). (Entered: 11/23/2022)	View Add to request
5	11/23/2022	Proposed Summons. (Attachments: # 1 Summons, # 2 Summons, # 3 Summons, # 4 Summons, # 5 Summons) (Vondran, Steven) (Filed on 11/23/2022) (Entered: 11/23/2022)	View Add to request
4	11/23/2022	Case assigned to Judge Jeffrey S. White. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit E-Filing A New Civil Case at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. (cv, COURT STAFF) (Filed on 11/23/2022) (Entered: 11/23/2022)	Send Runner to Court
3	11/23/2022	First MOTION for leave to appear in Pro Hac Vice for Marshal Hoda (Filing fee \$ 317, receipt number ACANDC-17754705.) filed by Stephen T Pierce. (Vondran, Steven) (Filed on 11/23/2022) (Entered: 11/23/2022)	View Add to request
2	11/23/2022	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Stephen T Pierce.. (Vondran, Steven) (Filed on 11/23/2022) (Entered: 11/23/2022)	View Add to request
1	11/23/2022	COMPLAINT against All Defendants (Filing fee \$ 402, receipt number ACANDC-17754637.). Filed byStephen T Pierce. (Attachments: # 1 Civil Cover Sheet)(Vondran, Steven) (Filed on 11/23/2022) (Entered: 11/23/2022)	View Add to request

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17 UNITED STATES DISTRICT COURT
 18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO & OAKLAND DIVISION

20 **Stephen Pierce, individually and**
 21 **on behalf of all others similarly**
 22 **situated,**

23 Plaintiff;

24 v.

25 **Samuel Bankman-Fried, Caroline**
 26 **Ellison, Zixiao “Gary” Wang,**
 27 **Nishad Singh, Armanino, LLP,**
 28 **and Prager Metis CPAs, LLC,**

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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CLASS ACTION COMPLAINT

*“It is sort of like real monetizable stuff in some senses ... like you’re the guy calling bullsh*t and saying this thing’s actually worthless but in what sense are you right?”*

- Sam Bankman-Fried, Defendant and founder of FTX Group, asked if he was running a Ponzi scheme.

“How do I signal my genuinely sweet and feminine nature on my dating profile? Should it go before or after the section on wire fraud[?]”

- Caroline Ellison, Defendant and former CEO of Alameda Research, on her personal blog.

“I have been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate failures in history ... Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here ... this situation is unprecedented.”

- John J. Ray III, FTX Group bankruptcy administrator, describing the FTX debacle in recent judicial pleadings.

I. Introduction

Sam Bankman-Fried built a cryptocurrency empire that made him a billionaire before the age of 30. That empire has now collapsed, and it has become clear that Bankman-Fried and his lieutenants misappropriated billions of dollars of their customers’ assets. This is a RICO action against Sam Bankman-Fried and those who conspired in and facilitated his misdeeds.

The named Plaintiff, Stephen Pierce, is an individual who entrusted his savings to Bankman-Fried’s now-defunct cryptocurrency exchange FTX US. Like many others, Mr. Pierce lost those savings when Bankman-Fried’s house of cards collapsed.

1 He thus brings this complaint, on behalf of himself and all others similarly situated,
2 against (1) Sam Bankman-Fried, (2) Caroline Ellison, (3) Zixiao “Gary” Wang, (4)
3 Nishad Singh, (5) Armanino, LLP, and (6) Prager Metis CPAs, LLC (collectively, the
4 “Defendants”). In support thereof, he would show the Court as follows.¹

5 II. Summary of the Action

6 1. This action arises from one of the great frauds in history. But, as is often
7 true, what became a calamity started with runaway success. In 2017, Sam Bankman-
8 Fried founded a cryptocurrency trading firm called **Alameda Research** in Berkeley,
9 California. In 2019, he started a cryptocurrency exchange² called **FTX**—which
10 quickly grew to become the world’s second-largest. By 2022, Forbes estimated his
11 fortune at \$17 billion and ranked him the 41st richest person in the world. It was
12 amongst the fastest accumulations of self-made wealth in history.

13 2. Bankman-Fried didn’t just get rich—he fashioned himself a prophet. In
14 an endless stream of tweets, interviews, and appearances, he touted a prosperous
15 future powered by a crypto bull market that would never end. He repeatedly
16 proclaimed his intention to give away his fortune. He hobnobbed with the rich and
17 famous and became one of the United States’ largest political donors. In no time at
18 all, Bankman-Fried became a celebrity in his own right—recognizable the world over
19 by his initials: “SBF.”

20 3. Then it all fell apart. In November 2022, a leaked balance sheet made
21 clear that Alameda Research was in serious financial trouble. That spooked the
22

23 ¹ Statements related to Mr. Pierce’s own experiences are within his personal
24 knowledge. All other allegations are the result of investigation by the undersigned
25 attorneys.

26 ² A cryptocurrency exchange is a business that provides customers a digital
27 marketplace for buying, selling, and storing cryptocurrencies and making
cryptocurrency-related financial transactions.

1 market, leading to massive withdrawals from Bankman-Fried's cryptocurrency
2 exchanges and a liquidity crisis. In response, Bankman-Fried froze withdrawals of
3 customer assets—and then put his whole empire into bankruptcy. His companies
4 went from collective valuations exceeding \$40 billion to zero. It took nine days.

5 4. In the aftermath, Bankman-Fried and his top brass made a series of
6 public statements about what went wrong. Bankman-Fried tweeted that he had
7 “f*cked up” and was “sorry,” without explaining precisely how or why. Then came the
8 big reveal. Caroline Ellison—then-CEO of Alameda Research and Bankman-Fried's
9 former girlfriend—admitted that she, Bankman-Fried, Gary Wang, and Nishad
10 Singh had misappropriated FTX customer assets to cover Alameda's trading losses
11 and repay its outstanding debts. FTX had a **\$10 billion** hole in its balance sheet.

12 5. Bankman-Fried soon admitted that this misappropriation was not a
13 one-time event, but part of a years-long pattern of malfeasance and deception that
14 enriched him and his co-conspirators at the expense of their customers. He confessed
15 to a journalist that “each step was in isolation rational and reasonable, and then when
16 I finally added it up last week it wasn't.” He even revealed that his altruistic public
17 persona had been a sham, writing that it had all been part of “this dumb game we
18 woke westerners play where we say all the right shibboleths so everyone likes us.”

19 6. This is a unique case in many respects, but perhaps most of all in the
20 brazenness of the scheme, the scale of the disaster, and Bankman-Fried's immediate
21 confessions. Although there is much to be learned in discovery, the key facts are clear.
22 Bankman-Fried's cryptocurrency exchanges' terms of service made clear that
23 customers' assets belonged at all times to customers, and would not be transferred to
24 or used by Bankman-Fried's companies. But Bankman-Fried and his inner circle
25 treated those assets as a slush fund to fund their own proprietary investments and a
26 variety of personal boondoggles. To top it off, they used inside knowledge and
27

1 technical expertise to systematically advantage their own trading efforts and cheat
2 their customers. And they covered it all up by intentionally and systematically
3 deceiving the public about the true nature of their enterprise.

4 7. Bankman-Fried and his lieutenants did not act alone. They conspired
5 with various professionals and firms who vouched for and facilitated their enterprise,
6 lending a crucial veneer of respectability to their operation. Two of those co-
7 conspirators, Armanino and Prager Metis, were the FTX Group's auditors.³ Each of
8 these firms facilitated the FTX Group enterprise by giving Bankman-Fried's entities
9 clean bills of health, which Bankman-Fried used to convince customers and investors
10 to trust him with their money. All the while, they remained willfully blind to the
11 nature of the FTX Group enterprise for the sake of their own statuses in the crypto
12 community and their bottom lines.

13 8. In legal terms, all this adds up to a years-long pattern of racketeering
14 and conspiracy characterized by numerous instances of theft, wire fraud, bank fraud,
15 money laundering, and trafficking in stolen property in violation of the Racketeering
16 Influenced and Corrupt Organizations Act ("RICO"). This is a suit to hold the
17 Defendants accountable to the victims they harmed.

18 **III. Parties**

19 9. Plaintiff Stephen Pierce is an individual United States citizen residing
20 in Maryland. Mr. Pierce deposited \$19,986.00 in an interest-bearing account with
21 FTX US on January 5, 2022. He used the FTX US mobile app to request a withdrawal
22 of \$19,461.00 on November 7, 2022. Mr. Pierce has not received his money. He is one
23 of more than a million depositors who lost their money in the FTX Group's collapse.

24
25
26 ³ The "FTX Group" is the RICO enterprise-in-fact at the heart of this matter,
27 consisting of at least four different "Silos" and more than 130 individual business
28 entities.

1 10. Defendant Samuel “Sam” Bankman-Fried is an individual United
2 States citizen. Bankman-Fried is the founder and former leader of the FTX Group.
3 Bankman-Fried resides in The Bahamas. The most recent available information
4 suggests that he remains there under the supervision of Bahamian authorities.

5 11. Defendant Caroline Ellison is an individual United States citizen.
6 Ellison is the former CEO of Alameda Research and part of Bankman-Fried’s inner
7 circle. Ellison resided until recently in The Bahamas. She is rumored to have
8 absconded following the FTX Group’s collapse. Her current whereabouts are unclear.

9 12. Defendant Zixiao “Gary” Wang is an individual United States citizen.
10 Wang is the co-founder of Alameda Research and the FTX cryptocurrency exchanges.
11 He served as FTX’s Chief Technical Officer and was part of Bankman-Fried’s inner
12 circle. Wang resided until recently in The Bahamas. He is rumored to have absconded
13 following the FTX Group’s collapse. His current whereabouts are unclear.

14 13. Defendant Nishad Singh is an individual United States citizen. Singh is
15 the co-founder of the FTX cryptocurrency exchanges. He served as FTX’s Chief
16 Engineering Officer and was part of Bankman-Fried’s inner circle. Singh resided
17 until recently in The Bahamas. He is rumored to have absconded following the FTX
18 Group’s collapse. His current whereabouts are unclear.

19 14. Defendant Armanino, LLP (“Armanino”) is an accounting and
20 consulting firm that was engaged by the FTX Group to perform corporate audits. It
21 is one of the top 25 largest independent accounting and business consulting firms in
22 the United States, with more than 2000 employees and 24 offices—including ten
23 offices in California. Armanino markets itself aggressively to companies in the
24 cryptocurrency space, touting an “industry-focused practice” that “serves digital asset
25 financial service firms, miners & stakers, token projects, and ‘crypto-curious’
26
27
28

1 companies ... to fulfill the unique needs of the industry.” Armanino has its principal
2 place of business at 12657 Alcosta Boulevard, Suite 500, San Ramon, California.

3 15. Defendant Prager Metis CPAs, LLC (“Prager Metis”) is an accounting
4 and consulting firm that was engaged by the FTX Group to perform corporate audits.
5 Prager Metis has more than 700 employees in offices around the United States and
6 the globe, including five offices in California. Prager Metis markets itself aggressively
7 to companies in the cryptocurrency space, announcing recently that it had become
8 “the first-ever CPA firm to officially open its Metaverse headquarters.” Prager Metis
9 is a New York LLC with its principal place of business at 14 Penn Plaza, Suite 1800,
10 New York, New York, 10122.

11 IV. Jurisdiction & Venue

12 A. Subject-Matter Jurisdiction

13 16. This Court has jurisdiction over the RICO claims in this lawsuit under
14 28 U.S.C. § 1331 because these claims arise under the laws of the United States.

15 B. Personal Jurisdiction

16 17. This Court has personal jurisdiction over Bankman-Fried, Ellison,
17 Wang, and Singh because each of them regularly conducts business in California and
18 has done so for many years. Bankman-Fried and Wang founded Alameda Research
19 in Berkeley, California in 2017 and operated that company from Berkeley for several
20 years. Ellison and Singh were early employees there.

21 18. In addition, Bankman-Fried, Ellison, Wang, and Singh have for years
22 directed FTX and FTX US customers to deposit funds via wire transfer to Silvergate
23 Bank, a California business entity with its principal place of business at 4250
24 Executive Square, Suite 300, La Jolla, California. Bankman-Fried, Ellison, Wang,
25 and Singh further directed FTX US customers to submit those same wire transfers
26 to their “payee address” at 2000 Center Street in Berkeley. On information and belief,
27

1 the FTX Group received billions of dollars in in incoming wire transfers through
2 Silvergate, its California receiving bank, and at least tens of millions from FTX US
3 depositors to its Berkeley payee address.

4 19. In addition, Bankman-Fried, Ellison, Wang, and Singh have
5 intentionally availed themselves of the California consumer market through the
6 extensive promotion, marketing, and sale of their products and services in this state.
7 In 2021, FTX US entered into a \$17.5 million deal to sponsor the UC Berkeley
8 Athletic Department and an approximately \$10 million deal to sponsor the Golden
9 State Warriors. In addition, the individual Defendants caused FTX and FTX US to
10 engage in an extensive national marketing scheme, including by airing
11 advertisements during Super Bowl LVI (2022) that touted their services as “a safe
12 and easy way to get into crypto.” These advertisements were directed at consumers
13 across the United States, including consumers in California.

14 20. In addition, Bankman-Fried, Ellison, Wang, and Singh have repeatedly
15 and intentionally sought and received investments for their business enterprises in
16 this state, including from some of the most noteworthy investment firms in Silicon
17 Valley such as Sequoia Capital, Third Point Ventures, and Lightspeed Venture
18 Partners (all headquartered in Menlo Park, California). On information and belief,
19 each of them has personally traveled to this State or personally worked with
20 individuals residing in this State as part of their efforts to secure such investments.

21 21. This Court has general personal jurisdiction over Armanino because
22 Armanino has its principal place of business in San Ramon, California. This is
23 sufficient basis for this Court to exercise personal jurisdiction over Armanino in this
24 matter. In addition, for the avoidance of doubt, this Court would have specific
25 personal jurisdiction over Armanino even were Armanino not subject to general
26 personal jurisdiction. Armanino maintains ten offices in California, including its
27

1 headquarters in San Ramon. On information and belief, individual accountants,
2 auditors, and staff routinely performed work related to Bankman-Fried's companies
3 from these California offices.

4 22. This Court has personal jurisdiction over Prager Metis because Prager
5 Metis regularly conducts business in California and has done so for many years.
6 Prager Metis maintains five offices in California, with two offices in Los Angeles and
7 one each in El Segundo, Santa Clara, and Torrance. On information and belief,
8 individual accountants, auditors, and staff routinely performed work related to
9 Bankman-Fried's companies from these California offices.

10 23. The above-recounted allegations show that each of the Defendants is
11 either "at home" in the State of California or otherwise has purposely availed itself of
12 the privilege of doing business in this State such that they could reasonably
13 anticipate being haled into court here. This Court's exercise of personal jurisdiction
14 over each of the Defendants comports with traditional notions of fair play and
15 substantial justice, the California long-arm statute, and the Due Process Clause of
16 the United States Consitution.

17 C. Venue

18 24. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a
19 substantial part of the events giving rise to this action occurred in this judicial
20 district. Specifically, as noted above, the individual Defendants' trading firm
21 Alameda Research was founded in Berkeley, California. In addition, the individual
22 Defendants directed their customers—including the named Plaintiff here—to make
23 deposits in their FTX US accounts by directing wire transfers to West Realm Shire
24 Services, Inc., which maintained its payee address at 2000 Center Street in Berkeley,
25 California. On information and belief, customers directed at least tens of millions of
26 dollars the Defendants' Berkeley address.

D. Divisional Assignment

25. Divisional assignment to the San Francisco and Oakland Division of the Northern District of California is appropriate pursuant to Civil L.R. 3-2(c) because a substantial part of the events or omissions giving rise to the claims at issue occurred in Berkeley, California. Alameda Research, the cryptocurrency trading fund at the heart of this case, was founded in Berkeley. In addition, FTX US customers—including the named Plaintiff here—were instructed to and did deposit funds in FTX US accounts by submitting wire transfers to West Realm Shires Services, Inc., with its payee address at 2000 Center Street, Berkeley, California, 94704. On information and belief, customers directed at least tens of millions of dollars to the Defendants’ Berkeley address.

V. Factual Allegations

A. Welcome to Crypto-World

26. What would become the crypto craze began in 2009 with the publication of a whitepaper by a mysterious developer who called himself Satoshi Nakamoto.⁴ This paper described a “peer-to-peer electronic cash system” that integrated a number of existing ideas in cryptography. Nakamoto called this system Bitcoin and soon released the first “ Bitcoins” to the world. Over time, many other digital currencies emerged. These assets became known as cryptocurrencies—or “crypto,” for short.

27. All cryptocurrencies share some fundamental characteristics. Each runs on a distributed public ledger called a “blockchain.” Each blockchain is a record of all transactions made between currency holders. Because each currency’s blockchain is publicly distributed amongst many participants, the record created is tamper-evident and immutable. In this way, the blockchain makes it possible for each unit of a

⁴ The person or persons who authored this paper have never been identified.

1 cryptocurrency to be transmitted from owner to owner without intermediaries such
2 as traditional banks.

3 28. In the early days of cryptocurrency trading, technical sophistication was
4 required to buy, sell, and store these digital assets. Soon, **cryptocurrency**
5 **exchanges** emerged and lowered barriers to entry. These centralized exchanges
6 facilitated trade by calculating floating exchange rates, providing escrow services,
7 and giving users a place to store their assets. Over time, cryptocurrency exchanges
8 came to play a crucial role in the digital currency market, allowing non-technical
9 consumers to purchase crypto with just a few clicks.

10 29. The cryptocurrency ecosystem has experienced mind-boggling growth
11 since the release of Nakamoto's paper. Exploding public interest has resulted in a
12 series of enormous swings in prices and repeated booms and busts. In 2017, the price
13 of a Bitcoin ballooned from \$900 to nearly \$20,000 over the course of a single year.
14 The events that led to this action began that same year.

15 **B. Enter: SBF**

16 30. The activities of Sam Bankman-Fried—or “SBF,” as he is widely
17 known—are at the heart of this case. Bankman-Fried was born in California and
18 spent his early life there. He later attended the Massachusetts Institute of
19 Technology, where he studied physics and mathematics.

20 31. In 2017, Bankman-Fried became interested in cryptocurrency. Before
21 long, he co-founded his own crypto-trading firm with Defendant Gary Wang in
22 Berkeley, California. They called it **Alameda Research**. Alameda quickly grew to
23 around 15 employees. Among their ranks were Caroline Ellison and Nishad Singh—
24 both Defendants here—who became part of Bankman-Fried and Wang's inner circle.

25 32. Bankman-Fried was Alameda's head trader and agenda-setter. He
26 marked himself out as risk-hungry from the beginning, pushing back on efforts by his
27

1 subordinates to slow down some of the firm’s riskier activities. This led to mixed
2 results. Alameda reportedly saw huge losses on bungled trades, hacks, and
3 unnecessary expenses. But one trade, in particular, was profitable enough to keep
4 Alameda afloat: an arbitrage opportunity created by mismatched prices for
5 cryptocurrency in the United States and Asia. For a time, this was immensely
6 profitable. That was enough to mark Bankman-Fried as a rising star.

7 C. FTX Lifts Off

8 33. In 2019, Bankman-Fried approached Changpeng “CZ” Zhao—the CEO
9 of Binance, now the world’s largest cryptocurrency exchange—with a proposal to
10 launch a cryptocurrency futures trading desk under Zhao’s umbrella. Zhao wasn’t
11 interested, but he did agree to help Bankman-Fried launch an exchange of his own.
12 Using money from Zhao and other investors, Bankman-Fried soon co-founded **FTX**—
13 an abbreviation for “futures exchange”—with Gary Wang and Nishad Singh.

14 34. FTX provided users the same core service as other cryptocurrency
15 exchanges: a marketplace for buying, selling, and storing digital currencies. But, by
16 2019, the market for exchanges was well-developed and competitive. FTX needed to
17 stand out. It did so by offering its users the largest menu of the most exotic financial
18 instruments. FTX offered crypto derivatives trading, crypto futures trading, crypto
19 options, leveraged tokens, and more. In 2020, Bankman-Fried, Wang, and Singh
20 expanded their empire’s reach by founding FTX US, a cryptocurrency marketplace
21 specifically for U.S.-based consumers.

22 35. Though FTX offered users exotic trades, it promised not to do exotic
23 things with their deposits. Neither FTX nor FTX US was set up to engage in
24 “fractional reserve banking”⁵ like a traditional bank. The FTX and FTX US Terms of

26 ⁵ Fractional reserve banking is the traditional system of banking that operates
27 across the globe, pursuant to which banks take deposits from the public, hold a

1 Service promised to hold customers' assets 1:1, stating: "Title to your Digital Assets
2 shall at times remain with you and shall not transfer to FTX Trading" and that assets
3 would be maintained in customer accounts "for your [i.e., the customer's] benefit."

4 36. From 2019 to 2022, FTX and FTX US dedicated mind-boggling sums to
5 marketing efforts, signing deals worth more than \$375 million in sports partnerships
6 alone. The company spent a reported \$6.5 million on a Superbowl ad featuring
7 *Seinfeld* creator Larry David that touted FTX as "a safe and easy way to get into
8 crypto," \$17.5 million to sponsor UC Berkeley Athletics, \$10 million to sponsor the
9 Golden State Warriors, and—to top it off—a reported \$135 million for the naming
10 rights to the Miami Heat's NBA arena.

11 37. Over the same period, Bankman-Fried set about building his personal
12 brand. He established himself as the world's most visible proponent of a charitable
13 movement called Effective Altruism, repeatedly proclaiming his intention to give
14 away the wealth he was rapidly accumulating. He tweeted constantly, gave numerous
15 television and podcast interviews, and became one of the United States' largest
16 political donors. He quickly became a celebrity.

17 38. All these efforts had their intended effect: FTX and FTX US grew very
18 quickly. Within three years of opening its doors, FTX was valued at \$1.2 billion. A
19 few months later, \$25 billion. A few months after that, \$32 billion. FTX US, for its
20 part, added another \$8 billion. This meant that Bankman-Fried had suddenly become
21 very wealthy. In 2022, Forbes featured him on the cover of the 40th Annual Forbes
22 400, ranking him as the forty-first richest person in the world. The magazine noted
23
24

25 _____
26 proportion of their deposit liabilities in liquid assets as a reserve, and are at liberty
27 to lend the remainder to borrowers.

1 that in all of human history only Mark Zuckerberg, founder of Facebook, had been so
2 rich so young. Bankman-Fried was twenty-nine years old.

3 **D. Inside FTX**

4 39. As the FTX Group grew, Bankman-Fried and his associates moved
5 around the world in search of a business-friendly environment. They moved first to
6 Hong Kong, and later to The Bahamas. Bankman-Fried remained in charge
7 throughout, while his associates and co-owners Ellison, Wang, and Singh acted as his
8 trusted lieutenants.

9 40. Once in The Bahamas, Bankman-Fried, Ellison, Wang, Singh, and at
10 least six other FTX Group employees lived together in a \$40 million luxury penthouse
11 from which they oversaw FTX Group operations. According to FTX insiders, they
12 were and are close personal friends and have at various times had complex romantic
13 involvements. This “gang of kids”—as they have since been labeled in the press—
14 managed and directed the multi-billion-dollar FTX Group empire until its collapse.

15 41. Given the amount of money at stake, the FTX Group’s management,
16 internal processes, and corporate structure over this period were almost comically
17 deficient. The FTX Group did not maintain centralized control of its cash, failing even
18 to keep an accurate list of bank accounts and signatories. Nor did it keep a list of its
19 employees. Disbursements were granted through an online chat system where
20 supervisors blessed spending requests with personalized emojis. Perhaps most
21 shockingly, FTX—a company valued at \$32 billion—had neither a board of directors
22 nor an accounting department. At one point, an experienced investor advised FTX to
23 implement a board of directors and other internal controls. An FTX employee
24 reportedly responded: “Go f*uck yourself.”

25 42. The FTX Group’s digital security measures were similarly egregious. An
26 unsecured group email account was used to access critically sensitive data such as
27

1 private encryption keys. No effective firewalls were established between the FTX
2 Group exchanges and their owners' proprietary trading activities. And the FTX
3 Group failed to perform daily reconciliation of positions on the blockchain—perhaps
4 the most basic function of a cryptocurrency exchange.

5 43. Worst of all, it now appears that throughout the FTX Group's history,
6 Bankman-Fried and his lieutenants treated their companies' and their customers'
7 assets as an enormous slush fund. During the FTX Group's collapse, Ellison admitted
8 that she, Bankman-Fried, Wang, and Singh had diverted \$10 billion in customer
9 assets to fund venture investments, cover trading losses, and pay Alameda's debts.
10 Bankruptcy filings have confirmed that they "loaned" (i) \$2.3 billion to Paper Bird,
11 Inc., a Delaware corporation controlled by Bankman-Fried, (ii) another \$1 billion to
12 Bankman-Fried personally, (iii) \$543 million to Nishad Singh, and (iv) \$55 million to
13 Ryan Salame.⁶ They used hundreds of millions in corporate funds to purchase homes
14 and other personal items for FTX Group employees and advisors. At least \$1 billion
15 more has simply vanished. They did all this using a custom "backdoor" in their
16 businesses' accounting software, reportedly built and maintained by Gary Wang.

17 44. Bankman-Fried and his lieutenants set about covering their tracks even
18 as FTX Group grew. Bankman-Fried often communicated using applications that
19 were set to auto-delete after a short period and encouraged other employees to do the
20 same. And he and his lieutenants formed a complex web of more than 130 distinct
21 business entities in jurisdictions across the globe. Many were simply shells—failing,
22 in many instances, to hold a single board meeting.

23 45. Bankman-Fried and his lieutenants also used the inside advantage
24 gained from operating their cryptocurrency exchanges to the benefit of their
25

26
27 ⁶ Ryan Salame was co-CEO of FTX Digital Markets.

proprietary trading operations—and thus themselves—at the expense of the FTX Group’s customers. They secretly exempted Alameda Research from the FTX auto-liquidation protocol, meaning—on information and belief—that unlike other traders, Alameda could make losing trades without forfeiting its collateral. In addition, independent blockchain analysis has revealed that FTX Group used inside knowledge about future listings on the FTX exchanges to “front run” the market and their own customers—purchasing stockpiles of soon-to-be-listed cryptocurrencies and selling them at inflated prices once their addition to FTX’s menu was announced.

46. Amidst this internal chaos, Bankman-Fried and his lieutenants were engaged in a calculated campaign to bring additional users to the FTX Group exchanges and secure investment funding. To do so, they needed to create the appearance that the FTX Group was a legitimate and trustworthy enterprise. Bankman-Fried thus devised and executed a scheme to convince the world of his personal magnanimity and the security of the FTX exchanges. Bankman-Fried repeatedly touted his exchanges’ industry-leading security and liquidity, boasted that FTX and FTX US had completed GAAP audits, and even testified about FTX’s virtues before the U.S. Congress.⁷ This scheme had its intended effect. FTX and FTX US continued apace until just days before the FTX Group’s collapse.

E. FTX’s Collapse

47. In early 2022, the FTX Group business appeared strong. But within months of Bankman-Fried’s Forbes 400 cover, the crypto market began to show serious signs of weakness. The risk of contagion loomed. Bankman-Fried was quick to react, doling out lines of credit to keep foundering institutions afloat. This earned

⁷ Specific false representations are set out in Section V(G), *infra*.

1 him numerous plaudits as the “JP Morgan of crypto.” And it appeared, at least for a
2 time, that Bankman-Fried’s plan to prop up the market might work.

3 48. It didn’t. In early November 2022, CoinDesk published a report setting
4 out never-before-seen details of Alameda Research’s balance sheet. This report
5 showed that Alameda was enormously exposed to one asset—a cryptocurrency called
6 the **FTT token**, the “in-house” currency of FTX. This showed that both parts of
7 Bankman-Fried’s empire were propped up by demand for an asset whose value was
8 inextricably tied up with perception of the FTX brand and Bankman-Fried himself.
9 Years of rumors about the ongoing interconnection between Bankman-Fried’s trading
10 firm and his exchanges were confirmed. Fear, uncertainty, and doubt—“FUD” in
11 crypto argot—began to spread.

12 49. Caroline Ellison, by this point Alameda’s CEO, soon took to Twitter in
13 an attempt at defense. She claimed that Alameda had more than \$10 billion in assets
14 and a variety of “hedgies” that weren’t reflected on the leaked balance sheet. But this
15 announcement did not have its intended effect. Within hours, Changpeng Zhao
16 announced that he would liquidate his holdings of the FTT token. Given the
17 importance of the FTT token price to both Alameda and the FTX exchanges, this
18 exacerbated concerns over the health of all parts of the FTX empire.

19 50. Bankman-Fried himself took to Twitter after Zhao’s announcement,
20 attempting to calm the market’s fears. Bankman-Fried claimed: “FTX is fine. Assets
21 are fine. FTX has enough to cover all client holdings. **We don’t invest client assets**
22 **(even in treasuries).**” Acknowledging the ongoing wave of withdrawals from FTX’s
23 exchanges, he wrote: “**We have been processing all withdrawals, and will**
24 **continue to do so.**”

25 51. FTX stopped processing withdrawals less than 24 hours later.
26 Bankman-Fried then shocked the world by announcing that FTX—until just days
27

1 earlier one of the world’s largest cryptocurrency exchanges, valued at \$32 billion—
2 would be acquired by its competitor Binance. Bankman-Fried claimed this acquisition
3 would “clear out the withdrawal backlog” and deal with FTX’s “liquidity crunch.” He
4 promised again that **“all assets will be covered 1:1.”**

5 52. Bankman-Fried’s tweets made out the Binance acquisition as a done
6 deal. It was not. After getting a look at FTX’s balance sheet, Binance walked away.
7 This set off a panic. Customers tried to withdraw assets from FTX and FTX US *en*
8 *masse*. FTX’s website became unusable. Users received the message: “We’re sorry,
9 something went wrong while processing your request. Please try again later.”

10 53. Bankman-Fried again took to Twitter. He began: “I’m sorry. That’s the
11 biggest thing. I f*cked up, and should have done better.” Over the course of twelve
12 tweets, he proceeded to admit that FTX did not have enough reserves to cover client
13 withdrawals, to reveal that Alameda Research would be “winding down,” and to
14 apologize for the calamity. He wrote that he was “responsible for making sure that
15 things went well,” and had “clearly failed in that.” He concluded, again: “I’m sorry.”

16 54. Ellison soon revealed the \$10 billion hole in FTX’s balance sheet to a
17 gathering of Alameda Research employees. Bankman-Fried soon confirmed by
18 showing spreadsheets to potential investors that revealed these FTX client funds had
19 been transferred to Alameda. The documents further showed that approximately \$2
20 billion of assets were altogether unaccounted for. Internal examiners soon discovered
21 the “backdoor” that had allowed Bankman-Fried and his lieutenants to move these
22 assets without detection.

23 55. As these revelations poured in, another Twitter announcement from
24 Bankman-Fried: **“Hi all: Today, I filed FTX, FTX US, and Alameda for**
25 **voluntary Chapter 11 proceedings in the US.”** Bankman-Fried claimed that he
26 was “still piecing together all the details” but was “shocked to see things unravel the
27

1 way they did.” Bankruptcy filings soon revealed that he had put the entire FTX
2 empire—more than 130 individual companies—into bankruptcy. He resigned from all
3 leadership positions and was soon replaced by John J. Ray III—the same
4 administrator who managed the bankruptcy of Enron.

5 56. Client withdrawals from FTX International had, by the time of the
6 bankruptcy, been frozen for some time. But amidst his public apologies, Mr.
7 Bankman-Fried had taken pains to emphasize that FTX’s United States operation
8 remained safe. He had tweeted that his statements revealing improprieties at his
9 companies were “**ALL ABOUT FTX INTERNATIONAL,**” and that “**FTX US**
10 **USERS ARE FINE!**” The FTX US website proclaimed that “**withdrawals are and**
11 **will remain open.**” Around the same time Bankman-Fried put the FTX family of
12 companies into bankruptcy, FTX US stopped processing withdrawals. The world over,
13 FTX was dead.

14 57. In January 2022, Stephen Pierce—the named Plaintiff in this suit—had
15 deposited \$19,986 in an interest-bearing account with FTX US. As directed by FTX
16 US’s website, he had wired his funds to FTX US’s parent company, West Realm
17 Shires Services, Inc., at 2000 Center Street in Berkeley, California—care of West
18 Realm’s “receiving bank” Silvergate, at 4250 Executive Square, La Jolla, California.
19 Amidst the turmoil described above, on November 7, 2022, Mr. Pierce attempted to
20 withdraw \$19,461.00 using the FTX US mobile app. Although the app showed that
21 his withdrawal was successful, Mr. Pierce has never received any incoming transfer.
22 Numerous other FTX and FTX US customers have had the same experience.

23 F. The Fallout

24 58. Less than 24 hours after the Bankman-Fried put the FTX empire into
25 bankruptcy, its customers and the world still reeling, \$600 million in assets were
26 siphoned from FTX and FTX US crypto wallets. In FTX’s official Telegram channel,
27

1 the company's General Counsel Ryne Miller shared a message that read: **"FTX has**
2 **been hacked. FTX apps are malware. Delete them ... Don't get on FTX site as**
3 **it might download Trojans."** Many FTX and FTX US users' account balances
4 began to show: "\$0."

5 59. FTX Group's customers took to Twitter and other platforms to announce
6 their losses. Many announced that they had lost their life savings. Institutional
7 investors, too, were hit hard. A series of bankruptcies and liquidity crises emerged.
8 The shockwave set off by the FTX Group's collapse continues to reverberate.

9 60. Despite the carnage he caused, Bankman-Fried remained unabashed.
10 As customers bemoaned their lost savings, Bankman-Fried playfully tweeted—one
11 letter at a time—"W..H..A..T..H..A..P..P..E..N..E..D." Asked by a journalist about his
12 stance on regulation of the crypto marketplace in light of his empire's demise,
13 Bankman-Fried responded "f*uck regulators ... they make everything worse ... they
14 don't protect consumers at all." Queried whether his public commitment to "ethics
15 stuff" was "mostly a front," Bankman-Fried responded: "Yeah ... I mean that's not
16 *all* of it ... but it's a lot." He compared the development of his own public persona
17 to "this dumb game we woke westerners play where we say all the right shibboleths
18 so everyone likes us." He soon put the FTX Group penthouse in The Bahamas up for
19 sale for \$40 million.

20 61. FTX Group's bankruptcy process began in earnest with the appointment
21 of John J. Ray III as Chief Executive Officer of the debtor entities. In his first-day
22 pleadings before the bankruptcy court, Mr. Ray did not mince words. He wrote: "I
23 have over 40 years of legal and restructuring experience. I have been the Chief
24 Restructuring Officer or Chief Executive Offer in several of the largest corporate
25 failures in history ... Never in my career have I seen such a complete lack of corporate
26 controls and such a complete absence of trustworthy financial information as
27

1 occurred here ... this situation is unprecedented.” Mr. Ray’s pleadings went on to
2 reveal many of the key facts about the FTX Group’s malfeasance recounted above. It
3 has become clear that billions of dollars of assets remain missing, and that the FTX
4 Group’s liabilities far exceed its assets.

5 **G. How the Scheme Worked**

6 62. Until he put his companies into bankruptcy, Bankman-Fried controlled
7 more than 130 distinct business entities that he and his lieutenants operated as a
8 RICO enterprise referred to herein as the “FTX Group.”

9 63. The FTX Group’s corporate structure can be summarized by reference
10 to four “silos.” These silos include (1) a group composed of West Realm Shires, Inc., a
11 Delaware corporation, and its subsidiaries, which include businesses known as FTX
12 US, FTX US Derivatives, FTX US Capital Markets, and others (the “**FTX US Silo**”),
13 (2) a group composed of Alameda Research LLC, a Delaware company, and its
14 subsidiaries (the “**Alameda Silo**”), (3) a group composed of Clifton Bay Investments,
15 LLC, a Delaware company, and its subsidiaries, which included FTX Ventures (the
16 “**FTX Ventures Silo**”), and (4) a group composed of FTX Trading Ltd., an Antigua
17 company, and its subsidiaries, including the exchange “FTX.com” (the “**FTX Silo**”).

18 64. Each of these silos was controlled by Bankman-Fried. Defendants Gary
19 Wang and Nishad Singh co-founded many of the entities in the FTX Group with
20 Bankman-Fried, in which they owned minority equity interests. The FTX US and
21 FTX Silos also have third-party equity investors, including investment funds,
22 endowments, sovereign wealth funds, and family funds.

23 65. **The Alameda Silo.** The primary operating company in the Alameda
24 Silo is Alameda Research, LLC, which is organized in the State of Delaware. The
25 Alameda Silo operated quantitative trading funds specializing in crypto assets.
26 Strategies included arbitrage, market making, yield farming, and volatility trading.

1 The Alameda Silo is owned by Bankman-Fried (90%) and Wang (10%). Bankman-
2 Fried was the initial CEO and head trader within the Alameda Silo companies.
3 Defendant Caroline Ellison was elevated to that position in 2021.

4 66. ***The Ventures Silo.*** The venture silo contains several entities that
5 made and managed private investments, particularly in cryptocurrency-related
6 startups and ventures. All companies in the Ventures Silo are organized in Delaware
7 or the British Virgin Islands.

8 67. ***The FTX Silo.*** The primary operating company in the FTX Silo is FTX
9 Trading, Ltd., which is organized in Antigua. This silo includes FTX.com, the trade
10 name for Bankman-Fried's digital asset trading platform and cryptocurrency
11 exchange. FTX.com was co-founded by Bankman-Fried, Wang, and Singh and
12 commenced operations in May 2019. By the end of 2021, approximately \$15 billion of
13 assets were held on the platform, which reportedly handled 10% of global crypto
14 trading volume by that time. As of July 2022, FTX.com had millions of registered
15 users.

16 68. ***The FTX US Silo.*** FTX US was founded in January 2020. FTX US is
17 open to U.S. depositors and had approximately one million users as of August 2022.
18 All companies in the FTX US silo are organized in Delaware or South Dakota.

19 69. ***The FTX Group Hierarchy.*** The FTX Group enterprise operated with
20 a distinct structural hierarchy. Bankman-Fried was at all times the unquestioned
21 leader. Bankman-Fried's lieutenants Ellison, Wang, and Singh reported to him and
22 did his bidding. The remainder of this complaint refers to Bankman-Fried, Ellison,
23
24
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1 Wang, and Singh as the “Inner Circle.”⁸ FTX Group employees reported to the Inner
2 Circle, as did third parties such as accountants, bankers, lawyers, and the like.⁹

3 70. Additional information about the backgrounds and roles of the members
4 of the Inner Circle is as follows.

5 a. **Gary Wang** co-founded Alameda Research and FTX with
6 Bankman-Fried. Wang is a software engineer who formerly worked at
7 Google and graduated from MIT. Wang served as FTX’s Chief Technical
8 Officer. Wang built the accounting “backdoor” that allowed the Inner
9 Circle to move and distribute company and customer assets at will. He
10 is known to be extremely private, working closely only with other
11 members of the Inner Circle.¹⁰

12 b. **Caroline Ellison** was an early employee at Alameda
13 Research and was eventually appointed by Bankman-Fried and Wang
14 as its CEO. Ellison is an asset trader who formerly worked at the Jane
15 Street trading firm and graduated from Stanford with a degree in
16 mathematics. Ellison admitted to participating in the misappropriation
17 of \$10 billion in FTX Group customer funds as the FTX crisis unfurled
18 and implicated Bankman-Fried, Wang, and Singh.

21 ⁸ This nomenclature does not imply that persons or entities other than
22 Bankman-Fried, Ellison, Wang, and Singh were not themselves direct participants
23 in FTX Group’s wrongful conduct. Nor does it imply that others not named as
24 defendants in this complaint are not also liable for their actions in relation to this
25 scheme. Discovery in this matter will reveal the full scope and hierarchy of the FTX
26 Group enterprise.

25 ⁹ Many FTX Group employees appear to have been unaware of the Inner
26 Circle’s misdeeds.

26 ¹⁰ Wang is so private, and so little information about him is available, that
27 commentators have questioned his very existence.

1 c. **Nishad Singh** was an early employee at Alameda
 2 Research and co-founded FTX with Bankman-Fried and Wang. Singh is
 3 an electrical and software engineer who formerly worked at Facebook
 4 and graduated from the University of California, Berkeley. Singh was
 5 the Director of Engineering at FTX. Along with Bankman-Fried and
 6 Wang, Singh controlled the FTX exchanges' code and corporate funds.

7 71. At a high level, the Inner Circle's scheme worked as follows. Bankman-
 8 Fried and his lieutenants first built a cryptocurrency-focused trading firm (Alameda
 9 Research), and then a family of cryptocurrency exchanges (FTX and FTX US). They
 10 proceeded to use their technical skills and inside knowledge to systematically
 11 advantage Alameda—and thus themselves—over other users of their exchanges. And
 12 as the money available to them grew, it appears they treated all the FTX Group's
 13 finances as a slush fund—using secret software to misappropriate at least \$10 billion
 14 of customer assets to cover trading losses, fund venture investments, and spend
 15 lavishly on personal boondoggles. The FTX Group did all of this while executing a
 16 calculated scheme to defraud the public as to the criminal nature of their enterprise,
 17 in particular on television, on podcasts, on social media, and online.

18 72. The following paragraphs first set out (i) specific allegations about the
 19 individual Defendants' misappropriation of customer funds and cheating at the
 20 expense of FTX group exchange participants, then (ii) specific allegations about the
 21 individual Defendants' scheme to defraud the public about the nature of their
 22 enterprise, and finally (iii) specific allegations about the FTX Group's auditors'
 23 participation in the FTX Group enterprise.

24 73. **Theft & Fraud Allegations.** The Inner Circle purposefully
 25 intermingled the finances and affairs of the FTX Group business entities. They did
 26
 27

1 so in order to benefit themselves at the direct expense of their cryptocurrency
2 exchanges' depositors.

3 74. The terms of service of the FTX Group cryptocurrency exchanges made
4 clear that title to customers' digital assets remained at all times with the customer
5 and at no time transferred to the FTX Group. Specifically, the FTX Terms of Service
6 provide:

7 a. **"Title to your Digital Assets shall at all times remain**
8 **with you and shall not transfer to FTX Trading."**

9 b. **"None of the Digital Assets in your Account are the**
10 **property of, or shall or may be loaned to, FTX Trading. FTX**
11 **Trading does not represent or treat Digital Assets in User's [sic]**
12 **Accounts as belonging to FTX Trading."**

13 c. **"You control the Digital Assets held in your Account.**
14 **At any time, subject to outages, downtime, and other applicable**
15 **policies, you may withdraw your Digital Assets by sending them**
16 **to a different blockchain address controlled by you or a third**
17 **party."**

18 75. The FTX US Terms of Service provide:

19 a. **"As part of your FTX.US account, FTX.US provides**
20 **qualifying users access to accounts for you to store, track, transfer, and**
21 **manage your balances of cryptocurrency and/or dollars or other**
22 **supported currency. All cryptocurrency or dollars (or other**
23 **supported currencies) that are held in your account are held by**
24 **FTX.US for your benefit."**

1 b. **“Title to cryptocurrency represented in your FTX.US**
2 **Account shall at all times remain with you and shall not transfer**
3 **to FTX.US.”**

4 c. **“FTX.US does not represent or treat assets in your**
5 **FTX.US Account as belonging to FTX.US.”**

6 76. Nearly every word of these representations to FTX and FTX.US
7 customers was untrue. Rather than maintaining customers’ assets for customers’
8 benefit, the Inner Circle misappropriated billions in customer funds for their own
9 causes. This has been confirmed as follows.

10 77. Ellison admitted that she, Bankman-Fried, Wang, and Singh colluded
11 in the misappropriation of approximately \$10 billion in customer funds to a group of
12 Alameda employees on or about November 9, 2022.

13 78. Bankman-Fried revealed the misappropriation of more than \$10 billion
14 in customer funds to employees and investors on or about November 10, 2022. As
15 Reuters reported, Bankman-Fried showed employees and investors spreadsheets
16 that “revealed there was a \$10 billion hole in FTX’s finances – because customer
17 deposits had been transferred to Alameda and mostly spent on other assets.”

18 79. Bankman-Fried further admitted to the misappropriation of customer
19 funds in a text-based interview with journalist Kelsey Piper on November 15, 2022.
20 There, in response to a query whether he had been “lending out customer funds,”
21 Bankman-Fried responded: “it wasn’t quite lending them out – it was messier and
22 more organic than that; each step was in isolation rational and reasonable, and then
23 when I finally added it all up last week it wasn’t.”

24 80. In the same November 15, 2022 interview, Bankman-Fried further
25 admitted to the years-long intertwining of the Alameda Silo with the rest of the
26 FTX Group companies. Explaining the kinds of irregularities that led to the FTX
27

1 Group collapse, Bankman-Fried gave the example: “like, ‘oh FTX doesn’t have a bank
2 account, I guess people can wire to Alameda’s to get money on FTX ... 3 years later
3 ... ‘oh f*ck it looks like people wired \$8b[illion] to Alameda[.]”

4 81. As further confirmed in the FTX Group’s own bankruptcy filings, the
5 Inner Circle built a “secret exemption of Alameda from certain aspects of FTX.com’s
6 auto-liquidation protocol.” On information and belief, this “secret exemption”
7 functioned to allow Alameda to make highly leveraged trades on FTX, lose money,
8 and then keep its collateral. Collateral held by any other trader, in contrast, would
9 be “auto-liquidated” to the extent required to cover any losses sustained.

10 82. As confirmed by independent blockchain analysis, the Inner Circle used
11 inside knowledge of market-moving events to allow Alameda to “frontrun” on the FTX
12 Group cryptocurrency exchanges. On information and belief, Alameda Research used
13 prior knowledge of cryptocurrencies that were scheduled to be listed on the FTX
14 Entities’ platforms to stockpile those cryptocurrencies ahead of the public
15 announcements and then sell them for a profit, often to FTX’s own customers.
16 Independent blockchain analysis has confirmed that from January 2021 to March
17 2022, Alameda held \$60 million worth of 18 different cryptocurrencies that were
18 eventually listed on the FTX Entities’ platforms. On information and belief, Alameda
19 later sold those positions at inflated prices to the detriment of FTX users.

20 83. Bankruptcy filings have revealed the following apparently illicit
21 transactions, which on information and belief were directed by and for the benefit of
22 the Inner Circle: (i) a \$1 billion personal loan to Bankman-Fried, (ii) a \$2.3 billion
23 loan to Paper Bird, Inc., a Delaware entity controlled by Bankman-Fried, (iii) a \$543
24 million loan to Nishad Singh, and (iv) a \$55 million loan to Ryan Salome. At least
25 another \$1 billion in assets have vanished.

1 84. ***The Scheme to Defraud.*** The Alameda Silo was, from its inception
2 until its bankruptcy, involved in the buying and selling of cryptocurrencies. The FTX
3 US and FTX Silos provided customers with marketplaces for buying, selling, and
4 storing cryptocurrencies and engaging in cryptocurrency-related financial
5 transactions. Because the companies in the Alameda Silo were active participants in
6 that same market served by the FTX US and FTX silos, the Inner Circle knew that
7 their interests would be directly in conflict with that of FTX and FTX US customers.
8 Rather than take steps to ameliorate those conflicts, they intentionally used their
9 asymmetric advantages to profit at those customers' expense.

10 85. To create the appearance of separation between the Alameda Silo and
11 the rest of the FTX Group, Bankman-Fried elevated Defendant Caroline Ellison to
12 CEO of Alameda Research, LLC in 2021. Ellison continued to report directly to
13 Bankman-Fried and Wang—co-owners of the Alameda Silo—throughout her tenure.
14 Together, Bankman-Fried, Ellison, Wang, and Singh remained fully in control of all
15 parts of the FTX Group throughout its existence. Bankman-Fried, Ellison, Wang, and
16 Singh remained at all times in ultimate control of the underlying computer code and
17 matching engines that ran the FTX Group's businesses.

18 86. Ellison and Bankman-Fried were one-time romantic partners and close
19 personal friends. Ellison, Bankman-Fried, Wang, and Singh were personal friends
20 who lived together in a single penthouse while they controlled the operations of the
21 FTX Group. On information and belief, they routinely discussed and plotted the
22 Alameda and Venture Silos' trading and investment strategies in light of inside
23 information about market conditions and market-moving opportunities created by
24 their ownership of the FTX and FTX US Silos.

25 87. Bankman-Fried was repeatedly questioned about the relationship
26 between the FTX Group entities by the financial press and others. In May 2022, in
27

1 response to questions about Alameda’s activities, Bankman-Fried tweeted: “I don’t
2 run Alameda anymore, you should ask them.”

3 88. In October 2022, a CNBC interviewer asked Bankman-Fried: “What
4 about the relationship between FTX and Alameda, I think there are some questions
5 about where those lines are ... are there any potential conflicts of interest running as
6 many companies as you do in the same space?” Bankman-Fried responded: “I’ve put
7 a lot of work over the last few years into trying to eliminate conflicts of interest there
8 ... **one big piece of this is, I don’t run Alameda anymore, I don’t work for it,**
9 **none of FTX does, separate staffs. The way that we view FTX is as a neutral**
10 **piece of market infrastructure.”**

11 89. On April 3, 2022, in response to allegations that Alameda Research
12 manipulated the price of a particular cryptocurrency, Bankman-Fried tweeted: “Obv
13 bullsh*t conspiracy theory.”

14 90. Bankman-Fried’s statements concerning Alameda Research’s
15 separation from the FTX cryptocurrency exchanges were false. Bankman-Fried
16 himself confirmed this when asked about his greatest regrets in his November 15,
17 2022 interview with journalist Kelsey Piper. There, he stated that in retrospect he
18 would have “offboard[ed] Alameda from FTX once FTX could live on its own.”
19 Bankman-Fried made the false statements knowing they would be transmitted across
20 the U.S. and the world through electronic-transmissions wires, and with the intention
21 that they would induce or cause customers to begin or continue doing business with
22 the FTX Group.

23 91. In December 2021, Bankman-Fried went before congress and publicly
24 testified that FTX had a “transparent system where all of the market data is openly
25 available.” As has since become clear, FTX’s system was not transparent—it
26 contained secret “backdoors” that allowed Bankman-Fried and his co-Defendants to
27

1 move billions amongst their entities at will. It also contained secret exemptions for
2 Bankman-Fried's own proprietary trading firm. Bankman-Fried made this false
3 public statement knowing that it would be transmitted across the United States and
4 around the world using electronic-transmissions wires, with the intention that it
5 would cause customers to begin or continue doing business with FTX Group.

6 92. In August 2022, then-President of FTX Brett Harrison tweeted that
7 "direct deposits from employers to FTX US are stored in individually FDIC-insured
8 bank accounts in the users' names." On information and belief, Harrison made this
9 statement at Bankman-Fried's direction and with his prior consent. This statement
10 was patently false—FTX US customers are not, and at no time have been, FDIC-
11 insured. Harrison made this statement, at Bankman-Fried's behest, knowing that it
12 would be transmitted across the United States and around the world using electronic-
13 transmissions wires, with the intention to cause customers to begin or continue doing
14 business with FTX Group.

15 93. Bankman-Fried and his lieutenants' false statements accelerated as the
16 FTX crisis began to roil in November 2022. Bankman-Fried issued a series of tweets
17 including the following false statements on November 7, 2022:

18 a. "FTX is fine. Assets are fine. FTX has enough to cover all
19 client holdings. We don't invest client assets (even in treasuries). We
20 have ben processing all withdrawals and will continue to be."

21 b. "FTX International currently has a total market value of
22 assets/collateral higher than client deposits (moves with prices!)."

23 c. "We have GAAP audits, with > \$1b excess cash. We have a
24 long history of safeguarding client assets, and that remains true today."

25 d. "This [tweet thread discussing FTX financial problems]
26 was about FTX International. FTX US, the US based exchange that
27

1 accepts Americans, was not financially impacted by this sh*tshow ... It's
2 100 % liquid. Every user could fully withdraw."

3 94. Each of these statements was later proven false. FTX did invest client
4 assets in trading and venture-capital schemes controlled by FTX's owners through
5 the Alameda Entities. FTX International did not have a total market value of assets
6 and collateral higher than client deposits. And FTX US *was* financially impacted by
7 the Defendants' conduct, as became clear when Bankman-Fried put that entity into
8 bankruptcy and customer withdrawals were frozen. Bankman-Fried made these false
9 statements knowing they would be transmitted across the U.S. and the world through
10 electronic-transmissions wires, and with the intention that they would cause
11 customers to begin or continue doing business with the FTX entities.

12 95. Shortly after Alameda Research's balance sheet was revealed in the
13 press, Defendant Ellison attempted to calm the market by tweeting, on November 6,
14 2022: "a few notes on the balance sheet info that has been circulating recently: that
15 specific balance sheet is for a subset of our corporate entities, we have > \$10b of assets
16 that aren't reflected there ... the balance sheet breaks out a few of our biggest long
17 positions; we obviously have hedges that aren't listed ... given the tightening in the
18 crypto credit space this year we've returned most of our loans by now."

19 96. Ellison's statement was false. Alameda Research did not have > \$10
20 billion of assets that weren't reflected in the leaked spreadsheet and had not returned
21 its loans. Ellison knew that Alameda was insolvent and had already been the
22 recipient of \$10 billion in funds misappropriated from the FTX Group's customers.
23 Ellison made this false statement knowing it would be transmitted across the U.S.
24 and the world through electronic-transmissions wires, and with the intention that
25 they would cause customers to begin or continue doing business with the Alameda
26 Entities and the FTX Entities.

1 97. Ellison’s personal blog reveals that she knew she was part of an ongoing
 2 scheme to defraud the public as to the true nature of the FTX Group’s business. There,
 3 she wrote: “How do I signal my genuinely sweet and feminine nature on my dating
 4 profile? **Should it go before or after the section on wire fraud[?]**”

5 98. *The FTX Group’s Auditors.* The FTX Group, through Bankman-Fried,
 6 used audit results to deceive customers. In July 2021, Bankman-Fried tweeted that
 7 “yesterday, FTX became the first (?) crypto derivatives exchange to complete a GAAP
 8 audit!” The following month, he tweeted that he was “[e]xcited to announce that
 9 @ftx_us [i.e., FTX US] has officially passed its US GAAP audit!” Bankman-Fried went
 10 on to note that “both @FTX_official [i.e., FTX] and @ftx_us [i.e., FTX US] have [now]
 11 passed US GAAP audits,” and pledged that his exchanges “plan to continue getting
 12 audits going forward.”

13 99. Soon, FTX’s “Security Policy”—set out on its website—noted that “FTX
 14 has successfully undergone a US GAAP financial audit for 2021 and plans to continue
 15 undergoing regular audits.” Similarly, FTX US’s “Regulation and Licensure
 16 Information”—published on the FTX.US website—stated that “FTX US has
 17 successfully received a US GAAP financial audit.”

18 100. It remains unclear which firms completed these 2021 audits.
 19 Nevertheless, Bankman-Fried’s were widely shared. In August 2021, Blockworks—a
 20 crypto-industry news service—reported that “Both FTX and FTX.US have completed
 21 requirements to pass the US Generally Accepted Accounting Principles (GAAP)
 22 audit, which checks for a set of accounting principles, standards, and procedures in
 23 accordance with the Financial Accounting Standards Board (FASB).” Bankman-
 24 Fried’s audit-related tweets were liked and reshared thousands of times.

25 101. The FTX Group appears to have retained Armanino and Prager Metis
 26 to audit FTX US and FTX, respectively, at some time during 2021. In light of
 27

1 Bankman-Fried’s previous public announcements and public attention to the FTX
2 Group’s prior audit results, Armanino and Prager Metis personnel knew or should
3 have known that their work would be used to entice third parties to entrust FTX
4 Group with their assets.

5 102. For both firms, the opportunity to work with the FTX Group was likely
6 perceived as a major coup. Both Armanino and Prager Metis market themselves
7 aggressively in the cryptocurrency space. Armanino’s website touts its “industry-
8 focused practice serv[ing] digital asset financial service firms, miners & stakers,
9 funds, token projects, and ‘crypto-curious companies,” including “on-demand audit
10 opinions issued under the most stringent examination standards.” Prager Metis
11 advertises that it “works with different companies in the digital assets space from an
12 audit, tax, and advisory perspective, including a top-three global cryptocurrency
13 exchange”—presumably FTX—and is a “leader in the digital assets industry.”

14 103. As reported in the Wall Street Journal, both Armanino and Prager Metis
15 have doubled as both auditors and “crypto industry cheerleaders” in recent years.
16 Each firm has issued public statements in support of crypto-industry companies and,
17 on information and belief, has made focused efforts to grow its revenue by riding the
18 cryptocurrency wave and expanding its book of digital-asset-related business.

19 104. Both firms’ facilitation of the FTX Group’s activities is part of a pattern
20 of failures to meet professional obligations. In 2019, a PCAOB review of one
21 Armanino audit found that Armanino had “issued an opinion without satisfying its
22 fundamental obligation to obtain reasonable assurance about whether the financial
23 statements were free of material misstatement.” In part by failing to maintain
24 “professional skepticism” and “obtain[] sufficient appropriate audit evidence to
25 support its opinion that the financial statements were presented fairly,” Armanino
26 “fail[ed] to accomplish the essential purpose of the audit.” In 2020, the PCAOB
27

1 reviewed four audits in which Prager Metis was the primary auditor. It found that
2 **all four** were deficient, setting out a litany of problems with Prager Metis's work.

3 105. In March 2022, Armanino and Prager Metis issued certified audit
4 reports giving FTX US and FTX clean bills of health. FTX's bankruptcy administrator
5 has since publicly declared these reports unreliable, writing that he had "substantial
6 concerns as to the information presented" and did "not believe it appropriate for
7 stakeholders or the [bankruptcy] Court to rely on the audited financial statements as
8 a reliable indication of the financial circumstances" of the entities examined.

9 106. By agreeing to prepare and certify the audit reports at the behest of the
10 FTX Group, Armanino and Prager Metis agreed to conspire with the FTX Group in
11 its conduct of a RICO enterprise. On information and belief, both Armanino and
12 Prager Metis—through their personnel—knew about or were willfully blind to the
13 nature of the FTX Group enterprise and pattern of racketeering in which the Inner
14 Circle was engaged. As expert accountants have publicly noted following the FTX
15 Group's demise, Armanino and Prager Metis certified the FTX US and FTX financials
16 in the face of at least four obvious red flags.

17 107. First, neither Armanino nor Prager Metis was given access to the full
18 scope of the FTX Group financials or gained an understanding of the interrelationship
19 of the financial health of the FTX Group entities.

20 108. Second, neither Armanino nor Prager Metis provided an opinion
21 concerning FTX Group's internal controls over accounting and financial reporting.

22 109. Third, neither Armanino nor Prager Metis questioned why the FTX
23 Group had not paid any U.S. federal income taxes despite being—on paper—
24 enormously profitable and subject to U.S. jurisdiction.

25 110. Fourth, Prager Metis did not question the innumerable related-party
26 transactions on display in FTX's financials, including but not limited to transactions
27

1 in which (i) Bankman-Fried and other insiders were trading on their own exchange
2 for their own accounts, (ii) an enormous “software royalty” paid by FTX Group to
3 Alameda Research without any satisfactory explanation, (iii) the use of related
4 parties to manage FTX currency and treasury activities on an “outsourced” basis, and
5 (iv) extensive use of the in-house FTT token for variety of purposes, including
6 acquisitions and other related-party transactions.

7 111. In addition to issuing their certified audit results, both Armanino and
8 Prager Metis showed public support for the FTX Group. Armanino did so when it
9 tweeted: “Let’s go buddy!,” tagging Bankman-Fried in advance of his testimony before
10 Congress. Prager Metis did so when it posted on its website that it was “Proud to
11 support FTX US,” and included a photo of Prager Metis and FTX representatives at
12 a baseball game. Auditors are required by regulators to maintain a “professional
13 skepticism” of their clients, including alertness to errors and fraud when assessing a
14 company’s finances. Neither Armanino nor Prager Metis did so here.

15 112. Because Armanino and Prager Metis personnel knew that their audit
16 results would be used and in fact were used to entice third parties to entrust property
17 to FTX Group and cover up the FTX Group’s ongoing malfeasance, each of these firms
18 facilitated and conspired with the FTX Group in its RICO enterprise. In light of the
19 glaring nature of the defects in the FTX Group’s financial documentation and internal
20 controls, as confirmed by Mr. Ray, Armanino and Prager Metis are believed to have
21 either been at least reckless or willfully blind with regard to the FTX Group’s true
22 nature and the RICO enterprise devised and managed by the Inner Circle.

1 **VI. Causes of Action & Class Allegations**

2 113. In light of the foregoing allegations, Plaintiff brings the following causes
3 of action on behalf of himself and all others similarly situated.

4 **Count One**

5 **Conduct of RICO Enterprise (18 U.S.C. § 1962(c))**
6 **(Against Bankman-Fried, Ellison, Wang, and Singh)**

7 114. All preceding allegations are incorporated as if fully set forth herein.

8 115. Bankman-Fried, Ellison, Wang, and Singh (collectively, the “Count One
9 Defendants”) are culpable persons under 18 U.S.C. § 1961(3).

10 116. The FTX Group is an enterprise engaged in and whose activities affect
11 interstate commerce. Each of the Count One Defendants was associated with or
12 employed by this enterprise and directed and managed its affairs.

13 117. The Count One Defendants’ enterprise shared a common purpose, which
14 was to: (i) convince and assuage potential and existing customers to entrust FTX
15 Group with their assets, (ii) conceal their misappropriation of customers’ funds and
16 conflict-of-interest activities, and (iii) make their ill-gotten gains available to them
17 for use in interstate and foreign commerce.

18 118. The Count One Defendants’ enterprise had a continuity of structure and
19 personnel. Bankman-Fried was at all times the leader. Ellison, Wang, and Singh
20 reported to Bankman-Fried as his top lieutenants, co-owners (in the case of Wang
21 and Singh), and part of his inner circle.

22 119. The Count One Defendants agreed to and did conduct and participate in
23 the enterprise’s affairs through a pattern of racketeering activity for the unlawful
24 purpose of intentionally defrauding depositors and customers of the FTX Group
25 entities. Specifically, the Count One Defendants committed multiple related acts of
26 racketeering activity as follows.

27 120. The Count One Defendants committed multiple acts of wire fraud under
28 18 U.S.C. § 1343. Specifically, as set out in the preceding paragraphs, the Count One

1 Defendants devised and perpetrated a scheme to defraud customers and potential
2 customers of the FTX US and FTX cryptocurrency exchanges for the purpose of
3 obtaining money or property by means of false or fraudulent pretenses,
4 representations, or promises, and transmitted or caused to be transmitted by means
5 of wire, radio, or television communication in interstate or foreign commerce various
6 writings, signals, pictures, and sounds for the purpose of executing their scheme.

7 121. The Count One Defendants committed multiple violations of 18 U.S.C.
8 § 1952, prohibiting interstate or foreign travel or transportation in aid of a
9 racketeering enterprise. Specifically, as set out in the preceding paragraphs, the
10 Count One Defendants traveled in interstate or foreign commerce with intent to
11 distribute the proceeds of their unlawful activity and otherwise promote, manage,
12 establish, carry on, and facilitate the promotion, management, establishment, and
13 carrying on of their unlawful activity. The Count One Defendants' unlawful activity
14 for purposes of this violation includes money laundering in violation of 18 U.S.C. §
15 1956 and indictable violations of U.S. Code, Chapter 31, Subchapter II, prohibiting
16 false reporting of monetary transactions.

17 122. The Count One Defendants committed numerous acts of money
18 laundering in violation of 18 U.S.C. § 1956. Specifically the Count One Defendants,
19 with the knowledge that the property involved in financial transactions to which they
20 were party represented the proceeds of unlawful activity, did in fact conduct and
21 attempt to conduct financial transactions that involved the proceeds of their unlawful
22 activity and were intended to promote the carrying on of that unlawful activity.

23 123. The Count One Defendants engaged in numerous transactions in
24 property derived from unlawful activity in violation of 18 U.S.C. § 1957. Specifically,
25 the Count One Defendants repeatedly deposited funds derived from their unlawful
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27
28

1 RICO enterprise by and through financial institutions in the United States and
2 abroad, and thereby affected interstate and foreign commerce.

3 124. The Count One Defendants operated an unlicensed money-transmitting
4 business in violation of 18 U.S.C. § 1960. Specifically, Defendants operated Alameda
5 Research Ltd. as a money-transmitting business by directing FTX customers
6 worldwide to direct wire transfers to that entity and proceeding to distribute those
7 funds at their discretion. On information and belief, Alameda Research Ltd. is not a
8 licensed money transmitting business in any jurisdiction and its activities involved
9 the transportation of funds that were intended to be used to promote or support
10 unlawful activity.

11 125. The Count One Defendants committed numerous violations of the
12 National Stolen Property Act, codified at 18 U.S.C. §§ 2314-15. Specifically, the Count
13 One Defendants transported, transmitted, or transferred in interstate and foreign
14 commerce money of the value of \$5000 or more, knowing the same to have been stolen,
15 converted, or taken by fraud.

16 126. The acts set forth in the preceding paragraphs constitute a pattern of
17 racketeering activity pursuant to 18 U.S.C. § 1961(5).

18 127. Each of the Count One Defendants directly and indirectly conducted and
19 participated in the conduct of the enterprise's affairs through the pattern of
20 racketeering activity described above, in violation of 18 U.S.C. § 1962(c).

21 128. As a direct and proximate result and by reason of the Count One
22 Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c), the named
23 Plaintiff and the members of the plaintiff class have been injured in their business
24 and property. The named Plaintiff and the members of the plaintiff class have
25 suffered concrete financial losses consisting of the loss of the fiat currency and digital
26 assets entrusted to FTX US. Even if these assets are eventually returned to the
27

1 members of the plaintiff class by virtue of the bankruptcy process, the class members
2 will have been concretely injured by the loss of use of their assets during the
3 intervening period.

4 129. WHEREFORE, Plaintiff requests that this Court enter judgment
5 against the Count One Defendants for violation of RICO § 1962(c).

6 **Count Two**
7 **RICO Conspiracy (18 U.S.C. § 1962(d))**
8 **(Against All Defendants)**

9 130. All preceding allegations are incorporated as if fully set forth herein.

10 131. Bankman-Fried, Ellison, Wang, Singh, Armanino, and Prager Metis
11 (collectively, the “Count Two Defendants”) are each culpable persons under 18 U.S.C.
12 § 1961(3).

13 132. The Count Two Defendants agreed and conspired to violate 18 U.S.C. §
14 1962(c). The individual Defendants Bankman-Fried, Ellison, Wang, and Singh
15 directed and controlled a RICO enterprise through a pattern of racketeering activity
16 as set out in the preceding paragraphs. Armanino and Prager Metis facilitated this
17 scheme by agreeing to provide and providing auditing and consulting services to the
18 FTX Group. They did so knowingly, or recklessly, or with willful blindness to the
19 nature of the RICO enterprise.

20 133. As a direct and proximate result and by reason of the Count Two
21 Defendants’ racketeering activities and violations of 18 U.S.C. § 1962(d), the named
22 Plaintiff and the members of the plaintiff class have been injured in their business
23 and property. The named Plaintiff and the members of the plaintiff class have
24 suffered concrete financial losses consisting of the loss of the fiat currency and digital
25 assets entrusted to FTX US. Even if these assets are eventually returned to the
26 members of the plaintiff class by virtue of the bankruptcy process, the class members
27 will have been concretely injured by the loss of use of their assets during the
28 intervening period.

134. WHEREFORE, Plaintiff requests that this Court enter judgment against the Count Two Defendants for violations of 18 U.S.C. § 1962(d).

**Class Allegations
(Applicable to All Counts)**

A. Class Type & Definition

135. Plaintiff brings this action individually and on behalf of a nationwide class, pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3).

136. The class is defined as all persons who, during the Class Period, entrusted fiat and/or digital currency to FTX US and were damaged thereby (the “Class”).

137. The Class Period is defined as the period between January 1, 2020 to the present.

138. The Defendants are excluded from the Class.

139. Plaintiff reserves the right to modify, change, or expand any aspect of these class definitions based on discovery and further investigation.

B. Rule 23 Requisites

140. For the reasons that follow, each of the requirements for maintenance of a class action under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) are met.

141. The Class is so numerous that the joinder of all members is impracticable. On information and belief, at least tens of thousands of depositors are presently unable to access assets they entrusted to FTX US. The Class members’ identities can be ascertained and notice of this action provided to them by reference to FTX Group records or, if necessary, the records of third-party entities that worked with FTX Group such as Silvergate Bank.

142. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting individual members of the Class. Among the questions of law and fact common to the Class are:

1 a. Whether the Defendants formed an enterprise that engaged in
2 interstate commerce;

3 b. Whether the individual Defendants violated federal laws
4 regarding wire fraud, transportation of stolen property, unlawful monetary
5 transactions, operating an unlicensed money-transmission business, money
6 laundering, and/or the National Stolen Property Act;

7 c. Whether the Defendants falsely promoted the FTX Group
8 enterprise;

9 d. Whether the individual Defendants conspired to and in fact did
10 misappropriate customer assets;

11 e. The amount of customer assets misappropriated by the individual
12 Defendants;

13 f. Whether Armanino and Prager Metis conspired with, facilitated,
14 and/or participated in the individual Defendants' RICO enterprise;

15 g. Whether Armanino and Prager Metis knew of, or were reckless or
16 wilfully blind with regard to, the nature of the RICO enterprise;

17 h. Whether the Class members have suffered damages, and if so the
18 nature and extent of those damages.

19 143. Plaintiff's claims against Defendants are typical of the claims of the
20 members of the Class because all members sustained damages arising out of the
21 Defendants' wrongful conduct as detailed herein. Plaintiff's and the Class members'
22 claims all arise out of the Defendants' uniform misrepresentations, omissions, and
23 unlawful acts and practices related to the FTX Group's activities.

24 144. Plaintiff will fairly and adequately protect the interests of the Class and
25 has retained counsel competent in class-action lawsuits. Plaintiff has no interests
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1 antagonistic to or in conflict with those of the Class and is an adequate representative
2 for the Class.

3 145. A class action is superior to other available methods for the fair and
4 efficient adjudication of this controversy since the joinder of all members of the Class
5 is impracticable. In addition, because the damages suffered by individual members of
6 the Class may in some instances be relatively small, the expense and burden of
7 individual litigation make it impossible for such Class members individually to
8 redress the wrongs done to them. Also, the adjudication of this controversy through
9 a class action will avoid the possibility of inconsistent and possibly conflicting
10 adjudications of the claims asserted herein. There will be no difficulty in the
11 management of this action as a class action.

12 146. Defendants have acted or refused to act on grounds generally applicable
13 to the Class, thereby making appropriate final injunctive relief and corresponding
14 declaratory relief with respect to the Class as a whole.

15 **VII. Prayer for Relief**

16 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
17 situated, respectfully requests that this Court grant the following relief.

18 a. Determine that the claims alleged herein may be maintained as
19 a class action under Federal Rule of Civil Procedure 23 and issue an
20 order certifying the class as defined above.

21 b. Award all actual, general, special, incidental, statutory, rescission,
22 punitive, and consequential damages and restitution to which Plaintiff
23 and the Class members are entitled, including triple damages to which
24 Plaintiff and the Class members are entitled under the RICO Act.

25 c. Award post-judgment interest on such monetary relief.

26 d. Grant appropriate injunctive and/or declaratory relief.

e. Award reasonable attorneys' fees and costs.

f. Grant such further relief that the Court deems appropriate.

VIII. Jury Demand

Plaintiff, individually and on behalf of the putative Class, demands a trial by jury on all matters so triable.

1 Dated: November 23, 2022

Respectfully submitted,

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Lam v. Bankman-Fried

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This docket is current through 02/10/2023

Today's Date: 2/10/2023
Source: U.S. District Court, Northern District of California (San Francisco)

Court:	U.S. District Court, Northern District of California (San Francisco)
Case Title:	Lam v. Bankman-Fried
Case:	3:22-CV-07336
Judge:	Judge Jacqueline Scott Corley
Date Filed:	11/20/2022
Case Status:	ADRMOP, RELATE

CASE INFORMATION	
Case Number:	3:22CV07336
Jury Demand:	Plaintiff
Demand:	\$5,000,000
Nature of Suit:	Torts: Other Fraud (370)
Jurisdiction:	Diversity
Cause:	28 USC 1332 Diversity-Fraud

PARTICIPANT INFORMATION	Expand All
Elliott Lam	1

Julie Papadakis

Russell Hawkins

Michael Elliott Jessup

Stephen T Pierce

Julie Chon Papadakis

Sam Bankman-Fried

Caroline Ellison

Golden State Warriors, LLC

CALENDAR INFORMATION[View Calendar Information](#)**DOCKET PROCEEDINGS (22)**

Entry #:	Date:	Description:	
20	02/03/2023	CERTIFICATE OF SERVICE by Julie Papadakis re 19 MOTION to Consolidate Cases MOTION to Appoint Counsel (Logan, Todd) (Filed on 2/3/2023) (Entered: 02/03/2023)	View Add to request
19	02/02/2023	MOTION to Consolidate Cases , MOTION to Appoint Counsel filed by Michael Elliott Jessup, Elliott Lam, Stephen T Pierce, Julie Papadakis, Russell Hawkins. Motion Hearing set for 3/9/2023 10:00 AM before Judge Jacqueline Scott Corley. Responses due by 2/16/2023. Replies due by 2/23/2023. (Attachments: # 1 Declaration of William M. Audet, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7	View Add to request

		Exhibit 6, # 8 Exhibit 7, # 9 Proposed Order)(King, Laurence) (Filed on 2/2/2023) (Entered: 02/02/2023)	
18	01/10/2023	ORDER by Judge Jacqueline Scott Corley granting (17) Administrative Motion to Relate in case 3:22-cv-07336-JSC. 23-cv-0024 is related to this action. (ahm, COURT STAFF) (Filed on 1/10/2023) (Entered: 01/10/2023)	View Add to request
17	01/04/2023	ADMINISTRATIVE MOTION To Relate pursuant to Local Rule 3-12 & 7-11 filed by Julie Chon Papadakis. Responses due by 1/9/2023. (Attachments: # 1 Declaration of Laurence D. King in Support of Administrative Motion to Consider Whether Cases Should be Related Pursuant to Civil Local Rules 3-12 and 7-11, # 2 Exhibit 1 to the Declaration of Laurence D. King, # 3 Exhibit 2 to the Declaration of Laurence D. King, # 4 Exhibit 3 to the Declaration of Laurence D. King, # 5 Exhibit 4 to the Declaration of Laurence D. King, # 6 Exhibit 5 to the Declaration of Laurence D. King, # 7 Proposed Order, # 8 Certificate/Proof of Service)(King, Laurence) (Filed on 1/4/2023) (Entered: 01/04/2023)	View Add to request
16	12/19/2022	CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. Please take notice that the case management conference set for March 2, 2023 is continued to April 6, 2023 at 1:30 p.m. before Judge Jacqueline Scott Corley via a Zoom webinar. Joint Case Management Statement is due by 3/30/2023. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jsc Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names must be sent to the CRD at jsccrd@cand.uscourts.gov no later than noon 4/5/2023. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ahm, COURT STAFF) (Filed on 12/19/2022) (Entered: 12/19/2022)	Send Runner to Court
15	12/19/2022	ORDER RELATING CASE. Signed by Judge Jacqueline Scott Corley on 12/19/2022. (22-cv-7444, 22-cv-7620, and 22-cv-7666 are related to this action.) (ahm, COURT STAFF) (Filed	View Add to request

		on 12/19/2022) Modified on 12/19/2022 (ahm, COURT STAFF). (Entered: 12/19/2022)	
14	12/16/2022	OPPOSITION/RESPONSE (re 9 ADMINISTRATIVE MOTION To Consider Whether Cases Should Be Related) filed byStephen T Pierce. (Hoda, Marshal) (Filed on 12/16/2022) (Entered: 12/16/2022)	View Add to request
13	12/16/2022	Summons Issued as to Sam Bankman-Fried, Caroline Ellison, Golden State Warriors, LLC. (far, COURT STAFF) (Filed on 12/16/2022) (Entered: 12/16/2022)	View Add to request
12	12/15/2022	Proposed Summons. (Audet, William) (Filed on 12/15/2022) (Entered: 12/15/2022)	View Add to request
	12/15/2022	Electronic filing error . ONLY ONE SUMMONS TO BE ISSUED PER CASE, USE AN ATTACHMENT TO SUMMONS IF NEEDED TO LIST ADDITIONAL DEFENDANTS INFORMATION [err201]This filing will not be p rocessed by the clerks office.Please re-file in its entirety. Re: 10 Proposed Summons filed by Elliott Lam (far, COURT STAFF) (Filed on 12/15/2022) (Entered: 12/15/2022)	Send Runner to Court
11	12/14/2022	OPPOSITION/RESPONSE (re 9 ADMINISTRATIVE MOTION To Consider Whether Cases Should Be Related) filed byMichael Elliott Jessup. (Logan, Todd) (Filed on 12/14/2022) (Entered: 12/14/2022)	View Add to request
10	12/13/2022	Proposed Summons. (Audet, William) (Filed on 12/13/2022) (Entered: 12/13/2022)	View Add to request
9	12/12/2022	ADMINISTRATIVE MOTION To Consider Whether Cases Should Be Related filed by Elliott Lam. Responses due by 12/16/2022. (Attachments: # 1 Declaration Of Kurt D. Kessler In Support Of Administrative L.R. 7-11 Motion To Consider Whether Cases Should Be Related, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Proposed Order, # 7 Certificate/Proof of Service)(Audet, William) (Filed on 12/12/2022) (Entered: 12/12/2022)	View Add to request
8	11/28/2022	CLERK'S NOTICE RESCHEDULING INITIAL CASE MANAGEMENT CONFERENCE. Joint Case Management Statement due by 2/23/2023. Initial Case Management Conference reset for 3/2/2023 at 1:30 p.m. before Judge Jacqueline Scott Corley via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jsc Court Appearances: Ad	View Add to request

		<p>vanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names must be sent to the CRD at jscrd@cand.uscourts.gov no later than noon on 3/1/2023. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/. (ahm, COURT STAFF) (Filed on 11/28/2022) (Entered: 11/28/2022)</p>	
7	11/25/2022	<p>ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Jacqueline Scott Corley for all further proceedings. Magistrate Judge Donna M. Ryu no longer assigned to case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras. Signed by The Clerk on 11/25/2022. (Attachments: # 1 Notice of Eligibility for Video Recording)(jrs, COURT STAFF) (Filed on 11/25/2022) (Entered: 11/25/2022)</p>	View Add to request
6	11/23/2022	<p>CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (This is a text-only entry generated by the court. There is no document associated with this entry.) (ig, COURT STAFF) (Filed on 11/23/2022) (Entered: 11/23/2022)</p>	Send Runner to Court
5	11/22/2022	<p>CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Elliott Lam.. (Audet, William) (Filed on 11/22/2022) (Entered: 11/22/2022)</p>	View Add to request
4	11/21/2022	<p>Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 2/22/2023. Initial Case Management Conference set for 3/1/2023 01:30 PM in Oakland, Courtroom 4, 3rd Floor. (far, COURT STAFF) (Filed on 11/21/2022) (Entered: 11/21/2022)</p>	View Add to request
3	11/21/2022	<p>Case assigned to Magistrate Judge Donna M. Ryu. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit E-Filing A New Civil Case at http://cand.uscourts.gov/ecf/caseopening. Standing orders can be downloaded from the court's web page at</p>	Send Runner to Court

		www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 12/5/2022. (ark, COURT STAFF) (Filed on 11/21/2022) (Entered: 11/21/2022)	
2	11/21/2022	FEE PAID (Filing fee\$402,receipt number ACANDC-17744783). (Audet, William) (Filed on 11/21/2022) Modified on 11/21/2022 (far, COURT STAFF). (Entered: 11/21/2022)	<div>Send Runner to Court</div>
1	11/21/2022	COMPLAINT Class Action Complaint against all Defendants. Filed by Elliott Lam (Attachments: # 1 Civil Cover Sheet) (Audet, William) (Filed on 11/21/2022) Modified on 11/21/2022 (far, COURT STAFF). (Entered: 11/21/2022)	<div>View</div> <div>Add to request</div>
	11/21/2022	Electronic filing error . Filing fee not paid. Please pay the filing fee through Pay.gov by clicking on Civil > Other Documents > New Case Filing Fee in CM/ECF. [err701] Re:[1] Complaint filed by Elliot Liam, Golden State Warriors (ark, COURT STAFF) (Filed on 11/21/2022) (Entered: 11/21/2022)	<div>Send Runner to Court</div>

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15 *Counsel for Plaintiff Elliott Lam, individually*
 16 *and on behalf of all others similarly situated*

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **SAN FRANCISCO DIVISION**

20 ELLIOTT LAM, individually
 21 and on behalf of all others similarly situated,

22 Plaintiff,

23 v.

24 SAM BANKMAN-FRIED, CAROLINE
 25 ELLISON, and GOLDEN STATE
 26 WARRIORS, LLC,

27 Defendants.

Case No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

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ELLIOTT LAM, by and through undersigned counsel, brings this action on behalf of himself and on behalf of all others similarly situated (“Plaintiff” and the “Class”) against SAM BANKMAN-FRIED, CAROLINE ELLISON, and GOLDEN STATE WARRIORS, LLC, (together, “Defendants”). Plaintiff make the following allegations based on personal knowledge of the facts pertaining to themselves and on information and belief upon investigation that is reasonable as to all other matters. Plaintiff alleges as follows:

NATURE OF ACTION

1. An “unprecedented” situation has occurred involving fraud and deceit at a scale rarely seen – causing billions of dollars in value and financial equity to ostensibly disappear overnight.

2. FTX Trading LTD d/b/a FTX’s (“FTX”) and West Realm Shires Services Inc. d/b/a FTX US’s (“FTX US”) (collectively, the “FTX Entities”), was collectively valued at over \$32 billion at one recent point and was known for offering and selling unregistered securities in the form of yield-bearing accounts (“YBAs”) to residents of the United States and other countries around the world.

3. The FTX Entities imploded in early November when they filed for bankruptcy in the aftermath of a seemingly massive and nearly unprecedented liquidity crisis. The FTX Entities, and its billionaire co-founder and Defendant herein, Sam Bankman-Fried, are reportedly now under investigation by the US Department of Justice and the Securities and Exchange Commission for severely mismanaging billions of dollars in client funds. When FTX’s troubles drew more and more headlines and customers started taking out funds, the FTX Entities halted withdrawals, and the companies and related entities filed for bankruptcy days later.

4. As a result of this crisis, CEO Bankman-Fried resigned on Nov. 11, and was replaced by John Ray III (“Ray”), who previously oversaw the Enron bankruptcy. On Nov. 17, Ray submitted a filing with the United States Bankruptcy Court, District of Delaware, stating:

“Never in my career [over 40 years of legal and restructuring experience] have I seen such a **complete failure of corporate controls** and such a **complete absence of trustworthy financial information** as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the

hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals, **this situation is unprecedented.**"

In re: FTX TRADING LTD., et al., No. 22-11068-JTD, Dkt. #24 at ¶ 5 (Bankr. D. Del., Nov. 17, 2022) (emphasis added).

5. Ray also published a sprawling, overly complicated organizational chart of FTX's financial and investment empire, offering a glimpse of the maze-like web of legal entities Bankman-Fried had created to run his empire. *In re: FTX TRADING LTD., et al.*, No. 22-11068-JTD, Dkt. #24 at Ex. B (Bankr. D. Del., Nov. 17, 2022) ("Preliminary Corporate Structure Chart").

6. Nick Mancini, director of research for the crypto data firm Trade the Chain has described the complex structure as likely intentional and created to aid Defendant Bankman-Fried's misconduct within his companies: "It's clear Sam [Bankman-Fried] designed the organizational structure to be intentionally convoluted in order to keep various employees and companies in the dark about what was happening outside of their specific walled garden within the greater structure. Reports of fraud, lack of accounting, and special privileges between subsidiaries are examples of reasons that you would create such an intentionally confusing structure."¹

7. In addition to using convoluted organizational structures to hide its malfeasance, reports have started to emerge about how Bankman Fried enabled the secret transfer of \$10 billion from FTX Entities to Alameda Research LLC, Bankman-Fried's venture-capital and trading firm affiliate of FTX, and that at least \$1 billion of those funds have disappeared.²

8. Separately, according to paperwork filed by Ray with the U.S. Bankruptcy Court for the District of Delaware, Alameda Research had \$4.1 billion in related-party loans. Among those were \$1 billion to Defendant Bankman-Fried.

9. The scale of this Ponzi-scheme-like fraud was matched only by the scale of the publicity campaign employed by Bankman-Fried and the FTX Entities to conjure up an illusion of financial and corporate success. Flush with money from unwitting investors and seeking to further

¹ <https://www.yahoo.com/now/ftx-bankruptcy-filing-reveals-remarkably-193200722.html> (last accessed: Nov. 20, 2022)

² <https://www.reuters.com/markets/currencies/exclusive-least-1-billion-client-funds-missing-failed-crypto-firm-ftx-sources-2022-11-12/> (last accessed: Nov. 20, 2022)

1 increase their customer reach, Bankman-Fried and the FTX Entities began signing branding deals
2 with sports institutions and advertising on television prolifically to entice new customers.

3 10. FTX Entities bought the naming rights for the National Basketball Association
4 (“NBA”) franchise Miami Heat’s stadium, signing a 19-year deal with the team and Miami-Dade
5 County, Florida, for \$135 million. The Mercedes-AMG Petronas Formula 1 team named FTX its
6 cryptocurrency exchange partner. And a professional e-sports team, TSM, agreed to be paid \$210
7 million from FTX over 10 years to change its name to TSM FTX. The FTX Entities continued to
8 spend lavishly over the last couple years on nonfungible token (“NFTs”) and crypto partnerships
9 with teams including the Golden State Warriors and the Washington Capitals. Major League
10 Baseball (“MLB”) and the FTX Entities announced what they were calling a long-term, global
11 partnership deal that came with swag: the umpires would wear patches with the logo of FTX.US.
12 Other sponsorships included the title sponsorships of the first season of MLB Home Run Derby X,
13 and the title sponsorship of the tournaments FTX Road to Miami and FTX Crypto Cup as part of
14 the Champions Chess Tour 2022. In August 2021, it was announced FTX secured naming rights to
15 UC Berkeley’s California Memorial Stadium in a \$17.5 million deal. In addition to the naming
16 rights, FTX will receive on-field branding and branding on athletics press backdrops, along with
17 social integration, likely exposing a substantial number of foreign students to FTX Entities’ trading
18 platform, offers of YBAs, and other services. FTX also ran Super Bowl ads to gain U.S. and
19 international exposure for new customers.

20 11. FTX Entities’ publicity and commercial campaign also involved the personal
21 endorsements of internationally-known celebrity, entertainment, and sports figures through FTX’s
22 own celebrity brand ambassadors. These ‘brand ambassadors,’ used their social media reach and
23 personal brands to induce unsophisticated investors and consumers into a relationship with the FTX
24 Entities.

25 12. As a result of the willful misconduct alleged above, and in more detail below,
26 Plaintiff brings this action on behalf of himself and the Class seeking to recover damages,
27
28

1 declaratory and/or injunctive relief stemming from fraudulent and deceitful conduct of Defendants
2 and their promotion and marketing of FTX Entities' trading platform and their YBAs.

3 PARTIES

4 13. Plaintiff Elliott Lam is a citizen of Canada and resident of Hong Kong, China. He is
5 a natural person over the age of 21. Plaintiff Lam purchased an unregistered security from FTX in
6 the form of a YBA and funded the account with a sufficient amounts to earn interest on his
7 holdings. Plaintiff Lam did so after being exposed to some or all of Defendants' misrepresentations
8 and omissions regarding the FTX Entities and their related trading platforms as detailed in this
9 complaint, and executed trades in reliance on those misrepresentations and omissions. As a result,
10 Plaintiff Lam has sustained damages approximated at \$750,000.00 for which Defendants are liable.

11 14. Defendant Sam Bankman-Fried, founder and former CEO of FTX, is a citizen and
12 resident of the Bahamas.

13 15. Defendant Caroline Ellison is the CEO of Alameda Research, LLC, a trading firm
14 launched by Defendant Sam Bankman-Fried. She oversaw many of the risky bets Alameda took
15 with regard to FTX customers' crypto tokens. Defendant Ellison is a resident of Hong Kong.

16 16. Defendant Golden State Warriors LLC is a professional basketball team in the NBA
17 that partnered with FTX in 2022, unveiling an FTX logo on the court at its home arena, Chase
18 Center, and is a corporation operating and existing under the laws of the State of California and
19 headquartered in San Francisco, California.

20 JURISDICTION & VENUE

21 17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
22 1332(d)(2)(A) because this is a class action for a sum exceeding \$5,000,000.00, exclusive of
23 interest and costs, and in which at least one class member is a citizen of a state different than the
24 Defendants.

25 18. This Court has personal jurisdiction against Defendants because at least one
26 Defendant conducts business in California, and/or have otherwise intentionally availed themselves
27 of the State of California's consumer market through the promotion, marketing, and sale of FTX's
28

YBAs in California, which constitutes committing a tortious act within the state of California. Defendants have also marketed and participated and/or assisted in the sale of FTX's unregistered securities to consumers in California. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants permissible under traditional notions of fair play and substantial justice.

19. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants engaged in business in this District; a substantial part of the events or omissions giving rise to the claims at issue occurred in this District; and because Defendants entered into transactions and/or received substantial profits from those who reside in this District.

20. Alternatively, venue is proper in this District under 28 U.S.C. § 1391(b)(3) as there is no single district in which all Defendants reside; because a substantial part of the events or omissions giving rise to the claims at issue occurred outside of the United States in the Bahamas, the home of Sam Bankman-Fried and FTX; and because Defendants entered into transactions and/or received substantial profits from those who reside in this District. As established, this district has personal jurisdiction over Defendants, rendering venue here appropriate. Further, Sam Bankman-Fried and FTX contracted with additional Defendant Golden State Warriors, who is headquartered and conduct business in this district.

21. All conditions precedent to the institution and maintenance of this action have been performed, excused, waived, or have otherwise occurred.

FACTUAL ALLEGATIONS

I. THE RISE OF FTX

22. In May 2019, former Wall Street trader Defendant Sam Bankman-Fried and ex-Google employee Zixiao "Gary" Wang founded 'FTX,' the owner and operator of the FTX.COM cryptocurrency exchange.

23. In little more than two years, by July 2021, the darling startup has reached an astronomical valuation of \$18 billion due to raising \$900 million during a funding round that included financial support from Wall Street titans like SoftBank Group Corp, venture capital firm

1 Sequoia Capital, private equity giant Thoma Bravo, Daniel Loeb's Third Point, the Paul Tudor
2 Jones family, British hedge fund manager Alan Howard, and 50-plus additional investors. The
3 company reportedly had at the time more than 1 million users and averaged about \$10 billion in
4 trading volume per day, with revenue surging more than tenfold in the past year.

5 24. In a mere 3 months, by October 2021, the value of FTX had soared again to \$25
6 billion. This funding round saw an infusion of \$420 million from reputable investor institutions and
7 firms like Ontario Teachers' Pension Plan Board, Temasek, Tiger Global and more than 60 other
8 investors.

9 25. In January 2022, FTX's smaller related entity, FTX.US, was valued at \$8 billion
10 stemming from a \$400 million first-round funding from reputable investors like Softbank Group
11 Corp, and Singapore's Temasek Holdings. Combined, the FTX Entities' value exceeded \$32
12 billion.

13 26. Flush with cash, the FTX Entities and related companies, continued and even
14 expanded its significant marketing and promotional efforts, as detailed below, to entice consumers
15 from around the world to adopt, use, or otherwise learn about its services and the crypto-industry.

16 27. The FTX Entities primary product was a platform service provider that served as a
17 mobile application for cryptocurrency investment and allowed users to place cryptocurrency trade
18 orders on behalf of users like Plaintiff and Class and to use interest bearing or yield-bearing
19 accounts (YBA). The trading platform sought to be both user-friendly for first time investors but
20 also with enough robust features for professional traders.

21 28. At its peak, the FTX.com exchange was extremely successful, and in 2022, around
22 \$15 billion in assets were traded daily on the platform, which represented 10% of global volume for
23 crypto trading. This made FTX one of the largest crypto-trading companies in the world. The FTX
24 team had grown to over 300 individuals from all over the globe. Although the FTX Entities'
25 primary international headquarters is in the Bahamas, it maintained a US base of operations in
26 Miami, Florida that significantly affected all parts of the United States, including California.

29. FTX quickly became one of the most utilized avenues for nascent investors to purchase cryptocurrency. By the time FTX filed for bankruptcy protection in November 2022, customers had entrusted a purported \$10 to \$50 billion dollars to the platform.

30. Defendant Bankman-Fried got rich off FTX (and an intertwined company called Alameda Research, LLC), with the two companies providing him income of more than \$1 billion in 2020 alone.

31. Before the house-of-cards empire collapsed, Defendant Bankman-Fried reached a net worth of \$26 billion. Bankman-Fried unabashedly used his wealth to become a major political donor and force, secured celebrity endorsements like Defendant Golden State Warriors named herein, and spent lavish sums of money on not just promotional materials for his companies but for his personal use as well.

II. THE FALL OF FTX

32. In the fall of 2022, trouble began for Defendants Bankman-Fried and FTX. On August 19, 2022, a U.S. bank regulator ordered the FTX platform to halt “false and misleading” information about whether funds at the company were insured by the government (they were not).

33. On November 2, 2022, popular crypto news publication CoinDesk released a devastating report, with leaked financial documents, showcasing that Bankman-Fried’s other company, Alameda Research, was heavily dependent on FTX’s native token, FTT.

34. CEO Changpeng “CZ” Zhao, who oversaw a competitor to FTX in Binance, in learning about the substantial amount that Alameda Research depended on FTT, decided to quickly and politely liquidate holdings of FTT worth more than \$500 million. Given CZ’s prominence in the crypto-trading sphere, other consumers quickly followed.

35. FTX saw a staggering \$6 billion in withdrawals over 3 days; FTX struggled to fulfill these withdrawals given their speed and volume. As a result of FTX’s situation, the related native coin FTT plummeted nearly a third in value.

36. On November 8, 2022, Defendant Bankman-Fried announced that Binance would come to the rescue and become a white-knight by bailing the company out. However, one day later,

on November 9, 2022, Binance announced it was withdrawing from the deal citing “due diligence” concerns and additional reports about mismanagement and mishandling of funds within the FTX Entities. FTT plunged even faster and even deeper.

37. On November 11th, unable to obtain a bailout from Binance or others, FTX filed for Chapter 11 bankruptcy and Bankman-Fried resigned as CEO and in a social media posting, publicly acknowledged that he had messed up.

III. ALAMEDA RESEARCH AND THE QUESTIONABLE ROLE IT HAD IN FTX’S COLLAPSE

38. According to recent reports, another explanation contributing to the precarious situation the FTX Entities and their trading platform was facing stems from mismanagement of funds. Earlier this year, Bankman-Fried secretly transferred at least \$4 billion in customer funds from FTX to Alameda to apparently cover for Alameda after it faced a series of losses. The FTX entities lent as much as \$8 billion, of which more than half belong to customers, to Alameda with more than \$10 billion in loans still outstanding. Alameda Research has a checkered and conflicting history with Defendant Bankman-Fried.

39. Alameda Research, LLC (“Alameda Research”) is a quantitative trading firm that was founded in November of 2017 by Defendant Bankman-Fried. Quantitative trading consists of trading strategies based on quantitative analysis, which rely on mathematical computations and number crunching to identify trading opportunities.

40. At the time, Defendant Bankman-Fried started moving up to \$25 million a day in arbitrage trades (using two or more markets to capitalize on the difference of price on the stock or commodity in different markets) to take advantage of the higher price of Bitcoin in Japan compared to the price in the U.S. The Company earned about \$20 million from that arbitrage opportunity.³

41. By 2018, Defendant Bankman-Fried had persuaded Defendant Ellison to join him at Alameda Research. Defendant Ellison described the recruitment as follows: “This was very much

³ Parloff, Roger. *Portrait of a 29-year-old billionaire: Can Sam Bankman-Fried make his risky crypto business work?* <https://finance.yahoo.com/news/ftx-ceo-sam-bankman-fried-profile-085444366.html> (Yahoo! Finance, August 12, 2021)

1 like, 'oh, yeah, we don't really know what we're doing,'" Ellison told Forbes magazine in an
2 interview regarding her initial impressions of Alameda.

3 42. In late 2018, the headquarters of Alameda Research was relocated to Hong Kong.
4 The team at Alameda Research included Defendant Bankman-Fried's close friends (and later co-
5 founders for FTX) Nishad Singh and Gary Wang. Defendant Caroline Ellison and Sam Trabucco
6 were also part of the group and upon moving to Hong Kong the group lived like college students
7 and fiercely traded crypto.

8 43. After Defendant Bankman-Fried established FTX in 2019, Defendant Ellison began
9 taking more responsibility at Alameda Research along with Sam Trabucco, who served as CEO.
10 Defendant Ellison rose swiftly at Alameda Research, becoming co-CEO of Alameda alongside Sam
11 Trabucco in the summer of 2021.

12 44. As of August 2021, Bankman-Fried owned approximately 90% of Alameda
13 Research.

14 45. Between early 2021 and March 2022, Alameda Research amassed crypto tokens
15 ahead of FTX announcing that it would list them, totaling about \$60 million worth of tokens in the
16 Ethereum blockchain.⁴

17 46. In and around April 2022, Sam Trabucco stepped down as co-CEO of Alameda
18 Research, months before he publicly announced his departure in August, according to a former
19 Alameda employee.⁵

20 47. In May and June of 2022, Alameda Research suffered significant losses. Anonymous
21 sources cited by the Wall Street Journal indicated that those losses led to FTX loaning Alameda
22 Research more than half of its customer funds. When Sam Bankman-Fried stated publicly that he
23 made a poor judgment call, the anonymous sources cited by the Wall Street Journal indicated that it
24

25 ⁴ Ostroff, Caitlin. *Alameda Amassed Crypto Tokens Ahead of FTX Listings, Public Data Shows*.
26 <https://www.wsj.com/livecoverage/stock-market-news-today-11-14-2022/card/alameda-amassed-crypto-tokens-ahead-of-ftx-listings-public-data-shows-z6KFN051ToEpFohTXA89> (Wall Street
27 Journal, November 14, 2022)

28 ⁵ Jeans, David, et al. 'Queen Caroline': The 'Fake Charity Nerd Girl' Behind The FTX Collapse.
<https://www.forbes.com/sites/davidjeans/2022/11/18/queen-caroline-the-risk-loving-29-year-old-embroiled-in-the-ftx-collapse> (Forbes Digital Assets, November 18, 2022).

was a decision to loan funds from FTX to Alameda Research that he was referencing. This conduct was explicitly forbidden by the terms of service of FTX.⁶ Some estimates are that Bankman-Fried secretly transferred at least \$4 billion in customer funds from FTX to Alameda to apparently cover for Alameda after it faced a series of losses. The FTX Entities lent apparently billions to a company that Defendant Bankman-Fried also owned in the past year. This misconduct and mismanagement raises significant ethical, legal, and conflicts of interest problems for Defendants.

IV. YIELD-BEARING ACCOUNTS (YBAS) AND VIOLATIONS OF LAW

48. Other violations of law stem from FTX's use of YBAS. Early on in its inception, the FTX Entities offered interest-bearing cryptocurrency accounts to public investors called yield-bearing accounts (YBAS). Plaintiff and the Class invested in FTX's YBAS.

49. The YBAS were "securities" as defined by the United States securities laws. The FTX Entities offered variable interest rewards on crypto assets held in the YBAS, which rates were determined by the FTX Entities in their sole discretion. In order to generate revenue to fund the promised interest, the FTX Entities pooled the YBA assets to engage in lending and staking activities from which they derived revenue to pay interest on the YBAS. These activities make the YBAS a "security" under state and federal law.

50. In October 2022, Director of Enforcement of the Texas State Securities Board, Joseph Rotunda, filed a declaration in which he explained how the YBAS are in fact "an offering of unregistered securities in the form of yield-bearing accounts to the residents of the United States."

51. Mr. Rotunda's declaration supported the notion that (i) users appear able to download the FTX trading app even when they reside in the United States; (ii) default settings were automatically configured to enable the earning of yield; (iii) FTX may not be fully disclosing all known material facts to clients prior to opening accounts and earning yield, thereby possibly engaging in fraud and/or making offers containing statements that are materially misleading or

⁶ Salmon, Brady, *FTX's terms-of-service forbid trading with customer funds*, <https://www.axios.com/2022/11/12/ftx-terms-service-trading-customer-funds> (Axios, November 13, 2022)

1 otherwise likely to deceive the public; and (iv) potentially violating securities laws in various
2 jurisdictions.

3 **V. LEVERAGING INTERNATIONAL REACH OF GOLDEN STATE WARRIORS TO MARKET**
4 **FTX’S PLATFORM AND SERVICES**

5 52. Defendant Sam Bankman-Fried, along with his company FTX, needed to continue
6 growing the userbase for its crypto-trading platform and enlisted, at great expense, some of the
7 marquee influencers and talents in the sports, entertainment, and celebrity arenas. These A-list
8 celebrities have not only been brand ambassadors for FTX, but some have also invested or sought
9 equity as part of his or her compensation. Most of these influencers conducted marketing and
10 promotional campaigns for Bankman-Fried and FTX and also further raised awareness and
11 encouraged the adoption of the FTX platform in social media, interviews, or other direct
12 engagement channels. As a result of their concerted actions, adoption, use, and money being spent
13 on the platform rose.

14 53. Defendant Bankman-Fried and FTX, in conjunction with the use of A-list celebrities
15 to promote FTX’s platform and products, also sought a stratospheric rise in publicity and consumer
16 awareness by spending, again lavishly, on partnerships with sports and entertainment entities like
17 the Golden State Warriors or slapping their name on an entire NBA arena for the storied Miami
18 Heat franchise.

19 54. These actions had one goal: outcompeting competitor trading platforms and getting
20 consumers to use the FTX platform technology instead. As then-FTX.US President Brett Harrison
21 explains, using A-list celebrities and mass branding campaigns would “familiarize consumers with
22 its technology, customer service and offerings” and with FTX brand. The company “need[ed]” to
23 attract new consumers to continue funneling them (and the money they put into the FTX system) as
24 part of an elaborate scheme to prompt up the businesses.

25 55. Defendants continued to drive unwitting investors and consumers into a Ponzi-like-
26 scheme, substantially assisting in the sale of the YBAs, which are unregistered securities. The A-list
27 celebrity brand ambassadors, including a Defendant herein, made representations, solicitations, or
28 other forms of promotions.

56. One of the FTX Entities' most prominent promotions and marketing efforts involved the NBA franchise Golden State Warriors ("GSW"). FTX and GSW launched a partnership in 2022 and with it unveiled the FTX logo on the main court at the Chase Center, the GSW's new \$1.4 billion arena. FTX served as GSW's Official Cryptocurrency Platform and NFT Marketplace, and to further promote FTX to its avid fanbase, the GSW dropped NFTs on FTX.US beginning in early 2022.

57. The NBA is one of the most prolific professional sports leagues in the world and the GSW, with recent championships in 2015, 2017, 2018 and as recently as 2022 gave the franchise, its arena, and its partnership with FTX unprecedented reach internationally. The partnership between the GSW and FTX marked the first international rights partner for the GSW, meaning the GSW and FTX had a visible market presence, inclusive of logo and likeness, internationally for all of its millions of fans. The partnership deal also included the GSW's G League affiliate team (Santa Cruz Warriors), the Golden Guardians and Warriors Gaming Squad (affiliated e-sports teams), in-arena signage at Chase Center, and virtual floor signage at GSW games. Millions of consumers, in the United States and most importantly internationally, were exposed to FTX's branding, marketing materials, and services.

CLASS ALLEGATIONS

58. As alleged herein, Plaintiff brings this lawsuit on behalf of themselves and all others similarly situated (the "Class"), pursuant to Fed. R. Civ. P. 23(a), (b)(2), (b)(3), and/or (c)(4).

I. CLASS DEFINITION(S)

59. Plaintiff seeks to represent the following *Transnational Class*: "All persons or entities outside the United States who, within the applicable time period limitations, purchased or enrolled in yield-bearing accounts ("YBAs") offered by FTX Trading LTD d/b/a FTX's ("FTX") and West Realm Shires Services Inc. d/b/a FTX US's ("FTX US") (collectively, the "FTX Entities") and/or otherwise invested in one or more FTX Entities."

60. The following persons or entities are further excluded from the Class: (i) judicial officers and associated court staff presiding over this case; (ii) past and present officers, directors,

1 affiliates, representatives, agents and employees to the Defendants, including Defendants
2 themselves, or any of its direct or indirect subsidiaries; (iii) any immediate family members of the
3 above two groups; and (iv) all those otherwise in the Class who timely and properly exclude
4 themselves therefrom in such manner as the Court may direct.

5 61. Any notices to the Class(es) directed by the Court shall comply with all provisions of
6 Rule 23 and applicable court rulings regarding notice(s). Class members may be notified of the
7 pendency, certification and/or other important steps in this action under Fed. R. Civ. P. 23, as
8 appropriate, through a Court-approved combination of direct and indirect methods, including print,
9 broadcast, social media, posting, and other physical and electronic means. All Class members
10 should be identifiable and reachable based on corporate records in the possession, custody and
11 control of Defendants and once made available, Plaintiff anticipates ease of publishing, mailing and
12 emailing notice at minimum.

13 62. Plaintiff reserves the right to modify or amend the definition of the proposed
14 *Transnational Class*, or to include additional classes or subclasses, before or after the Court
15 determines whether such certification is appropriate as discovery progresses. Plaintiff seeks
16 certification of the *Transnational Class* in part because a significant portion of the offers of FTX
17 YBAs to Plaintiff and the Class members (in which Defendants each substantially participated)
18 were made by FTX to persons and entities outside the United States.

19 II. REQUIREMENTS OF RULE 23(A) MET

20 A. Numerosity

21 63. The Class is comprised of thousands, if not millions, of consumers internationally, to
22 whom FTX offered and/or sold YBAs. Moreover, thousands, if not millions, of consumers
23 internationally have executed trades on the FTX Platform within the applicable limitations period.
24 Membership in the Classes is thus so numerous that joinder of all members is impracticable. The
25 precise number and nature of class members is currently unknown to Plaintiff but readily
26 identifiable through discovery and review of FTX's corporate records.
27
28

B. Commonality and Predominance

64. Common questions of law and fact predominate over any questions affecting individual class members. These common legal and factual questions include, but are not limited to, the following:

- a. whether the YBAs were unregistered securities under federal or applicable law;
- b. whether Defendants' participation and/or actions related to FTX's offerings and sales of YBAs violate the provisions of the Securities Act and under federal or applicable law;
- c. what the type and measure of damages suffered by Plaintiff and the Classes may be;
- d. whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;
- e. whether Plaintiff and Class members are entitled to injunctive and/or declaratory relief;
- f. whether Plaintiff and Class members are entitled to consequential damages, punitive damages, statutory damages, disgorgement, and/or other legal or equitable appropriate remedies as a result of Defendants' conduct.

C. Typicality

65. Plaintiff's claims are typical of the claims of the members of the Class because all members were injured through the uniform misconduct described above, namely that Plaintiff and the Class were offered and/or sold FTX's YBAs as a result of Defendants' actions and/or participation in the offering and sale of these unregistered securities, and Plaintiff is advancing the same claims and legal theories on behalf of themselves and all such members. Further, there are no defenses available to either Defendant that are unique to Plaintiff.

D. Adequacy

66. Plaintiff will fairly and adequately protect the interests of the members of the Classes. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests

1 to those of the Classes. Plaintiff anticipates no difficulty in the management of this litigation as a
2 class action. To prosecute this case, Plaintiff has chosen the undersigned law firms, which have the
3 financial and legal resources to meet the substantial costs and legal issues associated with this type
4 of consumer class litigation.

5 **E. Superiority**

6 67. A class action is superior to individual actions for the proposed Class, and also
7 superior to actions outside the United States, in part due to the following factors:

- 8 a. Joinder of all Class members would create extreme hardship and inconvenience for
9 the affected customers as they reside across the globe;
- 10 b. There are no known individual Class members who are interested in individually
11 controlling the prosecution of separate actions;
- 12 c. The interests of justice will be well served by resolving the common disputes of
13 potential Class members efficiently in one forum;
- 14 d. Extraterritorial litigation will unlikely provide the any, let alone the requested relief
15 for the proposed Class herein but by contrast, litigation of common questions as a
16 class action in a single, unitary proceeding will materially advance the disposition of
17 the litigation and is consistent with the purposes and goals of class actions;
- 18 e. Individual suits would not be cost effective or economically maintainable as
19 individual actions; and
- 20 f. The action is manageable as a class action.

21 **III. REQUIREMENTS OF RULE 23(B)(3) MET**

22 68. The questions of law or fact common to Plaintiff's and each Classes member's
23 claims predominate over any questions of law or fact affecting only individual members of the
24 Class. All claims by Plaintiff and the unnamed members of the Classes are based on the common
25 course of conduct by Defendants in marketing, offering, and/or selling the YBAs, which are
26 unregistered securities.

69. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

70. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the Classes as is in the instant action, common questions will be held to predominate over individual questions.

IV. REQUIREMENTS OF RULE 23(B)(2) MET

71. Alternatively, Plaintiff will seek certification under 23(b)(2) for injunctive and/or declaratory relief for the Class. Defendants have acted and refused to act on grounds generally applicable to the classes by engaging in a common course of conduct of aiding and abetting the offering and/or selling the YBAs, which are unregistered securities, thereby making appropriate final injunctive relief or declaratory relief with respect to the classes as a whole.

72. Defendants have acted and refused to act on grounds generally applicable to the classes by engaging in a common course of conduct of uniformly identical and uniform misrepresentations and omissions in receiving secret undisclosed compensation for their promotion of the FTX Entities' trading platform, thereby making appropriate final injunctive relief or declaratory relief with respect to the classes as a whole.

V. REQUIREMENTS OF RULE 23(C)(4) MET

73. One of the predominant issues regarding Defendants' liability is whether the YBAs FTX offered and/or sold are unregistered securities in violation of federal and/or applicable law, utilizing Rule 23(c)(4) to certify the Classes for a class wide adjudication on this or other issues would materially advance the disposition of the litigation as a whole.

74. Another predominant issue regarding Defendants' liability is whether they have violated the consumer protection and securities laws in making identical and uniform misrepresentations and omissions regarding the functionality of the FTX Entities' trading platform, and utilizing Rule 23(c)(4) to certify the Classes for a class wide adjudication on this or other issues would materially advance the disposition of the litigation as a whole.

CAUSES OF ACTION

COUNT I

Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (Individually and on Behalf of the Class)

75. Plaintiff repeats and realleges each and every allegation contained above, as though fully set forth herein.

76. The Unfair Competition Law (“UCL”) prohibits any “unlawful, unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

77. Defendants unfair and deceptive practices described herein are likely to mislead – and clearly have misled – consumers acting reasonably in the circumstances into purchasing YBAs and transacting with FTX.

78. Unlawful: Defendants have advertised the Products using false and/or misleading claims, such that Defendant’s actions as alleged herein violate at least the following laws:

- The False Advertising Law, California Business & Professions Code § 17500, *et seq.*

79. Fraudulent: A practice is “fraudulent” if members of the general public were or are likely to be deceived. Defendants’ statements regarding the legality, nature and viability of YBAs are deceptive to the public. Further, Defendant Bankman-Fried and FTX’s operation of FTX and Ponzi-scheme type behavior is further fraudulent and deceptive to the public related to the viability and nature of FTX.

80. Unfair: The UCL gives courts maximum discretion to address improper business practices that are “unfair” Defendants’ collective conduct with respect to the marketing and sale of YBAs is unfair because Defendant’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers in inducing them to transact with FTX and purchase YBAs and the utility of their conduct, if any, does not remotely outweigh the gravity of the harm to its victims. Plaintiff and the Class would not have transacted with FTX and purchased YBAs had they known that the statements were misrepresentations and deliberately deceiving.

81. Defendant Bankman-Fried and FTX's conduct with respect to the operation of FTX is also unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one that consumers, can reasonably avoid.

82. The harm suffered by Plaintiff and the Class was directly and proximately caused by the deceptive and unfair practices of Defendants related to YBAs and the operation of FTX, as described herein.

83. In accordance with California Business & Professions Code § 17203, Plaintiff seeks an order enjoining Defendants from continuing to conduct business through fraudulent or unlawful acts and practices and to commence a corrective advertising campaign. On behalf of the Class, Plaintiff also seeks an order for the restitution of all monies from the sales of YBAs, which were unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

COUNT II

Violation of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* (Individually and on Behalf of the Class)

84. Plaintiff repeats and realleges each and every allegation contained above, as though fully set forth herein.

85. California's False Advertising Law ("FAL") prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code § 17500.

86. As set forth herein, Defendants made statements regarding YBAs and FTX that were untrue or misleading. They publicly represented that FTX and YBAs were a viable and safe way to invest in crypto, a statement designed to deceive consumers into investing with FTX.

87. Defendants' claims that YBAs and FTX were viable and safe for investing in crypto are untrue due to the house of cards nature of FTX's business and movement of funds, as evidenced by the immense collapse in fall 2022.

88. Defendants knew, or reasonably should have known, that all these claims relating to the viability and safety of YBA and FTX were untrue or misleading. Defendants failed to adequately inform Plaintiff and the Class of the true nature of YBAs and FTX.

89. When the true nature of FTX and YBAs became publicly known in the fall of 2022, the immediate public outrage, bankruptcy proceedings, and government investigation reflected the degree to which consumers and the public at large felt they were deceived by Defendants and FTX's business practices.

90. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and restitution in the amount of moneys spent on YBAs.

COUNT III
Fraudulent Concealment
(Individually and on Behalf of the Class)

91. Plaintiff repeats and realleges each and every allegation contained above, as though fully set forth herein.

92. Defendants omitted an existing fact about FTX and YBAs when it failed to disclose information regarding the true nature of FTX and YBAs.

93. The omission is material because Plaintiff and the Class would not have transacted with FTX had they known true nature of FTX and YBAs

94. Defendants marketed and sold to Plaintiff and the Class despite having knowledge of the true nature of FTX and YBAs.

95. Defendants intended that consumers and purchasers would rely on Defendants' statements regarding the safety and nature of FTX and YBAs to bolster sales.

96. Plaintiff and the Class were not aware of the true nature and safety of YBAs and FTX's platform and could not reasonably have discovered those true characteristics.

97. Plaintiff and the Class relied on Defendants' statements in that they paid any amount of money for YBAs, which they would not have done had they known the true risky and Ponzi scheme nature of the products.

98. Plaintiff and the Class had the right to rely on Defendants' statements and omissions that created the false impression that FTX and YBAs were safe and reliable investment accounts based on reasonable purchaser expectations that the exchange would remain solvent.

99. Defendants had an affirmative duty to disclose the true nature of FTX and YBAs to potential purchasers and investors because they were in a superior position to know the true nature of FTX and YBAs.

100. Defendants fraudulently concealed the nature of FTX and YBAs, causing damages to Plaintiff and the class.

COUNT IV
Civil Conspiracy
(Individually and on Behalf of the Class)

101. Plaintiff repeats and realleges each and every allegation contained above, as though fully set forth herein.

102. Defendants made innumerable misrepresentations and omissions to Plaintiff and Class Members regarding the nature and safety of FTX and YBAs in order to induce confidence in the platform and convince consumers to invest in what was a patently misleading and deceptive scheme, thus deceiving consumers and potential customers that their investments in FTX were safe.

103. FTX and Defendant Sam Bankman-Fried entered into at least one agreement with the other Defendants for the express purpose of making misrepresentations or omissions in order to induce and convince Plaintiff and consumers to invest in YBAs and put their money in FTX.

104. Defendants engaged in concerted unlawful acts, particularly in the form of misrepresentations and omissions made to Plaintiff and the Class for the purposes of inducing them to invest with FTX and in YBAs.

105. The conspiracy substantially aided the wrongdoing conducted by FTX and Defendant Sam Bankman-Fried. Additionally, the non-FTX Defendant had knowledge of the fraud and wrongdoing by FTX as a result of their experience and relationship with FTX, and thus knew or should have known that the representations they made were deceitful and fraudulent.

106. This conspiracy caused damages to Plaintiff and the Class in the amount of the money they invested in FTX that was lost as a result of the insolvency.

COUNT V**Declaratory Judgment, Cal. Code Civ. Proc. § 1060
(Individually and on Behalf of the Class)**

107. Plaintiff repeats and realleges each and every allegation contained above, as though fully set forth herein.

108. This Count is asserted against all Defendants under Cal. Code Civ. Proc. § 1060.

109. There is a bona fide, actual, and present need for the declaratory relief requested herein; the declaratory relief prayed for herein deals with a present, ascertained or ascertainable state of facts and a present controversy as to that state of facts; contractual and statutory duties and rights are dependent on those facts and law applicable to the facts; the parties have an actual, present, adverse, and directly antagonistic interest in the subject matter; and the antagonistic and adverse interests are all before this Court by proper process for final resolution.

110. Plaintiff and the Class have an obvious and significant interest in the outcome of this lawsuit.

111. Plaintiff and the Class purchased YBAs and invested with FTX, based in part on justifiable reliance on Defendants' statements and misrepresentations regarding the nature of YBAs and the FTX platform.

112. If Plaintiff and the Class knew the true facts surrounding YBAs and FTX, including but not limited to that YBAs are unregistered securities, Plaintiff and the Class would not have purchased YBAs or invested with FTX in the first place.

113. Thus, there is a justiciable controversy over whether the YBAs were sold illegally and whether the Defendants illegally solicited their purchase from Plaintiff and the Class.

114. Plaintiff and the Class thus seek an order declaring that the YBAs were unregistered securities and needed to be registered with the SEC and state regulatory authorities, that FTX did not work as represented, and that Defendants were paid to misrepresent FTX and YBAs to the nation at large.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment on behalf of themselves and the Class(es):

- a. Certifying the proposed Class(es) as requested herein;
- b. Awarding actual, direct and compensatory damages;
- c. Awarding restitution and disgorgement of revenues if warranted;
- d. Awarding declaratory relief as permitted by law or equity, including declaring the Defendants' practices as set forth herein to be unlawful;
- e. Awarding injunctive relief as permitted by law or equity, including enjoining the Defendants from continuing any unlawful practices as set forth herein, and directing the Defendants to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;
- f. Awarding statutory and multiple damages, as appropriate;
- g. Awarding attorneys' fees and expenses; and
- h. Providing any such further relief as the Court deems just and proper

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial as to all claims so triable.

Dated: November 20, 2022

Respectfully submitted,

By: s/ William Audet

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**Pro hac vice forthcoming*

*Counsel for Plaintiff Elliott Lam, individually
and on behalf of all others similarly situated*

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Papadakis v. Bankman-Fried et al

3:23CV00024 (Approx. 9 pages)

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Today's Date: 2/10/2023
Source: U.S. District Court, Northern District of California (San Francisco)

Court:	U.S. District Court, Northern District of California (San Francisco)
Case Title:	Papadakis v. Bankman-Fried et al
Case:	3:23-CV-00024
Judge:	Judge Jacqueline Scott Corley
Date Filed:	01/03/2023
Case Status:	ADRMOP

CASE INFORMATION	
Case Number:	3:23CV00024
Jury Demand:	Plaintiff
Demand:	\$5,000,000,000
Nature of Suit:	Torts: Other Fraud (370)
Jurisdiction:	Diversity
Cause:	28 USC 1332 Diversity-Fraud

PARTICIPANT INFORMATION	Expand All
Julie Chon Papadakis	

Julie Papadakis

Samuel Bankman-Fried

Caroline Ellison

Zixiao Gary Wang

Nishad Singh

Armanino LLP

Prager Metis CPAs, LLC

CALENDAR INFORMATION

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DOCKET PROCEEDINGS (41)

Entry #:	Date:	Description:	
41	02/04/2023	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17960027.) filed by Armanino LLP. (Waskom, Thomas) (Filed on 2/4/2023) (Entered: 02/04/2023)	View Add to request
40	02/03/2023	ORDER by Judge Jacqueline Scott Corley granting 37 Motion for Pro Hac Vice as to Joel Strauss. (ahm, COURT STAFF) (Filed on 2/3/2023) (Entered: 02/03/2023)	View Add to request
39	02/03/2023	ORDER by Judge Jacqueline Scott Corley granting 36 Motion for Pro Hac Vice as to Jeffrey Campisi. (ahm, COURT STAFF) (Filed on 2/3/2023) (Entered: 02/03/2023)	View Add to request
38	02/03/2023	ORDER by Judge Jacqueline Scott Corley granting 35 Motion for Pro Hac Vice as to Frederic Fox. (ahm, COURT STAFF) (Filed on 2/3/2023) (Entered: 02/03/2023)	View Add to request

37	02/02/2023	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17953272.) filed by Julie Papadakis. (Strauss, Joel) (Filed on 2/2/2023) (Entered: 02/02/2023)	View Add to request
36	02/02/2023	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17953251.) filed by Julie Papadakis. (Campisi, Jeffrey) (Filed on 2/2/2023) (Entered: 02/02/2023)	View Add to request
35	02/02/2023	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17953223.) filed by Julie Papadakis. (Fox, Frederic) (Filed on 2/2/2023) (Entered: 02/02/2023)	View Add to request
34	01/31/2023	STIPULATION for extension of time to file responsive pleading filed by Prager Metis CPAs, LLC. (Hemmendinger, Sarah) (Filed on 1/31/2023) (Entered: 01/31/2023)	View Add to request
33	01/31/2023	Certificate of Interested Entities by Prager Metis CPAs, LLC (Hemmendinger, Sarah) (Filed on 1/31/2023) (Entered: 01/31/2023)	View Add to request
32	01/31/2023	Corporate Disclosure Statement by Prager Metis CPAs, LLC (Hemmendinger, Sarah) (Filed on 1/31/2023) (Entered: 01/31/2023)	View Add to request
31	01/27/2023	STIPULATION re 13 Complaint (Extension of Time for Defendant Armanino LLP to File its Responsive Pleading) filed by Armanino LLP. (Mortimer, Ann Marie) (Filed on 1/27/2023) (Entered: 01/27/2023)	View Add to request
30	01/27/2023	ORDER by Judge Jacqueline Scott Corley granting 26 Motion for Pro Hac Vice as to Bruce Braun. (ahm, COURT STAFF) (Filed on 1/27/2023) (Entered: 01/27/2023)	View Add to request
29	01/27/2023	Corporate Disclosure Statement by Armanino LLP (Rule 7.1) (Mortimer, Ann Marie) (Filed on 1/27/2023) (Entered: 01/27/2023)	View Add to request
28	01/27/2023	Certificate of Interested Entities by Armanino LLP (Mortimer, Ann Marie) (Filed on 1/27/2023) (Entered: 01/27/2023)	View Add to request
27	01/27/2023	NOTICE of Appearance by Ann Marie Mortimer and Kirk A. Hornbeck (Mortimer, Ann Marie) (Filed on 1/27/2023) (Entered: 01/27/2023)	View Add to request
26	01/27/2023	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17934720.) filed by Prager Metis CPAs, LLC. (Braun, Bruce) (Filed on 1/27/2023) (Entered: 01/27/2023)	View Add to request
25	01/25/2023	ORDER by Judge Jacqueline Scott Corley granting 24 Motion for Pro Hac Vice as to Joanna Travalini. (ahm, COURT STAFF)	View Add to request

		(Filed on 1/25/2023) (Entered: 01/25/2023)	
24	01/24/2023	MOTION for leave to appear in Pro Hac Vice for Joanna Travalini (Filing fee \$ 317, receipt number ACANDC-17925422.) filed by Prager Metis CPAs, LLC. (Travalini, Joanna) (Filed on 1/24/2023) (Entered: 01/24/2023)	View Add to request
23	01/24/2023	ORDER by Judge Jacqueline Scott Corley granting 22 Motion for Pro Hac Vice as to Thomas D. Hoyt. (ahm, COURT STAFF) (Filed on 1/24/2023) (Entered: 01/24/2023)	View Add to request
22	01/24/2023	MOTION for leave to appear in Pro Hac Vice for Attorney Thomas D. Hoyt (Filing fee \$ 317, receipt number ACANDC-17923991.) Filing fee previously paid on 1/24/2023 filed by Prager Metis CPAs, LLC. (Hoyt, Tommy) (Filed on 1/24/2023) (Entered: 01/24/2023)	View Add to request
21	01/24/2023	NOTICE of Appearance by Sarah Alison Hemmendinger as Counsel for Prager Metis CPAs, LLC (Hemmendinger, Sarah) (Filed on 1/24/2023) (Entered: 01/24/2023)	View Add to request
20	01/20/2023	SUMMONS Returned Executed by Julie Papadakis. Samuel Bankman-Fried served on 1/12/2023, answer due 2/2/2023. (Herkenhoff, Kathleen) (Filed on 1/20/2023) (Entered: 01/20/2023)	View Add to request
19	01/19/2023	SUMMONS Returned Executed by Julie Papadakis. Armanino LLP served on 1/9/2023, answer due 1/30/2023. (Herkenhoff, Kathleen) (Filed on 1/19/2023) (Entered: 01/19/2023)	View Add to request
18	01/19/2023	SUMMONS Returned Executed by Julie Papadakis. Zixiao Gary Wang served on 1/7/2023, answer due 1/30/2023. (Herkenhoff, Kathleen) (Filed on 1/19/2023) (Entered: 01/19/2023)	View Add to request
17	01/19/2023	SUMMONS Returned Executed by Julie Papadakis. Caroline Ellison served on 1/12/2023, answer due 2/2/2023. (Herkenhoff, Kathleen) (Filed on 1/19/2023) (Entered: 01/19/2023)	View Add to request
16	01/19/2023	SUMMONS Returned Executed by Julie Papadakis. Prager Metis CPAs, LLC served on 1/10/2023, answer due 1/31/2023. (Herkenhoff, Kathleen) (Filed on 1/19/2023) (Entered: 01/19/2023)	View Add to request
15	01/10/2023	Case Reassigned to Judge Jacqueline Scott Corley. Judge Jeffrey S. White no longer assigned to the case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras . (as, COURT STAFF) (Filed on 1/10/2023) (Entered: 01/10/2023)	View Add to request

14	01/10/2023	ORDER by Judge Jacqueline Scott Corley granting (17) Administrative Motion to Relate in case 3:22-cv-07336-JSC. 23-cv-0024 is related to this action. (ahm, COURT STAFF) (Filed on 1/10/2023) (Entered: 01/10/2023)	View Add to request
13	01/05/2023	COMPLAINT [CORRECTION OF DOCKET # 1] against Armanino LLP, Samuel Bankman-Fried, Caroline Ellison, Prager Metis CPAs, LLC, Nishad Singh, Zixiao Gary Wang. Filed by Julie Papadakis. (King, Laurence) (Filed on 1/5/2023) (Entered: 01/05/2023)	View Add to request
12	01/05/2023	ORDER SETTING CASE MANAGEMENT CONFERENCE AND REQUIRING JOINT CASE MANAGEMENT CONFERENCE STATEMENT. Signed by Judge Jeffrey S. White on 1/5/2023. Joint Case Management Statement due by 3/31/2023. Initial Case Management Conference set for 4/7/2023 11:00 AM - Videoconference Only. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jsw Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent to the CRD at jswcrd@cand.uscourts.gov no later than April 6, 2023 @ 12:00 PM PST. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . (kkp, COURT STAFF) (Filed on 1/5/2023) (Entered: 01/05/2023)	View Add to request
11	01/05/2023	Summons Issued as to Armanino LLP, Samuel Bankman-Fried, Caroline Ellison, Prager Metis CPAs, LLC, Nishad Singh, Zixiao Gary Wang. (sfb, COURT STAFF) (Filed on 1/5/2023) (Entered: 01/05/2023)	View Add to request
9	01/04/2023	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Jeffrey S. White for all further proceedings. Magistrate Judge Joseph C. Spero no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras . Signed by Clerk on 01/04/2023. (Attachments: # 1 Notice of Eligibility	View Add to request

		for Video Recording)(mbc, COURT STAFF) (Filed on 1/4/2023) (Entered: 01/04/2023)	
8	01/04/2023	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. This is a text only docket entry; there is no document associated with this notice. (klh, COURT STAFF) (Filed on 1/4/2023) (Entered: 01/04/2023)	Send Runner to Court
7	01/04/2023	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Julie Chon Papadakis.. (King, Laurence) (Filed on 1/4/2023) (Entered: 01/04/2023)	View Add to request
6	01/04/2023	NOTICE of Appearance by Blair Elizabeth Reed (Reed, Blair) (Filed on 1/4/2023) (Entered: 01/04/2023)	View Add to request
5	01/04/2023	NOTICE of Appearance by Kathleen A. Herkenhoff (Herkenhoff, Kathleen) (Filed on 1/4/2023) (Entered: 01/04/2023)	View Add to request
10	01/03/2023	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 3/31/2023. Initial Case Management Conference set for 4/7/2023 02:00 PM in San Francisco, Courtroom F, 15th Floor. (sfb, COURT STAFF) (Filed on 1/3/2023) (Entered: 01/05/2023)	View Add to request
4	01/03/2023	Case assigned to Magistrate Judge Joseph C. Spero. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit E-Filing A New Civil Case at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two	Send Runner to Court

		business days. Consent/Declination due by 1/17/2023. (bw, COURT STAFF) (Filed on 1/3/2023) (Entered: 01/04/2023)	
3	01/03/2023	Certificate of Interested Entities by Julie Chon Papadakis (King, Laurence) (Filed on 1/3/2023) (Entered: 01/03/2023)	View Add to request
2	01/03/2023	Proposed Summons. (King, Laurence) (Filed on 1/3/2023) (Entered: 01/03/2023)	View Add to request
1	01/03/2023	*** POSTED IN ERROR *** please see 13 COMPLAINT against Armanino LLP, Samuel Bankman-Fried, Caroline Ellison, Prager Metis CPAs, LLC, Nishad Singh, Zixiao Gary Wang (Filing fee \$ 402, receipt number ACANDC-17867208.). Filed by Julie Chon Papadakis. (Attachments: # 1 Civil Cover Sheet) (King, Laurence) (Filed on 1/3/2023) Modified on 1/5/2023 (cv, COURT STAFF). (Entered: 01/03/2023)	View Add to request

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Counsel for Plaintiff and for the Proposed Class

[Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIE PAPADAKIS, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SAMUEL BANKMAN-FRIED, CAROLINE
ELLISON, ZIXIAO “GARY” WANG,
NISHAD SINGH, ARMANINO LLP, and
PRAGER METIS CPAS, LLC,

Defendants.

Case No. 4:23-cv-00024-JSW

CLASS ACTION

[CORRECTED]
CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Julie Papadakis (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, files this action against Defendants Samuel Bankman-Fried (“Bankman-Fried” or “SBF”), Caroline Ellison (“Ellison”), Zixiao “Gary” Wang (“Wang”), Nishad Singh (“Singh”), Armanino LLP (“Armanino”) and Prager Metis CPAs, LLC (“Prager”) (collectively the “Defendants”). Plaintiff alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys. The investigation by Plaintiff’s attorneys includes, among other things, a review of the public documents and announcements published by Defendants, the Terms of Service and User Agreements that the FTX Entities (defined herein) provided to customers, media reports (including social media statements), documents filed in the United States Bankruptcy Court for the District of Delaware in connection with the bankruptcy filings (the “Bankruptcy Proceedings”) by FTX Trading LTD and the other FTX Entities controlled and/or previously controlled by the Individual Defendants named herein (Bankman-Fried, Ellison, Wang and Singh) including, but not limited to Doc Nos. 24 and 225 (and Exhibits C and D thereto) in Case 22-11068-JTD, the Securities and Exchange Commission’s (the “SEC”) complaint against Samuel Bankman-Fried in the United States District Court for the Southern District of New York (“SDNY”) (Civil Action No. 22-cv-10501) (the “SEC Bankman-Fried Action”) and the SEC’s complaint against Ellison and Wang in SDNY (Civil Action No. 22-cv-10794) (the “SEC Ellison/Wang Action”) (collectively the “SEC Actions”), ECF Nos. 3 and 4 in the SEC Ellison/Wang Action consisting of proposed judgments in the action accompanied by signed consents by Ellison and Wang and ECF Nos. 15 and 16 consisting of the December 23, 2022 entered judgments in the SEC Ellison/Wang Action, the SEC’s December 13, 2022 and December 21, 2022 Press Releases Nos. 2022-219 and 2022-234 announcing the filing of the SEC Actions (“SEC Press Releases”), the Sealed Indictment in *United States of America v. Samuel Bankman-Fried, a/k/a “SBF”* 22 CRIM 673 in the SDNY (the “Indictment”), the Superseding Information in *United States v. Caroline Ellison*, S2 22 Cr. 673 and Ellison’s guilty plea to the Superseding Information, the Superseding Information in *United States v. Zixiao (Gary) Wang*, S1 22 Cr. 673 and Wang’s guilty plea to the Superseding

Information, the December 13, 2022 Press Release No. 22-386 issued by the United States Attorneys' Office for the Southern District of New York (the "SDNY U.S. Attorneys' Office") in connection with the Indictment, the initial and amended complaints in *Commodity Futures Trading Commission v. Bankman-Fried, et al.*, Case No. 1:22-cv-10503-PKC filed in the SDNY (the "CFTC Action"), the December 13, 2022 and December 21, 2022 press releases (Nos. 8638-22 and 8644-22) issued by the Commodity Futures Trading Commission (the "CFTC") in connection with the filing and amended filings in the CFTC Action, the entered consent orders as of December 23, 2022 as to Ellison and Wang and filed at ECF Nos. 25 and 26 (as well as the proposed consent orders filed at ECF Nos. 14, 14-1, 15 and 15-1) in the CFTC Action, the December 13, 2022 hearing before the U.S. House of Representatives Committee on Financial Services (the "Committee"), including testimony by John J. Ray III, Chief Executive Officer of the FTX Group ("Ray"), the December 8, 2022 Memorandum from the FSC Majority Staff to the Members of the Committee, press releases and/or statements issued by Congresswoman Waters in connection with the December 13, 2022 Committee hearing, the November 23, 2022 letter from Senators Warren and Whitehouse to Attorney General Garland and Assistant Attorney General Polite, and the December 5, 2022 letter from Senator Warren and others to Alan Lane, CEO of Silvergate Capital Corporation ("Silvergate"), the November 16, 2022 letter from Senators Warren and Durbin to Ray and Bankman-Fried, the November 9, 2022 letter from Christina Rolle of the Securities Commission of the Bahamas to the Royal Bahamas Police Force, Doc 536 in *In re: Voyager Digital Holdings, Inc., et al.*, Case No. 22-10943 (MEW), filed in the United States Bankruptcy Court for the SDNY, and additional information in the public domain. Plaintiff believes that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE AND OVERVIEW OF THE ACTION

1. This is a class action on behalf of a class consisting of all persons other than Defendants that have deposited funds and/or assets in accounts ("Accounts") with FTX Trading LTD d/b/a FTX ("FTX or "the Company") or West Realm Shires Services Inc. d/b/a FTX US ("FTX.US" or "FTX US") (collectively, the "FTX Entities"), and who have been unable to access

1 or withdraw the deposited funds and/or assets in the Accounts, seeking to recover damages caused
 2 by Defendants’ violations of the California Unfair Competition Law (the “UCL”), the California
 3 False Advertising Law (the “FAL”), as well as common law claims for fraudulent concealment,
 4 negligent misrepresentation, intentional misrepresentation, fraud, breach of fiduciary duty, aiding
 5 and abetting fraud, aiding and abetting violations of the UCL, aiding and abetting breach of
 6 fiduciary duty, civil conspiracy, conversion, unjust enrichment, and a declaratory judgment.

7 2. The FTX Entities’ replacement CEO Ray – known for serving in a similar capacity
 8 to unravel the Enron fraud – testified on December 13, 2022 before the Committee: “This really
 9 is old-fashioned embezzlement . . . This is just taking money from customers and using it for your
 10 own purpose. Not sophisticated at all.”¹ As alleged herein, and being currently spilled out in the
 11 parade of actions being pursued against Bankman-Fried, Ellison and Wang, the FTX Entities were
 12 operated essentially as a Ponzi scheme, with customer funds entrusted to the FTX Entities
 13 becoming a casualty of the greed of the Individual Defendants and of their agents, such as the
 14 Auditor Defendants, who (upon information and belief) received substantial fees for their active
 15 participation in, and/or aiding and abetting of, the conduct alleged herein.

16 3. In connection with the Indictment, the SDNY U.S. Attorneys’ Office issued a
 17 December 13, 2022 press release stating, in pertinent part (emphasis added):²

18 U.S. Attorney Damian Williams said: “One month ago, FTX collapsed, causing
 19 billions of dollars in losses to its customers, lenders, and investors. Now, a federal
 20 grand jury in New York has indicted the former founder and chief executive officer
 21 of FTX and charged him with crimes related to the **phenomenal downfall** of that
 22 one-time cryptocurrency exchange, including **fraud on customers**, investors,
 23 lenders, and our campaign finance system. **As today’s charges make clear, this**
 24 **was not a case of mismanagement or poor oversight, but of intentional fraud,**
 25 **plain and simple.”**

26 Attorney General Merrick B. Garland said: “The Justice Department has filed
 27 charges alleging that Samuel Bankman-Fried perpetrated a range of offenses in a
 28 **global scheme to deceive and defraud customers** and lenders of FTX and
 Alameda, the defendant’s crypto hedge fund, as well as a **conspiracy** to defraud
 the United States government. We allege that the defendant **conspired to defraud**

¹ See https://finance.yahoo.com/news/ftx-founder-facing-charges-ceo-163757322.html?fr=sycsrp_catchall (last visited December 14, 2022).

² <https://www.justice.gov/usao-sdny/pr/united-states-attorney-announces-charges-against-ftx-founder-samuel-bankman-fried> (last visited December 18, 2022).

1 customers by misappropriating their deposits; to defraud lenders; to commit
 2 securities fraud and money laundering; and to violate campaign finance
 laws. . . .”

3 FBI Assistant Director Michael J. Driscoll said: “As the indictment today alleges,
 4 Bankman-Fried **knowingly defrauded the customers of FTX.com through the**
 5 **misappropriation of the customer deposits to pay expenses and debts of a**
 6 **different company he also owned as well as make other investments.** If you
 deceive and defraud your customers, the FBI will be persistent in our efforts to
 bring you to justice.”

7 4. CFTC Chairman Rostin Benham issued this statement in connection with the filing
 8 of the initial complaint in the CFTC Action (emphasis added)³:

9 FTX held itself out as “the safest and easiest way to buy and sell crypto” and
 10 represented that customers’ assets, including both fiat and digital assets including
 11 bitcoin and ether, were held in “custody” by FTX and segregated from FTX’s own
 12 assets. To the contrary, **FTX customer assets were routinely accepted and held**
 13 **by Alameda and commingled with Alameda’s funds.** Alameda, Bankman-Fried,
 14 and others also **appropriated customer funds for their own operations and**
 15 **activities,** including luxury real estate purchases, political contributions, and high-
 16 risk, illiquid digital asset industry investments. The complaint further alleges that,
 17 at Bankman-Fried’s direction, FTX employees **created features in the FTX code**
 18 **that favored Alameda and allowed it to execute transactions even when it did**
 19 **not have sufficient funds available,** including an “allow negative flag” and
 20 effectively limitless line of credit that allowed Alameda to withdraw billions of
 21 dollars in customer assets from FTX. These features were **not disclosed to the**
 22 **public.**

23 5. SEC Chair Gary Gensler issued this statement in connection with the filing of the
 24 December 13, 2022 SEC Bankman-Fried Action:

25 We allege that Sam Bankman-Fried built a house of cards on a foundation of
 26 deception while telling investors that it was one of the safest buildings in crypto.
 27 . . . The alleged fraud committed by Mr. Bankman-Fried is a clarion call to crypto
 28 platforms that they need to come into compliance with our laws. Compliance
 protects both those who invest on and those who invest in crypto platforms with
 time-tested safeguards, such as properly protecting customer funds and separating
 conflicting lines of business.⁴

6. The SEC’s Director of Enforcement Gurbir S. Grewal issued this statement in
 connection with the filing of the December 13, 2022 SEC Bankman-Fried Action (emphasis
 added):

³ <https://www.cftc.gov/PressRoom/PressReleases/8638-22> (last visited December 18, 2022).

⁴ <https://www.sec.gov/news/press-release/2022-219> (last visited December 18, 2022).

FTX operated behind a veneer of legitimacy Mr. Bankman-Fried created by, among other things, **touting its best- in-class controls, including a proprietary “risk engine,” and FTX’s adherence to specific investor-protection principles** and detailed terms of service. But as we allege in our complaint, that veneer wasn’t just thin, it was **fraudulent**.

7. Director Grewal further stated in connection with the December 13, 2022 filing of the SEC Bankman-Fried Action that the SEC’s investigation of others was ongoing, and the SEC was “holding Mr. Bankman-Fried responsible for fraudulently raising billions of dollars from investors in FTX and misusing funds belonging to FTX’s trading customers.”

8. In connection with the December 21, 2022 filing of the SEC Ellison/Wang Action, the SEC issued a press release summarizing those allegations (as to which Ellison and Wang have entered consent orders for entry of judgment) in pertinent part, as follows (emphasis added)⁵:

...between 2019 and 2022, Ellison, at the direction of Bankman-Fried, furthered the scheme by manipulating the price of FTT, an FTX-issued exchange crypto security token, by purchasing large quantities on the open market to prop up its price. FTT served as collateral for undisclosed loans by FTX of its customers’ assets to Alameda, a crypto hedge fund owned by Wang and Bankman-Fried and run by Ellison. . . . by manipulating the price of FTT, Bankman-Fried and Ellison caused the valuation of Alameda’s FTT holdings to be inflated, which in turn caused the value of collateral on Alameda’s balance sheet to be overstated, and misled investors about FTX’s risk exposure.

... from at least May 2019 until November 2022, Bankman-Fried raised billions of dollars from investors by **falsely touting FTX as a safe crypto asset trading platform with sophisticated risk mitigation measures to protect customer assets** and by telling investors that Alameda was just another customer with no special privileges; meanwhile, Bankman-Fried and Wang improperly diverted FTX customer assets to Alameda. The complaint alleges that Ellison and Wang knew or should have known that such statements were false and misleading.

... Ellison and Wang **were active participants in the scheme to deceive FTX’s investors and engaged in conduct that was critical to its success. The complaint alleges that Wang created FTX’s software code that allowed Alameda to divert FTX customer funds, and Ellison used misappropriated FTX customer funds for Alameda’s trading activity. The complaint further alleges that, even as it became clear that Alameda and FTX could not make customers whole, Bankman-Fried, with the knowledge of Ellison and Wang, directed hundreds of millions of dollars more in FTX customer funds to Alameda.**

“As part of their deception, we allege that Caroline Ellison and Sam Bankman-Fried schemed to manipulate the price of FTT, an exchange crypto security token that was integral to FTX, to prop up the value of their house of cards,” said SEC Chair Gary Gensler. ‘We further allege that Ms. Ellison and Mr. Wang played an active role in a scheme to misuse FTX customer assets to prop up Alameda and to

⁵ <https://www.sec.gov/news/press-release/2022-234> (last visited December 22, 2022).

1 post collateral for margin trading. When FTT and the rest of the house of cards
2 collapsed, Mr. Bankman-Fried, Ms. Ellison, and Mr. Wang left investors holding
the bag. . . .”

3 “As alleged, Mr. Bankman-Fried, Ms. Ellison, and Mr. Wang were active
4 participants in a scheme to conceal material information from FTX investors,
5 including through the efforts of Mr. Bankman-Fried and Ms. Ellison to artificially
6 prop up the value of FTT, which served as collateral for undisclosed loans that
Alameda took out from FTX pursuant to its undisclosed, and virtually unlimited,
line of credit,” said Sanjay Wadhwa, Deputy Director of the SEC’s Division of
Enforcement.

7 9. Similarly, the CFTC amended the CFTC Action to sue Ellison and Wang, and a
8 proposed consent order to judgment has been filed, and subsequently entered, as to Ellison and
9 Wang in the CFTC Action.

10 10. As further detailed herein, the SDNY U.S. Attorneys’ Office, SEC and CFTC have
11 now pursued Ellison and Wang for their misconduct, with a sweeping set of announcements on
12 December 21, 2022 of guilty pleas by Ellison and Wang in the criminal proceedings. Bankman-
13 Fried is expected to enter a plea on January 3, 2023.

14 11. This FTX house of cards that has now tumbled down in one of the largest frauds in
15 U.S. history started in 2019, when FTX was started as a cryptocurrency exchange by Bankman-
16 Fried, who served as its Chief Executive Officer (“CEO”) until his November 11, 2022 resignation.
17 In 2020, Bankman-Fried also founded FTX’s United States (“U.S.”) affiliate, FTX.US.

18 12. The FTX Entities claimed to offer a range of trading products, including
19 derivatives, options, volatility products, and leveraged tokens. The FTX Entities also purportedly
20 provided spot markets on cryptocurrency trading pairs, including the native token FTT/USDT
21 (“FTT Tokens”). These offerings were to allegedly enable FTX customers to trade with leverage
22 and short certain markets by borrowing from other FTX users. The FTX Entities’ terms of service
23 stated that customer assets belonged solely to the customer and would not be transferred to FTX
24 trading.

25 13. In addition, according to statements on the FTX website, “US users cannot trade
26 on FTX, but residents of the United States can trade on FTX.US.”

14. As Ray has now testified to the Committee: “What we’re seeing now is that the crypto assets for both FTX.com and for FTX US were housed in the same database” and “all housed in the same web format” reportedly at Amazon Web Services.⁶

15. As described by media following Ray’s testimony, the “dysfunction” at the FTX Entities is “longstanding,” with no independent board and no coherent record keeping.⁷

16. The outline of Ray’s testimony for the December 13, 2022 Congressional testimony (available at Doc 225-3 in Case 22-11068-JTD in the Bankruptcy Proceeding) notes:

Questions have been raised as to why all of the FTX Group companies were included in the Chapter 11 filing, particularly FTX US. The answer is because FTX US was not operated independently of FTX.com. . . . Chapter 11 protection was necessary both to avoid a ‘run on the bank’ at FTX US and to allow our team the time to identify and protect its assets.

17. Ray’s November 17, 2022 declaration filed in the Bankruptcy Proceedings, and exhibits thereto, provide his description, early in the investigation process, of the corporate organization of the various groups of business of the FTX Entities, which Ray refers to as four “silos”, each of which he declares was controlled by Bankman-Fried, with minority interest in the silos held by Wang and Singh. Ray declares that he was provided an unaudited consolidated balance sheet for the silo comprising the FTX.US side of the business (the “WRS Silo”) as of September 30, 2022, but he did not have “confidence in it” as being accurate.

18. The assets of customers that, as also reported by Ray, have been largely dissipated by the Individual Defendants, were raked in from 2019 to 2022 as a result of a widespread marketing campaign undertaken by the FTX Entities (via the Individual Defendants). The campaign, which included social media posts, interviews, sports partnerships, internet and television advertisements, and naming rights deals, rapidly increased the FTX Entities’ valuation, growing from \$1.2 billion to \$32 billion in only three years.

⁶ <https://www.coindesk.com/business/2022/12/13/with-ftxs-founder-facing-charges-new-ceo-details-lack-of-independence-of-ftx-us/> (last visited January 3, 2023).

⁷ <https://www.coindesk.com/business/2022/12/13/with-ftxs-founder-facing-charges-new-ceo-details-lack-of-independence-of-ftx-us/> (last visited January 3, 2023).

1 19. A key component of the highly lucrative promotional marketing campaign included
2 the air of legitimacy that the Auditor Defendants’ purported auditing work and other supportive
3 statements described herein provided to the FTX Entities. For example, throughout 2021 and
4 2022, Bankman-Fried represented that the FTX Entities had completed several successful audits
5 under U.S. generally accepted accounting principles (“GAAP”). In March 2022, the Auditor
6 Defendants, Armanino and Prager, reportedly issued certified reports that purportedly found the
7 FTX Entities to be in good financial health (the “Audit Reports”).

8 20. As stated in paragraph 51 of the complaint in the SEC Bankman-Fried Action,
9 FTX’s financial statements were audited and were represented to be presented in a manner that
10 “fairly present in all material respects the financial condition and operating results of” FTX. The
11 SEC Bankman-Fried Action complaint in paragraph 51 further alleges that, in contrast to these
12 representations, the “[a]udited financial statements’ do not include information about Alameda’s
13 undocumented ‘line of credit’ from FTX” and “other information” that was “[a]t the very least,
14 materially misleading. FTX’s current CEO has voiced ‘substantial concern as to the information
15 presented in these audited financial statements.’”

16 21. The Auditor Defendants issued Audit Reports indicating the good financial health
17 of the FTX Entities. In addition, the Auditor Defendants bolstered the Individual Defendants’
18 marketing scheme by issuing positive statements about Bankman-Fried and/or the FTX Entities in
19 media postings, as alleged herein. Armanino and Prager each published what have been coined in
20 the press as “cheerleading” statements in support of Bankman-Fried and the FTX Entities in 2021
21 and 2022. These “cheerleading” statements negate any claim of auditor independence by either
22 of the Auditor Defendants, and as a result of the massive fraud undertaken by the FTX Entities
23 and the Individual Defendants, of which numerous red flags dangled in front of the Auditor
24 Defendants, the so-called audits and Audit Reports thereon failed to comport with U.S. generally
25 accepted auditing standards (“GAAS”).

26 22. Another crucial component of the Bankman-Fried fraud and part of his
27 “cryptocurrency empire” was a Delaware limited liability company known as Alameda Research
28 LLC (“Alameda”), operating as a crypto-trading firm he founded in 2017. Bankman-Fried was

1 CEO of Alameda until 2021, after which Defendant Ellison served in that role. Bankman-Fried
 2 represented to customers that the FTX Entities and Alameda were separate and distinct. In contrast,
 3 the December 13, 2022 initial complaint filed in the CFTC Action (the “CFTC Complaint”) alleges
 4 that from at least May 2019 through at least November 11, 2022, FTX Trading and Alameda and
 5 other entities under the majority ownership and control of Bankman-Fried operated as a “single,
 6 integrated common enterprise under the sole authority of Bankman-Fried as their mutual owner.”
 7 In the initial complaint in the SEC Bankman-Fried Action, the SEC similarly alleges that
 8 Bankman-Fried “remained the ultimate decision-maker at Alameda”

9 23. Indeed, on November 2, 2022, the beginning of the end for the FTX Entities hit
 10 when the cryptocurrency publication CoinDesk published an article entitled “Divisions in Sam
 11 Bankman-Fried’s Crypto Empire Blur on His Trading Titan Alameda’s Balance Sheet”.⁸ The
 12 CoinDesk article opined that Alameda’s balance sheet was made up primarily of FTT tokens,
 13 indicating that Alameda “rest[ed] on a foundation largely made up of a coin that a sister company
 14 invented, not an independent asset like a fiat currency or another crypto.”

15 24. Shortly after the CoinDesk article was published, the FTX Entities saw massive
 16 customer withdrawals, resulting in a liquidity crisis. Bankman-Fried elected to freeze all
 17 withdrawals of customer assets.

18 25. On November 8, 2022, Binance, a rival cryptocurrency exchange, announced that
 19 it had reached a non-binding deal to acquire FTX. By November 9, 2022, however, Binance
 20 backed out, stating that FTX’s finances uncovered liquidity issues that were “beyond [Binance’s]
 21 control or ability to help.”

22 26. On November 12, 2022, The Wall Street Journal reported that Bankman-Fried,
 23 Ellison, Wang and Singh were aware that FTX had used customer assets to cover Alameda’s
 24 trading losses and repay its outstanding debts. As Congresswoman Waters stated in connection
 25 with the Committee hearing, it is feared that much of what is now coming to light about the fraud
 26 at the FTX Entities is only the “tip of the iceberg.”

27 ⁸ [https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-](https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/)
 28 [empire-blur-on-his-trading-titan-alamedas-balance-sheet/](https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/) (last visited December 18, 2022).

7 JURISDICTION AND VENUE

14 30. This Court has jurisdiction over the subject matter of this action pursuant to
15 28 U.S.C. § 1332(d)(2)(A) because this is a class action for a sum exceeding \$5,000,000.00,
16 exclusive of interest and costs, and in which at least one class member is a citizen of a state
17 different than the Defendants.

CORRECTED CLASS ACTION COMPLAINT

32. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in this Judicial District. Specifically, Alameda was founded in Berkeley, California. In addition, Defendants Bankman-Fried, Ellison, Wang, and/or Singh directed FTX customers to make certain of the deposits in their FTX Accounts by directing wire transfers to FTX.US, which maintained a payee address at 2000 Center Street in Berkeley, California. On information and belief, customers directed millions of dollars to the Defendants' Berkeley address.

33. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, and interstate telephone and/or wire communications.

DIVISIONAL ASSIGNMENT

34. Divisional assignment to the San Francisco and/or Oakland Division of the Northern District of California is appropriate pursuant to Civil L.R. 3-2(d) because a substantial part of the events or omissions giving rise to the claims at issue herein occurred in Berkeley, California. As indicated in the Form D filings for FTX Trading Ltd. with the SEC, Bankman-Fried was listed as the Executive Officer and Director of FTX Trading Ltd. with his business address reflected as 2000 Center Street, Berkeley, California 94704. FTX.US was the d/b/a for West Realm Shires Services, Inc., an entity located during a substantial portion of the events alleged herein at 2000 Center Street, Berkeley, California 94704, and as to which customers in FTX.US were directed as a point of contact. Upon information and belief, millions of dollars of customer funds were directed to the Berkeley, California address at the direction of one or more of the Individual Defendants and FTX Entities. Similarly, upon information and belief, FTX customer funds were deposited into bank accounts controlled by Alameda, including accounts in the name of North Dimension, Inc., an Alameda subsidiary.

PARTIES

35. Plaintiff Julie Papadakis deposited funds into an Account with the FTX Entities and has since been unable to withdraw her deposited funds and/or assets. Plaintiff is a resident of Puerto Rico.

1 36. Defendant Bankman-Fried is the founder and former CEO of FTX and Alameda.
2 Bankman-Fried is a citizen of the State of California. On December 12, 2022, Bankman-Fried
3 was arrested in the Bahamas, reportedly at the request of federal prosecutors in New York, and
4 has since been extradited to the United States and is residing at his parent's California residence.
5 Alameda's assets reportedly were involved in making loans of at least \$1 billion to Bankman-
6 Fried.

7 37. Defendant Ellison is the former CEO of Alameda. During a portion of the events
8 alleged herein, Ellison was a citizen of, and/or resided in, the State of California.

9 38. Defendant Wang is the co-founder of Alameda and FTX and served as FTX's Chief
10 Technical Officer. During a portion of the events alleged herein, Wang resided in the State of
11 California.

12 39. Defendant Singh is the co-founder of FTX and served as FTX's Chief Engineering
13 Officer. During a portion of the events alleged herein, Singh was a citizen of, and/or resided in,
14 the State of California. Alameda's assets reportedly were involved in making loans of
15 approximately \$543 million to Singh.

16 40. Defendants Bankman-Fried, Ellison, Wang, and Singh are sometimes referred to
17 herein as the "Individual Defendants."

18 41. Defendant Armanino maintains a principal place of business at 12657 Alcosta
19 Boulevard, Suite 500, San Ramon, California, and its website advertises Armanino as an
20 accounting and consulting firm. Upon information and belief, Armanino received fees and other
21 remuneration for engagements or consulting work performed for the FTX Entities.

22 42. Defendant Prager has at least five offices in California and maintains its principal
23 place of business at 14 Penn Plaza, Suite 1800, New York, New York, 10122. Prager's website
24 advertises its services as an accounting and consulting firm. Upon information and belief, Prager
25 received fees and other remuneration for engagements or consulting work performed for the FTX
26 Entities. According to the California Secretary of State, the agent for Prager in California is Joseph
27 Rust, 2381 Rosencrans Avenue, Suite 350, El Segundo, CA 90245.
28

43. Defendants Armanino and Prager are sometimes referred to herein as the “Auditor Defendants.”

FACTUAL ALLEGATIONS

I. FTX’S FORMATION AND DEFENDANTS’ FALSE REPRESENTATIONS CONCERNING HOW CUSTOMER ASSETS AND ACCOUNTS WOULD BE MAINTAINED AND USED

44. Alameda was founded in Berkeley, California in 2017 by Defendants Bankman-Fried and Wang. Alameda is a crypto-trading firm. Bankman-Fried served as CEO of Alameda until 2021, when he was succeeded by Ellison.

45. In 2019, Bankman-Fried co-founded FTX, an abbreviation of “futures exchange,” with Wang and Singh. FTX offered customers a range of trading products such as derivatives, options, volatility products, and leveraged tokens. FTX also provided spot markets in more than 300 cryptocurrency trading pairs, including its native token FTT/USDT. FTX’s terms of service provided that customer assets belonged **solely** to the customer and would **not** be transferred or otherwise used in FTX’s trading. Bankman-Fried also consistently maintained that the FTX Entities and Alameda were separate and distinct, an assertion that new CEO Ray and federal regulators have indicated is false.

46. FTX.US used a series of User Agreements, with at least three versions dated May 20, 2020, May 6, 2022, and September 16, 2022. In each of these User Agreements for FTX.US, at Section 6, it was stated to customers the following: “Title to cryptocurrency represented in your FTX.US Account shall at all times remain with you and shall not transfer to FTX.US.” Moreover, FTX.US’s terms of service stated, in pertinent part (emphasis added):

- a. As part of your FTX.US account, FTX.US provides qualifying users access to accounts for you to store, track, transfer, and manage your balances of cryptocurrency and/or dollars or other supported currency. ***All cryptocurrency or dollars (or other supported currencies) that are held in your account are held by FTX.US for your benefit.***
- b. ***Title to cryptocurrency represented in your FTX.US Account shall at all times remain with you and shall not transfer to FTX.US.***
- c. ***FTX.US does not represent or treat assets in your FTX.US Account as belonging to FTX.US.***

47. Further, FTX Trading’s terms of service stated, in pertinent part (emphasis added):

1 8.2.6. All Digital Assets are held in your Account on the following basis:

- 2 a) ***Title to your Digital Assets shall at all times remain with you and shall***
 3 ***not transfer to FTX Trading.*** As the owner of Digital Assets in your
 4 Account, you shall bear all risk of loss of such Digital Assets. FTX Trading
 5 shall have no liability for fluctuations in the fiat currency value of Digital
 6 Assets held in your Account.
- 7 b) ***None of the Digital Assets in your Account are the property of, or shall or***
 8 ***may be loaned to, FTX Trading;*** FTX Trading does not represent or treat
 9 Digital Assets in User's Accounts as belonging to FTX Trading.
- 10 c) ***You control the Digital Assets held in your Account.*** At any time, subject
 11 to outages, downtime, and other applicable policies (including the Terms),
 12 ***you may withdraw your Digital Assets*** by sending them to a different
 13 blockchain address controlled by you or a third party.

14 48. In addition, FTX.US's website has posted a document entitled, "FTX's Key
 15 Principles for Ensuring Investor Protections on Digital-Asset Platforms," stating that FTX
 16 "segregates customer assets from its own assets across our platforms." The document also
 17 represents that FTX maintained "liquid assets for customer withdrawals . . . [to] ensure a customer
 18 without losses can redeem its assets from the platform on demand." See
 19 <https://www.ftxpolicy.com/posts/investor-protections> (last visited December 15, 2022).

20 49. As information about the true nature of the operations at the FTX Entities is being
 21 revealed in the Committee hearings, Ray's testimony and statements, and in detailed allegations
 22 in actions filed by regulators, the statements alleged herein about the manner of holding, and
 23 segregation of, customer assets at the FTX Entities and in the Accounts were materially false when
 24 made, and untrue. Accordingly, related statements made by FTX Entities (under the control and
 25 at the direction of the Individual Defendants) that FTX offered "the safest and easiest way to buy
 26 and sell crypto" or numerous statements by Bankman-Fried in connection with Congressional
 27 testimony he provided earlier in 2022 (as noted in fn. 11 herein, including that "FTX segregates
 28 customer assets from its own assets across our platforms") were also materially false and
 misleading statements when made.

II. IN ADDITION TO MISREPRESENTING THE ACCOUNTS IN TRANSACTIONAL DOCUMENTS SUCH AS THE USER AGREEMENTS, THE DEFENDANTS ENGAGED IN A MARKETING SCHEME THAT INCLUDED THE AUDITOR DEFENDANTS' AFFIRMATIVE STATEMENTS AND REPRESENTATIONS CONCERNING FTX'S FINANCIAL STATEMENTS

50. To achieve the mass accumulation of funds from customers, during the period from at least 2019 through November 2022, the Individual Defendants also caused the FTX Entities to engage in a promotional campaign. Bankman-Fried became so well known in the cryptocurrency, investment, and financial markets that he soon was referred to just as “SBF.” Bankman-Fried peppered media with Twitter posts, television and podcast interviews. Celebrity “brand ambassadors” were also enlisted to tout the FTX Entities. As alleged in paragraph 2 of the initial complaint in the CFTC Action, FTX ran a 2022 Superbowl commercial that advertised FTX as “the safest and easiest way to buy and sell crypto.” FTX also paid social media influencers in lucrative sponsorship deals to promote their exchange and onboard new customers.

51. As a result of the targeted promotional campaign undertaken at the direction of the Individual Defendants and aided by the Auditor Defendants (as alleged herein), FTX became one of the largest crypto-trading companies in the world, with nearly \$15 billion in assets being traded on its platform daily.

52. Central to making the scheme work was instilling confidence in customers and potential customers that the FTX Entities were subject to accounting oversight. Accordingly, throughout 2021 and 2022, Bankman-Fried represented that the FTX Entities had purportedly completed several successful GAAP audits. For example, Bankman-Fried tweeted on July 31, 2021 that FTX was the “first (?) crypto exchange to complete a GAAP audit.” Similarly, Bankman-Fried tweeted on August 26, 2021 that FTX and FTX.US had officially passed US GAAP audits.

53. FTX’s website also contained a security policy noting the existence of 2021 audits and stated plans for future audits. The website stated: “FTX has successfully undergone a US GAAP financial audit for 2021 and plans to continue undergoing regular audits.”⁹ A similar

⁹ See <https://help.ftx.com/hc/en-us/articles/360031171351-Security-Policy> (last visited December 14, 2022).

representation specific to FTX.US was available online in a document entitled “FTX US Regulation and Licensure Information” stating: “FTX US has successfully received a US GAAP financial audit.”¹⁰

54. In March 2022, Defendants Armanino and Prager, the FTX Entities’ auditors, reportedly issued certified reports which found the FTX Entities to be in good financial health.

55. Moreover, Armanino and Prager each went so far as to issue public statements in support of the FTX Entities and Bankman-Fried. On December 8, 2021, Armanino tweeted “[I]et’s go buddy!” while tagging Bankman-Fried in advance of one of the several occasions where Bankman-Fried testified before Congress about the FTX Entities and their trading platforms.¹¹



Armanino Digital Assets
@ArmaninoCrypto

...

Next up... @SBF_FTX Let's go buddy!

7:26 AM · Dec 8, 2021

1 Retweet 6 Likes

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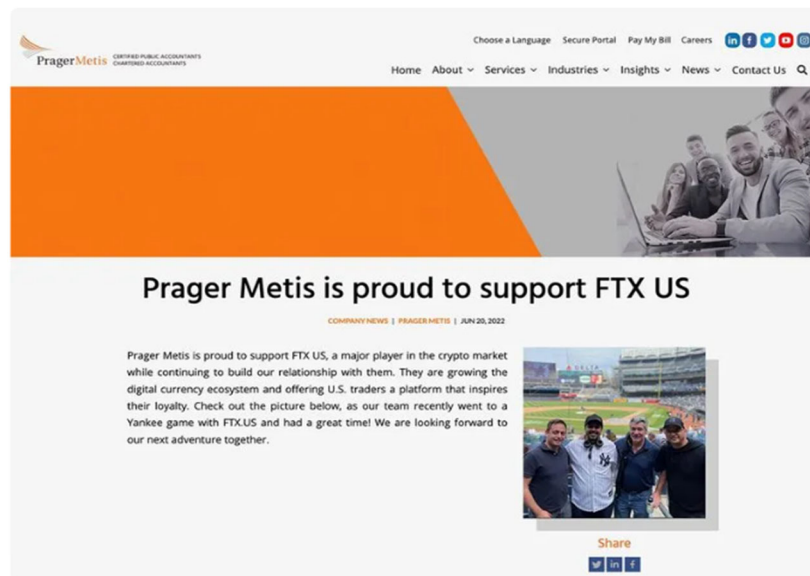
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¹⁰https://assets-global.website-files.com/625f3cf193eb0bdf6469cba/62cdd5db020a38b180c56541_Regulatory%20and%20Consumer%20Disclosure%20Page.pdf#:~:text=West%20Realm%20Shires%20Services%20Inc.%20%28%22FTX%20US%22%29%20is,to%20consumers%20all%20applicable%20risks%20of%20the%20service (last visited December 15, 2022).

¹¹ Bankman-Fried testified before Congress on at least two other occasions in February and May 2022, making a series of false assurances about the “extremely successful” nature of the FTX.com exchange, the growing size of its “compliance and customer support,” the “highly performant and reliable exchanges” of the FTX “platforms,” that “FTX has designed and offered a platform with a market structure that is risk reducing,” and that “FTX segregates customer assets from its own assets across our platforms,” among other materially false and misleading statements concerning the FTX Entities. The substance of the December 2021, February 2022 and May 2022 testimony of Bankman-Fried is available at the following links: <https://www.ftxpolicy.com/posts/testimony-may-12>; <https://www.ftxpolicy.com/posts/testimony-feb-9> and <https://www.ftxpolicy.com/posts/testimony-of-sam-bankman-fried-december-8-2021>.

56. In June 2022, Prager’s website featured a photo stating that the firm was “proud to support FTX US.”



III. THE AUDITOR DEFENDANTS FAILED TO COMPLY WITH GAAS AND IMPROPERLY FUNCTIONED AS “CHEERLEADERS” FOR THE INDIVIDUAL DEFENDANTS IN CONNECTION WITH THE MARKETING SCHEME

57. The Auditor Defendants were required to comply with applicable GAAS when performing their audits and issuing reports thereon. As described herein, the Auditor Defendants violated those professional standards and thereby reportedly provided audit opinions that allowed the Defendants to perpetuate the fraudulent scheme described herein. Accordingly, in issuing the Audit Reports that reportedly stated that the financial statements of the FTX Entities’ year end 2021 financial statements complied with GAAP, as well as making other supportive statements about the FTX Entities described herein, the Auditor Defendants violated GAAS and wrongly gave an air of legitimacy to the FTX Entities.

58. Under GAAS, the objective of a financial statement audit is the expression of an opinion on the fairness with which the audited financial statements present, in all material respects, the financial position, results of operations, and the cash flows of the reporting entity, in conformity with GAAP.

1 59. To achieve this objective, the Auditor Defendants were responsible for planning
2 and performing their financial statement audits to obtain “reasonable assurance” about whether
3 the FTX Entities’ financial statements were free of material misstatement under GAAP, including
4 misstatements caused by fraud.

5 60. To identify the risks of material misstatements, the professional standards to which
6 the Auditor Defendants were subject required them to perform the procedures identified in those
7 standards. The following are a sample of the standards, but are not exclusive:

- 8 • The standard requiring an auditor to obtain a sufficient understanding of the
9 company it is auditing, and its environment, including steps to “understand
10 the events, conditions and company activities that might reasonably be
11 expected to have a significant effect on the risks of material misstatement.”
- 12 • The standard requiring an auditor to obtain an understanding of internal
13 controls over financial reporting at the company being audited to
14 (a) identify the types of potential misstatements, (b) assess the factors that
15 affect the risks of material misstatement, and (c) design further audit
16 procedures. An auditor’s understanding of internal controls over financial
17 reporting includes evaluating the design of controls that are relevant to the
18 audit and determining whether the controls have been implemented. In this
19 regard, an auditor is required to evaluate the extent to which existing control
20 deficiencies are indicative of a fraud risk factor.
- 21 • The standard requiring an auditor to perform audit procedures designed to
22 identify the areas that might represent specific risks relevant to the audit,
23 including the existence of unusual transactions and events, and amounts,
24 ratios and trends that warrant investigation.
- 25 • The standard requiring the auditor to design and perform the audit
26 procedures in a manner that are specifically responsive to evident risks of
27 material misstatement for each relevant assertion of each significant
28 account and disclosure, including fraud risk.

- 1 • The standard requiring the auditor to evaluate the “reasonableness of
2 accounting estimates” made by the company in the “context of the financial
3 statements taken as a whole.” The auditor should consider various factors,
4 including “[d]eviations from historical patterns.” Further, the auditor
5 should “obtain an understanding of how [the company] developed the
6 estimate” and, based on that, (a) “[r]eview and test the process used by
7 management to develop the estimate”; (b) “[d]evelop an independent
8 expectation of the estimate to corroborate the reasonableness of [the
9 company’s] estimate”; and (c) “[r]eview subsequent events or transactions
10 occurring prior to the date of the auditor’s report.”
- 11 • The standards requiring adherence to the objective of a financial statement
12 audit consisting of the expression of an opinion on the fairness with which
13 the financial statements present, in all material respects, the financial
14 position, results of operations and the cash flows of the reporting entity, in
15 conformity with GAAP.
- 16 • The standards that impose upon auditors the responsibility of applying “due
17 professional care,” including the appropriate “professional skepticism.”
18 Professional skepticism requires the auditors to maintain a questioning
19 mind and critically assess the audit evidence it obtains. In this regard,
20 GAAS expressly requires that the auditors should not be satisfied with less
21 than persuasive evidence beyond simply a belief that management is honest.
- 22 • GAAS standards also prohibit an auditor from issuing any unqualified
23 opinion when it fails to gather sufficient appropriate audit evidence
24 necessary to support its opinion. When audit evidence obtained from one
25 source is inconsistent with that from another, or if the auditor has doubts
26 regarding the reliability of audit evidence, auditors are required to perform
27 additional audit procedures necessary to resolve the matter.

- GAAS also establishes the auditors' responsibility for identifying and responding to risks of material misstatement extended to those risks arising from fraud.

61. Indeed, the Supreme Court has described the role of an independent auditor as that of "public watchdog," established to improve the reliability of financial statements, enhance the credibility of those statements and thereby, support the capital markets. *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984). As alleged herein, Armanino and Prager not only failed entirely to conduct their work in accordance with the GAAS standards placed upon them as auditors, but failed in their foremost charge to be "independent," as alleged herein. Auditors must maintain independence in mental attitude in all matters relating to the audit.

62. Armanino and Prager both failed at complying with the standard for auditor independence. As set out above, prior to Bankman-Fried's December 2021 Congressional testimony about the FTX Entities, Armanino posted:



Armanino Digital Assets
@ArmaninoCrypto

...

Next up... @SBF_FTX Let's go buddy!

7:26 AM · Dec 8, 2021

1 Retweet 6 Likes

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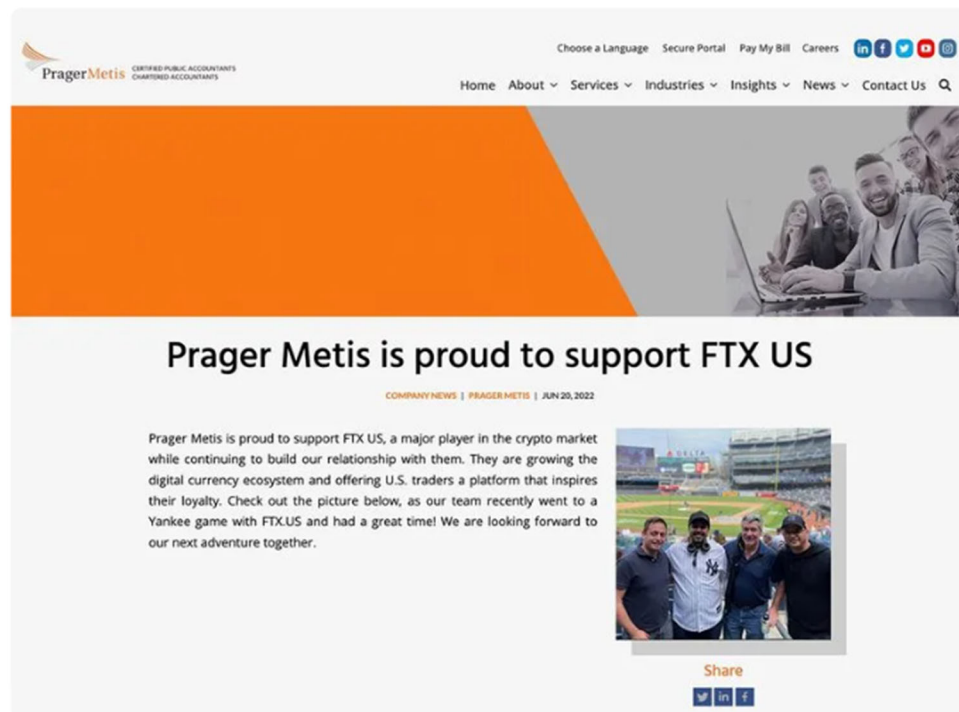
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63. In June 2022, Prager posted the following:



64. As set forth in the Prager June 2022 post (above), Prager states that FTX.US “offer[s] U.S. traders a platform that inspires their loyalty.” Prager’s “support” of FTX.US includes telling consumers that Prager has a “relationship” with FTX.US, that FTX.US is a “major player” in the crypto market, and that the platform offered “inspires . . . loyalty,” a very meaningful endorsement from a large U.S. based auditing firm designed to provide comfort to customers and encourage use of FTX.US’s services and offerings.

65. As referenced in a recent December 5, 2022 online article by Going Concern News Desk entitled “If There Was a PCAOB in the Metaverse, It Would Probably Find a Bunch of Errors in Prager Metis’s Audits Too” (the “December 5 Going Concern Article”), “[a]uditors should not be friends with their clients.” As a November 17, 2022 *Wall Street Journal* article astutely characterized the conduct, FTX’s auditors acted like “crypto industry cheerleaders.” The December 5 Going Concern Article hearkens back to the “Let’s go buddy” support Armanino voiced toward Bankman-Fried in connection with his December 2021 hearing before a Congressional committee, noting that making the statement “does not appear independent. At all! Quite the opposite, actually! Let’s try a little harder, people.”

66. The December 5 Going Concern article notes a particularly poorly timed Armanino tweet that it was a “great time to remember” Armanino’s “specialized crypto assurance,” a reference understood to be to a product that verifies customer assets held by crypto firms. As the December 5 Going Concern article quips, “Okay, so the world’s third largest crypto exchange—whose U.S. entity you provided assurance services to—is going down for the dirt nap, and you take it as an opportunity to plug your crypto assurance services? I mean, a) Okay, but also b) NOT NOW. The house is on fire, guys. Maybe you could tell us about a home security system another time.?”

67. In addition to the failure to comport with the independence standard, or conduct a GAAS compliant audit, the Auditor Defendants had several red flags of which they had notice: 1) the use of two auditing firms; 2) the number of interrelated parties forming the FTX Entities and Alameda; 3) that the FTX Entities did not reportedly have any internal accounting function or system of internal controls; 4) the use of offshore entities; 5) the loans Alameda made to certain of the Individual Defendants (as noted in Ray’s testimony to the Committee, Bankman-Fried on at least one occasion was assigned as both the issuer and the recipient of the loan); 6) the experience level of management; 7) the lack of a formal and independent Board of Directors for the FTX Entities; 8) the nature of cryptocurrency trading and lack of meaningful regulatory oversight; and 9) that the FTX Entities’ only accounting system was the use of Quickbooks.¹² As replacement CEO Ray testified on December 13, 2022 before the U.S. House Financial Services Committee: “They used QuickBooks, a multibillion-dollar company using QuickBooks. Nothing against QuickBooks, it’s a very nice tool, just not for a multibillion-dollar company.” As noted above, Ray emphasized that “[t]his really is old-fashioned embezzlement . . . This is just taking money from customers and using it for your own purpose. Not sophisticated at all.” The importance of independence is not to be overlooked, as it is the bedrock of an auditor providing

¹² As covered in other media reports and in Ray’s declaration set forth in the Bankruptcy Proceedings, expenses were coded with emojis for approval and employees received lavish perks. *See e.g.* [FTX%20filing%20reveals%20slipshod%20accounting,%20freewheeling%20expenses,%20perk s.html](#) (last visited December 31, 2022).

professional services. The PCAOB has sanctioned auditing firms for failing to comply with the standard over conduct that amounts to publicly advocating audit clients as investments.¹³

68. Indeed, the nature of the fraudulent and improper financial accounting or reporting here was not something any auditor of reasonable diligence and following GAAS auditing standards would have missed. The Auditor Defendants also had access to guidance from the PCAOB on auditing crypto assets, or any number of other sources in accounting literature.¹⁴

69. Moreover, the Auditor Defendants each have publicly professed to being well versed in issues concerning cryptocurrency and the auditing needs related thereto.

70. Prager, for example, maintained a copy of an October 2019 article on its website entitled “Accounting Professionals Need to Understand Cryptocurrency and Blockchain” and states “[s]imply put, blockchain = accounting ledger.”¹⁵ Prager also advertises on its website as specializing in new technologies, claiming its “team of experts focuses on industries spanning in digital assets” and proudly represents it “is the first CPA to offer headquarters in the metaverse platform Decentraland.”¹⁶ Similar statements are on a Prager webpage featuring its work for Digital Assets, wherein it states that Prager is “at the forefront of evolving regulations and actively participate in discussions regarding accounting policies in the cryptocurrency and blockchain industry.”¹⁷

71. Armanino’s representations concerning its auditing and accounting prowess for cryptocurrency are equally touted on its website. Among other things, Armanino advertises that it is the “first accounting firm to formalize and complete a ‘Proof of Reserves’ for a digital asset exchange. With a combination of traditional audit and industry tools, we are able to provide much-

¹³ https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-sanctions-two-firms-and-one-individual-for-auditor-independence-violations_712 (last visited December 18, 2022).

¹⁴ <https://pcaobus.org/Documents/Audits-Involving-Cryptoassets-Spotlight.pdf> (last visited December 18, 2022).

¹⁵ <https://pragermetis.com/insights/accounting-professionals-need-to-understand-cryptocurrency-and-blockchain/> (last visited December 18, 2022).

¹⁶ <https://pragermetis.com/metaverse/> (last visited December 18, 2022).

¹⁷ <https://pragermetis.com/industries/digital-assets/> (last visited December 18, 2022).

needed transparency to users of virtual asset service providers.” The firm’s website references it having the “first audit and assurance platform, on TrustExplorer” As explained in one article, “[t]he Armanino TrustExplorer program is a proprietary, Armanino-owned and controlled software solution that offers asset-backed token projects and their holders a new level of trust and transparency, by providing a current, third-party view of the tokens in circulation and the related collateralized fiat funds (such as U.S. dollars) that back them.”¹⁸ Further, a series of articles on the Armanino website also demonstrate its knowledge of what “best” accounting practices are for crypto startups and other advice.¹⁹

72. In short, Armanino and Prager are self-professed cryptocurrency savvy auditors. Yet, the misconduct and financial failings here did not take specialization in cryptocurrency to uncover. Within mere days to weeks of taking over as CEO, Ray found there was “no record keeping whatsoever” and a complete lack of internal controls. As noted above, the SEC Bankman-Fried Action complaint in paragraph 51 alleges that the “[a]udited financial statements ‘do not include information about Alameda’s undocumented ‘line of credit’ from FTX” and “other information” that was “[a]t the very least, materially misleading. Indeed, FTX’s current CEO has voiced ‘substantial concern as to the information presented in these audited financial statements.’”

73. Given Ray’s Congressional testimony as to the absence of records or proper documentation at the FTX Entities, and the lack of internal controls, data points that the auditors would either be required to examine or consider when undertaking an audit, Plaintiff alleges upon information and belief that the Auditor Defendants knowingly undertook the audit without the required documentation.

¹⁸ <https://medium.com/armanino-blockchain/armanino-trustexplorer-a-software-solution-for-the-future-of-digital-assets-e92a4482908a> (last visited December 18, 2022).

¹⁹ <https://www.armanino.com/articles/crypto-startups-token-projects-thrive-with-accounting-best-practices/> (last visited December 18, 2022); <https://www.armanino.com/articles/proof-of-reserves-elevating-trust-transparency-digital-asset-ecosystems/> (last visited December 18, 2022); <https://www.armanino.com/articles/armanino-trustexplorer-a-software-solution-for-the-future-of-digital-assets/> (last visited December 18, 2022); <https://www.armanino.com/articles/blockchain-crypto-resource-center/> (last visited December 18, 2022); <https://www.armanino.com/articles/auditing-misconceptions-digital-assets/> (last visited December 18, 2022); <https://www.armanino.com/software/trustexplorer/real-time-attest/> (last visited December 18, 2022).

1 74. The Auditor Defendants were also on notice of the Bankman-Fried tweets and
2 information posted on the websites of the FTX Entities announcing that they had been audited,
3 and that such information was being communicated to actual and prospective customers (Plaintiff
4 and the members of the Class) and others.

5 75. As a result, the Auditor Defendants acted with knowledge and intent that customers
6 and potential customers of the FTX Entities (which includes Plaintiff and the Class) would rely on
7 the fact that the FTX Entities had financial statements and that those statements had been audited,
8 particularly by U.S. based auditing firms with purported particularized knowledge and experience
9 in the crypto space, in making their decision to have an Account with the FTX Entities or to
10 transact business on the platforms of the FTX Entities.

11 76. Ray testified on December 14, 2022 that the audits performed on the FTX Entities
12 should not be relied upon.

13 77. Ray's November 17, 2022 declaration in the Bankruptcy Proceedings states that
14 the "FTX Group received audit opinions on consolidated financial statements for two of the Silos –
15 the WRS Silo and the Dotcom Silo – for the period ended December 31, 2021."²⁰ As stated by
16 Ray, "I have substantial concerns as to the information presented in these audited financial
17 statements, especially with respect to the Dotcom Silo. As a practical matter, I do not believe it
18 appropriate for stakeholders or the Court to rely on the audited financial statements as a reliable
19 indication of the financial circumstances of these Silos." Ray continues to declare on
20 November 17, 2022 that the "Debtors are locating and securing all available financial records but
21 expect it will be some time before reliable historical financial statements can be prepared for the
22 FTX Group with which I am comfortable as Chief Executive Officer. The Debtors do not have an
23 accounting department and outsource this function."

24 78. The November 17, 2022 Ray declaration also commented on the "unclear records
25 and lines of responsibility" of the FTX Group's "approach to human resources," that the "Debtors
26

27 ²⁰ Ray's November 17, 2022 declaration defines the FTX Group as consisting of the four Silos,
28 which includes the FTX US entities as part of the "WRS" Silo and the FTX Trading entities as
part of the "Dot Com" Silo.

1 did not have the type of disbursement controls that I believe are appropriate for a business
 2 enterprise” (noting an “on-line ‘chat’ platform where a disparate group of supervisors approved
 3 disbursements by responding with personalized emojis”), that the funds of the FTX Group were
 4 “used to purchase homes and other personal items for employees and advisors,” that FTX Group
 5 “did not keep appropriate books and records, or security controls, with respect to its digital assets”
 6 and the “absence of daily reconciliation of positions on the blockchain.”

7 79. As set forth above, the violations of GAAS engaged in by the Auditor Defendants
 8 were knowing, including their violation of the independence standard as a result of their
 9 “cheerleading” conduct, described herein. Based upon the facts concerning the accounting of the
 10 FTX Entities, as apparent to Ray in just a short period after serving as the new CEO, the Auditor
 11 Defendants knew that the Individual Defendants were engaged in the misconduct alleged herein.
 12 The Auditor Defendants provided substantial assistance to the FTX Entities and to the Individual
 13 Defendants by the issuance of the Audit Reports and the “cheerleading” efforts, alleged herein.

14 80. Armanino is now reported in media as indicating it will not undertake future
 15 engagements for cryptocurrency-based clients. This comes too late to save Plaintiff and the Class
 16 from the harm caused, as alleged herein.

17 **The Truth Begins To Emerge**

18 81. On November 2, 2022, an article published by the cryptocurrency publication
 19 CoinDesk flagged issues about the financial condition of Alameda and the FTX Entities. The
 20 article, entitled “Divisions in Sam Bankman-Fried’s Crypto Empire Blur on His Trading Titan
 21 Alameda’s Balance Sheet” stated, in pertinent part:

22 Billionaire Sam Bankman-Fried’s cryptocurrency empire is officially broken into
 23 two main parts: FTX (his exchange) and Alameda Research (his trading firm), both
 giants in their respective industries.

24 But even though they are two separate businesses, the division breaks down in a
 25 key place: on Alameda’s balance sheet, according to a private financial document
 26 reviewed by CoinDesk. (It is conceivable the document represents just part of
 Alameda.)

27 That balance sheet is full of FTX – specifically, the FTT token issued by the
 28 exchange that grants holders a discount on trading fees on its marketplace. While
 there is nothing per se untoward or wrong about that, it shows Bankman-Fried’s

trading giant Alameda rests on a foundation largely made up of a coin that a sister company invented, not an independent asset like a fiat currency or another crypto. The situation adds to evidence that the ties between FTX and Alameda are unusually Close.

The financials make concrete what industry-watchers already suspect: Alameda is big. As of June 30, the company's assets amounted to \$14.6 billion. Its single biggest asset: \$3.66 billion of "unlocked FTT." The third-largest entry on the assets side of the accounting ledger? A \$2.16 billion pile of "FTT collateral."

There are more FTX tokens among its \$8 billion of liabilities: \$292 million of "locked FTT." (The liabilities are dominated by \$7.4 billion of loans.)

"It's fascinating to see that the majority of the net equity in the Alameda business is actually FTX's own centrally controlled and printed-out-of-thin-air token," said Cory Klippsten, CEO of investment platform Swan Bitcoin, who is known for his critical views of altcoins, which refer to cryptocurrencies other than bitcoin (BTC).

Other significant assets on the balance sheet include \$3.37 billion of "crypto held" and large amounts of the Solana blockchain's native token: \$292 million of "unlocked SOL," \$863 million of "locked SOL" and \$41 million of "SOL collateral." Bankman-Fried was an early investor in Solana. Other tokens mentioned by name are SRM (the token from the Serum decentralized exchange Bankman-Fried co-founded), MAPS, OXY and FIDA. There is also \$134 million of cash and equivalents and a \$2 billion "investment in equity securities."

Also, token values may be low. In a footnote, Alameda says "locked tokens conservatively treated at 50% of fair value marked to FTX/USD order book."

Owners of the FTT token get discounts on FTX trading fees, increased commissions on referrals and earn rewards. The value of FTT is maintained by FTX's rolling program of buying back and burning tokens, a process that eats up a third of the exchange's trading commissions, which will continue until half of all tokens are burned, according to FTX.

82. In the wake of the publication of the CoinDesk article, the FTX Entities saw massive customer withdrawals, resulting in a liquidity crisis. On November 6, 2022, Binance, a competing crypto asset trading platform, commented that "[d]ue to recent revelations that have come [sic] to light," Binance would be liquidating its FTT holdings, which had been valued at the time at over \$500 million.

83. As recently laid out in chapter and verse in the initial complaint in the SEC Bankman-Fried Action, Bankman-Fried and Ellison acted to continue to cause harm to consumers by mispresenting the true financial condition of the FTX Entities. Accordingly, Ellison tweeted an offer to buy Binance's holdings of FTT for \$22 per token ("@cz_binance if you're looking to

1 minimize the market impact on your FTT sales, Alameda will happily buy it all from you today
2 at \$22!”).

3 84. Almost on cue, Bankman-Fried tweeted on or around November 7, 2022: “FTX is
4 fine. Assets are fine . . . FTX has enough to cover all client holdings. We don’t invest client assets
5 (even in treasuries). We have been processing all withdrawals, and will continue to be”
6 Upon information and belief, including the Ray December 13, 2022 testimony, Bankman-Fried’s
7 tweet was materially false and misleading because FTX, allegedly at his direction, had allowed
8 Alameda to invest client assets, and in investments riskier than treasuries. FTX was also not
9 processing “all” withdrawals during the time of his twitter statement, as communicated by
10 customer complaints on social media.

11 85. Ultimately, by November 8, 2022, Bankman-Fried elected to freeze all withdrawals
12 of customer assets. As a result, the price of FTT declined by 80%, and Alameda’s collateral on
13 deposit had a value lower than the amount Alameda borrowed from FTX, as noted in the SEC
14 Bankman-Fried Action, in paragraph 79. This resulted in FTX having billions in unrecoverable
15 loans out to Alameda.

16 86. On November 8, 2022, competing cryptocurrency exchange Binance announced
17 that it had reached a non-binding deal to acquire FTX. Upon information and belief, this potential
18 transaction was part of Bankman-Fried’s rushed effort to finding funding for FTX. However, only
19 one day later, Binance announced that “as a result of corporate due diligence” . . . [Binance had]
20 decided that [it would] not pursue the potential acquisition of FTX[]” and that “the issues [were]
21 beyond [Binance’s] control or ability to help.” FTX customers withdrew approximately \$5 billion
22 from the platform that same day, according to the SEC Bankman-Fried Action. Upon information
23 and belief, and as alleged in paragraph 83 of the complaint in the SEC Bankman-Fried Action,
24 Bankman-Fried “circulated a balance sheet to potential investors that listed a negative \$8 billion
25 entry labeled as a ‘hidden, poorly internally labeled ‘fiat@ account.’” The “fiat@account” is
26 reportedly a reference to the fiat@ftx.com account and as indicating FTX customer funds
27 deposited in Alameda’s bank accounts.
28

1 87. According to an allegation in the SEC Bankman-Fried Action, during a
2 November 9, 2022 meeting with Alameda employees, Ellison admitted that she, Bankman-Fried,
3 and Singh were aware that FTX funds had been used by Alameda. As set forth in a November 9,
4 2022 letter from Christina Rolle, Executive Director of The Securities Commission of The
5 Bahamas (“SCB Executive Director Rolle”), Ryan Salame (Chairman of FTX Digital), client
6 (a/k/a customer) assets held by FTX were transferred to Alameda in a manner that appeared to
7 constitute misappropriation, and that only Bankman-Fried, Singh, and Wang had the codes and
8 passwords to undertake these transfers. The November 9, 2022 letter from Rolle was filed as Doc
9 225-4 in the Bankruptcy Proceeding (Case No. 22-11068-JTD).

10 88. An affidavit dated November 10, 2022, signed by SCB Executive Director Rolle
11 (the “Rolle Affidavit”) was filed in the Bankruptcy Proceeding on December 14, 2022 (Doc 225-
12 4 in Case 22-11068-JTD), wherein Rolle details a November 9, 2022 phone call she had with
13 Salame and others identified by Rolle as including counsel for FTX Digital and FTX US. Salame’s
14 statements during that call, as relayed by Rolle, “exacerbated the need for the intervention of this
15 Honourable Court on an urgent basis.”

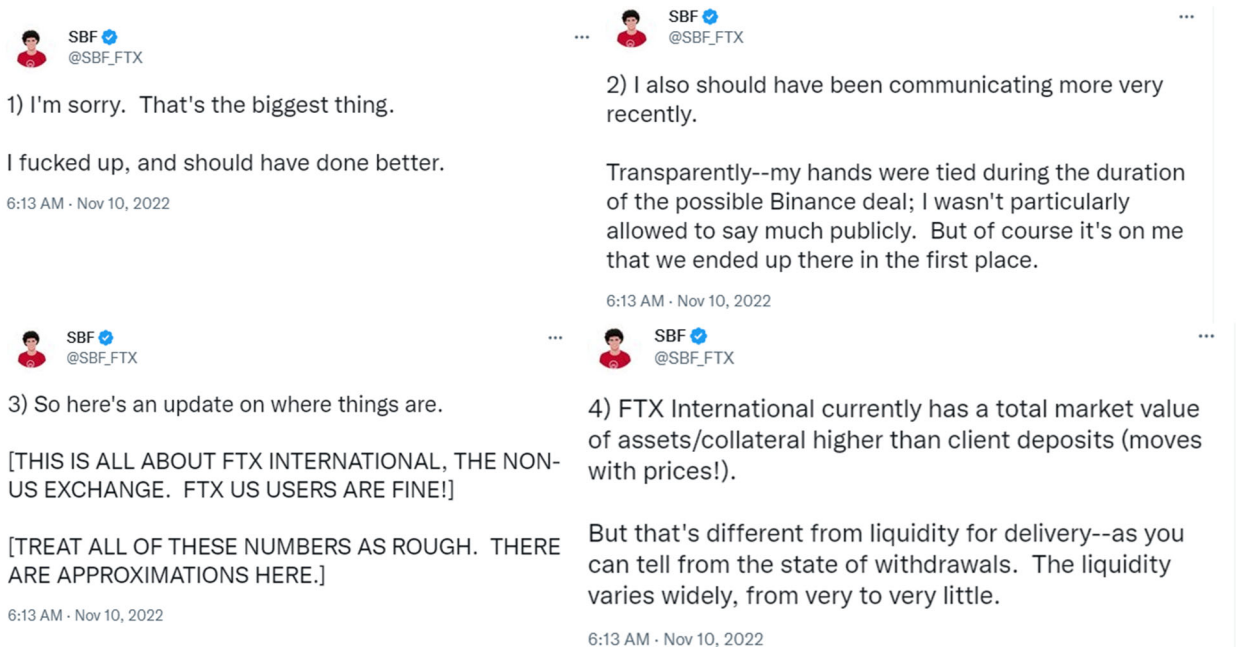
16 89. The Rolle Affidavit declares that “[s]pecifically, Mr. Salame advised that clients’
17 assets which may have been held with FTX Digital were transferred to Alameda Research” to
18 “cover financial losses of Alameda.”

19 90. The Rolle Affidavit further declares that, during the November 9, 2022 call, she
20 understood Salame to be “advising the Commission that the transfer of clients’ assets in this
21 manner was contrary to the normal corporate governance and operations of FTX Digital. Put
22 simply, that such transfers were not allowed or consented to by their clients.”

23 91. The Rolle Affidavit confirms that she was told that there were only three
24 individuals with the necessary codes or passwords to transfer clients’ assets to Alameda:
25 Bankman-Fried and co-founders Nishad Singh and Zixiao Wang, according to the affidavit. The
26 Rolle Affidavit provides that Bankman-Fried is “Director Chief Executive Officer” of FTX
27 Digital.
28

92. Among other details, the Rolle Affidavit cites concerns over a November 9, 2022 e-mail she received from Bankman-Fried admitting to “poor risk management,” that focus should be on making “customers whole,” and that **“we have segregated funds for all Bahamian customers on FTX. And we would be more than happy to open up withdrawals for all Bahamian customers on FTX, so that they can, tomorrow, fully withdraw all of their assets, making them fully whole.”** Bankman-Fried’s admission is simply another example of his fraudulent and improper acts, as it calls into question the propriety of the bankruptcy filing and whether Bankman-Fried caused the FTX Entities to make pre-filing preferential transfers of assets that belong to Plaintiff and the Class.

93. On November 10, 2022, Bankman-Fried issued a series of twenty-two tweets on Twitter apologizing to customers and attempting to offer an explanation for the crash.



 SBF
@SBF_FTX

5) The full story here is one I'm still fleshing out every detail of, but as a very high level, I fucked up twice.

The first time, a poor internal labeling of bank-related accounts meant that I was substantially off on my sense of users' margin. I thought it was way lower.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

7) And so I was off twice.

Which tells me a lot of things, both specifically and generally, that I was shit at.

And a third time, in not communicating enough. I should have said more. I'm sorry--I was slammed with things to do and didn't give updates to you all.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

9) Anyway: right now, my #1 priority--by far--is doing right by users.

And I'm going to do everything I can to do that. To take responsibility, and do what I can.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

11) There are a number of players who we are in talks with, LOIs, term sheets, etc.

We'll see how that ends up.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

13) Because at the end of the day, I was CEO, which means that *I* was responsible for making sure that things went well. *I*, ultimately, should have been on top of everything.

I clearly failed in that. I'm sorry.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

6) My sense before:

Leverage: 0x
USD liquidity ready to deliver: 24x average daily withdrawals

Actual:

Leverage: 1.7x
Liquidity: 0.8x Sunday's withdrawals

Because, of course, when it rains, it pours. We saw roughly \$5b of withdrawals on Sunday--the largest by a huge margin.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

8) And so we are where we are. Which sucks, and that's on me.

I'm sorry.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

10) So, right now, we're spending the week doing everything we can to raise liquidity.

I can't make any promises about that. But I'm going to try. And give anything I have to if that will make it work.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

12) Every penny of that--and of the existing collateral--will go straight to users, unless or until we've done right by them.

After that, investors--old and new--and employees who have fought for what's right for their career, and who weren't responsible for any of the fuck ups.

6:13 AM · Nov 10, 2022

 SBF
@SBF_FTX

14) So, what does this mean going forward?

I'm not sure--that depends on what happens over the next week.

But here are some things I know.

6:13 AM · Nov 10, 2022



15) First, one way or another, Alameda Research is winding down trading.

They aren't doing any of the weird things that I see on Twitter--and nothing large at all. And one way or another, soon they won't be trading on FTX anymore.

6:13 AM · Nov 10, 2022



17) All of the stakeholders would have a hard look at FTX governance. I will not be around if I'm not wanted.

All of the stakeholders--investors, regulators, users--would have a large part to play in how it would be run.

Solely trust.

6:13 AM · Nov 10, 2022



19) A few other assorted comments:

This was about FTX International. FTX US, the US based exchange that accepts Americans, was not financially impacted by this shitshow.

It's 100% liquid. Every user could fully withdraw (modulo gas fees etc).

Updates on its future coming.

6:13 AM · Nov 10, 2022



21) NOT ADVICE, OF ANY KIND, IN ANY WAY

I WAS NOT VERY CAREFUL WITH MY WORDS HERE, AND DO NOT MEAN ANY OF THEM IN A TECHNICAL OR LEGAL SENSE; I MAY WELL HAVE NOT DESCRIBED THINGS RIGHT though I'm trying to be transparent. I'M NOT A GOOD DEV AND PROBABLY MISDESCRIBED SOMETHING.

6:13 AM · Nov 10, 2022



16) Second, in any scenario in which FTX continues operating, its first priority will be radical transparency--transparency it probably always should have been giving.

Giving as close to on-chain transparency as it can: so that people know *exactly* what is happening on it.

6:13 AM · Nov 10, 2022



18) But all of that isn't what matters right now--what matters right now is trying to do right by customers. That's it.

6:13 AM · Nov 10, 2022



20) At some point I might have more to say about a particular sparring partner, so to speak.

But you know, glass houses. So for now, all I'll say is:

well played; you won.

6:13 AM · Nov 10, 2022



22) And, finally:

I sincerely apologize.

We'll keep sharing updates as we have them.

6:13 AM · Nov 10, 2022

94. On November 12, 2022, *The Wall Street Journal* published an article entitled "Alameda, FTX Executives Are Said to Have Known FTX Was Using Customer Funds." The article stated, in pertinent part:

Alameda Research's chief executive and senior FTX officials knew that FTX had lent its customers' money to Alameda to help it meet its liabilities, according to people familiar with the matter.

Alameda's troubles helped lead to the bankruptcy of FTX, the crypto exchange founded by Sam Bankman-Fried. Alameda is a trading firm also founded and owned by Mr. Bankman-Fried.

Alameda faced a barrage of demands from lenders after crypto hedge fund Three Arrows Capital collapsed in June, creating losses for crypto brokers such as Voyager Digital Ltd., the people said.

In a video meeting with Alameda employees late Wednesday Hong Kong time, Alameda CEO Caroline Ellison said that she, Mr. Bankman-Fried and two other FTX executives, Nishad Singh and Gary Wang, were aware of the decision to send customer funds to Alameda, according to people familiar with the video. Mr. Singh was FTX's director of engineering and a former Facebook employee. Mr. Wang, who previously worked at Google, was the chief technology officer of FTX and co-founded the exchange with Mr. Bankman-Fried.

Ms. Ellison said on the call that FTX used customer money to help Alameda meet its liabilities, the people said.

Alameda had taken out loans to fund illiquid venture investments, the people said. On Friday, FTX, Alameda, FTX US and other FTX affiliates filed for bankruptcy protection.

Bankruptcy means that it could be a long time before individual investors and others owed their funds are able to potentially recover any of them, if ever.

95. The Wall Street Journal article exposed that customer assets were being used to cover Alameda's trading losses and repay its outstanding debts. Accordingly, this meant that Defendants were operating contrary to the express terms of the FTX Entities' terms of service and user agreements, which stated that customer assets would not be transferred to FTX trading.

96. By November 11, 2022, Bankman-Fried had resigned as CEO of FTX and the FTX Entities and Alameda filed for bankruptcy. New CEO Ray provided a declaration in the Bankruptcy Proceedings declaring that he had never seen "such a complete lack of corporate controls and such a complete absence of trustworthy financial information as occurred here . . . the situation is unprecedented."

97. On November 30, 2022, Bankman-Fried was interviewed via videoconference by Andrew Ross Sorkin of The New York Times, during which interview Bankman-Fried acknowledged: ***"I was responsible for doing the right things and I mean, we didn't. Like, we messed up big."***

1 98. On December 12, 2022, Bankman-Fried was arrested in the Bahamas on the eve of
2 what would have been roughly his fourth time providing testimony to a Congressional committee
3 in a one-year period. Accordingly, the scheduled Congressional testimony for December 13, 2022
4 was provided by Ray, wherein Ray confirmed a host of adverse facts about what his investigation
5 to date into the FTX Entities had uncovered or confirmed. Ray's testimony relayed a story that
6 presents what for all intents and purposes sounds like a movie script where the truth is indeed
7 stranger than fiction.

8 99. As summarized in the prepared comments of Ray in connection with the
9 December 13, 2022 Congressional testimony (available in Doc 225-3 in Case No. 22-11068-JTD
10 in the Bankruptcy Proceedings), Ray states:

11 While many things are unknown at this stage, and many questions remain, we know
12 the following:

13 First, customer assets from FTX.com were commingled with assets from the
14 Alameda trading platform.

15 Second, Alameda used client funds to engage in margin trading which exposed
16 customer funds to massive losses.

17 Third, the FTX Group went on a spending binge in late 2021 through 2022, during
18 which approximately \$5 billion was spent buying a myriad of businesses and
19 investments, many of which may be worth only a fraction of what was paid for
20 them.

21 Fourth, loans and other payments were made to insiders in excess of \$1 billion.

22 Fifth, Alameda's business model as a market maker required deploying funds to
23 various third party exchanges which were inherently unsafe, and further
24 exacerbated by the limited protections offered in certain foreign jurisdictions.

25 100. As Congresswoman Maxine Waters is quoted as saying in a December 12, 2022
26 press release issued even before the damning Ray testimony was provided, "Mr. Bankman-Fried
27 must be held accountable" Congresswoman Waters reiterated at the opening of the
28 December 13, 2022 testimony Bankman-Fried needs to be held "accountable for the fraud he has
 committed and the harm he has caused." In relaying the staggering losses, Congresswoman
 Waters aptly summarized: "Just a few months ago, FTX was one of the largest cryptocurrency
 exchanges in the world, with a valuation of \$32 billion in just three years since its founding.
 Today, FTX is bankrupt and possibly looted. FTX misused approximately \$10 billion in customer

1 funds and owes creditors at least \$3 billion dollars.” Congresswoman Waters’ statement expressed
 2 that she was “deeply troubled to learn how common it was among Bankman-Fried and FTX
 3 employees to steal from the cookie jar of customer funds to finance their lavish lifestyles.”

4 101. Following the December 13, 2022 hearing, Congresswoman Waters commented on
 5 the “extent of the fraud,” highlighted SEC Chair Gensler’s remarks on “massive noncompliance
 6 by crypto firms[.]” and noted “concern[] that the millions of customers who were lied to by FTX,
 7 are just the tip of the iceberg.”

8 102. *Forbes* released what is represented as the comments that Bankman-Fried planned
 9 to provide to the Congressional committee on December 13, 2022 if he had appeared, with the
 10 opening salvo summing it up: “I f****d up.”²¹

11 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

12 103. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
 13 Procedure 23(a), (b)(2), and (b)(3) on behalf of a Class consisting of all persons other than
 14 Defendants that have deposited funds and/or assets in accounts (“Accounts”) with FTX Trading
 15 LTD d/b/a FTX (“FTX or “the Company”) or West Realm Shires Services Inc. d/b/a FTX US
 16 (“FTX.US” or “FTX US”) (collectively, the “FTX Entities”), and who have been unable to access
 17 or withdraw the deposited funds and/or assets in the Accounts.

18 104. Excluded from the Class are Defendants herein, the officers and directors of the
 19 FTX Entities, at all relevant times, members of their immediate families and their legal
 20 representatives, heirs, successors or assigns and any entity in which Defendants have or had a
 21 controlling interest.

22 105. The members of the Class are so numerous that joinder of all members is
 23 impracticable. Plaintiff and members of the Class are presently unable to withdraw their assets
 24 from FTX Accounts. While Plaintiff, at this time, does not possess information on the exact
 25 number of Class members, and the number of such persons may only be ascertained through

26
 27 ²¹ [“Exclusive Transcript: The Full Testimony Bankman-Fried Planned To Give To Congress”](https://www.forbes.com/sites/stevenehrlich/2022/12/13/exclusive-transcript-the-full-testimony-sbf-planned-to-give-to-congress/?sh=64fbb5a93c47)
 28 [https://www.forbes.com/sites/stevenehrlich/2022/12/13/exclusive-transcript-the-full-testimony-](https://www.forbes.com/sites/stevenehrlich/2022/12/13/exclusive-transcript-the-full-testimony-sbf-planned-to-give-to-congress/?sh=64fbb5a93c47)
[sbf-planned-to-give-to-congress/?sh=64fbb5a93c47](https://www.forbes.com/sites/stevenehrlich/2022/12/13/exclusive-transcript-the-full-testimony-sbf-planned-to-give-to-congress/?sh=64fbb5a93c47) (last visited December 14, 2022).

appropriate discovery, Plaintiff believes that there are more than one million members in the proposed Class. For example, the FTX website currently posts a prepared statement for the May 12, 2022 testimony Bankman-Fried provided to the U.S. House Committee on Agriculture, in which it is stated: “At the time of this writing, the FTX platforms have millions of registered users, and the FTX US platform has around one million users.” Class members may be identified from records maintained by the FTX Entities or their transfer agents and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in class actions. Alternatively, since one or more of the FTX Entities required customers to consent to receive communications electronically and to provide them with the customers’ e-mail addresses, e-mail notice to Class Members may also be a suitable alternative to mail notice in this action.

106. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of laws that are complained of herein.

107. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

108. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the Defendants violated Sections 17200, *et seq.* and 17500, *et seq.* of the California Business and Professions Code;
- whether the Defendants engaged in a conspiracy as alleged herein;
- whether other federal or applicable laws were violated by Defendants’ acts as alleged herein;
- whether the Defendants aided and abetted the violations of law of each of the other Defendants as alleged herein;
- whether certain of the Accounts were unregistered securities under federal or applicable law;
- what the type and measure of damages suffered by Plaintiff and the Class may be;

- whether Plaintiff and Class members have sustained monetary loss and the value and extent of that loss;
- whether Plaintiff and Class members are entitled to injunctive and/or declaratory relief, both on their own behalf and in the public interest;
- whether Plaintiff and Class members are entitled to restitution, consequential damages, punitive damages, statutory damages, disgorgement, and/or other legal or equitable appropriate remedies as a result of Defendants' conduct.
- whether the Individual Defendants have been unjustly enriched and should be required to pay restitution and or disgorgement to Plaintiff and the Class.

109. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by certain of the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. No difficulty in the management of this action as a class action exists.

COUNT I

Violation of California's Unfair Competition Law Cal. Bus. & Prof. Code §§ 17200, *et seq.* (Against the Individual Defendants on Behalf of Plaintiff and the Class)

110. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

111. This Count is asserted against the Individual Defendants and is based upon the California Unfair Competition Law ("UCL"), which prohibits any "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

112. The Individual Defendants' practices set forth herein were unlawful, fraudulent, and unfair, as set forth below. These deceptive practices described herein are likely to mislead—and clearly have misled—consumers acting reasonably under the circumstances into depositing funds and/or assets into Accounts with the FTX Entities and/or maintaining such Accounts.

113. **Unlawful:** The Individual Defendants have engaged in unlawful conduct in violation of the UCL in connection with statements and/or advertisements they each respectively issued to tout and/or advertise the FTX Entities and their products, including the Accounts, and/or

1 to cause consumers (*i.e.*, current and/or prospective customers of the FTX Entities) to sign up for
2 the Accounts or other products or services of the FTX Entities. In addition, as set forth herein, the
3 FTX Entities, under the direction and control of the Individual Defendants, offered and/or sold
4 unregistered securities in violation of applicable federal and state law.

5 114. Specifically, as to the Individual Defendants, they touted and/or advertised the
6 Accounts using false and/or misleading claims, including those alleged herein such that the
7 Individual Defendant's actions are unlawful. As alleged herein, each of the Individual Defendants
8 violated California Business & Professions Code §§ 17500, *et seq.* (the "FAL").

9 115. As set forth in the recent Indictment against Bankman-Fried, he is alleged to have
10 engaged in wire fraud and conspiracy to commit wire fraud on customers, wire fraud and
11 conspiracy to commit wire fraud on lenders, conspiracy to commit commodities fraud, conspiracy
12 to commit securities fraud, conspiracy to commit money laundering, and conspiracy to defraud
13 the United States and violate campaign finance laws. As set forth above, Ellison and Wang have
14 plead guilty to the Superseding Information in *United States v. Caroline Ellison*, S2 22 Cr. 673
15 and in *United States v. Zixiao (Gary) Wang*, S1 22 Cr. 673.

16 116. The SEC Actions allege fraud by the Individual Defendants in the offer or sale of
17 securities in violation of Section 17(a) of the Securities Act of 1933, and fraud in connection with
18 the purchase or sale of securities in violation of Section 10(b) of the Securities Exchange Act of
19 1934 and Rule 10b-5 thereunder. Ellison and Wang have entered consent judgments in the SEC
20 Ellison/Wang Action.

21 117. The CFTC Action filed against Bankman-Fried, Ellison and Wang alleges fraud in
22 violation of Section 6c(1) of the Commodity Exchange Act, and Regulation 180.1(a)(1), (3)
23 thereunder, and fraudulent misstatements of material fact and material omissions in violation of
24 Section 6c(1) of the Commodity Exchange Act, and Regulation 180.1(a)(2) thereunder. Ellison
25 and Wang have entered consent judgments as to claims against them in the CFTC Action.

26 118. Each of the Individual Defendants participated with Bankman-Fried in one or more
27 of the acts and violations of law that are now alleged against Bankman-Fried, Ellison and Wang
28 in the governmental actions alleged above. The Individual Defendants caused the FTX Entities to

offer the Accounts, collected and/or controlled the funds and assets that customer deposited into the Accounts, and conducted business by or on behalf of the FTX Entities using the means and instruments of interstate commerce including by mail, internet, and other electronic means. These activities set forth numerous unlawful acts that violate federal and state statutory and common law, and thus the Individual Defendants have committed unlawful acts in violation of the UCL and FAL.

119. **Fraudulent**: A practice is “fraudulent” pursuant to the UCL if members of the general public were or are likely to be deceived.

120. The Individual Defendants’ statements regarding the legality, nature and viability of Accounts are deceptive to the public. Bankman-Fried and the FTX Entities operated the activities of the FTX Entities in a manner alleged to be equivalent to a Ponzi-scheme, which conduct is fraudulent and deceives the public as to the viability and nature of the FTX Entities.

121. **Unfair**: The conduct undertaken and engaged in by the Individual Defendants to market and sale the Accounts is, and was, unfair pursuant to the UCL because it was immoral, unethical, unscrupulous, or substantially injurious to consumers in inducing them to deposit funds into, and/or maintain funds in, Accounts with the FTX Entities when the Accounts were operated contrary to the Terms of Use and User Agreements and what was represented to consumers as alleged herein, including the omission of the material fact that the Accounts would be run in the nature of a Ponzi-scheme.

122. The utility of the Defendants’ conduct, if any, does not remotely outweigh the gravity of the harm to consumers, who were victims of the Defendants’ misconduct. The Defendants’ conduct with respect to the operation of the FTX Entities is unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one that consumers, can reasonably avoid. Plaintiff and the Class would not have deposited funds into Accounts with the FTX Entities had they known that the Individual Defendants’ statements were in fact misrepresentations and deceitful.

123. As alleged herein, the harm suffered by Plaintiff and the Class was directly and proximately caused by the deceptive and unfair practices of the Individual Defendants in violation

of Section 17200 related to the Accounts and the operation of the FTX Entities. Plaintiff and the Class lost money or property as a result of the Individual Defendants' conduct alleged herein.

124. In accordance with California Business & Professions Code § 17203, Plaintiff seeks an order enjoining the Individual Defendants from continuing to conduct business through fraudulent, unlawful and unfair acts and practices.

125. On behalf of the Class, Plaintiff also seeks an order for the restitution of all monies made into Accounts with the FTX Entities, which were made resulting from acts of fraudulent, unfair, or unlawful competition alleged herein.

COUNT II

Violation of California's False Advertising Law Cal. Bus. & Prof. Code §§ 17500, *et seq.* (Against the Individual Defendants on Behalf of Plaintiff and the Class)

126. Plaintiff alleges each of the foregoing paragraphs as if fully set forth herein.

127. This Count is asserted against the Individual Defendants and is based upon California's False Advertising Law ("FAL"), which prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code § 17500. Specifically, Section 17500 provides, in pertinent part, that:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.

128. As alleged herein, the Individual Defendants made statements regarding the Accounts and the FTX Entities that were untrue or misleading. In statements made (or

1 disseminated or caused to be made or disseminated) before the public in the State of California, or
2 made (or disseminated or caused to be made or disseminated) from the State of California before
3 the public in any state in the manner set forth in Section 17500, the Individual Defendants publicly
4 represented, among other things, that FTX offered a viable and safe way to invest in crypto, and
5 that the Accounts would be operated in the manner set forth in the Terms of Service and User
6 Agreements. These and other statements alleged herein were designed to deceive, and did deceive,
7 consumers into investing with and/or maintaining investments with, the FTX Entities, including
8 but not limited to the Accounts.

9 129. The Individual Defendants' claims that Accounts and the FTX Entities were viable
10 and safe for investing in crypto, or that the assets in the Accounts were segregated, among other
11 representations alleged herein, were materially false due to the commingled nature of the FTX
12 Entities' businesses and movement of the assets and/or funds in the Accounts, as demonstrated by
13 the subsequent bankruptcy of the FTX Entities in the Fall of 2022 and the related governmental
14 investigations and actions.

15 130. The Individual Defendants knew, or in the exercise of reasonable care should have
16 known, that all these claims relating to the FTX Entities and the viability and safety of, and terms
17 of usage of, the Accounts were untrue or misleading. The Individual Defendants failed to
18 adequately inform Plaintiff and the Class of the true nature of the Accounts and the FTX Entities.

19 131. Plaintiff and other members of the Class opened Accounts with the FTX Entities
20 and transferred money to those Accounts in reliance, in whole or in part, on the Individual
21 Defendants' representations about the nature of the investments offered by the FTX Entities and
22 Accounts, and their viability and safety, and would not have so invested or would have paid less
23 for the investments if they had known the truth. When the truth about the FTX Entities and
24 Accounts began to be publicly revealed, as alleged herein, harm resulted to Plaintiffs and the Class
25 as a result of the FTX Entities' need for bankruptcy protection, and the resulting government
26 investigations have begun to demonstrate the depth of the deceit practiced upon Plaintiff and the
27 Class by the Individual Defendants and the business practices in which they caused the FTX
28 Entities to engage or facilitated the FTX Entities to operate.

132. Based upon the conduct alleged herein, the Individual Defendants are liable pursuant to Cal. Bus. & Prof. Code § 17500.

COUNT III

Fraudulent Concealment (Against the Individual Defendants on behalf of Plaintiff and the Class)

133. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

134. This Count is asserted against the Individual Defendants and is based upon the claim of fraudulent concealment under common law.

135. The Individual Defendants omitted an existing fact about the FTX Entities and Accounts when they failed to disclose information regarding the true nature of the FTX Entities and Accounts, as alleged herein. These omissions relate to the core purposes and operation of the Accounts as represented to Plaintiff and the Class.

136. The omissions alleged herein by the Defendants are material because Plaintiff and the Class would not have transacted with the FTX Entities had they known true nature of the FTX Entities and Accounts.

137. The Individual Defendants marketed and sold the Accounts and FTX's products and services to Plaintiff and the Class despite having knowledge of the true nature of the FTX Entities and the Accounts, as well as the financial condition of the FTX Entities. The Individual Defendants, notably Bankman-Fried, caused FTX US and FTX Trading to represented that their financial statements conformed to GAAP and were audited.

138. The Individual Defendants intended that Plaintiff and the Class would rely on the Individual Defendants' statements alleged herein, including those regarding the safety and nature of the FTX Entities and the Accounts, including the statements about GAAP, to increase the number of customers opening Accounts.

139. Plaintiff and the Class were not aware of the true nature and lack of safety of the Accounts and the FTX Entities' platform and could not reasonably have discovered those true characteristics. Similarly, Plaintiff and the Class were not aware of the true nature of the FTX

1 Entities' financial condition, lack of proper accounting procedures and internal controls, that the
2 "[a]udited financial statements' do not include information about Alameda's undocumented 'line
3 of credit' from FTX," or that the financial statements, as a result, were not compliant with GAAP,
4 and could not reasonably have discovered those true characteristics.

5 140. Plaintiff and the Class relied on the Individual Defendants' statements in that they
6 deposited any amount of funds into Accounts with the FTX Entities, which they would not have
7 done had they known that the assets and/or funds in the Accounts would not be segregated or used
8 in the manner as alleged herein.

9 141. Plaintiff and the Class had the right to rely on the Individual Defendants' statements
10 and omissions that created the false impression that the Accounts were safe and reliable based on
11 reasonable purchaser expectations that FTX would remain solvent, was handling their Accounts
12 in conformity with the representations alleged herein, that the FTX Entities' financial statements
13 were accurate and its practices conformed to the representations set forth herein, and that the
14 Auditor Defendants had conducted a GAAS compliant audit in connection with issuing the Audit
15 Reports, and had been independent while undertaking the engagement for the FTX Entities.

16 142. The Individual Defendants had an affirmative duty to disclose the true nature of the
17 FTX Entities and Accounts to prospective and actual customers and investors because they were
18 in a superior position to know the true nature of the FTX Entities and Accounts.

19 143. The Individual Defendants fraudulently concealed the nature of the FTX Entities,
20 the financial condition of the FTX Entities, and the nature and use of customer funds deposited
21 with, and into, the Accounts, and this conduct caused damage to Plaintiff and the Class.

22 **COUNT IV**

23 **Negligent Misrepresentation** 24 **(Against the Individual Defendants on behalf of Plaintiff and the Class)**

25 144. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
26 paragraphs as if fully set forth herein.

27 145. Plaintiff brings this claim against each of the Individual Defendants for negligent
28 representation.

1 148. The representations made by the Individual Defendants in connection with the FTX
2 Entities and the Accounts were material and would have been considered by a reasonable
3 consumer in making decisions to enter the Accounts or engage in any transactions with the FTX
4 Entities.

150. As a result, Plaintiffs and members of the Class were directly and proximately injured by the Individual Defendants' negligence in failing to inform Plaintiff and members of the Class of the true nature of the operations of the Accounts and use of their assets and money contained within those Accounts.

**Intentional Misrepresentation
(Against the Individual Defendants on behalf of Plaintiff and the Class)**

152. The Individual Defendants represented to Plaintiff and the Class, as a true fact, that FTX's products and/or services were safe and reliable, and that the funds and/or assets used by

1 Plaintiff and Class members to open or fund Accounts would be segregated and not transferred to
2 other entities. The Individual Defendants also represented that the financial statements of FTX
3 complied with GAAP.

4 153. The representations of the Individual Defendants were false as alleged herein.
5 Among other things, as stated in paragraph 51 of the complaint in the SEC Bankman-Fried Action,
6 FTX's audited financial statements "do not include information about Alameda's undocumented
7 'line of credit' from FTX" and that other information discussed was "at the very least, materially
8 misleading." FTX's current CEO has now advised that those financial statements should not be
9 relied upon and has been quoted as having "substantial concern as to the information presented in
10 these audited financial statements."

11 154. The Individual Defendants knew the representations were false when they made
12 them because they controlled the FTX Entities and had full access to the information about the
13 manner in which they were causing the FTX Entities to market, receive, and handle monies and
14 assets from Plaintiff and the Class, and/or they made the representations recklessly and without
15 regard for the truth of what was being represented.

16 155. The Individual Defendants made the representations alleged herein with the intent
17 to induce Plaintiff and the Class to rely on the representations.

18 156. Plaintiff and the Class reasonably relied on the representations.

19 157. Plaintiff and the Class were harmed and damaged.

20 158. The reliance by Plaintiff and the Class on Individual Defendants' representations
21 were a substantial factor in causing the harm to the Plaintiff and the Class.

22 **COUNT VI**

23 **Fraud**

24 **(Against the Individual Defendants on behalf of Plaintiff and the Class)**

25 159. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
26 paragraphs as if fully set forth herein.

1 160. At the time Plaintiff and Class members agreed to have an Account or opened an
2 Account, the Individual Defendants did not disclose, but concealed and misrepresented the true
3 facts related to the Accounts, as alleged herein.

4 161. As detailed herein, the Individual Defendants represented to Plaintiff and the Class
5 that FTX's Accounts, products and/or services were safe and reliable, and that the funds and/or
6 assets used by Plaintiff and Class members to open or fund Accounts would be segregated and not
7 transferred to other entities. The Individual Defendants also represented that the financial
8 accounting of FTX complied with GAAP.

9 162. The representations of the Individual Defendants were false as alleged herein.

10 163. The Individual Defendants knew, or should have known, that the representations
11 were false when made they made them because they controlled the FTX Entities and had full
12 access to the information about the manner in which they were causing the FTX Entities to market,
13 receive, and handle monies and assets from Plaintiff and the Class, and/or they made the
14 representation recklessly and without regard for the truth of what was being represented.

15 164. The Individual Defendants also knew that the omissions and misrepresentations
16 regarding the Accounts and the FTX Entities use of customer funds and assets were material, and
17 that a reasonable consumer would rely upon Defendants' representations (and corresponding
18 omissions) in making the decision to have an Account and send money or assets to the Defendants.

19 165. The Individual Defendants in fact intended to deceive Plaintiff and Class members.

20 166. Plaintiff and Class members did not know, nor could they have known through
21 reasonable diligence, about how their monies and assets in the Accounts would be used by the
22 Individual Defendants and the FTX Entities in the manner alleged herein that was contrary to the
23 representations made to the Plaintiff and the Class.

24 167. Plaintiff and the Class members were reasonable in relying on the Individual
25 Defendants' misrepresentations (and corresponding omissions) in making their decision to send
26 money or assets to the Individual Defendants for purposes of opening an Account.

1 168. Plaintiff and Class members had a right to rely on the Individual Defendants'
2 misrepresentations (and corresponding omissions) in making their decision to send money or
3 assets to the Defendants for purposes of opening an Account.

4 169. Plaintiff and Class members sustained damages as a result of their reliance on the
5 Individual Defendants' omissions and misrepresentations, thus causing Plaintiff and Class
6 members to sustain actual losses and damages in a sum to be determined at trial, including punitive
7 damages.

8 **COUNT VII**

9 **Breach of Fiduciary Duty** 10 **(Against the Individual Defendants on behalf of Plaintiff and the Class)**

11 170. Plaintiff repeats and re-alleges each and every allegation contained in the
12 foregoing paragraphs as if fully set forth herein.

13 171. This Count is asserted against the Individual Defendants and is based upon their
14 breach of fiduciary duty to Plaintiff and the Class.

15 172. The Individual Defendants undertook to act on behalf of Plaintiff and the Class via
16 the Terms of Use and User Agreements, wherein the Individual Defendants agreed, on behalf of
17 the FTX Entities, to preserve the safety and security of the funds and/or assets in the Accounts that
18 Plaintiff and the Class had deposited, paid, delivered and entrusted to the FTX Entities, as alleged
19 in Section I of the Factual Allegations section alleged herein. As a result of their undertaking to
20 conform to the promises made in, among other representations, the Terms of Use and User
21 Agreements, the FTX Entities and the Individual Defendants owed fiduciary duties to Plaintiff and
22 the Class.

23 173. The FTX Entities and the Individual Defendants breached their fiduciary duties to
24 Plaintiff and the Class by, among other things, intentionally, knowingly, recklessly, willfully or
25 negligently engaging in the acts and conduct as alleged herein, including failing to establish
26 adequate internal controls, commingling the assets and/or funds deposited by Plaintiff and the
27 Class in the Accounts as promised in the Terms of Service and User Agreements, applicable
28 regulations and/or common law, misappropriating the assets and/or funds deposited by Plaintiff

1 and the Class in the Accounts, and/or permitting, authorizing and/or using funds and/or assets in
2 the Accounts to be used by the FTX Entities and/or the Individual Defendants for their own
3 purposes or for purposes not authorized by Plaintiff and the Class.

4 174. As a direct and proximate cause of the breaches of fiduciary duty by the FTX
5 Entities and the Individual Defendants, Plaintiff and the Class have been damaged and harmed in
6 an amount to be determined at trial, and they have been unable to access or withdraw their funds
7 and/or assets originally deposited in, or that were represented to be on deposit in, the Accounts.

8 **COUNT VIII**

9 **Aiding and Abetting Fraud** 10 **(Against All Defendants on behalf of Plaintiff and the Class)**

11 175. Plaintiff repeats and re-alleges each and every allegation contained in the
12 foregoing paragraphs as if fully set forth herein.

13 176. This Count is asserted against all Defendants for aiding and abetting the fraud
14 undertaken by the Individual Defendants and the FTX Entities, as alleged herein.

15 177. As alleged herein, the Individual Defendants made material misrepresentations
16 and omissions to Plaintiff and Class Members regarding, among other things, the nature and
17 safety of the FTX Entities and Accounts in order to induce confidence in the platform and
18 Accounts, and convince consumers to open Accounts.

19 178. Bankman-Fried entered into at least one agreement with the other Individual
20 Defendants for the express purpose of making misrepresentations or omissions in order to induce
21 and convince Plaintiff and consumers to invest in Accounts and put their money in the FTX
22 Entities.

23 179. Each of the Individual Defendants had knowledge of the fraud and wrongdoing by
24 the other Individual Defendants and the FTX Entities as a result of their experience and
25 relationship with the FTX Entities, and thus knew that the representations that the FTX Entities
26 and the Individual Defendants made about, among other things, the FTX Entities' treatment and
27 use of customer funds, financial condition, and conformity of the FTX Entities' accounting to
28 GAAP were deceitful and fraudulent when made. As a result, each of the Individual Defendants

provided substantial assistance to the other Individual Defendants in connection with the fraud alleged herein.

180. In addition, the Auditor Defendants knew that the representations by the Individual Defendants and the FTX Entities, alleged herein, including that the financial statements of the FTX.US and FTX Trading entities conformed with GAAP, were deceitful and fraudulent when made.

181. Armanino provided substantial assistance to the Individual Defendants and to FTX.US (*i.e.* the WRS Silo). Prager provided substantial assistance to the Individual Defendants and to FTX Trading (*i.e.* the Dot Com Silo). As alleged herein, each of the Auditor Defendants issued Audit Reports despite knowingly engaging in acts that violated auditor independence standards, and while knowing that the financial reporting and accuracy of the financial statements of the FTX.US entities (for Armanino) and the FTX Trading Entities (for Prager) were either materially misstated or lacking in proper support, based on the facts as described herein in Sections II and III of the Factual Allegations section. Facts alleged herein further supporting the lack of independence and substantial assistance include Prager publicly stating its “support” of FTX.US and posting on media that it has a “relationship” with FTX.US. Similarly, Armanino has tweeted support of Bankman-Fried as its “buddy.” Plaintiff alleges, upon information and belief, that the Auditor Defendants provided knowing and substantial assistance to the FTX Entities and the Individual Defendants in connection with the fraudulent conduct alleged herein.

182. Defendants’ conduct caused damages to Plaintiff and the Class in the amount of the money they invested in the FTX Entities that was lost as a result of the misconduct by the FTX Entities and the Individual Defendants that resulted in the insolvency and dissipation of customer assets.

COUNT IX

Aiding and Abetting Violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.* (Against All Defendants on behalf of Plaintiff and the Class)

183. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

184. This Count is asserted against all Defendants and is based upon the violations of Section 17200 alleged herein by the Individual Defendants.

185. The Individual Defendants each aided and abetted the other Individual Defendants in the unlawful, fraudulent, and unfair conduct alleged to violate Section 17200, *et seq.*, as alleged herein.

186. As alleged herein, each of the Defendants knew the conduct of the FTX Entities and the Individual Defendants constituted violations of Section 17200 and each of the Defendants gave substantial assistance or encouragement to the FTX Entities and/or the Individual Defendants to so act.

187. Each of the Defendants had knowledge of the fraud and wrongdoing by the FTX Entities as a result of their experience and relationship with the FTX Entities, and thus knew that the representations that the Individual Defendants made about, among other things, the FTX Entities' treatment and use of customer funds, financial condition, and conformity of the FTX Entities' accounting to GAAP were deceitful and fraudulent when made.

188. In addition, the Auditor Defendants knew that the representations about the financial statements of the FTX Entities conforming with GAAP and other statements concerning the FTX Entities alleged herein, were deceitful and fraudulent when made. The Auditor Defendants facilitated the violations of statutory and common law alleged herein by providing the Audit Reports that the Auditor Defendants knew that the FTX Entities and the Individual Defendants would use to solicit and/or maintain customers. As a result, the Auditor Defendants provided substantial assistance or encouragement to the FTX Entities and/or the Individual Defendants to engage in violations of Section 17200.

189. Defendants' conduct caused damages to Plaintiff and the Class in the amount of the money they invested in the FTX Entities that was lost as a result of the misconduct by the FTX Entities and the Individual Defendants that resulted in the insolvency and dissipation of customer assets.

COUNT X

**Aiding and Abetting Breaches of Fiduciary Duty
(Against All Defendants on behalf of Plaintiff and the Class)**

190. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

191. This Count is asserted against all Defendants and is based upon the claims of breach of fiduciary duty by the Individual Defendants alleged herein.

192. Each of the Individual Defendants aided and abetted the other Individual Defendants in the breaches of fiduciary duty, as alleged herein. The Auditor Defendants also aided and abetted the breaches of fiduciary duty by the Individual Defendants, as alleged herein.

193. As alleged herein, each of the Defendants knew the conduct of the FTX Entities and the Individual Defendants constituted a breach of fiduciary duty based upon the violations of statutory and common law alleged herein, and each of the Defendants gave substantial assistance or encouragement to the FTX Entities and/or the Individual Defendants to so act.

194. Defendants' conduct caused damages to Plaintiff and the Class in the amount of the money they invested in the FTX Entities that was lost as a result of the misconduct by the FTX Entities and the Individual Defendants that resulted in the insolvency and dissipation of customer assets.

195. As a direct and proximate cause of the breaches of fiduciary duty by the FTX Entities and the Individual Defendants, and the aiding and abetting of those breaches of fiduciary duty by each of the Defendants, Plaintiff and the Class have been damaged and harmed in an amount to be determined at trial, and have been unable to access or withdraw their funds and/or assets originally deposited in, or that were represented to be on deposit in, the Accounts.

COUNT XI

**Civil Conspiracy
(Against All Defendants on behalf of Plaintiff and the Class)**

196. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

1 197. This Count is asserted against all Defendants and is based upon the claim of civil
2 conspiracy under common law.

3 198. The Individual Defendants made material misrepresentations and omissions to
4 Plaintiff and Class Members regarding the nature and safety of the FTX Entities and Accounts in
5 order to induce confidence in the platform and convince consumers to invest in what was a patently
6 misleading and deceptive scheme, thus deceiving consumers and potential customers that their
7 investments in the FTX Entities were safe.

8 199. Bankman-Fried entered into at least one agreement with the other Defendants for
9 the express purpose of making misrepresentations or omissions in order to induce and convince
10 Plaintiff and consumers to invest in the Accounts and put their money in the FTX Entities.

11 200. Defendants engaged in concerted unlawful acts, particularly in the form of
12 misrepresentations and omissions made to Plaintiff and the Class for the purposes of inducing
13 them to invest with the FTX Entities and in Accounts. As set forth above, Ellison and Wang have
14 plead guilty to the Superseding Information in *United States v. Caroline Ellison*, S2 22 Cr. 673
15 and in *United States v. Zixiao (Gary) Wang*, S1 22 Cr. 673.

16 201. The conspiracy substantially aided the wrongdoing conducted by the FTX Entities
17 and Bankman-Fried. Additionally, each of the Defendants had knowledge of the fraud and
18 wrongdoing by the FTX Entities as a result of their experience and relationship with the FTX
19 Entities, and thus knew or should have known that the representations that the Individual
20 Defendants made about, among other things, the FTX Entities' treatment and use of customer
21 funds, financial condition and conformity of the FTX Entities' accounting to GAAP were deceitful
22 and fraudulent when made.

23 202. In addition, the Auditor Defendants knew or should have known that the
24 representations about the financial statements of the FTX Entities conforming with GAAP and
25 other supportive statements concerning the FTX Entities alleged herein, were deceitful and
26 fraudulent when made.

27 203. This conspiracy caused damages to Plaintiff and the Class in the amount of the
28 money they invested in the FTX Entities that was lost as a result of the misconduct by the FTX

1 Entities and the Individual Defendants that resulted in the insolvency and dissipation of customer
2 assets.

3 **COUNT XII**

4 **Conversion**
5 **(Against the Individual Defendants on behalf of Plaintiff and the Class)**

6 204. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
7 paragraphs as if fully set forth herein.

8 205. This Count is asserted against the Individual Defendants.

9 206. Plaintiff and the Class deposited funds and/or assets and maintained funds and/or
10 assets in the Accounts, and Plaintiff and the Class each owned and had the right to possess the
11 assets and/or funds in their respective Accounts. Specifically, the FTX Entities and the Individual
12 Defendants represented to Plaintiff and the Class that they had the right to withdraw their funds
13 and/or assets in the Accounts, and that the funds and/or assets in the Accounts would be
14 segregated, as set forth in the Terms of Use and User Agreements. As set forth herein, the funds
15 and/or assets in the Accounts were not maintained in accordance with the Terms of Use and/or
16 User Agreements at all relevant times alleged herein, and the funds and/or assets in the Accounts
17 have been converted by the FTX Entities and/or the Individual Defendants for purposes not set
18 forth in the Terms of Use and User Agreements, have been misappropriated by the Individual
19 Defendants and/or have been frozen due to the Bankruptcy Proceedings.

20 207. The FTX Entities and the Individual Defendants substantially interfered with the
21 funds and/or assets of the Plaintiff and the Class in their respective Accounts by knowingly and/or
22 intentionally taking possession of the Property to use for purposes not authorized by the Plaintiff
23 and the Class, spending the funds and/or assets in the Accounts for items not authorized pursuant
24 to the Terms of Use and User Agreements, and/or refusing to return the funds and/or assets in the
25 Accounts after customers demanded return of their assets and/or funds in the Accounts.

26 208. Plaintiff and the Class did not consent to the use of their assets and/or funds in the
27 Accounts in the manner alleged above.
28

210. The conduct of the FTX Entities and the Individual Defendants was a substantial factor in causing the harm alleged herein to Plaintiff and the Class.

6 **Unjust Enrichment**
7 **(Against the Individual Defendants on behalf of Plaintiff and the Class)**

8 211. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
9 paragraphs as if fully set forth herein.

212. This Count is asserted against the Individual Defendants based upon the monetary benefits the Plaintiff and the Class conferred on these defendants in the form of their deposits of funds and/or assets into the Accounts that were used to continue the ongoing scheme alleged herein, including making it appear that the FTX Entities were functioning as represented to customers and others, and Plaintiff and the Class also unknowingly conferred a benefit on these defendants because these defendants misappropriated some or all of the funds and/or assets in the Accounts. Plaintiff and the Class also conferred a benefit on these defendants based upon fees paid to the FTX Entities for transactions.

213. The Individual Defendants have knowledge of the benefits conferred upon them by Plaintiff and the Class.

20 214. The Individual Defendants should not be permitted, in good conscience and equity,
21 to retain the funds and/or assets that they have received as a result of their misappropriation of
22 customer funds and assets alleged herein.

215. As a result of the Individual Defendants' conduct, Plaintiff and the Class suffered damages in the form of the transaction fees they paid to the FTX Entities, and in the loss of their assets and/or funds deposited into the Accounts that were misappropriated by the Individual Defendants or used for purposes not authorized pursuant to the terms of the User Agreements and Terms of Use.

216. Plaintiff and the Class have no adequate remedy at law.

218. The Individual Defendants' conduct was willful, intentionally deceptive, and intended to cause economic injury to Plaintiff and the Class. Plaintiff and the Class are therefore entitled to punitive damages.

**Declaratory Judgment, Cal. Code Civ. Proc. § 1060
(Against the Defendants on Behalf of Plaintiff and the Class)**

220. This Count is asserted against the Defendants under Cal. Code Civ. Proc. § 1060.

222. Plaintiff and the Class have an obvious and significant interest in the outcome of this action.

224. If Plaintiff and the Class knew the true facts surrounding Accounts and the FTX Entities, including but not limited to that certain of the Accounts were used to solicit customers

1 for unregistered securities, Plaintiff and the Class would not have deposited funds and/or assets
2 into Accounts with the FTX Entities.

3 225. A justiciable controversy exists as to whether the Accounts were marketed, offered
4 and/or sold illegally and whether the Defendants unlawfully and/or illegally solicited deposits of
5 funds and/or assets from Plaintiff and the Class.

6 226. Plaintiff and the Class thus seek an order declaring that certain of the Accounts
7 were unregistered securities and were required to be registered with the SEC and state regulatory
8 authorities, that the Defendants were required to disclose that certain of the Accounts were
9 unregistered securities, that the Individual Defendants caused the FTX Entities to violate the
10 Terms of Service and/or User Agreements by the acts perpetrated using customer assets as
11 described herein, and that each of the Defendants received payment or financial benefits from
12 misrepresenting the FTX Entities and Accounts to customers and potential customers of the FTX
13 Entities, including Plaintiff and members of the Class.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

16 A. Determining that the instant action may be maintained as a class action under
17 Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative
18 and Plaintiff's counsel as Class Counsel;

19 B. Requiring Defendants to provide an accounting to Plaintiff and the Class, and to
20 pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged
21 herein;

22 C. Awarding Plaintiff and the other members of the Class restitution and/or injunctive
23 relief, including relief in the public interest to prevent further harm from, and/or rectify the harm
24 that has resulted from, Defendants' misconduct;

25 D. Requiring the Individual Defendants to return to Plaintiff and the Class any monies
26 or assets they received and by which they are unjustly enriched;

E. Requiring the Auditor Defendants to return, for distribution to the Plaintiff and the Class, any auditing, consulting, or other fees or payments they received in connection with any activities related to the FTX Entities;

F. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees, and other costs, including any attorneys' fees pursuant to Cal. Code of Civil Procedure Section 1021.5; and

G. Awarding such other and further relief as this Court may deem just and proper, including punitive damages.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

DATED: January 5, 2023

KAPLAN FOX & KILSHEIMER LLP

By: /s/ Laurence D. King
Laurence D. King

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This docket is current through 01/30/2023

Today's Date: 2/10/2023

Source: U.S. District Court, Southern District of California (San Diego)

Court: U.S. District Court, Southern District of California (San Diego)
Case Title: [Gonzalez v. Silvergate Bank et al](#)
Case: 3:22-CV-01981
Judge: Judge [Roger T. Benitez](#)
Date Filed: 12/14/2022

SYNOPSIS INFORMATION

Allegations: Class action. Defendants failed to adequately monitor and stop the fraudulent activities of FTX/Alameda, and Defendants' acts and omissions directly in furtherance of this scheme, carried out through defendant accounts, were the cause of the investment losses of Plaintiff and class members.

Damages: \$5,000,000.00 in damages, class action certification, restitution, interest, fees and costs.

COMPLAINT (MANUALLY RETRIEVED)

 [Original Image of this Document \(PDF\)](#)

CASE INFORMATION

Case Number: 3:22CV01981
Referred To: Magistrate Judge [William V. Gallo](#)
Jury Demand: Plaintiff
Nature of Suit: Torts: Other Fraud (370)
Key Nature of Suit: Torts/Negligence; Personal Property; Other Fraud (430.77.05)
Key Nature of Suit: Class Action (115)
Jurisdiction: Diversity
Cause: 28 USC 1332fd Diversity-Breach of Fiduciary Duty

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Email Address:

CALENDAR INFORMATION[View Calendar Information](#)**DOCKET PROCEEDINGS (11)**

Entry #:	Date:	Description:		
11	12/27/2022	ORDER Granting Joint Motion For Extension Of Time To Respond To Complaint [ECF No. 8]. Signed by Judge Roger T. Benitez on 12/27/2022. (ddf) (Entered: 12/27/2022)	View	Add to request
10	12/21/2022	NOTICE OF RELATED CASE(S) by Joewy Gonzalez of case(s) 3:22-cv-01901-L-AGS . (Girard, Daniel) (ddf). (Entered: 12/21/2022)	View	Add to request
9	12/21/2022	NOTICE of Party With Financial Interest by Alan J. Lane, Silvergate Bank, Silvergate Capital Corporation re 8 Joint MOTION for Extension of Time to File Response/Reply as to 1 Complaint, /Joint Motion to Extend Defendants' Deadline to Respond to the Class Action Complaint /Defendant Silvergate Capital Corporation's Notice of Parties With Financial Interest Per Civil Local Rule 40.2 and Rule 7.1 of the Federal Rules of Civil Procedure . No Parties With Financial Interest. (Towill, Polly) (ddf). (Entered: 12/21/2022)	View	Add to request
8	12/21/2022	Joint MOTION for Extension of Time to File Response/Reply as to 1 Complaint, /Joint Motion to Extend Defendants' Deadline to Respond to the Class Action Complaint by Alan J. Lane, Silvergate Bank, Silvergate Capital Corporation. (Towill, Polly) (ddf). (Entered: 12/21/2022)	View	Add to request

7	12/21/2022	NOTICE OF WITHDRAWAL OF DOCUMENT by Silvergate Capital Corporation, Silvergate Bank, Alan J. Lane /Withdrawal of Documents Filed as Docket Numbers 6, 6-1 and 6-2. (Macarr, Madalyn) (ddf). (Entered: 12/21/2022)	View	Add to request
6	12/20/2022	Joint MOTION for Extension of Time to File Response/ Reply as to 1 Complaint, /Joint Motion to Extend Defendants' Deadline to Respond to the Class Action Complaint by Alan J. Lane, Silvergate Bank, Silvergate Capital Corporation. (Attachments: # 1 [Proposed] Order Granting Joint Motion to Extend Defendants' Deadline to Respond to the Class Action Complaint, # 2 Notice Defendant Silvergate Capital Corporation's Notice of Parties With Financial Interest Per Civil Local Rule 40.2 and Rule 7.1 of the Federal Rules of Civil Procedure)(Macarr, Madalyn) QC Mailer re Document contains wrong signature (ddf). (Entered: 12/20/2022)	View	Add to request
5	12/20/2022	NOTICE of Appearance of Madalyn A. Macarr by Madalyn Annabel Macarr on behalf of Alan J. Lane, Silvergate Bank, Silvergate Capital Corporation (Macarr, Madalyn)Attorney Madalyn Annabel Macarr added to party Alan J. Lane(pty:dft), Attorney Madalyn Annabel Macarr added to party Silvergate Bank(pty:dft), Attorney Madalyn Annabel Macarr added to party Silvergate Capital Corporation(pty:dft) (ddf). (Entered: 12/20/2022)	View	Add to request
4	12/20/2022	NOTICE of Appearance of John Landry by John Michael Landry on behalf of Alan J. Lane, Silvergate Bank, Silvergate Capital Corporation (Landry, John)Attorney John Michael Landry added to party Alan J. Lane(pty:dft), Attorney John Michael Landry added to party Silvergate Bank(pty:dft), Attorney John Michael Landry added to party Silvergate Capital	View	Add to request

3	12/20/2022	Corporation(pty:dft) (ddf). (Entered: 12/20/2022) NOTICE of Appearance of Polly Towill by Polly Towill on behalf of Alan J. Lane, Silvergate Bank, Silvergate Capital Corporation (Towill, Polly)Attorney Polly Towill added to party Alan J. Lane(pty:dft), Attorney Polly Towill added to party Silvergate Bank(pty:dft), Attorney Polly Towill added to party Silvergate Capital Corporation(pty:dft)(ddf). (Entered: 12/20/2022)	View	Add to request
2	12/14/2022	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (mjw) (jrd) (Entered: 12/14/2022)	View	Add to request
1	12/14/2022	COMPLAINT With Jury Demand Against Silvergate Bank, Silvergate Capital Corporation, Alan J. Lane (Filing fee \$402.00 receipt number ACASDC-17423842.), filed by Joewy Gonzalez. (Attachments: # 1 Civil Cover Sheet) The new case number is 3:22-cv-1981-BEN-WVG. Judge Roger T. Benitez and Magistrate Judge William V. Gallo are assigned to the case. (Girard, Daniel C.) (mjw)(jrd) (Entered: 12/14/2022)	View	Add to request

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOEWY GONZALEZ, on behalf of all
others similarly situated,

Plaintiff,

v.

SILVERGATE BANK, SILVERGATE
CAPITAL CORPORATION, and ALAN J.
LANE,

Defendants.

Case No. **'22CV1981 BEN WVG**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Joewy Gonzalez, on behalf of himself and all others similarly situated,
2 brings this action against Defendants Silvergate Bank, Silvergate Capital Corporation,
3 and Alan J. Lane, and alleges as follows.

4 **INTRODUCTION**

5 1. Plaintiff invested his savings in cryptocurrency, digital assets purportedly
6 secured by anti-counterfeiting cryptography. Plaintiff entrusted his investments to FTX,
7 a cryptocurrency exchange founded by Samuel Bankman-Fried. FTX promised investors
8 that they could store assets securely as they gained in value, cash them out, or trade them
9 for other assets or financial products. With FTX's recent collapse, Plaintiff and other
10 FTX investors are unable to recover their investments and face years of uncertainty and
11 catastrophic losses.

12 2. Bankman-Fried not only ran FTX's exchange and affiliated companies but
13 also co-founded Alameda Research LLC, a cryptocurrency trading firm. Unlike FTX,
14 which purported to allow investors to store, trade, or cash out their "tokens" and other
15 crypto assets, Alameda executed cryptocurrency trades on its own behalf, including on
16 the FTX platform. Unbeknownst to Plaintiff and the other investors, Alameda and FTX
17 operated as a single criminal enterprise under the control of Bankman-Fried. The new
18 CEO of FTX, who took over after the company declared bankruptcy in November 2022,
19 stated: "Never in my career have I seen such a complete failure of corporate controls and
20 such a complete absence of trustworthy financial information as occurred here."
21 Deposits, both in fiat currency (*i.e.*, U.S. dollars) and in cryptocurrency, which FTX
22 undertook to store for trading or potential investment, were diverted to and commingled
23 with Alameda's assets. Alameda used FTX investor funds for a variety of unauthorized
24 purposes, including proprietary, speculative trading on other digital-asset exchanges,
25 funding risky crypto investments, operations, marketing, political contributions, luxury
26 real estate purchases, and funding hundreds of millions of dollars in loans to Bankman-
27 Fried and other FTX executives.

1 3. Silvergate, a publicly traded and federally regulated bank catering to
2 cryptocurrency customers, maintained both FTX and Alameda accounts. It directly aided
3 and abetted FTX’s fraud and breaches of fiduciary duty via first-hand participation in the
4 commingling of funds, improper transfers, and lending out of customer money.
5 Silvergate processed billions in transfers from FTX’s client account at Silvergate to the
6 Alameda accounts. Silvergate also accepted deposits from FTX investors—intended to
7 be stored, traded, or cashed out—that at Bankman-Fried’s direction were wired straight
8 to Alameda bank accounts and misused. Bankman-Fried explained that he “forgot”
9 about the improper transfers until the company imploded, telling a reporter “it looks like
10 people wired \$8b to Alameda and ‘oh god we basically forgot about the stub account
11 that corresponded to that so it was never delivered to FTX.’”

12 4. Silvergate is liable for its role in furthering FTX’s investment fraud and
13 breaches of fiduciary duty and is obligated under common law to make Plaintiff and the
14 other investors whole.

15 **JURISDICTION AND VENUE**

16 5. This Court has jurisdiction over this action pursuant to 28 U.S.C.
17 § 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy
18 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and at least one
19 member of the proposed plaintiff class is a citizen of a State different from a Defendant.

20 6. The Court has personal jurisdiction over Defendants based on their
21 substantial, continuous and systematic contacts with the State and because Defendants
22 have purposely availed themselves of the benefits and privileges of conducting business
23 activities within the State.

24 7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c)
25 because Defendants Silvergate Bank and Silvergate Capital are headquartered in this
26 District and a substantial part of the events or omissions giving rise to the claims
27 occurred in the District.

PARTIES

A. Plaintiff

8. Plaintiff Joewy Gonzalez is a citizen and resident of Revere, Massachusetts. Starting in November 2021, Plaintiff placed funds in an FTX account in anticipation of executing cryptocurrency trades, engaging in investment activity. After FTX announced its bankruptcy, Plaintiff attempted to withdraw the cryptocurrency in his FTX account but was unable to do so.

B. Defendants

9. Defendant Silvergate Bank is a California corporation with its principal place of business in La Jolla, California.

10. Chartered by the State of California, Silvergate Bank is overseen by the Federal Reserve Bank of San Francisco; its deposits are guaranteed by the Federal Deposit Insurance Corporation.

11. Silvergate Bank primarily serves the cryptocurrency industry—its customers include cryptocurrency exchanges, institutional investors, and stablecoin issuers, such as Coinbase, Bitstamp, Crypto.com, Kraken, and Gemini.

12. Defendant Silvergate Capital Corporation is a Maryland corporation with its principal place of business in La Jolla, California and the parent of Silvergate Bank (together, “Silvergate”).

13. Defendant Alan J. Lane is President and Chief Executive Officer of Silvergate Capital, Chief Executive Officer of Silvergate Bank and a member of Silvergate Capital’s board of directors. He resides in Temecula, California.

OVERVIEW OF RELEVANT BANKING REGULATIONS

14. Silvergate is obligated to comply with the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.* (“BSA”), including regulations broadening its anti-money laundering provisions. The Bank Secrecy Anti-Money Laundering Manual promulgated by the Federal Financial Institutions Examination Council (FFIEC Manual) summarizes the

1 applicable anti-money laundering compliance program requirements, expectations for
2 risks and risk management, industry sound practices, and examination procedures.

3 15. Silvergate must maintain procedures that allow it to “form a reasonable
4 belief that it knows the true identity of each customer.” 31 C.F.R. §§ 1020.220(a)(1), (2);
5 12 C.F.R. § 21.21. Silvergate must maintain a customer due diligence program to assist
6 in predicting the types of transactions, dollar volume, and transaction volume each
7 customer is likely to conduct, furnishing a means for the bank to notice unusual or
8 suspicious transactions for each customer. The customer due diligence program allows
9 the bank to know the financial activity of its customers and the ability to predict the type
10 and frequency of transactions in which its customers are likely to engage. Federal
11 guidelines thus require that Silvergate take reasonable steps to “determine the identity of
12 all nominal and beneficial owners of the private banking account” and “determine the
13 source(s) of funds deposited into the private banking account and the purpose and
14 expected use of the account; and . . . review the activity of the account to ensure that the
15 activity is consistent with the information obtained about the source of funds, the stated
16 purpose and the expected use of the account, as needed to guard against money
17 laundering, and to report any suspicious activity.”

18 16. Customer due diligence programs must be tailored to the risk presented by
19 particular customers, such that the higher the risk presented, the more attention is paid.
20 Where a customer is determined to be high risk, the anti-money laundering guidelines
21 direct federally regulated banks like Silvergate to gather additional information about the
22 customer and its accounts, including determining: (1) purpose of the account; (2) source
23 of funds; (3) proximity of customer’s residence to the bank; and (4) explanations for
24 changes in account activity.

25 17. Moreover, Silvergate and its personnel must be able to identify and take
26 appropriate action once on notice of any of a series of money laundering “red flags” set
27 forth in the FFIEC Manual. Among these are: (1) funds transfers sent in large, round
28

1 dollar amounts; (2) funds transfer activity occurs to or from a financial institution
2 located in a higher risk jurisdiction distant from the customer's operations; (3) frequent
3 involvement of multiple jurisdictions or beneficiaries located in higher-risk offshore
4 financial centers; (4) repetitive or unusual funds transfer activity; (5) funds transfers sent
5 or received from the same person to or from different accounts; (6) unusual funds
6 transfers that occur among related accounts or among accounts that involve the same or
7 related principals; (7) transactions inconsistent with the account holder's business; (8)
8 customer use of a personal account for business purposes; (9) multiple accounts
9 established in various corporate names that lack sufficient business purpose to justify the
10 account complexities; and (10) multiple high-value payments or transfers between shell
11 companies without a legitimate business purpose.

12 18. In addition, federal law requires Silvergate to conduct "enhanced" due
13 diligence when establishing or maintaining a correspondent account for a financial
14 institution that operates under an offshore license (as FTX did) or is incorporated in a
15 jurisdiction known for failing to cooperate with international anti-money laundering
16 principles (as FTX was, having incorporated in the Bahamas).

17 19. The FFIEC Manual also identifies "lending activities" and "nondeposit
18 account services," including for nondeposit investment products, as services requiring
19 enhanced due diligence and carrying a high risk of money laundering because they
20 facilitate a higher degree of anonymity and involve high volumes of currency. Therefore,
21 when investment trading or lending services are being run through the bank, the FFIEC
22 Manual requires heightened due diligence including determining the purpose of the
23 account, ascertaining the source and funding of the capital, identifying account control
24 persons and signatories, scrutinizing the account holders' business operations, and
25 obtaining adequate explanations for account activities.

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STATEMENT OF FACTS

A. The Cryptocurrency Industry

20. Cryptocurrency is a form of digital currency that first came to prominence in 2008, when an author under the pseudonym Satoshi Nakamoto published the whitepaper *Bitcoin: A Peer-to-Peer Electronic Cash System*. Nakamoto defined cryptocurrency as “an electronic payment system based on cryptographic proof instead of trust, allowing any two willing parties to transact directly with each other without the need for a trusted third party”—*i.e.*, a bank.

21. Cryptocurrency relies on a long list of public addresses, each bearing a unique label consisting of numbers and letters, corresponding to a specific amount of cryptocurrency. The address acts as a public key. The owner of the cryptocurrency holds a private key, which serves as a password to access the account, and allows people to send each other the cryptocurrency.

22. Cryptocurrency ownership is tracked on a public ledger. In the case of Bitcoin, for example, thousands of people who use Bitcoin maintain the ledger. When Bitcoin is sold, the transaction is broadcast to the entire network. Bitcoin miners (computers on the network) compile the transactions as they arrive into a group called a “block.” Once that block becomes official, the block is considered mined. New blocks will then refer to the blocks preceding them, forming a blockchain—the formal record of what transactions the network has agreed upon, and in what order.

23. The process of confirming a block is time- and resource-intensive, and involves the miner repeatedly attempting to generate a small enough number by running an algorithm. If the number is small enough—a setting determined by the Bitcoin software—then the miner has mined a block. If not, the process starts over with a different input. The calculations are so intensive that miners require special hardware, and often are run on large farms of computers that are always on.

24. Cryptocurrency has rapidly gained value over the past decade while experiencing high volatility. When Nakamoto's paper was first published, one Bitcoin—the original cryptocurrency—was worth zero dollars. In November 2021, one Bitcoin was worth more than \$67,000. As of the date of this complaint, one Bitcoin is worth over \$17,000.

25. Several new forms of cryptocurrency have proliferated since the advent of Bitcoin, many of which have been even more volatile than Bitcoin. FTT, the FTX token, was worth over \$77 in September 2021. Now it is worth around \$1.40.

26. Today, the primary way people buy the different types of cryptocurrency is through cryptocurrency exchanges. These are companies, like FTX, Coinbase, Kraken, and others, that accept regular currency in exchange for cryptocurrency. In other words, you wire an exchange an amount of money, and the exchange gives you title to a corresponding amount of cryptocurrency.

B. The FTX Exchange

27. The FTX group of companies was founded in 2019 and began as an exchange or marketplace for the trading of cryptocurrency assets. Until declaring bankruptcy, the FTX companies operated a multi-billion-dollar mobile application cryptocurrency investment service that offered trading in various options, futures, swaps, and other digital commodity derivative products. FTX also offered various services related to cryptocurrency trading. For example:

- FTX maintained a spot market on which FTX customers could trade cryptocurrency with other FTX customers in exchange for money or other cryptocurrency;
- FTX maintained spot-margin trading services, which enabled FTX customers to borrow against collateral in their FTX accounts and trade or lend cryptocurrency in their accounts to other FTX customers for purposes of executing trades; and

- FTX maintained an over-the-counter service that allowed investors to request quotes for spot cryptocurrency assets and to carry out trades.

28. Customers were able to access the FTX platform through the FTX website, FTX.com, as well as through its popular mobile app. The stated objective of FTX was to build a digital-asset trading platform and exchange to promote a better user experience, customer protection, and innovative financial products.

29. FTX grew rapidly after its founding in 2019. As of 2021, FTX stated that it held approximately \$15 billion in assets across its platforms.

30. As it raised money from investors, Bankman-Fried, his agents and affiliates continuously highlighted to the public the safe nature of the platform and its products. FTX touted automated risk mitigation procedures, including a program that calculated a customer's margin level every 30 seconds and automatically liquidated assets if collateral fell below a certain threshold. Bankman-Fried stated repeatedly that FTX and its customers were protected from others' losses due to this auto-liquidation program.

31. Bankman-Fried represented that FTX offered "complete transparency about the positions that are held [and] a robust, consistent, risk framework."

32. Similarly, FTX's terms of service assured investors they owned and controlled assets they placed on the exchange. Those terms stated unequivocally that "[t]itle to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading." The terms further provided that "[n]one of the Digital Assets in your Account are the property of, or shall or may be loaned to, FTX Trading" and that "You control the Digital Assets held in your account. At any time, subject to outages, downtime, and other applicable policies . . . you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party."

33. FTX also solicited investments that were purportedly loans to be used on the FTX.com exchange to purchase crypto assets that would generate promised returns.

Investors purchased FTT tokens (FTX’s proprietary token) on the understanding that FTX, using part of its profits, would buy back the tokens at various times.

34. FTT tokens and other FTX digital assets were not registered with any U.S. jurisdiction or regulatory authority. Unconstrained by U.S. securities law, FTX marketed vaguely described crypto investments as delivering “HIGH RETURNS WITH NO RISK”:

Investment offerings

PACKAGES

We offer one investment product:

15% annualized fixed rate loans (no lockup)

We can accept both fiat and crypto and can pay interest denominated in either. We can take on another \$200m in capital and still achieve returns that beat traditional and crypto markets.

For investors with specific risk profiles, we are happy to discuss custom packages. For investments of \$50m or more, we are willing to discuss higher rates of return.

HIGH RETURNS WITH NO RISK

These loans have **no downside** – we guarantee full payment the principal and interest, enforceable under US law and established by all parties’ legal counsel. We are extremely confident we will be pay this amount. In the unlikely case where we lose more than 2% over a month we will give all investors the opportunity to recall their funds and we will still guarantee full repayment.

35. Relatedly, in furtherance of its rapid fundraising, FTX deployed an aggressive, celebrity-fueled marketing campaign, which included well-known sports and entertainment figures such as Tom Brady, Gisele Bundchen, Shaquille O’Neal, Steph Curry, and others. FTX also obtained the naming rights to the Miami Heat’s venue, and formalized a partnership with the Golden State Warriors.

C. Alameda

36. Bankman-Fried founded Alameda Research, LLC (“Alameda”)—a quantitative trading firm specializing in cryptocurrency assets—in 2017, before founding FTX. Alameda initially focused mostly on high frequency arbitrage trading through which the company sought to exploit price differences for the same or similar assets

1 across various digital-asset platforms. Later, Alameda undertook other strategies, such as
2 market making, pooling cryptocurrency assets in exchange for interest, volatility trading,
3 and eventually, taking large equity stakes in various digital-asset companies.

4 37. According to Alameda, within a year of its founding, it had “become the
5 largest liquidity provider and market maker in the [digital] asset space,” and traded
6 “\$600 million to 1 billion a day” which it said was “roughly 5% of global volume in
7 digital asset trading.”

8 38. Bankman-Fried operated as the majority owner of Alameda at all relevant
9 times, and was the CEO of Alameda until fall 2021. Even after that, Bankman-Fried
10 continued to control Alameda, remaining a signatory on its bank accounts and
11 maintaining decision-making authority over all of its trading, investment, and financial
12 decisions.

13 **D. Bankman-Fried Used Alameda to Misappropriate FTX Investor Funds**

14 39. Throughout the period in which FTX was raising investor funds, Bankman-
15 Fried made repeated public statements assuring investors that their FTX assets were safe,
16 tweeting, for example: “Backstopping customer assets should always be primary.
17 Everything else is secondary”; and, “As always, our users’ funds and safety comes first.
18 We will always allow withdrawals (except in cases of suspected money
19 laundering/theft/etc.).”

20 40. Likewise, Bankman-Fried, individually, and through his agents and
21 employees, made a point of publicly maintaining that there were circuit breakers in place
22 to ensure the separation of Alameda and FTX, and to protect against Alameda’s
23 preferential treatment on the FTX platform. Bankman-Fried’s public statements
24 regarding this purported FTX/Alameda separation include:

- 25 • To the *Wall Street Journal*: “There are no parties that have privileged
26 access”;

- To *Bloomberg*: “Alameda is a wholly separate entity” and “We’re at arm’s length and don’t get any different treatment from other market-makers.”

41. In like vein, during an August 2022 media appearance, Alameda’s CEO described a purported firewall between FTX and Alameda:

They’re both owned by Sam, obviously. So ultimately, sort of aligned incentives in that way. We keep them quite separate in terms of day-to-day operations. We definitely have a Chinese wall in terms of information sharing to ensure that no one in Alameda would get customer information from FTX or anything like that, or any sort of special treatment from FTX. They really take that pretty seriously.

42. Even after the FTX bankruptcy, Bankman-Fried claimed to *The New York Times* that “Alameda is not, like, a company that I monitor day-to-day.” He similarly claimed to *New York Magazine* that Alameda is “not a company I run. It’s not a company I have run for the last couple years.”

43. In truth, far from “walling off” Alameda from FTX, following its collapse FTX represented to the Bankruptcy Court at the first-day hearing that Bankman-Fried ran this global multibillion-dollar business as a “personal fiefdom.” FTX and Alameda also shared office space, first in Berkeley, California and later in Hong Kong and the Bahamas, as well as sharing key personnel, hardware, technology, and intellectual property. In addition, Bankman-Fried and other senior executives at FTX and Alameda had widespread access to each other’s systems and accounts.

44. Since FTX’s bankruptcy filing, it has come to light that, from the outset of FTX’s operations in 2019, customers deposited billions of dollars, which they thought were going to fund their trading activities, into Silvergate bank accounts that actually were controlled by Alameda.

45. Alameda commingled the FTX funds with its other assets, and in turn used them to finance its trading operations and other Bankman-Fried ventures, including payments to celebrity pitchmen and purchases of luxury real estate.

1 46. Among other investments, Alameda used FTX customer funds to prop up
2 the value of FTX's own cryptocurrency, the FTT token, which grants holders a discount
3 on trading fees on the FTX exchange. A large percentage of Alameda's balance sheet
4 was held in FTT tokens.

5 47. FTX also granted Alameda several unique exceptions that allowed
6 Bankman-Fried to carry out his scheme:

- 7 • Alameda was exempted from FTX's auto-liquidation feature, meaning it
8 was permitted to maintain a negative balance in its account with no
9 collateral. It was the only account afforded that treatment.
- 10 • Bankman-Fried directed FTX to increase Alameda's negative balance cap,
11 effectively providing it with an uncapped line of credit, through which it
12 could use other FTX customer funds for its own trading activities. No other
13 FTX account was granted a similar line of credit.

14 48. The scheme began to unravel when Alameda became unable to pay debt
15 incurred through billions of dollars in loans that Bankman-Fried caused Alameda to
16 borrow from third-party cryptocurrency lenders to fund his investments and for personal
17 use. Specifically, when the cryptocurrency market began to decline precipitously in
18 2022, several of these lenders demanded repayment from Alameda, and because
19 Alameda had no assets to pay them back, Bankman-Fried caused Alameda to draw on its
20 FTX credit line, resulting in Alameda owing billions of dollars to FTX.

21 **E. The FTX Scheme Collapses**

22 49. The FTX scheme ended in November 2022 when the scale of the fraud
23 became apparent to the market. The chain of events leading to FTX's swift collapse was
24 set in motion on November 2nd, when CoinDesk, a crypto news website, published an
25 article stating that based on its review of an Alameda balance sheet it had obtained,
26 Alameda held a large position in FTT and other FTX tokens.

1 50. On November 6th, Changpeng “CZ” Zhao, the CEO of Binance, a
2 cryptocurrency trading platform, liquidated \$530 million of FTT. Other customers then
3 raced to pull out: over the course of 72 hours investors sought to withdraw an estimated
4 \$6 billion from FTX, placing the company under severe financial pressure.

5 51. After declining by 32%, the price of FTT briefly rallied on November 8th
6 when Bankman-Fried announced that Binance would acquire FTX. But the next day,
7 Binance announced it would not proceed with the transaction, citing its due diligence
8 findings and reports of mishandled customer funds by FTX. The price of FTT
9 plummeted.

10 52. On November 11th, FTX filed for Chapter 11 bankruptcy and Bankman-
11 Fried resigned as CEO. The bankruptcy filing includes all 130 companies under the
12 FTX umbrella, as well as the trading firm Alameda.

13 53. John J. Ray, who oversaw Enron following its accounting scandal in 2007,
14 became CEO. After reviewing FTX’s books and records, Ray declared that “never in my
15 career have I seen such an utter failure of corporate controls at every level of an
16 organization, from the lack of financial statements to a complete failure of any internal
17 controls or governance whatsoever.”

18 54. Ray stated that FTX “failed to implement virtually any of the systems or
19 controls that are necessary for a company that is entrusted with other people’s money”
20 and that the “[c]ash management procedural failures included the absence of an accurate
21 list of bank accounts and account signatories, as well as insufficient attention to the
22 creditworthiness of banking partners around the world.” Ray noted “[t]he ability of
23 Alameda, the crypto hedge fund within the FTX Group, to borrow funds held at
24 FTX.com to be utilized for its own trading or investments without any effective limits.”

25 55. Further, Ray stated “we know” that “customer assets from FTX.com were
26 commingled with assets from the Alameda trading platform,” that Alameda “used client
27
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1 funds to engage in margin trading which exposed customer funds to massive losses,” and
 2 that “loans and other payments were made to insiders in excess of \$1 billion.”

3 56. On November 10th, in the midst of FTX’s collapse, Bankman-Fried
 4 admitted to culpability in a series of Twitter exchanges with reporters and investors:



11

12 57. In the same series of tweets, Bankman-Fried blamed “a poor internal
 13 labeling of bank-related accounts.” When asked how FTX customer deposits ended up in
 14 Alameda’s accounts, Bankman responded that his exchange platform did not originally
 15 have a bank account, so customers were directed to wire money to *Alameda’s* account
 16 with Silvergate in exchange for the commodity assets on FTX.

17 58. According to Bankman-Fried, executives at the company “forgot” about
 18 this irregular depositing arrangement right up until the company imploded: “[I]t looks
 19 like people wired \$8b to Alameda and ‘oh god we basically forgot about the stub
 20 account that corresponded to that and so it was never delivered to FTX.’”

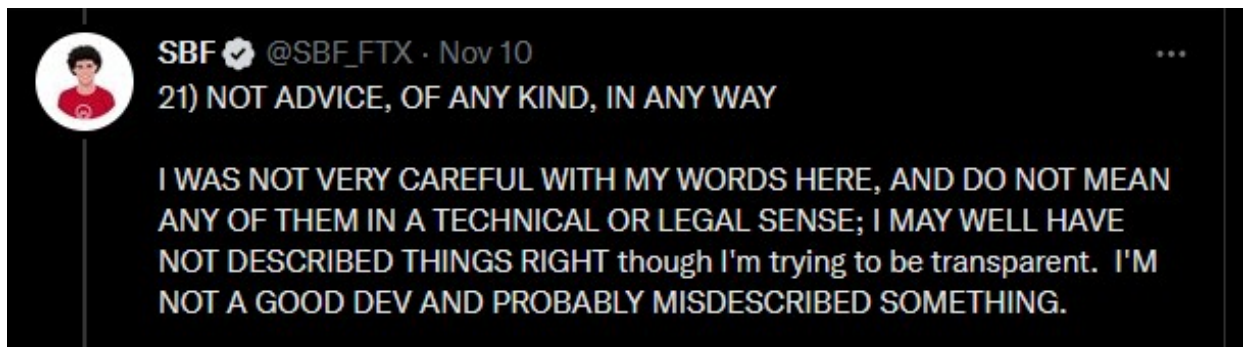
21 59. Similarly, in a recent interview, Bankman-Fried sought to downplay his
 22 conduct as an error or oversight:

23 There was a F*** up, I was incorrect on Alameda’s balances on FTX by a fairly
 24 large number, an embarrassingly large one and it was because of a, like, very
 25 poorly labeled accounting thing, which was a historical artifact of a time before
 26 FTX had bank accounts and the result of that was basically there was a time back
 27 yonder when people would wire money to Alameda and then actually credited on
 28

FTX. This . . . got screwed up and that was like a pretty big miss and that meant Alameda was substantially more levered than I thought it was.

60. Bankman-Fried also told an investor that more than \$10 billion in loans remains outstanding.

61. By the 21st tweet in the November 10th series, Bankman-Fried was offering disclaimers:



F. The Fallout

62. On December 12th, Bankman-Fried was arrested in the Bahamas on the basis of an indictment filed by the U.S. attorney’s office for the Southern District of New York. The criminal charges against Bankman-Fried include wire fraud, securities fraud, money laundering, and conspiracy to commit wire fraud and securities fraud.

63. On December 13th, the Securities and Exchange Commission filed a civil action against Bankman-Fried for securities fraud in the Southern District of New York, alleging in part:

- “[F]rom the start, Bankman-Fried improperly diverted customer assets to his privately-held crypto hedge fund . . . and then used those customer funds to make undisclosed venture investments, lavish real estate purchases, and large political donations” and “sank billions of dollars of customer funds into speculative venture investments.”

- “Bankman-Fried diverted FTX customer funds to Alameda in essentially two ways: (1) by directing FTX customers to deposit fiat currency (e.g., U.S. Dollars) into bank accounts controlled by Alameda; and (2) by enabling Alameda to draw down from a virtually limitless ‘line of credit’ at FTX, which was funded by FTX customer assets.”
- “The FTX funds transferred to Alameda were used not only for Alameda’s proprietary trading, but also to fund loans to FTX executives, including Bankman-Fried himself, and to fund personal real estate purchases. Between March 2020 and September 2022, Bankman-Fried executed promissory notes for loans from Alameda totaling more than \$1.338 billion, including two instances in which Bankman-Fried was both the borrower in his individual capacity and the lender in his capacity as CEO of Alameda.”
- “Bankman-Fried also used commingled funds from Alameda to make large political donations and to purchase tens of millions of dollars in Bahamian real estate for himself, his parents, and other FTX executives.”
- “[O]n or about July 22, 2022, Bankman-Fried loaned himself \$136 million.”

64. Also on December 13th, the Commodity Futures Trading Commission filed a complaint against Bankman-Fried, FTX, and Alameda containing similar allegations concerning the scheme.

65. The same day, John J. Ray (who, as noted, serves as FTX’s CEO in bankruptcy) testified to the House Financial Services Committee that, despite the relatively new cryptocurrency markets involved, FTX committed “really old-fashioned embezzlement. This is just taking money from customers and using it for your own purpose. Not sophisticated at all—sophisticated, perhaps, in the way they were able to sort of hide it from people, frankly, right in front of their eyes.”

G. Silvergate's Complicity in the FTX Scheme

66. Following FTX's collapse, significant questions about Silvergate's role in the failed FTX crypto enterprise have been raised both on Wall Street and in Congress.

67. On November 15th, Marcus Aurelius Value, an investment research firm, tweeted that "[r]ecently subpoenaed Silvergate bank records reveal \$425 million in transfers from \$SI crypto bank accounts to South American money launderers. Affidavit from investigation into crypto crime ring linked to smugglers/drug traffickers."

68. On November 17th, the investment newsletter *The Bear Cave* released a report entitled "The Great Crypto Collapse" that discussed in part Silvergate's involvement in crypto markets. The report notes an "alarming" August 2022 forfeiture application for probable cause filed in Broward County, Florida that asserts Silvergate's link to a money laundering operation. According to that court filing, portions of which the report reproduces, "Records produced by Silvergate Bank found: (i) During the period of September 2021 to June 2022 ten companies had transferred a total of over \$425 million dollars off these cryptocurrency trading platforms into accounts held at different US banks. (ii) The accounts were receiving funds in the same pattern as those . . . used to facilitate the laundering of illicit funds."

69. On December 1st, *The Bear Cave* issued a further report raising additional concerns about Silvergate's role in illegal transfers related to crypto currency. That report highlights a July 2021 plea agreement filed in the Middle District of Florida stating that the convicted defendant, Joel Greenberg, wired "\$200,000 from the account of the Tax Collector's Office at Florida Capital Bank to Silvergate Bank" in order to buy cryptocurrency for himself. "Greenberg quickly spent the \$200,000 in multiple purchases of cryptocurrency," the plea agreement states. "Greenberg engaged in more than 40 transactions over the course of about four days" and then withdrew almost all of the cryptocurrency from the Silvergate account.

1 70. On December 5th, investment bank Morgan Stanley downgraded
2 Silvergate's investment rating, explaining that Silvergate's ability to make money may
3 be impaired by the continued stress in crypto markets caused by FTX's bankruptcy.

4 71. Silvergate also faces Congressional inquiries. A December 5th letter signed
5 by Sens. Elizabeth Warren (D-MA) and John Kennedy (R-LA) and by Rep. Roger W.
6 Marshall (R-KS) posed a series of questions to Defendant Alan Lane regarding
7 Silvergate's relationship with the FTX complex, after noting the direct funds transfers
8 from FTX's client account at Silvergate to the accounts of Alameda and other entities
9 under Bankman-Fried's control. Silvergate's "involvement in the transfer of FTX
10 customer funds to Alameda reveals what appears to be an egregious failure of your
11 bank's responsibility to monitor . . . suspicious financial activity," the letter states. In
12 expressing concern over Silvergate's "role in facilitating the improper transfer of FTX
13 customer funds to Alameda," the letter notes that "Silvergate's failure to take adequate
14 notice of this scheme suggests that it may have failed to implement or maintain an
15 effective anti-money laundering program."

16 72. A subsequent December 7th letter to Federal Reserve Chair Jerome Powell
17 from Senators Warren and Tina Smith (D-MN) highlights an \$11.5 million investment
18 that Alameda made in Moonstone Bank, an amount "more than double the bank's worth
19 at the time." The investment could be seen as a move by FTX to gain access to the bank
20 without owning a U.S. banking license. A former president of the Independent
21 Community Bankers of America is quoted in the letter as saying that "[t]he fact that an
22 offshore hedge fund that was basically a crypto firm was buying a stake in a tiny bank
23 for multiples of its stated book value should have raised massive red flags."

24 **1. Background on Silvergate Bank**

25 73. Founded in 1988 as an industrial loan company, Silvergate, a member of the
26 Federal Reserve, was once a small, community bank with three branches in Southern
27 California. Its stock publicly trades on the New York Stock Exchange under the symbol
28

1 SI. Silvergate historically provided traditional financial services including commercial
2 banking, business lending, commercial and residential real estate lending and mortgage
3 warehouse lending, funded primarily by interest-bearing deposits and borrowing.

4 74. In 2013 Silvergate shifted its focus to digital currency. By 2018 “the
5 majority” of Silvergate’s funding came from “non interest bearing deposits associated
6 with clients in the digital currency industry.” With its initial public offering, Silvergate
7 touted itself as the “leading provider of innovative financial infrastructure solutions and
8 services to participants in the nascent and expanding digital currency industry.”

9 75. Further committing to its shift in business plan, in mid-2019, Silvergate
10 sold its small business lending division “to increase its focus on its digital currency
11 initiative and its specialty lending competencies.” It also sold off two of its retail
12 banking branches to focus more on crypto currencies. CEO and Defendant Alan Lane
13 said Silvergate was “all in” on crypto.

14 76. As part of this digital currency initiative, in the first quarter of 2018,
15 Silvergate introduced the “Silvergate Exchange Network” or “SEN”—a “proprietary,
16 virtually instantaneous payment network for participants in the digital currency
17 industry.” The SEN allows cryptocurrency investors and crypto exchanges who bank at
18 Silvergate to transfer money instantly, 24/7, which contrasts with wire transfers or ACH
19 transactions outside the bank, which can take hours or days to complete.

20 77. The SEN’s capabilities make Silvergate attractive to crypto investors and
21 exchanges as a de facto clearinghouse. Crypto exchanges and crypto investors who bank
22 at Silvergate can instantly transfer money around the clock among each other’s accounts.

23 78. Silvergate, as one of the few banks enabling customers to move U.S. dollars
24 onto crypto exchanges, fueled by its instantaneous SEN platform, became “the go-to
25 bank for the cryptocurrency industry,” according to its website.

2. Silvergate's Mutual Interests and Alignment with FTX/Alameda

79. FTX/Alameda was one of Silvergate's most important customers, and their business operations and interests were tightly entwined. Silvergate profited from deposits by digital-asset customers, which grew exponentially as FTX's own business expanded. Out of Silvergate's approximately 1,500 customers, FTX alone accounted for approximately 10% of Silvergate's deposits.

80. Until its collapse, Silvergate's website even showed an endorsement from Bankman-Fraud stating that "[l]ife as a crypto firm can be divided up into before Silvergate and after Silvergate—it's hard to overstate how much it revolutionized banking for blockchain companies."

81. Silvergate had a strong incentive to keep its knowledge of the irregularities of the FTX/Alameda scheme to itself. Silvergate earned increased profits in conjunction with the accelerating use by customers of the FTX exchange platform and app. Silvergate earned income from transaction fees as well as from investing capital derived from its FTX accounts.

82. Silvergate held its initial public offering on November 7, 2019. Before it went public and retained FTX as a client in 2019, Silvergate had an annual net income of \$7.6 million. By 2021 its net annual income had increased to \$75.5 million. Silvergate's business and profits grew in tandem with those of FTX and Alameda.

83. After closing at \$12.50 per share on the day of its IPO, the price of Silvergate stock skyrocketed to \$219.75 per share as of November 15, 2021. By December 9, 2022, following FTX's collapse, Silvergate shares had dropped back down to \$21.43.

84. In a public letter issued December 5, 2022, Lane acknowledged "the apparent misuse of customer assets and other lapses of judgment by FTX and Alameda Research."

3. Silvergate's Knowledge and Participation in the FTX Fraud

85. Silvergate's actions and inaction were integral to Bankman-Fried's enterprise. Numerous accounts held by his companies—including FTX Ltd., FTX US, and Alameda—were held at Silvergate Bank. Bankman-Fried's fraud and the financial details concerning his FTX/Alameda companies occurred in plain sight of Silvergate.

86. As discussed above, federal law required Silvergate and Lane to monitor FTX/Alameda for anomalous or suspicious behavior, and upon discovering signs of fraud, money laundering or other mismanagement or malfeasance, to stop doing business with FTX/Alameda and report the red flags.¹

87. Silvergate's duty of due diligence in relation to FTX/Alameda was especially strong because Silvergate advertised Bankman-Fried on its website.

88. Lane acknowledged these duties, stating that, "For each and every account, these laws require us to determine the beneficial owner, the source of funds, and the purpose and expected use of funds. Silvergate also monitors transaction activity for every account and identifies activity outside of the expected usage."

89. Among other facts that triggered enhanced due diligence obligations, Defendants knew that cryptocurrency trading has repeatedly presented an opportunity for fraud. They therefore should have applied heightened scrutiny to the related-party transactions, speculation in novel, risky crypto assets and other atypical FTX/Alameda activities and processes occurring in Silvergate's accounts.

90. Defendants breached their know-your-customer and anti-money laundering duties with respect to FTX/Alameda. They either failed to establish and maintain an adequate due diligence program or failed to properly execute such a program.

¹ Plaintiff's claims are not predicated on whether Silvergate filed or failed to file a Suspicious Activity Report pursuant to the Bank Secrecy Act.

1 91. Because red flags from the FTX scheme abounded, even ordinary due
 2 diligence—not limited to the enhanced scrutiny required—would have revealed
 3 suspicious account activities.

4 92. As noted above, the FFIEC Manual describes certain “red flags” that
 5 indicate possible money laundering or other misconduct, for which banks must monitor.
 6 Included in the FFIEC Manual’s list are the following “red flags,” all of which were
 7 present in the transactions and activity in the FTX/Alameda accounts held at Silvergate:

- 8 • “Unusual transfers of funds occur among related accounts or among
 9 accounts that involve the same or related principals.”
- 10 • “Funds transfer activity is unexplained, repetitive, or shows unusual
 11 patterns.”
- 12 • “Many funds transfers are sent in large, round dollar, hundred dollar, or
 13 thousand dollar amounts.”
- 14 • “Frequent involvement of multiple jurisdictions or beneficiaries located in
 15 higher-risk offshore financial centers.”
- 16 • “Funds transfer activity occurs to or from a financial institution located in a
 17 higher risk jurisdiction distant from the customer’s operations.”
- 18 • “A foreign correspondent bank exceeds the expected volume in its client
 19 profile for funds transfers, or an individual company exhibits a high volume
 20 and pattern of funds transfers that is inconsistent with its normal business
 21 activity.”
- 22 • “Customer uses a personal account for business purposes.”
- 23 • “Unusual use of trust funds in business transactions or other financial
 24 activity.”

25 93. Those are not the only red flags relevant to FTX/Alameda’s operations and
 26 transactions. Despite widespread advertising in the United States, FTX never made any
 27 attempt to comply with U.S. securities laws, raising immediate questions about FTX’s
 28

1 civil and criminal exposure and attendant risks to Silvergate. Neither FTX nor any other
2 FTX crypto asset was ever registered with any U.S. jurisdiction or regulatory authority.

3 94. Nor did FTX/Alameda ever have financial statements audited or show
4 Silvergate any audited financial statements. That omission, standing alone, was
5 extremely suspicious and should have been reported to law enforcement.

6 95. Moreover, Silvergate accepted several billion dollars from FTX customers,
7 intended to be lodged or traded on the FTX crypto exchange, for deposit into an account
8 held by a separate entity, Bankman-Fried's hedge fund Alameda. This massive
9 commingling of funds was carried out via transactions that Silvergate's internal
10 monitoring systems should have brought to the attention of the bank's compliance and
11 risk management personnel.

12 96. It also was apparent to Defendants that numerous wires sent to Bankman-
13 Fried's Alameda trading account actually were earmarked for deposit to FTX for trading
14 on its exchange. It is highly unusual for a hedge fund to receive the high volume of
15 relatively small deposits, from a large number of distinct individuals, that Alameda
16 received through its account at Silvergate. The bank nonetheless permitted what were
17 clearly incoming investor funds, denominated in miscellaneous amounts, to be deposited
18 with Bankman-Fried's own hedge fund and commingled with Alameda's assets.

19 97. Further, the increasing and uncapped loan "margin" that FTX extended to
20 Alameda, through their respective Silvergate accounts, relied on impermissible related-
21 party transactions that the bank repeatedly knew about and processed.

22 98. In still another suspect related-party transaction, Bankman-Fried made
23 Alameda a "licensor" to FTX such that FTX paid approximately \$400 million in investor
24 funds to Alameda, through their Silvergate accounts, purportedly for technology that
25 would be used to optimize the FTX.com exchange platform and app.

26 99. Defendants' failures to adequately monitor and stop the fraudulent activities
27 of FTX/Alameda, and Defendants' acts and omissions directly in furtherance of this
28

1 scheme, carried out through Silvergate bank accounts, were the cause of the investment
2 losses of Plaintiff and class members.

3 **AGENTS AND CO-CONSPIRATORS**

4 100. At all relevant times, each of Silvergate, Bankman-Fried and Lane was a
5 principal, agent, joint venturer, partner or affiliate of Silvergate, Bankman-Fried and
6 Lane. In doing the acts alleged herein, Silvergate, Bankman-Fried and Lane acted within
7 the course and scope of that principal, agent, joint venture, partnership or affiliate
8 relationship. Silvergate, Bankman-Fried and Lane had mutual knowledge of each other's
9 wrongdoing; ratified, approved, joined in, acquiesced, or authorized the wrongful acts of
10 Silvergate, Bankman-Fried and Lane; and retained the benefits of those wrongful acts.

11 101. At all relevant times, each of Silvergate, Bankman-Fried and Lane was a
12 co-conspirator of Silvergate, Bankman-Fried and Lane. Silvergate and Lane aided and
13 abetted, encouraged and substantially assisted Bankman-Fried in jointly perpetrating a
14 fraudulent scheme upon Plaintiff and the investor class. In taking action, as alleged
15 herein, to aid, abet, encourage and substantially assist the commissions of the wrongful
16 acts, omissions and other misconduct set forth herein, Defendants acted with an
17 awareness of their wrongdoing and realized that their conduct would substantially aid
18 the accomplishment of their illegal design.

19 **TOLLING OF THE STATUTES OF LIMITATIONS**

20 102. Defendants Silvergate and Lane fraudulently concealed from Plaintiff and
21 the other investors the true nature of the FTX investment enterprise. Though aware of
22 the illegal FTX/Alameda scheme and its injurious effects, Defendants did not take any
23 action to stop or report it, but instead continued accepting the deposits and executing the
24 transfer and lending transactions upon which the scheme relied.

25 103. Silvergate and Lane were aware that FTX investors like Plaintiff did not
26 know about the FTX/Alameda investment fraud. Silvergate and Lane had superior and
27
28

1 exclusive knowledge of that fraud. Despite reasonable diligence on their part, Plaintiff
2 was kept ignorant by these Defendants of the factual bases for these claims for relief.

3 104. Plaintiff did not discover, and exercising reasonable diligence could not
4 have discovered, the facts establishing Defendants' violations or the harm caused
5 thereby until FTX's implosion in early November 2022. Plaintiff learned of the relevant
6 actions and violations of FTX/Alameda, Silvergate and Lane through media coverage
7 and FTX's bankruptcy filing.

8 105. Because Plaintiff and the other class members could not have reasonably
9 discovered the facts constituting Silvergate's and Lane's violations until November
10 2022, all applicable statutes of limitation were tolled until then.

11 **CLASS ACTION ALLEGATIONS**

12 106. Plaintiff sues on his own behalf and on behalf of all other persons similarly
13 situated under Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of a class of
14 all persons who, as of November 11, 2022, had legal title to any fiat or cryptocurrency
15 deposited or invested with FTX, including from the FTX.com, FTX US and FTX
16 international platforms.

17 107. Excluded from the class are Silvergate's employees, affiliates, legal
18 representatives, predecessors, successors or assigns; any entity in which Silvergate has a
19 controlling interest or which has a controlling interest in Silvergate; the immediate
20 family members of Alan Lane; and the judicial officers to whom this litigation is
21 assigned as well as their staff and immediate family members.

22 108. Numerosity. The class members are too numerous to be practicably joined.
23 The class members are identifiable from information and records in the possession,
24 custody, or control of Silvergate. Notice of this action can be readily provided to all
25 members of the class.

1 109. Typicality. Plaintiff's claims are typical of the claims of other members of
2 the class. Plaintiff and each class member invested in the FTX investments at issue and
3 was subject to the wrongful conduct alleged in this complaint.

4 110. Adequacy of Representation. Plaintiff is a member of the class and will
5 fairly and adequately represent and protect its interests. Plaintiff has no interests contrary
6 to or in conflict with the interests of the other class members.

7 111. Plaintiff's counsel are competent and experienced in class action and
8 investment fraud litigation and will pursue this action vigorously.

9 112. Commonality and Predominance. Common questions of fact and law exist
10 as to all members of the class and predominate over any questions pertaining to
11 individual class members. Among the questions common to the class are:

12 a. Whether Bankman-Fried committed fraud or breached duties to
13 Plaintiff and members of the class;

14 b. Whether Silvergate aided and abetted, joined and/or participated in
15 Bankman-Fried's fraud or breach of duties;

16 c. Whether Silvergate knowingly carried out transactions in furtherance
17 of the FTX investment scheme despite atypical banking activity and other red flags
18 indicating that Bankman-Fried, through FTX/Alameda and his other operations, was
19 committing investor fraud, breaching fiduciary duties, and misusing investor funds;

20 d. Whether Silvergate was unjustly enriched in consequence of its
21 wrongful conduct; and

22 e. Whether, in view of their investment losses, Plaintiff and the class
23 are entitled to damages or restitution.

24 113. Superiority. A class action is superior to all other available methods for the
25 fair and efficient adjudication of this controversy. Although many class members paid
26 thousands to dollars to deposit or invest assets with FTX, the cost of this litigation will
27 be high. The factual issues are complex and detailed, extend over several years and
28

1 relate to many transactions. Absent a class action, most class members would find the
2 cost of litigating their claims individually to be prohibitively high and would have no
3 effective remedy. Class treatment will conserve resources, avoid inconsistent rulings,
4 and promote efficiency and economy of adjudication in a single court.

5 **CLAIMS FOR RELIEF**

6 **COUNT 1**

7 **Aiding and Abetting Fraud** 8 **(Against Silvergate and Lane)**

9 114. Plaintiff incorporates all of the foregoing allegations by reference.

10 115. Bankman-Fried made fraudulent misrepresentations and omissions to the
11 investing public about the nature of the FTX investments and how investor money would
12 be applied. Plaintiff and class members relied to their detriment on these
13 misrepresentations and omissions when depositing or investing assets with FTX.

14 116. Defendants knew of and substantially aided this fraud. Silvergate accepted
15 billions of dollars of irregular deposits and approved the related-party transfers, atypical
16 lending and funds commingling that marked Bankman-Fried's fraudulent scheme. In
17 connection with providing such material assistance, Defendants were aware of their
18 essential role in the scheme and knowingly acted in furtherance of it. Defendants also
19 substantially benefited from their participation in this scheme.

20 117. As a direct and proximate result of Defendants' aiding and abetting of fraud,
21 Plaintiff and class members have been damaged in an amount to be determined at trial

22 **COUNT 2**

23 **Aiding and Abetting Breach of Fiduciary Duty** 24 **(Against Silvergate and Lane)**

25 118. Plaintiff incorporates all of the foregoing allegations by reference.

26 119. At all relevant times, Bankman-Fried was the controlling owner and/or
27 CEO of the FTX companies. By reason of his controlling position, actions and direct and
28

indirect representations to Plaintiff and class members, and because they deposited funds into Bankman-Fried's control with the understanding that he would act in accordance with his promises in regard to the use of such funds, Bankman-Fried owed investors the fiduciary duties of loyalty and care and to deal honestly and in good faith. Nevertheless, Bankman-Fried breached fiduciary duties he owed to Plaintiff and class members.

120. Through their knowledge of FTX/Alameda's business model and banking activity, Defendants knew that Bankman-Fried owed fiduciary duties to investors, such as Plaintiff. Defendants substantially assisted Bankman-Fried's breaches of fiduciary duty while knowing he was breaching those duties. Bankman-Fried's breaches of duty were enabled by and would not have been possible but for Defendants' relevant actions and inaction.

121. As a direct and proximate result of Defendants' aiding and abetting of breach of fiduciary duty, Plaintiff and class members have been damaged in an amount to be determined at trial.

COUNT 3

Unjust Enrichment

(Against Silvergate)

122. Plaintiff incorporates all of the foregoing allegations by reference.

123. Plaintiff lacks an adequate remedy at law.

124. Plaintiff and the other class members conferred benefits on Silvergate by depositing funds into and using the FTX exchange platforms.

125. Silvergate acquired ill-gotten gain, including in the form of revenues, derived from Plaintiff's and the other class members' funding and use of the FTX exchange platforms.

126. Silvergate condoned and furthered the wrongful conduct from which it benefited. Its retention of these sums is therefore inequitable.

127. Silvergate's wrongful gain should be restored to Plaintiff and the class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment:

A. Certifying this action as a class action under Federal Rule of Civil Procedure 23(a) and (b)(3), appointing Plaintiff as class representative and his attorneys as class counsel under Federal Rule of Civil Procedure 23(g), and requiring Defendants to pay the costs of Notice to the class;

B. Awarding damages or restitution, including pre-judgment interest, upon each Count in an amount to be determined at trial;

C. Awarding reasonable attorneys' fees and costs of litigation; and

D. Granting such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff seeks a jury trial of any Counts for which a trial by jury is permitted by law.

Respectfully submitted,

Dated: December 14, 2022

By: /s/ Daniel C. Girard

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOEWY GONZALEZ, on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Suffolk County, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Girard Sharp LLP - 601 California St., Ste. 1400
San Francisco, CA 94108 Tel: 415.981.4800

DEFENDANTS

SILVERGATE BANK, SILVERGATE CAPITAL CORPORATION, and ALAN J. LANE

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'22CV1981 BEN WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	IMMIGRATION	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 448 Education			
	PRISONER PETITIONS			
	Habeas Corpus:			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	Other:			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)(2) (the Class Action Fairness Act)

Brief description of cause:

Aiding and Abetting Fraud; Aiding and Abetting Breach of Fiduciary Duty; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE M. James Lorenz

DOCKET NUMBER 3:22-cv-01901

DATE

Dec 14, 2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Daniel C. Girard

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

TO ORDER COPIES OF ANY DOCUMENTS LISTED
BELOW, CALL WESTLAW COURTEXPRESS
1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply)

This docket is current through 02/10/2023

Today's Date: 2/10/2023

Source: U.S. District Court, Southern District of California (San Diego)

Court: U.S. District Court, Southern District of California (San Diego)
Case Title: [Sepulveda Zuleta et al v. Silvergate Capital Corporation et al](#)
Case: 3:22-CV-01901
Judge: Judge [Roger T. Benitez](#)
Date Filed: 12/01/2022
Case Status: LNO

SYNOPSIS INFORMATION

Allegations: Class action. Defendants failed to fulfill their due diligence obligations by either failing to establish an adequate due diligence program or failing to properly execute that program, which caused damages to the plaintiff.

Damages: Class action certification, Declaration, Compensatory, Punitive damages, Interest, Fees, and Costs.

COMPLAINT (MANUALLY RETRIEVED)

 [Original Image of this Document \(PDF\)](#)

CASE INFORMATION

Case Number: 3:22CV01901
Referred To: Magistrate Judge [William V. Gallo](#)
Jury Demand: Plaintiff
Nature of Suit: Torts: Other Fraud (370)
Key Nature of Suit: Torts/Negligence; Personal Property; Other Fraud (430.77.05)
Key Nature of Suit: Class Action (115)
Jurisdiction: Diversity
Cause: [28 USC 1453](#) Class Action Fairness Act
Lead Docket: 3:23-CV-000383;22-CV-01981

PARTICIPANT INFORMATION

Jose Tomas Sepulveda Zuleta

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Type: Plaintiff
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CALENDAR INFORMATION

[View Calendar Information](#)

DOCKET PROCEEDINGS (17)

Entry #:	Date:	Description:		
17	02/09/2023	NOTICE of Voluntary Dismissal by Michael Lehrer, Tristan Newman, Jose Tomas Sepulveda Zuleta (Fitzgerald, Jack) (Entered: 02/09/2023)	View	Add to request
16	02/03/2023	ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE. Case reassigned to Judge Roger T. Benitez and Magistrate Judge William V. Gallo for all further proceedings. District Judge Ruth Bermudez Montenegro, Magistrate Judge Andrew G. Schopler no longer assigned to case. The new case number is 22CV1901-BEN-WVG.. Signed by District Judge Ruth Bermudez Montenegro on 2/3/2023. Signed by Judge Roger T. Benitez on 2/3/2023. (All non-registered users served via U.S. Mail Service)(alns) (Entered: 02/06/2023)	View	Add to request
15	01/20/2023	NOTICE OF RELATED CASE(S) by Michael Lehrer, Tristan Newman, Jose Tomas Sepulveda Zuleta of	View	Add to request

14	01/18/2023	case(s) 22-cv-1981-BEN-WVG & 23-CV-38-CAB-AHG . (Fitzgerald, Jack) (jpp). (Entered: 01/20/2023) MINUTE ORDER OF RECUSAL. Judge M. James Lorenz is no longer assigned. Case reassigned to District Judge Ruth Bermudez Montenegro and District Judge Ruth Bermudez Montenegro for all further proceedings. The new case number is 22cv1901-RBM-AGS.(no document attached) (maq) (anh). (Entered: 01/18/2023)	Send Runner to Court
13	12/21/2022	CERTIFICATE OF SERVICE by Jason Brenier, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Silvergate Capital Corporation /Declaration of Service re Notice of Appearance of Madalyn A. Macarr (Macarr, Madalyn) (cxl1). (Entered: 12/21/2022)	View Add to request
12	12/21/2022	SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Alan J. Lane served. (Flynn, Trevor) (cxl1). (Entered: 12/21/2022)	View Add to request
11	12/19/2022	ORDER granting 9 Joint Motion to Extend Deadline for Defendants to Respond to the Class Action Complaint. Signed by Judge M. James Lorenz on 12/19/2022. Defendants shall have five (5) extra pages for their consolidated response, and Plaintiffs shall have five (5) extra pages to oppose. (All non-registered users served via U.S. Mail Service)(cxl1) (Entered: 12/19/2022)	View Add to request
10	12/16/2022	NOTICE of Appearance by Madalyn Annabel Macarr on behalf of Jason Brenier, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Silvergate Capital Corporation (Macarr, Madalyn)Attorney Madalyn Annabel Macarr added to party Jason Brenier(pty:dft), Attorney Madalyn Annabel Macarr added to party Alan J. Lane(pty:dft), Attorney Madalyn Annabel Macarr added to party Christopher M. Lane(pty:dft),	View Add to request

		Attorney Madalyn Annabel Macarr added to party Tyler J. Pearson(pty:dft), Attorney Madalyn Annabel Macarr added to party Silvergate Capital Corporation(pty:dft) (cxl1). (Entered: 12/16/2022)		
9	12/16/2022	Joint MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Jason Brenier, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Silvergate Capital Corporation. (Towill, Polly) (cxl1). (Entered: 12/16/2022)	View	Add to request
8	12/16/2022	Corporate Disclosure Statement by Silvergate Capital Corporation. No Corporate Parents/Interested Parties. (Towill, Polly) (cxl1). (Entered: 12/16/2022)	View	Add to request
7	12/16/2022	NOTICE of Appearance of John Landry by John Michael Landry on behalf of Jason Brenier, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Silvergate Capital Corporation (Landry, John)Attorney John Michael Landry added to party Jason Brenier(pty:dft), Attorney John Michael Landry added to party Alan J. Lane(pty:dft), Attorney John Michael Landry added to party Christopher M. Lane(pty:dft), Attorney John Michael Landry added to party Tyler J. Pearson(pty:dft), Attorney John Michael Landry added to party Silvergate Capital Corporation(pty:dft) (cxl1). (Entered: 12/16/2022)	View	Add to request
6	12/16/2022	NOTICE of Appearance of Polly Towill by Polly Towill on behalf of Jason Brenier, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Silvergate Capital Corporation (Towill, Polly)Attorney Polly Towill added to party Jason Brenier(pty:dft), Attorney Polly Towill added to party Alan J. Lane(pty:dft), Attorney Polly Towill added to party Christopher M. Lane(pty:dft), Attorney Polly Towill added to party Tyler J. Pearson(pty:dft), Attorney Polly Towill added to party Silvergate Capital	View	Add to request

		Corporation(pty:dft) (cxl1). (Entered: 12/16/2022)		
5	12/14/2022	SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Christopher M. Lane served. (Flynn, Trevor) (cxl1). (Entered: 12/14/2022)	View	Add to request
4	12/05/2022	SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Tyler J. Pearson served. (Flynn, Trevor) (cxl1). (Entered: 12/05/2022)	View	Add to request
3	12/05/2022	SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Silvergate Capital Corporation served. (Flynn, Trevor) (cxl1). (Entered: 12/05/2022)	View	Add to request
2	12/02/2022	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4 , Fed.R.Civ.P and LR 4.1. (cxl1) (rmc). (Entered: 12/02/2022)	View	Add to request
1	12/01/2022	COMPLAINT with Jury Demand against Jason Brenier, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Silvergate Capital Corporation (Filing fee \$402 receipt number ACASDC-17389898.), filed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. (Attachments: # 1 Civil Cover Sheet) The new case number is 3:22-cv-1901-L-AGS. Judge M. James Lorenz and Magistrate Judge Andrew G. Schopler are assigned to the case. (Fitzgerald, Jack)(cxl1) (rmc). (Entered: 12/02/2022)	View	Add to request

TO ORDER COPIES OF ANY DOCUMENTS LISTED
 ABOVE, CALL WESTLAW COURTEXPRESS
 1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply)

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Counsel for Plaintiffs
(add'l counsel listed below)

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

JOSÉ TOMÁS SEPÚLVEDA ZULETA,
 MICHAEL LEHRER, and TRISTAN
 NEWMAN, on behalf of themselves and all
 others similarly situated,

Plaintiffs,

v.

SILVERGATE CAPITAL CORPORATION,
 ALAN J. LANE, CHRISTOPHER M. LANE,
 TYLER J. PEARSON, and JASON BRENIER,

Defendants.

Case No.: **'22CV1901 L AGS**

CLASS ACTION

**CLASS ACTION COMPLAINT
 FOR FRAUD; FRAUDULENT
 CONCEALMENT &
 INDUCEMENT; CIVIL
 CONSPIRACY; NEGLIGENCE;
 VIOLATIONS OF THE UCL; and
 UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

“Life as a crypto firm can be divided up into before Silvergate and after Silvergate — it's hard to overstate how much it revolutionized banking for blockchain companies.”

— Sam Bankman-Fried

FOUNDER AND CEO, FTX AND ALAMEDA RESEARCH

Plaintiffs JOSÉ TOMÁS SEPÚLVEDA ZULETA, MICHAEL LEHRER, and TRISTAN NEWMAN, on behalf of themselves, all others similarly situated, and the general public, by and through their undersigned counsel, hereby bring this action against Defendants SILVERGATE CAPITAL CORPORATION, ALAN J. LANE, CHRISTOPHER M. LANE, TYLER J. PEARSON, and JASON BRENIER, and allege the following upon their own knowledge, or where they lack personal knowledge, upon information and belief including the investigation of counsel.

INTRODUCTION

1. Silvergate Capital Corporation is the parent of Silvergate Bank (together, “Silvergate”), a United States bank serving the cryptocurrency industry. Its customers include, for example, cryptocurrency exchanges, institutional investors, and stablecoin issuers. Some of its notable customers are Coinbase, Paxos, Circle, Kraken, Bitstamp, Gemini, and Crypto.com.

2. This case concerns Silvergate’s conduct regarding its most notable customer, the cryptocurrency trading exchange, FTX, which spectacularly imploded in early November 2022, entering into Chapter 11 bankruptcy as the result of rampant fraud and corporate malfeasance that has seemingly left over a million debtors with losses in the billions of dollars.

3. Silvergate and its Chief Executive and Risk Officers were complicit in and responsible for some of these fraudulent losses because, in violation of its Know-Your-Customer (KYC) and Anti-Money Laundering (AML) regulatory obligations, Silvergate

1 knowingly or negligently permitted FTX to direct customer deposits to Alameda Research, a
 2 hedge fund that is a wholly separate entity also owned by FTX's founder and Chief Executive
 3 Officer, Sam Bankman-Fried.

4 **THE PARTIES**

5 4. Plaintiff José Tomás Sepúlveda Zuleta is a citizen and resident of Viña Del Mar,
 6 Chile.

7 5. Plaintiff Michael Lehrer is a resident of Atlanta, Georgia.

8 6. Plaintiff Tristan Newman is a resident of Austin, Texas.

9 7. Defendant Silvergate Capital Corporation is a Maryland company with its
 10 principle place of business in La Jolla, California. It is the parent of Silvergate Bank.

11 8. Defendant Alan J. Lane is the director and Chief Executive Officer of both
 12 Silvergate Capital Corporation and Silvergate Bank and a resident of Temecula, California.

13 9. Defendant Christopher M. Lane is Silvergate's Senior Vice President of
 14 Business & Deposit Systems, sometimes referred to as Chief Technology Officer. Prior to
 15 that, Mr. Lane was Senior Vice President and Chief Operations Officer, and Director of
 16 Business Systems. Mr. Lane is the son of Defendant Alan J. Lane and a resident of Temecula,
 17 California.

18 10. Until November 7, 2022, when he was replaced, Defendant Tyler J. Pearson was
 19 Silvergate's Chief Risk Officer. Prior to that, Mr. Pearson was Silvergate's Senior Vice
 20 President of Enterprise Risk Management. Mr. Pearson is the son-in-law of Defendant Alan
 21 J. Lane and a resident of Temecula, California.

22 11. Defendant Jason Brenier holds several positions at Silvergate. Since October
 23 2018, he has been Vice President and Director of Finance and Accounting. Since October
 24 2019, he has also been Silvergate's Senior Vice President of Correspondent Banking, and
 25 Senior Relationship Manager. Finally, in May 2022, he was also named Silvergate's Director
 26 of Trading. Mr. Brenier is the son-in-law of Defendant Alan J. Lane and a resident of
 27 Temecula, California.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a State different from Defendants. In addition, more than two-thirds of the members of the class reside in states other than the state in which Defendants are citizens and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

13. The Court has personal jurisdiction over Defendants pursuant to Cal. Code Civ. P. § 410.10, as a result of Defendants' substantial, continuous and systematic contacts with the State, and because Defendants have purposely availed themselves of the benefits and privileges of conducting business activities within the State.

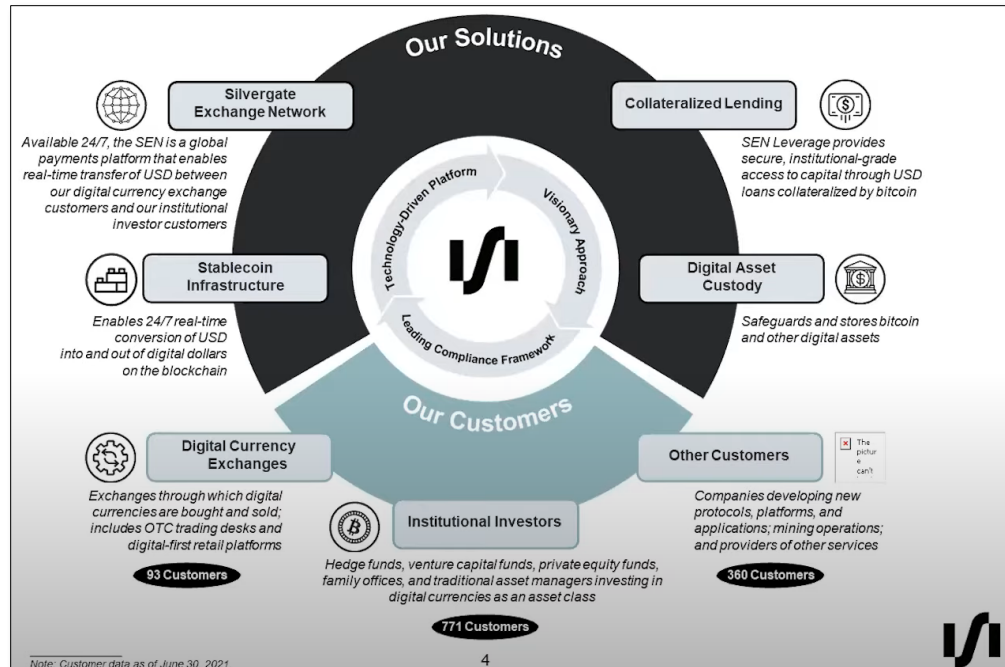
14. Venue is proper in this Southern District of California pursuant to 28 U.S.C. §§ 1391(b) and (c), because Defendants reside in this district, Silvergate is headquartered in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTS

I. BACKGROUND

15. Silvergate was founded in 1988, is a member of the Federal Reserve, and is publicly traded on the New York Stock Exchange under the symbol SI, having gone public in October 2019.

16. In 2013, Silvergate began to provide banking services to the emerging digital asset industry. Today, it is the leading provider of financial infrastructure solutions and services for the growing cryptocurrency industry. Replicated below is an infographic showing Silvergate's business as of June 2021.



17. In particular, Silvergate maintains and operates a real-time payments platform, known as the Silvergate Exchange Network (SEN), which is central to its suite of payment, lending, and funding solutions for its customers in the digital currency industry. The SEN allows Silvergate's customers 24/7 access to send money between their Silvergate accounts, and the accounts of other participants on the SEN, an important feature in the cryptocurrency industry.

II. SILVERGATE'S PARTNERSHIP WITH FTX

18. Until its recent implosion and bankruptcy, FTX was a platform for trading digital assets like cryptocurrencies and tokens. As is customary with brokers that facilitate retail trading of stocks (like TD Ameritrade, E-Trade, Robinhood, etc.), retail traders wanting to participate in the FTX cryptocurrency exchange platform were first required to deposit funds with FTX. This could be accomplished in a number of ways, including by wiring fiat following wiring instructions FTX provided.

19. Silvergate and FTX had a close relationship. Although Silvergate has approximately 1,500 customers, FTX represented nearly 10% of Silvergate's deposits, making FTX one of Silvergate's most important customers. Indeed, before it collapsed, FTX was the second largest cryptocurrency exchange in the world. In testament to this relationship,

though it has been removed since FTX’s bankruptcy, the following endorsement appeared on Silvergate’s website:

“Life as a crypto firm can be divided up into before Silvergate and after Silvergate — it’s hard to overstate how much it revolutionized banking for blockchain companies.”

— Sam Bankman-Fried

FOUNDER AND CEO, FTX AND ALAMEDA RESEARCH

20. Notably, in quoting him and using his endorsement to market its own business, Silvergate identified Mr. Bankman-Fried as the “Founder and CEO” of *both* FTX and Alameda Research.

III. FTX’S FRAUD AND COLLAPSE

21. In 2017, Mr. Bankman-Fried launched a crypto trading firm, Alameda Research LLC. Initially, it primarily operated as a delta-neutral trading firm, using strategies like market making and arbitrage to avoid taking directional risk. Later, it began to take increasingly risky bets, losing billions of dollars in the process as cryptocurrency markets fell precipitously in 2022.

22. In 2019, Mr. Bankman-Fried, along with Gary (Zixiao) Wang and Nishad Singh, founded FTX as an exchange or marketplace for the trading of digital assets like cryptocurrencies, with its operations beginning in May 2019. FTX’s primary international headquarters are in the Bahamas, with its U.S. operations located in Miami, Florida.

23. FTX’s promise was a trading platform and exchange for digital assets that would provide a better user experience, customer protections, and innovative products robust enough for professional trading firms and intuitive enough for first-time and retail users.

24. FTX also created and issued FTT, the main utility token providing access to the FTX exchange platform’s features and services. FTT token holders are entitled to some FTX exchange discounts and other benefits, but the token’s main attribute is that FTX periodically uses a portion of its profits to buy FTT tokens back, making them deflationary. Thus, the higher FTX’s profits are, the higher the price of FTT will be. So FTT tokens are a bet on FTX’s future. Such tokens, however, are open to abuse.

1 25. In an August 6, 2021 interview with Bloomberg’s Matt Levine, Mr. Bankman-
 2 Fried candidly explained the potential for fraud:

3 You start with a company that builds a box and in practice this box, they
 4 probably dress it up to look like a life-changing, you know, world-altering
 5 protocol that’s gonna replace all the big banks in 38 days or whatever. Maybe
 6 for now actually ignore what it does or pretend it does literally nothing. It’s
 7 just a box. So what this protocol is, it’s called ‘Protocol X,’ it’s a box, and you
 8 take a token.

9 So you’ve got this box and it’s kind of dumb, but like what’s the end game,
 10 right? This box is worth zero obviously. . . . But on the other hand, if everyone
 11 kind of now thinks that this box token is worth about a billion dollar market
 12 cap, that’s what people are pricing it at and sort of has that market cap.
 13 Everyone’s gonna mark to market. In fact, you can even finance this, right?
 14 You put X token in a borrow lending protocol and borrow dollars with it. If
 15 you think it’s worth like less than two thirds of that, you could even just like
 16 put some in there, take the dollars out. Never, you know, give the dollars back.
 17 You just get liquidated eventually. And it is sort of like real monetizable stuff
 18 in some senses.¹

19 26. FTX and Alameda were quite successful, having netted approximately \$350
 20 million and \$1 billion in profits, respectively, in 2020 alone.

21 27. With FTX quickly gaining in popularity, in the summer of 2021, Mr. Bankman-
 22 Fried stepped down as CEO from Alameda Research to focus on FTX. But his influence and
 23 connection with Alameda was still deeply ingrained. On November 28, 2022, for example,
 24 Law360 reported that FTX told the bankruptcy judge at the hearing for its first-day motions
 25 that Mr. Bankman-Fried “had run the worldwide, multibillion-dollar business as a ‘personal
 26 fiefdom.’”²

27 ¹ As reported in Matt Levine, “FTX’s Balance Sheet Was Bad,” Bloomberg (Nov. 13, 2022),
 28 at <https://www.bloomberg.com/opinion/articles/2022-11-14/ftx-s-balance-sheet-was-bad>;
 see also “Transcript: Sam Bankman-Fried and Matt Levine on Crypto Market Structure,”
 Bloomberg (Aug. 6, 2021), at <https://www.bloomberg.com/news/articles/2021-08-06/transcript-sam-bankman-fried-and-matt-levine-on-crypto-market-structure>.

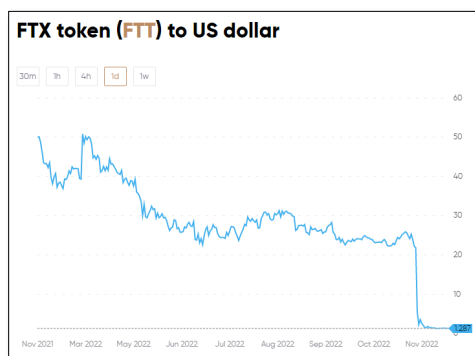
² Rick Archer, “FTX Pledges Better Books, Celsius Faulted for Asset Mingling,” Law360
 (Nov. 28, 2022), at <https://www.law360.com/articles/1552261/ftx-pledges-better-books-celsius-faulted-for-asset-mingling>.

28. Over the next year, FTX continued to grow. As of September 2022, around \$15 billion of digital assets were being traded daily on FTX's platform, representing 10% of the global volume for crypto trading.

29. In early November 2022, however, crypto publication CoinDesk released a report finding that, even though FTX and Alameda were ostensibly separate companies, Alameda's balance sheet was mostly comprised of FTT, the token FTX had invented.³ It appeared that, following massive losses Alameda had sustained in the second quarter of 2022 when the cryptocurrency Luna collapsed, FTX was lending Alameda money against these illusory assets. The report thus called FTX's liquidity into serious question.

30. Shortly after these revelations, FTX's primary competitor, Binance (headed by Changpeng "CZ" Zhao) announced it was liquidating \$530 million worth of FTT tokens. Customers raced to withdraw funds from FTX, with an estimated \$6 billion withdrawn over the course of 72 hours, as the value of its FTT token plunged 32% in the same timeframe.

31. On Tuesday, November 8, 2022, FTX announced that Binance would buy FTX, effectively bailing it out. The following day, however, Binance announced it was walking away from the deal after performing due diligence and finding that customer funds had been mishandled. This news sent FTT plunging.



³ See Ian Allison, "Divisions in Sam Bankman-Fried's Crypto Empire Blur on His Trading Titan Alameda's Balance Sheet: Alameda had \$14.6 billion of assets as of June 30, according to a private document CoinDesk reviewed. Much of it is the FTT token issued by FTX, another Bankman-Fried company." CoinDesk (Nov. 2, 2022), at <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet>.

32. On the morning of Thursday, November 10, 2022, Reuters reported that, after Alameda sustained \$500 million in losses in May and June 2022, Mr. Bankman-Fried had transferred at least \$4 billion from FTX to Alameda without telling anyone, “fearing the news would leak.”⁴ Moreover, “the Wall Street Journal reported FTX lent more than half of its \$16 billion in customer funds to Alameda in total, with Bankman-Fried telling an investor this week that **Alameda owes FTX about \$10 billion.**”⁵

33. At around the same time the report came out, on November 10, 2022, Mr. Bankman-Fried took to Twitter, firing off a series of tweets apologizing for and attempting to explain FTX’s failures.



34. Tweets 4-6 and 19 in the series (and particularly the blurb highlighted in tweet 5 below) are particularly relevant here.



⁴ Brian Evans, “Sam Bankman-Fried secretly transferred FTX customer funds to Alameda Research after his trading firm suffered losses in the spring, report says,” Reuters (Nov. 10, 2022), at <https://www.cnbc.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html>.

⁵ *Id.* (emphasis added).



35. According to an FTX balance sheet leaked that same day and pictured below, FTX held just \$900 million in liquid assets against \$8.9 billion of liabilities. The document also referenced a negative \$8 billion entry described as “hidden, poorly internally labeled ‘fiat@’ account.”⁶

Note: all of these are rough values, and could be slightly off; there is also obviously a chance of typos etc. They also change a bit over time as trades happen.

Liabilities				Assets				Less liquid				Illiquid			
Ticker	Liability			Ticker	Deliverable now	Before this week		Ticker	Deliverable	Before this week		Ticker	Deliverable	Before	
LayerZero	-45,000,000			HOOD	472,291,833	579,183,374		FTT	553,903,773	5,905,299,356		other ventures	1,475,000,000	1,475,000,000	
EUR	-114,536,254			USD in Ledger Prime	200,000,000	200,000,000		SRM	2,187,876,172	5,430,110,335		GDA	1,150,000,000	1,150,000,000	
Genesis	-200,000,000			USDB	73,001,646	73,223,641		SOL	181,902,267	2,245,516,953		Adelphi	500,000,000	500,000,000	
BlockFi	-215,000,000			DAI	28,491,686	28,464,601		MAPS	616,372,827	865,376,279		PVTR	63,766,000	63,766,000	
USDT	-796,482,404			DOT	28,384,450	32,522,098		Locked USDT	500,000,000	500,000,000		TWTR	43,293,943	34,986,915	
ETH	-671,542,668			PAXG	23,767,062	23,244,430		OKX	54,008,094	100,105,976		TRUMP/DOE	7,394,877	7,394,877	
BTC	-1,412,738,406			JPY	21,758,186	21,979,251		STO	45,511,084	66,499,913					
USD	-5,135,280,129			TUSD	15,991,381	16,034,265		ETHE	53,155,549	64,420,529					
Other	-268,462,711			EURT	12,117,879	11,847,808		FIDA	36,492,562	62,127,811					
				BRZ	9,049,093	8,708,731		NSOL	26,958,417	60,394,582					
				BRL	7,017,295	6,753,417		RSD	15,946,248	49,907,401					
				WXRP	6,987,896	9,298,681		BITV	26,527,697	31,559,557					
				PAX	1,000,714	1,002,277		Others	17,860,159	26,105,657					
								CBTC	3,304,945	4,387,145					
								APT	312,092,943	287,602					

Hidden, poorly internally labeled "fiat@" account -8,000,000,000

Withdrawals on Sunday 5,200,000,000

There were many things I wish I could do differently than I did, but the largest are represented by these two things: the poorly labeled internal bank-related account, and the size of customer withdrawals during a run on the bank

	Liabilities	Liquid	Less Liquid	Liquid	Liabilities + liquid without fiat@	Total	Actual leverage	Perceived leverage	Normal	Aggressive
Today's prices	-8,859,042,572	899,859,124	5,449,519,517	3,232,059,943	40,816,552	722,389,579	12.02x	0x	3.60x	0.25x
October's prices	-8,859,042,572	1,012,262,574	15,415,519,517	3,223,752,915	153,220,002	10,792,492,434	1.73x	0x	4.05x	0.23x

	Liabilities	Liquid	Less Liquid	Liquid	Liabilities + liquid	Total	Actual leverage	Perceived leverage	Normal	Aggressive
Before Sunday	-13,859,042,572	5,899,859,124	5,449,519,517	3,232,059,943	40,816,552	722,389,579	12.02x	0x	23.60x	0.85x
50% of withdrawals	-13,859,042,572	6,012,262,574	15,415,519,517	3,223,752,915	153,220,002	10,792,492,434	1.73x	0x	24.05x	0.87x

Liabilities		Assets	
Ticker	Liability	Ticker	Deliverable now
	-8,859,042,572	Liquid	899,859,124
LayerZero	-45,000,000		
EUR	-114,536,254	HOOD	472,291,833
Genesis	-200,000,000	USD in Ledger Prime	200,000,000
BlockFi	-215,000,000	USDB	73,001,646
USDT	-796,482,404	DAI	28,491,686
ETH	-671,542,668	DOT	28,384,450
BTC	-1,412,738,406	PAXG	23,767,062
USD	-5,135,280,129	JPY	21,758,186
Other	-268,462,711	TUSD	15,991,381
		EURT	12,117,879
		BRZ	9,049,093
		BRL	7,017,295
		WXRP	6,987,896
		PAX	1,000,714

23	Hidden, poorly internally labeled "fiat@" account	-8,000,000,000
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⁶ Matt Levine, “FTX’s Balance Sheet Was Bad,” Bloomberg (Nov. 13, 2022), at <https://www.bloomberg.com/opinion/articles/2022-11-14/ftx-s-balance-sheet-was-bad>.

36. On Friday, November 11, 2022, FTX filed for Chapter 11 bankruptcy, and Bankman-Fried resigned as CEO. Alameda Research and a host of other companies related to FTX and Alameda also moved for bankruptcy and joint administration.⁷

37. Shortly after FTX's bankruptcy filing, the Wall Street Journal reported that "[i]n a video meeting with Alameda employees late Wednesday [November 9] Hong Kong time, Alameda CEO Caroline Ellison said that she, Mr. Bankman-Fried and two other FTX executives, Nishad Singh and Gary Wang, were aware of the decision to send customer funds to Alameda."⁸ Ms. Ellison explained that "FTX used customer money to help Alameda meet its liabilities."⁹

38. On November 13, 2022, citing "a source familiar with company operations," CNBC reported that Alameda "was able to quietly use customer funds from . . . FTX in a way that flew under the radar of investors, employees and auditors in the process, according to [the] source."¹⁰ It did this by "using billions from FTX users without their knowledge"¹¹ As a result of Alameda's use—and loss—of FTX customers' funds, FTX "drastically

⁷ See *In re FTX Trading Ltd. Bankr.*, No. 22-BR-11068-JTD (D. Del., filed Nov. 11, 2022), Dkt. No. 1 (Voluntary Petition), Annex 1.

⁸ David Michaels, Elaine Yu, and Caitlin Ostroff, "Alameda, FTX Executives Are Said to Have Known FTX Was Using Customer Funds; Trading firm Alameda's troubles helped lead to the bankruptcy of crypto exchange FTX." Wall Street Journal (Nov. 12, 2022), at <https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238>.

⁹ *Id.*

¹⁰ Kate Rooney, "Sam Bankman-Fried's Alameda quietly used FTX customer funds for trading, say sources," CNBC.com (Nov. 13, 2022), at <https://www.cnbc.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html>.

¹¹ *Id.*

1 underestimated the amount FTX needed to keep on hand if someone wanted to cash out,” and
2 “did not have nearly enough on hand” when things went bad.¹²

3 39. According to CNBC, “The blurred lines between FTX and Alameda Research
4 resulted in a massive liquidity crisis for both companies. . . . When asked about the blurred
5 lines between his companies in August [2022], Bankman-Fried denied any conflict of interest
6 and said FTX was a ‘neutral piece of market infrastructure,’” and that he had “put a lot of
7 work over the last few years into trying to eliminate conflicts of interest there,”” adding “‘I
8 don’t run Alameda anymore. I don’t work for it, none of FTX does. We have separate staffs—
9 we don’t want to have preferential treatment. We want as best as we can, to treat everyone
10 fairly.’”¹³

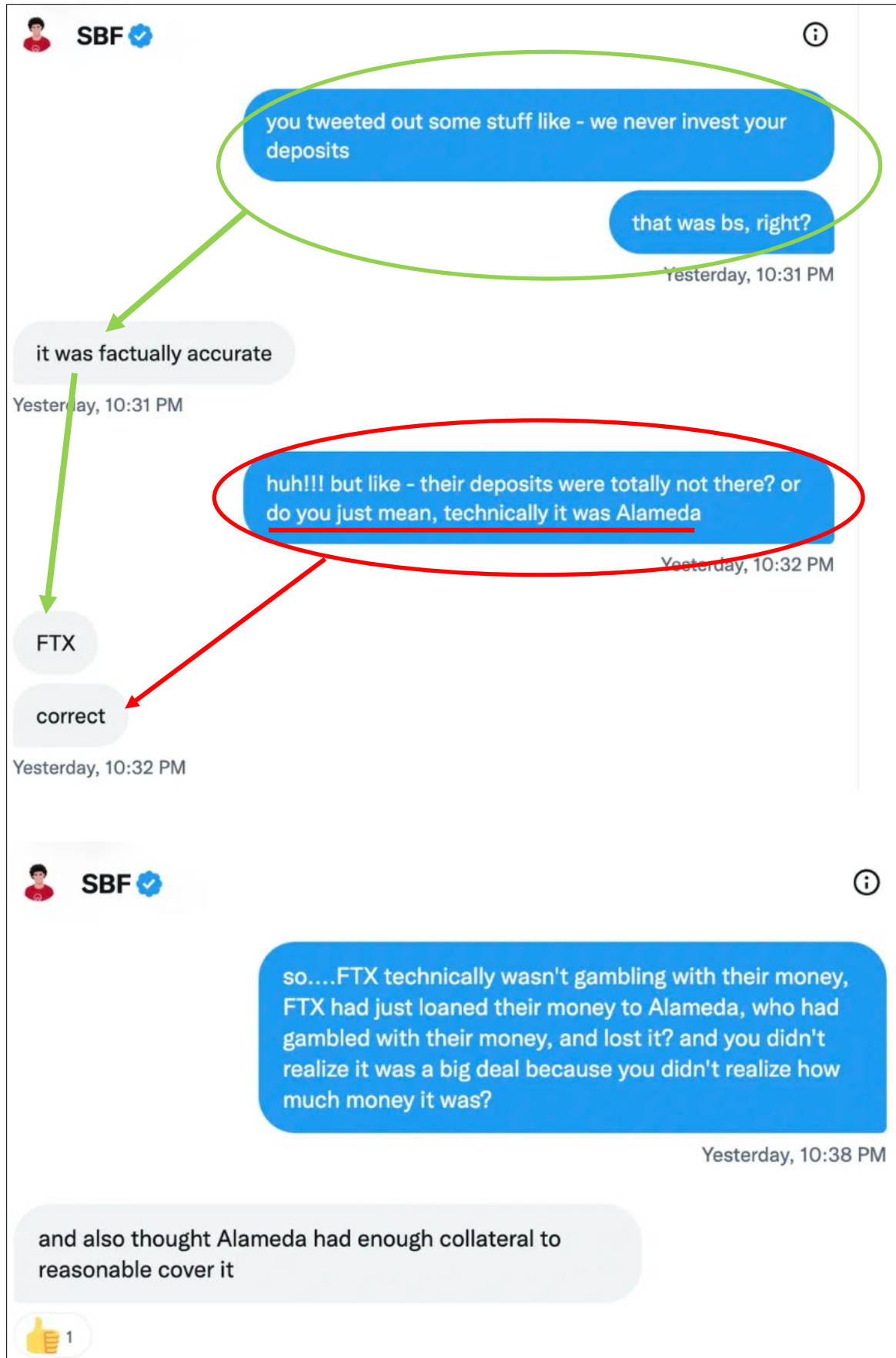
11 40. On November 15, 2022, Mr. Bankman-Fried engaged in a twitter conversation
12 with Vox writer Kelsey Piper, which she published the next day.¹⁴ Certain portions of the
13 conversation relevant here are replicated below.

14
15
16
17
18 [continued]
19
20
21
22

23
24 ¹² *See id.*

25 ¹³ *Id.*

26 ¹⁴ Kelsey Piper, “Sam Bankman-Fried tries to explain himself: The fallen crypto CEO on
27 what went wrong, why he did what he did, and what lies he told along the way,” Vox (Nov.
28 16, 2022), at <https://www.vox.com/future-perfect/23462333/sam-bankman-fried-ftx-cryptocurrency-effective-altruism-crypto-bahamas-philanthropy>.





SBF ✓



was the Alameda thing when LUNA crashed the first time customer deposits got lent out (that's what people are saying) or was it more like, the accounting was such that a lot of the stuff you were doing was implicitly backed by customer deposits?

Yesterday, 9:25 PM

messy accounting + margin exchange --> position built up over time, though in retrospect LUNA crash was when a lot of it did

but messy accounting --> I didn't realize full size of it until a few weeks ago

Yesterday, 9:26 PM



SBF ✓

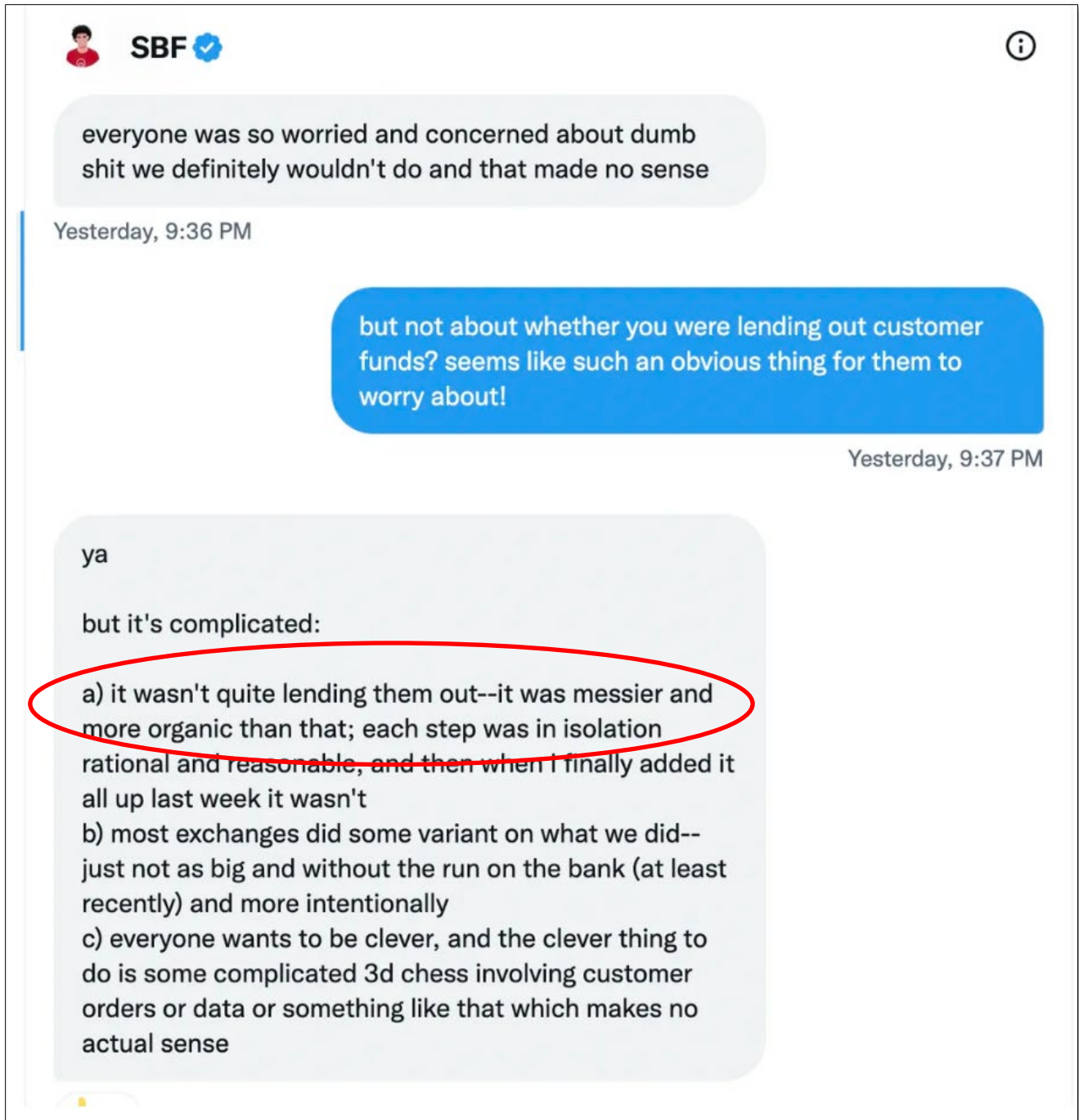


if you could do it all over again, would you just take more careful accounting? never touch customer funds? never go into crypto?

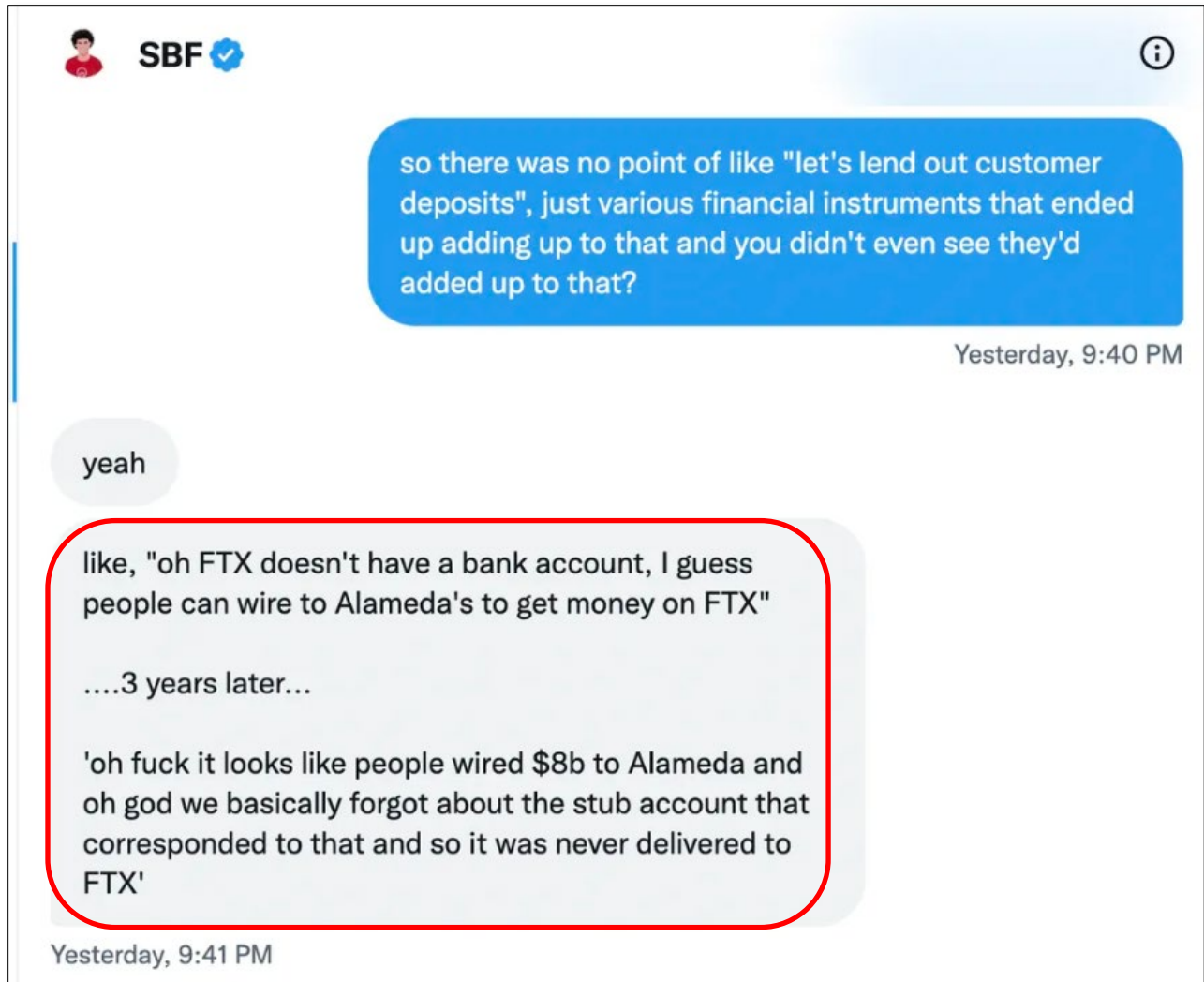
Yesterday, 9:34 PM

more careful accounting + offboard Alameda from FTX once FTX could live on its own

Yesterday, 9:34 PM



41. Finally, Mr. Bankman-Fried admitted that FTX was using Alameda's bank account to receive customer deposits, rather than transferring money from FTX to Alameda.



42. Notably, the amount of these diverted, comingled customer funds corresponds to the negative \$8 billion “hidden, poorly labeled fiat@ account” on FTX’s balance sheet.

43. The same day FTX filed for bankruptcy, November 11, 2022, John J. Ray III accepted the position of FTX’s CEO. On November 17, 2022, Mr. Ray submitted in the bankruptcy action a Declaration in Support of Chapter 11 Petitions and First Day Pleadings, stating:¹⁵

¹⁵ *Id.*, Dkt. No. 24.

4. I have over 40 years of legal and restructuring experience. I have been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate failures in history. I have supervised situations involving allegations of criminal activity and malfeasance (Enron). I have supervised situations involving novel financial structures (Enron and Residential Capital) and cross-border asset recovery and maximization (Nortel and Overseas Shipholding). Nearly every situation in which I have been involved has been characterized by defects of some sort in internal controls, regulatory compliance, human resources and systems integrity.

5. Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals, this situation is unprecedented.

44. Mr. Ray further declared:

B. Cash Management

50. The FTX Group did not maintain centralized control of its cash. Cash management procedural failures included the absence of an accurate list of bank accounts and account signatories, as well as insufficient attention to the creditworthiness of banking partners

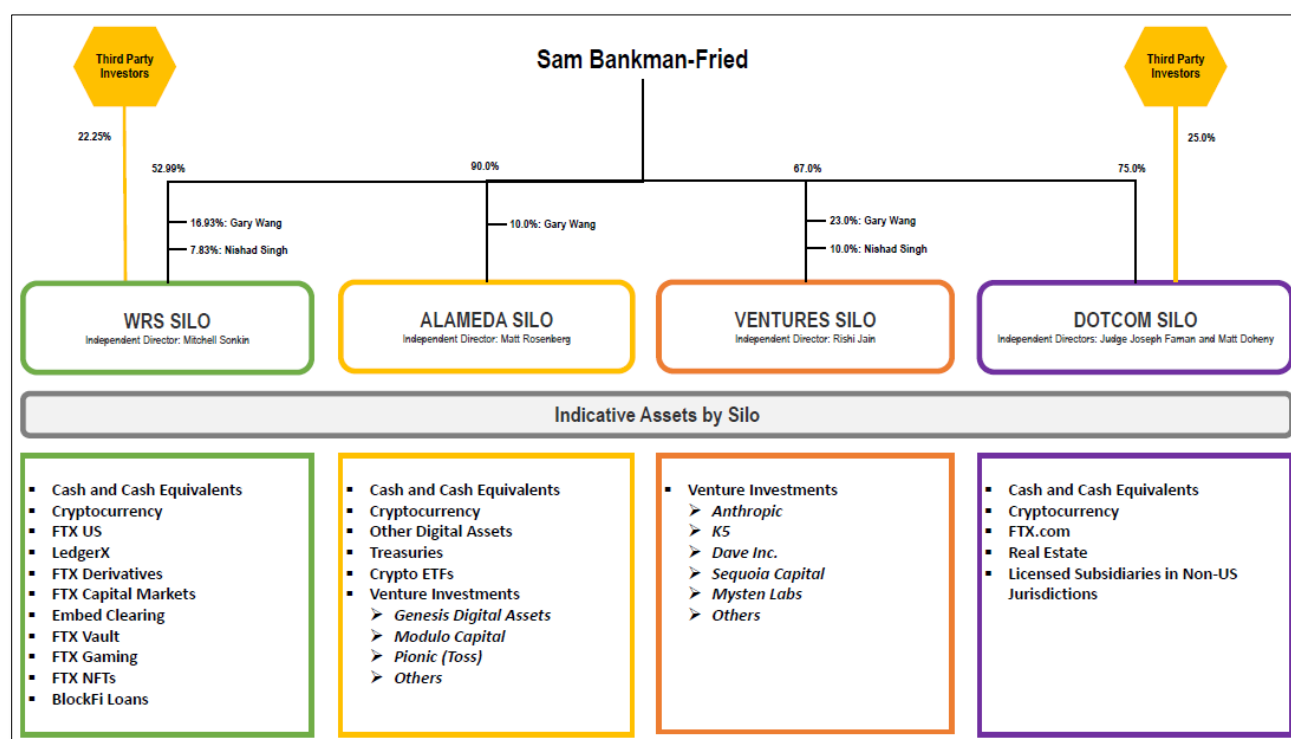
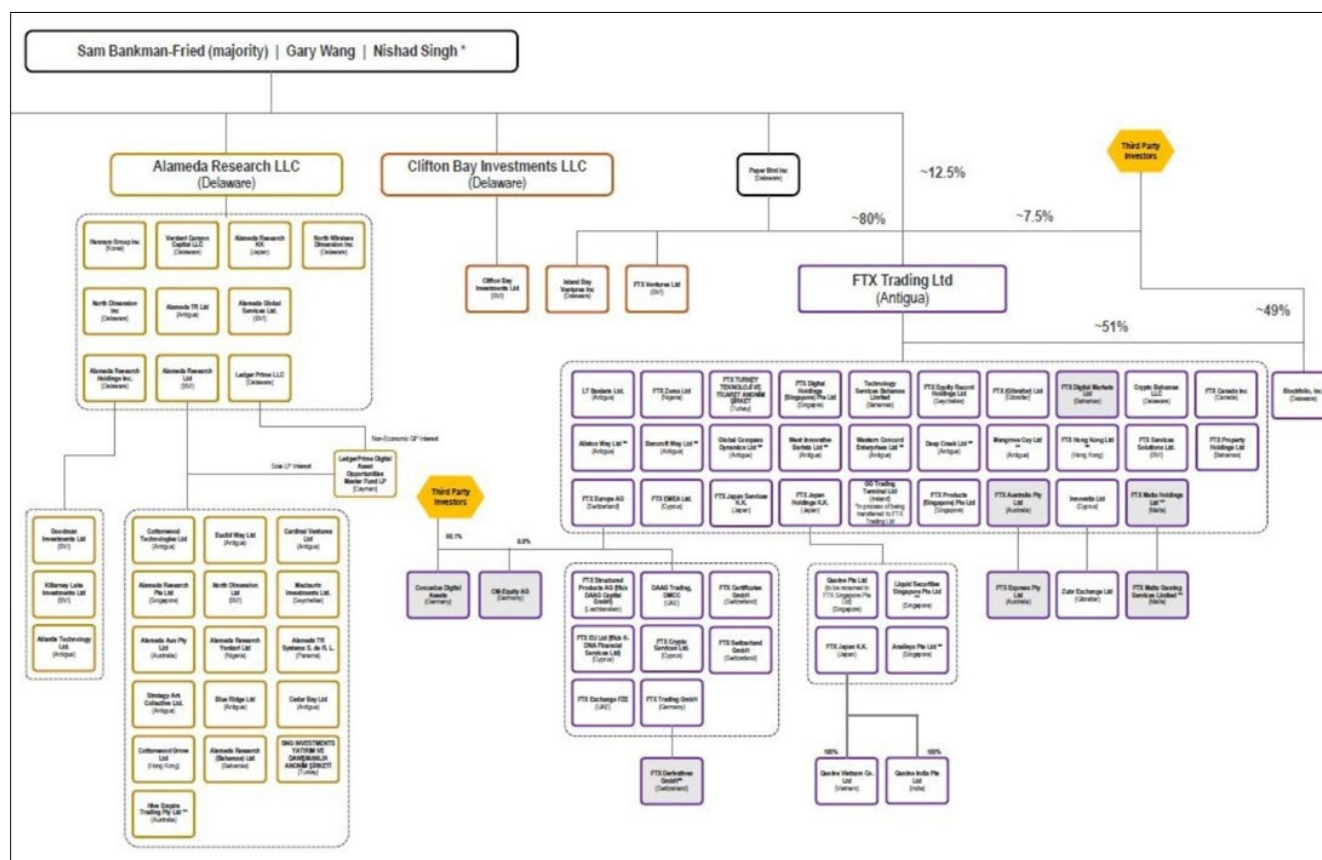
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around the world. Under my direction, the Debtors are establishing a centralized cash management system with proper controls and reporting mechanisms.

45. Mr. Ray's declaration included organization charts demonstrating that, despite both being owned by Sam Bankman-Fried, FTX and Alameda are wholly separate entities.



46. After obtaining audited financial statements of West Realm Shires, also known as FTX US, and FTX Trading Ltd., following the initiation of the bankruptcy, CoinDesk published an article describing a “series of red flags” in those reports.¹⁶

47. First, FTX used two audit firms to separately audit FTX’s U.S.-based entity and its offshore Bahamas-based entity. Those audit firms, Armanino and Prager Metis, are relatively small and inspected by the Public Company Accounting Oversight Board (PCAOB) only once every three years. Both have poor records with the PCAOB.

48. Second, neither Armanino’s nor Prager Metis’s audits provided an opinion on FTX’s internal controls over accounting and financial reporting.¹⁷

49. Third, although FTX appeared to be profitable, neither FTX US nor FTX Trading paid any federal income taxes.¹⁸

50. Finally, CoinDesk noted “complex, roundtrip and utterly confounding related-party transactions documented” over just two years. These related-party transactions were the “biggest red flag,” and were so numerous that it was “difficult to know where to begin to analyze them.”¹⁹

IV. SILVERGATE’S ROLE IN THE FTX FRAUD AND COLLAPSE

51. FTX was a crucial client of Silvergate’s. As of June 2022, Silvergate had approximately 1,500 institutional clients, with a total of approximately \$12 billion on deposit. Yet, despite constituting just a few accounts at Silvergate, FTX’s deposits made up a full 10% of Silvergate’s total deposits.

¹⁶ Francine McKenna, “A Complete Failure of Corporate Controls’: What Investors and Accountants Missed in FTX’s Audits,” CoinDesk (Nov. 18, 2022), at <https://www.coindesk.com/layer2/2022/11/18/a-complete-failure-of-corporate-controls-what-investors-and-accountants-missed-in-ftxs-audits>.

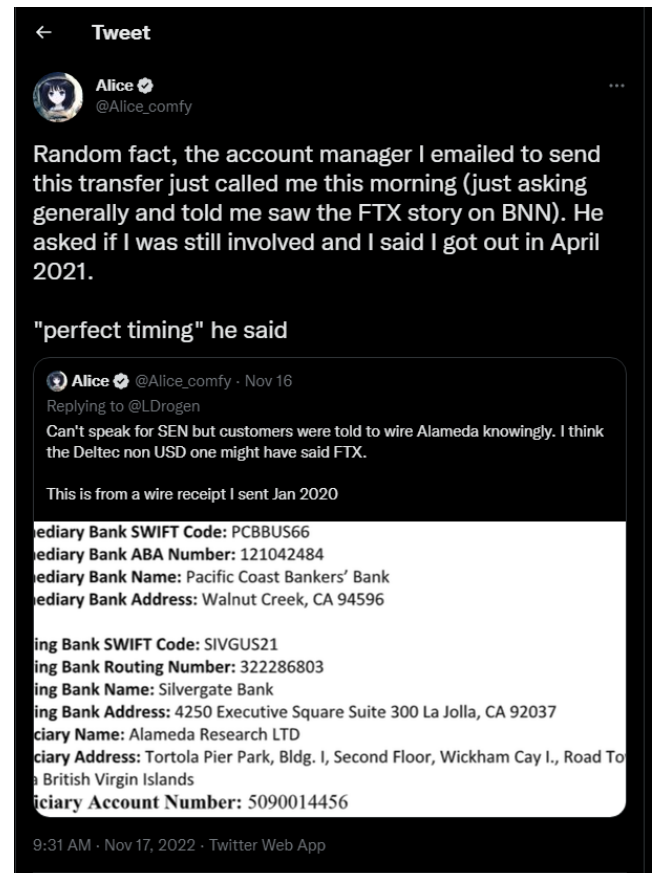
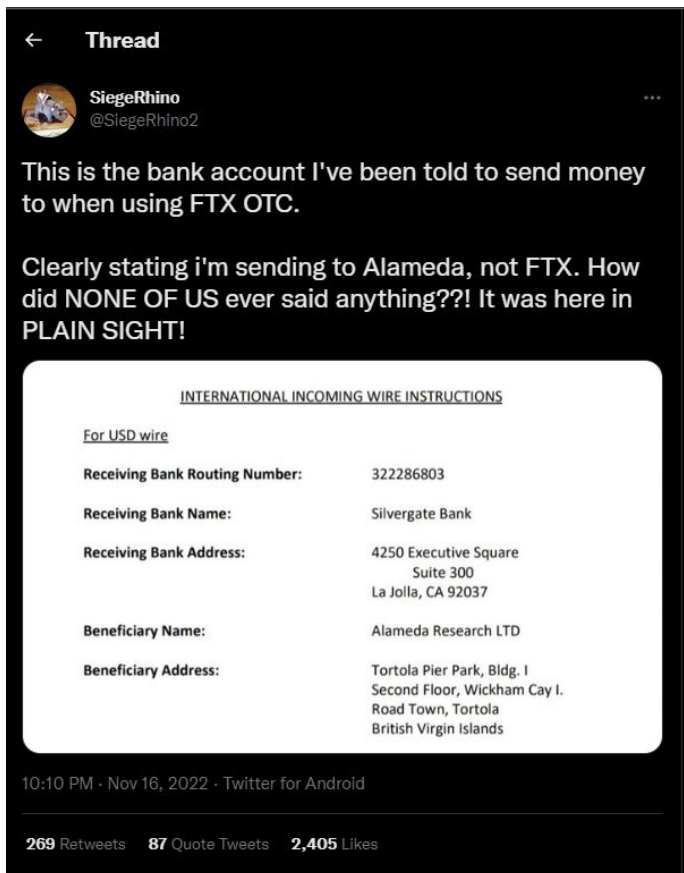
¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

52. To trade cryptocurrencies on FTX, customers must have first deposited funds. At least some customers wishing to make deposits via bank wire were directed by FTX to deposit funds to account(s) held at Silvergate. As Mr. Bankman-Fried admitted, however, the account(s) that at least some customers were directed to deposit funds to was not held by FTX, but rather Alameda Research, a wholly separate entity.

53. In addition to Mr. Bankman-Fried's admission, there are numerous accounts online of FTX customers being directed to deposit funds in an Alameda Research account. Two such tweets are replicated below, with one showing the Alameda Research Account as number 5090014456 at Silvergate.



Blowup of image in second “Alice” tweet above

Intermediary Bank SWIFT Code: PCBBUS66
Intermediary Bank ABA Number: 121042484
Intermediary Bank Name: Pacific Coast Bankers’ Bank
Intermediary Bank Address: Walnut Creek, CA 94596

Receiving Bank SWIFT Code: SIVGUS21
Receiving Bank Routing Number: 322286803
Receiving Bank Name: Silvergate Bank
Receiving Bank Address: 4250 Executive Square Suite 300 La Jolla, CA 92037
Beneficiary Name: Alameda Research LTD
Beneficiary Address: Tortola Pier Park, Bldg. I, Second Floor, Wickham Cay I., Road Town,
Tortola British Virgin Islands
Beneficiary Account Number: 5090014456

54. That same account number—along with seven others for Alameda—was noted in a November 19 filing in the FTX bankruptcy proceeding (Dkt. No. 47-3), as shown below.

Debtor	Bank Name	Last Four Digits of Account No.
FTX Japan K.K.	SBI Sumishin Net Bank Ltd.	7502
FTX Japan K.K.	SBI Sumishin Net Bank Ltd.	3065
FTX Japan K.K.	SBI Sumishin Net Bank Ltd.	0109
FTX Japan K.K.	SBI Sumishin Net Bank Ltd.	0110
Alameda Research LLC	Signature Bank	5489
Alameda Research Ltd	Signature Bank	9485
Maclaurin Investments Ltd.	Signature Bank	2685
Blockfolio, Inc.	Signature Bank	4174
FTX Europe AG	Signature Bank	7500
FTX Trading Ltd	Signature Bank	9964
FTX Trading Ltd	Signature Bank	9018
FTX Ventures Ltd	Signature Bank	7872
Hive Empire Trading Pty Ltd	Signature Bank	3087
Ledger Holdings Inc.	Signature Bank	8106
Ledger Prime LLC	Signature Bank	5385
Ledger Prime LLC	Signature Bank	5377
Paper Bird Inc	Signature Bank	8701
West Realm Shires Inc.	Signature Bank	7436
West Realm Shires Services Inc.	Signature Bank	2804
West Realm Shires Services Inc.	Signature Bank	3976
West Realm Shires Services Inc.	Signature Bank	6989
West Realm Shires Services Inc.	Signature Bank	6989
FTX Lend Inc.	Signature Bank	7651
Crypto Bahamas LLC	Signature Bank	5171
Good Luck Games, LLC	Signature Bank	7432
Goodman Investments Ltd.	Signature Bank	2903
West Realm Shires Financial Services Inc.	Signature Bank	9812
Alameda Research LLC	Signet	5489
Ledger Holdings Inc.	Silicon Valley Bank	7808
Alameda Research KK	Silvergate Bank	3433
Alameda Research KK	Silvergate Bank	4621
Alameda Research LLC	Silvergate Bank	5587
Alameda Research LLC	Silvergate Bank	6056
Alameda Research LLC	Silvergate Bank	6080
Alameda Research Ltd	Silvergate Bank	4456
Alameda Research Ltd	Silvergate Bank	4464
Alameda Research Ltd	Silvergate Bank	4605
FTX Europe AG	Silvergate Bank	4439
FTX Europe AG	Silvergate Bank	8182
FTX Europe AG	Silvergate Bank	8190
FTX Japan K.K.	Silvergate Bank	8169
FTX Japan K.K.	Silvergate Bank	8185
FTX Japan K.K.	Silvergate Bank	8193
Ledger Holdings Inc.	Silvergate Bank	1235
Ledger Prime LLC	Silvergate Bank	1223
Ledger Prime LLC	Silvergate Bank	3145
North Dimension Inc	Silvergate Bank	8738
North Dimension Inc	Silvergate Bank	8746
West Realm Shires Services Inc.	Silvergate Bank	8589

55. As a U.S. bank, pursuant to Title III of the USA PATRIOT Act (“Act”)²⁰ Silvergate is subject to Know-Your-Customer (KYC) and Anti-Money Laundering (AML) laws and regulations designed to help prevent identity theft, money laundering, financial fraud, terrorism financing, and other financial crimes. *See* 31 U.S.C. § 5312.

56. Under section 312 of the Act, U.S. financial institutions like Silvergate must perform due diligence, and in some cases, enhanced due diligence, with regard to correspondent accounts²¹ established or maintained for foreign financial institutions, like FTX, and private banking accounts established or maintained for non-U.S. persons.²²

57. U.S. financial institutions covered by the Act, like Silvergate, must establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to detect and report known or suspect money laundering or suspicious activity conducted through or involving any correspondent account established, maintained, administered, or managed in the United States.²³

58. At a minimum, this includes (1) determining whether the account is subject to enhanced due diligence under section 312, (2) assessing the money laundering risk posed, based on consideration of relevant risk factors, and (3) applying risk-based policies, procedures, and controls to each such correspondent account reasonably designed to detect

²⁰ HR 3162, Pub. L. 107-56, the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (Enacted Oct. 26, 2001).

²¹ A correspondent account is one established to receive deposits from or make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution. *See* Pub. L. 107-56 § 311(e)(1)(B).

²² *See* Dep’t of Treasury, Financial Crimes Enforcement Network, “FACT SHEET: Section 312 of the USA PATRIOT Act; Final Regulation and Notice of Proposed Rulemaking” (December 2005) at 1, *at* <https://www.fincen.gov/sites/default/files/shared/312factsheet.pdf>.

²³ *See id.*

1 and report known or suspected money laundering activity, including a periodic review of the
2 correspondent account activity.²⁴

3 59. More specifically, this means taking reasonable steps to “(1) determine the
4 identity of *all nominal and beneficial owners of the private banking account*; . . . (3)
5 determine the source(s) of funds deposited into the private banking account and *the purpose*
6 *and expected use of the account*; and (4) *review the activity of the account to ensure that*
7 *the activity is consistent with the information obtained about the source of funds, the stated*
8 *purpose and the expected use of the account*, as needed to guard against money laundering,
9 and to report any suspicious activity.”²⁵

10 60. Moreover, under section 312 of the Act, U.S. financial institutions like
11 Silvergate must apply “enhanced” due diligence when establishing or maintaining a
12 correspondent account for a foreign financial institution (like FTX) that is operating (1) under
13 an offshore license, (2) in a jurisdiction found to be non-cooperative with international anti-
14 money laundering principles, or (3) in a jurisdiction found to be of primary money laundering
15 concern under section 311 of the Act. With regard to such correspondent accounts, the Act
16 requires U.S. financial institutions like Silvergate to take reasonable steps to (1) conduct
17 appropriate enhanced scrutiny; (2) determine whether the foreign bank itself offers
18 correspondent accounts to other foreign banks (i.e., nested accounts) and, as appropriate,
19 identify such foreign bank customers and conduct additional due diligence on them; and (3)
20 identify the owners of the foreign bank, if its shares are not publicly traded.²⁶

21 61. Silvergate is aware of its compliance responsibilities. A November 21, 2022
22 “Letter to our Customers” published on linkedin.com by Silvergate CEO, Defendant Alan J.
23 Lane, stated:

24
25
26 ²⁴ *Id.*

27 ²⁵ *Id.* at 4.

28 ²⁶ *Id.* at 3.

Our business starts by knowing our customers, their business and the activity they plan to conduct at our institution. Once we approve a new customer, if the activity in their account does not match the activity that we expect based on our initial approval, we take immediate action up to and including terminating that relationship. No exceptions. The U.S. Bank Secrecy Act requires us to develop a robust compliance and risk management program. It's a responsibility we take very seriously.²⁷

62. In an April 2022 Finastra TV episode titled "Leveraging Crypto for Banks (Americas)," Defendant Christopher M. Lane was asked, "As crypto use cases proliferate and converge with traditional banking and payment services, which elements of the cryptocurrency and blockchain ecosystem can financial institutions be looking to own, or truly control for their clients?" Silvergate's CEO stated he believed:

[T]he role that commercial banks play in this ecosystem is really providing that of trust. I think it's really important that banks really focus on, essentially compliance—KYC, AML—as they think through what aspects of this ecosystem that they need to own. So I think that's probably answer number one.

And then I think custody in general is something that's just so foundational to some of the products that are going to be built here. It's just, it's really important if banks are looking for partnerships in this space that they stay close to the custody solution.²⁸

63. Mr. Lane further stated:

From a Silvergate perspective, this is something we've been doing for about 10 years now. So just trying to understand the changes of what's required from a compliance perspective is definitely something that if you're getting into this space in time to put the work in there—and again, going back to the concept earlier, **KYC/AML is just a critical component for any bank looking[at] getting into this space.** A compliance program in general.²⁹

²⁷ At <https://www.linkedin.com/pulse/letter-our-customers-silvergate-bank>.

²⁸ At <https://www.finastra.com/tv/episode/leverage-crypto-banks-americas>, at 13:40-15:11 (cleaned up).

²⁹ *Id.* starting at 26:30 (cleaned up; emphasis added).

64. Silvergate and the individual defendants failed to fulfill their due diligence obligations by either failing to establish an adequate due diligence program or failing to properly execute that program.

65. Had Silvergate and the individual defendants complied with their KYC, AML and due diligence obligations, they would have known that numerous transactions sent to the Alameda Research account were not intended to go to the hedge fund, but were intended for deposit to FTX.

66. Ordinary due diligence would have revealed suspicious activity and required reporting. For example, it would be extremely unusual and suspicious for a hedge fund to receive the high volume of transfers or deposits, in relatively small amounts, from a high number of distinct persons, that was occurring with Alameda Research.

67. Moreover, all of the accounts held by Sam Bankman-Fried's companies—including FTX Ltd., FTX US, and Alameda—were held in Silvergate, giving the bank a full view of the companies' financials.

68. Had Silvergate conducted even a cursory review of FTX's audits, it would have been aware of the serious issues plaguing its corporate control. Silvergate either reviewed FTX and Alameda audits and ignored their red flags, or it simply chose not to request audits.

69. Silvergate was also well aware that cryptocurrency is an industry rife with opportunity for and actual instances of fraud. Silvergate had witnessed many such instances in its many years of serving the industry.³⁰ It thus should have been especially attuned to the means and mechanisms of fraud of the type in which FTX and Alameda engaged.

³⁰ See, e.g., Mike Freeman, "San Diego lawsuit aims to safeguard \$154M in embezzled funds that were converted to cryptocurrency: U.S. Attorney seeks civil forfeiture; Funds transferred to Coinbase account at La Jolla bank and converted into 3,879 Bitcoins." San Diego Union-Tribune (Dec. 21, 2021), *available at* <https://www.sandiegouniontribune.com/business/story/2021-12-21/san-diego-lawsuit-aims-to-safeguard-154-million-in-allegedly-embezzled-funds-converted-to-crypto-currency>.

70. In addition, FTX’s Chief Regulatory Officer, Dan Friedberg, was well-known for a \$50 million poker cheating scandal.³¹ Silvergate thus should have been especially attuned to the possibility for fraud given Mr. Friedberg’s involvement in the business.

71. Because FTX and Alameda never had financial statements audited, neither ever provided Silvergate with audited financial statements. This alone should have been suspicious to Silvergate.

72. Had Silvergate and the individual defendants fulfilled their due diligence requirements they would have detected that such funds were being misdirected and reported it—especially given the close nature of Alameda Research and FTX, and the prominence of FTX as a client for Silvergate.

73. In sum, Silvergate—including through the actions and non-actions of its CEO, Defendant Alan J. Lane, Senior Vice President of Business Systems, Defendant Chris Lane, Senior Vice President of Enterprise Risk Management, Defendant Tyler J. Pearson, and Vice President and Manager of Correspondent Banking, Defendant Jason Brenier—either intentionally (fraudulently), or at least negligently or recklessly failed to comply with its KYC and AML obligations, which would have prevented funds intended for FTX from being deposited and comingled in an unrelated bank account. By doing so, Silvergate enabled FTX’s fraud and the losses of millions—perhaps even billions—of dollars of FTX customer deposits.

A. Defendant Alan J. Lane (Silvergate CEO)

74. Defendant Alan J. Lane joined Silvergate Bank in December 2008, as director and Chief Executive Officer. He is also director and CEO of the bank’s holding company,

³¹ See Fang Shihan, “FTX was fueled by drugs, sex, and poker fraud,” The Checkout (Nov. 17, 2022), at <https://www.techinasia.com/ftx-fueled-drugs-sex-poker-fraud>; Thomas Barrabi, “FTX’s ‘chief regulatory officer’ Dan Friedberg tied to online poker scandal,” New York Post (Nov. 20, 2022), at <https://nypost.com/2022/11/20/ftxs-ex-chief-regulatory-officer-tied-to-online-poker-scandal>.

1 Defendant Silvergate Capital Corporation. He holds a B.A. in Economics from San Diego
2 State University.

3 75. As CEO, Mr. Lane is responsible for all aspects of Silvergate’s business. Mr.
4 Lane was an early proponent of cryptocurrencies and a key driver of Silvergate’s entry into
5 the industry.

6 76. Given that FTX is one of Silvergate’s most important customers based on value
7 alone—comprising a full 10% of the bank’s deposits despite it having 1,500 customers—Mr.
8 Lane knew or should have known how the due diligence program regarding FTX, Alameda,
9 and their accounts was designed, enacted, and executed.

10 77. In a November 8, 2021 interview titled “Roundtable: Banking in the Digital Age
11 with Alan Lane,” Mr. Lane spoke at length about Silvergate’s business, and special the SEN.

12 78. According to Mr. Lane, SEN connects digital currency exchanges with “several
13 hundred institutional investors” like “hedge funds, family offices, etc.—any institution that
14 is investing in digital currencies or digital assets as a new asset class,” and “the primary
15 benefit that our customers gain in transacting across the SEN is that it is a regulated on ramp
16 and an off ramp between U.S. dollars and other fiat currencies, into and out of digital
17 currencies.”³²

18 79. According to Mr. Lane, “the SEN was really a gamechanger . . . for the industry”
19 because it “helped reduce banking friction, improved liquidity, and also reduced counterparty
20 risk because all of the customers who participate on the SEN, they’ve all been run through
21 our regulatory compliance framework.”³³

22 80. Mr. Lane further stated that:

23 As folks are entering the [SEN] ecosystem, they beat a path to our door
24 because we have a regulated, a tried-and-true, regulated platform that has been
25 through eight years of consistent regulatory oversight. I want to be clear, I
26 don’t ever want to overstate that. The regulators don’t say, yeah this is great,

27 ³² *Id.* at 1:27-2:26.

28 ³³ *Id.* at 3:01-3:28.

they just tell us if we can't do it, right, and so we've been doing it for eight years, and they haven't said we can't. And so the consistent regulatory oversight, the improvements over time, the KYC, the anti-money laundering; it means our customers know that they have a bank account they can count on.³⁴

81. Finally, Mr. Lane stated that Silvergate was “all in” on crypto, and that 98% or 99% of Silvergate's deposits were related to crypto by that time.³⁵ In discussing Silvergate's customers, Mr. Lane stated that Silvergate was “in the background . . . helping our customers, our institutional, our business customers, scale their businesses”³⁶

82. Mr. Lane failed to appropriately ensure the sufficiency of Silvergate's due diligence program, monitoring, and reporting regarding FTX and Alameda, and instead helped facilitate what should have been an obvious misdirection of funds.

83. Had Mr. Lane fulfilled his obligations regarding due diligence for FTX accounts, Silvergate would have quickly detected and reported suspicious activity and prevented misdirection of funds early on, which should have prevented further misdirection of funds.

B. Defendant Chris Lane (Silvergate SVP of Business & Deposit Systems)

84. As Senior Vice President of Business & Deposit Systems, Defendant Chris Lane had responsibilities concerning Silvergate's compliance with KYC and AML requirements.

85. During his April 2022 appearance on Finastra TV, Mr. Lane was asked Do the models for KYC and AML change as the shift from . . . the identity-based model of AML and KYC—we know who you are, you're a trusted entity, ok [you are] good [to] do stuff . . . from that to, we don't know who you are, this is a blockchain scenario, but we know every single thing that you're doing, while you're doing it, and we know everything you've done, because we can go back and look. Because then you start really measuring things in terms of behaviors, and trying to stop bad behaviors, rather than trying to stop bad people from getting into the ecosystem. Do you see banks

³⁴ *Id.* at 24:51-25:23.

³⁵ *See id.* at 26:29-50.

³⁶ *Id.* at 29:04-26.

1 having to make a shift in that, in order to interact with, and really optimize
2 interactions with the crypto and blockchain ecosystems?

3 In response, he stated:

4 So I think what you might be referring to is just the pseudonymous nature of
5 . . . cryptocurrencies. I don't know that there's necessarily anything vastly
6 different than how banks and non-bank financial institutions have already
7 been performing their KYC/AML obligations in this space for longer than
8 Bitcoin has been around. You know, the ability to actually verify a person,
9 you know, a person's identity and essentially get to know them without having
10 them walk into a physical branch. That's the use case that's been around for a
11 while and I don't think it changes drastically with the evolution of this
12 ecosystem.

13 Banks and non-bank financial institutions; there are players that have been
14 doing this for a long time, essentially providing a digital onboarding
15 experience, and just continuing to build on that use case and evolve that
16 program is I think is what's needed.

17 86. Mr. Lane knew or should have known how the due diligence program regarding
18 FTX and Alameda and their accounts were designed and enacted.

19 87. Mr. Lane failed to appropriately monitor and ensure the sufficiency of
20 Silvergate's due diligence program and monitoring regarding FTX and Alameda.

21 88. Had Mr. Lane fulfilled his obligations regarding due diligence for FTX and
22 Alameda accounts, Silvergate would have detected and reported suspicious activity. This
23 should have prevented further misdirection of funds.

24 89. Because of Mr. Lane's failures, Silvergate failed to detect or report what should
25 have been obviously suspicious activity—permitting perhaps billions of dollars of intended
26 for FTX to be deposited into an account held by a separate entity, Alameda Research.

27 90. Had Mr. Lane fulfilled his obligations regarding due diligence for FTX accounts,
28 Silvergate would have quickly detected and reported suspicious activity and prevented
misdirection of funds early on, which should have prevented further misdirection of funds.

C. Tyler J. Pearson (Silvergate Chief Risk Officer & SVP of Enterprise Risk Management)

91. Defendant Tyler J. Pearson was Silvergate’s Chief Risk Officer from April 2021 to early November 2022, and prior to that was Silvergate’s Senior Vice President of Enterprise Risk Management from September 2017 to December 2019.

92. In his positions with Silvergate, Mr. Pearson was responsible for identifying, analyzing, and mitigating internal and external risks, and ensuring Silvergate complies with government regulations.

93. Mr. Pearson was responsible for ensuring the design, enactment, and execution of the due diligence program regarding FTX and Alameda and their accounts were sufficient and properly enacted.

94. Because of Mr. Pearson’s failures, Silvergate failed to detect or report what should have been obviously suspicious activity—permitting perhaps billions of dollars of intended for FTX to be deposited into an account held by a separate entity, Alameda Research.

95. As Alma Agotti, a former enforcer with the U.S. Securities and Exchange Commission said, “It’s very bad practice and risk management in any book to mingle your customer funds with counterparty funds and other funds,” and “It’s bad risk management and it’s sloppy at the very least.”³⁷

96. Such misdirection or mingling of funds should have been obvious if the Mr. Pearson and Silvergate enacted an adequate due diligence program and adequately executed the program.

97. Had Mr. Pearson fulfilled his obligations regarding due diligence for FTX and Alameda accounts, Silvergate would have quickly detected and reported suspicious activity

³⁷ Yueqi Yang and Max Reyes, “FTX Received Some Customer Deposits Via Bank Accounts Held by Alameda,” Bloomberg (Nov. 28, 2022), at <https://www.bloomberg.com/news/articles/2022-11-28/ftx-received-some-customer-deposits-via-bank-accounts-held-by-alameda>.

1 and prevented misdirection of funds early on, which should have prevented further
2 misdirection of funds.

3 **D. Jason Brenier (Silvergate Director of Trading; SVP of Correspondent**
4 **Banking; Senior Relationship Manager; VP and Director of Finance and**
5 **Accounting)**

6 98. Defendant Jason Brenier is an experienced Certified Public Accountant. He
7 received a B.A. in Business Economics with Accounting Emphasis from UC Santa Barbara
8 in 2005, and has taught a class on Auditing at UCSD.

9 99. Mr. Brenier was and is responsible for many aspects of Silvergate's business
10 related to the behavior at issue in this case. This includes, for example participating in the
11 review and design of Risk and Control programs for the Trading department; maintaining
12 current knowledge of all federal and state laws and regulations; assisting in reporting to
13 Finance, Risk, and Operations and to external parties, including regulators; collaborating with
14 the Operations, Treasury, Risk, Finance, Compliance, Sales, and Business Development
15 Departments; and having ownership over the Trading Department's balance sheet.

16 100. Mr. Brenier knew or should have known how the due diligence program
17 regarding FTX and Alameda and their accounts were designed and implemented.

18 101. Mr. Brenier failed to appropriately monitor and ensure the sufficiency of
19 Silvergate's due diligence program and its execution regarding FTX and Alameda and their
20 accounts.

21 102. Had Mr. Brenier fulfilled his obligations the due diligence program related to
22 FTX and Alameda, he and others at Silvergate would have detected and reported suspicious
23 activity. This should have prevented further misdirection of funds.

24 103. Had Mr. Brenier fulfilled his obligations regarding due diligence for FTX and
25 Alameda accounts, Silvergate would have quickly detected and reported suspicious activity
26 and prevented misdirection of funds early on.

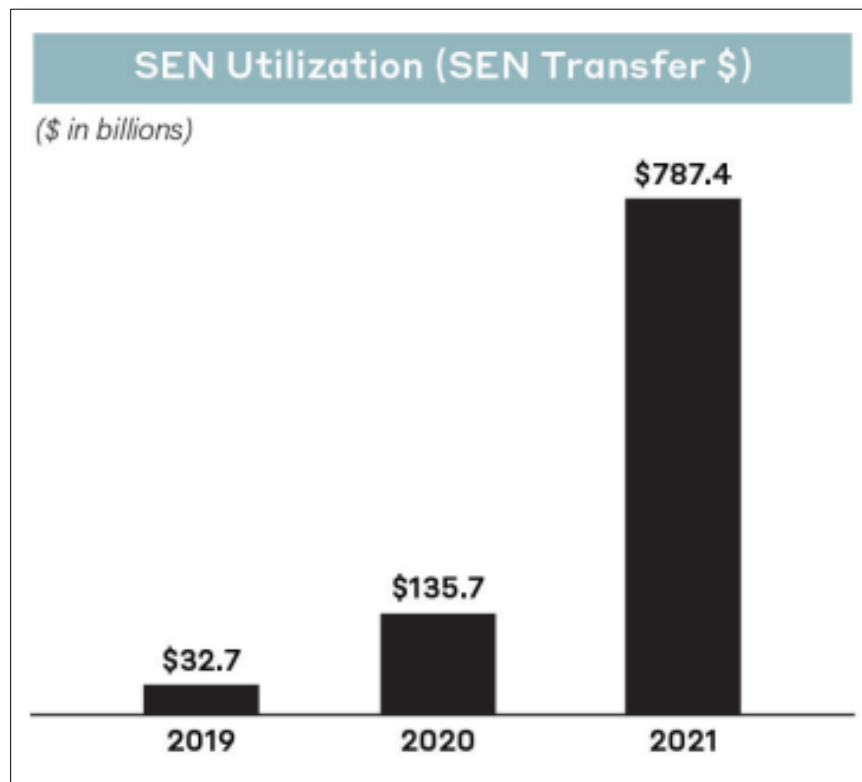
27 104. Had Mr. Brenier fulfilled his obligations regarding due diligence for FTX and
28 Alameda accounts, Silvergate would have quickly detected and reported suspicious activity

and prevented misdirection of funds early on, which should have prevented further misdirection of funds.

* * *

105. In sum, Silvergate and the individual defendants failed to perform adequate KYC and AML procedures to ensure, for example, that funds being deposited into Alameda Research's account did not belong to FTX customers, rather than Alameda, or were otherwise tainted.

106. Silvergate was incentivized either to actively assist FTX in the fraud, or at least look the other way. As FTX grew exponentially, so too did its preeminent product, SEN:



107. Because Silvergate profits from transactions and transfers on SEN, it directly profited from the misdirection of funds to Alameda research, and increased use of the FTX exchange platforms.

108. In addition, Silvergate profited from deposits that digital-asset customers left on its network, which grew significantly as FTX's business grew. At the end of September 2022, those deposits were 90% of the bank's overall deposit base, amounting to \$11.9 billion. And

of that, FTX alone constituted nearly 10% of the \$11.9 billion in deposits, or about \$1.2 billion.³⁸ As a result, Silvergate's profits grew even when traffic on SEN slowed.³⁹

109. Similarly, prior to going public and retaining FTX as a client in 2019, Silvergate had net income of \$7.6 million, which ballooned to \$75.5 million by 2021, as shown in the chart below from Silvergate's 2021 10-K.

	Year Ended December 31,				
	2021	2020	2019	2018	2017
(In thousands, except per share data)					
Statement of Operations Data:					
Interest income	\$ 130,394	\$ 79,590	\$ 81,035	\$ 72,752	\$ 48,306
Interest expense	1,127	7,226	10,078	3,129	6,355
Net interest income	129,267	72,364	70,957	69,623	41,951
Provision for (reversal of) loan losses	—	742	(439)	(1,527)	262
Net interest income after provision	129,267	71,622	71,396	71,150	41,689
Noninterest income	45,256	19,177	15,754	7,563	3,448
Noninterest expense	89,120	59,605	52,478	48,314	30,706
Income before income taxes	85,403	31,194	34,672	30,399	14,431
Income tax expense ⁽¹⁾	6,875	5,156	9,826	8,066	6,788
Net income	78,528	26,038	24,846	22,333	7,643
Dividends on preferred stock	3,016	—	—	—	—
Net income available to common shareholders	\$ 75,512	\$ 26,038	\$ 24,846	\$ 22,333	\$ 7,643

110. The individual Defendants benefited directly from the malfeasance.

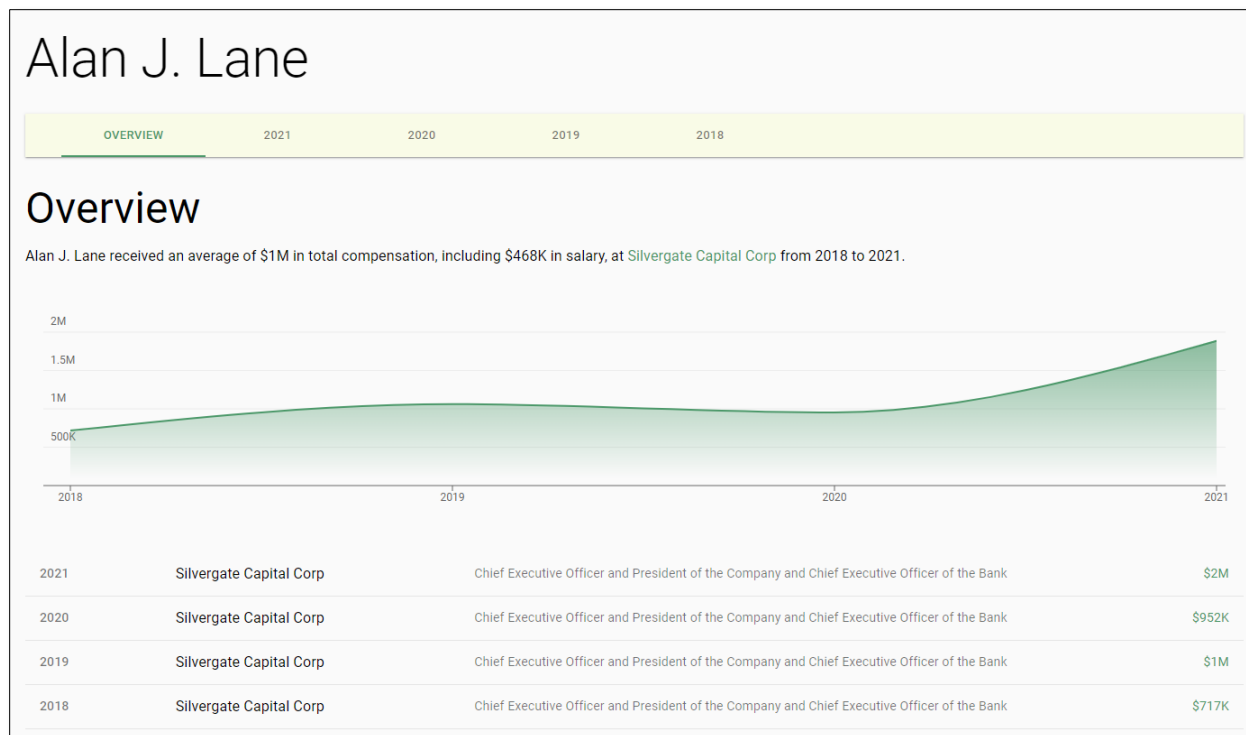
111. As Silvergate's business and profits rapidly grew along with FTX's, so too did its executives' income and the value of their stock and options holdings.

112. Between its October 2019 IPO, and November 15, 2022, Silvergate's stock increased from \$12 per share to a high of \$226.97 per share.

113. Moreover, Defendant Alan J. Lane's salary nearly tripled between 2018 (when he earned \$717,000), and 2021 (when he earned \$1.9 million).

³⁸ See Marc Rubinstein, "These Banks Were Left Holding the Bag in Crypto Implosion," The Washington Post (Nov. 23, 2022), available at <https://tinyurl.com/2d4ktdfz>; see also <https://beincrypto.com/banks-get-burned-playing-with-crypto>.

³⁹ See Zhiyuan Sun, "Silvergate Capital Crypto Transfers Down by \$50 Billion Compared to Q3 2021," CoinTelegraph (Oct. 18, 2022), at <https://cointelegraph.com/news/silvergate-capital-s-crypto-to-fiat-transfers-decrease-by-50b-compared-to-q3-2021>



114. More specifically, as CEO, in 2021, Mr. Lane earned a total compensation package of \$1,884,426, comprised of a salary of \$520,000; stock awards of \$414,953; options awards of \$413,651; non-equity compensation of \$489,840; and other compensation of \$45,982.

115. The other individual Defendants associated with Silvergate were also well compensated. In 2020, Silvergate paid Defendant Chris Lane \$352,163; paid Defendant Tyler J. Pearson \$246,553; and paid Defendant Jason Brenier \$270,601.

116. Moreover, in July 2022—approximately three months before FTX's collapse—Defendant Alan J. Lane exercised options to purchase 16,314 shares of Silvergate at \$16.09, which he immediately sold for an average of approximately \$92.46 per share, netting him approximately \$1,245,832 in proceeds.

Insider Trades (Form4 Filings)											
TX DATE	NAME	DISPOSED/ACQUIRED	SECURITY TYPE	NO. SHARES	PRICE	OWNERSHIP	TX CODE	OFFICER	OFFICER TITLE	DIRECTOR	10% OWNER
2022-07-21	LANE ALAN J	A	Class A Common Stock	16314	16.09	16314	M	1	President and CEO	1	0

Insider Trades (Form4 Filings)											
TX DATE	NAME	DISPOSED/ACQUIRED	SECURITY TYPE	NO. SHARES	PRICE	OWNERSHIP	TX CODE	OFFICER	OFFICER TITLE	DIRECTOR	10% OWNER
2022-07-21	LANE ALAN J	D	Class A Common Stock	9214	92.9352	0	S	1	President and CEO	1	0
2022-07-21	LANE ALAN J	D	Class A Common Stock	7100	91.8337	9214	S	1	President and CEO	1	0

117. Because its fortunes were so tied up in FTX, Silvergate's stock price and market capitalization has dropped precipitously, to approximately \$21 per share around the time of the filing of this Complaint (a drop of approximately 90% from its high). In light of FTX's collapse, Morgan Stanley lowered its 2023 EPS estimate for Silvergate, arguing that the digital asset-focused bank now faces a "wide range of outcomes and risks" solely from the demise of FTX.⁴⁰



118. The assistance in illicit enterprises seems to be a pattern for Silvergate. In response to a June 2022 subpoena, Silvergate produced records that have been alleged to show that "[d]uring the period of September 2021 to June 2022 ten companies had transferred a total of over \$425 million dollars" from crypto accounts held in Silvergate to South American money launderers.⁴¹

⁴⁰ See Max Gottlich, "Silvergate faces 'wide range of outcome and risks' from FTX fallout: Morgan Stanley," Seeking Alpha (Nov. 25, 2022), at <https://seekingalpha.com/news/3911368-silvergate-faces-wide-range-of-outcomes-and-risks-from-ftx-fallout-morgan-stanley>.

⁴¹ See August 16, 2022 Affidavit of Detective Benjamin Dusenbery, *In re: Seizure of Two Million Forth-Eight Thousand Two Hundred Twenty-Nine Dollars and 40/100 (\$2,048,229.48) In United States Currency*, Case No. CACE-22-012446 (Circuit Ct. for 17th Judicial Circuit, Broward County, Florida), Filing No. 155882914 (e-filed Aug. 23, 2022).

V. THE AFTERMATH

119. On November 7, 2022, shortly before FTX filed for bankruptcy, Silvergate appointed a new Chief Risk Officer, replacing Defendant Tyler J. Pearson.⁴²

120. The same day FTX filed bankruptcy, November 11, 2022, Silvergate issued a press release titled “Silvergate Provides Statement on FTX Exposure,” quoting Defendant Alan J. Lane. According to the release:

Silvergate . . . today issued the following statement regarding its exposure to FTX *and its related entities* (“FTX”):

“In light of recent developments, I want to provide an update on Silvergate’s exposure to FTX. As of September 30, 2022, Silvergate’s total deposits from all digital asset customers totaled \$11.9 billion, of which FTX represented less than 10%. Silvergate has no outstanding loans to nor investments in FTX, and FTX is not a custodian for Silvergate’s bitcoin-collateralized SEN Leverage loans. To be clear, our relationship with FTX is limited to deposits,” said Alan Lane, Chief Executive Officer of Silvergate.⁴³

121. Five days later, on November 16, 2022, Silvergate issued a press release titled “Silvergate Provides Mid-Quarter Update and Announces Participation in Oppenheimer’s 5th Blockchain & Digital Assets Summit.” It stated that it was “providing the following unaudited and preliminary mid-quarter results as of November 15, 2022,” then noted “Average quarter-to-date digital asset customer deposits of approximately \$9.8 billion, *excluding all deposits from FTX and its related entities*.”⁴⁴

122. It thus appears that as much as \$2.1 billion of FTX’s “deposits from all digital assets customers” represent funds ostensibly sent to FTX, some portion of which were actually sent to Alameda, where they were stolen in the FTX Ponzi scheme.

⁴² Silvergate Capital Corporation Press Release, “Silvergate announces changes to its executive team” (Nov. 7, 2022), at <https://ir.silvergate.com/news/news-details/2022/Silvergate-announces-changes-to-its-executive-team/default.aspx>.

⁴³ Silvergate Capital Corporation 8-K (Nov. 14, 2022), Ex. 99.1 (emphasis added).

⁴⁴ Silvergate Capital Corporation 8-K (Nov. 17, 2022), Ex. 99.1 (emphasis added).

VI. PLAINTIFFS' EXPERIENCE AND DAMAGES

123. Beginning in May 2022, and continuing until FTX's implosion and bankruptcy, Plaintiff José Tomás Sepúlveda Zuleta funded and used the FTX international platform. Mr. Sepúlveda Zuleta primarily used FTX for staking cryptocurrency.

124. Beginning in or around November 2021 and continuing until shortly before FTX's implosion and bankruptcy, Plaintiff Michael Lehrer funded and actively traded cryptocurrency and other digital assets on the FTX US exchange.

125. Beginning in or around April 2021, Plaintiff Tristan Newman funded and regularly used the FTX international trading platform to trade cryptocurrency and other digital assets (at the time, he was living abroad).

126. At least in part as a result of Silvergate's wrongful actions detailed herein, on November 11, 2022, FTX and 133 related entities, including FTX US, declared bankruptcy.

127. At the time FTX declared bankruptcy on November 11, 2022, Plaintiff Zuleta had approximately \$4,500 worth of cryptocurrency on deposit with FTX, which he has been unable to withdraw or otherwise recover despite multiple attempts to do so.

128. At the time FTX declared bankruptcy on November 11, 2022, Plaintiff Lehrer had approximately \$323,000 USD on deposit with FTX. Since that time, despite making efforts, Plaintiff has been unable to withdraw or otherwise recoup his funds.

129. At the time FTX declared bankruptcy on November 11, 2022, Plaintiff Newman had approximately \$8,000 in USD, and \$7,000 in cryptocurrency on deposit with FTX. Since that time, despite trying, Plaintiff has been unable to withdraw or otherwise recoup his funds.

CLASS ACTION ALLEGATIONS

130. While reserving the right to redefine or amend the class definition prior to or as part of a motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23, Plaintiff seeks to represent a class of all persons who, as of November 11, 2022, had legal title to any fiat or cryptocurrency unable to be withdrawn from FTX, including both the FTX US and FTX international platforms (the "Class").

131. The members in the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all Class Members in a single action will provide substantial benefits to the parties and Court.

132. Questions of law and fact common to Plaintiff and the Class include:

a. Whether Silvergate maintained bank accounts in the name of Alameda Research;

b. Whether FTX customers were directed to deposit funds into one or more Silvergate bank accounts held in the name of Alameda Research;

c. Whether Silvergate knowingly or negligently allowed customer funds intended to be deposits to FTX to be deposited instead to one or more bank accounts held in the name of Alameda Research;

d. Whether Silvergate's facilitating the deposit of customer funds intended for FTX to be deposited into one or more bank accounts held in the name of Alameda Research constituted fraud, negligence, and/or a violation of the law;

e. Whether Plaintiffs and other Class Members were damaged by Silvergate's wrongful and/or unlawful actions and inactions;

f. Whether Silvergate and the individual Defendants benefitted or were unjustly enriched by their improper conduct;

g. Appropriate injunctive relief;

h. The proper amount of damages, including punitive damages;

i. The proper amount of restitution; and

j. The proper amount of attorneys' fees.

133. These common questions of law and fact predominate over questions that affect only individual Class Members.

134. Plaintiffs' claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Silvergate's conduct in facilitating the deposit of customer funds intended for FTX into accounts owned and

controlled by Alameda Research, which directly contributed to the FTX implosion and bankruptcy that has harmed Plaintiffs and other Class Members.

135. Plaintiffs will fairly and adequately represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation.

136. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class Member is small, such that, absent representative litigation, it would be infeasible for Class Members to redress the wrongs done to them.

137. Silvergate has acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

138. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Fraud

139. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

140. At the time Plaintiffs and other Class Members traded cryptocurrency on FTX's platforms, they were unaware Silvergate permitted or facilitated funds intended for FTX to be deposited into bank accounts held by Alameda Research.

141. Plaintiffs and other Class Members reasonably relied on Silvergate's and the individual Defendants' expertise and regulatory obligations in deciding to fund and use the FTX exchange platforms.

142. Plaintiffs and other Class Members did not know—and could not have known through reasonable diligence—the true nature of the banking arrangements between FTX, Silvergate, and Alameda, and their officers, Defendants Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Jason Brenier, as well as Sam Bankman-Fried, and Caroline Ellison. Indeed,

these relationships have only come to light in the wake of FTX's spectacular collapse and bankruptcy.

143. Plaintiffs and other Class Members had a right to rely on Silvergate's and the individual Defendants' omissions of material information, as Defendants maintained exclusive or superior control over knowledge of the true nature of the personal, business, and banking relationships at issue.

144. Plaintiffs and other Class Members were injured as a result of their reliance on Silvergate's and the individual Defendants' omissions, causing them to sustain actual losses and damages in a sum to be determined at trial, including punitive damages.

SECOND CAUSE OF ACTION

Fraudulent Concealment & Inducement

145. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

146. Silvergate and each of the individual Defendants did not disclose, but instead concealed material information about the bank accounts and banking relationships at issue, as discussed herein.

147. Silvergate and each of the individual Defendants knew, or should have known, that FTX deposits were being mishandled, and FTX and Alameda funds comingled.

148. Silvergate and each of the individual Defendants also knew that their omissions regarding the bank accounts were material, and that reasonable consumers would rely on their omissions in making deposits intended for FTX into Alameda Research's account(s) at Silvergate, and in funding and using the FTX exchange platforms.

149. Plaintiffs and other Class Members did not know—nor could they have known through reasonable diligence—the true nature of the personal, business, and banking relationships alleged herein.

150. Plaintiffs and other Class Members had a right to rely on Silvergate's and each of the individual Defendants' instructions and omissions in funding and using the FTX

exchange platforms, as Defendants maintained exclusive or superior control over the platforms' accounts and what information was available regarding them.

151. In making omissions of material facts, Silvergate and each of the individual Defendants intended to induce, and did induce Plaintiffs and other Class Members into funding and using the FTX exchange platforms, where their funds and assets became part of the fraud.

152. Plaintiffs and other Class Members were injured as a result of their reliance on Silvergate's and each of the individual Defendants material omissions, causing them to sustain actual losses and damages in a sum to be determined at trial, including punitive damages.

THIRD CAUSE OF ACTION

Civil Conspiracy

153. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

154. Silvergate and each of the individual Defendants made numerous omissions to Plaintiffs and other Class Members in order to induce confidence and drive consumers to deposit funds into what was ultimately a Ponzi scheme.

155. Defendants Silvergate, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, and Jason Brenier entered into one or more agreements with Sam Bankman-Fried and Caroline Ellison, and the entities they controlled, FTX and Alameda Research, for the purpose of making misrepresentations and omissions, and facilitating the Ponzi scheme.

156. Silvergate and each of the individual Defendants further engaged in unlawful acts, namely the violation of the USA PATRIOT Act, and other banking regulations requiring the accurate earmarking and handling of banking transactions.

157. Defendants' conspiracy substantially assisted or encouraged the wrongdoing conducted by FTX and Alameda Research; further, Silvergate and each of the individual Defendants had knowledge of the fraud and/or wrongdoing because of their experience and relationship with FTX and Alameda Research, as alleged herein. As such, Silvergate and each

of the individual Defendants knew that omissions made to Plaintiffs and other Class Members were deceitful and fraudulent, and could result in great harm to Plaintiffs and other Class Members.

158. Defendants' conspiracy with FTX and Alameda to commit fraud caused damages to Plaintiffs and other Class Members in a sum to be determined at trial, including punitive damages.

FOURTH CAUSE OF ACTION

Negligence

159. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

160. Silvergate and each of the individual Defendants negligently, carelessly, recklessly, and/or unlawfully mishandled deposits intended for FTX but deposited into Silvergate accounts held by Alameda Research.

161. As a direct and legal result of Defendants' wrongful conduct and omissions, Plaintiffs and other Class Members have sustained damages in a sum to be determined at trial, including punitive damages.

FIFTH CAUSE OF ACTION

Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

162. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

163. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

164. The acts, omissions, misrepresentations, practices, and non-disclosures of Silvergate and each of the individual Defendants alleged herein constitute business acts and practices.

Fraudulent

165. The acts, omissions, misrepresentations, practices, and non-disclosures of Silvergate and each of the individual Defendants alleged herein were fraudulent because they

induced Plaintiffs and other Class Members to fund and use the fraudulent FTX exchange platforms under false pretenses.

Unlawful

166. The acts of Silvergate and each of the individual Defendants alleged herein are “unlawful” under the UCL in that, as alleged herein, they violate the USA PATRIOT Act, and particularly its KYC, AML and due diligence requirements, and constitute fraud, fraudulent concealment, civil conspiracy, negligence, and unjust enrichment.

167. Plaintiffs and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices.

Unfair

168. Silvergate’s and each of the individual Defendants’ conduct was unfair because it was immoral, unethical, unscrupulous, or substantially injurious to consumers, and the utility of its conduct, if any, did not outweigh the gravity of the harm to its consumers.

169. Silvergate’s and each of the individual Defendants’ conduct was also unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not necessarily limited to the USA PATRIOT Act, and specifically the public policy rationales that underpin KYC and AML obligations.

170. Silvergate’s and each of the individual Defendants’ conduct was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided. For example, FTX consumers directed to deposit funds into an account in the name of Alameda Research may reasonably not have noticed the discrepancy, or may have assumed there was some lawful connection between the entities (such as a doing-business-as relationship), and reasonably relied on Silvergate to safeguard their deposits.

171. There were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described herein.

* * *

172. Defendants profited from, and Plaintiffs and other Class Members suffered injury in fact and lost money as a result of Defendants' fraudulent, unlawful, and unfair conduct. Accordingly, Plaintiffs seek an Order for the restitution of all monies that were inequitably acquired by Defendants pursuant to the UCL.

SIXTH CAUSE OF ACTION

Quasi-Contract / Unjust Enrichment

173. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

174. Plaintiffs and other Class Members conferred benefits on Defendants by depositing funds into and using the FTX exchange platforms.

175. Defendants were unjustly enriched in retaining the revenues derived from Plaintiffs' and other Class Members' funding and use of the FTX exchange platforms. Retention of those moneys under these circumstances is unjust and inequitable. Defendants' actions and omissions caused injuries to Plaintiffs and other Class Members because they would not have deposited and lost their funds if the true facts had been known, and if Defendants had not engaged in the malfeasance alleged.

176. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs and Class Members is unjust and inequitable, Defendants have been unjustly enriched in an amount to be determined at trial.

PRAYER FOR RELIEF

177. Wherefore, Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, pray for judgment against Defendants Silvergate, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, and Jason Brenier as to each and every cause of action, and the following remedies:

(A) An Order declaring this action to be a proper class action, appointing Plaintiffs as Class Representatives, and appointing Plaintiffs' undersigned counsel as Class Counsel;

(B) An Order requiring Defendants to bear the cost of Class Notice;

(C) An Order requiring Defendants to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;

(D) An Order requiring Defendants to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgment interest thereon;

(E) An Order requiring Defendants to pay compensatory damages and punitive damages as permitted by law;

(F) An award of attorneys' fees and costs; and

(G) Any other and further relief that Court deems necessary, just, or proper.

JURY DEMAND

178. Plaintiffs hereby demands a trial by jury on all issues so triable.

Dated: December 1, 2022

/s/ Jack Fitzgerald

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CIVIL COVER SHEET

22CV1901 L

AGS

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOSÉ TOMÁS SEPÚLVEDA ZULETA, et al., on behalf of themselves and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Republic of Chile
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Fitzgerald Joseph LLP, 2341 Jefferson St., Suite 200,
San Diego, CA 92110

DEFENDANTS

SILVERGATE CAPITAL CORPORATION, ALAN J. LANE,
CHRIS LANE, TYLER PEARSON, and JASON BRENIER

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)(2) (the Class Action Fairness Act)

Brief description of cause:

FRAUD; FRAUDULENT CONCEALMENT & INDUCEMENT; CONSPIRACY; NEGLIGENCE; UCL; and UNJUST ENRICHMENT

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

Dec 1, 2022

SIGNATURE OF ATTORNEY OF RECORD

/s Jack Fitzgerald

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

TO ORDER COPIES OF ANY DOCUMENTS LISTED
BELOW, CALL WESTLAW COURTEXPRESS
1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply)

This docket is current through 02/10/2023

Today's Date: 2/10/2023

Source: U.S. District Court, Southern District of California (San Diego)

Court: U.S. District Court, Southern District of California (San Diego)
Case Title: [Husary et al v. Silvergate Bank et al](#)
Case: 3:23-CV-00038
Judge: Judge Roger T. Benitez
Date Filed: 01/09/2023

CASE INFORMATION

Case Number: 3:23CV00038
Referred To: Magistrate Judge William V. Gallo
Jury Demand: Plaintiff
Demand: \$5,000,000
Nature of Suit: Torts: Other Fraud (370)
Jurisdiction: Diversity
Cause: 28 USC 1332fr Diversity-Fraud
Lead Docket: 3:22-CV-019013:22-CV-01981

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Francisco De Tomaso

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Party Description: on behalf of themselves and all others similarly situated

Type: Plaintiff

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Silvergate Bank

Type: Defendant

Silvergate Capital Corporation

Type: Defendant

Alan J. Lane

Type: Defendant

CALENDAR INFORMATION

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DOCKET PROCEEDINGS (11)

Entry #:	Date:	Description:		
11	02/09/2023	NOTICE of Voluntary Dismissal by Soham Bhatia, Francisco De Tomaso, Michael Hawwa, Andrawes Husary (Wilson, Victoria) (Entered: 02/09/2023)	View	Add to request
10	02/03/2023	ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE. Case reassigned to Judge Roger T. Benitez and Magistrate Judge William V. Gallo for all further proceedings. District Judge Ruth Bermudez Montenegro, Magistrate Judge Andrew G. Schopler no longer assigned to case. The new case number is 23CV0038-BEN-WVG.. Signed by District Judge Ruth Bermudez Montenegro on 2/3/2023. Signed by Judge Roger T. Benitez on 2/3/2023. (All non-registered users served via U.S. Mail Service)(alns) (Entered: 02/06/2023)	View	Add to request
9	01/24/2023	ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE. Case reassigned to District Judge Ruth Bermudez Montenegro and Magistrate Judge Andrew G. Schopler for all further proceedings. Judge Cathy Ann Bencivengo, Magistrate Judge Allison H. Goddard no longer assigned to case. Create association to 3:22-cv-01901-RBM-AGS. The new case number is 23-cv-00038-RBM-AGS.. Signed by Judge Cathy Ann Bencivengo on 1/24/2023. Signed by Judge Ruth Bermudez Montenegro on 1/23/2023.(anh) (Entered: 01/24/2023)	View	Add to request
8	01/12/2023	PRO HAC APPROVED: Marcelo Diaz-Cortes appearing for Plaintiffs Soham Bhatia, Francisco De Tomaso, Michael Hawwa, Andrawes Husary (no document attached) (jrm) (Entered: 01/12/2023)	Send Runner to Court	
7	01/12/2023	Request to Appear Pro Hac Vice (Filing fee received: \$ 213 receipt number	View	Add to request

		ACASDC-17491140.) (Application to be reviewed by Clerk.) (Diaz-Cortes, Marcelo) (Entered: 01/12/2023)	
6	01/11/2023	PRO HAC APPROVED: Victoria J. Wilson, Jason Kenneth Kellogg appearing for Plaintiffs Soham Bhatia, Francisco De Tomaso, Michael Hawwa, Andrawes Husary (no document attached) (jrm) (Entered: 01/11/2023)	Send Runner to Court
5	01/11/2023	Request to Appear Pro Hac Vice (Filing fee received: \$ 213 receipt number ACASDC-17489084.) (Application to be reviewed by Clerk.) (Kellogg, Jason) (Entered: 01/11/2023)	View Add to request
4	01/11/2023	Request to Appear Pro Hac Vice (Filing fee received: \$ 213 receipt number ACASDC-17488852.) (Application to be reviewed by Clerk.) (Wilson, Victoria) (Entered: 01/11/2023)	View Add to request
3	01/10/2023	NOTICE OF RELATED CASE(S) by Soham Bhatia, Francisco De Tomaso, Michael Hawwa, Andrawes Husary of case(s) 22-cv-1981; 22-cv-1901 . (Hartley, Jason) (anh). (Entered: 01/10/2023)	View Add to request
2	01/09/2023	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (ggv) (Entered: 01/09/2023)	View Add to request
1	01/09/2023	COMPLAINT with Jury Demand against Alan J. Lane, Silvergate Bank, Silvergate Capital Corporation (Filing fee \$ 402 receipt number ACASDC-17481760.), filed by Soham Bhatia, Andrawes Husary, Michael Hawwa, Francisco De Tomaso. (Attachments: # 1 Civil Cover Sheet) The new case number is 3:23-cv-38-CAB-AHG. Judge Cathy Ann Bencivengo and Magistrate Judge Allison H. Goddard are assigned to the case. (Hartley, Jason)(ggv) (sjt). (Entered: 01/09/2023)	View Add to request

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Pro hac vice applications forthcoming

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANDRAWES HUSARY,
FRANCISCO DE TOMASO,
SOHAM BHATIA and MICHAEL
HAWWA on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

SILVERGATE BANK,
SILVERGATE CAPITAL
CORPORATION and ALAN J.
LANE,

Defendants.

Case No. '23CV0038 CAB AHG

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs, Andrawes Husary, Francisco de Tomaso, Soham Bhatia and
2 Michael Hawwa on behalf of themselves and all other similarly situated, bring this
3 action against Defendants, Silvergate Bank, Silvergate Capital Corporation and
4 Alan J. Lane, and allege:

5 **INTRODUCTION**

6 1. This is an action against Silvergate Bank and its parent company,
7 Silvergate Capital Corporation (collectively, “Silvergate”), for aiding and abetting a
8 multibillion-dollar fraudulent scheme orchestrated by Sam Bankman-Fried
9 (“Bankman-Fried”) through two of his entities, the cryptocurrency exchange FTX
10 and the cryptocurrency hedge fund Alameda Research LLC (“Alameda”).

11 2. By becoming one of only a handful of U.S. banks that catered to
12 cryptocurrency-related exchanges, funds and customers, Silvergate emerged from a
13 small regional bank into a national bank with more than \$12 billion in deposits.
14 Because Silvergate did not have to pay interest on deposits to crypto companies like
15 FTX — companies shunned by traditional banks that were happy just to have a
16 legitimate place to deposit their money — Silvergate was able to invest those
17 deposits in low-risk securities that generated *hundreds of millions of dollars* in
18 profit for the bank. Soon Silvergate became completely dependent on the crypto
19 industry, which comprised 90% of its deposits and nearly all of its profits.

20 3. Silvergate also separately developed a proprietary network called the
21 “Silvergate Exchange Network” (or “SEN”). SEN allowed exchanges like FTX to
22 offer its customers, for the first time, a 24-hour-a-day, seven-days-a-week trading
23 platform for trading in cryptocurrency.

24 4. In early November 2022, FTX, which was one of the largest (if not the
25 largest) Silvergate depositors, as well as the largest user of the SEN network, filed
26 for Chapter 11 bankruptcy protection. FTX’s majority owner, Bankman-Fried,
27 acknowledged publicly that he used about \$10 billion in FTX customer funds for
28

Alameda, a separate, Bankman-Fried-owned company that engaged in complicated and risky crypto trading.

5. Crucially, Silvergate held the accounts of *both* FTX and Alameda. Silvergate, which publicly touted its enhanced, proprietary anti-money laundering (“AML”) and “Know Your Customer” (“KYC”) systems, knew FTX and Alameda were different companies. It knew FTX held investor funds. It knew Alameda engaged in risky trading. It saw *billions of dollars* of investor money transferred out of FTX and into Alameda, then out of Alameda to pay Alameda’s debts and to enrich Bankman-Fried and his inner circle. It saw billions of dollars in FTX customer funds wired directly to Alameda and related entities. But despite this knowledge, Silvergate — which proudly displayed on the home page of its website a quote by Bankman-Fried heralding Silvergate as the bank that “revolutionized crypto banking” — did nothing. To the contrary, Silvergate substantially assisted FTX by continuing to allow FTX to use its Silvergate accounts and the SEN network.

6. In the end, approximately \$8 billion in FTX customer funds, including the funds of Plaintiffs and about one million others, have been lost. This lawsuit seeks to recover some of those losses, which would not have occurred had Silvergate stopped giving FTX access to its accounts and the SEN network when it saw what FTX and Bankman-Fried were doing.

PARTIES

7. Plaintiff Andrawes Husary is a citizen and resident of San Bruno, California. On April 15, 2022, Husary placed \$2,000 in funds in an FTX account for executing cryptocurrency trades and/or engaging in investment activity. Shortly thereafter, he purchased a nonfungible token as an investment. When FTX announced its bankruptcy in early November 2022, Husary tried to withdraw the asset from his FTX account but was unable to do so.

1 8. Plaintiff Francisco de Tomaso is a citizen and resident of Buenos
2 Aires, Argentina. On April 28, 2021, de Tomaso placed \$500 in funds in an FTX
3 account in anticipation of executing cryptocurrency trades and/or engaging in
4 investment activity. He was instructed to wire the funds directly to the Alameda
5 account at Silvergate Bank in the United States, which he did. De Tomaso also
6 transferred cryptocurrency worth \$138,360 into the FTX account. When FTX
7 announced its bankruptcy in early November 2022, de Tomaso tried to withdraw
8 the assets from his FTX account but was unable to do so.

9 9. Plaintiff Soham Bhatia is a citizen and resident of San Francisco,
10 California. Beginning around September 2021, Bhatia made eight separate deposits
11 of cryptocurrency valued at about \$20,000 in an FTX account for executing
12 cryptocurrency trades and/or engaging in investment activity. When FTX
13 announced its bankruptcy in early November 2022, Bhatia tried to withdraw the
14 assets from his FTX account but was unable to do so.

15 10. Plaintiff Michael Hawwa is a citizen and resident of San Francisco,
16 California. In or around April 2022, Hawwa placed \$500 in funds in an FTX
17 account for executing cryptocurrency trades and/or engaging in investment activity.
18 Shortly thereafter, he purchased a nonfungible token as an investment. When FTX
19 announced its bankruptcy in early November 2022, Hawwa tried to withdraw the
20 asset from his FTX account but was unable to do so.

21 11. Defendant Silvergate Bank is a California corporation with its
22 principal place of business in La Jolla, California. Silvergate Bank is California-
23 chartered and overseen by the Federal Reserve Bank of California. The FDIC
24 guarantees its deposits.

25 12. Defendant Silvergate Capital Corporation is a Maryland company with
26 its principal place of business in La Jolla, California. It is the parent of Silvergate
27 Bank.
28

14. Subject Matter Jurisdiction. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, Title 28, United States Code, Section 1332(d), because (i) the matter in controversy exceeds \$5 million, exclusive of interest and costs; (ii) there are members of the proposed Class who are citizens of different states than Defendants; and (iii) there are in the aggregate more than 100 members of the proposed class.

15. Personal Jurisdiction. This Court has specific personal jurisdiction over Defendants pursuant to Section 410.10, Cal. Code Civ. P., and pursuant to Defendants' substantial, continuous and systematic contacts with the State of California, and because Defendants have purposely availed to the benefits and privileges of conducting business in the State of California.

16. Venue. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendants are headquartered in and/or reside in this District, a substantial part of the events and omissions giving rise to the claim occurred in this District and because Defendants would be subject to personal jurisdiction with respect to this action in this District if this District were a separate state.

A. FTX

17. The FTX group of companies (collectively, “FTX”) were founded by Bankman-Fried along with Zixiao “Gary” Wang (“Wang”) and Nishad Singh (“Singh”). Bankman-Fried controlled and held a 90% interest in FTX.

18. Among other services, FTX provided a “spot market” trading platform allowing users to trade cryptocurrency such as Bitcoin and Ethereum with other FTX customers in exchange for either other cryptocurrency or “fiat” currency like U.S. dollars. Cryptocurrency is digital currency designed as a medium of exchange

1 through a computer network, and does not rely on any central authority, like a bank
2 or a government, to maintain it.

3 19. FTX had more than 100 million users as of August 2022. It grew to
4 become the world's second-largest cryptocurrency exchange, and at one time was
5 valued at \$32 billion.

6 **B. Alameda Research**

7 20. In 2017 (prior to founding FTX), Bankman-Fried, Wang and Singh
8 founded Alameda Research LLC ("Alameda"). Bankman-Fried held a 90% interest
9 in and controlled Alameda.

10 21. Alameda was essentially a hedge fund specializing in cryptocurrency
11 assets. Like other hedge funds, it executed sophisticated and aggressive trading
12 strategies like arbitrage, market making, yield farming and capitalizing on market
13 volatility. Unlike traditional hedge funds, Alameda's focus was crypto.

14 22. Importantly, Alameda, its affiliates and subsidiaries were completely
15 separate from FTX. Indeed, Bankman-Fried stated publicly that Alameda, a crypto
16 hedge fund serving private investors, was a "wholly separate entity" from FTX, a
17 crypto exchange serving retail customers.

18 **C. Silvergate Bank and Alan Lane**

19 23. Silvergate caters to the cryptocurrency industry. It describes itself
20 publicly as "the leading provider of innovative financial infrastructure solutions and
21 services to participants in the nascent and expanding digital currency industry."

22 24. Indeed, Silvergate's importance to the crypto industry was summed up
23 by Bankman-Fried, whose quote was featured prominently on Silvergate's website:

“Life as a crypto firm can be divided up into before Silvergate and after Silvergate — it's hard to overstate how much it revolutionized banking for blockchain companies. Day in and day out, the Silvergate™ Exchange Network (SEN) proves it is one of the key backbones of the cryptocurrency settlement layer.”

— Sam Bankman-Fried

FOUNDER AND CEO, FTX AND ALAMEDA RESEARCH

25. Before Silvergate, Bankman-Fried has also said, crypto firms like FTX and Alameda had no access to banks.

26. Silvergate started in 1988 as a small, Southern California savings and loan. It became a bank in 1996 but remained small, with just three branches.

27. In 2013, its CEO, Lane, personally invested in cryptocurrency. The experience led him to direct the bank into looking at how it might serve the burgeoning crypto industry — an industry that, to this day, the great majority of banks will not touch. Lane later stated, “What I saw was an opportunity to bank these companies that were essentially being de-risked from other banks.”

28. Silvergate’s refocusing ultimately resulted in the creation of the Silvergate Exchange Network (“SEN”), a proprietary payment network that provides a very simple yet fundamental service. Like a brokerage network for traditional investments such as stocks, bonds and mutual funds, SEN allows retail investors to buy and sell cryptocurrency 24 hours a day, seven days a week. In other words, it provides everyday investors with an “on-ramp” into a crypto investment, and an “off-ramp” out of it.

29. SEN is the largest “on-ramp/off-ramp” network in crypto. As a result, Silvergate quickly became ubiquitous in the expanding crypto industry, and in 2019 it went public, eventually raising more than \$1.3 billion in capital.

30. More importantly, Silvergate’s fortunes became entirely dependent on the fortunes of its crypto-industry accountholders, of which FTX was one of the largest, if not the largest. By the time of FTX’s bankruptcy, FTX comprised nearly 10% of Silvergate’s deposits.

31. Silvergate was not required to, and did not, pay interest to crypto accountholders like FTX and Alameda for their deposits. This allowed Silvergate to invest those deposits in low-risk securities.

32. This business model — taking interest-free deposits and investing them in low-risk securities — generated big profits at low risk to the bank. And it also gave Silvergate a competitive advantage in relation to competing banks that shunned crypto-related deposits. The crypto industry was the key to Silvergate’s profitability and success.

33. From 2020 to 2021, deposits from crypto exchanges, miners, custodians and the like rocketed from \$2 billion to \$10 billion. Silvergate’s share price rose from \$12 per share to \$200 per share, greatly enriching shareholders like Lane.

34. By September 2022, Silvergate had grown its deposits to \$11.9 billion, of which 90% came from crypto-related accountholders like FTX and Alameda. Silvergate used those deposits to build an \$11.4 billion securities portfolio that, in just the first three financial quarters of 2022, generated more than \$200 million in interest income.

D. Silvergate’s AML and BSA Processes

35. Federal law requires banks like Silvergate to “know their customers” and understand their customers’ banking behavior. Under applicable regulations, a bank must maintain procedures that allow it to “form a reasonable belief that it knows the true identity of each customer.” 31 C.F.R. §§ 1020.220(a)(1), (2). Thus, banks

1 are required to collect information about the holder of each account. Where an entity
2 opens an account, the bank must obtain information concerning the individuals who
3 control the account.

4 36. Customer due diligence requires Silvergate to identify its customers,
5 report indications of suspicious activity and assign a “customer risk rating.” Customer
6 due diligence requires Silvergate to know what business the customer is in, and to
7 understand the types of transactions a customer should, and actually does, make.
8 When monitoring its customers’ accounts, Silvergate is obligated to comply with the
9 Bank Secrecy Act (BSA), including regulations broadening its anti-money laundering
10 provisions. The BSA requires Silvergate to develop, administer and maintain a
11 program to ensure compliance. The program must be approved by the bank’s board
12 of directors and noted in the board meeting minutes. It must (1) provide for a system
13 of internal controls to ensure ongoing BSA compliance, (2) provide for independent
14 testing of the bank’s compliance, (3) designate an individual to coordinate and
15 monitor compliance and (4) provide training for appropriate personnel.

16 37. Silvergate must also maintain a customer due diligence program to
17 predict the types of transactions, dollar volume and transaction volume each customer
18 is likely to conduct, thereby providing the bank with a means of identifying unusual
19 or suspicious transactions for each customer. The customer due diligence program
20 allows the bank to maintain awareness of the financial activity of its customers and
21 the ability to predict the type and frequency of transactions in which its customers are
22 likely to engage.

23 38. Customer due diligence programs should be tailored to the risk
24 presented by individual customers, such that the higher the risk presented, the more
25 attention is paid. Where a customer is determined to be high risk, banks should gather
26 additional information about the customer and accounts, including determining: (1)
27 purpose of the account; (2) source of funds; (3) proximity of customer’s residence to
28 the bank; and (4) explanations for changes in account activity.

39. Silvergate and its personnel must be able to identify and take appropriate action once put on notice of any of a series of money laundering indicia set forth in the Federal Financial Institutions Examination Council's BSA/AML Examination Manual. These include: (1) repetitive or unusual fund transfer activity; (2) fund transfers sent or received from the same person to or from different accounts; (3) transactions inconsistent with the account holder's business; (4) transfers of funds among related accounts; (5) depositing of funds into several accounts that are later consolidated into a single master account; (6) large fund transfers sent in round-dollar amounts; (7) payments unconnected to legitimate contracts or revenue sources; (8) fund transfers containing limited content or related party information; and (9) an unusually large number of persons or entities receiving fund transfers from one company.

40. Here, Silvergate engaged in a Know Your Customer analysis of FTX and Alameda and monitored the accounts for anomalous or suspicious behavior. Silvergate collected and reviewed information about their business operations, the source of funds and the purpose of the accounts.

41. Indeed, Silvergate publicly touted its AML/BSA processes as even more robust than the average bank's. Silvergate employed twice as many compliance staff as traditional banks of its size. The bank said it typically took six months to conduct due diligence on crypto exchange clients looking to open up an account.

42. In SEC filings, Silvergate assured the public that given the high-risk nature of crypto-related enterprises, the bank did extensive due diligence on those customers: "For customers such as exchanges which pose a higher degree for risk or have a higher degree of regulatory obligations, the Company's processes are more extensive and incorporate reputational reviews, reviews of applicable licensing requirements, plans, and status, and reviews of customer policies and procedures regarding the BSA, consumer compliance, information security, Dodd-Frank Act

1 prohibitions against unfair, deceptive, or abusive acts or practices, as well as reviews
2 of transaction monitoring systems and audit results.”

3 43. Silvergate has acknowledged publicly that it “operates in accordance
4 with the Bank Secrecy Act and the USA PATRIOT Act. For each and every account,
5 these laws require us to determine the beneficial owner, the source of funds, and the
6 purpose and expected use of funds.”

7 44. Silvergate has also acknowledged that it monitors transactions within
8 accounts and compares them to the transactions it would expect to see from its
9 accountholders: “Silvergate also monitors transaction activity for every account and
10 identifies activity outside of the expected usage.”

11 45. Silvergate has acknowledged that when it finds suspicious activity, it
12 must file a SAR: “When we identify certain kinds of activity, we are required to file
13 suspicious activity reports, and we do so routinely. We have a track record of closing
14 accounts that are used for purposes outside of the expected use.” (This allegation is
15 meant to underscore that Silvergate had AML/BSA processes in place. This lawsuit
16 is *not* predicated on Silvergate’s filing of, or failure to file, a SAR.)

17 46. Silvergate looks for, and acts on, red flags: “After accounts are open, we
18 continue to monitor account activity as part of our enhanced due diligence process on
19 each of these accounts and to take action when there are red flags.”

20 47. Silvergate has also suggested publicly that it has created and applies its
21 own special kind of regulatory compliance review; specifically, that Silvergate is a
22 bank “whose solutions are built on a deep-rooted commitment and proprietary
23 approach to regulatory compliance.”

24 48. And when speaking to potential crypto-related accountholders, Lane has
25 publicly touted those potential accountholders’ ability to obtain a “good housekeeping
26 seal of approval” by submitting to Silvergate’s “know your customer” processes: “We
27 joke that we’re kind of like the good housekeeping seal of approval. If you’ve gone
28

1 through the rigor of satisfying our KYC, our diligence process, we're intentional about
2 it and you can have confidence that you have an account at Silvergate."

3 **E. FTX Owed Fiduciary Duties to Its Customers**

4 49. FTX knew that its customers, including Plaintiffs and class members,
5 were relying on FTX to protect the assets they deposited. They relied on and trusted
6 FTX to do so.

7 50. Moreover, FTX and Bankman-Fried were aware of and encouraged that
8 reliance and trust. Time and time again, FTX's principals touted the premium that
9 FTX put on the safety of their customers' assets. For example, Bankman-Fried
10 tweeted "As always, our users' funds and safety comes first. We will always allow
11 withdrawals (except in cases of suspected money laundering/theft/etc.)." He also
12 tweeted that "Backstopping customer assets should always be primary. Everything
13 else is secondary."

14 51. FTX also expended large sums of money in an effort to become "the
15 cleanest brand in crypto." It hired dozens of A-list sports figures and prominent
16 organizations to promote its reputation, including but not limited to Tom Brady,
17 Stephen Curry and Major League Baseball. A Super Bowl commercial starring
18 Brady described FTX as "the safest and easiest way to buy and sell crypto."

19 52. At a hearing before the U.S. House of Representatives Committee on
20 Financial Services, FTX through Bankman-Fried touted FTX's "complete
21 transparency." Bankman-Fried also touted FTX's technical expertise and its
22 proprietary, automated, internal "risk engine," which was designed and created to
23 keep its customers safe.

24 53. Silvergate knew about FTX's campaign to emphasize the safety and
25 security of its exchange — and of the crypto industry as a whole. Silvergate knew
26 about the fiduciary duties that arose out of that campaign and of .
27
28

F. FTX Is a Massive Fraud Operated Out of the FTX and Alameda Accounts

54. From the moment of FTX’s creation, FTX breached those duties and perpetrated a multibillion-dollar fraud on its customers, including Plaintiffs and class members. FTX diverted customer funds to Alameda in what Bankman-Fried’s replacement CEO, John Ray III (“Ray”), described as “really old-fashioned embezzlement.”

55. FTX did so in two ways. It allowed customer funds to be transferred from the FTX account at Silvergate directly to accounts controlled by Alameda at Silvergate. This created what has been described as a “limitless ‘line of credit’” that allowed Bankman-Fried to use FTX customer money to pay down *billions of dollars* in loans taken out by Alameda to fund investments and Bankman-Fried’s personal use.

56. Second, FTX instructed its customers to deposit funds directly into accounts held by Alameda at Silvergate. *Billions of dollars* of FTX customer funds were received into Alameda accounts in this way. Some of these bank accounts at Silvergate were in the name of an Alameda subsidiary called North Dimension, Inc. (“North Dimension”), a company that, as Silvergate knew, had no obvious connection to Alameda’s hedge-fund business, or to FTX, other than a connection to Bankman-Fried.

57. All of the FTX customer funds transferred or sent into Alameda accounts at Silvergate were commingled with Alameda’s assets. These commingled funds were then paid out indiscriminately for various purposes.

58. In the end, approximately *\$10 billion* of FTX customer money was improperly sent to accounts at Silvergate controlled by Alameda. Approximately *\$8 billion* of that money was used by Alameda for its own hedge fund trading purposes, or for the personal benefit of Bankman-Fried, Wang, Singh and others. Bankman-Fried took more than \$1.3 billion from the Alameda accounts and spent

1 hundreds of millions more toward luxury real estate, political pet projects and private
2 investments. Singh took more than \$550 million and Wang nearly \$225 million.

3 **G. Defendants Had Actual Knowledge of What FTX, Alameda**
4 **and Bankman-Fried Were Doing**

5 59. None of the FTX customers, including Plaintiffs and the class members
6 in this case, knew that their funds were being diverted to Alameda. For example,
7 Bankman-Fried used the Silvergate-based account of Alameda subsidiary North
8 Dimension as the recipient of direct transfers of money from FTX customers, so that
9 customers would not know the money was going to Alameda.

10 60. Defendants, however, did know. With Silvergate's stringent, months-
11 long "Know Your Customer" processes, Defendants knew exactly what business
12 FTX and Alameda conducted. They knew that FTX was an exchange that held
13 billions of dollars customer funds in its account at Silvergate. They knew that
14 Alameda was an entirely separate business, a hedge fund that engaged in speculative,
15 risky, crypto-related trades.

16 61. And with Silvergate's stringent account-monitoring procedures, which
17 included proprietary automated processes employed in aid of a large staff of
18 AML/BSA analysts, Defendants also saw the transactions that plainly revealed the
19 fraud. Defendants saw transfers of *billions of dollars* in funds from the FTX account
20 to the Alameda account. There exists no legitimate explanation for any of the
21 transfers, much less transfers of the velocity and size that occurred in just a relatively
22 short time — a matter of months. The frequency and amount of these transfers easily
23 alerted Silvergate's risk department, which was headed by Lane's son-in-law Tyler
24 J. Pearson. (Pearson was replaced as Silvergate's chief risk officer on November 7,
25 2022, after FTX began to fail and four days before it filed for bankruptcy.)

26 62. Moreover, Defendants through Silvergate's AML/BSA processes saw
27 the *billions of dollars* of fiat currency funds sent directly to Alameda accounts from
28

1 FTX customers, in relatively small denominations. These deposits, taken together at
2 a velocity reaching *billions of dollars*, had no legitimate explanation.

3 63. Ultimately, about *\$10 billion* in FTX customer funds went to the
4 Alameda account, with *\$8 billion* unaccounted for.

5 64. As CEO of Silvergate Bank and president and director of its parent,
6 Silvergate Capital, Lane obtained AML/BSA information about FTX and Alameda.
7 Lane developed a relationship with Bankman-Fried and knew that FTX and Alameda
8 were completely separate entities with separate purposes.

9 **H. Defendants Substantially Assisted the Fraud**

10 65. Despite Defendants' knowledge of the fraud being perpetrated through
11 its FTX and Alameda accounts, they substantially helped FTX, Alameda and
12 Bankman-Fried perpetrate that fraud. Not only did they continue to allow FTX and
13 Alameda to use Silvergate accounts, Defendants continued to allow FTX to use
14 Silvergate's proprietary SEN network. This enabled FTX and Bankman-Fried to
15 continue to on-ramp new customers and to allow existing customers to trade
16 cryptocurrency. In other words, Defendants enabled FTX's very existence through
17 the use of Silvergate's SEN network.

18 66. Allowing FTX to continue to use the SEN network also ensured that
19 Silvergate would continue to grow its deposits and generate income from the SEN's
20 use by the world's second largest cryptocurrency exchange. As Silvergate has stated
21 in its securities filings: "The SEN has a powerful network effect that makes it more
22 valuable as participants and utilization increase. The SEN has enabled us to
23 significantly grow our noninterest bearing deposit product for digital currency
24 industry participants, which has provided the majority of our funding over the last
25 four years. . . . In addition, use of the SEN has resulted in an increase in noninterest
26 income that we believe will become a valuable source of additional revenue as we
27 develop and deploy fee-based solutions in connection with our digital currency
28 initiative." Silvergate and Lane benefitted financially as a result.

67. Finally, there is no evidence that Defendants ever alerted authorities of what FTX and Alameda were doing. No regulatory consent order was ever issued against FTX or Alameda before they went bankrupt.

I. The Fallout

68. On November 2, 2022, the crypto news website CoinDesk ran a story reporting that Alameda's balance sheet contained large amounts of cryptocurrency tokens associated with or created by FTX, including FTX's proprietary "FTT" token.

69. Because FTT was not widely traded and was mostly held by Bankman-Fried and FTX, this news caused the world's largest crypto exchange, Binance, to liquidate about \$500 million of FTT. This in turn led to a proverbial "run on the bank," causing FTX customers to begin withdrawing significant amounts of money from FTX.

70. At this point, Bankman-Fried knew that FTX would not be able to honor all of the customer withdrawal requests. He knew that those customers' deposits had been transferred and/or sent to Alameda. So in an attempt to quell the tide of withdrawals, Bankman-Fried made a series of outrageous lies to the public.

71. On November 7, 2022, he tweeted "FTX is fine. Assets are fine. . . . FTX has enough to cover all client holdings. We don't invest client assets (even in treasuries). We have been processing all withdrawals, and will continue to be" The tweet was false, and Bankman-Fried later deleted it.

72. On November 8, 2022, FTX paused customer withdrawals, driving down the value of the FTT token — the asset that Bankman-Fried had used as collateral for the \$10 billion in "loans" from FTX to Alameda — by 80%. This obliterated FTX's ability to recover the value of the customer deposits it had sent to Alameda.

73. Bankman-Fried sought investors, including its main competitor Binance, to bail out FTX. On November 9, 2022, Binance announced it had

1 conducted due diligence of FTX and decided not to intervene. FTX customers
2 promptly withdrew \$5 billion from the platform that day.

3 74. Also that day, Bankman-Fried admitted at a meeting with Alameda
4 employees that he, Wang and Singh knew that FTX customer funds had been sent to
5 and used by Alameda.

6 75. On November 10, 2022, Bankman-Fried acknowledged it to the world,
7 tweeting, “1) I’m sorry. That’s the biggest thing. I f*cked up, and should have done
8 better.”

9 76. On November 11, 2022, Bankman-Fried resigned from FTX. FTX,
10 Alameda and about 100 affiliates filed for Chapter 11 bankruptcy protection later that
11 day.

12 77. Within days, Ray was appointed the new CEO of FTX. On November
13 17, 2022, he filed a Declaration in support of the bankruptcy. Ray, who held the
14 same position following the Enron financial catastrophe, stated “Never in my career
15 have I seen such a complete failure of corporate controls and such a complete absence
16 of trustworthy financial information as occurred here. From compromised systems
17 integrity and faulty regulatory oversight abroad, to the concentration of control in the
18 hands of a very small group of inexperienced, unsophisticated and potentially
19 compromised individuals, this situation is unprecedented.” Ray also reported that
20 FTX did not conduct board meetings.

21 78. On December 13, 2022, Ray testified before the House Financial
22 Services Committee. He stated that “This is just old fashioned embezzlement, taking
23 money from others and using it for your own purposes. This is not sophisticated at
24 all.”

25 79. Ray also stated that FTX’s domestic and international entities did not
26 operate independently of each other.

27 80. Ray stated that FTX’s computer infrastructure allowed senior
28 management to access customer assets without security protocols in place to prevent

1 those assets from being redirected, and that Alameda borrowed FTX client funds for
2 use in Alameda's trading and investments, without limits. Alameda traded those
3 funds on margin and suffered disastrous losses.

4 81. Ray also stated that assets were commingled in the FTX and Alameda
5 accounts (which again, were held at Silvergate); that no reliable financial statements
6 existed; that FTX lacked personnel in financial and risk management functions; and
7 that FTX lacked independent governance.

8 82. On December 13, 2022, the SEC sued Bankman-Fried, alleging
9 securities fraud.

10 83. That same day, the CFTC sued Bankman-Fried, FTX and Alameda for
11 fraud as well.

12 84. On December 14, 2022, Bankman-Fried was indicted in the U.S. District
13 Court for the Southern District of New York and charged with eight counts of fraud.
14 He was arrested in the Bahamas and awaits extradition to the United States to face
15 the charges.

16 85. Silvergate's actions have drawn attention from the government as well.
17 On December 5, Senators Elizabeth Warren (D-Mass.), Roger W. Marshall (R-Kan.)
18 and John Kennedy (R-La.), sent Lane and Silvergate a letter voicing "concern[]
19 about Silvergate's role in [FTX's] activities because of reports suggesting that
20 Silvergate facilitated the transfer of FTX customer funds to Alameda."

21 86. And as Defendants knew it would if news of FTX's fraud became
22 public, Silvergate's financial fortunes have dropped precipitously. By January 5,
23 2023, Silvergate lost more than \$8 billion of its \$12 billion in deposits. And its stock
24 price plummeted almost 80% since that news broke in November 2022.

25 **J. Lane as Agent and Co-Conspirator**

26 87. At all relevant times, Silvergate, Bankman-Fried and Lane were
27 principals, agents, joint venturers, partners and/or affiliates of each other. They each
28 acted within the course and scope of that principal, agent, joint venture, partnership

1 and/or affiliate relationship. Silvergate, Bankman-Fried and Lane had mutual
2 knowledge of each other's wrongdoing. They each ratified, approved, joined in,
3 acquiesced, or authorized the wrongful acts of Silvergate, Bankman-Fried and Lane,
4 and retained the benefits of those wrongful acts.

5 88. At all relevant times, Silvergate, Bankman-Fried and Lane were each
6 co-conspirators of the other. Silvergate and Lane aided and abetted, encouraged and
7 substantially assisted Bankman-Fried in jointly perpetrating a fraudulent scheme
8 upon Plaintiffs and the class. By aiding, abetting, encouraging and substantially
9 assisting the wrongful acts, omissions and other misconduct alleged above,
10 Defendants acted with an awareness of their wrongdoing and realized that their
11 conduct would substantially aid the accomplishment of their illegal design.

12 **K. Tolling of Statutes of Limitation**

13 89. Defendants Silvergate and Lane fraudulently concealed from Plaintiffs
14 and the other FTX customers the true nature of FTX. Silvergate and Lane were aware
15 of the illegal FTX scheme whereby FTX customer money was embezzled by
16 Alameda. They were aware that it would injure Plaintiffs and the class members.
17 But Defendants took no action to stop or report it. Instead, Silvergate continued
18 accepting FTX deposits and executing the transfer and lending transactions upon
19 which the scheme relied. Silvergate and Lane knew that FTX investors like Plaintiffs
20 were unaware of the FTX/Alameda investment fraud. Silvergate and Lane had
21 superior and exclusive knowledge of the fraud.

22 90. Plaintiffs did not discover, and although exercising reasonable diligence
23 could not have discovered, the facts establishing Defendants' violations or the harm
24 caused until FTX's bankruptcy in early November 2022. Plaintiffs learned about the
25 scheme through media coverage and FTX's bankruptcy filing.

26 91. Because Plaintiffs and the other class members could not have
27 reasonably discovered the facts constituting Silvergate's and Lane's violations until
28 November 2022, all applicable statutes of limitation were tolled until then.

CLASS ACTION ALLEGATIONS

92. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated who, as of November 11, 2022, held legal title to any fiat or cryptocurrency deposited or invested through an FTX platform.

93. Excluded from the class are Silvergate and its employees, affiliates, predecessors, successors or assigns; Alan Lane or his immediate family members; Samuel Bankman-Fried or his immediate family members; Gary Wang or his immediate family members; Nishad Singh or his immediate family members; Class Counsel; as well as the Judge to whom the Action is assigned and any member of the Judge's staff and immediate family.

94. This action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, because it meets all the requirements of Rule 23(a)(1)-(4), including the numerosity, commonality, typicality and adequacy requirements, and it satisfies the requirements of Rule 23(b)(3) in that the predominance and superiority requirements are met.

95. Numerosity. The members of the Classes are so numerous that joinder of all members is impracticable. FTX had more than one million users at the time of its bankruptcy who held legal title to currency fiat or cryptocurrency on the FTX exchanges.

96. Commonality. There are numerous questions of fact or law that are common to Plaintiffs and all the members of the Class. Common issues of fact and law predominate over any issues unique to individual class members. Issues that are common to all class members include, but are not limited to the following:

- a. Whether Bankman-Fried and/or FTX committed fraud or breached fiduciary duties to the class;
- b. Whether Bankman-Fried and/or FTX had fiduciary duties to Plaintiffs and members of the class;

- c. Whether Bankman-Fried and/or FTX breached their fiduciary duties to Plaintiffs and members of the class;
- d. Whether Silvergate had actual knowledge of the scheme by FTX, Alameda and Bankman-Fried to transfer and/or FTX customer funds to Alameda;
- e. Whether Silvergate, despite actual knowledge of the scheme, substantially assisted it;
- f. Whether Silvergate was unjustly enriched by its wrongful conduct; and
- g. Whether Class Plaintiffs and class members suffered damages or are entitled to restitution.

97. Typicality. Plaintiffs have claims that are typical of the claims of all of the members of the Class. Plaintiffs and each class member invested through the FTX exchange and were subject to the wrongful conduct alleged in this complaint. Furthermore, the claims arise under legal theories that apply to Plaintiffs and all other class members.

98. Adequacy of Representation. Plaintiffs will fairly and adequately represent the interests of the members of the Classes. Plaintiffs do not have claims that are unique to Plaintiffs and not the other class members, nor are there defenses unique to Plaintiffs that could undermine the efficient resolution of the claims of the Class. Further, Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in class action litigation, to represent Plaintiffs. There is no hostility between Plaintiffs and the unnamed class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

99. Predominance. Common questions of law and fact predominate over questions affecting only individual class members. The only individual issues

likely to arise will be the amount of damages to be recovered by each class member, the calculation of which does not bar certification.

100. Superiority. A class action is superior to all other feasible alternatives for the resolution of this matter. Individual litigation of multiple cases would be highly inefficient and would waste the resources of the courts and of the parties. The damages sought by Plaintiffs and class members are relatively small and unlikely to warrant individual lawsuits given the fees and costs, including expert costs, required to prosecute the claims.

101. Manageability. This case is well suited for treatment as a class action and easily can be managed as a class action because evidence of both liability and damages can be adduced, and proof of liability and damages can be presented, on a class-wide basis, while the allocation and distribution of damages to class members would be essentially a ministerial function.

102. Ascertainability. Class members are readily ascertainable. The class members are readily identifiable from information and records in the possession, custody or control of Silvergate and/or the bankruptcy trustee of FTX.

103. All conditions precedent to this action have occurred or have been waived.

COUNT 1

Aiding and Abetting Fraud Against All Defendants

104. Plaintiffs re-allege and incorporate paragraphs 1 through 103 above as if fully set forth herein.

105. As set forth above, Bankman-Fried and FTX perpetrated a fraud upon Plaintiffs and class members through materially false and misleading statements and omissions that misled Plaintiffs and class members about the nature of FTX investments and how investor money would be used. The Bankman-Fried and FTX knew these statements to be false.

106. Plaintiffs and class members reasonably relied to their detriment upon those misrepresentations when they invested with FTX.

107. Silvergate substantially assisted the fraud perpetrated by FTX and Bankman-Fried, with knowledge that they were defrauding investors like Class Plaintiffs and class members. In connection with providing substantial and material assistance to the Bankman-Fried and FTX, Silvergate knew of its role in their scheme, and acted knowingly in assisting.

108. Silvergate substantially benefited from its participation in the scheme.

109. As a direct and proximate result of Silvergate aiding and abetting the fraud, Plaintiffs and class members have suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs, on behalf of himself and all similarly situated class members, respectfully demand judgment against Silvergate for their damages; pre- and post-judgment interest; punitive damages; and such other and further relief as the Court deems just and proper.

COUNT 2

Aiding and Abetting Breach of Fiduciary Duty Against All Defendants

110. Plaintiffs re-allege and incorporate paragraphs 1 through 103 above as if fully set forth herein.

111. Bankman-Fried and FTX fostered a special relationship with Class Plaintiffs and class members that engendered fiduciary duties of loyalty, care, honesty and/or good faith. They had a duty to act for the benefit of Class Plaintiffs and class members upon matters within the scope of their relationship, which included the duty to take Plaintiffs' and class members' money and use those funds as promised.

112. Bankman-Fried and FTX breached their fiduciary duties by misappropriating, commingling and otherwise misusing investor funds, and otherwise acting as alleged herein in violation of his fiduciary duties to investors.

113. Through its knowledge of FTX and Alameda's public statements, business models and banking activity, Silvergate knew that FTX and Bankman-Fried owed fiduciary duties to investors, including Plaintiffs and the class, and that they were breaching those fiduciary duties.

114. Silvergate substantially assisted in the breaches of fiduciary duty with knowledge that Bankman-Fried and FTX were breaching those duties.

115. As a direct and proximate result of Silvergate's aiding and abetting Bankman-Fried and FTX's breaches of fiduciary duty, Plaintiffs and class members have suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated class members, respectfully demand judgment against Silvergate for their damages, including but not limited to profits made by Silvergate relating to Bankman-Fried, FTX, and Alameda, their principals or employees; pre- and post-judgment interest; punitive damages; and such other and further relief as the Court deems just and proper.

COUNT 3

Unjust Enrichment Against Silvergate

116. Plaintiffs re-allege and incorporate paragraphs 1 through 103 above as if fully set forth herein.

117. Silvergate provided banking services to Bankman-Fried, FTX and Alameda through various bank accounts. Those bank accounts were used to carry out the fraudulent scheme.

118. Class Plaintiffs and class members conferred benefits on Silvergate by depositing funds into and using the FTX exchange platforms.

119. The funds held in FTX's accounts belonged to investors. Thus, Plaintiffs and class members conferred benefits upon Silvergate in the form of deposits from which Silvergate generated income, including but not limited to revenues derived from Class Plaintiffs' and other class members' funds, interest,

transfer fees, service fees, transaction fees and online banking fees. Silvergate knowingly and voluntarily accepted, and retained, the deposits and those benefits.

120. Because Silvergate aided and abetted the Bankman-Fried and FTX's fraud and breach of fiduciary duty, it would be inequitable for Silvergate to retain the benefits it generated from monies of Class Plaintiffs and class members.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated class members, respectfully demands judgment against Silvergate for the return of income and fees retained by Silvergate; pre- and post-judgment interest; and/or such other and further relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Silvergate, as follows:

1. Certifying this action as a class action, appointing Plaintiffs as class representatives and their lawyers as class Counsel and requiring Silvergate to pay the costs of notice to the class;
2. Awarding damages, restitution and/or disgorgement of profits, including prejudgment interest, upon each count in an amount to be determined at trial;
3. Awarding reasonable attorneys' fees and costs of litigation; and
4. Granting such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: January 9, 2023

By: /s/ Jason S. Hartley

Jason S. Hartley

Jason M. Lindner

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San Diego, California 92101

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12 Victoria J. Wilson, Esq.
13 Marcelo Diaz-Cortes, Esq.
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18 Miami, Florida 33131
19 Telephone: (305) 403-8788
20 jk@lklsg.com
21 vjw@lklsg.com
22 jk@lklsg.com
23 *(Pro Hac Vice Applications Forthcoming)*
24
25
26
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANDRAWES HUSARY, FRANCISCO DE TOMASO, SOHAM BHATIA and MICHAEL HAWWA

(b) County of Residence of First Listed Plaintiff San Mateo County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jason S. Hartley, HARTLEY LLP, 101 W. Broadway,
Ste. 820, San Diego, CA 92101; 619-400-5822

DEFENDANTS

SILVERGATE BANK, SILVERGATE CAPITAL CORPORATION
and ALAN J. LANE

County of Residence of First Listed Defendant San Diego County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'23CV0038 CAB AHG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(d)(2)

Brief description of cause:

Aiding and abetting fraud, aiding and abetting breach of fiduciary duty, and unjust enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
\$5,000,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Lorenz and Benitez

DOCKET NUMBER 3:22cv1901-L and 3:22cv1981 BEN

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 9, 2023

s/Jason S. Hartley

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.