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18
19 **UNITED STATES DISTRICT COURT**
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21 ANDRAWES HUSARY,
FRANCISCO DE TOMASO,
22 SOHAM BHATIA and MICHAEL
HAWWA on behalf of themselves
and all others similarly situated,

23 *Plaintiffs,*

24 v.

25 SILVERGATE BANK,
26 SILVERGATE CAPITAL
CORPORATION and ALAN J.
27 LANE,

28 *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

1 Alameda, a separate, Bankman-Fried-owned company that engaged in complicated
2 and risky crypto trading.

3 5. Crucially, Silvergate held the accounts of *both* FTX and Alameda.
4 Silvergate, which publicly touted its enhanced, proprietary anti-money laundering
5 (“AML”) and “Know Your Customer” (“KYC”) systems, knew FTX and Alameda
6 were different companies. It knew FTX held investor funds. It knew Alameda
7 engaged in risky trading. It saw *billions of dollars* of investor money transferred
8 out of FTX and into Alameda, then out of Alameda to pay Alameda’s debts and to
9 enrich Bankman-Fried and his inner circle. It saw billions of dollars in FTX
10 customer funds wired directly to Alameda and related entities. But despite this
11 knowledge, Silvergate — which proudly displayed on the home page of its website
12 a quote by Bankman-Fried heralding Silvergate as the bank that “revolutionized
13 crypto banking” — did nothing. To the contrary, Silvergate substantially assisted
14 FTX by continuing to allow FTX to use its Silvergate accounts and the SEN
15 network.

16 6. In the end, approximately \$8 billion in FTX customer funds, including
17 the funds of Plaintiffs and about one million others, have been lost. This lawsuit
18 seeks to recover some of those losses, which would not have occurred had
19 Silvergate stopped giving FTX access to its accounts and the SEN network when it
20 saw what FTX and Bankman-Fried were doing.

21 **PARTIES**

22 7. Plaintiff Andrawes Husary is a citizen and resident of San Bruno,
23 California. On April 15, 2022, Husary placed \$2,000 in funds in an FTX account
24 for executing cryptocurrency trades and/or engaging in investment activity. Shortly
25 thereafter, he purchased a nonfungible token as an investment. When FTX
26 announced its bankruptcy in early November 2022, Husary tried to withdraw the
27 asset from his FTX account but was unable to do so.
28

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

13. Defendant Alan J. Lane is the CEO of Silvergate Bank and the president and a director of Silvergate Capital. He resides in Temecula, California.

JURISDICTION AND VENUE

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.

GENERAL ALLEGATIONS

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.

1 29. SEN is the largest “on-ramp/off-ramp” network in crypto. As a result,
2 Silvergate quickly became ubiquitous in the expanding crypto industry, and in 2019
3 it went public, eventually raising more than \$1.3 billion in capital.

4 30. More importantly, Silvergate’s fortunes became entirely dependent on
5 the fortunes of its crypto-industry accountholders, of which FTX was one of the
6 largest, if not the largest. By the time of FTX’s bankruptcy, FTX comprised nearly
7 10% of Silvergate’s deposits.

8 31. Silvergate was not required to, and did not, pay interest to crypto
9 accountholders like FTX and Alameda for their deposits. This allowed Silvergate to
10 invest those deposits in low-risk securities.

11 32. This business model — taking interest-free deposits and investing them
12 in low-risk securities — generated big profits at low risk to the bank. And it also gave
13 Silvergate a competitive advantage in relation to competing banks that shunned
14 crypto-related deposits. The crypto industry was the key to Silvergate’s profitability
15 and success.

16 33. From 2020 to 2021, deposits from crypto exchanges, miners, custodians
17 and the like rocketed from \$2 billion to \$10 billion. Silvergate’s share price rose from
18 \$12 per share to \$200 per share, greatly enriching shareholders like Lane.

19 34. By September 2022, Silvergate had grown its deposits to \$11.9 billion,
20 of which 90% came from crypto-related accountholders like FTX and Alameda.
21 Silvergate used those deposits to build an \$11.4 billion securities portfolio that, in just
22 the first three financial quarters of 2022, generated more than \$200 million in interest
23 income.

24 **D. Silvergate’s AML and BSA Processes**

25 35. Federal law requires banks like Silvergate to “know their customers”
26 and understand their customers’ banking behavior. Under applicable regulations, a
27 bank must maintain procedures that allow it to “form a reasonable belief that it knows
28 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.

1 39. Silvergate and its personnel must be able to identify and take appropriate
2 action once put on notice of any of a series of money laundering indicia set forth in
3 the Federal Financial Institutions Examination Council's BSA/AML Examination
4 Manual. These include: (1) repetitive or unusual fund transfer activity; (2) fund
5 transfers sent or received from the same person to or from different accounts; (3)
6 transactions inconsistent with the account holder's business; (4) transfers of funds
7 among related accounts; (5) depositing of funds into several accounts that are later
8 consolidated into a single master account; (6) large fund transfers sent in round-dollar
9 amounts; (7) payments unconnected to legitimate contracts or revenue sources; (8)
10 fund transfers containing limited content or related party information; and (9) an
11 unusually large number of persons or entities receiving fund transfers from one
12 company.

13 40. Here, Silvergate engaged in a Know Your Customer analysis of FTX
14 and Alameda and monitored the accounts for anomalous or suspicious behavior.
15 Silvergate collected and reviewed information about their business operations, the
16 source of funds and the purpose of the accounts.

17 41. Indeed, Silvergate publicly touted its AML/BSA processes as even more
18 robust than the average bank's. Silvergate employed twice as many compliance staff
19 as traditional banks of its size. The bank said it typically took six months to conduct
20 due diligence on crypto exchange clients looking to open up an account.

21 42. In SEC filings, Silvergate assured the public that given the high-risk
22 nature of crypto-related enterprises, the bank did extensive due diligence on those
23 customers: "For customers such as exchanges which pose a higher degree for risk or
24 have a higher degree of regulatory obligations, the Company's processes are more
25 extensive and incorporate reputational reviews, reviews of applicable licensing
26 requirements, plans, and status, and reviews of customer policies and procedures
27 regarding the BSA, consumer compliance, information security, Dodd-Frank Act
28

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;

- 1 c. Whether Bankman-Fried and/or FTX breached their fiduciary duties
2 to Plaintiffs and members of the class;
- 3 d. Whether Silvergate had actual knowledge of the scheme by FTX,
4 Alameda and Bankman-Fried to transfer and/or FTX customer funds
5 to Alameda;
- 6 e. Whether Silvergate, despite actual knowledge of the scheme,
7 substantially assisted it;
- 8 f. Whether Silvergate was unjustly enriched by its wrongful conduct;
9 and
- 10 g. Whether Class Plaintiffs and class members suffered damages or are
11 entitled to restitution.

12 97. Typicality. Plaintiffs have claims that are typical of the claims of all
13 of the members of the Class. Plaintiffs and each class member invested through the
14 FTX exchange and were subject to the wrongful conduct alleged in this complaint.
15 Furthermore, the claims arise under legal theories that apply to Plaintiffs and all
16 other class members.

17 98. Adequacy of Representation. Plaintiffs will fairly and adequately
18 represent the interests of the members of the Classes. Plaintiffs do not have claims
19 that are unique to Plaintiffs and not the other class members, nor are there defenses
20 unique to Plaintiffs that could undermine the efficient resolution of the claims of the
21 Class. Further, Plaintiffs are committed to the vigorous prosecution of this action
22 and have retained competent counsel, experienced in class action litigation, to
23 represent Plaintiffs. There is no hostility between Plaintiffs and the unnamed class
24 members. Plaintiffs anticipate no difficulty in the management of this litigation as
25 a class action.

26 99. Predominance. Common questions of law and fact predominate over
27 questions affecting only individual class members. The only individual issues
28

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.

1 transfer fees, service fees, transaction fees and online banking fees. Silvergate
2 knowingly and voluntarily accepted, and retained, the deposits and those benefits.

3 120. Because Silvergate aided and abetted the Bankman-Fried and FTX's
4 fraud and breach of fiduciary duty, it would be inequitable for Silvergate to retain
5 the benefits it generated from monies of Class Plaintiffs and class members.

6 WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated
7 class members, respectfully demands judgment against Silvergate for the return of
8 income and fees retained by Silvergate; pre- and post-judgment interest; and/or
9 such other and further relief as the Court deems just and proper.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for judgment against Silvergate, as follows:

12 1. Certifying this action as a class action, appointing Plaintiffs as class
13 representatives and their lawyers as class Counsel and requiring Silvergate to pay
14 the costs of notice to the class;

15 2. Awarding damages, restitution and/or disgorgement of profits,
16 including prejudgment interest, upon each count in an amount to be determined at
17 trial;

18 3. Awarding reasonable attorneys' fees and costs of litigation; and

19 4. Granting such other relief as the Court may deem just and proper.

20 **JURY DEMAND**

21 Plaintiffs demand a trial by jury on all issues so triable.

22 Dated: January 9, 2023

By: /s/ Jason S. Hartley

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