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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 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**

**Party Description:** on behalf of themselves and all others similarly situated  
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**Michael Lehrer**

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**Alan J. Lane**

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**Tyler J. Pearson**

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**Jason Brenier**

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**CALENDAR INFORMATION**

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**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)	<a href="#">View</a>	<a href="#">Add to request</a>
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)	<a href="#">View</a>	<a href="#">Add to request</a>
15	01/20/2023	NOTICE OF RELATED CASE(S) by Michael Lehrer, Tristan Newman, Jose Tomas Sepulveda Zuleta of	<a href="#">View</a>	<a href="#">Add to request</a>



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)	<a href="#">Send Runner to Court</a>
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) (cx11). (Entered: 12/21/2022)	<a href="#">View</a> <a href="#">Add to request</a>
12	12/21/2022	SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Alan J. Lane served. (Flynn, Trevor) (cx11). (Entered: 12/21/2022)	<a href="#">View</a> <a href="#">Add to request</a>
11	12/19/2022	ORDER granting <a href="#">9</a> 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)(cx11) (Entered: 12/19/2022)	<a href="#">View</a> <a href="#">Add to request</a>
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),	<a href="#">View</a> <a href="#">Add to request</a>

9	12/16/2022	<p>Attorney Madalyn Annabel Macarr added to party Tyler J. Pearson(pty:dft), Attorney Madalyn Annabel Macarr added to party Silvergate Capital Corporation(pty:dft) (cx11). (Entered: 12/16/2022)</p> <p>Joint MOTION for Extension of Time to File Answer re <a href="#">1</a> Complaint, by Jason Brenier, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, Silvergate Capital Corporation. (Towill, Polly) (cx11). (Entered: 12/16/2022)</p>	<a href="#">View</a>	<a href="#">Add to request</a>
8	12/16/2022	<p>Corporate Disclosure Statement by Silvergate Capital Corporation. No Corporate Parents/Interested Parties. (Towill, Polly) (cx11). (Entered: 12/16/2022)</p>	<a href="#">View</a>	<a href="#">Add to request</a>
7	12/16/2022	<p>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) (cx11). (Entered: 12/16/2022)</p>	<a href="#">View</a>	<a href="#">Add to request</a>
6	12/16/2022	<p>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</p>	<a href="#">View</a>	<a href="#">Add to request</a>

5	12/14/2022	Corporation(pty:dft) (cx11). (Entered: 12/16/2022) SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Christopher M. Lane served. (Flynn, Trevor) (cx11). (Entered: 12/14/2022)	<a href="#">View</a>	<a href="#">Add to request</a>
4	12/05/2022	SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Tyler J. Pearson served. (Flynn, Trevor) (cx11). (Entered: 12/05/2022)	<a href="#">View</a>	<a href="#">Add to request</a>
3	12/05/2022	SUMMONS Returned Executed by Jose Tomas Sepulveda Zuleta, Tristan Newman, Michael Lehrer. Silvergate Capital Corporation served. (Flynn, Trevor) (cx11). (Entered: 12/05/2022)	<a href="#">View</a>	<a href="#">Add to request</a>
2	12/02/2022	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with <a href="#">Rule 4, Fed.R.Civ.P</a> and LR 4.1. (cx11) (rmc). (Entered: 12/02/2022)	<a href="#">View</a>	<a href="#">Add to request</a>
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)(cx11) (rmc). (Entered: 12/02/2022)	<a href="#">View</a>	<a href="#">Add to request</a>

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17 *Counsel for Plaintiffs*  
 18 *(add'l counsel listed below)*

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

21 JOSÉ TOMÁS SEPÚLVEDA ZULETA,  
 22 MICHAEL LEHRER, and TRISTAN  
 23 NEWMAN, on behalf of themselves and all  
 24 others similarly situated,

25 Plaintiffs,

26 v.

27 SILVERGATE CAPITAL CORPORATION,  
 28 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

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“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.

1 **JURISDICTION AND VENUE**

2 12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §  
3 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the  
4 sum or value of \$5,000,000 exclusive of interest and costs, and at least one member of the  
5 class of plaintiffs is a citizen of a State different from Defendants. In addition, more than  
6 two-thirds of the members of the class reside in states other than the state in which Defendants  
7 are citizens and in which this case is filed, and therefore any exceptions to jurisdiction under  
8 28 U.S.C. § 1332(d) do not apply.

9 13. The Court has personal jurisdiction over Defendants pursuant to Cal. Code Civ.  
10 P. § 410.10, as a result of Defendants’ substantial, continuous and systematic contacts with  
11 the State, and because Defendants have purposely availed themselves of the benefits and  
12 privileges of conducting business activities within the State.

13 14. Venue is proper in this Southern District of California pursuant to 28 U.S.C. §§  
14 1391(b) and (c), because Defendants reside in this district, Silvergate is headquartered in this  
15 district, and a substantial part of the events or omissions giving rise to the claims occurred in  
16 this district.

17 **FACTS**

18 **I. BACKGROUND**

19 15. Silvergate was founded in 1988, is a member of the Federal Reserve, and is  
20 publicly traded on the New York Stock Exchange under the symbol SI, having gone public  
21 in October 2019.

22 16. In 2013, Silvergate began to provide banking services to the emerging digital  
23 asset industry. Today, it is the leading provider of financial infrastructure solutions and  
24 services for the growing cryptocurrency industry. Replicated below is an infographic showing  
25 Silvergate’s business as of June 2021.  
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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,



1 though it has been removed since FTX’s bankruptcy, the following endorsement appeared on  
2 Silvergate’s website:

3 “Life as a crypto firm can be divided up into  
4 before Silvergate and after Silvergate — it’s  
5 hard to overstate how much it revolutionized  
6 banking for blockchain companies.”  
7 — Sam Bankman-Fried  
8 FOUNDER AND CEO, FTX AND ALAMEDA RESEARCH

7 20. Notably, in quoting him and using his endorsement to market its own business,  
8 Silvergate identified Mr. Bankman-Fried as the “Founder and CEO” of *both* FTX and  
9 Alameda Research.

10 **III. FTX’S FRAUD AND COLLAPSE**

11 21. In 2017, Mr. Bankman-Fried launched a crypto trading firm, Alameda Research  
12 LLC. Initially, it primarily operated as a delta-neutral trading firm, using strategies like  
13 market making and arbitrage to avoid taking directional risk. Later, it began to take  
14 increasingly risky bets, losing billions of dollars in the process as cryptocurrency markets fell  
15 precipitously in 2022.

16 22. In 2019, Mr. Bankman-Fried, along with Gary (Zixiao) Wang and Nishad Singh,  
17 founded FTX as an exchange or marketplace for the trading of digital assets like  
18 cryptocurrencies, with its operations beginning in May 2019. FTX’s primary international  
19 headquarters are in the Bahamas, with its U.S. operations located in Miami, Florida.

20 23. FTX’s promise was a trading platform and exchange for digital assets that would  
21 provide a better user experience, customer protections, and innovative products robust  
22 enough for professional trading firms and intuitive enough for first-time and retail users.

23 24. FTX also created and issued FTT, the main utility token providing access to the  
24 FTX exchange platform’s features and services. FTT token holders are entitled to some FTX  
25 exchange discounts and other benefits, but the token’s main attribute is that FTX periodically  
26 uses a portion of its profits to buy FTT tokens back, making them deflationary. Thus, the  
27 higher FTX’s profits are, the higher the price of FTT will be. So FTT tokens are a bet on  
28 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.<sup>1</sup>

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.’”<sup>2</sup>

27 <sup>1</sup> 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>.

<sup>2</sup> 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>.

1 28. Over the next year, FTX continued to grow. As of September 2022, around \$15  
2 billion of digital assets were being traded daily on FTX’s platform, representing 10% of the  
3 global volume for crypto trading.

4 29. In early November 2022, however, crypto publication CoinDesk released a  
5 report finding that, even though FTX and Alameda were ostensibly separate companies,  
6 Alameda’s balance sheet was mostly comprised of FTT, the token FTX had invented.<sup>3</sup> It  
7 appeared that, following massive losses Alameda had sustained in the second quarter of 2022  
8 when the cryptocurrency Luna collapsed, FTX was lending Alameda money against these  
9 illusory assets. The report thus called FTX’s liquidity into serious question.

10 30. Shortly after these revelations, FTX’s primary competitor, Binance (headed by  
11 Changpeng “CZ” Zhao) announced it was liquidating \$530 million worth of FTT tokens.  
12 Customers raced to withdraw funds from FTX, with an estimated \$6 billion withdrawn over  
13 the course of 72 hours, as the value of its FTT token plunged 32% in the same timeframe.

14 31. On Tuesday, November 8, 2022, FTX announced that Binance would buy FTX,  
15 effectively bailing it out. The following day, however, Binance announced it was walking  
16 away from the deal after performing due diligence and finding that customer funds had been  
17 mishandled. This news sent FTT plunging.



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25 <sup>3</sup> See Ian Allison, “Divisions in Sam Bankman-Fried’s Crypto Empire Blur on His Trading  
26 Titan Alameda’s Balance Sheet: Alameda had \$14.6 billion of assets as of June 30, according  
27 to a private document CoinDesk reviewed. Much of it is the FTT token issued by FTX,  
28 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>.

1 32. On the morning of Thursday, November 10, 2022, Reuters reported that, after  
2 Alameda sustained \$500 million in losses in May and June 2022, Mr. Bankman-Fried had  
3 transferred at least \$4 billion from FTX to Alameda without telling anyone, “fearing the news  
4 would leak.”<sup>4</sup> Moreover, “the Wall Street Journal reported FTX lent more than half of its \$16  
5 billion in customer funds to Alameda in total, with Bankman-Fried telling an investor this  
6 week that **Alameda owes FTX about \$10 billion.**”<sup>5</sup>

7 33. At around the same time the report came out, on November 10, 2022, Mr.  
8 Bankman-Fried took to Twitter, firing off a series of tweets apologizing for and attempting  
9 to explain FTX’s failures.



15 34. Tweets 4-6 and 19 in the series (and particularly the blurb highlighted in tweet  
16 5 below) are particularly relevant here.



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25 <sup>4</sup> Brian Evans, “Sam Bankman-Fried secretly transferred FTX customer funds to Alameda  
26 Research after his trading firm suffered losses in the spring, report says,” Reuters (Nov. 10,  
27 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>.

28 <sup>5</sup> *Id.* (emphasis added).



1 35. According to an FTX balance sheet leaked that same day and pictured below,  
 2 FTX held just \$900 million in liquid assets against \$8.9 billion of liabilities. The document  
 3 also referenced a negative \$8 billion entry described as “hidden, poorly internally labeled  
 4 ‘fiat@’ account.”<sup>6</sup>

Liabilities		Assets	
	-8,859,042,572	Liquid	899,859,124
			1,012,262,574
Ticker	Liability	Ticker	Deliverable now
LayerZero	-45,000,000	HOOD	472,291,833
EUR	-114,536,254	USD in Ledger Prime	200,000,000
Genesis	-200,000,000	USDB	73,001,646
BlockFi	-215,000,000	DAI	28,491,686
USDT	-796,482,404	DOT	28,384,450
ETH	-671,542,668	PAXG	23,767,062
BTC	-1,412,738,406	JPY	21,758,186
USD	-5,135,280,129	TUSD	15,991,381
Other	-268,462,711	EURT	12,117,879
		BRZ	5,049,093
		BRL	7,017,295
		WXRP	6,987,896
		PAX	1,000,714
			1,002,277

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>.

1           36. On Friday, November 11, 2022, FTX filed for Chapter 11 bankruptcy, and  
2 Bankman-Fried resigned as CEO. Alameda Research and a host of other companies related  
3 to FTX and Alameda also moved for bankruptcy and joint administration.<sup>7</sup>

4           37. Shortly after FTX’s bankruptcy filing, the Wall Street Journal reported that “[i]n  
5 a video meeting with Alameda employees late Wednesday [November 9] Hong Kong time,  
6 Alameda CEO Caroline Ellison said that she, Mr. Bankman-Fried and two other FTX  
7 executives, Nishad Singh and Gary Wang, were aware of the decision to send customer funds  
8 to Alameda.”<sup>8</sup> Ms. Ellison explained that “FTX used customer money to help Alameda meet  
9 its liabilities.”<sup>9</sup>

10           38. On November 13, 2022, citing “a source familiar with company operations,”  
11 CNBC reported that Alameda “was able to quietly use customer funds from . . . FTX in a way  
12 that flew under the radar of investors, employees and auditors in the process, according to  
13 [the] source.”<sup>10</sup> It did this by “using billions from FTX users without their knowledge . . . .”<sup>11</sup>  
14 As a result of Alameda’s use—and loss—of FTX customers’ funds, FTX “drastically  
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18 <sup>7</sup> See *In re FTX Trading Ltd. Bankr.*, No. 22-BR-11068-JTD (D. Del., filed Nov. 11, 2022),  
19 Dkt. No. 1 (Voluntary Petition), Annex 1.

20 <sup>8</sup> David Michaels, Elaine Yu, and Caitlin Ostroff, “Alameda, FTX Executives Are Said to  
21 Have Known FTX Was Using Customer Funds; Trading firm Alameda’s troubles helped lead  
22 to the bankruptcy of crypto exchange FTX.” Wall Street Journal (Nov. 12, 2022), at  
23 <https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238>.

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

25 <sup>10</sup> Kate Rooney, “Sam Bankman-Fried’s Alameda quietly used FTX customer funds for  
26 trading, say sources,” CNBC.com (Nov. 13, 2022), at  
27 <https://www.cnbc.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html>.

28 <sup>11</sup> *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.<sup>12</sup>

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.’”<sup>13</sup>

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.<sup>14</sup> Certain portions of the  
13 conversation relevant here are replicated below.

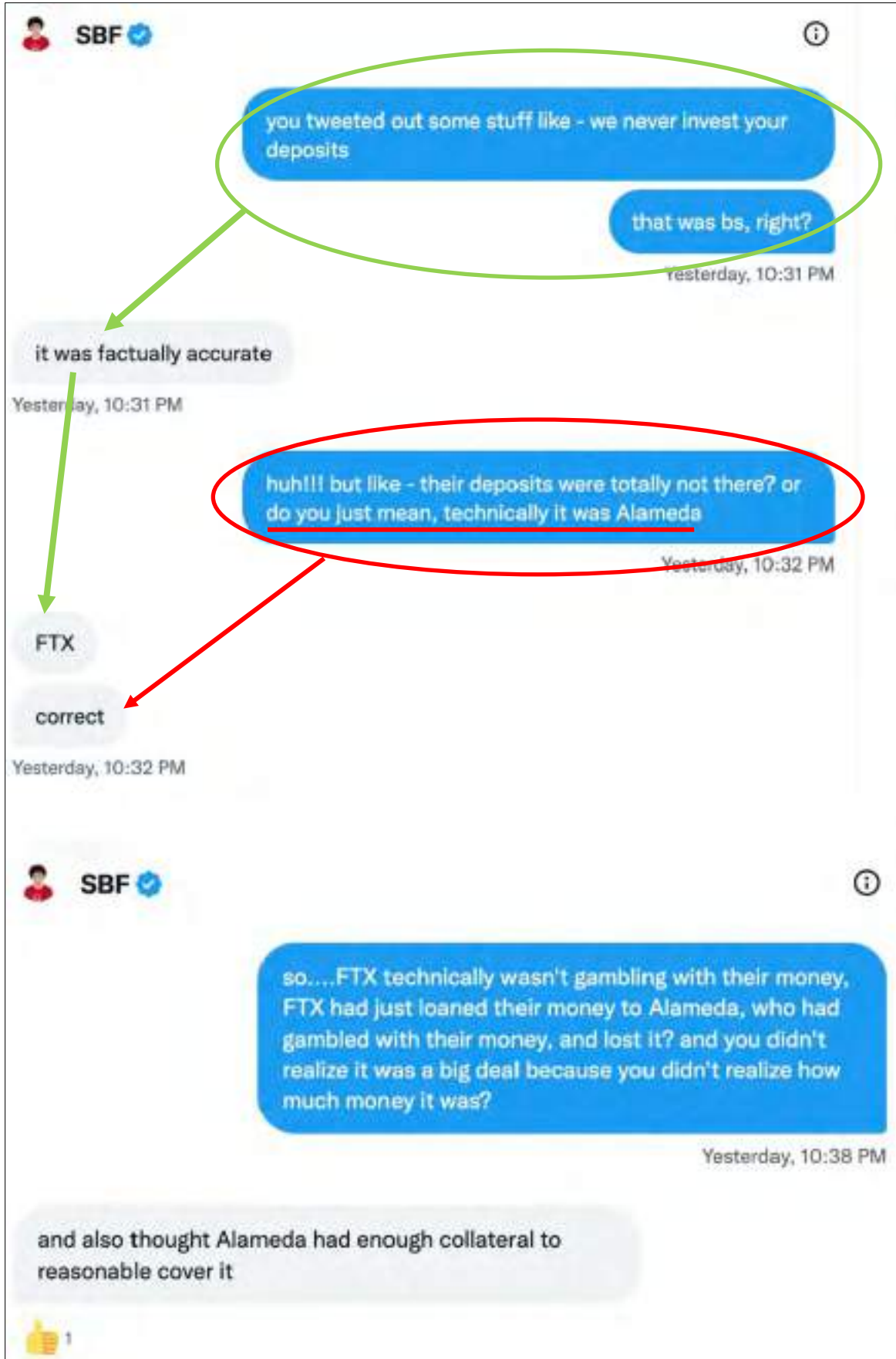
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24 <sup>12</sup> *See id.*

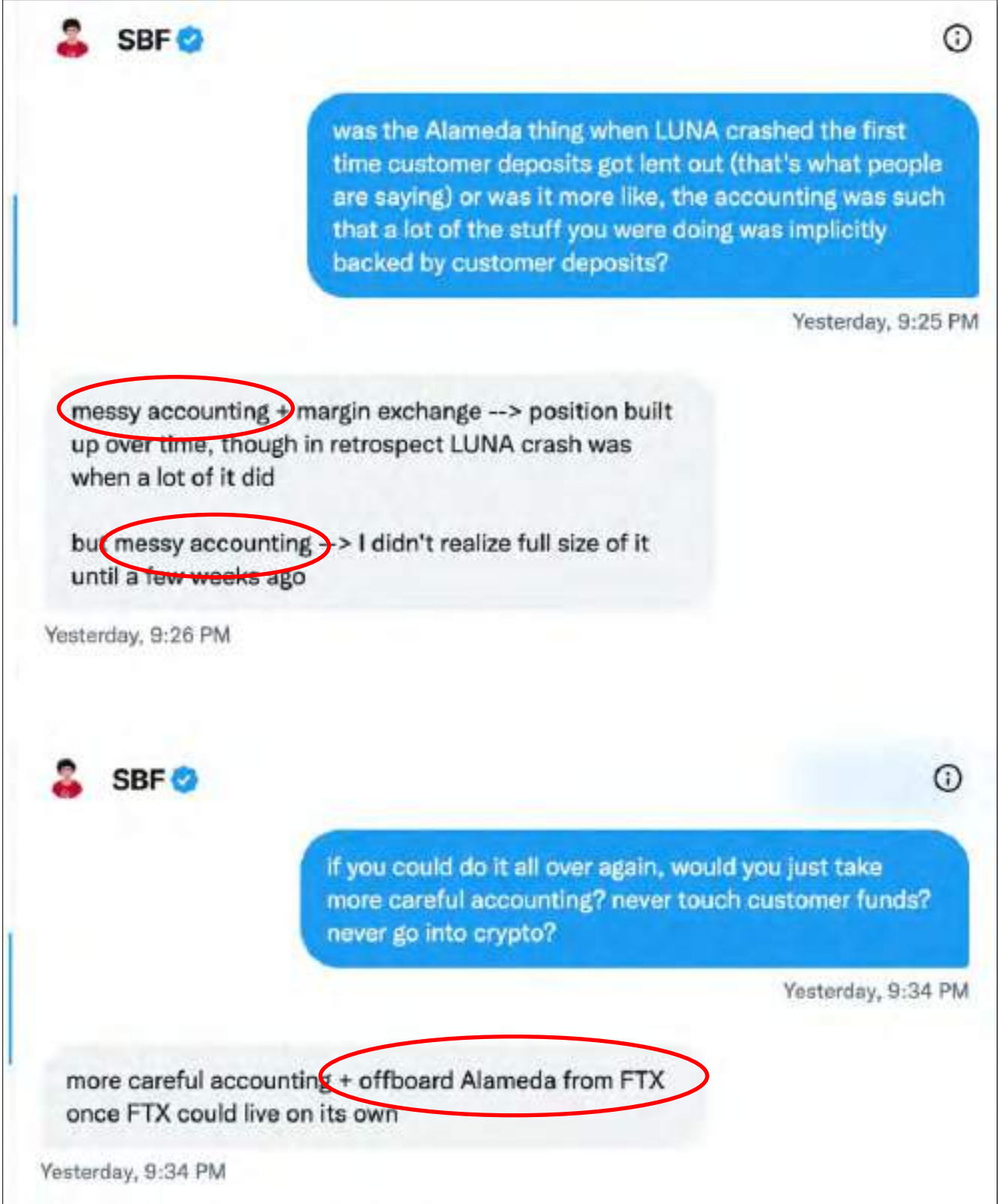
25 <sup>13</sup> *Id.*

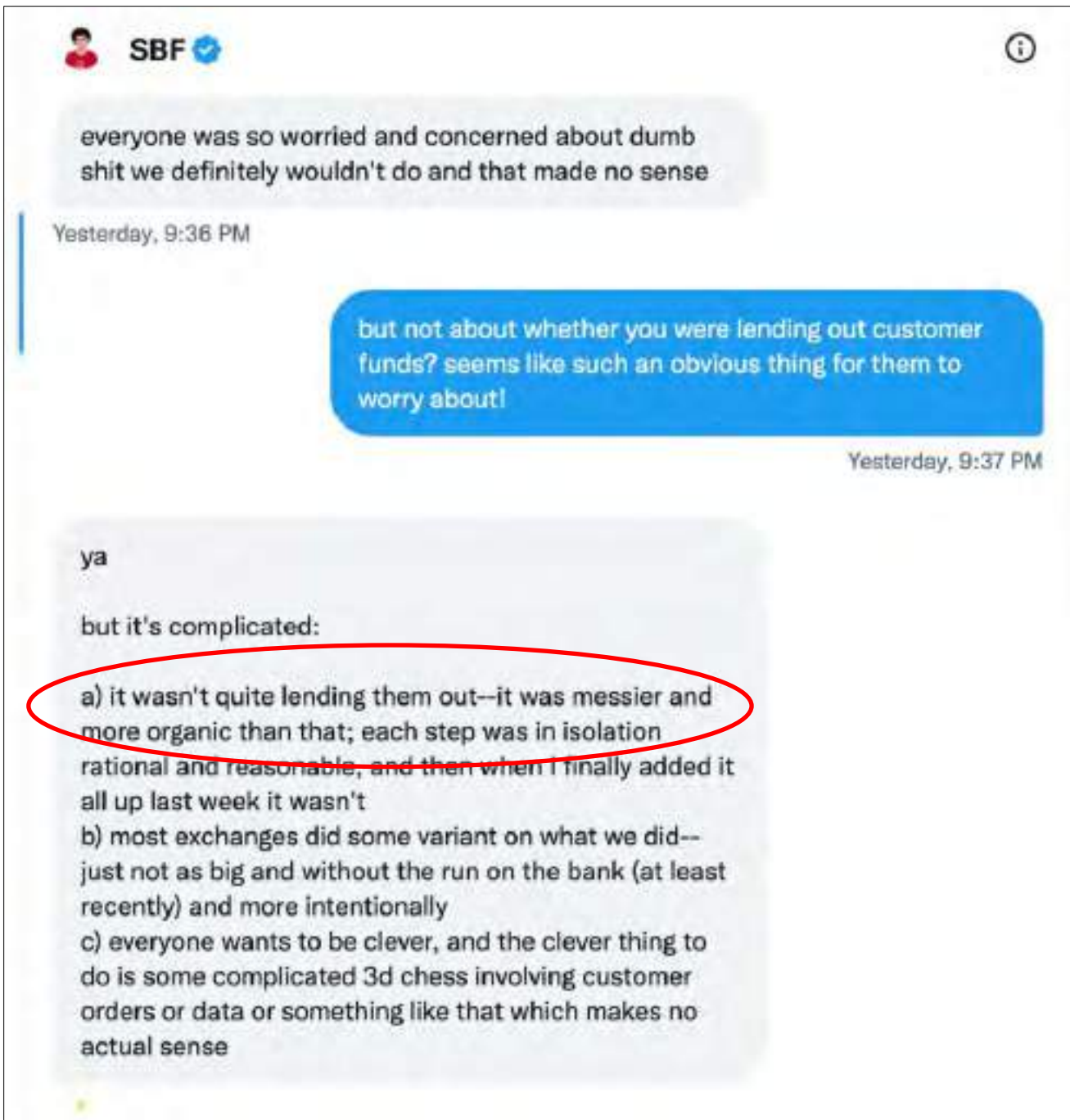
26 <sup>14</sup> Kelsey Piper, “Sam Bankman-Fried tries to explain himself: The fallen crypto CEO on  
27 what went wrong, why he did what he did, and what lies he told along the way,” Vox (Nov.  
28 16, 2022), *at* <https://www.vox.com/future-perfect/23462333/sam-bankman-fried-ftx-cryptocurrency-effective-altruism-crypto-bahamas-philanthropy>.



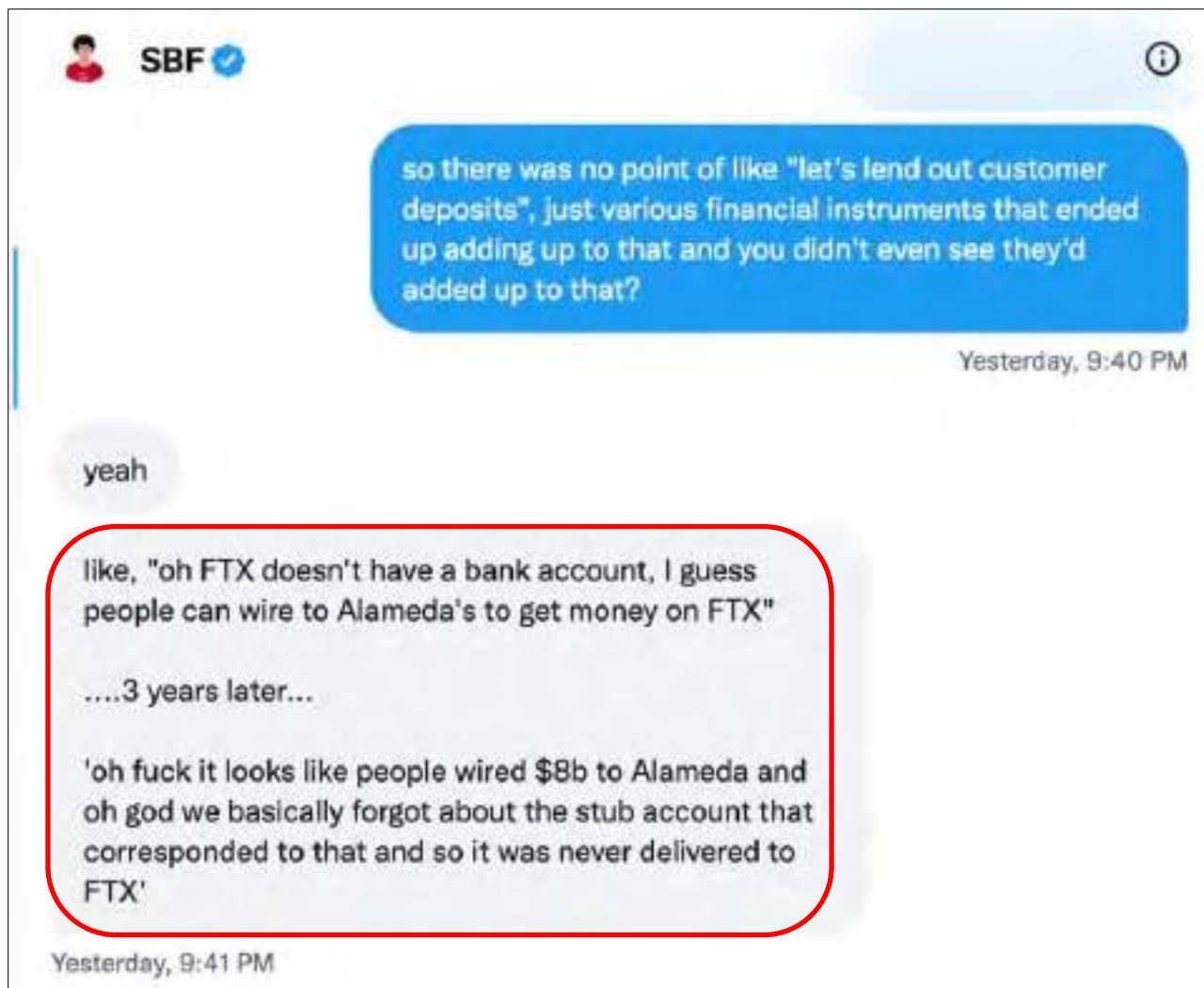


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23 41. Finally, Mr. Bankman-Fried admitted that FTX was using Alameda's bank  
24 account to receive customer deposits, rather than transferring money from FTX to Alameda.  
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18 42. Notably, the amount of these diverted, comingled customer funds corresponds  
19 to the negative \$8 billion “hidden, poorly labeled fiat@ account” on FTX’s balance sheet.

20 43. The same day FTX filed for bankruptcy, November 11, 2022, John J. Ray III  
21 accepted the position of FTX’s CEO. On November 17, 2022, Mr. Ray submitted in the  
22 bankruptcy action a Declaration in Support of Chapter 11 Petitions and First Day Pleadings,  
23 stating:<sup>15</sup>

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28 <sup>15</sup> *Id.*, Dkt. No. 24.

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

9 5. Never in my career have I seen such a complete failure of corporate  
10 controls and such a complete absence of trustworthy financial information as occurred here.  
11 From compromised systems integrity and faulty regulatory oversight abroad, to the concentration  
12 of control in the hands of a very small group of inexperienced, unsophisticated and potentially  
13 compromised individuals, this situation is unprecedented.  
14

15 44. Mr. Ray further declared:

16 **B. Cash Management**

17 50. The FTX Group did not maintain centralized control of its cash. Cash  
18 management procedural failures included the absence of an accurate list of bank accounts and  
19 account signatories, as well as insufficient attention to the creditworthiness of banking partners  
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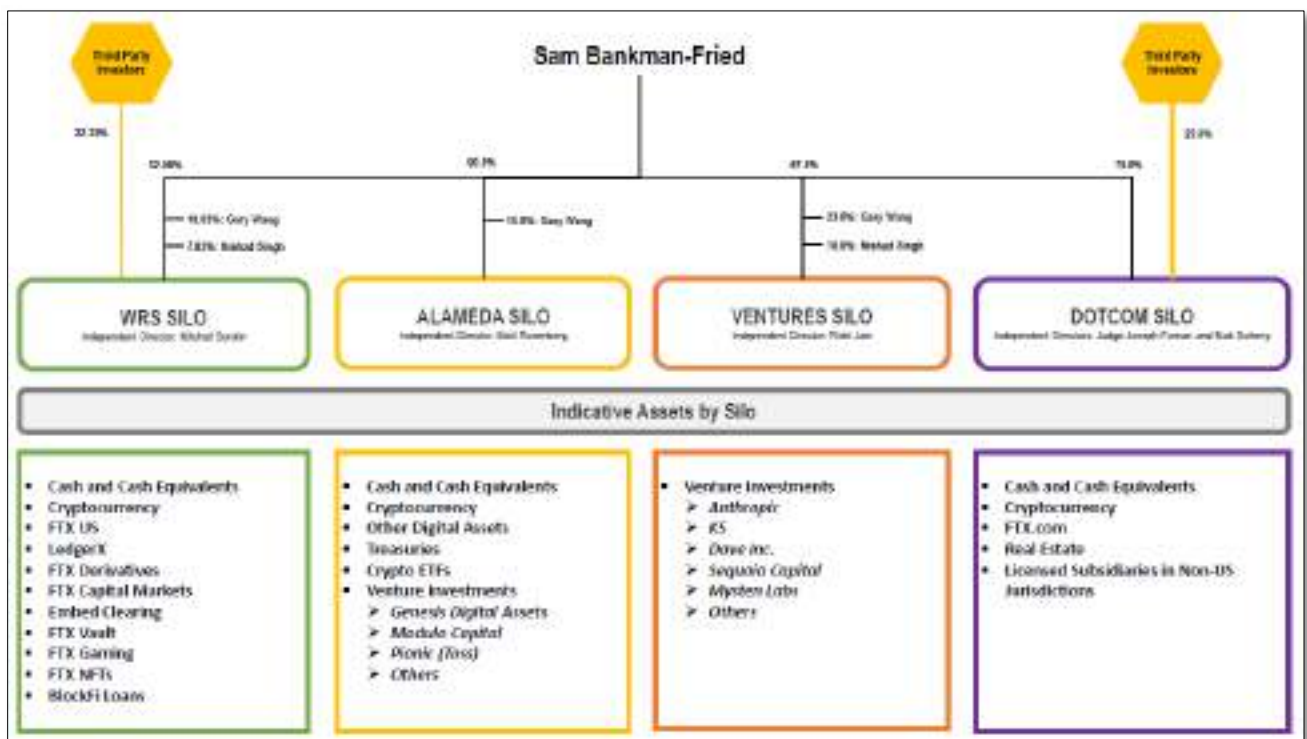
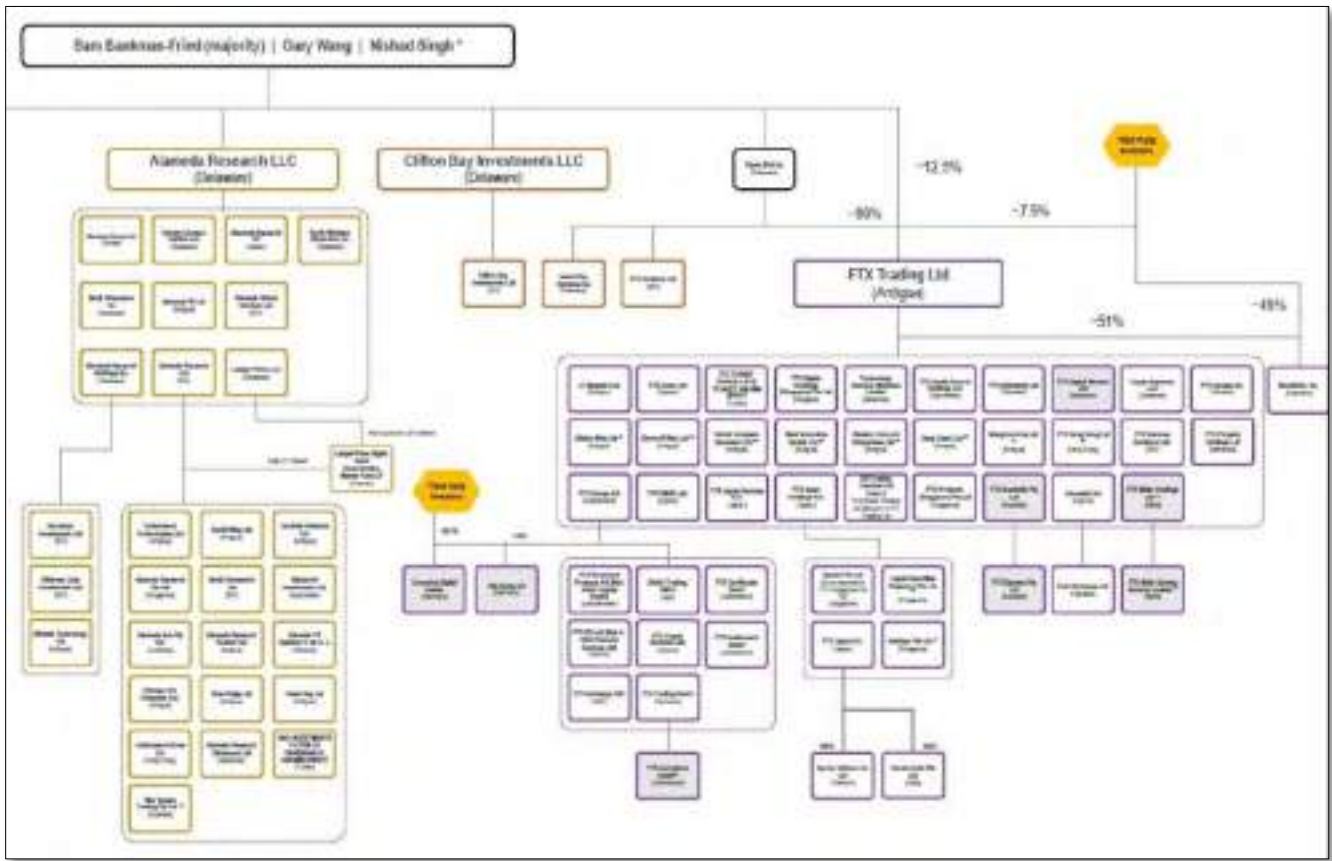
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24 Case 22-11068-JTD Doc 24 Filed 11/17/22 Page 19 of 30

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26 around the world. Under my direction, the Debtors are establishing a centralized cash  
27 management system with proper controls and reporting mechanisms.  
28

1 45. Mr. Ray's declaration included organization charts demonstrating that, despite  
 2 both being owned by Sam Bankman-Fried, FTX and Alameda are wholly separate entities.



1 46. After obtaining audited financial statements of West Realm Shires, also known  
2 as FTX US, and FTX Trading Ltd., following the initiation of the bankruptcy, CoinDesk  
3 published an article describing a “series of red flags” in those reports.<sup>16</sup>

4 47. First, FTX used two audit firms to separately audit FTX’s U.S.-based entity and  
5 its offshore Bahamas-based entity. Those audit firms, Armanino and Prager Metis, are  
6 relatively small and inspected by the Public Company Accounting Oversight Board (PCAOB)  
7 only once every three years. Both have poor records with the PCAOB.

8 48. Second, neither Armanino’s nor Prager Metis’s audits provided an opinion on  
9 FTX’s internal controls over accounting and financial reporting.<sup>17</sup>

10 49. Third, although FTX appeared to be profitable, neither FTX US nor FTX  
11 Trading paid any federal income taxes.<sup>18</sup>

12 50. Finally, CoinDesk noted “complex, roundtrip and utterly confounding related-  
13 party transactions documented” over just two years. These related-party transactions were the  
14 “biggest red flag,” and were so numerous that it was “difficult to know where to begin to  
15 analyze them.”<sup>19</sup>

#### 16 **IV. SILVERGATE’S ROLE IN THE FTX FRAUD AND COLLAPSE**

17 51. FTX was a crucial client of Silvergate’s. As of June 2022, Silvergate had  
18 approximately 1,500 institutional clients, with a total of approximately \$12 billion on deposit.  
19 Yet, despite constituting just a few accounts at Silvergate, FTX’s deposits made up a full 10%  
20 of Silvergate’s total deposits.

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23 <sup>16</sup> Francine McKenna, “A Complete Failure of Corporate Controls’: What Investors and  
24 Accountants Missed in FTX’s Audits,” CoinDesk (Nov. 18, 2022), at  
25 [https://www.coindesk.com/layer2/2022/11/18/a-complete-failure-of-corporate-controls-  
what-investors-and-accountants-missed-in-ftxs-audits](https://www.coindesk.com/layer2/2022/11/18/a-complete-failure-of-corporate-controls-what-investors-and-accountants-missed-in-ftxs-audits).

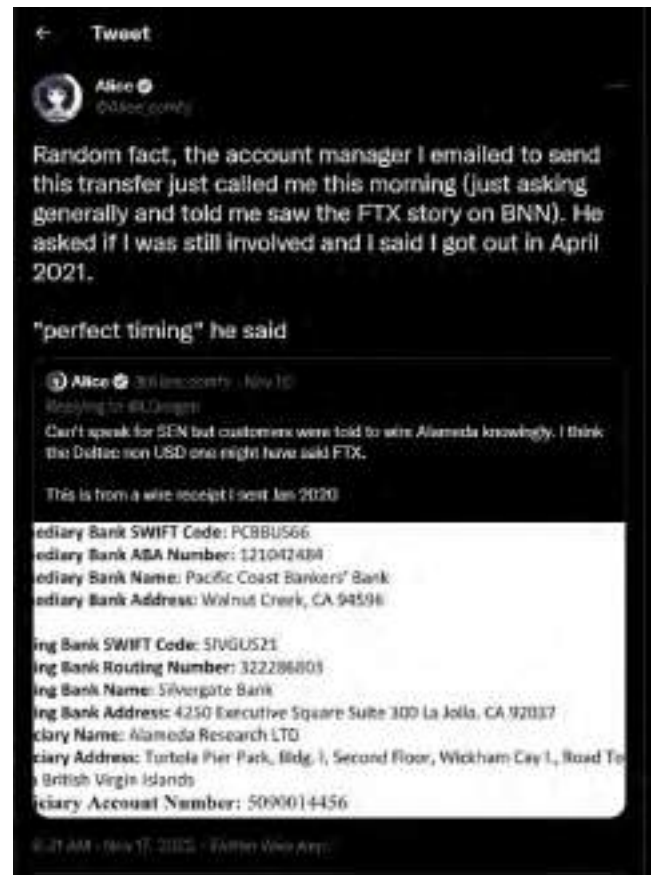
26 <sup>17</sup> *Id.*

27 <sup>18</sup> *Id.*

28 <sup>19</sup> *Id.*

1 52. To trade cryptocurrencies on FTX, customers must have first deposited funds.  
 2 At least some customers wishing to make deposits via bank wire were directed by FTX to  
 3 deposit funds to account(s) held at Silvergate. As Mr. Bankman-Fried admitted, however, the  
 4 account(s) that at least some customers were directed to deposit funds to was not held by  
 5 FTX, but rather Alameda Research, a wholly separate entity.

6 53. In addition to Mr. Bankman-Fried’s admission, there are numerous accounts  
 7 online of FTX customers being directed to deposit funds in an Alameda Research account.  
 8 Two such tweets are replicated below, with one showing the Alameda Research Account as  
 9 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 Sumitsum Net Bank Ltd.	7502
FTX Japan K.K.	SBI Sumitsum Net Bank Ltd.	3063
FTX Japan K.K.	SBI Sumitsum Net Bank Ltd.	0109
FTX Japan K.K.	SBI Sumitsum Net Bank Ltd.	0110
Alameda Research LLC	Signature Bank	5489
Alameda Research Ltd	Signature Bank	9485
Machuan Investments Ltd	Signature Bank	2683
Blockfoto, 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
How Engine Trading Pty Ltd	Signature Bank	3087
Ledger Holdings Inc.	Signature Bank	8106
Ledger Prime LLC	Signature Bank	5383
Ledger Prime LLC	Signature Bank	5377
Paper Bird Inc.	Signature Bank	8701
West Realm Shares Inc.	Signature Bank	7486
West Realm Shares Services Inc.	Signature Bank	2804
West Realm Shares Services Inc.	Signature Bank	3876
West Realm Shares Services Inc.	Signature Bank	6989
West Realm Shares Services Inc.	Signature Bank	6989
FTX Lead 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 Shares 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	4458
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	3143
North Dimension Inc.	Silvergate Bank	8738
North Dimension Inc.	Silvergate Bank	8746
West Realm Shares Services Inc.	Silvergate Bank	8589

1 55. As a U.S. bank, pursuant to Title III of the USA PATRIOT Act (“Act”)<sup>20</sup>  
2 Silvergate is subject to Know-Your-Customer (KYC) and Anti-Money Laundering (AML)  
3 laws and regulations designed to help prevent identity theft, money laundering, financial  
4 fraud, terrorism financing, and other financial crimes. *See* 31 U.S.C. § 5312.

5 56. Under section 312 of the Act, U.S. financial institutions like Silvergate must  
6 perform due diligence, and in some cases, enhanced due diligence, with regard to  
7 correspondent accounts<sup>21</sup> established or maintained for foreign financial institutions, like  
8 FTX, and private banking accounts established or maintained for non-U.S. persons.<sup>22</sup>

9 57. U.S. financial institutions covered by the Act, like Silvergate, must establish a  
10 due diligence program that includes appropriate, specific, risk-based, and, where necessary,  
11 enhanced policies, procedures, and controls that are reasonably designed to detect and report  
12 known or suspect money laundering or suspicious activity conducted through or involving  
13 any correspondent account established, maintained, administered, or managed in the United  
14 States.<sup>23</sup>

15 58. At a minimum, this includes (1) determining whether the account is subject to  
16 enhanced due diligence under section 312, (2) assessing the money laundering risk posed,  
17 based on consideration of relevant risk factors, and (3) applying risk-based policies,  
18 procedures, and controls to each such correspondent account reasonably designed to detect  
19

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20  
21 <sup>20</sup> HR 3162, Pub. L. 107-56, the “Uniting and Strengthening America by Providing  
22 Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (Enacted Oct.  
23 26, 2001).

24 <sup>21</sup> A correspondent account is one established to receive deposits from or make payments on  
25 behalf of a foreign financial institution, or handle other financial transactions related to such  
26 institution. *See* Pub. L. 107-56 § 311(e)(1)(B).

27 <sup>22</sup> *See* Dep’t of Treasury, Financial Crimes Enforcement Network, “FACT SHEET: Section  
28 312 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>.

<sup>23</sup> *See id.*

1 and report known or suspected money laundering activity, including a periodic review of the  
2 correspondent account activity.<sup>24</sup>

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.”<sup>25</sup>

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.<sup>26</sup>

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:

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24  
25  
26 <sup>24</sup> *Id.*

27 <sup>25</sup> *Id.* at 4.

28 <sup>26</sup> *Id.* at 3.

1 Our business starts by knowing our customers, their business and the activity  
 2 they plan to conduct at our institution. Once we approve a new customer, if  
 3 the activity in their account does not match the activity that we expect based  
 4 on our initial approval, we take immediate action up to and including  
 5 terminating that relationship. No exceptions. The U.S. Bank Secrecy Act  
 6 requires us to develop a robust compliance and risk management program. It's  
 7 a responsibility we take very seriously.<sup>27</sup>

8 62. In an April 2022 Finastra TV episode titled “Leveraging Crypto for Banks  
 9 (Americas),” Defendant Christopher M. Lane was asked, “As crypto use cases proliferate and  
 10 converge with traditional banking and payment services, which elements of the  
 11 cryptocurrency and blockchain ecosystem can financial institutions be looking to own, or  
 12 truly control for their clients?” Silvergate’s CEO stated he believed:

13 [T]he role that commercial banks play in this ecosystem is really providing  
 14 that of trust. I think it’s really important that banks really focus on, essentially  
 15 compliance—KYC, AML—as they think through what aspects of this  
 16 ecosystem that they need to own. So I think that’s probably answer number  
 17 one.

18 And then I think custody in general is something that’s just so foundational to  
 19 some of the products that are going to be built here. It’s just, it’s really  
 20 important if banks are looking for partnerships in this space that they stay  
 21 close to the custody solution.<sup>28</sup>

22 63. Mr. Lane further stated:

23 From a Silvergate perspective, this is something we’ve been doing for about  
 24 10 years now. So just trying to understand the changes of what’s required from  
 25 a compliance perspective is definitely something that if you’re getting into  
 26 this space in time to put the work in there—and again, going back to the  
 27 concept earlier, **KYC/AML is just a critical component for any bank  
 28 looking[ at] getting into this space.** A compliance program in general.<sup>29</sup>

29 <sup>27</sup> At <https://www.linkedin.com/pulse/letter-our-customers-silvergate-bank>.

30 <sup>28</sup> At <https://www.finastra.com/tv/episode/leverage-crypto-banks-americas>, at 13:40-15:11  
 31 (cleaned up).

32 <sup>29</sup> *Id.* starting at 26:30 (cleaned up; emphasis added).

1 64. Silvergate and the individual defendants failed to fulfill their due diligence  
2 obligations by either failing to establish an adequate due diligence program or failing to  
3 properly execute that program.

4 65. Had Silvergate and the individual defendants complied with their KYC, AML  
5 and due diligence obligations, they would have known that numerous transactions sent to the  
6 Alameda Research account were not intended to go to the hedge fund, but were intended for  
7 deposit to FTX.

8 66. Ordinary due diligence would have revealed suspicious activity and required  
9 reporting. For example, it would be extremely unusual and suspicious for a hedge fund to  
10 receive the high volume of transfers or deposits, in relatively small amounts, from a high  
11 number of distinct persons, that was occurring with Alameda Research.

12 67. Moreover, all of the accounts held by Sam Bankman-Fried's companies—  
13 including FTX Ltd., FTX US, and Alameda—were held in Silvergate, giving the bank a full  
14 view of the companies' financials.

15 68. Had Silvergate conducted even a cursory review of FTX's audits, it would have  
16 been aware of the serious issues plaguing its corporate control. Silvergate either reviewed  
17 FTX and Alameda audits and ignored their red flags, or it simply chose not to request audits.

18 69. Silvergate was also well aware that cryptocurrency is an industry rife with  
19 opportunity for and actual instances of fraud. Silvergate had witnessed many such instances  
20 in its many years of serving the industry.<sup>30</sup> It thus should have been especially attuned to the  
21 means and mechanisms of fraud of the type in which FTX and Alameda engaged.  
22  
23

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24 <sup>30</sup> *See, e.g.*, Mike Freeman, "San Diego lawsuit aims to safeguard \$154M in embezzled funds  
25 that were converted to cryptocurrency: U.S. Attorney seeks civil forfeiture; Funds transferred  
26 to Coinbase account at La Jolla bank and converted into 3,879 Bitcoins." San Diego Union-  
27 Tribune (Dec. 21, 2021), *available at*  
28 <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>.

1           70. In addition, FTX’s Chief Regulatory Officer, Dan Friedberg, was well-known  
2 for a \$50 million poker cheating scandal.<sup>31</sup> Silvergate thus should have been especially  
3 attuned to the possibility for fraud given Mr. Friedberg’s involvement in the business.

4           71. Because FTX and Alameda never had financial statements audited, neither ever  
5 provided Silvergate with audited financial statements. This alone should have been suspicious  
6 to Silvergate.

7           72. Had Silvergate and the individual defendants fulfilled their due diligence  
8 requirements they would have detected that such funds were being misdirected and reported  
9 it—especially given the close nature of Alameda Research and FTX, and the prominence of  
10 FTX as a client for Silvergate.

11           73. In sum, Silvergate—including through the actions and non-actions of its CEO,  
12 Defendant Alan J. Lane, Senior Vice President of Business Systems, Defendant Chris Lane,  
13 Senior Vice President of Enterprise Risk Management, Defendant Tyler J. Pearson, and Vice  
14 President and Manager of Correspondent Banking, Defendant Jason Brenier—either  
15 intentionally (fraudulently), or at least negligently or recklessly failed to comply with its KYC  
16 and AML obligations, which would have prevented funds intended for FTX from being  
17 deposited and comingled in an unrelated bank account. By doing so, Silvergate enabled  
18 FTX’s fraud and the losses of millions—perhaps even billions—of dollars of FTX customer  
19 deposits.

20           **A. Defendant Alan J. Lane (Silvergate CEO)**

21           74. Defendant Alan J. Lane joined Silvergate Bank in December 2008, as director  
22 and Chief Executive Officer. He is also director and CEO of the bank’s holding company,  
23  
24

25 \_\_\_\_\_  
26 <sup>31</sup> See Fang Shihan, “FTX was fueled by drugs, sex, and poker fraud,” The Checkout (Nov.  
27 17, 2022), at <https://www.techinasia.com/ftx-fueled-drugs-sex-poker-fraud>; Thomas Barrabi,  
28 “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.”<sup>32</sup>

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.”<sup>33</sup>

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,

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27 <sup>32</sup> *Id.* at 1:27-2:26.

28 <sup>33</sup> *Id.* at 3:01-3:28.

1 they just tell us if we can't do it, right, and so we've been doing it for eight  
 2 years, and they haven't said we can't. And so the consistent regulatory  
 3 oversight, the improvements over time, the KYC, the anti-money laundering;  
 4 it means our customers know that they have a bank account they can count  
 on.<sup>34</sup>

5 81. Finally, Mr. Lane stated that Silvergate was "all in" on crypto, and that 98% or  
 6 99% of Silvergate's deposits were related to crypto by that time.<sup>35</sup> In discussing Silvergate's  
 7 customers, Mr. Lane stated that Silvergate was "in the background . . . helping our customers,  
 8 our institutional, our business customers, scale their businesses . . . ."<sup>36</sup>

9 82. Mr. Lane failed to appropriately ensure the sufficiency of Silvergate's due  
 10 diligence program, monitoring, and reporting regarding FTX and Alameda, and instead  
 11 helped facilitate what should have been an obvious misdirection of funds.

12 83. Had Mr. Lane fulfilled his obligations regarding due diligence for FTX accounts,  
 13 Silvergate would have quickly detected and reported suspicious activity and prevented  
 14 misdirection of funds early on, which should have prevented further misdirection of funds.

15 **B. Defendant Chris Lane (Silvergate SVP of Business & Deposit Systems)**

16 84. As Senior Vice President of Business & Deposit Systems, Defendant Chris Lane  
 17 had responsibilities concerning Silvergate's compliance with KYC and AML requirements.

18 85. During his April 2022 appearance on Finastra TV, Mr. Lane was asked  
 19 Do the models for KYC and AML change as the shift from . . . the identity-  
 20 based model of AML and KYC—we know who you are, you're a trusted  
 21 entity, ok [you are] good [to] do stuff . . . from that to, we don't know who  
 22 you are, this is a blockchain scenario, but we know every single thing that  
 23 you're doing, while you're doing it, and we know everything you've done,  
 24 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

25  
 26 <sup>34</sup> *Id.* at 24:51-25:23.

27 <sup>35</sup> *See id.* at 26:29-50.

28 <sup>36</sup> *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.

1           **C. Tyler J. Pearson (Silvergate Chief Risk Officer & SVP of Enterprise Risk**  
2           **Management)**

3           91. Defendant Tyler J. Pearson was Silvergate’s Chief Risk Officer from April 2021  
4 to early November 2022, and prior to that was Silvergate’s Senior Vice President of  
5 Enterprise Risk Management from September 2017 to December 2019.

6           92. In his positions with Silvergate, Mr. Pearson was responsible for identifying,  
7 analyzing, and mitigating internal and external risks, and ensuring Silvergate complies with  
8 government regulations.

9           93. Mr. Pearson was responsible for ensuring the design, enactment, and execution  
10 of the due diligence program regarding FTX and Alameda and their accounts were sufficient  
11 and properly enacted.

12           94. Because of Mr. Pearson’s failures, Silvergate failed to detect or report what  
13 should have been obviously suspicious activity—permitting perhaps billions of dollars of  
14 intended for FTX to be deposited into an account held by a separate entity, Alameda  
15 Research.

16           95. As Alma Agotti, a former enforcer with the U.S. Securities and Exchange  
17 Commission said, “It’s very bad practice and risk management in any book to mingle your  
18 customer funds with counterparty funds and other funds,” and “It’s bad risk management and  
19 it’s sloppy at the very least.”<sup>37</sup>

20           96. Such misdirection or mingling of funds should have been obvious if the Mr.  
21 Pearson and Silvergate enacted an adequate due diligence program and adequately executed  
22 the program.

23           97. Had Mr. Pearson fulfilled his obligations regarding due diligence for FTX and  
24 Alameda accounts, Silvergate would have quickly detected and reported suspicious activity  
25

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26 <sup>37</sup> Yueqi Yang and Max Reyes, “FTX Received Some Customer Deposits Via Bank Accounts  
27 Held by Alameda,” Bloomberg (Nov. 28, 2022), *at*  
28 <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.

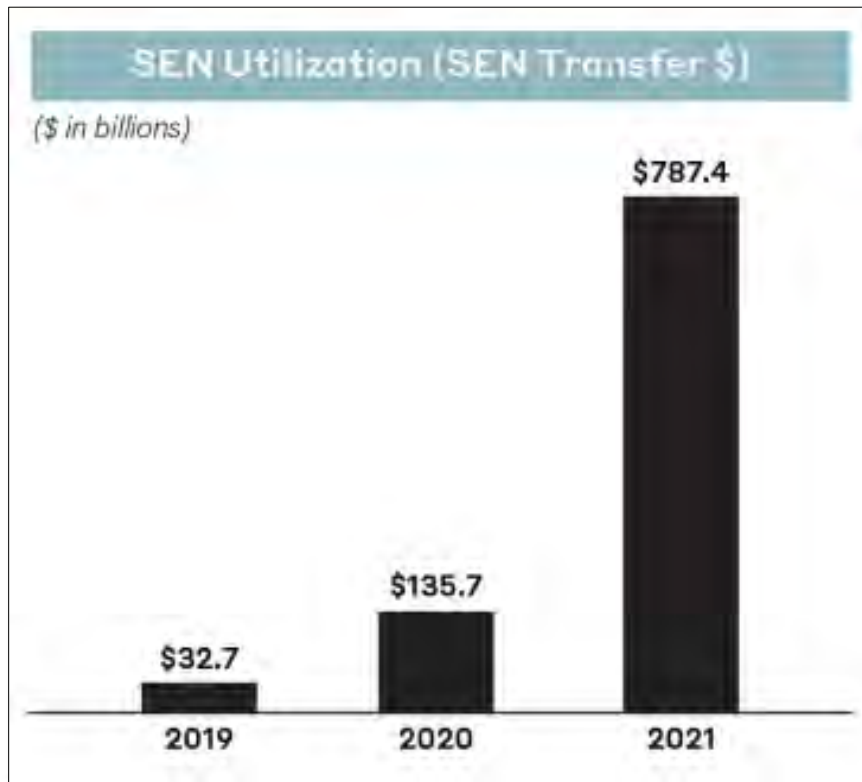
27 104. Had Mr. Brenier fulfilled his obligations regarding due diligence for FTX and  
28 Alameda accounts, Silvergate would have quickly detected and reported suspicious activity

1 and prevented misdirection of funds early on, which should have prevented further  
2 misdirection of funds.

3 \* \* \*

4 105. In sum, Silvergate and the individual defendants failed to perform adequate  
5 KYC and AML procedures to ensure, for example, that funds being deposited into Alameda  
6 Research’s account did not belong to FTX customers, rather than Alameda, or were otherwise  
7 tainted.

8 106. Silvergate was incentivized either to actively assist FTX in the fraud, or at least  
9 look the other way. As FTX grew exponentially, so too did its preeminent product, SEN:



23 107. Because Silvergate profits from transactions and transfers on SEN, it directly  
24 profited from the misdirection of funds to Alameda research, and increased use of the FTX  
25 exchange platforms.

26 108. In addition, Silvergate profited from deposits that digital-asset customers left on  
27 its network, which grew significantly as FTX’s business grew. At the end of September 2022,  
28 those deposits were 90% of the bank’s overall deposit base, amounting to \$11.9 billion. And

1 of that, FTX alone constituted nearly 10% of the \$11.9 billion in deposits, or about \$1.2  
2 billion.<sup>38</sup> As a result, Silvergate's profits grew even when traffic on SEN slowed.<sup>39</sup>

3 109. Similarly, prior to going public and retaining FTX as a client in 2019, Silvergate  
4 had net income of \$7.6 million, which ballooned to \$75.5 million by 2021, as shown in the  
5 chart below from Silvergate's 2021 10-K.

	Year Ended December 31,				
	2021	2020	2019	2018	2017
(In thousands, except per share data)					
<b>Statement of Operations Data:</b>					
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 <sup>(1)</sup>	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	1,016	—	—	—	—
Net income available to common shareholders	\$ 75,512	\$ 26,038	\$ 24,846	\$ 22,333	\$ 7,643

15 110. The individual Defendants benefited directly from the malfeasance.

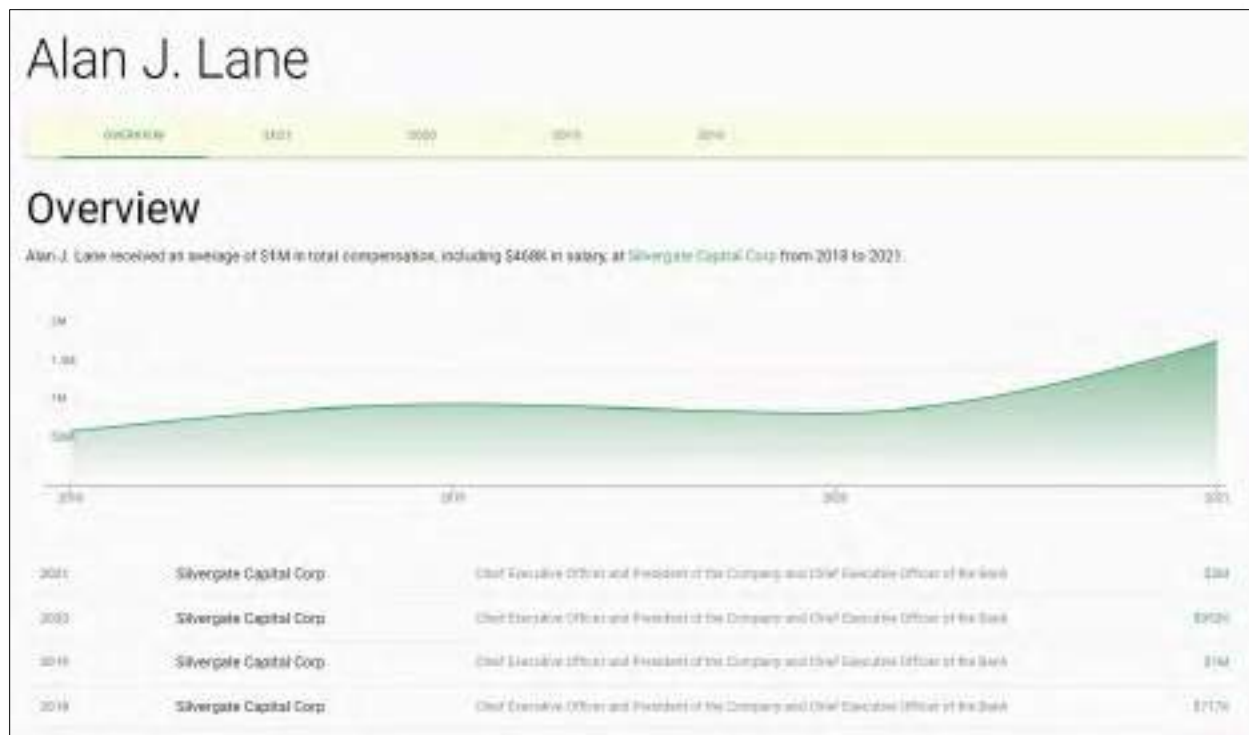
16 111. As Silvergate's business and profits rapidly grew along with FTX's, so too did  
17 its executives' income and the value of their stock and options holdings.

18 112. Between its October 2019 IPO, and November 15, 2022, Silvergate's stock  
19 increased from \$12 per share to a high of \$226.97 per share.

20 113. Moreover, Defendant Alan J. Lane's salary nearly tripled between 2018 (when  
21 he earned \$717,000), and 2021 (when he earned \$1.9 million).

24 <sup>38</sup> See Marc Rubinstein, "These Banks Were Left Holding the Bag in Crypto Implosion," The  
25 Washington Post (Nov. 23, 2022), available at <https://tinyurl.com/2d4ktdfz>; see also  
26 <https://beincrypto.com/banks-get-burned-playing-with-crypto>.

27 <sup>39</sup> See Zhiyuan Sun, "Silvergate Capital Crypto Transfers Down by \$50 Billion Compared to  
28 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.

TRADE DATE	NAME	INSTRUMENT CODE	SECURITY TYPE	NO. SHARES	PRICE	ORDER TYPE	IS OMB	OFFICER	OFFICER TITLE	DEPARTMENT	ISY_EVENT
2022-07-21	LANE ALAN J	A	Class A Common Stock	16314	16.09	16314	M	1	President and CEO		1

TRADE DATE	NAME	INSTRUMENT CODE	SECURITY TYPE	NO. SHARES	PRICE	ORDER TYPE	IS OMB	OFFICER	OFFICER TITLE	DEPARTMENT	ISY_EVENT
2022-07-21	LANE ALAN J	D	Class A Common Stock	16314	92.46	0	S	1	President and CEO		1
2022-07-21	LANE ALAN J	D	Class A Common Stock	7102	91.8817	9176	S	1	President and CEO		1

1 117. Because its fortunes were so tied up in FTX, Silvergate’s stock price and market  
 2 capitalization has dropped precipitously, to approximately \$21 per share around the time of  
 3 the filing of this Complaint (a drop of approximately 90% from its high). In light of FTX’s  
 4 collapse, Morgan Stanley lowered its 2023 EPS estimate for Silvergate, arguing that the  
 5 digital asset-focused bank now faces a “wide range of outcomes and risks” solely from the  
 6 demise of FTX.<sup>40</sup>



17 118. The assistance in illicit enterprises seems to be a pattern for Silvergate. In  
 18 response to a June 2022 subpoena, Silvergate produced records that have been alleged to  
 19 show that “[d]uring the period of September 2021 to June 2022 ten companies had transferred  
 20 a total of over \$425 million dollars” from crypto accounts held in Silvergate to South  
 21 American money launderers.<sup>41</sup>

23 <sup>40</sup> See Max Gottlich, “Silvergate faces ‘wide range of outcome and risks’ from FTX fallout:  
 24 Morgan Stanley,” Seeking Alpha (Nov. 25, 2022), at  
 25 <https://seekingalpha.com/news/3911368-silvergate-faces-wide-range-of-outcomes-and-risks-from-ftx-fallout-morgan-stanley>.

26 <sup>41</sup> See August 16, 2022 Affidavit of Detective Benjamin Dusenbery, *In re: Seizure of Two*  
 27 *Million Forth-Eight Thousand Two Hundred Twenty-Nine Dollars and 40/100*  
 28 *(\$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).

1 **V. THE AFTERMATH**

2 119. On November 7, 2022, shortly before FTX filed for bankruptcy, Silvergate  
3 appointed a new Chief Risk Officer, replacing Defendant Tyler J. Pearson.<sup>42</sup>

4 120. The same day FTX filed bankruptcy, November 11, 2022, Silvergate issued a  
5 press release titled “Silvergate Provides Statement on FTX Exposure,” quoting Defendant  
6 Alan J. Lane. According to the release:

7 Silvergate . . . today issued the following statement regarding its exposure to  
8 FTX *and its related entities* (“FTX”):

9 “In light of recent developments, I want to provide an update on Silvergate’s  
10 exposure to FTX. As of September 30, 2022, Silvergate’s total deposits from  
11 all digital asset customers totaled \$11.9 billion, of which FTX represented less  
12 than 10%. Silvergate has no outstanding loans to nor investments in FTX, and  
13 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.<sup>43</sup>

14 121. Five days later, on November 16, 2022, Silvergate issued a press release titled  
15 “Silvergate Provides Mid-Quarter Update and Announces Participation in Oppenheimer’s 5th  
16 Blockchain & Digital Assets Summit.” It stated that it was “providing the following unaudited  
17 and preliminary mid-quarter results as of November 15, 2022,” then noted “Average quarter-  
18 to-date digital asset customer deposits of approximately \$9.8 billion, *excluding all deposits*  
19 *from FTX and its related entities.*”<sup>44</sup>

20 122. It thus appears that as much as \$2.1 billion of FTX’s “deposits from all digital  
21 assets customers” represent funds ostensibly sent to FTX, some portion of which were  
22 actually sent to Alameda, where they were stolen in the FTX Ponzi scheme.

24 \_\_\_\_\_  
25 <sup>42</sup> Silvergate Capital Corporation Press Release, “Silvergate announces changes to its  
26 executive team” (Nov. 7, 2022), at [https://ir.silvergate.com/news/news-  
details/2022/Silvergate-announces-changes-to-its-executive-team/default.aspx](https://ir.silvergate.com/news/news-details/2022/Silvergate-announces-changes-to-its-executive-team/default.aspx).

27 <sup>43</sup> Silvergate Capital Corporation 8-K (Nov. 14, 2022), Ex. 99.1 (emphasis added).

28 <sup>44</sup> Silvergate Capital Corporation 8-K (Nov. 17, 2022), Ex. 99.1 (emphasis added).



1 **VI. PLAINTIFFS' EXPERIENCE AND DAMAGES**

2 123. Beginning in May 2022, and continuing until FTX's implosion and bankruptcy,  
3 Plaintiff José Tomás Sepúlveda Zuleta funded and used the FTX international platform. Mr.  
4 Sepúlveda Zuleta primarily used FTX for staking cryptocurrency.

5 124. Beginning in or around November 2021 and continuing until shortly before  
6 FTX's implosion and bankruptcy, Plaintiff Michael Lehrer funded and actively traded  
7 cryptocurrency and other digital assets on the FTX US exchange.

8 125. Beginning in or around April 2021, Plaintiff Tristan Newman funded and  
9 regularly used the FTX international trading platform to trade cryptocurrency and other  
10 digital assets (at the time, he was living abroad).

11 126. At least in part as a result of Silvergate's wrongful actions detailed herein, on  
12 November 11, 2022, FTX and 133 related entities, including FTX US, declared bankruptcy.

13 127. At the time FTX declared bankruptcy on November 11, 2022, Plaintiff Zuleta  
14 had approximately \$4,500 worth of cryptocurrency on deposit with FTX, which he has been  
15 unable to withdraw or otherwise recover despite multiple attempts to do so.

16 128. At the time FTX declared bankruptcy on November 11, 2022, Plaintiff Lehrer  
17 had approximately \$323,000 USD on deposit with FTX. Since that time, despite making  
18 efforts, Plaintiff has been unable to withdraw or otherwise recoup his funds.

19 129. At the time FTX declared bankruptcy on November 11, 2022, Plaintiff Newman  
20 had approximately \$8,000 in USD, and \$7,000 in cryptocurrency on deposit with FTX. Since  
21 that time, despite trying, Plaintiff has been unable to withdraw or otherwise recoup his funds.

22 **CLASS ACTION ALLEGATIONS**

23 130. While reserving the right to redefine or amend the class definition prior to or as  
24 part of a motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23,  
25 Plaintiff seeks to represent a class of all persons who, as of November 11, 2022, had legal  
26 title to any fiat or cryptocurrency unable to be withdrawn from FTX, including both the FTX  
27 US and FTX international platforms (the "Class").  
28

1 131. The members in the proposed Class are so numerous that individual joinder of  
2 all members is impracticable, and the disposition of the claims of all Class Members in a  
3 single action will provide substantial benefits to the parties and Court.

4 132. Questions of law and fact common to Plaintiff and the Class include:

5 a. Whether Silvergate maintained bank accounts in the name of Alameda  
6 Research;

7 b. Whether FTX customers were directed to deposit funds into one or more  
8 Silvergate bank accounts held in the name of Alameda Research;

9 c. Whether Silvergate knowingly or negligently allowed customer funds  
10 intended to be deposits to FTX to be deposited instead to one or more bank accounts  
11 held in the name of Alameda Research;

12 d. Whether Silvergate's facilitating the deposit of customer funds intended  
13 for FTX to be deposited into one or more bank accounts held in the name of Alameda  
14 Research constituted fraud, negligence, and/or a violation of the law;

15 e. Whether Plaintiffs and other Class Members were damaged by  
16 Silvergate's wrongful and/or unlawful actions and inactions;

17 f. Whether Silvergate and the individual Defendants benefitted or were  
18 unjustly enriched by their improper conduct;

19 g. Appropriate injunctive relief;

20 h. The proper amount of damages, including punitive damages;

21 i. The proper amount of restitution; and

22 j. The proper amount of attorneys' fees.

23 133. These common questions of law and fact predominate over questions that affect  
24 only individual Class Members.

25 134. Plaintiffs' claims are typical of Class Members' claims because they are based  
26 on the same underlying facts, events, and circumstances relating to Silvergate's conduct in  
27 facilitating the deposit of customer funds intended for FTX into accounts owned and  
28

1 controlled by Alameda Research, which directly contributed to the FTX implosion and  
2 bankruptcy that has harmed Plaintiffs and other Class Members.

3 135. Plaintiffs will fairly and adequately represent and protect the interests of the  
4 Class, has no interests incompatible with the interests of the Class, and has retained counsel  
5 competent and experienced in class action litigation.

6 136. Class treatment is superior to other options for resolution of the controversy  
7 because the relief sought for each Class Member is small, such that, absent representative  
8 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

9 137. Silvergate has acted on grounds applicable to the Class, thereby making  
10 appropriate final injunctive and declaratory relief concerning the Class as a whole.

11 138. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.  
12 23.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **Fraud**

16 139. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
17 if set forth in full herein.

18 140. At the time Plaintiffs and other Class Members traded cryptocurrency on FTX's  
19 platforms, they were unaware Silvergate permitted or facilitated funds intended for FTX to  
20 be deposited into bank accounts held by Alameda Research.

21 141. Plaintiffs and other Class Members reasonably relied on Silvergate's and the  
22 individual Defendants' expertise and regulatory obligations in deciding to fund and use the  
23 FTX exchange platforms.

24 142. Plaintiffs and other Class Members did not know—and could not have known  
25 through reasonable diligence—the true nature of the banking arrangements between FTX,  
26 Silvergate, and Alameda, and their officers, Defendants Alan J. Lane, Christopher M. Lane,  
27 Tyler J. Pearson, Jason Brenier, as well as Sam Bankman-Fried, and Caroline Ellison. Indeed,  
28

1 these relationships have only come to light in the wake of FTX’s spectacular collapse and  
2 bankruptcy.

3 143. Plaintiffs and other Class Members had a right to rely on Silvergate’s and the  
4 individual Defendants’ omissions of material information, as Defendants maintained  
5 exclusive or superior control over knowledge of the true nature of the personal, business, and  
6 banking relationships at issue.

7 144. Plaintiffs and other Class Members were injured as a result of their reliance on  
8 Silvergate’s and the individual Defendants’ omissions, causing them to sustain actual losses  
9 and damages in a sum to be determined at trial, including punitive damages.

10 **SECOND CAUSE OF ACTION**

11 **Fraudulent Concealment & Inducement**

12 145. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
13 if set forth in full herein.

14 146. Silvergate and each of the individual Defendants did not disclose, but instead  
15 concealed material information about the bank accounts and banking relationships at issue,  
16 as discussed herein.

17 147. Silvergate and each of the individual Defendants knew, or should have known,  
18 that FTX deposits were being mishandled, and FTX and Alameda funds comingled.

19 148. Silvergate and each of the individual Defendants also knew that their omissions  
20 regarding the bank accounts were material, and that reasonable consumers would rely on their  
21 omissions in making deposits intended for FTX into Alameda Research’s account(s) at  
22 Silvergate, and in funding and using the FTX exchange platforms.

23 149. Plaintiffs and other Class Members did not know—nor could they have known  
24 through reasonable diligence—the true nature of the personal, business, and banking  
25 relationships alleged herein.

26 150. Plaintiffs and other Class Members had a right to rely on Silvergate’s and each  
27 of the individual Defendants’ instructions and omissions in funding and using the FTX  
28

1 exchange platforms, as Defendants maintained exclusive or superior control over the  
2 platforms' accounts and what information was available regarding them.

3 151. In making omissions of material facts, Silvergate and each of the individual  
4 Defendants intended to induce, and did induce Plaintiffs and other Class Members into  
5 funding and using the FTX exchange platforms, where their funds and assets became part of  
6 the fraud.

7 152. Plaintiffs and other Class Members were injured as a result of their reliance on  
8 Silvergate's and each of the individual Defendants material omissions, causing them to  
9 sustain actual losses and damages in a sum to be determined at trial, including punitive  
10 damages.

### 11 **THIRD CAUSE OF ACTION**

#### 12 **Civil Conspiracy**

13 153. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
14 if set forth in full herein.

15 154. Silvergate and each of the individual Defendants made numerous omissions to  
16 Plaintiffs and other Class Members in order to induce confidence and drive consumers to  
17 deposit funds into what was ultimately a Ponzi scheme.

18 155. Defendants Silvergate, Alan J. Lane, Christopher M. Lane, Tyler J. Pearson, and  
19 Jason Brenier entered into one or more agreements with Sam Bankman-Fried and Caroline  
20 Ellison, and the entities they controlled, FTX and Alameda Research, for the purpose of  
21 making misrepresentations and omissions, and facilitating the Ponzi scheme.

22 156. Silvergate and each of the individual Defendants further engaged in unlawful  
23 acts, namely the violation of the USA PATRIOT Act, and other banking regulations requiring  
24 the accurate earmarking and handling of banking transactions.

25 157. Defendants' conspiracy substantially assisted or encouraged the wrongdoing  
26 conducted by FTX and Alameda Research; further, Silvergate and each of the individual  
27 Defendants had knowledge of the fraud and/or wrongdoing because of their experience and  
28 relationship with FTX and Alameda Research, as alleged herein. As such, Silvergate and each

1 of the individual Defendants knew that omissions made to Plaintiffs and other Class Members  
2 were deceitful and fraudulent, and could result in great harm to Plaintiffs and other Class  
3 Members.

4 158. Defendants' conspiracy with FTX and Alameda to commit fraud caused  
5 damages to Plaintiffs and other Class Members in a sum to be determined at trial, including  
6 punitive damages.

#### 7 **FOURTH CAUSE OF ACTION**

##### 8 **Negligence**

9 159. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
10 if set forth in full herein.

11 160. Silvergate and each of the individual Defendants negligently, carelessly,  
12 recklessly, and/or unlawfully mishandled deposits intended for FTX but deposited into  
13 Silvergate accounts held by Alameda Research.

14 161. As a direct and legal result of Defendants' wrongful conduct and omissions,  
15 Plaintiffs and other Class Members have sustained damages in a sum to be determined at trial,  
16 including punitive damages.

#### 17 **FIFTH CAUSE OF ACTION**

##### 18 **Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.***

19 162. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
20 if set forth in full herein.

21 163. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice."  
22 Cal. Bus. & Prof. Code § 17200.

23 164. The acts, omissions, misrepresentations, practices, and non-disclosures of  
24 Silvergate and each of the individual Defendants alleged herein constitute business acts and  
25 practices.

##### 26 **Fraudulent**

27 165. The acts, omissions, misrepresentations, practices, and non-disclosures of  
28 Silvergate and each of the individual Defendants alleged herein were fraudulent because they

1 induced Plaintiffs and other Class Members to fund and use the fraudulent FTX exchange  
2 platforms under false pretenses.

3 **Unlawful**

4 166. The acts of Silvergate and each of the individual Defendants alleged herein are  
5 “unlawful” under the UCL in that, as alleged herein, they violate the USA PATRIOT Act,  
6 and particularly its KYC, AML and due diligence requirements, and constitute fraud,  
7 fraudulent concealment, civil conspiracy, negligence, and unjust enrichment.

8 167. Plaintiffs and the Class reserve the right to allege other violations of law which  
9 constitute other unlawful business acts or practices.

10 **Unfair**

11 168. Silvergate’s and each of the individual Defendants’ conduct was unfair because  
12 it was immoral, unethical, unscrupulous, or substantially injurious to consumers, and the  
13 utility of its conduct, if any, did not outweigh the gravity of the harm to its consumers.

14 169. Silvergate’s and each of the individual Defendants’ conduct was also unfair  
15 because it violates public policy as declared by specific constitutional, statutory or regulatory  
16 provisions, including but not necessarily limited to the USA PATRIOT Act, and specifically  
17 the public policy rationales that underpin KYC and AML obligations.

18 170. Silvergate’s and each of the individual Defendants’ conduct was also unfair  
19 because the consumer injury was substantial, not outweighed by benefits to consumers or  
20 competition, and not one consumers themselves could reasonably have avoided. For example,  
21 FTX consumers directed to deposit funds into an account in the name of Alameda Research  
22 may reasonably not have noticed the discrepancy, or may have assumed there was some  
23 lawful connection between the entities (such as a doing-business-as relationship), and  
24 reasonably relied on Silvergate to safeguard their deposits.

25 171. There were reasonably available alternatives to further Defendants’ legitimate  
26 business interests, other than the conduct described herein.

27 \* \* \*

1 172. Defendants profited from, and Plaintiffs and other Class Members suffered  
2 injury in fact and lost money as a result of Defendants' fraudulent, unlawful, and unfair  
3 conduct. Accordingly, Plaintiffs seek an Order for the restitution of all monies that were  
4 inequitably acquired by Defendants pursuant to the UCL.

5 **SIXTH CAUSE OF ACTION**

6 **Quasi-Contract / Unjust Enrichment**

7 173. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
8 if set forth in full herein.

9 174. Plaintiffs and other Class Members conferred benefits on Defendants by  
10 depositing funds into and using the FTX exchange platforms.

11 175. Defendants were unjustly enriched in retaining the revenues derived from  
12 Plaintiffs' and other Class Members' funding and use of the FTX exchange platforms.  
13 Retention of those moneys under these circumstances is unjust and inequitable. Defendants'  
14 actions and omissions caused injuries to Plaintiffs and other Class Members because they  
15 would not have deposited and lost their funds if the true facts had been known, and if  
16 Defendants had not engaged in the malfeasance alleged.

17 176. Because Defendants' retention of the non-gratuitous benefits conferred on them  
18 by Plaintiffs and Class Members is unjust and inequitable, Defendants have been unjustly  
19 enriched in an amount to be determined at trial.

20 **PRAYER FOR RELIEF**

21 177. Wherefore, Plaintiffs, on behalf of themselves, all others similarly situated, and  
22 the general public, pray for judgment against Defendants Silvergate, Alan J. Lane,  
23 Christopher M. Lane, Tyler J. Pearson, and Jason Brenier as to each and every cause of action,  
24 and the following remedies:

25 (A) An Order declaring this action to be a proper class action, appointing  
26 Plaintiffs as Class Representatives, and appointing Plaintiffs' undersigned counsel as  
27 Class Counsel;

28 (B) An Order requiring Defendants to bear the cost of Class Notice;



1 (C) An Order requiring Defendants to disgorge all monies, revenues, and  
2 profits obtained by means of any wrongful act or practice;

3 (D) An Order requiring Defendants to pay restitution to restore all funds  
4 acquired by means of any act or practice declared by this Court to be an unlawful,  
5 unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus  
6 pre-and post-judgment interest thereon;

7 (E) An Order requiring Defendants to pay compensatory damages and  
8 punitive damages as permitted by law;

9 (F) An award of attorneys' fees and costs; and

10 (G) Any other and further relief that Court deems necessary, just, or proper.

11 **JURY DEMAND**

12 178. Plaintiffs hereby demands a trial by jury on all issues so triable.

13  
14 Dated: December 1, 2022

/s/ Jack Fitzgerald

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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

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, 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

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, 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