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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 EDWIN GARRISON, BRANDON ORR,
24 LEANDRO CABO, RYAN
25 HENDERSON, MICHAEL
26 LIVIERATOS, ALEXANDER
27 CHERNYAVSKY, GREGG
28 PODALSKY, VIJETH SHETTY,
CHUKWUDOZIE EZEOKOLI,
MICHAEL NORRIS, SHENGYUN
HUANG, VITOR VOZZA, KYLE
RUPPRECHT, & SUNIL KAVURI, on
behalf of themselves and all others

Case No.: 2:24-cv-01841

**CLASS ACTION COMPLAINT
FOR:**

1. **VIOLATIONS OF
SECURITIES LAWS**
2. **VIOLATIONS OF UNFAIR
COMPETITION AND
DECEPTIVE AND UNFAIR
TRADE PRACTICES LAWS**
3. **CIVIL CONSPIRACY**

1 similarly situated,

2 Plaintiffs,

3 v.

4 RIOT GAMES, INC., & NORTH
5 AMERICA LEAGUE OF LEGENDS
6 CHAMPIONSHIP SERIES LLC,

7 Defendants.

**4. AIDING AND ABETTING
FRAUD**

**5. AIDING AND ABETTING
CONVERSION**

6. DECLARATORY JUDGMENT

7. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

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1 Plaintiffs, on behalf of themselves and all others similarly situated, sue Riot
2 Games, Inc. (“Riot Games”) and the North America League of Legends
3 Championship Series LLC (the “LCS”) for their actions, which contributed to the
4 collapse of FTX Trading LTD d/b/a FTX’s (“FTX Trading”), West Realm Shires
5 Services Inc. d/b/a FTX US’s (“FTX US”), and Alameda Research, LLC’s
6 (“Alameda,” and collectively, the “FTX Group” or “FTX”), including but not limited
7 to 1) aiding and abetting and/or actively participating in the FTX Group’s massive,
8 multibillion dollar global fraud, and 2) promoting, offering, or selling unregistered
9 securities such as FTX’s yield-bearing accounts (“YBA”) and FTX’s native
10 cryptocurrency token (“FTT”), and doing so through FTX’s cryptocurrency
11 investment service that placed orders on users’ behalf (the “FTX Platform”), which
12 caused Plaintiffs substantial harm. Plaintiffs, on behalf of themselves and all others
13 similarly situated, allege the following based upon personal knowledge as to
14 Plaintiffs and Plaintiffs’ own acts, and upon an investigation conducted by and
15 through counsel.

16 17 **JURISDICTION AND VENUE**

18 1. This Court has subject matter jurisdiction over this action pursuant to
19 28 U.S.C. § 1332(d)(2)(A) because this is a class action for a sum exceeding
20 \$1,000,000,000.00 (one billion dollars), exclusive of interest and costs, and in which
21 at least one class member is a citizen of a state different than the Defendants.

22 2. This Court has general personal jurisdiction over Defendants Riot
23 Games and the LCS in the state of California because Riot Games and the LCS have
24 their principal places of business in this state, and are engaged in substantial and not
25 isolated activity within this state, rendering Defendants subject to the jurisdiction of
26 the courts of this state, whether or not the claim arises from that activity.

1 3. Upon transfer of this Related Action to the Transferee Court (the United
2 States District Court for the District of Florida) for consolidation into the *IN RE:*
3 *FTX Cryptocurrency Exchange Collapse Litigation MDL* (“FTX MDL”), 1:23-md-
4 03076-KMM, the Transferee Court will have personal jurisdiction over Defendants
5 because in enacting the multidistrict litigation statute, 28 U.S.C. § 1407, Congress
6 “authroiz[ed] the federal courts to exercise nationwide personal jurisdiction ... and
7 [t]ransfers under Section 1407 are simply encumbered by considerations of in
8 personam jurisdiction...” *In re Agent Orange Prod. Liab. Litig. MDL No 381*, 818
9 F.2d 145, 163 (2d Cir. 1987). The Transferee Court further independently has
10 personal jurisdiction over Defendants because the Court has jurisdiction over one or
11 more of the co-conspirators of the civil conspiracy alleged herein, and because
12 Defendants committed tortious acts in the state of Florida, including aiding and
13 abetting the fraud, and the other tortious acts, as alleged herein.

14 4. Venue is proper in this District under 28 U.S.C. § 1391 because
15 Defendants Riot Games and LCS reside in this District and/or because the acts,
16 practices, and courses of business constituting the violations alleged in this
17 Complaint occurred within this District. Venue is also proper in the Southern District
18 of Florida before the Transferee Court pursuant to 28 U.S.C. § 1407, because the
19 Panel ordered in its Transfer Order that all Related Actions be transferred to the
20 Transferee Court and consolidated into the FTX MDL for pretrial purposes. Venue
21 is further proper in the Southern District of Florida before the Transferee Court
22 pursuant to 28 U.S.C. § 1391 because the acts, practices, and courses of business
23 constituting the violations alleged in this Complaint occurred within this District.

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

1 **INTRODUCTION**

2 6. As COVID-19 was causing unprecedented financial turmoil to the
3 sports and entertainment industries—possibly forever—Riot Games and the LCS
4 had a crucial decision to make: (1) do they follow organizations like the National
5 Football League and stay away from promoting the extremely risky and unknown
6 world of cryptocurrency, or (2) push “all in” and put the great resources and prestige
7 of the Riot Games and LCS brands behind FTX so they could leap to the front of the
8 cryptocurrency world and sell tens of billions of dollars in unregistered and illegal
9 securities to consumers? After considering the question and the profits at stake, Riot
10 Games and the LCS decided to take the risks and go all in.

11 7. Unfortunately for Riot Games and the LCS, under binding law, anyone
12 that mass promotes products FTX’s can be sued for any and all resulting damages.
13 This law was updated for today’s technology so that promoters like Riot Games and
14 the LCS can be held liable under securities laws for using the Internet and social
15 media for mass solicitations of crypto-related securities, whether for their own or the
16 securities issuer (FTX Group)’s gain. The law now recognizes that the Internet,
17 social media, and other new platforms have given promoters an incredible new outlet
18 to aid and participate in selling fraudulent investments to investors across the globe.
19 As one expert said, “In the old days, brokers would have to call up people to
20 convince them to invest or put on a road show. Now it’s normalized with online
21 platforms.”¹ After Riot Games and the LCS went all in for FTX and assisted it in
22 selling unregistered securities to investors worldwide, FTX declared bankruptcy, its
23 leaders will be in jail, and losses to the victims now total \$11 billion dollars. This
24 case seeks to hold Riot Games and the LCS liable under the law.

25 _____
26 ¹ [https://www.securitiesfrauddefense.net/wp-content/uploads/2019/04/Sales-of-unregistered-](https://www.securitiesfrauddefense.net/wp-content/uploads/2019/04/Sales-of-unregistered-securities-are-a-growing-problem-thats-harming-investors-%E2%80%94-and-the-industry.-InvestmentNews.pdf)
27 [securities-are-a-growing-problem-thats-harming-investors-%E2%80%94-and-the-industry.-](https://www.securitiesfrauddefense.net/wp-content/uploads/2019/04/Sales-of-unregistered-securities-are-a-growing-problem-thats-harming-investors-%E2%80%94-and-the-industry.-InvestmentNews.pdf)
28 [InvestmentNews.pdf](https://www.securitiesfrauddefense.net/wp-content/uploads/2019/04/Sales-of-unregistered-securities-are-a-growing-problem-thats-harming-investors-%E2%80%94-and-the-industry.-InvestmentNews.pdf).

1 8. The FTX disaster is among the largest financial frauds in history. Sam
2 Bankman-Fried (“SBF”), FTX Group’s² founder and former CEO, is on house arrest
3 awaiting his sentencing following his conviction for fraud and conspiracy after
4 stealing billions of dollars from FTX customers. FTX Group’s new CEO—who
5 helped wind down Enron—concluded the fraud here was worse than Enron. Billions
6 of dollars have been stolen from investors across the globe.

7 9. Evidence now reveals that the FTX Group’s fraud was only able to
8 reach such heights through the offer and sale of unregistered securities, with the
9 willing help and assistance of some of the wealthiest, most powerful, and most
10 recognized organizations and celebrities across the globe. Every victim who invested
11 in FTX had to open an FTX YBA, which was itself an unregistered security. The
12 U.S. Securities and Exchange Commission (“SEC”) concluded that FTX’s exchange
13 token FTT was promoted as an investment contract and is also a security.

14 10. In *Wildes v. BitConnect Int’l PLC*, 25 F.4th 1341 (11th Cir. 2022), the
15 Eleventh Circuit clearly articulated the standard applicable to mass solicitation of
16 unregistered securities, ruling that spokespersons who promoted a crypto Ponzi
17 scheme had engaged in “solicitation” of securities by “urg[ing] people to buy [crypto
18 tokens] in online videos,” even if the offering’s promoters did not directly target
19 particular purchasers. *Id.* at 1346. In so ruling, the Court observed that the Securities
20 Act does not distinguish between individually targeted sales efforts and broadly
21 disseminated pitches, and noted that in early cases applying the Securities Act of
22 1933, “people understood solicitation to include communications made through
23

24 _____
25 ² FTX Trading Ltd. and its subsidiaries are referred to herein as “FTX Trading” or “FTX Trading
26 Ltd.” West Realm Shires Inc. and its subsidiaries, including West Realm Shires Services, Inc.
27 (“WRS”), are referred to herein as “FTX US.” FTX Trading Ltd. and FTX US are collectively
referred to as “FTX” or the “FTX entities.” FTX and Alameda Research, LLC and its subsidiaries
28 (“Alameda”) collectively make up the “FTX Group.”

1 diffuse, publicly available means—at the time, newspaper and radio
2 advertisements.” *Id.*

3 11. *In Pino v. Cardone Capital, LLC*, 55 F.4th 1253 (9th Cir. 2022), the
4 Ninth Circuit adopted *Wildes* in its entirety, holding that a real estate management
5 company that promoted real estate investment funds through “mass communications
6 to potential sellers” via nontargeted internet videos posted on social media could be
7 a statutory seller liable for solicitation based on YouTube videos and Instagram posts
8 touting the investments and rates of return. *Id.* at 1259–60. The court noted that, to
9 state a cause of action, a plaintiff “need not have alleged that he specifically relied
10 on any of the alleged misstatements identified in the [complaint].” *Id.*

11 12. *In De Ford v. Koutoulas*, 6:22-CV-652, 2023 WL 2709816 (M.D. Fla.
12 Mar. 30, 2023), the court denied a motion to dismiss claims that a spokesperson for
13 “Let’s Go Brandon” cryptocurrency (LGBCoin) engaged in the solicitation of
14 unregistered securities. Citing *Wildes*, the court rejected the argument that “mere
15 social media posts cannot make him a seller of securities” and held that the plaintiff
16 had sufficiently alleged a claim for selling unregistered securities by alleging (1) the
17 online promotion of LGBCoin through social media channels, and (2) that the
18 promotions were done to serve the spokesperson’s own financial interests. *Id.* at *15.

19 13. Most recently, on September 20, 2023, Judge William H. Orrick of the
20 Northern District of California, applying both *Pino* and *Wildes*, denied a motion to
21 dismiss by a promoter who was sued for participating in a similar FTX scheme to
22 sell unregistered securities in the form of cryptocurrency, concluding that the suit
23 alleged that the defendants actively solicited sales of the crypto assets, and were not
24 just “mere collateral participants.” *Houghton v. Leshner*, No. 3:22-cv-07781, 2023
25 WL 6826814, at *3–5 (N.D. Cal. Sept. 20, 2023). In reaching that conclusion, Judge
26 Orrick reasoned that “[s]olicitation is broadly construed,” and a promoter “could be
27 a statutory seller liable for solicitation *based on YouTube videos and Instagram posts*

1 *touting the investments and rates of return.” Id.* (emphasis added) (citing *Pino*, 55
2 F.4th at 1256; and then citing *Wildes*, 25 F.4th 1341).

3 14. In an official statement accompanying the announcement of the long-
4 term partnership between the LCS and FTX, Riot Games stated:

5 We’re proud to announce that FTX is the Official Cryptocurrency
6 Exchange of the LCS. Our seven-year partnership with FTX represents
7 the largest sponsorship agreement Riot has ever signed for an esports
8 league . . . At the forefront of every LCS partnership, we consider the
9 sentiment and interests of our fans. This data strongly informs our
10 decision-making process, helping us hone in on partners who are
11 relevant to our audience and can elevate the LCS for years to come.
12 Those metrics pointed to a direct interest in the crypto category, where
13 FTX stands out as an innovative, thoughtful leader in a space our fans
14 understand. Together, we’ve only just begun to press our advantage.³

15 15. Interestingly, while Riot Games and the LCS and many others were
16 quick to jump into the crypto world with both feet when they saw the potential for
17 fast money, the National Football League had the foresight to specifically *bar* its
18 teams from selling sponsorships to cryptocurrency trading firms back in September
19 2021, because it needed the chance to evaluate the cryptocurrency industry more
20 closely before it could develop and implement its official strategy.⁴

21 **FACTUAL BACKGROUND**

22 16. SBF and his FTX Group caused billions of dollars in losses to Plaintiffs,
23 through at least two separate schemes, both of which contributed to the downfall of
24 the FTX Group.

25 ³ LoLesports Staff, *LCS Creates a Gold Advantage with FTX* (August 3, 2021),
<https://lolesports.com/article/lcs-creates-a-gold-advantage-with-ftx/blt54c2964ee439f1a7>

26 ⁴ Bibhu Pattnaik, *Why the NFL Bans Cryptocurrency, NFT Sponsorships for Teams*, yahoo!finance
27 (Sept. 5, 2021), <https://finance.yahoo.com/news/why-nfl-bans-cryptocurrency-nft-164438729.html>.

1 17. On one hand, SBF and the FTX Group stole customer deposits and used
2 billions of dollars in customer funds to support the operations and investments of
3 FTX and Alameda, to fund speculative venture investments, to make charitable and
4 political contributions, and to personally enrich SBF himself, all while publicly
5 touting the safety of the investment and the segregation of customer funds. FTX's
6 mobile application and/or web-based cryptocurrency investment service that placed
7 cryptocurrency trade orders on behalf of users (the "FTX Platform") maintained by
8 the FTX Group was truly a house of cards, a Ponzi scheme where the FTX Group
9 shuffled customer funds between their opaque affiliated entities, using new investor
10 funds obtained through investments in the FTX Platform, the YBAs, FTT, and/or
11 loans to pay interest and investment withdrawals to the old ones and to attempt to
12 maintain the appearance of liquidity.

13 18. On the other hand, the FTX Group offered and sold securities without
14 proper registration, thereby depriving Plaintiffs of financial and risk-related
15 disclosures that would have impacted their calculus as to whether to invest in the
16 FTX Group. Rather than heed the myriad warnings from the SEC dating as far back
17 as 2017, the FTX Group chose instead to skirt US regulation through deception.

18 19. This conduct violates numerous laws, including laws related to the sale
19 of unregistered securities, consumer protection, professional malpractice, fraud, and
20 conversion.

21 20. As outlined herein, Defendants directly perpetrated, conspired to
22 perpetrate, and/or aided and abetted the FTX Group's multi-billion-dollar frauds for
23 its own financial and professional gain.

24 21. Because of these schemes, the FTX Group imploded, and over \$30
25 billion in value evaporated almost overnight when the FTX Group filed its
26 emergency Chapter 11 bankruptcy petition in Delaware.

1 22. To be sure, both Defendants are responsible for the damages that Class
2 Members have sustained. As further detailed herein, Defendants were necessary
3 players in pushing the FTX fraud to the unprecedented extent it reached, and all
4 made exorbitant amounts of money in the process of doing so. For instance,
5 Defendants helped create the false narratives about FTX and used celebrities and
6 sports leagues to give them instant credibility.

7 23. FTX is and will be involved in federal bankruptcy proceedings for
8 many years and there is no guarantee that any of the victims will be able to see any
9 recovery from those proceedings. This class action may be the only avenue for any
10 of the victims to recover any of their damages.

11 24. What's more, FTX would not have been successful in perpetrating this
12 fraudulent scheme on Plaintiffs and Class Members around the globe without key
13 events that took place in and emanated from Miami, Florida, which not only
14 eventually became FTX's official headquarters but was their de facto domestic
15 headquarters for years before FTX's eventual collapse. According to the Declaration
16 of Dan Friedberg, attached as **Exhibit A**, FTX maintained an office in Miami,
17 Florida, since early 2021, long before FTX eventually moved its Domestic
18 headquarters to Brickell in late 2022. *Id.*, ¶ 20. Since early 2021, FTX's Miami office
19 was run by Mr. Avinash Dabir, who was based in Miami and originally worked for
20 Blockfolio as Director of Product and Partnership before FTX later acquired
21 Blockfolio in late 2020.⁵ *Id.* Dabir eventually became FTX's Vice President of
22 Business Development. *Id.* Friedberg met with Mr. Dabir often and is very familiar
23 with Mr. Dabir and his activities. *Id.*

24 _____
25 ⁵ See Zack Voell, *FTX Exchange's \$150M Deal for Mobile-First Blockfolio Is a Retail Trading*
26 *Play*, Coindesk, [https://www.coindesk.com/markets/2020/08/25/ftx-exchanges-150m-deal-for-](https://www.coindesk.com/markets/2020/08/25/ftx-exchanges-150m-deal-for-mobile-first-blockfolio-is-a-retail-trading-play/)
27 [mobile-first-blockfolio-is-a-retail-trading-play/](https://www.coindesk.com/markets/2020/08/25/ftx-exchanges-150m-deal-for-mobile-first-blockfolio-is-a-retail-trading-play/) (Sept. 14, 2021, 5:47 AM EDT); see also
28 *Blockfolio*, Crunchbase, <https://www.crunchbase.com/organization/blockfolio/people> (last visited
March 6, 2024).

1 25. As explained by co-founder of FTX Nishad Singh: “In September 2022,
2 SBF announced to the company over video conference that the Miami office would
3 become the official FTX US headquarters, and that it would close its other offices
4 in favor of the Miami location. This selection of Miami occurred for many reasons,
5 including a desire to consolidate operations in the United States, FTX US
6 employees’ preference for Miami for such consolidation, Miami’s close proximity
7 to the Bahamas and ease of travel between the two locales, Mr. Dexter’s stature
8 within FTX US, SBF’s relationship with Miami mayor Francis Suarez, Miami’s
9 status as an informal ‘crypto hub,’ and the rebranding of the Miami Heat arena as
10 FTX Arena.” Declaration of Nishad Singh (“Singh Decl.”), attached as **Exhibit D**,
11 at ¶ 17.

12 26. Beyond Dabir, “at least twenty-one employees not already located in
13 Miami indicated they would move to Miami” and “[o]thers indicated they would
14 spend the majority of their time in Miami.” Singh Decl., at ¶ 17. Other FTX
15 executives was also drawn to spend time in Miami. *See also id.* at ¶ 18 (“Even
16 though FTX Trading was not based in the United States, at least one of SBF and
17 Ramnik Arora, FTX Trading’s head of product, traveled to the United States, on
18 average, roughly every other week to meet with business partners, including
19 investors. I specifically recall that these trips often took them to, at a minimum,
20 Washington, D.C., New York, and Miami.”).

21 27. Mr. Dabir operated from FTX’s Miami office, and he was focused on
22 formulating and executing FTX’s important celebrity partnerships. Ex. A, ¶ 21; *see*
23 *also* Singh Decl. ¶ 13 (“From 2021 until FTX’s collapse, Mr. Dabir executed some
24 of FTX’s various publicity campaigns from a Miami office.”). Mr. Dabir had a lot
25 of prior experience working with some of the major sports industries, including the
26 NBA. Ex. A., ¶ 21.

1 28. According to Friedberg, Mr. Dabir was very good at his job, and it was
2 his idea to expend significant resources on FTX’s sports and celebrity-based
3 partnerships. Ex. A, ¶ 22. Mr. Dabir specifically started by suggesting FTX form a
4 Partnership with the Miami Heat and the naming rights to the Miami Arena. *Id.* FTX
5 announced the Partnership in March 2021, and included FTX purchasing the naming
6 rights of the Miami Heat stadium for 19 years in a deal worth approximately \$135
7 million. *Id.*

8 29. The naming of the “FTX Arena” served as an important centerpiece for
9 FTX’s efforts to reach other FTX partnerships with celebrities and other well-known
10 partners. *Id.*, ¶ 23. Mr. Dabir was the senior FTX executive responsible for creating,
11 consummating, and implementing deals between FTX and other Partners, such as
12 the Mercedes Formula 1 team, Major League Baseball, the MLB Umpire’s
13 Association, TSM, Tom Brady, Stephen Curry, the Golden State Warriors, Naomi
14 Osaka, Larry David, and Shohei Ohtani. *Id.*

15 30. Having Larry David agree to conduct a commercial for FTX during the
16 2022 Super Bowl was a very big event for FTX because, according to Friedberg, it
17 was the first time that he had ever agreed to serve as a spokesperson for any product.
18 *Id.*, ¶ 24. Mr. Dabir deserves much of the credit for creating that idea and concept
19 and collaborating with Mr. David and his team, resulting in the award-winning Super
20 Bowl FTX commercial that aired with the Super Bowl in 2022. *Id.*

21 31. Released on March 31, 2022, Mr. Dabir appeared on the popular
22 cryptocurrency podcast *The Joe Pomp Show*, where he was interviewed by Mr.
23 Pompliano for over half an hour on specifically the efforts he undertook and oversaw
24 from his FTX base of operations in Miami, Florida, to create, consummate, and
25 implement, among other things, the FTX arena deal and the Larry David Superbowl
26 commercial. A transcript of the podcast is attached as **Exhibit B**.

1 32. Mr. Dabir begins by introducing himself as “Vice President of Business
2 Development at FTX, so I handle a lot of our sports partnerships as well as doing
3 some of the interesting things in real estate as well.” Ex. B at 2. He then explains
4 that “the end goal” is really how does FTX “acquire more users.” *Id.*

5 33. After first acknowledging and agreeing with Mr. Pompliano that FTX
6 was at that point the “leaders” in the sports partnership category and that “it started
7 with Miami Heat Arena,” Mr. Dabir explained that he led the effort to obtain the
8 FTX Arena deal because he “had previously worked at the NBA” and that he
9 identified Miami because it had “a great market,” a “multicultural, great team,” and
10 the “Crypto Buzz was like growing here in Miami.” *Id.*, at 2–3. Dabir explained that
11 a contributing factor to the deal was “the fact that this was during COVID where,
12 you know, a decent amount of live event businesses were-were short on revenue,”
13 which “opened up the door where we could have that conversation” with Miami-
14 Dade County and the Miami Heat. *Id.*, at 4.

15 34. Mr. Dabir also explained that it was crucial “to get approval from a
16 local government, plus the Heat and the NBA who had their own diligence teams
17 looking into” the FTX Arena deal because it “really sort of validated not only just
18 FTX but the cryptocurrency industry in general.” *Id.*, at 4.

19 35. In order to close the FTX Arena deal, according to Mr. Dabir, FTX
20 confidentially disclosed to Miami-Dade County and the Miami Heat FTX’s balance
21 sheet—which was comprised almost entirely of customer funds—and he explained
22 to Mr. Pompliano that “there are ways to structure these deals in a way where, you
23 know, you can front load some of the funds, right, to-to provide some more comfort.”
24 *Id.*

25 36. Mr. Dabir explained that there were multiple ways that FTX measured
26 the success of their Brand Ambassador program, with the “obvious one [being]
27 straight up conversion,” as in “[h]ow many people in Florida download the app or
28

1 around the Miami area, download the app, register, deposit, trade, you know, it's
2 that standard sort of funnel that's very easy to track." *Id.*, at 6. But the other method,
3 according to Mr. Dabir, is the "intangible element" of "trust" and "legitimacy" that
4 comes from "building trust and value through brand association," like "I've already
5 heard of FTX because of FTX Arena, or I saw your Super Bowl spot with-with Larry
6 David." *Id.*

7 37. Mr. Dabir also explains how he oversaw and participated in the creation
8 of Larry David's now infamous 2022 Super Bowl ad, and recounting, "when we saw
9 the script, we were like, this script is awesome. And then-then we're like, 'We have
10 to get Larry David, right?' And then, you know, the teams went to work to try, and
11 I don't know if that commercial works, if it's not Larry David, right?" *Id.*, 7.

12 38. Crucially, all FTX employees or agents who were involved in the Larry
13 David Super Bowl commercial ultimately reported to Avi Dabir, who had final
14 approval of all aspects of the commercial from his base of operations in Miami.

15 39. Mr. Dabir also went into detail about his dealings with Tom Brady and
16 Giselle Bündchen and how the individual FTX Brand Ambassador partnership deals
17 worked. *Id.*, 9. Importantly, not only was Mr. Dabir directly involved in negotiating
18 and consummating the individual FTX Brand Ambassador partnership deals from
19 his base in Miami, he also explains that Defendants Brady and Bündchen were
20 instrumental in bringing other FTX Brand Ambassadors into the fold, such as Curry.
21 *Id.*

22 40. The question of whether the promotion of the FTX Platform, the sale
23 of every YBA and/or FTT is (or is not) the sale of "unregistered securities" has
24 practically been answered in the affirmative through various regulatory statements,
25 guidance, and actions issued by the Securities and Exchange Commission and other
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1 regulatory entities. For example, on November 1, 2017, in the “SEC Statement
2 Urging Caution Around Celebrity Backed ICOs.”⁶

3 In the SEC’s Report of Investigation concerning The DAO,⁷ the
4 Commission warned that virtual tokens or coins sold in ICOs may be
5 securities, and those who offer and sell securities in the United States
6 must comply with the federal securities laws. Any celebrity or other
7 individual who promotes a virtual token or coin that is a security must
8 disclose the nature, scope, and amount of compensation received in
9 exchange for the promotion. A failure to disclose this information is a
10 violation of the anti-touting provisions of the federal securities laws.
11 **Persons making these endorsements may also be liable** for potential
12 violations of the anti-fraud provisions of the federal securities laws, **for**
13 **participating in an unregistered offer and sale of securities**, and for
14 acting as unregistered brokers. The SEC will continue to focus on these
15 types of promotions to protect investors and to ensure compliance with
16 the securities laws.

17 41. The SEC and state securities regulators over the past 5 years, have
18 already found liable numerous celebrities, cryptocurrency brokers and exchanges
19 just like FTX for offering this exact same type of interest-bearing account and native
20 token, finding that exchanges such as BlockFi,⁸ Voyager,⁹ and Celsius¹⁰ all offered
21 these same products as unregistered securities.

22 ⁶ SEC Statement Urging Caution Around Celebrity Backed ICOs, SEC (Nov. 1, 2017),
23 <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos>.

24 ⁷ SEC, Release No. 81207, Report of Investigation Pursuant to Section 21(a) of the Securities
25 Exchange Act of 1934: The DAO (July 25, 2017),
26 <https://www.sec.gov/files/litigation/investreport/34-81207.pdf>.

27 ⁸ Press Release, *BlockFi Agrees to Pay \$100 Million in Penalties and Pursue Registration of its*
28 *Crypto Lending Product*, SEC (Feb. 14, 2022), <https://www.sec.gov/news/press-release/2022-26>.

⁹ Steve Kaaru, *6 US Regulators Crackdown on Voyager Digital over Interest-Bearing Accounts*,
CoinGeek (April 1, 2022), <https://coingeek.com/6-us-regulators-crackdown-on-voyager-digital-over-interest-bearing-accounts/>.

¹⁰ Celsius Network, LLC (N.J. Bureau of Secs. Sept. 17, 2021),
<https://www.nj.gov/oag/newsreleases21/Celsius-Order-9.17.21.pdf> (cease and desist order).

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

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

21 44. Literally overnight, Plaintiffs’ assets, including FTT,¹¹ held on the FTX
22 Platform and/or in their YBAs were robbed from them as FTX imploded and former-

23 _____
24 ¹¹ Although the FTX Group purported to maintain a separation between the US and International
25 platform—in large part because it knew its products offered on the international exchange were
26 securities required to be registered with securities regulators—the separation was merely a farce
27 and was easily circumvented (which was something that the FTX Group encouraged) through the
28 use of, for instance, a VPN. *See Can You Use FTX Exchange in the USA? (Revealed)*, Blockduo,
<https://web.archive.org/web/20231202053834/https://blockduo.com/ftx-usa/> (“FTX, like other

1 CEO, Sam Bankman-Fried, filed a Chapter 11 bankruptcy petition in Delaware on
2 an emergency basis. This happened because, as explained by the new CEO of the
3 failed FTX Group:

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

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

21 _____
22 crypto exchanges, uses something called geo-blocking to stop users from restricted countries from
23 using the exchange. They do this by seeing where your IP address is, and if it is from one of the
24 banned countries, they will block you from the site. . . . With the now wide availability of VPNs,
25 this can be bypassed . . .”). The use of VPNs to circumvent geo-blocking for cryptocurrency
26 exchanges is a well-known and widely used method encouraged by the exchanges to rake in as
27 many new U.S.-based customers as possible to keep new funds loading onto their platform. *See*
28 Complaint ¶ 6, *CFTC v. Changpeng Zhao, et al.*, No. 1:23-cv-01887, (N.D. Ill. Mar. 27, 2023),
ECF No. 1 (CFTC enforcement action brought because “Binance and its officers, employees, and
agents have instructed U.S. customers to use virtual private networks (‘VPNs’) to obscure their
location; allowed customers that had not submitted proof of their identity and location to continue
to trade on the platform long after announcing such conduct was prohibited; and directed VIP
customers with ultimate beneficial owners, key employees who control trading decisions, trading
algorithms, and other assets all located in the United States to open Binance accounts under the
name of newly incorporated shell companies to evade Binance’s compliance controls.”).

1 *See In re FTX Trading LTD., et al.*, D. Del. Bankr. Case No. 22-11068 (JTD) (“FTX
2 Bankruptcy”), D.E. 24, ¶¶ 4–5 (Nov. 17, 2022) (emphasis added).

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

14 46. The deceptive and failed FTX Platform all emanated from in Miami,
15 Florida, FTX’s domestic headquarters and the host of the largest and most famous
16 International World Cryptocurrency Conventions. FTX’s fraudulent scheme was
17 designed to take advantage of unsophisticated investors from across the globe, who
18 utilize mobile apps to make their investments. As a result, consumers around the
19 globe collectively sustained billions of dollars in damages. FTX organized and
20 emanated its fraudulent plan from its worldwide headquarters located in Miami,
21 Florida. Miami became the “hot spot” for crypto companies, hosting the most
22 investments in crypto startups as well as the annual Bitcoin Miami 2022 Global
23 Forum. Several crypto companies, including crypto exchange Blockchain.com,
24 Ripple and FTX.US, moved their headquarters to Miami. Others, including fellow
25 exchange eToro, expanded their U.S. presence with offices in Miami. FTX was
26 already very familiar with Miami, signing a deal worth more than \$135 million
27
28

1 dollars for the naming rights of the waterfront arena, where 3-time NBA Champions
2 the Miami Heat play.

3 47. Plaintiffs bring this action against Riot Games and the LCS who
4 actively promoted FTX and its yield-bearing-accounts (“YBAs”) to millions of
5 people. Though FTX paid Defendants handsomely to push its brand, Defendants did
6 not conduct adequate (if any) due diligence. Given Defendants’ prominence and Riot
7 Games’ vast resources, they knew or should have known about FTX’s financial
8 fragility, as well as the concerns about FTX selling unregistered crypto securities.

9 48. With the rise to prominence of the internet and social media, a new
10 multi-billion-dollar cottage industry of “Influencers” has been created. Influencers
11 played a major role in the FTX disaster and in fact, FTX could not have risen to such
12 great heights without the massive impact of these Influencers, who hyped the FTX
13 Platform for undisclosed payments ranging from tens of thousands of dollars to
14 multimillion-dollar bribes.¹² Indeed, the most searched companies on the internet
15 today are cryptocurrency brands. According to the NBA 2021–2022 Marketing &
16 Partnerships Annual Report by Sponsor United, the cryptocurrency industry had a
17 higher search volume during that year than the entire Alcohol & Beverages industry.

18 49. It is paramount to understand that the Florida state law claims asserted
19 in this action **do not require “reliance” or “deceit.”** The law merely requires the
20 named Plaintiffs (and eventually the certified class) to have suffered damages as a
21 result of: (a) purchasing an “unregistered security,” and (b) that was promoted by
22 Defendants for their financial benefit and/or the financial benefit of FTX.

23 50. The reality is that anyone around the world with a computer can now
24 be a promoter. Many of these paid FTX promoters have since asked for forgiveness
25 because many of these Influencers rely mainly on their alleged independence and

26 ¹² For example, the company Coinbound touts, “We help crypto brands go viral using Web3’s top
27 influencers.” Coinbound, <https://coinbound.io/influencers/> (last visited March 6, 2024).

1 impartiality in attracting people to join their fanbase.¹³ This Action is brought to hold
2 liable a promoter who specifically violated the law under these acts and will serve
3 as precedent to warn and guide other promoters in the future.

4 51. State and federal regulators have been required to quickly modify and
5 adjust to all the changing sources of promoters and marketers. Starting with sponsors
6 on radio, then television and motion pictures and today, to the wild west of the
7 internet, the number of companies that specialize in promoting on social media have
8 sky-rocketed. According to studies, those aged 18 to 34 are more likely to build an
9 interest in an investment specifically from social media, instead of traditional news
10 websites.¹⁴

11
12 **PARTIES**

13 52. **Plaintiff Brandon Orr** is a citizen and resident of the State of Arizona.
14 He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Orr
15 purchased or held legal title to and/or beneficial interest in any fiat or cryptocurrency
16 deposited or invested through an FTX Platform. As a result of Riot Games and the
17 LCS's wrongdoing and the specific allegations set forth herein, Plaintiff Orr has
18 sustained damages for which Riot Games and the LCS are liable.

19 53. **Plaintiff Leandro Cabo** is a citizen and resident of the State of
20 California. He is a natural person over the age of 21 and is otherwise *sui juris*.
21 Plaintiff Cabo purchased or held legal title to and/or beneficial interest in any fiat or
22 cryptocurrency deposited or invested through an FTX Platform. As a result of Riot
23

24 ¹³ Amanda Perelli, *Finance influencers are apologizing to fans after making money promoting*
25 *FTX—and some say they'll make changes*, Bus. Insider (Nov. 14, 2022, 9:30 AM EST),
<https://www.businessinsider.com/influencers-sponsored-by-ftx-say-sorry-to-fans-2022-11>.

26 ¹⁴ Shane Kickey, *As 'influencers' spread through social media, beware the pitfalls*, The Guardian
27 (Aug. 22, 2021, 4:00 EDT), <https://www.theguardian.com/money/2021/aug/22/as-finfluencers-spread-through-social-media-beware-the-pitfalls>.

1 Games and the LCS's wrongdoing and the specific allegations set forth herein,
2 Plaintiff Cabo has sustained damages for which Riot Games and the LCS are liable.

3 **54. Plaintiff Ryan Henderson** is a citizen and resident of the State of
4 California. He is a natural person over the age of 21 and is otherwise *sui juris*.
5 Plaintiff Henderson purchased or held legal title to and/or beneficial interest in any
6 fiat or cryptocurrency deposited or invested through an FTX Platform. As a result of
7 Riot Games and the LCS's wrongdoing and the specific allegations set forth herein,
8 Plaintiff Henderson has sustained damages for which Riot Games and the LCS are
9 liable.

10 **55. Plaintiff Michael Livieratos** is a citizen and resident of the State of
11 Connecticut. He is a natural person over the age of 21 and is otherwise *sui juris*.
12 Plaintiff Livieratos purchased or held legal title to and/or beneficial interest in any
13 fiat or cryptocurrency deposited or invested through an FTX Platform. As a result of
14 Riot Games and the LCS's wrongdoing and the specific allegations set forth herein,
15 Plaintiff Livieratos has sustained damages for which Riot Games and the LCS are
16 liable.

17 **56. Plaintiff Alexander Chernyavsky** is a citizen and resident of the State
18 of Florida. He is a natural person over the age of 21 and is otherwise *sui juris*.
19 Plaintiff Chernyavsky purchased or held legal title to and/or beneficial interest in
20 any fiat or cryptocurrency deposited or invested through an FTX Platform. As a
21 result of Riot Games and the LCS's wrongdoing and the specific allegations set forth
22 herein, Plaintiff Chernyavsky has sustained damages for which Riot Games and the
23 LCS are liable.

24 **57. Plaintiff Gregg Podalsky** is a citizen and resident of the State of
25 Florida. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff
26 Podalsky purchased or held legal title to and/or beneficial interest in any fiat or
27 cryptocurrency deposited or invested through an FTX Platform. As a result of Riot
28

1 Games and the LCS's wrongdoing and the specific allegations set forth herein,
2 Plaintiff Podalsky has sustained damages for which Riot Games and the LCS are
3 liable.

4 58. **Plaintiff Vijeth Shetty** is a citizen and resident of the State of Florida.
5 He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff Shetty
6 purchased or held legal title to and/or beneficial interest in any fiat or cryptocurrency
7 deposited or invested through an FTX Platform. As a result of Riot Games and the
8 LCS's wrongdoing and the specific allegations set forth herein, Plaintiff Shetty has
9 sustained damages for which Riot Games and the LCS are liable.

10 59. **Plaintiff Chukwudozie Ezeokoli** is a citizen and resident of the State
11 of Illinois. He is a natural person over the age of 21 and is otherwise *sui juris*.
12 Plaintiff Ezeokoli purchased or held legal title to and/or beneficial interest in any fiat
13 or cryptocurrency deposited or invested through an FTX Platform. As a result of
14 Riot Games and the LCS's wrongdoing and the specific allegations set forth herein,
15 Plaintiff Ezeokoli has sustained damages for which Riot Games and the LCS are
16 liable.

17 60. **Plaintiff Michael Norris** is a citizen and resident of the State of New
18 Jersey. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff
19 Norris purchased or held legal title to and/or beneficial interest in any fiat or
20 cryptocurrency deposited or invested through an FTX Platform. As a result of Riot
21 Games and the LCS's wrongdoing and the specific allegations set forth herein,
22 Plaintiff Norris has sustained damages for which Riot Games and the LCS are liable.

23 61. **Plaintiff Edwin Garrison** is a citizen and resident of the State of
24 Oklahoma. He is a natural person over the age of 21 and is otherwise *sui juris*.
25 Plaintiff Garrison purchased or held legal title to and/or beneficial interest in any fiat
26 or cryptocurrency deposited or invested through an FTX Platform. As a result of
27 Riot Games and the LCS's wrongdoing and the specific allegations set forth herein,
28

1 Plaintiff Garrison has sustained damages for which Riot Games and the LCS are
2 liable.

3 62. **Plaintiff Shengyun Huang** is a citizen and resident of the State of
4 Virginia. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff
5 Huang purchased or held legal title to and/or beneficial interest in any fiat or
6 cryptocurrency deposited or invested through an FTX Platform. As a result of Riot
7 Games and the LCS's wrongdoing and the specific allegations set forth herein,
8 Plaintiff Huang has sustained damages for which Riot Games and the LCS are liable.

9 63. **Plaintiff Vitor Vozza** is a citizen and resident of the Federal Republic
10 of Brazil. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff
11 Vozza purchased or held legal title to and/or beneficial interest in any fiat or
12 cryptocurrency deposited or invested through an FTX Platform. As a result of Riot
13 Games and the LCS's wrongdoing and the specific allegations set forth herein,
14 Plaintiff Vozza has sustained damages for which Riot Games and the LCS are liable.

15 64. **Plaintiff Kyle Rupprecht** is a citizen and resident of the Dominion of
16 Canada. He is a natural person over the age of 21 and is otherwise *sui juris*. Plaintiff
17 Rupprecht purchased or held legal title to and/or beneficial interest in any fiat or
18 cryptocurrency deposited or invested through an FTX Platform. As a result of Riot
19 Games and the LCS's wrongdoing and the specific allegations set forth herein,
20 Plaintiff Rupprecht has sustained damages for which Riot Games and the LCS are
21 liable.

22 65. **Plaintiff Sunil Kavuri** is a citizen and resident of the United Kingdom
23 of Great Britain and Northern Ireland. He is a natural person over the age of 21 and
24 is otherwise *sui juris*. Plaintiff Kavuri purchased or held legal title to and/or
25 beneficial interest in any fiat or cryptocurrency deposited or invested through an
26 FTX Platform. As a result of Riot Games and the LCS's wrongdoing and the specific
27

1 allegations set forth herein, Plaintiff Kavuri has sustained damages for which Riot
2 Games and the LCS are liable.

3 **66. Defendant Riot Games, Inc. (“Riot Games”)**, entered into a
4 sponsorship agreement with FTX to promote it and its products. Riot Games is a
5 corporation incorporated and operating under the laws of Delaware, with its global
6 headquarters at 12333 W Olympic Blvd., Los Angeles, CA 90064. Riot Games
7 (1) admittedly advertised and promoted the sale of the FTX Platform, YBAs and/or
8 FTT, and; (2) failed to disclose, in any of its marketing campaigns and/or
9 advertisements, that it was paid substantial sums by FTX and profited from the sale
10 of cryptocurrency, the FTX Platform, YBAs and/or FTT, in clear violation of SEC,
11 FTC and various federal and state regulations.

12 **67. Defendant North America League of Legends Championship**
13 **Series LLC (the “LCS”)**, entered into a sponsorship agreement with FTX to
14 promote it and its products. The LCS is an LLC formed in Delaware and authorized
15 to do business in California with its principal California address being 12333 W
16 Olympic Blvd., Los Angeles, CA 90064. The LCS 1) admittedly advertised and
17 promoted the sale of the FTX Platform, YBAs and/or FTT, and; (2) failed to disclose,
18 in any of its marketing campaigns and/or advertisements, that it was paid substantial
19 sums by FTX and profited from the sale of cryptocurrency, the FTX Platform, YBAs
20 and/or FTT, in clear violation of SEC, FTC and various federal and state regulations.

21 22 **FACTUAL ALLEGATIONS**

23 **A. The Rise of FTX**

24 **68.** In May 2019, SBF and his co-founders, Gary Wang and Nishad Singh,
25 launched FTX, which, along with various subsidiaries, affiliates and related entities,
26 operated the FTX Platform, which FTX purported to be a centralized digital asset
27 exchange aimed at “the mass market and first-time users” of cryptocurrencies.

1 69. FTX portrayed itself as a trustworthy and law-abiding member of the
2 cryptocurrency industry, focused not only on profits, but also on investor and client
3 protection. In public statements, including in testimony before the United States
4 Senate, SBF stated that FTX had adopted “principles for ensuring investor
5 protections on digital asset-platforms” including “avoiding or managing conflicts of
6 interest,” and that “[a]s a general principle[,] FTX segregate[s] customer assets from
7 its own assets across our platforms.” SBF spent millions on advertisements to
8 portray FTX as the “safest and easiest way to buy and sell crypto” and “the most
9 trusted way to buy and sell” digital assets.¹⁵

10 70. All the while, however, FTX was doing none of these things. Instead of
11 managing conflicts, the FTX Group actively embraced them, using FTX Trading,
12 FTX.US, and Alameda funds interchangeably to prop up the enterprise. Contrary to
13 SBF’s statements, FTX had no focus on investor protection and did not segregate
14 customer funds. Rather, FTX used customer assets as an interest-free source of
15 capital for Alameda’s and SBF’s private ventures.

16 71. FTX was conceived in Northern California before transitioning its
17 headquarters to Chicago, Illinois, and ultimately landing its domestic operations in
18 Miami, Florida, where FTX US was headquartered and where, in early 2021, FTX
19 purchased the naming rights to the Miami Heat’s waterfront arena for more than
20 \$135 million, one of many sports venues on which FTX paid to have its name
21 emblazoned and one of many extravagant purchases made with Class Members’
22 funds.

23 72. Beginning no later than early 2019, for FTX Trading, and no later than
24 May 22, 2020, for FTX US, Class Members could open “yield-bearing accounts”
25 (“YBAs”) and/or other accounts, and deposit a wide assortment of cryptocurrencies,

26
27 ¹⁵ See Superseding Indictment ¶ 2, *United States of America v. Samuel Bankman-Fried*, No. S5
Cr. 673 (March 28, 2023), ECF No. 115.

1 as well fiat currency, including U.S. dollars, into the accounts (“Class Member
2 funds”) through the FTX website or through FTX’s mobile app.

3 73. FTX lured Class Members to make such deposits with promises of
4 guaranteed 8% annual percent yield on assets equivalent up to \$10,000 USD and
5 guaranteed 5% annual percent yield on amounts between \$10,000 USD and
6 \$100,000 USD, each of which compounded hourly upon a Class Member’s deposit
7 of funds. At no time did FTX register the YBAs pursuant to any federal or state
8 securities law, as discussed more fully below.

9 74. By structuring the rates of returns in this way, FTX targeted nascent
10 investors—i.e., those under the age of 30 and/or new to trading, both inexperienced
11 and unsophisticated—by tying higher rates of return to lower deposit amounts with
12 “no fees and no minimum balances.”

13 75. Unlike a traditional brokerage, FTX took custody of Class Members’
14 assets, which FTX promised to safeguard. In its terms of service, FTX represented
15 to Class Members that “[a]ll cryptocurrency or dollars (or other supported
16 currencies) that are held in your account are held by FTX.US for your benefit;” that
17 “[t]itle to cryptocurrency represented in your FTX.US Account shall at all times
18 remain with you and shall not transfer to FTX.US;” and that “FTX.US does not
19 represent or treat assets in your FTX.US Account as belonging to FTX.US.” FTX
20 Trading’s terms of service similarly represented that no customer funds were “the
21 property of, or shall be loaned to, FTX Trading,” and that FTX Trading “does not
22 represent or treat Digital Assets in User’s Accounts as belonging to FTX Trading.”

23 76. FTX assured Class Members that their assets were safe and could be
24 withdrawn at any time, claiming on its website that “FTX does back the principal
25 generating the yield with its own funds and equity.” SBF further promised, on
26 Twitter in August 2021, “[FTX] will always allow withdrawals (except in cases of
27 suspected money laundering/theft/etc.).”

1 77. FTX also promised to protect against the risk that any customer would
2 engage in self-dealing on the exchange or otherwise try to manipulate the market.
3 For example, FTX claimed to offer “wash trading protection,” representing that it
4 implemented “exchange controls that actively prevent a party trading with
5 themselves.” Additionally, FTX represented, in its terms of service, that “FTX.US
6 does not permit self-trades in order to manipulate markets, reported statistics, or
7 cause liquidations.”

8 78. FTX also purported to protect against the risk that any customer would
9 become overleveraged or undercollateralized on the platform. For this, FTX touted
10 its “risk-engine,” an automated monitoring system that required FTX customers to
11 pledge additional collateral to their accounts as trades went bad and, if the customer
12 failed to do so, liquidated that customer’s assets. FTX detailed its auto-liquidating
13 “risk engine” and other purported risk management procedures in a public proposal
14 to the U.S. Commodity Futures Trading Commission (“CFTC”), in which FTX
15 sought permission to trade non-intermediated margin products (i.e., without any
16 intermediary to hold customer funds):

17 A participant’s margin level is recalculated every 30 seconds as
18 positions are marked to market, and if the collateral on deposit falls
19 below maintenance margin level, FTX’s automated system will begin
20 to liquidate the portfolio. The automated system will liquidate 10
21 percent of a portfolio at a time by placing offsetting orders on the
22 central limit order book. Once the liquidation process results in
23 collateral on deposit that exceeds the margin requirement, the
24 liquidation will stop. Because the liquidation is done automatically and
25 positions are marked to market every 30 seconds, these liquidations can
26 occur at any time, on a “24-7” basis.¹⁶

27 79. FTX claimed that this and other risk management procedures
28 distinguished it from other cryptocurrency exchanges and ensured that Class

¹⁶ <https://www.cftc.gov/media/7031/CommentFTXAmendedOrder/download>.

1 Member funds were protected from losses by other users. For example, on May 11,
2 2022, SBF tweeted that “the margin mode is safe and conservative: real time risk
3 engines mean you neither have to preemptively liquidate days early, nor risk
4 positions going underwater for days.” The next day, SBF testified before the U.S.
5 House of Representatives Committee on Agriculture that:

6 In our risk model the collateral is held directly at the clearinghouses,
7 the collateral for all the positions. There is CFTC oversight of that
8 collateral, and it is guaranteed to be there to not be used for anything
9 else, to be *segregated*, and that is a difference with traditional models.
10 It provides an extra guarantee of the assets backing these positions.
(emphasis added).¹⁷

11 At that hearing, in response to Chairwoman Jahana Hayes’ concern that FTX’s risk
12 monitoring system “could create an opening for fraud and abuse, particularly
13 towards new customers that are entering the digital asset market for the first time,”
14 SBF assured that in FTX’s model, “there is a lot of capital which is held directly
15 with CFTC oversight [and] **segregated** accounts for margin for the customers’
16 positions, which also provides a capital backstop” (emphasis added).

17 80. More generally, in television commercials, in print advertising, through
18 interviews and spokespeople, on Twitter, Facebook, TikTok, Instagram, and
19 LinkedIn, and in other publications, FTX repeatedly peddled itself as “the safest and
20 easiest way to buy and sell crypto,” and SBF repeatedly promised that “our users’
21 funds and safety come first.” In highlighting FTX’s purported safety, SBF and other
22 FTX executives falsely represented that FTX was insured by the Federal Deposit
23 Insurance Corporation (“FDIC”)—including in a tweet by FTX US President Brett
24 Harrison that “direct deposits from employers to FTX US are stored in individually
25 FDIC-insured bank accounts in the users’ names,” and “stocks are held in FDIC-

26 _____
27 ¹⁷ <https://www.govinfo.gov/content/pkg/CHRG-117hhr48754/html/CHRG-117hhr48754.htm>.

1 insured . . . accounts”—until the FDIC ordered that FTX cease and desist in a letter
2 dated August 18, 2022.

3 81. SBF’s carefully curated public persona complemented FTX’s veneer of
4 safety and was critical to FTX’s meteoric rise. SBF came to be “the best-known
5 proponent of the ‘effective altruism’ social movement which believes in prioritizing
6 donations to projects that will have the largest impact on the most people.” In touting
7 his commitment to the movement, SBF explained on YouTube and to journalists that
8 “I wanted to get rich, not because I like money but because I wanted to give that
9 money to charity,” and that “I pretty quickly run out of really effective ways to make
10 yourself happier by spending money . . . I don’t want a yacht.”

11 82. But in truth, SBF did want a yacht, and he wanted Formula One teams,
12 BMWs, beachfront condos, and cocaine-fueled parties. And he got those things—
13 with Class Member funds. SBF’s association with altruism and charity, and his
14 public denouncements of greed and excess, generated a false trustworthiness among
15 the public and provided necessary goodwill for FTX, each critical to hide his lavish
16 spending of Class Member funds.

17 83. On the basis of these reassurances, along with other representations
18 described herein, FTX grew to become one of the largest cryptocurrency exchanges
19 in the world—at its peak, the exchange’s trading volumes reached approximately
20 \$21 billion per day and its valuation topped \$32 billion within three years of its
21 founding.

22 **B. FTX’s Key Players**

23 *I. Sam Bankman-Fried*

24 84. The FTX Group was founded in 2019 and began as an exchange or
25 marketplace for the trading of crypto assets. FTX was established by Samuel
26 Bankman-Fried, Gary (Zixiao) Wang and Nishad Singh, with operations
27 commencing in May 2019. FTX was purportedly established to build a digital asset
28

1 trading platform and exchange for the purpose of a better user experience, customer
2 protection, and innovative products. FTX built the FTX.com exchange to develop a
3 platform robust enough for professional trading firms and intuitive enough for first-
4 time users.

5 85. Prior to that, the Silicon Valley-born, MIT-educated Bankman-Fried,
6 also known as SBF, launched his quantitative crypto trading firm, Alameda, in
7 November 2017,¹⁸ after stints in the charity world and at trading firm Jane Street.¹⁹
8 Quantitative trading consists of trading strategies based on quantitative analysis,
9 which rely on mathematical computations and number crunching to identify trading
10 opportunities.

11 86. On January 3, 2023, Bankman-Fried pled not guilty to eight criminal
12 charges during a hearing before the U.S. District Court for the Southern District of
13 New York in USA v. SBF, 1:22-cr-00673-LAK-1. On February 23, 2023, a
14 superseding indictment was unsealed. It added four more charges, including charges
15 for conspiracy to commit bank fraud and unlicensed money transmitting business,
16 and money laundering. *Id.*, Doc. 80. Bankman-Fried was convicted by a jury on
17 November 2, 2023, of all seven charges tried in October 2023. He now faces over
18 100 years in prison for crimes predicated on his lying to investors and stealing
19 billions of dollars of his customers' money.

22 ¹⁸ Lakshmi Varanasi, Sarah Jackson, Britney Nguyen & Sindhu Sundar, *The Rise and Fall of*
23 *FTX's Sam Bankman-Fried, the Onetime Crypto Billionaire Prosecutors Now Want Jailed After*
24 *They Say He Interfered With Witnesses in His Criminal Case*, Bus. Insider,
<https://www.businessinsider.com/ftx-crypto-king-sam-bankman-fried-rise-and-fall-2022-11> (July
26, 2023, 5:12 PM EDT).

25 ¹⁹ Avery Hartmans, *The Collapse of Crypto Firm FTX and Its Superstar Founder Explained for*
26 *Those Who Know Nothing About Crypto*, Bus. Insider (Nov. 12, 2022, 6:45 AM EST)
27 [https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-
2022-11?inline-endstory-related-recommendations=](https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=).

1 **II. Caroline Ellison**

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

6 88. In late 2018, the headquarters of Alameda was relocated to Hong Kong.
7 The team at Alameda included Bankman-Fried’s close friends (and later co-founders
8 for FTX) Nishad Singh and Gary Wang. Caroline Ellison was also part of the group
9 and, upon moving to Hong Kong, the group lived like college students and fiercely
10 traded crypto.

11 89. After Bankman-Fried established FTX in 2019, Ellison began taking
12 more responsibility at Alameda.

13 90. In October 2021, Ellison was appointed as co-CEO of Alameda with
14 Sam Trabucco after Bankman-Fried resigned from the firm in an effort to give the
15 appearance of putting distance between the exchange and trading shop he founded.
16 As co-CEO, Ellison helped oversee Alameda’s expansion beyond its initial market-
17 neutral, but relatively low-profit business as a market maker for low-volume
18 cryptocurrencies into riskier trading strategies, according to a Twitter thread
19 detailing that shift. For instance, Alameda traders began exploring yield farming in
20 decentralized finance (DeFi). Ellison became sole CEO in August 2022, following
21 Trabucco’s sudden and unexpected departure from the firm, when he shifted his role
22 from Co-CEO to adviser of the company.²⁰

23 91. Leading up to the collapse of FTX, Ellison lived with nine other FTX
24 or Alameda colleagues in Bankman-Fried’s \$30 million penthouse in the Bahamas.

25 _____
26 ²⁰ Nelson Wang, Co-CEO of Crypto Trading Firm Alameda Research Sam Trabucco Steps Down,
27 CoinDesk [https://www.coindesk.com/business/2022/08/24/co-ceo-of-crypto-trading-firm-
alameda-research-sam-trabucco-steps-down/](https://www.coindesk.com/business/2022/08/24/co-ceo-of-crypto-trading-firm-alameda-research-sam-trabucco-steps-down/) (May 11, 2023, 1:43 PM EDT).

1 She reportedly paid SBF rent, and was occasionally in a romantic relationship with
2 him. In 2021, Ellison tweeted about recreational stimulant use. Upon information
3 and belief, Ellison left the Bahamas and moved back to Hong Kong.

4 92. “Young people tend to be too risk averse,” Ellison said in a more recent
5 Alameda podcast episode.²¹

6 93. In December 2022, Ellison pled guilty to criminal charges stemming
7 from FTX’s collapse, including conspiracy to commit wire fraud, conspiracy to
8 commit commodities fraud, conspiracy to commit securities fraud, and conspiracy
9 to commit money laundering.

10 **III. Gary Wang**

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

15 95. Wang met Bankman-Fried at a math camp in high school. Later, they
16 became college roommates at the Massachusetts Institute of Technology, where
17 Wang got degrees in mathematics and computer science and Bankman-Fried
18 received a bachelor’s in physics.²²

19 96. Before co-founding Alameda (and later FTX), Wang worked at Google.
20 He claims to have built a system to aggregate prices across public flight data,
21
22
23

24 ²¹ FTX Official, *FTX Podcast #36: Defi Summer Crypto Trading Strategy*, Youtube (Jan 22, 2021),
25 <https://web.archive.org/web/20221108225900/https://www.youtube.com/watch?v=zfc9JAgWBs>.

26 ²² *Raising the Bar*, FTX Blog,
27 <https://web.archive.org/web/20221109182910/https://blog.ftx.com/blog/raising-the-bar/>.

1 according to an introduction on the Future Fund’s website.²³ When Bankman-Fried
2 left the Jane Street Hedge Fund to start Alameda in 2017, Wang left the tech giant.

3 97. The startup has its beginnings in a three-bedroom Berkeley apartment
4 – the downstairs served as its office. The firm shifted to Hong Kong, in part to take
5 advantage of arbitrage opportunities in Asian bitcoin markets – including the price
6 discrepancy between BTC in Japan and BTC everywhere else.

7 98. It’s there that Wang and Bankman-Fried funneled funds from Alameda
8 to build its bespoke derivatives exchange. Bankman-Fried told Insider that he is not
9 a good coder: “I don’t code. I’m trash. I have not written any of FTX’s code base.
10 That’s all a lot of other really impressive people at FTX. That’s not me at all.”²⁴

11 99. At the age of 28, Wang topped *Forbes*’ 2022 list of the world’s
12 billionaires under 30 with a net worth of \$5.9 billion in April. SBF sent his
13 congratulations to Wang in public, tweeting that “I couldn’t be prouder” when the
14 list came out.²⁵

15 100. In December 2022, Wang pled guilty to criminal charges stemming
16 from FTX’s collapse, including conspiracy to commit wire fraud, conspiracy to
17 commit commodities fraud, and conspiracy to commit securities fraud.

18 ***IV. Nishad Singh***

19 101. Nishad Singh joined Alameda in the early days, when the five-person
20 trading firm was based in a Berkeley, California, apartment. He went from finding

21 _____
22 ²³ *Who We Are*, FTX Future Fund,
<https://web.archive.org/web/20221109222441/https://ftxfuturefund.org/about/>.

23 ²⁴ Keri McMahon & Vicky Ge Huang, *Here Are 10 of the Most Surprising Little-known Facts We*
24 *Learned About the 29-Year-Old Crypto Billionaire Sam Bankman-Fried After Months Speaking to*
25 *His Closest Friends, Family, and Colleagues*, Bus. Insider (Dec. 28, 2021, 4:00 AM CST),
[https://www.businessinsider.com/crypto-trading-billionaire-sam-bankman-fried-ftx-alameda-](https://www.businessinsider.com/crypto-trading-billionaire-sam-bankman-fried-ftx-alameda-surprising-facts-2021-12#5-people-often-think-hes-a-programmer-but-hes-not-5)
[surprising-facts-2021-12#5-people-often-think-hes-a-programmer-but-hes-not-5](https://www.businessinsider.com/crypto-trading-billionaire-sam-bankman-fried-ftx-alameda-surprising-facts-2021-12#5-people-often-think-hes-a-programmer-but-hes-not-5).

26 ²⁵ Sam Bankman-Fried (@SBF_FTX), Twitter (Apr. 5, 2022, 8:45 AM),
27 https://twitter.com/SBF_FTX/status/1511324242612297738.

1 and exploiting arbitrage opportunities in crypto markets to being appointed director
2 of engineering at FTX.

3 102. Singh is and was a close confidant of Bankman-Fried, having shared
4 multiple apartments with the FTX founder over the years, including most recently a
5 10-person luxury penthouse in Nassau, the Bahamas.

6 103. He is rumored to be just one of three people who controlled the keys to
7 the exchange's matching engine, and admittedly was informed of a plan to backstop
8 losses at Alameda with FTX customer funds.²⁶

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

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

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

23 ²⁶ Dave Michaels, Elaine Yu & Caitlin Ostroff, *Alameda, FTX Executives Are Said to Have Known*
24 *FTX Was Using Customer Funds*, Wall St. J., [https://www.wsj.com/articles/alameda-ftx-](https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238)
25 [executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238](https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238) (Nov. 12, 2:42
PM ET).

26 ²⁷ FTX Official, *FTX Podcast: Crypto Engineer's Responsibilities*, YouTube (Dec. 23, 2020),
27 [https://web.archive.org/web/20221123034805/https://www.youtube.com/watch?app=desktop&v=](https://web.archive.org/web/20221123034805/https://www.youtube.com/watch?app=desktop&v=rl0Rq2cUSIQ)
[rl0Rq2cUSIQ](https://web.archive.org/web/20221123034805/https://www.youtube.com/watch?app=desktop&v=rl0Rq2cUSIQ).

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

6 108. “Nishad was one of my brother’s best friends in high school. He’s
7 shown the fastest and most sustained professional growth I’ve ever witnessed,”
8 Bankman-Fried wrote in a company blog.²⁸ Singh also assisted Wang in building
9 most of FTX’s “technological infrastructure” and managed the development team.

10 109. Although pitched as a community-run and- organized exchange, people
11 familiar with the matter told CoinDesk the true power over Serum rested with FTX
12 Group, which then held the program’s access keys.²⁹ A similar relationship may be
13 in place at FTX’s core properties.³⁰

14 110. On February 28, 2023, Nishad Singh, who was one of SBF’s best
15 friends, a core Alameda engineer, and head of FTX’s engineering, also pled guilty
16 to criminal counts for conspiracy to commit fraud and conspiracy to commit money
17 laundering. He agreed to cooperate with prosecutors’ investigation into Bankman-
18 Fried and apologized for his role in FTX’s scheme.

21 ²⁸ *Raising the Bar*, FTX Blog,
22 <https://web.archive.org/web/20221109182910/https://blog.ftx.com/blog/raising-the-bar/>.

23 ²⁹ Danny Nelson, *FTX Hack Sparks Revolution at Serum DEX as Solana Devs Plot Alameda's*
24 *Ouster*, CoinDesk, [https://www.coindesk.com/business/2022/11/12/ftx-hack-spooks-solana-defi-](https://www.coindesk.com/business/2022/11/12/ftx-hack-spooks-solana-defi-community-igniting-revolution-at-alameda-controlled-serum-dex/)
[community-igniting-revolution-at-alameda-controlled-serum-dex/](https://www.coindesk.com/business/2022/11/12/ftx-hack-spooks-solana-defi-community-igniting-revolution-at-alameda-controlled-serum-dex/) (May 9, 2023, 12:02 AM
EDT).

25 ³⁰ Dave Michaels, Elaine Yu & Caitlin Ostroff, *Alameda, FTX Executives Are Said to Have Known*
26 *FTX Was Using Customer Funds*, Wall St. J., [https://www.wsj.com/articles/alameda-ftx-](https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238)
27 [executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238](https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238) (Nov. 12, 2:42
PM ET).

1 111. November 12, 2022, *The Wall Street Journal* reported that Bankman-
2 Fried, Ellison, Wang, and Singh were aware that FTX had used customer assets to
3 cover Alameda's trading losses and repay its outstanding debts.

4 **C. The Basics of a Cryptocurrency Exchange**

5 112. In many ways, centralized cryptocurrency exchanges, including FTX,
6 are analogous to banks albeit for the cryptocurrency industry. There is a big
7 difference, however, in regards to the way a cryptocurrency exchange and a bank
8 are and should be authorized to utilize customer assets.

9 113. More specifically, cryptocurrency exchanges accept deposits of
10 cryptocurrency, and often fiat currency on behalf of their customers. Once that
11 cryptocurrency is received by the exchange then it has dominion and control over
12 those assets.

13 114. The exchange then credits the applicable customer account with the
14 appropriate amount of cryptocurrency or fiat assets the exchange received. This
15 credit can be regarded as a liability of the exchange to its customer.

16 115. If, for example, cryptocurrency was deposited to the customer's
17 exchange account, the customer could then take that credit received from the
18 exchange, and:

- 19 a) Trade it for another cryptocurrency
20 b) Trade it for fiat currency
21 c) Leave it as a balance on the exchange account (leaving an open
22 liability of the exchange to the customer)
23 d) Withdraw it (withdrawal could be done prior to or after a trade or
conversion)

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

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

7 117. One major factor the affects the exchange’s ability to process such
8 requests is whether or not they have the assets and/or capital necessary to do so.

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

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

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

21 *“You control the Digital Assets held in your Account. At any*
22 *time, subject to outages, downtime, and other applicable policies*
23 *(including the Terms), you may withdraw your Digital Assets by*
24 *sending them to a different blockchain address controlled by you*
*or a third party.”*³¹

25 _____
26 ³¹ FTX Terms of Service (May 13, 2022),
27 https://web.archive.org/web/20221108192005/https://help.ftx.com/hc/article_attachments/9719619779348/FTX_Terms_of_Service.pdf.

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

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

23 121. While the existence of such loans associated with assets deposited to
24 yield-bearing accounts was known, the substantial risks associated with such loans,
25 and by extension the yield-bearing accounts in general was not adequately
26 represented.

1 122. The main functional differences between banks and cryptocurrency
2 exchanges is such that exchanges are largely unregulated, and that exchanges (and
3 by extension exchange accounts and the users who use them) are subject to a lot of
4 additional risks compared to that of a bank account.

5 123. Banks are, of course, subject to a variety of capital control requirements
6 to ensure protection of consumer assets. Banks are regulated with regards to the type
7 of assets that they can invest customer assets in. Banks are subject to regular
8 financial audits. Banks have regulatory oversight to ensure the protection of
9 consumer assets. And of course, bank accounts have FDIC insurance so that bank
10 account holders have coverage in case a bank, despite such measures, becomes
11 insolvent. *Id.*

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

18 125. Other than by an exchange’s own terms of service (which wasn’t
19 adhered to in this case), exchanges are not prevented from whether they invest
20 customer assets elsewhere, and if so, what types of investments they enter into, or
21 loans they provide, regardless of the inherent level of risk. And exchanges have no
22 requirement to have any type of insurance equivalent to FDIC insurance. While
23 some exchanges will sometimes claim they have ‘insurance,’ the terms and
24 conditions associated with that insurance are typically completely unknown to
25 investors, and often this insurance will bear little to no resemblance to FDIC
26 insurance; in essence the term ‘insurance’ is used as a marketing ploy to help instill
27

1 customer confidence in the exchange, even when such confidence may not be
2 warranted.

3 126. Due to the aforementioned reasons and risks surrounding the lack of
4 regulation, as well as various types of cybersecurity-related risks that aren't
5 applicable to banks but are critically important for exchanges, cryptocurrency
6 exchanges are generally not and should not be considered a 'safe' place to store
7 assets, whether cryptocurrency assets or fiat assets.

8 127. The inherent riskiness associated with storing assets on a
9 cryptocurrency exchange is well-known to the vast majority of well-educated and
10 knowledgeable cryptocurrency users. This is evidenced by the frequent expression
11 'not your keys, not your coins,' essentially meaning that if you don't *control* the
12 cryptocurrency in your account, it's not really yours. 'Your' cryptocurrency belongs
13 to the exchange if you elect to store it 'on' the exchange, and if they renege or are
14 unable to fulfill their liability to you, you as the beneficial cryptocurrency owner of
15 the cryptocurrency, have effectively lost your money.

16 128. This is further referenced by the extensive track record of the many
17 cryptocurrency exchanges that have shut down and ultimately failed,³² often in
18 spectacular fashion. The most common reasons for an exchange's failure include:

- 19
- 20 a) The exchange borrowing against customer assets (either to fund
21 business operations or lending them out in an effort to generate a profit)
leading to insolvency;
 - 22 b) The exchange trading or leveraging customer assets in an effort to
23 generate a profit, leading to insolvency;
 - 24 c) A hack or theft by an external actor;
 - 25 d) Embezzlement, or theft by an internal actor, typically founder(s) of the
26 exchange; or

27 ³² See *Exchange Graveyard*, Crypto Wisser, <https://www.cryptowisser.com/exchange-graveyard/>.

1 e) Disappeared suddenly, for no apparent reason (typically taking
2 customer assets with them).

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

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

19 131. This is not to suggest that exchanges cannot be a much safer place to
20 store assets. They can be with appropriate regulation and oversight. In fact, it appears
21 that for FTX Japan³³ specifically, those investors will be made whole or almost
22 whole due to sensible regulations that were put in place in light of the lessons learned
23 from the failures of Mt. Gox and Coincheck exchanges in Japan.

24
25
26 ³³ JP Koning, Opinion, *Japan Was the Safest Place to Be an FTX Customer*, Coindesk,
27 <https://www.coindesk.com/consensus-magazine/2022/12/13/japan-was-the-safest-place-to-be-an-ftx-customer/> (Sept. 28, 2023, 10:22 AM EDT).

1 **D. The Mechanics of the Fraudulent Scheme**

2 132. The FTX fraud was straightforward, albeit thoroughly concealed from
3 unsuspecting Class Members.

4 133. With the promise of higher-than-average returns and leading-edge
5 safeguards, and by way of FTX’s material omissions further detailed herein, FTX
6 lured Class Members to deposit U.S. dollars and crypto-based assets into speculative
7 investments, including YBAs, on the FTX exchange.

8 134. Contrary to FTX’s representations to its customers that “FTX.US does
9 not represent or treat assets in your FTX.US Account as belonging to FTX.US,” and
10 unlike many of its competitors, including Coinbase Global, the largest U.S.-based
11 exchange, FTX did not segregate customer funds or designate them for the
12 customer’s benefit, instead commingling those funds in several “omnibus” accounts
13 held by FTX.

14 135. Under the cloak of this wide-ranging con game, FTX insiders including
15 SBF facilitated the routing of billions of dollars in purported profits of FTX, which
16 were in reality Class Member funds, to the insiders, and their families, friends, and
17 other acquaintances through purported personal “loans,” bonuses, “investments,”
18 and all other means of transfer, including real estate purchases and hundreds of
19 millions of dollars in charitable and political contributions. Class Member funds
20 were also used to fuel uncapped spending on illicit drugs, naming rights to sports
21 arenas, concert sponsorships, luxury cars, and private jets.

22 136. Frequently, SBF routed his fraudulent scheme through Alameda LLC
23 (“Alameda”), a cryptocurrency hedge fund that he independently owned. SBF and
24 Mr. Wang formed Alameda two years before launching FTX and split ownership of
25 Alameda 90% and 10%, respectively. SBF led Alameda as CEO until October 2021,
26 from which time he continued to control the company and maintained ultimate
27 authority over its trading, borrowing/lending, and investment activity.

1 137. Until his scheme collapsed, SBF, along with a number of his
2 lieutenants, publicly maintained that Alameda and FTX were “wholly separate
3 entitit[ies] . . . at arm’s length,” and, despite their overlapping ownership by SBF,
4 the companies were kept “separate in terms of day-to-day operations” by way of “a
5 Chinese wall . . . to ensure that [Alameda wouldn’t get] any sort of special treatment
6 from FTX.”

7 138. Contrary to these representations, SBF operated FTX and Alameda as
8 a common enterprise. The two companies shared offices for some time, as well as
9 key personnel and other resources critical to the companies’ operations.

10 139. SBF routinely funneled Class Member funds through Alameda and/or
11 other entities that SBF separately owned, sometimes as bogus “related party
12 transactions.” For example, financial statements for FTX Trading, now available to
13 the public for the first time, disclose “a related party receivable” valued at \$1.2
14 billion (equivalent to 44% of the company’s assets); a \$362 million “related party
15 payable”; \$250 million in payments (equivalent to 25% of the company’s revenues)
16 to a related party for “software royalties;” and a series of related party transactions
17 described only as “currency management” activities. The same financial statements
18 identify that these transactions were for the benefit of SBF, noting that the “primary
19 shareholder [i.e., SBF] is also the primary shareholder of several related entities
20 which do business with the company.”

21 140. Other times, SBF misappropriated Class Member funds as “loans,
22 including for example, a \$1 billion ‘loan’ to himself; a \$543 million ‘loan’ to Mr.
23 Singh; and a \$55 million ‘loan’ to Ryan Salame, another FTX executive.” SBF and
24 other insiders received billions in dollars in purported “loans” from Alameda. None
25 of these “loans” have ever been repaid, nor was there any reason to believe at the
26 time the “loans” were made that they would or could be repaid. The FTX insiders
27 effectively looted the company. Even during the crypto boom, the FTX insiders
28

1 could not reasonably have repaid these loans, and no reasonable lender would have
2 loaned such large amounts. In fact, none of these loans were ever repaid, nor upon
3 information and belief was any interest ever paid on the loans.

4 141. More often, SBF looted Class Member funds directly, without the cover
5 of sham related party transactions or insider loans. For many years, SBF directed
6 that FTX customer funds be wired to bank accounts held by North Dimension, a
7 wholly owned subsidiary of Alameda. North Dimension was a fake electronics
8 retailer created by SBF to disguise its ties to FTX. North Dimension shared an
9 address with FTX US in Berkeley, California, and published a website through
10 which customers often “had trouble actually purchasing products” and was “rife with
11 misspellings and bizarre product prices,” including “sale prices that were hundreds
12 of dollars above a regular price.” For example, North Dimension advertised a
13 \$410.00 “Ipad 11 ‘ich Cell Phone” for the sale price of \$899.00:



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20 142. Once wired to North Dimension’s accounts, Class Member funds were
21 commingled with Alameda’s and misappropriated by SBF. SBF has admitted to
22 looting Class Member funds in this way, explaining to reporters after the fraud was
23 revealed that “people wired \$8b to Alameda and . . . it was never delivered to FTX.”

24 143. SBF found diverse ends for which to misappropriate Class Members
25 funds, including to pay for Alameda’s leveraged trades and investments, which had
26 grown riskier over time. Initially, Alameda primarily traded in high-risk arbitrage,
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1 purchasing cryptocurrencies on one exchange and quickly selling them on other
2 exchanges for higher prices. Later, Alameda pivoted to “yield farming,” investing in
3 cryptocurrencies that paid interest-like returns. Alameda’s entrée into yield farming
4 was not without internal controversy—in early 2021, Caroline Ellison, Alameda’s
5 CEO, expressed concerns about the riskiness of Alameda’s yield farming investment
6 strategy to no avail. Ms. Ellison was correct to observe that Alameda’s bets had
7 grown dodgier. At the time, Sam Trabucco, another Alameda executive, tweeted that
8 Alameda’s investing strategies increasingly relied on “intuition” and other
9 unconventional measures, including “Elon Musk’s social media posts.” As noted
10 above, Ms. Ellison has since pleaded guilty to misappropriating FTX customer assets
11 to fund Alameda’s risky bets and to cover Alameda’s colossal losses.

12 144. SBF used Class Member funds to underwrite Alameda’s risky
13 operations in other ways. Though SBF publicly claimed that Alameda was a “regular
14 user” of FTX, contrary to that representation, FTX exempted Alameda from the
15 automated “risk engine” described above, allowing Alameda to avoid liquidation
16 under the monitoring system. Compounding FTX’s—and, though they did not know
17 it, Class Members’—exposure to Alameda, SBF allowed Alameda to maintain a
18 negative balance in its FTX accounts and steadily increased Alameda’s negative
19 balance cap over time. Through these cheats, Alameda was not only able to evade
20 collateralizing its position on the exchange; Alameda also was able to maintain a
21 negative balance on the exchange and utilize the exchange to trade and withdraw
22 assets without limit, giving it an estimated “line of credit” of \$65 billion,
23 collateralized by the customer deposits on the exchange. Alameda lacked any ability
24 to repay this line of credit, having spent the money on insider transfers and purported
25 “loans,” gifts, and questionable investments.

26 145. With these exemptions—exemptions offered to no other customers on
27 the exchange—FTX extended Alameda a de facto limitless line of credit, which
28

1 Alameda used to invest \$8 billion in risky startups and esoteric cryptocurrencies—
2 highly illiquid investments purchased on credit from FTX, funded with Class
3 Member assets. SBF also misappropriated Class Member funds to inflate the balance
4 sheets of Alameda, which were largely backed by FTT, a cryptocurrency that FTX
5 contrived from thin air and issued to Alameda at no cost. FTX represented that, as
6 “the backbone of the FTX ecosystem,” FTT was widely distributed, but contrary to
7 that representation, most FTT tokens issued were held by FTX and/or Alameda. As
8 of June 30, 2022, Alameda’s largest assets were tied to FTT, including “unlocked
9 FTT” totaling \$3.66 billion, and “FTT collateral” totaling \$2.16 billion. Using Class
10 Member funds and to the benefit of Alameda, SBF manipulated the value of FTT by
11 implementing a “rolling program of buying back and burning [FTT] tokens,” a
12 process which consumed a third of FTX’s revenue. By artificially increasing the
13 value of FTT in this way, SBF increased the value of collateral available to Alameda,
14 with which SBF was able to borrow billions of dollars from third party lenders in
15 furtherance of his fraudulent scheme.

16 146. Upon information and belief, SBF also employed Alameda to funnel
17 Class Member funds from FTX US to his other companies. Just days before FTX
18 filed for bankruptcy protection, Alameda withdrew over \$200 million from FTX US;
19 Alameda then transferred \$142.4 million of those funds to FTX Trading’s
20 international accounts, exhibiting, according to industry experts, that Alameda had
21 been serving as a “bridge between FTX US and FTX [Trading]” for some time.

22 147. The improper relationship between Alameda and FTX was well known
23 to the companies’ insiders, and completely concealed from Class Members. As
24 Ellison, former co-CEO of Alameda, told a federal judge in Manhattan when
25 entering her guilty plea:
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1 From approximately March 2018 through November 2022, I worked at
2 Alameda Research, a cryptocurrency trading firm principally owned by
3 Sam Bankman-Fried.

4 From 2019 through 2022, I was aware that Alameda was provided
5 access to a borrowing facility on FTX.com, the cryptocurrency
6 exchange run by Mr. Bankman-Fried. I understood that FTX executives
7 had implemented special settings on Alameda's FTX.com account that
8 permitted Alameda to maintain negative balances in various fiat
9 currencies and crypto currencies. In practical terms, this arrangement
10 permitted Alameda access to an unlimited line of credit without being
11 required to post collateral, without having to pay interest on negative
12 balances and without being subject to margin calls or FTX.com's
13 liquidation protocols. I understood that if Alameda's FTX accounts had
14 significant negative balances in any particular currency, it meant that
15 Alameda was borrowing funds that FTX's customers had deposited
16 onto the exchange.

17 While I was co-CEO and then CEO, I understood that Alameda had
18 made numerous large illiquid venture investments and had lent money
19 to Mr. Bankman-Fried and other FTX executives. I also understood that
20 Alameda had financed these investments with short-term and open-
21 term loans worth several billion dollars from external lenders in the
22 cryptocurrency industry. When many of those loans were recalled by
23 Alameda's lenders in and around June 2022, I agreed with others to
24 borrow several billion dollars from FTX to repay those loans. I
25 understood that FTX would need to use customer funds to finance its
26 loans to Alameda. I also understood that many FTX customers invested
27 in crypto derivatives and that most FTX customers did not expect that
28 FTX would lend out their digital asset holdings and fiat currency
deposits to Alameda in this fashion. From in and around July 2022
through at least October 2022, I agreed with Mr. Bankman-Fried and
others to provide materially misleading financial statements to
Alameda's lenders. In furtherance of this agreement, for example, we
prepared certain quarterly balance sheets that concealed the extent of
Alameda's borrowing and the billions of dollars in loans that Alameda
had made to FTX executives and to related parties. I also understood
that FTX had not disclosed to FTX's equity investors that Alameda
could borrow a potentially unlimited amount from FTX, thereby putting
customer assets at risk. I agreed with Mr. Bankman-Fried and others

1 not to publicly disclose the true nature of the relationship between
2 Alameda and FTX, including Alameda's credit arrangement.

3 I also understood that Mr. Bankman-Fried and others funded certain
4 investments in amounts more than \$10,000 with customer funds that
5 FTX had lent to Alameda. The investments were done in the name of
6 Alameda instead of FTX in order to conceal the source and nature of
7 those funds. I am truly sorry for what I did. I knew that it was wrong.
8 And I want to apologize for my actions to the affected customers of
9 FTX, lenders to Alameda and investors in FTX. Since FTX and
10 Alameda collapsed in November 2022, I have worked hard to assist
11 with the recovery of assets for the benefit of customers and to cooperate
12 with the government's investigation. I am here today to accept
13 responsibility for my actions by pleading guilty.³⁴

14 148. *The Wall Street Journal* recently reported that Ellison told Alameda
15 staffers in a video call that she was one of four people (along with Sam Bankman-
16 Fried, Gary Wang, and Nishad Singh) who were aware of the decision to send FTX
17 customer funds to Alameda, to help the fund meet its liabilities.³⁵

18 149. Similarly, Nishad Singh, head of FTX's engineering and one of SBF's
19 best friends, has admitted that he knew by mid-2022 that Alameda was borrowing
20 FTX customer funds and that customers were not aware.³⁶

21 150. FTX co-founder Gary Wang likewise explained his knowledge of the
22 companies' interconnectedness in his guilty plea:

23 ³⁴ Transcript of Guilty Plea at 26–29, *United States v. Ellison*, No. 22-cr-673 (S.D.N.Y. Dec. 19,
24 2022), [https://www.johnreedstark.com/wp-content/uploads/sites/180/2022/12/Ellison-Hearing-
25 Transcript.pdf](https://www.johnreedstark.com/wp-content/uploads/sites/180/2022/12/Ellison-Hearing-Transcript.pdf).

26 ³⁵ Dave Michaels, Elaine Yu & Caitlin Ostroff, *Alameda, FTX Executives Are Said to Have Known*
27 *FTX Was Using Customer Funds*, Wall St. J., [https://www.wsj.com/articles/alameda-ftx-
28 executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238](https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238) (Nov. 12, 2:42
PM ET).

³⁶ Jody Godoy & Luc Cohen, *FTX's Singh Pleads Guilty As Pressure Mounts on Bankman-Fried*,
Reuters (Feb. 28, 2023, 4:42 PM EST), [https://www.reuters.com/legal/ftxs-singh-agrees-plead-
guilty-us-criminal-charges-lawyer-says-2023-02-28/](https://www.reuters.com/legal/ftxs-singh-agrees-plead-guilty-us-criminal-charges-lawyer-says-2023-02-28/).

1 Between 2019 and 2022, as part of my employment at FTX, I was
2 directed to and agreed to make certain changes to the platform's code.
3 I executed those changes, which I knew would Alameda Research
4 special privileges on the FTX platform. I did so knowing that others
5 were representing to investors and customers that Alameda had no such
6 special privileges and people were likely investing in and using FTX
7 based in part on those misrepresentations. I knew what I was doing was
8 wrong. I also knew that the misrepresentations were being made by
9 telephone and internet, among other means, and that assets traded on
10 FTX included some assets that the U.S. regulators regard as securities
11 and commodities.

12 151. FTX had a handful of insiders and employees with virtually limitless
13 power to direct transfers of fiat currency and crypto assets and to hire and fire
14 employees, with no effective oversight, internal controls, or checks on the exercise
15 of these powers. FTX failed to establish or maintain any semblance of fundamental
16 financial and accounting controls. This is particularly shocking given that at its peak,
17 FTX operated in hundreds of jurisdictions, controlled billions of dollars of assets,
18 engaged in as many as 26 million transactions per day, and had millions of users.
19 Board oversight was effectively non-existent. With few exceptions, FTX lacked
20 independent or experienced finance, accounting, human resources, information
21 security, and cybersecurity personnel or leadership. Nor was there any effective
22 internal audit function. Some FTX entities did not produce any financial statements.
23 Some were deemed impossible to audit.

24 152. FTX insiders paid out millions of dollars in hush money to keep
25 whistleblowers from exposing the fraud, money laundering, and price manipulation.
26 FTX even hired the attorneys of these whistleblowers to help keep these complaints
27 from the public.

28 153. At no time did FTX disclose the foregoing to Class Members, including
that:

1 I. SBF was siphoning Class Member funds to his friends and family
2 members or for his own personal use;

3 II. FTX was not segregating Class Member funds, instead commingling
4 those funds in FTX's omnibus accounts and treating those funds as FTX's
5 own;

6 III. FTX directed that Class Member funds be wired directly into accounts
7 held by North Dimension, a subsidiary of Alameda;

8 IV. FTX and Alameda were not, in fact, "wholly separate entities at arm's
9 length," and were instead operated as a common enterprise;

10 V. SBF was looting Class Member funds under the guise of non-arm's
11 length "related party transactions" and "loans" often by way of Alameda;

12 VI. SBF routinely transferred Class Member funds out of accounts held
13 by FTX to those held by Alameda;

14 VII. SBF was using Class Member funds to underwrite his speculative
15 personal investments at Alameda, and his charitable and political
16 contributions;

17 VIII. Alameda was exempt from the "risk engine" and other FTX protocols
18 in place to prevent a user from becoming undercollateralized or
19 overleveraged on the exchange;

20 IX. With the foregoing exemption, Alameda engaged in margin trading on
21 the FTX platform, exposing Class Members to the risk of Alameda's loss;

22 X. FTX used Class Member funds to manipulate the price of FTT, which
23 was not "widely distributed," but instead concentrated in the hands of FTX
24 and Alameda; and

25 XI. FTX did not have in place fundamental internal controls, including an
26 independent board of director or a CFO.

27
28 154. Had Class Members known of these material omissions, they would not
29 have deposited funds into accounts on the FTX exchange and SBF's fraud would

1 not have succeeded. In late 2022, the fraud finally collapsed, and the misconduct
2 was revealed.

3 **E. The Fraud’s Collapse**

4 155. The FTX.com exchange was extremely successful since its launch in
5 May 2019. In 2022, around \$15 billion of assets were traded daily on the platform,
6 which represented approximately 10% of global volume for crypto trading. The FTX
7 Group’s team grew to over 300 employees globally. Although the FTX Group’s
8 primary international headquarters is in the Bahamas, its domestic US base of
9 operations is located in Miami, Florida.³⁷

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

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

17 158. At his peak, Bankman-Fried was worth \$26 billion. At 30, he had
18 become a major political donor, gotten celebrities like the defendants in the FTX
19 MDL to vociferously promote FTX, and secured the naming rights to the arena
20 where the NBA’s Miami Heat play.³⁸

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23 ³⁷ Cheyenne Ligon, *Crypto Exchange FTX Is Moving Its US Headquarters from Chicago to Miami*,
CoinDesk (Sept. 27, 2022, 2:52 PM EDT),
24 <https://www.coindesk.com/business/2022/09/27/crypto-exchange-ftx-is-moving-its-us-headquarters-from-chicago-to-miami/>.

25 ³⁸ Avery Hartmans, *The Collapse of Crypto Firm FTX and Its Superstar Founder Explained for*
26 *Those Who Know Nothing About Crypto*, Bus. Insider (Nov. 12, 2022, 6:45 AM EST),
27 <https://www.businessinsider.com/ftx-sbf-crypto-saga-explained-what-happened-what-it-means-2022-11?inline-endstory-related-recommendations=>.

1 159. Beginning in mid-2022, the value of cryptocurrencies rapidly declined,
2 and SBF began to bail out troubled crypto firms that, if they were to fail, would bring
3 down FTX with them and reveal SBF's fraud. For example, in the summer of 2022,
4 FTX extended a \$400 million revolving credit facility to BlockFi, a crypto lender.
5 At the time, BlockFi held as collateral for loans hundreds of millions of dollars in
6 FTT, the cryptocurrency that FTX had engineered to prop up Alameda. If BlockFi
7 failed, the liquidation of those tokens would crash FTT, and in turn, Alameda, whose
8 assets were primarily backed by the token. FTX's \$400 million loan kept BlockFi
9 temporarily afloat, and FTX engaged in a number of similar transactions, propping
10 up failing crypto companies in order to keep the fraud alive, as 2022 progressed.

11 160. Despite SBF's attempts to keep troubled crypto firms afloat, the value
12 of digital currencies continued to decline throughout 2022, and FTX's liquidity
13 crunch tightened. By the end of summer 2022, SBF needed another \$1 billion to
14 keep his fraudulent scheme running. He looked to Silicon Valley and to sovereign
15 wealth funds in the Middle East, but he was unable to successfully close any further
16 investments in FTX, despite many solicitations. Without this influx of capital, FTX's
17 exposure to margin calls heightened and, in November 2022, SBF's house of cards
18 finally collapsed.

19 161. In early November 2022, crypto publication CoinDesk released a
20 bombshell report that called into question just how stable Bankman-Fried's empire
21 really was.³⁹ On November 2, 2022, news broke that Alameda's balance sheet was
22 propped up by the FTX-manipulated FTT, revealing the close ties between FTX and
23 Alameda to the public for the first time. FTX had lent billions, including most of its
24 cryptocurrency reserves, to Alameda, first as capital for trading, and eventually to
25 cover Alameda's massive losses.

26 _____
27 ³⁹ *Id.*

1 162. Prior to the collapse of the FTX Group, Bankman-Fried's
2 cryptocurrency empire was publicly ostensibly broken into two main parts: FTX (his
3 exchange) and Alameda (his trading firm), both giants in their respective industries.
4 But even though they are two separate businesses, the division breaks down in a key
5 place: on Alameda's balance sheet, which was full of FTX assets – specifically, the
6 FTT token issued by the exchange that grants holders a discount on trading fees on
7 its marketplace. It shows Bankman-Fried's trading giant Alameda rests on a
8 foundation largely made up of a coin that a sister company invented, not an
9 independent asset like a fiat currency or another crypto. The situation adds to
10 evidence that the ties between FTX and Alameda are unusually close.⁴⁰

11 163. Days later, on November 6, 2022, Changpeng Zhao, CEO of Binance,
12 the world's largest cryptocurrency exchange and FTX's most powerful competitor,
13 tweeted that he intended to sell Binance's \$580 million holding of FTT, which
14 threatened to crash the price of FTX's token and, in turn, Alameda's balance sheet.
15 Mr. Zhao's announcement triggered demand for \$5 billion in customer withdrawals,
16 which FTX promptly halted due to a lack of funds. The value of FTT plunged 32%,
17 but rallied once again with Bankman-Fried's surprise announcement on Tuesday,
18 November 8, that Binance would buy FTX, effectively bailing it out.⁴¹

19 164. But, after a 24-hour diligence period, Binance backed out of the deal,
20 denying a critical capital injection to SBF. Mr. Zhao explained his reasons for the
21 about-face: "Sam, I'm sorry. We won't be able to continue this deal. Way too many
22

23 ⁴⁰ Ian Allison, *Divisions in Sam Bankman-Fried's Crypto Empire Blur on His Trading Titan*
24 *Alameda's Balance Sheet*, CoinDesk (Aug. 16, 2023, 5:56 PM EDT),
<https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/>.

25 ⁴¹ *Zahra Tayeb, FTX Was Reportedly Hit with \$6 Billion in Withdrawals in Just 72 Hours*, Bus.
26 Insider: Markets Insider (Nov. 9, 2022, 5:05 AM EST),
27 <https://markets.businessinsider.com/news/currencies/ftx-6-billion-withdrawals-72-hours-sam-bankman-fried-binance-2022-11>.

1 issues. CZ.” Binance cited findings during due diligence, as well as reports of
 2 mishandled customer funds and the possibility of a federal investigation.⁴² In truth,
 3 there were always too many issues—issues with the interconnectedness between
 4 Alameda and FTX, issues with FTX’s total lack of internal controls, issues with
 5 SBF’s looting of Class Member funds, the news of which sent FTT plunging even
 6 further — Bankman-Fried saw 94% of his net worth wiped out in a single day.⁴³
 7 This triggered panic selling of FTT and a run on FTX, thereby ensuring the firm’s
 8 swift demise.

9 165. Bankman-Fried issued a 22-tweet-long explanation of where he
 10 believed he and the FTX Group went wrong:⁴⁴



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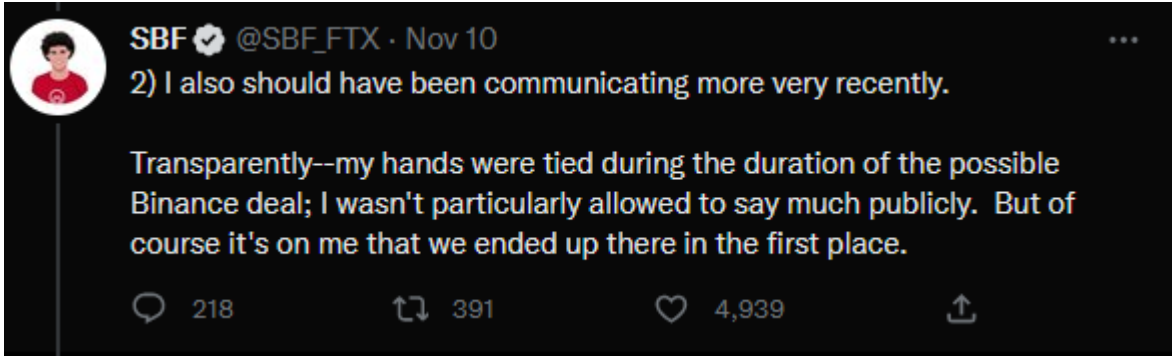
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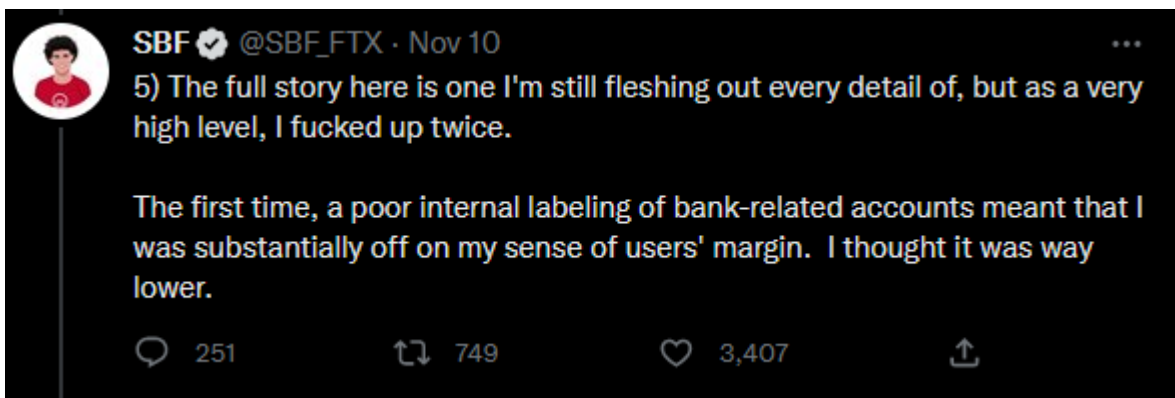
21 ⁴² Brian Evans, *FTX Faces Federal Probes on Handling of Client Funds as Asset Shortfall Could*
 22 *Top \$6 Billion, Report Says*, Bus. Insider: Markets Insider (Nov. 9, 2022, 1:56 PM EST),
 23 [https://markets.businessinsider.com/news/currencies/ftx-crash-sec-cftc-probes-asset-liability-
 shortfall-6-billion-2022-11](https://markets.businessinsider.com/news/currencies/ftx-crash-sec-cftc-probes-asset-liability-shortfall-6-billion-2022-11).

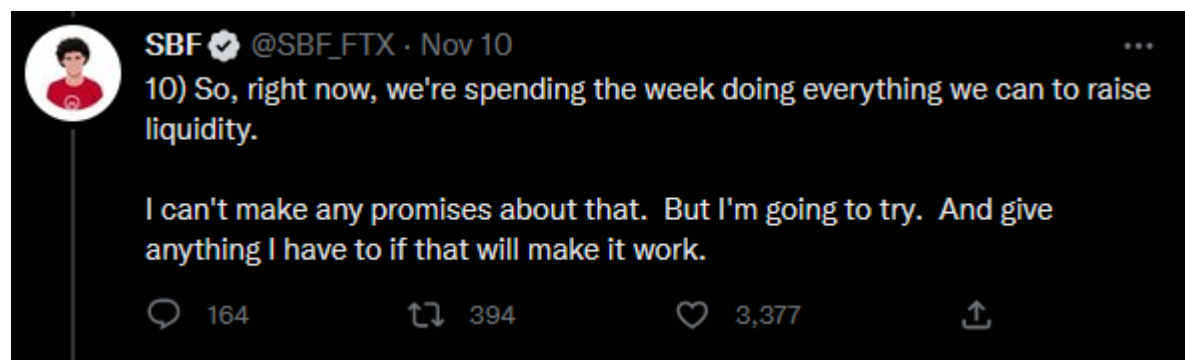
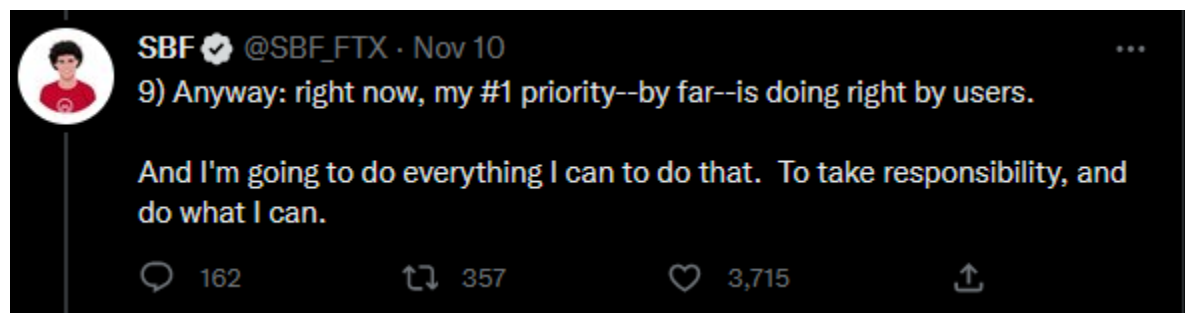
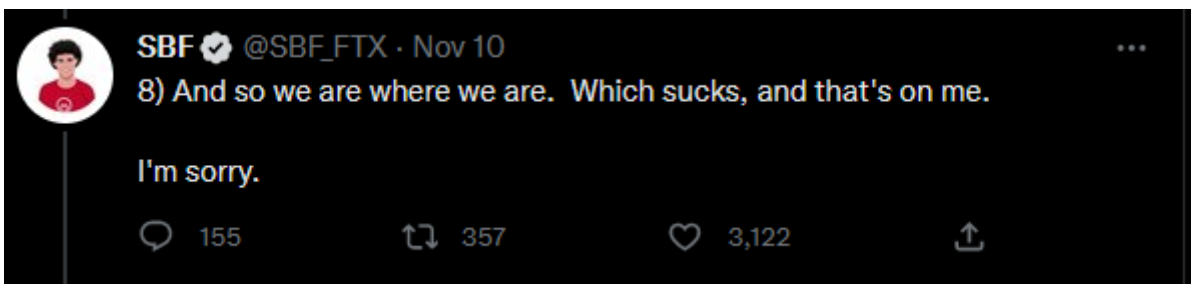
24 ⁴³ Samantha Delouya, *Thirty-Year Old Crypto Tycoon Sam Bankman-Fried Was Worth \$16*
 25 *Billion. 94% of That Was Wiped Out in Just One Day*, Bus. Insider: Markets Insider (Nov. 8, 2022,
 8:04 PM EST), [https://www.businessinsider.com/ftx-ceo-crypto-binance-sam-bankman-fried-
 wealth-wiped-out-2022-11](https://www.businessinsider.com/ftx-ceo-crypto-binance-sam-bankman-fried-wealth-wiped-out-2022-11).

26 ⁴⁴ Sam Bankman-Fried (@SBF_FTX), Twitter (Nov. 10, 2022, 9:13 AM),
 27 https://twitter.com/SBF_FTX/status/1590709189370081280 (last of linked tweets).

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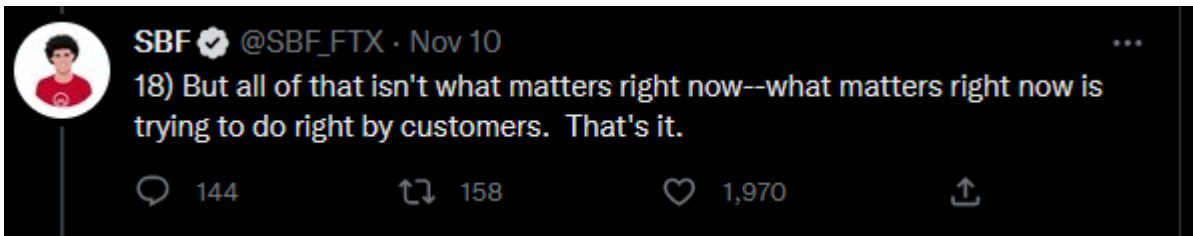
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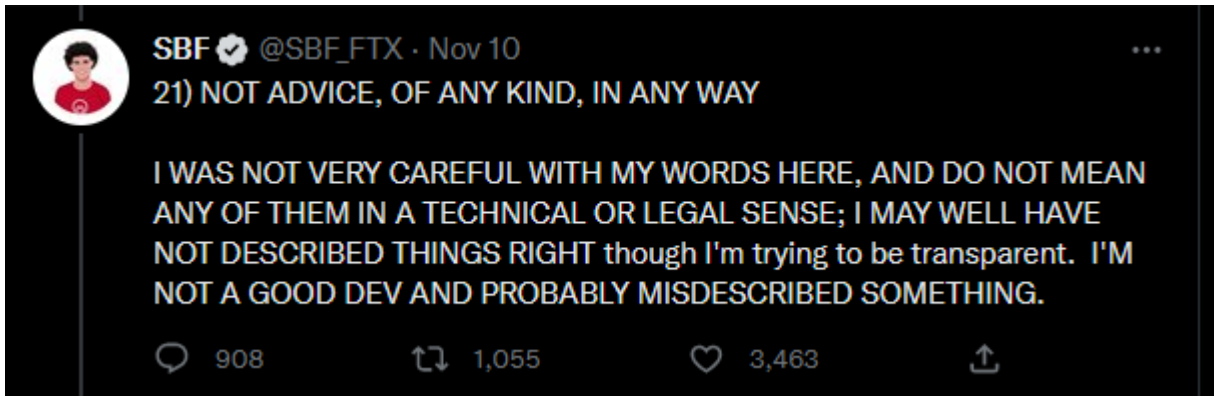
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1 **F. FTX Files for Bankruptcy**

2 166. On November 11th, unable to obtain a bailout, and facing an
3 insurmountable liquidity crisis, the FTX Group filed for Chapter 11 bankruptcy and
4 Bankman-Fried resigned as CEO.⁴⁵

5 167. At or around the same time as Bankman-Fried's *mea culpa* tweets and
6 discussions with reporters, an FTX balance sheet was leaked which shows that FTX
7 held approximately \$900 million in liquid assets against \$8.9 billion of liabilities,
8 with a negative \$8 billion entry described as a "hidden, poorly internally labeled
9 fiat@ account."⁴⁶

10 168. Later, *The Wall Street Journal* reported that in a video meeting with
11 Alameda employees on November 9, 2022 (the day prior to Bankman-Fried's
12 November 10, 2022 litany of tweets), Alameda CEO Caroline Ellison said that she,
13 Bankman-Fried, and two other FTX executives, Singh and Wang, were aware of the
14 decision to send customer funds directly to Alameda. Ellison even admitted that
15 "FTX used customer money to help Alameda meet its liabilities."⁴⁷ Ellison
16 elaborated on these statements on the record when pleading guilty to eight counts of
17 conspiracy to commit wire fraud, securities fraud, and money laundering, among
18 other conspiracies.⁴⁸

19 _____
20 ⁴⁵ Phil Rosen, *FTX Files for Bankruptcy and Sam Bankman-Fried Steps Down as CEO After*
21 *Crypto Exchange Fails to Secure Bailout*, Bus. Insider (Nov. 11, 2022),
<https://markets.businessinsider.com/news/currencies/ftx-bankruptcy-sam-bankman-fried-ceo-crypto-binance-alameda-markets-2022-11>.

22 ⁴⁶ Matt Levine, Opinion, *FTX's Balance Sheet Was Bad*, Bloomberg (Nov. 14, 2022, 1:09 PM
23 EST), <https://www.bloomberg.com/opinion/articles/2022-11-14/ftx-s-balance-sheet-was-bad#xj4y7vzkg>.

24 ⁴⁷ Dave Michaels, Elaine Yu & Caitlin Ostroff, Alameda, *FTX Executives Are Said to Have Known*
25 *FTX Was Using Customer Funds*, Wall St. J., <https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238> (Nov. 12, 2022,
26 2:42 PM ET).

27 ⁴⁸ *Id.*

1 169. The same source explained that FTX’s biggest customer was Alameda,
2 which, instead of holding money, was borrowing billions from FTX users using
3 FTX’s in-house cryptocurrency, FTT token, as collateral, then trading it. When the
4 price of the FTT nosedived 75% in a day, making the collateral insufficient to cover
5 the trade, both FTX and Alameda suffered massive liquidity crises. *Id.*

6 170. On December 13, 2022, the SEC filed a civil action against Bankman-
7 Fried for securities fraud in the United States District Court for the Southern District
8 of New York. *SEC v. SBF*, 1:22-cv-10501, Doc. 1 (S.D.N.Y.) In that complaint, the
9 SEC alleged:

10 When prices of crypto assets plummeted in May 2022,
11 Alameda’s lenders demanded repayment on billions of dollars of
12 loans. Despite the fact that Alameda had, by this point, already taken
13 billions of Bankman-Fried of FTX customer assets, it was unable to
14 satisfy its loan obligations. Bankman-Fried directed FTX to divert
15 billions more in customer assets to Alameda to ensure that Alameda
maintained its lending relationships, and that money could continue
to flow in from lenders and other investors. *Id.* ¶ 4

16 Through the summer of 2022, he directed hundreds of
17 millions more in FTX customer funds to Alameda, which he then
18 used for additional venture investments and for “loans” to himself
and other FTX executives.

19 171. The SEC alleged that “Bankman-Fried diverted FTX customer funds to
20 Alameda in essentially two ways: (1) by directing FTX customers to deposit fiat
21 currency (e.g., U.S. Dollars) into bank accounts controlled by Alameda; and (2) by
22 enabling Alameda to draw from a virtually limitless “line of credit” at FTX, which
23 was funded by FTX customer accounts.” *Id.* ¶ 32.

24 172. The bankruptcy court appointed John J. Ray III, a 40-year industry
25 veteran who oversaw the liquidation of Enron, to replace SBF as FTX’s CEO. Mr.
26 Ray quickly uncovered fundamental deficiencies in basic accounting, corporate
27

1 governance, and other controls by FTX. These deficiencies were so startling that Mr.
2 Ray remarked he had never “seen such a complete failure of corporate controls and
3 such a complete absence of trustworthy financial information as occurred here.”

4 Moreover, Mr. Ray uncovered that:

5 *First*, customer assets from FTX.com were commingled with assets from the
6 Alameda trading platform.

7 *Second*, Alameda used client funds to engage in margin trading which
8 exposed customer funds to massive losses.

9 *Third*, the FTX Group went on a spending binge in late 2021 through 2022,
10 during which approximately \$5 billion was spent buying a myriad of
11 businesses and investments, many of which may be worth only a fraction of
12 what was paid for them.

13 *Fourth*, loans and other payments were made to insiders in excess of \$1
14 billion.

15 *Fifth*, Alameda’s business model as a market maker required deploying funds
16 to various third-party exchanges which were inherently unsafe, and further
17 exacerbated by the limited protection offered in certain foreign jurisdictions.

18 173. On April 9, 2023, Mr. Ray filed in the FTX Bankruptcy his First Interim
19 Report to the Independent Directors on Control Failures at the FTX Exchanges. *See*
20 FTX Bankruptcy, D.E. 1242-1 (Apr. 9, 2023), attached as **Exhibit C** (the “First
21 Interim Rpt.”).

22 174. Defining the “FTX Group” as a de facto singular entity comprised of
23 FTX Trading, FTX.US, and Alameda, collectively, Mr. Ray begins by explaining
24 that:

25 the Debtors have had to overcome unusual obstacles due to the FTX
26 Group’s lack of appropriate record keeping and controls in critical
27 areas, including, among others, management and governance, finance
28 and accounting, as well as digital asset management, information
security and cybersecurity. Normally, in a bankruptcy involving a

1 business of the size and complexity of the FTX Group, particularly a
2 business that handles customer and investor funds, there are readily
3 identifiable records, data sources, and processes that can be used to
4 identify and safeguard assets of the estate. Not so with the FTX Group.

4 Upon assuming control, the Debtors found a pervasive lack of records
5 and other evidence at the FTX Group of where or how fiat currency and
6 digital assets could be found or accessed, and extensive commingling
7 of assets. This required the Debtors to start from scratch, in many cases,
8 simply to identify the assets and liabilities of the estate, much less to
9 protect and recover the assets to maximize the estate's value. This
10 challenge was magnified by the fact that the Debtors took over amidst
11 a massive cyberattack, itself a product of the FTX Group's lack of
12 controls, that drained approximately \$432 million worth of assets on
13 [November 11, 2022,] the date of the bankruptcy petition (the
14 "November 2022 Breach"), and threatened far larger losses absent
15 measures the Debtors immediately implemented to secure the
16 computing environment.

13 Despite the public image it sought to create of a responsible business,
14 the FTX Group was tightly controlled by a small group of individuals
15 who showed little interest in instituting an appropriate oversight or
16 control framework. These individuals stifled dissent, commingled and
17 misused corporate and customer funds, lied to third parties about their
18 business, joked internally about their tendency to lose track of millions
19 of dollars in assets, and thereby caused the FTX Group to collapse as
20 swiftly as it had grown. In this regard, while the FTX Group's failure
21 is novel in the unprecedented scale of harm it caused in a nascent
22 industry, many of its root causes are familiar: hubris, incompetence,
23 and greed.

21 First Interim Rpt., 2-3.

22 175. After summarizing the history of the three main FTX Group entities,
23 the current efforts to retain advisors to assist in investigating the FTX Group's
24 available financial records and interview witnesses, Mr. Ray provides a
25 comprehensive review of the FTX Group's control failures that led to its eventual
26 collapse, including (1) lack of management and governance controls; (2) lack of
27

1 financial and accounting controls; and (3) lack of digital asset management,
2 information security and cybersecurity controls. *Id.* at 11–37.

3 176. According to Mr. Ray, “[t]he FTX Group lacked appropriate
4 management, governance, and organizational structure,” and the “management and
5 governance of the FTX Group was largely limited to Bankman-Fried, Singh, and
6 Wang. Among them, Bankman-Fried was viewed as having the final voice in all
7 significant decisions.” *Id.*, 11. The trio “controlled nearly every significant aspect of
8 the FTX Group,” despite being “not long out of college and with no experience in
9 risk management or running a business,” and “[b]oard oversight, moreover, was
10 effectively non-existent.” *Id.*

11 177. The FTX Group also “lacked an appropriate organizational structure.
12 Rather than having an ultimate parent company able to serve as a central point for
13 decision-making that could also direct and control its subsidiaries, the FTX Group
14 was organized as a web of parallel corporate chains with various owners and interest,
15 all under the ultimate control of Bankman-Fried.” *Id.* at 8. The FTX Group did not
16 even have a comprehensive organizational chart until the end of 2021, lacked any
17 tracking of intercompany relationships and ownership of particular entities, and “did
18 not even have current and complete lists of who its employees were.” *Id.* at 8–9.

19 178. The FTX Group also suffered from a near complete failure to observe
20 corporate formalities, especially when it came to managing the finances of the FTX
21 Group, for instance:

- 22 a) Failure to maintain “personnel who were experienced and
23 knowledgeable enough to account accurately for assets and liabilities,
24 understand and hedge against risk, or compile and validate financial
25 reports,” *Id.* at 11;
- 26 b) Failure to maintain adequate “policies and procedures relating to
27 accounting, financial reporting, treasury management, and risk
28 management,” *Id.*;

1 c) Failure to maintain an accurate and appropriate accounting system, in
2 that 56 FTX Group entities did not produce financial statements of *any*
3 kind, 35 used QuickBooks in conjunction with Google documents,
4 Slack communications, shared drives, and Excel spreadsheets, *Id.* at
5 12–13;

6 d) Recordkeeping was so poor that Bankman-Fried described Alameda as
7 “hilariously beyond any threshold of any auditor being able to even get
8 partially through an audit,” adding:

9 Alameda is unauditabile. I don’t mean this in the sense of
10 “a major accounting firm will have reservations about
11 auditing it”; I mean this in the sense of “*we* are only able
12 to ballpark what its balances are, let alone something like
13 a comprehensive transaction history.” We sometimes find
14 \$50m of assets lying around that we lost track of; such is
15 life.

16 *Id.* at 14;

17 e) “Key accounting reports necessary to understand the FTX Group’s
18 assets and liabilities, such as statements of cash flows, statements of
19 equity, intercompany and related party transaction matrices, and
20 schedules of customer entitlements, did not exist or were not prepared
21 regularly,” *Id.* at 14–15;

22 f) “Copies of key documentation – including executed loan agreements,
23 intercompany agreements, acquisition and investment documents, bank
24 and brokerage account statements, and contract and account
25 information of all types – were incomplete, inaccurate, contradictory,
26 or missing entirely.” *Id.* at 15;

27 g) the FTX Group “did not maintain reliable lists of bank or trading
28 accounts, cryptocurrency wallets, or authorized signatories,” and let
“[t]housands of deposit checks . . . collect[] like junk mail,” *Id.* at 15;

h) “Although the FTX Group consisted of many, separate entities,
transfers of funds among those entities were not properly documented,
rendering tracing of funds extremely challenging,” including using
Slack, Signal, and Telegram with “disappearing messages” enabled,
and often approving expenses and invoices on Slack by “emoji,” *Id.*;

- 1 i) “The FTX Group did not observe any discernable corporate formalities
2 when it came to intercompany transactions. Assets and liabilities were
3 routinely shuffled among the FTX Group entities and insiders without
4 proper process or documentation. Alameda routinely provided funding
5 for corporate expenditures (*e.g.*, paying salaries and other business
6 expenses) whether for Alameda, for various other Debtors, or for FTX
7 DM, and for venture investments or acquisitions whether for Alameda
8 or for various other Debtors. Alameda also transferred funds to insiders
9 to fund personal investments, political contributions, and other
10 expenditures—some of which were nominally ‘papered’ as personal
11 loans with below-market interest rates and a balloon payment due years
12 in the future.” *Id.* at 17;
- 13 j) Often times, intercompany and insider transfers were recorded in a
14 manner “that was inconsistent with the apparent purpose of the
15 transfers,” for instance, tens of millions of dollars being transferred
16 from Alameda to Bankman-Fried, personally, but recorded in the
17 general ledger as “Investment in Subsidiaries: Investments-
18 Cryptocurrency,” often times recorded in a way that intercompany
19 transactions did not balance across relevant entities, nor were they
20 recorded with specificity regarding which digital assets were involved
21 in the transfer and their value when transferred, *Id.*;
- 22 k) On both FTX International and US exchanges, Alameda was a customer
23 that traded “for its own account as well as engaging in market-making
24 activities, and, in that capacity, it was granted extraordinary privileges
25 by the FTX Group,” such as granting Alameda “an effectively limitless
26 ability to trade and withdraw assets from the exchange regardless of the
27 size of Alameda’s account balance, and to exempt Alameda from the
28 auto-liquidation process that applied to other customers,” effectively
allowing it to borrow and/or withdraw up to \$65 billion from the FTX
Platform, *Id.* at 18–22; and finally
- l) There were “extensive deficiencies in the FTX Group’s controls with
respect to digital asset management, information security, and
cybersecurity,” which was “particularly surprising given that the FTX
Group’s business and reputation depended on safeguarding crypto
assets,” and “[a]s a result of these control failures,” which included (i)
maintaining the majority of customer assets in “hot” wallets that are
easily hacked, (ii) failing to safeguard private keys but storing them in
an Amazon Web Services account, (iii) failing to employ multi-

signature capabilities or Multi-Party Computation, (iv) failing to restrict FTX Group employee user access to sensitive infrastructure, such as omnibus wallets holding billions of dollars in assets, and (v) failing to enforce multi-factor authentication for employees and other commonsense safeguards to protect customer assets and sensitive data—all of which leads to the irrefutable conclusion that “the FTX Group exposed crypto assets under its control to a grave risk of loss, misuse, and compromise, and lacked a reasonable ability to prevent, detect, respond to, or recover from a significant cybersecurity incident, including the November 2022 Breach.” *Id.* at 22–37.

179. Mr. Ray concludes that “[t]he FTX Group’s profound control failures placed its crypto assets and funds at risk from the outset.” *Id.* at 39.

G. Crypto Sector a Hotbed for Illicit Activity and Fraudulent Conduct

180. From its inception, cryptocurrency has been fueled by illicit activity and the crypto sector continues to be rife with frauds and scams. For a detailed breakdown on the illicit use of cryptocurrency, see the U.S. Department of Justice’s report from September 2022 titled: “The Role of Law Enforcement In Detecting, Investigation, And Prosecuting Criminal Activity Related to Digital Assets.” The report was issued pursuant to the March 9, 2022 Executive Order on Ensuring Responsible Development of Digital Assets and is the latest report on cryptocurrency released by DoJ⁴⁹ dating back to 2018, all of which detail the dire harms caused by cryptocurrency. DoJ notes that “[t]he rise of the Bitcoin network paralleled the development of Silk Road, AlphaBay, and other illegal online marketplaces...” and the department classified digital asset crime into three categories: “(1) cryptocurrency as a means of payment for, or manner of facilitating, criminal activity; (2) the use of digital assets as a means of concealing illicit financial activity; and (3) crimes involving or affecting the digital assets ecosystem.” The

⁴⁹ Press Release, *Justice Department Announces Report on Digital Assets and Launches Nationwide Network*, Dep’t of Just. (Sept. 16, 2022), <https://www.justice.gov/opa/pr/justice-department-announces-report-digital-assets-and-launches-nationwide-network>.

1 September report details several high-profile cases involving the illicit use of
2 cryptocurrency. One case is the darknet marketplace Silk Road, which accepted
3 payment only in Bitcoin, and was shut down by the FBI in 2013 after having
4 facilitated sales revenue totaling over 9.5 million Bitcoin, equivalent to roughly \$1.2
5 billion at the time.

6 181. Cryptocurrency is increasingly being used by organized crime
7 syndicates and nation states for illicit purposes. In January 2022, the Government
8 Accountability Office (GAO) issued a report finding that “[v]irtual currency is
9 increasingly used illicitly to facilitate human and drug trafficking.”⁵⁰
10 Cryptocurrency is also being used by Iran, Russia, and North Korea to bypass U.S.
11 economic and financial sanctions.⁵¹ According to the United Nations, “money raised
12 by North Korea’s criminal cyber operations are helping to fund the country’s illicit
13 ballistic missile and nuclear programs.”⁵² North Korea’s brazenness was revealed to
14 the public earlier this year when a well-known “Web 3” video game, Axie Infinity,
15 was hacked and \$620 million in the cryptocurrency ether was stolen. “Chainalysis
16 estimates that North Korea stole approximately \$1 billion in the first nine months of
17

18 ⁵⁰ *Virtual Currencies: Additional Information Could Improve Federal Agency Efforts to Counter*
19 *Human and Drug Trafficking [Reissued with Revisions Feb. 7, 2022]*, U.S. Gov’t Accountability
20 Off., <https://www.gao.gov/products/gao-22-105462>.

21 ⁵¹ Emily Flitter & David Yaffe-Bellany, *Russia Could Use Cryptocurrency to Blunt the Force of*
22 *U.S. Sanctions*, N.Y. Times (Feb. 24, 2022),
23 <https://www.nytimes.com/2022/02/23/business/russia-sanctions-cryptocurrency.html>, Kyle Barr,
24 *Iran Plans to Use Crypto to Pay for Imports to Help Get Around Sanctions*, Gizmodo (Aug. 9,
25 2022), <https://gizmodo.com/iran-crypto-imports-sanctions-1849389297>, Mike Orcutt, *This is How*
26 *North Korea Uses Cutting-Edge Crypto Money Laundering to Steal Millions*, MIT Tech. Rev.
27 (Mar. 5, 2020), [https://www.technologyreview.com/2020/03/05/916688/north-korean-hackers-](https://www.technologyreview.com/2020/03/05/916688/north-korean-hackers-cryptocurrency-money-laundering/)
28 [cryptocurrency-money-laundering/](https://www.technologyreview.com/2020/03/05/916688/north-korean-hackers-cryptocurrency-money-laundering/).

⁵² Christian Davies & Scott Chipolina, Fin. Times, *It’s Not Juche if You Have to Steal—How North*
26 *Korea Became a Mastermind of Crypto Cybercrime*, Ars Technica (Nov. 14, 2022, 11:15 AM),
27 [https://arstechnica.com/information-technology/2022/11/how-north-korea-became-a-](https://arstechnica.com/information-technology/2022/11/how-north-korea-became-a-mastermind-of-crypto-cyber-crime/)
28 [mastermind-of-crypto-cyber-crime/](https://arstechnica.com/information-technology/2022/11/how-north-korea-became-a-mastermind-of-crypto-cyber-crime/).

1 2022 from decentralized crypto exchanges alone,” one of the reasons why Anne
2 Neuberger, US deputy national security adviser for cyber security, said in July 2022
3 that North Korea “uses cyber to gain up to a third of their funds for their missile
4 program.”⁵³

5 182. Cryptocurrency has also fueled a surge in ransomware that has
6 victimized American businesses, health care systems, and state and local
7 governments. In May of 2022, the majority staff on the Homeland Security &
8 Governmental Affairs Committee released a startling report on ransomware.⁵⁴ The
9 report notes that in 2021, “ransomware attacks impacted at least 2,323 local
10 governments, schools, and healthcare providers in the United States” and that the
11 FBI “received 3,729 ransomware complaints with adjusted losses of more than \$49.2
12 million.” The report acknowledges that these numbers underestimate the true scale
13 of the problem because many ransomware victims do not report to authorities. As
14 evidence, they cite data from blockchain analytics company Chainalysis that found
15 “malign actors received at least \$692 million in cryptocurrency extorted as part of
16 ransomware attacks” in 2020. The report notes that “cryptocurrency, typically
17 Bitcoin, has become a near universal form of ransom payment in ransomware
18 attacks, in part, because cryptocurrency enables criminals to extort huge sums of
19 money from victims across diverse sectors with incredible speed.” The link between
20 cryptocurrency and ransomware became clear to the public in the wake of the
21 Colonial Pipeline hack in May 2021, which disrupted gasoline supplies in the
22

23
24 ⁵³ *Id.*

25 ⁵⁴ U.S. Senate Comm. on Homeland Sec. & Governmental Affs., Use of Cryptocurrency in
26 Ransomware Attacks, Available Data, and National Security Concerns (May 25, 2022),
27 [https://www.hsgac.senate.gov/wp-
28 content/uploads/imo/media/doc/HSGAC%20Majority%20Cryptocurrency%20Ransomware%20
Report.pdf](https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC%20Majority%20Cryptocurrency%20Ransomware%20Report.pdf).

1 southeastern U.S. In the wake of that breach, several commentators argued for a ban,
2 or heavy regulation, of cryptocurrency.⁵⁵

3 183. Everyday consumers have also fallen victim to various cryptocurrency-
4 related scams. The Consumer Financial Protection Bureau (CFPB) published 2,404
5 cryptocurrency related consumer complaints in its Consumer Complaint Database
6 during 2021, and more than 1,000 cryptocurrency-related complaints during 2022
7 year-to-date.⁵⁶ According to the September DoJ report: “The CFPB has also received
8 hundreds of servicemember complaints involving cryptocurrency assets or
9 exchanges in the last 12 months, approximately one-third of which concerned frauds
10 or scams.”⁵⁷ In June 2022, the Federal Trade Commission issued a report finding
11 that “since the start of 2021 more than 46,000 people have reported losing over \$1
12 billion in crypto to scams – that’s about one out of every four dollars reported lost,
13 more than *any* other payment method.”⁵⁸ The median individual loss was a
14 staggering \$2,600.

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

18 Consumers and investors are exposed to improper conduct in the
19 crypto-asset ecosystem for a variety of reasons, including a lack of

20 ⁵⁵ Lee Reiners, Opinion, *Ban Cryptocurrency to Fight Ransomware*, Wall St. J. (May 25, 2021,
21 1:13 PM ET) <https://www.wsj.com/articles/ban-cryptocurrency-to-fight-ransomware-11621962831>.

22 ⁵⁶ Press Release, *Justice Department Announces Report on Digital Assets and Launches*
23 *Nationwide Network*, Dep’t of Just.: Off. of Pub. Affairs (Sept. 16, 2022)
24 <https://www.justice.gov/opa/pr/justice-department-announces-report-digital-assets-and-launches-nationwide-network>.

25 ⁵⁷ *Id.*

26 ⁵⁸ Emma Fletcher, *Reports Show Scammers Cashing in on Crypto Craze*, FTC (June 3, 2022),
27 <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze>.

1 transparency as well as the fact that crypto-assets have relatively novel
2 and rapidly developing applications. This leads to frequent instances of
3 operational failures, market manipulation, frauds, thefts, and scams.
4 While the data for populations vulnerable to disparate impacts remains
5 limited, available evidence suggests that crypto-asset products may
6 present heightened risks to these groups, and the potential financial
7 inclusion benefits of crypto-assets largely have yet to materialize.⁵⁹

8 185. There is also a long history of consumer losses associated with
9 centralized exchanges, FTX being the latest. One of the first cryptocurrency
10 exchange failures was Japan-based Mt. Gox in 2014. Mt. Gox was handling over
11 70% of bitcoin transactions worldwide by the time it ceased operations after the
12 exchange was hacked and the majority of cryptocurrency held by the exchange on
13 behalf of customers was stolen. Creditors to Mt. Gox are still waiting for their funds,
14 a sign that does not bode well for FTX creditors, to the extent they seek recovery
15 directly from the FTX Group through the bankruptcy proceedings.⁶⁰

16 186. All of the above-mentioned problems with cryptocurrency are well
17 known and one of the big reasons why consumers are hesitant to purchase or use
18 cryptocurrency. According to Pew Research, 16% of Americans have invested in
19 cryptocurrency while another 71% are not invested although they have heard at least
20 a little about cryptocurrency.⁶¹ For those in the latter group, concerns around fraud
21 and scams are likely playing a role in their resistance to crypto investing.

22 ⁵⁹ U.S. Dep't of the Treasury, *Crypto-Assets: Implications for Consumers, Investors, and
23 Businesses* (Sept. 2022), https://home.treasury.gov/system/files/136/CryptoAsset_EO5.pdf.

24 ⁶⁰ Becky Yerak, What to Watch in the FTX Bankruptcy as Details Remain Scarce, Wall St. J.
(Nov. 14, 2022, 8:33 PM ET), <https://www.wsj.com/articles/what-to-watch-in-the-ftx-bankruptcy-as-details-remain-scarce-11668475992?page=1>.

25 ⁶¹ Michelle Faverio & Navid Massarat, *46% of Americans who have invested in cryptocurrency
26 say it's done worse than expected*, Pew Rsch. Ctr. (Aug. 23, 2022),
27 <https://www.pewresearch.org/short-reads/2022/08/23/46-of-americans-who-have-invested-in-cryptocurrency-say-its-done-worse-than-expected/>.

1 187. For those who choose to invest in cryptocurrency, the damages can be
2 overwhelming, as with the FTX fraud. The losses sustained by SBF’s victims are
3 staggering. FTX stole more than \$8 billion in Class Member funds, the bulk of which
4 has now vanished. Many Class Members came of working age in the recession and,
5 later, the COVID-19 pandemic, and as a result have spent their lives working long
6 hours for low wages, often across multiple jobs or in the gig economy. Unlike
7 Defendant, these Class Members do not have money to burn. They are not “crypto-
8 bros.” They are financially vulnerable, and SBF, with the help of his co-conspirators,
9 exploited their vulnerability for tremendous financial gain. Now, Bankman-Fried is
10 going to jail and his victims are left with nothing.

11 **H. The SEC’s Approach to Cryptocurrency.**

12 **I. Overview**

13 188. Despite the crypto industry’s cries for “regulatory clarity,” the SEC’s
14 stance on cryptocurrency has been clear and consistent from the beginning. Critics
15 of the SEC’s stance toward cryptocurrency overlook an important aspect of U.S.
16 securities law – securities regulation is not meant to be precise but is instead
17 intentionally drafted to be broad and all-encompassing; clarity is not just uncommon;
18 it is deliberately avoided. This is why the definitions of “security” in Section 2(a)(1)
19 of the Securities Act of 1933 (Securities Act), 15 U.S.C. 77b(a)(1), and Section
20 3(a)(10) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C.
21 78c(a)(10), include not only conventional securities, such as “stock[s]” and
22 “bond[s],” but also the more general term “investment contract.”

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

25 The fundamental purpose undergirding the Securities Acts
26 is “to eliminate serious abuses in a largely unregulated
27 securities market.” *In defining the scope of the market that*
28 *it wished to regulate, Congress painted with a broad*

1 *brush. It recognized the virtually limitless scope of human*
2 *ingenuity, especially in the creation of “countless and*
3 *variable schemes devised by those who seek the use of the*
4 *money of others on the promise of profits,” and*
5 *determined that the best way to achieve its goal of*
6 *protecting investors was “to define ‘the term “security” in*
7 *sufficiently broad and general terms so as to include within*
8 *that definition the many types of instruments that in our*
9 *commercial world fall within the ordinary concept of a*
10 *security.”* Congress therefore did not attempt precisely to
11 cabin the scope of the Securities Acts . . . Rather, it enacted
12 a definition of “security” sufficiently broad to encompass
13 virtually any instrument that might be sold as an
14 investment.”⁶²

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

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

27 191. Federal courts have already confirmed the SEC’s jurisdiction in
28 numerous crypto-related emergency asset freeze hearings where the issue is always
29 considered and affirmed, same as it has been by hundreds of federal courts across
30 the country since the *Howey* Decision, which the Supreme Court adopted over 75

⁶² *Reves v. Ernst & Young*, 494 U.S. 56, 60–61 (1990) (emphasis added) (citations omitted).

1 years ago.⁶³ That decision resulted in the *Howey* Test, which is used to determine the
2 presence of an investment contract. The *Howey* Test stipulates that an investment
3 contract exists if there is an “investment of money in a common enterprise with a
4 reasonable expectation of profits to be derived from the efforts of others.”⁶⁴ The
5 *Howey* Test is the principal method used by the SEC to determine if a given
6 cryptocurrency is a security.

7 192. The SEC has used multiple distribution channels to share its message
8 and concerns regarding crypto, digital trading platforms, initial coin offerings, and
9 other digital asset products and services over the past decade. The SEC first made
10 investors aware of the dangers of investing in cryptocurrency in 2013 when the
11 Office of Investor Education and Advocacy issued an Investor Alert on “Ponzi
12 Schemes Using Virtual Currencies.”⁶⁵

13 193. A year later, the same office issued an Investor Alert on “Bitcoin and
14 Other Virtual Currency-Related Investments.”⁶⁶ In 2017, the Commission took the
15 rare step of releasing a Section 21(a) Report of Investigation that looked at the facts
16 and circumstances of The DAO, which offered and sold approximately 1.15 billion
17 DAO Tokens in exchange for a total of approximately 12 million Ether (“ETH”)
18 over a one-month period in 2016.⁶⁷ The SEC applied the *Howey* Test to the DAO
19 tokens and concluded they were securities under the Securities Act of 1933

20 ⁶³ *SEC v. Howey Co.*, 328 U.S. 293 (1946).

21 ⁶⁴ *Id.*

22 ⁶⁵ SEC, Pub. No. 153, *Investor Alert: Ponzi Schemes Using Virtual Currencies* (July 2013),
23 https://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf.

24 ⁶⁶ SEC, *Investor Alert: Bitcoin and Other Virtual Currency-Related Investments*, Investor.gov
25 (May 7, 2014), <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/investor-39>.

26 ⁶⁷ SEC, Release No. 81207, *Report of Investigation Pursuant to Section 21(a) of the Securities*
27 *Exchange Act of 1934: The DAO* (July 25, 2017),
<https://www.sec.gov/files/litigation/investreport/34-81207.pdf>.

1 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”).
 2 While The DAO, and DAO tokens, were no longer operational at the time due to a
 3 high-profile hack that resulted in the theft of most DAO tokens, the Commission
 4 chose to release the report so as “to advise those who would use a Decentralized
 5 Autonomous Organization (“DAO Entity”), or other distributed ledger or
 6 blockchain-enabled means for capital raising, to take appropriate steps to ensure
 7 compliance with the U.S. federal securities laws.”⁶⁸

8 194. In 2019, the SEC released a “Framework for “Investment Contract”
 9 Analysis of Digital Assets” which provided additional details on when a digital asset
 10 has the characteristics of an investment contract and “whether offers and sales of a
 11 digital asset are securities transactions.”⁶⁹

12 195. In addition, the SEC has publicized its position on cryptocurrency in
 13 countless enforcement actions,⁷⁰ multiple speeches,⁷¹ Congressional testimony,⁷²
 14 and several official SEC statements⁷³ and proclamations.⁷⁴ Current SEC Chairman,
 15 Gary Gensler, has spoken frequently about the perils and illegality of crypto
 16

17 ⁶⁸ *Id.* at 1–2.

18 ⁶⁹ *Framework for “Investment Contract” Analysis of Digital Assets*, SEC (Mar. 8, 2023),
 19 <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.

20 ⁷⁰ *Crypto Assets and Cyber Enforcement Actions*, SEC (Nov. 21, 2023),
 21 <https://www.sec.gov/spotlight/cybersecurity-enforcement-actions>.

22 ⁷¹ Gary Gensler, Chair, SEC, *Remarks Before the Aspen Security Forum*, SEC (Aug. 3, 2021),
 23 <https://www.sec.gov/news/speech/gensler-aspen-security-forum-2021-08-03>.

24 ⁷² Gary Gensler, Chair, SEC, *Testimony Before the Subcommittee on Financial Services and*
 25 *General Government, U.S. House Appropriations Committee*, SEC (May 26, 2021),
 26 <https://www.sec.gov/news/testimony/gensler-2021-05-26>.

27 ⁷³ Jay Clayton, Chairman, SEC, *Statement on Cryptocurrencies and Initial Coin Offerings*, SEC
 28 (Dec. 11, 2017), <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>.

⁷⁴ Divisions of Enforcement and Trading and Markets, *Statement on Potentially Unlawful Online*
Platforms for Trading Digital Assets, SEC (Mar. 7, 2018), <https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading>.

1 lending platforms and decentralized finance,⁷⁵ warning that their failure to register
2 with the SEC may violate U.S. securities laws.⁷⁶ In one interview, Gensler said:

3 The law is clear, it's not about waving a wand. Congress spoke about this in
4 1934 . . . When a [digital] platform has securities on it, it is an exchange, and
5 it's a question of whether they're registered or they're operating outside of
6 the law and I'll leave it at that.⁷⁷

7 196. On September 8, 2022, Chair Gensler gave a speech reflecting on the
8 flexibility of the securities laws and the SEC's consistency in applying these laws to
9 cryptocurrency.⁷⁸ Gensler noted that of the 10,000 different cryptocurrencies in the
10 market, "the vast majority are securities," a position that was also held by his
11 predecessor, Jay Clayton.⁷⁹ Gensler went on to note that the SEC has spoken with a
12 "pretty clear voice" when it comes to cryptocurrency "through the DAO Report, the
13 Munchee Order, and dozens of Enforcement actions, all voted on by the
14 Commission" and that "[n]ot liking the message isn't the same thing as not receiving
15 it."⁸⁰

18 ⁷⁵ Michael McSweeney, *Gensler sets SEC sights on DeFi, crypto lending and more in expansive*
19 *speech on regulation*, The Block (Aug. 3, 2021, 1:08 PM EDT),
20 <https://www.theblock.co/post/113416/gensler-speech-crypto-defi-lending-sec>.

21 ⁷⁶ Ben Werschkul, *Crypto Platforms that Don't Register With the SEC Do Business 'Outside the*
22 *Law': Gensler*, Yahoo! Finance (Mar. 4, 2022), [https://ca.finance.yahoo.com/news/crypto-](https://ca.finance.yahoo.com/news/crypto-platforms-dont-register-with-sec-outside-the-law-gensler-164215740.html)
[platforms-dont-register-with-sec-outside-the-law-gensler-164215740.html](https://ca.finance.yahoo.com/news/crypto-platforms-dont-register-with-sec-outside-the-law-gensler-164215740.html).

23 ⁷⁷ Michael McSweeney, *Gensler sets SEC sights on DeFi, crypto lending and more in expansive*
24 *speech on regulation*, The Block (Aug. 3, 2021, 1:08 PM EDT),
<https://www.theblock.co/post/113416/gensler-speech-crypto-defi-lending-sec>.

25 ⁷⁸ Gary Gensler, Chair, SEC, *Kennedy and Crypto*, SEC (Sept. 8, 2022)
<https://www.sec.gov/news/speech/gensler-sec-speaks-090822>.

26 ⁷⁹ *Id.*

27 ⁸⁰ *Id.*

1 197. The judicial record supports Chair Gensler’s assertions. The SEC has
2 taken over 100 crypto-related enforcement actions and has not lost a single case.⁸¹

3 198. What follows are summaries of seven cases that will help inform this
4 litigation.

5 II. SEC v. KIK

6 199. In Kik⁸², the SEC’s complaint⁸³, filed in the U.S. District Court for the
7 Southern District of New York on June 4, 2019, alleged that Kik sold digital asset
8 securities to U.S. investors without registering their offer and sale as required by the
9 U.S. securities laws. Kik argued that the SEC’s lawsuit against it should be
10 considered “void for vagueness.”⁸⁴

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

18
19
20 ⁸¹ See Simona Mola, Cornerstone Research, *SEC Cryptocurrency Enforcement: 2021 Update*,
21 <https://www.cornerstone.com/wp-content/uploads/2023/01/SEC-Cryptocurrency-Enforcement-2021-Update.pdf>.

22 ⁸² Press Release, *SEC Obtains Final Judgment Against Kik Interactive For Unregistered Offering*,
23 *SEC* (Oct. 21, 2020), <https://www.sec.gov/news/press-release/2020-262>.

24 ⁸³ Press Release, *SEC Charges Issuer With Conducting \$100 Million Unregistered ICO*, *SEC* (June
4, 2019), <https://www.sec.gov/news/press-release/2019-87>.

25 ⁸⁴ Aziz Abdel-Qader, *SEC Seeks to Block Kik Subpoenas, Refutes “Void for Vagueness” Claim*,
26 *Fin. Magnates* (Oct. 29, 2019, 22:35 GMT),
27 <https://www.financemagnates.com/cryptocurrency/news/sec-seeks-to-block-kik-subpoenas-refutes-void-for-vagueness-claim/>.

1 204. Without admitting or denying the allegations in the SEC’s complaint,
2 the defendants consented to the entry of a final judgment enjoining them from
3 violating the registration provisions of Sections 5(a) and 5(c) of the Securities Act
4 of 1933. The judgment ordered the defendants to disgorge, on a joint and several
5 basis, \$1,224,000,000.00 in ill-gotten gains from the sale of Grams, with credit for
6 the amounts Telegram pays back to initial purchasers of Grams. It also ordered
7 Telegram Group Inc. to pay a civil penalty of \$18,500,000. For the next three years,
8 Telegram is further required to give notice to the SEC staff before participating in
9 the issuance of any digital assets.

10 **IV. SEC v. BlockFi**

11 205. In BlockFi Lending LLC, the first SEC case ever involving a crypto-
12 lending program, on February 14, 2022, the SEC charged BlockFi ⁸⁹with failing to
13 register the offers and sales of its retail crypto-lending product and also charged
14 BlockFi with violating the registration provisions of the Investment Company Act
15 of 1940.

16 206. BlockFi argued for “increased regulatory clarity” but lost.⁹⁰

17 207. To settle the SEC’s charges, BlockFi agreed to pay a \$50 million
18 penalty, cease its unregistered offers and sales of the lending product, BlockFi
19 Interest Accounts (BIAs), and bring its business within the provisions of the
20 Investment Company Act within 60 days. BlockFi’s parent company also announced
21 that it intends to register under the Securities Act of 1933 the offer and sale of a new
22
23

24 ⁸⁹ Press Release, BlockFi Agrees to Pay \$100 Million in Penalties and Pursue Registration of its
25 Crypto Lending Product, SEC (Feb. 14, 2022), <https://www.sec.gov/news/press-release/2022-26>.

26 ⁹⁰ *A Letter from Our Founders: Pioneering a Path Forward to Regulatory Clarity*, BlockFi (Feb.
27 14, 2022), <https://web.archive.org/web/20221111035031/https://blockfi.com/pioneering-regulatory-clarity>.

1 lending product. In parallel actions, BlockFi agreed to pay an additional \$50 million
2 in fines to 32 states to settle similar charges.

3 V. SEC Wells Notice to Coinbase

4 208. In 2021, Coinbase began marketing a cryptocurrency lending product
5 called Lend. The Lend program purported to allow some Coinbase customers
6 to "earn interest on select assets on Coinbase, starting with 4% APY on USD Coin
7 (USDC)."⁹¹ According to Coinbase, its lawyers reached out to the SEC to discuss its
8 Lend product, at which point SEC staff instead served Coinbase with a Wells Notice,
9 informing Coinbase of their intention to seek approval from the SEC Commissioners
10 to file a civil enforcement action against Coinbase for violating the federal securities
11 laws.

12 209. According to Coinbase, the SEC issued the Wells Notice because of
13 Coinbase's failure to file a registration statement with the SEC for the offering of its
14 Lend product, which the SEC believed was a security.⁹²

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

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

24
25 ⁹¹ Paul Grewal, *The SEC Has Told Us It Wants to Sue Us Over Lend. We Don't Know Why.*,
26 Coinbase (Sept. 7, 2021), <https://www.coinbase.com/blog/the-sec-has-told-us-it-wants-to-sue-us-over-lend-we-have-no-idea-why>.

27 ⁹² *Id.*

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

9 213. Per the “family resemblance test,” a presumption that a note is a
10 security can only be rebutted if the note bears a resemblance to one of the enumerated
11 categories on a judicially developed list of exceptions, as follows: 1) a note delivered
12 in consumer financing; 2) a note secured by a mortgage on a home; 3) a short-term
13 note secured by a lien on a small business or some of its assets; 4) a note evidencing
14 a character loan to a bank customer; 5) a short-term note secured by an assignment
15 of accounts receivable; and 6) a note which simply formalizes an open-account debt
16 incurred in the ordinary course of business (such as a trade payable for office
17 supplies); and 7) a note evidencing loans by commercial banks for current
18 operations.

19 214. The “family resemblance” analysis requires:

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

1 215. Applying the family resemblance test to Lend reveals the presence of a
2 note. First, Coinbase likened the Lend program to that of a savings account, where
3 the Lend customer is looking for a profitable investment and Coinbase is looking for
4 investors. Second, Coinbase marketed the Lend program as an investment. Third,
5 investors would expect that securities regulation applies. Fourth, Coinbase is not a
6 bank, so their so-called savings account falls under no other regulatory jurisdiction
7 and protection.

8 216. Given the clear facts of the case, Coinbase decided to cancel the Lend
9 program.⁹³

10 **VI. SEC v. Binance**

11 217. In *Binance*, the SEC filed a complaint⁹⁴ on June 5, 2023, in the United
12 States District Court for the District of Columbia against several of the Binance
13 entities including Binance.com, U.S.-based affiliates, and the founder Changpeng
14 Zhao. The SEC alleges that Binance.com and the other defendants violated thirteen
15 securities laws, including selling various unregistered securities and a staking-as-a-
16 service program; operating an unregistered exchange, broker-dealer, and clearing
17 agency across interstate lines; covertly controlling Binance.US to evade U.S.
18 securities laws; secretly allowing U.S. high-value traders to remain on the
19 international platform; and commingling billions of U.S. assets with Zhao-owned
20 entities. The SEC seeks a preliminary injunction to, among other relief, freeze and
21 repatriate defendants' U.S. assets. The SEC also seeks to permanently enjoin
22
23

24 ⁹³ See Mitchell Clark, *Coinbase Cancels Lend Program Launch After SEC Fight / The Company*
25 *Says It's Still Looking for "Regulatory Clarity"*, *Verge* (Sept. 20, 2021, 2:38 PM EDT),
[https://www.theverge.com/2021/9/20/22684169/coinbase-crypto-lend-feature-discontinued-sec-
26 lawsuit-threats](https://www.theverge.com/2021/9/20/22684169/coinbase-crypto-lend-feature-discontinued-sec-lawsuit-threats).

27 ⁹⁴ Complaint, *SEC v. Binance Holdings Ltd.*, No. 1:23-cv-01599 (D.D.C. June 5, 2023), ECF No.
28 1, <https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-101.pdf>.

1 defendants from directly or indirectly violating the Exchange and Securities Acts,
2 disgorge illegal gains, and award civil damages.

3 **VII. SEC v. Coinbase**

4 218. In Coinbase, the SEC filed a complaint⁹⁵ on June 6, 2023, in the United
5 States District Court for the Southern District of New York against Coinbase and
6 Coinbase Global. The SEC alleges that the Coinbase entities have violated multiple
7 securities laws, including making billions of dollars from selling various
8 unregistered securities and a staking-as-a-service program; and operating an
9 unregistered exchange, broker-dealer, and clearing agency across interstate lines.
10 The SEC seeks to permanently enjoin defendants from directly or indirectly
11 violating the Exchange and Securities Acts, disgorge illegal gains, and award civil
12 damages. “Coinbase was fully aware of the applicability of the federal securities
13 laws to its business activities, but deliberately refused to follow them,” stated Gurbir
14 S. Grewal, Director of the SEC’s Division of Enforcement.⁹⁶

15 **VIII. SEC v. Terraform Labs Pte. Ltd.**

16 219. In one of the most recent developments in the crypto space, on July 31,
17 2023, Judge Jed Rakoff in the Southern District of New York entered an order
18 denying a motion to dismiss claims that defendants, a crypto-assets company and its
19 founder, were responsible for a multibillion-dollar fraud that involved the
20 development, marketing, offer and sale of crypto-assets that the SEC alleged were
21 unregistered securities. *SEC v. Terraform Labs Pte. Ltd.*, No. 23-CV-1346, 2023 WL
22 4858299 (S.D.N.Y. July 31, 2023).

23 220. This is a significant ruling for several reasons.

24 _____
25 ⁹⁵ Complaint, *SEC v. Coinbase, Inc.*, No. 1:23-cv-04738 (S.D.N.Y. June 6, 2023), ECF No. 1,
<https://www.sec.gov/litigation/complaints/2023/comp-pr2023-102.pdf>.

26 ⁹⁶ Press Release, *SEC Charges Coinbase for Operating as an Unregistered Securities Exchange,*
27 *Broker, and Clearing Agency*, SEC (June 6, 2023), <https://www.sec.gov/news/press-release/2023-102>.

1 221. First, it supports the fact that YBAs and FTT are unregistered securities.

2 222. Second, Judge Rakoff explicitly rejects a key component of his
3 colleague, Judge Analisa Torres' reasoning in her order on cross-motions for
4 summary judgment in *SEC v. Ripple Labs, Inc.*, No. 20 CIV. 10832, 2023 WL
5 4507900 (S.D.N.Y. July 13, 2023), *motion to certify appeal denied*, No. 20 CIV.
6 10832, 2023 WL 6445969 (S.D.N.Y. Oct. 3, 2023), which drew a distinction
7 between crypto-assets sold directly by the issuer and on the secondary market.

8 223. Third, Judge Jed Rakoff is a highly regarded jurist who is considered
9 an expert in securities law and business law. In fact, Todd Baker, an attorney and
10 Senior Fellow at the Richman Center for Business, Law & Public Policy at Columbia
11 Business and Law Schools called Judge Rakoff, in a *Financial Times* article, the
12 “[T]he most respected securities authority in the federal judiciary.”⁹⁷

13 224. The relevant points of comparison in Judge Rakoff's decision to the
14 FTX MDL are his analysis around the Luna token and UST stablecoin, which bear
15 similarities to the FTT token and YBAs, respectively.

16 225. With respect to the Luna token, Judge Rakoff found that a common
17 enterprise and expectation of profit existed because Terraform labs used proceeds
18 from LUNA coin sales to develop the Terraform blockchain and represented that
19 that these improvements would increase the value of the Luna tokens. This is similar
20 to the FTT token, which was an exchange token. Given FTT's features, it was clearly
21 designed to go up in value as the FTX platform grew and became more popular with
22 crypto traders. In fact, in their complaint alleging, amongst other things, that FTT is
23 an unregistered security, the SEC states:

24 FTX used the pooled proceeds from FTT sales to fund the development,
25 marketing, business operations, and growth of FTX, depending on the

26 ⁹⁷ Todd Baker, *Crypto Got Rakoff'd*, *Fin. Times* (Aug. 3, 2023),
27 <https://www.ft.com/content/5e5a3c4a-7508-4db8-ab23-1ff17c87c880>.

1 success of FTX and its management team in developing, operating, and
2 marketing the trading platform. If demand for trading on the FTX
3 platform increased, demand for the FTT token could increase, such that
4 any price increase in FTT would benefit holders of FTT equally and in
5 direct proportion to their FTT holdings. The large allocation of tokens
6 to FTX incentivized the FTX management team to take steps to attract
7 more users onto the trading platform and, therefore, increase demand
8 for, and increase the trading price of, the FTT token.⁹⁸

9 226. The SEC makes a similar allegation with respect to Luna in the
10 Terraform Labs action and Judge Rakoff sides with the SEC. From his decision:

11 The SEC’s theory for horizontal commonality as to these other coins,
12 however, rests on a different but equally plausible theory. As to the
13 LUNA tokens, for instance, the SEC has demonstrated horizontal
14 commonality by alleging that the defendants’ used proceeds from
15 LUNA coin sales to develop the Terraform blockchain and represented
16 that these improvements would increase the value of the LUNA tokens
17 themselves. See Amended Complaint ¶¶ 46-47, 49-51. In other words,
18 by alleging that the defendants “pooled” the proceeds of LUNA
19 purchases together and promised that further investment through these
20 purchases would benefit all LUNA holders, the SEC has adequately
21 pled that the defendants and the investors were joined in a common,
22 profit-seeking enterprise.⁹⁹

23 227. Also, of relevance to the FTX MDL and to this case is Judge Rakoff’s
24 conclusion that the algorithmic stablecoin, UST, also met the *Howey* standard for
25 investment contracts. Note that this is the first time the SEC has alleged that a
26 stablecoin is an investment contract, and the SEC’s reasons for making this
27 allegation also support the assertion that YBAs are securities.

28

⁹⁸ Complaint ¶ 79, *SEC v. Ellison*, No. 1:22-cv-10794 (S.D.N.Y. Dec. 21, 2022), ECF No. 1, <https://www.sec.gov/files/litigation/complaints/2022/comp-pr2022-234.pdf>.

⁹⁹ *SEC v. Terraform Labs Pte. Ltd.*, No. 23-CV-1346, 2023 WL 4858299, at *13 (S.D.N.Y. July 31, 2023).

1 228. While UST, like most stablecoins, was supposed to be tied one-for-one
2 to the US dollar, Terraform and Kwon marketed “UST coins as profitable investment
3 opportunities—as opposed to just stable stores of value—in meetings with U.S.
4 investors, investment conferences in major U.S. cities, and on social media
5 platforms.”¹⁰⁰

6 229. Then, in 2021, Terraform launched the “Anchor Protocol” which was
7 an “investment pool into which owners of UST coins could deposit their coins and
8 earn a share of whatever profits the pool generated.”

9 230. Judge Rakoff found that “the fact that most of the UST coins were
10 deposited in the Anchor Protocol independently rendered these tokens investment
11 contracts, indeed investments that were touted as being capable of being able to
12 generate future profits of as much as 20%.”¹⁰¹ Judge Rakoff goes on to say:

13 In essence, the UST tokens were allegedly “pooled” together in the
14 Anchor Protocol and, through the managerial efforts of the defendants,
15 were expected to generate profits that would then be re-distributed to
16 all those who deposited their coins into the Anchor Protocol—in other
17 words, on a pro-rata basis.”¹⁰²

18 231. This closely resembles the facts surrounding YBAs and Judge Rakoff’s
19 finding that UST met the requirements for an investment contract supports the
20 conclusion that YBAs are also unregistered securities.

21 232. Judge Rakoff also explicitly rejects a key element of Judge Torres’
22 analysis in the *Ripple* decision, stating:

23 It may also be mentioned that the Court declines to draw a distinction
24 between these coins based on their manner of sale, such that coins sold
25 directly to institutional investors are considered securities and those

25 ¹⁰⁰ *Id.* at *2.

26 ¹⁰¹ *Id.* at *12.

27 ¹⁰² *Id.* at *13.

1 sold through secondary market transactions to retail investors are not.
2 In doing so, the Court rejects the approach recently adopted by another
3 judge of this District in a similar case, *SEC v. Ripple Labs Inc.*, 2023
4 WL 4507900 (S.D.N.Y. July 13, 2023).¹⁰³

5 233. Judge Rakoff goes on to explain that *Howey* and its progeny never made
6 such a distinction, nor does it matter, for purposes of *Howey* analysis, whether a
7 purchaser “bought the coins directly from the defendants or, instead, in a secondary
8 resale transaction.”¹⁰⁴

9 234. While noting that “in theory, the tokens, if taken by themselves, might
10 not qualify as investment contracts,” Judge Rakoff evaluated—“as the Supreme
11 Court did in *Howey*—whether the crypto-assets and the ‘full set of contracts,
12 expectations, and understandings centered on the sales and distribution of [these
13 tokens]’ amounted to an ‘investment contract’ under federal securities laws.”¹⁰⁵

14 235. Judge Rakoff’s rejection of the *Ripple* decision’s secondary market
15 distinction and fulsome *Howey* analysis support Plaintiffs’ assertion that FTT and
16 YBAs are unregistered securities. FTT purchasers, on the FTX Platform or
17 elsewhere, did not necessarily know who the seller was. But, as Judge Rakoff
18 explains, knowledge of the seller’s identity is not necessary to prove that purchasers
19 expected profits based on the efforts of FTX, who is the issuer of these assets, and
20 not simply a platform where the assets traded.

21 **IX. SEC v. Payward (Kraken)**

22 236. The SEC filed a complaint against Payward, Inc. and Payward
23 Ventures, Inc., which do business as Kraken, on November 20, 2023, in the United
24 States District Court for the Northern District of California.

25 ¹⁰³ *Id.* at *15.

26 ¹⁰⁴ *Id.*

27 ¹⁰⁵ *Id.* at *12.

1 237. The SEC alleges that Kraken entities have violated multiple securities
 2 laws, including hundreds of millions of dollars from operating an unregistered
 3 exchange, broker-dealer, and clearing agency across interstate lines and from
 4 unlawfully facilitating the buying and sale of crypto asset securities. The SEC seeks
 5 to permanently enjoin defendants from directly or indirectly violating the Exchange
 6 and Securities Acts, disgorge illegal gains, and award civil penalties. “We allege that
 7 Kraken made a business decision to reap hundreds of millions of dollars from
 8 investors rather than coming into compliance with the securities laws. That decision
 9 resulted in a business model rife with conflicts of interest that placed investors’ funds
 10 at risk,” said Gurbir S. Grewal, Director of the SEC’s Division of Enforcement.¹⁰⁶

11 **I. FTX’s Offer and Sale of YBAs, Which Are Unregistered Securities.**

12 238. Beginning in 2019, the FTX Group began offering the YBAs to public
 13 investors through its Earn program. Plaintiffs and other similarly situated individuals
 14 invested in FTX’s YBAs.

15 239. The details of the Earn program were presented on the FTX website,¹⁰⁷
 16 and additional information on Earn is described in a declaration submitted in the
 17 Voyager Chapter 11 proceedings by Joseph Rotunda, Director of Enforcement of the
 18 Texas State Securities Board, on October 14, 2022.¹⁰⁸

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

21 _____
 22 ¹⁰⁶ <https://www.sec.gov/news/press-release/2023-237>

23 ¹⁰⁷ FTX Crypto Derivatives Exchange, FTX App Earn, FTX,
 24 <https://web.archive.org/web/20221127164753/https://help.ftx.com/hc/en-us/articles/10573545824532-FTX-App-Earn>.

25 ¹⁰⁸ Supplemental Declaration to the Texas State Securities Board’s and the Texas Department of
 26 Banking’s Limited Objection to the Debtors’ Motion for Entry of an Order (I) Authorizing Entry
 27 into the Asset Purchase Agreement and (II) Granting Related Relief, *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (Bankr. S.D.N.Y. Oct. 14, 2022), ECF No. 536,
 28 <https://cases.stretto.com/public/x193/11753/PLEADINGS/1175310142280000000134.pdf>.

1 You can now earn yield on your crypto purchases and deposits, as well
2 as your fiat balances, in your FTX app! By opting in and participating
3 in staking your supported assets in your FTX account, you'll be eligible
to earn up to 8% APY on your assets.¹⁰⁹

4 241. On the same webpage, the company also states:

5 The **first \$10,000 USD** value in your deposit wallets will
6 earn **8% APY**. Amounts held **above \$10,000 up to \$100,000 USD** in
7 value (subject to market fluctuations) will earn **5% APY**.¹¹⁰

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

12 243. Staking is a technical concept that applies to the blockchain consensus
13 mechanism called Proof of Stake, which some cryptocurrencies utilize.¹¹¹ Staking
14 serves a similar function to cryptocurrency mining, in that it is the process by which
15 a network participant gets selected to add the latest batch of transactions to the
16 blockchain and earn some crypto in exchange. While the exact mechanism will vary
17 from project to project, in general, users will put their token on the line (i.e., “stake”)
18 for a chance to add a new block onto the blockchain in exchange for a reward. Their
19 staked tokens act as a guarantee of the legitimacy of any new transaction they add
20 to the blockchain. The network chooses validators based on the size of their stake
21 and the length of time they've held it. Thus, the most invested participants are
22 rewarded. If transactions in a new block are discovered to be invalid, users can have

23
24 ¹⁰⁹ FTX Crypto Derivatives Exchange, *FTX App Earn*, FTX,
25 <https://web.archive.org/web/20221127164753/https://help.ftx.com/hc/en-us/articles/10573545824532-FTX-App-Earn>.

26 ¹¹⁰ *Id.*

27 ¹¹¹ For example, Ethereum, Tezos, Cosmos, Solana, and Cardano all use Proof of Stake.

1 a certain amount of their stake burned by the network, in what is known as a slashing
2 event.¹¹²

3 244. Some within the crypto community argue that staking is not a security
4 because it is simply part of the code by which specific cryptocurrencies operate. In
5 other words, some argue that staking programs are different from lending programs
6 because user assets are not actually being “lent” out to third parties. But in September
7 2022, SEC Chairman Gary Gensler told reporters that “cryptocurrencies and
8 intermediaries that allow holders to ‘stake’ their coins might pass” the *Howey*
9 Test.¹¹³ According to Gensler, “From the coin’s perspective...that’s another indicia
10 that under the *Howey* test, the investing public is anticipating profits based on the
11 efforts of others.” The Wall Street Journal noted that if an intermediary such as a
12 crypto exchange offers staking services to its customers, Mr. Gensler said, it “looks
13 very similar—with some changes of labeling—to lending.”¹¹⁴

14 245. Based upon information – included and not included – on the FTX
15 website, it does not appear that the company is adhering to the technical, commonly
16 understood, definition of staking. *See* Ex. A ¶¶ 36–42. The most telling indicator is
17 that the company permits any cryptocurrency listed on their platform to be eligible
18 for staking, even coins that do not use Proof of Stake. *Id.* ¶ 39. The FTX website
19 specifically states that Bitcoin and Dogecoin can generate yield under the Earn
20 program, even though these coins use the Proof of Work consensus mechanism

21
22 ¹¹² *See, e.g., What is Staking?*, Coinbase, <https://www.coinbase.com/learn/crypto-basics/what-is-staking>;
23 *Mensholong Lepcha, Slashing*, Techopedia (Nov. 2, 2023),
24 <https://www.techopedia.com/definition/slashing>; *Blocknative, A Staker's Guide to Ethereum Slashing & Other Penalties*, Blocknative (Oct. 1, 2022), <https://www.blocknative.com/blog/an-ethereum-stakers-guide-to-slashing-other-penalties>.

25 ¹¹³ Paul Kiernan & Vicky Ge Huang, Ether’s New ‘Staking’ Model Could Draw SEC Attention,
26 *Wall St. J.* (Sept. 15, 2022, 6:07 PM ET), <https://www.wsj.com/articles/ethers-new-staking-model-could-draw-sec-attention-11663266224>.

27 ¹¹⁴ *Id.*

1 (meaning you CANNOT technically stake Bitcoin or Dogecoin). Therefore, it is not
2 at all clear where the promised yield is coming from.

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

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

- 13 a. An investment of money
- 14 i. Cryptocurrency is a medium of exchange and way of
15 transferring value in a measurable and quantifiable way. It
16 is increasingly used as a means of payment, although it is
17 more commonly used as a speculative investment at this
18 point in time. Whether or not cryptocurrency can be
19 defined as ‘money’ is in part a matter of semantics that can
20 vary based on considers the fundamental features of
21 money to be, and what criteria needs to be achieved in
22 order for something to be considered money. Suffice to
23 say, when examining aspects such as fungibility,
24 durability, portability, divisibility, scarcity, transferability,
25 acting as a medium of exchange, acting as a unit of
26 account, and acting as a store of value, it could be argued
27 that some cryptocurrencies fulfill many of these criterion
28 as good as or even better than fiat currencies.
- b. In a common enterprise
- i. FTX customer assets are almost always consolidated in
wallets operated and controlled by FTX at least initially.
These wallets are typically referred to as ‘hot wallets’ or
‘consolidation wallets.’ From these wallets,
cryptocurrency can be move to other FTX-controlled

wallets, or it can be used to pay back other customers performing withdrawals, but FTX can and did send (and loan) out such assets to other entities, including Alameda ‘Alameda.’ The blockchains data contains an immutable and verifiable record of data that shows that FTX customer deposits went into accounts operated by a common enterprise, namely, FTX.

- c. With the expectation of profit
 - i. FTX customers are promised yield when they participate in the Earn program. And at up to 8% yield, that is a considerable amount that would be considerably in excess to that of a savings account at a bank. But it was also far riskier than investing money in a savings account at a bank. FTX goes out of their way to advertise this yield, and indicate that such earnings are to be calculated on the “investment portfolio” that is stored ‘in’ the FTX app.¹¹⁵
- d. To be derived from the efforts of others
 - i. The FTX Yield-bearing account was portrayed as passive income stream. A customer needs to do nothing more than ensure they are subscribed to the yield program, and that they have deposited assets (of crypto or even fiat) in order to earn the 5% or 8% yield, which they clearly indicate is counted hourly. There is no further work or action needed on the part of the user.
 - ii. The work that ‘others’ (namely FTX) would need to do would including, at a baseline, sending transactions. But it would also require FTX to make an effort by leveraging and investing the money elsewhere which could theoretically come about either via giving out loans, employing trading strategies, ‘staking,’ making other investments, or giving out loans to entities (such as Alameda) that would employ such strategies.

247. The FTX Earn program was most likely a note per *Reves* as well. First, FTX offered Earn to obtain crypto assets for the general use of its business, namely,

¹¹⁵ FTX Crypto Derivatives Exchange, *FTX App Earn*, FTX, <https://web.archive.org/web/20221127164753/https://help.ftx.com/hc/en-us/articles/10573545824532-FTX-App-Earn>.

1 to run its activities to pay interest to Earn investors, and users purchased YBAs and
2 were automatically opted-in to Earn to receive interest on their crypto assets. Second,
3 Earn was offered and sold to a broad segment of the general public. Third, FTX
4 promoted Earn as an investment; on their website, FTX notes that Earn users will
5 receive “yield earnings” on their “investment portfolio.”¹¹⁶ Fourth, no alternative
6 regulatory scheme or other risk reducing factors exist with respect to Earn. Note that
7 the above analysis mirrors that provided by the SEC in their BlockFi order.¹¹⁷

8 248. FTX maintains that it does not offer for sale any product that constitutes
9 a “security” under federal or state law. Under federal securities laws as construed by
10 the United States Supreme Court in its decision *SEC v. W.J. Howey Co.*, 328 U.S.
11 293 (1946) and by the SEC, an investment contract is a form of security under United
12 States securities laws when (1) the purchaser makes an investment of money or
13 exchanges another item of value (2) in a common enterprise (3) with the reasonable
14 expectation of profits to be derived from the efforts of others.

15 249. The YBAs were “securities” as defined by the United States securities
16 laws and as interpreted by the Supreme Court, the federal courts, and the SEC. The
17 FTX Group offered variable interest rewards on crypto assets held in the YBAs on
18 the FTX Platform, which rates were determined by the FTX Group in their sole
19 discretion. In order to generate revenue to fund the promised interest, the FTX Group
20 pooled the YBA assets to engage in lending and staking activities from which they
21 derived revenue to pay interest on the YBAs. These activities make the YBAs a
22 “security” under state and federal law.

23 250. On October 14, 2022, Director of Enforcement of the Texas State
24 Securities Board, Joseph Rotunda, filed a declaration in the Chapter 11 bankruptcy

25 ¹¹⁶ *Id.*

26 ¹¹⁷ Press Release, *BlockFi Agrees to Pay \$100 Million in Penalties and Pursue Registration of its*
27 *Crypto Lending Product*, SEC (Feb. 14, 2022), <https://www.sec.gov/news/press-release/2022-26>.

1 proceedings pending in connection with the collapse of the Voyager Digital
2 cryptocurrency exchange, *In re: Voyager Digital Holdings, Inc., et al.*, Case No. 22-
3 10943 (MEW), ECF No. 536 (Bankr. S.D.N.Y. Oct. 14, 2022), in which he
4 explained how the YBAs are in fact “an offering of unregistered securities in the
5 form of yield-bearing accounts to the residents of the United States.” *Id.*, at 6. In his
6 declaration, the pertinent portions of which are reproduced in full for ease of
7 reference, Rotunda explains:

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

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

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

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

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

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

8 FTX US maintains a website at <https://ftx.us> that contains a webpage
9 for smartphone applications for FTX (formerly Blockfolio)¹¹⁸ (the “FTX
10 Trading App”) and FTX US Pro. Users appear able to click a link in this
11 webpage to download the FTX Trading App even when they reside in the
12 United States.

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

22 I thereafter used the FTX Trading App to initiate the transfer of \$50.00
23 from my bank account to the FTX account and then transferred .1 ETH from
24 a 3.0 wallet to the FTX account. The transfer of funds from my bank account
25 to the FTX account will take up to six days to complete but the transfer of
26 ETH was processed within a few minutes.

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

¹¹⁸ Based upon information and belief, FTX Trading acquired Blockfolio LLC (“Blockfolio”) in or around August 2020. At the time, Blockfolio managed a cryptocurrency application. FTX Trading appears to have thereafter rebranded Blockfolio and its smartphone application as FTX. Now, users can download the FTX Trading App from Apple’s App Store or Google’s Google Play Store. Although FTX rebranded Blockfolio, the application listing in Apple’s App Store still showed the application as developed by Blockfolio.

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

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

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

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

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

27 The article also contained a section titled Is this available in my
28 country? This section explained that “FTX Trading App Earn is
available to FTX Trading App customers that are in one of the FTX
permitted jurisdictions.” It contained a hyperlink to an article titled
Location Restrictions published by FTX Crypto Derivatives Exchange
under help.ftx.com. This article described various restrictions on
operations in certain countries and locations and read in part as follows:

FTX does not onboard or provide services to corporate
accounts of entities located in, established in, or a resident of the
United States of America, Cuba, Crimea and Sevastopol,

1 **Luhansk People’s Republic, Donetsk People’s Republic,**
2 **Iran, Afghanistan, Syria, or North Korea.** FTX also does not
3 onboard corporate accounts located in or a resident of **Antigua**
4 **or Barbuda.** FTX also does not onboard any users from Ontario,
5 and FTX does not permit non-professional investors from Hong
6 Kong purchasing certain products.

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

18 FTX serves all Japanese residents via FTX Japan.

19 (emphasis in original)

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

23 Based upon my earning of yield and an ongoing investigation by the
24 Enforcement Division of the Texas State Securities Board, the yield program
25 appears to be an investment contract, evidence of indebtedness and note, and
26 as such appears to be regulated as a security in Texas as provided by Section
27 4001.068 of the Texas Securities Act. At all times material to the opening of
28 this FTX account, FTX Trading and FTX US have not been registered to offer
 or sell securities in Texas. FTX Trading and FTX US may therefore be
 violating Section 4004.051 of the Texas Securities Act. Moreover, the yield
 program described herein has not been registered or permitted for sale in
 Texas as generally required by Section 4003.001 of the Securities Act, and as
 such FTX Trading and FTX US may be violation Section 4003.001 by
 offering unregistered or unpermitted securities for sale in Texas. Finally, FTX
 Trading and FTX US may not be fully disclosing all known material facts to
 clients prior to opening accounts and earning yield, thereby possibly engaging

1 in fraud and/or making offers containing statements that are materially
2 misleading or otherwise likely to deceive the public. Certain principals of
3 FTX Trading and FTX US may also be violating these statutes and disclosure
4 requirements. Further investigation is necessary to conclude whether FTX
5 Trading, FTX US and others are violating the Securities Act through the acts
6 and practices described in this declaration.

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

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

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

25 Executed on October 14, 2022 in Austin, Texas.

26 /s Joseph Jason Rotunda

27 By: Joseph Jason Rotunda

28 **J. FTX's Offer and Sale of FTT Tokens, Which Are Unregistered Securities.**

29 251. The FTT token that contributed to FTX's demise is also an investment
30 contract per the *Howey* Test. FTT is an exchange token created by FTX that entitles
31 holders to benefits on the FTX exchange. According to crypto news site CoinDesk,
32 "such benefits often include trading fee discounts, rebates and early access to token
33

1 sales held on the platform”¹¹⁹ Exchange tokens can be very profitable for their
2 issuers because the exchanges that issue them tend to keep a significant number of
3 tokens for themselves, which they can pump in price through speeches, social media
4 posts, and other announcements. Economically, exchange tokens are akin to equity,
5 although the holders of exchange tokens have no legal rights or interests in the issuer.
6 As the exchange issuer grows in size and prominence, and trading volume increases
7 on the exchange, the value of the exchange token will likely increase. Thus, the value
8 of FTT increased as the FTX exchange became more well-known and utilized.¹²⁰

9 252. FTT passes the *Howey* Test because the token was controlled by FTX
10 (the company could create or destroy it at will) and because its value was based upon
11 the success of FTX, which was dependent on the “efforts” of others besides the
12 investors. It is also clear that investors bought FTT because they thought it would go
13 up in price; this is the same reason why most, if not all, investors buy any given
14 cryptocurrency. In fact, Binance CEO Changpeng “CZ” Zhao agreed to accept FTT
15 tokens as part of FTX’s buyout of Binance’s equity stake in FTX.¹²¹

16 **K. Using the FTX Platform Necessarily Required Transacting in**
17 **Unregistered Securities.**

18 253. Another avenue through which FTX users may have been exposed to a
19 securities transaction was through the basic structure of the FTX Platform.

20 254. Despite cryptocurrency and blockchain’s foundational premise being
21 the ability to transmit value peer-to-peer using a trustless and decentralized database
22

23 ¹¹⁹ Robert Stevens, *What Is an Exchange Token?*, Coindesk (Nov. 9, 2022, 12:19 PM EST)
<https://www.coindesk.com/learn/what-is-an-exchange-token/>.

24 ¹²⁰ See *FTX Token FTT*, CoinMarketCap, <https://coinmarketcap.com/currencies/ftx-token/> (last
25 accessed Nov. 21, 2023) (showing FTT price history).

26 ¹²¹ Harrison Miller, *Binance Passes on FTX Takeover, Bitcoin Rebounds on CPI Data*, Investor’s
27 Business Daily (Nov. 10, 2022), [https://www.investors.com/news/binance-to-buy-ftx-
international-operations-as-liquidity-crunch-sparks-crypto-selloff/](https://www.investors.com/news/binance-to-buy-ftx-international-operations-as-liquidity-crunch-sparks-crypto-selloff/).

1 that cannot be censured by any third party, cryptocurrency exchanges operate more
2 like traditional banks.

3 255. When you buy Bitcoin through a centralized cryptocurrency exchange,
4 there is no corresponding transaction to the Bitcoin blockchain. Rather, the exchange
5 simply maintains its own database that indicates which cryptocurrencies it owes to
6 its customers. This is similar to how banks operate. Money deposited in a checking
7 account is not actually “ours.” The money becomes the bank’s and we are owed a
8 debt by the bank which is governed by the terms and conditions of the account.

9 256. Cryptocurrency exchanges should then be in custody of enough
10 cryptocurrency on the blockchain to cover what it owes customers. Custody can be
11 done using hot or cold digital wallets (hot wallets are connected to the internet, cold
12 wallets are not), with best practice being for exchanges to hold the majority of
13 cryptocurrency they are holding on behalf of customers in multiple cold wallets. Best
14 practices would also dictate that exchanges hold customer assets in separate wallets
15 from exchange assets, and that each customer’s assets would be held in a distinct
16 wallet.

17 257. According to the first day declaration by John Ray, FTX kept its crypto
18 in a common pool used to fund undisclosed and unreasonably risky investments:

19 The FTX Group did not keep appropriate books and records, or security
20 controls, with respect to its digital assets. Mr. Bankman-Fried and
21 [Alameda co-founder Gary] Wang controlled access to digital assets of
22 the main businesses in the FTX Group (with the exception of LedgerX,
23 regulated by the CFTC, and certain other regulated and/or licensed
24 subsidiaries). Unacceptable management practices included the use of
25 an unsecured group email account as the root user to access confidential
26 private keys and critically sensitive data for the FTX Group companies
27 around the world, the absence of daily reconciliation of positions on the
28 blockchain, the use of software to conceal the misuse of customer
funds, the secret exemption of Alameda from certain aspects of
FTX.com’s auto-liquidation protocol, and the absence of independent
governance as between Alameda (owned 90% by Mr. Bankman-Fried

1 and 10% by Mr. Wang) and the Dotcom Silo (in which third parties had
2 invested).

3 The Debtors have located and secured only a fraction of the digital
4 assets of the FTX Group that they hope to recover in these Chapter 11
5 Cases. The Debtors have secured in new cold wallets approximately
6 \$740 million of cryptocurrency that the Debtors believe is attributable
7 to either the WRS, Alameda and/or Dotcom Silos. The Debtors have
8 not yet been able to determine how much of this cryptocurrency is
9 allocable to each Silo, or even if such an allocation can be determined.
10 These balances exclude cryptocurrency not currently under the
11 Debtors' control as a result of (a) at least \$372 million of unauthorized
12 transfers initiated on the Petition Date, during which time the Debtors
13 immediately began moving cryptocurrency into cold storage to mitigate
14 the risk to the remaining cryptocurrency that was accessible at the time,
15 (b) the dilutive 'minting' of approximately \$300 million in FTT tokens
16 by an unauthorized source after the Petition Date and (c) the failure of
17 the co-founders and potentially others to identify additional wallets
18 believed to contain Debtor assets.¹²²

14 258. In the declaration, Mr. Ray presents several rough balance sheets for
15 the various FTX silos, while noting that he does not have confidence in them, and
16 that "the information therein may not be correct as of the date stated."¹²³ Most telling
17 is a footnote that appears on the balance sheets for the exchange businesses:
18 "Customer custodial fund assets are comprised of fiat customer deposit balances.
19 Balances of customer crypto assets deposited are not presented."¹²⁴ Ray notes that
20 U.S. and overseas exchanges "may have significant liabilities" but that "such
21
22
23

24 ¹²² Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings ¶¶ 65–
25 66, *In re FTX Trading LTD*, No. 22-11068, (Bankr. D. Del. Nov. 17, 2022), ECF No. 24,
<https://pacer-documents.s3.amazonaws.com/33/188450/042020648197.pdf>.

26 ¹²³ *Id.* ¶ 18.

27 ¹²⁴ *Id.* ¶ 19.

1 liabilities are not reflected in the financial statements prepared while these
2 companies were under the control of Mr. Bankman-Fried.”¹²⁵

3 259. To further complicate matters, statements given by Sam Bankman-Fried
4 to the Wall Street Journal (“WSJ”) last year suggest that about half of the balance
5 owed by Alameda to FTX was from wire transfers that customers made to FTX via
6 Alameda in the early days before FTX had a bank account.¹²³ This money was
7 intended to fund customers’ accounts at FTX. Bankman-Fried claims some
8 customers continued to use that route after FTX had a bank account and that “[o]ver
9 time, FTX customers deposited more than \$5 billion in those Alameda
10 accounts”¹²⁶ The WSJ acknowledged that these funds “could have been
11 recorded in two places—both as FTX customer funds and as part of Alameda’s
12 trading positions”—and that “[s]uch double-counting would have created a huge
13 hole in FTX’s and Alameda’s balance sheets, with assets that weren’t really
14 there.”¹²⁷

15 260. The relationship between FTX and Alameda was critical to the
16 exchange’s eventual collapse. After suffering large losses in the wake of several high
17 profile crypto-firm failures in the spring and summer of 2022 (Alameda most likely
18 was exposed to crypto hedge fund Three Arrows Capital), FTX.com lent out some
19 of its customer assets that it did control to Alameda.¹²⁸ Presumably, the exchange
20 benefitted from the interest paid by Alameda for the loaned crypto asset—although
21
22

23 ¹²⁵ *Id.* ¶ 38.

24 ¹²⁶ *Id.*

25 ¹²⁷ *Id.*

26 ¹²⁸ Molly White, *The FTX Collapse: The Latest Revelations (Part Three): The FTX Files* (Nov.
27 18, 2022), <https://newsletter.mollywhite.net/p/the-ftx-collapse-the-latest-revelations>.

1 some have suggested that the loans were made for free.¹²⁹ Alameda could then use
2 the customer assets as cheap collateral for margined trades with other parties
3 (obtaining collateral from other sources would have been much more expensive).¹³⁰

4 261. It appears that Alameda did post collateral to secure the loans of
5 customer crypto assets that it received, but that collateral took the form of FTT
6 tokens. FTT tokens were the so-called “native token” of the FTX exchange: FTX
7 created FTT and issued it to both institutional and retail investors without registering
8 with any regulator or undergoing any audit or other external due diligence. FTX
9 could create unlimited amounts of FTT if it wished.

10 262. In short, there appear to have been two sets of leveraged transactions
11 involved. First, Alameda borrowed assets from FTX’s customers, providing FTT
12 tokens as collateral for those loans. Second, Alameda engaged in margin trading,
13 essentially borrowing money to execute risky trading strategies: these trades were
14 secured by the assets Alameda had borrowed from FTX customers’ accounts.
15 Leverage makes trades potentially more lucrative, but also makes them more
16 vulnerable to adverse market movements. In an Alameda balance sheet linked to
17 CoinDesk in early November, Alameda’s largest asset holdings were listed as being
18 FTT tokens. (It is possible that it received these in a kind of bailout from FTX.)
19 Other assets listed on that balance sheet included SOL tokens (issued by the Solana
20 blockchain, in which Sam Bankman-Fried was an early investor) and SRM tokens
21
22

23 ¹²⁹ Paige Tortorelli & Kate Rooney, *Sam Bankman-Fried’s Alameda Quietly Used FTX Customer*
24 *Funds for Trading, Say Sources*, CNBC, [https://www.cnbc.com/2022/11/13/sam-bankman-frieds-](https://www.cnbc.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html)
25 [alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html](https://www.cnbc.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html) (Nov. 14,
2022, 8:08 AM EST).

26 ¹³⁰ For a more general discussion of the conflicts of interest inherent in these relationships, see
27 Frances Coppola, *The FTX-Alameda Nexus*, Coppola Comment (Nov. 10, 2022),
<https://www.coppolacomment.com/2022/11/the-ftx-alameda-nexus.html>.

1 (issued by the Serum exchange that Sam Bankman-Fried co-founded).¹³¹ Alameda
2 had few assets that hadn't been created out of thin air by FTX or FTX-related
3 entities.

4 **L. FTX Aggressively and Deceptively Marketed its Platform**

5 263. The concerns about the crypto industry as a hotbed for fraud, as
6 discussed above, are one reason why crypto firms like FTX turn to celebrity
7 endorsers. The FTX advertising campaign is particularly pernicious because it
8 implicitly acknowledges cryptocurrency's problems while holding FTX out as the
9 "safe" place to invest in cryptocurrency. These statements were untrue, as FTX
10 turned out to be a house of cards that misappropriated customer assets.

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

14 265. FTX's brand ambassadors and ad campaigns that utilized those brand
15 ambassadors had a critical role in portraying FTX as being 'safe' and 'compliant.'
16 For example:

17 In Stephen Curry's FTX commercial, FTX's alleged safety is
18 quite blatantly stated when he claims,

19 *"With FTX, I have everything I need to buy, sell, and trade crypto*
20 *safely"*

21 Kevin O'Leary, another FTX brand ambassador, stated,

22 *"To find crypto investment opportunities that met my own*
23 *rigorous standards of compliance, I entered into this relationship*
24 *with FTX. It has some of the best crypto exchange offerings I've*
seen on the market. FTX leverages best-in-class tech to provide

25 ¹³¹ Ian Allison, *Divisions in Sam Bankman-Fried's Crypto Empire Blur on His Trading Titan*
26 *Alameda's Balance Sheet*, CoinDesk, [https://www.coindesk.com/business/2022/11/02/divisions-](https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/)
27 [in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/](https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/) (Aug.
16, 2023, 5:56 PM EDT).

1 *a quality trading experience with low fees for both professional*
2 *and retail investors alike, while at the same time providing the*
3 *reporting platform that serves both internal and regulatory*
4 *compliance requirements”*

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

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

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

19 *“I obviously know all the institutional investors in this deal. We*
20 *all look like idiots. Let's put that on the table. We relied on each*
21 *other's due diligence, but we also relied on another investment*
22 *theme that I felt drove a lot of interest in FTX[:] Sam Bankman-*
23 *Fried is an American. His parents are American compliance*
24 *lawyers. There were no other [large] American exchanges to*
25 *invest in if you wanted to invest in crypto as an infrastructure*
26 *play.”¹³²*

27 Mr. O'Leary is also a strategic investor in Canada's largest
28 cryptocurrency exchange, 'WonderFi.' The name is derived from
Mr. O'Leary's nickname, 'Mr. Wonderful.' Mr. O'Leary's
involvement in WonderFi could naturally lead one to believe that he
knew how to perform adequate due diligence on exchanges, and that

26 ¹³² Kevin O'Leary Says FTX Collapse Makes Him and Other Investors in the Crypto Exchange
27 'Look Like Idiots', Daily Hodl (Dec. 9, 2022), <https://dailyhodl.com/2022/12/09/kevin-oleary-says-ftx-collapse-makes-him-and-other-investors-in-the-crypto-exchange-look-like-idiots/>.

1 he would do so on FTX before investing and acting as a brand
2 ambassador.

3 266. Based upon the information that has been released by FTX's new CEO
4 John Ray as part of the company's bankruptcy filings, it is clear that anyone who
5 bothered to spend 20 minutes reviewing FTX's operations pre-collapse would have
6 identified significant red flags. In his first day pleading in support of FTX's chapter
7 11 petitions, Mr. Ray noted:

8 Never in my career have I seen such a complete failure of corporate
9 controls and such a complete absence of trustworthy financial
10 information as occurred here. From compromised systems integrity and
11 faulty regulatory oversight abroad, to the concentration of control in the
12 hands of a very small group of inexperienced, unsophisticated and
13 potentially compromised individuals, this situation is unprecedented.¹³³

14 267. Mr. Ray's pleading contains a number of troubling findings, among
15 them, (1) FTX did not have centralized control of its cash; (2) FTX had no dedicated
16 human resources department, which has hindered Mr. Ray's team from preparing a
17 complete list of who worked for the FTX Group; (3) there was a lack of disbursement
18 controls that resulted in employees submitting payment requests via on-line chat and
19 these requests being approved by managers responding with personalized emojis;
20 (4) corporate funds were used to purchase homes and personal items for employees,
21 and; (5) there was a lack of books and records and an absence of lasting records of
22 decision-making.

23 268. It is hard to imagine that anyone who did business with FTX, including
24 paid endorsers, would not have personally witnessed one or more of the deficiencies
25 identified by Mr. Ray. All FTX endorsers have extensive business dealings beyond
26

27 ¹³³ Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings ¶¶ 5,
28 In re FTX Trading LTD, No. 22-11068, (Bankr. D. Del. Nov. 17, 2022), ECF No. 24, <https://pacercdocuments.s3.amazonaws.com/33/188450/042020648197.pdf>.

1 FTX and surely would be able to identify business practices that are unusually
2 problematic.

3 269. Furthermore, many customers were not opting to use FTX because of
4 who their investors were. Instead, many customers relied on the testimonials of paid
5 celebrity endorsers and these celebrities knew why they were being compensated.
6 Indeed, the whole point behind paying celebrities to endorse a product is to increase
7 sales.

8 270. Thus, celebrated sports and entertainment franchises like Riot Games
9 and the LCS have a moral and legal obligation to know that what they are promoting
10 is unlikely to cause physical or financial damage to customers.

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

16 272. In March 2021, FTX became the first company in the crypto industry
17 to name an arena. This helped lend credibility and recognition to the FTX brand and
18 gave the massive fanbase of basketball exposure to the FTX Platform.

19 273. FTX's explanation for using stars like Tom Brady and Gisele Bündchen
20 and sports and entertainment franchises like Riot Games and the LCS was no secret.
21 "We're the newcomers to the scene," said then-FTX.US President Brett Harrison,
22 referring to the crypto services landscape in the U.S. "The company needs to
23 familiarize consumers with its technology, customer service and offerings, while
24 competing with incumbents like Coinbase Global Inc. or Kraken We know that
25
26
27
28

1 we had to embark on some kind of mass branding, advertising, sponsorship type
2 work in order to be able to do that”¹³⁴

3 274. In other words, the FTX Group needed celebrities and well known
4 sports and entertainment franchises like Riot Games and the LCS to continue
5 funneling investors into the FTX Ponzi scheme and to promote and substantially
6 assist in the sale of unregistered securities, including the YBAs. Below are
7 representative statements and advertisements Riot Games and the LCS made to drive
8 the offers and/or sales of the YBAs, which Plaintiff and Class Members will
9 supplement as the case progresses and discovery unfolds.

10 275. The promotions should not be viewed in isolation, but rather as a part
11 of a wide-ranging conspiracy to promote and sell unregistered securities, including
12 by all of the defendants in the FTX MDL, and to aid and abet the FTX Group’s fraud
13 and conversion perpetrated on Plaintiffs and the Classes.

14 **M. Riot Games and LCS’s Roles in the Fraud**

15 276. Like each group of defendants in the FTX MDL, Riot Games and the
16 LCS contributed both to the perpetration of the fraud and to the sale of unregistered
17 securities in a vital way.

18 277. Riot Games is a video game developer and publisher with several global
19 juggernaut video game titles including League of Legends, a multiplayer online
20 battle arena video game and one of the most-played PC games in the world. League
21 of Legends has over 150 million monthly players. Riot Games and its affiliates,
22 including the LCS, host live event competitions for League of Legends esports,
23
24

25 ¹³⁴ Megan Graham, *Tom Brady and Gisele Bündchen to Star in \$20 Million Campaign for Crypto*
26 *Exchange*, Wall St. J. (Sept. 8, 2021, 12:00 PM ET), [https://www.wsj.com/articles/tom-brady-and-](https://www.wsj.com/articles/tom-brady-and-gisele-bundchen-to-star-in-20-million-campaign-for-crypto-exchange-11631116800?mod=article_inline)
27 [gisele-bundchen-to-star-in-20-million-campaign-for-crypto-exchange-](https://www.wsj.com/articles/tom-brady-and-gisele-bundchen-to-star-in-20-million-campaign-for-crypto-exchange-11631116800?mod=article_inline)
28 [11631116800?mod=article_inline](https://www.wsj.com/articles/tom-brady-and-gisele-bundchen-to-star-in-20-million-campaign-for-crypto-exchange-11631116800?mod=article_inline).

1 which is the third most watched professional sport in the world among the
2 demographic of 18- 34 year old males, behind only the NFL and NBA.

3 278. The LCS is the top professional esports league for League of Legends
4 in the United States and Canada. It is one of eight tier one professional competitive
5 leagues run by Riot Games. The LCS has eight franchise teams. Each annual season
6 of competition is divided into two splits, spring and summer, which conclude with a
7 double-elimination tournament between the top teams. The top teams from the LCS
8 qualify for the annual League of Legends World Championship. Except for some
9 touring events, all games of the LCS are played live at the Riot Games Arena in Los
10 Angeles, California. The live streams of these matches are watched by hundreds of
11 thousands of fans mostly across North America but also the world.

12 **a) Riot Games and the LCS Partnered with FTX to Promote Its**
13 **Platform.**

14 279. In announcing the long-term partnership between the LCS and FTX on
15 August 3, 2021, Riot Games stated on its website:

16 We're proud to announce that FTX is the Official Cryptocurrency
17 Exchange of the LCS. Our seven-year partnership with FTX represents
18 the largest sponsorship agreement Riot has ever signed for an esports
19 league. Starting this weekend, fans will notice FTX branding on the
20 LCS broadcast around the most valuable currency in League of
21 Legends: Gold. Player net worth, total team gold and those rollercoaster
22 gold graphs will all be presented by FTX. Additionally, FTX will
23 directly sponsor the LCS Most Improved Player Award, to be voted on
24 by a cross-section of Rioters, media and team representatives. At the
25 forefront of every LCS partnership, we consider the sentiment and
26 interests of our fans. This data strongly informs our decision-making
27 process, helping us hone in on partners who are relevant to our audience
28 and can elevate the LCS for years to come. Those metrics pointed to a
direct interest in the crypto category, where FTX stands out as an

1 innovative, thoughtful leader in a space our fans understand. Together,
2 we've only just begun to press our advantage.¹³⁵

3 280. In a coordinated social media post, the LCS also announced the
4 partnership:¹³⁶



25 ¹³⁵ LoLesports Staff, *LCS Creates a Gold Advantage with FTX* (August 3, 2021),
26 <https://lolesports.com/article/lcs-creates-a-gold-advantage-with-ftx/blt54c2964ee439f1a7>

27 ¹³⁶ LCS (@LCSOfficial), Twitter (August 3, 2021),
28 <https://twitter.com/LCSOfficial/status/1422600767047802884>

1 281. In exchange for those services, Riot Games and the LCS received
2 substantial compensation. The deal was worth over \$25 million in the first two years
3 and tens of millions more through its completion in 2028. *See* FTX Bankruptcy, D.E.
4 243 at 3, 20. FTX paid out around \$10,250,000 in 2021/2022. *Id.* at 3. Riot Games
5 and the LCS did not disclose the form or number of payments received under their
6 agreement(s) to the public when promoting FTX.

7 282. The connection between FTX and Riot Games did not begin with this
8 agreement. Prior to, and throughout the agreement period, Riot Games' image and
9 reputation to its customer base was inextricably linked to FTX through its then-CEO,
10 SBF. SBF is famous for his affinity for League of Legends. By his own admission,
11 SBF is "(in)famous" among investors for playing League of Legends during
12 meetings and phone calls.¹³⁷ He acknowledged on Twitter that he played "a lot more
13 [League of Legends] than you'd expect from someone who routinely trades off sleep
14 vs work."¹³⁸ This preexisting connection to a, then, respected and admired
15 entrepreneur likely paved the way for this official partnership.

16 283. Running parallel to SBF's personal interest in League of Legends, FTX
17 also entered into other public business ventures with entities participating in the Riot
18 esports ecosystem. In June 2021, shortly before entering into the Agreement, FTX
19 acquired the naming rights for an esports team then participating in the LCS, TSM.
20 TSM first began as a League of Legends website and playing guide resource in 2009
21
22

23 ¹³⁷ Britney Nguyen, *Sam Bankman-Fried was once caught playing the video game 'League of*
24 *Legends' during a pitch meeting for FTX* (November 10, 2022) [https://www.businessinsider.com/ftx-sam-bankman-fried-league-of-legends-investor-pitch-](https://www.businessinsider.com/ftx-sam-bankman-fried-league-of-legends-investor-pitch-meeting-2022-11)
25 [meeting-2022-11](https://www.businessinsider.com/ftx-sam-bankman-fried-league-of-legends-investor-pitch-meeting-2022-11); Matthew Gault, *Is Sam Bankman-Fried Playing 'League of Legends' While*
26 *FTX Burns?* (November 16, 2022) [https://www.vice.com/en/article/pkgwxn/is-sam-bankman-](https://www.vice.com/en/article/pkgwxn/is-sam-bankman-fried-playing-league-of-legends-while-ftx-burns)
[fried-playing-league-of-legends-while-ftx-burns](https://www.vice.com/en/article/pkgwxn/is-sam-bankman-fried-playing-league-of-legends-while-ftx-burns)

27 ¹³⁸ Gault, *Is Sam Bankman-Fried Playing 'League of Legends' While FTX Burns?*
28

1 before becoming one of the first teams in the LCS, where TSM had competed for
2 over 10 years.¹³⁹

3 284. Indicative of the favored status FTX placed on this partnership with the
4 LCS, FTX hosted a LCS specific portion of the FTX website to promote the
5 partnership, which has been taken down since the bankruptcy.¹⁴⁰

6 285. On the FTX website, FTX declared:

7 FTX is proud to be the official cryptocurrency exchange partner of the
8 League Championship Series. “Built by traders, for traders” is our
9 official tagline, but “Built by gamers, for gamers” fits just as well. As
10 passionate fans of esports and the LCS, we love being in the middle of
11 the action. That’s why we created a partnership designed to enhance the
playing experience for gamers everywhere.

12 286. Throughout the course of its partnership with FTX, Riot Games and the
13 LCS and associated individuals provided services in accordance with their
14 agreements and their own financial interests. For example, they posted on social
15 media and appeared in images and videos used to promote FTX. Representative
16 examples of their promotions of FTX are below. Due to the sheer amount of even
17 publicly available material, only a small subset is provided; further examples may
18 be found via the links and instructions in the following footnote.¹⁴¹

19 _____
20 ¹³⁹ Sebastian Sinclair, *FTX strikes 7-year Deal With ‘League of Legends’ Riot Games* (Aug. 3,
21 2021) <https://www.coindesk.com/markets/2021/08/04/ftx-strikes-7-year-deal-with-league-of-legends-riot-games/>

22 ¹⁴⁰ Accessible through the Wayback Machine at
23 <https://web.archive.org/web/20220823001624/https://ftx.us/lcs/> and
<https://web.archive.org/web/20221109182005/https://ftx.us/lcs/>; images collected by the
Wayback Machine on August 23, 2022 and November 9, 2022, respectively.

24 ¹⁴¹ For official LCS tweets, go to X, <https://twitter.com/explore> on a web browser, input the
25 following in the search bar at the top, and then search by “latest” just under the search bar:
26 (from:LCSOfficial) (@FTX_Official OR FTX). For official FTX tweets, use the following
27 search terms: (@LCSOfficial OR LCS OR "League of Legends" OR "Riot Games"
(from:FTX_Official). As far as counsel has been able to ascertain, the LCS posted content
similar to their tweets across their social media channels.

1 287. As laid out in the sponsorship agreement filed in FTX’s bankruptcy
 2 proceedings,¹⁴² the Agreement had several broadcasting elements:

- 3 (4) **Summary of Broadcast Integrations.** Unless otherwise mutually agreed upon and subject to the terms herein, the
 4 following summary of broadcast integrations shall be included:

| <u>Key Broadcast Feature</u> | <u>Sponsored Events</u> | <u>Broadcast Feeds</u> | <u>Length</u> | <u>Frequency</u> |
|---|--|------------------------|--------------------|---|
| FTX Gold Fixed Broadcast Placement | LCS Spring & Summer Split, Playoffs & Finals | English | Entire game | Persistent on screen branding |
| FTX Gold Players Graph | LCS Spring & Summer Split | English | :15 | 1x per game |
| FTX Gold Team Graph | LCS Spring & Summer Split | English | :15 | 1x per game |
| Broadcast Segment: FTX Most Improved Player Segment (working title) | LCS Spring & Summer Split | English | Up to 1 minute | 1x per weekend (starting wk 6) |
| In-Game Rotating Logo Billboard | LCS Spring & Summer Split, Playoffs & Finals | English | Up to 1 minute | Est. 3x per game (total frequency contingent upon gameplay) |
| Advertisement Spot | LCS Spring & Summer Split, Playoffs & Finals | English | :15 to :30 seconds | 1x/weekend |

- 16 (5) The Parties agree that Sponsor will be considered at least a top-four partner in terms of on-screen exposure time
 17 during gameplay (where gameplay is defined as when the game timer starts until game ends, and where partner is defined as a commercial 3rd party, non-broadcast, LCS partner (pro-teams excluded)).

18 288. A key broadcast integration element was the FTX branding of the
 19 teams’ gold meters on live broadcasts. Gold is the in-game currency used in League
 20 of Legends. This branding is a fixed placement viewable throughout the broadcast
 21 while gameplay is on screen. The broadcast would include “FTX’s fixed logo on the
 22 screen throughout the entire game – a step which was unprecedented in League of
 23 Legends globally. At times, the FTX logo was more visible than Riot’s.”¹⁴³

26 ¹⁴² FTX Bankruptcy, Decl. of Vyte Danileviciute, D.E. 245, Ex. A.

27 ¹⁴³ See FTX Bankruptcy, D.E. 243, at 8.

1 289. As shown here from a screenshot of the live broadcast of the 2022
2 Finals of the LCS Summer Split:¹⁴⁴



15
16 290. In addition to those broadcasting integrations, the Agreement also
17 allowed for the creation of an FTX Most Improved Player Award and Trophy, LCS
18 run FTX sponsored community tournaments, quarterly executive partnership
19 meetings between LCS and FTX, and at least six social media posts by both LCS
20 and FTX.

21 291. Throughout the course of the LCS's partnership with FTX, LCS made
22 numerous posts across platforms promoting FTX by showcasing its logo in
23 connection with LCS events and gameplay, often while tagging FTX.

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¹⁴⁴ YouTube, LoL Esports VODs and Highlights, C9 vs 100 | Finals | LCS Summer Split | Cloud9 vs 100 Thieves | Game 1 (2022) (September 11, 2022), <https://www.youtube.com/watch?v=7CMV-4JXmEs&list=PLcypEVobSi9eIT3f6akNeKmq4a4QFTuxP&index=3>

1 292. In addition to LCS’s own posts that specifically set out to promote FTX,
2 these logo placements would have been visible to those viewing LCS games,
3 tournaments, streams, and content.

4 293. These promotions via logo placement and tagging implicitly promoted
5 FTX (and by extension FTT and YBAs) as a mainstream, trustworthy brand and
6 product.

7 294. For example, LCS posted repeatedly about the FTX branded Most
8 Improved Player Award:¹⁴⁵



25 ¹⁴⁵ LCS (@LCSOfficial), Twitter (August 17, 2021),
26 <https://twitter.com/LCSOfficial/status/1427706804583161862>; LCS (@LCSOfficial), Twitter
27 (April 24, 2022), <https://twitter.com/LCSOfficial/status/1518298967003615232>; LCS
28 (@LCSOfficial), Twitter (August 31, 2022),
<https://twitter.com/LCSOfficial/status/1565051803867254784>



Last year, @Fudgecakey won the 2021 @FTX_Official Most Improved Player Award!

Who is your frontrunner for 2022 so far? #LCS



2:40 PM · Apr 24, 2022



Congratulations to @Contractz on winning the 2022 #LCS @FTX_Official Most Improved Player Award! #CLGWIN

Learn more at: lolesports.com/article/2022-l...



3:00 PM · Aug 31, 2022



1 295. Similarly, LCS made FTX branded posts about the “FTX Average Gold
2 Difference” including on August 28, 2021:¹⁴⁶



22 296. Numerous examples of the persistent use of the FTX logo can be seen
23 on all of the social media feeds described above, in addition to outside sources.

24 297. In turn, FTX, in addition to promoting joint products, regularly cheered
25 on and congratulated the LCS and its associated teams, creating a rapport and veneer

26 ¹⁴⁶ LCS (@LCSoOfficial), Twitter (August 28, 2021),
27 <https://twitter.com/LCSoOfficial/status/1431677963276193799>

1 of trustworthiness with LCS fans by making it seem as if FTX shared LCS's fans'
2 values. This ploy would not have been as effective were it not for Riot Games and
3 LCS's parallel promotions of FTX. These return promotions by FTX also directly
4 benefited Riot Games and the LCS by leading FTX's own followers to their content,
5 streams, and events.¹⁴⁷



26 ¹⁴⁷ FTX (@FTX_Official), Twitter (September 16, 2022)
27 https://twitter.com/FTX_Official/status/1570856564483039232

1 298. FTX further bolstered its reputation with LCS fans by partnering with
2 Riot Games and the LCS to periodically conduct giveaways.

3 299. For example, by voting for the FTX Most Improved Player Award, you
4 also entered into a chance to win a replica of the trophy brought to you by FTX. The
5 voting took place and the giveaways rules were housed on the FTX website which
6 the LCS twitter helpfully linked its fans to.¹⁴⁸



26 ¹⁴⁸ LCS (@LCSOfficial), Twitter (August 22, 2022),
27 <https://twitter.com/LCSOfficial/status/1561775208507158528>

1 300. In other examples, FTX offered cash prizes, limited edition gear, and
2 free trips to LCS events.¹⁴⁹



26 ¹⁴⁹ FTX (@FTX_Official), Twitter (April 18, 2022)
27 https://twitter.com/FTX_Official/status/1516118187997335556; FTX (@FTX_Official), Twitter
28 (September 9, 2022), https://twitter.com/FTX_Official/status/1568320838776115200



22 301. This partnership and advertising must be viewed as part of the larger
23 FTX campaign to legitimize itself to the public. For example, in coordination with
24 Tom Brady’s promotion of FTX, the LCS posted¹⁵⁰:

25
26
27 ¹⁵⁰ LCS (@LCSOfficial), Twitter (September 8, 2021),
<https://twitter.com/LCSOfficial/status/1435635600061710336>



302. The “We’re IN” in this promotion marks it as part of FTX’s “You In?” campaign, wherein FTX recruited a variety of sports and entertainment figures to promote FTX by stating or implying that said figures were “in on,” i.e., investing in FTX, and so viewers should be too.

303. Based on the strong affinity SBF has for League of Legends, he promoted FTX’s partnership with the LCS and TSM including on August 15, 2021.¹⁵¹

¹⁵¹ SBF (@SBF_FTX), Twitter August 15, 2021, https://twitter.com/SBF_FTX/status/1427046342795296772



304. On November 11, 2022, FTX declared bankruptcy. On December 16, 2022, LCS filed a motion seeking to have the bankruptcy court terminate its contract with FTX. *In re FTX Trading LTD., et al.*, D. Del. Bankr. Case No. 22-11068 (“FTX Bankruptcy”), at D.E. 243. The court granted the request and the partnership agreement was cancelled effective December 30, 2022.

305. In LCS’s filings in the FTX bankruptcy proceedings, LCS indicated that the ongoing partnership with FTX had caused significant damage to LCS, stating: “Since the public unraveling of FTX, [the LCS] has faced significant non-

1 monetary and monetary damage as a result of its ongoing association with FTX.”
2 FTX Bankruptcy, D.E. 243 at 9. LCS also pointed out the clear reputational harm
3 resulting from this affiliation:

4 The interplay between FTX’s actions and Riot’s business interest
5 was on full public display to Riot’s customers and gamers.
6 Images of Mr. Bankman-Fried playing League of Legends were
7 displayed alongside text describing his cavalier attitude towards
8 investor meetings and irresponsibility with corporate funds.
9 These images created a public narrative that Mr. Bankman-
Fried’s interest in League of Legends, once relatable and human,
was now reckless and juvenile.

10 *Id.* at 16.

11 306. While the affiliate Riot Games and LCS websites and social media
12 feeds still contain many FTX promotions, Plaintiffs are uncertain whether
13 individuals related to Riot Games, the LCS, or FTX may have deleted relevant
14 information, as other celebrity promoters of FTX have done. As a result, discovery
15 is likely to uncover many additional, actionable statements.

16 307. Furthermore, certain FTX resources, like its podcast database, are no
17 longer publicly accessible. These may reveal further actionable statements once
18 obtained.

19 308. The overarching objective of the partnership was for Riot Games and
20 the LCS through a series of promotions and media campaigns, to help FTX
21 successfully solicit or attempt to solicit investors in FTX’s crypto-related securities
22 from California, Florida, and nationwide.

23 309. As Riot Games and the LCS expected and understood when entering
24 their partnerships with FTX, their promotions would be widely viewed across the
25 world, but particularly in the U.S. and in Florida, where FTX had its domestic home
26 office.

1 **b) Riot Games and the LCS Had Financial Incentives to Induce**
2 **Class Members to Invest in FTX and to Trust the Platform.**

3 310. Riot Games, the LCS, and FTX had a symbiotic relationship. As
4 discussed above, they relied on each other's branding to increase legitimacy for
5 themselves. Before his fall from grace, SBF was a great spokesman for the idea that
6 Riot Games has sold of "video games and success as compatible." Affiliation with
7 FTX and SBF served this narrative as SBF achieved mainstream success while
8 remaining a devotee of League of Legends. There was also a significant overlap
9 between the consumer bases for the LCS as an esports league and FTX: mainly young
10 men. The partnership between LCS and FTX took advantage of the logical
11 connection between the LCS and FTX brands.

12 311. Riot Games and the LCS had every incentive to be effective promoters
13 of FTX in order to continue the sponsorship relationship and continue receiving
14 payment for their services. Given the huge expenses associated with running an
15 esports league, the standing of teams and players is highly dependent on not only
16 skill, but their ability to attract and keep paying sponsors.

17 312. FTX's sponsorship was especially valuable for the LCS because the
18 promotions went both ways, with each promoting the other and funneling their fans
19 to each other. As the agreement outlined, part of the deal required "Social Media
20 Amplification", in other words: "The Parties will collaborate to create a social and
21 digital plan that can be jointly promoted throughout the Term (e.g. amplifying
22 Sponsor's broadcast integrations on Riot and Sponsor official social channels)."¹⁵²

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27 ¹⁵² FTX Bankruptcy, Decl. of Vyte Danileviciute, D.E. 245, Ex. A, at 12.

1 **c) The Promotions Were Deceptive and Unlawful.**

2 313. Riot Games and the LCS’s promotions solicited or assisted FTX in
3 soliciting investments in unregistered securities by encouraging viewers to invest in
4 FTX, FTT, and/or YBAs.

5 314. Riot Games and the LCS did not disclose the form or amount of their
6 compensation by FTX for promoting the sale of FTX securities.

7 315. Riot Games and the LCS and its agents made deceptive statements
8 and/or allowed their name and likeness to be used in connection with FTX’s
9 deceptive statements in promotions of FTX and its products, as detailed above.
10 These promotions, along with the entire “You In?” campaign, conveyed the
11 messages that everyone—regardless of socioeconomic status—would benefit from
12 using FTX and that FTX was a safe place to invest and store assets.

13 **d) Riot Games and the LCS Knew or Should Have Known They**
14 **Were Soliciting or Assisting FTX to Solicit Investments in**
15 **Unregistered Securities and/or that They Were Aiding and**
16 **Abetting FTX Group’s Fraud and/or Conversion.**

17 316. Given Riot Games and the LCS’s substantial investment and
18 sponsorship experience and vast resources to obtain outside advisors, they knew or
19 should have known of potential concerns about FTX selling unregistered crypto
20 securities and/or that they were aiding and abetting FTX Group’s fraud and/or
21 conversion, especially to millions of their followers. This is especially true in light
22 of the rampant mismanagement and myriad red flags that the FTX Group’s regular
23 business practices set off.

24 317. Other organizations and individuals, with presumably more to gain, did
25 find red flags at FTX and turned down FTX and/or Sam Bankman-Fried’s money.
26 The nonprofits Our World Data and MITRE declined offered gifts of \$7.5 million
27 and \$485,000, respectively, from the FTX Future Fund due to undisclosed red
28

1 flags.¹⁵³ In addition, CME Group CEO Terry Duffy allegedly told SBF that he was
2 “an absolute fraud” upon having an initial conversation with him.¹⁵⁴

3 318. In fact, the LCS knew of the regulatory and other thorny questions
4 surrounding cryptocurrency exchanges and had internal controls limiting such
5 advertisements. When FTX partnered with the LCS team TSM, the LCS limited how
6 TSM could display the sponsorship, finding that naming or jersey sponsorships with
7 FTX in Riot Games’ events would be in violation of the developer’s guidelines
8 around partnerships with cryptocurrency exchanges.¹⁵⁵ Conveniently, none of these
9 concerns limited the LCS from taking on FTX as a massive sponsor.

10 319. The issues with cryptocurrencies in general were made specifically
11 worse here where Riot Games and the LCS partnered with a crypto exchange that,
12 as admitted by its own website, cannot work with clients in the US. This offer should
13 have raised significant concerns since the LCS is a league encompassing only US
14 and Canadian teams.

15 **e) The Promotions Were Directed at Plaintiffs in Florida, and**
16 **Customers Nationwide.**

17 320. The LCS promotions were published on public social media accounts
18 and their affiliated websites and appeared on streams broadcasts, among other
19 places. They were accessible to plaintiffs nationwide, including in Florida.

20 _____
21 ¹⁵³ Laura Davison & Sophie Alexander, *Sam Bankman-Fried’s Red Flags Were Seen in All*
22 *Corners of His Empire*, Moneyweb (Dec. 1, 2022, 6:39 AM),
<https://www.moneyweb.co.za/moneyweb-crypto/sam-bankman-frieds-red-flags-were-seen-in-all-corners-of-his-empire/>.

23 ¹⁵⁴ Stephanie Landsman, *CME Group CEO Calls Bankman-Fried ‘an Absolute Fraud,’ Says He*
24 *Saw Trouble Months Before FTX collapse*, CNBC (Nov. 22, 2022, 8:57 PM EST)
25 <https://www.cnbc.com/2022/11/23/absolute-fraud-cmes-terry-duffy-says-he-saw-trouble-before-ftx-collapse-.html>.

26 ¹⁵⁵ Jacob Wolf, *TSM barred from using new FTX sponsor in name, jerseys on League of*
27 *Legends, VALORANT broadcasts* (June 4, 2021), <https://dotesports.com/news/tsm-barred-from-using-new-ftx-sponsor-in-name-jerseys-on-league-of-legends-valorant-broadcasts>

1 **N. Material Ties to Florida**

2 321. According to the Declaration of Dan Friedberg, attached as Exhibit A,
3 FTX maintained an office in Miami, Florida, since early 2021, long before FTX
4 eventually announced the move of its Domestic headquarters to Brickell in late 2022.
5 *Id.* ¶ 20. Since early 2021, FTX’s Miami office was run by Mr. Avinash Dabir,
6 FTX’s Vice President of Business Development. *Id.* Friedberg met with Mr. Dabir
7 often and is very familiar with Mr. Dabir and his activities. *Id.*

8 322. Mr. Dabir, from the Miami office, focused on formulating and
9 executing FTX’s important celebrity partnerships. *Id.* ¶ 21. Mr. Dabir was the senior
10 FTX executive responsible for creating, consummating, and implementing deals
11 between FTX and other Partners, such as Major League Baseball, the MLB Umpire’s
12 Association, TSM, the Mercedes Formula 1 team, Tom Brady, Stephen Curry, the
13 Golden State Warriors, Naomi Osaka, Larry David, and Shohei Ohtani. *Id.* ¶ 23.

14 323. It was Mr. Dabir’s idea to expend significant resources on FTX’s sports
15 and celebrity-based partnerships. *Id.* ¶ 22. Mr. Dabir specifically started by
16 suggesting FTX form a Partnership with the Miami Heat and acquire the naming
17 rights to the Miami Arena. *Id.* FTX announced the Partnership in March 2021, which
18 included FTX purchasing the naming rights of the Miami Heat stadium for 19 years
19 in a deal worth approximately \$135 million. *Id.*

20 324. Mr. Dabir deserves much of the credit for the collaboration with Mr.
21 David that resulted in the award-winning Super Bowl FTX commercial that aired
22 with the Super Bowl in 2022. *Id.* ¶ 24. Crucially, all FTX employees or agents who
23 were involved in the Larry David Super Bowl commercial ultimately reported to Avi
24 Dabir, who had final approval of all aspects of the commercial from his base of
25 operations in Miami.

26 325. Released on March 31, 2022, Mr. Dabir appeared on the popular
27 cryptocurrency podcast The Joe Pomp Show, where he was interviewed by Mr.

1 Pompliano for over half an hour on specifically the efforts he undertook and oversaw
2 from his FTX base of operations in Miami, Florida, to create, consummate, and
3 implement, among other things, the FTX arena deal and the Larry David Superbowl
4 commercial. A transcript of the podcast is attached as Exhibit B.

5 326. Mr. Dabir begins by introducing himself as “Vice President of Business
6 Development at FTX, so I handle a lot of our sports partnerships as well as doing
7 some of the interesting things in real estate as well.” Ex. B at 2. He then explains
8 that “the end goal” is really how does FTX “acquire more users.” *Id.*, at 9. After first
9 acknowledging and agreeing with Mr. Pompliano that FTX was at that point the
10 “leaders” in the sports partnership category and that “it started with Miami Heat
11 Arena,” Mr. Dabir explained that he led the effort to obtain the FTX Arena deal
12 because he “had previously worked at the NBA” and that he identified Miami
13 because it had “a great market,” a “multicultural, great team,” and the “Crypto Buzz
14 was like growing here in Miami.” *Id.* at 2–3.

15 327. Mr. Dabir also explained that it was crucial “to get approval from a
16 local government, plus the Heat and the NBA who had their own diligence teams
17 looking into” the FTX Arena deal because it “really sort of validated not only just
18 FTX but the cryptocurrency industry in general.” *Id.* at 4.

19 328. Mr. Dabir went into detail about his dealings with Tom Brady and
20 Giselle Bündchen and how the individual FTX Brand Ambassador partnership deals
21 worked. *Id.* at 9. Importantly, not only was Mr. Dabir directly involved in negotiating
22 and consummating the individual FTX Brand Ambassador partnership deals from
23 his base in Miami, he also explained that MDL Defendants Brady and Bündchen
24 were instrumental in bringing other FTX Brand Ambassadors into the fold, such as
25 MDL Defendant Curry. *Id.*

1 329. In addition to coordinating the promoter campaigns from Miami,
2 Florida, FTX announced it was moving its official U.S. headquarters from Chicago
3 to Miami in 2022.¹⁵⁶ This move happened before FTX declared bankruptcy.

4 330. The promotional campaigns came from the brain trust of FTX in
5 Miami, but many of the promotions also took place in Florida as a cryptocurrency
6 hub.

7 **CLASS ACTION ALLEGATIONS**

8 331. As detailed below in the individual counts, Plaintiffs bring this lawsuit
9 on behalf of themselves and all others similarly situated, pursuant to Rule 23(a),
10 (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil Procedure.

11 **A. Class Definitions**

12 332. Plaintiffs Vozza, Rupprecht, Winter, and Kavuri seek to represent the
13 following International Classes and Plaintiffs Orr, Cabo, Henderson, Livieratos,
14 Chernyavsky, Podalsky, Shetty, Ezeokoli, Norris, Garrison, and Huang seek to
15 represent the following Classes:

16 **(1) International Class:** All persons or entities residing
17 outside the United States who, within the applicable
18 limitations period, purchased or held legal title to
19 and/or beneficial interest in any fiat or cryptocurrency
20 deposited or invested through an FTX Platform,
21 purchased or enrolled in a YBA, or purchased FTT.

22 **(2) Nationwide Class:** All persons or entities in the United
23 States who, within the applicable limitations period,
24

25 ¹⁵⁶ Cheyenne Ligon, *Crypto Exchange FTX Is Moving Its US Headquarters From Chicago to*
26 *Miami*, Coindesk (May 11, 2023, 2:51 PM EDT),
27 <https://www.coindesk.com/business/2022/09/27/crypto-exchange-ftx-is-moving-its-us-headquarters-from-chicago-to-miami/>.

1 purchased or held legal title to and/or beneficial interest
2 in any fiat or cryptocurrency deposited or invested
3 through an FTX Platform, purchased or enrolled in a
4 YBA, or purchased FTT.

5 **In the Alternative:**

6 **(3) Florida Subclass:** All persons or entities in the State of Florida who,
7 within the applicable limitations period, purchased or held legal title
8 to and/or beneficial interest in any fiat or cryptocurrency deposited
9 or invested through an FTX Platform, purchased or enrolled in a
10 YBA, or purchased FTT.

11 **(4) California Subclass:** All persons or entities in the State of
12 California who, within the applicable limitations period, purchased
13 or held legal title to and/or beneficial interest in any fiat or
14 cryptocurrency deposited or invested through an FTX Platform,
15 purchased or enrolled in a YBA, or purchased FTT.

16 **(5) Oklahoma Subclass:** All persons or entities in the State of
17 Oklahoma who, within the applicable limitations period, purchased
18 or held legal title to and/or beneficial interest in any fiat or
19 cryptocurrency deposited or invested through an FTX Platform,
20 purchased or enrolled in a YBA, or purchased FTT.

21 Excluded from the Classes are Riot Games and the LCS and their officers, directors,
22 affiliates, legal representatives, and employees; the MDL Defendants and their
23 officers, directors, affiliates, legal representatives, and employees; the FTX Group
24 and their officers, directors, affiliates, legal representatives, and employees; any
25 governmental entities, any judge, justice, or judicial officers presiding over this
26 matter and members of their immediate family and judicial staff.

1 333. Plaintiffs reserve the right to modify or amend the definition of the
2 proposed Classes, or to include additional classes or subclasses, before or after the
3 Court determines whether such certification is appropriate as discovery progresses.
4 Plaintiffs seek certification of the Classes in part because all offers of the FTX
5 Platform, YBAs and/or FTT to Plaintiffs and the Class Members (in which Riot
6 Games and the LCS materially assisted, substantially participated, and/or personally
7 participated) were made by FTX from their principal place of business in Miami,
8 Florida, and thus every single offer to sell cryptocurrency, the FTX Platform, YBAs
9 and/or FTT stems from a transactional occurrence that emanated from the State of
10 Florida.

11 **B. Numerosity**

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

20 **C. Commonality/Predominance**

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

24 (a) whether Bankman-Fried, the FTX Insiders, and/or FTX committed
25 fraud;

26 (b) whether Riot Games and the LCS agreed with Bankman-Fried, the FTX
27 Insiders, and/or FTX to commit fraud;

- 1 (c) whether Riot Games and the LCS had the requisite degree of knowledge
2 of Bankman-Fried's, the FTX Insiders', and/or FTX's fraud;
- 3 (d) whether the FTX Platform, YBAs and/or FTT were unregistered
4 securities under federal, Florida, California, or other law;
- 5 (e) whether Riot Games and the LCS's participation and/or actions in
6 FTX's offerings and sales of the FTX Platform, YBAs and/or FTT
7 violated the provisions of applicable securities law;
- 8 (f) the type and measure of damages suffered by Plaintiffs and the Class;
- 9 (g) whether Riot Games and the LCS's practices violate the FDUTPA, the
10 California Unfair Competition Law, or other state consumer-protection
11 statutes;
- 12 (h) whether Plaintiffs and Class members have sustained monetary loss and
13 the proper measure of that loss;
- 14 (i) whether Plaintiffs and Class members are entitled to injunctive relief;
- 15 (j) whether Plaintiffs and Class members are entitled to declaratory relief;
- 16 and
- 17 (k) whether Plaintiffs and Class members are entitled to consequential
18 damages, punitive damages, statutory damages, disgorgement, and/or
19 other appropriate legal or equitable remedies as a result of Riot Games
20 and the LCS's conduct.

21 **D. Typicality**

22 336. Plaintiffs' claims are typical of the claims of the members of the Classes
23 because all members were injured through the uniform misconduct described above,
24 namely that Plaintiffs and all class members were offered and/or sold FTX's FTX
25 Platform, YBAs and/or FTT because of Riot Games and the LCS's actions and/or
26 participation in the offering and sale of these unregistered securities, that Riot Games
27 and the LCS aided and abetted the fraud and conversion perpetrated by Bankman-

1 Fried, the FTX Insiders, and/or FTX, or that Riot Games and the LCS agreed with
2 Bankman-Fried, the FTX Insiders, and/or FTX to commit fraud. Plaintiffs are
3 advancing the same claims and legal theories on behalf of themselves and all such
4 members. Further, there are no defenses available to Riot Games and the LCS that
5 are unique to Plaintiffs.

6 **E. Adequacy of Representation**

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

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

16 338. The questions of law or fact common to Plaintiffs' and each Class
17 member's claims predominate over any questions of law or fact affecting only
18 individual members of the Classes. All claims by Plaintiffs and the unnamed
19 members of the Classes are based on the common course of conduct by Riot Games
20 and the LCS (1) in marketing, offering, and/or selling the FTX Platform, YBAs
21 and/or FTT, which are unregistered securities, (2) in receiving secret undisclosed
22 compensation for their promotion of the FTX Platform, (3) in aiding and abetting
23 fraud and/or conversion by Bankman-Fried, FTX and the FTX Insiders, and/or (4)
24 in agreeing with Bankman-Fried, the FTX Insiders, and/or FTX to commit fraud.

25 339. The common course of conduct by Riot Games and the LCS includes,
26 but is not limited to their promotion, offer, sale, solicitation, material assistance,
27 substantial participation in, and/or personal participation in the offer or sale of the
28

1 FTX Platform, YBAs, and/or FTT, and/or their aiding and abetting of the FTX
2 Group's Ponzi scheme, fraud, and/or conversion of billions of dollars of customer
3 assets.

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

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

11 **G. Superiority**

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

14 (a) Joinder of all Class members would create extreme hardship and
15 inconvenience for the affected customers as they reside nationwide and
16 throughout the state;

17 (b) Individual claims by Class members are impracticable because the
18 costs to pursue individual claims exceed the value of what any one
19 Class member has at stake. As a result, individual Class members have
20 no interest in prosecuting and controlling separate actions;

21 (c) There are no known individual Class members who are interested in
22 individually controlling the prosecution of separate actions;

23 (d) The interests of justice will be well served by resolving the common
24 disputes of potential Class members in one forum;

25 (e) Individual suits would not be cost effective or economically
26 maintainable as individual actions; and

27 (f) The action is manageable as a class action.

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

2 343. Riot Games and the LCS have acted and refused to act on grounds
3 generally applicable to the Classes by engaging in a common course of conduct of
4 aiding and abetting the offering and/or selling of the FTX Platform, YBAs and/or
5 FTT, which are unregistered securities, and violating state consumer-protection
6 laws, thereby making appropriate final injunctive relief or declaratory relief with
7 respect to the classes as a whole.

8 344. Riot Games and the LCS have acted and refused to act on grounds
9 generally applicable to the Classes by engaging in a common course of conduct of
10 uniformly identical and uniform misrepresentations and/or omissions in receiving
11 secret undisclosed compensation for their promotion of the FTX Platform, thereby
12 making appropriate final injunctive relief or declaratory relief with respect to the
13 classes as a whole.

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

15 345. As it is clear that one of the predominant issues regarding Riot Games
16 and the LCS's liability is whether the FTX Platform, YBAs and/or FTT that FTX
17 offered and/or sold are unregistered securities, utilizing Rule 23(c)(4) to certify the
18 Class for a class wide adjudication on this issue would materially advance the
19 disposition of the litigation as a whole.

20 346. As it is clear that another predominant issue regarding Riot Games and
21 the LCS's liability is whether they have violated the consumer protection and
22 securities laws of Florida in making identical and uniform misrepresentations and
23 omissions regarding the functionality of the FTX Platform, and/or in receiving secret
24 undisclosed compensation for their promotion of the FTX Platform, utilizing Rule
25 23(c)(4) to certify the Classes for a class wide adjudication on this issue would
26 materially advance the disposition of the litigation as a whole.

1 **J. Nature of Notice to the Proposed Class.**

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

6 **CAUSES OF ACTION**

7 **COUNT ONE**

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

11 348. Plaintiffs repeat and re-allege the allegations contained in paragraphs
12 1–347 above, as if fully set forth herein.

13 349. Section 517.07(1), Fla. Stat., provides that it is unlawful and a violation
14 for any person to sell or offer to sell a security within the State of Florida unless the
15 security is exempt under Fla. Stat. § 517.051, is sold in a transaction exempt under
16 Fla. Stat. § 517.061, is a federally covered security, or is registered pursuant to Ch.
17 517, Fla. Stat.

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

23 351. The FTX Platform, YBAs and/or FTT sold and offered for sale to
24 Plaintiffs are each a security pursuant to Fla. Stat. § 517.021(22)(a).

25 352. The FTX Platform, YBAs and/or FTT sold and offered for sale to
26 Plaintiffs were not:

- 27 a. exempt from registration under Fla. Stat. § 517.051;

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

4 146. The FTX Entities sold and offered to sell the unregistered YBAs to
5 Plaintiffs.

6 147. Defendants are agents of the FTX Entities pursuant to Fla. Stat. §
7 517.211.

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

12 **COUNT TWO**

13 **For Violations of the Florida Deceptive and Unfair Trade Practices Act,**
14 **§ 501.201, Florida Statutes, *et seq.***
15 **(Plaintiffs Individually and on behalf of the Classes)**

16 354. Plaintiffs repeat and re-allege the allegations contained in paragraphs
17 1–347 above, as if fully set forth herein.

18 355. This cause of action is brought pursuant to the Florida Deceptive and
19 Unfair Trade Practices Act, Section 501.201, Fla. Stat., *et seq.* (“FDUTPA”). The
20 stated purpose of the FDUTPA is to “protect the consuming public . . . from those
21 who engage in unfair methods of competition, or unconscionable, deceptive, or
22 unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §
23 501.202(2).

24 356. Plaintiffs and Class members are consumers as defined by Florida
25 Statutes Section 501.203. Defendants are engaged in trade or commerce within the
26 meaning of the FDUTPA.

1 357. Florida Statutes Section 501.204(1) declares unlawful “[u]nfair
2 methods of competition, unconscionable acts or practices, and unfair or deceptive
3 acts or practices in the conduct of any trade or commerce.”

4 358. The Defendants’ unfair and deceptive practices as described herein
5 were consumer-oriented and are objectively materially likely to mislead—and have
6 materially misled—consumers acting reasonably in the circumstances.

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

10 360. Plaintiffs and consumers in the Classes have been aggrieved by the
11 Defendants’ unfair and deceptive practices and acts of false advertising by paying
12 into the Ponzi scheme that was the FTX Platform and in the amount of their lost
13 investments.

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

17 362. Pursuant to Florida Statutes Sections 501.211(2) and 501.2105,
18 Plaintiffs and consumers in the Classes make claims for actual damages, attorneys’
19 fees, and costs.

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

COUNT THREE

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

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2
3
4 364. Plaintiffs repeat and re-allege the allegations contained in paragraphs
5 1–347 above, as if fully set forth herein.

6 365. The FTX Entities and the Defendants made numerous
7 misrepresentations and omissions to Plaintiffs and Class Members about the FTX
8 Platform to promote false confidence in and to drive consumers to invest in what
9 was ultimately a Ponzi scheme. This misled customers with the false impression that
10 any cryptocurrency assets held on the FTX Platform were safe and were not being
11 invested in unregistered securities.

12 366. The FTX Entities entered into one or more agreements with the
13 Defendants with the purpose of making these misrepresentations and/or omissions
14 to induce Plaintiffs and consumers to invest in the YBAs and/or use the FTX
15 Platform.

16 367. The Defendants engaged in unlawful acts with the FTX Entities,
17 namely, the misrepresentations and omissions made to Plaintiffs and the Classes and
18 the sale of unregistered securities.

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

24 369. The Defendants’ conspiracy with the FTX Entities to commit fraud
25 caused damages to Plaintiffs and the Classes in the amount of their lost investments.
26
27
28

COUNT FOUR

Aiding and Abetting Fraud

(Plaintiffs Individually and on behalf of the Classes, or in the alternative, Plaintiffs Orr, Cabo, Henderson, Livieratos, Chernyavsky, Podalsky, Shetty, Ezeokoli, Norris, Garrison, and Huang Individually and on behalf of the Nationwide Classes, or in the alternative, Plaintiffs Podalsky, Shetty, and Chernyavsky on behalf of the Florida Subclasses)

370. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–347 as if fully set forth herein.

371. The FTX Insiders and FTX Group made numerous misrepresentations and omissions to Plaintiffs and Class Members about the FTX Platform to induce confidence and to drive consumers to invest in cryptocurrency through the FTX Platform, and to deposit funds into what was ultimately a fraudulent house of cards. Defendants actively joined these efforts by misleading customers and prospective customers with the false impression that cryptocurrency assets held on the FTX Platform were safe and with material omissions regarding how investor funds would be used. Bankman-Fried, the FTX Insiders, and the FTX Group knew these statements to be false.

372. Plaintiffs and the Class members reasonably relied upon Bankman-Fried, the FTX Insiders, and the FTX Group’s material misrepresentations and omissions to invest in cryptocurrency through the FTX Platform to their detriment.

373. Defendants participated in, substantially assisted, and facilitated Bankman-Fried’s, the FTX Insiders’, and the FTX Group’s fraudulent misconduct, with knowledge that such fraud was cheating investors. For example, while either knowing or consciously disregarding Bankman-Fried’s and the FTX Group’s and Insiders’ misconduct and red flags, Defendants still promoted and/or solicited the FTX Platform, YBAs, and/or FTT, to Plaintiffs and the Classes as described

1 hereinabove, making the various misrepresentations and omissions as set forth
2 hereinabove.

3 374. Defendants substantially benefitted from Bankman-Fried's, the FTX
4 Insiders', and FTX Group's scheme, as described herein.

5 375. Plaintiffs and the Class members suffered damages as a direct and
6 proximate result of Defendants aiding and abetting the fraudulent scheme, in an
7 amount to be determined at trial.

8 **COUNT FIVE**

9 **Aiding and Abetting Conversion**

10 **(Plaintiffs Individually and on behalf of the Classes, or in the**
11 **alternative, Plaintiffs Orr, Cabo, Henderson, Livieratos, Chernyavsky,**
12 **Podalsky, Shetty, Ezeokoli, Norris, Garrison, and Huang Individually and on**
13 **behalf of the Nationwide Classes, or in the alternative, Plaintiffs Podalsky,**
14 **Shetty, and Chernyavsky on behalf of the Florida Subclasses)**

15 376. Plaintiffs repeat and re-allege the allegations contained in paragraphs
16 1–347 as if fully set forth herein.

17 377. The funds deposited by Class Members into the FTX Platform were
18 personal property of the Plaintiffs and Class Members. Bankman-Fried and FTX
19 Group wrongfully interfered with Plaintiffs' possessory interest in a specific,
20 identifiable sum of money, the amount that each plaintiff had in their FTX account
21 that they could not withdraw.

22 378. Plaintiffs' funds were their own. They each had a possessory interest in
23 the sum of money they invested in the FTX Platform.

24 379. Defendants, based on their knowledge of the FTX Group's operations
25 obtained through due diligence, ongoing monitoring, and partnership, acquired
26 knowledge of FTX's conversion of Plaintiffs' funds.

1 380. Notwithstanding this knowledge, and by reason of the conduct
2 described herein, Defendants substantially aided, abetted, and/or participated with
3 FTX in the conversion of funds that belonged to Plaintiffs.

4 381. Defendants' actions, in combination with the actions of FTX and MDL
5 Defendants, are a proximate cause of actual damages to Plaintiffs and class
6 members. Together with the MDL Defendants, Defendants are jointly and severally
7 liable for participating in the conversion of Plaintiffs' funds.

8 **COUNT SIX**

9 **Declaratory Judgment**
10 **(Federal Declaratory Judgment Act)**
11 **(Plaintiffs Individually and on behalf of the Classes)**

12 382. Plaintiffs repeat and re-allege the allegations contained in paragraphs
13 1–347 as if fully set forth herein.

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

21 384. Plaintiffs and the members of the Classes have an obvious and
22 significant interest in this lawsuit.

23 385. Plaintiffs and members of the Classes purchased YBAs, based in part
24 on justifiable reliance on the Defendants' misrepresentations and omissions
25 regarding the FTX Platform as further described hereinabove.

26 386. If the true facts had been known, including but not limited to that the
27 YBAs are unregistered securities, the FTX Platform does not work as represented,
28

1 and Defendants were paid exorbitant sums of money to peddle FTX to the nation,
2 Plaintiffs and the Classes would not have purchased YBAs in the first place.

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

6 388. Plaintiff and the Class seek an order declaring that the YBAs were
7 securities, that the FTX Platform did not work as represented, and that Defendants
8 were paid exorbitant sums of money to peddle FTX to the nation.

9 **COUNT SEVEN**

10 **Unjust Enrichment**

11 **(Plaintiffs Individually and on behalf of the Classes)**

12
13 389. Plaintiffs reallege and incorporate by reference the allegations
14 contained in all preceding paragraphs above as if fully set forth herein.

15 390. Plaintiffs directly conferred a monetary benefit on the Defendants in
16 the form of investment funds provided to the Defendants from FTX customer funds.

17 391. Plaintiffs also conferred a monetary benefit on the Defendants because
18 they accepted funds that they knew, or should have known, were FTX consumer
19 deposits.

20 392. With Plaintiffs' money, the Defendants enriched themselves.

21 393. The Defendants have knowledge of the benefits that Plaintiffs
22 conferred on them.

23 394. Under principles of equity and good conscience, the Defendants should
24 not be permitted to retain the funds and assets they received as a result of their
25 misappropriation of Plaintiffs' assets, because they knowingly concealed material
26 information from Plaintiffs regarding FTX's conversion of the funds, which directly
27

1 resulted in the loss of Plaintiffs’ funds and assets that were supposed to have been
2 stored on the exchange.

3 395. As a result of the Defendants’ conduct, Plaintiffs have suffered
4 damages in an amount to be determined at trial.

5 396. To the extent that Plaintiffs have no other adequate remedy at law,
6 Plaintiffs seek restitution of all funds and assets that the Defendants have unjustly
7 received as a result of their conduct alleged herein, as well as interest, reasonable
8 attorneys’ fees, expenses, and costs to the extent allowable, as well as all other relief
9 the Court deems necessary to make them whole.

10 **THE CALIFORNIA CLAIMS, AS AN ALTERNATIVE TO THE**
11 **NATIONWIDE CLAIMS**

12 **COUNT EIGHT**

13 **For Violations of the Unfair Competition Law Business & Professions**
14 **Code § 17200, *et seq.***

15 **(In the alternative, Plaintiffs Cabo and Henderson Individually and on**
16 **behalf of the California Subclasses)**

17 397. Plaintiffs repeat and re-allege the allegations contained in paragraphs
18 1–347 above, as if fully set forth herein.

19 398. California’s Unfair Competition Law, Business & Professions Code §§
20 17200 *et seq.* (the “UCL”) prohibits acts of unlawful and unfair competition,
21 including any “unlawful, unfair or fraudulent business act or practice,” any “unfair,
22 deceptive, untrue or misleading advertising” and any act prohibited by Business &
23 Profession Code § 17500.

24 399. Defendants have committed business acts and practices that violate the
25 UCL by aiding and abetting the breaches of fiduciary duties, fraudulent and unfair
26 conduct, and unlawful conduct. Defendants’ conduct as alleged above constitutes
27 unlawful competition in that, for the reasons set forth above, said acts and practices
28

1 violate the Corporations Code.

2 400. The conduct of Defendants as alleged above also constitutes unfair
3 competition in that, for the reasons set forth above, the acts and practices offend
4 public policy and are unethical, oppressive, and unscrupulous, and are substantially
5 injurious to the public.

6 401. Defendants' conduct was a proximate cause of the injuries to Plaintiffs
7 and the California Class alleged herein, and it caused and continues to cause
8 substantial injury to Plaintiffs and the members of the California Class. By reason
9 of the foregoing, Defendants should be required to pay restitution to Plaintiffs and
10 members of the California Class.

11 **COUNT NINE**

12 **Violations of the California Securities Law**

13 **Cal. Corp. Code §§ 25110 *et seq.***

14 **(In the alternative, Plaintiffs Cabo and Henderson individually and on
15 behalf of the California Subclasses)**

16 402. Plaintiffs repeat and re-allege the allegations contained in paragraphs
17 1–347 above, as if fully set forth herein.

18 403. Section 25110 of the California Securities Law (“CSL”) prohibits the
19 offer or sale by any person in California of securities that are not qualified through
20 registration. CSL Section 25503 affords a statutory cause of action to victimized
21 investors for violations of Section 25110. Additionally, Section 25504.1 extends
22 liability under Section 25503 to any person who materially assists in a violation of
23 Section 25110 and makes them jointly and severally liable with any other person
24 liable under Section 25503.

25 404. Defendants materially assisted and/or personally participated with the
26 FTX Group in the offering and selling of the FTX Platform, the YBAs and/or FTT
27

1 Tokens Securities in California without being properly registered or qualified for
2 offer or sale either with any federal or California regulator in violation of Section
3 25503.⁵²

4 405. Moreover, CSL Section 25210(b) provides: “No person shall, ... on
5 behalf of an issuer, effect any transaction in, or induce or attempt to induce the
6 purchase or sale of, any security in this state unless [a licensed] broker-dealer and
7 agent have complied with any rules as the commissioner may adopt for the
8 qualification and employment of those agents.”

9 406. Defendants breached Section 25210(b) by encouraging the FTX Group
10 to offer and sell the FTX Platform, YBAs and/or FTT Tokens securities despite the
11 fact that such securities were not qualified under the CSL.

12 407. Additionally, CSL Section 25501.5 affords a statutory cause of action
13 to victimized investors for violations of Section 25210(b).

14 408. Together with the MDL Defendants, Defendants are accordingly jointly
15 and severally liable to Plaintiffs for recessionary damages under Section § 25504.1.

16 409. Plaintiffs hereby conditionally tender their FTX Group Securities in
17 accordance with Section § 25503.

18 **COUNT TEN**

19 **Aiding and Abetting Fraud**

20 **(In the alternative, Plaintiffs Cabo and Henderson Individually and on**
21 **behalf of the California Subclasses)**

22
23
24 ⁵² Plaintiffs contend that secondary liability for materially assisting a strict liability violation
25 of the qualification requirements of a violation pursuant to Section 255030 does not require proof
26 that Defendants intended “to deceive or defraud.” However, Plaintiffs in the alternative contend
27 that even if so, Defendants’ knowledge of and participation in FTX Group’s non-compliance with
28 the CSL establishes their intent to deceive investors regarding the FTX Platform, the YBAs and/or
FTT Tokens.

1 410. Plaintiffs repeat and re-allege the allegations contained in paragraphs
2 1–347 as if fully set forth herein.

3 411. The FTX Insiders and FTX Group made numerous misrepresentations
4 and omissions to Plaintiffs and Class Members about the FTX Platform to induce
5 confidence and to drive consumers to invest in cryptocurrency through the FTX
6 Platform, and to deposit funds into what was ultimately a fraudulent house of cards.
7 Defendants misled customers and prospective customers with the false impression
8 that cryptocurrency assets held on the FTX Platform were safe and with material
9 omissions regarding how investor funds would be used. Bankman-Fried, the FTX
10 Insiders, and the FTX Group knew these statements to be false.

11 412. Plaintiffs and the Class members reasonably relied upon Bankman-
12 Fried, the FTX Insiders, and the FTX Group’s material misrepresentations and
13 omissions to invest in cryptocurrency through the FTX Platform to their detriment.

14 413. Defendants participated in, substantially assisted, and facilitated
15 Bankman-Fried’s, the FTX Insiders’, and the FTX Group’s fraudulent misconduct,
16 with knowledge that such fraud was cheating investors. For example, while either
17 knowing or consciously disregarding Bankman-Fried’s and the FTX Group’s and
18 Insiders’ misconduct and red flags, Defendants still promoted and/or solicited the
19 FTX Platform, YBAs, and/or FTT, to Plaintiffs and the Classes as described
20 hereinabove, making the various misrepresentations and omissions as set forth
21 hereinabove.

22 414. Defendants substantially benefitted from Bankman-Fried’s, the FTX
23 Insiders’, and FTX Group’s scheme.

24 415. Plaintiffs and the Class members suffered damages as a direct and
25 proximate result of Defendants’ aiding and abetting the fraudulent scheme, in an
26 amount to be determined at trial.

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COUNT ELEVEN

Aiding and Abetting Conversion

(In the alternative, Plaintiff Cabo and Henderson Individually and on behalf of the California Subclasses)

416. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1–347 as if fully set forth herein.

417. The funds deposited by Class Members into the FTX Platform were personal property of the Plaintiffs and Class Members. Bankman-Fried and FTX Group wrongfully interfered with Plaintiffs’ possessory interest in a specific, identifiable sum of money, the amount that each plaintiff had in their FTX account that they could not withdraw.

418. Plaintiffs’ funds were their own. They each had a possessory interest in the sum of money they invested in the FTX Platform.

419. Defendants, based on its knowledge of the FTX Group’s operations obtained through due diligence, ongoing monitoring, and partnership, acquired knowledge of FTX’s conversion of Plaintiffs’ funds.

420. Notwithstanding this knowledge, and by reason of the conduct described herein, Defendants substantially aided, abetted, and/or participated with FTX in the conversion of funds that belonged to Plaintiffs.

421. Defendants’ actions, in combination with the actions of FTX, are a proximate cause of actual damages to Plaintiffs and class members. Together with the MDL Defendants, Defendants are jointly and severally liable for participating in the conversion of Plaintiffs’ funds.

COUNT TWELVE

Civil Conspiracy

(In the alternative, Plaintiff Cabo and Henderson Individually and on behalf of the California Subclasses)

1 422. Plaintiffs repeat and re-allege the allegations contained in paragraphs
2 1–347 above, as if fully set forth herein.

3 423. The FTX Group and Defendants made numerous misrepresentations
4 and omissions to Plaintiffs and Class Members about the FTX Platform in order to
5 induce confidence and to drive consumers to invest in what was ultimately a Ponzi
6 scheme, misleading customers and prospective customers with the false impression
7 that any cryptocurrency assets held on the FTX Platform were safe and with material
8 misrepresentations and/or omissions regarding how customer funds would be used.
9 Defendants knew these statements to be false.

10 424. The FTX Group entered into one or more agreements with Defendants
11 with the purpose of making these misrepresentations and/or omissions to induce
12 Plaintiff and consumers to invest in the YBAs, FTT and/or use the FTX Platform.
13 Defendants stood to benefit financially from assisting with this fraud as each would
14 receive the financial and other benefits described hereinabove.

15 425. Defendants engaged in unlawful acts with the FTX Group, namely, the
16 misrepresentations and omissions made to Plaintiffs and the Classes and the sale of
17 unregistered securities as further described hereinabove.

18 426. Defendants' conspiracy substantially assisted or encouraged the
19 wrongdoing conducted by the FTX Group; further, Defendants had knowledge of
20 such fraud and/or wrongdoing, because of their experience and relationship with the
21 FTX Group, as described above, and as such, knew that the representations made to
22 Plaintiffs were deceitful and fraudulent. Accordingly, Defendants knew that the
23 material misrepresentations and omissions relating to the safety of the FTX Platform
24 would result in injury to FTX's customers, including Plaintiffs and the Class
25 members.

26 427. Defendants' conspiracy with the FTX Group to commit fraud caused
27 damages to Plaintiffs and the Classes in the amount of their lost investments.

1 **IN THE ALTERNATIVE, THE OKLAHOMA CLAIMS**

2 **COUNT THIRTEEN**

3 **Violations of the Oklahoma Consumer Protection Act**

4 **Okla. Stat. Ann. tit. 15, § 751 *et seq.***

5 **(In the alternative, Plaintiff Garrison individually and on behalf of the**
6 **Oklahoma Subclasses)**

7 428. Plaintiffs repeat and re-allege the allegations contained in paragraphs
8 1–347 above, as if fully set forth herein.

9 429. This cause of action is brought pursuant to the Oklahoma Consumer
10 Protection Act (“OCA”), section 751 *et seq.*

11 430. The Oklahoma Consumer Protection Act provides that an “unfair trade
12 practice” is “any practice which offends established public policy or if the practice
13 is immoral, unethical, oppressive, unscrupulous or substantially injurious to
14 consumers.” § 752(14). It declares unlawful any unfair or deceptive trade practice
15 “as defined in section 752.” § 753(20).

16 431. Plaintiffs and Class members are persons as defined by section 752(1).
17 Defendants are engaged in a “consumer transaction” as defined by section 752(2),
18 and as described more fully herein.

19 432. Defendants have violated the OCA by engaging in the unfair and
20 deceptive practices as described herein, which offend public policies and are
21 immoral, unethical, unscrupulous and injurious to consumers.

22 433. Plaintiffs and consumers in the Class have been aggrieved by
23 Defendants’ unfair and deceptive practices in the amount of their lost investments.

24 434. The harm suffered by Plaintiffs and consumers in the Class was directly
25 and proximately caused by the deceptive and unfair practices of Defendants, as more
26 fully described herein.

1 435. Pursuant to section 761.1 of the OCPA, Plaintiffs and consumers in the
2 Class make claims for actual damages, attorneys' fees and costs.

3 **COUNT FOURTEEN**

4 **Violations of the Oklahoma Uniform Securities Act of 1980**

5 **Okla. Stat. Tit. 71, §§ 1-101 *et seq.***

6 **(In the alternative, Plaintiff Garrison individually and on behalf of the**
7 **Oklahoma Subclasses)**

8 436. Plaintiffs repeat and re-allege the allegations contained in paragraphs
9 1–347 above, as if fully set forth herein.

10 437. 71 Section 1-301 of the Oklahoma Securities Act (“OSA”) makes it
11 unlawful to sell a security in Oklahoma unless the security is registered, exempted,
12 or the security is a covered security as defined in the act.

13 438. The FTX Platform, YBAs and/or FTT Tokens are each a security
14 pursuant to 71 Okla. Stat. § 1-102(32), as described more fully herein.

15 439. As a result of these actions, Defendants violated section 1-102(32) and
16 are liable to Plaintiffs pursuant to section 1-509 for both primary and secondary
17 violations of Oklahoma securities law, as described more fully hereinabove.

18 **COUNT FIFTEEN**

19 **Aiding and Abetting Fraud**

20 **(In the alternative, Plaintiff Garrison individually and on behalf of the**
21 **Oklahoma Subclasses)**

22 440. Plaintiffs repeat and re-allege the allegations contained in paragraphs
23 1–347 as if fully set forth herein.

24 441. The FTX Insiders and FTX Group made numerous misrepresentations
25 and omissions to Plaintiffs and Class Members about the FTX Platform to induce
26 confidence and to drive consumers to invest in cryptocurrency through the FTX
27 Platform, and to deposit funds into what was ultimately a fraudulent house of cards.

1 Defendants misled customers and prospective customers with the false impression
2 that cryptocurrency assets held on the FTX Platform were safe and with material
3 omissions regarding how investor funds would be used. Bankman-Fried, the FTX
4 Insiders, and the FTX Group knew these statements to be false.

5 442. Plaintiffs and the Class members reasonably relied upon Bankman-
6 Fried, the FTX Insiders, and the FTX Group's material misrepresentations and
7 omissions to invest in cryptocurrency through the FTX Platform to their detriment.

8 443. Defendants participated in, substantially assisted, and facilitated
9 Bankman-Fried's, the FTX Insiders', and the FTX Group's fraudulent misconduct,
10 with knowledge that such fraud was cheating investors. For example, while either
11 knowing or consciously disregarding Bankman-Fried's and the FTX Group's and
12 Insiders' misconduct and red flags, Defendants still promoted and/or solicited the
13 FTX Platform, YBAs, and/or FTT, to Plaintiffs and the Classes as described
14 hereinabove, making the various misrepresentations and omissions as set forth
15 hereinabove.

16 444. Defendants substantially benefitted from Bankman-Fried's, the FTX
17 Insiders', and FTX Group's scheme, as described herein.

18 445. Plaintiffs and the Class members suffered damages as a direct and
19 proximate result of each of Defendants aiding and abetting the fraudulent scheme,
20 in an amount to be determined at trial.

21
22 **PRAYER FOR RELIEF**

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

- 25 a) Certifying the Class as requested herein;
26 b) Awarding actual, direct and compensatory damages;
27 c) Awarding restitution and disgorgement of revenues;

- 1 d) Awarding declaratory relief as permitted by law or equity, including
2 declaring the Defendants' practices as set forth herein to be unlawful;
3 e) Awarding injunctive relief as permitted by law or equity, including enjoining
4 the Defendants from continuing those unlawful practices as set forth herein,
5 and directing the Defendants to identify, with Court supervision, victims of
6 their conduct and pay them all money they are required to pay;
7 f) Awarding statutory, punitive, and multiple damages, as appropriate;
8 g) Awarding attorneys' fees and costs; and
9 h) Providing such further relief as may be just and proper.

10 **DEMAND FOR JURY TRIAL**

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

12 Dated: March 7, 2024

Respectfully submitted,

13
14 **By: /s/ Reed Forbush**

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