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and additional named Plaintiff Neil Fairman
and Lead Counsel for the Proposed Class*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

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| ALECTA TJÄNSTEPENSION ÖMSESIDIGT and NEIL FAIRMAN, on behalf of themselves and all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>JAMES H. HERBERT, II, HAFIZE GAYE ERKAN, MICHAEL J. ROFFLER, OLGA TSOKOVA, MICHAEL D. SELFRIDGE, NEAL HOLLAND, and KPMG, LLP,<br><br>Defendants. | Case No. 3:23-cv-02940-AMO<br><br>**COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**<br><br><u>CLASS ACTION</u><br><br>**<u>DEMAND FOR JURY TRIAL</u>**<br><br>Judge: Hon. Araceli Martínez-Olguín |

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Lead Plaintiff Alecta Tjänstepension Ömsesidigt ("Lead Plaintiff" or "Alecta") and additional named plaintiff Neil Fairman (together, "Plaintiffs"), by and through their undersigned counsel, bring this action individually and on behalf of all other persons and entities who purchased or otherwise acquired the common stock or preferred stock of First Republic Bank ("FRB," the "Company," or the "Bank") between October 13, 2021 and April 28, 2023, both dates inclusive (the "Class Period"), and were injured thereby (the "Class").

The allegations in this Complaint are based upon Plaintiffs' personal knowledge as to themselves and their own acts and upon information and belief as to all other matters. Plaintiffs' information and belief is based on the independent investigation of their counsel. This investigation included, among other things, a review and analysis of: (i) FRB's public filings with the Federal Deposit Insurance Corporation ("FDIC"); (ii) research reports prepared by securities and financial analysts concerning FRB; (iii) transcripts of FRB investor conference calls; (iv) FRB investor presentations; (v) reports by the financial press concerning FRB and the Defendants named in this Complaint; (vi) FRB securities pricing data; (vii) reports concerning FRB by regulators, including the FDIC's September 8, 2023 report titled, "FDIC's Supervision of First Republic Bank" (the "FDIC Report"), and the Office of Inspector General's ("OIG") November 28, 2023 report titled, "Material Loss Review of First Republic Bank" (the "OIG Report"); (viii) interviews of former FRB employees; (ix) consultations with experts; and (x) other material and data identified herein. Lead Counsel's investigation into the factual allegations is continuing, and many of the relevant facts are known only by Defendants or are exclusively within their custody or control. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## I. SUMMARY OF THE ACTION

1. This action arises from the fraudulent misrepresentations that concealed the true risks that led to the dramatic collapse of First Republic Bank. Throughout the Class Period, the Individual Defendants (defined below)—FRB's senior-most executives—misrepresented that FRB's deposit base was stable and well-diversified. In truth, FRB's deposits were heavily concentrated and inflated by several undisclosed rate incentive programs used to attract customer deposits by offering below-market interest rates on loans and above-market interest rates on deposits. The combination of low-interest assets (loans)

and unstable liabilities (deposits) created a perfect storm of undisclosed risks that became increasingly acute as interest rates rose during 2022 and early 2023. These undisclosed problems—which, as detailed below, were well known to the Individual Defendants and FRB's auditor, Defendant KPMG—led to the second largest bank failure in U.S. history. Prior to its collapse, FRB was the fourteenth largest bank in the U.S. In a span of less than seven months, FRB's stock price declined ***over 99%***, virtually eliminating the value of the Company's stock and causing investors billions in damages.

2. FRB primarily catered to high-net worth ("HNW") individuals and businesses in coastal U.S. cities, offering private banking, business banking, and wealth management services. FRB's business model centered on developing sustained client relationships by offering clients a full suite of banking services, including residential, commercial and personal loans, deposit services, and private wealth management. FRB touted its "client-focused" business model as a key advantage over its competition, claiming that its superior customer service led clients to remain loyal to FRB.

3. Leading up to the Class Period, FRB experienced a period of meteoric growth. FRB's assets increased by approximately 20% each year from 2018 to 2021—compared to 5% growth industry-wide—while deposits increased by over 73% during this period. Contrary to its reputation as a retail bank for HNW households, approximately two-thirds of FRB's deposit growth came from business deposits, which accounted for $27.5 billion of FRB's $41.4 billion in new deposits between 2020 and 2021.

4. FRB's growth was also disproportionately driven by a large number of "uninsured" deposit accounts—accounts with balances that exceed the FDIC's $250,000 insurance limit. Any amount in such accounts above $250,000 is not protected in the event of a bank failure, and therefore these accounts present heightened liquidity risks that must be carefully managed. In particular, banks like FRB with a large concentration of uninsured deposits must assess and mitigate the risk that such deposits could be withdrawn in the event depositors lose confidence in the safety or stability of the bank. In 2020, FRB reported that $80.3 billion, or 70% of its total deposits, were uninsured. In 2021, the number of uninsured deposits ballooned to 75% of total deposits, totaling $116.7 billion. By comparison, the median percentage of total deposits that were uninsured for FRB's peer banks during the same time period ranged from just 31 to 41 percent.

5. FRB used deposits to fund its growing loan business, with total loans doubling from $75.9 billion to $166.08 billion between 2018 and 2022. Loans made up a substantial portion of FRB's assets, comprising between 75 and 80 percent of FRB's total assets during this period. FRB's loan portfolio was heavily concentrated in the residential real estate market. Because FRB focused on originating residential mortgage loans, the vast majority of FRB's loans featured long maturities (i.e., loans with terms longer than five-years) and fixed rates (i.e., loans where the interest rate remained constant for the entire term of the loan). Moreover, because FRB's residential mortgage loan customers were predominately HNW individuals, significant portions of FRB's loans were "jumbo" or non-conforming loans, meaning such loans could not be readily sold or securitized to raise cash.

6. FRB's deposits were its primary source of funding new loan originations. Therefore, analysts and investors were focused on the stability of FRB's deposits. During the Class Period, the Individual Defendants issued false assurances to the public that the Bank's deposit growth was stable and diversified, and that FRB had the ability to organically grow its loan portfolio even if the Federal Reserve ("Fed") increased interest rates.

7. For example, Defendants repeatedly claimed that FRB's client service model was the reason for its loan and deposit growth. On April 13, 2022, FRB's Chief Executive Officer ("CEO"), Defendant Roffler, stated that "***service***" was "***what drives growth***."[1] And, on July 14, 2022, FRB's Chief Banking Officer, Defendant Selfridge, stated that "***[o]ur deposit-base remains well-diversified***" and that "***[o]ur service model is performing quite well and continues to drive our safe, stable, organic growth***." On October 14, 2022, Roffler stated that "with rates rising we've continued to grow our loan portfolio, and if I stand back from that, we've always been focused on ***service first and foremost, and that is what has driven loan growth frankly in any environment***."

8. In truth, FRB's deposits were anything but diversified or stable. Throughout the Class Period, FRB relied on undisclosed rate incentives in order to both attract and retain deposits and boost new loan originations. Defendants operated at least three different rate incentive programs, which offered clients favorable interest rates in exchange for making deposits into a FRB checking account. ***First***, through

[1] Unless otherwise stated, all emphasis is added and internal footnotes, citations, and original emphases are omitted.

rate incentives, FRB frequently decreased its already abnormally low interest rates on mortgages and loans to wealthier clients if these clients agreed to deposit a certain amount, typically 15 to 20 percent of the loan value, into a FRB checking account. One former FRB Vice President confirmed that interest rates on single-family residential loans could be as low as 1.85%. FRB's undisclosed interest rate discounts on mortgages and business loans significantly undercut its competitors and enticed borrowers to open checking accounts with FRB. Former employees confirmed that this practice of offering undisclosed, below-market interest rates in exchange for deposits was frequently used throughout FRB's regions and across multiple verticals including: single-family residential loans, commercial real estate and multifamily real estate loans, and even business loans and lines of credit. In fact, one former employee stated that every single loan in the Business Banking division's largest vertical in Boston, private equity, included a rate incentive.

9. FRB's reliance on loan rate incentives to attract and retain deposits exposed the Bank to the risk of deposit outflows because deposits made as a result of these loan rate incentives were not as "sticky" as deposits generated in the normal course of FRB's banking and lending operations. Former employees of FRB reported that there was no written term in the loan agreement that required a client to maintain the deposits in a FRB checking account for any period of time. As several former employees stated, it was merely a "handshake deal" and based on "goodwill." Therefore, depositors could withdraw their deposits after the loan was funded with a favorable interest rate, and FRB would not reprice the loan. This exposed FRB to the (undisclosed) risk that it would be left with a long-term fixed-rate mortgage at a rock-bottom interest rate, and a deposit from the client that could be withdrawn at any time.

10. ***Second***, FRB operated an undisclosed Rate Exception Program, which paid clients above-market interest rates on deposit accounts in order to entice clients to make and maintain large deposits with FRB. According to former employees, FRB bankers from any region could request approval from senior managers at FRB to pay clients interest rates that were ***ten times higher*** than the published rate for deposits. The higher interest rates paid on these deposits generally lasted a few months, but could be extended to one year. Like the rate incentives offered on loans, there was no requirement that the client maintain the funds in a FRB account for a certain period of time. Once the higher interest rate expired, FRB had no mechanism that required clients to maintain their deposit account with FRB. As some accounts with rate

incentives frequently contained $200 to $300 million, the stickiness of these deposits was critical to the stability of FRB's balance sheet. However, Defendants never disclosed that they relied on the Rate Exception Program to maintain a constant inflow of deposits.

11. The Individual Defendants not only knew that these rate incentives existed, but strongly encouraged all FRB bankers to use them to increase deposit levels. According to many former employees, Defendants consistently spoke about offering rate incentives to lower interest rates on loans and increase rates paid on deposits during weekly company-wide Loan Meetings and Asset Liability Committee meetings ("ALCO").

12. ***Third***, FRB operated an additional rate incentive program in which high-level managers met in a conference room called the "War Room" and later renamed the "Peace Room" at the end of each quarter to review the Bank's deposit numbers. If the team needed to bolster FRB's deposit numbers for that quarter, they would contact HNW clients and hedge funds to offer them an interest rate on a deposit account that was well above market rates for a period as short as eight days. According to multiple former employees, senior FRB executives, including Defendants Erkan and Roffler, were personally involved in these quarter-end efforts to inflate deposits and conceal any deposit shortfalls or outflows.

13. Through the operation of these undisclosed rate incentive programs, Defendants were able to publicly represent that FRB had a strong and stable balance sheet, supported by loyal customers with sticky deposits. In reality, Defendants encouraged bankers to fuel deposit growth with temporary interest rate discounts on loans and temporary increases of interest rates paid on deposits, risking depositor flight in the event interest rates rose and depositors sought higher rates at competing banks or through other investments, or in the event of any perceived or actual risk to the Bank's safety. These practices were not disclosed to investors, and as discussed below, were inconsistent with Defendants' statements characterizing the nature and risks of FRB's business.

14. In 2022, the Federal Reserve began to raise interest rates and predictably, depositors started to withdraw their funds from FRB. In response, Defendants ramped up these efforts, aggressively employing rate incentives in order to stave off the deposit outflow. However, these undisclosed practices could not generate sufficient deposits in order to sustain the Bank's continual loan growth. As a result, FRB was forced to increasingly rely on higher-yield money market and certificates of deposit accounts

("CDs"), as well as borrowings, to fund its loans, while continuing to offer discounted loan rates in an effort to boost its declining deposits. This negative trend compressed the Bank's net interest income ("NII") and net interest margin ("NIM")—critical metrics that calculated the income generated on the Bank's interest-earning assets—and as discussed below, exacerbated a mismatch in the duration of the Bank's assets and liabilities, eventually prompting massive deposit outflows.

15. The Individual Defendants, who were FRB's senior-most executives and members of FRB's Board of Directors ("Board"), served on committees tasked with actively monitoring the Bank's interest rate risk. These committees were meant to abide by the Bank's interest rate and market risk management framework, which set forth guidelines and established risk appetite (the amount of risk a bank is willing to accept) and risk tolerance (the acceptable degree of deviation from the expected risk) levels for key risk-assessment metrics. Under these policies, Defendants were to "striv[e] to maintain a neutral balance sheet" and, to do so, were to "regularly analyze the sensitivity of [the Bank's] net interest income ('NII') and economic value of equity ('EVE') to changes in interest rates to limit the potential negative impact of market downturns and periods of interest rate volatility, both in the short-term and in the long-term."

16. As one of the key metrics the Bank used to evaluate interest rate risk, EVE modeling is meant to analyze interest rate risk on the fair market values of the Bank's assets, liabilities, and equity by taking the present value of all asset cash flows and subtracting the present value of all outstanding liability cash flows. When using an EVE model, the Bank would calculate the values for a base-case scenario and a stress scenario. Any breaches to the Bank's predetermined EVE risk thresholds indicate that the market rate change will negatively impact the Bank.

17. Beginning in January 2022, the Federal Reserve announced that it would soon raise interest rates, and implemented its first rate increase in March 2022. Consistent with the Bank's policies to manage interest rate risk, Defendants saw by the first quarter of 2022 that rising rates could have significant adverse effects on the Bank's balance sheet. EVE simulations for this quarter revealed that if the Federal Reserve raised rates by 300 basis points ("bps"), the Bank's value of equity would be reduced by 20%.

18. Concerned with the results of the Bank's EVE modeling, the Bank's Asset Liability Management Committee ("ALMCO") met on April 26, 2022 to discuss the EVE projections. Critically,

during this meeting, FRB's Vice President and the Head of the ALMCO recommended that FRB "***stop lengthening its asset duration considering the increasing likelihood of interest rates moving higher this year***." In other words, the Head of the ALMCO was recommending that FRB originate fewer 5-to-30-year mortgages in its loan portfolio, or potentially consider selling the many 5-to-30-year mortgages held on FRB's balance sheet. Beyond discussing this recommendation, the ALMCO took no other action.

19. Rather than inform investors that this strategy would exacerbate the Bank's elevated interest rate risk, Defendant Herbert told investors on April 13, 2022 that the Bank's "***opportunity to continue to grow [mortgage originations] is greater than one thinks***," that the "***mortgage business will continue***," and he was not "***worr[ied] about it very much***." Internally, over the ensuing quarter, Defendants continued on with the same business strategy that EVE models demonstrated to be increasingly risky in a rising rate environment, i.e., grow the long-dated residential mortgage portfolio, even if it meant offering hyper-competitive pricing. Over the course of the second quarter of 2022, FRB increased its loan portfolio and deepened its concentration in long-dated single-family residential mortgages, in direct contradiction to the ALMCO's recommendation.

20. By June 2022, the Federal Reserve had raised rates three times. As a result of this, and based on Defendants' failure to manage interest rate risk, Defendants' EVE projections became increasingly alarming. Indeed, by the second quarter of 2022, the Bank's EVE projections began to breach the Bank's risk appetite and risk tolerance levels: projected EVE would be reduced by 33% if the Federal Reserve raised rates another 200 bps (risk tolerance was 15%), 50% if raised by 300 bps (risk tolerance was 20%), and 66% if raised by 400 bps (risk tolerance was 25%). Despite these material breaches, during the Bank's earnings call held on July 14, 2022, Defendant Tsokova reaffirmed that the Bank "***continue[d] to operate in a safe and sound manner***," while Defendant Selfridge stated that the "***service model is performing quite well and continues to drive our safe, stable, organic growth***."

21. Behind the scenes, however, Defendants recognized during an August 1, 2022 ALMCO meeting that the rising rates continued to seriously imperil the Bank's safety and stability. During this meeting, the ALMCO acknowledged that "[a]sset duration continued to expand, and liability duration contracted due to market changes and the funding mix shifting to shorter duration deposits and advances"—which were the exact issues flagged during the April 2022 meeting. The ALMCO further

"***discussed that deposits were pushing EVE further to be liability sensitive as balances migrate from checking to higher-yielding and shorter-duration products***" and again acknowledged that FRB "has shifted originations from shorter duration fixed and variable rate hybrid loans to 30 year fixed-rate." In other words, FRB was being forced to pay more for deposits but was increasingly locking itself into long-term, fixed interest loans, increasing the Bank's exposure to further interest rate increases.

22. Despite these alarming trends, on September 14, 2022, the Board approved the risk appetite statement breaches and failed to suggest any corrective action. To make matters worse, the Individual Defendants continued to pursue the exact strategy that was amplifying interest rate risk. During the third quarter of 2022, FRB grew total loans by approximately $7.4 billion, of which approximately $5.0 billion were loans that featured terms between five and thirty years.

23. Largely as a result of Defendants doubling down on long-dated mortgage growth, FRB's EVE breaches became increasingly dire. In the third quarter of 2022, FRB's model projected a 41% decrease in EVE with a projected interest rate increase of only 100 bps, far outside the Bank's 15% risk tolerance and 20% risk appetite. Under the 200 bps increase scenario, FRB projected that EVE would fall 82%, well beyond the risk tolerance and risk appetite statement of 20% and 25%, respectively. Again, these undisclosed metrics were a far cry from the picture the Individual Defendants painted to the market. During an investor conference on September 12, 2022, Defendant Roffler summarized FRB performance as "***safe, consistent, stable growth*** . . . ***[q]uarter after quarter, we deliver that***."

24. Despite Defendants' reassurances, the relevant truth concealed by Defendants' false or misleading statements and omissions began to emerge on October 14, 2022, when FRB announced disappointing financial results for the third quarter of 2022, including that NII growth slowed to 20.6% year-over-year and NIM declined to 2.71% (down from 2.80% the prior quarter). FRB attributed the decrease in NIM to "average funding costs increasing more rapidly than the offsetting increase in the average yields on interest-earning assets." In addition, FRB disclosed figures for its checking account balances, which reflected a roughly $8 billion, or 7%, ***decrease*** in checking account balances quarter-over-quarter. In response to this news, FRB's common stock price declined $22.14 per share, more than 16%.

25. However, the Individual Defendants continued to downplay the risk that rising interest rates posed to FRB. During the third quarter earnings call on October 14, 2022, Defendants Herbert and Roffler

called rising interest rates a "***short-term***" and "***temporary problem***." Less than two weeks later, on October 26, 2022, the Bank's ALMCO met to discuss the "***materially liability-sensitive***" nature of FRB's balance sheet, and prepared a memorandum to the Board stating that EVE risk thresholds had been "***breached in all scenarios***." Despite internal interest rate models signaling to Defendants the material risks on the Bank's balance sheet if rates continued to rise, on November 16, 2022, FRB's Board again declined to take any corrective action.

26. The Bank's EVE model as of December 31, 2022 was projecting that a 100 bps increase would reduce equity by 59%, far exceeding the risk tolerance of 15%, and that a 200 basis point increase would reduce EVE by 117%, resulting in negative equity, and far exceeding the risk tolerance of 20% for that scenario. These bleak projections still did not prompt Defendants to take any action, nor did they apprise investors of these risks facing the Bank. Instead, despite the EVE projections and internal recognition that the Bank should shorten asset durations, Defendants continued to assure investors the Bank was well-positioned for the long-term and could stay the course in terms of its loan growth. For example, on January 13, 2022, Defendant Roffler stated, "***we remain well-positioned to deliver safe, strong growth through the consistent execution of our service-focused culture and business model***."

27. In FRB's Form 10-K annual report for 2022, filed on February 28, 2023, Defendants Herbert, Roffler, Holland, and Tsokova claimed that they "***perform scenario-based stress-testing to ensure resilience in case of expected and unexpected future events***," without disclosing that this very stress-testing had repeatedly alerted Defendants to the risk that rising interest rates posed to the Bank.

28. Moreover, in the 2022 10-K, Defendants classified the entirety of the Bank's $166.87 billion loan portfolio as "held for investment," meaning that under Generally Accepted Accounting Standards ("GAAP"), Defendants represented that the Bank had both the "intent and ability to hold [these loans] for the foreseeable future or until maturity or payoff." Defendants also classified $28.36 billion in debt securities as "held to maturity," meaning that Defendants represented that they had both the "positive intent and ability to hold [these securities] to [their] maturity." By classifying FRB's loans as held for investment and debt securities as held to maturity, Defendants were able to book these assets according to their carrying values as opposed to their fair values, which had declined significantly as a result of rising federal interest rates. Throughout 2022, FRB incurred substantial unrealized losses on its loan portfolio. Indeed,

by December 31, 2022, there was a ***$22.95 billion*** difference between FRB's recorded value of its loans ($166.87 billion) and their fair value ($143.92 billion). The unrealized losses on FRB's loan portfolio were significant enough that, if they were accounted for on FRB's balance sheet, they would have turned FRB's shareholder equity ***negative***. Moreover, FRB recorded a ***$4.77 billion*** difference between the carrying value of its held-to-maturity securities and their fair value. In other words, by December 31, 2022, when considering both unrealized losses on its loans and securities, FRB had total unrealized losses of ***$27.72 billion***, compared to $17.45 billion in shareholders equity.

29. Defendants' representations that they had the "positive intent and ability" to hold these loans and debt securities were false or misleading because FRB's deposit base had become increasingly unstable in 2022, and depositors had begun to withdraw deposits in search of higher yields elsewhere. Notwithstanding Defendants' continued reliance on rate incentives to attract and retain deposits, Defendants were unable to generate sufficient deposits to fund the Bank's loan growth, creating a downward spiral of growing long-duration, fixed-rate loans and dwindling low-cost deposits. Given this trend, Defendants could not represent that the Bank had sufficient sources of liquidity over the full duration of these assets without having to liquidate them to raise cash.

30. The 2022 10-K also included audit opinions by Defendant KPMG stating that (i) "the consolidated financial statements" issued by FRB "present[ed] fairly, in all material respects, the financial position of the Bank" in accordance with GAAP and (ii) KPMG had conducted its "audits in accordance with the standards of the PCAOB," the Public Company Accounting Oversight Board. However, as of the date of KPMG's audit opinion, FRB struggled with an inability to grow deposits, deposit outflows, declining profitability, an ever-worsening asset-liability mismatch, and increasing fair value losses on its loan portfolio. FRB's balance sheet thus presented "[n]egative trends" and "uneconomic long-term commitments" that raised substantial doubt about FRB's ability to continue as a going concern. Given these risks, KPMG should have, as provided under the PCAOB Auditing Standards, reviewed management's plans to manage and mitigate interest rate risks. Had it done so, KPMG would have learned that FRB had not failed to mitigate interest rate risk or to implement any corrective measures as interest rates increased throughout 2022. Despite these negative trends, KPMG signed off on FRB's misclassification of its loans and securities as held for investment and held to maturity, and issued a clean

audit opinion, failing to alert investors to FRB's vulnerability to a downward spiral in both solvency and liquidity.

31. On March 10, 2023, the undisclosed ticking time bomb on FRB's balance sheet exploded. Following the collapse of Silicon Valley Bank, a regional bank widely regarded as a peer to FRB, the Bank experienced massive deposit withdrawals by customers. According to a report by the OIG, "March 10 deposit outflows reached approximately $25 billion of [FRB's] total deposits of approximately $148 billion at that time." FRB's loss of nearly 17% of its deposit base in a single day meant that FRB "had to draw significantly on its credit lines with the Federal Home Loan Bank and Federal Reserve." In other words, FRB was borrowing money, with interest, in order to repay depositors who pulled their deposits out of the Bank.

32. In an effort to calm investor fear over FRB's deposit base and liquidity, after market-hours on March 10, the Company filed a Form 8-K stating: "***This filing reiterates First Republic's continued safety and stability and strong capital and liquidity positions***." The Form 8-K also stated that "***First Republic's deposit base is strong and very-well diversified***." Significantly, Defendants did not disclose the $25 billion of deposit outflows on March 10, 2023. Then, on March 12, FRB issued a press release stating that the Bank had increased its total available, unused liquidity to more than $70 billion, an increase of $10 billion from what was disclosed on March 10, 2023. The press release contained a joint statement by Defendants Herbert and Roffler stating that "***First Republic's capital and liquidity positions are very strong***." Once again, Defendants did not disclose FRB's massive deposit outflows. On March 13, 2023, Defendant Herbert told CNBC that "***that the bank was not seeing massive outflows of deposits and that the business was operating as usual***." In truth, massive deposit outflows continued at FRB ***that same day***, with an additional ***$40 billion*** of deposits leaving the Company on March 13, in addition to the roughly ***$25 billion*** of deposits that left the Company on Friday, March 10, 2023.

33. Despite Defendants' reassurances, FRB's common stock price declined by $52.55 per share, or more than 37% on Monday, March 13, 2023.

34. Over the ensuing weeks, FRB continued on a downward spiral. On March 15, 2023, S&P and Fitch downgraded FRB's credit rating, citing "***the risk of deposit outflows***," and FRB's "***high proportion of uninsured deposits as a percentage of total deposits***," which "***results in deposits that can***

***be less sticky in times of crisis or severe stress***." These downgrades led to a 21% decline in FRB's common stock price on March 15, 2023.

35. The next day, FRB disclosed that it had received a lifeline in the form of $30 billion in deposits from a consortium of 11 U.S. banks, and further disclosed that it had a cash position of just $34 billion, had significantly drawn on its borrowing capacity, had increased short-term borrowing from the Federal Home Loan Bank, was evaluating the composition and size of its balance sheet going forward, and was suspending its common stock dividend. The Company also disclosed that "[i]nsured deposits from close of business on March 8, 2023 to close of business on March 15, 2023 have remained stable," and that "[d]aily deposit outflows have slowed considerably," but said nothing about the state of its uninsured deposits. These disclosures led to an additional 33% common stock price decline on March 17, 2023.

36. Over the weekend of March 17-19, 2023, Moody's and S&P both downgraded FRB's credit rating to junk status, with Moody's citing "the deterioration in the bank's financial profile" and S&P stating that "the bank was likely under high liquidity stress with substantial deposit outflows over the past week." These additional credit downgrades led to a more than 47% common stock price decline on March 20, 2023.

37. On April 24, 2023, FRB issued a press release and held an earnings calls regarding its 1Q 2023 financial results, revealing the massive amount of deposits that left the Company in March, and the fact that its deposit base had not recovered those losses. FRB disclosed that total deposits had declined roughly ***40%*** in the first quarter compared to 4Q 2022, and 35.5% year-over-year, to $104.5 billion. Significantly, these figures ***included*** the $30 billion injection of deposits from 11 large U.S. banks FRB received in March 2023, further signaling to the market that the Company's deposit base remained highly unstable. As a result of these disclosures, FRB's common stock declined by $10.31 per share, or more than 64%, on April 25 and 26, 2023.

38. Finally, before the market opened on April 28, 2023, news reports emerged that FRB would likely be placed into receivership, driving its common stock price down more than 42% on April 28, 2023. On Monday, May 1, 2023, the FDIC announced that FRB was indeed seized and placed into receivership. Trading in FRB was halted on May 1 and suspended on May 2, 2023. When trading resumed over-the-

counter on May 3, 2023, FRB's common stock price declined an additional 90.06%, to a closing price of only $0.33 on May 3, 2023.

39. In the wake of FRB's failure, regulators and government officials launched investigations and inquiries into the actions of FRB's senior management and auditor, KPMG, prior to the Bank's collapse, including investigations into insider trading by former FRB executives. As alleged below, Defendants Herbert, Roffler, and Selfridge, along with many other FRB executives, unloaded more than ***$30 million*** in FRB common stock on investors while FRB's common stock price was inflated by Defendants' misstatements and omissions, including highly suspicious sales immediately before the Bank's collapse.

40. While many of those investigations are ongoing, in a report on September 8, 2023, the FDIC concluded that the causes of FRB's failure included "rapid growth in assets and deposits, loan and funding concentrations, unrealized losses, an overreliance on uninsured deposits, and ***a failure to sufficiently mitigate interest rate risk***." Similarly, in a report on November 28, 2023, the OIG found that "[r]ising interest rates quickly created an asset/liability mismatch for the bank" because FRB's "assets were concentrated in longer-term loans that generated low interest income, while deposits required to fund those loans were short-term." The report concluded that "***[t]his mismatch was inconsistent with First Republic's own policies and its risk appetite thresholds. Nevertheless, First Republic accepted the risk without taking sufficient corrective action***."

## II. JURISDICTION AND VENUE

41. The claims asserted herein arise under Sections 10(b), 20(a) and 20A of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), 78t-1(a), respectively, and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. § 240.10b-5.

42. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and under 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States.

43. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b) because FRB's principal executive offices were located within this District and many of the acts

and practices complained of herein, including the dissemination to the public of materially false or misleading information, occurred in substantial part in this District.

44. In connection with the acts, conduct, and other wrongs alleged herein, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

## III. PARTIES AND RELEVANT NON-PARTIES

### A. Lead Plaintiff

45. Lead Plaintiff Alecta Tjänstepension Ömsesidigt was founded in 1917 and is currently one of Sweden's largest pension funds, managing the pensions of approximately 2.6 million people and 35,000 companies. As set forth in the attached certification, Alecta purchased or otherwise acquired FRB common stock at artificially inflated prices during the Class Period and was damaged as a result of the conduct alleged herein. *See* Exhibit 1.

### B. Additional Plaintiff Neil Fairman

46. Additional named plaintiff Neil Fairman ("Fairman") is an investor who purchased FRB preferred stock at artificially inflated prices during the Class Period and was damaged as a result of the conduct alleged herein. As set forth in the attached certification, Fairman purchased FRB L Series preferred stock. *See* Exhibit 2.

### C. Individual Defendants

47. James H. Herbert II ("Herbert") founded FRB in 1985 in San Francisco, and served as a director and its CEO until July 2021, and then its co-CEO until March 2022, at which point the Board appointed Herbert Executive Chairman of FRB. During the Class Period, Herbert served on the Investment Committee of FRB's Board until his transition to Executive Chairman in 2022. Herbert regularly issued public statements on behalf of FRB, including the alleged materially false or misleading statements identified below in Section V.

48. Hafize Gaye Erkan ("Erkan") served as FRB's President from 2017 through 2021, and served as co-CEO from July 2021 until December 31, 2021, when she suddenly resigned. Erkan had also served as a member of FRB's Board since 2019. In 2020 and 2021, Erkan served on the Directors'

Enterprise Risk Management Committee, the Directors' Information Security and Technology Committee, and the Investment Committee. Defendant Erkan regularly issued public statements on behalf of FRB, including the alleged materially false or misleading statements identified below in Section V.

49. Michael J. Roffler ("Roffler") was appointed as CEO of FRB in March 2022 (having served as acting co-CEO beginning in January 2022) and served in that role until the Bank's collapse in May 2023. Roffler was named a member of FRB's Board on January 1, 2022. Roffler became President in May 2021 and held that position until May 2023. Roffler also previously served as FRB's Chief Financial Officer ("CFO") from 2014 through 2021. During his tenure at FRB, Roffler served on the Directors' Enterprise Risk Management Committee, and the Directors' Information Security and Technology Committee. Before working at FRB, Roffler worked for Defendant KPMG for 16 years as a Certified Public Accountant, including five years as an audit partner. Roffler regularly issued public statements on behalf of FRB, including the alleged materially false or misleading statements identified below in Section V.

50. Olga Tsokova ("Tsokova") served as FRB's Chief Accounting Officer ("CAO") from 2015 until the Bank's failure in May 2023. Tsokova served as acting CFO from January 2022 to November 2022 when she was appointed Deputy CFO—a role she held until the Bank's closure. Tsokova also served as Executive Vice President from January 2022 until FRB closed. Defendant Tsokova is a Certified Public Accountant. Tsokova regularly issued public statements on behalf of FRB, including the alleged materially false or misleading statements identified below in Section V.

51. Michael D. Selfridge ("Selfridge") served as FRB's Chief Banking Officer from 2016 until the Bank's closure in May 2023. According to the Company's Definitive Proxy Statement for the 2022 Annual Meeting of Shareholders ("2022 Proxy Statement"), Defendant Selfridge's role included "oversee[ing] Business Banking, Eagle Lending (consumer) and Relationship Management/Private Banking activities in the California; New York; Boston; Portland, Oregon; Bellevue, Washington; and Jackson, Wyoming regions." Selfridge participated in the Company's quarterly earnings calls and investor conferences, and issued public statements on behalf of FRB, including the alleged materially false or misleading statements identified below in Section V.

52. Neal Holland ("Holland") joined FRB as CFO in November 2022 and held that position until the Bank's failure in May 2023. Defendant Holland is a Chartered Financial Analyst and Certified Public Accountant. Holland participated in the Company's quarterly earnings calls and investor conferences, and issued public statements on behalf of FRB, including the alleged materially false or misleading statements identified below in Section V.

53. Defendants Herbert, Erkan, Roffler, Tsokova, Selfridge, and Holland are collectively referred to herein as the "Individual Defendants."

54. As former directors, officers, and senior executives of FRB, the Individual Defendants each possessed the power and authority to control, and did in fact control, FRB's public statements, including its FDIC filings,[2] press releases, and presentations to analysts and investors. In their respective roles, each Individual Defendant was directly involved in preparing, reviewing, and approving their own statements and the Bank's statements and disclosures to the public. Each of the Individual Defendants was also provided with copies of FRB's FDIC filings alleged herein to be materially false or misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Additionally, because of their positions and access to material non-public information, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and/or were being concealed from, the public, and that the representations that were being made were at the time materially false or misleading.

### D. KPMG

55. KPMG, LLP ("KPMG") is an international accounting firm organized under the laws of the State of Delaware, with principal executive offices in New York, New York. During the Class Period, KPMG audited FRB's financial statements.

### E. Non-Party FRB

56. First Republic Bank was a California state-chartered bank with no holding company founded in 1985 and headquartered in San Francisco. During the Class Period, FRB's common stock traded

[2] During the Class Period, FRB operated without a bank holding company and therefore filed its annual and quarterly reports on Forms 10-K and 10-Q, current reports on Form 8-K, proxy statements and other information with the FDIC rather than the Securities and Exchange Commission.

on the New York Stock Exchange ("NYSE") under the ticker symbol "FRC." During the Class Period, FRB had seven series of preferred stock outstanding, includes Series H, I, J, K, L, M, and N, which traded on the NYSE under the ticker symbols "FRC-PrH," "FRC-PrI," "FRC-PrJ," "FRC-PrK," "FRC-PrL," "FRC-PrM," and "FRC-PrN," respectively.

57. In 2007, FRB was acquired by Merrill Lynch, which was subsequently acquired by Bank of America Corp. In November 2010, Bank of America sold FRB to a group of private investors and FRB management, including Defendant Herbert. Later in 2010, FRB went public again through an IPO.

58. Before its collapse, FRB offered private banking, private business banking, and private wealth management services nationally in 93 offices. FRB's products included "residential, commercial, and personal loans, deposit services, and private wealth management, including investment, brokerage, insurance, trust and foreign exchange services." FRB catered to HNW individuals in coastal cities.

59. On May 1, 2023, the FDIC announced that FRB had been closed by the California Department of Financial Protection and Innovation ("CDFPI"), the FDIC was appointed receiver, and the Bank's deposit accounts and assets were sold to JPMorgan Chase Bank ("JPMorgan").

### F. Former FRB Employees[3]

60. FE-1 was a FRB executive in the San Francisco Bay Area from before the Class Period until shortly after JPMorgan purchased FRB. FE-1's focus was on business development. FE-1 indicated that his branch acted as FRB's hub for Silicon Valley and focused on serving technology companies, entrepreneurs, and private equity clients. FE-1's team managed approximately 3,000 clients (including both consumers and businesses) with a total deposit value of about $3 billion.

61. FE-2 worked at FRB for over two decades until the Bank's assets were purchased by JPMorgan. Beginning in 2019, FE-2 was a Vice President of a group that provided lending strategy support to all of the 17 loan teams covering the 39 states that FRB served. FE-2's team predominantly provided support on residential loans.

62. FE-3 was a Senior Preferred Banker from before the Class Period until 2023 in FRB's San Francisco Bay Area. FE-3 was in a client-facing role, which involved on-boarding clients and assisting

[3] For purposes of readability and preserving the anonymity of these confidential witnesses, this Complaint uses "he" and "his" in connection with all of the Former Employees, regardless of gender.

them with banking activities. FE-3 was responsible for determining what the client needed, referring the client to the appropriate division(s) of FRB, and assigning a Relationship Manager who would best suit those needs. FE-3 was also responsible for preparing his branch office for internal audits, external audits conducted by KPMG, and compliance reviews.

63. FE-4 was a Director who oversaw commercial and residential appraisal operations from 2020 until FRB's collapse. FE-4 managed loan appraisal operations for regions east of California.

64. FE-5 worked for FRB for approximately three decades, and held the title of Executive Director when FRB closed. FE-5 oversaw one of the largest client portfolios in the Bank. FE-5 was in regular contact with Defendants, and in particular with Defendant Roffler.

65. FE-6 was a Relationship Manager in the San Francisco Bay Area from 2016 until 2023 when FRB collapsed. FE-6 reported to Regional Managing Director Mohammad Fahmi, who reported to Defendant Selfridge, the Chief Banking Officer.

66. FE-7 was a Preferred Banker starting before the Class Period until 2023 in FRB's San Francisco Bay Area. FE-7 worked primarily with individual consumer clients to establish accounts and provide various banking services, including loan and mortgage referrals.

67. FE-8 was a Managing Director in FRB's Private Wealth Management division beginning before the Class Period until shortly after JPMorgan purchased FRB. While employed at FRB, FE-8 attended the company-wide weekly Loan Meetings held on Mondays.

68. FE-9 was a loan specialist in the Commercial and Multifamily Real Estate loan division in one of FRB's California offices from March 2021 until being laid off in January 2023.

69. FE-10 was a Relationship Manager from 2021 to 2022. FE-10 was primarily responsible for loan sales of commercial and multi-family residential buildings.

70. FE-11 was a credit analyst in Business Banking based in the Boston area from 2022 until FRB's closure. In this role, FE-11 underwrote and managed private equity loans, including completing the on-boarding process, renewing or modifying loans, and liaising with clients. The Private Equity vertical, with approximately $5 billion in commitments, was the largest vertical within FRB's Boston-based Business Banking division, which had a total volume of about $10 billion.

71. FE-12 began working at FRB in 2017 and in 2020 became a Director of Commercial and Industrial ("C&I") Lending, primarily within a region of the Northeast U.S., until FRB went into receivership. FE-12's responsibilities included sales of C&I lending products, other than real estate loans.

72. FE-13 held multiple positions at FRB in the nearly two decades he worked at FRB, including most recently as an operation strategist in the Preferred Banking Office in the San Francisco headquarters. Starting prior to the Class Period, FE-13 reported to Tracey Chan, Senior Vice President of San Francisco Bay Area Preferred Banking.

73. FE-14 was an associate on the Management Analytics Team from before the Class Period until early 2022. While FE-14 was a member of that team, the team reported to Defendant Erkan. FE-14's role included, among other responsibilities, determining how FRB's investment portfolio would be impacted by interest rate volatility.

74. FE-15 was a data analyst in Lending Operations in FRB's San Francisco headquarters from before the Class Period until early 2023 when he was assigned to another analytical role where he remained until FRB went into receivership. FE-15 was responsible for developing predictive modeling for FRB's lending operations.

75. FE-16 was a member of FRB's Digital Team for nearly ten years. From 2018 until FRB closed, FE-16 was a Vice President of a team involved in the development of digital applications for online banking.

76. FE-17 was a risk analyst in FRB's San Francisco headquarters from before the Class Period to late 2022. FE-17 built dashboards for data analysis, development, and visualization for multiple segments of FRB.

77. FE-18 was a manager on the IT Internal Audit Team from prior to the Class Period until the Bank's collapse.

## IV. SUMMARY OF DEFENDANTS' FRAUD

### A. Background on FRB

78. During the Class Period, FRB offered private banking and wealth management services in 93 Preferred Banking Offices nationally with offices concentrated in coastal markets including: San Francisco, Los Angeles, Newport Beach, San Diego, Portland, New York, Boston, and Palm Beach.

79. FRB conducted operations through two business segments: Commercial Banking and Wealth Management. The Commercial Banking segment was responsible for gathering deposits, originating and servicing loans, and investing in investment securities. The Wealth Management segment's primary responsibilities included investment management for individuals and institutions, money market, mutual fund, and brokerage activities, sales of life insurance policies, trust and custody services, and foreign exchange activities.

80. FRB touted its "client-focused" business model as a key advantage it held over its competition. FRB's high-touch business model emphasized becoming a client's "banker for life" so that a client would continue to work with FRB for all of their personal and professional banking needs for decades. Under this "relationship-based, client-focused approach," FRB assigned each client a Relationship Manager, who acted as a single point of contact for the client.

81. At all times during the Class Period, FRB operated as an FDIC-insured bank. This meant that if FRB failed, the FDIC would reimburse depositors up to $250,000 per account.

**B. FRB's Operations**

82. FRB generated revenue primarily through borrowing money from customer deposits, on which it paid interest at times, in order to loan or invest these monies at a higher rate than paid to depositors. The vast majority of FRB's liabilities were customer deposits, and the vast majority of its assets were loans. A key performance indicator for FRB was the difference between the interest expense paid to FRB's customers on their deposits and the interest income earned on FRB's interest-bearing assets. The dollar amount by which interest income exceeds interest expense is referred to as net interest income or "NII." A related key performance indicator is the difference between the weighted average interest rate earned on FRB's interest-bearing assets and the weighted average interest rate paid on FRB's customer deposits, which is referred to as the net interest rate "spread." NII constituted the core of FRB's revenue before and during the Class Period.

83. FRB's balance-sheet liabilities other than deposits included shareholder's equity, borrowing from the Federal Home Loan Bank ("FHLB") and/or the Federal Reserve Bank discount window, and certain notes issued by FRB. FRB's balance-sheet assets other than loans included liquid assets (such as

cash, cash equivalents, and debt securities classified as available-for-sale) and other investments (such as debt securities classified as held-to-maturity).

84. Since at least 2002, FRB focused on attracting deposits from "high liquidity and substantial net worth" individuals and businesses in the "urban, coastal" markets where it operated. FRB defined HNW households as those with $1 million or more of investable assets. For years, FRB emphasized to investors that these HNW clients represented "a growing opportunity" for FRB because there was an "increased concentration of wealth in [these] markets." For example, in October 2017, FRB told investors that while the urban, coastal markets it operated in contained 21% of all U.S. households, these markets contained 58% of all HNW households in the country. FRB also highlighted that their "very satisfied personal banking clients recommending [FRB] to their businesses and non-profit organizations" could help fuel further business deposits.

85. Utilizing this strategy, FRB grew deposits steadily: from 2012 to 2017, deposits rose from $27.1 billion to $68.9 billion. During this time period, deposits rose approximately 21% annually but were majorly focused in consumer deposits. However, by the end of 2017, FRB's business deposits represented 54% of all deposits, and the average size of these business deposits was $366,000.

86. At the same time, FRB held numerous assets—predominantly loans—that generated interest income for FRB. For instance, based primarily on deposit growth, FRB's total assets rose from $34.4 billion in 2012 to $87.79 billion in 2017. FRB's loan portfolio, a subset of its total assets, likewise grew from $28 billion in 2012 to $62.8 billion in 2017.

87. FRB's loan portfolio was heavily concentrated in the residential real estate market during this period. By the end of 2017, single family residential loans and lines of credit constituted a majority of FRB's loan portfolio (approximately 60%) and the remaining 40% largely was evenly distributed between multifamily real estate, commercial real estate, business, and construction and other loans. Because FRB focused on originating residential mortgage loans, the vast majority of FRB's loan portfolio featured long maturities (i.e., loans with terms longer than five-years) and fixed interest rates.

88. In addition to its loan portfolio, FRB also held funds from customers' deposits in more liquid assets. For example, in 2017, FRB held approximately $1.2 billion in cash and $16.82 billion in securities, which constituted 22% of total assets.

89. Monitoring its liabilities, especially customer deposits, and assets was critical to FRB's ability to generate earnings before and during the Class Period. Critical to these efforts was managing liquidity risk and interest rate risk.

90. Liquidity risk refers to the risk of a bank being unable to meet financial obligations as they come due without incurring unacceptable losses. For instance, if FRB were to experience withdrawals of customer deposits that exceeded its cash and cash equivalents, FRB would be forced to sell less liquid assets (potentially at significant losses) or to borrow from non-deposit sources (potentially at significantly greater expense). Even if FRB were to meet its short-term financial obligations, such realized losses or increased borrowing expenses might threaten the Bank's ability to continue as a going concern. In the extreme case, as in fact occurred, a sale of substantially all of FRB's assets might be insufficient to make depositors whole.

91. FRB's executives monitored liquidity risk by receiving frequent updates on the Bank's liquidity and how it would be affected by various scenarios. That included information on the amount of FRB's assets readily convertible into cash without undue loss, FRB's untapped borrowing capacity with different sources of funding, deposit trends and the stability of FRB's deposits (particularly its uninsured deposits), FRB's ability to sell certain assets (such as loans), and FRB's contingency funding plans.

92. Interest rate risk refers to the risks to a bank's revenue, liquidity, and solvency from changes in market interest rates. Market interest rates influence a bank's operations in many ways. For example, to attract and retain deposits in a rising rate environment, a bank may need to pay higher interest rates to depositors, which raises its interest expense. Rising market interest rates could also lead to withdrawals of customer deposits, threatening the bank's liquidity. In theory, rising interest rates could also increase a bank's interest income, but in a rising interest rate environment, a bank may have greater difficulty originating new loans. Moreover, the bank may hold long-term fixed-rate loans, whose interest income would not increase with market interest rates, and whose fair market value would decrease as market interest rates rise. The greater the mismatch between the maturities of the bank's assets (e.g., long-term fixed-rate loans) and liabilities (e.g., customer deposits), the greater the consequences of rising interest rates.

93. FRB's executives likewise monitored interest rate risk by receiving frequent updates on the Bank's interest rate exposure and how it would be affected by various interest rate scenarios. That included information on FRB's interest expense and interest income, the breakdown of FRB's deposits between non-interest-bearing and interest-bearing deposits, the breakdown of FRB's loans between fixed rates and floating rates, loan demand and loan performance, and FRB's origination practices.

94. Market interest rates are set by supply and demand. The Federal Reserve can influence market interest rates through various monetary policy tools, such as: setting the interest rate on reserve balance accounts at Federal Reserve Banks, which influences the rates at which banks lend money to each other (the federal funds rate); setting the terms of the overnight reverse repurchase agreement facility available to nonbank financial institutions; open market operations to purchase and sell U.S. Treasury and federal agency securities; and setting the terms under which eligible institutions can borrow at its discount window. The Federal Reserve's Federal Open Market Committee ("FOMC") meets eight times a year to set the federal funds target rate.

95. Generally speaking, the Federal Reserve's monetary policy balances the goals of increasing employment and economic growth, on the one hand, with the goals of curbing inflation and maintaining the value of the U.S. dollar relative to other currencies, on the other hand. In balancing these goals, the Federal Reserve can pursue an "expansionary" monetary policy—increasing the money supply and decreasing interest rates—to increase employment and economic growth, or pursue "contractionary" monetary policy—decreasing the money supply and increasing interest rates—to decrease inflation and increase the relative value of the U.S. dollar.

96. Because fluctuations in interest rates can impact both the cost at which a bank obtains deposits from its customers and the ability of the bank to generate income from its customers' deposits by issuing loans, such fluctuations also impact a bank's NII and NIM, which is the percentage a bank earns from its assets relative to what it pays its customers on their deposits. Both of these metrics, NII and NIM, are key to a bank's financial stability. If a bank has not appropriately mitigated interest rate risk, rising interest rates can compress NII and NIM, or even turn these figures negative, leading to losses, a reduction in new loan origination, and an inability to attract new deposits with higher interest rates. When this

happens, bank customers and investors can lose confidence in the bank's business model, which can lead to a bank "run," where requests for withdrawal by bank customers exceed the bank's available liquidity.

97. For the years leading up to the Class Period, market interest rates remained low. Indeed, the federal funds rate from 2012 to 2016 ranged from only 0.07% to 0.54%, and bank prime loan rates—the rates given to the most credit worthy customers—ranged between 3.25% and 3.75%. The Federal Reserve raised rates in 2017, but rates went no higher than approximately 1.5%. During this period of low market interest rates, FRB delivered incremental gains in NII (from $1.17 billion in 2012 to $2.15 billion in 2017) while maintaining a stable NIM (between 3.13% and 4.22%). FRB's increase in NII and stable NIM during this period reflected the prevailing low market interest rates and the fact that FRB was able to grow its portfolio of interest-bearing assets (thereby increasing its interest income) while keeping its costs of maintaining its customers deposits, also known as funding costs, low.

### C. In 2018, FRB and Defendant Herbert Lobby to Roll Back the Dodd-Frank Act's Liquidity and Stress-Testing Requirements

98. In 2017, following a period of consistent growth, FRB crossed a key regulatory threshold under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), exceeding $50 billion in total consolidated assets. While all FDIC-insured banks are subject to regulatory scrutiny, the Dodd-Frank Act, which Congress enacted in the aftermath of the 2008 financial crisis, subjects certain large banks (then-defined as those exceeding $50 billion in assets) to enhanced regulatory supervision, heightened standards, and compulsory capital and liquidity stress testing, among other strict compliance and risk management policies. The Dodd-Frank Act also requires banks exceeding $50 billion in assets to annually perform and report stress test results to the FDIC and disclose the results of that testing to the public.

99. Starting in 2018, FRB and Defendant Herbert contributed significant financial resources in order to lobby in favor of rolling back critical Dodd-Frank safeguards through a bill known as the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA"). The EGRRCPA sought to ease regulatory requirements on all but the largest U.S. banks, and was the most significant rollback of banking regulatory standards since Congress enacted the Dodd-Frank Act. Specifically, the EGRRCPA proposed raising the asset threshold at which the Dodd-Frank Act's enhanced standards and supervision applied from

$50 billion to $250 billion, and increasing the asset threshold at which company-run stress testing is required from $10 billion to $250 billion.

100. Having recently exceeded the $50 billion threshold, FRB paid at least $250,000 to law firms to lobby support for the EGRRCPA in order to avoid the Dodd-Frank Act's enhanced standards and supervision. Furthermore, Defendant Herbert, who at the time was also serving on the Federal Reserve Bank's Federal Advisory Council, personally contributed over $100,000 to the Congressional Leadership Fund and the Republican National Committee while the EGRRCPA was in committee.

101. The lobbying efforts of FRB, Defendant Herbert and other banks paid off when Congress enacted the EGRRCPA on May 24, 2018. The EGRRCPA raised the regulatory threshold for stress testing and other enhanced prudential standards to $100 billion, and, eighteen months later, to $250 billion. Having most recently reported total assets of $90.2 billion as of March 31, 2018, FRB was no longer in danger of having to comply with the heightened regulatory scrutiny of the Dodd-Frank Act.

102. As discussed below, given that FRB was not subject to the enhanced regulatory supervision under the Dodd-Frank Act during the Class Period, Defendants' statements regarding FRB's safety, liquidity, stress testing, and risk management policies and practices were highly material to investors.

### D. No Longer Facing the Dodd-Frank Act's Scrutiny, Defendants Rapidly Grew FRB's Balance Sheet, Heightening FRB's Risk Profile

103. Following the Dodd-Frank Act rollbacks, Defendants ushered in a period of explosive growth, as FRB's total assets rose approximately 20% per year, from $99.20 billion at the end of 2018 to $181.09 billion by the end of 2021. Many analysts, such as Morningstar and JPMorgan, praised FRB's total asset growth as "exceptional" and favorably compared its 20% compounded asset growth over 10 years with the industry growth rate of 5% during the same time period.

104. FRB fueled its explosive asset growth by rapidly increasing deposits. For instance, FRB increased total deposits from $79.1 billion in 2018 to $156.3 billion by the end of 2021—an increase of approximately 73.5%. As is reflected in the below table, FRB recorded its two largest deposit inflows in 2020 and 2021, with deposits increasing 28% and 36% year-over-year ("y/y"), respectively. Deposits also grew by 13% in 2022.

| | 2020 | 2021 | Change y/y | 2022 | Change y/y |
|---|---|---|---|---|---|
| **Total Deposits** | **$ 114.93** | **$ 156.32** | **36%** | **$176.44** | **13%** |
| Noninterest-bearing checking | $ 46.28 | $ 70.84 | 53% | $62.58 | -12% |
| Interest-bearing checking | $ 30.60 | $ 41.25 | 35% | $41.18 | 0% |
| Money market checking | $ 16.78 | $ 20.30 | 21% | $25.81 | 27% |
| Money market savings | $ 12.59 | $ 16.57 | 32% | $21.66 | 31% |
| Certificates of deposits | $ 8.68 | $ 7.36 | -15% | $25.21 | 243% |

**Table 1: FRB's Total Deposits at Year End, 2020-2022 ($ in Billions)**

105. As reflected in Table 1, there are various deposit types. FRB paid no interest on its noninterest-bearing checking accounts and little interest on its interest-bearing checking accounts. FRB paid progressively more interest on deposits held in money market checking accounts, money market savings accounts, and certificates of deposits. As is shown in Table 1, FRB's deposits shifted significantly in 2022. For instance, noninterest bearing checking accounts declined by 12%, while money market savings and certificates of deposits rose 31% and 243%, respectively. As discussed in Section IV.J below, these changes stemmed from the Federal Reserve raising interest rates, which prompted depositors to move funds into accounts that paid higher interest on their cash balances.

106. The majority of FRB's deposit inflows in 2021 and 2022 stemmed from attracting new business deposits. In 2021, for example, $27.5 billion of FRB's $41.4 billion (67%) in new deposits were business deposits, while the remaining one-third were consumer deposits. This trend continued in 2022, as business deposits constituted $17.85 billion of the $20.14 billion, or 89%, in new deposits. After introducing almost $60 billion in business deposits in a two-year span, business deposits rose to constitute 60% and 63% of FRB's total deposits by the end of 2021 and 2022, respectively. As FRB disclosed in an April 2022 investor presentation, the average business deposit account was $481,000, while the average consumer deposit account was $149,000. FE-1 recalled that business deposits included technology or technology-adjacent companies that had large deposits in their checking accounts ($200-300 million, for example) and would frequently withdraw or draw down millions in deposits at a time.

107. Critically, the FDIC insures depositors' money if a bank fails, but only up to $250,000. Thus, if a bank fails and the depositor has more than $250,000 in deposits, those deposits are not insured by the FDIC and are referred to as "uninsured deposits."

108. As of December 31, 2020, FRB reported $80.3 billion of total uninsured deposits, which constituted 70% of total deposits. In 2021, FRB's uninsured deposits increased 45% to $116.7 billion, which amounted to 75% of total deposits. The funding concentration of uninsured deposits continued in 2022 as $119.5 billion of FRB's $176.4 billion in deposits, or 68%, were uninsured. FRB's uninsured deposit concentration is reflected in the below table.

| | 2020 | 2021 | Change y/y | 2022 | Change y/y |
|---|---|---|---|---|---|
| **Uninsured Deposits** | **$ 80.3** | **$ 116.7** | **45%** | **$ 119.5** | **2%** |
| As % of Total Deposits | 70% | 75% | -- | 68% | -- |
| As % of Total Assets | 56% | 64% | -- | 56% | -- |

**Table 2: FRB's Total Uninsured Deposits, 2020-2022 ($ in Billions)**

109. Accordingly, as reflected in Table 2, FRB had a very high concentration of uninsured deposits. This presented certain risks because, as noted above, uninsured deposits risk being wiped out in the event of the Bank's failure, and thus these depositors are especially likely to withdraw their funds during actual or perceived periods of stress for the Bank. Because of this tendency of customers who have uninsured deposits, the Bank needed to closely monitor this risk at all times. To this end, the Bank maintained an uninsured deposit caution level at 70% of deposits, which it exceeded as of year-end 2021.

110. FRB's exposure to uninsured deposits dwarfed nearly all of its peer banks. Indeed, during the 2020-2021 time period, the median percentage of uninsured deposits to total assets for a group of peer banks ranged from ***just 31% to 41%***. At the end of 2021, only two of FRB's peer banks—Silicon Valley Bank and Signature Bank—held a larger proportion of uninsured deposits:

| Bank | Total Deposits (in Thousands) | Percentage of Total Deposits Uninsured |
|---|---|---|
| Silicon Valley Bank | 175,378,000 | 95% |
| Signature Bank | 106,153,818 | 92% |
| **First Republic Bank** | **156,321,243** | **75%** |
| The Huntington National Bank | 146,382,512 | 71% |
| BMO Harris Bank National Association | 137,817,391 | 66% |
| HSBC Bank USA, National Association | 151,179,446 | 65% |
| Fifth Third Bank, National Association | 176,175,460 | 64% |
| MUFG Union Bank, National Association | 101,482,402 | 58% |

| Bank | Total Deposits (in Thousands) | Percentage of Total Deposits Uninsured |
|---|---|---|
| Manufacturers and Traders Trust Company | 133,685,640 | 55% |
| Keybank National Association | 155,074,869 | 54% |
| Citizen Bank, National Association | 156,829,177 | 50% |
| Morgan Stanley Bank, National Association | 164,020,000 | 47% |
| UBS Bank USA | 111,602,591 | 43% |
| Regions Bank | 141,129,000 | 40% |
| Morgan Stanley Bank, Private Bank, National Association | 125,670,000 | 33% |
| Ally Bank | 145,765,000 | 14% |
| American Express National Bank | 85,493,447 | 14% |
| Discover Bank | 75,525,799 | 11% |
| USAA Federal Savings Bank | 105,070,590 | 8% |

**Table 3: Banks with the Largest Percentages of Uninsured Deposits**

111. As FRB attracted new deposits, it largely deployed these funds to grow its loan portfolio. From 2018 to 2022, FRB's loan portfolio doubled: from $75.9 to $166.08 billion. Throughout this period, loans constituted approximately 75% to 80% of FRB's total assets. Thus, as reflected in Table 4 below, FRB's loans were the primary driver of FRB's revenues.

| | 2020 | 2021 | YoY % Change y/y | 2022 | Change y/y |
|---|---|---|---|---|---|
| **Total Assets** | **$ 142.50** | **$ 181.09** | **27%** | **$ 212.64** | **17%** |
| Net Loans | $ 111.93 | $ 134.26 | 20% | $ 166.08 | 24% |
| Single Family Residential | $ 64.61 | $ 80.37 | 24% | $ 102.76 | 28% |
| Multifamily Residential | $ 13.77 | $ 15.42 | 16% | $ 21.59 | 35% |
| Commercial Real Estate | $ 8.02 | $ 8.53 | 6% | $ 10.83 | 27% |
| Commercial Construction | $ 2.02 | $ 1.98 | -2% | $ 2.14 | 8% |
| Business | $ 16.70 | $ 19.19 | 15% | $ 18.79 | -2% |
| Other | $ 7.45 | $ 8.98 | 21% | $ 10.79 | 20% |

**Table 4: FRB's Total Assets and Loan Portfolio, 2020-2022 ($ in Billions)**

112. FRB's loan growth was accompanied by a continued concentration in real estate loans (single and multifamily residential). As reflected above in Table 4, at the end of 2020, FRB held

$88.42 billion of these real estate loans, which constituted 79% of loans, and 62% of total assets. By the end of 2021, FRB's single and multifamily real estate loans increased to $106.79 billion, which constituted 80% of loans and 59% of total assets. At the end of 2022, single and multifamily real estate loans swelled to $137.32 billion (83% of loans and 65% of total assets). Indeed, in 2022, real estate loans constituted 96% (in terms of dollar amount) of the new loans that FRB originated.

113. As a general matter, FRB recorded nearly all loans on its balance sheet as held for investment ("HFI") rather than held for sale ("HFS"). A bank records loans as HFI when it possesses the intent and ability to hold the loan on its balance sheet for its full term, and records a loan as HFS when it intends to sell the loan or lacks the ability to hold the loan for its full term. When a bank holds a loan for investment, it records the loan on the balance sheet consistent with the loan's "book value," meaning the loan's original value. In contrast, loans designated as held for sale are recorded consistent with their "fair value," meaning the loan's current estimated value in the market. Similar principles apply to securities. Throughout 2022, FRB held approximately $27 billion in securities as held to maturity ("HTM") and $3 billion of securities as available for sale ("AFS").

114. The fair value of assets such as loans and securities may fluctuate for various reasons. One reason includes rising interest rates. As interest rates rise, new loans and securities with higher interest rates become available and cause loans or securities that have a rate fixed to a value below the rates of new loans or securities (as opposed to one that adjusts to prevailing market rates) to become less attractive to investors. This decline in demand can push down the market value of these loans or securities. A bank may realize these fair value losses if the bank intends to sell the loans or securities (which could be advantageous if the bank anticipates that these assets may further decrease in value) or if the bank lacks the ability to hold the asset to maturity due to operational reasons, such as managing the bank's liquidity and solvency. In either case, the bank must reduce the carrying value of such loans or securities to reflect their fair market value, thus realizing any losses.

115. FRB's loans were predominantly fixed rate and long duration. The below table reflects FRB's fixed-rate loans relative to adjustable-rate loans for loans due after one or more years.

| | 2020 | 2021 | 2022 |
|---|---|---|---|
| Fixed | $ 86.07 | $ 99.91 | $ 131.39 |
| Adjustable | $ 26.52 | $ 16.56 | $ 17.33 |
| Percent of Loans with Fixed Rate | 76% | 86% | 88% |

**Table 5: Distribution of FRB's Loan Portfolio Due After One Year, 2020-2022 ($ in Billions)**

116. As reflected in Table 5, over 75% of FRB's loans due after one year featured fixed rates—a number that increased significantly as FRB grew its loan portfolio in 2021 and 2022.

117. FRB's loans also were heavily concentrated in longer-duration loans that were at least several years away from maturity.

| Duration | 2021 | % of Loans | 2022 | % of Loans |
|---|---|---|---|---|
| 1 Year or Less | $18.31 | 14% | $17.66 | 11% |
| >1 Year Through 5 Years | $11.32 | 8% | $13.53 | 8% |
| >5 Years Through 15 Years | $23.44 | 17% | $31.38 | 19% |
| >15 Years | $81.75 | 61% | $103.8 | 62% |

**Table 6: Duration of FRB's Loan Portfolio, 2021-22 ($ in Billions)**

118. As reflected in Table 6, in 2021 and 2022, over 80% of FRB's loans matured in over five years. FRB also concentrated its securities portfolio in long-duration investments. At the end of 2021, of the Bank's $22.40 billion in HTM securities, $21.17 billion (or, 94%) matured after ten years.

### E. The Individual Defendants Repeatedly Assure Investors That FRB's Deposit and Loan Growth Are Safe and Stable, While Downplaying the Impact of Rising Interest Rates on FRB

119. Throughout the Class Period, Defendants falsely assured investors about FRB's: (i) stable, well-diversified deposit growth; (ii) ability to grow loan originations despite rising interest rates; (iii) ability to manage interest rate risk, including in the face of substantial interest rate hikes in 2022; and (iv) methods for managing liquidity risk. These representations communicated that Defendants were able to manage and mitigate the risks inherent in FRB's business model in a rising interest rate environment. Investors credited these representations, as reflected in analyst reports that repeatedly praised the apparent resiliency of FRB's business model in the face of rising interest rates.

120. ***First***, throughout the Class Period, Defendants falsely assured investors that FRB's deposit growth was "***well-diversified***" and driven by strong client relationships, and that FRB's deposits provided FRB with a stable source of funding for loans, even in the face of rising rates. For example, on October 13, 2021, the first day of the Class Period, Defendant Erkan attributed FRB's deposit growth to "***strong client activity and referral activity***" and claimed that FRB's deposit growth was "***well diversified across client types***." On January 14, 2022, Defendant Selfridge stated that: "***We continue to maintain a diversified deposit funding base***."

121. On April 13, 2022, Defendant Roffler stated that "***service***" was "***what drives growth and staying very focused on credit, safety, soundness and it's even more valuable***." Defendant Roffler touted FRB's ability to grow deposits despite rising interest rates, stating: "***I think the thing that gives us confidence is if you come back to the service model and our business model***. Even in periods of rising rates in the past, we have grown deposits 15% to 18% relatively consistently. . . . ***And so we are deepening relationships. We're adding new households***. . . . ***And so that activity leads us to continue to grow our deposit base and you've seen it time after time***."

122. On July 14, 2022, Defendant Selfridge reiterated that: "***[o]ur deposit-base remains well-diversified***" and that "***[o]ur service model is performing quite well and continues to drive our safe, stable, organic growth***." On this date, Defendant Tsokova similarly stated that "***we continue to operate in a safe and sound manner***," adding that "***[o]verall, it has been a great first half of the year, reflecting the stability and consistency of our model***." On January 13, 2023, Defendant Roffler stated: "***[W]e remain well-positioned to deliver safe, strong growth through the consistent execution of our service-focused culture and business model***."

123. The stability of FRB's deposits and the Bank's ability to generate new customer deposits to fund loan growth were also a key focus of analysts during the Class Period. For example, on October 13, 2021, Wells Fargo wrote: "Another quarter of strong origination activity (fully funded by deposits) helped drive better-than-expected revenue. . . . The story looks pretty consistent at the moment . . . ." In a February 3, 2022 report, UBS noted FRB's "organic outperformance," stating that the Bank's "[a]bove-median account growth suggests outsized deposit growth at these firms is more core than investors are fearing." UBS concluded that "account growth at . . . FRC suggests that deposits may not be as 'surge' and sensitive

to outflow as recent market fears imply." Similarly, in an April 13, 2022 report, Wolfe stated that "Fed [Balance Sheet] Runoff Poses Risk to System-Wide Deposit Growth, ***But Not FRC's***." The report stated that "FRC's service model . . . enabled it to grow deposits 15-18% in the 2015-2019 hiking cycle and should enable it to do so again in this one—despite [quantitative tightening]."[4] On July 8, 2022, Wedbush wrote that: "Deposit growth should keep pace with loan growth," stating that "FRC is confident it can continue to grow deposits in a rising rate environment." On July 14, 2022, Evercore wrote that FRB "[m]gmt expects deposit growth to continue albeit, at a slower pace than prior 2 years."

124. ***Second***, throughout the Class Period, Defendants repeatedly assured investors that FRB's business model could withstand rising interest rates, and that FRB's loan growth would not be impacted by rising interest rates. Prior to the Class Period, on July 13, 2021, Herbert stated that interest rate hikes "probably won't make much difference operationally as to how we run the business. We do run a very matched book I think this Gaye referred to earlier. And so, if you look at our simulation models, ***rising rate environment is not a particularly threatening thing***."[5]

125. Defendants repeated these assurances on conference calls with investors throughout the Class Period. For example, on January 14, 2022, Defendant Roffler stated that "***72% of our deposits are in checking. That gives you some protection as rate starts to rise, and then, one that's probably you highlight when you said it, growth***." On July 14, 2022, Defendant Herbert stated "***our model is stronger than ever . . . and we are well positioned to go ahead in the current conditions***." Roffler added that "I'd also highlight, $70 billion, $75 billion of our deposits are noninterest-bearing relationship-based focus, right? ***And so again, that gives us some protection from how fast the Fed looks to be willing to move here in the second half of the year***."

126. In fact, on August 9, 2022, Roffler claimed that:

> ***[T]he rise in rates actually gives [FRB] a much greater opportunity to engage with clients and prospects***. When we're at a 0 interest rate, no one wants to talk to you about CD. . . .

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[4] Quantitative tightening (also known as balance sheet normalization) refers to monetary policies that contract or reduce the Federal Reserve's balance sheet which, in turn, removes liquidity from financial markets.

[5] To run a "matched book" means that assets and liabilities are "matched" with approximately equally distributed values, maturities, and interest rates. For example, $1 billion of assets with fixed interest rates and a 30-year maturity would be matched with fixed-rate liabilities of approximately $1 billion and a 30-year maturity.

> And that engages existing clients, brings new clients, and also deepens relationships. . . . ***And so what we do is really use it as a deepening of relationship strategy in addition to acquiring new [clients]***.

On October 14, 2022, Roffler stated that "***with rates rising we've continued to grow our loan portfolio, and if I stand back from that, we've always been focused on service first and foremost, and that is what has driven loan growth frankly in any environment***."

127. Analysts relied on Defendants' assurances about FRB's ability to safely grow despite rising interest rates. For example, on April 13, 2022, Piper Sandler stated that FRB's "high-quality service model continues to attract new clients and should drive mortgage growth even if industrywide activity slows." On April 14, 2022, JPMorgan stated that "even with mortgage rates rising sharply during the quarter, not only did the company not see any type of growth headwind, but the company reported it [sic] strongest quarter ever for loan originations." In a July 14, 2022 report, Wedbush praised FRB's "better than expected performance on nearly all fronts," noting "[a]verage loan growth of 21% Y/Y . . . driven by jumbo single family mortgage" and "[a]verage deposit growth of 21% Y/Y," which the report characterized as "a very healthy level of growth despite headwinds." The report concluded that "[w]e view FRC's business model as the gold standard in banking given its success in wooing the highly desirable affluent client base." On October 17, 2022, JPMorgan observed that despite "concern . . . that the company would struggle to maintain its loan momentum in the face of a rapid rise in mortgage rates, the company delivered another convincing quarter with average loans increasing at a near 25% annualized pace." The report concluded that "in the backdrop of a very challenged mortgage environment," FRB's "model [was] proving to be even more durable than expected."

128. ***Third***, throughout the Class Period, Defendants represented to investors that the Bank managed and mitigated interest rate risk. In FDIC filings throughout the Class Period, Defendants Herbert, Roffler, Tsokova, and Holland stated that:

> The Bank's Board approves policies and limits governing the management of interest rate risk at least annually. Our ALM and Investment Committees further establish risk management guidelines and procedures within the broader policies and limits established by the Bank's Board. Compliance with these policies and limits is reported to the Bank's Board on an ongoing basis and decisions on the management of interest rate risk are made as needed.

129. ***Fourth***, Defendants falsely reassured investors that FRB held sufficient liquid assets and closely managed and mitigated this risk. In FDIC filings issued during the Class Period, Defendants Herbert, Roffler, Erkan, Holland, and Tsokova stated: "We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs." The Individual Defendants further stated: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and intermediate-term demands***."

130. As discussed below, Defendants' statements were false or misleading, and when the relevant truth was ultimately revealed to the market, FRB's stock price crashed and investors lost billions.

### F. Contrary to Defendants' Statements, FRB's Deposit Growth Was Driven by Undisclosed Rate Incentives, Resulting in Deposit Outflows as Interest Rates Rose

131. Throughout the Class Period, FRB relied on deposits for 92% of its funding, with the rest of funding sourced through federal lending programs. While deposits can provide a less costly source of funding, they can also—depending on the type of depositor—be more volatile because depositors may pull their money out of the Bank during times of stress. In addition to providing a low-cost source of funding, checking deposits provided liquidity that allowed FRB to represent to regulators and to the public that it was well-capitalized and stable.

132. Given the dramatic growth in FRB's loan volume during the Class Period, *see supra* ¶¶111-112, FRB needed to continually grow deposits to fund new loans. Defendants' public statements during the Class Period claimed that FRB's deposit growth was generated organically through high-touch banking relationships, and therefore, these deposits provided a stable source of funding. *See supra* ¶¶120-23. Contrary to these claims, as detailed by numerous former employees, FRB relied on several undisclosed, unsustainable tactics to attract and retain deposits in order to support FRB's continuous loan growth, none of which were disclosed to investors.

133. ***First***, FRB offered reduced interest rates on its loans, including residential, commercial and multifamily real estate loans, and business loans and lines of credit, in exchange for loan customers agreeing to deposit funds at FRB or maintain their deposits at the Bank. ***Second***, FRB established a Rate Exception Program that allowed Relationship Managers in each of the Bank's branches to offer their clients

a short-term, higher interest rate on deposits if the client agreed to deposit a large amount of funds at the bank. ***Third***, at the end of every quarter, a designated team of senior FRB employees worked to generate an influx of additional deposits prior to the Bank reporting its financial results for the quarter. During these quarter-end meetings, this team contacted the Bank's HNW clients and hedge funds customers to negotiate large, short-term deposits on which FRB agreed to pay the depositors exceptionally high interest rates.

134. Collectively, these undisclosed practices resulted in FRB's reported deposit balances being far greater than they would have been if FRB had generated its deposit growth organically, as Defendants claimed. By relying on these undisclosed tactics to generate deposits, Defendants gave investors a false impression of FRB's safety and stability. Specifically, deposits generated through undisclosed rate incentives and short-term deposit arrangements were not as stable or "sticky" as deposits generated in the normal course of FRB's banking operations, which relied on customer service and satisfaction to attract and retain loyal clients. As such, deposits generated through these undisclosed rate incentives were far more susceptible to flow out of the Bank as federal interest rates began to rise (and with them, prevailing interest rates paid on deposits) and these clients sought higher returns on their deposits. These practices also exposed the Bank to the risk of massive deposit outflows in the event depositors lost confidence in the safety of FRB. As discussed below in Section IV.O, this is precisely what occurred at the end of the Class Period. Compounding this undisclosed risk, offering unpublished rate incentives to attract large deposits only increased FRB's concentration of uninsured deposits, which as discussed in Section IV.D, also made FRB more susceptible to deposit outflows. Moreover, as discussed below in Section IV.J, relying on rate incentives, and in particular, discounted loan rates on residential mortgages, to generate deposits exacerbated the impact of rising interest rates by creating a mismatch between the Bank's long-term assets and short-term liabilities.

### 1. FRB Grew Its Deposits by Offering Rate Incentives on Loans

#### a. Single-Family Residential Loans

135. Leading up to and during the Class Period, FRB had a practice of generally approving long-duration, non-conforming loans, or "jumbo loans," with abnormally low interest rates for its HNW clients.

136. Non-conforming mortgages, like the ones offered by FRB, are home loans that do not comply with the guidelines of government-sponsored enterprises ("GSE"), such as the Federal Home Loan

Mortgage Corp. (commonly known as "Freddie Mac") or the Federal National Mortgage Association (commonly known as "Fannie Mae"). GSEs like Freddie Mac and Fannie Mae play the critical role of purchasing loans from banks on the secondary mortgage market, providing the banks with much-needed liquidity to fund more loans. GSE guidelines have a number of requirements that must be satisfied in order to purchase a loan, such as a maximum loan amount. As of December 31, 2021, ***43%*** of total loans serviced by FRB had outstanding balances greater than $822,375, which was then the maximum conforming loan amount for a single-family loan. Due to the size of FRB's jumbo loans, they did not conform to GSE standards and could not be readily sold on the secondary market.

137. Moreover, many of FRB's jumbo loans offered an interest-only repayment period of ten years. In 2021, for example, FRB's jumbo loans with interest-only repayment periods comprised ***61%*** of FRB's single-family residence loans. An interest-only loan is also considered non-conforming, even if it is not a jumbo loan. Thus, the secondary mortgage market for FRB's loans was additionally limited due to the interest-only repayment period on many of its loans.

138. In general, a non-conforming loan would call for a higher interest rate to be paid to the bank since the bank would have more difficulty selling the loan and would likely have to hold the loan until maturity. However, FRB competed for loan business with other banks by lowering interest rates on their loans, often below the market rate. According to an article published by The Wall Street Journal on April 25, 2023, "First Republic developed a business niche by marketing mortgages to the titans of Wall Street and Silicon Valley with rates starting below 3%," well below prevailing market rates.

139. Unbeknownst to investors, FRB routinely reduced the already-low interest rates on its single-family residential loans further in exchange for loan customers agreeing to deposit or maintain large amounts of money at the Bank. Former FRB employees with first-hand knowledge of FRB's mortgage lending practices confirmed that the interest rates on single-family residential loans frequently dropped below 3% because of these undisclosed incentives.

140. As a Vice President of a lending production support team, FE-2 managed all 17 of FRB's loan teams and saw virtually all loan requests. FE-2 described seeing interest rates on FRB's jumbo residential loans that were as low as ***1.85%***.

141. FE-3, a Preferred Banking Representative, stated that FRB gave wealthier clients more favorable interest rates on large loans if they promised to maintain a deposit account at FRB. FE-4, a director of real estate appraisals, confirmed that if a customer who already had or agreed to deposit a large sum of money in a FRB account, FRB could offer them below-market interest rates on their residential mortgage.

142. FE-2 explained that FRB distributed a daily pricing matrix that allowed employees to calculate the interest rates that they could offer to a client. If, for example, FRB's pricing matrix indicated that the Bank's standard interest rate on a particular day was 4.0%, a Relationship Manager could offer a prospective loan client a rate incentive if the client agreed to bring significant assets to the Bank. If the prospective client maintained a checking account with an average balance of $30,000 and a wealth management account worth $5 million at another bank, for example, the Relationship Manager could lower the offered rate to 2.8% if the client agreed to transfer their assets to FRB. FE-2 added that each Relationship Manager also had access to two "Silver Bullets" per year, which allowed the Relationship Manager to reduce the offered loan rate by another 20 bps, or 0.2%. In total, in the example provided, the offered rate could be reduced from 4% to 2.6% without the need to obtain prior approval from the executive loan committee.

143. FE-5 recalled that FRB would offer wealthy clients who agreed to give FRB large deposits a 2.5% interest rate on a 10-year or 30-year loan, when the market rates were about 4%. FE-6 stated that Relationship Managers could reduce the officially published interest rate by 65 bps, or .65%, if the client deposited 15% of the loan value into a FRB checking account.

144. FE-4 stated that the terms of the residential loan would be worked out between the client and the Loan Officer or Relationship Manager. FE-7, who was in a client-facing role as a Preferred Banking Representative, recalled that the first question a Relationship Manager would ask a client when discussing mortgage interest rates was: "What are you willing to bring over?" FE-7 stated that Relationship Managers would tell a potential loan client exactly how much money they would need to deposit in a FRB checking account for a specific interest rate on a residential mortgage.

145. As explained by FE-1, a FRB executive, FRB bankers could offer an interest rate on a residential mortgage that was lower than FRB's published rate if the client agreed to deposit 10% to 20%

of the loan value in a checking account for a set period of time. FE-3 stated that the more money a client was willing to deposit, the better the interest rate FRB offered. FE-3 added that FRB generally required 20% of the loan value to be deposited to qualify for a rate incentive, but if a customer deposited more than 20% of the loan value, FRB bankers could offer even larger rate incentives.

146. FE-3 stated, for example, FRB might offer a customer with a high deposit balance a $10 million loan that was 20 bps, or .2%, below the prime rate (the interest rate that a bank offers its most creditworthy customers). FE-3 contrasted this with a traditional favorable rate that was published, which might be 10 bps, or 0.1%, ***above*** the prime rate.

147. Significantly, FE-3 estimated that ***90 percent*** of his own book of loan clients, which amounted to approximately $250 million, had a discounted loan rate based on their relationship with the Bank.

148. While FRB's practice of offering below-market interest rates to residential mortgage customers was widespread, according to FE-1, the agreement with the loan customer was nothing more than a "handshake agreement" or a "gentlemen's agreement," and did not appear in the loan customer's contract. FE-7 likewise understood that the requirement was "more like a handshake agreement." FE-3 similarly stated that there was no written requirement in the loan documents that ensured that the borrowers would deposit and maintain the money in the account after the loan was funded.

149. FE-5 stated that clients' commitments to make deposits in exchange for a discounted loan rate was based just on "goodwill." FE-5 recalled an example of a client who received a 2.5% interest rate on a loan in exchange for a commitment to make deposits, but "forgot" to make the deposits. FE-5 added that it was very easy for clients to withdraw their deposits after their discounted loan was funded because the commitment was never made in writing.

150. High-level executives at FRB, including the Individual Defendants, were aware that FRB had no mechanism to ensure that customers maintain deposits in a FRB checking account despite receiving a rate incentive from FRB. According to FE-4, senior executives regularly discussed the issue at weekly Loan Meetings, which were held on Zoom every Monday afternoon for employees who worked on FRB's lending side. FE-4 recalled that FRB's Managing Directors, Vice Presidents, and executives would attend the Loan Meetings, including Defendants Herbert, Roffler, Holland, and Tsokova, as well as Defendant

Selfridge, who ran the meetings. FE-4 stated that FRB's senior management's consistent message was to bring in more deposits and to make sure that clients with loan rate incentives were meeting the requirement to open and maintain a certain amount of money in a FRB checking account. While FE-3 did not attend Loan Meetings, FE-3 stated that Relationship Managers reported the action items FRB executives discussed at the Loan Meetings to him. FE-3 stated that FRB's leadership emphasized to Relationship Managers that they should ensure that their clients were meeting their minimum deposit requirements.

151. FRB relied on Relationship Managers to individually follow up with their loan clients regarding the clients' deposits. Multiple former employees stated that FRB incentivized Relationship Managers to speak with their loan clients to ensure that the promised deposit was made, but that there was no penalty to the bankers if the loan customer later withdrew them. According to FE-2, it was in a Relationship Manager's interest to ensure the deposit was made as each Relationship Manager earned a commission based on the opening of the account and the average balances maintained as of the end of each quarter and each year. FE-3 similarly recalled that there were incentives for Relationship Managers whose loan clients opened checking accounts.

152. FE-3 explained that each Relationship Manager could use the Client Relationship Portal ("CRP"), a company-side browser that contained information regarding a client's account(s), to compare each client's loans against their deposits. FE-3 recalled that Defendant Erkan referenced using CRP along these lines for client outreach during meetings.

153. Moreover, according to FE-5, the Analytics group at FRB used a dashboard to track all deposit withdrawals on a daily basis. The Analytics team would send FE-5 monthly reports that contained which rate exception clients withdrew deposits from FRB.

154. Even if Relationship Managers followed up with their loan clients, FRB had no recourse to require that the client maintain the deposited funds in a FRB account. FE-1 explained that once the loan was funded, FRB could not modify the interest rate it provided. FE-7 likewise stated that he never saw FRB reprice a loan interest rate upwards in the four years he worked at FRB. FE-8 also stated that he did not know of any instance in which FRB raised the interest rate on a rate exception loan because a depositor withdrew their money from their account.

155. FE-5 questioned FRB senior management at meetings about how FRB planned to address the risk that depositors would not honor their commitment to maintain deposits after receiving discounted loan rates. FE-5 brought the concern to a number of leaders in FRB's Lending, Banking and Wealth Management divisions, but it became a "sore subject." When FE-5 asked about the actions the Bank planned to take if deposits were withdrawn, senior management told FE-5 not to worry because it would not happen. Senior management told FE-5 to just focus on bringing in more deposits. FE-5 was "shocked" that FRB's executives, and especially Defendant Roffler, did not seem to understand the severity of the situation.

156. As discussed below in Sections IV.J-O, in 2022, FRB's reckless strategy of offering discounted loan rates in exchange for nonbinding-deposit commitments from clients had disastrous consequences. Once interest rates began to rise, Defendants' frantic efforts to increase deposits, including contacting customers who received loan discounts but failed to maintain their deposit commitments, were unsuccessful in generating or retaining sufficient deposits to stem the tide of deposit outflows. Meanwhile, as detailed in Section IV.J, this tactic loaded up the Bank's balance sheet with low-interest, fixed-rate loans that left the Bank highly susceptible to interest-rate shocks.

### b. Commercial Real Estate and Multifamily Real Estate Loans

157. FRB's reliance on undisclosed interest rate incentives extended to its commercial real estate ("CRE") and multifamily loans. From 2021 to January 2023, FE-9 serviced these types of loans, which ranged between $1 million and $40 million. On average, the CRE and multifamily loans FE-9 personally serviced ranged from $5-10 million. FE-9 recalled that FRB applied specialized, non-published pricing on all CRE and multifamily loans because clients either maintained large deposits at FRB or were going to transfer large deposits to FRB. FE-10, a Relationship Manager for Commercial and Multifamily Real Estate Loan clients during the Class Period, likewise stated that FRB "always" offered an incentive to clients who deposited money with the Bank. FE-10 noted that if a client did not have a certain amount to deposit into a checking account, the client would not qualify for an interest rate incentive on the loan.

158. FE-10 further explained that FRB would provide discounted interest rates on commercial loans to customers based on the customer agreeing to deposit about 15% of the loan amount in a FRB account. FE-9 stated that for a new loan, FRB would ask the client for at least 20% of the loan amount in

deposits in order to provide a more favorable interest rate. If it was an established client, FRB would ask the client to bring their operating accounts to FRB and a certain amount on an annual basis in exchange for a more favorable interest rate. FE-9 added that the more money that a client agreed to deposit in a checking account, the more a Relationship Manager could discount the interest rate on the loan.

159. As in the case of single-family residential loans, FE-10 stated that FRB did not have the ability to change the interest rate on these loans if the client did not satisfy their deposit commitments. FE-5 recalled one instance in which he asked for Defendant Roffler's support to pursue a client who had received a below-market interest rate on a commercial loan in exchange for a $50 million deposit, but withdrew the deposit after the loan was funded. FE-5 wanted to ask the client to deposit the required amount again or raise the interest rate on the loan, but Defendant Roffler told FE-5 that FRB would not engage in a "tit for tat" with clients.

160. FE-10 stated that while the promise was noted internally on FRB's systems, there was no covenant or term in the loan documents that required the client to make the deposits; it was merely a "gentlemen's agreement." FE-9 likewise specified that the loan documents did not include anything in writing requiring a commercial loan client to bring over their promised deposits. There was only one line in a note on the Bank's term sheet, which was not viewed by the client, stating the discounted interest rate and the amount that the borrower or guarantor would be bringing to FRB upon funding of the loan. FRB loan underwriters told FE-9 that it was up to the Relationship Managers to ensure the clients followed through on moving deposits to FRB, and that it was "just how it is done" at FRB.

161. FE-10 stated that senior management "suggested" that FE-10 and other Relationship Managers ensure that commercial loan clients who received discounted interest rates make deposits during the weekly Loan Meetings held over Zoom every Monday. FE-10 recalled that FRB's senior executives who attended the meetings, and Defendant Selfridge in particular, would discuss following up with those clients who had not satisfied their deposit commitments.

162. The former employees who serviced commercial and multifamily real estate loans described how FRB's messaging around deposits began to change in 2022. FE-10 stated that senior management's messaging to employees about following up with clients regarding deposits ramped up when interest rates starting rising, and "really jumped" in the fall of 2022. FE-9 agreed that for all of 2022, FRB incentivized

Relationship Managers with large bonuses to request deposits from their clients across the board and that FRB management told Relationship Managers in all departments to concentrate on getting deposits from their clients.

**c. Business Loans and Lines of Credit**

163. FRB also relied on interest rate incentives in its Business Banking segment in order to attract deposits. FE-11, a Portfolio Analyst who underwrote and managed loans for the Private Equity vertical of the Business Banking team, confirmed that this practice was not limited to residential loans. FE-11 stated that FRB offered reduced loan rates in exchange for deposits across the board to FRB's Business Banking clients as well, including private equity and venture capital clients.

164. FE-11 recalled that there was no standardized method to determine the interest rates charged to these private equity clients and, unlike other banks he worked for, FRB did not use a pricing model to set the interest rate for a loan. Instead, FE-11 stated that the interest rate would depend on the relationship the client had with the Bank. For example, a FRB banker might offer a new client a loan that was 50 bps, or .5%, higher than the prime interest rate, but could offer an existing client with a high deposit balance a prime interest rate. FE-11 estimated that the typical market rate on a similar business loan at other banks was likely around 35 to 75 bps, or .35 to .75% ***higher*** than the prime interest rate.

165. FE-11 stated that the total volume of business loans for FRB was approximately $32 billion during FE-11's tenure. The office in which FE-11 worked had a volume of about $10 billion, which included all verticals, including air craft, real estate, private equity, professional services, and non-profits. The loans provided within the Private Equity vertical, the largest vertical for his office, made up approximately $5 billion of those commitments. FE-11 indicated that during 2022 to 2023, FE-11's team generated about $1.5 billion in new loan commitments.

166. FE-11 stated that every single new loan client in the Private Equity group agreed to a "handshake deal" to maintain the business's primary deposits at FRB in exchange for a discounted interest rate. FE-11 explained that the Managing Director would note the client's promise in a draft term sheet, which FE-11 would use to draft the loan paperwork, including a credit memorandum summarizing every aspect of the deal. FE-11's memorandum included a note at the end stating that "All primary deposit

accounts would be maintained at FRB." This promise, however, was not formally recorded in the loan agreement.

167. FE-11 said that part of the downfall of FRB was the "handshake" agreements they made with clients because clients tried to find ways around it. FE-11 recalled an instance in which FRB provided a new business banking client, who came over from another bank, a credit line of $50,000,000. The client made the same "handshake" deal for a discounted interest rate on the loan, but never made the promised deposits. When the client's Relationship Manager asked the client why they had not made any deposits with FRB, the client said they had maintained their deposits at their former bank.

168. FE-12 worked in C&I Lending during the Class Period. FE-12 explained that C&I primarily focused its lending on credit lines for businesses, and typically excluded private equity clients. FE-12 stated that during the Class Period, FRB placed an emphasis on expanding C&I's deposit base and types of customers. For instance, FRB encouraged employees to lend more in C&I than other areas with higher bonuses for certain deposits. FE-12 stated that employees' commissions and bonuses were based on the amount of deposits they brought in to the Bank, so there was an incentive to stay on top of their clients' deposits.

169. FE-12 stated that C&I originated loans in the range of $1 million to approximately $20 million, whereas the group that handled private equity business would originate loans in the range of $5 million to $250 million. FE-12 stated that FRB required all loan customers to have a deposit account with FRB. During the underwriting process for a loan, FRB would memorialize in an approval memo how much money a customer was expected to deposit or had already deposited in exchange for a lower interest rate on their loan. FE-12 stated that FRB would periodically review the loan customer's account to make sure their deposits were within the terms of the rate incentive deal.

170. As the above witness accounts reveal, FRB relied heavily on undisclosed discounts to loan customers across their verticals in order to gather deposits. However, loan customers were free to remove their deposits without losing the benefit of their discounts. This practice exposed the Bank to significant risks related to rising interest rates. Deposits that were made solely to obtain more favorable loan rates were not sticky and far more likely to flow out of the Bank in the event interest rates rose and customers sought higher yields on their deposits, or in the event depositors questioned the safety of their deposits with

FRB. Moreover, FRB's failure to ensure that loan customers actually maintained deposits with the Bank contributed to the mismatch between FRB's deposits and ever-growing portfolio of loans. As discussed below in Section IV.J, this mismatch between growth in deposits and loans contributed directly to the Bank's liquidity issues that arose beginning in 2022.

### 2. FRB Engaged in a Long-Standing, Undisclosed Practice That Paid Clients Extraordinarily High Rates on Deposits to Increase Deposit Numbers, Reducing the Stability of FRB's Deposits

171. In addition to offering reduced interest rates on loans as an incentive to attract or retain deposits, FRB resorted to paying deposit customers exceedingly high interest rates on checking accounts in order to maintain a constant influx of deposits. This program, known as the Rate Exception Program, allowed bankers across the country to request approval from FRB senior bankers to pay clients a higher interest rate on their checking account deposits for short periods of time.

172. Banks generally pay very low interest rates on checking accounts. FRB's published average interest rate for its checking accounts, for example, hovered around 0.01% for the first three quarters of 2021 and 0.02% in the fourth quarter of 2021. FE-3 stated that FRB bankers used the Rate Exception Program to entice clients to transfer their deposits from another bank to FRB by offering higher, unpublished interest rates. For example, FE-3 said that if FRB's published interest rate for a standard checking account was 0.05%, depending on the anticipated deposit level, a FRB banker could apply and get approved to offer an interest of 0.5%—***ten times higher*** than the published interest rate for the same checking account.

173. According to FE-12, a director of C&I Lending, if a current or potential client mentioned that another bank offered them a higher interest rate on a deposit account, FRB bankers could request a rate exception that would meet or beat the competitor's pricing, allowing FRB to win or maintain the relationship with the client. FE-12, corroborated by accounts from FE-3 and FE-1, explained that the Rate Exception Program process involved a FRB banker emailing a request to a specific FRB Rate Exception email address. FE-1, a FRB executive in FRB's Silicon Valley region, recalled that bankers would detail in the request whether a competitor bank offered the client a better interest rate and would propose a rate that would match or increase the competing rate.

174. FE-12 recounted that the Rate Exception Team, comprised of senior managers who divided responsibility for approvals by geographic region, would review the request and decide whether to approve the requested rate.

175. FE-1 explained that FRB bankers used the Rate Exception Program to attract and retain the "right" clients, depending on the relationship, or potential relationship, with FRB and the amount the client was willing to deposit. FE-1 explained that if a client who had $50 million to deposit agreed to keep 10 to 20% of those funds in a checking account for approximately one year, FRB would approve a temporary rate exception to pay a higher interest rate on their money market account. FE-1 indicated that FRB generally approved Rate Exceptions for clients with at least $5 million to deposit, but would in some cases approve a client with a lower balance who would be a reliable source of referrals. FE-8 recalled the minimum amount required for a rate exception on a deposit account was $500,000 to $1 million. FE-12 added that there was an emphasis on offering Rate Exceptions to HNW individuals, hedge funds, and real estate firms.

176. FE-12 estimated that FRB approved rate exceptions for 25 to 35% of clients. FE-1 remembered that "everybody got greedy" when it came to submitting requests for Rate Exceptions, since FRB's compensation and bonus structure depended on the number of deposit accounts opened and the amount deposited. FE-1 knew of a banker who was making $34-35 million a year based upon deposits brought into FRB. According to FE-1, as a result of FRB's compensation structure, FRB bankers shifted their focus to HNW clients and HNW businesses who were able to deposit enormous sums of money when offered a rate exception.

177. Aside from the compensation incentives tied to the number of deposits, bankers were explicitly encouraged to request rate exceptions for their clients. FE-12 reported that during weekly Loan Meetings held each Monday, senior management would generally discuss that FRB bankers should use the Rate Exception Program as a tool to bring in more deposits. FE-8 stated that a common message at the Loan Meetings was "[t]here's always an exception that could be made." As discussed in further detail below, FE-12 recalled that requests to the Rate Exception Program ramped up in 2022, as the interest rate environment became more competitive and FRB needed to compete with other banks for deposits.

178. FRB's Rate Exception Program only provided higher interest rates on deposit accounts for a temporary time period. Former FRB employees reported that the Bank closely tracked the accounts within the Rate Exception Program and informed bankers when the higher interest rates were at risk of expiring. FE-1 understood that FRB had a dedicated team which tracked rate exceptions through various metrics and reviewed the special interest rates quarterly. FE-1 recalled that the team responsible for tracking rate exceptions would contact the bankers every quarter regarding the status of their rate exception clients. FE-1 said that he would get an email towards the end of each quarter informing him when his clients' rate exceptions would expire and revert to the normal rate. However, FE-1 stated that the Rate Exception Team would often approve a three-month extension based upon the clients' deposit amounts. FE-1 said that some of his clients would get the rate exception amount guaranteed for 12 months because of the amount of their deposits.

179. FE-3 also recalled that the rate exception would be removed if the client's deposit account decreased below the agreed-upon balance. In that case, the interest rate would be adjusted downwards and the banker would have to submit a new request to the Rate Exception Team to achieve the same higher interest rate on a checking account.

180. While the Rate Exception Team did not explain their criteria for evaluating a rate exception request, FE-1 knew that the team would ask a banker how sticky the funds were as part of the approval process. For example, FE-1 stated that the Rate Exception Team would approve clients with connections to technology companies, for instance, because their deposits were perceived as sticker than other types of clients.

181. While FRB's Rate Exception Program increased the amount of FRB's deposits, especially into checking accounts, these deposits were not sticky because clients only deposited funds to earn a higher interest rate on the deposits. There was no mechanism that required the clients to maintain their deposits in checking accounts at FRB if a competitor bank made a more attractive offer or if the client perceived a risk to the safety of the Bank. As FE-1 stated, many of FRB's clients who deposited money with FRB under the Rate Exception Program were companies with extremely large amounts of money in uninsured checking accounts. FE-1's clients, often private equity firms in Silicon Valley, would maintain $200 to $300 million in a checking account because of the rate exception. As discussed further below, FE-1 felt

that these companies were the first to withdraw their deposits with the first sign of trouble at FRB, leaving a "big hole on the balance sheet" for FRB.

182. Through the Rate Exception Program, FRB was able to temporarily attract HNW clients, increase their deposit balances, and ensure that clients maintained their balances for at least as long as the Rate Exception was valid. While this undisclosed practice temporarily increased deposits, it created a risk that such deposits would flow out of the Bank once the rate exception expired, or if such HNW clients decided to take their deposits elsewhere in search of higher yields. Moreover, this practice also increased FRB's funding costs, reducing the Bank's NII and NIM. However, the deposits generated through this program were not sufficient to sustain FRB's continuous loan growth. As discussed below, FRB also relied on a second, centrally-managed Rate Exception Program to generate even more deposits at quarter end.

183. FE-13, an operation strategist in the Preferred Banking Office in the San Francisco headquarters, explained that the program was operated by just a few individuals in FRB's headquarters. During his tenure, FE-13 was responsible for preparing a weekly report (the Rate Exception Sheet) for one of the team's members, Joe Petitti. FE-13's report tracked in an Excel spreadsheet the clients who received an undisclosed rate exception. Thus, FE-13 had personal knowledge of the program even though he stated it was highly confidential.

184. FE-13 explained that towards the end of each quarter, the group met in a conference room called the "War Room" (later renamed the "Peace Room") on the second floor of the San Francisco headquarters to review the deposit numbers for that quarter. FE-5 did not participate in the War Room meetings but was well aware of them as his direct reports, including a senior banking manager, attended the meetings and reported back to him. FE-5 explained that the team tracked the flow of deposits, analyzed which deposits were going to stick, and analyzed why deposits were leaving the Bank. According to FE-5, FRB's executives considered the War Room's activities vital.

185. The War Room team included high-level bank managers, such as: Tracy Chan, Anna Hirano, Margaret Mak, Amie Stevens, Fatema Arande, and Karen Weisenbach. FE-13 also remembered seeing Defendant Erkan attend the War Room meetings at least twice. FE-5 stated that Defendant Roffler was in the War Room often, especially in the 60 days prior to FRB's collapse. FE-5 stated that the War

Room meetings were also attended by FRB's biggest deposit producers and FRB' employees who ran the Bank's largest branches and divisions.

186. According to FE-13, during the quarter-end War Room meetings, if the team determined that the Bank needed to shore up the amount of deposits for that quarter, the team would contact a HNW client or a hedge fund to request that they make a sizeable deposit into a checking account. In exchange, FRB would pay an exceptionally high interest rate on the checking account for a set period of time.

187. FE-14 stated that FRB used the War Room rate exceptions as a "tool" to manage deposits at the end of the quarter. FE-14 explained that if FRB was about to file its financial reports, and the bank experienced an unexpected outflow of deposits, the rate exceptions were used to "smooth deposits" before the report was published. FE-14 stated that FRB wanted to avoid any end-of-quarter "surprises" in the event there was a large outflow of deposits.

188. The War Room rate exceptions were generally only applicable for a short period of time that was determined by the War Room team. FE-13 reported that the War Room team would offer individual clients the higher rate for about 4 to 6 months. For hedge funds, the deposit may have only been necessary for just a week to allow FRB to increase the deposit numbers at the end of the quarter.

189. FE-13 reported that the War Room team maintained lists of clients that they could rely on to quickly wire enormous deposits into a checking account at FRB.

190. The difference in the offered rate for these deposits compared to typical deposits was stark. FE-13 recalled that while the average interest rate paid for a checking account was about 0.01%, the War Room team would offer rates ranging from 0.45 to 0.5% on a checking account.

191. The program was limited to clients with extraordinary wealth and hedge funds, but it was not an insignificant number of clients. FE-13 estimated that when he prepared the weekly Rate Exception Sheet, there were approximately 300 clients listed who were receiving much higher rates on their checking accounts.

192. While there was no standard amount deposited to receive the rate exception, FE-13 stated that each client in the program was depositing far more than the FDIC-insured maximum. FE-13 recalled that in many cases the deposits were so large that the increased rate would generate enough income to the client to pay their monthly mortgage with just the interest earned on the checking account. FE-13 further

estimated that the total amount he tracked on the Rate Exception sheet for Petitti was about $1 to 2 billion. FE-13 thought that the clients of Tracy Chan—the Senior Managing Director of Preferred Banking—accounted for approximately $1 billion in deposits within the program as well.

193. After FE-13's supervisor, Petitti, left FRB in 2016, FE-13 was no longer required to prepare the weekly report, but he understood from War Room member Tracy Chan that the program expanded considerably. FE-13 reported directly to Chan and understood that the program expanded because Chan assembled a team of eight FRB employees to track the deposits, approve requests, and notify bankers of expirations. Chan would additionally inform FE-13 when War Room meetings were taking place because she would not be available during this time. Based on conversations with Chan, FE-13 learned that the War Room meetings were still occurring when he left the Bank in early 2022. FE-5 confirmed that in 2022, the War Room activities intensified, as FRB frantically tried to increase deposits at the end of each quarter.

194. FE-13 indicated that the quarter-end activities of the War Room itself were highly confidential. While working for Petitti, FE-13 primarily worked on creating the weekly Rate Exception Sheet by himself and only distributed the Rate Exception Sheet to about 10-12 people total.

195. However, FE-13 stated that executive management was certainly aware of what was happening in the War Room at the end of each quarter. The meetings took place in a conference room for multiple hours on the same floor as the executive offices, including the offices of Defendants Herbert and Erkan. Furthermore, FE-13 saw that Defendant Erkan participated in the meetings on at least two occasions. FE-5 also indicated that Defendant Roffler was "very much" in attendance at the War Room meetings, especially in March 2023.

196. FE-14, whose supervisor reported directly to Defendant Erkan, likewise reported that Defendant Erkan was involved in the War Room discussions as the Chief Deposit Officer. According to FE-14, when Erkan was appointed President and Co-CEO, she passed the responsibility to Fatima Arande, Business Head of East Coast Deposits.

197. The War Room's deposit gathering at the end of the quarter enabled the Bank to boost deposit numbers temporarily, masking any deposit shortfall, deposit outflow or other performance issues that may have existed throughout the quarter. It also enabled FRB to present an image of stronger, more stable liquidity to regulators and to the public, as it appeared that the Bank had access to a substantial

quantity of sticky deposits in cheap, non-interest-bearing checking accounts. In truth, the deposits generated through the activities of the War Room were only maintained in order to benefit from the higher interest rates being offered by the War Room. These deposits were far from sticky, as confirmed by FE-13's example of a hedge fund client that planned to withdraw $10-15 million after just eight days per the Bank's War Room agreement.

198. As with the rate incentives offered throughout FRB branch offices through the Rate Exception Program, the Bank's War Room efforts created a misleading image of consistently strong and organic deposit growth each quarter, while FRB bankers were pumping up the numbers at the last moment with uninsured, non-sticky deposits. The Bank was also creating a misleading image for investors and regulators that FRB had steady access to low-cost deposits in checking accounts.

199. Moreover, because the program was increasing deposits, the Bank was able to use the deposits to fund at least a portion of its loans instead of borrowing funds from the Federal Reserve or other banks. FE-13 indicated that borrowing excessive amounts of funds from federal sources was not only more expensive than self-funding, but could raise concerns from regulators about the Bank's liquidity.

### G. In 4Q 2020, FRB Modifies Its Deposit Outflow Calibration Model and Recategorizes $19 Billion in Deposits to Avoid Triggering Deposit Outflow Risk Indicators

200. Beginning in the fourth quarter of 2020, the Bank's regulators began to identify issues with the manner in which it was assessing and mitigating risks related to its deposit growth. As background, at all relevant times, FRB had two primary regulators: the FDIC and the CDFPI. The FDIC's San Francisco Regional Office and the CDFPI jointly monitored FRB through a continuous examination process ("CEP") over the course of every year. The regulators supervised FRB's safety and soundness, liquidity and interest rate risks, the adequacy of the Bank's risk management systems and internal controls, among other subjects.

201. As a part of the regulators' CEP, they prepare quarterly and annual reports of findings that are issued to the Bank's senior managers and Board. If a regulator identifies a weakness or deficiency during a targeted review, it may issue one or more Supervisory Recommendations ("SR"), a finding that informs the Bank of the regulator's concerns and its recommended changes.

202. In its 2021 examination period, the FDIC issued an SR related to FRB's Deposit Outflow Calibration Model Uncertainty and Stress Magnitude. The SR directed management's attention to changes made to the Bank's Deposit Outflow Calibration Model, a stress testing tool used to determine risks associated with a deposit outflow, which occurs when clients withdraw funds from the bank at a faster rate than new deposits are made. The FDIC found that FRB "re-categorized approximately $19 billion in deposit inflows during the pandemic from short-term to long-term balances."

203. FRB's reclassification of these balances markedly impacted the results of the Bank's liquidity stress testing, and in particular, projections of the Realistic Worst Case scenario—a type of simulation that estimates the most adverse but realistic changes to the Bank based on the occurrence of different situations. According to the FDIC, FRB's re-categorization decreased the aggregate outflow projections under the Realistic Worst Case scenario by 12% of its total assets—***nearly $17 billion***.

204. The FDIC found that if FRB had not manipulated these metrics, the results of the tests for the 90+ and 180+ day funding horizons would have "breached the qualitative Risk Appetite Statement."

205. The manipulation of these metrics made deposits seem more sticky and made FRB's liquidity appear more resilient when, in fact, FRB's management knew (and attempted to conceal) as early as the fourth quarter of 2020 that a deposit outflow was a stress point.

206. The results of these liquidity stress tests and the reclassification of the short-term balances were never disclosed to investors.

### H. Heading into 2022, FRB Experiences a Revolving Door of Executives

207. For decades, Defendant Herbert ran First Republic as its CEO. By 2021, however, Herbert was in his mid-70s and facing health issues. In July 2021, the Board announced a succession plan: Defendant Erkan would become Herbert's co-CEO, effective July 12, 2021, and serve in a co-CEO capacity through December 31, 2022, at which point she would become sole CEO while Herbert left the CEO position to become Executive Chairman. As reported by the San Francisco Business Times, Erkan would report to Herbert in her role as co-CEO.

208. As it turned out, the Herbert-Erkan co-CEO arrangement lasted less than six months. On December 31, 2021, Erkan announced her resignation. As was later reported by the Financial Times, Erkan's brief co-CEO tenure was tumultuous, as she was "involved in a series of interactions with other

senior executives that two of the people described as 'toxic.'" To make matters worse, Erkan's resignation coincided with Herbert's planned medical leave of absence, which the Board had approved for January 1, 2022 to June 30, 2022.

209. Based upon Erkan's unexpected departure and Herbert's medical leave of absence, the Bank announced that CFO Roffler had been elevated to acting co-CEO and that Olga Tsokova (then CAO) had been appointed acting CFO. Nevertheless, there were continued shakeups in the C-suite as Chief Operating Officer ("COO") Jason Bender announced his resignation on January 11, 2022 due to personal reasons.

210. On March 7, 2022, the Bank announced that Herbert would end his temporary medical leave of absence effective April 4, 2022 at which point he would "resume his duties as Co-[CEO]." But just a week later, the Bank changed course. It announced that Herbert would be leaving the co-CEO role and would become Executive Chairman, and that Roffler would serve as sole CEO, effective March 13, 2022.

211. The Board did not hire a permanent COO or CFO until much later in 2022. The Board first filled the COO position on August 4, 2022, naming Susie Cranston ("Cranston"), effective September 1, 2022. Then, on August 22, 2022, the Board appointed Neal Holland as CFO, effective November 2, 2022, at which point Tsokova was moved to Deputy CFO and CAO.

### I. Starting in March 2022, the Fed Takes Historic Action to Counteract Rampant Inflation by Aggressively Increasing Interest Rates

212. On January 26, 2022, the Federal Reserve issued a statement on behalf of the FOMC, which, as discussed above, is responsible for making decisions about the federal funds rate—the target interest rate set by the Federal Reserve. In the statement, the FOMC announced that during its January 2022 meeting, it decided not to increase the federal funds rate, but "the Committee expects it will soon be appropriate to raise the target range for the federal funds rate."

213. Following the Federal Reserve's announcement, UBS commented on February 3, 2022 that "five rate hikes is the most the Fed has raised rates in a calendar year since 2005, and thus, liability growth and re-pricing becomes more of a forefront issue for [banks in] 2022 than if the Fed raised more gradually." In this same report, UBS surveyed several banks' susceptibility to rate hikes, specifically by focusing on deposit quality. Looking to potential deposit outflows, UBS identified FRB as a bank that "could be more vulnerable (flows and pricing) in a rate hiking cycle that is less gradual than we saw in 2015-18."

214. As it signaled it would, on March 16, 2022, the FOMC announced that it would increase interest rates, for the first time since 2018, by 0.25%, or 25 bps, to counter unchecked inflation. The FOMC also signaled that it aimed to increase rates by about 0.25% six more times during 2022, such that the interest rate would jump from near zero to between 1.75 and 2% by December 2022.

215. Unsatisfied with its progress on curbing persistent inflation, the FOMC acted far more forcefully in the spring of 2022. On May 5, 2022, instead of a 0.25% increase, the FOMC elevated rates by 0.5%, its largest rate hike in over two decades. Then, in each of the next five FOMC meetings, the rate jumped by another 0.75%. In its final rate hike of 2022, on December 14, 2022, the FOMC increased rates by 0.5%, with rates reaching a range of 4.25 to 4.5%. Once again, Fed Chair Jerome Powell warned in a news conference that more sharp increases through 2023 were necessary to address inflation. Officials were targeting a short-term rate of 5 to 5.25% by the end of 2023. By March 2023, as a result of nine different rate increases, rates were in the range of 4.75 to 5.0%. The Federal Reserve's increases to the federal funds rate in 2022 and 2023 are summarized below in Table 7.

| Meeting Date | Rate Increase (bps) | Federal Funds Rate Target Range |
|---|---|---|
| January 26, 2022 | 0 | 0.00% to 0.25% |
| March 17, 2022 | 25 | 0.25% to 0.50% |
| May 5, 2022 | 50 | 0.75% to 1.00% |
| June 16, 2022 | 75 | 1.50% to 1.75% |
| July 27, 2022 | 75 | 2.25% to 2.50% |
| September 21, 2022 | 75 | 3.00% to 3.25% |
| November 2, 2022 | 75 | 3.75% to 4.00% |
| December 14, 2022 | 50 | 4.25% to 4.50% |
| February 1, 2023 | 25 | 4.50% to 4.75% |
| March 22, 2023 | 25 | 4.75% to 5.00% |
| May 3, 2023 | 25 | 5.00% to 5.25% |
| July 26, 2023 | 25 | 5.25% to 5.50% |

**Table 7: FOMC Federal Funds Rate History 2022 - 2023**

### J. Throughout 2022, Defendants Knew FRB Faced Material Risks from Elevated Federal Interest Rates, but Failed to Address and Mitigate These Risks While Downplaying Them to Investors

#### 1. FRB Established Risk Management Committees and Risk Assessment Policies Designed to Monitor Interest Rate Risk

216. Throughout 2022, FRB's senior executives and Board members served on various committees that actively monitored the impact of rising federal interest rates.

217. The Directors' Enterprise Risk Management ("DERM") Committee of the Board oversaw "the strategies, policies, and systems established by management to identify, assess, measure, monitor, report, and control the core risks facing the Bank." The DERM Committee was also responsible for enhancing "management's and the Board's understanding of the Bank's overall risk profile and risk appetite." The DERM Committee Charter specifically outlined a number of responsibilities, such as to "review, approve, and recommend to the Board the Bank's Risk Appetite Statement at least annually," to "review Risk Appetite Statement breaches and policy breaches to the extent that there are implications for the Bank's risk profile," and to "review reports from management, including the Chair of the BERM [Bank Enterprise Risk Management Committee] and the BERM, and, if appropriate, other Board committees, regarding 'black swans' (high-severity, low-likelihood risks) . . . as needed."

218. The Bank Enterprise Risk Management ("BERM") Committee was a management-level committee that reported to the DERM Committee. According to the FDIC Report, the BERM Committee "reviewed interest rate risk information, at least quarterly, and reported on breaches to the DERM," which reported significant interest rate risks to the Board. In 2020 and 2021, Defendant Erkan served on the DERM Committee. In 2022, Defendant Roffler served on the DERM Committee.

219. The Asset Liability Management Committee (ALMCO) monitored interest rate risk and escalated breaches of risk thresholds to FRB's Treasury Risk Officer, who reported to the BERM and DERM Committees.

220. FRB created an interest rate risk management policy in its Interest Rate/Market Risk Management Framework that established risk appetite (the amount of risk a bank is willing to accept), and risk tolerance (the acceptable degree of deviation from the expected risk). FRB's Interest Rate/Market Risk Management Framework also identified various "Framework Component[s]," which detailed principles

and methods to mitigate risk. These framework components included: (i) risk appetite framework; (ii) strategic planning; (iii) risk measurement; and (iv) sensitivity analysis limits.

221. First, FRB guided its risk appetite framework by "striv[ing] to maintain a neutral balance sheet." To achieve this neutrality, the policy stated: "We regularly analyze the sensitivity of our net interest income ('NII') and economic value of equity ('EVE') to changes in interest rates to limit the potential negative impact of market downturns and periods of interest rate volatility, both in the short-term and in the long-term."

222. As background, NII simulations project "the changes in asset and liability cash flows, expressed in terms of NII, over a specified time horizon for defined interest rate scenarios." FRB modeled NII under various interest rate stress scenarios to identify vulnerabilities and sources of potential earnings volatility. On the other hand, EVE modeling is meant to analyze interest rate risk on the fair market values of a bank's assets, liabilities, and equity by taking the present value of all asset cash flows and subtracting the present value of all outstanding liability cash flows. When using an EVE model, banks calculate the values for a base-case scenario and a stress scenario. If the bank's predetermined EVE risk thresholds are breached during stress testing, it indicates to the bank that the market rate change will have a negative impact on the bank.

223. Second, FRB maintained a strategic planning principle to maintain "a balanced match of assets to liability that limits the volatility of earnings and capital stemming from changes in interest rates." To accomplish this, FRB's policy stated that: "We manage interest rate risk as set by the direction of the bank's Business Plan and to ensure there are few, if any, deviations from the Business Plan forecasts." The policy further stated that this was accomplished "primarily by originating and retaining adjustable-rate loans and hybrid ARM [Adjustable-Rate Mortgage] loans with initial short- or intermediate-term fixed rates, and match funding these assets with checking and savings deposits; short- and intermediate-term CDs; long-term, laddered maturity, fixed-rate FHLB advances; and unsecured, term, fixed-rate senior notes."

224. Third, FRB's risk measurement component principle was meant to ensure FRB "measure[d] and manage[d] the potential impact of changes in interest rates on our [NII], [NIM], and capital." To measure and manage this impact, FRB's policy stated that:

> We conduct scenario simulations of changes in interest rates and yield curves. We use a simulation model to measure and evaluate potential changes in our contractual NII, which excludes the impact of purchase accounting. We run various hypothetical interest rate scenarios at least quarterly and compare these results to a scenario with no changes in interest rates.

225. Fourth, FRB's interest rate risk management policy included a provision on sensitivity analysis limits. The implication of this component was that:

> There are policy limits in place for the outputs of the stress test results for changes to NII and EVE. Board approved interest rate risk limits that reflect the risk tolerance and business activities of [the Bank] are used to monitor and manage interest rate risk. The limits cover rate shock and ramp scenarios which enables to accurately assess the impact of optionality to the balance sheet.

226. As shown through these policies, FRB was required to maintain a balanced match of assets and liabilities, including by issuing adjustable-rate loans and matching funding of these loans with liabilities. The policy also required FRB's Board to approve and monitor interest rate risk limits, including FRB's EVE.

### 2. During the First-Half of 2022, Defendants Receive Alarming Projections Regarding the Effects of Rate Hikes on FRB's Financial Position

227. As addressed in Section IV.I, the Federal Reserve indicated in January 2022 that interest rate increases were imminent, and then began to raise rates in March 2022. During this time, analysts were keenly focused on FRB's interest rate risk and repeatedly questioned the Individual Defendants about the impact of rising interest rates. For example, on January 14, 2022, during FRB's fourth quarter 2021 earnings call, an analyst from Stephens asked about FRB's "interest rate sensitivity" and whether that "ha[d] changed or did that change at all over the last three months." Defendant Roffler denied that the Bank was sensitive to rising rates, and claimed that "***72% of our deposits are in checking. That gives you some protection as rate[s] start to rise, and then, one that's probably you highlight when you said it, growth***."

228. Throughout the first quarter of 2022, analysts continued to discuss the impact of rising interest rates risk on the Bank. On February 22, 2022, UBS highlighted potential challenges: "Given the composition of FRC's balance sheet, where assets have more gearing to the middle and long end of the curve and funding (deposits) is geared to the short end, we think adding more short rate hikes without a commensurate parallel shift could be negative for NIM." Conversely, on March 7, 2022, Piper Sandler

posited that "higher rates" would be "modestly beneficial to [NIM]" due to "the dynamic nature of the balance sheet (growth in assets at higher yields, paydowns among assets with lower yields)." Thus, while analysts were focused on how FRB would fare heading into this higher rate environment, they lacked a clear idea of how interest rate increases would impact FRB and how Defendants would manage the Bank's balance sheet in response to rising rates.

229. Meanwhile, consistent with Board policies to manage interest rate risk, FRB's committees continually modeled NII and EVE to better understand the Bank's potential vulnerabilities to rising interest rate scenarios. When analyzing EVE for the first quarter of 2022, FRB's committees noticed a dramatic decrease in EVE as compared to the projections for the previous quarter. Indeed, FRB modeled EVE in a plus 300 bps scenario and projected a decline in the value of equity by 20% during the first quarter of 2022.

230. On April 26, 2022, the ALMCO met and discussed the projected declines in EVE during the first quarter of 2022 under various rate scenarios. The ALMCO attributed these projections to "declines in asset prices [loans] outpacing declines in liability costs [deposits]." In response, according to the OIG Report, FRB's Vice President and the Head of the ALMCO recommended that FRB "***stop lengthening its asset duration considering the increasing likelihood of interest rates moving higher this year***." For example, to "stop lengthening its asset duration," FRB could originate fewer 5-to-30-year mortgages in its loan portfolio. Beyond this recommendation, the ALMCO took no other formal action.

231. The ALMCO was concerned with how these two trends were amplifying the Bank's interest rate risk as confirmed by the Bank's undisclosed EVE projections.

232. ***First***, FRB's balance sheet was heavily concentrated in long-duration, fixed-rate loans, which were susceptible to losing value as interest rates rose. As introduced above in ¶113, FRB listed the carrying values of loans it intended to and possessed the present ability to hold to maturity. As interest rates fluctuate, a loan's fair value, i.e., the value of its future cash flows and thus what it would be worth if remarketed and sold, may increase or decrease. Once the Federal Reserve began to raise interest rates in March 2022, the fair value of FRB's loans began to decline, while future rate increases (as confirmed by the Bank's EVE projections) would cause the value of these loans to decrease further. Indeed, at the end of the first quarter of 2022, FRB held a reported $141.31 billion in loans (constituting 76% of total assets), but the fair value of these loans was only $129.32 billion, which amounted to a difference of $12 billion.

During the second quarter of 2022, the difference between the carrying value and fair value of loans increased to $17.15 billion (amounting to a 43% increase in unrealized losses on these assets). Despite the significant unrealized losses, FRB represented to investors that it had both the intent and present ability to hold all loans until they matured and thus recorded the $151.52 billion book value on its balance sheet.

233. ***Second***, as the Federal Reserve raised interest rates three separate times in the second quarter of 2022 (as provided in Table 7 above), FRB's total interest expense, i.e., what FRB paid on liabilities (deposits and borrowings) that it used to fund assets (loans), increased 59%, from $44 million in the first quarter of 2022 to $70 million in the second quarter. As the Federal Reserve continued to raise rates, Defendants understood (through their EVE projections and otherwise) that this trend could continue and that total interest expense would also rise.

234. As the ALMCO acknowledged, the concurrent fair value losses within FRB's loan portfolio and rising interest charges paid to depositors presented significant interest rate and liquidity risks to the Bank if rates continued to rise. For example, the Bank's potential declines in the value of equity could undermine depositor confidence in the Bank, and could also signal that the Bank may be forced to sell certain assets at a loss to cover obligations to depositors. And, notably, the Bank's EVE projections rendered these risks entirely foreseeable.

235. However, despite knowing of these material risks, when speaking to investors, Defendants downplayed the impact of rising interest rates on FRB's business. Defendants told the market that the Bank would continue to originate new mortgage loans from their HNW clientele, and that the Bank's growing loan portfolio would strengthen the stability of the Bank's deposit base and FRB's overall profitability. For example, on April 13, 2022, during FRB's first quarter 2022 earnings call, an analyst from UBS specifically asked: "given your experience here, how should we think about investment speed and other financing needs as rates increase materially and quickly?" Defendant Herbert confidently responded that the Bank's "***opportunity to continue to grow [mortgage originations] is greater than one thinks***," that the "***mortgage business will continue***," and he was not "worr[ied] about it very much." Defendant Roffler echoed this sentiment, stating: "***Loan pipeline and backlog remain very strong because, again, we're there to serve clients when -- as Jim mentioned, others might be pulling back a little bit and continuing to deepen and increase relationships with clients who consider us their lead bank***."

236. Analysts credited these representations, and issued reports stating that they were encouraged about FRB's ability to grow its loan book in the rising interest rate environment. For example, on April 13, 2022, Piper Sandler wrote: "[m]anagement continued to sound an optimistic tone for this year and reaffirmed key guidance metrics: mid-teens loan growth, a margin of 2.65-2.75% and efficiency ratio of 62%-64%." The same day, UBS wrote: "More importantly, management talked about a strong [loan] pipeline, and thus, we think single family growth in 2Q22 could be as strong as 1Q22."

237. By the second quarter of 2022, FRB's EVE model projected that interest rate increases in the 200 to 400 bps range would "reduce the value of First Republic's equity by an amount greater than its risk tolerance or risk appetite thresholds." FRB's 2Q 2022 projections are reflected in Table 8 below.

| **Quarter End** | **Market Value of Equity (in millions)** | **Scenario** | | | |
|---|---|---|---|---|---|
| | | **+100 bps** | **+200 bps** | **+300 bps** | **+400 bps** |
| **June 2022** | $ 13,588 | -16% | -33% | -50% | -66% |
| **Risk Tolerance/ Appetite** | | 15/20% | 20/25% | 25/30% | 30/35% |

**Table 8: FRB's 2Q 2022 EVE Projections**

238. As reflected in Table 8, FRB's EVE model projected that EVE would be reduced by 16% if the Federal Reserve raised rates by 100 bps, 33% if raised by 200 bps, 50% if raised by 300 bps, and 66% if raised by 400 bps. Critically, FRB's projection ***breached risk tolerance levels under all scenarios, while the projections also breached risk appetite levels in the 200 to 400 bps scenarios***. Under both the 300 and 400 bps scenarios, the EVE reductions were well in excess of both risk tolerance and risk appetite thresholds.

239. Despite the flashing red signals emanating from the Bank's interest rate risk models and internal recognition of further risks if FRB continued to originate long-dated loans, Defendants pursued a strategy of increasing origination of long-duration loans without informing the market of any potential downsides. As it turned out, during the second quarter, FRB grew its loan portfolio by 7% (from $141.31 billion to $151.52 billion). During the quarter, total deposits only grew 2%, meaning FRB largely funded its loan growth from more expensive borrowings from the FHLB, which Defendants increased from $3.7 billion to $11 billion, an increase of nearly 200%.

240. The vast majority of this loan growth stemmed from $8 billion in new single family residential mortgage loans—most of which carried loan terms between five and thirty years. At the end of the second quarter of 2022, according to FRB's Reports of Condition and Income ("Call Reports") filed with the FDIC, FRB increased its loans with durations of five years or greater by $7 billion, which amounted to a 9% increase quarter-over-quarter. As noted above, these loans were prone to fair value swings that could further undermine the Bank's profitability, liquidity, and overall ability to continue to operate. In other words, the precise risks discussed at the April 26, 2022 ALMCO meeting—lengthening asset duration and declines in the fair value of assets outpacing the growth in deposits—came to pass in the second quarter of 2022.

241. Significantly, FRB's continued loan growth in the second quarter ran contrary to the Bank's internal projections, which predicted a decline in loan volume. Throughout the Class Period, FE-15 oversaw FRB's predictive loan modeling that forecasted the quantity of loans that FRB would originate in certain loan buckets for the next 12 months. These loan buckets included: (i) residential loans (1-4 family units); (ii) commercial real estate loans (above 4 units); (iii) other loans and credit lines; (iv) loans backed by stocks; and (v) personal loans. These predictive model forecasts were disseminated to the Vice President of Lending Services, David Bain, and Commercial Real Estate Head PJ Pamulo, and were forwarded to senior leadership, including the COO, President, and CEO.

242. FE-15 generated FRB's predictive model based on twenty years of historical data and norms, and forward-looking assumptions concerning interest rates, inflation, sales force figures and other factors. Every quarter, FE-15 validated the models with new data, including historical data on the actual quantity of loans FRB originated in the most recent quarter. FE-15 explained that three factors determined loan origination volume: (i) federal interest rates; (ii) the size of the loan origination sales team; and (iii) loan pricing.

243. FE-15 further explained that the model projected estimates with 95% accuracy, or within two standard deviations of the mean, which FE-15 referred to as "in the goal post." For residential loans, the goal post was 1.33 standard deviations above the trend line. FE-15 explained that he rarely saw any variances between the estimates in his model and the actual results.

244. However, beginning in the first and second quarters of 2022, FE-15 saw spikes in loan volume—meaning that the actual loan volumes were above the expected value. FE-15 explained that during this time, because the size of the sales team remained constant and federal interest rates increased, the only explanation for the divergence between expected loan volume and actual loan volume was that FRB offered hyper-competitive pricing on new loan originations during this time.

245. As FE-15's account makes clear, Defendants not only doubled-down on the same assets that were amplifying fundamental risks faced by the Bank, but they did so by offering hyper-competitive rates. As such, these loans were even more susceptible to declining in value as the Federal Reserve continued raising interest rates. Far from managing FRB's balance sheet with "safety" and "soundness"—as Roffler told investors on April 13, 2022—Defendants were exacerbating the Bank's risk profile without informing investors of what lie ahead.

**3. By the Third Quarter of 2022, Defendants Continue to See Glaring Warning Signals in FRB's Internal Models, but Double-Down on Their Loan Growth Strategy, Further Amplifying FRB's Interest Rate Risks**

246. On July 14, 2022, FRB announced second quarter earnings and held its earnings call. In their prepared remarks, Defendants Tsokova and Selfridge reaffirmed that—despite breaching internal interest rate risk thresholds—the Bank "***continue[d] to operate in a safe and sound manner***" and that the Bank's "***service model is performing quite well and continues to drive our safe, stable, organic growth***." Defendants also continued to emphasize the Bank's safety and stability in response to specific analyst questions raised during the earnings call. For example, Husseini Poonawala from BofA Securities asked that:

> [I]f we assume that single-family originations are coming around, let's call it, 3 to 3.25 funding costs, given how quickly the Fed is moving implies a pretty sharp compression risk in the margin.[]
>
> Is that a reasonable concern as we think about 2023 in terms of the risk of margin compression?

In response, Roffler emphasized that the Bank's deposit composition provided "***protection from how fast the Fed looks to be willing to move here in the second half of the year***," while also emphasizing the "***consistency and stability***" of the Bank's model, which he claimed "***keep[s] things consistent and stable over long periods of time***."

247. Analysts credited these representations regarding the safety and stability of the Bank. For example, on July 14, 2022, Piper Sandler wrote: "Despite a challenging operating environment for the industry, management continued to sound an optimistic tone for its business, highlighting the consistency of the model and its performance." The same day, Stephens commented, "The underlying strength in loan originations and lower risk profile vs. more traditional banks remains attractive to us."

248. Also, at this time, analysts fixated on the Bank's growing loan portfolio in the challenging rate environment, observing that the Bank's loan growth outpaced deposit growth. On July 14, 2022, Wells Fargo wrote:

> 2Q22 results showcased strong loan growth, however with deposit growth lagging loans, the bank had to tap lines at the FHLB, and is guiding to growth in CDs and a broader re-mix of deposits to fund future growth. This overall balance sheet repositioning leaves the bank in a weaker position for the current rate environment, in our opinion.

Wells Fargo further observed that FRB had "one of the highest loan-to-deposit ratios in our group [of peer banks], at 91.5%, [which] could cause additional liquidity pressure." Christopher Edward McGratty of Keefe, Bruyette, & Woods specifically asked about this on the earnings call: "Just going back to the funding. Last cycle, Mike, you were around 100% loan to deposit. You're 90% today. What's the comfort level to let that drift, given the size of the balance sheet today?" In response, Roffler stated: "***We're very comfortable***. Obviously, we're coming in 85%, 90% where we've been, and we've operated in the high 90s to 100. ***And we feel like given our funding sources and the strength of our liquidity profile, we could operate in that range again***." In other words, Roffler responded to the specific risks raised by analysts by touting the Bank's ability to pursue its strategy of growing loans despite declining deposit growth, while concealing the excessive risks FRB's internal interest rate models had already identified with this strategy.

249. Shortly after the earnings call, on July 27, 2022, the Federal Reserve raised rates by 75 bps for a second consecutive time, increasing the benchmark rate to a range of 2.25 to 2.50%. During the announcement, Chairman Powell indicated that it was possible that the rate increases would slow in the following months, but news outlets commented that he did not rule out another 75-basis-point jump.

250. On August 1, 2022, the ALMCO met again to discuss the Bank's interest rate risks. Specifically, according to the OIG Report, the ALMCO discussed the EVE decreases as of the second

quarter of 2022. The ALMCO attributed the EVE "declines in asset prices – a result of increased market rates, widening spreads, and rate volatility." The ALMCO acknowledged that "***[a]sset duration continued to expand, and liability duration contracted due to market changes and the funding mix shifting to shorter duration deposits and advances***"—which were the exact issues flagged during the April 2022 meeting. FRB executives present at the August meeting acknowledged that without introducing new deposits, FRB would be "***firmly liability sensitive***." In other words, FRB had a long-term asset maturity and repricing structure and a shorter-term liability structure, and thus needed to continually introduce new deposits in order to originate new loans at higher rates than presently held on the balance sheet. The ALMCO "***discussed that deposits were pushing EVE further to be liability sensitive as balances migrate from checking to higher-yielding and shorter-duration products***."

251. During the August 1, 2022 meeting, the ALMCO members also acknowledged how the composition of the Bank's assets were undercutting FRB's ability to withstand additional interest rate increases. During this meeting, the ALMCO again acknowledged that FRB "***has shifted originations from shorter duration fixed and variable rate hybrid loans to 30 year fixed-rate***." The ALMCO further acknowledged that "loan sales have substantially declined"—meaning that FRB was not selling loans it originated to diversify its portfolio of assets, but instead was holding essentially all loans on its balance sheet. In terms of new originations, the ALMCO also discussed that FRB's "***mortgage rates were decreasing to maintain market share***," which confirms FE-15's account that the observed deviations between actual and predicted loan volume was due to FRB's practice of offering discounted loan rates in order to boost loan growth. Nevertheless, the ALMCO unanimously decided to take no further action on the breaches.

252. The EVE breaches were likewise discussed at the BERM and DERM Committees. At a BERM Committee meeting in August 2022, the BERM decided that the model results warranted no further action. During a September 7, 2022 DERM Committee meeting, the DERM Committee discussed the results of the second quarter EVE analyses and recommended monitoring for the next one to two quarters.

253. As Defendants failed to mitigate the Bank's emerging interest rate risk, during the third quarter, FRB's EVE breaches became increasingly dire. The results are reflected in Table **9** below.

| Quarter End | Market Value of Equity (in millions) | Scenario | | | |
|---|---|---|---|---|---|
| | | +100 bps | +200 bps | +300 bps | +400 bps |
| **September 2022** | $ 8,103 | -41% | -82% | -120% | -156% |
| **Risk Tolerance/ Appetite** | | 15/20% | 20/25% | 25/30% | 30/35% |

**Table 9: FRB's 3Q 2022 EVE Projections**

254. As reflected in Table 9, FRB's EVE modeling projected risk tolerance and risk appetite breaches ***across all scenarios***. Even under the scenario of only a 100 basis point increase, FRB's model projected a 41% decrease in EVE, far outside the 15% risk tolerance and 20% risk appetite for this scenario. Under the 200 basis point increase scenario, FRB projected that EVE would fall 82%, well beyond the risk tolerance and risk appetite thresholds of 20% and 25%, respectively.

255. Despite the severity of these EVE breaches relative to FRB's risk tolerance and risk appetite thresholds, on September 14, 2022, the Board ***approved the risk appetite statement breaches and failed to suggest any corrective action***.

256. As they did during the second quarter, in the third quarter, Defendants again increased FRB's exposure to fixed-rate, long-duration loans—despite the ALMCO identifying that in order to mitigate interest rate risk, the Bank needed to ***shorten*** asset duration. During the quarter, FRB grew total loans by approximately $7.4 billion, while increasing its exposure to loans with terms between five and thirty years by $5.0 billion, according to FRB's Call Reports filed with the FDIC. Moreover, FRB did not market any loans for sale, as was considered during the August 2022 ALMCO meeting.

257. FE-15 recalled that FRB's third quarter 2022 loan growth was two standard deviations above what he forecasted loan growth to be for the quarter. As noted above, FE-15 considered the divergence to stem from FRB offering hyper-competitive pricing (low interest rates) to customers to originate new loans.

258. Also, during the third quarter, FRB suffered from additional unrealized losses on its loan portfolio and increasing costs of funding as depositors sought higher yields on their money. As to the fair value of loans, total loans were $158.77 billion, and the fair value of these loans was $136.26 billion, meaning the difference between the carrying value and the fair value of loans increased by 31% from the second quarter of 2022. Moreover, the cost of funding more than doubled, as total interest expense rose

from $70 million to $249 million (a 256% quarterly increase). While these adverse trends were troubling, Defendants knew based upon the Bank's EVE modeling that the Bank's risk profile would only deteriorate further if the Federal Reserve increased interest rates further, even modestly. By pursuing a strategy that only amplified these negative trends, Defendants increased the Bank's already significant interest rate risk. Defendants' reckless strategy also invited broader liquidity and systemic risks, such as the Bank needing to sell assets at a loss or losing depositor confidence, leading to a run on deposits.

259. Around this time, the FDIC specifically identified that the Bank was facing increased interest rate and liquidity risks. Indeed, in September 2022, while developing its supervisory plan[6] for examining FRB during the 2023 examination cycle, the FDIC concluded that FRB's liquidity and interest rate risk indicated "[e]levated" levels of risk and reflected the need for focused monitoring and a thorough assessment of the elevated risk areas. The FDIC deemed FRB's liquidity and interest rate risks to be elevated based upon FRB's high percentage of uninsured deposits to total assets and concentration of assets in long-dated loans. Also, further to the FDIC's concerns regarding the Bank's short-term liquidity risk, in September 2022, the FDIC changed FRB's 12-month liquidity outlook rating to "[n]egative" due to concerns related to FRB's increased funding costs resulting from interest rate increases.

#### 4. Defendants Acknowledge Severe and Increasing Interest Rate Risks During the Fourth Quarter of 2022 and Early 2023

260. Beginning in the fourth quarter of 2022, investors began to learn the truth of Defendants' poor interest rate risk management and of the material risks facing the Bank as a result of the high interest rate environment. As discussed further in Section IV.K, the Bank disclosed on October 14, 2022 that its NIM and NII metrics had declined and were projected to continue to decline due to increasing deposit costs and a failure to reprice loans at higher interest rates. Nevertheless, Defendants continued to downplay the risks faced by the Bank.

261. On the October 14, 2022 earnings call discussing third quarter 2022 earnings, analysts focused on whether Defendants could continue to execute on their strategy of growing FRB's residential

[6] The FDIC develops supervisory plans "at the beginning of the examination cycle" to provide "a risk assessment of the institution and a supervisory agenda and timeline."

loan portfolio in light of slowing deposit growth and increasing deposit costs. Specifically, during the earnings call, Steven Alexopolous from JPMorgan asked:

> [G]iven the yield curve, which is likely to invert even more in coming months, you know one, could you see a scenario where you would need to slow loan growth. And two irrespective really of that answer, could you walk us through your NIM expectations for 2023, and how bad could it get if this forward curve does play out?

Defendant Roffler responded that:

> [While the Bank expected] some pressure on the margin here as we go into the fourth quarter and early part of next year[,]
>
> the Fed will eventually get to a place where they've been successful in reducing inflation, and if you look to the other side of that hill . . . . ***We'll be safe and have come through credit very well, and we'll be ready to go from there with a much bigger client household base, because we continue to acquire clients***.

In response to similar analyst questions, Defendants Roffler and Herbert were insistent that rising interest rates were only a "***short-term***" and "***temporary problem***."

262. While investors responded to the negative news as detailed in Section IV.K, they also credited Defendants' assurances downplaying the risks associated with FRB's asset-liability mismatch. For example, in analyst reports issued on October 17, 2022, analysts remained encouraged about FRB's long-term prospects based on the Bank's loan growth and the "durab[ility]" of the Bank's business model. JPMorgan commented that:

> [T]he company delivered another convincing quarter with average loans increasing at a near 25% annualized pace. Along these lines, we believe the company is positioned to increase loans in the ~$30B range in 2022 (which is over 20% growth), which is in the backdrop of a very challenged mortgage environment. With the model proving to be even more durable than expected, over the long term we believe this will result in a re-rating of the stock to above the prior historical valuation.

UBS wrote: "Additionally, we see mid-teens loan growth as sustainable, even with much higher rates, given FRC's unmatched client service in banking and very competitive pricing." Stephens similarly commented:

> There are periods when First Republic's client-based strategy and focus on building new households does not align with near-term investor expectations. The third quarter of 2022 was a perfect example where the company utilized market volatility to attract relationships to the bank by being competitive on deposit rates. The performance YTD and following 3Q22 earnings of FRC primarily reflect a rising rate environment and the impact on deposit costs. The step-up in expected funding costs is responsible for our lower EPS outlook. ***Nothing else has changed***, especially our view that First Republic's organic growth outlook and credit profile remain well above any peer group.

263. In contrast to the favorable picture Defendants painted to investors, behind the scenes, FRB's committees continued to acknowledge FRB's increasing interest rate risk during the fourth quarter of 2022. Despite the severity of the breaches and the historic interest rate hikes, in October 2022, the ALMCO once again voted unanimously to take no further action on the EVE risk profile breaches.

264. On October 26, 2022, the Head of the ALMCO wrote a memorandum to the Board stating that the third quarter's EVE analysis was "***materially liability-sensitive***" primarily due to the fair value impairments seen in FRB's assets, as discussed above. The ALMCO's memorandum informed the Board that the EVE risk thresholds had been "***breached in all scenarios***." On the same day, the ALMCO met. During this meeting, "second line personnel" recommended that "management communicate the breaches to BERM and DERM again and explain that they were likely to continue until inflation and rates came down or deposit mix shifted back towards checking."

265. On November 11 2022, the BERM Committee discussed the EVE breaches but took no further action. The minutes for the November 2022 DERM Committee meeting reflect that the committee discussed the third quarter EVE results, and noted that due to the rising interest rate environment, the EVE risk thresholds would continue to be breached for several quarters. Still, the DERM Committee determined that no further action was necessary.

266. On November 16, 2022, the Board discussed the breaches, but again decided to take no corrective action.

267. In the midst of these discussions about the EVE results, on November 2, 2022, the Federal Reserve raised interest rates by 75 bps for a fourth consecutive time. On December 14, 2022, the rates increased by another 50 bps. In total, during the fourth quarter of 2022, the Federal Reserve increased rates by 125 bps.

268. FRB's December 2022 EVE projections remained dire. A December 31, 2022 Interest Rate Risk Summary memorandum to the Board, dated February 1, 2023, reproduced in the FDIC Report, stated:

> "The EVE analysis as-of December 31, 2022 points to a significantly liability-sensitive Economic Value of Equity position. The further increase in liability sensitivity from the September 30, 2022 results is driven primarily by shorter liabilities duration, which is primarily a result of increases in interest-bearing deposits and short-term wholesale funding and declines in non-interest bearing checking balances.

The spot Economic Value of Equity is estimated at $6.9 billion, or lower than the $8.1 billion September 30, 2022 estimate. An instantaneous parallel positive 2% shock in rates would result in a (-116.9%), or (-$8.1 billion) decrease in EVE, which translates into a negative economic value of equity."

269. Thus, by February 1, 2023, FRB's Board was aware that the EVE model was projecting that a 200 basis point increase would reduce FRB's EVE by 117%, resulting in negative equity, as shown below in Table 10.

| Quarter End | Market Value of Equity (in millions) | Scenario | | | |
|---|---|---|---|---|---|
| | | +100 bps | +200 bps | +300 bps | +400 bps |
| **December 2022** | $ 6,928 | -59% | -117% | -172% | -224% |
| **Risk Tolerance/ Appetite** | | 15/20% | 20/25% | 25/30% | 30/35% |

**Table 10: FRB's 4Q 2022 EVE Projections**

270. Despite knowing that FRB's exposure to long-dated loans was amplifying FRB's risks, Defendants again deepened FRB's long-dated loan exposure during the fourth quarter of 2022. During this quarter, FRB originated approximately $8.1 billion of new loans, which, according to FRB's Call Reports filed with the FDIC, included approximately $3.5 billion of new loans with terms of five to thirty years. At the end of the fourth quarter, FRB's loans with terms of five to thirty years accounted for approximately 80% of all loans and 49% of all assets.

271. According to FE-15, as with the third quarter of 2022, FRB's fourth quarter 2022 loan growth was two standard deviations above what his model projected loan growth to be for that quarter. FE-15 again attributed the divergence between the projected and actual results to FRB offering below-market rates on new loans.

272. At the same time as Defendants continued to deepen their reliance on long-dated and below-market loans—despite the risks associated with this strategy as discussed during committee meetings—FRB's cost of funding also increased again. In the fourth quarter of 2022, FRB paid $545 million in interest, or 111% more than during the third quarter of 2022. Moreover, the difference between the carrying value and fair values of loans increased again by approximately $500 million. Making matters worse, the Bank suffered approximately $3 billion in unrealized losses in its HTM securities portfolio during the quarter, which increased the difference in carrying value and fair value for these assets to just under $6 billion in

total, i.e., a reported book value of $28.24 billion and fair value of $22.68 billion. Thus, FRB's unrealized losses on its loans and securities exceeded $28 billion.

273. Despite the warning signals, during the Bank's fourth quarter earnings call held on January 13, 2023, Defendant Tsokova assured investors that the "***balance sheet remains strong***." Moreover, despite the EVE projections and internal recognition that the Bank should shorten asset durations, Defendants continued to assure investors the Bank was well-positioned for the long-term and could stay the course in terms of its loan growth. For example, Defendant Roffler emphasized that the Bank "***remain[ed] well-positioned to deliver safe, strong growth through the consistent execution of our service-focused culture and business model***." And, in response to an analyst question about loan growth, Defendant Selfridge stated that the Bank expected "mid-teens loan growth [for 2023]" and that the Bank "was comfortable with that . . . [and] the mix is going to be consistent as it has been in years previous." Defendant Selfridge continued: "It's never been a better time to acquire clients at First Republic, and that's true for the lending side as well."

274. Contrary to Defendants' public statements, on February 1, 2023, the ALMCO met and again identified EVE risk appetite and risk tolerance breaches across all scenarios. Moreover, the ALMCO meeting materials identified breaches in NII simulations, further indicating the Bank's amplified risk profile in a rising rate environment. During the first quarter of 2023, FE-15 recalled that FRB's loan originations were "out of control" relative to his forecast, meaning that FRB continued to originate new loans well in excess of what was indicated based on economic factors.

#### 5. FRB Experiences Deposit Outflows, Further Amplifying the Bank's Interest Rate Risk

275. Throughout the latter parts of 2022 and early 2023, Defendants became increasingly concerned about FRB's financial position due to FRB's failure to attract and retain sufficient deposits. Unbeknownst to investors, FRB employees were also raising concerns internally about FRB losing existing depositors, but these concerns were ignored or silenced by Defendants.

276. FE-10, a Relationship Manager, recalled that starting in the summer of 2022, FRB employees discussed that their clients were withdrawing deposits as interest rates were rising and other

banks were offering higher deposit rates. FE-10 stated he had conversations with other employees who were losing massive deposit accounts that had previously maintained balances between $45 and $90 million.

277. FE-5, a FRB executive, confirmed that as interest rates began to rise, FRB's clients began to withdraw their deposits to seek greater yield on their cash deposits. FE-5 explained that these depositors transferred cash to other banks that paid a higher interest rate or transferred money out of checking and savings accounts in order to purchase Treasurys. FE-5, who oversaw a $3 billion portfolio, closely monitored his clients' deposits and recalled that even though he brought in approximately $400 million to $500 million in new deposits throughout 2022, his deposits were actually down approximately $100 million by year end 2022. FE-5 confirmed these figures through FRB's "dashboard," which allowed bankers to track the deposit data of their own clients and the clients of their direct reports. FE-5 noted that he had one of the largest portfolios at FRB, and believed if he was losing depositors at such a rate, that other bankers were experiencing deposit losses as well.

278. For at least six months prior to March 2023, FE-5 was raising concerns about FRB's "significant" deposit outflows, and specifically questioned executives about whether FRB had any risk management measures in place to protect against deposit outflows. FE-5 raised these concerns to FRB's executives, including Defendants Roffler and Herbert, numerous times through individual meetings, direct emails, and phone calls. FE-5 stated he met with Defendant Roffler multiple times to discuss concerns about the stability of FRB's deposit base, but Roffler would not listen. In addition to raising concerns privately, FE-5 stated that in the months leading up to the Bank's collapse, he would also raise concerns to executives about the deposit levels dropping precipitously during weekly Loan Meetings. FE-5 did not generally attend the weekly company-wide Asset Liability Committee (ALCO) meetings, but began attending them in the months before the collapse to question senior management about FRB's deposit outflows.

279. FE-5 felt that these deposit losses were also driving senior management's urgent messaging to bring in more deposits. However, according to FE-5, it became clear that bankers could not bring in enough new deposits to keep pace with the number of deposits clients withdrew.

280. Corroborating FE-5's account about widespread concerns about the Bank's deposit base in 2022, other former employees recalled that management's top priority in 2022 became attracting new deposits. The message to focus on deposit growth was disseminated to all of the verticals and to all levels of employees.

281. FE-9 stated that increasing the number of deposits was a topic of discussion during this time period at the weekly Loan Meeting on Mondays, in which Defendants Herbert, Roffler, Tsokova, and Selfridge personally pressured bankers to ensure all loan clients who received a relationship-based lending rate were satisfying the deposit requirement. FE-9 stated that during 2022, there was a big push to bring in more deposits, including special bonuses for Relationship Managers who increased their deposit numbers.

282. FE-10, a Relationship Manager, recalled that his team held a contest which rewarded the team member who was able to gather the most deposits from clients. FE-10 added that senior management's messaging to focus on bringing in the deposits of loan clients noticeably ramped up when interest rates started rising. And, around fall 2022, FRB senior management's messaging about increasing deposit growth "really jumped."

283. FE-12 similarly stated that during 2022 and 2023, senior management's primary focus was to gather more deposits. FE-12 stated that senior management emphasized increasing deposit growth and using the Rate Exception Program to bring in more deposits. FE-12 recalled that during weekly Loan Meetings in 2022 and 2023, FRB's C-suite, including Defendants Selfridge, Roffler, and Herbert, discussed with more urgency the need to bring in deposits, the rising costs of funds, and the impact of rising interest rates on NIM.

284. FE-11's supervisor would hold weekly or monthly meetings after the weekly Loan Meetings for the 25-30 employees in the Business Banking division in Boston, during which the supervisor would tell the team to focus on getting deposits even more than earning new business or upsizing existing business. FE-11 added that the team leaders would walk around the Boston office and tell bankers to focus on winning back deposits.

285. FE-3 stated that upper management met monthly with C-Suite employees. Following those meetings, District Managers would hold District Meetings to disseminate information that was provided at the higher-level executive meetings. FE-3 stated that while deposits were always a topic of conversation

at the District Meetings, it became a more important focus when the Fed started raising rates. FE-3 understood that there was pressure from upper management to get more deposits on the books. FE-3 added that he attended regularly-scheduled all-company meetings, which he stated were held two to three times per year. The meetings were conducted by Anna Hirano and Defendant Erkan, and later Defendant Selfridge after Defendant Erkan resigned. Defendant Herbert would also attend occasionally. During these meetings, FRB executives reiterated to employees the need to bring in deposits and communicated that "[w]e need more growth."

286. FE-6 confirmed that starting in late 2022 and until the Bank's failure, the CEO would stress the need to bring in more deposits at every weekly Loan Meeting. FE-6 stated that deposits became more of a point of emphasis than ever before. FE-6 specifically recalled that the Bank's senior executives, including Defendants Herbert, Roffler, and Selfridge, stated that the sales team should pursue deposits from clients who received discounted loan rates and who had not followed through on transferring the amount of deposits agreed-upon when receiving the loan rate.

287. FE-7 also recalled that bank management became more focused on increasing non-interest bearing checking account balances when rates started rising in 2022, as they consistently emphasized "checking, checking, checking." FE-16 likewise remembered the need to grow deposits being discussed at all-company meetings.

288. FE-4 described how FRB's loan employees would be recognized during Loan Meetings for their progress or "close rate" for bringing in deposits promised in exchange for discounted loan rates. For example, a senior executive might state that one banker had a close rate of 90% on getting deposits that were promised to the bank, and encouraged other bankers to follow that example. FE-9 additionally recalled a list that tracked every Relationship Manager's deposits that were missing and the names of the clients. FE-9 recalled that Defendants Herbert, Roffler, Tsokova, Selfridge, and other Executive Vice Presidents referred to the list during weekly Loan Meetings.

289. FE-2 explained that executives were actively seeking out new ways to grow deposits when rates began rising. In the fourth quarter of 2022, the Eagle Insight Group—a team that worked in conjunction with Bank management—created a weekly report that tracked whether clients who received a relationship-based lending discount on a loan were maintaining a balance in a FRB checking account.

290. According to FE-2, the weekly reports were provided to Relationship Managers to facilitate outreach to clients regarding deposits. The Vice President of the Eagle Insight Group provided an update on the report to all attendees of each weekly Loan Meeting. FE-2 stated that the Vice President would announce the deposit-gathering success stories of certain loan teams and regions that followed up with clients who received a relationship-based interest rate on a loan.

291. FE-2 recalled that the success rate in the fourth quarter of 2022 when the Eagle Insight Group started using the tracking report was in the "mid 50s." The weekly tracking report was still not bringing in enough deposits to remedy the Bank's funding issues, despite the group's announcement before the collapse that they had achieved a 78% success rate.

292. Multiple former employees reported that the pressure to increase deposit numbers hit an all-time high during a weekly Loan Meeting in the first quarter of 2023, when Defendant Herbert banged his fists on a table and furiously shouted that the bankers needed to get more deposits. FE-2 remembered listening in astonishment as Defendant Herbert, generally a calm individual, "lash[ed] out" and demanded that bankers call at least 15 clients each day, "even if it means you're calling through the night" because "if you're not doing that, you're not doing your job."

293. FE-1 perceived that in January 2023 there was a "shift" at a meeting in which Defendant Herbert became "really furious." Defendant Herbert told employees to "go back to the basics." FE-1 explained that FRB's basics had been to focus on clients to whom FRB had lent money to purchase their residences and open up primary checking accounts for them to auto pay the mortgage loan. Defendant Herbert communicated the stern message to go back to the basics of opening deposit accounts for residential real estate clients because these were sticky deposits. At that time, FE-1 and other employees knew the high rates meant the Bank was going to be in trouble.

294. FE-4 recalled an "oh shit moment" at a Loan Meeting in January 2023 when Defendant Herbert, visibly angry, yelled at employees that they needed to bring in more deposits. That moment stuck out to FE-4 as it was the first time any of his colleagues, some of whom worked at FRB for 10 to 20 years, had heard Defendant Herbert yell at employees. FE-4 said Herbert was "overheated."

295. FE-11 recalled a January 2023 Loan Meeting in which Herbert was very aggressive about having employees reaching out to clients for more deposits. Specifically, FE-11 recalled Herbert saying: "Do you think the client is just going to call you? You need to pick up the phone and get back to work."

296. FE-6 recalled that during the January 2023 Loan Meeting, Herbert "lit into us" about increasing deposit numbers. Defendant Herbert told attendees of the meeting that clients were withdrawing deposits from FRB and if FRB was going to continue lending funds, the Bank needed to get more deposits.

297. FE-8 also described Defendant Herbert's "uncharacteristic" behavior during a January 2023 weekly Loan Meeting. FE-8 stated that while Herbert was usually very supportive of the efforts of FRB's Relationship Managers to bring in deposits, that meeting was the "one and only time" that Herbert said the Relationship Managers had "failed" to bring in enough deposits and "had to step up their game." Defendant Herbert also told the Relationship Managers that it was "critical" that they go out and bring in more deposits, essentially saying their jobs were at risk. FE-8 stated Herbert's tone was "very alarming" to FRB employees.

298. FE-16, who attended weekly ALCO meetings on Tuesdays, stated that Defendant Herbert again spoke under duress urgently at an ALCO meeting in January 2023, stating that employees needed to do more. FE-16 noted that employees would recall the tone of that meeting specifically because it was very unlike Defendant Herbert to raise his voice.

299. Details of Defendant Herbert's uncharacteristic, frantic outburst were reported in a Wall Street Journal article titled, "Why First Republic Bank Collapsed," published on May 1, 2023: "Jim Herbert, the bank's 78-year-old founder, usually a reassuring presence, slammed his hand on the table during an all-hands meeting. We've got to get more deposits, he said, according to people familiar with the matter."

## K. In 3Q 2022, the Relevant Truth Is Partially Revealed as the Bank's Downward Spiral Begins

### 1. In October 2022, NII and NIM Growth Slow, and FRB Discloses $8 Billion in Checking Deposit Outflows, but Defendants Downplay Concerns About the Company's Stability and Liquidity

300. Before market open on October 14, 2022, FRB announced disappointing 3Q 2022 financial results in a press release. In particular, FRB reported that its NII growth slowed to 20.6% year-over-year

(down from 24.1% year-over-year growth the prior quarter) and its NIM declined to 2.71% (down from 2.80% the prior quarter). FRB attributed the decrease in NIM to "average funding costs increasing more rapidly than the offsetting increase in the average yields on interest-earning assets." In addition, in its press release, FRB disclosed figures for its checking account balances, which reflected a roughly $8 billion, or 7% decrease, in checking account balances quarter-over-quarter.

301. The same day, FRB held an earnings conference call to discuss its 3Q 2022 financial results, during which it presented slides that the Company filed the same day on Form 8-K. Even though Defendants had reaffirmed FRB's guidance of 2022 NIM being in the upper half of the 2.65% to 2.75% range as recently as September 12, 2022, during the conference call, Tsokova disclosed that Defendants were lowering NIM guidance for 2022, stating: "We now expect to be at the lower end of our guided net interest margin range of 2.65% to 2.75% for the full year 2022."

302. During the question-and-answer portion of the 3Q 2022 earnings call, Roffler stated:

> The fed has aggressively raised rates. They've begun quantitative tightening, which in September was the first month at full capacity, and so you are – there is going to be some pressure on the margin here as we go into the fourth quarter and early part of next year.

303. During the 3Q 2022 earnings call, Roffler also suggested that FRB would be able to meaningfully offset NIM compression going forward given the anticipated rate increase environment, stating, a "couple of times when the margin has compressed a little bit through yield curve inversions, etc., we've had to look at where we can make some adjustments to our expense base and we would absolutely do that as we go forth."

304. On this news, the price of FRB's common stock declined by $22.14 per share, more than 16%, from a closing price of $134.73 per share on October 13, 2022, to a closing price of $112.59 per share on October 14, 2022.

305. Analysts expressed surprise at FRB's NII and NIM results, lowered NIM guidance, and the significant decline in checking deposit balances, and identified those disclosures as driving FRB's stock price decline. For example, Morningstar wrote in an October 14, 2022 report titled, "Higher Deposit Costs Start to Bite First Republic in Q3; We Plan to Lower Our Fair Value Estimate," that:

> First Republic saw its deposit pricing go from 0.17% to 0.74% in a single quarter, while its NIM went from 2.8% to 2.71%, much worse than what peers are seeing. This was despite the bank still reporting that it should benefit from rising rates last quarter, and management expecting NIMs to remain elevated as recently as last quarter.

306. Evercore wrote in an October 14, 2022 report titled, "3Q Snapshot & Call Takes Funding Pressures Weigh on NIM & NII," noted the "implications of the sharp increase in funding costs and lower NIM on 4Q and 2023 earnings expectations. Shares off 16% today on the print & subsequent call." In an October 14, 2022 report titled, "FRC 3Q22 Earnings Review NIM Reset Pain," analyst Wolfe wrote that "FRC shares closed down ~16% . . . on the back of today's disappointing quarter."

307. Barclays highlighted in an October 16, 2022 report titled, "3Q22 EPS Review: Increased Funding Costs to Pressure Near-term NIM Performance," that FRB's "NIM contracted 9bps" and that the Company "lowered its 2022 NIM outlook from upper-end of 2.65-2.75% to the lower-end implying a much lower anticipated NIM for 4Q22 and heading into next year." The Barclays report also noted that:

> [T]he focus was on its [FRB's] net interest margin, which compressed 9bps as non-interest bearing [sic] deposit balances dropped 7% and its cost of interest-bearing deposits jumped 63bps. In addition, despite reiterating it expected its 2022 NIM to be at the upper-end of its 2.65-2.75% targeted range at our mid- September Conference, it now anticipates being at the lower-end, implying more meaningful compression in 4Q22.

308. An October 14, 2022 article by Bloomberg titled, "First Republic Sinks By Record Amount on 2022 NIM Forecast," reported that, according to Adam Crisafulli of Vital Knowledge (which, among other things, curates information and provides analysis about financial markets), "[t]he nation's banking giants (like JPM, BAC, etc.) have 'sticky' deposit bases and can keep rates low as a result, ***but FRC is having to pay up to retain/grow deposits -- the result is margin weakness during a time when most other people's NIMs are expanding***." The article continued, stating that "[i]f present trends persist, FRC will either need to sacrifice loan growth or suffer further NIM pressure and neither scenario is bullish."

309. Piper Sandler similarly flagged the lack of stickiness in First Republic's non-interest-bearing deposit base, writing in an October 14, 2022 report titled, "3Q22 First Look: EPS Miss Us on Margin Pressure as Funding Costs Rise," that "deposits increase[ed] 16%, though this largely stemmed from higher CD balances, which more than doubled. With clients becoming more rate sensitive, we expect further deposit mix shift."

310. However, during the 3Q 2022 earnings call, Defendants also downplayed the significance of rising interest rates, suggesting NII and NIM pressure would be transitory, and that FRB would continue operations as usual. For example, Herbert claimed:

> Despite the interim rate conditions, our long term focus always remains maintaining exceptional credit standards so we can focus on the future rather than the past: operating with strong levels of capital to support franchise growth as we serve existing clients and acquire new ones; steady execution of our simple, straightforward model; and always acting in the best interest of our clients, while consistently delivering extraordinary and differentiated service.
>
> Through this approach we acquired great clients who stay with us for long periods of time and grow with us and reform more clients. This creates a unique, compounding, organic effect. The franchise remains very strong. Our client service levels are at all-time highs and most importantly, credit continues to be exceptional.

311. In prepared remarks during the 3Q 2022 conference call, Roffler further stated:

> Turning to interest rates for a moment, as Jim mentioned, since our last call the fed increased rates very rapidly. Additionally, the market's expectation for future rate hikes also increased. We have responded to the sharp rise in rates by providing clients with attractive deposit opportunities through CDs and money market accounts. While this client-centric approach puts pressure on our net interest margin in the near term, ***it will allow us to retain and acquire great clients who will stay with us and grow with us for many years to come***.

312. Discussing the increasing rate environment and its impact on FRB, Roffler stated:

> [T]he fed will eventually get to a place where they've been successful in reducing inflation, and if you look to the other side of that hill for example, the bank will be mid-teens percentage larger, maybe a little bit more. We'll be safe and have come through credit very well, and we'll be ready to go from there with a much bigger client household base, because we continue to acquire clients.

313. In response to an analyst's question about FRB's non-interest-bearing deposit mix and the potential for additional outflow of those deposits, Roffler made the following claim about the supposed stability and stickiness of FRB's important checking deposit balances:

> [W]e were obviously pleased to have checking balances remain 70% more deposits for many quarters, and I think for the past nine years we've been over 50% checking balances and so it's been a consistently high proportion of our deposit levels. You know so it probably could come down a little bit from here, but given the amount of working capital for both businesses and consumers, you know it's probably not a lot lower, but probably a little bit lower from here.

314. Roffler also downplayed the risks posed to FRB, claiming that the Company's margin compression due to interest rates "***is a bit of a short term issue and a short term challenge***, because the fed will – they will get to a successful point in this battle and at that point it will get better from there."

315. Herbert likewise downplayed the impact of the interest rate increases as transitory, stating:

> [B]asically what's going on here ***is a temporary problem*** on the margin coming from the steepness of the run-up. We're funding it with CDs. We have a very, very strong capacity to the way CD is funding, it's not an issue, and basically we're sticking to our game plan of going to the bank and bringing in great clients and the mortgage book will catch up in a

> relatively short period of time in a few quarters. And so basically we want to stay short of the CDs in order to ride the other side of the hill down.

316. Analysts bought into Defendants' explanations. For example, following the 3Q 2022 earnings call, Evercore wrote in an October 14, 2022 report titled, "3Q Snapshot & Call Takes: Funding Pressures Weigh on NIM & NII, but Growth Outlook Solid" that:

> Management expects lower cost deposits to continue to shift towards higher cost in coming quarters – expects the mix of checking deposits to be slightly below FRC's historical 50% range. Additionally, from a funding perspective, management noted that FRC would rather grow CDs and gain customers rather than tapping other wholesale funding. FRC does not expect to sell securities to fund growth.

317. RBC was similarly reassured by Defendants' statements. In a post-conference call report on October 14, 2022, titled, "3Q EPS $2.21 - Strong growth a consistent theme, but margin pressure is the near term headwind," RBC noted: "We are fine-tuning estimates and maintaining our rating as we believe First Republic continues to deserve a strong premium valuation. That said, the current margin pressure that is due to rising short term rates and funding costs are headwinds that may not improve in the very near term." The report continued, stating: "Despite the near-term concerns on the deposit pricing and margin trends, we continue to appreciate First Republic's high quality franchise, we just believe that the near term headwinds will take a few quarters to normalize."

318. News outlet American Banker also parroted Defendants' reassuring statements made during the 3Q 2022 conference call in an October 14, 2022 article titled, "At First Republic, narrowing margins overshadow red-hot loan growth." The American Banker article stated that "though the bank will continue to struggle with margin compression over the next few quarters, it won't face any difficulties growing loans or maintaining its sterling credit quality, Founder and Executive Chairman James Herbert said on a conference call with analysts."

319. UBS similarly signaled optimism about the stickiness of First Republic's deposit base in the wake of the Company's 3Q 2022 earnings call, stating in an October 17, 2022 report titled, "We see a 2.41% NIM in 2023E," that:

> While gathering deposits in this type of rate environment to support mid-teens loan growth is certainly an expensive challenge, FRC still boasts of ***one of the strongest household acquisition growth and client retention in bank land***. In other words, we see noninterest-bearing growth potentially resuming in 2H23, as household growth starts to mitigate negative deposit mix shift.

320. Stephens wrote in an October 17, 2022 report titled, "2Q22 Review: Long-Term Strategy May Not Always Match Near-Term Expectations," that:

> The performance YTD and following 3Q22 earnings of FRC primarily reflect a rising rate environment and the impact on deposit costs. The step-up in expected funding costs is responsible for our lower EPS outlook. ***Nothing else has changed***, especially our view that ***First Republic's organic growth outlook and credit profile remain well above any peer group***.

### 2. At the End of 2022, FRB Began Engaging in Dramatic Cost-Cutting Measures in a Last-Ditch Effort to Improve Its Liquidity

321. While Defendants signaled to investors at the end of 2022 that FRB would be making adjustments to its expenses in order to combat NIM and NII pressure, unbeknownst to the market, the Bank was engaging in drastic company-wide measures to cut costs and conceal the extent to which rising interest rates were negatively impacting FRB's NII and NIM. Former employees described how cost-cutting measures began at the end of 2022 and quickly escalated to mass layoffs.

322. FE-4 indicated that starting in October 2022, his supervisor told him that FRB needed to cut back on business expenses. FE-4 had interviewed for a promotion, but his supervisor informed him in October 2022 that the Bank would be deferring his and all promotions due to "budget constraints."

323. During an all-company meeting in the fourth quarter of 2022, FE-2 stated that Defendant Roffler asked all employees to put in a 110% effort to hold expenses down. FE-2 stated that employees were asked to continue to serve clients but management also stressed that: "We are not saying no to new business. We just need to be more thoughtful about new business." FE-16 likewise stated that FRB management began to discuss cost-cutting in the fourth quarter of 2022.

324. At the end of 2022, FRB's situation was becoming more grim. In December 2022, FE-4's supervisor had asked him to review his staff numbers and prepare a list of four of his 16 employees to layoff. FE-4 recalled that by January 2023, rumors began to spread internally that all of the Bank's managers were putting together similar lists of employees to layoff.

325. FE-16 stated that by January or February 2023, FRB management told different departments to cut back expenses on hiring and spending. FE-16 then heard that there would be a 10% company-wide layoff.

326. FE-9 recalled attending a meeting in January 2023 during which Defendants Roffler and Herbert assured employees that the Bank would be fine. However, a few days later, FE-9 was laid off along with, as he understood, all of FRB's hundreds of contingent employees and a large number of full-time employees.

327. Likewise, FE-2 confirmed that despite Defendants Roffler's and Herbert's statements during a fourth quarter Executive Management meeting that the Bank would "weather the storm," FE-2 had to reduce his team in November 2022 from 32 employees to just two non-contingent employees.

328. FE-4 stated that in or around January 2023, FRB slashed all reimbursements for travel expenses, client meals, and team lunches. From that point on, every expense had to be approved, which had never been required before. FE-4 stated that he knew "things were going to get tight."

329. FE-16 indicated in February 2023, FRB did not award restricted stock units to its employees, which he believed was an indicator that the Bank was not hitting its targets.

### L. During the Class Period, Defendant Herbert Sells Shares While in Possession of Material Non-Public Information

330. During the Class Period, while Lead Plaintiff and other class members were buying shares at prices inflated by Defendants' materially false or misleading statements and omissions and fraudulent scheme, Defendant Herbert sold 110,000 shares of FRB common stock at inflated prices for profits of $16,923,300. Specifically, Herbert made the following sales:

| Date | Shares Sold | Price Per Share | Profits |
|---|---|---|---|
| 10/20/2021 | 20,000 | $212.60 | $4,252,000 |
| 3/16/2022 | 35,000 | $167.15 | $5,850,250 |
| 10/26/2022 | 20,000 | $116.63 | $2,332,600 |
| 1/17/2023 | 20,000 | $131.79 | $2,635,800 |
| 2/22/2023 | 15,000 | $123.51 | $1,852,650 |

331. When Defendant Herbert sold on each of these days, he was in possession of material nonpublic information ("MNPI") as alleged above, including:

a. FRB's deposit base was not organic, stable, or diversified because a material subset of FRB's deposits had been originated through undisclosed rate incentives and rate exceptions that made those deposits highly and unusually susceptible to outflows in a rising interest rate environment;

b. FRB's business model could not withstand a rising interest rate environment because FRB lacked the ability to maintain deposits, originate loans, or to sell illiquid assets without unacceptable losses in such an environment;

c. FRB was failing to abide by controls and procedures to manage and mitigate interest rate risk; and

d. FRB lacked sufficient available sources of liquidity to meet reasonably foreseeable short-term and intermediate-term demands.

332. When Defendant Herbert sold on October 26, 2022, January 17, 2023, and February 22, 2023, he was in possession of additional MNPI, including:

a. FRB's 2Q 2022 EVE projections, dated August 1, 2022, "breached" its risk tolerance and risk appetite thresholds in three out of four scenarios (based on increases as small as 200 bps), yet the ALMCO took no further action;

b. The BERM and DERM Committees and the Board approved the 2Q 2022 EVE breaches in August 2022, on September 7, 2022, and on September 14, 2022, respectively, with no further action;

c. The FDIC's 2023 Supervisory Plan, issued in September 2022, showed "Elevated" liquidity risk and interest rate risk; and

d. FRB's 3Q 2022 EVE projections, dated October 26, 2022, "breached" its risk tolerance and risk appetite thresholds in all scenarios and showed that FRB was "***materially liability-sensitive***," yet the ALMCO took no further action.

333. When Defendant Herbert sold on January 17, 2023 and February 22, 2023, he was in possession of additional MNPI, including:

a. The BERM and DERM Committees and the Board approved the 3Q 2022 EVE breaches in November 2022, on November 11, 2022, and on November 16, 2022, respectively, with no further action; and

b. As discussed below in Section IV.M, as of December 31, 2022, FRB had misclassified its loans as HFI and its debt securities as HTM, even though FRB lacked the ability to hold such loans for the foreseeable future and its debt securities to maturity, because the Bank lacked effective liquidity risk management and controls to reliably determine that it had sufficient sources of liquidity over the full duration of these assets without having to liquidate them.

334. When Defendant Herbert sold on February 22, 2023, he was in possession of additional MNPI, including:

a. A memorandum to the Board dated February 1, 2023 showed that FRB was "significantly liability-sensitive" and that an interest-rate increase of just 200 bps would result in FRB having negative economic value of equity;

b. Herbert had been specifically warned about the risks of deposit outflows in response to rising interest rates, including by FE-5; and

c. Herbert recognized the dire consequences facing FRB in light of its inability to generate sufficient deposits in 2022, as confirmed by multiple former employees' accounts of Herbert's uncharacteristic outburst during a January 2023 Loan Meeting.

### M. On February 28, 2023, FRB Issues Its 2022 Form 10-K Containing Accounting Misstatements, Yet KPMG Issues a Clean Audit Opinion

335. As discussed above, throughout 2022, FRB struggled with an inability to grow deposits and deposit outflows, declining profitability, an ever-worsening asset-liability mismatch, and increasing unrealized losses within its loan and securities portfolios. In the midst of FRB's looming liquidity crisis, on February 28, 2023, FRB issued its Annual Report on Form 10-K containing its financial results for Fiscal Year 2022.

336. In the "Report of Independent Registered Public Accounting Firm" (the "Auditor Report") contained in this Form 10-K, KPMG, who had served as FRB's auditor for over a decade, certified that it audited FRB's financial statements as of and for the year ending December 31, 2022, and FRB's internal control over financial reporting as of December 31, 2022, in accordance with the standards issued by the PCAOB. Based on its audit, KPMG opined that the financial statements complied with GAAP and that FRB maintained effective internal control over financial reporting.

337. GAAP is a set of principles recognized by the accounting profession and accepted by the SEC as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time. GAAP are the official standards for accounting accepted by the SEC. GAAP is recognized by the accounting profession as promulgating the conventions, rules, and procedures constituting accepted accounting practices at a particular time. Under applicable federal regulations, financial statements "which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate." 17 C.F.R. § 210.4-01(a).

338. The PCAOB was established by the U.S. Congress to oversee the audits of public companies in order to protect investors and further the public interest in the preparation of informative, accurate, and independent audit reports. To fulfill its mission, the PCAOB establishes auditing and related professional practice standards for registered public accounting firms such as KPMG to follow during their audits of financial statements issued by public companies such as FRB.

339. Contrary to FRB's and KPMG's representation, FRB's 2022 10-K violated GAAP in two respects, and KPMG's audit did not conform to PCAOB standards.

### 1. FRB's Financial Statements Misclassify Securities and Loans

340. GAAP ordinarily requires the recognition and reporting of assets at their fair value as of the date of the financial statements—i.e., their current market value. GAAP provides, however, an exception for loans that are held for investment (HFI) or securities that are held-to-maturity (HTM), i.e., assets which the entity has the positive intent and ability to hold until it fully matures and all payments are made. Loans classified as HFI and securities classified as HTM may be recognized and reported at book value, rather than fair value. Thus, gains and losses in the fair value of HFI-classified loans and HTM securities are not recognized in a company's financial statements in SEC or FDIC filings.

341. According to Accounting Standards Codification ("ASC") section 310:

> Loans and trade receivables that management has the intent and ability to hold for the foreseeable future or until maturity or payoff shall be reported in the balance sheet at outstanding principal adjusted for any chargeoffs, the allowance for loan losses (or the allowance for doubtful accounts), any deferred fees or costs on originated loans, and any unamortized premiums or discounts on purchased loans.

342. If management does not have ***both the intent and ability*** to hold loans for the foreseeable future (or until maturity), then the entity must reclassify the loans from HFI to HFS and recognize the HFS

loans at the lower of their carrying value (adjusted outstanding principal) or fair value. If the HFS loans' fair value is lower than the carrying value, the difference is recognized as a loss.

343. Similar to the case for loans, ASC section 320, "Investments-Debt Securities," states that FRB was permitted to classify its debt securities as HTM, and thereby recognize such securities at amortized cost, "only if the reporting entity [i.e., FRB] ha[d] the positive intent and ability to hold those securities to maturity." If, however, FRB had the intent, but not the ability, to hold its debt securities to maturity, it was required to re-classify its debt securities from HTM to available-for-sale (AFS). This would have required FRB to measure such AFS debt securities at fair value and record the difference between such fair value and amortized cost, and any subsequent changes in fair value as unrealized holding gains or losses.

344. ASC 320 further provides that:

> An entity shall not classify a debt security as held-to-maturity if the entity has the intent to hold the security for only an indefinite period. Consequently, a debt security shall not, for example, be classified as held-to-maturity if the entity anticipates that the security would be available to be sold in response to any of the following circumstances:
>
> a. Changes in market interest rates and related changes in the security's prepayment risk
>
> b. Needs for liquidity (for example, due to the withdrawal of deposits, increased demand for loans, surrender of insurance policies, or payment of insurance claims)
>
> c. Changes in the availability of and the yield on alternative investments
>
> d. Changes in funding sources and terms;
>
> e. Changes in foreign currency risk.

As the accounting firm Ernst & Young has explained, one consequence of these demanding requirements is that "entities that use an active asset-liability management program to manage interest rate risk will find it difficult to classify securities as held to maturity if those securities are subject to sale to satisfy the objectives of the asset-liability program."

345. Thus, in classifying assets as HFI and HTM pursuant to GAAP, an entity makes representations as to its liquidity and interest rate risk management, including that the entity possesses effective liquidity risk management and controls to reliably determine that it has sufficient sources of liquidity over the full duration until these assets reached maturity.

346. As discussed above, throughout 2022, FRB incurred substantial unrealized losses on its loan portfolio as interest rates rose and the fair value of its assets decreased. At the end of 2021, FRB held $134.96 billion of loans (75% of total assets), which had a fair value of $129.27 billion. By the first quarter of 2022, the difference between the fair value and carrying value of FRB's loans increased by another $6 billion, as the fair value of FRB's $141.31 billion loan book declined to $129.32 billion. The difference between the fair value and book value of FRB's loans increased by another approximately $5 billion during both the second and third quarters of 2022. By December 31, 2022, there was a $22.95 billion difference between FRB's recorded value of its loans ($166.87 billion) and their fair value ($143.92 billion). In total, throughout 2022, the unrealized losses in FRB's loan book (i.e., the difference between the fair value and recorded value of FRB's loan portfolio) grew by ***over 300%***.

347. As noted above, the unrealized losses on FRB's loan portfolio were significant enough that, if they were accounted for on FRB's balance sheet, would have turned FRB's shareholder equity negative. For example, by the second quarter of 2022, FRB's $17.15 billion in unrealized losses exceeded the $16.43 billion in shareholder equity. This trend persisted and worsened during the third and fourth quarters of 2022.

348. FRB also had unrealized losses in its securities portfolio. As of December 31, 2022, FRB held $28.36 billion in HTM securities and $3.35 billion in AFS securities. FRB reported that 96% ($27.41 billion) of HTM securities portfolio were long-duration securities, i.e., those that matured beyond ten years. Due to this concentration in long-duration securities, FRB recorded a $4.77 billion difference between the carrying value of held-to-maturity securities and their fair value. In other words, by December 31, 2022, when considering both unrealized losses on its loans and securities portfolios, FRB had total unrealized losses of $27.72 billion, compared to $17.45 billion in shareholder equity.

349. At the same time that FRB had significant unrealized losses, FRB held relatively little cash and AFS securities. As of December 31, 2022, FRB held less than $8 billion, or 4% of deposits, in cash and AFS securities.

350. Thus, in classifying and accounting for its loans as HFI and its debt securities as HTM, FRB made representations as to its ability to hold such loans for the foreseeable future and its debt securities to maturity. Such representations were related to FRB's liquidity and interest rate risk management, including

that it possessed effective liquidity risk management and controls to reliably determine that it has sufficient sources of liquidity over the full duration of these assets without having to liquidate these assets. These representations ran directly counter to the reality (known to Defendants) that FRB was subject to significant interest rate risk, including an extremely liability-sensitive balance sheet, and that their chosen strategy of growing FRB's loan portfolio with additional fixed-rate, long-duration loan sources was further undermining the stability of the Bank's balance sheet and increasing the likelihood that FRB would need additional sources of liquidity ***in the near term***.

351. Accordingly, Defendants' misclassification of FRB's loans as HFI and its debt securities as HTM in FRB's financial statements contained in the Bank's 2022 Form 10-K violated GAAP, rendering FRB's financial statements materially false or misleading. As FRB's auditor, KPMG should have insisted that FRB re-classify certain loans from HFI to HFS and its debt securities from HTM to AFS as of December 31, 2022, and record billions of dollars in losses in accordance with GAAP given that the carrying value of FRB's loans and debt securities were significantly lower than their fair value as of this date.

352. By issuing its unqualified ("clean") opinion on FRB's financial statements contained in FRB's 2022 Form 10-K, KPMG improperly agreed with FRB that such financial statements were prepared in accordance with GAAP. Thus, KPMG's opinion that the relevant financial statements were presented in accordance with GAAP was false. Additionally, this clean opinion was also inappropriate because during its audit, KPMG failed to (a) obtain sufficient appropriate audit evidence in accordance with PCAOB Auditing Standard ("AS") 1105 in support of the classification of FRB's loan portfolio and debt securities and the resultant failure to recognize material losses to such portfolio/securities; and (b) exercise due professional case and professional skepticism in accordance with PCAOB AS 1015 with respect to FRB's accounting for the same loans and debt securities. Because of such failures, and in contrast to its assertion reflected in the Auditor Report, KPMG did not perform its audit of FRB's 2022 financial statements in accordance with PCAOB Auditing Standards.

### 2. KPMG Fails to Issue a Going Concern Warning

353. Under PCAOB AS 2415.01, auditors are responsible for "evaluat[ing] whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time,

not to exceed one year beyond the date of the financial statements being audited." While the PCAOB provides that "[c]ontinuation of an entity as a going concern is assumed in financial reporting in the absence of significant information to the contrary," auditors are required to consider if their knowledge of relevant conditions and events that exist at or have occurred prior to the date of their report "significantly contradicts the going concern assumption."

354. Under PCAOB AS 2415.03, if "the auditor believes there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time," the auditor should "(1) obtain information about management's plans that are intended to mitigate the effect of such conditions or events, and (2) assess the likelihood that such plans can be effectively implemented." If, after considering this information, the auditor "concludes there is substantial doubt, [the auditor] should (1) consider the adequacy of disclosure about the entity's possible inability to continue as a going concern for a reasonable period of time, and (2) include an explanatory paragraph, including an appropriate title (immediately following the opinion paragraph), in its audit report to reflect its conclusion. If the auditor concludes that substantial doubt does not exist, it should consider the need for disclosure."

355. When considering the information available, an auditor "may identify information about certain conditions or events that, when considered in the aggregate, indicate" the possibility of substantial doubt about an entity's ability to continue as a going concern. The PCAOB provides some examples of such conditions or events under PCAOB AS 2415.06, including: (1) "[n]egative trends—for example, recurring operating losses, working capital deficiencies, negative cash flows from operating activities, adverse key financial ratios"; and (2) "[i]nternal matters—for example, work stoppages or other labor difficulties, substantial dependence on the success of a particular project, uneconomic long-term commitments, need to significantly revise operations."

356. As of February 28, 2022, the state of FRB's balance sheet presented "negative trends" and "uneconomic long-term commitments" that should have indicated to KPMG the possibility of substantial doubt about FRB's ability to continue as a going concern.

357. By the end of 2022, First Republic had a significant over-concentration and heavy reliance on fixed-rate loans in a rising interest rate environment that created an asset-liability mismatch. As of December 31, 2022, FRB held $166.87 billion in loans, excluding a $784 million allowance for credit

losses, which constituted 78% of the bank's total assets. Of the loans with a duration of one year or longer, 76% ($131.38 billion) were fixed rate and 24% ($17.33 billion) were adjustable-rate loans. Notably, approximately 80% of FRB's loans had a maturity of over five years.

358. Due to FRB's concentration of longer-duration loans, FRB had a substantial gap between the book value and fair value of its loans. By December 31, 2022, the fair value of FRB's loans was estimated at $22.95 billion less than the reported book value. This meant that FRB's assets were worth approximately 14% less than as reported on its balance sheet. Moreover, and notably, the $22.95 billion difference between the fair value and carrying value of FRB's loans significantly exceeded the Bank's total shareholder equity, which was $17.45 billion as of December 31, 2022.

359. At the same time, FRB had unrealized losses in its securities portfolio. As of December 31, 2022, FRB held $28.36 billion in held-to-maturity securities and $3.35 billion in available-for-sale securities. As with its loans, FRB reported that 96% ($27.41 billion) of held-to-maturity securities portfolio were long-duration securities, i.e., those that matured beyond ten years. Due to this concentration in long-duration securities, FRB recorded a $4.77 billion difference between the carrying value of held-to-maturity securities and the fair value. In other words, by December 31, 2022, FRB had total unrealized losses of $27.72 billion, compared to $17.45 billion in shareholder equity.

360. As of December 31, 2022, FRB only held 4% of assets in cash and available for sale securities. Based upon FRB's liquidity position, and its concentration in long-duration assets with unrealized losses, KPMG should have identified that FRB's financial statements created vulnerability to external shocks that carried the potential to trigger a downward spiral to both solvency and liquidity. Moreover, the difference between the fair value and carrying value of FRB's assets raised doubts about the Bank's ability to recover the full book value of its assets, which could impact capital adequacy and profitability, potentially breaching regulatory requirements or impacting ongoing operations.

361. Given these risks, KPMG should have, as required by the PCAOB Auditing Standards, reviewed management's plans to manage and mitigate risks related to the asset/liability mismatch and the growing paper losses to the fair value of FRB's assets. Through this review, and through documents available to KPMG related to the FDIC's supervision of the Bank, KPMG would have seen that FRB's faced significant risks to its liquidity and solvency from rising interest rates and that Defendants had not

taken proactive measures to mitigate interest rate risk, despite their longstanding awareness of these risks. Indeed, as the Federal Reserve raised rates throughout 2022, FRB failed to implement any comprehensive approach to mitigate the risks facing the bank despite knowing as early as April 2022 that higher rate environments would cause, based on projections, significant problems to the Bank's EVE figures. *See* Section IV.J.

362. KPMG should have also analyzed the Bank's actual response to these economic factors over 2022, which would have further revealed the issues facing the Bank and Defendants' failure to react. Throughout 2022, as rates rose and diminished the value of FRB's assets significantly, Defendants only ***increased*** the Bank's dependence on its mortgage loan book, while failing to meaningfully obtain higher-rates on these loans, shown by looking at overall yields on these assets reported throughout 2022. For example, despite the Bank's adverse EVE projection (which were deeply and negatively impacted by the Bank's residential loan portfolio), FRB increased its residential real estate loans each quarter in 2022: 6% in 1Q 2022, 9% in 2Q 2022, 6% in 3Q 2022, and 4% in 4Q 2022. In total, FRB's single-family residential real estate exposure rose from $80.37 billion to $102.67 billion during 2022. And despite the Federal Reserve's significant rate increases during this time, FRB's yield on these assets remained relatively flat: from 2.82% at year-end 2021 to 2.89% at year-end 2022.

363. FRB failed to diversify its assets to higher-yielding investments in other respects. After residential real estate, the Bank's largest loan class was multifamily real estate, which constituted $21.59 billion by year-end 2022. Despite increasing these loans by approximately $6 billion during 2022, FRB's yield on these loans declined, from 3.61% to 3.50%. This trend further imperiled the Bank's financial position heading in 2023, especially as Defendants failed to secure, relative to market conditions, higher-yielding assets. While FRB was able to fetch a higher yield on business loans in 2022 (from 3.20% to 4.03%), FRB's exposure to business loans actually decreased in 2022 (from $19.19 billion to $18.79 billion). FRB continued its dependence on its loan portfolio to generate interest income, but it could not adapt its loan originations to the higher-rate environment, which presented significant issues with the Bank's operations heading into 2023.

364. In sum, the combination of FRB's unrealized losses in its assets and meager cash position, coupled with Defendants' inability to mitigate the Bank's interest rate risk—both in terms of prior

investments and future planning—created significant doubt regarding FRB's ability to continue as a going concern. KPMG, as the independent auditor, had a responsibility to raise this doubt in its Auditor Report in accordance with PCAOB Auditing Standards to inform stakeholders and potentially initiate further scrutiny or corrective actions.

### N. Following the Collapse of Silicon Valley Bank, Defendants Continue to Assure Investors About the Bank's Stability, While Concealing FRB's Massive Deposit Outflows

365. After the market closed on March 8, 2023, SVB Financial Group, the parent company of Silicon Valley Bank ("SVB") (widely considered a peer bank of FRB) disclosed that it had sold substantially all of its $21 billion available-for-sale securities portfolio and incurred an after-tax loss of approximately $1.8 billion on that sale. SVB Financial Group also announced that it was attempting to raise approximately $2.25 billion in capital in an effort to cover deposit withdrawals and shore up its deteriorating balance sheet.

366. Media outlets commented on investor concerns about the stickiness of FRB's deposit base and the Company's liquidity in light of similarities between FRB and SVB. For example, The Wall Street Journal wrote in a March 9, 2023 article that, in light of SVB's announcements, "***investors grew concerned about the stickiness of cheap bank deposits in a world of rising rates***." The article continued, "First Republic caters to business owners and wealthy individuals. ***These are the kinds of customers who are starting to yank their deposits from bank accounts in search of higher rates on Treasurys and other products***." Similarly, The New York Times wrote in a March 9, 2023 article that following the March 8 news about SVB, "***concern swirled that others could run into similar problems***."

367. On March 10, 2023, the CDFPI took possession of SVB and appointed the FDIC as receiver. At the same time, depositors began withdrawing their money from FRB. Investors, however, remained in the dark about deposit outflows at the Bank. In fact, unbeknownst to investors, FRB suffered a massive outflow of deposits on March 10, 2023, totaling around ***$25 billion***, or roughly 16.8% of the Company's total deposits.

368. As deposits were flowing out of FRB, bankers worked around the clock to process transfers while attempting to reassure clients. FE-1 recalled that the period after SVB's collapse was "chaos." FRB bankers were staying until midnight in the office and some employees slept in their cars.

369. FE-1 recalled that during this time period there were 6:30 a.m. meetings with the executive team, which included Defendants Herbert and Roffler and COO Cranston. The executive team told FRB employees to tell their clients that FRB and its deposits were safe and that FRB had enough capital. During these meetings, executives also told employees not to listen to the media and that FRB was well-capitalized. The meetings started on March 10, 2023, and continued to the following weekend (the weekend of March 17, 2023). The meetings then stopped and there was silence from the executives, according to FE-1.

370. FE-1 said that, previously, on Tuesdays, employees received internal ALCO reports regarding the Bank, but around this time the reports stopped coming in. FE-1 concluded that there was a huge hole in the balance sheet that management didn't want to share with employees. FE-1 said: "They didn't want to start a panic with us. We had to keep the clients calm."

371. FE-5 confirmed that FRB's senior executives, including Defendant Roffler and COO Cranston kept employees "in the dark" about the Bank's struggle to retain deposits. FE-8 recalled that during a February or March 2023 weekly Loan Meeting, FE-5 addressed Defendants Selfridge and Roffler and COO Cranston, imploring them to stop "leaving employees in the dark." According to FE-8, FE-5 was "relentless" and "did not back down." FE-8 recalled that FE-5 demanded that the executives be truthful and questioned how FRB employees were expected to tell clients that the Bank was fine when it was not. FE-8 added that it was not the first time questions about FRB's condition were raised. Employees, including FE-5, posed questions at the Monday Loan Meeting about the Bank's condition "quite often" during this time period as rumors were "flying" that FRB was in trouble. Defendant Roffler and COO Cranston would deny these rumors at meetings and falsely assure employees that FRB was fine.

372. FE-2 stated that FRB asked for volunteers in the latter half of March to assist with stemming depositors from moving out of the Bank. FE-2 stated that FRB had teams of people working almost around the clock taking calls from clients. FE-2 recalled that all departments' Relationship Managers, Preferred Bankers, and sales people were calling their clients trying to reassure them that "the bank is fine, we're liquid and there's no need to move your deposits." As deposits were moving, assistants were wire-transferring requests. FRB had also put together a tool to determine how to maneuver client funds to have the maximum FDIC coverage based upon a client's overall balances.

373. In stark contrast to the internal chaos at FRB, on March 10, 2023, Defendants sought to tamp down investor fear over FRB's deposit base and liquidity, as well as the Bank's safety and stability. In particular, after market-hours on March 10, the Company filed a Form 8-K stating: "***This filing reiterates First Republic's continued safety and stability and strong capital and liquidity positions***." The Form 8-K also stated that "***First Republic's deposit base is strong and very-well diversified***." Significantly, Defendants did not disclose the $25 billion of deposit outflows on March 10, 2023.

374. The Form 8-K further pointed to the Company's current access to additional liquidity in an effort to allay market concerns, stating: "***First Republic's liquidity position remains very strong***. Sources beyond a well-diversified deposit base include over $60 billion of available, unused borrowing capacity at the Federal Home Loan Bank and the Federal Reserve Bank." The Company provided further granularity on its deposits in an effort to reassure investors, stating:

> Consumer deposits have an average account size of less than $200,000 and business deposits have an average account size of less than $500,000. Within business deposits, no one sector represents more than 9% of total deposits, with the largest being diversified real estate. Technology-related deposits represent only 4% of total deposits.

375. Defendants' reassuring statements had the intended effect. For example, RBC issued a March 10, 2023 report titled, "FRC - Incremental funding and securities portfolio disclosures provide a favorable distinction," citing FRB's statements in the March 10, 2023 Form 8-K and stating that they "should help investors better understand and identify the key distinctions of FRC's business model and client exposures" and that "we believe the company's disclosures provide credibility to the thesis that FRC is far less exposed to the most acute and idiosyncratic pressures that are impacting certain banks today."

376. On Sunday, March 12, 2023, the New York State Department of Financial Services, a New York state banking regulator, closed Signature Bank of New York (another of First Republic's peer banks), and appointed the FDIC as receiver of Signature Bank of New York.

## O. The Relevant Truth Is Revealed Through a Series of Disclosures Between March and May 2023

### 1. On March 12, FRB Announces It Has Had to Add $10 Billion of Additional Borrowing Capacity from the Federal Reserve and JPMorgan Chase

377. While publicly assuring investors about FRB's "***continued safety and stability and strong capital and liquidity positions***," internally, FRB was scrambling to obtain access to additional borrowing

capacity in an effort to shore up its liquidity in light of its massive, undisclosed deposit outflows. Then, on Sunday, March 12, 2023, FRB issued a press release stating that it had to increase its total available, unused liquidity to more than $70 billion, an increase of $10 billion from what was disclosed on March 10, 2023. In making this disclosure, however, Defendants again sought to quell investor concerns about the Company's liquidity, safety, and stability. Specifically, the March 12, 2023 press release contained a joint statement from Herbert and Roffler, stating:

> ***First Republic's capital and liquidity positions are very strong***, and its capital remains well above the regulatory threshold for well-capitalized banks. As we have done since 1985, we operate with an emphasis on safety and stability at all times, while maintaining a well-diversified deposit base. First Republic continues to fund loans, process transactions and fully serve the needs of clients by delivering exceptional service.

378. The next day, March 13, 2023, Defendants continued to misleadingly reassure the market about First Republic's liquidity and stability. Specifically, Herbert told well-known financial market commentator Jim Cramer of CNBC that "First Republic Bank has been able to meet withdrawal demands on Monday with the help of additional funding from JPMorgan Chase," and further told Cramer "***that the bank was not seeing massive outflows of deposits and that the business was operating as usual***."

379. Yet, in stark contrast to what Herbert told investors, and unbeknownst to the market, massive deposit outflows continued at FRB ***that same day***, with a staggering ***additional $40 billion of deposits*** leaving the Company on March 13, ***in addition to the roughly $25 billion*** of deposits that left the Company on Friday, March 10, 2023.

380. Despite Defendants' reassurances, the price of FRB's common stock declined by $50.55 per share, or more than 37% on Monday, March 13, 2023, from a closing price of $81.76 per share on Friday, March 10, 2023, to a closing price of $31.21 per share on March 13, 2023. As set forth below in Section IX, FRB's preferred stock similarly declined in response to this disclosure.

381. A March 14, 2023 article by Banking Drive stated that FRB's share price decline on Monday, March 13 "may have come in reaction to a statement First Republic made Sunday indicating it could access more than $70 billion in unused liquidity from sources including the Federal Reserve and JPMorgan Chase."

382. Some analysts latched onto Defendants' reassuring statements. For example, in a March 12, 2023, report titled, "Reaffirms capital and liquidity strength after an uncertain weekend," RBC wrote:

> First Republic issued a press release tonight reaffirming the company's strong capital and liquidity position. Tonight, First Republic issued a press release disclosing that the company has further enhanced and diversified its financial position with additional liquidity from the Federal Reserve Bank and JPMorgan Chase & Co. Specifically, the company disclosed that the additional borrowing capacity and access to funding from the FHLB as well as financing from JPMorgan in total provides more than $70 billion in available and unused liquidity to fund operations. Furthermore, this excludes additional liquidity that FRC would be eligible to receive under the new Bank Term Funding Program announced today. Given the uncertainty around funding sources for the industry over the weekend, ***this is positive news for First Republic***.

383. The RBC report further stated: "We appreciate First Republic's proactive approach to addressing investor and key stakeholder questions around the company's financial position. We do not know the status of deposit flows at the company over the weekend, but this announcement does provide some relief in terms of the overall funding availability." It also stated: "While investors will still have questions about the company's longer-term funding and growth profile, this announcement is a positive."

384. Similarly, Bloomberg published an article on March 12, 2023, noting that "Fears about First Republic's viability could be eased after it a liquidity injection that raises available resources to $70 billion from the $60 billion announced on Friday."

385. An American Banker article published on March 12, 2023, titled, "First Republic touts position after boosting Fed, JPMorgan Chase borrowing limits," reported commentary from an analyst at Janney Montgomery Scott regarding FRB's disclosures earlier in the day, stating: "The news is a 'positive development' after investors' concerns over the past few days." The article further reported: "[a]nother plus, [the analyst at Janney Montgomery Scott] added, is that the bank remained open and wasn't part of the Sunday evening regulatory announcements" from the Federal Reserve, which unveiled a new Bank Term Funding Program (or BTFP), that would better-allow banks to manage their liquidity, and an easing of conditions at its discount window, which allows lenders to make short-term borrowings to handle their liquidity needs. Bloomberg wrote in a March 14, 2022 article titled, "For First Republic, Fundamentals Looking More Attractive: React," that "[s]trengthened borrowing capacity and additional financing from JPMorgan are addressing First Republic's liquidity needs amid deposit outflow, while fundamentals could be improving."

### 2. On March 15, 2023, S&P Downgrades FRB Based on Doubts About Its Balance Sheet and Profitability

386. On March 15, 2023, ratings company S&P downgraded its FRB credit ratings, including: downgrading its long-term issuer credit rating to "BB+" from "A-," a significant four-notch downgrade; downgrading its senior unsecured issue rating to "BB+;" downgrading its subordinated stock issue rating to "BB-;" and downgrading its preferred stock issue rating to "B." Explaining the downgrades, S&P stated, "***we believe the risk of deposit outflows is elevated at First Republic***," and that "if deposit outflows continue, we expect First Republic would need to rely on its more costly wholesale borrowings. This would encumber its balance sheet and hurt its modest profitability." S&P also "placed [its] ratings on First Republic on CreditWatch with negative implications," which it stated "reflect[ed] ***the lack of visibility on the level and pace of deposit volatility and the potential for higher usage of more costly wholesale funding***."

387. Also on March 15, 2023, ratings agency Fitch downgraded FRB's credit rating. Specifically, Fitch downgraded its First Republic "Long-Term Issuer Default Rating (IDR)" to "BB" from "A-," and downgraded First Republic's "Short-Term IDR" to "B" (a rating that indicates a company has an uncertain capacity for timely payment of financial commitments relative to other issuers or obligations in the same country) from "F1" (a rating that indicates a company has the strongest capacity for timely payment of financial commitments relative to other issuers or obligations in the same country). Fitch also placed FRB's ratings on "Rating Watch Negative." Fitch further explained that it considered "FRC's deposit base as concentrated given the strategic focus on banking wealthy and financially sophisticated customers in select urban coastal markets in the U.S. ***This not only drives a high proportion of uninsured deposits as a percentage of total deposits but also results in deposits that can be less sticky in times of crisis or severe stress***."

388. On this news, the price of FRB's common stock declined by $8.47 per share, or more than 21%, from a closing price of $39.63 per share on March 14, 2023, to a closing price of $31.16 per share on March 15, 2023. As set forth below in Section IX, FRB's preferred stock similarly declined in response to this disclosure.

389. Media outlets attributed First Republic's stock price decline to the information concerning FRB's worsening liquidity as reflected in the credit downgrades. For example, AdvisorHub wrote in a March 15, 2023 article that "First Republic Bank shares fell as much as 26% on Wednesday morning after S&P Global cut their credit rating to BB+ from A- amid concerns about deposit outflows." Another AdvisorHub article published on March 16 stated that "[o]n Wednesday [March 15], First Republic shares sank 21% as its credit rating was cut to junk by S&P Global Ratings and Fitch Ratings." The Los Angeles Times wrote on March 15, 2023, in an article titled, "First Republic Bank cut to junk status by S&P, Fitch amid bank turmoil," that FRB's stock price closed 21% lower after the downgrades, noting that "[b]oth credit rating firms said further downgrades are possible as First Republic faces deposit outflows that could affect its liquidity and ramp up wholesale borrowing."

390. Bloomberg likewise wrote in a March 15, 2023 article published after the market closed that First Republic "was cut to junk by S&P Global Ratings and Fitch Ratings on Wednesday," and further noted that First Republic's "stock fell 21% Wednesday in New York." The Bloomberg article also reported that First Republic was "[s]aid to [w]eigh [o]ptions [i]Including a [s]ale," and that "[t]he bank, which is also weighing options for shoring up liquidity, is expected to draw interest from larger rivals, but that "[n]o decision has been reached and the bank could still choose to remain independent."

391. Analysts also seized on the ratings downgrades as signaling additional risk to FRB's liquidity and operations. For example, in a March 15, 2023 report titled, "First Read First Republic Bank Rating Agencies Change in Debt Rating," UBS wrote that "[g]iven the ratings agencies change in debt rating, we believe the business fundamentals have changed for FRC. Until we gain sufficient clarity, we are placing our PT [price target] and rating under review." A March 16, 2023 analyst report from Barclays noted that "[t]he downgrades from two major credit-rating companies officially move FRC to the high-yield market."

**3. On March 16, 2023, FRB Announces That It Has Had to Raise Even More Funds, and That Eleven of the Largest U.S. Banks, Led by JPMorgan Chase, Have Deposited $30 Billion with FRB**

392. On March 16, 2023—despite securing an additional $10 billion in liquidity just four days earlier—FRB was again seeking to shore up its liquidity. Specifically, financial media reported that eleven large U.S. banks—including JPMorgan, Bank of America, Wells Fargo, Citigroup, Goldman Sachs, and

Morgan Stanley—would deposit $30 billion with FRB to provide the Company additional liquidity with an initial term of 120 days at market rates.

393. In addition, after the market closed on March 16, 2023, FRB issued a press release disclosing that the Bank: (1) had a cash position of just $34 billion, not including the $30 billion of deposits from the 11 large U.S. banks; (2) had already significantly drawn on its borrowing capacity, including borrowing between $20 and $109 billion from the Federal Reserve at an overnight rate of 4.75%; and (3) since the close of business on March 9, 2023, FRB increased short-term borrowing from the FHLB by $10 billion, at a rate of 5.09%. In addition, FRB disclosed in its March 16 press release that it was focused on reducing its borrowings and evaluating the composition and size of its balance sheet going forward, and that the Bank was suspending its common stock dividend. The press release further stated that "***[i]nsured deposits*** from close of business on March 8, 2023 to close of business on March 15, 2023 have remained stable," and that "[d]aily deposit outflows have slowed considerably," but said nothing about the state of the Bank's uninsured deposits.

394. On this news, the price of FRB common stock declined by $11.24 per share, or nearly 33%, from a closing price of $34.27 per share on March 16, 2023, to a closing price of $23.03 per share on March 17, 2023. As set forth below in Section IX, FRB's preferred stock similarly declined in response to this disclosure.

395. Media outlets attributed FRB's common stock price decline to the Company's March 16 disclosures. For example, Bloomberg wrote in a March 16, 2023 article that First Republic shares "slipped in extended New York trading after the bank announced it was suspending its dividend." Reuters wrote in a March 17, 2023 article that "[s]hares of First Republic Bank [] tumbled nearly 33% on Friday [March 17, 2023], leaving them down more than 80% in the past 10 sessions, despite a rescue package with $30 billion in deposits injected by large U.S. banks." Similarly, in a March 17, 2023 article by Bloomberg titled, "First Republic's $30 Billion Rescue Fails to Calm Investors," the media outlet noted that "First Republic shares closed down 33% to $23.03 after slumping as much as 35% in intraday trading Friday," and noted that analysts believed the $30 billion "[d]eposit injection [wa]s a 'temporary solution.'"

396. Analysts also seized on these March 16 disclosures as revealing additional detail about the problems facing FRB. For example, in a March 16, 2023 report by Evercore titled, "Avengers:

Endgame… ?," the analyst wrote that "the $30B infusion likely stabilizes the bank for now amid slowing deposit outflows. We maintain our Tactical Underperform rating on FRC as we expect persistent pressure on funding costs & net interest income to continue to weigh on the shares. Our estimates and target price are under review." The Evercore report described the $30 billion in deposits from other banks "as likely a temporary solution – particularly given the noted 120 day window." The report added that FRB's "deposit destruction remains unclear, and as a result we cannot rule out that the infusion is bridge financing as strategic options are evaluated." In addition, the report estimated that, based on information disclosed in FRB's March 16 Form 8-K, "deposit outflows on a worst case scenario could be as high as ~$90B. This is based on FRC's disclosed $20-$109B range of Fed borrowings, $10B incremental FHLB borrowings, and $30B increase in cash position."

397. Morningstar similarly stated in a Match 17, 2023 report titled, "Don't Be Fooled: Latest Liquidity Injection Reveals Bad News for First Republic; Lowering Our FVE [fair value estimate]," that "[d]isclosures made by First Republic regarding this latest liquidity injection remove all doubts that a significant runoff of deposits has occurred. . . . Based on the potential range of deposits that may have fled, we believe the bank could already be unprofitable on a go-forward basis." The report further stated, "***it could be inferred that the bank had up to $89 billion of deposits flee***. While First Republic states that uninsured deposit balances have stayed roughly stable, roughly 68% of deposits, or roughly $120 billion, was uninsured, so insured balances staying put is not comforting."

398. Similarly, Wolfe research wrote in a March 23, 2023 report titled, "FRC: Between Scylla and Charybdis," that it was lowering its estimates "to Reflect Loss of $70bn in Deposits."

399. Barclays wrote in a March 16, 2023, report titled, "First Republic Bank Receives Liquidity From Biggest Banks but Deposit Level Uncertainty Persists," that although "receiving $30bn in uninsured deposits from the largest banks strengthens liquidity and is a vote of confidence, significantly reducing the probability of failure," FRB still "didn't provide an update on uninsured deposit balances." The report further flagged that although the Company stated "daily deposit outflows have slowed considerably, we do not know where they currently stand."

### 4. Over the Weekend of March 17-19, 2023, Moody's and S&P Downgrade FRB's Credit Rating to Junk Status

400. After the market closed on Friday, March 17, 2023, Moody's downgraded First Republic's credit rating to junk status—reducing its credit rating of FRB from Baa1 to B2, below investment grade—citing "the deterioration in the bank's financial profile and the significant challenges First Republic Bank faces over the medium term in light of its increased reliance on short-term and higher cost wholesale funding due to deposit outflows." Moody's wrote that "the high cost of these borrowings, combined with the high proportion of fixed-rate assets at the bank, is likely to have a large negative impact on First Republic's core profitability in coming quarters." In addition, Moody's explained that First Republic "faces the eventual need to sell assets to repay these obligations" and "[t]his could lead to the crystallization of the unrealized losses on its AFS [available-for-sale] or HTM [held-to-maturity] securities." Moody's warned that "[e]ven if the crystallization of unrealized losses is avoided, . . . the impact on [First Republic's] profitability from higher interest expense will still be significant." Moody's also warned that FRB's credit rating could be downgraded further, citing "the continuing challenges to the bank's medium-term credit profile in light of its significantly eroded deposit base, increased reliance on short-term wholesale funding and sizeable volume of unrealized losses on its investment securities."

401. On Sunday, March 19, 2023, S&P downgraded FRB for a second time in a week, this time reducing FRB's credit rating to junk status. S&P further downgraded FRB's long-term issuer credit rating from "BB+" to "B+;" senior unsecured issue rating to "B+;" subordinated issue rating to "B-;" and preferred stock issue rating to "CCC." In explaining its downgrade, S&P stated that FRB "faces substantial long-term challenges" and expressed concern that the Company had "tapped higher-cost secured funding extensively over the last week." S&P believed that "the bank was likely under high liquidity stress with substantial deposit outflows over the past week," citing "[t]he deposit infusion from 11 U.S. banks, the company's disclosure that borrowings from the Fed range from $20 billion to $109 billion and borrowings from the Federal Home Loan Bank (FHLB) increased by $10 billion, and the suspension of its common stock dividend."

402. Following this news, the price of FRB common stock declined by $10.85 per share, or more than 47%, from a closing price of $23.03 per share on March 17, 2023, to a closing price of $12.18 per

share on Monday, March 20, 2023. As set forth below in Section IX, FRB's preferred stock similarly declined in response to this disclosure.

403. Market commentators attributed the decline in FRB's stock price to the information in the additional ratings agency downgrades concerning FRB's deteriorating liquidity. For example, Reuters explained in a March 20, 2023 article titled, "First Republic shares tumble again as liquidity fears linger," that:

> Shares of First Republic Bank (FRC.N), closed 47% lower on Monday, ***adding to recent losses as concerns about its liquidity continued to worry investors despite a $30 billion influx of deposits last week***.
>
> The bank's stock fell as much as 50% and closed at $12.18 after the New York Stock Exchange halted it several times due to volatility.
>
> S&P Global downgraded First Republic deeper into junk status on Sunday and said the recent cash infusion from 11 large U.S. banks last week may not solve its liquidity problems.

Bloomberg similarly wrote in a March 20, 2023 article titled, "First Republic Dives 47% to Record Low on Downgrade, Bank Talks," that First Republic's "shares tumbled 47% to an all-time low after S&P Global lowered its credit rating for the second time in a week and as executives from major banks discussed fresh efforts to stabilize the lender." In a March 20, 2023 article titled, "The Broader Banking Panic Is Over. Why First Republic Stock Keeps Falling," Barron's stated that "First Republic stock fell 47%, to an all-time low of $12.14, on Monday as concerns about its future only grew—despite new talks to stabilize the bank." Barron's noted that

> The stock had already opened sharply lower after S&P Global cut the regional bank's long-term credit rating again on Sunday—this time to B+ from BB+—and warned a $30 billion rescue package won't be enough. It was the second time S&P has downgraded the bank's credit rating in less than a week, after cutting it from A- to BB+ last Wednesday.

404. Commenting on FRB's nearly 50% stock price decline, the Los Angeles Times wrote in an article titled, "First Republic Bank shares slide in volatile trading session," on March 20, 2023, that "[s]hares of First Republic Bank fell an additional 47% on Monday as investors remain uneasy about the bank's financial condition even after a group of the nation's largest financial institutions teamed up on a $30-billion rescue package." The report attributed the continued decline to the news of the additional downgrade by S&P, stating: "Over the weekend, the bank's credit rating was downgraded by S&P Global

Ratings, which said that the rescue package should ease near-term liquidity pressures, but it 'may not solve the substantial business, liquidity, funding, and profitability challenges' that it believes the San Francisco-based bank probably is now facing." The New York Times reported in a March 20, 2023 article titled, "Fate of First Republic Hangs in Balance as Shares Plummet Again," that:

> First Republic has also seen several downgrades of its credit in recent days. On Friday, Moody's said it was downgrading the bank because of its increased reliance on short-term borrowing . . . .
>
> . . . .
>
> Standard & Poor's, in its own downgrade on Sunday, said the bank continued to face "substantial business, liquidity, funding and profitability challenges."

NPR similarly reported in a March 20, 2023 article titled, "First Republic Bank shares sink to another record low, but stock markets are calmer," that "First Republic Bank shares sank more than 45% to another record low on Monday," and that, "[t]he California-based lender was downgraded for a second time this week over the weekend by S&P Global, contributing to the declines on Monday."

405. As investors digested news of the Moody's and S&P downgrades, reports emerged concerning the magnitude of deposit outflows at FRB and that the Bank was planning to sell assets to raise cash. On March 19, 2023, The Wall Street Journal reported that "[c]ustomers have pulled some $70 billion in deposits [from FRB], almost 40% of its total, according to people familiar with the matter." On March 20, 2023, the Financial Times reported in an article titled, "Wall Street chief executives seek new plan for First Republic," that "[t]he continued slide in First Republic's share price on Monday came after its credit rating was cut for the second time in a week following a flight of depositors who pulled tens of billions of dollars from their accounts." The report stated that "First Republic, which is battling to restore investor confidence, has lost about $70bn of deposits since the start of the year when they totaled $176.4bn, said one person briefed on the matter." Another Financial Times article on this date, titled, "Small banks, big reach," reported that "[t]he stock of California-based First Republic Bank has sold off sharply; it is reportedly planning to place shares privately to shore up capital, after it was forced to meet cash needs with pricey loans from the Fed and deposits from larger banks."

### 5. On April 24, 2023, FRB Announces Dismal 1Q 2023 Earnings Results, a Massive Outflow of Deposits, and Additional Measures to Increase Liquidity

406. After market close on April 24, 2023, FRB issued a press release announcing its 1Q 2023 financial results. The press release disclosed that the Bank had been forced to take drastic measures to raise cash, reduce expenses, and increase liquidity. FRB disclosed that even after the $30 billion injection FRB received from a consortium of banks, total deposits had declined 40.8% in the first quarter compared to 4Q 2022, and 35.5% year-over-year, to $104.5 billion. The press release stated:

> [T]he Bank is taking actions to strengthen its business and restructure its balance sheet. These actions include efforts to increase insured deposits, reduce borrowings from the Federal Reserve Bank, and decrease loan balances to correspond with the reduced reliance on uninsured deposits. Through these actions, the Bank intends to reduce the size of its balance sheet, reduce its reliance on short-term borrowings, and address the challenges it continues to face. . . .
>
> The Bank is also taking steps to reduce expenses, including significant reductions to executive officer compensation, condensing corporate office space, and reducing non-essential projects and activities. The Bank also expects to reduce its workforce by approximately 20-25% in the second quarter.
>
> In addition to these actions, the Bank is pursuing strategic options to expedite its progress while reinforcing its capital position.

407. In the press release, Defendant Holland stated: "With the closure of several banks in March, ***we experienced unprecedented deposit outflows***. We moved swiftly and leveraged our high-quality loan and securities portfolios to secure additional liquidity. We are working to restructure our balance sheet and reduce our expenses and short-term borrowings."

408. FRB held an investor conference call after-market hours on April 24, 2023, during which Defendants provided prepared remarks but took no questions. During the conference call, Roffler stated:

> Let me now discuss our current funding. As the industry events unfolded in March, ***we experienced unprecedented deposit outflows***. Beginning the week of March 27, our deposits stabilized and they have remained stable since that time. As of March 31, and excluding deposits from the large banks, insured deposits were $54.6 billion or 73% of total deposits. Uninsured deposits were $19.8 billion or 27% of total deposits.
>
> Consumer deposits represented 52% of total deposits. Total deposits as of April 21, including the $30 billion received from the large banks were $102.7 billion, down only 1.7% from the end of the first quarter. This slight decline from March 31 reflects seasonal client tax payments that occur each April. In response to the unprecedented deposit outflows we experienced toward the middle of March 2023, we accessed additional liquidity to ensure we could serve client needs. Our ability to do so swiftly was supported by the outstanding credit quality of our loan portfolio.

> Total borrowings peaked on March 15 at $138.1 billion.
>
> At that time, we had $34 billion of cash and cash equivalents available on our balance sheet. We have since repaid a portion of our borrowings. As of March 31, total borrowings have declined to $106.7 billion, and we had $13.2 billion of cash and cash equivalents available on our balance sheet. Importantly, as of April 21, we had $45.1 billion of unused available borrowing capacity and cash on hand. This available liquidity is more than 2x our uninsured deposits, excluding the $30 billion of uninsured deposits received from the large banks.

409. Roffler continued, stating that the Bank was taking actions to reduce its exposure to uninsured deposits, decreasing its loan balances, and drastically cutting expenses and headcount:

> Though we face challenges and uncertainties, with the stabilization of our deposit base and the strength of our credit quality and capital position, we continue to take steps to strengthen our business.
>
> First, we are focusing on increasing our deposits. ***We are doing so by focusing on insured deposits*** from new consumers, small businesses and nonprofit organizations. We are also focused on serving our existing clients by providing off-balance sheet liquidity solutions as well as educating on and optimizing their FDIC insurance options. And we are leveraging our preferred banking offices which remain an important channel for driving deposit growth. ***Going forward, uninsured deposits will remain a much smaller percentage of total deposits than in the past***.
>
> Second, ***we are working to decrease our loan balances to correspond with our reduced reliance on uninsured deposits***. We are doing so by moderating our loan volumes, and we are focusing on originating loans to sell in the secondary market. We intend to retain servicing on these loans as we always have, so that we remain the primary point of contact for our clients. Through these actions, we intend to reduce the size of our balance sheet, reduce our reliance on short-term borrowings and address the challenges we continue to face.
>
> Third, we are taking steps to meaningfully reduce our expenses to align with our focus on reducing the size of the balance sheet. These expense reductions are designed in a way that supports our continued focus on client service and does not affect our regulatory and risk-related support and controls.
>
> Actions underway include: significant reductions to executive officer compensation as previously disclosed, condensing corporate office space within our markets and reducing nonessential projects and activities. With reductions in projects, activities, and loan volume, we expect to reduce the size of our workforce by approximately 20% to 25% during the second quarter.

410. On this news, the price of FRB common stock declined by $10.31 per share, or more than 64%, from a closing price of $16.00 per share on April 24, 2023, to a closing price $5.69 per share on April 26, 2023. As set forth below in Section IX, FRB's preferred stock similarly declined in response to this disclosure.

411. Analysts expressed surprise over the size of FRB's deposit outflows. For example, Wells Fargo stated in an April 24, 2023 report that "[e]xcluding the large bank deposits, ***balances were down roughly $100B, much worse than Street estimates, and a level that could prove very hard to come back from***." Similarly, an April 28, 2023 Barclays report wrote that:

> Given the uncertainty around recent events and the company's coyness around providing information intra-quarter, no one knew what to expect in terms of deposit run-off. The arbitrary line in the sand heading into the print was FRC had lost ~40% of its deposits, excluding the $30bn placed there from the big banks. ***However, this proved to be too conservative, with core deposits down closer to 60%***.

412. Media reports also expressed shock over the extent of FRB's deposit outflows during the quarter. For example, in an April 25, 2023 report titled, "First Republic Laid Bare The Extent of Banking Turmoil. Brace for More Jitters," Barron's wrote that:

> First Republic Bank on Monday revealed the extent of deposit flight during the panic, and exactly how much support it needed to cover its books. Investors are far from impressed. The problem now isn't having enough money to cover deposits—it's paying the interest on those loans it needed to get through the storm.

In another April 25, 2023 report, Barron's stated that:

> First Republic stock (ticker: FRC) dropped 49% to $8.10 [on April 26, 2023], a new low for shares of the San Francisco-based bank. The bank's stock is now down 93% year to date.
>
> The trigger was First Republic's first-quarter results released Monday after the bell. First Republic said deposits plunged by 41% in the quarter amid the cash crunch that toppled Silicon Valley Bank and Signature Bank. The lender had to borrow at high rates from the Federal Reserve and others to cover those huge outflows, the results showed.

413. While investors were reeling from the news about the size of FRB's deposit outflows and the dramatic steps necessary to shore up the Bank's liquidity, additional reports emerged that FRB was seeking to sell assets to raise cash. For example, Barron's reported on April 26, 2023, that:

> More details of First Republic balance sheet efforts emerged Tuesday when Bloomberg reported that First Republic was looking to sell $50 billion to $100 billion of assets, including long-dated mortgages and securities, in an effort to shrink its balance sheet and clean up the asset-liability mismatch that plagued the bank. With interest rates rising quickly, the bank is under pressure to pay more interest to depositors than the rates it receives on loans that were issued when rates were low.

In an April 26, 2023 report titled, "First Republic Stock Slides Further While Other Regional Banks Stand Firm," Barron's stated "[s]hares of First Republic Bank tumbled again Wednesday [April 26, 2023] as investors remained skeptical that the San Francisco-based bank will be able to complete a turnaround." The report stated that:

> [FRB's] shares dived nearly 20% Wednesday as reports emerged about the bank's efforts to avoid collapse. On Tuesday, the stock had plummeted 49% to close at a record low, after the bank said Monday that its deposits had declined more than 40% in the first quarter and revealed plans to cut as much as 25% of its workforce.
>
> First Republic is considering asking banks involved in its $30 billion rescue package last month, including JPMorgan Chase (JPM), to buy bonds from the bank at above-market rates, according to a CNBC report that cited banks familiar with the proposal.

414. Market commentators specifically linked FRB's stock price declines on April 25 and 26, 2023, to the Bank's disclosures on April 24, 2023. CNBC noted in an April 28, 2023 article that "[s]hares of First Republic closed at $16 on Monday before the bank reported its first-quarter results, which showed a decline in deposits of about 40%. The stock fell more than 60% over the next two days, hitting a new all-time low." The Los Angeles Times similarly wrote in an April 26, 2023 article that First Republic "lost an additional 29.8%" on April 26, 2023, "after nearly halving the day before. That's when it gave details about how many customers bolted amid last month's turmoil in the industry." Similarly, Fortune wrote in an April 26, 2023 article that:

> First Republic Bank's stock continued to slide Wednesday [April 26, 2023], an ongoing rout that has erased more than 50% of its value just this week on concerns about the bank's financial health in the wake of two other bank collapses.
>
> Shares slumped nearly 20% in afternoon trading, following an even more severe tumble Tuesday, after it revealed that depositors withdrew more than $100 billion last month . . . .

**6. On April 28, 2023, Media Outlets Report That an FDIC Receivership Is Likely**

415. Notwithstanding Roffler's assurances on April 24, 2023, regarding "the stabilization of [FRB's] deposit base" and the Bank's "available liquidity," on April 28, 2023, numerous media outlets reported that FRB would likely enter receivership with the FDIC, and that the FDIC had solicited bids for FRB from several financial institutions. A pre-market report by CNBC stated that "[s]ources told CNBC's David Faber that the most likely outcome for the troubled bank is for the Federal Deposit Insurance Corporation to take it into receivership." The report added that "[t]he FDIC is asking other banks for potential bids on First Republic if the regulator were to seize the bank, sources told Faber."

416. On this news, the price of 'FRB's common stock declined by $2.68 per share, or more than 42.2%, from a closing price of $6.19 on April 27, 2021, to a closing price of $3.51 per share on April 28, 2023. As set forth below in Section IX, FRB's preferred stock similarly declined in response to this disclosure.

417. Media outlets attributed FRB's stock price decline on April 28, 2023, to the reports about the likely FDIC receivership. CNN published an article on April 28, 2023, titled, "First Republic stock falls 20% on report that it's likely to fail," stating that "[s]hares of First Republic tumbled 20% Friday morning after CNBC, citing anonymous sources, reported that the lender was likely to collapse." CNBC reiterated its report about the FDIC planning to seize control of FRB, stating that "[t]he stock slid 43% and was halted for volatility multiple times." The article reported that the Company's shares "were down more than 50% at one point during the session, hitting an intraday low of $2.98 per share." Numerous other media outlets issued similar reports. For example, an April 28, 2023 article by Financial Post stated that "[s]hares of First Republic Bank tumbled nearly 32 per cent on April 28 after a CNBC report said the troubled lender was most likely headed for receivership." Similarly, the Financial Times reported in an April 28, 2023 article titled, "First Republic shares plunge again as survival plan fails to materialise," that "[s]hares in First Republic plunged 49 per cent in after-hours trading on Friday as the embattled California bank prepared to end another week of turmoil without a long-term plan for its survival." The article further stated that First Republic's "shares were briefly halted for volatility as investors lost faith that what First Republic's advisers call an 'open bank' solution was about to materialize," and that the Company's "shares had already fallen 43 per cent during normal trading hours on Friday." Barron's wrote in an April 28, 2023 article titled, "First Republic Stock Is Plunging Again. The Outlook Is Unclear," that:

> Shares of regional lender First Republic Bank fell more than 45% after hours Friday as concerns mounted about the future of the bank and a possible seizure by the Federal Deposit Insurance Corporation.
>
> Shares traded around $1.86 shortly before 5 p.m., down 47% from their close at $3.51, off 43% in regular trading. The stock had opened on Monday at $14.27.

Similarly, Reuters reported on April 28, 2023 that:

> The [FDIC] is preparing to place First Republic Bank under receivership imminently, a person familiar with the matter said on Friday, sending shares of the lender down nearly 50% in extended trading.

> The U.S. banking regulator decided the troubled regional lender's position has deteriorated and there is no more time to pursue a rescue through the private sector, the source told Reuters, requesting anonymity because the matter is confidential.

**7. On May 1, 2023, the FDIC Announces That JPMorgan Acquired FRB Over the Weekend**

418. Over the weekend of April 29-30, 2023, media outlets reported on the ongoing negotiations between the FDIC and potential bidders for FRB's assets. For example, Reuters reported on April 29, 2023, that "U.S. regulators are trying to clinch a sale of First Republic Bank over the weekend, with roughly half a dozen banks bidding, sources said on Saturday." The report stated that:

> Citizens Financial Group Inc, PNC Financial Services Group and JPMorgan Chase & Co are among bidders vying for First Republic in an auction process being run by the Federal Deposit Insurance Corp, according to sources familiar with the matter. US Bancorp was also among banks the FDIC had asked to submit a bid, according to Bloomberg.

Confirming the April 28, 2023 reports about FRB likely entering receivership, the Reuters report revealed that "[t]he FDIC process kicked off this week, three of the sources said. The bidders were asked to give non-binding offers by Friday and were studying First Republic's books over the weekend, one of the sources said." The report continued that "[a] deal is expected to be announced on Sunday night before Asian markets open, with the regulator likely to say at the same time that it had seized the lender, three of the sources said. Bids are due by Sunday noon, one of the sources said." On April 30, 2023, Bloomberg reported that "US regulators were working into the night to resolve the First Republic Bank crisis late Sunday."

419. Before the market opened on May 1, the FDIC issued a press release announcing that the CDFPI had closed FRB and appointed the FDIC as receiver, and that the FDIC was entering into a purchase and assumption agreement with JPMorgan to assume all of the deposits and substantially all of the assets of FRB. Also on May 1, 2023, before the market opened, the NYSE halted trading in shares of FRB effective as of 6:39 a.m. ET.

420. Then, before the market opened on May 2, the NYSE announced that it was immediately suspending trading in FRB's common stock and seven other FRB securities and commencing proceedings to delist those shares.

421. Following this news, the price of FRB's common stock declined by $3.18 per share, or 90.6%, from a closing price of $3.51 per share on April 28, 2023 to a closing price of $0.33 per share on May 3, 2023, when trading of First Republic shares resumed over-the-counter after being delisted from the NYSE. As set forth below in Section IX, FRB's preferred stock similarly declined in response to this disclosure.

422. In total, First Republic's stock price declined ***99.8***% between October 13, 2021, the first day of the Class Period and May 3, 2023, virtually eliminating the value of FRB common stock. As set forth below in Section IX, the value of FRB's preferred stock was likewise eliminated during the Class Period.

**P. Relevant Post-Class Period Events**

423. Shortly following FRB's collapse, regulators announced investigations into wrongdoing by FRB's former executives and its auditor, KPMG. Also, in recent months, regulators have studied the causes of FRB's failure and issued detailed reports concluding that Defendants failed to mitigate key risks facing FRB, which was in direct conflict with statements Defendants issued to investors throughout the Class Period.

**1. Regulators and Lawmakers Scrutinize Defendants' Conduct Leading up to FRB's Collapse**

424. On May 3, 2023, U.S. Senator Elizabeth Warren wrote to Defendant Roffler regarding

> the collapse of [FRB] to seek additional information about the gross mismanagement that resulted in [FRB's] failure, the extent to which you and other bank executives earned huge salaries and bonuses while leading the bank towards failure, and about your support and the support of other bank executives for weaker banking rules.

Senator Warren described FRB's model as one that "left the bank completely unprepared for the rise in interest rates that began in 2022." Senator Warren asked for Defendant Roffler's answers to twelve questions posited in the letter.

425. Also, on May 3, 2023, U.S. Senators Richard Blumenthal and Ron Johnson sent a letter to Defendant KPMG regarding the Bank's audits of SVB, Signature, and FRB. In this letter, Senators Blumenthal and Johnson wrote:

> KPMG published clean audits of SVB on February 24, 2023, 14 days before it failed, of Signature on March 1, 2023, 11 days before it failed, and of First Republic on February 28, 2023, 16 days before it received a $30 billion bailout. Given KPMG's role in assessing the financial health of these banks, we write to request records related to KPMG's audits and practices.

Senators Blumenthal and Johnson highlighted that "KPMG also appears to have had longstanding relationships with all three banks," and specifically cited that Defendant Roffler "had worked for KPMG for 16 years, including five years as an audit partner."

426. On May 5, 2023, the SEC announced an investigation into whether "any members of the then-executive team of First Republic improperly traded on inside information."

427. On May 12, 2023, the U.S. House Financial Services Committee announced it would hold a hearing on May 17, 2023 regarding its "Continued Oversight Over Regional Bank Failures." On May 17, Defendant Roffler testified alongside SVB's former CEO Greg Becker and Signature's former Chairman Scott Shay.

428. On November 1, 2023, the FDIC confirmed that a "directors and officers probe into First Republic is taking place" to investigate "potential misconduct." The FDIC did not reveal additional details regarding the investigation.

**2. Regulators Issue Reports Regarding the Risk Management Failures That Contributed to FRB's Collapse**

429. Since FRB's collapse, regulators have also issued reports regarding the cause of FRB's failure. On September 8, 2023, the FDIC released the aforementioned Report, *FDIC's Supervision of First Republic Bank*. The purpose of the report was to "provide[] information about the cause of First Republic's failure and evaluate[] the FDIC's supervision of the bank from the 2018 examination cycle through its failure on May 1, 2023." In this inquiry, the FDIC concluded that:

> [T]here were attributes of First Republic's business model and management strategies that made it vulnerable to the contagion that began on March 10, 2023. Those attributes and strategies included rapid growth in assets and deposits, loan and funding concentrations, unrealized losses, an overreliance on uninsured deposits, and ***a failure to sufficiently mitigate interest rate risk***.

430. On November 28, 2023, the OIG hired a third-party consulting firm, Cotton & Company Assurance and Advisory, LLC, to investigate the causes of failure and material loss to the FDIC deposit insurance fund, resulting in the OIG Report. The OIG Report also concluded that FRB's "***strategy of***

***attracting high net-worth customers with competitive loan terms, and funding growth through low-cost deposits, resulted in a concentration of uninsured deposits while increasing the bank's sensitivity to interest rate risk in a rising rate environment***."

431. Further, the FDIC and OIG Reports each concluded that Defendants did not take adequate measures to mitigate interest rate risk. For example, the FDIC Report concluded that "First Republic pursued a business model that worked well in a low interest rate environment but ***bank management and the Board did not take adequate steps to mitigate interest rate risk***." The FDIC Report further described that "[r]ising interest rates quickly created an asset/liability mismatch for the bank" because FRB's "assets were concentrated in longer-term loans that generated low interest income, while deposits required to fund those loans were short-term." The OIG Report similarly concluded that:

> First Republic operated with an asset/liability mismatch that exceeded a majority of peer banks and increased its susceptibility to interest rate risk in a rising rate environment. ***This mismatch was inconsistent with First Republic's own policies and its risk appetite thresholds. Nevertheless, First Republic accepted the risk without taking sufficient corrective action***.

432. Based on FRB's "size, sophistication, and risk profile," the FDIC Report concluded that FRB should have taken "additional proactive measures to mitigate interest rate risk." In the FDIC Report, the FDIC offered several areas of potential risk mitigation that FRB could have, but did not, undertake. The FDIC concluded that, during 2022, FRB failed to adequately adapt its loan portfolio. The FDIC Report found that FRB "could have more aggressively changed its loan pricing and loan product offerings to reduce asset duration." For example, the FDIC Report stated that FRB could have "discontinued offering longer-duration loans, such as 30-year fixed-rate mortgages." The FDIC also concluded that FRB could have "engaged in hedging activities to offset interest rate risk." The FDIC Report further concluded that FRB "***could have sold loans before interest rates increased***." By pursuing this strategy, according to the FDIC, FRB could have "reduced the risk of unrealized fair value losses on the loan portfolio that the bank experienced." The FDIC Report further noted that "[w]hile First Republic sold approximately $85 million in loans from 2021 through the first quarter of 2022, it had ***no loans sales from the second quarter of 2022 through year end 2022*** and no loan sales through bulk sales or securitizations in 2021 and 2022."

## V. THE INDIVIDUAL DEFENDANTS' MATERIALLY FALSE OR MISLEADING STATEMENTS AND OMISSIONS OF MATERIAL FACT

433. As alleged in this Section, Defendants made materially false and misleading statements and omissions during the Class Period in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgate thereunder.

434. ***First***, Defendants misrepresented to investors that FRB had a stable deposit funding base without disclosing that, in reality: (a) FRB's deposit growth was inflated by its reliance on undisclosed interest rate incentives to gather deposits, which undermined the stability of the Bank's deposits; (b) at quarter-end, Defendants offered short-term, higher rates to attract extremely large deposits from HNW individuals, private equity firms, and hedge funds to inflate deposit totals; (c) Defendants ignored red flags from the Bank's risk management tools designed to ensure the stability of deposits and manipulated the results of these tools, such as the deposit outflow calibration model; and (d) in 2022, many depositors were leaving the Bank and creating volatility in the Bank's most significant funding source.

435. ***Second***, Defendants misrepresented to investors that FRB appropriately managed interest rate risk and downplayed the impact of rising interest rates on FRB's business model of generating revenues predominantly through single family residential mortgages, when, in reality: (a) FRB originated many of these loans through rate exception programs such that FRB was offering hyper-competitive interest rates on loans, and that this business practice carried additional risks in a rising interest rate environment; and (b) by 2022, Defendants lacked sufficient interest rate risk management, as evidenced by Defendants: (i) noncompliance with asset/liability mismatch principles provided in the Bank's Interest Rate/Market Risk Management Framework; (ii) failure to address risk appetite and risk tolerance threshold breaches in the Bank's EVE modeling, which, for example, had "breached [the Bank's risk tolerance levels] in all scenarios" by October 2022 and projected negative equity under a 200 basis point increase scenario by January 2023; and (iii) continuing to originate billions of dollars of long-duration, fixed-rate mortgages at hyper-competitive prices that only compounded the Bank's interest rate risk, at the same time as the Bank's risk committees recommended shortening the Bank's asset duration.

436. ***Third***, Defendants misrepresented to investors that FRB maintained sufficient liquidity and had in place effective liquidity risk management and controls without disclosing that, in reality: (a) FRB's

deposit growth was inflated by its reliance on undisclosed interest rate incentives to gather deposits, which undermined the stability of the Bank's deposits; (b) at quarter-end, Defendants offered short-term rate exceptions to attract extremely large deposits from HNW individuals, private equity firms, and hedge funds to artificially bolster deposit totals; (c) Defendants ignored red flags from the Bank's risk management tools designed to ensure the stability of deposits and manipulated the results of these tools, such as the deposit outflow calibration model; (d) in 2022, many depositors were leaving the Bank and creating volatility in the Bank's funding source; and (e) Defendants lacked sufficient interest rate risk management, as evidenced by Defendants: (i) noncompliance with asset/liability mismatch principles provided in the Bank's Interest Rate/Market Risk Management Framework; (ii) failure to address risk appetite and risk tolerance threshold breaches in the Bank's EVE modeling, which, for example, had "breached [the Bank's risk tolerance levels] in all scenarios" by October 2022 and projected negative equity under a 200 basis point increase scenario by January 2023; and (iii) continuing to originate billions of dollars of long-duration, fixed-rate mortgages at hyper-competitive prices that only compounded the Bank's interest rate risk at the same time as the Bank's risk committees recommended shortening the Bank's asset duration.

437. ***Fourth***, Defendants misrepresented to investors that FRB appropriately accounted for "HFI" loans and "HTM" securities without disclosing that, in reality, the Bank did not possess the ability to hold its HFI loans and/or HTM securities to maturity based on the Bank's liquidity and interest rate risk, which was confirmed by the Bank's EVE modeling results, including: (a) FRB's deposit base had become increasingly unstable in 2022, and depositors had begun to withdraw deposits in search of higher yields elsewhere; and (b) Defendants continued to rely on rate incentives to attract and retain deposits, but Defendants were unable to generate sufficient deposits to fund the Bank's loan growth, creating a downward spiral of growing long-duration, fixed-rate loans and dwindling low-cost deposits.

**1. October 13, 2021—3Q 2021 Earnings Call**

438. On October 13, 2021, Defendants Herbert and Erkan participated in an earnings call to discuss FRB's financials results for the third quarter of 2021.

439. During the question-and-answer portion, Defendant Erkan stated the following in response to a question from Compass Point analyst David Patrick Rochester:

> Q: Just wanted to start on the deposit side. Growth was fantastic yet again this quarter. Can you just talk about any specific drivers impacting those trends? And I know you generally have stronger deposit growth in the back half of the year, so just kind of wanted to confirm you still expect that momentum to carry into 4Q?
>
> **Erkan**: Yes, absolutely. So we have seen the deposit growth coming in both in terms of increased average account balances that we have seen across consumer as well as business and ***quite strong client activity and referral activity, especially on the business side***. It has been ***well diversified across client types, regions and industries and a healthy mix of both new and existing clients***.

440. Defendant Herbert stated the following in response to a question from Wolfe analyst Bill Carcache:

> Q: I wanted to ask if you could comment on how you're thinking about the pace of deceleration in loan origination growth from here? Last quarter was your strongest ever, and this quarter was your strongest third quarter ever. So it would be natural to see some deceleration off these very high levels, especially as you go up against tougher comps. So just would be curious to hear your thoughts there on the pace. And then separately, if you could also discuss what kind of impact, if any, you think the Fed's tapering could have on your mortgage business?
>
> **Herbert**: I think the loan volume, ***the loan volume is never forced***. Let me -- the reason I'm hesitating is just how to say this. ***We never force our loan volume***. ***We do as many good deals as we are exposed to opportunistically***. But I would take you back to our investor deck, where about 80% or 85% of our business and over 60% is done with existing clients and 85% roughly is done with existing clients and their direct referrals. ***That activity does not really reflect a lot of volatility***.

441. The statements set forth in ¶¶439-440 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact. Contrary to Defendant Erkan's statement that deposit growth was the result of "***strong client activity and referral activity***" and that deposits were "***well diversified***" and presented a "***healthy mix***," FRB's deposit figures stemmed in part from the Bank's undisclosed rate incentives to gather deposits, which attracted short-term, volatile, and rate-sensitive deposits to the Bank that were categorically less stable than organically grown deposits. Moreover, the Bank's shortcomings in interest rate and liquidity risk management practices prevented the Bank from meaningfully assessing the risk of the Bank's concentration in uninsured deposits, which presented an unstable source of funding due to the tendencies of such depositors to withdraw funds in times of stress. For example, Defendants continually failed to comply with the Bank's Interest Rate/Market Risk Management Framework to "strive to maintain a neutral balance sheet" by "originating and retaining adjustable-rate loans and hybrid ARM [Adjustable-Rate Mortgage] loans with initial short-

or intermediate-term fixed rates, and match funding these assets with checking and savings deposits; short- and intermediate- term CDs; long-term, laddered maturity, fixed-rate FHLB advances; and unsecured, term, fixed-rate senior notes." In direct contradiction of the Bank's policies and Defendant Herbert's statement that "***the loan volume is never forced***," FRB offered discounted loans, predominantly fixed-rate, long-duration loans, to clients in exchange for the expectation (but not enforceable requirement) that the client deposit or maintain a certain percentage of the loan in deposits in their FRB accounts. By forcing loan volume in an effort to attract deposits, Defendants made the Bank increasingly vulnerable in a rising interest rate environment as, in a rising rate environment, the value of the Bank's long-duration, fixed-rate assets could lose value, leave the Bank with little flexibility to diversify, and could cause depositors to lose confidence in the Bank. As detailed above, at the time of these statements:

a. FRB was heavily reliant on uninsured deposits as a source of funding, and had created a significant funding concentration of uninsured deposits, which grew from 65% to 75% of total deposits between December 31, 2018 and December 31, 2021, and from 52% to 64% of total assets during this period. Moreover, FRB's uninsured deposit balances almost doubled from year-end 2019 through year-end 2021. Uninsured deposits are particularly volatile and unstable as a source of funding during actual or perceived stress events. Unbeknownst to investors, Defendants amplified the risk and volatility of these deposits through undisclosed sales practices and ongoing violations of the Bank's interest rate risk management policies.

b. FRB's primary interest rate risk mitigation strategy relied on continual growth to produce a consistent volume of loans priced at current interest rates. However, this strategy only worked as long as there was deposit growth and strong demand for loans at current rates. FRB's strategy of offering large, long-term loans with low fixed rates, which FRB held to maturity, resulted in a concentration of highly illiquid assets which could only be sold at a loss in the event of a liquidity shortfall due to rising interest rates. This practice directly violated the Bank's Interest Rate/Market Risk Management Framework.

c. FRB offered its loan clients undisclosed significant discounts on loan interest rates in exchange for making deposits at FRB, in many cases up to 20% of the loan amount. With no formal agreement requiring the deposits be maintained for a specific period of time, FRB was forcing loan volume in fixed-rate, high-duration mortgages for the potential allure of deposit growth. These deposits, which a client placed with the Bank solely to secure a favorable loan rate, were not as sticky as deposits generated through organic customer relationships, and were more susceptible to flow out of the Bank once the depositor obtained the favorable loan rate.

d. FRB's deposit growth was inflated by its reliance on undisclosed interest rate incentives to gather deposits, which undermined the stability of the Bank's deposits. As detailed by numerous former employees, FRB bankers routinely received approval from senior management to offer clients Rate Exceptions, which provided the clients short-term, higher interest rates on deposits.

e. Every quarter, senior FRB bankers met in FRB's War Room/Peace Room to increase quarter-end deposit balances by soliciting extremely large deposits from HNW individuals, private equity firms, and hedge funds. In exchange for these deposits, FRB would pay the clients abnormally high interest rates for periods as short as eight days.

f. By the fourth quarter of 2020, the Bank had already recognized its exposure to the risk of deposit outflows based on the results of its liquidity stress test, the Deposit Outflow Calibration Model. Rather than mitigate this risk, the Bank merely recategorized $19 billion in deposits from short-term to long-term deposits, decreasing outflow projections in its stress testing by nearly $17 billion.

**2. November 4, 2021—BancAnalysts Association of Boston Conference**

442. On November 4, 2021, Defendants Tsokova and Selfridge participated in the BancAnalysts Association of Boston Conference.

443. During her opening remarks, Defendant Tsokova stated:

> And ***if we look at the funding side, how do we fund this loan growth? Although we have diversified funding base, deposits continue to be the key element of the funding base.*** And deposits over the same period of time, they grew on pace with loans, actually a little bit better, 21% on the annualized basis over the last 10 years. And again, it's all organic growth.
>
> ***And if we look at the composition of deposits, about 60% of the total deposit base are business deposits. And then by type, 69% of total deposits are checking.***
>
> ***Now what also differentiates us, our average deposit account balances are typically higher.*** And on the consumer side, for example, they're about $130,000 as

> average balance. And if you think about our clients, they may have couple of mortgages to pay, so they need just high cash balances on average. ***And on the business side, our clients need to maintain the operational cash and those levels like, on average, are just under $500,000***.
>
> And because of that, because of the larger account -- average account balances, we have less number of deposit accounts just overall. If we compare ourselves to the top 50 -- to the banks from $100 billion to $250 billion, actually have by number, 5x less of deposit accounts than average bank in this range. ***And what it allows us, it allows us to get those -- to know those clients better, stay closer to them and be able to provide exceptional client service***.

444. During the question-and-answer portion, an analyst asked, "interest rates could be rising, hopefully, in the next -- within the next year or so. . . . [H]ow are you thinking about your margin in a rising rate environment, given this chart is not supportive of higher NIM in a rising rate environment?" Defendant Selfridge replied:

> ***I think it's supportive of stability***. . . .
>
> So in terms of simulation, net interest income will grow and then grow more in year 1 and year 2. And the reason is a couple of things. ***One, I think there's a little bit of a misperception on the First Republic balance sheet that it's a lot of very extended jumbo mortgages, 30 years. That's not the case. Actually, break it apart, almost half of the balance sheet reprices within a year because somewhere between 26% to 30% is repricing within a year***.
>
> CPRs for First Republic or prepayments -- and active client base, even if the industry goes to sort of 5% CPRs, we probably are double that. So 10% prepayment repricing opportunity growth is a repricing opportunity at, call it, mid-teens. And so you sort of pull all of that together and you've got that 50% to 60% repricing, 60% to 70% now checking on the rest perhaps hybrid mortgages that have a duration that's lower than one would think. ***So it's properly matched. We're sort of going for neutral, a little bit asset sensitive***.
>
> So to your question, when we model it conservatively, the betas, I think, we have, we assume checking goes down. We assume people move to savings. We're assuming in year 1, I think a 69% -- the last time we disclosed the 69%, 70% beta and then that drops a little bit in year 2, and it still works. So the -- I guess the way we think about it -- the way I think about it is more of the steepness of the yield curve. Can we -- ***and we also have with that active client base that Olga talked about, stable checking that allows us to keep the cost deposits low, particularly in a raising -- rising rate environment***.
>
> ***But I think it will stabilize, and I think we'll continue to grow, and I think we'll continue to be able to manage our NIM within a historic range***.

445. The statements set forth in ¶¶443-44 were materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶441.

**3. November 8, 2021—3Q 2021 Form 10-Q**

446. On November 8, 2021, FRB issued its Form 10-Q covering the third quarter of 2021, which was signed by Defendants Herbert, Erkan, and Roffler. The Form 10-Q stated:

> ***We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs*. . . . *In addition, we* maintain a contingency funding plan and *perform scenario-based stress-testing to ensure resilience in case of expected and unexpected future events*.**

447. The Form 10-Q further stated: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and intermediate-term demands***."

448. The 10-Q also stated:

> Total deposits were $145.3 billion at September 30, 2021, an increase of 26% compared to $114.9 billion at December 31, 2020, and an increase of 39% compared to $104.4 billion at September 30, 2020. ***Deposits increased as a result of expanding existing client relationships, referrals from existing clients, and new deposit clients. We continue to emphasize building banking relationships through checking and other transaction deposit accounts***.

449. The 10-Q further stated: "At September 30, 2021, our total deposits were $145.3 billion, a 26% increase from $114.9 billion at December 31, 2020, ***as we continued to expand relationships with existing clients and acquire new deposit clients, both business and consumer***."

450. The statements set forth in ¶¶446-49 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact. At the time these statements were made, FRB's business strategies undermined FRB's interest rate risk and liquidity risk mitigation. FRB's deposit base, which represented 97% of its funding base in 2021, was not diversified, as it was heavily concentrated in uninsured deposits, which were far more susceptible to outflows in the event of rising interest rates or if depositors lost confidence in the safety of FRB. FRB also had an increasing concentration of below-market, long-duration, fixed-rate loans within its assets portfolio. As a result of these strategies, FRB did not have access to sufficient liquid assets to meet demands because if interest rates were to rise, FRB would receive the same below-market income from its existing fixed-rate loans, while at the same time its funding costs (i.e., interest paid to depositors) would increase. Moreover, its loan portfolio, the Bank's main type of asset, was concentrated in highly illiquid, below-

market, fixed rate, long-duration loans, which could only be sold at a loss in a high interest rate environment.

451. In addition, FRB engaged in a long-standing and widespread practice of offering undisclosed rate incentives to grow deposits. In exchange for a client's agreement to make large deposits with FRB, the rate incentives lowered the interest rates borrowers paid FRB on loans and increased the interest rates FRB paid to depositors. A substantial portion of the increase in FRB's deposits was driven by undisclosed rate incentives, and deposits accumulated with rate incentives were subject to an unusual and heightened risk of withdrawals. Furthermore, in a rising interest rate environment, this combination of stagnant loan income and higher interest expenses would cause FRB's primary profit metrics (NII and NIM) to decline.

452. The Bank's widespread practice of attempting to boost deposits by providing clients with discounted mortgages, the majority of which were fixed-rate, long-duration loans, also violated the Bank's Interest Rate/Market Risk Management Framework which required that FRB "originat[e] and retain[] adjustable-rate loans and hybrid ARM [Adjustable-Rate Mortgage] loans with initial short- or intermediate-term fixed rates, and match funding these assets with checking and savings deposits; short- and intermediate- term CDs; long-term, laddered maturity, fixed-rate FHLB advances; and unsecured, term, fixed-rate senior notes."

453. Finally, FRB had manipulated its internal stress tests to mask liquidity issues even before interest rates began to rise. And, the Bank's interest rate modelling already showed that projected increases in interest rates approached the Bank's risk tolerance levels. As detailed above, at the time of these statements:

a. FRB had a significant funding concentration of uninsured deposits, which grew from 65% to 75% of total deposits between December 31, 2018 and December 31, 2021, and from 52% to 64% of total assets during this period. Moreover, FRB's uninsured deposit balances almost doubled from year-end 2019 through year-end 2021. Uninsured deposits are particularly volatile and unstable as a source of funding during actual or perceived stress events.

b. FRB's primary interest rate risk mitigation strategy relied on continual growth to produce a consistent volume of loans priced at current interest rates. However, this strategy only worked as long as there was deposit growth and strong demand for loans at current rates. FRB's strategy of offering large, long-term loans with low fixed rates, which FRB held to maturity, resulted in a concentration of highly illiquid assets which could only be sold at a loss in the event of a liquidity shortfall due to rising interest rates.

c. FRB offered its loan clients undisclosed significant discounts on loan interest rates in exchange for making deposits at FRB, in many cases up to 20% of the loan amount. With no formal agreement requiring the deposits be maintained for a specific period of time, FRB's deposits were not stable and were vulnerable to deposit outflows as interest rates rose or FRB's customers lost confidence in FRB.

d. FRB's deposit growth was inflated by its reliance on undisclosed interest rate incentives to gather deposits, which undermined the stability of the Bank's deposits. As detailed by numerous former employees, FRB bankers routinely received approval from senior management to offer clients Rate Exceptions, which provided the clients short-term, higher interest rates on deposits.

e. Every quarter, senior FRB bankers met in FRB's War Room/Peace Room to increase quarter-end deposit balances by soliciting extremely large deposits from HNW individuals, private equity firms, and hedge funds. In exchange for these deposits, FRB would pay the clients abnormally high interest rates for periods as short as eight days.

f. By the fourth quarter of 2020, the Bank had already recognized its exposure to the risk of deposit outflows based on the results of its liquidity stress test, the Deposit Outflow Calibration Model. Rather than mitigate this risk, the Bank merely recategorized $19 billion in deposits from short-term to long-term deposits, decreasing outflow projections in its stress testing by nearly $17 billion.

g. FRB's EVE results projected that a 300 basis point interest rate increase would cause the Bank to approach its risk tolerance levels. The results for the third quarter of 2021 showed that a 300 basis point increase would result in a 17% decrease in EVE. FRB's risk tolerance was a decrease of 25%, and its risk appetite was a decrease of 30%.

**4. January 14, 2022—4Q 2021 Earnings Call**

454. On January 14, 2022, Defendants Selfridge and Roffler participated in an earnings call to discuss FRB's financials results for the fourth quarter of 2021.

455. During the call, Defendant Selfridge stated:

> In terms of funding, it was an exceptional year. Total deposits were up $41 billion or 36% compared to a year ago. ***We continue to maintain a diversified deposit funding base***. Checking deposits represented 72% of total deposits at year-end, our highest level ever and business deposits represented 60% of total deposits at year-end. The average rate paid on all deposits for the quarter was just 5 basis points, leading to an overall funding cost of just 12 basis points.

456. The statement set forth in ¶455 was materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶441.

457. Defendant Roffler stated the following in response to a question from Terry McEvoy, an analyst from Stephens:

> Q: And then is my follow-up, maybe a question on interest rate sensitivity, what you provide in the deck is, as of September 30th. So, I guess, my question is, has that changed or did that change at all over the last three months. And I know in the Q, it talks about incorporating future growth projections, could you maybe just talk about balance sheet dynamics and underlying growth that's behind the 1.4% increase in NII?
>
> **Roffler**: Yeah. No. The -- from quarter-to-quarter, those disclosures don't change a lot and that's largely because of how consistent and stable we are.
>
> . . . .
>
> And so, a few dynamics that help with that, ***72% of our deposits are in checking. That gives you some protection as rate starts to rise, and then, one that's probably you highlight when you said it, growth***.

458. In addition to the reasons set forth above in ¶441, the statement set forth in ¶457 was materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact because at the time it was made, rather than being "***protect[ed] as rates start to rise***," FRB faced significant risks in a rising interest rate environment. Contrary to Defendant Roffler's suggestions, FRB had obtained a significant number of checking deposits from undisclosed sales practices. For example, every quarter, senior FRB bankers met in FRB's War Room/Peace Room to increase quarter-end deposit balances by soliciting extremely large deposits from HNW individuals, private

equity firms, and hedge funds. FRB also offered discounted loans to clients in exchange for the expectation (but not enforceable requirement) that the client deposit or maintain a certain percentage of the loan in deposits in their FRB accounts. Contrary to Defendant Roffler's assurances, rising interest rates could (i) pressure the Bank to pay more to retain these deposits, or risk losing them, and (ii) upend the Bank's sales practices altogether, conditions that could lead to deposit instability and outflows, especially in light of FRB's concentration in large, uninsured depositors.

459. Moreover, far from having "protection" from rising rates, the Bank's widespread practice of attempting to boost deposits by providing clients with discounted mortgages, the majority of which were fixed-rate, long-duration loans, violated the Bank's Interest Rate/Market Risk Management Framework which required that FRB "originat[e] and retain[] adjustable-rate loans and hybrid ARM [Adjustable-Rate Mortgage] loans with initial short- or intermediate-term fixed rates, and match funding these assets with checking and savings deposits; short- and intermediate- term CDs; long-term, laddered maturity, fixed-rate FHLB advances; and unsecured, term, fixed-rate senior notes." In addition, under its Interest Rate/Market Risk Management Framework, FRB modeled the Bank's interest rate sensitivity using EVE stress scenarios to "limit the potential negative impact of market downturns and periods of interest rate volatility, both in the short-term and in the long term," and further set risk tolerance and risk appetite thresholds meant to be "used to monitor and manage interest rate risk." As detailed above, at the time of this statement:

a. FRB's EVE results projected that a 300 basis point interest rate increase would cause the Bank to approach its risk tolerance levels. The results for the fourth quarter of 2021 showed that a 300 basis point increase would result in a 11% decrease in EVE. FRB's risk tolerance was a decrease of 25%, and its risk appetite was a decrease of 30%. The results for the second and third quarters of 2021 projected 20% and 17% decreases, respectively.

**5. February 28, 2022—2021 Form 10-K**

460. On February 28, 2022, FRB issued its annual report for 2021 on Form 10-K, which was signed by Defendants Herbert, Roffler, and Tsokova. The Form 10-K stated:

Liquidity Risk Management:

> ***We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs***. Liquidity and funding-related risk policies and limits are established within our Liquidity Risk Management Policy, which is approved by

> the Board at least annually. Liquidity risk is actively monitored and managed by the Treasury department, Chief Financial Officer and senior management through the Bank Enterprise Risk Management Committee, with independent oversight provided by the Board through the Directors' Enterprise Risk Management Committee. ***In addition, we*** maintain a contingency funding plan and ***perform scenario-based stress-testing to ensure resilience in case of expected and unexpected future events***.

461. The Form 10-K further stated: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and long-term demands***."

462. The 10-K also stated:

> Total deposits were $156.3 billion at December 31, 2021, an increase of 36% compared to $114.9 billion at December 31, 2020. ***Deposits increased as a result of expanding existing client relationships, referrals from existing clients, and new deposit clients. We continue to emphasize building banking relationships through checking and other transaction deposit accounts***.

463. The 10-K further stated: "At December 31, 2021, our total deposits were $156.3 billion, a 36% increase from $114.9 billion at December 31, 2020, ***as we continued to expand relationships with existing clients and acquire new deposit clients, both business and consumer***."

464. The statements set forth in ¶¶460-63 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53. In addition to the reasons detailed above in ¶¶450-53, at the time of these statements:

a. FRB's EVE results projected that a 300 basis point interest rate increase would cause the Bank to approach its risk tolerance levels. The results for the fourth quarter of 2021 showed that a 300 basis point increase would result in a 11% decrease in EVE. FRB's risk tolerance was a decrease of 25%, and its risk appetite was a decrease of 30%. The results for the second and third quarters of 2021 projected 20% and 17% decreases, respectively.

**6. April 13, 2022—1Q 2022 Earnings Call**

465. On April 13, 2022, Defendants Herbert and Roffler participated in an earnings call to discuss FRB's financials results for first quarter of 2022.

466. During the question-and-answer portion, Defendants Herbert and Roffler stated the following in response to a question from Erika Najarian, a UBS Investment Bank analyst:

Q: Given the volatility in the outlook for the economy, there are a lot of investors that we're speaking to that are newer to First Republic.

And Jim and Mike, perhaps you can answer this question that I'm getting. Clearly, the rate trajectory that the forward curve is pricing in is much more violent and significant than we've seen over the past several years.

And so how do you reassure future shareholders about the durability of single-family growth? Maybe say in this public forum, what sort of the secret sauce is. And for Mike Selfridge, I think there is a big debate on what much higher rates will mean for private equity and venture capital. And so given your experience here, how should we think about investment speed and other financing needs as rates increase materially and quickly?

**Herbert**: Erika, it's Jim, let me start with the answer on mortgages. We have – I've been at this business a long time. Mortgages lag a little bit, as Mike was indicating, both Mikes actually, but they are climbing fairly rapidly. And what happens as they move fairly quickly is competition tends to pull back, particularly mortgage broker originations and secondary market originations. Those are coming to almost to a halt already. ***And so our opportunity to continue to grow is greater than one thinks***.

The other thing is we're doing most of our business, 60% plus with existing clients, and we still are. The other thing is that our deposit base is entirely different now than in any prior run up. We're at almost 70% checking and 60% from business banking, which is, to some extent, working capital.

***The mortgage business will continue***. Prior to this bank, I started in 1980, we went through the early '80s. And even then, we made a lot of money. The spread widened on mortgages, and there was business to be done. S***o I don't really worry about it very much. The increase is going to be more violent than we had predicted. But as Olga just said, we've redone our forward projections around 7 increases, if I have that right. We did 7 increases and the NIM stays the same. The NII still expands as we've said in our deck. So that's the mortgage piece***. Let me turn it over to Mike or Mike for the business piece.

. . . .

**Roffler**: Erika, maybe one last comment I'd make, because I like the start of your question sort of in an uncertain backdrop or challenging backdrop and sort of what you see in the results here and sort of our outlook during challenging times in the past, ***the benefit of client service, which drives growth, right***? So if you think about a few of the things like AUM not down very much because client inflows is driving it despite the market volatility.

***Loan pipeline and backlog remain very strong because, again, we're there to serve clients when -- as Jim mentioned, others might be pulling back a little bit and continuing to deepen and increase relationships with clients who consider us their lead bank***.

And so service becomes even more valuable when times are challenging***. And that's what drives growth and staying very focused on credit, safety, soundness and it's even more valuable. So it's really fundamental to the way we operate and try to maintain sort of that consistency and stability in all periods because we want to be there for our clients***.

467. Defendant Roffler stated the following in response to a question from Wolfe analyst Bill Carcache:

> Q: Some banks are expecting a more pronounced decrease in deposits across the system as the Fed begins to reduce the size of its balance sheet. But it sounds like you expect the impact on First Republic to be relatively modest. Can you go into a little bit more detail on what gives you confidence in your ability to sustain deposit growth at levels sufficient to support your loan growth without much of an increase in your deposit betas relative to the last cycle?
>
> **Roffler**: ***I think the thing that gives us confidence is if you come back to the service model and our business model***. Even in periods of rising rates in the past, we have grown deposits 15% to 18% relatively consistently. And if you look back to 2015-2019, that was the case. And the reason for that is, even though the Fed is acting, service doesn't stop.
>
> And so we are deepening relationships. We're adding new households. We're adding new wealth management teams, which bring households. ***And so that activity leads us to continue to grow our deposit base*** and you've seen it time after time.

468. The statements set forth in ¶¶466-67 were materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶441, 458-59.

**7. May 9, 2022—1Q 2022 Form 10-Q**

469. On May 9, 2022, FRB issued its Form 10-Q covering the first quarter of 2022, which was signed by Defendants Roffler and Tsokova. The Form 10-Q stated:

> ***We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs***. Liquidity and funding-related risk policies and limits are established within our Liquidity Risk Management Policy, which is approved by the Board at least annually. Liquidity risk is actively monitored and managed by the Treasury department, Chief Financial Officer and senior management through the Bank Enterprise Risk Management Committee, with independent oversight provided by the Board through the Directors' Enterprise Risk Management Committee. ***In addition, we*** maintain a contingency funding plan and ***perform scenario-based stress-testing to ensure resilience in case of expected and unexpected future events***.

470. The Form 10-Q further stated: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and long-term demands***."

471. The 10-Q also stated:

> Total deposits were $162.1 billion at March 31, 2022, an increase of 4% compared to $156.3 billion at December 31, 2021, and an increase of 27% compared to $127.9 billion at March 31, 2021. ***Deposits increased as a result of expanding existing client relationships, referrals from existing clients, and new deposit clients. We continue to emphasize building banking relationships through checking and other transaction deposit accounts***.

472. The 10-Q further stated: "At March 31, 2022, our total deposits were $162.1 billion, a 4% increase from $156.3 billion at December 31, 2021, ***as we continued to expand relationships with existing clients and acquire new deposit clients, both business and consumer***."

473. For the reasons set forth in ¶¶450-53, 464, the statements in ¶¶469-72 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact. In addition to the reasons detailed above in ¶¶450-53, 464, at the time of these statements:

a. FRB's primary interest rate risk mitigation strategy relied on continual growth to produce new loans that would be priced at current interest rates or would reprice at current interest rates (in the case of adjustable rate loans) to provide the Bank with stable income. However, this strategy to produce income only worked as long as there was stable deposit growth to fund the loans and strong demand for loans at the current market rates. Despite rising interest rates, FRB continued to offer hyper-competitive pricing in order to originate new, long-duration loans at fixed rates. Therefore, FRB needed a larger and stable deposit base to fund these rock-bottom interest rate loans. Due to this strategy, while internal models predicted a decline in residential real estate loan volume, FRB increased its residential real estate loans by 6% in 1Q 2022. Still, its yield on these assets remained relatively flat. FRB's strategy of offering large, long-term loans with low fixed rates, which FRB held to maturity, resulted in a concentration of highly illiquid assets which could only be sold at a loss in the event of a liquidity shortfall due to rising interest rates.

b. FRB offered its loan clients undisclosed significant discounts on loan interest rates in exchange for making deposits at FRB, in many cases up to 20% of the loan amount. With no formal agreement requiring the deposits be maintained for a specific period of time, FRB's clients could easily withdraw their funds to seek higher interest rates at other banks, making FRB vulnerable to deposit outflows as interest rates rose or if FRB's customers lost confidence in the safety of the Bank. As detailed by former employees, increasing deposit growth was a frequent topic of discussion at the weekly Loan Meetings in 2022. During these meetings, Defendants Herbert, Roffler, Tsokova, and Selfridge personally pressured bankers to ensure all loan clients were satisfying the deposit requirements in exchange for relationship-based lending rates.

c. FRB's EVE results projected that a 300 basis point interest rate increase would cause the Bank to approach its risk tolerance levels. The results for the first quarter of 2022 showed that a 300 basis point increase would result in an 20% decrease in EVE. FRB's risk tolerance was a decrease of 25%, and its risk appetite was a decrease of 30%. The Bank's potential declines in the value of equity could undermine depositor confidence in the Bank, and could also signal that the Bank may be forced to sell certain assets at a loss to cover obligations to depositors.

**8. July 14, 2022—2Q 2022 Earnings Call**

474. On July 14, 2022, Defendants Herbert, Roffler, Tsokova, and Selfridge participated in an earnings call discussing FRB's financial results for the second quarter of 2022.

475. During the call, Defendant Herbert stated:

> Our model and our culture have proven to be very successful long term through all economic cycles. In fact, during times of broader economic uncertainty, our holistic client-centric service is even more valued by our clients. During these times, we often see our new client household acquisition rate increase as it is currently doing.
>
> ***Today, our model is stronger than ever. This has once again driven our excellent performance during this most recent quarter, and we are well positioned to go ahead in the current conditions***.

476. Discussing the Bank's deposits and funding, Defendant Selfridge stated that "***[o]ur deposit-base remains well-diversified***" and that "***[o]ur service model is performing quite well and continues to drive our safe, stable, organic growth***."

477. Defendant Tsokova similarly stated that "***[w]ith a consistent focus on credit, capital and liquidity, we continue to operate in a safe and sound manner***." Defendant Tsokova added that "***[o]verall, it has been a great first half of the year, reflecting the stability and consistency of our model***."

478. During the question-and-answer portion, Defendant Roffler stated the following in response to a question from Christopher Edward McGratty of Keefe, Bruyette, & Woods:

> Q: Just going back to the funding. Last cycle, Mike, you were around 100% loan to deposit. You're 90% today. What's the comfort level to let that drift, given the size of the balance sheet today?
>
> **Roffler**: ***We're very comfortable***. Obviously, we're coming in 85%, 90% where we've been, and we've operated in the high 90s to 100. And we feel like ***given our funding sources and the strength of our liquidity profile***, we could operate in that range again.

479. Defendant Roffler stated the following in response to a question from Ebrahim Huseini Poonawala, an analyst from BofA Securities:

> Q: I just had one final question around -- as we think about the margin, I think you had a bunch of questions around the outlook for deposit betas and such. I think the struggle Olga, Mike, is around if we assume that single-family originations are coming around, let's call it, 3 to 3.25 funding costs, given how quickly the Fed is moving implies a pretty sharp compression risk in the margin.
>
> So would -- I guess, one, is that a reasonable concern as we think about 2023 in terms of the risk of margin compression? And second, when you think about the relationship deposits coming on, are the costs materially different relative to your back book on the deposits when we think about pricing?
>
> **Roffler**: On the second part of your question, I would say no because, t***ypically, they're coming from relationships where we're having a new relationship where relationships are being built, and you do a loan and you bring deposits in a portion of that's in checking and some of it may be in money market, but I wouldn't see it as a greater pricing than the current portfolio***.
>
> I'd also highlight, $70 billion, $75 billion of our deposits are noninterest-bearing relationship-based focus, right? ***And so again, that gives us some protection from how fast the Fed looks to be willing to move here in the second half of the year***.
>
> There's a page in our investor deck that talks about the resiliency and the repricing of our loan portfolio. When you combine floating rate assets with historical repayments has really offset the rise in funding costs, which continue to be very modest. And the new loan yields that Mike Selfridge talked about, right, that's a portion of the loan portfolio, you don't reprice the whole portfolio. And then if I stand back from all that, I think we had talked about this earlier, ***it's about consistency and stability over long periods of time, which leads to growing balance sheet, growing net interest income***. It's never been about expand the margin and keep growth modest. It's been about serve clients that leads to future growth, ***keep things consistent and stable over long periods of time***.

480. The statements set forth in ¶¶475-79 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶441, 458-59.

481. In addition, Defendants' statements such as the "***model is stronger than ever***" and that the "***model is performing quite well and continues to drive our safe, stable, organic growth***," lacked a reasonable basis in fact based upon uncertainties in the Bank's interest rate risk. Indeed, when analyzing EVE for the first quarter of 2022, FRB's committees noticed a dramatic decrease in EVE as compared to the projections for the previous quarter and that in a plus 300 bps scenario, the value of equity would be reduced by 20%. On April 26, 2022, the ALMCO met and discussed the decrease in EVE and attributed the declines in "asset prices outpacing declines in liabilities costs." During this meeting, however, FRB's

Vice President and the Head of the ALMCO recommended that FRB "stop lengthening its asset duration considering the increasing likelihood of interest rates moving higher this year"—a recommendation consistent with the Bank's Interest Rate/Market Risk Management Framework to "originat[e] and retain[] adjustable-rate loans and hybrid ARM [Adjustable-Rate Mortgage] loans with initial short- or intermediate-term fixed rates." Nevertheless, despite this recommendation, and in contradiction to Defendant Roffler's statements that the Bank was "***very comfortable***" with its high loan to deposit ratio and that the Bank's approach was "***consistency and stability over long periods of tim***e," the Bank continued to originate long-duration, fixed-rate loans at hyper-competitive prices.

482. At the same, the Bank was encountering deposit volatility as deposits were leaving the Bank in search of higher yielding accounts or investments. Far from being "***well positioned to go ahead in the current conditions***," the Bank internally recognized based on EVE modeling that rising rates would cause the Bank's loan portfolio to further fall in value, and increase costs and volatility in the Bank's deposit base, underlining that the Bank's interest rate risks could lead to compression of the Bank's NII and NIM, and would worsen if the Federal Reserve increased rates to higher levels. By continuing to originate long-duration, fixed-rate loans, while also offering undisclosed rate exceptions as a way to attract deposits (and thus causing further volatility in the deposit base), Defendants were increasing the Bank's already significant interest rate risk, inviting broader liquidity and systemic risks, such as the Bank needing to sell assets at a loss or losing depositor confidence.

**9. August 8, 2022—2Q 2022 Form 10-Q**

483. On August 8, 2022, FRB issued its Form 10-Q covering the second quarter of 2022, which was signed by Defendants Roffler and Tsokova. The Form 10-Q stated:

> ***We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs***. . . . ***In addition, we*** maintain a contingency funding plan and ***perform scenario-based stress-testing to ensure resilience in case of expected and unexpected future events***.

484. The Form 10-Q further stated: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and long-term demands***."

485. For the reasons set forth in ¶¶450-53, 464, 473, the statements in ¶¶483-84 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact. In addition to the reasons detailed above in ¶¶450-53, 464, 473, at the time of these statements:

a. FRB's primary interest rate risk mitigation strategy relied on continual growth to produce new loans that would be priced or would reprice at current interest rates to provide the Bank with stable income. However, this strategy to produce income only worked as long as there was stable deposit growth to fund an increasing number of loans and strong demand for loans at the current market rates. Despite rising interest rates, FRB continued to offer hyper-competitive pricing in order to originate new, long-duration loans at fixed rates. Therefore, FRB needed a larger and stable deposit base to fund these rock-bottom interest rate loans. Due to this strategy, while internal models predicted a decline in residential real estate loan volume, FRB increased its residential real estate loans by 6% in 1Q 2022 and 9% in 2Q 2022. Still, its yield on these assets remained relatively flat. FRB's strategy of offering large, long-term loans with low fixed rates, which FRB held to maturity, resulted in a concentration of highly illiquid assets which could only be sold at a loss in the event of a liquidity shortfall due to rising interest rates.

b. FRB's focus on deposit growth and its relentless use of rate incentives on deposits and loans without any safeguards against deposit withdrawal were creating a concentration of extremely volatile uninsured deposits, which were especially prone to deposit outflow in the rising rate environment. As former employees reported, as interest rates rose, clients began withdrawing massive deposits to pursue higher yields with FRB's competitors.

c. The Bank's June 2022 EVE projections indicated that any increase in interest rates over 100 basis points would result in a drastic decrease in equity by amounts greater than the Bank's risk tolerance and risk appetite thresholds. In the second quarter of 2022, FRB's EVE results projected that a 200 basis point rate increase would result in a 33% decrease in EVE, while a 300 basis point increase would result in a 50% decrease in EVE. FRB's risk tolerance was a decrease of 20% in the 200 basis point scenario and 25% in the 300 basis point scenario and its risk appetite was a decrease of 25% in the 200 basis point scenario and 30% in the 300 basis point scenario. The

Bank's potentially significant declines in the value of equity, in particular, could undermine depositor confidence in the Bank, and could also signal that the Bank may be forced to sell certain assets at a loss to cover obligations to depositors.

d. On August 1, 2022, the ALMCO discussed the EVE decreases as of the second quarter of 2022, which they attributed to "declines in asset prices – a result of increased market rates, widening spreads, and rate volatility." The ALMCO acknowledged that "***[a]sset duration continued to expand, and liability duration contracted due to market changes and the funding mix shifting to shorter duration deposits and advances***," FRB "***has shifted originations from shorter duration fixed and variable rate hybrid loans to 30 year fixed-rate***," and FRB's "***mortgage rates were decreasing to maintain market share***." In other words, the ALMCO acknowledged that FRB had a long-term asset maturity and repricing structure and a shorter-term liability structure, and thus needed new deposits so as to originate new loans at higher rates than presently held on the balance sheet. However, instead of addressing this asset/liability duration mismatch, FRB was continuing to offer long-duration loans at below-market rates, magnifying the negative impact of rising rates.

486. The Form 10-Q also stated:

> The Bank's Board approves policies and limits governing the management of interest rate risk at least annually. Our ALM and Investment Committees further establish risk management guidelines and procedures within the broader policies and limits established by the Bank's Board. ***Compliance with these policies and limits is reported to the Bank's Board on an ongoing basis and decisions on the management of interest rate risk are made as needed***.

487. The statement set forth in ¶486 was materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact because, as discussed in ¶¶450-53, 464, 473, 485, at the time it was made, the results of FRB's stress tests projected significant breaches in interest rate risk thresholds, which were reported to the Board and senior management, but were not disclosed to investors.

488. The second quarter 10-Q also disclosed the results of FRB's NII Simulation:

| | Estimated Increase (Decrease) in Net Interest Income | |
|---|---|---|
| Change in Market Interest Rates | Twelve Months Ending June 30, 2023 | Twelve Months Ending June 30, 2024 |
| Shock: | | |
| +200 bps immediately | 6.9 % | 8.1 % |
| +100 bps immediately | 3.4 % | 3.3 % |
| -100 bps immediately | (3.0)% | (7.8)% |
| Ramp: | | |
| +200 bps over next 12 months | 3.3 % | 5.3 % |
| +100 bps over next 12 months | 1.5 % | 1.8 % |
| -100 bps over next 12 months | (1.2)% | (5.8)% |

489. The statement set forth in ¶488 was materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact at the time it was made. While FRB's disclosed NII simulation results may not have been impacted severely by interest rate increases, its EVE modeling projected significant breaches with even modest increases in interest rates, as discussed above in ¶485.

490. The 10-Q also stated:

> Total deposits were $165.6 billion at June 30, 2022, an increase of 6% compared to $156.3 billion at December 31, 2021, and an increase of 23% compared to $134.7 billion at June 30, 2021. Deposits were our primary source of funding and represented 93% of our funding base at June 30, 2022, compared to 97% at December 31, 2021 and 93% at June 30, 2021. ***Deposits increased as a result of expanding existing client relationships, referrals from existing clients, and new deposit clients. We continue to emphasize building banking relationships through checking and other transaction deposit accounts***.

491. The 10-Q further stated: "At June 30, 2022, our total deposits were $165.6 billion, a 6% increase from $156.3 billion at December 31, 2021, ***as we continued to expand relationships with existing clients and acquire new deposit clients, both business and consumer***."

492. The statements set forth in ¶¶490-91 were materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53, 464, 473, 485.

**10. August 9, 2022—UBS Financial Services Conference**

493. On August 9, 2022, Defendants Selfridge and Roffler participated in a conference at UBS Financial Services, hosted by Erika Najarian.

494. During the conference, Defendant Roffler stated the following:

> Q: So I wanted to pivot and talk a little bit about the many puts and takes that now exist for net interest income. I don't think we've had so many variables in a very long time. So first question really here is, how should we think about, if at all, how your deposit acquisition strategy is evolving as we think about where we are in rates, how fast we got there, and what the futures firm is implying?
>
> **Roffler**: And ***the rise in rates actually gives them a much greater opportunity to engage with clients and prospects***. When we're at a 0 interest rate, no one wants to talk to you about CD. No one wants to talk to you about a passbook. And so we've been able to really sort of rev the engine again with respect to our CD strategy. And that engages existing clients, brings new clients, and also deepens relationships. So yes, ***they come in to talk about the CD special that we're promoting. But at the same time, they say, "Oh, wait a minute, I have that money at the other bank. I'll bring that over too." And so what we do is really use it as a deepening of relationship strategy in addition to acquiring new***.

495. The statement set forth in ¶494 was materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶441, 458-59, 481-82. In addition, far from internally recognizing rising rates as a positive as allowing the Bank "***greater opportunity to engage with clients and prospects***," the Bank's shortcomings in interest rate and liquidity risk management practices had left the Bank especially vulnerable to rising interest rates. Indeed, on August 1, 2022, the ALMCO again acknowledged that FRB "has shifted originations from shorter duration fixed and variable rate hybrid loans to 30 year fixed-rate"—which was in direct contradiction of the Bank's Interest Rate/Market Risk Management Framework and the recommendation at the prior ALMCO meeting to shorten asset durations. The ALMCO also discussed that FRB's "mortgage rates were decreasing to maintain market share," confirming that Defendants were deepening a business strategy that amplified interest rate risks, without implementing any measures to mitigate these risks. Thus, in contrast to Defendant Roffler's statement, there were significant, material, and growing risks associated with the Bank's strategy in the face of interest rate risk, none of which were disclosed to investors.

### 11. September 12, 2022—Barclays Global Financial Services Conference

496. On September 12, 2022, Defendant Roffler participated in the Barclays Global Financial Services Conference.

497. During the conference, Defendant Roffler stated the following:

> Q: And a minute left, and I want to give you a chance to respond to the second ARS question we had. But I guess the biggest reason people haven't owned First Republic was valuation. How do you look at valuation and why you think, of course, First Republic maybe deserves to be valued higher or differently than kind of other ventures.
>
> **Roffler**: If I had a few words. ***It would be safe, consistent, stable growth, right? Quarter after quarter, we deliver that*** with pristine credit.

498. The statement set forth in ¶497 was materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶441, 458-59, 481-82, 495.

**12. October 14, 2022—3Q 2022 Earnings Call**

499. On October 14, 2022, Defendants Herbert and Roffler participated in an earnings call to discuss FRB's financial results for the third quarter of 2022.

500. During the question-and-answer portion of the call, Defendant Roffler stated the following in response to a question from analyst Steven Alexopoulos from JPMorgan:

> Q: I wanted to start, so with mortgage rates moving up very dramatically this year, the initial concern on your stock was that loan growth would slow, right. With that said you're now three quarters in a row; you've done over – basically 20%-ish growth, so that's not a concern anymore. But the concern is now that either one, there won't be enough deposit funding in 2023 to fund strong loan growth right, given what's going on with QT, and if there is enough deposit funding, then your NIM will just compress materially trying to fund that loan growth, right, which is locked in over 10% right now. So my question is given the yield curve, which is likely to invert even more in coming months, you know one, could you see a scenario where you would need to slow loan growth. And two irrespective really of that answer, could you walk us through your NIM expectations for 2023, and how bad could it get if this forward curve does play out?
>
> **Roffler**: Thanks for the question, Steve. On your first part of that, I think you're right. I mean, ***with rates rising we've continued to grow our loan portfolio, and if I stand back from that, we've always been focused on service first and foremost, and that is what has driven loan growth frankly in any environment***.
>
> You know when you saw 2016 to 2018, the last time rates rose we grew the portfolio at mid-teens to high-teens rate year-after-year. We continue to price lending at A-pricing because we have A-credit, and one of the hallmarks of First Republic for 37 years has been pristine credit through any cycle, and right now that's very important. And as we look to 2023, the safety and stability of the bank's loan portfolio is absolutely critical and we continue to serve clients each and every day, and that's always been our objective and ***that has put some pressure on the margin as we talked about in the prepared remarks, because we are growing the loan portfolio and then funding it a little bit differently than we had in the past couple of years given the market forces you talk about, right.***
>
> The fed has aggressively raised rates. They've begun quantitative tightening, which in September was the first month at full capacity, and so you are – ***there is going to be some pressure on the margin here as we go into the fourth quarter and early part of next year***.

But then the fed will eventually get to a place where they've been successful in reducing inflation, and if you look to the other side of that hill for example, the bank will be mid-teens percentage larger, maybe a little bit more. We'll be safe and have come through credit very well, and we'll be ready to go from there with a much bigger client household base, because we continue to acquire clients.

501. Defendant Roffler stated the following in response to a question from Wolfe analyst Bill Carcache:

Q: Mike Roffler, following up on your NIM comments, if we assume that the fed hikes and holds throughout 2023. Can you frame, maybe add anything to your earlier NIM comments and I think we're getting lots of questions, I think just around where ultimately NIM would settle under that scenario.

**Roffler**: . . . .

But it's this period of the rapid rise where you see a little bit of the compression, but you're right, two quarters from now, three quarters from now when they are done, ***given the nature of the CS [sic] portfolio that we've talked about, it is a bit of a short term issue and a short term challenge***, because the fed will – they will get to a successful point in this battle and at that point it will get better from there.

502. Defendant Roffler stated the following in response to a question from Tim Coffey, an analyst from Janney Montgomery Scott:

Q: [D]o you have any – can you provide some color on your thoughts on tangible common equity in relation to both how the balance sheet is expected to grow this next year and the forward rate curve?

**Roffler**: . . . .

So we feel like we're in a really good place right now. ***We're not as exposed as others to the available-for-sale mark-to-market challenges that I think are showing up in a lot of the numbers today***, but we feel like we're in a really good place to capitalize in tangible book wise.

503. Defendant Herbert stated the following in response to a question from Jared Shaw, an analyst for Wells Fargo:

Q: And then when you look at a lot of the CD specials that you have right now, it seems like it's a little shorter duration, four and five month products. I guess what's the expectation for when those mature and we're potentially in a higher rate environment. Will that just sort of roll into another shorter-duration option or would you look to extend duration on some of those CDs?

**Herbert**: One of the reasons we're staying short is that historically most of the run-ups like this, and the steeps last for not a long period of time. The steeper they are, the less long they lasted. And basically ***what's going on here is a temporary problem on the margin coming from the steepness of the run-up***. We're funding it with CDs. ***We have a very, very strong capacity to the way CD is funding, it's not an issue***, and basically we're

> sticking to our game plan of going to the bank and bringing in great clients and the mortgage book will catch up in a relatively short period of time in a few quarters. And so basically we want to stay short of the CDs in order to ride the other side of the hill down.

504. The statements set forth in ¶¶500-03 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis for the reasons set forth in ¶¶441, 458-59, 481-82, 495.

505. In addition, in contrast to Defendants' statements, rising interest rates presented far more than "***a temporary problem***" or "***a short term issue and a short term challenge***." At the time of their statements, Defendants' noncompliance with FRB's Interest Rate/Market Risk Management Framework had become even more reckless. Following the third quarter, FRB's EVE model ***breached the Bank's risk tolerance and risk appetite at all levels***. Indeed, in a 100 basis point increase scenario, the Bank's EVE model projected a 41% decrease in EVE, far outside the 15% risk tolerance and 20% risk appetite. Under the 200 basis point increase scenario, FRB projected that EVE would fall 82%, well beyond the risk tolerance and risk appetite thresholds of 20% and 25%, respectively. The Bank's alarming EVE projections reflected the Bank's (i) increasing concentration in long-duration, fixed-rate loans with hyper-competitive pricing, and (ii) upheaval in the Bank's deposit base as clients sought increased yield on their cash deposits.

506. These trends, as confirmed by the Bank's EVE modeling and the ALMCO's risk assessments, presented a significant threat to FRB's stability. In contrast to Defendant Roffler's statement that the Bank was "***not as exposed as others to the available-for-sale mark-to-market challenges***," the Bank's EVE modeling specifically demonstrated that the fair values of the Bank's assets (predominantly its long-duration, fixed rate loans and securities) would lose value as rates rose. And despite this problem, and in contrast to Defendant Herbert's statement that this was a "***temporary problem***," the dire EVE projections, if realized, could (and ultimately did) result in increasing unrealized losses on the Bank's balance sheet, which carried the significant potential of undermining depositor confidence in the Bank's stability, especially when considering the Bank's large concentration of uninsured deposits. Moreover, by calling rising rates a "***short-term***" and "***temporary***" issue, Defendants Herbert and Roffler concealed that the Bank ***had no mitigating strategy for its significant interest rate risk***. Indeed, on September 14, 2022, the Board of Directors approved the risk appetite statement breaches and failed to suggest any corrective action. Moreover, further confirming that the Bank's interest rate risk management failings had resulted in

liquidity risk, in September 2022, the FDIC indicated that the Bank had an "Elevated" liquidity risk that reflected the need for focused monitoring and a thorough assessment.

**13. November 8, 2022—3Q 2022 Form 10-Q**

507. On November, 2022, FRB issued its Form 10-Q covering the third quarter of 2022, which was signed by Defendants Roffler and Holland. The Form 10-Q stated:

> ***We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs****. . . .* ***In addition, we*** maintain a contingency funding plan and ***perform scenario-based stress-testing to ensure resilience in case of expected and unexpected future events***.

508. The Form 10-Q further stated: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and long-term demands***."

509. For the reasons set forth in ¶¶450-53, 464, 473, 485, the statements set forth in ¶¶507-08 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact. In addition to the reasons detailed above in ¶¶450-53, 464, 473, 485, at the time of these statements:

a. FRB was heavily reliant on uninsured deposits as a source of funding, and had created a significant funding concentration of uninsured deposits, which grew from 65% to 75% of total deposits between December 31, 2018 and December 31, 2021, and from 52% to 64% of total assets during this period. Moreover, FRB's uninsured deposit balances almost doubled from year-end 2019 through year-end 2021. Uninsured deposits are particularly volatile and unstable as a source of funding during actual or perceived stress events.

b. FRB's primary interest rate risk mitigation strategy relied on continual growth to produce a consistent volume of new loans that would be priced at or would reprice at current interest rates to provide the Bank with stable income. However, this strategy to produce income only worked as long as there was stable deposit growth to fund the loans and strong demand for loans at the current market rates. Despite rising interest rates, FRB continued to offer hyper-competitive pricing in order to originate new, long-duration loans at fixed rates. Therefore, FRB needed a larger and stable deposit base to fund these rock-bottom interest rate loans. Due to this strategy, while internal models predicted a decline in residential real estate loan volume, FRB increased its residential real estate loans by 6% in 1Q 2022, 9% in 2Q 2022, and 6% in 3Q 2022. Still, its yield on these assets remained relatively flat. FRB's strategy of offering large, long-term loans with low fixed rates, which FRB held to maturity, resulted in a concentration of highly illiquid assets which could only be sold at a loss in the event of a liquidity shortfall due to rising interest rates.

c. The Bank's September 2022 EVE projections indicated that an increase in interest rates by only 100 basis points would result in a drastic decrease in equity by amounts greater than the Bank's risk tolerance and risk appetite thresholds. In the third quarter of 2022, FRB's EVE results projected that a 100 basis point rate increase would result in a 41% decrease in EVE; a 200 basis point rate increase would result in a 120% decrease in EVE, i.e., negative equity, while a 300 basis point increase would result in a 156% decrease in EVE. FRB's risk tolerance was a decrease of 15%, 20%, 25%, and 30%, respectively; and its risk appetite was a decrease of 20%, 25%, 30%, and 35% respectively. The Bank's potential negative equity, in particular, could undermine depositor confidence in the Bank, and could also signal that the Bank may be forced to sell certain assets at a loss to cover obligations to depositors.

d. On September 14, 2022, the Board of Directors ***approved the risk appetite statement breaches and failed to suggest any corrective action***.

e. During the third quarter of 2022, FRB grew total loans by approximately $7.4 billion, of which approximately $5.0 billion were loans that featured terms between five and thirty years. Far from addressing the ALMCO's concerns about FRB's asset/liability mismatch, FRB's long-duration loans continued to account for approximately 64% of all loans and 50% of total assets. FRB further did not market any loans for sale, as was considered during the August 2022 ALMCO meeting.

f. During the third quarter of 2022, in September 2022, the FDIC issued FRB its 2023 Supervisory Plan. Within this plan, FDIC examiners noted that the Liquidity Monitoring Tool and Interest Rate Risk Outlier indicated "elevated" risk and reflected the need for focused monitoring and a thorough assessment. Factors causing the "elevated" risk included a high percentage of uninsured deposits to total assets and increased asset duration. During the third quarter, FDIC examiners also changed the 12-month outlook for the Liquidity component rating to "Negative" due to increased funding costs resulting from interest rate increases.

g. On October 26, 2022 the Head of the ALMCO wrote a memorandum to the Board stating that the third quarter's EVE analysis was "materially liability-sensitive" primarily due to the fair value impairments seen in FRB's assets. The ALMCO's memorandum informed the Board that the EVE risk thresholds had been "breached in all scenarios." On the same day, the ALMCO met. During this meeting, "second line personnel" recommended that "management communicate the breaches to BERM and DERM again and explain that they were likely to continue until inflation and rates came down or deposit mix shifted back towards checking."

510. The Form 10-Q also stated:

> The Bank's Board approves policies and limits governing the management of interest rate risk at least annually. Our ALM and Investment Committees further establish risk management guidelines and procedures within the broader policies and limits established by the Bank's Board. ***Compliance with these policies and limits is reported to the Bank's Board on an ongoing basis and decisions on the management of interest rate risk are made as needed***.

511. The statement set forth in ¶510 was materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact because, as discussed in ¶¶450-53, 464, 473, 485, 509, at the time it was made, the results of FRB's stress tests projected significant breaches in interest rate risk thresholds, which were reported to the Board and senior management, but were not disclosed.

512. The 3Q 2022 10-Q also disclosed the results of FRB's NII Simulation:

| Change in Market Interest Rates | Estimated Increase (Decrease) in Net Interest Income | |
|---|---|---|
| | Twelve Months Ending September 30, 2023 | Twelve Months Ending September 30, 2024 |
| Shock: | | |
| +200 bps immediately | 1.7 % | (1.7)% |
| +100 bps immediately | 1.5 % | (0.5)% |
| -100 bps immediately | 0.3 % | 0.6 % |
| Ramp: | | |
| +200 bps over next 12 months | 2.0 % | (2.6)% |
| +100 bps over next 12 months | 1.5 % | (0.9)% |
| -100 bps over next 12 months | 0.2 % | 0.8 % |

513. The statement set forth in ¶512 was materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact at the time it was made. While FRB's disclosed NII simulation results may not have been impacted severely by interest rate increases, its EVE modeling projected significant breaches with even modest increases in interest rates, as discussed above in ¶¶473, 485, 509. The EVE projections were concealed from investors, leaving investors with the false impression that the Bank was more resilient to the rising interest rates than it was.

514. The 10-Q also stated:

> Total deposits were $172.4 billion at September 30, 2022, an increase of 10% compared to $156.3 billion at December 31, 2021, and an increase of 19% compared to $145.3 billion at September 30, 2021. Deposits were our primary source of funding and represented 93% of our funding base at September 30, 2022, compared to 97% at December 31, 2021 and 94% at September 30, 2021. ***Deposits increased as a result of expanding existing client relationships, referrals from existing clients, and new deposit clients. We continue to emphasize building banking relationships through checking and other transaction deposit accounts***.

515. The 10-Q further stated: "At September 30, 2022, our total deposits were $172.4 billion, a 10% increase from $156.3 billion at December 31, 2021, ***as we continued to expand relationships with existing clients and acquire new deposit clients, both business and consumer***."

516. The statements set forth in ¶¶514-15 were materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53, 464, 473, 485, 509.

**14. January 13, 2023—4Q 2022 Earnings Call**

517. On January 13, 2023, Defendants Herbert, Roffler, Selfridge, and Tsokova participated in an earnings call to discuss FRB's financial results for the fourth quarter of 2022. During the call, Defendant Herbert stated:

> Let me take a moment to provide some perspective on the current rate environment and the Fed tightening cycle as we see it. Since our last call about 90 days ago, the Fed has raised rates another 125 basis points. At the same time, the 10-year treasury has declined 50 basis points. The resulting increased rate inversion has begun to put some pressure on our net interest margin and net interest income. However, history and experience has shown that this type of inverted yield curve has a limited duration. ***Cycles are just that. They're cycles***.
>
> . . . .

> We are staying focused on executing our model, and we remain very committed to delivering solid results through all market conditions. ***The bedrock of our performance is providing truly exceptional, differentiated service, maintaining very strong credit, delivering safe organic growth and the results follow***.

518. Defendant Roffler similarly stated:

> 2022 was a terrific year with record loan growth, record loan origination volume, record revenue and record earnings per share. Let me begin by covering some key results for the year. Total loans outstanding were up 24%. Total deposits have grown 13%. Wealth management assets were down only 3%, while the S&P 500 was down more than 19% over the same period.
>
> This strong growth, in turn, has led to strong financial performance. Year-over-year, total revenues have grown 17%. Net interest income has grown 17%. Earnings per share has grown 7%. And importantly, tangible book value per share has increased 11% during the year. ***As we look to a more challenging year ahead, we remain well-positioned to deliver safe, strong growth through the consistent execution of our service-focused culture and business model***.

519. Also, in prepared remarks on the earnings call, Defendant Tsokova stated that:

> Our capital position remains strong. During 2022, we added over $400 million of net new Tier 1 capital through a successful common stock offering. At year-end, Tier 1 leverage ratio was 8.51%. Liquidity also remains strong. High-quality liquid assets were 13% of average total assets in the fourth quarter.
>
> Our credit quality remains excellent. Net charge-offs for the year were only $3 million. Over the same period, our provision for credit losses was $107 million, which was driven by our strong loan growth. This is a multiple of nearly 40x. ***Heading into 2023, our balance sheet remains strong***.

520. During the question-and-answer portion of the earnings call, John Pancari from Evercore asked:

> On the loan growth, on the mid-teens growth expectation, could you perhaps kind of break it out by loan category, what you're thinking is a reasonable expectation for growth, particularly on the mortgage side given where we're looking at rates as well as purchase activity. If you can give us a breakdown of that mid-teens and the key drivers that would be really helpful.

521. In response, Defendant Selfridge stated:

> John, it's Mike. Yes, mid-teens loan growth, ***we're comfortable with that. I would say the mix is going to be consistent as it has been in years previous. So nothing unusual there and where it's coming from***. And Jim mentioned the disruption going on. It's never been a better time to acquire clients at First Republic, and that's true for the lending side as well.

522. The statements set forth in ¶¶517-21 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶441, 458-59, 481-82, 495, 505-06. In addition, in contrast to Defendants' soothing statements that the Bank "***remain[ed] well positioned to deliver safe, strong growth***," that the "***balance sheet remains strong***," and that there was "***nothing unusual***" about the Bank's loan growth, FRB's interest rate risk—exacerbated by the Bank's deepening concentration in long-duration, fixed-rate loans, and volatile deposit funding base—had become more severe, while Defendants still failed to implement any plan to mitigate this risk. Indeed, for a second consecutive quarter, the Bank's EVE projections breached risk tolerance and risk appetite under all scenarios. In a 100 basis point rate increase scenario, the Bank's EVE would be reduced by 59%. In a 200 basis point rate increase scenario, the Bank's EVE would be reduced by 117%, i.e., would result in negative equity. Moreover, despite the requirements of the Interest Rate/Market Risk Management Framework and recommendations the ALMCO that the Bank shorten asset durations, the Bank continued to originate new long-duration, fixed rate loans, despite that, as confirmed by the Bank's EVE modeling, these loans were further amplifying the Bank's interest rate risk. Thus, it was misleading for Defendant Selfridge to state that "***we're comfortable with [mid-teens loan growth]***" without disclosing the obvious risks and limitations associated with that strategy.

523. Further, in contrast to Defendant Roffler's statement that the Bank was "***well-positioned to deliver safe, strong growth***," there were significant signs internally that the Bank's deposits were contracting, rather than poised for growth. Multiple FEs reported that the pressure to increase deposit numbers hit an all-time high during a weekly Loan Meeting in 1Q 2023, when Defendant Herbert banged his fists on a table and furiously shouted that the bankers needed to get more deposits. Moreover, FE-5 also confirmed that there was increasing volatility in the Bank's deposits as depositors were leaving the Bank in search of higher yields on their deposits.

**15. February 28, 2023—2022 Form 10-K**

524. On February 28, 2023, FRB issued its annual report for 2022 on Form 10-K, which was signed by Defendants Herbert, Roffler, Holland, and Tsokova. The Form 10-K stated:

Liquidity Risk Management:

> ***We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs****. . . .* ***In addition, we*** maintain a contingency funding plan and ***perform scenario-based stress-testing to ensure resilience in case of expected and unexpected future events***.

525. The Form 10-K further stated: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and long-term demands***."

526. For the reasons set forth in ¶¶450-53, 464, 473, 485, 509 the statements set forth in ¶¶524-25 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact. In addition to the reasons detailed above in ¶¶450-53, 464, 473, 485, 509, at the time of these statements:

a. FRB was heavily reliant on uninsured deposits as a source of funding, and had created a significant funding concentration of uninsured deposits, which grew from 65% to 75% of total deposits between December 31, 2018 and December 31, 2021, and from 52% to 64% of total assets during this period. At year-end 2022, uninsured deposits were 68% of total deposits and 56% of total assets. Moreover, FRB's uninsured deposit balances almost doubled from year-end 2019 through year-end 2021. Uninsured deposits are particularly volatile and unstable as a source of funding during actual or perceived stress events.

b. FRB's primary interest rate risk mitigation strategy relied on continual growth to produce new loans that would be priced at or would reprice at current interest rates to provide the Bank with stable income. However, this strategy only worked as long as there was stable deposit growth to fund an increasing number of loans and strong demand for loans at the current market rates. Despite rising interest rates, FRB continued to offer hyper-competitive pricing in order to originate new, long-duration loans at fixed rates. Therefore, FRB needed a larger and stable deposit base to fund these rock-bottom interest rate loans. Due to this strategy, while internal models predicted a decline in residential real estate loan volume, FRB increased its residential real estate loans by 6% in 1Q 2022, 9% in 2Q 2022, 6% in 3Q 2022, and 4% in 4Q 2022. Still, its yield on these assets remained relatively flat. FRB's strategy of offering large, long-term loans with low fixed rates, which FRB held to maturity, resulted in a concentration of highly illiquid assets which could only be sold at a loss in the event of a liquidity shortfall due to rising interest rates.

c. FRB offered its loan clients undisclosed significant discounts on loan interest rates in exchange for making deposits at FRB, in many cases up to 20% of the loan amount. With no formal agreement requiring the deposits be maintained for a specific period of time, FRB's deposits were not stable and were vulnerable to deposit outflows as interest rates rose or FRB's customers lost confidence in FRB. As detailed by former employees, increasing deposits was a topic of discussion at the weekly Loan Meetings in 2022. During these meetings, Defendants Herbert, Roffler, Tsokova, and Selfridge personally pressured bankers to ensure all loan clients were satisfying the deposit requirements in exchange for relationship-based lending rates. FE-2 recounted that in 4Q 2022, the Eagle Insight Group—a team that worked in conjunction with Bank management—created a weekly report that tracked, for the first time, whether clients who received a relationship-based lending discount on a loan were maintaining deposits in a FRB checking account.

d. Multiple FEs reported that the pressure to increase deposit numbers hit an all-time high during a weekly Loan Meeting in 1Q 2023, when Defendant Herbert banged his fists on a table and furiously shouted that the bankers needed to get more deposits.

e. The Bank's December 2022 EVE projections indicated that an increase in interest rates by only 100 basis points would result in a drastic decrease in equity by amounts greater than the Bank's risk tolerance and risk appetite thresholds. In the fourth quarter of 2022, FRB's EVE results projected that a 100 basis point rate increase would result in a 59% decrease in EVE; a 200 basis point rate increase would result in a 117% decrease in EVE, i.e., negative equity; a 300 basis point increase would result in a 172% decrease in EVE; and a 400 basis point increase would result in a 224% decrease in EVE. FRB's risk tolerance under 100, 200, 300, and 400 basis point increase scenarios was a decrease of 15%, 20%, 25%, and 30%, respectively; and its risk appetite under these scenarios was a decrease of 20%, 25%, 30%, and 35%, respectively.

f. A December 31, 2022 Interest Rate Risk Summary memorandum to the Board, dated February 1, 2023, stated that

> "The EVE analysis as-of December 31, 2022 points to a significantly liability-sensitive Economic Value of Equity position. The further increase in liability sensitivity from the September 30, 2022 results is driven primarily by shorter liabilities duration, which is primarily a result of increases in interest-bearing deposits and short-term wholesale funding and declines in non-interest bearing checking balances."

Despite knowing FRB's exposure to long-dated loans were amplifying FRB's risks, Defendants again deepened FRB's long-dated loan exposure during the fourth quarter of 2022. During this quarter, FRB originated approximately $8.1 billion of new loans, approximately half of which were loans featured terms of five-to-thirty-year terms. At the end of the fourth quarter, FRB's loans with terms of five-to-thirty-year terms accounted for 63% of all loans and 49% of all assets. According to FE-15, FRB's fourth quarter loan growth was two standard deviations above what he estimated loan growth to be for that quarter. FE-15 attributed the divergence between projected and actual results to FRB offering below-market rates on new loans.

g. On February 1, 2023, the ALMCO met and again identified EVE risk appetite and risk tolerance breaches across all scenarios. Moreover, the ALMCO meeting materials identified breaches in the NII simulations.

527. The Form 10-K also stated:

> The Bank's Board approves policies and limits governing the management of interest rate risk at least annually. Our ALM and Investment Committees further establish risk management guidelines and procedures within the broader policies and limits established by the Bank's Board. ***Compliance with these policies and limits is reported to the Bank's Board on an ongoing basis and decisions on the management of interest rate risk are made as needed***.

528. The statement set forth in ¶527 was materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact because, as discussed in ¶¶450-53, 464, 473, 485, 509, 526, at the time it was made, the results of FRB's stress tests projected significant breaches in interest rate risk thresholds, which were reported to the Board and senior management, but were not disclosed.

529. The 2022 10-K also disclosed the results of FRB's NII Simulation:

| Change in Market Interest Rates | Estimated Increase (Decrease) in Net Interest Income | |
|---|---|---|
| | Twelve Months Ending December 31, 2023 | Twelve Months Ending December 31, 2024 |
| Shock: | | |
| +200 bps immediately | (6.0)% | (10.3)% |
| +100 bps immediately | (3.1)% | (5.0)% |
| -100 bps immediately | 2.1% | 4.8% |
| -200 bps immediately | 3.7% | 7.8% |
| Ramp: | | |
| +200 bps over next 12 months | (1.5)% | (9.0)% |
| +100 bps over next 12 months | (0.8)% | (4.4)% |
| -100 bps over next 12 months | 0.1% | 4.0% |
| -200 bps over next 12 months | 0.3% | 6.5% |

530. The statement set forth in ¶529 was materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact at the time it was made. While FRB's disclosed NII simulation results may not have been impacted severely by interest rate increases, its undisclosed EVE modeling projected significant breaches with even modest increases in interest rates, as discussed above in ¶¶473, 485, 509, 526.

531. In the 2022 Form 10-K, Defendants Herbert, Roffler, Holland, and Tsokova classified $28.36 billion in securities as HTM securities. For these securities, these Defendants represented that they had both the "***positive intent and ability to hold [each HTM security] to maturity***," stating that "[d]ebt securities that the Bank has purchased with the positive intent and ability to hold to its maturity are classified as held-to-maturity and reported at amortized cost."

532. In the 2022 Form 10-K, Defendants Herbert, Roffler, Holland, and Tsokova classified $166.87 billion in loans as HFI loans. For these loans, these Defendants represented, pursuant to GAAP, that they had both the "intent and ability to hold for the foreseeable future or until maturity or payoff should be reported in the balance sheet at outstanding principal adjusted for any charge-offs, the allowance for loan losses (or the allowance for doubtful accounts), any deferred fees or costs on originated loans, and any unamortized premiums or discounts on purchased loans."

533. The statements set forth in ¶¶531-32 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact at the time they were made. In classifying and accounting for its loans as HFI and its debt securities as HTM, FRB

inherently made representations as to its ability to hold such loans for the foreseeable future and its debt securities to maturity. Such representations were related to FRB's liquidity and interest rate risk management, including that it possessed effective liquidity risk management and controls to reliably determine that it has sufficient sources of liquidity over the full duration of these loans without having to liquidate these loans. As detailed above, at the time of these statements:

a. FRB's deposit base was not organic, stable, or diversified because an undisclosed and material subset of FRB's deposits had been originated through undisclosed rate incentives and rate exceptions that made those deposits highly and unusually susceptible to correlated outflows, in circumstances such as a rising interest rate environment;

b. FRB's deposit base had become increasingly unstable as interest rates rose, for instance, as FE-5 recalled, depositors withdrew large substantial amounts of deposits during the latter part of 2022 in an effort to identify higher yield accounts or to invest in Treasurys; and

c. FRB faced significant interest rate risk that further increased the likelihood that profitability and liquidity would compress, and would require the Bank to sell at least some portion of long-duration assets. For example, FRB's 3Q 2022 EVE projections, dated October 26, 2022, "breached" its risk tolerance and risk appetite thresholds in all scenarios and showed FRB was "materially liability sensitive," yet ALMCO took no further action. The BERM and DERM Committees and the Board approved the 3Q 2022 EVE breaches in November 2022, on November 11, 2022, and on November 16, 2022, respectively, with no further action. These issues compounded in December 2022 and into 2023, as detailed in ¶526 above.

534. The 10-K also stated:

> Total deposits were $176.4 billion at December 31, 2022, an increase of 13% compared to $156.3 billion at December 31, 2021. Deposits were our primary source of funding and represented 92% of our funding base at December 31, 2022, compared to 97% at December 31, 2021. ***Deposits increased as a result of referrals from existing clients, new deposit clients, and usage of other deposit funding channels. We continue to emphasize building banking relationships through checking and other transaction deposit accounts***.

535. The 10-K further stated: "At December 31, 2022, our total deposits were $176.4 billion, a 13% increase from $156.3 billion at December 31, 2021, ***as we continued to expand relationships with existing clients and acquire new deposit clients, both business and consumer***."

536. The statements set forth in ¶¶534-35 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53, 464, 473, 485, 509, 526.

537. Defendants Roffler and Holland attached Sarbanes Oxley Act of 2002 ("SOX") Certifications as exhibits to the Form 10-K, confirming that each of them reviewed the annual report. Defendants Roffler and Holland certified that:

> [] Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
>
> [] Based on my knowledge, the financial statements, and other financial information included in this annual report, ***fairly present in all material respects the financial condition, results of operations and cash flows*** of the registrant as of, and for, the periods presented in this annual report[.]

538. The statement set forth in ¶537 was materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53, 464, 473, 485, 509, 526.

**16. March 10, 2023—Form 8-K**

539. On March 10, 2023, FRB issued a Regulation FD Disclosure filed on Form 8-K, which was signed by Defendant Tsokova. The Form 8-K stated:

> ***This filing reiterates First Republic's continued safety and stability and strong capital and liquidity positions***.
>
> ***
>
> ***First Republic's deposit base is strong and very-well diversified***. Consumer deposits have an average account size of less than $200,000 and business deposits have an average account size of less than $500,000. Within business deposits, no one sector represents more than 9% of total deposits, with the largest being diversified real estate. Technology-related deposits represent only 4% of total deposits.
>
> ***First Republic's liquidity position remains very strong***. Sources beyond a well-diversified deposit base include over $60 billion of available, unused borrowing capacity at the Federal Home Loan Bank and the Federal Reserve Bank.

> First Republic's very high-quality investment portfolio is stable and represents a modest percentage of total bank assets. The investment portfolio is less than 15% of total bank assets. Of this, less than 2% of total bank assets is categorized as available for sale.
>
> First Republic has consistently maintained a strong capital position with capital levels significantly higher than the regulatory requirements for being considered well-capitalized.
>
> First Republic has a long-standing track record of exceptional credit quality. Nonperforming assets are only 6 basis points of total assets. Since 2000, First Republic's average annual net charge-offs have been just 1/10th those of the top U.S. Banks.

540. The statements set forth in ¶540 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53, 464, 473, 485, 509, 526. In addition, at the time of these statements, FRB's main source of liquidity, its deposits, were not "well-diversified" or "strong," and were in fact highly volatile and rapidly depleting. By March 10, 2023, FRB had experienced massive deposit outflows. According to the OIG Report, "March 10 deposit outflows reached approximately $25 billion of [FRB's] total deposits of approximately $148 billion at that time." FRB's loss of nearly 17% of its deposit base in a single day meant, according the OIG Report, that FRB "had to draw significantly on its credit lines with the Federal Home Loan Bank and Federal Reserve." In other words, FRB was borrowing money, with interest, in order to repay depositors who pulled their deposits out of the bank. As the OIG Report stated:

> ***First Republic's financial position had significantly weakened following the deposit run because of the substantial increase in its cost of funding***. Specifically, First Republic's low-cost customer deposits were significantly reduced, and replaced by higher-cost borrowings from the Federal Reserve Bank and Federal Home Loan Bank which were drawn to meet deposit outflows.

Therefore, FRB's liquidity position was not "***very strong***" as Defendant Tsokova claimed.

541. The March 10, 2023 deposit outflows confirmed that FRB's strategy of offering large, long-term loans with low fixed rates resulted in a concentration of highly illiquid assets which could only be sold at a loss in the event of a liquidity shortfall due to rising interest rates. FRB's reliance on borrowings from the FHLB and Federal Reserve to meet deposit demands on March 10, 2023 confirmed that its concentration of highly illiquid assets posed significant risks to FRB's liquidity. The March 10, 2023 deposit outflows also confirmed that FRB's concentration of uninsured deposits and reliance on undisclosed rate incentives to gather deposits exposed FRB to significant liquidity risks.

**17. March 12, 2023—Press Release**

542. On March 12, 2023, FRB issued a press release filed on Form 8-K and signed by Defendant Tsokova. The press release stated:

> First Republic Bank (NYSE:FRC), a leading private bank and wealth management company, today said it has ***further enhanced and diversified its financial position*** through access to additional liquidity from the Federal Reserve Bank and JPMorgan Chase & Co.
>
> The additional borrowing capacity from the Federal Reserve, continued access to funding through the Federal Home Loan Bank, and ability to access additional financing through JPMorgan Chase & Co. ***increases, diversifies, and further strengthens First Republic's existing liquidity profile***. The total available, unused liquidity to fund operations is now more than $70 billion. This excludes additional liquidity First Republic is eligible to receive under the new Bank Term Funding Program announced by the Federal Reserve today.
>
> "Jim Herbert, Founder and Executive Chairman and Mike Roffler, CEO and President of First Republic Bank said, "***First Republic's capital and liquidity positions are very strong***, and its capital remains well above the regulatory threshold for well-capitalized banks. As we have done since 1985, ***we operate with an emphasis on safety and stability at all times, while maintaining a well-diversified deposit base***. First Republic continues to fund loans, process transactions and fully serve the needs of clients by delivering exceptional service."

543. The statements set forth in ¶542 were materially false or misleading, omitted material facts necessary to render such statements not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53, 464, 473, 485, 509, 526, 541.

**18. March 13, 2023—Statement by Defendant Herbert to CNBC**

544. On March 13, 2023, CNBC published a report titled, "First Republic tells CNBC the bank isn't seeing that many depositors leave, JPMorgan funding working." The report stated that:

> First Republic Bank has been able to meet withdrawal demands on Monday with the help of additional funding from JPMorgan Chase, the bank's executive chairman told CNBC's Jim Cramer.
>
> ***Jim Herbert told Cramer that the bank was not seeing massive outflows of deposits and that the business was operating as usual***. Herbert declined to say specifically how much had been withdrawn, Cramer said.

545. The statement set forth in ¶544 was materially false or misleading, omitted material facts necessary to render such statement not misleading, or lacked a reasonable basis in fact for the reasons set forth in ¶¶450-53, 464, 473, 485, 509, 526, 541. Defendant Herbert's statement was materially false or misleading for the additional reason that at the time it was made, FRB was experiencing continued, massive deposit outflows and was not "***operating as usual***." According to the OIG Report, "March 10 deposit

outflows reached approximately $25 billion of [FRB's] total deposits of approximately $148 billion at that time." Then, "[o]n Monday, March 13, 2023, withdrawal demands were significant, with approximately ***$40 billion*** in deposit outflows." FRB's loss of over 40% of its deposit base in a single day meant, according the OIG Report, that FRB "had to draw significantly on its credit lines with the Federal Home Loan Bank and Federal Reserve." In other words, FRB was borrowing money, with interest, in order to repay depositors who pulled their deposits out of the bank. As the OIG Report stated:

> First Republic's financial position had significantly weakened following the deposit run because of the substantial increase in its cost of funding. Specifically, First Republic's low-cost customer deposits were significantly reduced, and replaced by higher-cost borrowings from the Federal Reserve Bank and Federal Home Loan Bank which were drawn to meet deposit outflows.

Therefore, FRB was not "***operating as usual***" as Defendant Herbert claimed.

546. FRB was also not "***operating as usual***" because, as former employees described, there was "chaos" inside FRB at the time of Defendant Herbert's statement. FE-1 described how FRB bankers were staying until midnight in the office and some employees slept in their cars. FE-1 recalled that starting on March 10, 2023, there were 6:30 a.m. meetings with the executive team which included Defendant Herbert, Defendant Roffler, and Susie Cranston in which they discussed the deposit outflows. Similarly, FE-2 stated that FRB asked for volunteers to assist with stemming depositors from moving out of the Bank, and that FRB had teams of people working almost around the clock taking calls from clients and arranging wire transfers.

## VI. KPMG'S MATERIALLY FALSE OR MISLEADING STATEMENTS AND OMISSIONS OF MATERIAL FACT

547. In the Annual Report filed by FRB on Form 10-K for Fiscal Year 2022 (filed February 28, 2023), KPMG issued clean audit opinions concerning FRB, specifically stating that: (i) "the consolidated financial statements" issued by FRB "present[ed] fairly, in all material respects, the financial position of the Bank" in accordance with GAAP; and (ii) KPMG had conducted its "audits in accordance with the standards of the PCAOB."

548. KPMG's statements identified in ¶547 were materially false, misleading, and omitted material facts for reasons stated above in ¶¶340-352. In contrast to KPMG's statements issuing an unqualified opinion on FRB's financial statements contained in FRB's 2022 Form 10-K, KPMG falsely

represented that FRB's financial statements were prepared in accordance with GAAP. Additionally, these statements were also false or misleading because during its audit, KPMG failed to (a) obtain sufficient audit evidence in accordance with PCAOB AS 1105 in support of the classification of FRB's loan portfolio and debt securities and the resultant failure to recognize material losses to such portfolio and securities, and (b) exercise due professional care and professional skepticism in accordance with PCAOB Auditing Standard 1015 with respect to FRB's accounting for the same loans and debt securities. Because of such failures, and in contrast to the above statements, KPMG did not perform its audit of FRB's 2022 financial statements in accordance with PCAOB auditing standards.

549. In addition, KPMG's statements identified in ¶547 were materially false, misleading, and omitted material facts because, for reasons stated above in ¶¶353-364, KPMG violated GAAP and PCAOB standards by failing to raise the possibility of substantial doubt about FRB's ability to continue as a going concern in its Auditor Report.

## VII. <u>ADDITIONAL ALLEGATIONS OF THE INDIVIDUAL DEFENDANTS' SCIENTER</u>

550. The Individual Defendants were active and culpable participants in the fraud, as evidenced by their knowing or deliberately reckless issuance of their materially false or misleading statements and omissions. The Individual Defendants acted with scienter in that they knew or were severely reckless in not knowing that the public statements set forth in Section V above were materially false or misleading when made, and knowingly or recklessly participated in the issuance or dissemination of such statements as primary violators of the federal securities laws. In addition to the facts alleged in Section IV above, the Individual Defendants' scienter is evidenced by the specific facts discussed below.

### A. The Individual Defendants Were Financially Motivated to Conceal Material Information from Investors

551. ***First***, although Plaintiffs need not allege any motive to plead a strong inference of scienter, Defendants Herbert, Roffler, and Selfridge profited from FRB's artificially inflated stock price during the Class Period by offloading their personally held FRB shares through a series of well-timed sales. The suspiciousness of these sales has launched investigations by the DOJ, the SEC, the Massachusetts Attorney General, and the U.S. Senate and made headlines in, among other publications, Forbes, which reported that

insider sales occurred "shortly before its share price collapsed," and The Wall Street Journal, which reported that insider sales occurred "before a catastrophic stretch" that saw FRB's "share prices crater."

552. Defendant Herbert sold 110,000 FRB shares during the Class Period for profits of ***$16,923,300***, approximately 12% of the shares that he held and could sell. None of Herbert's Class Period sales was made pursuant to any Rule 10b5-1 plan.

553. The timing of Defendant Herbert's Class Period sales was suspicious. As noted above in ¶¶330-34, Herbert's sales were timed while he was in possession of material non-public information. For example, Herbert sold 20,000 shares for profits of $2,332,600 on October 26, 2022—the same day that FRB's EVE projections breached its risk tolerance and risk appetite thresholds in all scenarios. Herbert also sold 20,000 shares for profits of $2,635,800 on January 17, 2023—the second day on which Herbert could trade after a quarterly "restricted period" that included adverse developments at year end.[7] Herbert also sold 15,000 shares for profits of $1,852,650 on February 22, 2023—within the first few days on which Herbert could trade after a "lock-up" period arising from an offering[8] and after the Board was informed that a moderate interest-rate increase would result in FRB having a negative economic value of equity. February 22, 2023 was also just 13 trading days before FRB's share price began to collapse on March 13, 2023.

554. Defendant Herbert also gifted 129,616 FRB shares to non-profit organizations during the Class Period, approximately 14% of the shares that he held and could sell. Together, Herbert's sales and gifts represented approximately 26% of the shares that he held and could sell. Herbert's gifts, including to organizations with which he was directly associated, further confirm his knowledge that FRB's share price was inflated and would soon collapse. Herbert must have known that the organizations receiving those gifts would immediately liquidate the shares, as is customary for non-profit organizations. For example, a

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[7] It is customary for public companies to restrict the trading of their executives in their stock for a "restricted period" starting several weeks before the end of each quarter and ending some period after quarterly earnings are announced. FRB's aggregate Form 4 data suggests that FRB's restricted period started two weeks before the end of the quarter and ended at the end of the day that quarterly earnings were announced. Thus, Herbert would have been restricted from trading FRB shares from mid-December 2022 until Friday, January 13, 2023. The next trading day was Monday, January 16, 2023.

[8] FRB's executives were restricted from selling FRB stock during a 10-day "lock-up" period after an offering of common stock on February 8, 2023.

significant portion of Herbert's giving was directed to the BASIC Fund, an organization that he founded and of which he served as Chairman. The BASIC Fund held securities through an account at First Republic Securities Company ("FRSC"), a FRB subsidiary, and told donors that, after receiving stock, it would instruct FRSC to "make sure the securities are sold right away." Forms 990-PF filed by the BASIC Fund with the IRS are consistent with its following that stated practice. Herbert likely obtained substantial tax benefits for these charitable donations, as well as significant personal and reputational benefits.

555. Defendant Roffler sold 17,526 FRB shares during the Class Period for profits of ***$2,257,606***, approximately 22% of the stock that he held and could sell. None of Roffler's Class Period sales was made pursuant to any Rule 10b5-1 plan.

556. The timing of Defendant Roffler's Class Period sales was suspicious. Roffler sold 10,000 shares for profits of $1,278,700 on November 15, 2022—the first day on which Roffler could trade after a quarterly restricted period during which FRB's EVE projections breached its risk tolerance and risk appetite thresholds in all scenarios. Roffler sold another 7,526 shares for profits of $978,906 on January 19, 2023—within the first few days on which Roffler could trade after adverse developments at year end.

557. Defendant Selfridge sold 13,750 FRB shares during the Class Period for profits of ***$2,345,437***, approximately 17% of the stock that he held and could sell. None of Selfridge's Class Period sales was made pursuant to any Rule 10b5-1 plan.

558. The timing of Defendant Selfridge's Class Period sales was suspicious. For example, Selfridge sold 2,500 shares for profits of $417,575 on August 12, 2022—the first day on which Selfridge could trade after a lock-up period arising from an offering[9] that followed the ALMCO's recognition that FRB was "firmly liability sensitive." Selfridge also sold 1,250 shares for profits of $153,062 on November 21, 2022—shortly after the BERM and DERM Committees and the Board took no action on the third quarter EVE results. And, Selfridge sold 1,500 shares for profits of $217,500 on February 3, 2023—just two trading days after the Board was informed that a moderate interest-rate increase would result in FRB having a negative economic value of equity, and just one month before FRB's share price began to collapse.

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[9] FRB's executives were restricted from selling FRB stock during a 10-day "lock-up" period after an offering of common stock on August 2, 2022.

559. The suspiciousness of Defendants Herbert, Roffler, and Selfridge's sales is further supported by contemporaneous sales by other FRB executives who were positioned to know the same material non-public information. FRB's President of Private Wealth Management, Robert Thornton, sold 26,293 FRB shares during the Class Period for profits of ***$3,476,986***, approximately 63% of the shares that he held and could sell. All of those sales were made in January 2023. FRB's Chief Credit Officer, David Lichtman, sold 40,879 FRB shares during the Class Period for profits of ***$5,249,701***, approximately 60% of the share that he held and could sell. The vast majority of those sales were made between November 2022 and March 2023, including as late as March 6, 2023—just five trading days before FRB's share price began to collapse. None of Thornton or Lichtman's Class Period sales was made pursuant to any Rule 10b5-1 plan.

560. The motivation of Defendants Herbert, Roffler, and Selfridge to sell stock at prices inflated by the fraud further strengthens the strong inference of scienter.

561. ***Second***, FRB's incentive compensation, both short-term and long-term, motivated Defendants Herbert, Roffler, and Selfridge to make the false and misleading statements and omissions at issue. Defendants Herbert, Roffler and Selfridge had a personal financial motive to misclassify FRB's loans as HFI and thus avoid recognizing FRB's substantial mark-to-market losses on FRB's balance sheet.

562. Defendants Herbert's, Roffler's, and Selfridge's 2022 incentive compensation (a mix of cash bonuses and awards of Restricted Stock Units ("RSUs")), and the vesting in 2022 of their long-term incentives granted in 2019 in the form of Performance Share Units ("PSUs"), were both based on FRB's net income or other performance metrics derived from it. Recognizing mark-to-market losses during the Class Period on FRB's loans erroneously classified as HFI would have wiped out FRB's net income, and thus erased a substantial portion of Defendants Herbert's, Roffler's, and Selfridge's incentive compensation, which comprised the vast majority of their overall compensation during the Class Period.

563. For his employment in 2021, the last year for which FRB disclosed the details of its executive compensation in a Proxy, Defendant Herbert received ***$10,472,818*** (excluding PSUs granted in 2021 and scheduled to vest in 2024, which, as Herbert would have known, were highly unlikely to vest). Of that amount, $9,212,000, or 88%, was incentive compensation that was contingent and variable.

564. According to FRB's Proxy Statement and his employment agreement, Defendant Herbert was entitled to an annual bonus opportunity of 0.5% of FRB's pre-tax profit. FRB reported a pre-tax profit of $1.8 billion for 2021, meaning that Herbert had a bonus opportunity of $9,212,000. Herbert's bonus could have been reduced below the maximum opportunity if certain "performance criteria" fell below their "target levels." Those performance criteria were (1) average ratio of quarterly nonperforming assets to total assets (weighted 30%); (2) certain regulatory criteria (weighted 30%); (3) annual after-tax return on tangible assets (weighted 10%); and (4) annual after-tax return on average tangible common equity ("ROATCE") (weighted 30%). In its 2022 Proxy Statement, FRB reported that all four performance criteria were "100% Achieved" and thus Herbert received his maximum bonus of $9,212,000 for 2021. Half of that amount was paid in cash and the rest in RSUs.

565. FRB never filed its Proxy Statement for its 2023 meeting of shareholders, and thus never disclosed its executive compensation for 2022. Yet, it can be inferred from other disclosures that Defendant Herbert continued to receive incentive compensation that increased as a result of the fraudulent scheme in 2022. Herbert's employment agreement was amended in 2022, as relevant, to reduce his compensation pro rata for the duration of his medical leave of absence (about 19% of the year), but otherwise remained in place. FRB reported a pre-tax profit of $2.1 billion for 2022, meaning that Herbert was entitled to a bonus opportunity of approximately $8.6 million for 2022. Assuming that FRB's performance criteria for 2022 were the same as those for 2021, Herbert would have received his maximum bonus for 2022 as well as shown below. That result remains the same under a range of similar performance targets for the quantitative performance criteria (for example, if the ROATCE target were raised from 10% to 11%).

| Performance Criterion | 2021 Target | 2022 Reported Performance | Inferred 2022 Result |
|---|---|---|---|
| 1. Average Ratio of Quarterly Nonperforming Assets to Total Assets | ≤ 1.00% | 0.05% | 100% Achieved |
| 3. Annual After-Tax Return on Average Tangible Assets | ≥ 0.75% | 0.85% | 100% Achieved |
| 4. Annual After-Tax Return on Average Tangible Common Equity (ROATCE) | ≥ 10.0% | 11.8% | 100% Achieved |

**Table 11: Performance Criteria for Defendant Herbert's Incentive Compensation**

566. As discussed above in ¶¶340-52, FRB had mark-to-market losses of over $22 billion at year end 2022 on loans misclassified as HFI, meaning that properly classifying FRB's HFI assets in 2022 would have reduced Herbert's incentive compensation for 2022 to ***zero***.

567. In addition, during the Class Period, Defendant Herbert's long-term incentive, previously granted in 2019, vested. Although granted three years earlier, as intended, this long-term incentive continued to affect Herbert's motives during the Class Period. On December 13, 2019, Herbert was granted 55,000 PSUs scheduled to vest on December 13, 2022. Under the terms of the grant, 100% of those PSUs would vest if FRB's ROATCE over the three-year period ending September 30, 2022 was at least 10%; otherwise, none would vest and the award would be valueless. Based on FRB's reported ROATCE and Herbert's Form 4s, 100% of that award vested on December 13, 2022, worth approximately $7 million. If FRB had properly classified its HFI loans to HFS during the Class Period and recorded mark-to-market losses as a result of this change in accordance with GAAP, FRB's ROATCE for the three-year period ending September 30, 2022 would have been below the 10% target, rendering Herbert's PSU award for 2019 worthless.

568. Defendant Roffler also received incentive compensation that was significantly increased by the misstatements at issue. Roffler had a maximum bonus opportunity of $2,175,000 for 2021, which he received (half in cash, half in RSUs). Of that amount, nearly two-thirds ($1,425,000) was contingent on the same "objective performance measures" applicable to Defendant Herbert—except that the weights for the first and third criteria were switched. Assuming that FRB's performance criteria for 2022 were the same as or similar to those for 2021, as shown above for Herbert, Roffler would have received his maximum bonus for 2022 as well. Properly classifying FRB's HFI loans in 2022 would have reduced FRB's net income for 2022 to zero, and thus reduced FRB's Annual After-Tax Return on Average Tangible Assets and ROATCE—each weighted 30% for Roffler in 2021—for 2022 to zero. As a result, assuming the weights remained the same in 2022, the "objective" portion of Roffler's incentive compensation for 2022 would have been reduced by ***60%***.

569. Defendant Roffler's long-term incentive granted for 2019 also vested during the Class Period. Although granted three years earlier, as intended, this long-term incentive continued to affect Roffler's motives during the Class Period. Roffler received 29,750 PSUs in December 2019 that were

scheduled to vest in December 2022. Roffler's PSUs were subject to the same ROATCE target as Defendant Herbert's. Based on FRB's reported ROATCE and Roffler's Form 4s, 100% of that award vested on December 13, 2022, worth more than ***$3.6 million***. If FRB had properly classified its HFI loans during the Class Period, FRB's ROATCE for the three-year period ending December 2022 would have been reduced by the mark-to-market losses, which would have dragged the average below the 10% target and rendered Roffler's PSU award for 2019 worthless.

570. Defendant Selfridge also received incentive compensation that was significantly increased by the misstatements at issue. For his employment in 2021, Selfridge received more than ***$3,460,242*** (excluding PSUs granted in 2021 and scheduled to vest in 2024, which, as Selfridge would have known, were highly unlikely to vest). Of that amount, $2,750,000, or 79%, was incentive compensation that was contingent and variable.

571. Selfridge had a maximum bonus opportunity of $2,750,000 for 2021, which he received (half in cash, half in RSUs). Of that amount, about half ($1,425,000) was contingent on the same "objective performance measures" established for Defendant Herbert. Assuming that FRB's performance criteria for 2022 were the same as or similar to those for 2021, as shown above for Herbert, Selfridge would have received his maximum bonus for 2022 as well. Properly classifying FRB's HFI loans in 2022 would have reduced FRB's net income for 2022 to zero, and thus reduced FRB's Annual After-Tax Return on Average Tangible Assets and ROATCE—weighted 40% for Selfridge in 2021—for 2022 to zero. As a result, assuming the weights remained the same in 2022, the "objective" portion of Selfridge's incentive compensation for 2022 would have been reduced by ***40%***. Selfridge received an additional $950,000 in 2021 from participation in a bonus pool based on FRB's pre-tax profits. Properly classifying FRB's HFI loans in 2022 would have eliminated FRB's pre-tax profits for 2022, and thus eliminated Selfridge's share of any bonus pool based on pre-tax profits for 2022.

572. Defendant Selfridge's long-term incentive granted for 2019 also vested during the Class Period. Although granted three years earlier, as intended, this long-term incentive continued to affect Selfridge's motives during the Class Period. Selfridge received 29,750 PSUs in December 2019 that were scheduled to vest in December 2022. Selfridge's PSUs were subject to the same ROATCE target as Defendants Herbert's and Roffler's. Based on FRB's reported ROATCE and Selfridge's Form 4s, 100%

of that award vested on December 13, 2022, worth more than $3.6 million. If FRB had properly classified its HFI loans during the Class Period, FRB's ROATCE for the three-year period ending December 2022 would have been reduced by the mark to market losses, which would have dragged the average below the 10% target and rendered Selfridge's PSU award for 2019 worthless.

573. The motivation of Defendants Herbert, Roffler, and Selfridge to receive compensation inflated by the fraud further strengthens the strong inference of scienter.

### B. The Individual Defendants Knew or Had Access to Information Contradicting Their Public Statements Regarding the Stability of FRB's Deposits, Interest Rate Risk Management, and Liquidity

574. As alleged throughout this Complaint, the Individual Defendants' knowledge or reckless disregard of undisclosed information that rendered their statements materially false or misleading when made is evidenced by FRB's internal policies governing the monitoring of interest rate risk and liquidity risk, regulatory investigations into the failure of FRB, and the accounts of former employees concerning the Individual Defendants' knowledge or access to information rendering their statements materially false or misleading.

#### 1. Defendants Knew or Recklessly Disregarded That FRB Was Vulnerable to Interest Rate Hikes

575. Defendants' active monitoring of interest rate risk demonstrates that Defendants knew or recklessly disregarded that FRB was uniquely susceptible to interest rate risk.

576. According to FRB's quarterly and annual FDIC filings, FRB's Board, including Board Chairman Defendant Herbert, Defendant Erkan and Defendant Roffler, reviewed interest rate risk policies annually and received ongoing reports on compliance with those policies:

> The Bank's Board of Directors approves policies and limits governing the management of interest rate risk at least annually. Our Asset Liability Management ('ALM') and Investment Committees further establish risk management guidelines and procedures within the broader policies and limits established by the Bank's Board of Directors. Compliance with these policies and limits is reported to the Bank's Board of Directors on an ongoing basis and decisions on the management of interest rate risk are made as needed.

577. In addition, the Board received "regular reports" on FRB's "operations and enterprise risk management activities, including an enterprise risk assessment" through standing committees charged with

overseeing risk, such as the DERM. As FRB described in its Definitive Proxy Statement for the 2021 Annual Meeting of Shareholders, FRB's "management regularly discusses macro- and business-specific environmental factors with the [DERM] and the full Board, as well as the potential impact of these factors on our risk profile, financial situation and capital adequacy."

578. Defendants Erkan and Roffler in particular served on the DERM Committee which, according to its charter, oversaw "the strategies, policies, and systems established by management to identify, assess, measure, monitor, report, and control the core risks facing the Bank." The DERM Committee's responsibilities included: to enhance "management's and the Board's understanding of the Bank's overall risk profile and risk appetite;" to "review, approve, and recommend to the Board the Bank's Risk Appetite Statement at least annually;" to "review Risk Appetite Statement breaches and policy breaches to the extent that there are implications for the Bank's risk profile;" and to "review reports from management, including the Chair of the BERM and the BERM, and, if appropriate, other Board committees, regarding 'black swans' (high-severity, low-likelihood risks) . . . as needed." Defendant Erkan served on the DERM Committee in 2020 and 2021, and Defendant Roffler served on the DERM Committee in 2022.

579. FRB's management also "periodically" reviewed with the Board and Investment Committee, which included Defendant Herbert, "specific risk analyses, such as interest rate sensitivity and earnings simulation scenario analyses." The Board also had the responsibility to oversee and review FRB's capital stress testing.

580. FE-2, a Vice President on FRB's lending side, stated that approximately nine people worked closely with the stress testing, including the Chief Technology Officer, the Chief Risk Officer, and the CFO, who would direct the testing and conduct a final review before the results were presented to the President, Chairman, and the Board.

581. Because these policies required active monitoring of interest rate risk, Defendants knew or recklessly disregarded the drastic impact that interest rate hikes would have on FRB. Starting in the second quarter of 2022, the BERM and DERM Committees, as well as the Board, received reports quarter after quarter warning that the EVE model predicted that the rising interest rates would not only breach FRB's risk tolerance and/or risk appetite, but would wipe out FRB's economic value of equity. *See* ¶¶237-269.

The BERM and DERM Committees and the Board reviewed the information and voted to approve the breaches of the risk tolerance levels and/or risk appetite. The EVE results were reviewed and approved by FRB management and Defendants on the following dates:

- April 26, 2022: ALMCO reviewed the EVE results for the first quarter of 2022. FRB's Vice President and Head of ALMCO recommended that FRB stop lengthening its asset duration. ALMCO took no further action.
- August 1, 2022: ALMCO reviewed the EVE results for the second quarter of 2022, recognized that the results make FRB "firmly liability sensitive" but recommended no further action.
- August 2022: The BERM Committee reviewed the EVE results for the second quarter of 2022, approved the risk tolerance and risk appetite breaches, and took no further action.
- September 7, 2022: The DERM Committee reviewed the EVE results for the second quarter of 2022 and recommended monitoring the projections for the next one to two quarters.
- September 14, 2022: The Board reviewed and approved the risk tolerance and risk appetite breaches and recommended no further action.
- October 26, 2022: ALMCO reviewed the results and the Head of ALMCO reported to the Board in a memorandum that the EVE results for the third quarter of 2022 were "materially liability sensitive" and that risk thresholds had been breached in all increased rate scenarios.
- November 2022: The BERM Committee reviewed the EVE results for the third quarter of 2022 but approved no further action.
- November 11, 2022: The DERM Committee members discussed the EVE results for the third quarter of 2022, recognized that the risk thresholds would be breached in the scenario modeling for several more quarters, and recommended no further action.
- November 16, 2022: The Board discussed the third quarter of 2022 EVE results but took no action.
- February 1, 2023: A memorandum to the First Republic Board, including then-Chairman Herbert, urgently alerted the Board that the EVE analysis as of December 31, 2022 was "significantly liability-sensitive." The Board was informed that the model projected a mere 2% increase in rates would result in a $8.1 billion decrease in EVE (a decrease of -116.9%), translating into a negative economic value of equity.
- February 2023: The ALMCO, BERM, and DERM Committee, and the Board are presented with the results of the EVE analyses as of December 31, 2022.

582. The discussions at these meetings and the multiple votes approving the risk threshold breaches confirm that Defendants were informed about the catastrophic EVE projections when they made their alleged false or misleading statements.

### 2. Defendants Knew or Recklessly Disregarded That FRB's Deposit Base Was Not Stable and Was Not Diversified

583. The accounts of former employees and the conclusions of FRB's regulators support the inference that Defendants knew or recklessly disregarded that FRB's deposit base was not stable or sticky, was not growing organically, and was not diversified because: (i) FRB had a funding concentration of uninsured deposits, which are inherently less stable than insured deposits; (ii) FRB clients received discounted rates on their loans in exchange for maintaining deposits at the Bank, but were not required to honor their deposit commitments in order to obtain the favorable interest rate, impacting the stickiness and stability of the Bank's deposits; (iii) FRB clients were depositing funds only to receive short-term inflated interest rates on their checking accounts, impacting the stickiness of FRB's deposits; and (iv) FRB's deposit numbers were being manipulated at the end of each quarter by the efforts of the War Room/Peace Room team, which further impacted the stability and stickiness of FRB's deposits.

584. ***First***, Defendants knew that FRB had a funding concentration of uninsured deposits, which posed a significant threat to the Bank's deposit stability in the event of actual or perceived liquidity stress. *See* ¶¶108-110. According to the FDIC Report, FRB's Uninsured Deposits to Total Deposits Key Risk Indicator ("KRI") caution level was 70%. As of December 31, 2021, the number of uninsured deposits amounted to 75% of total deposits, breaching FRB's caution level. Furthermore, the FDIC's 2021 ROE drew management's attention to the funding concentration and indicated that the number of uninsured deposits exceeded FRB's caution level. Additionally, according to the FDIC Report, the FDIC's Supervisory Plans noted that the number of uninsured deposits were "***potentially unstable***."

585. In addition to the KRIs, the FDIC reported that FRB actively monitored the risks presented by uninsured deposits through an Uninsured Deposits Dashboard, which provided management with a "comprehensive assessment of deposit stability on a quarterly basis." FE-17 stated there were 10 to 15 metrics that had to do with deposit outflow including but not limited to, the percentage of loan balance deposited, account set up deposits, daily average deposit balance, and deposit growth.

586. FE-17 stated that one of his responsibilities was to create a monthly KRI and Key Performance Indicator ("KPI") Risk Data Report, which he recalled was "definitely provided to the C-Suite." The KRI-KPI Risk Data Report summarized risk meters using line graphs of different colors: green

indicated no risk, yellow indicated caution was required, and red was used when immediate action was required. Any red risk meters were escalated to the Board on a quarterly basis, identifying the breach and any remediation plan.

587. FE-17 stated that FRB held annual risk meetings attended by executives including Defendants Roffler, Tsokova, and Erkan. FE-17 reported that interest rate risk and the impact on FRB's interest margin were frequent topics of discussion.

588. In February 2022, FE-17 said he had taken it upon himself to perform an analysis of the impact of an interest rate increase under a worst-case scenario of a 20% deposit outflow. His analyses resulted in a $1B loss. FE-17 wanted to present his projections at a second quarter 2022 meeting, but was told not to conduct any further analysis as Chris Wolfe, Chief Investment Officer for FRB Private Wealth Management, had already prepared a similar analysis.

589. FE-17 indicated that, to his knowledge, no one at FRB investigated or monitored the risks associated with the number of accounts with deposits over the FDIC-insured limit. This supports an inference of scienter because Defendants either actively monitored the risks and knew about them when making their false or misleading statements, or Defendants were severely reckless when they failed to inform themselves of a critical risk facing FRB that had also been the subject of an FDIC ROE.

590. ***Second***, Defendants knew or recklessly disregarded that FRB's loan clients were being offered discounted rates on their loans in exchange for making or maintaining deposits at the Bank, but that there was no formal requirement that a client had to maintain the funds in a FRB checking account. FE-4 explained that FRB held company-wide Loan Meetings each Monday with approximately 1,100 employees attending in person or virtually. FE-4, FE-12, and FE-11 confirmed that many members of the C-Suite attended the meetings, and that there was always at least one C-Suite executive on each call, including Defendants Herbert, Roffler, Tsokova, and Holland. These FEs recalled that Defendant Selfridge would often start and lead the meetings.

591. During these calls, FE-12 recalled that the Defendants would discuss the Rate Exception Program that was offered to FRB's loan clients each week.

592. Starting in 2022, when interest rates began to rise, following up on these promised deposits became a key agenda item discussed by Defendants during the weekly Loan Meetings. FE-9 stated that

Defendants Herbert, Roffler, Tsokova, and Selfridge personally pressured bankers to ensure all loan clients were satisfying the deposit requirement to receive a relationship-based lending rate.

593. FE-12 also stated that during 2022 and 2023, Defendants Selfridge, Roffler, and Herbert discussed increasing deposit growth more urgently during Loan Meetings.

594. FE-11 stated that beginning in October 2022, Defendants discussed the need to make up a gap of around $1 billion in deposits during Loan Meetings.

595. FE-2 recounted that in 4Q 2022, the Eagle Insight Group—a team that worked in conjunction with Bank management—created a weekly report that formally tracked, whether clients who received a relationship-based lending discount on a loan were maintaining deposits in a FRB checking account. The weekly reports were provided to Relationship Managers, and the Vice President of the Eagle Insight Group provided an update on the report to all attendees of each weekly Loan Meeting. FE-2 stated that the Vice President would announce the deposit-gathering success stories of certain loan teams and regions that followed up with clients who received a relationship-based interest rate on a loan.

596. FE-9 recalled Defendants Herbert, Roffler, Tsokova, and Selfridge discussing during weekly Loan Meetings in 2022 a list which tracked the loan clients who were given a rate exception but did not maintain the promised funds in a checking account. The list tracked which Relationship Managers were assigned to these clients.

597. FE-5 questioned FRB senior management, including Defendant Roffler, at meetings about how FRB planned to address the risk that depositors would not honor their commitment to maintain deposits after receiving discounted loan rates. FE-5 stated that he was "shocked" that FRB's executives, and especially Defendant Roffler, did not seem to understand the severity of the situation.

598. ***Third***, Defendants knew or recklessly disregarded that FRB's deposit base was not sticky because deposit growth was fueled by the Rate Exception Program which was offered company-wide to increase the interest paid to clients on their deposit accounts. Defendants spoke about the Rate Exception Program at company-wide ALCO meetings, which were held weekly on Tuesdays for all employees that worked with deposit accounts. *See* ¶¶298, 370.

599. ***Fourth***, Defendants knew that the deposit numbers were being temporarily inflated by the undisclosed War Room/Peace Room team, which offered to pay extraordinarily high interest rates on a

checking account in exchange for an extremely large deposit by a high net worth individual or hedge fund. *See* ¶¶182-199.

600. FE-13 recalled that the team convened for days at a time at the end of each quarter in a conference room on the second floor of FRB's San Francisco headquarters—the same floor as the executive offices, including Defendants Herbert and Erkan.

601. Furthermore, FE-13 and FE-14 both indicated that Defendant Erkan would participate in the War Room/Peace Room meetings on occasion. And, FE-5 indicated that Defendant Roffler would participate in the meetings, especially in the 60 days prior to FRB's collapse.

602. ***Finally***, Defendant Herbert's uncharacteristic outburst regarding the urgent need to bring in more deposits during the weekly Loan and ALCO Meetings in January 2023, as reported by multiple FEs and the media, also supports an inference that Defendant Herbert knew or had access to information concerning the stability and stickiness of FRB's deposits. *See* ¶¶292-299.

### 3. Defendants Knew or Recklessly Disregarded That FRB's Liquidity Was Weakening with Interest Rate Increases

603. Defendants knew or recklessly disregarded information that showed that FRB's liquidity was highly vulnerable to interest rate volatility when interest rates began to rise in 2022.

604. Defendants were tasked with monitoring and managing FRB's liquidity risk exposure. Specifically, according to FRB's quarterly and annual FDIC disclosures:

> Liquidity and funding-related risk policies and limits are established within our Liquidity Risk Management Policy, which is approved by the Board at least annually. Liquidity risk is actively monitored and managed by the Treasury department, Chief Financial Officer and senior management through the Bank Enterprise Risk Management Committee, with independent oversight provided by the Board through the Directors' Enterprise Risk Management Committee.

605. Thus, as senior executives of FRB, each of the Defendants were or should have been actively monitoring the risks to liquidity posed by rising interest rates. Furthermore, because Defendants Roffler, Tsokova, and Holland each held the position of CFO in 2014 to 2021, January to November 2022, and November 2022 until May 2023, respectively, they each were or should have been actively monitoring liquidity risks. By virtue of his membership on the DERM starting in 2022, Defendant Roffler similarly

was or should have been actively monitoring liquidity risks. The same is true of Defendant Herbert by virtue of his position as Chairman of the Board.

606. Additionally, as the senior-most executives of FRB, Defendants would have reviewed the examination materials of its primary regulator, the FDIC, including the results of its Annual Roll-Up Examinations, Supervisory Plans, and any Supervisory Recommendations, which all highlighted liquidity risks as a result of FRB's business model and strategies.

607. For example, Defendants were specifically informed by the FDIC of a liquidity risk facing FRB due to its business model. As part of its 2021 Roll Up Examination, the FDIC issued a Supervisory Recommendation directing management's attention to FRB's recategorization of $19 billion in deposits from short-term to long-term deposits in the fourth quarter of 2020, which materially changed the results of the stress test by decreasing the aggregate outflow projections by nearly $17 billion.

608. Similarly, in September 2022, after interest rates began increasing, FRB received the 2023 Supervisory Plan from the FDIC, which outlined the regulator's examination strategy for FRB. In the plan, the FDIC revealed that due to a high percentage of uninsured deposits and increased asset duration, the Liquidity Monitoring Tool and Interest Rate Risk Outlier indicated "Elevated" risk levels. The FDIC's plan stated that the elevated risk reflected the need for focused and ongoing monitoring, and a thorough assessment of the elevated risk areas when conducting its Market and Funding Risk Targeted Review.

609. Furthermore, the inference of scienter is supported by the accounts of former FRB employees. For example, FE-1 recounted that during the week of March 10, 2023 through March 17, 2023, the executive team, including Defendants Herbert and Roffler, would hold meetings every day at 6:30 am, during which the executives told FRB employees to ignore the media reports and to reassure clients that FRB deposits were safe. Defendants Herbert's and Roffler's personal involvement in these desperate attempts to convince clients that FRB was well-capitalized supports the inference that Defendants actively monitored FRB's liquidity and knew of the Bank's liquidity problems when they made their false or misleading statements about the strength of FRB's liquidity.

### C. Defendants Repeatedly Spoke in Detail About the Issues Underlying the Fraud

610. As set forth in Section V, Defendants repeatedly spoke to investors and analysts about FRB's purported resiliency to deposit outflow, the size and diversification of its deposit base, its loan

growth, liquidity, the strength of its business model in withstanding interest rate volatility, and other material topics. For example, throughout the Class Period in FRB's FDIC filings, Defendants Herbert, Roffler, Erkan, Holland, and Tsokova stated: "We engage in various activities to manage our liquidity risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets to meet our cash flow and funding needs." Defendants further stated that: "***Management believes that the sources of available liquidity are well-diversified and adequate to meet all reasonably foreseeable short-term and intermediate-term demands***."

611. During conference calls, Defendants emphasized that FRB's deposit-base was well-diversified. For example, on July 14, 2022, Defendant Selfridge, stated that "***[o]ur deposit-base remains well-diversified***." Defendants also repeatedly touted FRB's client service model as the reason for its loan and deposit growth. On April 13, 2022, FRB's CEO, Defendant Roffler, stated that "service" was "what ***drives growth***." And, on July 14, 2022, Defendant Selfridge, stated that "***[o]ur service model is performing quite well and continues to drive our safe, stable, organic growth***." On October 14, 2022, Roffler stated that "with rates rising we've continued to grow our loan portfolio, and if I stand back from that, ***we've always been focused on service first and foremost, and that is what has driven loan growth frankly in any environment***." Defendants also stressed the strength of the Bank's liquidity position, such as on July 14, 2022, in response to a question about FRB's high loan-to-deposit ratio given the size of the balance sheet, Defendant Roffler replied: "***We're very comfortable*** . . . ***given our funding sources and the strength of our liquidity profile*** ."

612. Many of Defendants' materially false or misleading statements were provided in direct response to questions from analysts about the impact of rising interest rates on FRB, further supporting a strong inference of scienter because Defendants either had knowledge and access to information about these topics or were deliberately reckless in failing to investigate before responding to these questions.

613. For example, on October 13, 2021, in response to a question about the drivers of FRB's deposit growth momentum, Defendant Erkan responded that FRB experienced "***quite strong client activity and referral activity, especially on the business side***. It has been ***well diversified across client types, regions and industries and a healthy mix of both new and existing clients***." And, on January 14, 2022, an analyst focused on interest rate sensitivity asked, "has that changed or did that change at all over the

last three months[?] . . . [C]ould you maybe just talk about balance sheet dynamics and underlying growth that's behind the 1.4% increase in NII?" Defendant Roffler stated:

> [T]hose disclosures don't change a lot and that's largely because of how consistent and stable we are. . . .
>
> And so, a few dynamics that help with that, ***72% of our deposits are in checking. That gives you some protection as rate starts to rise, and then, one that's probably you highlight when you said it, growth***.

Then, on April 13, 2022, in response to the question, "[c]learly, the rate trajectory that the forward curve is pricing in is much more violent and significant than we've seen over the past several years. And so how do you reassure future shareholders about the durability of single-family growth?" Defendant Herbert told investors that the Bank's "***opportunity to continue to grow [mortgage originations] is greater than one thinks***," that the "***mortgage business will continue***," and he does not "worry about [rising interest rates] very much." During the same conference call, in response to the question, "[c]an you go into a little bit more detail on what gives you confidence in your ability to sustain deposit growth at levels sufficient to support your loan growth without much of an increase in your deposit betas relative to the last cycle?" Roffler stated, "***the thing that gives us confidence is if you come back to the service model and our business model***. . . . [E]ven though the Fed is acting, service doesn't stop. . . . ***And so that activity leads us to continue to grow our deposit base***." During FRB's October 14, 2022 earnings call, Herbert responded to an analyst question about the duration of FRB's deposits by stating, "basically what's going on here is a ***temporary problem*** on the margin coming from the steepness of the run-up." On January 13, 2023, Selfridge responded to a question regarding "a reasonable expectation for growth, particularly on the mortgage side given where we're looking at rates," by stating: "***It's never been a better time to acquire clients at First Republic, and that's true for the lending side as well***."

### D. In March 2023, Defendants Herbert, Roffler, and Tsokova Specifically Denied FRB's Deteriorating Financial Condition

614. As set forth in Section V, beginning on March 10, 2023, Defendants Herbert, Roffler, and Tsokova issued specific denials regarding FRB's financial condition. On March 10, 2023, FRB experienced $25 billion of deposit outflows. Nevertheless, FRB issued a press release signed by Defendant Tsokova "***reiterat[ing] First Republic's continued safety and stability and strong capital and liquidity***

***positions***." On March 12, 2023, FRB issued another press release signed by Defendant Tsokova stating that FRB had secured additional borrowing capacity while assuring investors that these borrowings only "***increases, diversifies and further strengthens First Republic's liquidity profile***." In this press release, Defendants Herbert and Roffler assured investors that FRB's "***capital and liquidity positions are very strong***."

615. On March 13, 2023, approximately $40 billion in additional deposits left FRB. Nevertheless, the same day, Defendant Herbert told CNBC's Jim Cramer that FRB "***was not seeing massive outflows of deposits and that the business was operating as usual***." The fact that Defendants Herbert, Roffler, and Tsokova issued specific denials about FRB's weakening liquidity on March 10 to 13, 2023, a period during which FRB had lost approximately 40% of its deposits, further contributes to the strong inference of scienter.

616. As alleged above in Section V.O, on April 24, 2023, within weeks of Defendants' false statements denying deposit outflows and affirming the liquidity and strength of FRB, the Bank confirmed that it had experience catastrophic deposit outflows beginning in March 2023. Specifically, FRB announced an astonishing ***41%*** decline in deposits, and Defendants Holland and Roffler admitted in FRB's April 24, 2023 press release and earnings call that these deposit outflows began "***[w]ith the closure of several banks in March***." The temporal proximity and sharp contrast between Defendants' false or misleading statements about FRB's liquidity and deposit base and their disclosures of catastrophic deposit outflows on April 24, 2023 further supports an inference that Defendants knew, or were deliberately reckless, that their statements were false or misleading were made.

### E. Defendants Intentionally Ignored and Stifled Negative News, Including the Results of Internal Audits

617. Defendants' refusal to recognize the negative results of internal audits further supports an inference of their scienter.

618. FE-18, a senior manager whose role was part of the IT Audit Function, stated that the executives of FRB never wanted to hear bad news. FE-18 stated that managers and executives often pushed back on the findings of a report and required employees to repeatedly revise reports if the results were not in line with their expectations.

619. For example, in December 2022, FE-18 completed a Data Governance Audit related to FRB's data quality controls. The audit revealed certain issues with FRB's Data Governance, but when FE-18 attempted to validate the audit, the Chief Information Officer pushed back on the findings and "lied." FE-18 explained that FRB needed to ultimately provide the findings to regulators, such as the FDIC, and the leadership of the Bank was very sensitive to how the audit results would be communicated.

620. FE-18 stated that this was not an isolated incident, it was part of the "tone at the top" of FRB. FE-18 felt that the Chief Information Officer and others were not being truthful.

621. In the audit reports, there were different ratings, such as "satisfactory" or "needs improvement;" but, everyone reported ratings of "satisfactory." FE-18 stated that Defendant Herbert did not tolerate unsatisfactory reports and that executive leadership did not want to see unsatisfactory reports. FE-18 even heard that FRB terminated one person who issued an unsatisfactory rating on a report.

622. FE-18 described the process of reporting assessment findings to FRB leadership as strenuous because, even though he had worked as an auditor for other companies, he had never experienced the level of pushback and massaging of audit reports that he experienced at FRB.

623. FE-18's account of FRB executives' resistance to adverse information is corroborated by the accounts of other former employees who similarly recognized that Defendants recklessly disregarded information provided demonstrating that FRB was struggling with deposit stickiness. For at least six months prior to March 2023, FE-5 repeatedly raised concerns to FRB executives, including Defendants Roffler and Herbert about depositor outflows. Instead of recognizing the risk of deposit outflow, Defendants recklessly disregarded FE-5's concerns and said not to worry about clients withdrawing their deposits. FE-8 recalled FE-5 questioning FRB's senior management regarding the severity of the risk of deposit outflow, but stated that Defendant Roffler and other executives would silence any concerns during weekly meetings and assure employees that the Bank was fine. FE-1 likewise stated that even during emergency meetings held at 6:30 a.m. on a daily basis before the Bank's collapse, the executive team, including Defendants Herbert and Roffler, told FRB employees to ignore the media reports about deposit outflows and the Bank's financial condition. These accounts further support a strong inference that Defendants were at least deliberately reckless when issuing their materially false or misleading statements to investors.

### F. Loan and Deposit Growth Were Core Operations of FRB

624. The importance of FRB's lending and deposit operations raises a strong inference that Defendants knew, or were deliberately reckless in not knowing that their statements were false or misleading.

625. As FRB disclosed in its 2021 and 2022 Forms 10-K, NII, the difference between the interest earned from loans and the interest paid on deposits, was FRB's "largest source of income." For example, FRB's NII in 2021 was $4.1 billion while its noninterest income paled in comparison, earning just $920 million.

626. FRB's loans were a critical driver of revenue for the Bank. In 2021, loans comprised $134.96 billion of FRB's $181.09 billion total assets, or 75%of its total assets. In 2022 FRB's loans amounted to $166.87 billion of the Bank's $212.64 billion total assets, or approximately 78%of its total assets.

627. Relatedly, deposits at FRB were critically important to FRB's operations, as they were the Bank's most significant source of loan funding. FRB's 2022 10-K indicated that "[d]eposits were our primary source of funding and represented ***92%*** of our funding base at December 31, 2022." As of December 31, 2021, the reliance on deposits for funding was even higher, as deposits represented ***97%*** of the funding base.

628. During the Class Period, interest rate risk was one of the most immediate and significant challenges facing FRB. A failure to adequately manage interest rate risk would result in dire consequences for FRB, including the risk of a bank run. When a bank's clients perceive a threat to the bank's liquidity, ability to meet withdrawal requests, or solvency, the clients may choose to withdraw a large majority or the entirety of their deposits with that bank. In the case of FRB, a run on the bank was a significant risk because of the Bank's concentration of uninsured deposits, which are particularly volatile in stress events. The withdrawal of FRB's uninsured deposit accounts would drain the Bank's primary source of funding, further undermining the Bank's liquidity and resulting in even more deposit withdrawals. Without a stable supply of deposit funding, Defendants knew that FRB's liquidity would decline dramatically and FRB's business, results of operations and financial condition would be "materially and adversely" affected, as Defendants recognized in the 2022 10-K. Moreover, due to the fact that a substantial portion of FRB's

loans could not readily be sold on the secondary market (*see* ¶¶135-38), a substantial decrease in deposits would mean that Defendants would have to turn to more expensive sources of funding, such as borrowing from the FHLB, further impacting FRB's financial condition. Therefore, a liquidity crisis resulting from higher interest rates threatened the solvency of the Bank.

629. For these reasons, FRB recognized the management of interest rate risks as a critical operation of the Bank. The DERM Committee Charter identified "Interest Rate/Market Risk" as one of the "Core Risk Categories" facing FRB. The C-suite executives, Board members and multiple committees, including the Investment Committee, the ALMCO, and the DERM and BERM Committees, actively monitored interest rate risk.

630. FRB's primary regulator, the FDIC, conducted ongoing monitoring, targeted reviews, and annual examinations of FRB's management of these risks, and informed Defendants of the results. FRB was also required to conduct quarterly stress testing on its liquidity levels and the impact of rising interest rates on liquidity.

631. Given the importance of deposit and loan growth to FRB, Defendants either knew about the true state of FRB's deposit growth and stability, and the limitations on the Bank's ability to safely originate new loans given the interest rate risks facing the Bank, or were severely reckless in not knowing the true state of affairs.

### G. Defendants Reviewed and Certified the Truth and Accuracy of FRB's Financial Statements Pursuant to the Sarbanes Oxley Act

632. When considered in tandem with all of the allegations set forth above, Defendants' certifications pursuant to §§ 302 and 906 of the Sarbanes Oxley Act of 2002 ("SOX") filed as exhibits to each of FRB's annual Forms 10-K and quarterly Forms 10-Q (the "SOX Certifications") further support an inference of scienter.

633. During the Class Period, Defendants Herbert, Roffler, Tsokova, and Holland each signed the SOX Certifications (i) recognizing that they "are responsible for establishing and maintain disclosure controls and procedures [ ] and internal control over financial reporting" for FRB, (ii) stating that they "designed" and "evaluated" FRB's disclosure controls, and (iii) "designed such internal control over financial reporting . . . to provide reasonable assurance regarding the reliability of financial reporting and

the preparation of financial statements for external purposes in accordance with generally accepted accounting principles."

634. The Defendants further represented in each SOX Certification that they disclosed to FRB's auditors, i.e., Defendant KPMG, and Audit Committee of FRB's Board: (i) "All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information" and (ii) "Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting."

635. The Defendants who signed the SOX Certifications also confirmed that they reviewed the report to which the Certification was attached and that:

> [] Based on my knowledge, this [] report ***does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading*** with respect to the period covered by this report;
>
> [] Based on my knowledge, the financial statements, and other financial information included in this report, ***fairly present in all material respects the financial condition, results of operations and cash flows of the registran***t as of, and for, the periods presented in this report;

636. During the Class Period, Defendants Herbert, Roffler, Tsokova, and Holland signed and filed SOX Certifications as follows:

a. Defendant Roffler certified all of FRB's quarterly and annual reports during the Class Period, including: the Forms 10-Q for the third quarter of 2021, the first, second and third quarters of 2022, and the Forms 10-K for the years 2021 and 2022.

b. Defendant Herbert certified FRB's Form 10-Q for the third quarter of 2021.

c. Defendant Erkan certified FRB's Form 10-Q for the third quarter of 2021.

d. Defendant Tsokova certified FRB's Forms 10-Q for the first and second quarter of 2022 and the Form 10-K for the year 2021.

e. Defendant Holland certified FRB's Form 10-Q for the third quarter of 2022 and the Form 10-K for the year 2022.

637. If Defendants reviewed and evaluated the financial statements as represented in each of the SOX Certifications, they would have been alerted to the devastating impact that rising interest rates were having on FRB's liquidity, stability and solvency.

638. Defendants, therefore, either knew of the material misstatements and omissions contained in FRB's financial statements or failed to perform the required reviews and falsely represented that they had. In either scenario, Defendants' knowing or reckless SOX Certifications further support an inference of their scienter.

## VIII. ADDITIONAL ALLEGATIONS OF KPMG'S SCIENTER

639. In addition to the facts alleged in above, the KPMG's scienter is evidenced by the specific facts discussed below.

640. ***First***, as FRB's independent auditor, KPMG was aware of all material aspects of FRB's financial information.

641. ***Second***, KPMG had access to documents related to the FDIC's supervision of FRB. Section 36(h) of the Federal Deposit Insurance Act (12 U.S.C. § 1831m(h)) required FRB to provide KPMG with copies of the institution's "report of condition," "report of examination," or "any supervisory memorandum of understanding" issued by the Bank's regulators. Through the information contained within these reports, as is reflected in detailed summaries throughout the various Regulator reports issued after the Bank's collapse, KPMG knew or was reckless to disregard the material risks facing FRB, including with respect to potential volatility in FRB's funding sources, FRB's methods for modeling potential deposit outflows, and the increasing mismatches between the duration on FRB's assets relative to liabilities.

642. KPMG learned all of these and other adverse facts in real-time. By way of example only, KPMG learned during the 2021 FDIC examination cycle that the Bank's liquidity stress testing was inadequate as it had "re-categorized approximately $19 billion in deposit inflows during the pandemic from short-term to long-term balances, thereby decreasing aggregate outflow projections under each time horizon of the LST's Realistic Wort Case scenario by nearly $17 billion, or 12 percent of total assets."

643. KPMG also knew of FRB's EVE breaches by October 22, 2022. The FDIC issued FRB its second quarter 2022 Large Insured Depository Institution ("LIDI") report in October 2022, which included the EVE percentage change from the base of -50 percent in the +300 bps scenario and changed the EVE

risk trend from stable to increasing. The EVE breaches were mentioned in the third quarter 2022 LIDI report, issued in January 2023, which noted that the EVE breaches had occurred for two consecutive quarters. The third quarter 2022 LIDI report also noted that "first line personnel were not contemplating any IRR strategy changes and the bank's Enterprise Risk Management (ERM) team decided to continue to measure and monitor the metrics at the ALMCO. Finally, the third quarter 2022 LIDI report noted that the breaches had been escalated to the ALMCO and presented to the BERM Committee and the Board."

644. ***Third***, the inference of KPMG's scienter is strengthened by the fact that it served as the auditor for three banks that failed in rapid succession in the spring of 2023: SVB, Signature Bank, and FRB. As the Financial Times reported on May 3, 2023, "three failed banks had one thing in common: KPMG," The Financial Times reported: "In all three cases, KPMG gave the banks' financial statements a clean bill of health as recently as the end of February." Based upon KPMG's perceived shortcomings, on May 4, 2023, the U.S. Senate Permanent Subcommittee on Investigations demanded communications and records from KPMG regarding its audits of three failed banks. In a May 3, 2023 letter to KPMG CEO Paul Knopp, Senators Richard Blumenthal (D-CT) and Ron Johnson (R-WI) noted that, in the days leading up to these banks' failures, KPMG had "issued these audits without qualification" and sought KPMG's communications with state and federal regulators. At the time of this pleading, the Senate's investigation remains ongoing,

## IX. <u>LOSS CAUSATION</u>

645. As a result of Defendants' materially false or misleading statements, omissions of material fact, and fraudulent course of conduct, FRB's common stock and preferred stock traded at artificially inflated prices during the Class Period. Relying on the integrity of the market price for First Republic common stock and preferred stock, and public information related to FRB, Plaintiffs and other Class members purchased or otherwise acquired FRB common stock and preferred stock at prices that incorporated and reflected Defendants' misrepresentations and omissions of material fact alleged herein. As a result of their purchases or acquisitions of FRB common stock and preferred stock during the Class Period at artificially inflated prices and the removal of that inflation upon the disclosures set forth below, Plaintiffs and the Class suffered economic losses (i.e., damages) under the federal securities laws.

646. Defendants' false or misleading statements, material omissions, and fraudulent course of conduct directly and proximately caused FRB common stock and preferred stock to trade at artificially inflated prices during the Class Period, with its common stock closing as high as $221.91 per share on November 16, 2021. Those misrepresentations and omissions of material fact directly and proximately caused artificial inflation in the price FRB's common stock and preferred stock and/or served to maintain the price of FRB's common stock and preferred stock at an artificially inflated level.

647. Absent Defendants' misrepresentations and omissions of material fact, Plaintiffs and other Class members would not have purchased or otherwise acquired their FRB common stock and preferred stock at the artificially inflated prices at which they traded. It was entirely foreseeable to Defendants that misrepresenting and concealing material facts from the public would artificially inflate the price of FRB's common stock and preferred stock and/or maintain artificial inflation in the price of these securities. The economic losses (i.e., damages suffered by Plaintiffs and other Class members) were a direct, proximate, and foreseeable result of Defendants' materially false or misleading statements and omissions of material fact, which artificially inflated the price of FRB's common stock and preferred stock and/or maintained artificial inflation in FRB's common stock and preferred stock, and the subsequent significant decline in the value of these securities when the relevant truth was revealed and/or the risks previously concealed by Defendants' material misrepresentations and omissions materialized.

648. Plaintiffs and other Class members suffered actual economic loss and were damaged when the material facts and/or the foreseeable risks concealed or obscured by Defendants' misrepresentations and omissions were revealed and/or materialized through the disclosure of new information concerning FRB on: October 14, 2022; March 12, 2023; March 15, 2023; March 16, 2023; March 17, 2023; March 19, 2023; April 24, 2023; April 28, 2023; and May 1-2, 2023. As alleged in this Section, the disclosure of the relevant truth and/or materialization of the foreseeable risks concealed by Defendants' misrepresentations and omissions directly and proximately caused foreseeable declines in the price of FRB's common stock and preferred stock by removing the artificial inflation in the price of these securities that resulted from Defendants' fraud. The timing and magnitude of the declines in the price of FRB's common stock and preferred stock, as detailed herein, negate any inference that the loss suffered by

Plaintiffs and the Class was caused by changed market conditions or other macroeconomic factors unrelated to Defendants' fraudulent conduct.

**A. October 14, 2022**

649. On October 14, 2022, investors began to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized. On that day, FRB announced disappointing 3Q 2022 financial results. In particular, FRB reported that its NII growth slowed to 20.6% year-over-year (down from 24.1% year-over-year growth the prior quarter) and its NIM declined to 2.71% (down from 2.80% the prior quarter). FRB attributed the decrease in NIM to "average funding costs increasing more rapidly than the offsetting increase in the average yields on interest-earning assets." In addition, in its press release, FRB disclosed figures for its checking account balances, which reflected a roughly $8 billion, or 7% decrease, in checking account balances quarter-over-quarter.

650. The same day, FRB held an earnings conference call to discuss its 3Q 2022 financial results. In prepared remarks, Tsokova disclosed that FRB was lowering is 2022 NIM guidance, stating: "We now expect to be at the lower end of our guided net interest margin range of 2.65% to 2.75% for the full year 2022."

651. As a result of these disclosures, the price of FRB's common stock declined by $22.14 per share, more than 16%, from a closing price of $134.73 per share on October 13, 2022, to a closing price of $112.59 per share on October 14, 2022.

652. Analysts flagged FRB's NII and NIM results, lowered NIM guidance, and the significant decline in checking deposit balances as driving FRB's stock price decline. For example, Evercore noted in an October 14, 2022 report the "implications of the sharp increase in funding costs and lower NIM on 4Q and 2023 earnings expectations. Shares off 16% today on the print & subsequent call." In an October 14, 2022 report analyst Wolfe wrote that "FRC shares closed down ~16% . . . on the back of today's disappointing quarter." Similarly, Bloomberg published an October 14, 2022 article titled, "First Republic Sinks By Record Amount on 2022 NIM Forecast."

653. Barclays highlighted in an October 16, 2022 report that the Company "lowered its 2022 NIM outlook from upper-end of 2.65-2.75% to the lower-end implying a much lower anticipated NIM for 4Q22 and heading into next year." The Barclays report also noted that:

> [T]he focus was on its [First Republic's] net interest margin, which compressed 9bps as non-interest bearing [sic] deposit balances dropped 7% and its cost of interest-bearing deposits jumped 63bps. In addition, despite reiterating it expected its 2022 NIM to be at the upper-end of its 2.65-2.75% targeted range at our mid- September Conference, it now anticipates being at the lower-end, implying more meaningful compression in 4Q22.

654. An October 14, 2022 article by Bloomberg reported on First Republic's disclosures, noting that "[t]he nation's banking giants (like JPM, BAC, etc.) have 'sticky' deposit bases and can keep rates low as a result, ***but FRC is having to pay up to retain/grow deposits -- the result is margin weakness during a time when most other people's NIMs are expanding***."

**B. March 12, 2023**

655. On March 12, 2023, investors continued to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized. That day, FRB issued a press release revealing that it needed to access additional capital to shore up its liquidity position, disclosing that it increased its total available, unused liquidity by roughly $10 billion, bringing its total to more than $70 billion.

656. As a result of this disclosure, the price of FRB's common stock declined by $50.55 per share, or more than 37% on Monday, March 13, 2023, from a closing price of $81.76 per share on Friday, March 10, 2023, to a closing price of $31.21 per share March 13, 2023. As set forth in the below table, FRB's preferred stock similarly declined in response to this disclosure:

| Preferred Stock Series | Closing Price on 3/10/2023 | Closing Price on 3/13/2023 | Price Decline | Percentage Decline |
|---|---|---|---|---|
| Series H | $16.47 | $11.80 | $4.67 | 28.3% |
| Series I | $17.40 | $12.74 | $4.65 | 26.7% |
| Series J | $15.65 | $10.34 | $5.31 | 33.9% |
| Series K | $13.77 | $10.28 | $3.49 | 25.3% |
| Series L | $13.93 | $10.28 | $3.65 | 26.2% |
| Series M | $13.90 | $10.18 | $3.72 | 26.7% |
| Series N | $14.70 | $10.32 | $4.38 | 29.8% |

**Table 12: Preferred Stock Price Declines on March 13, 2023**

657. Market commentators linked the decline in FRB's stock price to the Company's disclosure on March 12, 2023. For example, a March 14, 2023 article by Banking Drive stated that FRB's share price decline on Monday, March 13 "may have come in reaction to a statement First Republic made Sunday indicating it could access more than $70 billion in unused liquidity from sources including the Federal Reserve and JPMorgan Chase."

**C. March 15, 2023**

658. On March 15, 2023, investors continued to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized. On that date, S&P downgraded its First Republic: (1) long-term issuer credit rating to "BB+" from "A-" (a four-notch downgrade); (2) senior unsecured issue rating to "BB+;" (3) subordinated stock issue rating to "BB-;" and (4) preferred stock issue rating to "B." Explaining the downgrades, S&P stated, "***we believe the risk of deposit outflows is elevated at First Republic***," and that "if deposit outflows continue, we expect First Republic would need to rely on its more costly wholesale borrowings. This would encumber its balance sheet and hurt its modest profitability." S&P "placed [its] ratings on First Republic on CreditWatch with negative implications," which "reflects the lack of visibility on the level and pace of deposit volatility and the potential for higher usage of more costly wholesale funding."

659. Also on March 15, 2023, Fitch downgraded First Republic's credit rating. Specifically, Fitch downgraded its First Republic "Long-Term Issuer Default Rating (IDR)" to "BB" from "A-," and downgraded First Republic's "Short-Term IDR" to "B" from "F1". Fitch also placed First Republic's ratings on "Rating Watch Negative." Fitch explained that it considered:

> FRC's deposit base as concentrated given the strategic focus on banking wealthy and financially sophisticated customers in select urban coastal markets in the U.S. This not only drives a high proportion of uninsured deposits as a percentage of total deposits but also results in deposits that can be less sticky in times of crisis or severe stress.

660. As a result of these disclosures, the price of FRB common stock declined by $8.47 per share, or more than 21%, from a closing price of $39.63 per share on March 14, 2023, to a closing price of $31.16 per share on March 15, 2023. FRB's preferred stock declined in response to this disclosure as follows:

| Preferred Stock Series | Closing Price on 3/14/2023 | Closing Price on 3/15/2023 | Price Decline | Percentage Decline |
|---|---|---|---|---|
| Series H | $12.32 | $9.95 | $2.37 | 19.2% |
| Series I | $12.99 | $11.27 | $1.72 | 13.2% |
| Series J | $10.54 | $9.18 | $1.36 | 12.9% |
| Series K | $10.07 | $8.24 | $1.83 | 18.1% |
| Series L | $10.18 | $8.74 | $1.44 | 14.1% |
| Series M | $9.96 | $8.60 | $1.36 | 13.6% |
| Series N | $10.35 | $8.76 | $1.59 | 15.3% |

**Table 13: Preferred Stock Price Declines on March 15, 2023**

661. Media outlets attributed FRB's stock price decline to the additional information concerning the deterioration of FRB's financial position and liquidity revealed in the S&P and Fitch downgrades. For example, AdvisorHub wrote in a March 15, 2023 article that "First Republic Bank shares fell as much as 26% on Wednesday morning after S&P Global cut their credit rating to BB+ from A- amid concerns about deposit outflows." Bloomberg likewise wrote in a March 15, 2023 article that First Republic's "stock fell 21% Wednesday in New York." Another AdvisorHub article published on March 16 stated that "[o]n Wednesday [March 15], First Republic shares sank 21% as its credit rating was cut to junk by S&P Global Ratings and Fitch Ratings."

662. Analysts also seized on the information in the ratings downgrades as signaling additional risk to FRB's liquidity and stability. For example, in a March 15, 2023 report UBS wrote that "[g]iven the ratings agencies change in debt rating, we believe the business fundamentals have changed for FRC. Until we gain sufficient clarity, we are placing our PT and rating under review." A March 16, 2023 analyst report from Barclays noted that "[t]he downgrades from two major credit-rating companies officially move FRC to the high-yield market."

**D. March 16, 2023**

663. On March 16, 2023, investors continued to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized. On this date, financial media outlets reported that eleven large U.S. banks would deposit $30 billion with FRB to provide the Company additional liquidity with an initial term of 120 days at market rates.

664. The same day, FRB also issued a press release disclosing that: (1) it had a cash position of just $34 billion (not including the $30 billion of deposits from large U.S. banks); (2) it had significantly drawn on its borrowing capacity, including borrowing between $20 and $109 billion from the Federal Reserve at an overnight rate of 4.75%; and (3) since the close of business on March 9, FRB increased short-term borrowing from the Federal Home Loan Bank by $10 billion, at a rate of 5.09%. FRB also disclosed in its March 16 press release that it was seeking to reduce its borrowings and evaluating the composition and size of its balance sheet going forward, and was suspending its common stock dividend.

665. As a result of these disclosures, the price of FRB common stock declined by $11.24 per share, or nearly 33%, from a closing price of $34.27 per share on March 16, 2023, to a closing price of $23.03 per share on March 17, 2023. FRB's preferred stock declined in response to this disclosure as follows:

| Preferred Stock Series | Closing Price on 3/16/2023 | Closing Price on 3/17/2023 | Price Decline | Percentage Decline |
|---|---|---|---|---|
| Series H | $14.01 | $9.36 | $4.65 | 33.2% |
| Series I | $15.62 | $10.15 | $5.50 | 35% |
| Series J | $13.50 | $9.01 | $4.49 | 33.2% |
| Series K | $12.71 | $8.65 | $4.06 | 31.9% |
| Series L | $13.00 | $8.85 | $4.15 | 31.9% |
| Series M | $12.95 | $9.06 | $3.98 | 30% |
| Series N | $13.20 | $8.00 | $5.20 | 39.3% |

**Table 14: Preferred Stock Price Declines on March 16, 2023**

666. Analysts seized on these March 16 disclosures as revealing additional detail about the problems facing FRB. For example, in a March 16, 2023 report by Evercore titled, "Avengers: Endgame... ?," the analyst wrote that "the $30B infusion likely stabilizes the bank for now amid slowing deposit outflows," and that the move was "likely a temporary solution – particularly given the noted 120 day window." Morningstar similarly stated in a March 17, 2023 report that "[d]isclosures made by First Republic regarding this latest liquidity injection remove all doubts that a significant runoff of deposits has occurred. . . . Based on the potential range of deposits that may have fled, we believe the bank could already be unprofitable on a go-forward basis." Wolfe research wrote in a March 23, 2023 report titled, "FRC: Between Scylla and Charybdis," that it was lowering its estimates "to [r]eflect [l]oss of $70bn in [d]eposits."

667. Media outlets noted that FRB's common stock price declined as a result of these March 16 disclosures. For example, Bloomberg wrote in a March 16, 2023 article that FRB shares "slipped in extended New York trading after the bank announced it was suspending its dividend." Reuters wrote in a March 17, 2023 article that FRB's stock price "tumbled nearly 33% on Friday" "despite a rescue package with $30 billion in deposits injected by large U.S. banks." Similarly, in a March 17, 2023 article by Bloomberg wrote that "First Republic shares closed down 33% to $23.03 after slumping as much as 35% in intraday trading Friday," and noted that analysts believed the $30 billion "[d]eposit injection [wa]s a 'temporary solution.'" The Financial Times likewise wrote in a March 17 article titled, "Bank stocks slide after First Republic rescue fails to reassure investors," that "First Republic's shares closed Friday down 33 per cent."

**E. March 17 and March 19, 2023**

668. On Friday, March 17 and Sunday, March 19, 2023, investors continued to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized, including through additional credit downgrades from ratings agencies. In particular, on March 17, 2023, Moody's downgraded First Republic's credit rating to junk status and noted that Moody's could issue a further downgrade, citing "the deterioration in the bank's financial profile and the significant challenges First Republic Bank faces over the medium term in light of its increased reliance on short-term and higher cost wholesale funding due to deposit outflows." The ratings agency wrote: "Moody's believes the high cost of these borrowings, combined with the high proportion of fixed-rate assets at the bank, is likely to have a large negative impact on First Republic's core profitability in coming quarters." Moody's further noted that, notwithstanding First Republic's receipt of a $30 billion deposit infusion, "the . . . path for the bank back to sustained profitability remains uncertain." In addition, Moody's explained that First Republic "faces the eventual need to sell assets to repay these obligations" and "[t]his could lead to the crystallization of the unrealized losses on its AFS [available-for-sale] or HTM [held-to-maturity] securities." But, Moody's warned "[e]ven if the crystallization of unrealized losses is avoided, . . . the impact on [First Republic's] profitability from higher interest expense will still be significant."

669. Then, on March 19, 2023, S&P downgraded First Republic's: long-term issuer credit rating into "junk" territory, from "BB+" to "B+;" senior unsecured issue rating to "B+;" subordinated issue rating to "B-;" and preferred stock issue rating to "CCC." S&P stated that First Republic "faces substantial long-term challenges" and expressed concern that the Company had "tapped higher-cost secured funding extensively over the last week." S&P further stated:

> "The deposit infusion from 11 U.S. banks, the company's disclosure that borrowings from the Fed range from $20 billion to $109 billion and borrowings from the Federal Home Loan Bank (FHLB) increased by $10 billion, and the suspension of its common stock dividend collectively lead us to the view that the bank was likely under high liquidity stress with substantial deposit outflows over the past week."

670. As a result of these disclosures on March 17, 2023, and March 19, 2023, the price of FRB common stock declined by $10.85 per share, or more than 47%, from a closing price of $23.03 per share on March 17, 2023, to a closing price of $12.18 per share on Monday, March 20, 2023. FRB's preferred stock declined in response to this disclosure as follows:

| Preferred Stock Series | Closing Price on 3/17/2023 | Closing Price on 3/20/2023 | Price Decline | Percentage Decline |
|---|---|---|---|---|
| Series H | $9.36 | $7.31 | $2.05 | 21.9% |
| Series I | $10.15 | $8.01 | $2.14 | 21% |
| Series J | $9.01 | $6.94 | $2.07 | 22.9% |
| Series K | $8.65 | $6.85 | $1.80 | 20.8% |
| Series L | $8.85 | $6.95 | $1.90 | 21.4% |
| Series M | $9.06 | $6.92 | $2.14 | 23.6% |
| Series N | $8.00 | $6.90 | $1.10 | 13.7% |

**Table 15: Preferred Stock Price Declines on March 20, 2023**

671. Media outlets quickly flagged the information reflected in the credit downgrades as driving First Republic's stock price decline. For example, a March 17, 2023 Bloomberg article noted that, following Moody's downgrade, First Republic's "share price tumbled 33% on Friday, an indication that investors remain unsatisfied."

672. Bloomberg likewise wrote in a March 20, 2023 article that FRB "shares tumbled 47% to an all-time low after S&P Global lowered its credit rating for the second time in a week and as executives from major banks discussed fresh efforts to stabilize the lender." NPR also noted in a March 20, 2023 article that "First Republic Bank shares sank more than 45% to another record low on Monday," and that,

"[t]he California-based lender was downgraded for a second time this week over the weekend by S&P Global, contributing to the declines on Monday."

673. While the market digested the news contained in the March 17 and March 19, 2023 credit downgrades, media reports surfaced about the amount of deposit outflows at FRB, along with news that the Company was looking to sell assets in order to raise cash and bolster its liquidity position. Specifically, on March 19, 2023, The Wall Street Journal reported that "[c]ustomers have pulled some $70 billion in deposits [from FRB], almost 40% of its total, according to people familiar with the matter." On March 20, 2023, the Financial Times reported that "[t]he continued slide in First Republic's share price on Monday came after its credit rating was cut for the second time in a week following a flight of depositors who pulled tens of billions of dollars from their accounts." The article stated that "First Republic, which is battling to restore investor confidence, has lost about $70bn of deposits since the start of the year when they totaled $176.4bn, said one person briefed on the matter." Another Financial Times article on this date, titled, "Small Banks, Big Reach," reported that "[t]he stock of California-based First Republic Bank has sold off sharply; it is reportedly planning to place shares privately to shore up capital, after it was forced to meet cash needs with pricey loans from the Fed and deposits from larger banks."

**F. April 24, 2023**

674. On April 24, 2023, investors continued to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized. On this date, FRB issued a press release and held an earnings calls regarding its 1Q 2023 financial results, revealing the extent of the deposit outflows in March, and the fact that the Bank's deposit base had not recovered those losses. Following earlier reports speculating about the amount of deposit outflows at the Bank, FRB disclosed that total deposits had declined roughly 40% in the first quarter compared to 4Q 2022, and 35.5% year-over-year, to $104.5 billion. Significantly, these figures ***included*** the $30 billion injection of deposits from 11 large U.S. banks FRB received in March 2023, further signaling to the market that the Company's deposit base remained highly unstable.

675. In the press release Defendants further disclosed:

> [T]he Bank is taking actions to strengthen its business and restructure its balance sheet. These actions include efforts to increase insured deposits, reduce borrowings from the Federal Reserve Bank, and decrease loan balances to correspond with the reduced reliance

> on uninsured deposits. Through these actions, the Bank intends to reduce the size of its balance sheet, reduce its reliance on short-term borrowings, and address the challenges it continues to face. . . .
>
> The Bank is also taking steps to reduce expenses, including significant reductions to executive officer compensation, condensing corporate office space, and reducing non-essential projects and activities. The Bank also expects to reduce its workforce by approximately 20-25% in the second quarter.
>
> In addition to these actions, the Bank is pursuing strategic options to expedite its progress while reinforcing its capital position.

676. In the press release, Defendant Holland stated: "***With the closure of several banks in March, we experienced unprecedented deposit outflows***."

677. During FRB's 1Q 2023 conference call, Roffler stated:

> As the industry events unfolded in March, we experienced unprecedented deposit outflows. . . . As of March 31, and excluding deposits from the large banks, insured deposits were $54.6 billion or 73% of total deposits. Uninsured deposits were $19.8 billion or 27% of total deposits.
>
> In response to the unprecedented deposit outflows we experienced toward the middle of March 2023, we accessed additional liquidity . . . .

678. During the call, Roffler expanded on FRB's plan to address its liquidity problems, stating:

> First, we are focusing on increasing our deposits. We are doing so by focusing on insured deposits from new consumers, small businesses and nonprofit organizations. . . . Going forward, uninsured deposits will remain a much smaller percentage of total deposits than in the past.
>
> Second, we are working to decrease our loan balances to correspond with our reduced reliance on uninsured deposits. . . . Through these actions, we intend to reduce the size of our balance sheet, reduce our reliance on short-term borrowings and address the challenges we continue to face.
>
> Third, we are taking steps to meaningfully reduce our expenses to align with our focus on reducing the size of the balance sheet. . . .
>
> With reductions in projects, activities, and loan volume, we expect to reduce the size of our workforce by approximately 20% to 25% during the second quarter.

679. In addition, on April 26, 2023, Barron's reported that First Republic was looking to shore-up its liquidity by selling $50 billion to $100 billion of assets, including long-dated mortgages and securities, in an effort to shrink its balance sheet and address the Company's asset-liability mismatch.

680. As a result of these disclosures, the price of FRB's common stock declined by $10.31 per share, or more than 64%, from a closing price of $16.00 per share on April 24, 2023, to a closing price of $5.69 per share on April 26, 2023. FRB's preferred stock declined in response to this disclosure as follows:

| Preferred Stock Series | Closing Price on 4/24/2023 | Closing Price on 4/26/2023 | Price Decline | Percentage Decline |
|---|---|---|---|---|
| Series H | $6.99 | $2.42 | $4.57 | 65.3% |
| Series I | $7.16 | $2.57 | $4.59 | 64.1% |
| Series J | $6.42 | $2.00 | $4.42 | 68.8% |
| Series K | $6.42 | $1.70 | $4.72 | 73.5% |
| Series L | $6.34 | $1.80 | $4.58 | 72.2% |
| Series M | $6.30 | $1.71 | $4.59 | 72.8% |
| Series N | $6.45 | $2.27 | $4.18 | 64.8% |

**Table 16: Preferred Stock Price Declines on April 26, 2023**

681. Analysts seized on the disclosures in FRB's press release and earnings call, and reports that the Company was looking to offload assets, linking them to the decline in FRB's stock price. For example, in an April 24, 2023 report, Wells Fargo wrote that "FRC's existence still very much hangs in the balance, and we remain on the sidelines," and expressed surprise over the size of First Republic's deposit outflows, noting that "[e]xcluding the large bank deposits, ***balances were down roughly $100B, much worse than Street estimates, and a level that could prove very hard to come back from***."

682. CNBC noted in an April 28, 2023 article that "[s]hares of First Republic closed at $16 on Monday [April 24] before the bank reported its first-quarter results, which showed a decline in deposits of about 40%. The stock fell more than 60% over the next two days, hitting a new all-time low."

683. The Los Angeles Times wrote in an April 26, 2023 article that FRB "lost an additional 29.8%" that day, "after nearly halving the day before. That's when it gave details about how many customers bolted amid last month's turmoil in the industry." Similarly, Fortune wrote in an April 26, 2023 article that:

> First Republic Bank's stock continued to slide Wednesday [April 26], an ongoing rout that has erased more than 50% of its value just this week on concerns about the bank's financial health in the wake of two other bank collapses.
>
> Shares slumped nearly 20% in afternoon trading, following an even more severe tumble Tuesday, after it revealed that depositors withdrew more than $100 billion last month . . . .

684. In an April 26, 2023 article, Barron's wrote: "Shares of First Republic Bank tumbled again Wednesday [April 26, 2023] as investors remained skeptical that the San Francisco-based bank will be able to complete a turnaround." The Barron's article explained that:

> First Republic . . .' shares dived nearly 20% Wednesday as reports emerged about the bank's efforts to avoid collapse. On Tuesday, the stock had plummeted 49% to close at a record low, after the bank said Monday that its deposits had declined more than 40% in the first quarter and revealed plans to cut as much as 25% of its workforce.
>
> First Republic is considering asking banks involved in its $30 billion rescue package last month, including JPMorgan Chase (JPM), to buy bonds from the bank at above-market rates, according to a CNBC report that cited banks familiar with the proposal."

**G. April 28, 2023**

685. On April 28, 2023, investors continued to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized, when numerous media outlets reported that FRB would likely enter receivership with the FDIC, and that the FDIC had solicited bids for FRB from several financial institutions.

686. As a result of these disclosures, the price of FRB's common stock declined by $2.68 per share, or more than 43.2%, from a closing price of $6.19 on April 27, 2021, to a closing price of $3.51 per share on April 28, 2023. FRB's preferred stock declined in response to this disclosure as follows:

| Preferred Stock Series | Closing Price on 4/27/2023 | Closing Price on 4/28/2023 | Price Decline | Percentage Decline |
|---|---|---|---|---|
| Series H | $2.91 | $1.98 | $.98 | 31.9% |
| Series I | $3.11 | $1.96 | $1.15 | 36.9% |
| Series J | $2.32 | $1.63 | $.69 | 29.7% |
| Series K | $2.24 | $1.64 | $.60 | 26.7% |
| Series L | $2.18 | $1.70 | $.48 | 22% |
| Series M | $2.11 | $1.73 | $.38 | 18% |
| Series N | $2.42 | $1.76 | $.66 | 27.2% |

**Table 17: Preferred Stock Price Declines on April 28, 2023**

687. Media outlets attributed FRB's stock price decline to these disclosures. In an April 28, 2023 article, CNBC reported that "[s]ources told CNBC's David Faber that the most likely outcome for the troubled bank is for the Federal Deposit Insurance Corporation to take it into receivership. The stock slid 43% and was halted for volatility multiple times."

688. The Financial Post wrote in an April 28, 2023 article that "[s]hares of First Republic Bank tumbled nearly 32 per cent on April 28 after a CNBC report said the troubled lender was most likely headed for receivership under the U.S. Federal Deposit Insurance Corporation (FDIC)."

689. Similarly, the Financial Times reported in an April 28, 2023 article that "[s]hares in First Republic plunged 49 per cent in after-hours trading on Friday as the embattled California bank prepared to end another week of turmoil without a long-term plan for its survival." The article further stated that First Republic's "shares had already fallen 43 per cent during normal trading hours on Friday." Likewise, Barron's wrote in an April 28, 2023 article that "[s]hares of regional lender First Republic Bank fell more than 45% after hours Friday as concerns mounted about the future of the bank and a possible seizure by the Federal Deposit Insurance Corporation."

**H. May 1-2, 2023**

690. On May 1-2, 2023, investors continued to learn the relevant truth concealed by Defendants' misrepresentations and omissions, and the risks previously concealed by Defendants' fraud gradually materialized. On May 1, 2023, news reports surfaced that the CDFPI had closed FRB and appointed the FDIC as receiver, and that the FDIC was entering into a purchase and assumption agreement with JPMorgan to assume all of the deposits and substantially all of the assets of FRB, meaning JP Morgan was effectively taking over the Bank. Also on May 1, 2023, the NYSE halted shares of FRB effective as of 6:39 a.m. ET.

691. Then, on May 2, the NYSE announced it was immediately suspending trading in FRB common stock and preferred stock and starting proceedings to delist those shares.

692. Following these additional disclosures, the price of FRB's common stock declined by $3.18 per share, or 90.6%, from a closing price of $3.51 per share on April 28, 2023, and May 2, 2023 to a closing price of $0.33 per share on May 3, 2023, when trading of FRB shares resumed over-the-counter after being delisted from the NYSE. FRB's preferred stock declined in response to this disclosure as follows:

| Preferred Stock Series | Closing Price on 4/28/2023 | Closing Price on 5/3/2023 | Price Decline | Percentage Decline |
|---|---|---|---|---|
| Series H | $1.98 | $.05 | $1.93 | 97.4% |
| Series I | $1.96 | $.06 | $1.90 | 98.2% |
| Series J | $1.63 | $.03 | $1.60 | 97.9% |
| Series K | $1.64 | $.03 | $1.61 | 97.9% |
| Series L | $1.70 | $.04 | $1.66 | 97.9% |
| Series M | $1.73 | $.03 | $1.70 | 98.2% |
| Series N | $1.76 | $.04 | $1.72 | 98% |

**Table 18: Preferred Stock Price Declines on May 3, 2023**

693. In total, FRB's common stock price declined ***99.8***% between October 13, 2021, the first day of the Class Period, and May 3, 2023, virtually eliminating the value of FRB common stock and causing Lead Plaintiff and other Class members damages. FRB's preferred stock declined between October 13, 2021 and May 3, 2023 as follows:

| Preferred Stock Series | Closing Price on 10/13/2021[10] | Closing Price on 5/3/2022 | Percentage Decline During Class Period |
|---|---|---|---|
| Series H | 25.78 | $.05 | 99.8% |
| Series I | 26.48 | $.06 | 99.7% |
| Series J | 18.53 | $.03 | 99.8% |
| Series K | 25.11 | $.03 | 99.9% |
| Series L | 25.24 | $.04 | 99.8% |
| Series M | 24.35 | $.03 | 99.8% |
| Series N | 24.93 (11/13/2021) | $.04 | 99.8% |

**Table 19: Preferred Stock Total Price Declines During the Class Period**

## X. <u>CLASS ACTION ALLEGATIONS</u>

694. Plaintiffs bring this action as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the Class consisting of all persons and entities who purchased or acquired FRB common stock or preferred stock between October 13, 2021, and April 28, 2023, both dates inclusive (the "Class"). Excluded from the Class are Defendants and their families, the officers, directors, and affiliates of FRB, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which FRB has or had a controlling interest.

695. The members of the Class are so numerous that joinder of all members is impracticable. FRB common stock was actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are thousands of members in the proposed Class because over 186 million shares of FRB common stock and over 3.6 million shares of preferred stock were outstanding during the Class Period. Record owners and other members of the Class may be identified from records maintained by FRB or its

[10] FRB's Series N preferred stock began trading on November 22, 2021.

transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

696. Plaintiffs' claims are typical of Class members' claims, as all Class members are similarly affected by Defendants' wrongful conduct in violation of federal law as complained of herein.

697. Plaintiffs will fairly and adequately protect the Class members' interests and have retained counsel competent and experienced in class and securities litigation.

698. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

a. whether Defendants violated the Exchange Act and Rule 10b-5 promulgated thereunder;

b. whether Defendants made materially false or misleading statements or omissions of material fact during the Class Period;

c. whether Defendants acted with the requisite level of scienter;

d. whether and to what extent the price of FRB common stock and preferred stock was artificially inflated during the Class Period because of the materially misleading statements and omissions alleged herein;

e. whether the market for FRB common stock and preferred stock was efficient; and

f. whether the members of the Class have sustained damages as a result of the conduct complained of herein and, if so, the appropriate measure of damages.

699. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## XI. THE FRAUD ON THE MARKET PRESUMPTION OF RELIANCE APPLIES

700. At all relevant times, the market for FRB's common stock and preferred stock was an efficient market for the following reasons, among others:

a. FRB's common stock and preferred stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

b. As a regulated issuer, FRB filed periodic public reports with the FDIC;

c. FRB regularly and publicly communicated with investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

d. FRB was followed by several securities analysts employed by major brokerage firm(s) who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firm(s). Each of these reports was publicly available and entered the public marketplace.

701. As a result of the foregoing, the market for FRB's common stock and preferred stock promptly digested current information regarding FRB from all publicly available sources and reflected such information in the price of FRB's common stock and preferred stock. Under these circumstances, all purchasers and acquirers of FRB's common stock or preferred stock during the Class Period suffered similar injury through their purchase or acquisition of FRB's common stock or preferred stock at artificially inflated prices and the presumption of reliance applies.

702. Further, at all relevant times, Plaintiffs and all other Class members reasonably relied upon Defendants to disclose material information as required by law and in the Company's FDIC filings. Plaintiffs and other Class members would not have purchased or otherwise acquired FRB common stock or preferred stock at artificially inflated prices if Defendants had disclosed all material information as required. Thus, to the extent that Defendants concealed or improperly failed to disclose material facts with regard to the Company and its business, Plaintiffs and other Class members are entitled to a presumption of reliance in accordance with *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972).

## XII. THE STATUTORY SAFE HARBOR AND BESPEAKS CAUTION DOCTRINE ARE INAPPLICABLE

703. The PSLRA's statutory safe harbor and the bespeaks caution doctrine applicable to forward-looking statements under certain circumstances does not apply to any of the materially false and misleading statements alleged herein.

704. None of the statements complained of herein was a forward-looking statement. Rather, each was a historical statement or a statement of purportedly current facts and conditions at the time such statement was made.

705. To the extent that any of the materially false and misleading statements alleged herein can be construed as forward-looking, any such statement was not accompanied by meaningful cautionary language identifying important facts that could cause actual results to differ materially from those in the statement.

706. To the extent that the statutory safe harbor does apply to any forward-looking statement alleged herein, Defendants are liable for any such statement because at the time such statement was made, the particular speaker actually knew that the statement was false or misleading, and/or the statement was authorized and/or approved by an executive officer of FRB who actually knew that such statement was false when made.

707. Moreover, to the extent that any Defendant issued any disclosures purportedly designed to "warn" or "caution" investors of certain "risks," those disclosures were also materially false and/or misleading when made because they did not disclose that the risks that were the subject of such warnings had already materialized and/or because such Defendant had the requisite state of mind.

## XIII. CAUSES OF ACTION

### COUNT I

### Violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5 Promulgated Thereunder Against Defendants Herbert, Erkan, Roffler, Tsokova, Selfridge, and Holland

708. Plaintiffs incorporate ¶¶1-707 by reference. This Count is brought against these Defendants pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, on behalf of Plaintiffs and all other members of the Class.

709. During the Class Period, these Defendants violated §10(b) of the Exchange Act and SEC Rule 10b-5(b) by disseminating or approving the false statements specified above, which they knew or recklessly disregarded were false or misleading in that the statements contained misrepresentations and/or failed to disclose material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

710. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid for or otherwise acquired FRB common stock or preferred stock at inflated prices. Plaintiffs and the Class would not have purchased or otherwise acquired FRB common stock or preferred stock at such prices, or at all, had they been aware that the market prices for FRB common stock and preferred stock had been artificially inflated by Defendants' fraudulent course of conduct.

711. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiffs and the Class suffered damages in connection with their respective purchases or acquisitions of FRB common stock or preferred stock during the Class Period.

712. The claim is brought within the applicable statute of limitations.

## COUNT II

### Violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5 Promulgated Thereunder Against Defendants Herbert, Erkan, Roffler, Tsokova, Selfridge, and Holland

713. Plaintiffs incorporate ¶¶1-712 by reference. This Count is brought against these Defendants pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, on behalf of Plaintiffs and all other members of the Class.

714. During the Class Period, these Defendants violated Section 10(b) of the Exchange Act and SEC Rules 10b-5(a) and (c) in that they employed devices, schemes, and artifices to defraud and carried out a plan, scheme, and course of conduct which operated as a fraud and deceit upon those who purchased or otherwise acquired the Bank's common stock or preferred stock during the Class Period.

715. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid for or otherwise acquired FRB common stock or preferred stock at inflated prices. Plaintiffs and the Class would not have purchased or otherwise acquired FRB common stock or preferred

stock at such prices, or at all, had they been aware that the market prices for FRB common stock and preferred stock had been artificially inflated by Defendants' fraudulent course of conduct.

716. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the Class suffered damages in connection with their respective purchases or acquisitions of FRB common stock or preferred stock during the Class Period.

717. The claim is brought within the applicable statute of limitations.

## COUNT III

### Violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5 Promulgated Thereunder Against Defendant KPMG

718. Plaintiffs incorporate ¶¶1-717 by reference. This Count is brought against Defendant KPMG pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, on behalf of Plaintiffs and all other members of the Class.

719. During the Class Period, Defendant KPMG violated §10(b) of the Exchange Act and SEC Rule 10b-5(b) by disseminating or approving the false statements specified above, which they knew or recklessly disregarded were misleading in that the statements contained misrepresentations and/or failed to disclose material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

720. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid for or otherwise acquired FRB common stock or preferred stock at inflated prices. Plaintiffs and the Class would not have purchased or otherwise acquired FRB common stock or preferred stock at such prices, or at all, had they been aware that the market prices for FRB common stock and preferred stock had been artificially inflated by Defendants' fraudulent course of conduct.

721. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the Class suffered damages in connection with their respective purchases or acquisitions of FRB common stock or preferred stock during the Class Period.

722. The claim is brought within the applicable statute of limitations.

**COUNT IV**

**Violation of Section 20(a) of the Exchange Act Against Defendants Herbert, Erkan, Roffler, Tsokova, Selfridge, and Holland**

723. Plaintiffs incorporate ¶¶1-722 by reference. This Count is brought against these Defendants pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), on behalf of Plaintiffs and all other members of the Class.

724. These Defendants each acted as a controlling person of FRB within the meaning of Section 20(a) of the Exchange Act. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Bank's operations, and/or intimate knowledge of the false statements filed by the Bank with the FDIC and disseminated to the investing public, these Defendants had the power to influence and control—and did influence and control, directly or indirectly—the decision-making of FRB, including the content and dissemination of the various false and/or misleading statements alleged herein. These Defendants were provided with or had unlimited access to copies of the Bank's reports and other statements alleged by Plaintiffs to be false or misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

725. In particular, these Defendants had direct and supervisory involvement in the day-to-day operations of FRB and, therefore, are presumed to have had the power to control or influence the activities giving rise to the securities violations as alleged herein, and exercised the same.

726. As described above, the Individual Defendants each violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable under Section 20(a) of the Exchange Act. As a direct and proximate result of this wrongful conduct, Plaintiffs and Class members suffered damages in connection with their purchases or acquisitions of FRB common stock during the Class Period.

727. The claim is brought within the applicable statute of limitations.

**COUNT V**

**Violation of Section 20A of the Exchange Act for Insider Trading Against Defendant Herbert**

728. Lead Plaintiff incorporates ¶¶1-727 by reference. This Count is asserted for violations of § 20A of the Exchange Act, 15 U.S.C. § 78t-1, on behalf of Lead Plaintiff and all other members of the Class who purchased shares of FRB common stock contemporaneously with the sale of FRB common stock by Defendant Herbert while he was in possession of material, nonpublic information, as alleged herein, including information concerning, inter alia, FRB's unstable deposits, nonviable business model, and heightened interest rate risk and liquidity risk.

729. Section 20A of the Exchange Act provides that:

> Any person who violates any provision of . . . [the Exchange Act] or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable . . . to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased . . . securities of the same class.

730. As set forth herein, Defendant Herbert violated Section 10(b) of the Exchange Act, Rule 10b-5, and Section 20(a) of the Exchange Act for the reasons stated in Counts I-II and IV above. Additionally, Defendant Herbert further violated Section 10(b) of the Exchange Act, Rule 10b-5, and Rule 10b5-1 (17 C.F.R. § 240.10b5-1) by selling shares of FRB common stock while in possession of material non-public information, as alleged herein, which information he had a duty to disclose, and which he failed to disclose in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, as more fully alleged herein.

731. Contemporaneously with Defendant Herbert's insider sale of FRB common stock, Lead Plaintiff and other members of the Class purchased shares of FRB common stock on a national securities exchange and in an open and efficient market, while Defendant Herbert was in possession of adverse material non-public information, as alleged herein, that he had a duty to disclose but failed to disclose.

732. In particular, Lead Plaintiff purchased FRB common stock contemporaneously with Defendant Herbert as follows.

| Defendant Herbert's Sale | | | | Lead Plaintiff's Contemporaneous Purchase | | |
|---|---|---|---|---|---|---|
| | **Sale Date** | **Shares Sold** | **Price Per Share** | **Purchase Date** | **Shares Purchased** | **Price Per Share** |
| **Defendant Herbert** | 2/22/2023 | 15,000 | $123.51 | 2/27/2023 | 200,000 | $122.06 |

733. Lead Plaintiff and other members of the Class have been damaged as a result of the violations of the Exchange Act alleged herein.

734. By reason of the violations of the Exchange Act alleged herein, Defendant Herbert is liable to Lead Plaintiff and other members of the Class who purchased shares of FRB common stock contemporaneously with Defendant Herbert's sales of FRB common stock during the Class Period.

735. Lead Plaintiff and other members of the Class, who purchased contemporaneously with Defendant Herbert's insider sale of FRB securities, seek disgorgement by Defendant Herbert of the profits gained or losses avoided from Defendant Herbert's sales in FRB common stock contemporaneous with Lead Plaintiff and the other members of the Class.

736. This action was brought within five years after the date of the last transaction that is the subject of Defendant Herbert's violations of Section 20A, and, with respect to the underlying violations of the Exchange Act alleged in this Count and in Counts I and II above, was brought within five years after the date of the last transaction that violated Section 20A of the Exchange Act.

## XIV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, prays for relief and judgment, as follows:

A. determining that this action is a proper class action pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class as defined herein, and a certification of Plaintiffs as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointment of Plaintiffs' counsel as Lead Counsel;

B. awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of the wrongdoing of all Defendants, in an amount to be proven at trial, including pre-judgment and post-judgment interest thereon;

C. awarding Plaintiffs and other members of the Class their costs and expenses in this litigation, including reasonable attorneys' fees and experts' fees and other costs and disbursements; and

D. awarding Plaintiffs and the other Class members such other relief as this Court may deem just and proper.

## XV. JURY TRIAL DEMANDED

Plaintiffs demands a trial by jury.

Dated: February 13, 2024

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