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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE SVB FINANCIAL GROUP SECURITIES LITIGATION	Master File No. 5:23-cv-01097-NW Consolidated Case Nos. 5:23-cv-01173-JD; 5:23-cv-01228-JD; 5:23-cv-01697-JD; 5:23-cv-01962-JD **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND THE COMPLAINT** <u>CLASS ACTION</u> Date: July 27, 2026 Time: 1:30 P.M. Courtroom: 3, 5th Floor Judge: Hon. Noël Wise

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE, that on July 27, 2026, at 1:30 P.M., in the courtroom of the Honorable Noël Wise, United States District Judge for the Northern District of California, located at 280 South 1st Street, 5th Floor, Courtroom 3, San Jose, California 95113, Lead Plaintiffs Norges Bank and Sjunde AP-Fonden (together, "Lead Plaintiffs") and additional plaintiffs Asbestos Workers Philadelphia Welfare and Pension Fund and Heat & Frost Insulators Local 12 Funds (collectively with Lead Plaintiffs, "Plaintiffs"), by and through their counsel, will move the Court for an order granting Plaintiffs leave to file an amended complaint (the "Amendment" or "Amended Complaint") pursuant to the Federal Rules of Civil Procedure.

Through this Motion, Plaintiffs seek leave to amend the Complaint for the limited purpose of adding an additional claim against Defendant KPMG LLP ("KPMG") for its violation of Section 10(b) of the Exchange Act. Plaintiffs do not seek to add any new parties, remove any existing parties, or alter the Class Period. This Motion is based upon this notice, the accompanying memorandum of points and authorities, the accompanying Declaration and exhibits thereto, and such other matters as the Court may consider.

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Whether Plaintiffs should be granted leave to amend the Complaint for the limited purpose of adding an additional claim against Defendant KPMG LLP ("KPMG") for its violation of Section 10(b) of the Exchange Act.

I. INTRODUCTION

In its motion to dismiss order, the Court found that the Complaint states a claim against KPMG for its violations of Section 11 of the Securities Act in connection with its audit opinions of SVB's financial statements for FY 2020 and 2021, which were incorporated by reference into the offering materials for SVB's bond, common stock, and preferred stock offerings in 2021 and 2022. *See* Dkt. No. 180 at 24. These claims did not require a showing of scienter. Discovery has now uncovered particularized facts showing that KPMG's audit opinions for 2021 and for 2022, the latter issued just days before SVB failed, were knowingly false or, at minimum, made with deliberate recklessness. Accordingly, Plaintiffs seek to amend the Complaint (the "Amendment")—as reflected in Exhibit A[1]—for the limited purpose of adding a scienter-based claim against KPMG for its violations of the Exchange Act.

As detailed in the Amendment, KPMG issued "clean" audit opinions for 2021 and 2022 that falsely represented that SVB's financial statements complied with GAAP, that its internal controls were effective, and that KPMG's audits were conducted in compliance with PCAOB standards. *See* Amendment ¶¶ 750-51. During this same period, SVB, in pursuit of higher yields to sustain reported earnings, dramatically expanded its investment portfolio, amassing a staggering $98 billion portfolio in fixed-income securities classified as held-to-maturity ("HTM")—a narrow accounting designation requiring SVB to demonstrate its "positive intent and ability" to hold those securities to maturity. *See id.* ¶¶ 728, 784-85. This represented a nearly 500% increase in the size of its HTM portfolio from the prior year ended December 31, 2020. SVB classified these securities as HTM to avoid recognizing any potential mark-to-market losses when interest rates rose. *See id.* ¶¶ 727, 729.

[1] References to "Exhibits or Ex. __" refer to the exhibits to the accompanying declaration of Sharan Nirmul ("Nirmul Decl.") filed herewith.

KPMG—as SVB's primary auditor with unfettered access to SVB's personnel, books, and records—served as the gatekeeper for this reckless strategy. By endorsing management's HTM classification, KPMG effectively vouched that SVB possessed sufficient liquidity and risk management controls to hold these securities through maturity.

Unknown to investors, discovery has revealed that KPMG utterly failed to independently assess SVB's ability to hold to maturity its $98 billion of HTM and instead relied entirely on untested management representations. Meanwhile, the PCAOB standards that KPMG falsely stated it followed required it to exercise rigorous professional skepticism, thoroughly test management assumptions, carefully evaluate liquidity and financial capacity, and respond meaningfully to contradictory evidence—expressly prohibiting reliance on management representations alone. Likewise, GAAP specifically imposed a forward-looking liquidity analysis mandating that securities cannot be classified as HTM if they may need to be sold to meet liquidity needs under reasonably foreseeable stress conditions. Discovery has revealed that KPMG's audit of the HTM classification was virtually non-existent, ignoring the fundamental question of whether it was appropriate for management to classify the vast majority of its assets as HTM. *See id.* ¶¶ 791-807.

KPMG's "workpapers," along with other documents produced during discovery in this litigation, reveal the "independent" auditor's wholesale reliance on SVB's management representations and superficial reasoning, utterly failing to analyze extraordinary changes in SVB's balance sheet or its forward-looking liquidity needs. Meanwhile, SVB's own liquidity stress tests—which KPMG reviewed—projected substantial funding shortfalls that could only be addressed by selling HTM securities, directly contradicting SVB's asserted "ability" to hold these securities to maturity. *See id.* ¶¶ 809-21. At the same time, Federal Reserve examinations and SVB internal audit findings likewise identified serious deficiencies in SVB's liquidity risk management, including flawed stress testing, inadequate liquidity buffers, and systemic control failures—all of which were known to KPMG. *See id.* ¶¶ 822-42.

Despite this contradictory evidence, KPMG knowingly or with deliberate recklessness failed to meaningfully assess SVB's HTM classifications and, subsequently, issued clean audit opinions with deliberate disregard for their truth. KPMG's clean audit opinions falsely reassured the market that SVB's HTM classification complied with GAAP and that its internal controls were effective, artificially inflating SVB's stock price. Ultimately, SVB's fragile liquidity condition was exposed when it was forced to sell nearly its entire AFS portfolio in March 2023 at a nearly $2 billion loss and announce a $2.25 billion capital raise, revealing the likelihood that it would be compelled to sell its HTM securities at steep losses. *See id.* ¶¶ 977-81. This cascade of events exposed the lack of risk controls at the Bank and ultimately led to one of the largest bank failures in history, costing SVB's investors billions of dollars. *See id.* ¶¶ 878, 978-81.

The Ninth Circuit has stressed that motions to amend should be treated with "extreme liberality." *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020). Defendants bear the burden on opposing a motion to amend, which may be "denied only upon [a] showing of bad faith, undue delay, futility, or undue prejudice to the opposing party." *Chudacoff v. Univ. Med. Ctr.*, 649 F.3d 1143, 1152 (9th Cir. 2011). KPMG cannot make such a showing.

First, Plaintiffs do not bring the Amendment in bad faith. The Amendment is the result of an extensive discovery review, conducted over a short period of time, and pleads particularized facts necessary to satisfy the Exchange Act's pleading standard for alleging scienter. The Court has already ruled that the Complaint states a claim based on largely the same misrepresentations under the Securities Act; the Amendment simply adds the scienter allegations—developed through discovery—necessary to support those claims under the Exchange Act.

Second, there is no undue delay. Fact discovery remains ongoing. No KPMG witness has been deposed, and the parties have taken less than one-fifth of their allotted depositions. *See* Nirmul Decl. ¶ 4. Plaintiffs have also agreed to stay the schedule and their motion for class certification pending resolution of this motion. "[C]ourts have found that undue delay cannot exist where discovery has not ended." *Dauth* v. *Convenience Retailers, LLC*, 2013 WL 12440997, at *3 (N.D. Cal. July 31, 2013) (collecting cases).

Third, KPMG will suffer no undue prejudice. KPMG has been a Defendant from the outset, and the Court has already sustained a Securities Act claim against KPMG based on many of the same misstatements and omissions. By agreement, all fact discovery has been stayed during the pendency of this motion, and the Court has afforded KPMG the opportunity to submit a supplemental brief addressing class certification as to the Exchange Act claim. *See* Dkt. Nos. 309, 314.

Fourth, the Amendment is not futile. It pleads particularized facts giving rise to a strong inference of scienter. The Amendment alleges that KPMG ignored numerous, well-documented red flags—drawn from its own workpapers, internal communications, and regulatory findings—while failing to conduct any meaningful analysis of SVB's ability to hold its HTM securities to maturity. These allegations support a compelling inference that KPMG acted with knowledge or at least deliberate recklessness. The Amendment comports with Ninth Circuit precedent recognizing auditor liability, including where the auditor engages in an "egregious refusal to see the obvious, or to investigate the doubtful." *New Mexico State Inv. Council v. Ernst & Young LLP*, 641 F.3d 1089, 1097–98 (9th Cir. 2011).

II. <u>BACKGROUND</u>

On June 13, 2025, the Court denied Defendants' motions to dismiss, finding that the Complaint adequately alleged that KPMG made materially false statements in its audit reports, in violation of Section 11 of the Securities Act—including that SVB's financial statements complied with GAAP, that its internal controls were effective, and that KPMG conducted its audits in accordance with PCAOB standards. *See* Dkt. No. 180 at 26-28. The Court held that these statements were plausibly false because "SVB suffered from significant and ongoing deficiencies in internal controls concerning the Bank's liquidity, interest rate risk, and ability to hold its HTM securities to maturity," and that KPMG "omitted material facts related to SVB's internal controls, facts that as alleged were known to KPMG yet entirely undisclosed." *Id*.

On June 18, 2025, KPMG moved for reconsideration of the Court's Motion to Dismiss Order. The Court denied that motion as well, finding that KPMG "presented little to support its motion." Dkt. No. 212 at 1.

Following the Court's June 13, 2025 Order, Plaintiffs promptly served comprehensive document requests on Defendants, including KPMG, and diligently obtained the regulatory approvals necessary for the production of confidential supervisory information ("CSI") from the

Federal Reserve and California state regulators. *See* Nirmul Decl. ¶ 5.

The Court set a January 9, 2026 deadline for substantial completion of document production. *See* Dkt. No. 250. Despite that deadline, KPMG produced over 500,000 pages of documents—amounting to 30% of its total production—***after*** the cutoff. *See* Nirmul Decl. ¶ 7. Likewise, Defendant Becker produced approximately 500,000 additional SVB documents after the deadline, which Defendants inadvertently excluded from their prior productions and first made available to Plaintiffs on April 3, 2026. *See id*. ¶ 8.

In total, following the Court's denial of Defendants' motions to dismiss through April 2026, Plaintiffs received more than 33 million pages of documents from SVB and over 1.5 million pages from KPMG. *See id*. ¶ 6. Plaintiffs reviewed these materials on an accelerated timeline in light of the pretrial schedule and disclosed their intent to amend to Defendants in advance of the Court's class certification hearing. *See id*. ¶ 8.

Discovery in this case is ongoing, and KPMG has ample time to conduct any additional discovery it deems necessary. The parties have not yet taken depositions of any current or former KPMG employees, nor have they deposed any of the other named Defendants. *See id*. ¶ 4. Under the parties' agreement, each side is allotted 30 depositions, yet only six witnesses—all former SVB employees—have been deposed, leaving substantial room for additional discovery. *See id*.

On April 15, 2026, Plaintiffs notified KPMG that, based on the discovery record, they intended to amend the Complaint for the purpose of adding a claim against KPMG for its violation of Section 10(b) of the Exchange Act for KPMG's 2021 and 2022 audit reports. On April 22, 2026, the Court adopted the parties' stipulated briefing schedule for Plaintiffs' anticipated motion to amend. *See* Dkt. No. 310. To eliminate any potential prejudice to KPMG, the parties stipulated to an order, which the Court entered, staying discovery during the pendency of the motion and permitting KPMG the opportunity to submit a supplemental brief in connection with class certification following the Amendment. *See* Dkt. No. 309.

III. THE AMENDMENT

Based on the voluminous discovery produced by Defendants in this litigation, Plaintiffs are able to allege with the particularity required by the PSLRA that KPMG violated the Exchange

Act by knowingly or with reckless disregard issuing unqualified audit opinions for fiscal years 2021 and 2022 that lacked any reasonable basis regarding SVB's HTM designations. Plaintiffs attach the Amendment, which adds a third section to the Complaint and is otherwise unchanged from the prior pleading, in clean and redline formats as Exhibits A and B.

As summarized below, the Amendment alleges that KPMG—SVB's auditor for nearly three decades—rubber-stamped management's unsupported assertions that SVB possessed the "positive intent and ability" to hold its massive HTM portfolio to maturity, a classification that ultimately shielded tens of billions of dollars in unrealized losses from SVB's reported financial condition, without conducting any meaningful analysis of the Bank's actual capacity to do so. That conclusion was untenable in light of the conditions SVB was facing, including repeated breaches of its Economic Value of Equity ("EVE") limits; internal audit and Federal Reserve findings that its interest rate, liquidity, and governance risk management frameworks were inadequate; and liquidity stress tests—based on unreliable models—projecting significant funding shortfalls that could only be addressed through the sale of HTM securities, an outcome repeatedly considered by senior management. KPMG's knowing or deliberately reckless conduct is demonstrated by the internal documents and discovery detailed in the Amendment.

Each of these facts constituted a clear red flag bearing directly on SVB's financial condition, risk profile, and ability to hold its HTM securities to maturity—***and was known to KPMG during its audits***. Moreover, KPMG failed to test SVB's internal controls over its HTM classifications—and, in fact, no such controls existed. Instead, these classification decisions were left to the unfettered discretion of SVB's Treasury executives and its Chief Financial Officer, Defendant Beck. And barely two weeks before the Bank's collapse, on February 24, 2023, KPMG issued its clean audit opinion for SVB's 2022 financial statements, neglecting to issue a going concern warning for SVB when the available facts demonstrated to KPMG that SVB was insolvent. SVB failed just fifteen days later.

A. The FY-2021 Audit Report

Despite SVB's HTM portfolio ballooning by nearly 500% during FY 2021—which SVB's own treasurer later acknowledged made SVB "a complete outlier" among its peers—KPMG's workpapers and documents reveal that it performed no substantive, portfolio-wide analysis of whether SVB had the financial capacity to hold its then-approximately $98 billion in HTM securities to maturity. *See* Amendment ¶¶ 791-807. Instead, KPMG's workpapers and internal documents reveal that KPMG simply relied on management's boilerplate and self-serving assertions regarding the Bank's historical trends and liquidity position, without considering the fundamental changes at the Bank, obtaining any corroborating evidence or performing any forward-looking analyses. *See id*. ¶¶ 800-05. Likewise, KPMG failed to identify or test internal controls over SVB's HTM classification—even though SVB maintained no controls designed to assess compliance with the "positive intent and ability" requirement at acquisition or upon reassessment. *See id*. ¶¶ 956-62. In short, notwithstanding its public representations that it followed all applicable PCAOB audit standards, KPMG conducted no meaningful evaluation of the single most consequential accounting judgment affecting SVB's financial condition—its purported ability to hold its enormous HTM portfolio to maturity.

In addition, the Amendment identifies a constellation of red flags—drawn from KPMG's own workpapers, private communications, and Federal Reserve supervisory materials—that fundamentally undermine SVB's representation that it had the ability to hold its HTM portfolio to maturity. *See id*. ¶¶ 809-948. As the Amendment explains, KPMG knowingly, or with deliberate recklessness, disregarded these obvious red flags.

First, KPMG was well aware that SVB's balance sheet had undergone a radical transformation during 2021. SVB's HTM portfolio ballooned from approximately $16 billion to $98 billion—a nearly 500% increase—as the Bank funneled tens of billions of dollars of new deposits into long-duration, fixed-rate securities and reclassified $8.8 billion in existing securities from AFS to HTM. *See id*. ¶¶ 728, 784-85. As the Amendment describes, KPMG knew this shift was not driven by a genuine assessment of SVB's ***ability*** to hold, but by a desire to "shield AOCI [a metric followed by regulators] in a rising rate environment" and "add risk exposures to HTM . . . to enhance return," as reflected in internal SVB memoranda contained in KPMG's own audit files. *Id*. ¶¶ 788, 865-66.

Second, KPMG knew that SVB's own internal liquidity stress testing ("ILST") revealed a massive liquidity shortfall—approximately $13 billion under enhanced stress scenarios—that could only be addressed through the outright sales of HTM securities. *See id.* ¶¶ 809-15. A July 2021 presentation provided to KPMG showed that more than $58 billion of SVB's purported $80.8 billion liquidity buffer consisted of unencumbered HTM securities, while the Bank's maximum repurchase ("repo") capacity was limited to just $4 billion—leaving SVB unable to monetize these assets absent outright sales. *See id.* ¶¶ 815-19. Consistent with this reality, SVB's Treasurer acknowledged at the July 2021 ALCO meeting that "all securities should be considered during a stress event," and Defendant Beck described the resulting liquidity gap as "staggering." *Id.* ¶ 818. As the Amendment demonstrates, SVB's liquidity position depended on the potential sale of HTM securities, undermining any assertion it had the ability to hold those securities to maturity.

Third, KPMG received and reviewed the Federal Reserve's November 2, 2021 supervisory letter, which identified "fundamental shortcomings" in SVB's internal liquidity stress testing, liquidity limits framework, and contingency funding plan, and warned that SVB's "liquidity risk management practices are below supervisory expectations." *Id.* ¶¶ 822-28. These findings made clear that SVB's purported liquidity resources were overstated, that the Bank did not know how much liquidity it would need in a stress event, and that it lacked the ability to monetize many of the securities it counted as available liquidity—conditions that directly undermined SVB's representation that it had the intent and ability to hold its HTM securities to maturity and called into question the effectiveness of its internal controls. *See id.* ¶¶ 832-33.

Notwithstanding the significance of these findings—and despite reviewing the Federal Reserve's conclusions and meeting with regulators as late as January 18, 2022—KPMG disregarded these deficiencies as irrelevant to its audit. *See id.* ¶¶ 833-37. As described in the Amendment, in its year-end 2021 workpapers, KPMG repeatedly concluded that the MRAs and MRIAs relating to deposit segmentation, ILST design, and SVB's liquidity risk management framework were "of little significance to the audit," characterizing them as "documentation / operational or compliance items" with "no indication of direct impact on SVB's financial statements or control environment." *Id.*

Fourth, SVB's February 2022 Internal Audit Report—distributed to KPMG's engagement team before the FY 2021 audit opinion was issued—assigned an overall rating of "Insufficient" to SVB's liquidity risk management, identifying "multiple areas of deficiencies" including "the absence of a mature independent review function, insufficient review and challenge documentation, . . . and missing linkage between the ILST and liquidity limit framework." *Id.* ¶¶ 837-42. This report further confirmed to KPMG that SVB lacked the governance, controls, and independent oversight necessary to reliably assess and manage its liquidity risk, directly undermining its asserted ability to hold its HTM securities to maturity. *Id.*

Fifth, KPMG was aware that SVB had been in continuous breach of its EVE sensitivity limits—a key interest rate risk metric—from September 2020 through the entirety of 2021. Internal memoranda characterized these breaches as a "serious concern" reflecting the "maximum extent of Treasury's appetite for a given risk." *Id.* ¶¶ 843-57. Yet, as the Amendment alleges, rather than remediate this serious risk exposure—which highlighted the HTM portfolio's vulnerability to rising interest rates—SVB engaged an outside consultant to revise its deposit modeling assumptions to assume longer deposit durations and applied unsupported "management overlays" that further increased those assumptions, thereby reducing reported EVE sensitivity without any corresponding reduction in underlying risk and concealing the Bank's true exposure from investors. *See id.* ¶¶ 858-60. KPMG knew SVB's purported "remediation" was driven by assumption changes rather than substantive risk reduction, and that the Federal Reserve had already criticized the very types of peer benchmarks embedded in the new deposit model, but accepted these assumption changes at face value. *See id.* ¶¶ 858-63.

B. The FY-2022 Audit Report

The Amendment details how KPMG's FY 2022 audit—culminating in an unqualified opinion issued on February 24, 2023, just fifteen days before SVB's collapse—did not correct the deficiencies from the prior year, but instead repeated and amplified them, including KPMG's conclusion that no substantial doubt existed as to SVB's ability to continue as a going concern.

KPMG's internal documents reveal that it again failed to conduct any meaningful analysis of SVB's ability to hold its HTM portfolio to maturity, which remained the most important accounting judgment affecting SVB's financial condition. *See id.* ¶¶ 870-78. Despite the dramatic escalation of risk throughout the year as interest rates rose and deposits fled, KPMG's workpapers simply repeated ***verbatim*** the same deficient language from FY 2021, asserting that "unprecedented deposit growth SVB is experiencing" mitigated HTM risk—even though deposits had ***declined*** by more than $25 billion during 2022. *See id.* ¶¶ 875-76. KPMG again failed to assess a "risk of material misstatement" related to management's HTM classifications, again rubber-stamping management's purported "intent and ability" determination and again failing to identify or test any controls over HTM classification.

Nor did the red flags visible to KPMG diminish. On the contrary, the FY 2021 red flags persisted and were compounded in FY 2022, as the Federal Reserve raised interest rates. Yet, as the Amendment shows, KPMG again knowingly or with deliberate recklessness ignored and failed to investigate these red flags.

First, SVB's redesigned ILST—developed in response to the Federal Reserve's criticisms—revealed a "sustained liquidity shortfall" far more severe than previously modeled and confirmed that the Bank was "severely constrained in [its] ability to monetize assets in stress," due both to the HTM classification of its securities portfolio and its limited monetization channels. *See id.* ¶¶ 880-84. Materials from the April 2022 Finance Committee meeting, which KPMG attended, showed that more than half of SVB's $131 billion liquidity buffer consisted of HTM securities that were "Unable to be Monetized," and the Bank projected a liquidity gap of approximately $35 billion under the 30-day stress scenario. *See id.* ¶¶ 881-84. Moreover, as the Amended Complaint demonstrates, throughout 2022, KPMG received detailed reporting documenting persistent Net Liquidity Position ("NLP") breaches ranging from $8.6 billion to $35 billion across multiple time horizons—none of which were remediated before the Bank collapsed. *See id.* ¶¶ 881-88.

Second, KPMG was aware of significant red flags relating to SVB's escalating interest rate risk but disregarded them during its audit. In 2022, as the Federal Reserve raised rates seven times—from near zero to 4.25–4.50%—KPMG failed to revise its audit plan to address the Bank's heightened exposure. *See id.* ¶¶ 889-93. At the same time, SVB's deposits declined by more than $26 billion, reversing the "unprecedented deposit growth" KPMG had previously cited to minimize HTM risk. *See id.* ¶ 948. KPMG also knew that SVB repeatedly breached its EVE sensitivity limits, even after manipulating underlying assumptions, yet failed to incorporate those breaches into its audit or its evaluation of internal controls, and permitted SVB to omit this critical risk indicator from its public disclosures. *See id*. ¶¶ 893-94. Together, these conditions signaled that SVB would likely need to sell its HTM securities to meet liquidity needs—directly contradicting the "ability" to hold required for its HTM classification.

Third, KPMG knew that throughout 2022, SVB repeatedly considered reclassifying or selling—i.e., not holding to maturity—billions of dollars of HTM securities, calling into question the Bank's "intent and ability" to hold its HTM securities to maturity. As the Amendment alleges, in April 2022, KPMG's lead audit partner noted that "SVB is planning to . . . reclass securities out of HTM to AFS." *Id*. ¶¶ 898. SVB again explored such reclassifications in October 2022, confirming that the underlying pressures had not abated but intensified. *See id*. ¶¶ 899-902. SVB's contingency funding plan—reviewed by KPMG—further contemplated that the "[d]istinction between AFS and HTM securities may be disregarded" in a liquidity stress. *Id*. ¶¶ 887. Despite this, KPMG accepted SVB's continued use of HTM accounting without assessing whether these facts rendered the classification improper under GAAP, instead blindly deferring to management without any further investigation.

Fourth, as liquidity pressures mounted throughout 2022—evidenced by repeated Net Liquidity Position and Commitments to Liquidity Buffer breaches, and the escalation of liquidity risk to "high"—SVB faced a substantial likelihood that it would need to sell its HTM securities to meet deposit outflows. At the same time, and as the Amendment makes clear, the scale of unrealized losses—approximately $15 billion—nearly exceeded SVB's total shareholders' equity, rendering such sales economically untenable without severely impairing the Bank's capital position and risking regulatory intervention. *See id*. ¶¶ 903-05. KPMG was aware of both the mounting liquidity pressures and escalating losses, yet failed to evaluate these risks in combination during its audit. *See id*.

Fifth, KPMG received the Federal Reserve's August 17, 2022 supervisory letter assigning SVB a Deficient-1 rating for Governance and Controls—the most severe rating under the LFI framework—explicitly warning that "operational deficiencies in practices or capabilities put the

Firm's prospects for remaining safe and sound through a range of conditions at significant risk." *Id*. ¶¶ 906-08. The letter further documented pervasive control failures across all three lines of defense, including that the Board "did not provide effective oversight" of management's remediation efforts. *Id*. ¶ 907. It emphasized that these deficiencies "are not correctable in the normal course of business" and required immediate intervention by senior leadership. *Id*. ¶ 908. Despite this, KPMG failed to meaningfully incorporate these findings into its audit and accepted SVB's financial reporting and internal control assertions without a reasonable basis to conclude that the Bank maintained effective governance or control processes. *Id*.

Sixth, KPMG received the Federal Reserve's November 15, 2022 supervisory letter warning that "SVB's interest rate risk (IRR) simulations are not reliable and require improvements," yet failed to incorporate these findings into its audit. *Id*. ¶¶ 909-11. The letter identified critical modeling failures, noting that SVB's forecasts of "meaningful" NIM compression, NII decline, and adverse earnings impacts were "directionally inconsistent" with its own IRR simulations, calling into question the reliability of its interest rate modeling. *Id*. KPMG, as alleged in the Amendment, received these findings during year-end 2022 fieldwork but did not revise its audit approach or assess their impact on financial reporting—including SVB's ability to support the classification of $91 billion in HTM securities with approximately $15 billion in unrealized losses. *See Id*. ¶ 911.

KPMG's knowledge or at least deliberate recklessness in FY 2022 extended well beyond deficient analyses and ignored red flags. On February 23, 2023—one day before issuing its audit opinion and just fifteen days before SVB's collapse—KPMG's lead audit partner approved a going concern analysis listing sixty-four discrete warning indicators and marked "No risk identified" for ***every one***. *See id*. ¶¶918-21. Among other things, KPMG falsely denied that SVB had (i) experienced "significant deterioration in the value of assets" (despite $15 billion in unrealized HTM losses); (ii) that SVB's "share price [had] declined by more than 20%" (despite a 66% decline); (iii) "operations exposed to volatile markets" (despite SVB's concentration in the collapsing venture capital sector); and (iv) denied awareness of "regulatory inquiries" (despite multiple Federal Reserve enforcement-related communications). *Id*. ¶¶ 924-43.

Compounding these failures, KPMG's independence was compromised during the very period it was finalizing its FY 2022 opinion. *Id*. ¶¶ 912-17. When SVB's Board indicated it might solicit bids from other auditors, KPMG's lead partner, Jack Pohlman, and its Chief Operating Officer launched a lobbying effort to retain the engagement, including direct outreach and meetings with Defendant Beck. *Id*. These actions created clear incentives to appease management and undermined KPMG's independence.

Lastly, on March 9, 2023—the day before SVB's collapse—KPMG signed a draft "comfort letter" in connection with its proposed $2.25 billion capital raise, effectively certifying SVB's financial health based on ten-day-old financial data without requesting updated information, even as Pohlman had circulated an article the prior evening noting Moody's downgrade of SVB's credit rating. KPMG's misrepresentations caused harm to investors, who relied on its audit opinions in purchasing SVB stock during the Class Period. *Id.* ¶¶ 949-55. When the truth emerged—including the revelation that SVB was on the brink of collapse and forced to liquidate its AFS portfolio at fire-sale prices—its financial condition, including its massive HTM investments, was exposed as unsustainable, and its stock price plummeted.

IV. <u>ARGUMENT</u>

A. Legal Standard

The Federal Rules provide that courts should "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The Ninth Circuit has emphasized that "requests for leave should be granted with extreme liberality." *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). A motion to amend "generally shall be denied only upon showing of bad faith, undue delay, futility, or undue prejudice to the opposing party." *Chudacoff v. Univ. Med. Ctr. of S. Nevada*, 649 F.3d 1143, 1152 (9th Cir. 2011).

"There exists a presumption under Rule 15(a) in favor of granting leave to amend." *Reckstin Fam. Tr. v. C3.ai, Inc.*, 2025 WL 490470, at *3 (N.D. Cal. Feb. 13, 2025); *see also United States v. Corinthian Colls.,* 655 F.3d 984, 995 (9th Cir. 2011) ("The standard for granting leave to amend is generous."). In evaluating motions to amend, "[t]he burden of persuading the court" is on "[t]he party opposing amendment." *AIG Specialty Ins. Co. v. TRC Cos.*, 2024 WL 2335645, at *1 (C.D. Cal. Apr. 9, 2024); *see also DCD Programs, LTD. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) ("The party opposing amendment bears the burden of showing prejudice."); *accord Reckstin Fam. Tr.*, 2025 WL 490470, at *3.[2]

As set forth below, KPMG cannot satisfy its burden.

B. Plaintiffs Are Not Amending in Bad Faith

For a court to deny leave to amend based on a showing of bad faith, the Court must find that the plaintiff, in bringing the amendment, acted with a "wrongful motive." *See DCD Programs*, 833 F.2d at 187 ("Since there is no evidence in the record which would indicate a wrongful motive, there is no cause to uphold the denial of leave to amend on the basis of bad faith."). "Actions that support a finding of bad faith include 'attempt[s] to prolong meritless litigation by making repeated and baseless amendments to their complaint.'" *Serv. Emps. Int'l Union v. Roselli*, 2009 WL 3013501, at *2 (N.D. Cal. Sept. 17, 2009).

There is no evidence that Plaintiffs are acting in bad faith. Plaintiffs merely seek to add an Exchange Act claim against KPMG based on the particularized scienter evidence uncovered during discovery. *See DCD Programs*, 833 F.2d at 187 (finding no "bad faith" where plaintiff "waited until they had sufficient evidence of conduct upon which they could base claims of wrongful conduct"); *see also East West Bank v. Shanker*, 2021 WL 3471177, at *4 (N.D. Cal.

[2] Rule 15, rather than Rule 16, should apply here, as the scheduling order (Dkt. No. 250) entered in this case "d[id] not include a deadline to amend the pleadings, let alone a deadline that has expired." *Salazar v. Victoria's Secret & Co.*, 2025 WL 1771435, at *2 (N.D. Cal. June 26, 2025); *accord Ciampi v. City of Palo Alto*, 2010 WL 5174013, at *2 n.1 (N.D. Cal. Dec. 15, 2010) (declining to apply Rule 16 where "neither scheduling order set a deadline for amending the pleadings"). That said, even if the Rule 16 "good cause" standard were to apply, Plaintiffs satisfy its requirements. Rule 16 "primarily considers the diligence of the party seeking the amendment." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). As set forth *infra*, § IV.D., Plaintiffs have been diligent in reviewing the over 33 million pages of discovery, evaluating the validity of a 10(b) claim against KPMG, and ultimately preparing the Amendment. Once good cause is shown (as it is here), the inquiry shifts back to the standard Rule 15 analysis. *See Cress v. Nexo Cap. Inc.*, 2025 WL 3034067, at *3 (N.D. Cal. Oct. 30, 2025). Thus, the distinction between Rule 15 and Rule 16 is immaterial to deciding Plaintiffs' Motion.

Aug. 6, 2021) (same); *Takeya USA Corp. v. PowerPlay Mktg. Grp., LLC*, 2022 WL 4596659, at *3 (C.D. Cal. Aug. 4, 2022) (same). In fact, as courts have explained, "waiting to amend a complaint or answer until a strong evidentiary basis for the amended claims has been developed is preferable." *Entangled Media, LLC v. Dropbox Inc.*, 348 F.R.D. 649, 655 (N.D. Cal. 2025).

Amendments based on facts uncovered during discovery are routine. *See, e.g.*, *M.H. v. Cnty. of Alameda*, 2012 WL 5835732, at *3 (N.D. Cal. Nov. 16, 2012) ("Courts routinely allow parties to amend their pleadings after new information comes to light during discovery"); *Entangled Media*, 348 F.R.D. at 655 (allowing amendment where party "explore[d] its claims through discovery prior to amending its pleadings to assert them"). This includes amendments adding a claim against an auditor for its violation of Section 10(b) of the Exchange Act. *See, e.g.*, *In re Lehman Bros. Sec. & ERISA Litig.*, 799 F.Supp.2d 258, 266-67, 303-04 (S.D.N.Y. 2011) (sustaining Section 10(b) claim against auditor added to amended complaint); *In re New Century*, No. 2:07-cv-00931-DDP, slip op. at 2-3 (C.D. Cal. Apr. 4, 2008) (Dkt. No. 263), and Second Amended Consolidated Class Action Complaint, *In re New* Century, No. 2:07-cv-00931-DDP (C.D. Cal. Apr. 30, 2008) (Dkt. No.269) (amended complaint adding Section 10(b) claim against auditor KPMG); Consolidated Second Amended Securities Class Action Complaint, *In re MF Global Holdings Ltd. Sec. Litig.*, No. 1:11-cv-07866-VM (S.D.N.Y.Oct. 7, 2014), (Dkt. Nos. 779, 779-5) (amended complaint adding Section 10(b) claim against auditor based on information learned from discovery).

Following the Amendment, KPMG will have ample opportunity to conduct additional discovery, oppose class certification on additional grounds, and file dispositive motions. Far from acting in bad faith, Plaintiffs have pursued the "preferable" course of action of "waiting to amend [the] complaint . . . until [it had] a strong evidentiary basis for the amended claims," rather than "prematurely asserting those claims on the basis of a limited record that may or may not support them." *Cress*, 2025 WL 3034067, at *5; s*ee also Entangled Media*, 348 F.R.D. at 655 (same).

C. KPMG Will Not Face Undue Prejudice by the Amendment

"To overcome Rule 15(a)'s liberal policy with respect to the amendment of pleadings a showing of prejudice must be substantial." *LeGrand v. Abbott Lab'ys*, 2024 WL 4969127, at *5

(N.D. Cal. Dec. 3, 2024). "[T]he burden of having to defend against a claim on its merits does not constitute undue prejudice." *Id*. "Neither delay resulting from the proposed amendment nor the prospect of additional discovery needed by the non-moving party in itself constitutes a sufficient showing of prejudice." *Oracle Am., Inc. v. Hewlett Packard Enter. Co.*, 2017 WL 3149297, at *3 (N.D. Cal. July 25, 2017); *LeGrand*, 2024 WL 4969127, at *5 (same). "The need to conduct additional discovery does not constitute undue prejudice" where "discovery has not yet closed." *Carranza v. City of San Pablo*, 2022 WL 110647, at *6 (N.D. Cal. Jan. 12, 2022).

The fact discovery cutoff is several months away. Neither KPMG nor any of the named Defendants have been deposed. Plus, Plaintiffs agreed to stay discovery during the pendency of this motion and stipulated to a schedule granting KPMG permission to make any additional class certification arguments it deems necessary—all of which eliminated any theoretical prejudice to KPMG. *See* Dkt. No. 310 (Order staying discovery). KPMG will have sufficient time—in accordance with its own stipulated schedule—to conduct discovery and prepare its defenses.

Plaintiffs' amendment is not sought "on the eve of the close of discovery," such that KPMG is prejudiced in any way—much less, a "substantial" amount. *See Droesch v. Wells Fargo, N.A.*, 2021 WL 5771132, at *2 (N.D. Cal. Dec. 6, 2021) ("This is not a case where Plaintiffs are seeking to amend the complaint on the eve of the close of discovery"); *Mendes v. Wright Med. Tech., Inc.*, 2006 WL 8434706, at *4 (C.D. Cal. July 21, 2006) ("Given that this case is still in the discovery phase . . . the Court does not find that the Defendant will be prejudiced if leave to amend the Complaint is granted").

D. Plaintiffs Did Not Unduly Delay in Seeking Leave to Amend

Plaintiffs have not acted with undue delay. As noted, fact discovery is ongoing, and none of the Defendants have been deposed. As courts have explained, undue delay "cannot exist" when the parties are still in the midst of fact discovery, ahead of dispositive motion practice. *See Dauth v. Convenience Retailers, LLC*, 2013 WL 12440997, at *3 (N.D. Cal. July 31, 2013) ("discovery is ongoing and courts have found that undue delay cannot exist where discovery has not ended") (collecting cases); *see also Am. Express Travel Serv. Co., Inc. v. D&A Corp.*, 2007 WL 2462080, at *8 (E.D. Cal. Aug. 28, 2007) ("If discovery is not closed, undue delay does not exist") (citing

Abels v. JBC Legal Grp., P.C., 229 F.R.D. 152, 156 (N.D. Cal. 2005)).

Plaintiffs moved expeditiously through Defendants' voluminous productions of over 33 million pages of documents—including over a half-million pages of documents produced by KPMG after the substantial completion deadline—to discern whether there existed the particularized scienter facts necessary to allege a viable Exchange Act claim against KPMG. That Plaintiffs were able to do so and draft the proposed amendments all in the span of a few months is the very definition of diligence. *See James ex rel. James Ambrose Johnson, Jr., 1999 Tr. v. UMG Recordings, Inc.*, 2012 WL 4859069, at *2 (N.D. Cal. Oct. 11, 2012) ("Plaintiffs have had to review 25,000 contracts since March 2012, and additional documents produced since then. Discovery is ongoing. Five months to complete a review of the discovery and draft the consolidated amended complaint is not *undue* delay") (emphasis in original). In any event, as courts have explained, "[t]he mere fact that an amendment is offered late in the case is . . . not enough to bar it." *Webb*, 655 F.2d at 980.

Lastly, the Amendment is timely under the statute of limitations. As the Supreme Court has explained, "the limitations period [of the Exchange Act] does not begin to run until the plaintiff thereafter discovers or a reasonably diligent plaintiff would have discovered the facts constituting the violation, including scienter," sufficient to survive a motion to dismiss. *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 653 (2010); *see also York Cnty. on Behalf of Cnty of York Ret. Fund v. HP, Inc.*, 65 F.4th 459, 465 (9th Cir. 2023) ("we hold that a 'reasonably diligent plaintiff has not 'discovered' one of the facts constituting a securities fraud violation until he can plead that fact with sufficient detail and particularity to survive a 12(b)(6) motion to dismiss'"). Prior to discovery, KPMG's public statements asserted that it complied with all PCAOB standards and bore no responsibility for SVB's failure. Plaintiffs could not have pled an Exchange Act claim against KPMG without the documents produced in this action, including KPMG's workpapers, which contained the particularized scienter facts necessary to overcome a motion to dismiss under the PSLRA's pleading standard. *See, e.g.*, *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 4038878, at *8 (D.N.J. July 17, 2020) ("this is a complex matter, involving millions of documents . . . requiring appropriate and relatively time-consuming analysis, . . . to determine the factual basis and support for a scienter based claim"); *see also York Cnty.*, 65 F.4th at 467-68 (finding 10(b) claim timely where scienter could not have been sufficiently pled without the benefit of information learned during discovery).

E. The Amendment Is Not Futile

"A proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim." *Byrnes v. Chevron Corp.*, 2024 WL 4545965, at *3 (N.D. Cal. Oct. 21, 2024); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) ("'If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.'"). "[D]enial of a motion for leave to amend on [the futility] ground is rare and courts generally defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed." *Cress*, 2025 WL 3034067, at *8.

The Amendment is not futile. Courts have repeatedly sustained Exchange Act claims against auditors, including KPMG. *See, e.g.*, *New Mexico State Inv. Council v. Ernst & Young LLP*, 641 F.3d 1089 (9th Cir. 2011); *In re Mattel, Inc. Sec. Litig.*, 2021 WL 1259405 (C.D. Cal. Jan. 26, 2021); *In re New Century*, 588 F. Supp. 2d 1206 (C.D. Cal. 2008); *Plumbers & Pipefitters Nat'l Pension Fund v. Cisco Sys. Inc.*, 2003 WL 27435829 (N.D. Cal. Apr. 24, 2003).

The Complaint alleges detailed facts supporting each element of Plaintiffs' claim, including falsity, scienter, and loss causation.

Falsity. The Court previously found that the Complaint sufficiently shows that KPMG's "clean audit report[] for SVB" for fiscal year 2021 was "materially false, misleading, and omitted material facts because SVB suffered from significant and ongoing deficiencies in internal controls concerning the Bank's liquidity, interest rate risk, and ability to hold its HTM securities to maturity." Dkt. No. 180 at 7; *see also id.* at 26-29. KPMG's fiscal year 2022 audit report contained identical misleading statements. The Amendment does not disturb the Court's prior conclusion, nor does it offer any reason to conclude KPMG's 2022 audit was any different.

Just as these misleading audit reports adequately supported Plaintiffs' Securities Act claims against KPMG, they also support the falsity element of Plaintiffs' Exchange Act claims. *See New*

Mexico, 641 F.3d at 1094 (reinstating Section 10(b) claim against auditor for falsely stating the "financial statements 'present fairly, in all material respects, the consolidated financial position of [issuer] . . . in conformity with generally accepted accounting principles [("GAAP")]'"); *New Century*, 588 F. Supp. 2d at 1216, 1233 (sustaining Section 10(b) claims against KPMG for audit opinions "regarding [issuer's] year-end financial statements and [issuer's] internal controls" which "contained material misstatements in violation of the [PCAOB] standards" and "were incorporated into the Series B stock offering"); *Lehman*, 799 F. Supp. 2d at 271-72, 304 (sustaining Section 10(b) claim against auditor that issuer's financial statements "had been prepared in accordance with GAAP and that they fairly represented the financial condition of the company").

Scienter. To allege scienter, a plaintiff must plead particularized facts showing "that the [auditors'] accounting practices were so deficient that the audit amounted to no audit at all, or an egregious refusal to see the obvious, or to investigate the doubtful." *New Mexico*, 641 F.3d at 1098. "In general, 'the more facts alleged that should cause a reasonable auditor to investigate further before making a representation, the more cogent and compelling a scienter inference becomes.'" *Mattel*, 2021 WL 1259405, at *9.

The allegations in the Amendment readily clear this bar. For example, the Amendment alleges the following facts concerning KPMG's FY 2021 audit report which Plaintiffs alleged based on their review of the discovery:

- Despite the Bank facing extraordinary risks with inadequate controls to manage those risks, KPMG conducted no analysis of SVB's "ability" to hold its HTM securities to maturity, simply accepting management's assurances and rubber-stamping the designations. *See* Amendment ¶¶ 791-807; *see also New Mexico*, 641 F.3d at 1098 ("allegations of recklessness have been sufficient where defendants failed to review or check information that they had a duty to monitor"); *Mattel*, 2021 WL 1259405, at *9 ("[t]he severity of Mattel's control weakness . . . and its persistence well after PwC's involvement, supports scienter").

- KPMG knew that, several times throughout 2021, the Bank breached its EVE limits and failed liquidity stress tests—tests projecting that funding shortfalls could only be addressed through the sale of HTM securities. *See* Amendment ¶¶ 809-21, 843-58.

- KPMG knew that SVB's "remediation" plan for addressing its risk control deficiencies merely changed underlying assumptions to produce a more favorable result. *See id.*¶¶ 855-63.

- KPMG knew that SVB continued investing in HTM securities well beyond its own investment policy and risk parameters. *See id*. ¶¶ 864-68.

These same failures persisted during the FY 2022 audit year. Yet again, KPMG knowingly or with deliberate recklessness failed to conduct a meaningful investigation. Moreover, the Bank's financial condition deteriorated during the audit year, raising even more red flags that KPMG knowingly, or with deliberate recklessness, disregarded. *See id*. ¶¶ 870-911, 918-62. For example, with the benefit of discovery, Plaintiffs allege:

- KPMG knew that SVB experienced repeated and growing liquidity risk metric breaches showing significant liquidity shortfalls. *See id*. ¶¶ 880-88. KPMG itself documented SVB's ballooning liquidity risk and lack of sufficient assets to meet projected stress outflows. *See id.*

- KPMG knew that SVB continued to breach its own internal EVE thresholds—breaches that SVB's internal memoranda characterized as a "serious concern" reflecting the "maximum extent of Treasury's appetite for a given risk." *See id*. ¶¶ 891-94.

- KPMG knew that senior SVB management repeatedly explored ways to reclassify or sell its HTM portfolio—efforts that directly contradicted management's assertion that SVB intended and was able to hold the HTM securities to maturity. *See id*. ¶¶ 896-902.

Despite knowing these facts, KPMG's workpapers reflect that it failed to conduct any investigation into, alter audit plans to account for, or even acknowledge these glaring red flags in its FY 2021 and FY 2022 audit reports. *See New Mexico*, 641 F.3d at 1095, 1098 (allegations that "EY was faced with circumstances that would compel a reasonable auditor to further investigate" were "sufficient to support an inference of scienter"); *see also New Century*, 588 F. Supp. 2d at 1234 ("The absence of a meaningful investigation . . . supports a strong inference of scienter"); *Cisco Sys., Inc.*, 2003 WL 27435829, at *6 ("An auditor's failure to investigate 'red flags' supports a finding of scienter").

Further strengthening the scienter inference, the Amendment details KPMG's compromised independence and disregard for other basic auditing procedures. For example, KPMG doggedly sought to retain SVB's business while simultaneously finalizing its FY 2022 audit report, failed to conduct a meaningful going concern analysis, and remarkably issued an unqualified "comfort letter" on March 9, 2023—while the Bank's financial condition was rapidly deteriorating in real time. *See* Amendment ¶¶ 912-16, 918-55. These facts provide additional support for an inference of scienter. *See In re Stone & Webster, Inc., Sec. Litig.*, 414 F.3d 187, 215 (1st Cir. 2005) ("[auditor's] motivation to overlook [accounting issues] in order to protect its own source of lucrative accounting and consulting fees . . . can thus strengthen an inference of scienter" and "[w]e do not doubt that such a profit motive could contribute to an auditor's decision to 'turn[] a [blind] eye'").

Loss Causation. The Court has already found that the Complaint adequately alleges that Plaintiffs' losses were caused by Defendants' misrepresentations. *See* Dkt. No. 180, at 22. The Court's prior conclusion remains intact: "Plaintiffs meet [the loss causation] standard easily." *Id.*

"'[L]oss causation is a "context-dependent" inquiry as there are an "infinite variety" of ways for a tort to cause a loss.'" *Id.* (quoting *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1210 (9th Cir. 2016)). "'Because loss causation is simply a variant of proximate cause, the ultimate issue is whether the defendant's misstatement, as opposed to some other fact, foreseeably caused the plaintiff's loss.'" *Id.* "A complaint sufficiently alleges loss causation when it contains 'enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of loss causation.'" *Id.* (quoting *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1057 (9th Cir. 2008)). "'[S]o long as the plaintiff alleges facts to support a theory that is not facially implausible, the court's skepticism is best reserved for later stages of the proceedings when the plaintiff's case can be rejected on evidentiary grounds.'" *Id.*

The Amended Complaint readily establishes evidence of loss causation. Following the Bank's announcement at the end of the Class Period that it needed to liquidate its entire AFS portfolio at a substantial loss and conduct a massive capital raise to cover those losses, the market learned of the Bank's dire liquidity needs and, thus, its inappropriate HTM classifications. Analysts immediately reacted to SVB's disclosures by concluding that—contrary to the "intent and ability" representations underlying its HTM accounting designation (and KPMG's audit opinions signing-off on those designations)—SVB likely needed to sell HTM securities to meet its liquidity needs, which would force it to recognize immediately a mark-to-market loss of approximately $15 billion. *See* Amendment ¶ 979.

For example, in a March 9, 2023 report lowering its price target from $174 to $100 and downgrading its rating of SVB from "Buy" to "Hold," Truist Securities attributed SVB's stock price decline on March 8, 2023 to "concerns around the bank's liquidity and the potential for HTM securities sales, which could severely impair tangible capital and profitability." ¶ 980. Truist stated that the actions SVB announced on March 8, together with continued deposit outflows, "increases the odds of further securities sales in the HTM portfolio" that, at the time, was sitting on "$15 billion in unrealized losses." *Id*. Likewise, Wolfe analysts noted that SVB's disclosures raised significant liquidity concerns given that continued deposit outflows were expected at a time when the Bank was "locked into >$90bn of off-limits HTM securities." *Id*. These facts, among the many others detailed in the Amendment, make plain that the Amendment is far from "futile." Rather, it is a necessary development in this litigation to ensure investors recover from KPMG for its violations of the Exchange Act.

V. <u>CONCLUSION</u>

For each of these reasons, Plaintiffs' motion for leave to file the Amendment should be granted.

Dated: May 4, 2026

Respectfully submitted,

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[3] In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of the document has been obtained from each of the other Signatories.

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