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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE SVB FINANCIAL GROUP SECURITIES LITIGATION	Master Case 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' OPPOSITION TO KPMG LLP'S MOTION TO DISMISS SECOND AMENDED COMPLAINT** <u>CLASS ACTION</u> Date: July 27, 2026 Time: 1:30 P.M. Courtroom: 3, 5th Floor Judge: Hon. Noël Wise

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INTRODUCTION[1]

As SVB's balance sheet ballooned during 2020 and 2021, the Bank transformed itself from a regional lender into an institution holding nearly $100 billion of long-duration securities classified as "held-to-maturity" ("HTM"). That critical accounting designation carried a restrictive prerequisite: SVB could classify securities as HTM ***only*** if it possessed the positive intent and ability to hold them until maturity. Yet as the HTM portfolio expanded, KPMG—whose role as independent auditor was to serve as a gatekeeper protecting investors and ensuring compliance with Generally Accepted Accounting Principles ("GAAP")—repeatedly encountered evidence demonstrating that SVB lacked the ability to hold those securities to maturity, including persistent interest-rate risk limit breaches, liquidity stress tests revealing substantial funding gaps, internal audit findings, escalating regulatory criticisms, and mounting concerns regarding the Bank's liquidity position. Instead of investigating and reconciling those contemporaneous red flags, KPMG consciously disregarded them and accepted, without challenge, management's representations regarding intent and ability.

The Court has already concluded that Plaintiffs sufficiently alleged that (i) SVB's financial statements ***violated GAAP*** because "Defendants knew they did not have sufficient liquidity" to hold their HTM securities to maturity (Dkt. No. 180 at 25); (ii) Defendants misrepresented "that the Bank had effective . . . internal control over financial reporting" (*id.* at 20); and (iii) KPMG issued materially false or misleading statements regarding these topics in its audit reports (*id.* at 26-29). The SAC now details what KPMG knew, or with deliberate recklessness disregarded, when it issued clean audit opinions for FY-2021 and FY-2022. Drawing extensively from KPMG's own workpapers, internal communications, and the contemporaneous records KPMG obtained and reviewed from SVB during the audit process, the SAC alleges, among other things, that KPMG blindly accepted management's assertions at face value, failed to perform any meaningful analysis of whether SVB actually possessed the ability to hold its HTM portfolio to maturity, failed to test controls directed at that critical accounting judgment, and disregarded

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[1] References to (i) "SAC" and "¶_" are to the [Proposed] Second Consolidated Amended Class Action Complaint (Dkt. No. 319-2); (ii) "Motion" or "Mot." are to KPMG's Motion to Dismiss the SAC (Dkt. No. 125); and (iii) capitalized terms not defined herein are defined in the SAC. Unless otherwise indicated, emphasis is added, and internal citations, alterations, and quotations are omitted.

the absence of controls governing HTM classifications altogether. In doing so, KPMG issued clean audit opinions certifying compliance with GAAP and effective internal controls despite possessing information that directly contradicted those conclusions.

Taken together, these allegations raise a powerful inference that KPMG engaged in precisely the type of "egregious refusal to see the obvious" that satisfies the scienter requirement under Ninth Circuit law. *See N.M. State Inv. Council v. Ernst & Young LLP*, 641 F.3d 1089, 1098 (9th Cir. 2011) (hereinafter "*New Mexico*"). Nothing in KPMG's Motion undermines that conclusion.

First, KPMG mischaracterizes Plaintiffs' scienter theory as a challenge to KPMG's "professional judgment" (Mot. at 1) rather than a challenge to its conscious disregard of contradictory evidence. Plaintiffs allege that KPMG possessed extensive evidence demonstrating that SVB lacked the positive intent and ability to hold its HTM portfolio to maturity, yet failed to meaningfully investigate, analyze, or reconcile that evidence before certifying the opposite conclusion to investors. The SAC identifies numerous instances in which KPMG merely "accepted management at its word," "never received [] documentation," and failed to revisit its purported HTM "judgment" from the prior audit year "[e]ven after being alerted to potential problems" with the Bank's liquidity. *New Mexico*, 641 F.3d at 1098, 1102. When considered alongside the magnitude of the GAAP violation—HTM represented over 40% of SVB's total assets and almost 80% of its investment portfolio—and the complete absence of any internal control ensuring proper classification of these assets, these facts raise a strong inference of scienter.

Second, KPMG impermissibly disaggregates the allegations rather than confronting their collective force. The SAC alleges that, as SVB rapidly transformed its balance sheet and expanded its HTM portfolio to nearly $100 billion, KPMG repeatedly encountered evidence undermining SVB's asserted ability to hold those securities to maturity. Rather than address the cumulative significance of that evidence, KPMG devotes dozens of pages to attacking individual allegations in isolation. But *Tellabs* and Ninth Circuit authority require courts to evaluate scienter allegations holistically and consider whether, "viewed in totality," they give rise to a strong inference of scienter. *New Mexico*, 641 F.3d at 1102-03.

Third, KPMG's efforts to minimize the red flags' significance amount to precisely the kind of merits dispute that cannot be resolved "at the motion to dismiss stage," where "the Court cannot consider arguments going to the truth of Plaintiffs' allegations." Dkt. No. 180 at 19. Plaintiffs have pleaded in exhaustive detail—backed by KPMG's own workpapers—that KPMG knew of specific, documented, and quantified warning signs and yet the workpapers are devoid of any meaningful analysis of them. KPMG's post-hoc assessment of how those facts should now be interpreted in connection with SVB's HTM classifications and its efforts to explain away these red flags raise factual disputes that are improper at the pleading stage and best left for a jury, if considered at all. For example, KPMG points to the Federal Reserve's "satisfactory" liquidity ratings for 2021 and 2022, but it ignores that (i) SVB's regulators did not evaluate whether the Bank had the positive intent and ability to hold nearly $100 billion of HTM securities to maturity; and (ii) the Federal Reserve's underlying findings—including "foundational weaknesses" in critical liquidity-risk processes—affirmatively support the allegations that SVB lacked the ability to reliably assess its funding and liquidity needs over the duration of those securities.

Fourth, KPMG ignores how allegations about the weeks and days leading up the Bank's collapse support scienter. Far from the collapse being "unforeseeable" (Mot. at 18), KPMG was confronted with escalating evidence regarding the Bank's weak controls and deteriorating liquidity position that it recklessly disregarded, including in its going-concern analysis. Among many examples, the SAC highlights KPMG's attendance at the November 2022 Board meeting wherein SVB specifically acknowledged: (i) significant deposit run off during FY-2022; (ii) projections for approximately $5 billion in additional run-offs ***per quarter*** during FY-2023; and (iii) ***multiple restructuring options that involved reclassifying HTM securities***. Rather than scrutinize this evidence, KPMG disregarded it. Nor was this an isolated instance. Just hours before SVB's failure, KPMG signed a "comfort letter" for SVB's contemplated public offering based on stale financial information.

Finally, the SAC adequately pleads loss causation. The Court already concluded that SVB's false and misleading HTM accounting was adequately alleged to be a substantial cause of investor losses. Dkt. No. 180 at 22. KPMG offers no substantive explanation as to why that ruling would not extend to its audit opinions. Mot. at 24. Nor could it, as the SAC pleads that market participants themselves "trac[ed]" each corrective event "back to 'the very facts about which [KPMG] lied'" by expressing heightened concerns about SVB's HTM accounting. *Mineworkers' Pension Scheme v. First Solar Inc.*, 881 F.3d 750, 753 (9th Cir. 2018).

I. BACKGROUND

Fueled by pandemic-era stimulus and historically low interest rates, SVB's total assets tripled from approximately $71 billion to $211 billion between 2019 and 2021. ¶783. At the same time, the Bank became increasingly dependent on largely uninsured deposits from venture-backed companies and investment funds, exposing it to, among other things, heightened liquidity and interest-rate risk. *Id.* Rather than prudently managing those risks, SVB management, as the SAC alleges, deployed much of this deposit growth to chase profit with higher-yield, long-duration HTM securities, causing its HTM portfolio to balloon from approximately $16 billion to $98 billion by year-end 2021. ¶¶784-85. Because HTM securities cannot be sold to meet liquidity needs without jeopardizing the accounting treatment of the broader portfolio, the decision to classify and maintain these HTM securities became the ***single most consequential accounting decision*** affecting SVB's financial condition. ¶¶782, 784.

Before designating securities as HTM—and at each subsequent reporting period—GAAP required SVB to assess whether the Bank had both the "positive intent" and "ability" to hold these assets to maturity. ¶781. That determination required SVB to assess whether it anticipated making HTM securities "available to be sold" in response to "[c]hanges in market interest rates" or "[n]eeds for liquidity" arising from "the withdrawal of deposits," in which case it "shall not classify" the security as HTM. *Id*. Yet, as the SAC alleges, SVB never conducted that analysis and, in any event, lacked the interest rate and liquidity risk controls necessary to conduct such assessments. *E.g.*, ¶¶797-99, 822-42.

In auditing SVB's HTM designations, Public Company Accounting Oversight Board ("PCAOB") Auditing Standards required KPMG to independently assess, for each audit year, whether SVB had the intent and ability to hold its HTM securities to maturity. ¶¶752-82. For FY-2021 and FY-2022, KPMG repeatedly issued clean audit opinions for SVB, despite conducting ***no meaningful assessment*** of whether SVB had the liquidity, funding capacity, and risk-management framework to hold securities through to maturity. ¶¶800-07, 875-76. As the SAC alleges, KPMG instead relied on management's unsupported "intent and ability" determinations and certified SVB's financial statements as GAAP compliant. *Id.*

KPMG's blind reliance on management was particularly egregious given its awareness of a parade of red flags indicating that SVB lacked the ability to hold its HTM securities to maturity. As the SAC alleges, throughout the Class Period, KPMG was aware of persistent interest-rate and liquidity-risk breaches, significant deficiencies in SVB's risk-management framework, adverse internal audit findings, and repeated regulatory criticisms concerning the Bank's liquidity and governance practices. ¶¶809-41, 874-90. Yet, as noted above, KPMG neither meaningfully tested management's HTM assertions nor evaluated whether SVB possessed the liquidity necessary to avoid HTM sales. ¶¶800-07, 875-76. KPMG likewise failed to test SVB's controls over its "intent and ability" determinations—controls that did not even exist. ¶962. Its failures culminated in its 2022 audit opinion that omitted any going-concern warning despite overwhelming evidence of deteriorating financial and liquidity conditions. ¶¶942-43. Two weeks later, SVB collapsed in one of the largest bank failures in United States history. ¶878.

A. KPMG Knew of Significant Red Flags During the FY-2021 Audit

KPMG's FY-2021 audit files contained a constellation of red flags demonstrating that SVB lacked the ability to hold its massive HTM portfolio to maturity. As the SAC alleges, before issuing its FY-2021 audit opinion, KPMG received and reviewed information showing that SVB's liquidity position depended on the sale of HTM securities, that its liquidity-risk framework was deficient, and that both regulators and SVB's internal audit department had identified serious weaknesses in the Bank's risk-management processes that went to the heart of the HTM classification. ¶¶809-948. Each of these red flags bore directly on the central accounting question underlying SVB's HTM classification: whether SVB possessed the positive intent and ability to hold its HTM portfolio to maturity.

First, KPMG knew that, as SVB's HTM portfolio surged from approximately $16 billion to $98 billion during 2021, the Bank funneled tens of billions of dollars of deposits into long-duration securities. ¶¶784-85. KPMG also knew that this transformation dramatically increased the Bank's liquidity and interest-rate risk and was driven by a desire to enhance returns while shielding Other Comprehensive Income ("OCI"), a metric followed by investors, from the effects of rising interest rates, not on account of any meaningful assessment of SVB's ability to hold those securities to maturity. ¶¶784-86, 798. KPMG's audit files confirm its awareness that SVB was "add[ing] risk exposures to HTM" to "enhance return[s]" and "shield [OCI] in a ris[i]ng rate environment." ¶788; *see also* ¶¶786-87.

Second, KPMG knew that SVB's ILST revealed substantial liquidity shortfalls. ¶¶809-19. In 2021, KPMG received an internal analysis showing that over $58 billion of SVB's purported $80.8 billion liquidity buffer consisted of HTM securities, even though the Bank had the capacity to monetize only approximately $4 billion of those securities through repurchase agreements, leaving a massive shortfall. ¶¶815-19. As a result, the Bank necessarily would need to sell HTM securities to generate liquidity during times of stress. *Id*. Consistent with that reality, Defendant Beck described SVB's liquidity shortfall as "staggering," while SVB's Treasurer acknowledged that the sale of "all securities," ***including HTM***, should be considered during a stress event. ¶818. Those admissions directly contradicted management's assertion that SVB possessed the positive intent and ability to hold its HTM securities to maturity, demonstrating instead that the Bank expected to rely on those same securities to meet liquidity needs during a stress event, in violation of the relevant accounting standards. ¶¶781-82.

Third, KPMG reviewed the Federal Reserve's November 2021 supervisory findings that SVB's liquidity risk management practices were "below supervisory expectations" and that the Bank's liquidity stress testing, liquidity limits framework, and contingency funding plan suffered from "fundamental shortcomings." ¶¶822-32. The Federal Reserve further warned that SVB's stress tests "understate[d] [deposit] outflows" and suggested that the Bank's liquidity buffer could be "insufficient" "under stress." ¶826. Rather than investigate what those findings meant for SVB's ability to hold its HTM portfolio to maturity, KPMG expressly dismissed them as irrelevant to the audit, characterizing them as having "no indication of direct impact on SVB's financial statements or control environment." ¶¶833-37.

Fourth, before issuing its FY-2021 audit opinion, KPMG's engagement team received SVB's February 2022 Internal Audit report assigning an overall rating of "Insufficient" to the Bank's liquidity risk management framework. ¶¶837-42. The report identified significant deficiencies in independent review, challenge processes, governance, and highlighted the "missing linkage" between liquidity stress testing and liquidity limits. *Id*. Those findings not only corroborated the Federal Reserve criticisms, but also further undermined management's assertion that SVB could hold its HTM portfolio to maturity. *Id*. KPMG disregarded these findings. ¶842 (stating Internal Audit reports not used for "control testing").

Fifth, KPMG knew that SVB remained in continuous breach of its EVE sensitivity limits throughout 2021, with internal documents characterizing those breaches as a "serious concern" and evidence that the Bank had exceeded its stated appetite for interest-rate risk. ¶¶843-57. KPMG further knew that SVB's purported remediation efforts relied largely on manipulating the underlying assumptions rather than actual 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. ¶¶858-63. Nevertheless, KPMG did not reassess whether the HTM portfolio remained supportable. *Id*.

B. KPMG Knew of Significant Red Flags During the FY-2022 Audit

KPMG's FY-2022 audit did not correct the deficiencies from the prior year. As the SAC alleges, KPMG continued to accept management's HTM classifications even as SVB's liquidity position deteriorated, interest rates increased, deposits declined, unrealized losses mounted, regulators escalated their criticisms, and the Bank's risk-management framework continued to weaken. ¶¶870-78. Rather than reassess its conclusions in light of these developments, KPMG largely repeated the same deficient analyses from FY-2021, including its assertion that prevailing interest rates and SVB's "unprecedented deposit ***growth***" mitigated HTM risk. ¶875. On February 24, 2023—just fifteen days before SVB's collapse—KPMG again issued clean GAAP and internal controls over financial reporting ("ICFR") opinions while declaring its audit followed PCAOB AS, including in assessing the Bank's ability to continue as a going concern. ¶¶877-78. These facts further demonstrate a strong inference of scienter as follows:

First, KPMG knew that SVB's liquidity position deteriorated dramatically throughout FY-2022. ¶¶880-89. SVB's redesigned ILST 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 securities classification and its limited monetization channels for those securities. ¶¶880-84. KPMG also received reports documenting persistent Net Liquidity Position breaches of up to $35 billion and knew that SVB's Financial Risk Management team had elevated its liquidity risk rating to "high" and concluded that SVB needed to "strengthen [its] liquidity position by restructuring the balance sheet in the near term." ¶¶881-88. At the same time, unrealized losses in the HTM portfolio grew to approximately $15 billion—nearly equal to SVB's total shareholders' equity. ¶¶903-05.

Second, KPMG knew any purported support for SVB's HTM classifications had rapidly deteriorated. During 2022, the Federal Reserve raised the federal funds rate seven times while SVB's deposits declined by more than $26 billion, eliminating the "unprecedented deposit growth" KPMG had previously cited as mitigating HTM risk. ¶¶800, 873-75, 891. KPMG also knew that SVB repeatedly breached its EVE risk limits, even after manipulating underlying assumptions. ¶¶892-94. Yet KPMG failed to assess how these developments impacted SVB's ability to hold HTM securities to maturity. ¶¶872-76.

Third, KPMG knew that throughout 2022, SVB repeatedly considered reclassifying or selling—i.e., not holding to maturity—billions of dollars of HTM securities, further undermining the Bank's asserted "intent and ability" to hold its HTM securities to maturity. ¶¶896-902. Those discussions included detailed discussions with the Board during a November 2022 strategy session attended by KPMG regarding transfers of HTM securities to address mounting liquidity pressure, and were fundamentally inconsistent with management's assertion that the Bank intended and was able to hold its HTM portfolio to maturity. ¶¶896-902, 946-47. Yet KPMG stated in workpapers that "management has no current need nor expectation to" transfer securities from HTM to AFS. ¶875.

Fourth, KPMG knew that, against the backdrop of these escalating risks, the Federal Reserve had deemed SVB's Board-level governance and control framework to be critically deficient. In August 2022, the Federal Reserve issued a letter assigning SVB a Deficient-1 rating for Governance and Controls, finding that the Board had failed to provide effective oversight and warning that the Bank's deficiencies posed a significant risk to its safety and soundness. ¶¶906-08. These findings directly undermined the reliability of the governance processes, controls, and management representations on which KPMG relied to support SVB's HTM classification. *Id*. Further underscoring the severity of these governance and control deficiencies, the Federal Reserve informed SVB on November 15, 2022, that its interest-rate-risk simulations were "not reliable," created a "false sense of safety and were directionally inconsistent. ¶¶909-11. Nonetheless, KPMG dismissed the findings as having no meaningful impact on its audit and continued to accept management's conclusions without scrutiny. ¶¶908, 911.

Fifth, KPMG ignored overwhelming evidence that SVB's ability to continue as a going-concern was in doubt. Although PCAOB AS 2415 required KPMG to evaluate contemporaneous conditions and events bearing on the Bank's viability, KPMG's lead audit partner approved a February 23, 2023 going-concern analysis purportedly concluding that none of sixty-four potential warning indicators existed. ¶¶761, 918-43. That conclusion ignored, among other things, severe liquidity pressures, mounting unrealized losses, and SVB's falling share price, while relying on inconsistent data regarding the Bank's projected liquidity. ¶¶924-43. KPMG's disregard of objective facts concerning the Bank's viability came at the same time as it was lobbying SVB to retain its lucrative business, including sponsoring Defendant Becker's cycling team at a $3-to-$4 million per year commitment. ¶¶912-17.

Sixth, further illustrating KPMG's pattern of disregarding significant red flags, just one week after issuing its FY-2022 clean audit opinion, Defendant Goldman Sachs approached KPMG seeking a comfort letter regarding a proposed $2.25 billion capital raise as SVB was planning to liquidate the entirety of its AFS portfolio at a $2 billion loss. ¶¶949-50, 977. Despite this decision coming so soon after the issuance of KPMG's FY-2022 clean audit, on March 9, 2023—the day before SVB's collapse—KPMG signed the draft comfort letter based on financial information that was already ten days old, without requesting updated financial data or reassessing the rapidly deteriorating circumstances facing the Bank. ¶¶951-55.

C. The Truth Is Revealed

KPMG's false audit opinions caused investors to purchase SVB stock at artificially inflated prices. ¶1003. As the SAC alleges, the truth regarding SVB's liquidity position, its inability to support its HTM classifications, and the deficiencies in its risk-management and control framework was revealed through three corrective events culminating in the Bank's failure. ¶¶963-81. After SVB disclosed, on March 8, 2023, that it had sold nearly all of its AFS portfolio at a loss of approximately $2 billion and needed to raise another $2.25 billion in capital, SVB's stock price collapsed. ¶¶977-81.

D. Post-Class Period Developments

On September 19, 2025, the Senate Permanent Subcommittee on Investigations released a detailed report following its interviews of KPMG executives and other personnel and its review of KPMG internal documents. ¶¶982-86. The report concluded that "KPMG had years-long awareness of the problems [at SVB] that precipitated [SVB's] eventual failure, but either ignored or justified these concerns." ¶985.

II. ARGUMENT

A. THE SAC ADEQUATELY ALLEGES KPMG'S SCIENTER

To plead scienter, Plaintiffs must allege facts "raising a strong inference that the defendant possessed actual knowledge or acted with deliberate recklessness." *New Mexico*, 641 F.3d at 1095. That inference "need not be irrefutable, *i.e.*, of the 'smoking-gun' genre," nor must it be the "most plausible" inference. *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 324 (2007). Rather, Plaintiffs need only allege facts giving rise to an inference of scienter that is "cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Id.* In assessing scienter, "[t]he court must determine whether '***all*** of the facts alleged, ***taken collectively***, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard.'" *New Mexico*, 641 F.3d at 1095 (quoting *Tellabs*, 551 U.S. at 323). Thus, the relevant inquiry is not whether any single allegation independently establishes scienter, but whether the SAC's allegations, viewed holistically, support a strong inference that KPMG knowingly or with deliberate recklessness disregarded facts contradicting the clean audit opinions it issued for FY-2021 and FY-2022.

Contrary to KPMG's assertion (Mot. at 11), courts do not afford auditors special deference when evaluating scienter allegations. The Ninth Circuit has rejected the notion that plaintiffs face a heightened burden when pleading fraud claims against auditors, cautioning courts against developing "separate rules of thumb for each type of scienter allegation." *New Mexico*, 641 F.3d at 1095 (quoting *S. Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 784 (9th Cir. 2008)) (cleaned up); *accord In re Mattel, Inc. Sec. Litig.*, 2021 WL 1259405, at *10 (C.D. Cal. Jan. 26, 2021); *see also In re Velti PLC Sec. Litig.*, 2015 WL 5736589, at *33 n.24 (N.D. Cal. Oct. 1, 2015). Accordingly, KPMG is subject to the same scienter analysis applicable to every other defendant under *Tellabs* and *New Mexico*.

Applying that standard, a strong inference of scienter exists where an auditor's conduct reflects "no audit at all, or an egregious refusal to see the obvious, or to investigate the doubtful." *New Mexico*, 641 F.3d at 1098. Allegations that an auditor "failed to review or check information that they had a duty to monitor, or ignored obvious signs of fraud" are sufficient to plead recklessness. *Id.* (quoting *Novak v. Kasaks*, 216 F.3d 300, 308-09 (2d Cir. 2000)). Likewise, deliberate recklessness exists where a defendant "had reasonable grounds to believe material facts existed that were misstated or omitted, but nonetheless failed to obtain and disclose such facts although he could have done so without extraordinary effort." *Reese v. Malone*, 747 F.3d 557, 569 (9th Cir. 2014), *overruled on other grounds by City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605 (9th Cir. 2017). The scienter inquiry therefore focuses on whether the auditor consciously disregarded information undermining its representations.

Consistent with these principles, courts routinely sustain fraud claims against auditors where allegations of violations of GAAP and PCAOB standards are accompanied by allegations that the auditor ignored red flags. *New Mexico*, 641 F.3d at 1102 ("[A]llegations of GAAS violations, coupled with allegations that significant 'red flags' were ignored, can suffice to withstand a motion to dismiss."); *see also Plumbers & Pipefitters Nat'l Pension Fund v. Cisco Sys. Inc.*, 2003 WL 27435829, at *6 (N.D. Cal.

Apr. 24, 2003) ("An auditor's failure to investigate 'red flags' supports a finding of scienter."); *In re Aegean Marine Petroleum Network, Inc. Sec. Litig.*, 529 F. Supp. 3d 111, 152 (S.D.N.Y. 2021) (similar). This "'red flag' doctrine guides the GAAP and [PCAOB] inquiries: 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." *In re Silver Wheaton Corp. Sec. Litig.*, 2019 WL 1512269, at *13 (C.D. Cal. Mar. 25, 2019) (quoting *New Mexico*, 641 F.3d at 1098).

1. The SAC Adequately Pleads Red Flags That KPMG Ignored, Either Knowingly or With Reckless Disregard

The SAC alleges that KPMG was repeatedly confronted with obvious and escalating red flags that directly contradicted management's assertion that SVB possessed the ability to hold its HTM portfolio to maturity, yet consciously disregarded that information and issued clean audit opinions anyway. *See* §§I.A-B. These red flags, which were neither isolated nor ambiguous, included: (i) Federal Reserve and internal audit findings identifying "fundamental shortcomings" in the Bank's liquidity risk management framework, governance, and controls (¶¶822-42); (ii) liquidity stress tests projecting substantial shortfalls under foreseeable stress scenarios, indicating that the Bank could not satisfy its liquidity needs without resorting to HTM sales (¶¶809-21, 880-90); (iii) persistent EVE-risk limit breaches reflecting heightened exposure to interest-rate risk, as well as regulator criticisms of the Bank's interest-rate risk models (¶¶843-52, 891-95, 909-11); (iv) internal documents showing that SVB expanded its HTM portfolio to enhance returns and shield AOCI while simultaneously accumulating interest-rate and liquidity risk (¶¶788, 865-66); and (v) the Bank's repeated efforts to sell or reclassify securities during FY-2022, including in direct response to projected deposit outflows (¶¶896-902).

These red flags demonstrate that KPMG knew of facts directly contradicting SVB's asserted ability to hold its HTM securities to maturity and raised substantial doubts as to whether SVB maintained controls capable of reliably making that determination. Yet as the SAC alleges, KPMG's internal files reveal that it simply "turned a blind eye" to these glaring red flags and based its clean audit opinion almost entirely on the Bank's self-serving representation that it satisfied GAAP's intent and ability requirement. *In re Valeant Pharm. Int'l, Inc. Sec. Litig.*, 2023 WL 3993740, at *4 (D.N.J. June 14, 2023) (auditor failed to inspect "unusual transactions and sales spike[s]" involving a party related to the issuer). These allegations foreclose KPMG's attempt to characterize this case as involving nothing more than a "poor audit" (Mot. at 8). Rather, they support a strong inference of scienter that KPMG consciously disregarded information undermining the very conclusions it certified to investors. *See, e.g.*, *Cisco*, 2003 WL 27435829, at *6 (scienter adequately alleged where auditor failed to investigate numerous "red flags").

Failure to Investigate Accuracy of HTM Designation. A strong inference of scienter exists because KPMG failed to take even the most basic steps "to verify the accuracy" of SVB's HTM classification. *New Mexico*, 641 F.3d at 1098; *see also In re New Century*, 588 F. Supp. 2d 1206, 1234 (C.D. Cal. 2008) ("The absence of a meaningful investigation into the flawed accounting methods . . . supports a strong inference of scienter."). Rather than independently assess whether SVB possessed the ability to hold its HTM portfolio to maturity, the SAC alleges that KPMG merely "accepted management at its word" and "never received [] documentation" regarding the HTM designation before "issu[ing] an unqualified Opinion on the accuracy of [SVB's] financial statements." *New Mexico*, 641 F.3d at 1098.

The SAC identifies multiple examples of this abdication. KPMG's workpapers for both audit years expressly state that it did "not assess[] a risk of material misstatement" as to management's identification of HTM securities because that determination was "one of [management's] principal functions and practices." ¶¶800, 875. Likewise, KPMG's year-end review of the AFS/HTM portfolio merely recited that the HTM classification depended on "[the security's] sub-asset class and management's intent and ability to hold the security," without evaluating whether that representation was true. ¶874; *see also* ¶¶800-04. Jack Pohlman, KPMG's lead audit partner, and Shantina Sampson, a KPMG senior manager, reviewed and approved these workpapers despite their firsthand knowledge of the red flags discussed above, including through their regular receipt and review of ALCO and Finance Committee meeting materials where many of those issues were presented and discussed. *See, e.g.*, ¶¶741, 744, 800-04, 847, 850, 870-75, 900.

KPMG's reliance on management's assertions was particularly unreasonable because both applicable auditing standards and KPMG's own internal guidance required an independent assessment of SVB's "intent and ability" determination. ¶¶769, 771. For example, PCAOB AS 2501.17 requires auditors to evaluate whether "the company has the financial resources and other means to carry out" its stated action. ¶769. KPMG's Handbook on Investments similarly identifies a company's "investment strategies" and "policies," "internal and external communications about liquidity planning for different scenarios," and "cash flow projections" as "relevant" sources of audit evidence when assessing "intent and ability." ¶771. The SAC alleges that KPMG ignored each of these categories of evidence, even though they directly contradicted management's assertion that SVB could hold its HTM portfolio to maturity.

Tellingly, KPMG does not contend that it followed the procedures set forth in the PCAOB AS or its Handbook. Instead, it points to generic considerations referenced in its workpapers—including SVB's "historical holding patterns," "sources of funds and deposit levels," and "external market factors." Mot. at 8. But none of these considerations was supported by ***substantive analysis or evidence*** indicating that SVB could satisfy its future liquidity needs while holding its HTM securities to maturity. *See* ¶¶800-07. Indeed, the only workpaper that appears to address forward liquidity contains an incomplete discussion that cuts off mid-sentence, further evidencing the absence of any substantive evaluation. ¶805. Moreover, KPMG's reliance on those generic factors is even less defensible because it failed to update them "[e]ven after being alerted to potential problems" with the Bank's existing liquidity during FY-2022—conduct courts recognize supports a strong inference of scienter. *New Mexico*, 641 F.3d at 1102; *see also Mattel*, 2021 WL 1259405, at *10 ("Even after being alerted to potential problems . . . [the auditor's] unqualified audit opinions, did not change.").

For example, in its FY-2022 workpapers, KPMG again asserted that "external factors" such as "where interest rates are at and the overall liquidity in the system," along with "internal factors, such as the unprecedented deposit growth," purportedly "***minimized***" the risk around management's intent and ability to hold its HTM securities to maturity. ¶875. But this rationale was carried forward from the FY-2021 audit even though the underlying facts had materially changed. *Compare* ¶875, *with* ¶800. By 2022, interest rates had ***risen sharply***, causing significant deterioration in the fair value of SVB's investment portfolio, and far from experiencing "unprecedented deposit growth," SVB's deposits had ***declined*** by over $25 billion in 2022, worsening its liquidity position and increasing the likelihood that SVB would need to sell HTM securities to meet future liquidity needs. ¶¶873, 875, 891, 903.

As another example, KPMG asserted in its FY-2022 workpapers that "management has no current need nor expectation to" transfer securities from HTM to AFS, despite knowing that SVB had ***repeatedly*** contemplated doing exactly that throughout 2022 as liquidity pressures mounted. ¶875; *see also* ¶¶896-902. Indeed, during the November 2022 Board meeting, SVB management explicitly laid out four strategies to shore up the bank's liquidity, three of which involved transfers from HTM to AFS, including: (i) "Transfer HTM and partial hedge"; (ii) "Transfer HTM and hedge; Sell portion of AFS and watch market reaction"; or (iii) "Transfer HTM and hedge and sell AFS simultaneously." ¶946. While KPMG attempts to characterize these discussions as routine consideration of new audit standards (Mot. at 16-17), nothing in the surrounding context supports this inference. *See, e.g.*, *id.*; ¶888 (SVB escalating liquidity risk to "***high***"). To the contrary, the context shows that SVB could not hold its HTM securities to maturity, but did not transfer these securities due to the risk of "[n]egative market and investor reaction." ¶947.

Magnitude of the Accounting Violation. The importance of the GAAP violation—here, the classification of nearly 80% of the Bank's investment portfolio as HTM, representing over 40% of total assets—supports scienter. ¶784; *see In re Daou Sys., Inc.*, 411 F.3d 1006, 1022 (9th Cir. 2005) ("significant violations of GAAP standards can provide evidence of scienter . . ."). Courts routinely recognize that "the breadth and scope of the auditor's deviation from GAAP or GAAS" is relevant to scienter. *See New Mexico*, 641 F.3d at 1098. Indeed, the Ninth Circuit has recognized that an auditor's failure to adequately scrutinize issues of extraordinary significance supports a strong inference of deliberate recklessness because "an auditor, in fulfilling duties of public trust, should take a long hard look" at such matters. *New Mexico*, 641 F.3d at 1099 (finding scienter adequately alleged where the auditor failed to meaningfully scrutinize a transaction representing "$700 million, roughly a quarter of Broadcom's reported revenue in 2006 of $2.5 billion"); *see also In re Medicis Pharm. Corp. Sec. Litig.*, 2010 WL 3154863, at *5 (D. Ariz. Aug. 9, 2010) ("substantial [accounting] errors give rise to an inference that the defendant acted recklessly or intentionally used deceptive accounting principles to disguise serious problems").

Here, the HTM classification was not a peripheral accounting judgment—it was the most consequential accounting determination affecting SVB's financial condition. During FY-2021, SVB rapidly expanded the HTM portfolio from approximately $16 billion to $98 billion—a 500% increase in a single year—and reclassified $8.8 billion in existing AFS securities into HTM. ¶¶728, 784. By FY-2022, the stakes grew even higher as the fair value of SVB's HTM portfolio deteriorated sharply, with unrealized losses swelling to over $15 billion by year-end 2022, which represented approximately 94.7% of SVB's total shareholders' equity of $16 billion. ¶¶903-05. Both the initial classification of securities as HTM and their continued designation represented to investors that SVB possessed the controls, liquidity resources, and risk-management framework necessary to hold the portfolio to maturity without being forced to sell the securities at a loss. And these representations were repeatedly the subject of analyst questions and commentary during the Class Period. ¶¶793, 970, 976, 980. As the SAC alleges, these representations were false and misleading. Under these circumstances KPMG was required to take a "long hard look" at management's asserted intent and ability. *New Mexico*, 641 F.3d at 1099. KPMG's deliberate failure to do so further supports a strong inference of scienter.

Failure to Identify the Complete Lack of Pertinent Internal Control. Scienter is also supported by KPMG's knowledge that SVB lacked any ICFR addressing whether its HTM classifications complied with GAAP. *See New Mexico*, 641 F.3d at 1098; *see also New Century*, 588 F. Supp. 2d at 1234-35 (scienter pled where "KPMG was aware of internal control deficiencies regarding [the company's] methods for determining the value of residual interests"). KPMG offers no concrete defense of this failure, besides baldly and incorrectly stating the ICFR claim is a "repackaging" of the GAAP opinion. Mot. at 11. Not so. As the SAC alleges, KPMG received SVB's indices of internal controls during both audit years, and none concerned SVB's intent and ability to hold the HTM securities to maturity. ¶¶959-61. The controls KPMG tested concerned other aspects of the securities portfolio, but not the accounting determination at the heart of the HTM classification. ¶959. KPMG nevertheless identified no control deficiency and issued clean audit and ICFR opinions. ¶¶750, 794, 950, 963, 987.

The SAC further alleges that during the FY-2021 audit, KPMG audit team members participated in walkthroughs of SVB's investment controls where SVB personnel specifically highlighted the period of rapid portfolio growth—but there is no indication that KPMG ever asked what controls, if any, governed HTM classification decisions. ¶961. Nor did KPMG correct this failure in FY-2022, even as the red flags surrounding the classification continued to mount. ¶¶957-62.

Accordingly, these allegations support a strong inference that KPMG consciously disregarded the absence of controls governing a critical accounting judgment. *New Mexico*, 641 F.3d at 1098.

2. KPMG's Conduct Just Before SVB's Collapse Confirms Scienter

The SAC's allegations regarding KPMG's audit of SVB's HTM portfolio do not stand in isolation. KPMG's conduct in the weeks preceding SVB's collapse reflects the same pattern—when confronted with evidence undermining management's narrative, KPMG knowingly or with deliberately reckless disregard failed to investigate, challenge, or reassess its conclusions. Instead, it repeatedly accepted management's assurances despite mounting evidence that the Bank's liquidity position was deteriorating. *See In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 763 F. Supp. 2d 423, 517 (S.D.N.Y. 2011) ("[T]he inference from the events of the collapse [of Bear Stearns] establish the [auditor's] failure to consider the red flags and constitute an adequate allegation of reckless disregard sufficient to establish scienter."); *In re Lehman Bros. Sec. & Erisa Litig.*, 131 F. Supp. 3d 241, 260 (S.D.N.Y. 2015) ("red flags bear on . . . whether [the auditor] violated the pertinent GAAS requirements . . . with the requisite state of mind.").

Wholly Deficient Going-Concern Analysis. KPMG's February 23, 2023 going-concern analysis provides yet another example of its deliberate disregard of objective facts. Fifteen days before SVB failed, KPMG completed a checklist requiring it to assess dozens of potential warning signs and nevertheless concluded that none existed. ¶¶918-21. In doing so, KPMG simultaneously ignored a $15.2 billion deterioration in the fair value of the HTM portfolio, a 66% decline in SVB's share price, ongoing supervisory criticisms that directly implicated the safety and soundness of the Bank, inconsistent projected deposit outflows, and internal discussions regarding restructuring alternatives. ¶¶924-48. The inference arising from these allegations is not a mere lapse in "auditor judgment"—as KPMG puts it (Mot. at 19-20)—but a conscious disregard of objective facts in its possession that rendered its going-concern conclusion untenable. *See Arnlund v. Deloitte & Touche LLP*, 199 F. Supp. 2d 461, 479-81 (E.D. Va. 2002) (scienter adequately pled where the auditor failed to issue a going-concern warning despite facts showing that the company's liquidity was in jeopardy and affecting its financial viability).

Perhaps most egregiously, KPMG's going-concern analysis rested on a deposit forecast that was irreconcilable with other contemporaneous information KPMG already knew. Despite attending the November 2022 Board meeting where SVB management projected ***deposit outflows of approximately $5 billion per quarter in 2023*** and presented three restructuring options involving HTM transfers to address the resulting liquidity pressures, KPMG nevertheless accepted for purposes of its going-concern analysis a separate forecast projecting that deposits would ***increase*** by approximately $7 billion during FY-2023. ¶¶944-48. Far from demonstrating failure was "unlikely" (Mot. at 20), SVB's November 2022 Board deck identified the potential for "***[n]egative market and investor reaction***" in response to the Bank's needed restructuring to address bubbling liquidity issues. ¶947. Disregarding this evidence strongly supports the inference that KPMG knew its analysis was unreliable or recklessly disregarded obvious evidence it was. *See Arnlund*, 199 F. Supp. 2d at 479-81; *Umsted v. Andersen LLP*, 2003 WL 23282616, at *3, *6 (N.D. Tex. Nov. 5, 2003) (scienter adequately alleged where the auditor disregarded information suggesting the financial information on which it relied was false or faulty).[2]

March 2023 Comfort Letter. KPMG's response to the March 2023 capital raise further supports scienter. Within days of issuing an unqualified audit opinion, SVB was preparing to sell its entire AFS portfolio and raise another $2.25 billion in capital to address mounting liquidity pressures. ¶¶950-52, 977. While KPMG had been specifically informed by November 2022 of the prospect that SVB would have to sell AFS securities (¶900), the 2023 sale timing, so shortly after the issuance of the Form 10-K, should have triggered KPMG to more closely audit SVB's intentions and abilities with respect to the entire securities portfolio. Instead, KPMG simply began working with SVB and Goldman Sachs on the offering, and indicated its willingness to provide Goldman Sachs a comfort letter that the financial information submitted in the Form 10-K fairly presented the Bank's financial condition, despite the fact that the AFS sale would materially impact the Bank's financial condition and call into focus the issue of having to reclassify or transfer HTM securities to create a new liquidity buffer. ¶¶949-53. KPMG signed the comfort letter on March 9, 2023, one day before the Bank collapsed, supported entirely by stale financial data and without requesting updated information, even as SVB's financial condition rapidly deteriorated. ¶¶951-53. KPMG's failure to investigate or reconcile these obvious inconsistencies further demonstrates its pattern of accepting management's representations without scrutiny, supporting a strong inference of scienter.

Efforts to Lobby SVB While Finalizing FY-2022 Audit. KPMG's campaign to preserve its SVB engagement while simultaneously finalizing an audit that ignored numerous red flags speaks directly to its

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[2] KPMG's authorities (Mot. at 19) are readily distinguishable and underscore the adequacy of the SAC's allegations. In *In re Polaroid Corp. Sec. Litig.*, 465 F. Supp. 2d 232, 247 (S.D.N.Y. 2006), the court determined that the auditor investigated the relevant liquidity issue—whether Polaroid could "refinance its short term debt"—and documented its analysis in contemporaneous memoranda. Here, by contrast, the SAC alleges that KPMG, among things, accepted a forecast that contradicted other contemporaneous information already in its possession, yet conducted no further investigation regarding this glaring discrepancy. And unlike, *In re Fannie Mae 2008 Sec. Litig.*, 742 F. Supp. 2d 382, 413 (S.D.N.Y. 2010), where the complaint alleged "no facts suggesting" the company would be unable to obtain financing or that its business model faced a genuine threat, the SAC alleges that KPMG was aware of multiple facts demonstrating severe and escalating liquidity pressures at SVB. *See, e.g.*, ¶¶944-48

"motivation to overlook [accounting issues] in order to protect its own source of lucrative accounting and consulting fees" and "can thus strengthen an inference of scienter." *In re Stone & Webster, Inc., Sec. Litig.*, 414 F.3d 187, 215 (1st Cir. 2005); *see also In re Jiangbo Pharm., Inc., Sec. Litig.*, 884 F. Supp. 2d 1243, 1266 (S.D. Fla. 2012) ("conflicts of interest [] might compromise the auditor's independence"), *aff'd sub nom.*, *Brophy v. Jiangbo Pharm., Inc.*, 781 F.3d 1296 (11th Cir. 2015). Here, just as KPMG was finalizing its FY-2022 audit report, SVB informed KPMG that it intended to seek competitive bids for its audit work. ¶¶912-13. KPMG responded by actively courting the Bank's business, including meeting with SVB executives and considering a multi-million-dollar sponsorship commitment associated with Defendant Becker. ¶¶914-16. When viewed alongside KPMG's repeated failure to investigate contradictory audit evidence, challenge management's assumptions, or revisit its conclusions despite mounting warning signs, they further support the inference that KPMG had incentives to avoid jeopardizing its client relationship by confronting SVB's accounting and liquidity problems.[3]

3. KPMG's Arguments to the Contrary Fail

Because KPMG "had contemporaneous knowledge of information that contradicted the representations" it made "to investors," scienter is adequately pled. Dkt. No. 180 at 21. None of KPMG's arguments alters that conclusion.

First, KPMG argues that, in face of a litany of red flags that it failed to investigate, the "most compelling inference" is "not that KPMG conducted 'no audit at all'" but rather that it "exercised its professional judgment in assessing SVB's classification of its HTM securities." Mot. at 10. This argument effectively renders meaningless the second two prongs of the scienter standard articulated by the Ninth Circuit—namely, that an auditor's "egregious refusal to see the obvious, or to investigate the doubtful" raises a strong inference of scienter. *New Mexico*, 641 F.3d at 1098. No authority supports such a result.[4]

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[3] The plaintiffs in *In re Peregrine Sys., Inc. Sec. Litig.*, 2005 WL 8158825, at *67 (S.D. Cal. Mar. 30, 2005) and *In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1427 & n.7 (9th Cir. 1994) (Mot. at 21) failed to allege facts connecting the auditor's desire to retain the engagement to contemporaneous audit decisions or accounting judgments. Here, by contrast, the SAC alleges KPMG was actively soliciting SVB's continued business while simultaneously finalizing its FY-22 audit and confronting the very liquidity, HTM-classification, and going-concern issues it ultimately failed to investigate and challenge.

[4] KPMG's suggestion that "egregious[]" failures to see the obvious cannot establish scienter (Mot. at 11) takes *DSAM*'s description of what the plaintiff "alleged" out of context. *See DSAM Glob. Value Fund v. Altris Software, Inc.*, 288 F.3d 385, 387 (9th Cir. 2002).

Moreover, the SAC does not support KPMG's purported competing inference that it "exercised professional judgment." Mot. at 8. Instead, the SAC alleges that that KPMG ***abdicated*** its audit responsibilities in the face of red flags by knowingly failing to identify or test any control governing SVB's intent and ability determination and by performing no meaningful intent and ability analysis of its own, amounting to "no audit at all" over this critical accounting classification. *New Mexico*, 641 F.3d at 1098; *see also, e.g.*, ¶¶800, 875; *Tellabs*, 551 U.S. at 314 (competing inferences must be "rationally drawn ***from the facts alleged***"). These allegations render *DSAM* and *Worlds of Wonder* factually distinguishable. In *DSAM*, the auditor did, in fact, audit the challenged transactions and simply missed the significance of certain "red flags" during its review.[5] *DSAM*, 288 F.3d at 387-90. And the auditor in *Worlds of Wonder* "extensively investigated, carefully addressed, reasonably resolved, and thoroughly documented every transaction" before reaching its conclusions. *Worlds of Wonder*, 35 F.3d at 1425. Neither of these cases suggests that an auditor may invoke its "professional judgment" as an excuse for its failure to conduct any meaningful audit in the face of glaring red flags that directly undermined the conclusion it endorsed.

By contrast, the SAC's facts resemble those in *New Mexico*. There, scienter was adequately pled because the auditor failed to meaningfully investigate the company's most significant accounting determination, and instead accepted management's unsupported representations in the face of contradictory evidence. *New Mexico*, 641 F.3d at 1098. Here, too, KPMG failed to meaningfully investigate facts directly contradicting SVB's asserted ability to hold nearly $100 billion of HTM securities to maturity—including liquidity stress-test results, severe interest rate risk exposures, and escalating regulatory criticisms. *See* §II.A. And KPMG conducted no audit at all of the critical accounting determination underlying SVB's HTM classifications, instead accepting management's unsupported representations. *See id.*

Second, KPMG is wrong that the red flags "did not, at the time, compel the conclusions Plaintiffs urge in hindsight." Mot. at 11. The SAC does not rely on hindsight. It alleges—based largely on KPMG's

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[5] In fact, as the district court explained in the order appealed in *DSAM*, the non-fraudulent inference was strengthened because the auditor identified the accounting violation and "recommend[ed] a restatement of those revenues," which "tend[ed] to negate any inference that [the auditor] deliberately concealed or ignored the GAAP violations." *Reiger v. PriceWaterhouseCoopers LLP*, 117. F. Supp. 2d 1003, 1013 (S.D. Cal. 2000). KPMG offers no such counter inference here. To the contrary, KPMG concealed material issues until the eve of SVB's collapse. *See* §II.B.

workpapers—that KPMG was contemporaneously aware of specific, documented, quantified warning signs that directly undermined its audit conclusions. Whether those facts should have led KPMG to reach a different conclusion is a merits dispute that cannot be resolved "at the motion to dismiss stage" where "the Court cannot consider arguments going to the truth of Plaintiffs' allegations." Dkt. No. 180 at 19. Moreover, by attacking each warning sign in isolation (Mot. at 11-17), KPMG ignores the well-established principle that "the red flags must be viewed in the aggregate; defendants cannot secure dismissal by cherry-picking only those allegations susceptible to rebuttal and disregarding the remainder." *Aegean Marine*, 529 F. Supp. 3d at 149. Viewed holistically, the red-flag allegations readily support scienter.

Even on KPMG's context-deprived terms, its arguments as to specific red flags fail. For example, KPMG argues that the Federal Reserve's findings "did not conclude that SVB's financial statements were misstated." Mot. at 12-13. But the relevant question is not whether the Federal Reserve identified false statements in SVB's financial statements. As SVB's outside auditor, it was KPMG's responsibility—not the Federal Reserve's—to assess the financial statements for any material misrepresentation. And here, the SAC sufficiently alleges that KPMG knew information revealing the very conditions that rendered SVB's HTM accounting classification false and misleading. Indeed, in its April 2023 post-mortem, the Federal Reserve concluded that SVB failed because of the risks inherent in its "balance sheet strategies." ¶215.

KPMG's reliance on the Federal Reserve's "satisfactory" liquidity rating (Mot. at 13) fares no better. That argument, as the Court has already noted, ignores the "regulator feedback ***during the Class Period*** that directly conflicted with representations to investors" regarding SVB's positive intent and ability to hold its HTM securities. Dkt. No. 180 at 21 (emphasis in original). The November 2021 findings identified "fundamental shortcomings" in SVB's liquidity stress testing, deposit modeling, and contingency funding plan—the very inputs underlying any ability-to-hold assessment. ¶¶825-27. Likewise, although the August 2022 letter acknowledged improvements in certain liquidity-risk processes, those same processes revealed ***a massive liquidity crisis*** under projected stress scenarios that deepened thereafter. ¶¶881-84. Moreover, these arguments ignore the broader point that KPMG ***entirely failed to investigate*** what the stress tests meant vis-à-vis the HTM classification, all of which demonstrates scienter. *See* §II.A.

KPMG similarly contends that its "judgment as to the HTM securities" was supported by information "contained in the documents incorporated into the SAC," pointing to SVB's public financial disclosures regarding deposit levels, available borrowing capacity, and liquidity. Mot. at 9. But by relying on SVB's public financial disclosures, rather than any contemporaneous analysis reflected in its audit workpapers, KPMG ***effectively concedes*** it did not consider such factors during either of the audits. ¶¶800-06, 874-76. Moreover, as KPMG knew, SVB's financial statements omitted critical information available to KPMG through the audit process, including the results of the Bank's liquidity stress testing, significant deficiencies in its risk-management controls, continued breach of interest rate risk limits, and the eventual deposit outflow projections, among other material facts. *See, e.g.*, ¶¶815-17, 881.

Third, KPMG argues that public disclosure of certain red flags undercuts scienter. Mot. at 15. But "the disclosure of red flags does not foreclose an inference of scienter." *Aegean Marine*, 529 F. Supp. 3d at 153. And while KPMG emphasizes that the fair value of the HTM securities was disclosed, this does not undercut scienter precisely because investors believed that the Bank had affirmatively determined that it had the positive intent and ability to hold each security to maturity and that KPMG had tested that conclusion and controls such that any unrealized losses would not flow through to the Bank's earnings. That was false. In any event, this argument mirrors the same unconvincing arguments raised in prior motions to dismiss in this case, including by the Exchange Act Defendants. *See, e.g.*, Dkt. No. 121 at 1-2.

Fourth, attacking a straw man, KPMG argues that GAAP expressly excludes "extremely remote disaster scenarios" such as bank runs from the intent and ability analysis. Mot. at 10. Yet Plaintiffs do not allege that KPMG was obligated to anticipate a bank run, but rather that KPMG was obligated to evaluate SVB's forward-looking needs including stemming from liquidity assessments, ***which included*** "severe yet plausible" stress scenarios projecting multibillion-dollar liquidity shortfalls that could only be addressed by selling HTM securities. ¶¶812, 815-17. SVB's accounting team recognized the accounting implications of these stress test results, expressly stating there is "***relevant guidance that might prohibit SVB from calling some/all of [its] securities as HTM***" if the Bank had a plan to sell in response to a severe liquidity event. ¶819. Moreover, KPMG invoked this same GAAP provision in its earlier motions to dismiss, *see* Dkt. No. 123 at 9-10, which the Court rejected in finding the financial statements violated GAAP and that KPMG falsely opined that SVB's financial statements accorded with GAAP. *See* Dkt. No. 180 at 25-29.

Fifth, KPMG's reliance on *Coady v. Indymac Bancorp, Inc.* backfires because that case illuminates the SAC's strength relative to the facts there—which the court characterized as a "very close call" on scienter. 2012 WL 12887532, at *2 n.3 (C.D. Cal. June 6, 2012). The *Coady* plaintiffs alleged that the bank misstated its allowance for loan losses, but their claims fell short because they failed "to allege any facts demonstrating that [the auditor] ***actually ignored [the red flag] information in the course of performing its audits***." Motion to Dismiss Tentative Ruling at 30, *Coady v. Indymac Bancorp, Inc.*, No. 08-cv-3812, (C.D. Cal. May 6, 2010), Dkt. No. 165 ("*Coady* Op."). In contrast, the SAC here pleads detailed, specific evidence drawn from KPMG's workpapers showing that KPMG saw and disregarded escalating red flags rather than investigating them. *See* §§II.A-B. *Coady* is further distinguishable because the bank there had taken concrete steps to update reserves given heightened risk, increasing its loss reserves "by approximately 600%," and the auditor identified and reported the control deficiency at issue. *Coady* Op. at 27, 31-32. SVB took no comparable remedial action, and KPMG identified no analogous deficiency. Properly understood, *Coady* reinforces the adequacy of the SAC's scienter allegations consistent with the framework articulated in *New Mexico*. *See* §§II.A-B.[6]

B. THE SAC ADEQUATELY PLEADS LOSS CAUSATION

The loss causation inquiry "requires no more than the familiar test for proximate cause." *First Solar*, 881 F.3d at 753. To plead loss causation, a plaintiff "need only show a 'causal connection' between the fraud and the loss" by, among other things, "tracing the loss back to the very facts about which the defendant lied" (*id.*) or showing that the alleged corrective events "relate back to the misrepresentation," *Lloyd v. Jacksonville Police & Fire Pension Fund*, 811 F.3d 1200, 1210 (9th Cir. 2016). "[L]oss causation is a context-dependent inquiry," and there are an "infinite variety of causation theories a plaintiff might allege to satisfy proximate cause." *First Solar*, 881 F.3d at 753-54.[7]

Here, the Court has already found that SVB's misrepresentations about its HTM securities and

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[6] KPMG's remaining authorities fare no better. The cases it cites involved plaintiffs who alleged only that an auditor "should have" or "must have" known of red flags—conclusory inferences that courts may reject under the PSLRA. *See In re Saxton, Inc. Sec. Litig.*, 156 F. App'x 917, 920 (9th Cir. 2005); *In re Mercury Interactive Corp. Sec. Litig.*, 2007 WL 2209278, at *13 (N.D. Cal. July 30, 2007). In contrast, the SAC alleges in painstaking detail KPMG's direct knowledge of each pertinent red flag. *See* §§I.A-B.

[7] A complaint need only provide "some indication of the loss and the causal connection that the plaintiff has in mind." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005); *see also In re BofI Holding, Inc. Sec. Litig.*, 977 F.3d 781, 794 (9th Cir. 2020) (loss causation "allegations will suffice so long as they give the defendant notice of plaintiffs' loss causation theory and [] the court some assurance that the theory has a basis in fact").

ICFR in annual reports for FY 2021 and FY 2022 sufficiently pled loss causation. Dkt. No. 180 at 22. KPMG claims that this "does not mean that Plaintiffs have satisfied their burden to plead loss causation against KPMG" for its audit opinions for the same years (Mot. at 24), but it offers no argument as to ***why*** its Motion warrants a different conclusion. The alleged corrective events revealed the same information already sustained by the Court about SVB's true liquidity position, which KPMG's clean audit opinions as to HTM accounting concealed, and concerned facts KPMG disregarded when issuing those opinions. Moreover, immediately following each corrective event, market participants specifically "trac[ed]" the event "back to the very facts about which the defendant lied" by expressing concerns ***in real time*** about SVB's liquidity position and ability to hold its HTM securities to maturity. *First Solar*, 881 F.3d at 753.

July 21, 2022. SVB's financial disclosures regarding net income, losses in its HTM and AFS portfolios, increases in the durations of those portfolios, and a reduced FY 2022 outlook (¶966) related directly to the red flags KPMG disregarded and began to reveal SVB's impaired liquidity position, which called into question its HTM accounting (¶968). In response, a Keefe Bruyette & Woods analyst asked Beck whether SVB "would have to" or would "be allowed to reverse" its HTM designation. ¶970.

October 20, 2022. SVB's disclosures regarding, among other things, its "elevated cash burn," HTM and AFS losses, and deposit outflows (¶¶971-73), further undermined SVB's liquidity position and ability to meet its liquidity needs without selling HTM assets (¶975). Indeed, analysts again responded by pressing SVB executives about SVB's need to "restructure" its HTM portfolio. ¶976.

March 8, 2023. SVB's disclosures—including the forced sale of its AFS portfolio at a $2 billion loss and a massive $2.25 billion capital raise—further revealed its dire liquidity position to the market and indicated that the Bank lacked sufficient liquidity to meet its financial obligations while holding its HTM securities to maturity. ¶977. Indeed, in the wake of this disclosure, Moody's downgraded SVB's credit rating due to a "deterioration in the bank's funding, liquidity, and profitability" (*id.*), and analyst reports expressed "concerns around the bank's liquidity" and raised questions about future HTM sales (¶980).

Because Plaintiffs—and the market—traced each corrective event back to "the very facts about which [KPMG] lied," loss causation is readily established. *First Solar*, 881 F.3d at 753; *see also Mattel*, 2021 WL 1259405, at *11 (loss causation adequately alleged where "company had engaged in improper accounting practices and that the stock fell precipitously after [it] began to reveal figures showing the company's true financial condition"); *In re Lehman Bros. Sec. & ERISA Litig.*, 799 F. Supp. 2d 258, 305-07 (S.D.N.Y. 2011) (sustaining Section 10(b) claims against auditor where clean audit opinions concealed true financial condition that was revealed through "massive write-downs," "ratings downgrades" and a "liquidity crisis" "that ultimately killed Lehman").

KPMG's loss causation challenges fail. ***First***, in arguing that Plaintiffs are "require[d]" to allege that the market "learned of and reacted to ***the fraud***" (Mot. at 23-24), KPMG misstates the law. In *First Solar*—the Ninth Circuit's seminal loss causation decision, which KPMG does not mention in its brief[8]—the court held that "[r]evelation of fraud in the marketplace is ***simply one of*** the infinite variety of causation theories a plaintiff might allege to satisfy proximate cause." 881 F.3d at 754. It further confirmed that loss causation "may be shown even where the alleged fraud is not necessarily revealed prior to the economic loss," including through "the revelation of an earnings miss . . . ***even if the market was unaware at the time that fraud had concealed the miss***." *Id.* at 753-54.

Second, KPMG is wrong that the corrective events did not "disclose[] any truth about anything having to do with the 2021 financial statements or ICFR." Mot. at 22. The 2021 financial statements KPMG signed off on reported over $98 billion in HTM securities (¶¶792, 903), and each corrective event revealed information that undermined that HTM accounting, as evidenced by analysts expressing specific concerns about the HTM designations. ¶¶963-81; *see Mattel*, 2021 WL 1259405, at *11; *Lehman Bros.*, 799 F. Supp. 2d at 306-07.

Finally, KPMG's arguments concerning its 2022 audit opinion are meritless. A corrective event need not "mention KPMG" or "disclose a restatement of financial results or fraud in the audit opinion." Mot. at 23; *see also BofI*, 977 F.3d at 790 (corrective "disclosure need not precisely mirror the earlier misrepresentation"); *Silver Wheaton*, 2019 WL 1512269, at *14 (rejecting argument that no loss causation exists for clean audit opinion because "plaintiffs have not alleged that Deloitte's purported violations of accounting rules were revealed to the market"). Nor does the absence of "sales of HTM securities" (Mot.

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[8] While KPMG cites to *Metzler*, *Loos*, and *Apollo Group* for what Plaintiffs "must" allege to plead loss causation (Mot. at 22-24), the Ninth Circuit confirmed in *First Solar* that those were "fact-specific" rulings and that its approval of "more restrictive" "revelation of fraud" causation theories in those cases "should not imply [its] rejection of others." *Id.* at 753-54.

at 23), preclude a finding of loss causation where, as here, the corrective events revealed the very truth that was concealed by KPMG's audit opinions signing off on SVB's HTM designation: SVB lacked sufficient liquidity to meet its financial obligations while holding its HTM securities to maturity. Indeed, analysts questioned the Bank's liquidity ***precisely because*** it was "locked into >$90bn of off-limits HTM securities." ¶980. While SVB did not sell HTM securities in March 2023, it also did not meet its financial obligations or hold those securities to maturity. Instead, the Bank collapsed under the weight of its HTM portfolio, thereby confirming exactly what Plaintiffs have alleged.

C. THE SAC ADEQUATELY PLEADS SCHEME LIABILITY

The SAC also sufficiently alleges a scheme claim because it alleges: (i) KPMG "committed a deceptive or manipulative act in furtherance of the alleged scheme," and (ii) there was "a connection between the alleged deceptive or manipulative act and the purchase or sale of a security." *Khan v. ChargePoint Holdings, Inc.*, 2026 WL 483060, at *4 (N.D. Cal. Feb. 20, 2026). Specifically, the SAC alleges that KPMG engaged in deceptive conduct by (i) failing to assess SVB's internal controls over its "intent and ability" assessment; (ii) relying on management's "intent and ability" representations in violation of PCAOB standards and its own accounting guidance; (iii) disregarding serious red flags indicating that SVB did not satisfy GAAP's "intent and ability" requirement; and (iv) preparing a sham going concern analysis. *See* ¶¶791-807. That conduct was "in connection with" purchases of SVB stock because purchasers in SVB common stock were deceived by the propriety of SVB's $90+ billion HTM portfolio and KPMG's assurances of those classifications as the "gatekeeper of [SVB's] financial reporting." ¶730. KPMG's claim that the SAC "consist[s] entirely of" alleged misstatements (Mot. at 25), is thus misguided. *See, e.g., State Tchrs. Ret. Sys. of Ohio v. ZoomInfo Techs. Inc.*, 2025 WL 3013683, at *18-19 (W.D. Wash. Oct. 28, 2025) (sustaining scheme claim where defendants "abandon[ed]" due diligence efforts and "suppressed" facts that "did not tell the story they wanted to tell").

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny KPMG's Motion.[9]

[9] KPMG's Motion argues that the SAC is time-barred. Mot. at 5 (citing Opposition to the Motion for Leave to Amend). KPMG's Motion also fails on this ground for reasons Plaintiffs set forth in their reply brief on the Motion to Amend.

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Respectfully submitted,

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[10] 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.