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Superior Court of California,
County of San Francisco

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CGC-23-607628

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**

14
15 **GEORGE A. MILLER and**
16 **JANET McKINLEY,**

17 Plaintiffs,

18 v.

19 **FIRST REPUBLIC BANK,**
20 **SAMUEL CARL SCHONER, and**
21 **DOES 1-10**

22 Defendants.

Case No. _____

COMPLAINT FOR:

1. **BREACH OF FIDUCIARY DUTY**
2. **NEGLIGENCE**
3. **ELDER ABUSE**
4. **FRAUD**

JURY DEMAND

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COMPLAINT

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1 **I. INTRODUCTION**

2 1. Plaintiff George Miller is 87 years old and Janet McKinley is 68 years old. They
3 have been married for many years. As retirees, their lives are dedicated to philanthropy, each
4 founding scholarships and organizations that give to disadvantaged students and underserved
5 minorities. Mr. Miller, for example, has dedicated millions of his life savings to the Miller
6 Scholars Program at the University of California Berkeley, which provides low-income, first-
7 generation students with an annual scholarship and a course in leadership and research skills.
8 Unfortunately, Defendants First Republic Bank and Samuel Schoner were not dedicated to
9 Plaintiffs’ philanthropic goals, or even their fiduciary duties of loyalty, care, and good faith.
10 Instead, even as they knew that they were causing Plaintiffs undue risk, and ultimately, enormous
11 loss, they lined their own pockets.

12 2. When First Republic Bank failed, Plaintiffs lost **\$7 million** because of Defendants’
13 mismanagement, failures, greed, and most importantly—fraud. The loss was the result of
14 Defendants’ decision to “invest” that entire sum into First Republic Bank preferred stock, which
15 was contrary to Defendants’ former advice and promise to diversify Plaintiffs’ investments.
16 Defendants also failed to disclose the risks of Plaintiffs’ investments, including the risks that
17 ultimately caused First Republic to fail. And once it was public knowledge that First Republic
18 was imploding in the spring of 2023, in a blatant breach of their fiduciary duties, Defendants
19 failed to liquidate Plaintiffs’ holdings **even after multiple requests by Plaintiffs to sell**, as
20 shown in detail hereafter.



1 3. Most of the money that Defendant Schoner lost was housed in a fund that provided
2 scholarships and support for underserved transfer students to attend UC Berkeley. Although
3 claiming he would “diversify” their accounts, Defendant Schoner loaded Plaintiffs’ savings with
4 \$7 million in First Republic preferred stock. **Plaintiff Miller repeatedly requested that**
5 **Defendant Schoner sell his stock, but Schoner did not sell a single share.** One has only to
6 look at the First Republic executives’ sales of stock prior to the collapse of First Republic to
7 understand the fraud that was committed on the Plaintiffs and other shareholders. As set forth
8 below, the executives got rid of tens of thousands of shares right before the bank failed.

9 4. Schoner knew that Mr. Miller was retired, and given his age, wanted limited
10 interaction with finances so that he could enjoy his retirement and focus on scholarships and
11 philanthropy. Likewise, Ms. McKinley trusted Schoner to deliver on the balanced portfolio he
12 had promised. However, Schoner disregarded Plaintiffs’ desire for diversification and invested
13 Plaintiffs’ savings into First Republic, the very bank Schoner worked for. Schoner received
14 increased commissions on the sales of First Republic stock he sold to the Plaintiffs. These
15 commissions created a conflict of interest that he chose over his duties to the Plaintiffs.

16 5. Plaintiffs now bring claims for breach of fiduciary duty, fraud, negligence, and
17 elder abuse (on behalf of Mr. Miller) against the Defendants.

18 **II. JURISDICTION AND VENUE**

19 6. This Court has personal jurisdiction over Defendant First Republic Bank because
20 Defendant was a California-chartered bank and trust company, is a California citizen, conducts
21 business in California, and is headquartered in San Francisco, California. This Court has personal
22 jurisdiction over Defendant Schoner as Defendant is a California citizen and conducts business in
23 San Francisco, California, where his office is located.

24 7. At all times relevant, the events which combined to produce the injuries sustained
25 by Plaintiffs occurred in San Francisco County and the State of California. This Court is
26 competent to adjudicate this action and the amount in controversy exceeds the jurisdictional
27 minimum of this Court.

28 8. Pursuant to California Code of Civil Procedure §395(a), venue is proper in the

1 above-entitled Court because Defendants do business in this County and a substantial part of the
2 events or omissions giving rise to the claims occurred in this County.

3 **III. THE PARTIES**

4 **A. Plaintiffs**

5 9. **Plaintiff George Miller** is an 87-year-old retiree and philanthropist. He has
6 served as a director or an advisor to UC Berkeley, Amnesty International, Oxfam America, The
7 Salvation Army, Environmental Defense Fund, Save the Bay, Market Street Railway, Americans
8 for Legal Reform, Nolo Press, Pacific Rivers Council, and Marshall Hale Hospital (now
9 California Pacific Medical Center). In 1997, Mr. Miller opened the Millers Scholars Program at
10 UC Berkeley which provided scholarships to low-income, first-generation community college
11 transfer students. Mr. Miller was a client of First Republic and Defendant Schoner was his
12 financial manager during the relevant time period.

13 10. **Plaintiff Janet McKinley** is a 68-year-old retiree and also a philanthropist. Ms.
14 McKinley is the chairwoman of Advance Global Capital—an institution focused on providing
15 credit to businesses owned or operated by women and other underrepresented groups. She
16 currently serves as Chair Emerita of the UC Berkeley Endowment Management Company, and
17 formerly served as a board member of UC Berkeley, as a board trustee of Smith College, the
18 Deutsche Bank Microfinance Consortium Fund, and MicroCredit Enterprises, and as chair of
19 Oxfam America. Ms. McKinley was a client of First Republic and Defendant Schoner was her
20 financial manager during the relevant time period.

21 **B. Defendants**

22 11. **Defendant First Republic Bank** was a California-chartered bank and trust
23 company, headquartered in San Francisco, California.

24 12. Defendant First Republic Bank and its subsidiaries offered private banking, private
25 business banking, and private wealth management. It provided residential, commercial, and
26 personal loans, deposit services, and private wealth management, including investment brokerage,
27 insurance, trust, and foreign exchange services.

28 13. Defendant First Republic offered services through preferred banking or wealth

1 management offices primarily in San Francisco, Palo Alto, Los Angeles, Santa Barbara, Newport
2 Beach and San Diego, California; Portland, Oregon; Boston, Massachusetts; Palm Beach, Florida;
3 Greenwich, Connecticut; New York, New York; Jackson, Wyoming; and Bellevue, Washington.

4 14. On May 1, 2023, following failed attempts to save the bank, the Federal Deposit
5 Insurance Corporation (“FDIC”) seized control of First Republic. Most of First Republic’s assets
6 have since been sold to JPMorgan Chase & Co.

7 15. **Defendant Samuel “Sam” Carl Schoner**, CRD # 1928356, is a Senior Managing
8 Director and Wealth Manager at First Republic Investment Management in San Francisco,
9 California.

10 16. Sam Schoner has been working as a financial manager since 1990.

11 17. Prior to working at First Republic, Schoner worked for Merrill Lynch’s Private
12 Client Group and for the Capital Markets Group at Union Bank of California.

13 18. Schoner was Mr. Miller and Ms. McKinley’s financial manager and started trading
14 in their accounts in 2012.

15 **C. Doe Defendants**

16 19. In addition to the named Defendant, various other individuals and entities
17 performed acts and made statements in furtherance thereof, and otherwise participated in, the
18 violations of law alleged herein. The true names and capacities of these individuals and entities,
19 Does 1 through 10, inclusive, are unknown to Plaintiff at this time. Plaintiff, therefore, sues
20 these Defendants, Does 1 through 10, by such fictitious names. Plaintiff further allege that each
21 of these Defendants, Does 1 through 10, is responsible for the acts and occurrences set forth
22 herein. Plaintiff is informed and believes that discovery will reveal additional information
23 concerning the identities of these Defendants, Does 1 through 10, and each of their acts and
24 statements made in furtherance of the violations of law alleged herein. Plaintiff will seek to
25 amend this complaint to show the true names and capacities of each of these Defendants, Does 1-
26 10, and the manner in which each of them is responsible for the damages alleged herein, when
27 such information is ascertained.

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1 **IV. CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

2 20. At all relevant times, Defendants (including Does 1-10) were agents of other
3 Defendants, and in doing the acts alleged herein, were acting within the course or scope of such
4 agency. Defendants and Does 1-10, and each of them, are individually sued as participants and as
5 aiders and abettors in the improper acts, plans, schemes, and transactions that are the subject of
6 this Complaint.

7 21. In committing the wrongful acts alleged herein, Defendants and Does 1-10 have
8 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with
9 and conspired with one another in furtherance of the improper acts, plans, schemes, and
10 transactions that are the subject of this Complaint. In addition to the wrongful conduct herein
11 alleged as giving rise to primary liability, Defendants and Does 1-10 further aided and abetted
12 and/or assisted each other in breaching their respective duties.

13 22. Defendants and Does 1-10, and each of them, engaged in a conspiracy, common
14 enterprise, and/or common course of conduct. During all times relevant hereto, Defendants and
15 Does 1-10, and each of them, initiated a course of conduct that was designed to and did conceal
16 the wrongful acts alleged herein. In furtherance of this plan, conspiracy, and course of conduct,
17 Defendant and Does 1-10, collectively and individually, took the actions set forth herein.

18 23. The purpose and effect of Defendants and Does 1-10's conspiracy, common
19 enterprise, and/or common course of conduct was, among other things, to disguise and conceal
20 their egregious conduct and violations of law.

21 24. Defendants and Does 1-10 accomplished their conspiracy, common enterprise,
22 and/or common course of conduct. Defendants and Does 1-10, and each of them, was a direct,
23 necessary, and substantial participant in the conspiracy, common enterprise, and/or common
24 course of conduct complained of herein.

25 25. Defendants and Does 1-10 aided and abetted and rendered substantial assistance in
26 and material contribution to the wrongs complained of herein. In taking such actions to
27 substantially assist and materially contribute to the accomplishment of that wrongdoing,
28 complained of herein, Defendants and Does 1-10 acted with knowledge of the primary

1 wrongdoing, substantially assisted in and materially contributed to the accomplishment of that
2 wrongdoing, and was aware of his or her overall contribution to and furtherance of the
3 wrongdoing.

4 **V. FACTUAL ALLEGATIONS¹**

5 **A. The Background of First Republic Bank**

6 26. First Republic Bank was a California-chartered bank founded in 1985 and
7 headquartered in San Francisco. In 1986, First Republic became a publicly traded company.

8 27. By July 2020, First Republic had over 5,000 employees and more than 80 offices
9 throughout California, Connecticut, Florida, Massachusetts, New York, Oregon, Washington, and
10 Wyoming.



22 28. First Republic was the 14th-largest U.S. bank before its collapse on May 1, 2023.²

23 29. First Republic catered to high-net-worth households. Tim Coffey, an analyst at
24 Janney Montgomery Scott said about First Republic long-standing business model, “lead with the
25 mortgage product, then you do your best to attract their low-cost deposits and their wealth

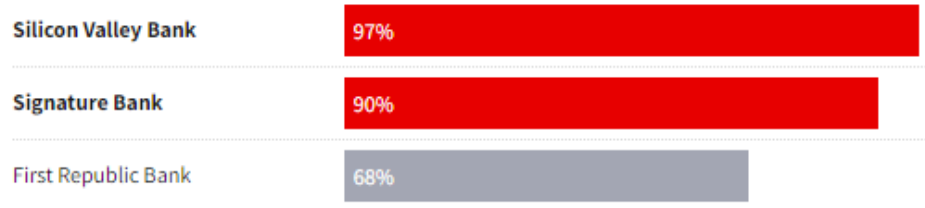
26 ¹ Plaintiffs allegations are based upon personal knowledge as to Plaintiffs and Plaintiffs’ own acts,
27 and upon information and belief as to all matters based upon the investigation conducted by and
through Plaintiffs’ attorneys.

28 ² Natalie Sherman, *First Republic: JP Morgan snaps up major US bank*, BBC, May 1, 2023,
<https://www.bbc.com/news/business-65445427>.

1 management business... Then once you have the personal stuff, you go after nonprofit accounts,
2 and more.”³ As reported in Reuters, “How First Republic’s courtship of the wealthy led to
3 meltdown,” by December 31, 2022, 68% of First Republic’s deposits exceeded the FDIC’s
4 \$250,000 insurance limit.⁴

5 Percentage of Uninsured Deposits At Battered 6 Regional Banks

7 Desposits that exceed FDIC's \$250,000 insurance limits as a percentage of the bank's
8 total deposits as of Dec. 31, 2022.



12 30. In 2020 and 2021, while interest rates were at an all-time low, First Republic
13 decided to aggressively grow its assets. During this time, First Republic offered its customers
14 low-rate loans and invested heavily in bonds and other hold-to-maturity assets.⁵ Hold-to-maturity
15 assets are inversely proportional to interest rates: as interest rates increase, the assets’ value
16 decreases. Given that interest rates were at an all-time low, First Republic knew that interest rates
17 could only go up. From 2021 onward, First Republic knew that the bank had solvency issues and
18 huge risks tied to inevitable interest rate hikes, which were “revealed” when the Bank collapsed.

19 B. First Republic Bank’s Collapse

20 31. First Republic’s ultimate demise can be attributed to a combination of the number
21 of deposits that exceeded the FDIC’s \$250,000 insurance limit and a risky investment strategy
22 that did not adequately account for increases in federal interest rates. As reported by Sheryl

23 _____
24 ³ Sheryl Estrada, *First Republic is suddenly in big trouble—but the structural issues date back*
25 *when CEO Mike Roffler was CFO*, Fortune, Apr. 28, 2023, [https://fortune.com/2023/04/28/first-](https://fortune.com/2023/04/28/first-republic-trouble-structural-issues-ceo-mike-roffler-was-cfo/)
26 [republic-trouble-structural-issues-ceo-mike-roffler-was-cfo/](https://fortune.com/2023/04/28/first-republic-trouble-structural-issues-ceo-mike-roffler-was-cfo/).

27 ⁴ Lawrence Delevingne, *How First Republic’s courtship of the wealthy led to meltdown*, Reuters,
28 Mar. 27, 2023, [https://www.reuters.com/business/finance/how-first-republics-courtship-wealthy-](https://www.reuters.com/business/finance/how-first-republics-courtship-wealthy-led-meltdown-2023-03-27/#:~:text=For%20years%2C%20First%20Republic%20lured,guarantees%20%24250%2C000%20per%20savings%20account.)
29 [led-meltdown-2023-03-](https://www.reuters.com/business/finance/how-first-republics-courtship-wealthy-led-meltdown-2023-03-27/#:~:text=For%20years%2C%20First%20Republic%20lured,guarantees%20%24250%2C000%20per%20savings%20account.)
30 [27/#:~:text=For%20years%2C%20First%20Republic%20lured,guarantees%20%24250%2C000%20per%20savings%20account.](https://www.reuters.com/business/finance/how-first-republics-courtship-wealthy-led-meltdown-2023-03-27/#:~:text=For%20years%2C%20First%20Republic%20lured,guarantees%20%24250%2C000%20per%20savings%20account.)

31 ⁵ Aaron Schnoor, *What Happened to First Republic Bank?* Medium, May 2, 2023,
32 <https://medium.com/explaining-economics/what-happened-to-first-republic-bank-d6b70a2808b3>.

1 Estrada at Fortune, “[t]he strategy of offering wealthy borrowers substantial mortgages, usually at
2 low rates, that for a time worked so well, was exquisitely wrong for what appeared in late 2022.”⁶

3 32. Interest rates began increasing in March of 2022 when the Federal Reserve began a
4 series of interest rate hikes. As the Wall Street Journal reported, in the spring of 2022, “[b]ehind
5 the scenes, pressure was growing. With Treasurys and money-market accounts suddenly offering
6 4%, the best customer service in the world would have a hard time convincing wealthy clients to
7 stick with a checking account yielding next-to nothing.”⁷ By the end of 2022, rates had gone
8 from zero to 4.5%. Cost cutting measures were put in place and “the bank slowed down hiring
9 and by the end of the year was replacing very few employees who left, according to investor
10 presentations and former employees.”⁸

Meeting date	Rate change	Target range
March 15-16, 2022	+25 basis points	0.25-0.5 percent
May 3-4, 2022	+50 basis points	0.75-1 percent
June 14-15, 2022	+75 basis points	1.50-1.75 percent
July 26-27, 2022	+75 basis points	2.25-2.5 percent
Sept. 20-21, 2022	+75 basis points	3-3.25 percent
Nov. 1-2, 2022	+75 basis points	3.75-4 percent
Dec. 13-14, 2022	+50 basis points	4.25-4.5 percent
Jan. 31-Feb. 1, 2023	+25 basis points	4.5-4.75 percent
March 21-22, 2023	+25 basis points	4.75-5 percent
May 2-3, 2023	+25 basis points	5-5.25 percent

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Source: Fed’s board of governors

21 33. By the end of 2022, rising interest rates meant First Republic’s loans and hold-to-
22 maturity assets exceeded their deposits. Its balance sheet showed that First Republic lost \$27
23 billion in markdowns on loans and other unrealized losses.⁹ By December 31, 2022, to increase
24 its liquidity, First Republic borrowed \$14 billion from the Federal Home Loan Bank (“FHLB”).¹⁰

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⁶ Estrada, *supra* note 3.

⁷ Rachel Louise Ensign et. al., *Why First Republic Bank Collapsed*, The Wall Street Journal, May 1, 2023, <https://www.wsj.com/articles/first-republic-bank-collapse-why-banking-crisis-61660d96>

⁸ *Id.*

⁹ *Id.*

¹⁰ First Republic Bank, Annual Report (Form 10-K) (Feb. 28, 2023).

1 34. On March 10, 2023, a complete failure of management, potentially criminal
2 conduct, and a bank run shuttered Silicon Valley Bank (“SVB”).¹¹ On March 12, 2023, on the
3 heels of SVB’s collapse, Signature Bank (which also suffered from a failure of proper
4 management) experienced a bank run and was forced to shut down.¹²

5 35. On March 12, 2023, two days after SVB’s collapse and on the same day as
6 Signature Bank’s collapse, First Republic announced it obtained an additional \$10 billion in
7 loaned liquidity from the Federal Reserve and JPMorgan Chase & Co.¹³

8 36. As worries of another bank run spread, between March 8, 2023, and March 13,
9 2023, First Republic’s share price declined by \$83.79 per share, or more than 72%, from \$115.00
10 on March 8, 2023, to \$31.21 at close on March 13, 2023.

11 37. By March 15, 2023, First Republic’s borrowing totaled \$138.1 billion from the
12 Federal Reserve, the FHLB, and JPMorgan Chase & Co.¹⁴

13 38. On March 15, 2023, S&P downgraded First Republic’s long-term issuer credit
14 rating to a to “BB+” from “A-,” its senior unsecured issue rating to “BB+,” its subordinated stock
15 issue rating to “BB-,” and its preferred stock issue rating to “B.” Fitch placed First Republic on a
16 “Rating Watch Negative,” downgrading its First Republic’s Long-Term Issuer Default Rating
17 (“IDR”) to a “BB” from “A-” and its Short-Term IDR to “B” from “F1.”¹⁵

18 39. On March 16, 2023, 11 banks infused First Republic with \$30 billion in cash to
19 prevent another bank failure and restore public confidence.¹⁶ But even after the cash infusion,
20 First Republic’s shares continued to fall.

21 40. The following day, on March 17, 2023, First Republic shares closed at \$23.03 per
22

23 ¹¹ Vivian Giang & Mike Dang, *10 Days That Have Roiled Markets: A Timeline of the Banking*
24 *Chaos*, The New York Times, Mar. 20, 2023, <https://www.nytimes.com/article/svb-silicon-valley-bank-collapse-timeline.html>.

¹² Giang & Dang, *supra* note 8.

¹³ First Republic Bank, Current Report (Form 8-K) (Mar. 12, 2023).

¹⁴ Press Release, First Republic Bank, First Republic Reports First Quarter 2023 Results, (Apr. 24, 2023) <https://ir.firstrepublic.com/static-files/013f57fb-b980-4353-bbb3-0e7a3b27f20a>.

¹⁵ Carla Mozée, *First Republic Bank downgraded to junk by S&P and Fitch on risk of clients pulling deposits in the wake of SVB failure*, Business Insider, Mar. 15, 2023, <https://markets.businessinsider.com/news/stocks/svb-first-republic-bank-credit-ratings-downgrade-junk-fitch-frc-2023-3>.

¹⁶ Sweet, *supra* note 8.

1 share, down from \$34.26 the previous day. Citing First Republic’s deteriorating financial
2 position, Moody’s Investors Service downgraded First Republic’s rating to “junk” status.¹⁷

3 41. On March 19, 2023, S&P further downgraded First Republic’s long-term issuer
4 credit rating to “junk” status and downgraded First Republic’s senior unsecured issue rating to
5 “B+,” its subordinated issue rating to “B-,” and its preferred stock issue rating to “CCC.”¹⁸

6 42. On March 20, 2023, First Republic’s stock closed at \$12.18 a share, down from
7 \$23.03 the previous trading day.

8 43. As of March 31, 2023, First Republic’s deposits totaled \$104.1 billion,
9 representing a 41% decrease in the first quarter of 2023.¹⁹ First Republic borrowed an additional
10 \$14.1 billion from the FHLB, bringing the amount of outstanding FHLB advances to \$28.1
11 billion. First Republic also borrowed \$77.3 billion from the Federal Reserve, totaling
12 approximately \$105.4 billion in borrowings.²⁰

13 44. On April 24, 2023, First Republic announced that it had lost \$100 billion in
14 deposits in March of 2023.²¹ As a result, First Republic’s share price continued to fall.

15 45. On April 28, 2023, First Republic’s deposits totaled approximately \$92.6 billion,
16 representing an additional 11% decrease in deposits from March 31, 2023.²² First Republic’s
17 share price fell to \$3.51 by the end of the day and to \$2.33 in after-market trading.

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19 ¹⁷ Akriti Sharma & Juby Babu, *Moody’s downgrades credit ratings on First Republic Bank*,
Reuters, Mar. 17, 2023, <https://www.reuters.com/business/finance/moodys-downgrades-credit-ratings-first-republic-bank-2023-03-18/>.

20 ¹⁸ Jonathan Stempel & Andirah Saligrama, *S&P cuts First Republic deeper into junk, says \$30 billion infusion may not solve problems*, Reuters, Mar. 19, 2023, available at
21 [https://www.reuters.com/business/finance/sp-again-downgrades-first-republic-bank-ratings-2023-03-19/#:~:text=March%2019%20\(Reuters\)%20%2D%20First,not%20solve%20its%20liquidity%20problems.](https://www.reuters.com/business/finance/sp-again-downgrades-first-republic-bank-ratings-2023-03-19/#:~:text=March%2019%20(Reuters)%20%2D%20First,not%20solve%20its%20liquidity%20problems.)

22 ¹⁹ Mehnaz Yasmin and Nupur Anand, *First Republic Bank deposits tumble more than \$100 billion as it explores options*, Reuters, Apr. 25, 2023, available at
23 <https://www.reuters.com/business/finance/first-republic-bank-deposits-falls-41-shares-slide-2023-04-24/>.

24 ²⁰ See Department of Financial Protection and Innovation, State of California, *First Republic Bank—Order Taking Possession of Property and Business*, May 1, 2023, available at
25 <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/04/First-Republic-Order-Taking-Possession-under-FC-592-FINAL.pdf>.

26 ²¹ Yasmin & Anand, *supra* note 18.

27 ²² Hannah Levitt & Jenny Surane, *JPMorgan takeover of First Republic provokes ‘too-big-to-fail’ banking critics*, Financial Post, May 1, 2023, <https://financialpost.com/fp-finance/banking/jpmorgan-takeover-first-republic-provokes-banking-critics>.

1 46. By April 28, 2023, First Republic borrowed another \$15.8 billion from the Federal
2 Reserve. By this time, First Republic had borrowed a total of \$28.1 billion from the FHLB and
3 \$93.2 billion from Federal Reserve, totaling \$121.3 billion outstanding.²³ At this point, First
4 Republic was unable to secure additional funding that would ensure its viability because its
5 borrowing had exceeded its assets yield, making First Republic structurally unprofitable.

6 47. On May 1, 2023, the FDIC seized control of First Republic. First Republic's
7 collapse was the second largest in the U.S. after Washington Mutual, which failed in the financial
8 crisis of 2008. Most of First Republic's assets have since been sold to JPMorgan Chase & Co.,
9 while the rest remains in FDIC receivership.²⁴

10 **C. While First Republic Collapsed, Executives Dumped Their Personal Stock**

11 48. In the time leading up to its collapse, First Republic and its executives
12 misrepresented its ability to withstand rising interest rates and failed to communicate the extent of
13 its vulnerabilities. At the same time, those same executives were dumping First Republic stock.

14 49. Before any public disclosures or findings were made but as First Republic teetered
15 on the verge of collapse, First Republic executives sold \$12 million in stock. None of the relevant
16 filings indicate that the executives' sales listed below were prescheduled and executed under
17 10b5-1 plans.²⁵

18 **1. Founder and Executive Chairman Sells Millions Weeks Before
19 Collapse**

20 50. In January and February 2023, Jim Herbert, First Republic's founder and
21 Executive Chairman, sold \$4.5 million worth of shares, representing 7% and 5% of his holdings
22 at the time, respectively.²⁶

23 ²³ Catarina Saraiva, *Fed Emergency Loans Plunge After First Republic Seizure*, Bloomberg, May
4, 2023, [https://www.bloomberg.com/news/articles/2023-05-04/fed-emergency-loans-plunge-
after-first-republic-seizure#xj4y7vzkg](https://www.bloomberg.com/news/articles/2023-05-04/fed-emergency-loans-plunge-after-first-republic-seizure#xj4y7vzkg).

24 ²⁴ Rachel Louise Ensign & Ben Eisen, *First Republic Bank is Seized, Sold to JPMorgan in
Second-Largest U.S. Bank Failure*, The Wall Street Journal, May 1, 2023,
25 [https://www.wsj.com/articles/first-republic-bank-is-seized-sold-to-jpmorgan-in-second-largest-u-
s-bank-failure-5cec723](https://www.wsj.com/articles/first-republic-bank-is-seized-sold-to-jpmorgan-in-second-largest-u-s-bank-failure-5cec723).

26 ²⁵ Ben Foldy & Tom McGinty, *First Republic Bank Executives Sold \$12 Million in Stock in
Months Before Crash*, The Wall Street Journal, Mar. 16, 2023, [https://www.wsj.com/articles/first-
republic-bank-executives-sold-12-million-in-stock-in-months-before-crash-
ca6ce79e?mod=breakingnews](https://www.wsj.com/articles/first-republic-bank-executives-sold-12-million-in-stock-in-months-before-crash-ca6ce79e?mod=breakingnews).

27 ²⁶ Foldy & McGinty, *supra* note 24.
28

1 **2. Chief Executive Officer Sells Largest Proportion of Holdings Since**
2 **2017**

3 51. On November 15, 2022, First Republic’s Chief Executive Officer Michael Roffler
4 sold \$1.3 million worth of shares.²⁷

5 52. On January 19, 2023, Roffler sold another \$1 million worth of shares.²⁸ These
6 sales were his first since July of 2021 and the largest proportionally of his holdings since 2017.

7 **3. Chief Credit Officer Sells Days Before the Run on First Republic**

8 53. In November and December of 2022, First Republic’s chief credit officer David
9 Lichtman and his spouse sold \$2.5 million worth of shares.²⁹

10 54. In 2023, Lichtman sold an additional \$2.5 million in shares over three sales—the
11 last of which was on March 6, 2023, in which Lichtman sold 8,000 shares at \$122.91, just days
12 before SVB announced \$1.8 billion in losses that triggered the First Republic run.³⁰ These seven
13 trades constituted the most sales the couple made in any five-month period.³¹

14 **4. President of Private Wealth Management’s Dumps Most of His Stock**

15 55. On January 18, 2023, First Republic’s president of private wealth management,
16 Robert Thornton, sold 73% of his outstanding shares for \$3.5 million.³² The trade constituted his
17 first since 2021 and represented the largest single sale in terms of value and proportion of
18 holdings over the past few months.³³ Given their magnitude, Schoner knew or should have
19 known of these sales.

20 **D. First Republic Made False Statements Designed to Hide Risks**

21 **1. 2021 Stock Purchases and Defendants’ False Statements**

22 56. By January 1, 2021, Plaintiffs held \$4.5 million in First Republic preferred stock

23 ²⁷ First Republic Bank, Statement of Changes in Beneficial Ownership of Securities (Form 4)
24 (Nov. 17, 2023).

25 ²⁸ First Republic Bank, Statement of Changes in Beneficial Ownership of Securities (Form 4)
26 (Jan. 23, 2023).

27 ²⁹ Foldy & McGinty, *supra* note 24.

28 ³⁰ First Republic Bank, Statement of Changes in Beneficial Ownership of Securities (Form 4)
(Mar. 7, 2023).

³¹ Foldy & McGinty, *supra* note 24.

³² First Republic Bank, Statement of Changes in Beneficial Ownership of Securities (Form 4)
(Jan. 18, 2023).

³³ Foldy & McGinty, *supra* note 24.

1 purchased by Defendant Schoner. Within the next year, Schoner would nearly double Plaintiffs’
2 holdings, purchasing an additional \$3.5 million in First Republic preferred stock for the Plaintiffs.

3 57. Meanwhile, on January 14, 2021, First Republic announced its financial
4 performance in the fourth quarter and full year of 2020. The corresponding press release and
5 Form 8-K indicated that First Republic’s profitability was increasing. Herbert is quoted in the
6 press release as stating, “First Republic continues to deliver **safe, consistent growth, reflecting**
7 **the strength** of course client focused service model.”

8 58. On the earnings conference call later that day, Herbert assured investors of First
9 Republic’s fortitude, stating that First Republic’s “continuing consistent performance under a
10 wide range of economic conditions” demonstrated the “**stability and long-term nature** and
11 power of [its] client service model.” Hafize Gaye Erkan, First Republic’s President at the time,
12 stated that First Republic “continue[d] to maintain **a diversified funding base.**”

13 59. On January 18, 2021, Defendant Schoner purchased another \$1,000,000 of First
14 Republic stock on behalf of Mr. Miller.

15 60. On February 26, 2021, First Republic filed its 2020 annual report on Form 10-K
16 with the FDIC (the “FY20 Report”). In the FY20 Report, First Republic misrepresented its ability
17 to withstand rising interest rates and failed to adequately assess the extent of its vulnerabilities.
18 Specifically, First Republic stated that it “engage[d] in various activities to manage [its] liquidity
19 risk, including maintaining a diversified set of funding sources and holding sufficient liquid assets
20 to meet [its] cash flow and funding needs.” The report also stated that “[m]anagement believes
21 that the **sources of available liquidity are well-diversified and adequate to meet all**
22 **reasonably foreseeable short-term and immediate demands**” and that First Republic
23 “utilize[d] a variety of interest rate risk management tools to evaluate [its] interest rate risk.”

24 61. On April 14, 2021, First Republic announced its financial performance in the first
25 quarter of 2021. On a conference call that same day, Herbert again touted the First Republic’s
26 fortitude and failed to appreciate the extent of its vulnerabilities, telling investors that its “long-
27 term steady approach has led to **consistent success through a wide variety of environments**”
28 and that First Republic’s “**strength, safety and soundness continue to be reflected in strong**

1 **capital, liquidity, and credit quality.**” Michael Roffler, First Republic’s Chief Financial Officer
2 at the time, told investors, “we run First Republic with strong credit, capital, and liquidity at all
3 times.” First Republic’s President Erkan also stated that First Republic was “very well positioned
4 to help manage client needs across different macro environments with both on and off-balance
5 sheet liquidity solutions,” and that “[its] **liquidity position remain[ed] very strong.**”

6 62. On July 13, 2021, First Republic announced its financial performance in the
7 second quarter of 2021. The corresponding press release and Form 8-K indicated that
8 profitability was again on the rise.

9 63. On the earnings conference call later that day, First Republic assured investors
10 First Republic was “operating in a **very safe and sound manner**” due to its “**diversified deposit**
11 **funding base.**” First Republic misrepresented its ability to withstand rising interest rates and
12 failed to adequately assess the extent of its vulnerabilities. In response to a question regarding the
13 impact of interest rate increases, Chairman Herbert stated, “if you look at our simulation models,
14 **[the] rising rate environment is not a particularly threatening thing...**Inversions don’t last
15 very long. **So they generally don’t mess with our balance sheet very much.**”

16 64. On July 15, 2021, Defendant Schoner purchased another \$1,000,000 of First
17 Republic stock on behalf of Mr. Miller and Ms. McKinley.

18 65. On October 13, 2021, First Republic announced its financial performance in the
19 third quarter of 2021. The corresponding press release and 8-K contained a quote by First
20 Republic President Erkan highlighting “the safety and stability of First Republic.” On the
21 earnings conference call later that day, Erkan touted First Republic’s fortitude, stating that its
22 deposit growth was “well diversified across client types, regions and industries and a healthy mix
23 of both new and existing clients.”

24 66. On November 4, 2021, while speaking at the BancAnalysts Association of Boston
25 Conference, First Republic’s Chief Accounting Officer Olga Tsokova minimized and failed to
26 adequately assess First Republic’s risk level. Specifically, Tsokova touted the “consistency and
27 stability of First Republic and [its] **ability to deliver consistent results over time over different**
28 **environments [and] different economic cycles.**”

1 67. At the same conference, First Republic’s Chief Banking Officer Michael Selfridge
2 misrepresented First Republic’s ability to withstand rising interest rates and failed to adequately
3 assess the extent of its vulnerabilities. In response to a question about the rising rate environment,
4 Selfridge stated that “[**interest rates**] **will stabilize**, and I think we’ll continue to grow and I think
5 we’ll continue to be able to manage.”

6 68. On November 18, 2021, Defendant Schoner purchased \$1,000,000 of First
7 Republic stock on behalf of Mr. Miller, and \$500,000 of stock for Plaintiff McKinley.

8 **2. 2022 False Statements**

9 69. By January 1, 2022, Plaintiffs were holding \$7 million in First Republic stock.

10 70. On January 14, 2022, First Republic announced its financial results for the fourth
11 quarter and full year of 2021. On the earnings conference call later that day, Chairman Herbert
12 misrepresented First Republic’s ability to withstand rising interest rates and failed to adequately
13 assess the extent of its vulnerabilities. Herbert stated, “if you look at our growth, it’s been
14 incredibly strong in the last several quarters.”

15 71. On the same call, Selfridge touted the fortitude of First Republic’s deposits, telling
16 investors:

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

22 72. On February 28, 2022, First Republic filed its annual report for FY 2021 on Form
23 10-K with the FDIC (the “FY21 Report”). In the FY21 Report, First Republic and its executives
24 continued to tout First Republic’s fortitude, misrepresented its ability to withstand rising interest
25 rates, and failed to adequately assess the extent of its vulnerabilities. It reported that First
26 Republic “engage[d] in various activities to manage [its] liquidity risk, including maintaining a
27 diversified set of funding sources and holding sufficient liquid assets to meet [its] cash flow and
28 funding needs.” The FY21 Report also stated that “[**m**anagement believes that the sources of

1 **available liquidity are well-diversified and adequate to meet all reasonably foreseeable**
2 **short-term and immediate demands”** and that First Republic “utilize[d] a variety of interest rate
3 risk management tools to evaluate [its] interest rate risk.”

4 73. On April 13, 2022, First Republic announced its financial results for the first
5 quarter of 2022. CEO Roffler told investors that even in a rising rate environment “**First**
6 **Republic remains well-positioned”** and its “balance sheet is strong and [its] service model
7 continues to thrive.” Tsokova echoed Roffler’s sentiments, stating that “[w]ith consistent focus
8 on credit, capital, and liquidity, *we continue to operate in a safe and sound manner.*”

9 74. On the same call, Herbert misrepresented First Republic’s ability to withstand
10 rising interest rates and failed to adequately assess the extent of its vulnerabilities. Herbert told
11 investors that even if the Federal Reserve increased interest rates, First Republic would remain
12 stable and could grow, stating, “the [interest rate] increase is going to be more violent than we
13 have predicted, but . . . we’ve redone our forward projections around seven increases if I have that
14 right.”

15 75. On July 14, 2022, First Republic announced its financial performance in the
16 second quarter of 2022. On the earnings conference call later that day, Herbert continued to tout
17 First Republic’s fortitude, misrepresented its ability to withstand rising interest rates, and failed to
18 adequately assess the extent of its vulnerabilities. Herbert told investors:

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

26 76. On October 14, 2022, First Republic reported its financial performance in the third
27 quarter of 2022. First Republic announced its growth had slowed and profits were down. First
28 Republic cited “average funding costs increasing more rapidly than offsetting increase in the
average yields on interest-earning assets” as the cause of the decline. As a result, First Republic
shares fell by \$22.14, from a closing price of \$134.73 on October 13, 2022, to \$112.59 on

1 October 14, 2022.

2 77. On the earnings conference call later that day, First Republic and its executives
3 continued to tout First Republic’s fortitude, misrepresented its ability to withstand rising interest
4 rates, and failed to adequately assess the extent of its vulnerabilities. Herbert told investors that
5 “**what’s going on here is a temporary problem** on the margin coming from the steepness of the
6 run up,” and assured them that First Republic “had a very, very strong capacity to raise CDs” as it
7 waited for “the mortgage book [to] catch-up in a relatively short period of time.”

8 78. On December 7, 2022, while speaking at the Goldman Sachs 2022 US Financial
9 Services Conferences, First Republic and its executives continued to promote First Republic’s
10 fortitude and failed to adequately assess the extent of its vulnerabilities. Roffler told investors
11 that “[s]afety and soundness has been a hallmark of First Republic [since] its founding 37 years
12 ago,” and touted First Republic’s “**safe credit, strong capital levels, and liquidity.**”

13 3. 2023 False Statements

14 79. On January 13, 2023, First Republic announced its financial performance in the
15 fourth quarter and full year of 2022. The corresponding press release and Form 8-K indicated that
16 First Republic’s net interest income had **decreased** for the first time in fourteen quarters to \$1.2
17 billion, down from \$1.3 billion the previous quarter, and the net interest margin had plummeted to
18 2.45%, down from 2.71% the previous quarter.

19 80. Despite these results, Herbert told investors that it was First Republic’s “best year
20 ever in many ways,” and that First Republic’s “time-tested business model and service culture
21 continue to perform really well.” Addressing concerns over rising interest rates, Herbert told
22 investors “[d]uring First Republic’s 37 year history, there have been five tightening cycles.
23 **We’ve continued to grow and prosper through them and especially after each one.**”

24 81. On the same call, Roffler assured investors, that “as we look to a more challenging
25 year ahead, **we remain well-positioned to deliver safe, strong growth** through the consistent
26 execution of our service focused culture and business model.”

27 82. On February 28, 2023, First Republic filed its annual report for FY 2022 on Form
28 10-K with the FDIC (the “FY22 Report”). The FY22 Report indicated that First Republic, as of

1 December 31, 2022, had total assets of \$212.6 billion and total deposits of \$176.4 billion.

2 83. In the FY22 Report, First Republic and its executives continued to tout First
3 Republic’s fortitude, misrepresented its ability to withstand rising interest rates, and failed to
4 adequately assess the extent of its vulnerabilities. It reported that First Republic “engage[d] in
5 various activities to manage [its] liquidity risk, including maintaining a diversified set of funding
6 sources and holding sufficient liquid assets to meet [its] cash flow and funding needs.” The FY22
7 Report also stated that “the sources of available liquidity are well-diversified and adequate to
8 meet all reasonably foreseeable short-term and immediate demands” and that it “utilize[d] a
9 variety of interest rate risk management tools to evaluate [its] interest rate risk.”

10 84. After SVB’s collapse on March 10, 2023, in response to additional scrutiny, First
11 Republic and its executives issued a press release and filed a Form 8-K the same day, assuring the
12 public and investors of First Republic’s strong deposit base, liquidity position, stability, and
13 capitalization.

14 85. On March 12, 2023, after borrowing another \$10 billion from the Federal Reserve
15 and JPMorgan Chase & Co., First Republic issued a press release and filed a Form 8-K the same
16 day assuring investors that it had “further enhanced and diversified its financial position,” and that
17 the “[a]dditional borrowing capacity from the [Federal Reserve], continued access to funding
18 through the [FHLB], and ability to access additional financing through JPMorgan Chase & Co.
19 increases, diversifies, and further strengthens First Republic’s existing liquidity profile.”

20 86. The same press release featured a quote from Herbert, who stated “**First**
21 **Republic’s capital and liquidity positions are very strong,**” and that the Company “operates
22 with an emphasis on safety and stability at all times, while maintaining a well-diversified deposit
23 base.” This was undoubtedly false.

24 87. First Republic had known for years that the solvency, liquidity, and risk
25 management issues they harbored would pose devastating risks once interest rates rose. At the
26 time the March 2023 press release was made, First Republic had already borrowed far more than
27 it could recover and executives knew or should have known that they would not be able to recoup
28 the Bank’s losses. Years of talk about the strength and solvency of First Republic was misleading

1 and failed to disclose the unreliable profit strategy and insecure assets that would ultimately
2 unravel as interest rates increased.

3 88. By the end of April 2023, First Republic was no longer viable due to the
4 combination of deposit outflows and high-interest borrowings. Based on these factors, the FDIC
5 seized First Republic and placed it into receivership.

6 89. On May 1, 2023, the FDIC sold First Republic's assets to JP Morgan Chase & Co.
7 for \$10.6 billion.

8 **E. The Plaintiffs' Losses Due to Fraud**

9 90. After a 35-year career, Plaintiff Miller retired to become a full-time philanthropist,
10 devoting his time to several environmental causes, a micro-credit program in Vietnam serving
11 over 260,000 disadvantaged women and minorities, and the Miller Scholars Program, which helps
12 hundreds of low-income, first-generation transfer students attend the University of California,
13 Berkeley.

14 91. Similarly, Plaintiff McKinley is dedicated to philanthropy as the Chair Emerita for
15 the UC Berkeley Endowment Fund and the founder of Advance Global Capital, which expands
16 access to capital for women and small and medium-sized enterprises.

17 **1. The Plaintiffs' Relationship with Defendant Sam Schroner**

18 92. Around 2009-2011, Defendant Schoner began courting Plaintiffs to become their
19 financial advisor, pitching bonds and preferred stocks. As seen in the email below, he described
20 his investment style as "buy[ing] small positions for diversification and liquidity."

21 **From:** "Schoner, Sam" <Sschoner@firstrepublic.com>
22 **Subject:** First Republic Private Wealth Management
23 **Date:** November 8, 2011 at 10:09:02 AM PST
24 **To:** jcfm@mac.com

25 Good morning Janet,

26 I hope you are doing well. I have attached a few Preferred and MLP offerings for your review.

27 I like to buy small positions for diversification and liquidity.

28 93. On this basis, Plaintiffs began engaging Schroner's services as a financial
management advisor in 2012. In 2013, Plaintiffs agreed to Schoner's management of their entire

1 investment portfolio, by which First Republic would charge a 0.45% annual advisory fee. Based
2 on this fee, Schoner earned hundreds of thousands of dollars in commission.

3 From: **Sam Schoner** Sschoner@firstrepublic.com
4 Subject: **RE: First Republic Private Wealth Management**
Date: July 23, 2013, 10:51 AM
To: **George Miller** gameleven@comcast.net

5 **Good morning George,**

6 **Glad to hear that you are doing well. I will try and make the process simple and painless. I understand after**
7 **spending your career in finance that you do not want to spend your time doing finance in retirement.**

8 **I would use our in-house allocation percentages, rebalance quarterly and use a combination of index mutual**
9 **funds, individual preferred's, individual corporate and certificate of deposits. We would continue to keep the**
10 **fixed income allocation in a short duration strategy until a time when it makes sense to extend further. For**
11 **your cash position I would use a combination of treasury bills and money markets.**

12 **See attached for embedded and advisory expenses (45bps).**

13 94. Plaintiffs made very clear in initial emails, calls, and meetings with Schoner that
14 they were not interested in maintaining close oversight over their accounts after their long careers.
15 They were assuaged by Schoner's assurances that he would maintain **diversified** accounts that
16 would meet Plaintiffs' long-term goals and not expose them to risk. Indeed, for the first few years
17 that he was their financial manager, Defendant Schoner maintained diversified accounts, gaining
18 Plaintiffs' trust.

19 95. Then, between 2017 and 2021, Defendant Schoner invested over \$7 million of
20 Plaintiffs' money in First Republic preferred shares, most of which was designated for the UC
21 Berkeley Miller Scholars. The other portion of the First Republic shares were placed in a smaller
22 account that Plaintiff McKinley kept to fund her niece's education in Canada and rarely checked.
23 Neither Plaintiff was aware of the huge amount of First Republic stock that Defendant Schoner
24 was keeping in these accounts until the losses became clear.

25 96. Defendant Schoner made larger commissions on the sales of First Republic
26 preferred stock which he sold to Plaintiffs. Defendant Schoner, therefore, had a self-interest in
27 selling First Republic preferred stock to the Plaintiffs, even though the investment strategy was
28 not in the best interest of the Plaintiffs. Schoner also knew that preferred shares would drop in
value as interest rates rose and yet failed to protect Plaintiffs' investments when that occurred.

1 97. By May 2023, Plaintiffs' \$7 million stake in First Republic preferred stock had
2 become worth almost zero. The loss of this money means that at least 700 underserved students
3 will not receive the benefit of the Miller Scholars Program, which includes a stipend,
4 individualized guidance, and leadership development.

5 98. Plaintiffs Miller and McKinley trusted Schoner to manage their funds. However,
6 Defendant Schoner failed to advise the Plaintiffs of the risks associated with investing a huge
7 portion of their funds in First Republic stock, and as to Plaintiff McKinley's account, did not tell
8 her that he was moving money to a different trust or investing \$1.5 million in First Republic
9 preferred stock in that account.

10 99. Indeed, Defendant Schoner emailed Ms. McKinley in 2020 to assuage her that he
11 was using preferred shares as a "diversifier," rather than as a large portion of her invested assets.

12 - *Would like to hear how you're thinking. What about preferred shares— how do you evaluate the risk profile for
13 them now?*

14 **Using to enhance quality income and as a diversifier from other fixed income asset classes. Using Preferreds
with preferential tax treatment , stable credit and avoiding speculative names.**

15 100. As their fiduciary, Defendant Schoner had a duty to avoid and or advise the
16 Plaintiffs of the risks associated with investing such a large percentage of the scholarship fund in
17 First Republic's stock.

18 101. Plaintiffs were reliant on Defendant Schoner for their investment strategy and
19 management of their funds. Schoner would email Plaintiffs regarding the new First Republic
20 preferred stock, encouraging them to invest, and Plaintiffs would agree to Defendant's proposals.

21 Re: First Republic Private Wealth Management



22 George Miller <gameleven@comcast
23 To Sam Schoner



24 Reply

25 Reply All

26 Forward



Thu 1/28/2021 8:07 AM

27 Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

28 Sounds ok to me.....i have sort of lost track of where =e are cash wise..gam

On Jan 28, 2021, at 7:59 AM, =choner, Sam <Sschoner@firstrepublic.com> wrote:

Good =orning George,

I hope you are doing well. First Republic is =ssuing new preferred's this morning. Let me know if you =ave any interest.

1 **2. The Plaintiffs Repeatedly Asked Schoner to Sell Their First Republic**
2 **Stock Prior to the Collapse**

3 102. In the months leading up to the collapse of First Republic, Plaintiff Miller asked
4 Defendant Schoner several times to sell his shares, but Schoner failed to heed the instructions.

5 103. On October 5, 2022, Mr. Miller emailed Schoner to say:
6 **“my long range (next 4 months) plan is to sell all**
7 **of the preferreds and give the money to charity.”**

8 104. Schoner totally failed to respond and did not sell any of the preferred stock he
9 managed in the Plaintiffs’ accounts. At the time, First Republic stock was trading around \$123
10 per share.

11 105. On March 1, 2023, Mr. Miller emailed Schoner to ask “all of the preferreds are at a
12 loss. Does it make sense to take loses and reinvest?” Schoner responded with some numbers
13 about gains or losses offset against regular income. Mr. Miller followed up on March 11, 2023
14 telling Schoner to **“get started” on reinvesting**. Schoner did not reinvest Mr. Miller’s funds,
15 despite this instruction.

16 106. At that time, First Republic stock was trading around \$122.5, as reflected in the
17 chart below. Shortly after, it would decline massively.



1 **3. Schoner’s Breach of Duties and Bad Faith Cost Plaintiffs Millions**
2 **Dedicated to Scholarships and Philanthropy**

3 107. On April 7, 2023, First Republic announced that it was suspending payments of
4 quarterly cash dividends on its preferred stock. Defendant Schoner did not take any action or
5 make any effort to inform Plaintiffs. And despite the preferred stock clearly no longer being a
6 good investment for the Plaintiffs, Schoner made no move to sell.

7 108. On April 11, 2023, Mr. Miller emailed Defendant Schoner to say “[I] see by my
8 most recent statement that thanks to First Republic preferreds I lost \$3.5 million in March.”

9 109. Following up to the prior email, on April 12, 2023, Mr. Miller emailed Schoner
10 “[I] assume you keep at least one eye on the First Republic preferreds...could you let me know if
11 there is any meaningful price change?” Defendant Schoner had already failed to inform Plaintiffs
12 about the massive drops in price that First Republic stock was taking, and altogether breached his
13 duties by continuing to cause Plaintiffs to hold their First Republic stock until it became
14 essentially valueless. Schoner did not inform Plaintiffs that First Republic stock had already
15 fallen to a tenth of the value from two months prior, or that it had fallen to a third of the price
16 from less than a month before.



1 110. Instead, in reply to an email on April 26, 2023, in which Mr. Miller worried that he
2 had lost \$5.5 million as a result of investing in First Republic shares, Schoner simply responded
3 with the balance held in Mr. Miller's account.

4 111. Defendant Schoner knew or should have known that the price of First Republic
5 stock was only doomed to drop more. Instead of protecting the Plaintiffs' investments, as his
6 duties required, he caused them to suffer additional economic loss as he continued to hold the
7 stock. Top executives at First Republic had already unloaded millions of dollars in stock. Indeed,
8 just a couple weeks after this email exchange, the Federal Reserve seized First Republic and
9 halted trading in the stock.

10 112. The Plaintiffs were understandably distraught with the news of First Republic's
11 closure and the sudden knowledge that they essentially lost everything that Defendant Schoner
12 had invested in First Republic stock. They emailed First Republic management on May 7, 2023,
13 and May 08, 2023, requesting that Schoner be taken off their accounts entirely. First Republic
14 representatives dithered, saying that they would look into the matter but did not take any action.
15 Schoner continued to contact Plaintiffs.

16 113. On May 26, 2023, rather than address Plaintiffs' concerns, First Republic
17 terminated Mr. Miller's accounts.

18 114. As of July 2023, First Republic stock is trading at \$0.67 per share. Based on
19 Plaintiffs' statements for May 1, 2023 – May 31, 2023, Plaintiffs have lost a combined
20 \$6,998,538 as a result of Defendant's misstatements, mismanagement, and misuse of Plaintiffs'
21 funds.

22 **VI. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **BREACH OF FIDUCIARY DUTY**

25 **(Against Defendant First Republic Bank and Samuel Carl Schoner)**

26 115. Plaintiffs hereby incorporate by reference the allegations set forth above, as though
27 set forth in full herein.

28 116. In 2012 Defendant Schoner became an agent for the benefit of Plaintiffs, and owed

1 a fiduciary duty to Plaintiffs as their financial manager.

2 117. As a trusted agent of Plaintiff, Defendant Schoner owed fiduciary duties of care,
3 loyalty, and good faith to Plaintiffs with respect to the investment and management of their
4 money.

5 118. Defendant Schoner breached his fiduciary duty by, among other things, materially
6 misleading Plaintiffs as to the value of First Republic stock, concealing the true nature of First
7 Republic's risks and liabilities willfully, intentionally, and with malice.

8 119. Plaintiffs have been damaged by Defendant Schoner's conduct and breach of his
9 fiduciary duties.

10 120. Defendant First Republic is responsible for its agent's wrongful actions. It either
11 knew of Defendant Schoner's breaches of fiduciary duty or it failed to supervise him sufficiently
12 to prevent him from engaging in such conduct. As a financial institution, Defendant First
13 Republic and its agents owed its clients a fiduciary obligation to recommend, purchase, and sell
14 suitable investments that were in line with their best interests and needs. In this case, First
15 Republic and Schoner should have provided a more diversified portfolio for Plaintiffs, as they
16 requested, and as First Republic and Schoner advertised. First Republic should never have
17 allowed its broker to invest so heavily in a self-interested stock, in contravention of Plaintiffs'
18 guidelines and best practices. Further, First Republic and Schoner should have sold Plaintiffs'
19 First Republic stock when Plaintiff first requested—in October 2022 and March 2023, or when it
20 was reasonable to do so.

21 121. Defendant First Republic owed a fiduciary duty to Plaintiffs. Defendant First
22 Republic breached its fiduciary duty by failing to appropriately hire, train, and supervise its agent,
23 Defendant Schoner. Plaintiffs were damaged due to Defendant's breach of duty. Therefore,
24 Defendant is liable to Plaintiffs for their losses and for punitive damages sufficient to punish
25 Defendant and deter other banks from allowing wealth managers to recommend that older clients
26 use a large portion of their life savings to purchase its own securities, which it knew were falsely
27 inflated.

28 122. Defendant Schoner's and Defendant First Republic Bank's conduct was done with

1 malice, fraud, and oppression, whereby they willfully and maliciously misled Plaintiffs to their
2 detriment.

3 **SECOND CAUSE OF ACTION**

4 **NEGLIGENCE**

5 **(Against Defendants First Republic Bank and Samuel Carl Schoner)**

6 123. Plaintiffs hereby incorporate by reference the allegations set forth above, as though
7 set forth in full herein.

8 124. Defendant Schoner owed Plaintiffs a duty to use reasonable care and diligence in
9 managing Plaintiffs' accounts. Defendant Schoner breached these duties and Plaintiffs sustained
10 damages as a result.

11 125. Defendant First Republic owed Plaintiffs a duty to use reasonable care and
12 diligence in hiring, training, and supervising Samuel Carl Schoner to act as its actual or apparent
13 agent. Defendant First Republic breached these duties and Plaintiffs sustained damages as a
14 result.

15 126. Plaintiffs should be awarded compensatory damages, plus interest as allowed by
16 law.

17 **THIRD CAUSE OF ACTION**

18 **ELDER ABUSE**

19 **(Against Defendants First Republic Bank and Samuel Carl Schoner)**

20 127. Plaintiffs hereby incorporate by reference the allegations set forth above, as though
21 set forth in full herein.

22 128. Defendant Schoner knew that his conduct was directed at a senior citizen, George
23 Miller, who was in his 70s when he started his relationship with Schoner, and in his 80s when
24 Schoner was managing his portfolio. Defendant Schoner knew that his conduct against Mr.
25 Miller would cause Mr. Miller to suffer substantial economic loss. Defendant Schoner took,
26 secreted, appropriated, obtained, and/or retained Plaintiff's funds for a wrongful use and/or with
27 the intent to defraud. In particular, Defendant Schoner wrongfully invested millions of Plaintiff's
28 funds into self-serving stock, then fraudulently induced Plaintiff to hold that stock as its value fell

1 to nearly nothing. Defendant knew or should have known that the conduct was likely to be
2 harmful to Plaintiff.

3 129. Defendant First Republic knew that its conduct was directed toward a senior
4 citizen, George Miller, and caused Plaintiff Miller to suffer substantial economic loss. Defendant
5 First Republic took, secreted, appropriated, obtained, and/or retained Plaintiff's funds for a
6 wrongful use and/or with the intent to defraud. First Republic issued false statements regarding
7 its performance intended to fraudulently induce Plaintiff to hold his stock and on which he relied.
8 Defendant First Republic knew or should have known that the conduct was likely to be harmful to
9 Plaintiff.

10 **FOURTH CAUSE OF ACTION**

11 **FRAUD**

12 **(Against Defendants First Republic Bank and Samuel Carl Schoner)**

13 130. Plaintiffs hereby incorporate by reference the allegations set forth above, as though
14 set forth in full herein.

15 131. Defendants falsely represented to Plaintiffs through written and oral
16 misrepresentations that First Republic stock was a sound investment, that First Republic did not
17 have any undisclosed or undue risks, and that they were maintaining a diversified and well-
18 rounded portfolio. Defendant knew or had reason to know that these representations were false
19 when they made them, made the representations recklessly and without regard for their truth,
20 and/or made the representations without any reason to believe they were true in light of
21 Defendant's then-existing knowledge of the truth of its financial and risk portfolio. Defendant
22 knew that this information was false and intended to mislead Plaintiffs. Defendant alternatively
23 made these false statements negligently, without reasonable ground for believing they were true.

24 132. Defendant's false representations were material to Plaintiffs, who believed and
25 reasonably relied on Defendant's false representations when they allowed \$7 million of their
26 monies to be invested in First Republic stock. In the absence of Defendant's false
27 representations, Plaintiffs would not have purchased or held First Republic stock.

28 133. Defendant's wrongful conduct was willful, malicious, oppressive, fraudulent,

1 and/or in reckless disregard of the Plaintiffs' rights, thereby entitling Plaintiffs to punitive
2 damages.

3 134. WHEREFORE, Plaintiffs pray for relief as set forth below.

4 **VII. PRAYER FOR RELIEF**

5 Plaintiffs prays that they be awarded judgment in their favor on each and every claim for
6 relief set forth above, and that they be awarded relief including, but not limited to, the following:

- 7 1. Compensatory damages according to proof;
- 8 2. Prejudgment and post-judgment interest at the maximum legal rate;
- 9 3. Costs of the proceedings;
- 10 4. Treble damages pursuant to California Civil Code § 3345;
- 11 5. Punitive damages;
- 12 6. Attorney fees pursuant to California Welf. & Inst. Code § 15610.30; and
- 13 7. All other and further relief as deemed just and proper.

14 **VIII. DEMAND FOR JURY TRIAL**

15 Plaintiffs hereby demand a jury trial on all issues so triable.

16
17 Dated: July 13, 2023

COTCHETT, PITRE & McCARTHY, LLP

18
19 By: 

20 JOSEPH W. COTCHETT
21 MARK C. MOLUMPY
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