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7 PHILIP GOLUBOWSKI,  
8 Plaintiffs,  
9 v.  
10 ROBINHOOD MARKETS, INC., et al.,  
11 Defendants.

Case No. 21-cv-09767-EMC (EMC)

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

Docket No. 97

12 Plaintiffs Amee Sodha and Vinod Sodha (“Plaintiffs”) filed suit against Defendants  
13 Robinhood Markets, Inc. (“Robinhood” or “the Company”), certain senior executives and directors  
14 of Robinhood (Vladimir Tenev, Jason Warnick, Baiju Bhatt, Jan Hammer, Paula Loop, Jonathan  
15 Rubenstein, Scott Sandell, and Robert Zoellick), and the underwriters (Goldman Sachs & Co. LLC,  
16 J.P. Morgan Securities LLC, Barclays Capital Inc., Citigroup Global Markets Inc., Wells Fargo  
17 Securities, LLC, Mizuho Securities USA LLC, JMP Securities LLC, KeyBanc Capital Markets Inc.,  
18 Piper Sandler & Co., Rosenblatt Securities Inc., BMO Capital Markets Corp., BTIG, LLC,  
19 Santander Investment Securities Inc., Academy Securities, Inc., Loop Capital Markets LLC, Samuel  
20 A. Ramirez & Company, Inc. and Siebert Williams Shank & Co., LLC). Docket No. 75 (“FAC”).  
21 Plaintiffs assert claims under Sections 11, 12 and 15 of the Securities Act of 1933 (the “Securities  
22 Act”) alleging that the registration statement and prospectus for Robinhood’s July 30, 2021, initial  
23 public offering (“IPO”) made false and misleading statements and omissions. The Court previously  
24 granted Robinhood’s Motion to Dismiss Plaintiffs’ First Amended Complaint, with leave to amend.  
25 Docket No. 90. Now pending before the Court is Defendants’ Motion to Dismiss Plaintiffs’ Second  
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Amended Complaint. Docket No. 97 (“MTD”).

For the following reasons, the Court **GRANTS** Defendants’ Motion to Dismiss **WITHOUT LEAVE TO AMEND.**

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### A. Overview

#### 1. Robinhood

Robinhood is a financial services company headquartered in Menlo Park, California. Docket No. 92 (“SAC”) ¶ 2. The company provides a trading platform wherein its customers engage with the financial markets through an application and user interface. SAC ¶¶ 2, 53. Robinhood’s primary customer base is retail investors, many of whom are first-time investors. *Id.* ¶ 53. Namely, Robinhood’s core product offerings include ability to trade in United States Stocks and Exchange Traded Funds (“ETFs”) and American Depository Receipts (“ADRS”) and to trade cryptocurrencies. *Id.* Robinhood is a commission-free broker that earns revenue through a “payment for order flow” (“PFOF”) practice, where it primarily earns revenue by routing customer transactions on its app to market makers in exchange for payments. *Id.* ¶ 54. For cryptocurrency trading, the consideration Robinhood earns is called “Transaction Rebates.” *Id.* Collectively, these earnings are referred to as “transaction-based revenue.” *Id.* Transaction-based revenue accounted for the majority of Robinhood’s revenue (75% in FY 2020 and 80.5% in January through March (Q1) 2021). *Id.*

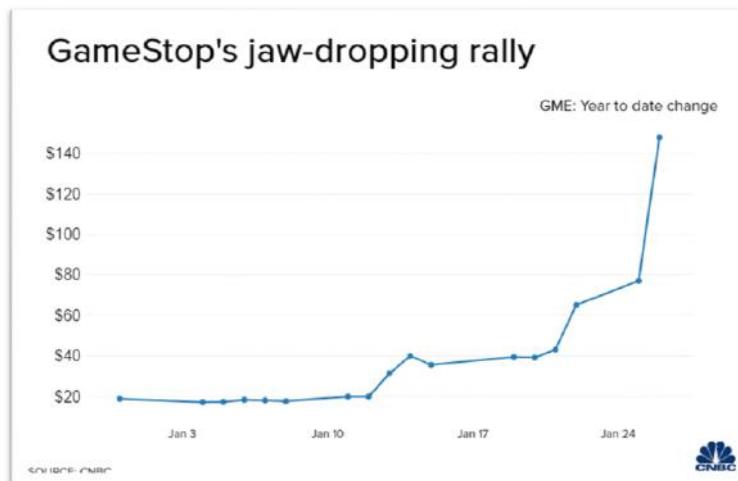
#### 2. Robinhood’s IPO

On July 30, 2021, Robinhood conducted an initial public offering (“IPO”) and offered 55 million shares of common stock to the public at a price of \$38 per share for proceeds of over \$2 billion. SAC ¶ 3. Prior to the IPO, Robinhood released the Registration Statement and Prospectus (collectively, the “Offering Documents”). SAC ¶ 1; MTD, Ex. 1 (Registration Statement); Ex. 2 (Prospectus). Plaintiffs allege that the Offering Documents contained materially false and misleading statements and omitted material information that was required by law to be disclosed in violation of §§11, 12, and 15 of the Securities Act of 1933 (“Securities Act”) and Items 105 and

303 of applicable SEC Regulations (Reg. S-K). SAC ¶ 1, 131-32.

### 3. The meme stock and Dogecoin events

Robinhood's IPO came on the heels of a series of events in early 2021 that have come to be publicly known as the "meme stock" and "Dogecoin" events. Specifically, from mid-January to early February, the prices of GameStop Corp. ("GME"), AMC Entertainment Holdings, Inc. ("AMC") and certain other stocks skyrocketed. SAC ¶ 72. The frenzy took off in part because of retail investors banding together in places like Reddit (under the subreddit r/WallStreetBets), to squeeze short-sellers who had bet against these companies. *Id.* To illustrate the extent of this event, the stock of AMC jumped 300% on one day alone, and Bed Bath & Beyond's shares rose 43% the same day. *Id.* ¶ 75. The price of GME also skyrocketed.



Id.

Plaintiffs allege that the meme stock event ended, and the stocks “fell from their unprecedented January highs,” and trading volume declined below “extraordinary levels” seen during the event. *Id.* ¶ 77. By the time the meme stock event waned, the company began seeing a huge pick up in the trading of a cryptocurrency, the Dogecoin. *Id.* ¶ 79. Specifically, the price of Dogecoin skyrocketed in April after it gained “cult status” on Reddit’s WallStreetBets message board. *Id.* ¶¶ 79-80. The spike lasted from January to May 2021, wherein Robinhood experienced a large increase in cryptocurrency trading on the platform, increasing its revenue from trading of the currency alongside the Dogecoin event. *Id.* ¶¶ 78-82. To illustrate how substantial the

1 Dogecoin event was, during that time, the value of the Dogecoin increased from half of a cent to  
2 73 cents at its height. *Id.* ¶¶ 79, 81. All in all, Robinhood experienced a 50% quarter-over-  
3 quarter increase in revenue from equities and options trading from Q4 2020 to Q1 2021 and an  
4 increase in revenue from cryptocurrency trading from \$12 million in Q4 2020 to \$87.5 million  
5 during the initial stage of the Dogecoin rally. *Id.* ¶ 82. Plaintiffs describe these amounts as “all-  
6 time highs” for the company. *Id.* However, these trading volumes in “meme stocks” fell after the  
7 unprecedeted highs in early Q1 as the trading craze subsided, and the large spike in  
8 cryptocurrency trading surrounding Dogecoin likewise fell throughout Q2 2021. *Id.* ¶¶ 77, 84.

9 **B. Procedural History**

10 Plaintiffs filed their original class action complaint on December 17, 2021, under §§ 11,  
11 12, and 15 of the Securities Act. Docket No. 1. After the lead plaintiffs were appointed, Plaintiffs  
12 filed a First Amended Complaint. Docket No. 75 (“FAC”). Plaintiffs alleged that the Offering  
13 Documents filed in connection with Robinhood’s IPO contained materially false and misleading  
14 statements and material omissions. FAC ¶ 1.

15 On August 18, 2022, Robinhood filed a motion to dismiss the FAC. Docket No. 78  
16 (“MTD”). Robinhood argued that none of its business strategy statements or risk factor statements  
17 were false or misleading, and that the Offering Documents accurately disclosed Robinhood’s  
18 financial performance. MTD at 10–25.

19 The Court granted Robinhood’s MTD with leave to amend. Docket No. 90. The Court  
20 determined that the Plaintiffs failed to plead a violation of Section 11 or Section 12(a) of the  
21 Securities Act. *Id.* at 8–17, 19–20. Specifically, Plaintiffs did not allege inaccuracies in the Key  
22 Performance Indicators (“KPIs”) that Robinhood reported. *Id.* at 10. Plaintiffs alleged that the  
23 Defendants had access to intra-quarterly results that showed a decline in its KPIs in months  
24 leading up to the company’s IPO that were inconsistent with the KPIs reported in the Offering  
25 Documents. *Id.* at 6. However, as a general matter, Defendants had no obligation to disclose  
26 incomplete intra-quarterly results (May to July 2021) because SEC regulations do not require the  
27 disclosure of interim quarterly results. *Id.* at 11 (citations omitted). Rather, disclosure would only  
28 be required where disclosing the intra-quarterly results would be “necessary to make the

1 statements made, in light of the circumstances under which they were made, not misleading.” *Id.*  
2 at 11 (citations omitted). The Complaint did not “provide contextual information that would show  
3 the [out-of-quarter] declines to be unusual and indicative of larger future trends.” *Id.* at 11.  
4 “Without historical data to show that the May to July 2021 [KPI declines] were exceptional and  
5 out of line with past fluctuations, that data is not so extraordinary as to mandate specific out-of-  
6 quarter disclosure.” *Id.* at 12. And further, while the complaint alleged a large decline in trading  
7 of cryptocurrency, the allegations did not show that Robinhood suffered unique declines compared  
8 to a general trend in the industry which would have been known by the public and any reasonable  
9 investor. *Id.*

10 Additionally, Robinhood disclosed future risks and downward trends of the metrics that  
11 they published, negating liability via omission. *Id.* Namely, Robinhood warned in its Offering  
12 Documents that historical data of KPI growth was not necessarily indicative of future  
13 performance; in fact, Robinhood reported that it expected growth rates of KPIs to decline  
14 significantly in future periods. *Id.* The Court also found that Plaintiffs failed to state a claim  
15 under the Act based upon allegations that Robinhood misrepresented its business strategies. The  
16 Court reasoned that such statements are vague statements of corporate optimism which are not  
17 actionable under the Act. *Id.* at 18.

18 Accordingly, the Court found that Plaintiffs failed to state a claim under §§ 11 and 12 of  
19 the Securities Act for omitting intra-quarterly reports showing downward trends in KPIs. *Id.* at  
20 20. The Court granted leave to amend to add allegations stating a claim, for example:

21 [A]llegations of specific contextual information demonstrating that  
22 the decline in KPI and cryptocurrency trading levels in the two to  
23 three months before the filing of the Offering Documents were  
24 extraordinary and indicative of larger future trends known to the  
management or through which management should have known  
would have a material impact on future performance and which were  
not adequately disclosed.

25 *Id.*

26 Thus, for Plaintiffs to have successfully amended their complaint, they needed to provide  
27 27 allegations giving specific contextual information demonstrating the decline in KPI and  
28

1 cryptocurrency trading levels for Robinhood specifically in the 2-3 months before the filing of the  
2 Offering Documents (May to July 2021) were extraordinary and indicative of a larger future trend  
3 sufficient to trigger out-of-quarter and intra-quarter reporting.

4 C. Updated allegations in the SAC

5 1. First Amended Complaint

6 As described above, in Plaintiffs' (now dismissed) FAC they alleged that the company  
7 issued an IPO based upon a revolutionary strategy of focusing on young and non-traditional  
8 investors. FAC ¶¶ 3-13. The Registration Statement became effective on July 28, 2021, and the  
9 company's IPO was priced at \$38, and the final Prospectus for the IPO was filed on July 30, 2021  
10 (the "Offering Documents"). FAC ¶¶ 88-91. Plaintiffs alleged that the company represented in  
11 the Offering Documents that it would focus on safety and reliability, needs of small investors, and  
12 radical feedback. *Id.* ¶¶ 3-13, 92-128. However, by the time the company issued its IPO,  
13 Plaintiffs alleged it had abandoned those principles and was failing to cater to the needs of its  
14 investors as shown in its security issues, failure to react to customer feedback, issues with fraud,  
15 and disruption to its platforms. *Id.* This failure in strategy, Plaintiffs argue, was reflected in  
16 Robinhood's data, *i.e.*, its declining KPI metrics from May to July 2021, in contrast to its steadily  
17 positive KPIs in the year prior. *Id.* ¶¶ 5-8, 129-139. Those KPIs were omitted from the Offering  
18 Documents. *Id.*

19 Namely, the FAC alleged that the Offering Documents reported positive KPIs from  
20 December 31, 2019, through December 31, 2020. FAC ¶¶ 5-8. Specifically, Robinhood's  
21 Monthly Active Users ("MAU") steadily increased. *Id.* ¶ 5. As did its total revenue, assets under  
22 custody ("AUC") and net cumulative funded accounts. FAC ¶¶ 6-8. However, in the few months  
23 from May 2021 to July 2021, just before the IPO, these metrics started declining. Specifically:

- 24 • MAU declined by 4.6 million users between May 2021 and July 2021 (a 19% decline),  
25 FAC ¶ 129; (11.62% between May and June and 8.45% between June and July 2021).
- 26 • Total cryptocurrency trading volume declined by \$97 billion in from May to June 2021 (a  
27 76% decline) and \$17 billion in July 2021 (an additional 56.67% decline), FAC ¶ 131-32.
- 28 • AUC declined by \$7.3 billion from June 2021 to July 2021 (a 7% decline), FAC ¶ 135.

- ARPU (average revenues per user) declined from \$137 to \$65 between March 2021 and September 2021 (a 53% decline), FAC ¶ 134. The Court notes that September 2021 is beyond the effective date of the Offering Documents.

Plaintiffs alleged that Robinhood had the ability to analyze its performance data immediately through the data platform Looker and that executives discussed the declining performance at the weekly all-hands meetings. FAC ¶¶ 12–13, 87, 108, 118–19. However, Robinhood did not disclose this data in its Offering Documents which included its company strategy that had since been abandoned, rendering the Offering Documents misleading.

**2. Second Amended Complaint**

In Plaintiffs' Second Amended Complaint, they allege that Robinhood's Offering Documents were misleading because they misrepresented the company's state of affairs as it existed at the time of the IPO. SAC ¶¶ 1–10. Namely, Robinhood allegedly represented the company was successfully executing a strategy of making investing available to an untapped market of small and non-traditional investors. *Id.* ¶¶ 1–7. To this end, Robinhood included historical performance data in its Offering Documents to evidence that it had been driving growth and was positioned to keep on growing. *Id.* However, by the time of the IPO, Robinhood's "core fundamentals" allegedly changed. *Id.* ¶ 4. Specifically, in 2021 Robinhood's largest source of revenue "was no longer fees from its customers' conventional trading in stocks and options, as it had been previously." SAC ¶ 108. Rather, Robinhood's revenue shifted to being driven by "speculative, fad-trading in meme stocks and the novelty cryptocurrency Dogecoin." *Id.* This change in fundamentals was not viable, as was represented by its declining intra-quarterly reports. *Id.* In other words, its fundamentals changed in that: (1) Robinhood's source of revenue shifted leading up to the IPO and this was not disclosed in the Offering Documents; and (2) the negative nature of this fundamental shift was evident from data available to Defendants in real time (intra-quarterly reports) that it did not disclose. *Id.* ¶¶ 4–6.

In this vein, Plaintiffs allege that a chart identifying historical quarterly net and transaction-based revenue from Q1 2019 through Q1 2021, and statements made about that revenue, along with a chart identifying sources of transaction-based revenue through Q1 2021 are untrue or

1 rendered misleading because they omitted material facts. SAC ¶¶ 110–13, 15. Plaintiffs also  
2 allege that tables included in the Offering Documents reflecting growth in Net Cumulative Funded  
3 Accounts (NCFA) and Monthly Active Users (MAU) from 2014 through Q1 2021 and 2017  
4 through Q1, respectively, were rendered false or materially misleading because Robinhood's core  
5 fundamentals had changed (*i.e.*, its revenue composition changed and its KPIs were declining) and  
6 specifically because MAU, ARPU and AUC declined prior to the IPO. *Id.* ¶¶ 119, 122. Plaintiffs  
7 also allege that statements made regarding risk factors and/or warnings were inadequate or false  
8 and misleading. *Id.* ¶¶ 127-30. Specifically, Plaintiffs allege the following information was known  
9 to Defendants but was not included in the Offering Documents, rendering the above misleading.

10 a. Shift in composition of revenue

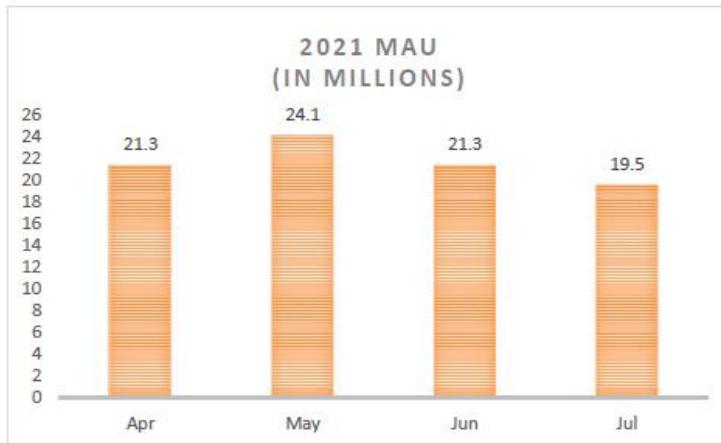
11 Plaintiffs allege that revenue from cryptocurrency trades became the company's main  
12 source of revenue by the time of the IPO, but investors were unaware of this because there was no  
13 breakdown of revenue type for the Q2 preliminary metrics, as opposed to prior quarters. SAC ¶ 6.  
14 In Q1, revenue from cryptocurrency trading rose to 21% of all revenue. *Id.* ¶ 57. Prior to Q1  
15 2021, a majority of the company's revenue came from the conventional trading of stocks, equities,  
16 and options. *Id.* ¶ 56.

17 b. Intra-quarterly reports regarding revenue and trading volumes and KPIs

18 Plaintiffs allege that equities revenue and trading volume dropped significantly from Q1 to  
19 Q2. Specifically, equities trading revenue declined 61%, when before it was one third of all  
20 transaction-based revenue. SAC ¶ 5. And further, equities trading volume declined 33% from  
21 June 2021 to July 2021. *Id.* Further, cryptocurrency revenue and trading volume dropped 90%  
22 from Q2 to the beginning of Q3. SAC ¶¶ 6, 84. Plaintiffs allege that as to revenue, aside from one  
23 quarter in Q4 2019, revenue mostly grew quarter-over-quarter from Q1 2019 to Q1 2021. *Id.* ¶ 55.

24 Plaintiffs allege that there were declines in KPIs, specifically in MAU, AUC, and ARPU,  
25 from Q2 to Q3 that were not disclosed in the Offering Documents and that these drops were  
26 “unusual” compared to historical financial information. SAC ¶ 7. Plaintiffs also allege that each  
27 of the KPIs when viewed in conjunction with the other drops in KPIs and alongside the reduction  
28 in revenue were material. SAC ¶¶ 7, 99, 103, 105.

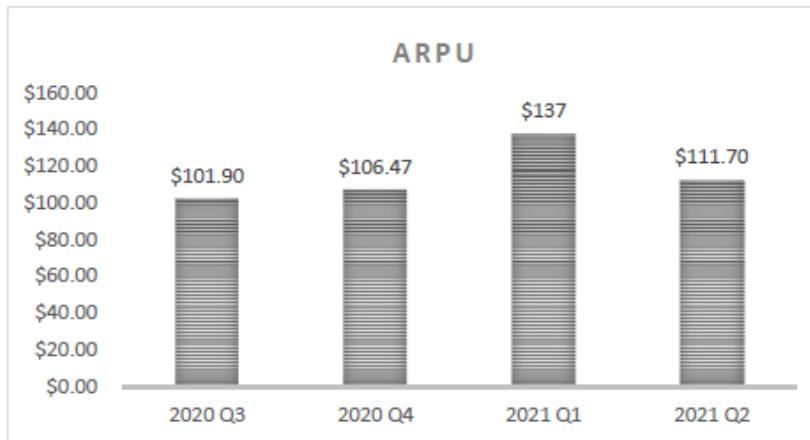
- 1     • **MAU (Monthly Active Users)**: Plaintiffs allege that MAU dropped about 19% from May  
 2       to July, including an 11.65% decline from May to June and an additional 8.45% decline  
 3       from June to July. SAC ¶¶ 7, 98-99. Plaintiffs allege that the MAU drops were “highly  
 4       material” because the decline was “considerable” and that they were “highly unusual”  
 5       because Robinhood had “rarely, if ever, experienced back-to-back months of declining  
 6       MAU of similar magnitude.” *Id.* ¶ 99.



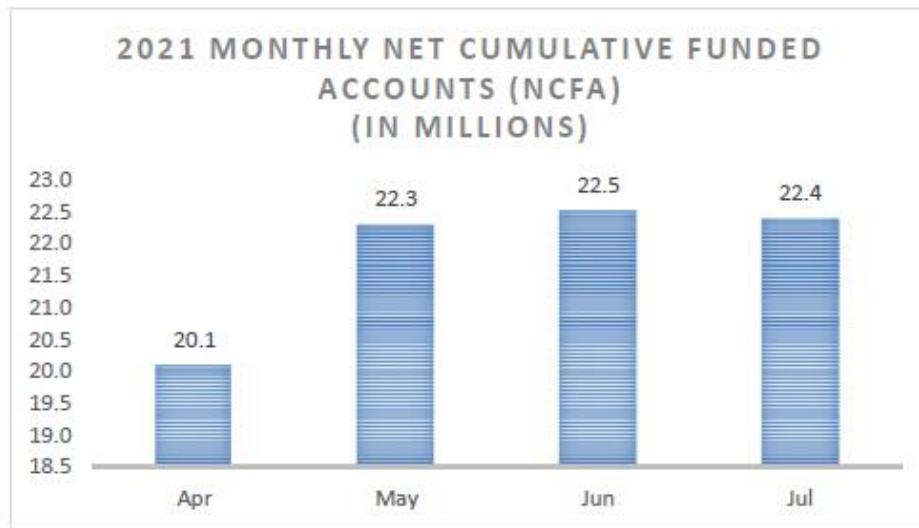
- 15     • **AUC (Assets Under Custody)**, which is the sum of the fair value of equities, options,  
 16       cryptocurrency and cash held by users in their accounts, had declined 7% from June to July  
 17       and, aside from a bump in June, had been declining since May. SAC ¶¶ 7, 103-104.  
 18       Plaintiffs allege that this decline stood “in stark contrast to the unbroken string of rising  
 19       AUC that occurred prior to July 2021.” *Id.* ¶ 103.



- 1     • ARPU (Average Revenue Per User) dropped nearly 20% from Q1 to the end of Q2. *Id.* ¶¶  
 2       7, 100. Although the Offering Documents provided preliminary estimates of KPIs for Q2,  
 3       they did not do so for ARPU. *Id.* ¶ 101.



- 11     • NCFA (Monthly Net Cumulative Funded Accounts): NCFA reflecting customer base and  
 12       usage remained largely flat from May through July 2021. *Id.* ¶¶ 7, 106.



## 22           II.       LEGAL STANDARD

23       Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include “a short and plain  
 24       statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A  
 25       complaint that fails to meet this standard may be dismissed pursuant to Rule 12(b)(6). *See* Fed. R.  
 26       Civ. P. 12(b)(6). To overcome a Rule 12(b)(6) motion to dismiss after the Supreme Court’s  
 27       decisions in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corporation v. Twombly*, 550  
 28       U.S. 544 (2007), a plaintiff’s “factual allegations [in the complaint] ‘must . . . suggest that the

1 claim has at least a plausible chance of success.”” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th  
2 Cir. 2014). The Court “accept[s] factual allegations in the complaint as true and construe[s] the  
3 pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire &*  
4 *Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). But “allegations in a complaint . . . may not  
5 simply recite the elements of a cause of action [and] must contain sufficient allegations of  
6 underlying facts to give fair notice and to enable the opposing party to defend itself effectively.”  
7 *Levitt*, 765 F.3d at 1135 (quoting *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d  
8 990, 996 (9th Cir. 2014)). “A claim has facial plausibility when the plaintiff pleads factual content  
9 that allows the court to draw the reasonable inference that the defendant is liable for the  
10 misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a  
11 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted  
12 unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556).

### 13 III. DISCUSSION

#### 14 A. Section 11 and 12(a)(2) liability

15 Section 11 of the Securities Act (“Section 11”) imposes liability on Defendants if “any part  
16 of the registration statement . . . contained an untrue statement of a material fact or omitted to state  
17 a material fact required to be stated therein or necessary to make the statements therein not  
18 misleading.” 15 U.S.C. §77k(a). “No scienter is required for liability under § 11.” *In re Daou*  
19 *Sys.*, 411 F.3d 1006, 1027 (9th Cir. 2005). Section 12(a)(2) of the Securities Act establishes  
20 liability for persons who offer or sell securities by means of prospectuses or oral communications  
21 that include untrue or misleading statements or omissions. *See id.*; *see also Rafton v. Rydex Series*  
22 *Funds*, No. 10-CV-01171-LHK, 2011 WL 31114, at \*7 (N.D. Cal. Jan. 5, 2011). Claims under  
23 Sections 11 and 12(a)(2) of the Securities Act contain roughly parallel elements; scienter is  
24 likewise not required for liability under Section 12(a)(2) of the Act. *See Rafton*, 2011 WL 31114,  
25 at \*6.

26 Plaintiffs’ Second Amended Complaint abandons claims that Robinhood’s Offering  
27 Documents were false or misleading because they misrepresented its business strategy (as alleged  
28 in the FAC). Instead, as stated above, Plaintiffs assert a new theory, arguing that the Offering

1 Documents were rendered false or misleading because (1) the pre-IPO declines in KPIs and  
2 declines in sources of revenues were undisclosed and misrepresented by the Offering Documents;  
3 and (2) investors were left in the dark regarding composition of the company’s revenue (skewing  
4 more heavily toward “fad-trading”), violating item 105 of the Act. Opp. to MTD at 3-8. These  
5 arguments are addressed in turn below.

6       1.     KPI, revenue, and trading volume disclosures

7       Plaintiffs argue that the Offering Documents misrepresented Robinhood’s financials, as  
8 represented by the trading volume on the platform, revenue from trading, and key performance  
9 indicators (“KPI”) metrics. Opp. to MTD at 9–15. Specifically, they argue that while the Offering  
10 Documents included data showing quarter-after-quarter growth, Defendants’ omission of  
11 “extraordinary and material downturns in key drivers of its revenue and KPIs in the months  
12 preceding the IPO” rendered the Offering Documents misleading. *Id.* at 13.

13       Plaintiffs do not allege that the Offering Documents include inaccurate reports of historical  
14 financial data, i.e., the data reports through the first quarter of 2021. *See generally* SAC. As  
15 explained in the Court’s prior order dismissing the First Amended Complaint, “a company’s  
16 statements are ‘inactionable’ if they ‘merely restate accurately reported historical information.’”  
17 Docket No. 90 (quoting *Irving Firemen’s Relief & Ret. Fund v. Uber Techs.*, No. 17-cv05558,  
18 2018 WL 4181954, at \*5 (N.D. Cal. Aug. 31, 2018) (cleaned up)).<sup>1</sup> For example, the Offering  
19 Documents accurately presented historical KPI data for 2019 and 2020 and the first quarter of  
20 2021. SAC ¶ 119. And the Offering Documents included quarterly net and transaction-based  
21 revenue for 2019 through the first quarter of 2021. *Id.* ¶ 110. Plaintiffs did not, and do not allege  
22 falsity of the historical data. *See generally id.* Plaintiffs allege, however, that this historical data  
23 and statements made about future performance were rendered misleading by omission of revenue,  
24 trading volume, and KPI reporting from the second and third quarter of 2021 which showed

25 \_\_\_\_\_  
26 <sup>1</sup> The same is true for statements made that “tout” accurate financial data. *Monachelli v.*  
27 *Hortonworks, Inc.*, 225 F. Supp. 3d 1045, 1055 (N.D. Cal. 2016) (internal citations and quotations  
28 omitted) (rejecting the argument that a firm misrepresented when it “touted” accurate financial  
results without exposing the downside impacts on growth because “disclosure[s] of accurate  
historical data accompanied by general statements of optimism and failure to disclose internal  
forecasts of future performance are not actionable”).

1 declines in the business. SAC ¶¶ 109–122.

2 As explained in the Court’s prior order, the Securities Act requires that “a registration  
3 statement include financial statements only if they are more than 135 days old. Further, SEC  
4 regulations give companies 45 days after the end of a quarter to report quarterly results and do not  
5 generally require the disclosure of interim quarterly results.” Docket No. 90 (Order granting Def’s  
6 MTD the FAC (“MTD Order”) at 11 (citing *City of Warren Police & Fire Ret. Sys. v. Natera Inc.*,  
7 46 Cal. App. 5th 946, 954 (2020) (cleaned up)). In other words, a company need not include a  
8 quarterly report in a registration statement unless that quarter ended less than 45 days before the  
9 IPO, and the company has additional time to submit underlying financial statements. *See id.*

10 The Initial Public Offering occurred on July 30, 2021, after the Registration Statement was  
11 deemed effective on July 28, 2021. SAC ¶¶ 3, 68. Accordingly, Robinhood was not obligated to  
12 disclose the results of the quarter ending in June (Q2 2021) until mid-August; and the interim  
13 results for the third quarter, i.e., July (first month of Q3 2021) were also not obligated to be  
14 disclosed until mid-November. However, an omission claim does arise when disclosure of  
15 information is “necessary to make the statements made, in light of the circumstances under which  
16 they were made, not misleading.” *Retail Wholesale & Dep’t Store Union Loc. 388 Ret. Fund v.*  
17 *Hewlett-Packard Co.*, 845 F.3d 1268, 1278 (9th Cir. 2017) (internal quotations and ellipses  
18 omitted). The speaker must have “affirmatively create[d] an impression of a state of affairs that  
19 differs in a material way from the one that actually exists.” *Id.* at 1278 (citation omitted). To this  
20 end, and as previously explained by the Court, inclusion of such out-of-quarter or intra-quarterly  
21 reports are only rendered necessary to the extent that they reflect declines so extraordinary as to be  
22 unusual and indicative of larger future trends when viewed in context of the company’s historical  
23 data. MTD Order at 11-13 (citing *In re Apple Inc. Sec. Litig.*, No. 19-CV-02033- YGR, 2020 WL  
24 2857397, at \*9 (N.D. Cal. June 2, 2020); *In re Lyft Inc. Sec. Litig.*, 484 F. Supp. 3d at 773).

25 a. Insufficiencies in the prior complaint

26 Regarding the FAC, the Court found that Plaintiffs’ allegations about omitted financial  
27 metrics did not satisfy the “historically extraordinary” standard. *Id.* The omitted information was  
28 in the wrong timeframe, did not reflect declines in several performance metrics, and, where

1 declines existed, the complaint lacked sufficient context to show that the decline was extraordinary  
2 relative to the company's historical performance. *See id.* Specifically, although the FAC alleged  
3 that revenue from the entire third quarter declined relative to the previous quarter, this did not  
4 address the relevant time period—i.e., the months leading up to the filing of the Offering  
5 Documents on July 28, 2021. *Id.* As to allegations regarding revenue for the second quarter, the  
6 revenue decline from just one quarter could have been merely “seasonal or aberrational.” *Id.* As  
7 to the KPIs, the allegations showed certain KPIs did not decline in the alleged period (Assets  
8 Under Custody “AUC” increased in June 2021 before decreasing in July, and Net Cumulative  
9 Funded Account “NCFA” remained flat). *Id.*

10 The Court recognized that Plaintiffs did include allegations showing a decline in the  
11 Monthly Active Users “MAU,” Average Revenue Per User “ARPU,” and crypto trading volume.  
12 *Id.* However, Plaintiffs failed to provide contextual information to show why those declines were  
13 extraordinary relative to the company’s historical data, i.e., that they were indeed unusual and/or  
14 otherwise indicative of larger future trends. *Id.* (citing *In re Apple Inc. Sec. Litig.*, No. 19-CV-  
15 02033- YGR, 2020 WL 2857397, at \*9 (N.D. Cal. June 2, 2020); *In re Lyft Inc. Sec. Litig.*, 484 F.  
16 Supp. 3d at 773)). As to the cryptocurrency trading, Plaintiffs also “fail[ed] to explain how the  
17 May to July 2021 decline in cryptocurrency trading was unique to Robinhood rather than a general  
18 trend which would have been known by the public and any reasonable investor.” *Id.* All in all,  
19 the Court explained that the Plaintiffs would need to amend their complaint to show why the data  
20 was so historically extraordinary as to render an intra-quarterly disclosure necessary.

21 b. New allegations contextualizing declines

22 Plaintiffs argue that their amended complaint includes sufficient contextual information to  
23 show that the declines in omitted financials were “extraordinary and indicative of larger future  
24 trends known to the management” requiring disclosure. MTD Opp. at 9-12. Defendants argue  
25 that the omitted information was not extraordinary, and no such disclosure was required. *See*  
26 Reply at 13-15. The Court finds Plaintiffs fail to state a claim on this basis because much of the  
27 complaint restates allegations previously dismissed by the Court as insufficient to state a claim,  
28 and the new allegations, when viewed against the proper baseline (the pre-frenzy company

1 financials), do not reflect results so extraordinary as to warrant out-of-quarter disclosure.

2 Many of the allegations in the Second Amended Complaint are restatements of allegations  
3 already provided in the First Amended Complaint, though sometimes adding details. *See, e.g.*,  
4 SAC ¶ 100 (quantifying that the decline in ARPU previously alleged (\$137 in Q1 to \$111.70 in  
5 Q2), amounted to a 20% decline). The repeated allegations include: that MAU declined 19% from  
6 May to July 2021. (FAC ¶ 129; SAC ¶¶ 7, 98-99); AUC declined 7% from Q1 2021 to Q2 2021,  
7 aside from a bump in AUC in June 2021 (FAC ¶ 135; SAC ¶¶ 7, 103-104); ARPU declined nearly  
8 20% from the first to second quarter of 2021 (FAC ¶ 134; SAC ¶¶ 7, 100); NCFA remained flat  
9 through May, June, and July 2021 (FAC ¶ 138, ¶¶ 7, 106); Cryptocurrency trading volume  
10 declined 76% in June 2021 and an additional 56.67% drop in July--90% in total. (FAC ¶¶ 12,  
11 131-32; SAC ¶¶ 84, 130).

12 Plaintiffs now add the following allegations. Plaintiffs allege the decline in MAU was  
13 “highly unusual”<sup>2</sup> because Robinhood had “rarely, if ever, experienced back-to-back months of  
14 declining MAU of similar magnitude” (i.e., 11.65% and 8.45% respectively). SAC ¶¶ 98-99.  
15 Plaintiffs also add the allegation that a 7% AUC decline from June (last month of Q2) to July (first  
16 month of Q3), aside from the one-time bump in June, stands “in stark contrast to the unbroken  
17 string of rising AUC that occurred prior to July 2021.” *Id.* ¶ 103. Plaintiffs allege that these  
18 declines in KPIs were extraordinary and indicative of future trends when viewed in context of  
19 each other and the declines in revenue and trading volume. SAC ¶¶ 99, 105. Plaintiffs also allege  
20 that, in addition to the decline in revenue from crypto trading that was previously alleged, FAC ¶  
21 133, revenue from equities and options trading also fell from Q1 (January to March) to Q2 (April  
22 to June) by 34%. SAC ¶ 83. Plaintiffs also add that, in addition to the fall of the cryptocurrency  
23 volume previously alleged, FAC ¶ 131, equities trading volume fell (33% decline from Q2 (April  
24 to June) to early Q3 (July to September)). SAC ¶ 83. Plaintiffs also add that the Robinhood

25  
26  
27 <sup>2</sup> Adding the label “highly unusual” alone does not help Plaintiffs’ claim as this would be merely a  
28 conclusory allegation. *See Wilkins v. California*, No. 20-CV-1939, 2022 WL 2834291, at \*1 &  
n.1 (N.D. Cal. July 20, 2022) (Chen, J.) (discussing the difference between conclusory and factual  
allegations).

1 cryptocurrency trading volume decrease in June at a rate of 40% and 31.5% in July far exceeded  
2 the fall experienced by the industry as a whole which was due to a regulatory crackdown in China.  
3 SAC ¶ 86 & n.2.

4 These added allegations (even accepted as true) are insufficient to state a claim that the  
5 out-of-quarter reports were so extraordinary, unusual, or indicative of larger future trends as to  
6 warrant disclosure.

7 On the one hand, the cases that the parties cite in their briefs on this issue stand for the  
8 principle that simultaneous declines in *multiple* financial indicators could render disclosure of out-  
9 of-quarter reports necessary. For example, in *Kapps v. Torch Offshore, Inc.* 379 F.3d 207, 219  
10 (5th Cir. 2004), in determining that a 60% decline in gas prices did not warrant disclosure, the  
11 court found it relevant that there was no simultaneous negative impact on revenue along with the  
12 price drop—making it reasonable to view the decline as an anomaly, showing fluctuation but not a  
13 pattern of decline. This implies that, conversely, the presence of a simultaneous revenue drop  
14 could require disclosure. *See id.* In *In re Turkcell Iletisim Hizmetler A.S. Sec. Litig.*, 202 F. Supp.  
15 2d 8, 13 (S.D.N.Y. 2001), in determining that a 9% drop in income for the company was not  
16 sufficiently extreme so as to warrant disclosure, the court noted that there was no drop in any other  
17 financial indicator, suggesting there was no “known trend” to disclose. And in *Franchi v.*  
18 *SmileDirectClub, Inc.*, 633 F. Supp. 3d 1046, 1069-1071 (M.D. Tenn. 2022) the court found that  
19 out-of-quarter reporting disclosure was indeed warranted where three financial metrics indicated a  
20 downward trend in the business leading up to the IPO (though the court did not explicitly state that  
21 it was the compounding nature that rendered disclosure necessary). *See id.* This line of cases  
22 would suggest that the decline in KPIs, trading volume, and revenue—when viewed collectively,  
23 could warrant disclosure.

24 However, the omitted data that Plaintiffs point to does not show a persistent decline in  
25 multiple financial metrics when viewed against the proper baseline.

26 As *Kapps* instructs, the declines Robinhood experienced in the second and third quarter of  
27 2021 should be viewed not myopically, but in context of the unprecedented spike that Robinhood  
28 experienced in its business earlier that year because of the “fad-trading” events. *See* 379 F.3d at

1 211-13, 216, 218. In *Kapps*, the court held that a 60% drop in the price of natural gas in the  
2 months leading up to the IPO was not so extraordinary as to require out-of-quarter disclosures.  
3 *See id.* In determining that disclosure was not warranted, the court considered the fact that, before  
4 the drop in price from \$10 to \$4.50, there was a sharp increase in prices (from \$2 to \$10). *Id.* at  
5 211. When the decline was viewed in context of the preceding sharp increase, the decline was  
6 better seen as a correction to the previous spike and not a downturn in the business. *See id.* at 211-  
7 13. The same is true here. By Plaintiffs' own account, Robinhood experienced an extreme and  
8 unprecedeted spike in business in early 2021 because of the meme stock and Dogecoin events.  
9 SAC ¶¶ 4, 72-73, 76-77, 82. Specifically, from January to February 2021 Robinhood experienced  
10 a nearly 50% increase from the previous quarter in trading revenue, resulting in part from the  
11 meteoric rise of GameStop stock, AMC stock (which, for example, jumped 300% in one day on  
12 January 27), and Bed Bath & Beyond stock. *Id.* ¶¶ 72-77, 82. And from January to May 2021,  
13 Robinhood experienced a spike in cryptocurrency trading on the platform, increasing its revenue  
14 from trading of the currency alongside the Dogecoin event. *Id.* ¶¶ 78-82. To illustrate how  
15 substantial the Dogecoin event was, during that time, the value of the Dogecoin increased from  
16 half of a cent to 73 cents at its height. *Id.* ¶¶ 79, 81. And cryptocurrency revenue increased from  
17 \$12 million to over \$85 million. *Id.* ¶ 82.

18 Accordingly, the proper question is not how financials leading up to the IPO compare to  
19 the financial metrics during the immediately preceding fad-trading spike, but how they compare to  
20 the company's historical performance, i.e., financials for a longer period. This comparison places  
21 the prior unprecedeted spike and the subsequent decline in proper context.

22                   i.        Equities and options trading

23       When viewed against the pre-spike numbers, these declines are modest or non-existent.  
24 Specifically, while revenue from equities and options trading (payment for order flow or "PFOF")  
25 fell from \$331 million in Q1 2021 to \$216.6 million in Q2 2021 (34.5%), the Q2 number was just  
26 1.5% less than the PFOF revenue in Q4 2020 (\$222 million). SAC ¶ 83. Plaintiffs have not cited,  
27 nor is the Court aware of, any case finding such a small decline to be extraordinary. In a similar  
28 vein, the equities-only trading revenue for Q2 2021 (\$52 million) fell within the range of typical

1 equities revenue for the company—which, beginning in 2020, spanned from \$31.6 million to—  
2 setting aside the meme stock event—to a high of \$80 million. *See* Prospectus at 144, 149; MTD  
3 Ex. 3, Q2 2021 Form 10-Q; Ex. 4, Q3 2021 Form 10-Q. In other words, the options and equities  
4 trading metrics that Plaintiffs argue were extraordinary enough to require disclosure were in-line  
5 with the company’s historical performance, setting aside the unprecedent meme stock event.

6                   ii.        Key Performance Indicators

7                  In turning to the KPIs, although there were declines from June to July in the KPIs,  
8 Robinhood actually experienced an *increase* in MAU and AUC compared to the first quarter of  
9 2021. Specifically, for the months ended March 31, 2021, there were 17.7 million MAU  
10 (compared to 19.5 million in July and 21.3 million in June). *Compare* Prospectus at 133 with SAC  
11 ¶ 98. AUC also increased in July compared to Q1 (\$94.7 billion vs. \$80.9 billion). *Compare*  
12 Prospectus at 133 with SAC ¶ 103. Accordingly, the MAU and AUC metrics more accurately  
13 reflect historical fluctuations as opposed to an “observed pattern” that would warn the  
14 management of persistent trends necessary to warrant disclosure. *In re Restoration Robotics, Inc.*  
15 *Sec. Litig.*, 417 F. Supp. 3d 1242, 1263 (N.D. Cal. 2019) (internal citations and quotations  
16 omitted) (finding a single decline insufficient to require out-of-quarter disclosure).

17                  Moreover, Plaintiffs cannot complain that investors were in the dark about these metrics  
18 for June, as Robinhood disclosed MAU and AUC metrics for June 2021 in their Offering  
19 Documents. Prospectus at 136. Plaintiffs also do not point to any authority for the proposition  
20 that a back-to-back decline in MAU in June and July necessarily renders a decline extraordinary.  
21 *See* Opp. at 9-11. Given that the back-to-back declines occurred immediately after a large spike in  
22 the company’s business, these declines again reflect not an unprecedented declining trend  
23 warranting disclosure, but more likely a correction back to normal levels. *See* *Kapps*, 379 F.3d at  
24 211-13, 216, 218 (decline in metric should be considered in context of preceding spike).<sup>3</sup>

25 \_\_\_\_\_  
26 <sup>3</sup> Plaintiffs also suggest that it was misleading for Robinhood not to provide preliminary estimates  
27 of ARPU for Q2 2021. SAC ¶ 101. But ARPU is calculated from quarterly revenue and NCFA,  
28 *see* Prospectus at 28, which were each disclosed for Q2 in the Offering Documents, *id.* at 30, so a  
reader could determine the Q2 decline in ARPU. *See* *In re Netflix, Inc. Sec. Litig.*, No. C 04-2978,  
2005 WL 3096209, at \*9 (N.D. Cal. Nov. 18, 2005) (dismissing claims where data allowed

1                   iii.     Cryptocurrency trading volume

2                 In regard to trading volume, plaintiffs also add allegations that the decline in  
3                 cryptocurrency trading volume Robinhood experienced from the end of Q2 to Q3 far exceeded the  
4                 fall experienced by the industry as a whole. SAC ¶ 86 & n.2. Specifically, Plaintiffs add that the  
5                 industry experienced downturns of 40% in June and 31.5% in July 2021 due to regulatory  
6                 crackdowns in China. *Id.* ¶ 86 & n.2. Robinhood, on the other hand, saw a 76% decline in trading  
7                 volume from May to June and another 56% decline from June to July. *Id.* ¶¶ 85-86. Robinhood  
8                 argues that Plaintiffs assertion that Robinhood's declines "far exceeded those in the industry as a  
9                 whole" (SAC ¶ 6) is "conclusory" and "not backed up with any data or figure," Reply at 11  
10                 (citations omitted). But this is not persuasive as Plaintiffs do include facts regarding relative  
11                 declines that support their allegation (*see* SAC ¶ 86 & n.2). Still, the trading volume that  
12                 Robinhood saw in June and July, as substantial as they were, fell in line with its historical metrics.  
13                 Specifically, the low in July 2021 of \$13 billion in trading volume was within the normal range of  
14                 trading when compared to the March 2021 (pre-Dogecoin spike) trading volume of \$16 billion.<sup>4</sup>  
15                 Additionally, following the IPO, the trading volume increased to \$22 billion in August 2021, and  
16                 then leveled off in September 2021 at \$16 billion.<sup>5</sup> It is difficult to say that the decline in trading  
17                 volume in July 2021 was representative of a persistent downward trend when, in the following  
18                 month, the trading volume rose again and then leveled out by September to pre-Dogecoin spike  
19                 numbers. This appears to represent, if anything, fluctuations back to the mean.

20                 All in all, the metrics available to Robinhood regarding the PFOF revenue, trading volume,  
21                 AUC, and MAU do not reflect, in proper context, an extraordinary or persistent decline in its  
22                 business; the metrics show increases in MAU and AUC from the months prior to the decline  
23                 followed by the leveling off after a huge and unprecedented spike. And while Plaintiffs allege that

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24  
25                 investors to calculate allegedly omitted information). Further, the Court already determined that  
the decline in ARPU was not exceptional or out of line with past fluctuations. MTD Order at 12.

26                 <sup>4</sup> See *Robinhood Monthly Metrics* (Released with Q2 2022 Form 10-Q), available at  
27                 [https://s28.q4cdn.com/948876185/files/doc\\_downloads/Monthly/March-2022-Metrics.pdf](https://s28.q4cdn.com/948876185/files/doc_downloads/Monthly/March-2022-Metrics.pdf) (last  
visited January 21, 2024).

28                 <sup>5</sup> *Id.*

1 the declines were “highly material” because they “coincide[ed] with the end of the meme stock  
2 and Dogecoin fads,” SAC ¶ 99—it is precisely that additional context which renders the declines  
3 as *not* indicative of an extraordinary downward trend as to mandate out-of-quarter reporting.

4                  iv.        Impact of risk warnings and disclosures

5                  In addition to the fact that Robinhood’s metrics do not show a historically extraordinary  
6 decline warranting out-of-quarter disclosures, Robinhood also properly disclosed future risks and  
7 downward trends of the metrics. *See, e.g.*, Prospectus at 37. As the Court previously explained in  
8 its last order granting Defendant’s motion to dismiss, *see* MTD Order at 12-13, under the  
9 “bespeaks caution” doctrine, “a court can rule as a matter of law (typically in a motion to dismiss  
10 for failure to state a cause of action or a motion for summary judgment) that defendants’ forward-  
11 looking representations contained enough cautionary language or risk disclosure to protect the  
12 defendant against claims of securities fraud.” *In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407,  
13 1413 (9th Cir. 1994) (internal citations and quotations omitted). While “blanket warnings that  
14 securities involve a high degree of risk [are] insufficient to ward against a federal securities fraud  
15 claim,” “precise cautionary language which directly addresses itself to future projections,  
16 estimates or forecasts in a prospectus” do not constitute a misrepresentation. *Id.* at 1414.

17                  As to the potential for downward trends in KPIs and revenue rates, among other warnings  
18 including in the Prospectus, Robinhood reported that it expected its growth rates in these metrics  
19 to decline significantly in the future:

20                  We have grown rapidly over the last few years, and therefore our  
21 recent revenue growth rate and financial performance should not be  
22 considered indicative of our future performance. In particular, since  
March 2020, we have experienced a significant increase in revenue,  
MAU, AUC and Net Cumulative Funded Accounts.

23                  ...

24                  The circumstances that have accelerated the growth of our business  
25 may not continue in the future, and we *expect the growth rates in*  
*revenue, MAU, AUC and Net Cumulative Funded Accounts to*  
*decline in future periods, and such declines could be significant.*

26                  ...

27                  We anticipate the rate of growth in these Key Performance Metrics  
28 [i.e., Net Cumulative Funded Accounts, MAUs, and Assets Under

1                   Custody (AUC)] will be lower for the period ended September 30,  
2                   2021, as compared to the three months ended June 30, 2021... due  
3                   to the exceptionally strong interest in trading, particularly in  
4                   cryptocurrencies, we experienced in the three months ended June 30,  
5                   2021 and seasonality in overall trading activities.  
6

7                   SAC ¶¶ 121, 123, 125, Prospectus at 31, 37. As the Court previously explained, these disclosures  
8                   were not misrepresentations on their own, notwithstanding that they indicate a slowing of growth  
9                   as opposed to a decline in metrics. MTD Order at 13-14. Importantly, with respect to the  
10                  downturns in cryptocurrency trading and revenue, a major factor in the decline of Robinhood's  
11                  KPIs, the company warned of the possibility of absolute declines:  
12

13                  The prices of cryptocurrencies are extremely volatile. Fluctuations  
14                  in the price of various cryptocurrencies may cause uncertainty in the  
15                  market and could negatively impact trading volumes of  
16                  cryptocurrencies, which would adversely affect the success of  
17                  RHC's business, financial condition and results of operations.  
18

19                  ...

20                  The cryptocurrency markets are volatile, and changes in the prices  
21                  and/or trading volume of cryptocurrencies may adversely impact  
22                  RHC's growth strategy and business. In addition, while we have  
23                  observed a positive trend in the total market capitalization of  
24                  cryptocurrency assets historically, driven by increased adoption of  
25                  cryptocurrency trading by both retail and institutional investors as  
26                  well as continued growth of various non-investing use cases,  
27                  historical trends are not indicative of future adoption, and it is  
28                  possible that the adoption of cryptocurrencies may slow, take longer  
                        to develop or never be broadly adopted, which would negatively  
                        impact our business, financial condition and results of operations.

19                  ...

20                  For the three months ended March 31, 2021, 17% of our total  
21                  revenue was derived from transaction-based revenues earned from  
22                  cryptocurrency transactions, compared to 4% for the three months  
23                  year ended December 31, 2020. While we currently support a  
24                  portfolio of seven cryptocurrencies for trading, for the three months  
25                  ended March 31, 2021, 34% of our cryptocurrency transaction-based  
26                  revenue was attributable to transactions in Dogecoin, as compared to  
27                  4% for the three months ended December 31, 2020. As such, in  
28                  addition to the factors impacting the broader cryptoeconomy  
                        described elsewhere in this section, RHC's business may be  
                        adversely affected, and growth in our net revenue earned from  
                        cryptocurrency transactions may slow or decline, if the markets for  
                        Dogecoin deteriorate or if the price of Dogecoin declines, including  
                        as a result of factors such as negative perceptions of Dogecoin or the  
                        increased availability of Dogecoin on other cryptocurrency trading  
                        platforms.

SAC ¶¶ 128-30, Prospectus at 78-79. These warnings are significant when viewed in context of the company's financials before, during, and after the Dogecoin spike. *See, e.g., Worlds of Wonder*, 35 F.3d at 1418-19 (finding that the issuer was not required to estimate the proportion of a change in its revenues that was due to temporary factors, nor "the precise extent of [an] anticipated revenue drop"); *In re Aldus Sec. Litig.*, No. 1993 WL 121478, at \*6 (W.D. Wash. Mar. 1, 1993) ("Aldus had no duty to reveal the specific amount of projected amortization cost increases.").<sup>6</sup>

Accordingly, these disclosures are not actionable in and of themselves for failure to predict with exact certainty the level of downturns the company would face under the bespeaks caution doctrine. More importantly, the disclosures, if anything, served to put investors on notice that Robinhood's trading revenues would be substantially lower in the second and third quarters of 2021 than in the first quarter of 2021.

## 2. Item 303

Plaintiffs relatedly argue that Robinhood's failure to disclose the metrics regarding KPIs, trading volume, and revenue violated Item 303 of Regulation S-K.

Item 303 requires disclosure of "any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." MTD Order at 20; 17 C.F.R. § 229.303(b)(2)(ii). A "trend" under Item 303 is an "observed pattern that accurately reflects persistent conditions of the particular registrant's business environment." *In re Restoration Robotics, Inc. Sec. Litig.*, 417 F. Supp. 3d 1242, 1263 (N.D. Cal. 2019) (internal citations and quotations omitted). Accordingly, the inquiry to discern if a "trend" exists warranting disclosure under Item 303 is akin to the inquiry under Section 11 generally in determining whether out-of-quarter disclosures were extraordinary enough to require disclosure. As explained above, the

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<sup>6</sup> To this end, the Court previously rejected identical allegations that the risk disclosures were in and of themselves misleading because those statements used contingent language such as "may" or "could" when those events had already come to pass given that the complained-of omissions were not historically extraordinary requiring disclosure. Compare FAC ¶¶ 158-161 with SAC ¶¶ 127-130; accord MTD Order at 9, 16-18. The same is true here.

1 complained-of omissions were not so persistent as to require disclosure.

2 The cases cited by Plaintiffs in opposition do not warrant a different result. In *Franchi*,  
3 2022 WL 4594575, at \*10, the court there determined that the sudden downward trend in three  
4 financial metrics in the quarter warranted out-of-quarter disclosure. However, as explained above,  
5 the complained-of metrics do not actually show a significant decline in multiple financial metrics  
6 for the company, but a correction back to the company's pre-spike numbers. Section III.A.1.b.

7 *In re Facebook, Inc. IPO Securities and Derivative Litigation*, 986 F. Supp. 2d 487, 511-  
8 13 (S.D.N.Y. 2013) is distinguishable, as there, the court found that the omitted information  
9 required disclosure not because of its content, but because of the company's internal reaction to  
10 the metrics it had in-hand at time of the IPO. Specifically, in *Facebook*, the company had seen a  
11 change in the number of Daily Active Users on the desktop version of the website (compared to  
12 increasing mobile usage) leading up to the IPO. *Id.* at 511. This was material because the  
13 company derived revenue from advertisements for desktop users. *Id.* The court was primarily  
14 persuaded that this constituted a material adverse trend that needed to be disclosed in the IPO  
15 because Facebook's senior leadership was adamant that the change warranted making emergency  
16 calls to a select group of investors, namely underwriters and institutional investors (the "Syndicate  
17 Analysts"), before the IPO. *Id.* at 513-14. The court reasoned that if the decline was serious  
18 enough to "warrant emergency calls" then that supported the claim that it was a trend under Item  
19 303. *Id.* The decline in desktop users occurred during the second quarter of 2012, resulting in  
20 lower revenue projections, and this was exacerbated by the decision in the same quarter that  
21 reduced the average amount of ads displayed to users on some pages. *Id.* at 500. Because of this,  
22 the company cut its internal revenue projects by 8.3% for the quarter and remainder of the year.  
23 *Id.* at 500-501.

24 Notably, Facebook's most senior executives determined that the change was so significant  
25 that it warranted disclosure to the Syndicate Analysts. *Id.* at 501. For example, the treasurer sent  
26 an email to employees with the subject line "Q2 estimates from analysts IMPORTANT PLS THIS  
27 MORNING." *Id.* at 501. And the treasurer stated that the Morgan Stanley bankers immediately  
28 needed to see the "q2-q4 by quarter revenue estimates from the analysts for whom we have

1 detailed models.” *Id.* at 501. Thereafter, the executives stated that Facebook needed to provide  
2 the new revenue figures to the Syndicate Analysts so they could revise models based on the new  
3 information and provide to the company’s largest potential investors. *Id.* On one of these calls,  
4 the treasurer stated:

5 I wanted to make sure you saw the disclosure we made in our  
6 amended filing. The upshot of this is that we believe we are going to  
7 come in [on] the lower end of our \$1.1 to \$1.2 bn range for Q2  
based upon the trends we described in the disclosure. **A lot of**  
8 **investors have been focused on whether the trend of ad**  
**impressions per user declining (primarily as a result of mobile)**  
9 **was a one-time, or continuing, occurrence. As you can see from**  
**our disclosure, the trend is continuing.** You can decide what you  
10 want to do with your estimates, our long term conviction is  
unchanged, but in the near term we see these trends continuing,  
hence our being at the low end of the \$1,100 + \$1,200 range.  
11

12 *Id.* at 502 (emphasis added). In short, in *Facebook*, there was a significant trend, not a correction,  
13 and management knew and acknowledged it as such. Here, there was what appears to be a  
14 correction and not a sustained trend. And there is no allegation that executives internally  
15 recognized and understood that the metrics they had at the time of the IPO constituted a persistent  
16 downward trends warranting modifications of future projections. *In re Facebook* is inapposite.

17 In a similar vein, Plaintiffs also raised at the motion hearing that these declines in KPIs  
18 must have been significant, because sophisticated analysts, based on information available to  
19 them, were not expecting Robinhood’s business to decline as significantly as it did in late 2021.  
20 But Plaintiffs point to no authority that analysts being incorrect about the future of a business  
21 necessarily evidences that omitted information was historically extraordinary.<sup>7</sup> Unfulfilled  
22 predictions of analysts alone do not retrospectively establish historically extraordinary information  
23 that mandates out-of-the ordinary disclosures.

24 In summation, the complained of declines were not historically extraordinary when viewed  
25 in context of the company’s overall financials (as opposed to the unprecedented spike in early  
26

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27 <sup>7</sup> This is particularly true given that Robinhood operates in the volatile market of cryptocurrency,  
which, as warned of in the IPO documents and as is generally known to investors, is especially  
28 vulnerable to unexpected ebbs and flows of trading. It is not outlandish that analysts might be  
unable to predict every downturn in a business; this market is unpredictable.

1       2021). Further, Robinhood made adequate disclosures of risk that, under the bespeaks doctrine,  
2 do not trigger liability under Item 105. These disclosures further put investors on notice of the  
3 possibility of downward trends. Accordingly, the Court dismisses Plaintiffs' claims under Section  
4 11 premised upon omissions of declines in KPIs, revenue, and trading volume.

5       B.     Change in Composition of Revenue

6       Plaintiffs also argue that Robinhood violated disclosure duties under Item 105 of the  
7 regulations requiring disclosure of "the material factors that make an investment in the registrant  
8 or offering speculative or risky." Opp. at 17-22; 17 C.F.R. §229.105. Specifically, Plaintiffs  
9 allege that the Offering Documents did not properly disclose the extent to which the business had  
10 become "dominated by fad trading in so-called meme stocks such as GameStop and the novelty  
11 cryptocurrency Dogecoin." SAC ¶¶ 3, 5-7, 70. Robinhood argues that in light of the publicly  
12 available information regarding the fad-trading events and the information in the Offering  
13 Documents, Plaintiffs have failed to state a claim. MTD at 10-12; Reply at 4-9.

14       As Robinhood notes, these trading events were amongst the biggest news stories of the  
15 year. *See, e.g., Year in Review: A Look Back at the Biggest News of 2021*, Wall Street Journal  
16 (Dec. 19, 2021), *available at* <https://www.wsj.com/story/a-look-back-at-the-biggest-news-of-2021-28c7c827> (last visited November 12, 2023); Nicole Lyn Pesce, *Google's 2021 Year in  
17 Search: AMC and GME stocks, Dogecoin, stimulus checks and shortages dominated queries*,  
18 MarketWatch (Dec. 11, 2021), *available at* <https://www.marketwatch.com/story/googles-2021-year-in-search-amc-and-gme-stocks-dogecoin-stimulus-checks-and-shortages-dominated-queries-11638950486> (last visited November 12, 2023); Stan Choe, *Dogecoin has its day; cryptocurrency  
19 is latest 'meme' craze*, AP News (Apr. 20, 2021), *available at*  
20 <https://apnews.com/article/cryptocurrency-technology-business-8462b437bb9ddaf821e49aff7a2bc5d6> (last visited November 12, 2023).<sup>8</sup> And Robinhood  
21 included information about the volatility regarding the trading frenzies—including lawsuits filed  
22  
23

24  
25  
26  
27       

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<sup>8</sup> Plaintiffs do not object to the Court taking judicial notice to the media reports cited in  
28 Defendants' brief for the purpose of showing that the information contained in them was available  
to the market. Opp. at 8 n.4.

1 against Robinhood and congressional inquiries—in its Offering documents. Prospectus at 42-43,  
2 53-54, 56, 206-207. Robinhood also disclosed the existence of bubbles from the meme stock  
3 event and information about the Dogecoin event in the Offering Documents. *See, e.g.*, Prospectus  
4 at 42-43, 206-207 (meme stock events); Prospectus at 79 (Dogecoin event). Plaintiffs appear to  
5 acknowledge the highly publicized nature of these events in their complaint. *See, e.g.*, SAC ¶¶  
6 70-85. Accordingly, a reasonable investor would have been aware of the meme stock and  
7 Dogecoin events in early 2021; these events, also disclosed in the Offering Documents, cannot  
8 support a securities claim. *Rubke v. Capitol Bancorp Ltd.*, 551 F.3d 1156, 1163 (9th Cir. 2009)  
9 (explaining that it is axiomatic that there can be no omission claim when the allegedly undisclosed  
10 information was in the public domain before the IPO).

11 Plaintiffs argue that, notwithstanding this publicly available information, Defendants had a  
12 duty to disclose that the company’s dependency on cryptocurrency trading and particularly on  
13 Dogecoin trading had grown in Q2 2021. Opp. at 21. Specifically, Robinhood provided  
14 preliminary revenue results for Q2 2021, but did not provide a breakdown of the transaction-based  
15 revenue *by type* for that quarter. *Id.* Accordingly—investors did not know that cryptocurrency  
16 trading revenue increased to 52% of its total trading revenue, up from 21% in Q1 2021. And  
17 investors were likewise unaware, Plaintiffs argue, that the cryptocurrency trading that was  
18 attributable to Dogecoin trading increased from 34% in Q1 to 62% in Q2 2021. *Id.* Plaintiffs  
19 summarize this theory:

20 [A]lthough an investor might have anticipated a decline in  
21 cryptocurrency trading volume on Robinhood’s platform (and  
22 revenue from Transaction Rebates) in Q3 2021, due to the end of the  
23 Dogecoin rally . . . without knowing that Robinhood’s dependence  
24 on cryptocurrency trading, and Dogecoin in particular, had increased  
25 exponentially in Q2 2021, an investor did not have any reason to  
anticipate a decline in cryptocurrency trading volume of the  
magnitude experienced by Robinhood in the two months prior to the  
IPO or the material impact that decline was reasonably likely to  
have on Robinhood’s Q3 2021 revenue, especially in light of the  
simultaneous collapse in PFOF from equities trading.

26 *Id.* at 22.

27 Defendants rebut that there is no Item 105 violation here because Item 105 requires  
28 disclosure of risk factors, not present performance indicators. Reply at 3-4. Defendants cite to

1      *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173 (2d Cir. 2014) for the  
2 proposition that the company need only disclose underlying risk factors, i.e., factors that could  
3 cause material future adverse events and not present performance indicators. *Id.* However, this  
4 case is not analogous. In *City of Pontiac*, the court considered whether Item 105 (then known as  
5 Item 503(c)) was violated where the defendant company was involved in a cross-border tax  
6 scheme. *City of Pontiac*, 752 F.3d at 183. The company disclosed that the DOJ was investigating  
7 the company regarding the scheme, but Plaintiffs argued that the defendants were required to  
8 disclose that UBS was, in fact, engaged in an ongoing tax evasion scheme to satisfy Item 105. *Id.*  
9 at 183-84. The court found that there was no obligation to disclose "uncharged, unadjudicated  
10 wrongdoing," as "disclosure is not a rite of confession." *Id.* at 184. Accordingly, by disclosing  
11 involvement in multiple legal proceedings indicating potential exposure to defense costs, UBS  
12 complied with obligations under the Securities Act. *Id.* Here the disclosure Plaintiffs identify  
13 would not have been an admission of wrongdoing in regard to an ongoing legal investigation, but  
14 rather, a shift in revenue source which in and of itself would not be a confession. *City of Pontiac*  
15 does not insulate the Defendants from liability.

16      Still, it is difficult to see how a reasonable investor would be unaware of the potential risk  
17 for Robinhood's business caused by a decline in cryptocurrency trading, and specifically  
18 Dogecoin, given the disclosures made. Robinhood specifically disclosed the significance of  
19 cryptocurrency trading to its business and risks associated with the declining trading volumes:

20      Trading activity was particularly high during the first two months of  
21 the 2021 period, returning to levels more in line with prior periods  
22 during the last few weeks of the quarter ended June 30, 2021, and  
23 remained at similar levels into the early part of the third quarter. *We*  
*expect our revenue for the three months ending September 30,*  
*2021 to be lower, as compared to the three months ended June 30,*  
*2021, as a result of decreased levels of trading activity relative to*  
*the record highs in trading activity, particularly in*  
*cryptocurrencies, during the three months ended June 30, 2021,*  
24 and expected seasonality. . . . We anticipate the rate of growth in  
25 these Key Performance Metrics will be lower for the period ended  
26 September 30, 2021, as compared to the three months ended June  
27 30, 2021, due to the exceptionally strong interest in trading,  
particularly in cryptocurrencies, we experienced in the three months  
ended June 30, 2021 and seasonality in overall trading activities.

1 Prospectus at 31 (emphasis added). Robinhood also stated:

2           **A substantial portion of the recent growth in our net revenues**  
3           **earned from cryptocurrency transactions is attributable to**  
4           **transactions in Dogecoin.** If demand for transactions in Dogecoin  
5           declines and is not replaced by new demand for other  
cryptocurrencies available for trading on our platform, our business,  
financial condition and results of operations could be adversely  
affected.

6 Prospectus at 79 (emphasis added).

7           To add to this disclosure, the magnitude of the Dogecoin trading was described. Investors  
8           were on notice of the fact that Robinhood's business had substantially shifted to rely more on  
9           cryptocurrency trading and more acutely, Dogecoin in Q1 2021. Specifically, Robinhood  
10          disclosed that a disproportionate fraction of its cryptocurrency volume in Q1 (34%) was composed  
11          of trades in Dogecoin. *Id.* That disclosure was picked up and widely reported in the media. For  
12          example, one Business Insider article had a headline reading: "Robinhood says dogecoin  
13          accounted for 34% of its cryptotrading revenue in the 1st quarter and lists declining interest in the  
14          meme token as a risk in its highly anticipated IPO filing." Emily Graffeo, *Robinhood says*  
15          *dogecoin accounted for 34% of its crypto-trading revenue in the 1st quarter, and lists declining*  
16          *interest in the meme token as a risk in its highly anticipated IPO filing*, Business Insider (July 2,  
17          2021), *available at* <https://www.businessinsider.in/stock-market/news/robinhood-says-dogecoin-accounted-for-34-of-its-crypto-trading-revenue-in-the-1st-quarter-and-lists-declining-interest-in-the-meme-token-as-a-risk-in-its-highly-anticipated-ipo-filing/articleshow/84048671.cms> (last  
18          visited November 16, 2023).<sup>9</sup> Additionally, the price of Dogecoin is publicly available  
19          information, meaning investors would be aware of price volatility. *See In re SeaChange Int'l Inc.*,  
20          2004 WL 240317, at \*14-15 (D. Mass. Feb. 6, 2004) (considering public availability of  
21          information in determining whether statements made were misleading).

22           The Court previously held that the disclosures by Robinhood were sufficient to make a  
23          reasonable investor aware of the significance of cryptocurrency trading to Robinhood's business  
24          and risks associated with declines in Dogecoin and cryptocurrency. *See* Docket No. 90 at 15-16.  
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28           <sup>9</sup> Plaintiffs again do not oppose the Court taking judicial notice of media reports, so long as not for  
the truth asserted therein. Opp. at 8 n.4.

1 Nothing changes that determination.

2 Namely, authority cited by Plaintiffs do not present a good reason to reconsider that  
3 finding. For example, *Mingbo Cai v. Switch, Inc.*, No. 2:18-cv-1471, 2019 WL 3065591, at \*5-6  
4 (D. Nev. July 12, 2019) does not support Plaintiffs' case. There, the court determined that  
5 Plaintiffs stated a Section 11 claim premised upon a failure to disclose the company's switch in its  
6 sales strategy to focus on hybrid cloud solutions, which presented new complications and required  
7 engineering. *Id.* The offering documents there discussed that hybrid cloud solutions could present  
8 a remarkable growth opportunity but did not disclose the shift in business to focus on that strategy.  
9 *Id.* Here, the shift in types of trading occurring on Robinhood's platform does not reflect a shift in  
10 Robinhood's business strategy, but a change in user behavior unprompted by Robinhood. In that  
11 sense, there was no shift in strategy to report. Additionally, here, unlike in *Mingbo Cai*, investors  
12 were made aware of the shift. Specifically, Robinhood disclosed its revenue breakdowns from Q1  
13 2021, showing an increase in revenue from cryptocurrency trading, thus putting investors on  
14 notice that the company was becoming more heavily reliant on this form of trading than in the  
15 past. *See SAC ¶ 115.* And further, Robinhood explicitly disclosed that cryptocurrency transaction  
16 revenue was accounting for an increased portion of its total revenue, and particularly, that  
17 Dogecoin was a large percentage of that increase. Prospectus at 79. Robinhood stated:

18 For the three months ended March 31, 2021, 17% of our total  
19 revenue was derived from transaction-based revenues earned from  
20 cryptocurrency transactions, compared to 4% for the three months  
21 year ended December 31, 2020. While we currently support a  
22 portfolio of seven cryptocurrencies for trading, for the three months  
23 ended March 31, 2021, 34% of our cryptocurrency transaction-based  
24 revenue was attributable to transactions in Dogecoin, as compared to  
25 4% for the three months ended December 31, 2020.

26 *Id.* So unlike in *Mingbo Cai* where investors were unaware of the shift in business, Robinhood  
27 disclosed that its business had shifted toward cryptocurrency trading—and even more acutely—to  
28 Dogecoin trading in particular. And Robinhood provided information as to the magnitude of that  
trading. While the proportion of that revenue continued to increase in the following quarter,  
investors were made aware of the change in revenue sources for the company that had already  
occurred. *Mingbo Cai* is inapposite.

At bottom, the “the inquiry can be boiled down to whether the Offering Documents were accurate and sufficiently candid.” *Panther Partners Inc. v. Jianpu Tech. Inc.*, No. 18 CIV. 9848 (PGG), 2020 WL 5757628, at \*7 (S.D.N.Y. Sept. 27, 2020). Robinhood repeatedly explained that there is volatility in the cryptocurrency market and in the price of Dogecoin, and that a “substantial portion” of its revenue was derived from Dogecoin trading. To this end, Robinhood provided a by-type revenue breakdown for Q1 2021 that showed a large percentage of its revenue derived from cryptocurrency trading. Given these disclosures, including that Robinhood’s model had begun to shift to rely more heavily on non-traditional trading by Q1 2021, the Court finds that Robinhood was sufficiently candid on this issue; the reasonable investor would not have been in the dark about the shift. Further, the market was well aware of industry-wide declines in cryptocurrency trading by the time of the IPO; a reasonable investor would be on notice that a risk of declines in trading of this currency may continue into the next quarter. And given that Robinhood disclosed that cryptocurrency trading accounted for an increasingly large percentage of its overall trading volume, a reasonable investor would understand Robinhood might see declines in trading of this currency at a higher rate than other trading companies in the market.

Plaintiffs also argue that the “pages of contingent risk warnings” regarding the volatility in cryptocurrencies were insufficient or misleading in and of themselves because the warnings were phrased as contingencies when “these risks had already come to pass.” Opp. at 18. This argument is also not availing.

As explained in the Court’s prior Motion to Dismiss Order, and for the reasons stated therein—the forward-looking statements are not actionable here. MTD Order at 12-13 (citing *In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1413-14 (9th Cir. 1994)).

Regarding the information already known to Robinhood at that time—i.e., downturns in trading volume and revenue or KPIs—as explained above, the omitted information was not indicative of larger future trends making disclosure appropriate. This renders cases cited by Plaintiffs inapposite. Specifically, in *Gerneth v. Chiasma, Inc.*, No. 16-cv-11082, 2018 WL 935418, at \*4-5 (D. Mass. Feb. 15, 2018), the court found that the disclosures were insufficient to satisfy Item 105 (then 503). There, the drug company included language stating risk factors

1 regarding regulatory approval of a drug the company was seeking to be approved, including that  
2 the drug could be delayed, and that the FDA may disagree with the design of the clinical trials. *Id.*  
3 However, Plaintiffs alleged that by the time of the IPO the FDA had already stated its  
4 disagreement with the trial design for the drug by that time. *Id.* at \*4. The court found that this  
5 omission rendered the disclosures inadequate under Item 503. *Id.* at \*4-5.

6 The circumstances here are not so stark. In *Gerneth*, the company was in possession of  
7 information (FDA disapproval of the drug) that would clearly dictate whether the “risk” would  
8 come to pass or not (FDA approval or disapproval of the drug). *Id.* at \*4. Here, Robinhood was  
9 aware of some declines in its business metrics but did not know whether the declines would persist  
10 into the future—i.e., the subject of the risk warning. This is because, as explained above, the  
11 declines known to Robinhood at the time of the IPO were not so historically extraordinary as to be  
12 indicative of larger future trends. Thus, unlike in *Gerneth* where the omitted fact was highly  
13 indicative as to whether the risk would come to pass (indeed *had* come to pass), the omitted facts  
14 known to Robinhood were less probative as to what would happen in the future. *See id.* *Gerneth* is  
15 thus inapposite.

16 In sum, considering Defendant’s extensive disclosures of the volatility of cryptocurrency  
17 trading and Dogecoin in particular, the disclosures reflecting Robinhood’s shift in composition of  
18 its revenue that had already commenced as of Q1 2021 (including specific information showing  
19 the size of that shift as of that quarter), and information known to the market at this time regarding  
20 the “fad-trading” events that were likely to continue for some time, Plaintiffs have failed to state a  
21 claim based on the company’s shift in revenue.

22 C. Claims Under Section 15

23 Section 15 of the Securities Act makes “controlling persons” jointly and severally liable  
24 for violations of Sections 11 or 12 committed by persons they control. 15 U.S.C. § 77o(a). A  
25 Section 15 claim may be sustained only if there is an underlying primary violation. *Howard v.*  
26 *Everex Sys., Inc.*, 228 F.3d 1057, 1065 (9th Cir. 2000). Because Plaintiffs’ SAC fails to allege  
27 such a violation, as described above, the Section 15 claim must be dismissed.

1      D. Leave to Amend

2            Where amendment is futile, the Court need not grant leave to amend. *See, e.g., Saul v.*  
3 *United States*, 928 F.2d 829, 843 (9th Cir. 1991). Here, Robinhood has already had a second bite  
4 at the apple in trying to allege additional facts to show that the pre-IPO declines needed to be  
5 disclosed. *See* FAC; Docket No. 90 (dismissing Plaintiffs' First Amended Complaint). Yet, the  
6 more context that Plaintiffs have added about Robinhood's business metrics and financials, the  
7 less it seems that the complained-of declines were so extraordinary as to warrant disclosure.  
8 Because the Court cannot identify allegations that Plaintiffs could add to their complaint at this  
9 juncture to render their claims viable, the Court finds that amendment would be futile; leave to  
10 amend is not warranted in this case. *See Saul*, 928 F.2d at 843.

11  
12                  **IV. CONCLUSION**

13            For the foregoing reasons, the Court **GRANTS** Defendants' Motion to Dismiss Plaintiffs'  
14 Section 11, 12(a) and 15 claims **WITHOUT LEAVE TO AMEND**.

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16  
17                  **IT IS SO ORDERED.**

18  
19            Dated: January 24, 2024

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21  
22                    
23                  EDWARD M. CHEN  
24                  United States District Judge