

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK	:	
By LETITIA JAMES, Attorney General of the State of	:	
New York,	:	Index No.:
	:	
Plaintiff,	:	<u>COMPLAINT</u>
	:	
-against-	:	
	:	
ALEX MASHINSKY,	:	
	:	
Defendant.	:	
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Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York (“OAG” or “Plaintiff”), alleges as follows:

PRELIMINARY STATEMENT

1. Between 2018 and at least June 2022, Defendant Alex Mashinsky (“Mashinsky” or “Defendant”) engaged in a scheme to defraud hundreds of thousands of investors, including more than 26,000 New Yorkers, by using false and misleading representations to induce them to deposit billions of dollars in digital assets with his cryptocurrency lending company Celsius Network LLC (together with its parent and related entities, “Celsius”), which he founded and led as chief executive officer. Mashinsky promoted Celsius as a safe alternative to banks while concealing that Celsius was actually engaged in risky investment strategies.

2. Mashinsky was the public face of Celsius. In hundreds of interviews, blog posts, and livestreams, Mashinsky promised investors high yield with minimal risk, assuring them that their digital assets would be as safe as money in a bank and that Celsius would always act in investors’ best interest. Touting himself and his company as a modern-day Robin Hood, Mashinsky boasted that Celsius “deliver[s] yield...to the people who would never be able to do it

themselves, [and] we take it from the rich....” Mashinsky promised investors some of the highest yields in the industry, as high as 17%. He told investors that Celsius would generate sustainably high returns by making low-risk collateralized loans to first-tier institutions and cryptocurrency exchanges as well as overcollateralized loans to retail borrowers.

3. These promises were false – but proved wildly popular. By early 2022, Mashinsky’s promotional efforts had helped Celsius amass \$20 billion in digital assets from investors all over the world. But as Celsius grew larger, it struggled to generate enough revenue to pay the promised yields on investors’ deposits. In search of revenue, Celsius moved into significantly riskier investments, extending hundreds of millions of dollars in uncollateralized loans, and investing hundreds of millions of dollars in unregulated decentralized finance platforms.

4. When Celsius suffered losses on risky investments, Mashinsky failed to disclose these losses to investors. Instead, he continued to promise and pay high yields to attract new deposits and to tell investors to keep their cryptocurrency with Celsius which, he continued to promise, would invest it safely and pay better returns than the banks. In one video Mashinsky claimed that: “All you need to do to become a millionaire... is to HODL,” using a popular industry term that originated as a misspelling of the word “hold” and has come to mean “hold on for dear life.” The term is often used to discourage investors from selling (or, in the case of Celsius, withdrawing their cryptocurrency from the platform) during market declines or volatility.

5. But as cryptocurrency markets plummeted in the spring of 2022, Celsius’s unsustainable business model began to unravel. By May 2022, Celsius’s liabilities exceeded its diminishing assets by hundreds of millions of dollars, and investor withdrawals were

accelerating. Rather than disclose Celsius's dire situation, Mashinsky doubled down. He repeatedly and falsely assured investors that Celsius was stronger than ever, that investor assets were safe at Celsius, and that Celsius had billions of dollars in liquidity to cover anyone who wanted to withdraw their assets. In late May 2022, Mashinsky was still actively recruiting new investors, urging them to disregard all criticism of Celsius from "naysayers and haters," to "ignore the FUD" (a popular crypto term that stands for fear, uncertainty, and doubt), and continued to encourage existing investors to HODL.

6. On June 12, 2022, Celsius froze customer withdrawals. A month later, on July 13, 2022, Celsius filed for bankruptcy, revealing that its liabilities exceeded its assets by more than one billion dollars.

7. The collapse of Celsius left many individuals in a state of desperation and financial ruin, which they described in letters to the bankruptcy court and the OAG. One New York resident mortgaged two properties to invest with Celsius. A father of three lost his life savings of more than \$375,000. A disabled veteran lost his investment of \$36,000, which had taken him nearly a decade to save up. Another disabled citizen, who depended upon government assistance to supplement his \$8 per hour income, lost his entire investment and was left feeling "humiliated and defeated."

8. Many investors wrote that they were persuaded to invest in Celsius by Mashinsky's false promises that Celsius would keep their assets safe and generate high yields through low-risk investments.

9. Mashinsky's scheme to defraud, including his misrepresentations and omissions, constitutes fraudulent practice in violation of New York General Business Law ("GBL") Article 23-A, §§ 352 *et seq.* (the "Martin Act"), as well as repeated fraudulent or illegal acts or persistent

fraud or illegality in the carrying on, conducting or transacting of business in violation of New York Executive Law § 63(12). Mashinsky also failed to register as a securities dealer and salesperson and as a commodities broker-dealer and commodities salesperson in violation of the registration provisions of the Martin Act, GBL § 359-e and attendant regulations.

10. This action seeks, *inter alia*, an order permanently enjoining Mashinsky from engaging in fraudulent, deceptive, and illegal acts in violation of the Martin Act and Executive Law; from engaging in any business relating to the issuance, advertisement, or sale of securities or commodities in New York; from serving as director or officer of any company doing business in New York; and directing Mashinsky to pay damages, restitution, and disgorgement.

PARTIES

11. Plaintiff Letitia James, the Attorney General of the State of New York, is authorized to bring this action and to assert the causes of action set forth below in the name and on behalf of the People of the State of New York pursuant to the Martin Act and Executive Law § 63(12).

12. The Martin Act authorizes the Attorney General to commence a civil action for restitution, damages and other relief in connection with fraudulent practices in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities or commodities within or from New York State. Executive Law § 63(12) authorizes the Attorney General to seek restitution, damages, injunctive relief, and costs when any person has engaged in repeated fraudulent or illegal acts or has otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transacting of business.

13. Defendant Alex Mashinsky is a co-founder and the former Chief Executive Officer (“CEO”) of Celsius Network LLC, a Delaware limited liability company with its principal office in Hoboken, New Jersey. Mashinsky controls Celsius Network LLC through his 83.7% equity stake in Celsius Network Inc., a Delaware corporation, which is a majority shareholder (65.32%) of Celsius Network Limited, which wholly owns Celsius US Holding LLC, which is in turn the sole owner of Celsius Network LLC. All these entities are debtors in the Celsius Network LLC bankruptcy proceedings in the Southern District of New York, Case No. 22-10964 (MG). Mashinsky conducted business from and resides in New York, New York.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendant, and authority to grant the relief requested pursuant to the Martin Act and Executive Law § 63(12).

15. Pursuant to C.P.L.R. § 503, venue is proper in New York County because the OAG’s office is located in this county, Defendant resides in this county, and a substantial part of the conduct giving rise to the claims occurred in this county.

FACTUAL ALLEGATIONS

I. General Background on Celsius and Mashinsky’s Role as Promoter and CEO of Celsius

16. Mashinsky launched Celsius in March 2017 in order to “radically disrupt a broken system...to help everyday people all around the world attain their financial dreams” and engage in the cryptocurrency “revolution.” Cryptocurrencies or virtual currencies, such as Bitcoin and Ether, are digital assets that reside on an electronic ledger, called a blockchain. Digital assets are commodities under the Martin Act.

17. Celsius claimed it was different from traditional financial institutions because it was “democratized” and “[b]uilt on the belief that financial services should only do what is in the best interests of the community.” A page on Celsius’s website titled “Why Trust Celsius” claimed that a “critical part” of the company’s mission was to “provide fair and transparent services.”

18. As CEO and majority owner of Celsius Network LLC, Mashinsky had access to and control over Celsius’s overall operations and corporate strategy. He was familiar with the day-to-day operations, business and financial affairs, and books and records of Celsius.

A. Celsius’s Products and Services

19. Celsius offered its customers a variety of cryptocurrency-related products and services, which were accessible through Celsius’s website and mobile application (“app”). To create a Celsius account, investors digitally signed Celsius’s user agreement and acknowledged its terms of use.

20. Investors could then transfer cryptocurrency from their own digital wallet into their Celsius account, purchase cryptocurrency through the Celsius app using dollars, or purchase cryptocurrency through Celsius using other cryptocurrencies. After investors transferred cryptocurrency to Celsius, they could earn interest on that cryptocurrency or use it as collateral to borrow against.

21. Celsius’s flagship product was the “Earn” program, which allowed investors to earn interest on cryptocurrency deposited into an earned interest account (“EIA”) at Celsius. Celsius promoted EIAs by advertising some of the highest yields in the market, up to 17% per year. Mashinsky explained that the rates were “subject to change on a weekly basis as they are

calculated by the weekly demand for each coin combined with our promise that up to 80% of our profits are returned to the depositors.”

22. EIA investors transferred their cryptocurrency to Celsius, which then pooled the deposited digital assets and invested them in various revenue-generating activities. Celsius had full control over its use of EIA assets, while investors had no discretion or control over Celsius’s investment decisions. EIAs constituted securities under the Martin Act.

23. Mashinsky described the EIA model as “sleep to earn,” where investors merely deposited their virtual currencies and let Celsius do all the work to generate returns. As Mashinsky put it, “you don’t have to do anything, you just go to sleep, and every Monday we pay you yield.”

24. At least 26,390 New York residents registered as users with Celsius and more than 4,000 of those investors enrolled in EIAs. As of December 31, 2021, New Yorkers had deposited a total of approximately \$440 million on the Celsius platform.

B. Mashinsky Promoted Celsius and Solicited Investors

25. Mashinsky was Celsius’s primary promoter and spokesman, appearing regularly in interviews, at cryptocurrency conferences, and on social media, including Twitter and YouTube. Many of Mashinsky’s YouTube and other interviews were and are accessible directly from the Celsius website. From 2018 through June 2022, Mashinsky promoted Celsius during his weekly “Ask Mashinsky Anything” videos (“AMAs”), which he broadcast on Fridays, often from his New York City apartment, the self-described “Crypto Castle.” Investors used a chat function to submit questions and comments, which Mashinsky would answer live.

26. By June 2022, Mashinsky had recorded 179 AMA episodes, most of which were about an hour long, and each of which was seen by thousands of viewers. Many of the AMAs

were posted on Celsius's website, as well as on YouTube, and were accessible at least until June 12, 2022, when Celsius froze investor accounts.

27. The videos often contained a picture and descriptions similar to the below:



Celsius AMA - Ask Mashinsky Anything October 30th 2020

10K views • Streamed 1 year ago

Celsius Network

Ask Mashinsky Anything! Our goal: to disrupt the financial industry and replace the current systems with a new model.



Updates with Alex: Close to \$300 million net deposits in the last 30 days. | Updates: Record loans. | ... 37 moments

28. From 2018 through at least 2020, the online descriptions of Mashinsky's videos included his promise "to act in the best interest" of investors.

Ask Mashinsky Anything!

Our goal: to disrupt the financial industry and replace the current systems with a new model.

Our mission: to act in the best interest of the community and provide financial freedom for all.

Join the revolution, join Celsius and unbank yourself!

Earn up to 15% APY on your digital assets and take out a loan starting at just 1% APR when using our Celsius wallet.

29. AMAs were accompanied by a solicitation to invest with Celsius and included links that would take viewers directly from Mashinsky's video to Celsius's website and Celsius's app.

30. Mashinsky cast himself as a visionary and developed a loyal following. Many of his slogans, such as "unbank the banked and bank the unbanked" and "banks are not your friends," were well-known throughout the cryptocurrency community. He often wore t-shirts branded with these slogans during his AMAs videos and in other public appearances.

31. Mashinsky lured investors to Celsius by promising that Celsius would keep their cryptocurrency assets safe and would pay outsized yields by using those assets to make low-risk loans. When critics claimed that it was impossible to generate the high returns Celsius promised

investors without taking “tremendous” risks with investors’ assets, Mashinsky continued to falsely insist that investing with Celsius was safe. Mashinsky dismissed the criticism that Celsius was taking risks with investors’ digital assets, asking his followers to ignore the “FUD” (fear, uncertainty, and doubt) and to unfollow critics on Twitter.

II. Mashinsky Misrepresented that Investor Assets at Celsius Were as Safe as Money in a Bank

32. Mashinsky drew investors to the Celsius platform by repeatedly and misleadingly stating that digital assets deposited with Celsius were as safe as – or even safer than – money deposited in a traditional bank.

33. In a March 7, 2019, interview at the NASDAQ MarketSite in Times Square, Mashinsky claimed that money deposited with Celsius was “as safe as it is with the bank, which is the alternative, it’s just that [Celsius] network is always acting in your best interest.” In a December 3, 2020, YouTube interview, Mashinsky stated that Celsius generated revenue by lending assets in a way “similar to what banks do.” On August 2, 2021, Mashinsky represented that Celsius was in fact safer than a bank, claiming in a YouTube interview that “we have less risk, we have much less risk [than banks].”

34. Mashinsky’s repeated statements presenting Celsius as safe as or safer than a bank were materially false and misleading. Banks are highly regulated by state and federal government agencies and undergo regular examinations. They are subject to capital requirements and are regularly tested for safety and soundness. State and federal regulators have robust systems in place to ensure orderly liquidations of failing institutions that minimize disruptions to customer services and limit customer losses. Many banks may access the Federal Reserve System for discounted liquidity to prevent potential failures. Bank customers are also protected by the Federal Deposit Insurance Corporation, which provides deposit insurance for

individual accounts up to \$250,000 as protection from losses due to bank failure. Because Celsius was not a bank, neither Celsius nor its customers had any hope of availing themselves of any of these protections when Celsius in fact failed.

35. Mashinsky also compared Celsius's lending of investor cryptocurrency to securities lending by securities broker-dealers, such as Schwab, Fidelity, Blackrock, or State Street. For example, on April 26, 2021, in a YouTube interview, Mashinsky stated that "the only difference between [securities] lending... and Celsius, which is digital asset lending, is that Celsius gives 80% of that to the depositor, to the user...."

36. But that was not the only difference. Broker-dealers, like banks, are subject to regulatory scrutiny. They generally must be members of the Financial Industry Regulatory Authority and must be registered either with the United States Securities and Exchange Commission or with a state securities regulator. Celsius was not registered with any of these entities as a broker-dealer. Furthermore, assets held with broker-dealers benefit from insurance provided by the Securities Investor Protection Corporation, which covers investors for up to \$500,000 in securities and up to \$250,000 in uninvested cash against losses due to a broker-dealer's insolvency. In stark contrast, Celsius's investor deposits were not covered by any insurance.

37. Mashinsky further misled investors by promising that Celsius would take full responsibility for safeguarding investor assets, including from any shortfalls or loss of value caused by Celsius's use or "deployment" of investors' cryptocurrency assets. In his December 10, 2021, AMA, Mashinsky declared that "Celsius takes full responsibility if anything goes bad" and claimed that if "something bad happens with the Celsius deployment ... Celsius [is] standing behind it." At the same time, Mashinsky frightened investors into staying with Celsius by stating

that competitors' platforms could not be relied upon "when they ... blow up... or when they don't perform or they don't deliver...." In the end, however, it was Celsius that fell quickly and neither performed nor delivered on its promises.

III. Mashinsky Misled Investors About the Number of Active Users of Celsius

38. Both Mashinsky's scheme and Celsius's sustainability depended on wide public acceptance of Celsius's business model and the willingness of investors to entrust their digital assets to Celsius. In a blog post on March 12, 2019, Mashinsky explained: "The more people that deposit, the more profits there are to distribute to the community, and THAT is a sustainable and scalable promise." To increase assets available for investment and for liquidity, Celsius needed a continuous supply of new investors and new deposits. And the more losses Celsius sustained through risky investment of existing deposits, the more it needed the new deposits to plug holes in its balance sheet.

39. Mashinsky often exaggerated the number of Celsius's investors, making Celsius appear significantly more popular than it actually was. In a YouTube interview on November 17, 2021, for example, Mashinsky, stated "we have a million and a half customers...they hold over 25 billion dollars' worth of digital currencies...." In another YouTube interview on June 1, 2022, Mashinsky claimed: "we have a community of almost two million people...."

40. While Celsius had approximately 1.7 million registered users as of July 2022, most were not active customers. In fact, from 2019 through 2022, roughly two-thirds of registered U.S. Celsius users held less than *one dollar's worth* of cryptocurrency in their Celsius accounts. For example, by June 17, 2022, Celsius had 584,192 registered U.S. users; of those, 386,294 (66%) had an account balance of less than one dollar. Mashinsky's claim of nearly two

million users was materially misleading because Celsius was not as widely accepted – or used – as Mashinsky led his investors to believe.

IV. Mashinsky Lured Investors to Celsius by Misrepresenting How Investor Assets Would be Deployed and Concealing the Risks of Those Deployments

41. Mashinsky solicited investors by promising to generate yield through low-risk sustainable means, primarily by making collateralized loans to reputable institutions and cryptocurrency exchanges and by making overcollateralized loans to retail investors. In a post on Celsius's website titled *Celsius Network is Nothing Like BlockFi*, dated March 12, 2019, Mashinsky wrote that Celsius's team is "hard at work acting in [investors'] best interest" and that Celsius's business model was "straightforward and transparent." He outlined Celsius's investment strategy: "We lend our community's assets to crypto exchanges and hedge funds looking to borrow coins."

42. In a YouTube interview on August 5, 2021, titled *How Crypto Yields Work*, Mashinsky claimed that this strategy enabled Celsius to pay investors "almost 100 times more than your bank pays you...and we do that without taking any risk...or taking minimal risk." In a December 10, 2021, AMA, Mashinsky yet again assured investors that Celsius "[doesn't] do it by taking risk..."

43. However, Celsius's business model was unsustainable. As Celsius proved unable to generate sufficient returns through safe loans and investments, it began to make uncollateralized loans to institutional borrowers and engage in risky strategies on unregulated decentralized finance protocols. In his July 14, 2022, sworn declaration filed in Celsius's bankruptcy proceeding, Mashinsky admitted that Celsius made "poor asset deployment decisions" and that since at least 2021 Celsius's business model needed significant changes, including reducing the yields paid to investors. Mashinsky also knew, as Celsius outlined in a

presentation to a potential investor in June 2022, that Celsius's trading business was "volatile, risk based, capital intensive and unprofitable" and that Celsius needed to "de-risk the business" by "reducing high risk DeFi, CeFi [centralized finance] and Institutional loans deployments." As alleged in more detail below, Celsius began to incur losses from its investing strategies at least as early as February 2021, and through the rest of 2021 and into 2022. Yet Mashinsky continued to falsely represent to investors that Celsius was generating high yield through low-risk investments and that investors' assets were safe at Celsius.

A. Mashinsky Falsely Claimed that Celsius Made No Uncollateralized Loans

44. Mashinsky repeatedly told investors that Celsius only made loans that were collateralized. In a May 19, 2020, YouTube interview, for instance, Mashinsky stated that "we are only doing asset-backed lending.... We only lend against collateral...without exception.... We have over one hundred percent collateral." In a July 17, 2020, AMA, Mashinsky stated that "Celsius does not do non-collateralized loans" because "that would be taking too much risk on [customers'] behalf." In his November 6, 2020, AMA, Mashinsky reiterated that "We do not do...unsecured lending."

45. Almost two years later, on April 13, 2022, in an interview with CNBC International, Mashinsky was asked to respond to a report that Celsius was offering uncollateralized loans that "could be incredibly risky." Mashinsky still maintained that "we don't offer any non-collateralized loans."

46. Non-collateralized loans are risky because if the borrower is unwilling or unable to repay the loan, the lender has no collateral it can retain or liquidate to offset the loss on the loan. Celsius's own internal Risk Management Framework document, dated October 20, 2021, recognized the "higher risk" of uncollateralized loans.

47. Mashinsky's statements that Celsius did not make non-collateralized loans were materially false and misleading. Between 2020 and 2022 Celsius exponentially increased its exposure to risky uncollateralized loans. In 2020, Celsius made almost \$10 million in uncollateralized loans. In 2021, that number ballooned to at least \$203 million, and in the first half of 2022, Celsius made at least \$394 million in uncollateralized loans. From 2020 through June 2022, Celsius made over 100 uncollateralized loans to at least 19 different counterparties.

B. Mashinsky Misrepresented the Risk and Extent of Celsius's Exposure to Decentralized Finance

48. Unable to generate sufficient returns through collateralized loans to retail and institutional counterparties, Celsius turned to risky investments on decentralized finance platforms to generate yield.

49. The phrase decentralized finance ("DeFi") refers to financial services, like cryptocurrency lending, that operate on a blockchain pursuant to certain predetermined rules ("protocols" and "smart contracts") without the involvement of an institutional intermediary such as a bank or a broker. While transactions on DeFi are typically over-collateralized by cryptocurrency, if the market value of the collateral falls below a certain threshold, the DeFi protocol will automatically liquidate the collateral and close out the loan. In a down market, such liquidations can result in significant loss of value for the borrower. Transactions on DeFi are also risky because DeFi protocols are unregulated and vulnerable to hacking, manipulation, and insolvency.

50. Celsius's risk management unit identified all DeFi investments as high-risk activity. Mashinsky personally acknowledged that DeFi posed risks, but assured investors, including during a December 3, 2021, YouTube interview, that "Celsius... helps people navigate

in a safe way into [the DeFi] environment... because Celsius already did the homework and figured out what's safe."

51. Mashinsky's statements about the safety of Celsius's DeFi investments were materially false and misleading because Celsius had not "figured out what's safe." In fact, Celsius suffered numerous losses caused by known risks of DeFi. For example, in August 2020, Mashinsky personally hired KeyFi Inc., for the purpose of handling Celsius's DeFi investments. KeyFi Inc. then engaged in high-risk leveraged trading strategies with more than \$500 million worth of Celsius's investor assets. By February 2021, these investments resulted in losses of at least tens of millions of dollars, including when a drop in the value of Celsius's collateral on the DeFi protocol Compound triggered automatic liquidation of this collateral.

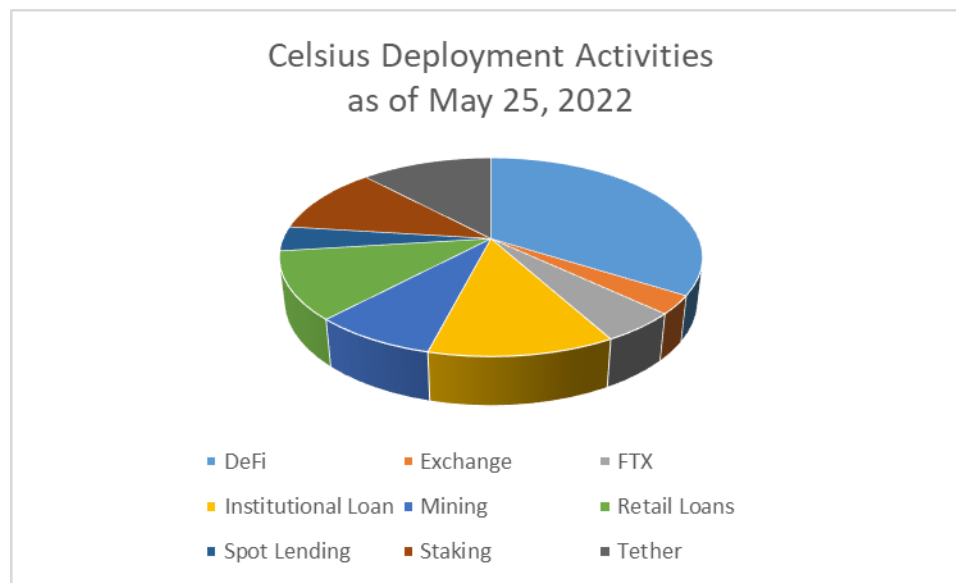
52. Later that year, in June 2021, Celsius lost access to 35,000 Ether worth tens of millions of dollars on a third-party service called StakeHound. Celsius never recovered those assets. Mashinsky failed to disclose this loss when it occurred.

53. Subsequently, in December 2021, Celsius lost Bitcoin then valued at approximately \$50 million in a hack on the DeFi protocol BadgerDAO.

54. As Celsius's losses on DeFi protocols mounted, Mashinsky told investors that Celsius's exposure to DeFi was minimal. In a June 1, 2022, YouTube interview, Mashinsky stated: "Celsius continues to do what it did for the last five years. Again, most of our business, I would say 90% of our business, has nothing to do with DeFi."

55. This statement was false. By the spring of 2022, Celsius had engaged far more than 10% of its assets in DeFi protocols; in fact, DeFi had grown into Celsius's single largest deployment category. Documents produced by Celsius indicate that as of May 25, 2022, Celsius

had deployed nearly 30% of investors' digital assets into DeFi activities, compared to only about 11% in retail lending and about 12% in institutional lending, as demonstrated in the chart below.



56. Celsius's large investments in risky DeFi strategies and Celsius's use of investor cryptocurrency as collateral for borrowing hundreds of millions from DeFi protocols were contrary to Mashinsky's representations to investors that their assets were invested safely and generated high yield at low risk.

C. Mashinsky Concealed Celsius's Exposure to Risky Investment Strategies and Institutions

57. Mashinsky was adamant that Celsius only lent assets to credible and reputable counterparties and did so "without taking any risk...or taking minimal risk." In his November 6, 2020, AMA, Mashinsky stated that Celsius "only lend[s] to the first-tier institutions, first tier exchanges...." On April 13, 2022, Mashinsky falsely and misleadingly claimed that Celsius dealt only with "very credible" institutional counterparties. Yet Celsius routinely exposed investors' assets to high-risk counterparties and strategies, and Celsius suffered multiple large losses which Mashinsky concealed from investors, despite repeated promises of transparency.

1. Celsius Lost Half a Billion Dollars of Investor Collateral

58. From October 2019 to February 2021, Celsius took out loans from Equities First Holdings (“Equities First”) that were collateralized by investor cryptocurrency. According to Mashinsky’s bankruptcy declaration, these loans were used to finance Celsius’s operations.

59. However, after repaying the loans to Equities First in July 2021, Celsius was unable to get back its collateral worth approximately \$500 million. This was a significant loss of investor assets, which Mashinsky concealed at the time. As of June 23, 2022, Equities First owed Celsius \$441 million on an unsecured basis.

2. Celsius Lent to Risky Companies of Dubious Valuation

60. Celsius made risky loans that were collateralized by illiquid collateral of highly speculative value in the form of proprietary tokens.

61. Between 2020 and 2022, under Mashinsky’s watch, Celsius made loans totaling roughly a billion dollars to Alameda Research Ltd. (“Alameda”), a cryptocurrency trading firm founded by the recently indicted Sam Bankman-Fried. A substantial portion of Alameda’s assets were held in FTT, a proprietary crypto token created and issued by Alameda’s sister company FTX Trading Ltd (“FTX”). FTX propped up the value of FTT by periodically re-purchasing FTT from the market. Celsius accepted FTT as collateral for many of its loans to Alameda. Those loans were risky because FTX was the largest holder of its proprietary token and therefore the valuation of those tokens was disconnected from market forces and subject to manipulation. Alameda filed for bankruptcy in November 2022 along with FTX. The value of FTT has since plummeted by roughly 95%, leaving Celsius holding nearly worthless collateral on any still outstanding loans to Alameda backed by FTT.

3. Celsius Deployed Investor Collateral on the Risky Anchor Protocol

62. Mashinsky misrepresented Celsius's large positions in Terra stablecoin ("Terra" or "UST"). Terra and Luna, its paired token, created by Terraform Labs, were particularly risky because they were an algorithmic stablecoin project, a type of cryptocurrency which, despite the inclusion of "stable" in its name, had in practice proven to be anything but. Prior algorithmic stablecoin projects including Basis Cash, Iron Finance, and Empty Set Dollar had given way to bank runs and death spirals that left the tokens worthless.

63. Terraform Labs also created the Anchor Protocol, a DeFi protocol which promised a 20% yield on deposits of Terra. This high interest rate was heavily subsidized and created artificial demand for Terra and Luna.

64. Mashinsky knew that the high yield promised by Anchor Protocol was too good to be true. During a YouTube interview on December 3, 2021, Mashinsky himself told investors that because "not all yield is created equal," Celsius only used "safe protocols," was "very skeptical," and "careful and [worked] with very few companies." He cautioned that "if somebody's offering you [a yield] of 20%, I would be very careful digging into why and how they're paying it."

65. Moreover, Mashinsky stated that subsidizing interest rates on a lending platform was an "alarming" practice and criticized BlockFi, another cryptocurrency lending platform, for having its rates subsidized by venture investors. He stated that "if BlockFi's VCs ever chose to stop funding the project, it's possible that those rates could crash and burn...."

66. Celsius nevertheless deposited its investors' assets on Anchor Protocol, despite Mashinsky's public acknowledgement of the risks of investing in protocols that paid such unreasonably high yields subsidized by the protocol founder. In the span of only six weeks, from

April 1 through May 6, 2022, Celsius invested approximately \$468 million worth of digital assets “on high earning Terra strategies.” This rapid deployment of funds brought Celsius’s total assets invested on Terra strategies to \$935 million.

67. When the prices of Terra and Luna crashed in May 2022, Mashinsky repeatedly and misleadingly assured investors that Celsius had no exposure to the project, as alleged in more detail below, to perpetuate his false narrative that Celsius made only low-risk investments with investor assets.

V. During the Cryptocurrency Crash of May and June 2022, Mashinsky Continued to Mislead Investors, Including About Celsius’s Financial Condition and Liquidity

68. Beginning in May 2022, following the collapse of Luna and Terra, the cryptocurrency market came under stress and values of nearly all digital assets fell drastically, with tens of billions of dollars in cryptocurrency market capitalization erased over the course of just a few days. Large players in the cryptocurrency industry publicly suffered substantial losses and some filed for bankruptcy. To perpetuate his scheme of keeping Celsius afloat at any cost, even to the detriment of investors, Mashinsky continued to assure investors that their assets were safe at Celsius.

A. In May 2022 Mashinsky Falsely Stated that Celsius Was as Strong as Ever, and Actively Recruited New Investors

69. In May 2022, investors began to withdraw hundreds of millions of dollars’ worth of cryptocurrency daily from the Celsius platform. Celsius saw its largest ever withdrawals on May 12, 2022, when investors withdrew over half a billion dollars from the platform in a single day.

70. The following day, in his May 13, 2022, AMA, Mashinsky stated that “Celsius is stronger than ever, we have billions of dollars in liquidity... and we continue to do what Celsius

does best – serve the community, protect the community, make sure your assets are there when you need them.”

71. A few days later, on May 16, 2022, in a YouTube interview titled *Luna/UST Aftermath on Crypto Markets & Stablecoins*, Mashinsky reiterated that “companies like Celsius... are standing strong.... At Celsius we are ready at all times... we were ready with the liquidity, we were providing everybody the option.”

72. Mashinsky’s statements were materially false and misleading. As a result of losses from risky investments and unsustainable payments of high yields to investors, by May 13, 2022, Celsius had total assets of less than \$12 billion and total liabilities of more than \$12.75 billion, resulting in net assets of negative \$820 million. Celsius was not “stronger than ever;” it was insolvent.

73. Mashinsky also concealed that Celsius had begun to experience a liquidity crisis in May 2022. According to the interim report of the examiner appointed in Celsius’s bankruptcy proceeding, “[b]eginning in May 2022, Celsius faced liquidity challenges. In its May 2022 Board Minutes, Celsius reported that its ‘capital sits near zero.’ At the same time, between May 9, 2022, and May 24, 2022, customer withdrawals caused Celsius to experience a net loss of over \$1.4 billion in assets.”

74. To ameliorate Celsius’s liquidity crisis and to get new investors and new assets onto the platform, Mashinsky misrepresented and concealed Celsius’s financial condition and liquidity, and actively solicited new investors. In his May 27, 2022, AMA, Mashinsky played a pre-recorded solicitation video which offered new investors a bonus for joining Celsius: “Did you know you can earn crypto by referring a friend? You’ll get \$50 in crypto for each completed referral. Your friend will get a \$50 referral reward too.”

75. Mashinsky ramped up his efforts to solicit new investors on May 29, 2022, when he sent the following message on Twitter: “These are hard times for many.... I will personally give one of the new @CelsiusNetwork users \$1000 this week if you show you opened an account and started #HODLing to build your #FinancialFreedom.” The tweet received hundreds of likes and retweets from the public.

76. Mashinsky’s efforts to solicit investors were effective, much to investors’ detriment. Even in the middle of the crypto downturn, between May 13 and June 12, Celsius added almost \$900 million worth of cryptocurrency, and between June 1 and June 17, 2022, it added almost two thousand new users.

B. Mashinsky Misrepresented Celsius’s Exposure to the Fallout from Terra and Luna

77. To dissuade investors from leaving Celsius and withdrawing assets from the platform, Mashinsky made false and misleading statements that Celsius had not been exposed to or suffered losses from the collapse of Terra and Luna.

78. During his June 1, 2022, YouTube interview, Mashinsky minimized Celsius’s exposure to the Terra/Luna fiasco:

I know people are concerned about the whole market and they were specifically concerned with the Terra/Luna situation and we’ve publicly stated many times that we didn’t lend to them, we didn’t buy Luna or UST, we were not like many others who invested in the project, we didn’t have any exposure to that, we have very small losses when we withdrew from the Anchor Protocol but these were in a single millions [sic]....

79. Later in the same interview Mashinsky dismissed concerns that Celsius “must have had huge damage from Luna,” saying “No, we didn’t have any, actually.... You should be worried about other people.”

80. Mashinsky's statements were materially false and misleading. As set forth above, Celsius invested nearly \$935 million worth of investors' assets into "high earning Terra strategies," which were highly speculative and risky and on which it lost almost \$18 million (nearly double what Mashinsky was willing to admit even when asked repeatedly in this interview).

81. In the same interview, Mashinsky was asked whether Celsius had any other exposure to the Terra-related turmoil. Mashinsky replied: "No other exposure that I know of.... There are other market participants who had big investments in Luna and UST, and so we basically either reduced or eliminated any exposure to those parties."

82. This statement was also false. Just weeks after the Terra/Luna collapse and mere days before Mashinsky's June 1, 2022, interview, Celsius made two loans to Three Arrows Capital, Ltd. ("3AC"), a hedge fund that had just suffered large and very public losses as a result of its exposure to Luna. On May 22, 2022, Celsius loaned 3AC \$50 million in stablecoin, collateralized by \$50 million in Bitcoin. On May 31, 2022, Celsius made an additional \$25 million loan to 3AC without requiring 3AC to post *any* collateral. On June 17, 2022, Celsius liquidated 3AC's Bitcoin collateral, which by then was worth only approximately \$35 million.

83. 3AC filed for bankruptcy on July 1, 2022, still owing Celsius a total of \$41 million. As an unsecured creditor, Celsius is unlikely to recover any significant portion of these debts.

C. As Celsius Neared Bankruptcy, Mashinsky Continued to Mislead Investors About Celsius's Available Liquidity and Financial Condition

84. Mashinsky's campaign to save Celsius by deceiving investors continued into June 2022. In an interview on June 1, 2022, Mashinsky was asked about "the elephant in the room;" namely that, "after everything that's happened recently, the number one question from people is

‘are our funds safe at Celsius?’” Mashinsky replied: “yes, so not just that they’re safe... we provided [the opportunity for] anyone who wanted to withdraw partially or fully, there were no problems.”

85. In the same interview, Mashinsky was asked: “If there ever were any type of insolvency issues, it sounds like you’ve got the framework and infrastructure with your transparency to let the community know immediately if there is a problem....,” to which Mashinsky replied “Yes.” This response was false and misleading because on May 25, 2022, Celsius had less than \$11 billion in total assets and approximately \$11.9 billion in total liabilities, with a deficit of almost \$900 million, which Mashinsky did not disclose.

86. In his June 10, 2022, AMA – only two days before Celsius froze withdrawals from its platform – Mashinsky said: “Celsius has billions in liquidity.... [W]e provide the immediate access to everybody, anyone who needs access to it, to the liquidity.” In the same AMA, Mashinsky stated “when you went through several bear markets, you know what to do... you need to have liquidity, which we have... that’s why anyone who wants to withdraw has no problem....”

87. The next day, on June 11, 2022, one Twitter user speculated about Celsius’s ability to fulfill withdrawal requests: “I hope retail [investors] can get out. I’ve been hearing about accounts locked.” Mashinsky immediately rejected the premise that Celsius investors were in any danger, replying on Twitter: “[D]o you know even one person who has a problem withdrawing from Celsius? Why spread FUD and misinformation.”

88. But the very next day, on June 12, 2022, Celsius paused investor withdrawals “in order to stabilize liquidity and operations while we take steps to preserve and protect assets....”

89. Mashinsky's repeated statements in June of 2022 that Celsius had billions of dollars of liquidity, that anyone who wanted to withdraw could do so, and that investor assets were safe at Celsius were materially false and misleading. By this time Celsius's liquid assets were far less than Celsius's liabilities to investors.

90. Celsius had experienced losses from the deployment of investor assets, resulting in negative weekly gross revenue for four out of the six weeks prior to June 12, 2022. That means that, for those weeks, Celsius paid more in interest to its EIA investors than it generated through investments of their cryptocurrency. Celsius's Chief Financial Officer confirmed this during an August 19, 2022, meeting of creditors in Celsius's bankruptcy case, when he stated: "It does not look as though we had enough yield to support what we were paying out.... We paid out over a hundred percent of the yield that we took in from deployments...."

91. As a result of losses from risky investments and unsustainably high yield payments to investors, Celsius's deficit (the difference between its assets and liabilities) had increased to over \$1 billion by mid-June 2022. Even then, Celsius's assets were inflated because they included the value of CEL, Celsius's proprietary token, held on Celsius's books. Celsius was the largest CEL token holder and controlled its supply in the market, meaning that the token was largely illiquid and of very speculative value. Celsius would never have been able to convert any significant proportion of its CEL holdings into dollars without crashing the token's market value, which would have caused further harm to Celsius's balance sheet.

92. Despite mounting losses, Mashinsky continued to conceal Celsius's true financial condition. While touting Celsius's liquidity and strength in his numerous YouTube interviews and weekly AMAs between May 1 and June 12, 2022, Mashinsky never disclosed that Celsius

had close to a billion-dollar deficit on its balance sheet and that it continued to experience a liquidity crisis. Rather he actively denied that there was any cause for concern.

93. After investors withdrew over \$672 million in cryptocurrency between June 10 and June 12, 2022, Celsius paused withdrawals in order to “stabilize liquidity” and was never able to restart them. Celsius filed for bankruptcy on July 13, 2022. By that point, Celsius had over \$4.7 billion in user liabilities, only \$1.75 billion in cryptocurrency assets. Furthermore, at least \$467 million worth of investors’ cryptocurrency was locked up in a decentralized application and unavailable for investor withdrawals, while additional investor assets were tied up in Celsius’s other businesses.

VI. Mashinsky Misled Investors About Celsius’s Compliance with Applicable Laws and Regulations

94. Celsius’s EIAs attracted the attention of state securities regulators in 2021. By the end of September 2021, the securities regulators of Alabama, New Jersey, Texas, and Kentucky had issued cease and desist orders to Celsius or notices of hearing seeking such orders, alleging that EIAs were unregistered securities or that Celsius was soliciting or selling securities while unregistered in violation of the respective states’ securities laws.

95. On October 18, 2021, the OAG sent a letter to Mashinsky and Celsius requesting information and documents concerning Celsius’s EIAs and other business practices.

96. On October 20, 2021, Washington State’s Department of Financial Institutions issued a statement of charges and a notice of intent to enter a cease-and-desist order against Celsius for selling unregistered securities and for failing to register as a broker-dealer.

97. Yet in a December 3, 2021, YouTube interview, Mashinsky blatantly misrepresented that “states and other regulators have looked into Celsius, they all came back thumbs up, there’s no problem, we didn’t find anything....” Mashinsky’s statements were

materially false and misleading because by that time at least five state securities regulators had alleged that Celsius was engaged in the offer or sale of unregistered securities or was itself an unregistered broker-dealer and had either directed Celsius to stop illegal activities in their states or had indicated their intention to seek such an order. Likewise, the OAG certainly never gave Celsius or Mashinsky a “thumbs up” or indicated there was “no problem” with their conduct. Contrary to Mashinsky’s December 3, 2021, statement, multiple regulators were then actively investigating – and continue to investigate – Celsius’s conduct.

VII. Mashinsky Violated New York State Registration Laws

98. By promoting EIAs through AMAs, YouTube interviews, and postings on Celsius’s website, Mashinsky sold and offered for sale securities without registering with the OAG as a securities dealer or a securities salesperson. Mashinsky also promoted and sold commodities in the form of cryptocurrencies without registering with the OAG as a commodities broker-dealer or a commodities salesperson.

99. EIAs are securities under the Martin Act because investors deposited their cryptocurrency assets with Celsius with the expectation of receiving promised yields from Celsius’s efforts in deploying investors’ pooled assets.

100. Under New York State law, a dealer is a person that is engaged in the business of selling securities to the public within or from New York for its own account and selling or offering for sale to the public securities issued by it. GBL § 359-e(1)(a).

101. As described above, Mashinsky offered, promoted, and sold EIAs, which he issued to the public from New York. Mashinsky was the majority shareholder of Celsius, a private company, and had access to the private keys to Celsius’s wallets, including to the wallet containing cryptocurrency pooled from customer EIA accounts. Private keys grant access and

determine ownership of the cryptocurrency. Mashinsky was a dealer under New York law and promoted and sold securities for his own account within the meaning of GBL § 359-e(1)(a).

102. A salesperson is a person employed by a broker or dealer for the purpose of representing them in the sale of securities to or from the public within or from New York. GBL § 359-e(1)(c). Mashinsky received a regular salary from Celsius and was employed by Celsius for, among other reasons, the purpose of selling and promoting its EIAs. Mashinsky was a salesperson within the meaning of GBL § 359-e(1)(c).

103. Mashinsky also acted as a salesperson without successfully completing the required examinations known as the “Series 63” or the “Series 66” that cover securities industry regulations and ethical practices and obligations.

104. As a dealer and salesperson of securities under New York law, Mashinsky was required to file a registration statement with the OAG prior to engaging in such conduct. GBL § 359-e(3).

105. Mashinsky was not exempted from the filing requirements.

106. Mashinsky failed to file a registration statement in connection with Celsius with the OAG prior to engaging in conduct that required such filing, in violation of GBL § 359-e(3).

107. Mashinsky also offered for sale from New York various cryptocurrencies to investors worldwide. Digital assets are commodities under the Martin Act.

108. Under New York law, a commodity broker-dealer is a person engaged in the business of selling or offering for sale commodities through commodity contracts to the public from New York. GBL § 359-e(14)(a)(iii). A commodity salesperson is a person employed by or representing a commodity broker-dealer in selling or offering for sale commodities through commodity contracts to the public from New York. GBL § 359-e(14)(a)(iv).

109. Mashinsky was engaged in the business of offering for sale and selling various cryptocurrencies through commodity contracts to the public from New York, and received a salary from Celsius, in part for promoting the sale of commodities, all through Celsius's app or website, Mashinsky was a commodity broker-dealer and a commodity salesperson under GBL § 359-e(14)(a). As a commodity broker-dealer and a commodity salesperson under New York law, Mashinsky was required to file a registration statement with the OAG prior to engaging in such conduct. GBL § 359-e(14)(b). Failure to register is a fraudulent practice under the Martin Act unless exempt. GBL § 359-e(14)(j, l).

110. Mashinsky sold or offered for sale commodities primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser.

111. Mashinsky was not exempted from the filing requirements, yet he failed to file a registration statement in connection with Celsius with the OAG as a commodity broker-dealer or commodity salesperson prior to engaging in conduct that required such filing, in violation of the Martin Act.

112. Mashinsky's failures to register under GBL § 359-e prior to offering or selling securities and commodities to New York investors each constitute fraudulent practices under the Martin Act. Such repeated and persistent conduct also constitutes illegality under Executive Law § 63(12).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Martin Act Securities Fraud – General Business Law §§ 352 and 353

113. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

114. The acts and practices of the Defendant alleged herein violated Article 23-A of the General Business Law in that they consisted of materially false and misleading representations, statements, and omissions relating to the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice or distribution of securities or commodities, and constituted fraudulent acts and fraudulent practices as defined in GBL § 352 *et seq.*

115. The acts and practices of the Defendant alleged herein constituted a scheme to defraud and other fraudulent practices as defined in General Business Law §§ 352 *et seq.*

SECOND CAUSE OF ACTION
Martin Act Securities Fraud – General Business Law § 352-c(1)

116. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

117. The acts and practices of the Defendant alleged herein violated General Business Law § 352-c(1)(a), in that they involved illegal and prohibited acts or practices in the use or employment of a fraud, deception, concealment, suppression, or false pretense, where said uses or employments were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this State of any securities or commodities.

118. The acts and practices of the Defendant alleged herein violated General Business Law § 352-c(1)(b), in that they involved illegal and prohibited acts or practices in the making of promises or representations as to the future which were beyond reasonable expectation or unwarranted by existing circumstances where said promises or representations were made to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this State of any securities or commodities.

119. The acts and practices of the Defendant alleged herein violated General Business Law § 352-c(1)(c), in that they involved illegal and prohibited acts or practices in the making of representations or statements which are false, where Defendant (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made, where said representations were made to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this State of any securities or commodities.

THIRD CAUSE OF ACTION

Martin Act Failure to Register – General Business Law § 359-e and Regulations Promulgated Thereunder, 13 NYCRR §§ 10, 13

120. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

121. The acts and practices of the Defendant alleged above violated New York General Business Law § 359-e and regulations promulgated thereunder, including provisions of Official Compilation of Codes, Rules, and Regulations of the State of New York Title 13, Chapter II, Subchapter A, Parts 10 and 13, insofar as such acts and practices constitute the sale or purchase of, or offer to sell or purchase, securities or engaging in the business of selling or offering to sell commodities through commodity contracts, from or to the public within or from the state of New York without filing a registration statement with the OAG.

FOURTH CAUSE OF ACTION

Repeated and Persistent Fraud – Executive Law § 63(12)

122. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

123. The acts and practices of the Defendant alleged herein constitute conduct proscribed by § 63(12) of the New York Executive Law, in that Defendant engaged in repeated

fraudulent acts or otherwise demonstrated persistent fraud in the carrying on, conducting or transaction of business in violation of Executive Law § 63(12).

FIFTH CAUSE OF ACTION

Repeated and Persistent Illegality – General Business Law §§ 352 and 353
Executive Law § 63(12)

124. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

125. The acts and practices of the Defendant alleged herein constitute conduct proscribed by Executive Law § 63(12), in that the Defendant engaged in repeated illegal acts in violation of New York General Business Law §§ 352 and 353.

126. Accordingly, Defendant has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION

Repeated and Persistent Illegality – General Business Law § 352-c(1)
Executive Law § 63(12)

127. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

128. The acts and practices of the Defendant alleged herein constitute conduct proscribed by Executive Law § 63(12), in that the Defendant engaged in repeated illegal acts in violation of New York General Business Law § 352-c(1).

129. Accordingly, Defendant has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SEVENTH CAUSE OF ACTION
Repeated and Persistent Illegality – General Business Law § 359-e and Regulations
Promulgated Thereunder, 13 NYCRR §§ 10, 13
Executive Law § 63(12)

130. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

131. The acts and practices of the Defendant alleged herein constitute conduct proscribed by Executive Law § 63(12), in that the Defendant engaged in repeated illegal acts, in violation of New York General Business Law §359-e and regulations promulgated thereunder, including provisions of Official Compilation of Codes, Rules, and Regulations of the State of New York Title 13, Chapter II, Subchapter A, Parts 10 and 13, insofar as such acts and practices constitute the sale or purchase of, or offer to sell or purchase, securities or engaging in the business of selling or offering to sell commodities through commodity contracts, from or to the public within or from the state of New York without filing a registration statement with the OAG.

132. Accordingly, Defendant has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- A. Permanently enjoining Defendant from violating the Martin Act, Article 23-A of the General Business Law, and Executive Law § 63(12) and from engaging in the fraudulent, deceptive and illegal acts alleged herein;
- B. Permanently enjoining Defendant from engaging in any business related to the issuance, offer, distribution, exchange, promotion, advertisement, negotiation, purchase, investment advice, or sale of securities or commodities, including any cryptocurrencies or digital assets, within or from this state;
- C. Permanently enjoining Defendant from serving as an officer or director of any company doing business in this state;
- D. Directing Defendant to pay damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein plus applicable pre-judgment interest;
- E. Directing Defendant to disgorge all amounts or assets obtained in connection with or as a result of the fraudulent and deceptive acts and violations of law alleged herein;
- F. Directing Defendant to make restitution of all amounts or assets obtained from investors in connection with the fraudulent and deceptive acts and violations of law complained of herein;
- G. Directing that Defendant pay Plaintiff's costs and fees;
- H. Directing such other equitable relief as may be necessary to redress Defendant's violations of New York law; and

I. Granting such other and further relief as may be just and proper.

Dated: New York, New York
January 5, 2023

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