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

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General
of the State of New York,

Petitioner,

- against -

Index No. _____

IAS Part _____

Assigned to Justice _____

VINO GLOBAL LIMITED
d/b/a COINEX,

Respondent.

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF THE VERIFIED PETITION AND ORDER TO SHOW CAUSE

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MISCELLANEOUS AUTHORITIES

Petitioner, People of the State of New York by Letitia James, Attorney General of the State of New York (the "OAG"), submits this Memorandum of Law in support of the Verified Petition proposed by Petitioner. Petitioner moves the Court for a permanent injunction to end the ongoing illegal activities of Vino Global Limited doing business as COINEX ("CoinEx" or "Respondent") which include engaging in the offer, sale, and purchase of securities and commodities without registration in the State of New York in violation of New York Executive Law § 63(12) and General Business Law ("GBL") § 352 *et seq*. (the "Martin Act").

Petitioner submits this memorandum of law and the accompanying Affirmation of Shantelee Christie ("Christie Aff.") dated February 22, 2023, with exhibits, in support of the Verified Petition, as well as the affidavits of OAG Senior Detective Brian Metz ("Metz Aff."), sworn to on February 19, 2023, and OAG Legal Assistant Edward Jaffe ("Jaffe Aff."), sworn to on February 17, 2023, filed herewith.

PRELIMINARY STATEMENT

The Martin Act has governed the regulation of securities in New York state for nearly a century. "The purpose of the Martin Act is to prevent all kinds of fraud in connection with the sale of securities . . . and to defeat all unsubstantial and visionary schemes in relation thereto whereby the public is fraudulently exploited." *People v. Federated Radio Corp.*, 244 N.Y. 33, 38 (1926). In keeping with that mission, the Martin Act requires registration of brokers and dealers to facilitate OAG's regulation and investigation of industry participants and to allow investors to make informed decisions about "those that they are trusting with their money." *People v. Landes*, 84 N.Y.2d 655, 662 (1994).

Initially, the New York State Legislature created registration requirements to allow the "Attorney-General to investigate issues and promotions *before* and not merely after the pockets of the public have been emptied." *Letter from Attorney General Albert Ottinger to Governor*

Alfred E. Smith, (Apr. 1, 1925), Bill Jacket, L 1925 ch 239 at 6 (emphasis added). However, in 1959, the Legislature expanded the Martin Act to help "deal effectively with those few who operate in the fringe area and who . . . jeopardize the confidence" in the market or in those who act lawfully. *Governor Nelson A. Rockefeller on Registration of Securities Brokers, Dealers, and Salesmen*, April 22, 1959, 1959 McKinney's Sess Laws of NY at 1767. In 1984, the Legislature further expanded registration requirements to require registration of commodities broker-dealers with the state. *Am. Memorandum for Governor by Attorney General Abrams*, at 2 (Attorney General's Legislative Program (No. 108-83), Bill Jacket, L 1984 ch 810 at 57. The law was "specifically designed to impose a significant sanction on those individuals who seek to straddle the Federal and State regulations" by not registering. The Legislature recognized in enacting the bill that demonstrating a violation would be "straightforward". *Id*. "Proof of engaging in the sale of the commodities and being unregistered would be a relatively simple task." *Id.*

CoinEx is an unregistered cryptocurrency trading platform that sold, offered to sell, purchased, and offered to purchase securities to and from the public and engaged in the business of selling or offering to sell commodities through commodity contracts to the public in the State of New York. CoinEx operated through its website www.coinex.com. Pet. ¶14; Metz Aff. ¶ 3.[1] Coinex was required to register with OAG[2] because of its securities and commodities related conduct within New York State. Additionally, CoinEx wrongfully represented itself as a global cryptocurrency "exchange" without appropriate registration or designation in violation of New York law. Pet. ¶¶ 78-82; Jaffe Aff. ¶ 8.[3] CoinEx engaged in repeated and persistent fraudulent practices in violation of the New York Executive Law ("Executive Law") § 63(12) and the New

[1] References herein to "Pet. ¶" refer to paragraphs within OAG's Verified Petition and references to "Metz Aff. ¶" refer to paragraphs within the Affidavit of OAG Senior Detective Brian Metz, filed in support of OAG's Verified Petition.
[2] OAG is also known as the New York State Department of Law ("DOL").
[3] References herein to "Jaffe Aff. ¶" refer to paragraphs within the Affidavit of OAG Legal Assistant Edward Jaffe, filed in support of OAG's Verified Petition.

York GBL §§ 352-c(3), 352(4), 359-e (2), 359-e(3) and 359-e(14)(b, j, and l).

Petitioner seeks a summary grant of the relief sought in the Verified Petition, as authorized by Executive Law § 63(12) and CPLR Article 4, including a permanent injunction, an accounting, an order directing CoinEx to implement geo-blocking based on IP addresses and GPS location to prevent access to CoinEx's mobile app, website, and services from New York; and restitution, disgorgement and costs against CoinEx.

STATEMENT OF FACTS

I. Background on Cryptocurrencies and Their Networks

Cryptocurrencies or virtual currencies, also referred to as digital assets are digital units used to store or exchange value. Pet. ¶ 29. Cryptocurrency transactions are stored and managed on a so-called "blockchain" ledger that maintains a system of payments and receipts. *Id*. Investors in particular cryptocurrencies execute cryptocurrency transactions by using digital wallets, which can include an online account associated with a particular cryptocurrency trading platform. *Id*. Records of each transaction can only be entered into the ledger (added to the blockchain) once they are verified by a computer or series of computers. *Id*. These computers can be owned by anyone (so called "validators") and can be located anywhere in the world. *Id*.

The validator that verifies a given transaction is entitled to receive a reward, generally, a sum of the cryptocurrency it verified. Pet. ¶ 30. Individual cryptocurrency holders can pledge their holding or stake to a particular validator to help that validator increase its stake and win more verification opportunities (known as "staking"). *Id*. In return for staking their cryptocurrency, investors, including passive cryptocurrency holders, receive a payment, often a portion of the validator's verification reward. *Id*. Staking is only one of the services provided by cryptocurrency issuers to make their tokens more attractive to investors, who can then earn profits on their token purchases. *Id*.

In the virtual asset industry, a "network" is used to describe the individuals, organizations, and institutions that operate the system of devices and software that make up the blockchain. Pet. ¶ 31. Many cryptocurrency networks take on social and communal qualities as founders, developers, and promoters communicate directly with investors about the prospective success of the token. *Id*. Networks compete for investors because the greater number of investors each network has, the greater chance the associated cryptocurrency will grow in value, and the greater profit that network can generate as a result. *Id*.

II. The CoinEx Platform

CoinEx was founded in 2017 by Haipo Yang, who also operates as CoinEx's Chief Executive Officer. Pet. ¶ 14; Metz Aff. ¶ 2.

CoinEx is a virtual currency trading website headquartered in Hong Kong and operated by Vino Global Limited, a business corporation registered with the Colorado Department of State. *Id*. According to Haipo Yang, CoinEx is powered by a team of more than 200 employees across the globe and delivers cryptocurrency trading services to more than 200 countries and regions. *Id*. CoinEx operates a blog through its website[4], which it uses to market itself and provide regular content and communications to its users. Pet. ¶ 16; Metz Aff. ¶ 7. The CoinEx blog discusses topics such as staking; how investors can make passive income; cryptocurrency whales and how to track their transactions; tips on crypto price forecasts; and how investors can profit from their crypto holdings. Pet. ¶ 16; Metz Aff. ¶ 7.

To begin trading on CoinEx, investors must open a CoinEx account by providing an email address and creating a password. Pet. ¶ 20; Metz Aff. ¶ 12. Once the account is created, CoinEx sends the investor a registration notification email and a prompt to "explore the crypto

[4] CoinEx's domain registrar is GoDaddy Inc. Metz Aff. ¶ 4.

world with CoinEx now!" Pet. ¶¶ 23; 28; Metz Aff. ¶¶ 12; 48. Investors can then purchase and sell cryptocurrencies. CoinEx also employs a Terms of Service to govern its agreement with users. Metz Aff. ¶ 2.

III. CoinEx Promotes Investments Through Staking

CoinEx encourages investors in cryptocurrency to participate in staking. In its August 1, 2022 blog titled *What is Staking in Crypto?* CoinEx defines staking as " a method of putting your cryptocurrency to work and earning rewards." Pet. ¶ 16; Ex. 4.4 to Metz Aff. According to CoinEx "[m]any cryptocurrencies use staking to verify transactions and provide participants the chance to profit from their holdings . . . [and] specific cryptocurrencies provide effective interest rates for staking, [thus] staking may be a terrific method to use your cryptocurrency to create passive income." *Id*. CoinEx affirmatively promotes staking as a way to maximize the benefits of holding digital assets and highlights that "[m]any long-term cryptocurrency owners view staking to put their holdings to use by producing rewards rather than letting them sit dormant in their wallets." Pet. ¶ 17; Ex. 4.4 to Metz Aff.

CoinEx then provides investors with step-by-step instructions on how to stake. It tells investors that they ". . . must first own digital assets . . . ." Then "move the coins from the exchange or application . . . used to buy them to an account that supports staking." *Id*.

In addition to helping generate profits, CoinEx touts an additional benefit of staking. CoinEx tells investors that "[s]taking also helps the blockchain projects . . . by enhancing their effectiveness and security." *Id*. CoinEx encouraged staking by telling Investors that the blockchain's security and transaction processing capacity is increased when they stake their holdings. *Id*.

IV. CoinEx Sold and Purchased Commodities and Securities Without Registration

CoinEx offers for sale, sells, offers for purchase and purchases, multiple cryptocurrencies to and from New York, including "AMP," "LBC", "LUNA," and "$RLY" (collectively the "Tokens"). Pet. ¶ 21; Metz Aff. ¶ 5.

CoinEx has not filed a registration statement with OAG in order to operate as a commodity broker-dealer and is not exempted from such registration. CoinEx also has not filed a registration statement with OAG in order to operate as a securities broker or dealer. Jaffe Aff. ¶ 7.

A. The AMP Token

CoinEx sold and purchased the cryptocurrency now known as the AMP token. CoinEx provides investors who purchase or sell AMP through its website with information about the token, including its issue date, total token supply, introduction to the AMP network and the team behind AMP, as well as links to the AMP website and white paper. Pet. ¶ 35; Ex. 7 to Metz Aff.

AMP is a part of the Flexa Network ("Flexa"). Pet. ¶ 35. Twenty percent of Flexa's fixed token supply was reserved for token sales to the public, and another 20% was allocated to the Flexa founding team and employee pool to incentivize current and future Flexa team members to remain with Flexa. Pet. ¶ 36. Flexa claimed that the remaining 60% of Flexa's token supply was reserved for its "Network Development Fund," "Developer Grants," and "Merchant Development Fund." *Id*.

In its May 2019 Flexa white paper, Flexa featured the people behind Flexa, referring to them as "Our Team," and marketed Flexa by emphasizing the team's importance to the future success of the network. Pet. ¶ 37. Flexa highlighted its labor, improvements, partnerships, and upgrades to create the appearance that the managerial efforts of the Flexa management team

would ensure the success of the network and, by extension, increase the value of the token. *Id*. For instance, during the Covid-19 pandemic, the Flexa team told investors it was "[u]pgrading the Network for the future." Pet. ¶ 38. Flexa also shared that its team was working to secure a marketplace for the token to be sold broadly. Pet. ¶ 38. And when that marketplace was secured the Flexa team proudly announced that their "longstanding partners at [a well-known cryptocurrency trading platform] will be the *very first market* to support the new Amp token for exchange." (emphasis in original). *Id*. Ultimately, Flexa's management team made the AMP token available for purchase and sale on multiple secondary trading platforms, including CoinEx. *Id*.

Flexa described its AMP token as a medium for accruing value, i.e., profit. Pet. ¶ 39. According to the November 2020 AMP white paper: "Economically, Amp serves as a vehicle for accruing value within a collateralized Network, aligning the interests of all participants." *Id.* Furthermore, AMP investors could also profit by participating in "staking", discussed above, and Flexa led investors to expect to receive payments from staking. *Id*.

CoinEx engaged in the business of buying, selling, and offering to sell and purchase AMP to New Yorkers. On October 21, 2022, Senior Detective Brian N. Metz ("Detective Metz") created a CoinEx trading account ("Account No. 1"), placed an order for 2333.08162911 AMP and sold 500 AMP with CoinEx. CoinEx filled the order and collected a fee of 0.0343995 USDT[5] for the AMP purchase and a fee of 0.0073065 USDT for the AMP sale. Metz Aff. ¶¶ 40-41. Detective Metz returned to CoinEx on October 28, 2022, and sold 900 AMP, and CoinEx charged a fee of 0.0130572 USDT. Metz Aff. ¶ 43. All of these transactions were carried out while Detective Metz was physically present in New York and using a computer which showed a

[5] USDT is the trading symbol under which the company Tether lists its virtual currency "tether" on virtual currency trading platforms.

New York-based IP address. Metz Aff. ¶ 49.

B. The LBC Token

CoinEx engaged in the business of buying, selling, and offering to sell and purchase AMP to New Yorkers. a cryptocurrency called the LBRY Credits ("LBC") on its platform. LBC is the cryptocurrency used throughout the LBRY Inc., Network ("LBRY"). Pet. ¶ 41. CoinEx provided information about LBC on the CoinEx website, including data on its token supply, an introduction to the LBRY network, and a description of the LBRY team as well as links to the LBRY website and white paper. Pet. ¶ 41. LBC has a stated fixed supply of one billion tokens. Pet. ¶ 41. When LBRY launched, it publicly claimed to reserve the first 400 million of its LBC token supply to raise money and develop its network over time: 200 million was allocated to a community fund for marketing; 100 million to an institutional fund to allow for "the formation of institutional partnerships"; and 100 million reserved for an operational fund for "operational purposes." Pet. ¶ 42. According to LBRY, the operational fund served "[t]o allow LBRY to function and profit." *Id*. In 2020, LBRY sold 7,028,356 LBC on the open market and issued 359,341 LBC to its employees from the operational fund. *Id*.

LBRY promoted LBC as an investment that would grow in value over time through the company's development of the LBRY network and, as such, created the appearance of intertwining LBRY's financial fate with the commercial success of the LBC token. LBRY, through its team of executives, engineers, and advisors, communicated to its investors that "no one believes in the LBRY protocol[6] more or has more incentive for its success, than LBRY, Inc." Pet. ¶ 43. LBRY advertised on its publicly available website that the "long-term value

[6] Protocol refers to a set of rules or procedures that govern the transfer of data between computers. A protocol dictates how a blockchain operates and the rules its participants must follow in order for the blockchain to function as intended.

proposition of LBRY is . . . dependent on our team staying focused on the task at hand: building this thing." Pet. ¶ 44. LBRY further emphasized that its ". . . focus now and henceforth will be on the long-term value of the LBRY protocol. Over the long-term, the interests of LBRY and the holders of Credits [also known as LBC] are aligned." *Id*.

On January 3, 2023, using CoinEx Account No.1, Detective Metz placed an order for 608.25237019 LBC from CoinEx, and CoinEx filled the order and deducted a fee of 1.82475712 LBC. Metz Aff. ¶ 44. On the same date, Detective Metz opened a second CoinEx account ("Account No. 2"), while physically present in New York, and placed an order for 1217.60974648 LBC from CoinEx for which CoinEx filled the order and charged a fee of 3.65282925 LBC. Metz Aff. ¶¶ 47; 48. All of these transactions were carried out while Detective Metz was physically present in New York and using a computer that showed a New York-based IP address. Metz Aff. ¶ 49.

C. The LUNA Token

CoinEx also sold and purchased the cryptocurrency called LUNA from and through its website. CoinEx provided investors with information about LUNA on the CoinEx website, including LUNA's distribution scheme, an introduction to its network, and links to the network's official website and whitepaper. Pet. ¶ 45. Additionally, CoinEx promoted the LUNA as one of "[t]he most well-known cryptocurrencies [that investors] may invest in [through staking] . . . ."*See* Ex. 4.4. to Metz Aff.

LUNA is a digital asset created by Terraform Labs ("Terraform"). Pet. ¶ 45. Do Kwon, LUNA's founder and the founder of Terraform, publicly announced that Terraform committed to "unlock at most 3 million LUNA per month for all operating costs . . ." and that those LUNA would cover expenditures "for critical infrastructure improvements and core technologies to

supplement the accelerating growth of the Terra ecosystem" and would also finance "all other [Terraform] operating costs such as employee token distribution." Pet. ¶ 48.

From its inception, LUNA was promoted as an investment that would increase in value due to the development of related applications by Terraform. Pet. ¶ 45. Do Kwon frequently took to Twitter to publicize LUNA's growth potential and value as an investment. Pet. ¶¶ 46. He described LUNA as designed to accrue value 'to the moon," and promised that investors in LUNA could receive profits from staking. *Id*. Do Kwon and Terraform created demand for LUNA by establishing and then heavily subsidizing other applications and platforms, such as its Anchor and Mirror networks. Pet. ¶ 47. Terraform told investors that, if they used LUNA on these platforms, they would earn returns upwards of 20% interest. *Id*. As expected, the price of LUNA saw a substantial increase with the launch of these other Terraform applications and platforms. *Id*.

CoinEx both sold and purchased LUNA and offered to sell and purchase LUNA to New Yorkers. On October 21, 2022, Detective Metz used Account No. 1 and placed an order for 9.99876497 LUNA and sold five (5) LUNA from and through CoinEx and CoinEx filled those orders and charged a transaction fee of 0.02999631 LUNA and 0.0343995 USDT respectively. Metz Aff. ¶¶ 39-40. Using the same account, on October 28, 2022, Detective Metz placed an order for 1.77862032 LUNA from CoinEx, and CoinEx filled the order and charged a fee of 0.00533587 LUNA. Metz Aff. ¶ 43. Each of these transactions was carried out while Detective Metz was physically present in New York and while using a computer with a New York-based IP address. Metz Aff. ¶ 49.

D. The $RLY Token

CoinEx also offered, sold, and purchased the $RLY token. The $RLY token is the native

token of the Rally network ("Rally"). According to the CoinEx website, Rally is a platform that gives creators the ability to monetize their content and allow their fanbase to support the creators and unlock rewards while doing so. Pet. ¶ 49. In an October 8, 2020 blog post, titled RLY Governance Token Supply Rally announced to its market that it had created a fixed supply of 15 billion $RLY and promised to release them over eight (8) years. *Id*. Rally pledged that 70% of the total supply of $RLY would be allocated to holders of $RLY, and about 30% would be allocated to Rally team members, i.e., its executive staff, initial investors, and advisors. *Id*. The tokens reserved for Rally team members and seed investors had a four (4) year vesting period, and the advisors were required to commit to Rally for one year to realize token ownership. *Id*. By representing that it retained portions of $RLY for its management team with a vesting schedule that seemed to incentivize the team to remain on board with the network, $RLY created the appearance that its management team's financial fate was intertwined with the fate of investors.

Additionally, Rally used $RLY token sales to fund its operations. In a February 2021 blog post titled Community Treasury Fundraise Update… and Next Steps Rally announced that " . . . over 97% [of token sales were used to] . . . balance stability of the Rally Network." Pet. ¶ 51. Rally further stated that it had ". . . robust funds . . . [to] enable the next level of growth and innovation" and ". . . significantly scale the Rally Network and empower even more development . . ." Pet. ¶ 51.

Purchasers in $RLY relied on Rally's management to make a profit. In February 2022, Rally's team used Twitter to publicize that $RLY was "now supported" on a major cryptocurrency trading platform. Pet. ¶ 50. Rally's team publicly talked about having substantial liquidity to fund the next level of growth and innovation of Rally. Pet. ¶ 52.

The Rally team also created and operated a profit-generating program for its investors.

The program provided rewards to investors if they lent their holdings back to Rally's shared pools. *Id*. In its October 16, 2020 blog, Rally explained that "[t]o participate, [$RLY token holders] provide liquidity to any of the . . . pools . . . then visit vaults.rally.io/liquidity to deposit [their liquidity provider] tokens and begin earning $RLY rewards." *Id*. The existence of these pools allowed for growth of Rally, which was important for profits but also provided a profit-generating mechanism for investors.

CoinEx both sold and purchased $RLY and offered to sell and purchase $RLY to New Yorkers. On October 21, 2022, Detective Metz used Account No. 1 to place an order for 158.02378628 $RLY from CoinEx, and on October 28th, Detective Metz sold 100.05721674 $RLY through CoinEx. Metz Aff. ¶ 41. CoinEx charged 0.47407136 $RLY and 0.00432368 USDT in fees, respectively. *Id*. Each of these transactions was carried out while Detective Metz was physically present in New York and using a computer with a New York-based IP address. Metz Aff. ¶ 49.

V. CoinEx Illegally Represented Itself as an Exchange in Violation of New York Law

CoinEx is not registered with the United States Securities and Exchange Commission ("SEC") as a national securities exchange and has not been designated as a contract market by the Commodity Futures Trading Commission ("CFTC"). Pet. ¶ 83; Jaffe Aff. ¶¶ 8-9. CoinEx, however, represented itself as an exchange in three ways. First, on its website, CoinEx publicly described itself as a "Global Cryptocurrency Exchange." Pet. ¶ 80; Metz Aff. ¶ 5. Second, CoinEx dedicated a section on its website, titled "Exchange," to display a virtual currency programming interface that streamed real-time and historical data on the various virtual currencies available on the CoinEx platform. Pet. ¶¶ 19; 81; Metz Aff. ¶ 5. Finally, the "Ex" in

CoinEx is an abbreviation and derivative of the word "Exchange." Pet. ¶ 82.

VI. CoinEx Failed to Comply with an OAG Subpoena

As part of its investigation into CoinEx, OAG served a subpoena *ad testificandum* on CoinEx to appear on January 9, 2023, and provide testimony concerning the virtual asset trading activities of its platform. Christie Aff. ¶¶ 3-4.

The subpoena served on CoinEx on December 22, 2022, pursuant to GBL § 352(4), states in pertinent part:

> TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to appear and attend and testify on the date, time, and place stated above or on any agreed-upon adjourned date or time, may subject You to prosecution for a misdemeanor or penalties and other lawful punishment under General Business Law § 352(4) and § 2308 of the New York Civil Practice Law and Rules, and/or other statutes.
>
> *Id*.

On January 9, 2023, CoinEx failed to appear before OAG on behalf of CoinEx. Christie Aff. ¶ 5.

ARGUMENT

I. Executive Law § 63(12) Authorizes the Attorney General to Obtain Expedited, Comprehensive Relief

Executive Law § 63(12) empowers the Attorney General to bring a special proceeding. A special proceeding is "plenary as an action, culminating in a judgment, but is brought on with the ease, speed, and economy of a mere motion." David D. Siegel, *N.Y. Practice* § 547 (6th ed. 2018). The legislative purpose for allowing a special proceeding under § 63(12) is to give the OAG expeditious means to enjoin fraudulent or illegal activity in furtherance of the public interest. *See, e.g., People v. Apple Health and Sports Clubs*, 206 A.D.2d 266, 268 (1st Dep't 1994), *appeal denied*, 84 N.Y.2d 1004 (1994)(citing *People v. B.C. Assocs.*, 194 N.Y.S.2d 353, 356-58 (Sup. Ct. N.Y. Cnty. 1959)) (stating that Executive Law § 63(12) is "intended as an

expeditious means for the Attorney-General to prevent further injury . . ."). "Under Executive Law § 63, the Attorney General may utilize CPLR§ 409(b) to seek injunctive relief against any business engaged in repeated fraudulent or illegal conduct in the transaction of business." *Matter of People v. Applied Card Sys., Inc*., 27 A.D. 3d 104, 106 (3d Dep't 2005).

A special proceeding goes right to the merits. The Court is required to make a summary determination upon all the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. CPLR 409. To the extent that triable issues of fact are raised, then they must be tried "forthwith." CPLR 410. Importantly, "the Respondents have the burden of establishing a triable issue of fact." *People v. P.U. Travel, Inc*., 2003 N.Y. Misc. LEXIS 2010, at *12 (Sup. Ct. N.Y. Cnty. June 19, 2003).

II. CoinEx Violated General Business Law Article 23-A By Failing to Register

CoinEx was engaged in the business of selling, offering to sell, purchasing, and offering to purchase commodities through commodity contracts and effecting transactions in securities for the accounts of others within New York while not being registered with OAG as a commodity broker-dealer or securities broker or dealer, and illegally represented itself as an "exchange", without proper registration or designation, all in violation of the Martin Act.

The Martin Act requires registration to facilitate OAG's regulation and investigation of broker-dealers and allow investors to make informed decisions about the people they choose to trust with their investments. *See Landes*, 84 N.Y.2d at 662. Registration serves to promote full disclosure of information necessary for investors to make informed investment decisions.

The failure to register is a fraudulent practice under the Martin Act. GBL § 359-e (14)(l). *See People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 631 (2018) (highlighting that the definition of fraudulent practices was expanded to include certain registration requirements.)[7]

[7] As the Court noted in *Credit Suisse*, "Section 359-e (14)(l) provides: 'A violation of this subdivision shall

Additionally, the Martin Act makes any act or practice prohibited under GBL §352-c a misdemeanor criminal offense. GBL §352-c(4). *Id*.

The Martin Act's registration requirements applies to both securities and commodities. An investment product can be both a commodity and a security. *See People v. Thomas*, 134 Misc. 2d 649, 653 (Sup. Ct, N.Y. Cnty. 1986) (finding that a transaction involving artworks sold or offered for sale was an investment contract security and that the same transaction involved commodities and commodity contracts as those terms are defined in GBL § 359-e(14)(a)(i) and (ii)). Here, CoinEx is engaged in the business of selling or offering to sell commodities through commodity contracts to the public and selling, offering to sell, purchasing, and offering to purchase securities to and from the New York. The tokens AMP, LBC, LUNA, and $RLY are both commodities and securities.

A. CoinEx Violated the Martin Act by Failing to Register as a Commodity Broker-Dealer

The Tokens are commodities under the Martin Act. In 2020, the First Department squarely held that a virtual currency was a "commodity" within the meaning of the Martin Act:

> [T]he Martin Act's definition of commodities as including "any foreign currency, any other good, article, or material" (GBL 359–e[14]) is broad enough to encompass [the virtual currency]. Indeed, federal courts and the Commodities Futures Trading Commission have found that virtual currencies are commodities under the Commodities Exchange Act, which defines the term more narrowly than does the Martin Act . . . .

Matter of James v. iFinex, Inc., 185 A.D.3d 22, 27 (1st Dept. 2020); *see also People v. Coinseed, Inc., et al*, 450366/2021, 2021 WL 4148794 at 1 (Sup. Ct. N.Y Cnty. Sept. 9, 2021) (permanently enjoining under the Martin Act defendants who sold commodities and/or securities while

constitute a fraudulent practice as that term is used in this article' and a specific reference to GBL § 359-e was added to GBL § 352"). *Id.*

unregistered).

Federal law is in accord. *See CFTC v. McDonnell*, 287 F. Supp. 3d 213, 228 (E.D.N.Y. 2018) (virtual currencies such as bitcoin "fall well-within the common definition of 'commodity' as well as the CEA's definition of 'commodities'); *Lagemann v. Spence*, 18 Civ. 12218 (GBD) (RWL), 2020 U.S. Dist LEXIS 88066, at *32-33 (S.D.N.Y. May 18, 2020) ("courts in this District have classified cryptocurrency as a 'commodity'"), *citing Sec. Exch. Comm'n. v. Telegram Group Inc.*, No. 19 Civ. 9439, 2020 U.S. Dist. LEXIS 53846, at *3-4 (S.D.N.Y. March 24, 2020) ("Cryptocurrencies . . . are a lawful means of storing or transferring value and may fluctuate in value as any commodity would"); *CFTC v. Gelfman Blueprint, Inc.*, No. 17 Civ. 07181 (PKC), 2018 U.S. Dist. LEXIS 207379, at *13-14 (S.D.N.Y. Oct. 2, 2018) ("Virtual currencies such as Bitcoin are encompassed in the definition of 'commodity' under Section 1a(9) of the [Commodity Exchange Act]"); *In the Matter of Coinflip, Inc.,* CFTC Docket No. 15-29, 2015 CFTC LEXIS 20, 2015 WL 5535736, at 2 (Sept. 17, 2015) ("The definition of a "commodity" is broad. Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.") (citations omitted).

Under both state and federal authority, the Tokens are commodities. In fact, because the Martin Act's definition of a commodity is broader than the federal definition, anything held to be a commodity under federal law would most certainly satisfy the definition of commodity under the Martin Act.

1. CoinEx Engaged in Business as a Commodity Broker-Dealer in New York

GBL § 359-e(14) of the Martin Act provides that those engaging in the business of selling or offering to sell commodities to the public in New York must register with OAG. Specifically, GBL § 359-e(14)(b) provides, in relevant part:

> Any person acting as a commodity broker-dealer, commodity salesperson or commodity investment advisor and any person who manages or supervises any such broker-dealer, salesperson or investment advisor shall file a registration statement with the attorney general as a commodity broker-dealer, commodity salesperson, or commodity investment advisor relating to the activity actually engaged in.
>
> GBL § 359-e(14)(b)

Subsection (a)(iii) defines a "commodity broker-dealer" as follows:

> "Commodity broker-dealer" means any person engaged in the business of selling or offering to sell commodities through commodity contracts to the public within or from the state of New York.
>
> GBL § 359-e(14)(a)(iii).

A "commodity contract" is further defined in subsection a(ii) as "any account, agreement or contract for the purchase or sale of, or any option or right to purchase or sell, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, one or more commodities . . ." GBL § 359-e(14)(a)(ii).

CoinEx is required to register as a commodity broker-dealer because it is engaged in the business of selling or offering to sell commodities through accounts or agreements that were primarily for speculation or investment purposes to the public in the State of New York. Pet. ¶¶ 60-63; Metz Aff. ¶¶ 36-41. The speculative or investment purpose of the commodities transactions executed through CoinEx is immediately apparent by the CoinEx's *Notification on Successful Registration* email sent upon the creation of New York-based accounts. Once

registered, CoinEx encourages investors to " . . . holding some crypto . . . " (rather than using the tokens for consumption) and suggests purchasers review its blog to learn how to stake their cryptocurrency holdings and make passive income, *supra*, Section II (B). Pet. ¶ 60; Metz Aff. ¶¶ 6; 14; 38. Indeed, CoinEx expressly promotes staking to investors as a "terrific method" to use cryptocurrency to create passive income. Pet. ¶ 60.

New Yorkers, including Detective Metz, purchased the Tokens from CoinEx through accounts and agreements while physically present in New York, and CoinEx collected a fee for each of the transactions. Metz Aff. ¶¶ 39-49. As such, CoinEx was acting as a commodity broker-dealer under New York law and is therefore required to file a registration statement with OAG prior to engaging in such conduct.

2. CoinEx was not Registered as a Commodity Broker-Dealer

Subject to certain exemptions, subdivision 14(b) of GBL § 359-e and Title 13, N.Y.C.R.R. § 13.2 require that under New York law, any commodity broker-dealer or commodity salesperson "shall file" with the OAG a "registration statement." GBL § 359-e(14)(b); 13 N.Y.C.R.R. § 13.2. CoinEx does not fall within any exemption available under GBL § 359-e or the regulations promulgated thereunder. Pet. ¶ 66. Nonetheless, CoinEx failed to file a registration statement with OAG. Jaffe Aff. ¶ 7.

CoinEx's failure to register under GBL § 359-e prior to offering or selling commodities within New York-based CoinEx accounts is a fraudulent practice and a violation of the Martin Act.

B. CoinEx Violated the Martin Act by Failing to Register as a Securities Broker or Dealer

Under the Martin Act:

> It shall be unlawful for any dealer, broker, or salesman to sell or

> offer for sale to or purchase or offer to purchase from the public within or from this state, any securities issues or to be issued, unless and until such dealer, broker, or salesman shall have filed with the department of law a registration statement as provided herein.
>
> GBL § 359-e(3).

A "dealer" is "any person, firm, association, or corporation engaged in the business of buying and selling securities from or to the public within or from this state for his or its own account, through a broker or otherwise…" (GBL § 359-e(1)(a)) and a "broker" means "any person, firm, association, or corporation, other than a dealer, engaged in the business of effecting transactions in securities for the account of others within or from this state…." GBL § 359-e(1)(b).

Accordingly, under New York law, in order to engage in the business of offering, selling, purchasing, or offering to purchase securities or effecting transactions in securities for the accounts of others, a dealer or broker must file a registration statement with the OAG.

1. CoinEx Engaged in the Business of Effecting Transactions in Securities Under the *Waldstein* Test

The Tokens CoinEx sold and purchased to and from New York are securities under New York law. In *re Matter of Waldstein*, 160 Misc. 763, 767-768 (Sup. Ct, Albany Co. 1936), adopted by the New York Court of Appeals in *All Seasons Resorts Inc. v. Abrams*, 68 NY 2d 81 (1986), the court held: "In general, . . . any form of instrument used for the purpose of financing and promoting enterprises, and which is designed for investment, is a security . . ."

The Tokens satisfy the *Waldstein* test as the Tokens were (i) purchased for investment purposes, (ii) the management teams promoted the Tokens for investment, and (iii) large numbers of each token were sold to promote and finance their respective network's development. *See* Pet.¶¶ 36; 38 (noting that Flexa reserved 20% of its fixed token supply for its management team and claimed to "[u]pgrad[e] the Network for the future."); Pet. ¶ 42 (noting LBRY reserved the first 400 million of its LBC token supply to raise money and subsequently sold over 7 million

LBC on the open market "[t]o allow LBRY to function and profit."); Pet. ¶ 48 (noting that sales of LUNA were used to raise funds for employee token distribution and fund Terraform's operations, including "critical infrastructure improvements and core technologies to supplement the accelerating growth of the Terra ecosystem"); Pet. ¶ 51 (noting Rally locked up 97% of its $RLY token sales to ensure liquidity "to significantly scale the Rally network and empower even more development and engagement").

Each token's survival and profitability was contingent on its network's ability to develop, increase usage, and grow, thus the need to finance and promote their enterprises. The Tokens were designed as investments and sold to the public to further the management teams' goals for the networks. Accordingly, the Tokens meet the test set forth in *Waldstein,* and therefore, they were securities under New York law. By selling and purchasing securities CoinEx was engaged in effecting transactions as a security broker or dealer.

2. CoinEx Engaged in the Business of Effecting Transactions in Securities Under the *Howey* Test

The Court of Appeals has also adopted the United States Supreme Court's test for determining whether a financial product is a security. In *Sec. Exch. Comm'n v. Howey Co.*, 328 U.S. 293 (1946)*,* the Supreme Court broadly equated securities with investment contracts, and held that "an investment contract … means a contract, transaction, or scheme whereby a person [1] invests his money [2] in a common enterprise and [3] is led to expect profits solely from the efforts of the promoter or a third party[.]" *Id.* at 298-299. The New York Court of Appeals adopted the *Howey* test and has held that the promoter's efforts need not be the sole cause of profits, and that it is sufficient if the promoter's efforts are "the undeniably significant ones … which affect the failure or success of the enterprise." *People v First Meridian Planning Corp.,* 86 N.Y. 2d 608, 621 (1995). The *Howey* test is similar to the analysis under *Waldstein* insofar as the analysis focuses on the fact that the instruments were used to finance and promote an enterprise and are promoted as investments.

The first prong of the *Howey* test is satisfied here because members of the public, such as

Detective Metz, invested money in order to obtain each of the Tokens. Here, Detective Metz used actual currency, the U.S. dollar, to purchase cryptocurrency to buy and sell each Token. *See* Pet. ¶¶ 24; 28; *See also* Metz Aff. ¶¶ 39-48.

The second prong of the *Howey* test is also satisfied here because investors in the Tokens were in a common enterprise as a portion of each pool of available tokens was reserved for the token's founders and management teams, thereby tying the fortunes of the token holder to the fortunes of management. *See* Pet. ¶ 36 (Flexa allocated 20% of its token supply to its founding team and employee pool); Pet. ¶ 42 (LBRY held the first 400 million of its token supply for itself); Pet. ¶ 48 (Terraform unlocked millions of LUNA per month for all operating costs such as employee token distribution); and Pet. ¶ 49 (Just under 30% of the $RLY token supply was reserved for its team members, seed investors, and advisors).

Moreover, staking created a common enterprise with AMP and LUNA as it resulted in additional revenue sources for investors. Flexa promoted staking in the AMP white paper which allowed the sharing of the economic benefits created. Pet. ¶ 39. Do Kwon used his Twitter handle to promote the ability of Luna holders to earn double-digit returns by staking their assets. Pet. ¶ 46. Additionally, CoinEx used the prospect of staking and its purported benefits and rewards to encourage investors to purchase cryptocurrencies, including the Tokens, and particularly the LUNA token, which CoinEx describes as one of "[t]he most well-known cryptocurrencies [that investors] may invest in [through staking] . . . ." *See* Ex. 4.4. to Metz Aff. And similar to staking, Rally encouraged $RLY investors to invest their tokens into a shared pool to provide network liquidity in exchange for payments. Pet. ¶ 52. Thus, the availability of staking and the creation of the Rally rewards program created a common enterprise sufficient for purposes of the *Howey* test.

The third and final prong of the *Howey* test is met here because investors were led to expect profits from the efforts of a third party. Each Token was promoted to the public as profit

opportunities that were contingent on the growth of their respective networks. Pet. ¶ 39 (Flexa described AMP as "a vehicle for accruing value," that would appreciate in value so long as its network continued to develop and grow); Pet. ¶¶ 43; 44 (LBRY used its website to tell investors that "no one believes in the LBRY protocol more or has more incentive for its success, than LBRY, Inc" and that the "long-term value proposition of LBRY is tremendous, but also dependent on our team staying focused on the task at hand: building this thing" so that LBC would appreciate in value as the LBRY network grew); Pet. ¶ 46 (noting that Terraform's founder frequently took to Twitter to publicize LUNA's growth potential and value as an investment and that Terraform made clear that the growth and adoption of the LUNA token remained largely dependent upon other Terraform projects and platforms.); Pet. ¶ 52 (noting Rally stressed its role in ensuring substantial liquidity to fund the network and how the liquidity of the network can, in turn, lead to profit for the $RLY investor).

3. The *Howey* and *Waldstein* Tests are Appropriately Applicable to the Tokens as Illustrated by Recent Federal Authority

The recent federal court decision in *Sec. Exch. Comm'n v. LBRY*, *Inc.*, No. 21 Civ. 260 (PB), 2022 U.S. Dist. LEXIS 202738 (D.N.H. Nov. 7, 2022) is instructive. In that case, the SEC filed a complaint charging LBRY, Inc. with conducting an unregistered offering and sale of securities. *Id.* at 1. The court there determined that when considering whether a digital asset is a security under *Howey*, the primary issue in dispute is often whether the issuer of the token led investors to have "a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." *Id*. at 8. In *LBRY*, involving the very same LBC token at issue here, the court held that statements characterizing the purchase of the token as an investment with growth potential and a business model that intertwined the fate of the developers and the success of the project weighed in favor of finding that LBC was, in fact, a security. *Id*. at 9-17. The same is true not only of LBC but also of AMP, LUNA, and $RLY.

The analysis illustrated in LBRY applies the *Howey* test. Similarly, like LBC, the AMP, LUNA, and $RLY tokens were used to finance and promote their respective networks'

enterprises and were also promoted as profit-accruing investments. Pet.¶¶ 36, 39, 42-44, 45-48, 49-52.

Accordingly, the Tokens, are each a security under *Waldstein* and*, Howey* test and consistent with recent authority in *LBRY* and CoinEx was required to register prior to offering, selling, or purchasing them in New York.

4. CoinEx is Not Registered as a Securities Broker or Dealer

Because the Tokens are securities, when CoinEx offered, sold, and purchased the Tokens to and from New York, CoinEx was engaged in the business of effecting transactions in securities on behalf of others and therefore is required to register under New York law. New Yorkers, including Detective Metz, paid CoinEx in exchange for each of the tokens purchased; in return, CoinEx took Detective Metz's instructions to buy and sell cryptocurrency and filled Detective Metz's orders. Accordingly, CoinEx operates as a securities broker or dealer pursuant to the Martin Act.

As a securities broker or dealer under New York law, CoinEx is required to file a registration statement with OAG prior to engaging in such conduct and CoinEx failed to do so. Jaffe Aff. ¶ 7. Accordingly, CoinEx violated the Martin Act.

III. CoinEx Violated the Exchange Provision of the Martin Act

Section 352-c(3) of the Martin Act makes it unlawful to represent oneself as an exchange or use any abbreviation of the word exchange in one's name while engaged in the business of selling securities or commodities, unless registered or designated to do so. Section 352-c(3) of the General Business Law provides, in full:

> It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, engaged in the sale of any securities or commodities, as defined in section three hundred fifty-two of this article, within or from the state of New York to represent that they are an "exchange" or use the word "exchange," or any abbreviation or derivative thereof, in its name or assumed name unless it is registered with the Securities and Exchange Commission as a national securities

> exchange, pursuant to section six of the Securities and Exchange Act of 1934, or unless it has been designated as a contract market by the Commodity Futures Trading Commission, pursuant to section five of the Commodity Exchange Act.

CoinEx is not registered as a national securities exchange with the SEC and is not designated as a contract market by the CFTC and is therefore not entitled to represent itself as an exchange or employ "ex" in its name. Pet. ¶ 83; Jaffe Aff. ¶¶ 8-9. Yet, CoinEx is engaged in the sale of cryptocurrencies through its website, purporting to operate a "global cryptocurrency exchange" where its users can "trade cryptos, anytime, anywhere." Pet. ¶ 80; Metz Aff. ¶ 5. In addition, CoinEx has dedicated a section of its website, titled "Exchange," to display a virtual currency programming interface that purports to stream real-time and historical data on the various virtual currencies available on the CoinEx platform. Pet. ¶ 81; Metz Aff. ¶ 5. Finally, the Martin Act expressly prohibits the use of the abbreviation "Ex" in a trade that suggests that the entity is an "exchange." Here, CoinEx has elected to include "Ex" in its "CoinEx" name, *see* Pet. ¶ 82, while engaging in the business of buying, selling, and offering to sell and purchase securities and commodities, in direct violation of the clear mandates of New York law. Thus, by its conduct, CoinEx has violated GBL § 352-c(3).

IV. CoinEx's Failure to Comply with the OAG Subpoena is Prima Facie Proof of its Fraudulent Practices

The Martin Act grants OAG the authority to issue subpoenas to compel testimony on matters deemed relevant or material to a Martin Act investigation. Section 352(3) of the General Business Law provides in full:

> The attorney-general, his deputy or other officer designated by him is empowered to subpoena witnesses, compel their attendance, examine them under oath before him or a magistrate, a court of record, or a judge or justice thereof and require the production of any books or papers which he deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the attorney-general under this article.

Section § 353 of the General Business Law provides in relevant part that, where one does

not appear for an examination, "such refusal [to appear] shall be prima facie proof that such [Respondent] is or has been engaged in fraudulent practices" and "a permanent injunction may issue from the supreme court without any further showing by the attorney-general." GBL §353(1).

Here, CoinEx was compelled by subpoena to appear for an examination under oath on January 9, 2023, and failed to appear. Christie Aff. ¶¶ 3-4. Therefore, pursuant to GBL § 353(1), CoinEx's non-appearance is prima facie proof that CoinEx has engaged in the fraudulent practices set forth in the OAG Verified Petition. OAG requests that the Court award OAG the maximum monetary allowance under the statute.

V. CoinEx Engaged in Repeated and Persistent Illegality in Violation of Executive Law §63(12)

Executive Law § 63(12) gives OAG the power to bring an action against any person or entity that engages in "repeated fraudulent or illegal acts" or "otherwise demonstrate[s] persistent fraud or illegality in the carrying on . . . or transaction of business." There are two prongs in the statute: acts that are "fraudulent" and acts that are "illegal." Here, CoinEx violated §63(12) by engaging in acts that were illegal because they violated the Martin Act.

As to the "illegal" prong of Executive Law § 63(12), an "illegal act" under the statute includes any violation of a federal, state, or local law. *See State v. Princess Prestige Co.*, 42 N.Y.2d 104, 105 (1977); *People v. Empyre Inground Pools, Inc.*, 227 A.D.2d 731, 732-733 (3d Dep't 1996). With respect to illegalities, Executive Law § 63(12) empowers the Attorney General to enforce all New York state laws and regulations. Indeed, "[a]ny conduct which violates State or Federal law or regulation is actionable under this provision." *People v. World Interactive Gaming Corp*., 185 Misc. 2d 852, 856 (Sup. Ct. N.Y. Cnty. 1999) (citation omitted); *Princess Prestige*, 42 N.Y.2d at 105; *Empyre Inground Pools, Inc.*, 227 A.D.2d at 732-733; *Matter of Freedom Discount Corp. v. Korn*, 28 A.D. 2d 517, 517 (1st Dep't 1967) (affirming use of Executive Law § 63(12) to enforce violations of the Penal Law).

Specifically, violations of the Martin Act constitute repeated illegalities redressable under Executive Law § 63(12). *See People v Allen et al*, 452378/2019, 2021 WL 394821 at *14 (Sup. Ct. N.Y Cnty. Feb. 4, 2021) (finding the Defendants repeated violations of the Martin Act to be violations of Executive Law § 63(12); *aff'd*, *People v. Allen et al*, 198 A.D. 3d 531). The statute defines "repeated" to include "[any] separate and distinct fraudulent or illegal act [or conduct] which affect[s] more than one [person]." *People v. 21st Cent. Leisure Spa Int'l, Ltd.*, 153 Misc. 2d 938, 944 (Sup. Ct. N.Y. Cnty. 1991). "[P]ersistent" is defined as the "continuance or carrying on of any fraudulent or illegal act of conduct." *Id.*

CoinEx engaged in the business of effecting transactions in commodities and securities for more than one New York-based CoinEx account, on separate dates in October 2022 and again in January 2023. Metz Aff. ¶¶ 39-48. CoinEx conducted each commodity and security sales while having failed to register as a commodity broker-dealer or as a securities broker or dealer with OAG, and therefore each commodity and security sale and purchase is a separate violation of the Martin Act and separate "illegal acts" that were repeated in violation of Executive Law § 63(12).

Additionally, CoinEx's website and mobile applications remain active and accessible to members of the public within New York State. Metz Aff. ¶ 50. And CoinEx continues to rely on its website to solicit offers for the sale and purchase of the Tokens, by presenting price quotes and continues to display the name "CoinEx" and content that suggests it is an "exchange*."* Id. Accordingly, CoinEx's illegal acts are both persistent and ongoing.

CoinEx's violations of the Martin Act are a repeated and persistent illegality and, thus, a violation of Executive Law § 63(12).

VI. The Court Should Order a Permanent Injunction, an Accounting, and Direct CoinEx to Prevent Access to its Website, Mobile App to New Yorkers and Award Restitution, Disgorgement and Costs

Courts have broad statutory and equitable authority to grant injunctive relief, an accounting, restitution, disgorgement, costs, and other relief. *See, e.g., Princess Prestige*, 42 N.Y.2d at 107-108; *Greenberg*, 27 N.Y.3d at 497-98. In this case, CoinEx's repeated and

persistent fraudulent and illegal acts warrant injunctive relief, restitution, disgorgement, costs, an accounting, and an order to implement geo-blocking to restrict access to CoinEx's website and mobile applications. Pursuant to § 63(12), The Court is empowered to grant wide-ranging equitable relief to redress CoinEx's illegalities.

VII. The Court Should Order Permanent Injunctive Relief

Once it finds in a summary proceeding pursuant to § 63(12) that a Respondent is liable, a court is expressly authorized to permanently enjoin the fraudulent and illegal conduct at issue. *See, e.g., Princess Prestige*, 42 N.Y.2d at 108. To ensure that Respondents end their misconduct, the Court can immediately exercise its authority to grant injunctive relief even if subsequent proceedings are needed to determine the scope of monetary relief. *See, e.g., Dell,* 21 Misc. 3d 1110, at *12 (ordering injunctive relief while granting the OAG discovery to determine the identities of all consumers entitled to restitution and the amount of monetary relief).

The OAG seeks a permanent injunction banning CoinEx from selling and buying securities and commodities to and from New Yorkers. Courts routinely impose permanent injunctive relief similar to that sought here—a complete ban on the underlying conduct that gave rise to the illegal activity. *See State v. Ford Motor Co.*, 74 N.Y.2d 495, 502 (1989); *Princess Prestige*, 42 N.Y.2d at 107; *see also, State v. Daro Chartours, Inc.*, 72 A.D.2d 872 (2d Dep't 1979); *Empyre Inground Pools, Inc*., 227 A.D. 2d at 731-732 (affirming decision to grant "petitioner's application and permanently enjoined Respondent from engaging in the home improvement and door-to-door sales businesses in New York.")

VIII. The Court Should Order CoinEx to Provide an Accounting of All Fees Received From New York Investors and Direct CoinEx to Prevent Access to its Website, Mobile App, and Services from the State of New York

Courts may order accountings under Section 63(12) in order to facilitate the determination of restitution and disgorgement. *See*, *e.g., People v. Veleanu*, 89 A.D.3d 950, 950 (2d Dep't 2011) (affirming judgment ordering accounting pursuant to § 63(12)); *People v. Sec.*

Elite Grp., 2019 N.Y. Misc. LEXIS 5556, at 6; 2019 NY Slip Op 33068(U(, *6 (Sup Ct, NY Cnty 2019) ("directing the rendering of an accounting to the Attorney General of the names and addresses of each consumer who paid fees directly to [Respondent] and the amount of money received from each such consumer").

Here, the accounting should set forth all of the names, email addresses, date of all transactions, associated IP address used at the time of each transaction, and last log-in date and time, the value of New Yorker's accounts individually and collectively, and the amount of money CoinEx has received from New York accounts at any time from six years prior to the date of this Verified Petition. This information is necessary to assess the extent of CoinEx's breach of New York State laws and the total amount of revenue CoinEx generated through its fraudulent and deceptive business practices.

Additionally, the Court should direct CoinEx to implement geo-blocking based on IP addresses and GPD location to prevent access to the CoinEx mobile application, website, and its services from New York. In *Coinseed*, Justice Borrok ordered that the website of a cryptocurrency platform engaged in fraud be turned over to a receiver so that the website could no longer be used as a tool to defraud New Yorkers. *See Coinseed, Inc.,* 2021 N.Y. Misc. LEXIS at *3. Here, the requested relief is more narrow and offers CoinEx the opportunity to maintain its business in the jurisdictions in which it is registered to do business.

IX. The Court Should Order CoinEx to Pay Restitution and Disgorgement

In addition to injunctive relief, the Court should grant restitution, order CoinEx to pay disgorgement and provide New York investors with the option to rescind their transactions. Restitution under § 63(12) is a "vehicle by which aggrieved consumers [can] recover the money which is due them without resorting to costly litigation." *State v. Ford Motor Co*., 136 A.D.2d 154, 158 (3rd Dep't 1988). Courts' broad power to direct restitution under § 63(12) "should be liberally construed," *New York v. Maiorano*, 189 A.D.2d 766, 767 (2d Dep't 1993), and an application for restitution pursuant to § 63(12) is "addressed to the sound judicial discretion of

the trial court," *Princess Prestige*, 42 N.Y.2d at 108. Courts' power to award restitution includes the power to order not only monetary relief but also the "authority to order Respondents to take affirmative action" that may be necessary to effect restitution. *Id.*

The Court should order CoinEx, pursuant to § 63(12) and the Martin Act, to account for and disgorge all revenue obtained from their fraudulent and illegal sales and purchases of digital asset securities and commodities to and from New Yorkers. A court may order disgorgement under § 63(12), "an equitable remedy distinct from restitution," *People v. Applied Card Sys*., 11 N.Y.3d 105, 125 (2008), in order to "deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct," *People v. Ernst & Young, LLP*, 114 A.D.3d 569, 569 (1st Dep't 2014). Similarly, a court may order disgorgement under the Martin Act. *See People ex rel. Schneiderman v. Greenberg* 27 N.Y.3d 490, 497(2016).

Penalties ought to be large enough to deter illegal, deceptive, fraudulent conduct but should not "be so disproportionate to the offenses as to be excessive." *Id*. Here, it is appropriate for CoinEx to disgorge all revenue obtained from its illegal conduct in New York State.

X. The Court Should Award OAG Costs

CPLR § 8303(a)(6) provides that a court may award the OAG "a sum not exceeding two thousand dollars against each defendant" in a special proceeding brought under Executive Law§ 63(12). New York courts routinely grant the OAG such costs. *See*, *e.g.*, *Daro Chartours, Inc.*, 72 A.D.2d at 873; *21st Cent. Leisure Spa Int'l*, 153 Misc. 2d at 944-45; *State v. Midland Equities of N.Y., Inc*., 117 Misc. 2d 203, 208 (Sup. Ct. N.Y. Cnty, Nov., 29, 1982); *People v. Therapeutic Hypnosis*, 83 Misc. 2d 1068, 1071-72 (Sup. Ct. Albany Cnty. 1975). Accordingly, the Court should award Petitioner $2,000 in costs imposed against CoinEx.

CONCLUSION

For the above reasons, the Court should grant the Verified Petition in its entirety and the requested relief set forth therein.

Dated: New York, New York
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