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

RACHEL POUYAFAR, on behalf of herself and all others similarly situated, Plaintiff, -v- YUNHAI QUAN, JOHN DOE NOS. 1-25, Defendants.	Index No. 654820/2023 Hon. Richard G. Latin, J.S.C. Part 46 Mot. Seq. #001

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

MANDEL BHANDARI LLP
Rishi Bhandari
Brice Jastrow
Donald Conklin
80 Pine Street, 33rd Floor
New York, NY 10005
rb@mandelbhandari.com
bj@mandelbhandari.com
Tel: (212) 269-5600
Fax: (646) 964-6667

Attorneys for Plaintiff
Rachel Pouyafar

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Plaintiff Rachel Pouyafar ("Plaintiff") submits this memorandum of law in support of her motion under CPLR Article 9 for an order: (1) certifying a class as defined below, (2) appointing her to be Class Representative, and (3) appointing Plaintiff's counsel as Class Counsel.

PRELIMINARY STATEMENT

This action is ideal for class certification under CPLR 901 and 902.

As the First Amended Complaint (NYSCEF Doc. No. 23) details, Plaintiffs' claims arise from a scam that affected Plaintiff and the Class (defined below) in the same way. Defendants targeted their victims by promising – and then pretending to deliver – large but fake cryptocurrency returns. These fake returns lured Plaintiff and the Class to deposit cryptocurrency in accounts controlled by Defendants. Once the victims had been "fattened" enough with reports of false profits and had transferred enough of their assets in escalating tranches, Defendants stole their property and disappeared. The virtual currency investment scam Defendants used here has been run enough times that it has its own name: "pig butchering."[1]

The Court has frozen the proceeds of this particular pig butchering scheme held in cryptocurrency wallets at Binance Holdings Limited for the rest of this action.[2] Without that injunction, Defendants would have moved this stolen property from Binance and made it permanently unrecoverable. Plaintiff now seeks class certification to ensure the efficient and effective prosecution of this action on behalf of herself and the many other victims of Defendants' pig butchering scheme. Certifying this case as a class action will allow the return of stolen assets

---

[1] See FinCEN Alert on "Pig Butchering" (Sept. 8, 2023), available at https://www.fincen.gov/sites/default/files/shared/FinCEN_Alert_Pig_Butchering_FINAL_508c.pdf (last accessed Apr. 12, 2024).

[2] NYSCEF Doc. No. 47.

to victims of this pig butchering scheme in an orderly way and help stop pervasive online cryptocurrency theft.

As explained below, this case satisfies the five class-certification prerequisites of CPLR 901 and the factors set forth in CPLR 902.

First, the Class satisfies article 9's numerosity requirement. Plaintiff's investigation of Defendants' pig butchering scheme has revealed 150-200 additional victims of the same scheme, and joinder of all members is impracticable.[3]

Second, the Action satisfies the commonality requirement under CPLR 901(a)(2). Where, as here, the same scheme was used to victimize class members, commonality of the claims predominates. Commonality does not require unanimity among class members, and the fact that there may be issues and damages unique to each individual class member does not prevent class certification.

Third, Plaintiff's claims are typical of those of the Class. Typicality is satisfied if Plaintiff's claims arise from the same practice or course of conduct as the claims of other class members and the claims are based on the same legal theory. Here, Plaintiff and all class members were victims of the same pig butchering scheme that used the same ecosystem of cryptocurrency wallets to hide its tracks, including the Pivot Wallet that connects all victims of this pig butchering scheme, and the same terminal Binance wallets where the proceeds of the scheme were kept before those wallets were frozen here.

Fourth, Plaintiff will adequately represent the Class. By proving her own claim, Plaintiff will prove the Class's claims and Plaintiff's interests are thus fully aligned with those of absent

---

[3] Dec. 8, 2023 Charles Zach Aff. ¶¶ 6-7 (NYSCEF Doc. No. 30).

Class members. Plaintiff has also actively monitored and will continue to monitor this litigation and will meet her obligations for participating here and has retained qualified counsel with relevant experience.

Fifth, class certification is warranted because litigating these claims on a Class-wide basis is superior to other ways of adjudicating the claims at issue. For each Class member to pursue their claim individually would require resource-intensive and time-consuming cryptocurrency tracing, analysis and investigation through a maze of transactions. And if all Class members' claims are not resolved here and the frozen Binance wallets are unfrozen, their stolen property will be, as a practical matter, lost forever.

THE PROPOSED CLASS

Plaintiff seeks to certify the following Class:

> All persons and entities whose funds were unlawfully taken by Defendants beginning on May 21, 2023, and whose stolen cryptocurrency is contained in the wallets on the Binance Exchange listed in the First Amended Complaint and Appendix A in this action, or in other cryptocurrency accounts at Binance controlled by Defendants.

See First Amended Complaint ("FAC") at ¶¶ 9, 43 (NYSCEF Doc. No. 23) & Appendix A (NYSCEF Doc. No. 24).

Excluded from the Class are Defendants, the officers, directors, and affiliates of Defendants at all relevant times, members of their immediate families, their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

BACKGROUND

Plaintiff Rachel Pouyafar is a resident of New York who was tricked by one or more individuals, including a person identifying himself as Yunhai Quan ("Quan") and other unknown people, as part of a scheme to persuade Class victims to transfer funds to crypto wallets controlled

by Defendants. FAC ¶ 2. Plaintiff was contacted by someone identifying himself as Quan by WhatsApp in July 2023, and Quan said he was interested in buying property in New York through Plaintiff since she is a licensed New York real estate agent. FAC ¶ 5. Quan induced Plaintiff to deposit a small amount of cryptocurrency in what looked like an account at the cryptocurrency exchange QuedEx but was in fact a cryptocurrency wallet controlled by Defendants. FAC ¶ 6. Quan persuaded Plaintiff to deposit more funds in this wallet by showing fake "profits" on her prior deposits, until Coinbase flagged Plaintiff's transaction history as potentially involving illegal activity and then froze her account on August 22, 2023. FAC ¶ 7.

Plaintiff investigated Defendants and found through cryptocurrency transaction records on the publicly-available blockchain that her stolen cryptocurrency went through a maze of intricate transactions and conversions to obscure its origin but was being held at an account at Binance. FAC ¶ 9. Her further investigation revealed that Defendants similarly scammed additional victims between May 21 and August 24, 2023, who were also enticed to deposit small initial amounts followed by bigger sums, which were then routed through a web of cryptocurrency transactions and conversions through the same Pivot Wallet in Defendants' network, before ending up at other accounts at Binance. FAC ¶ 10-11. This pattern of transactions – small amounts of money deposited in the same wallet followed by increasingly larger amounts – is common in pig butchering scams but is not consistent with legitimate cryptocurrency transactions by individuals and investors.[4]

This Pivot Wallet is like the top block of a pyramid of addresses, with multiple layers below, and at the bottom of this pyramid are Plaintiff and other Class Members. FAC ¶ 11.

[4] Dec. 8, 2023 Zach Aff. ¶ 7 (NYSCEF Doc. No. 30).

Defendants used transactions through the middle layers of addresses in the pyramid to make their scheme harder to identify and the stolen assets tougher to trace. FAC ¶ 12. Plaintiff and the Class are all victims of a common scheme involving one pyramid of cryptocurrency addresses and one Pivot Wallet.

Once the victims' deposits reached the Pivot Wallet, they were converted to stablecoins and sent to accounts on exchanges such as Binance, including the 25 accounts at Binance that have been frozen by the Court.[5] Unique among the exchanges that were the ultimate recipients of cryptocurrency from the pig butchering scheme, Binance cooperated with Plaintiff in providing assistance with freezing accounts and account records to help unravel Defendants' scheme and trying to identify other victim members of the Class.

PROCEDURAL HISTORY

Plaintiff filed an initial summons and complaint here against certain John Doe defendants on September 29, 2023, and asserted claims for conversion and money had and received.[6] That same day, Plaintiff moved by order to show cause for a temporary restraining order and preliminary injunction freezing the Binance wallet in which her stolen cryptocurrency was being held.[7] Her request for a TRO was granted that evening.[8]

---

[5] NYSCEF Doc. No. 17, NYSCEF Doc. No. 47.

[6] NYSCEF Doc. No. 1.

[7] NYSCEF Doc. Nos. 2-6.

[8] NYSCEF Doc. No. 8.

Plaintiff filed supplemental information about the pig butchering scheme in support of her motion for a preliminary injunction on October 19, 2023.[9] The Court then granted Plaintiff's request for a preliminary injunction freezing the Binance wallet holding her assets.[10]

Plaintiff filed a First Amended Complaint on behalf of herself and other similarly situated victims of Defendants' pig butchering scheme on December 8, 2023. In it, Plaintiff asserted claims on behalf of herself and the Class for conversion, money had and received, and a declaratory judgment about ownership of cryptocurrency assets that Defendants stole that ended up in certain Binance accounts identified in the complaint.[11]

The same day she filed a First Amended Complaint, Plaintiff also moved by order to show cause to freeze the additional Binance wallets that her investigation identified as holding stolen assets.[12] Plaintiff also moved to temporarily seal certain filings to prevent Defendants from identifying and emptying the Binance accounts where the proceeds of the scheme were being held.[13]

The Court granted Plaintiff's request for a temporary restraining order freezing the additional Binance accounts on December 22.[14] That TRO was extended to February 14, 2024.[15] On February 15, the Court granted Plaintiff's request for a preliminary injunction freezing the

---

[9] NYSCEF Doc. Nos. 12-16.

[10] NYSCEF Doc. No. 17.

[11] E.g., NYSCEF Doc. No. 21 & NYSCEF Doc. No. 23.

[12] NYSCEF Doc. Nos. 25-31.

[13] NYSCEF Doc. Nos. 32-35.

[14] NYSCEF Doc. No. 37.

[15] NYSCEF Doc. No. 41 & NYSCEF Doc. No. 45.

cryptocurrency stolen from the class in the Binance wallets identified in the First Amended Complaint during the pendency of this action.[16]

Defendants' true identities remain unclear, but Defendants have been appropriately served with all relevant filings here through special-purpose non-fungible Ethereum tokens ("NFTs") delivered to the relevant cryptocurrency wallets. These NFTs included hyperlinks to a website containing the documents to be served.[17] That form of service by NFT was approved by the Court and has been approved in other cases involving disputes with unknown defendants about cryptocurrency, including LCX AG v. John Doe Nos. 1-25, No. 154644/2022 (Sup. Ct. N.Y. Cnty).[18]

Certain people who appeared to be affiliated with Defendants reached out to counsel for Plaintiff after the Court entered the orders freezing certain Binance accounts. While some people who reached out to Plaintiff's counsel appeared to have additional knowledge of the pig butchering scheme – including the use of the Pivot Wallet in that scheme – no Defendant has ever appeared in this action.

When a defendant has failed to appear, courts may still consider whether to certify a class prior to the entry of a default judgment. Skeway v. China Nat. Gas, Inc., 304 F.R.D. 467, 472 (D. Del. 2014) (granting motion for class certification after defendant's default in appearing); see also Saade v. Insel Air, No. 17-22003-Civ, 2019 WL 2255580, *2 (S.D. Fla. Apr. 4, 2019) ("default

---

[16] NYSCEF Doc. No. 47.

[17] E.g., NYSCEF Doc. Nos. 10-11, 18-19, 38-39.

[18] See NYSCEF Doc. No. 112 in that case; see also, e.g., Stil Well v. Defendant "1," No. 23-21920-CIV, 2023 WL 5670722, at *3 (S.D. Fla. Sept. 1, 2023); Bowen v. Li, No. 23-CV-20399, 2023 WL 2346292, at *3 (S.D. Fla. Mar. 3, 2023); Bandyopadhyay v. Defendant 1, No. 22-CV-22907, 2022 WL 17176849, at *3 (S.D. Fla. Nov. 23, 2022).

does not change the analysis that a district court must undertake in deciding whether to certify a class because any other conclusion might give defendants an incentive to default in situations where class certification seems likely."); In re Industrial Diamonds Antitrust Litig., 167 F.R.D. 374, 376 n.1, 386–87 (S.D.N.Y. 1996) (certifying class against co-defendants after one defendant's default); cf. Acticon AG v. China N. E. Petroleum Holdings Ltd., 687 Fed. Appx. 10, 12 (2d Cir. 2017) ("[W]e conclude that the district court abused its discretion by denying as moot Acticon's motion for class certification ... As Acticon correctly notes, no default judgment had been entered prior to its motion for class certification.").

ARGUMENT

This case is about a pig butchering scheme and resulting cryptocurrency theft that was common to all Class members. It concerns Defendants' conduct that impacted all Class members in the same way, including the harm suffered when Defendants moved the stolen cryptocurrency through a maze of transactions to the Pivot Wallet and then the frozen Binance wallets listed in the First Amended Complaint. It is well suited to proceed as a class action.

Article 9 of the CPLR "is modeled on rule 23 of the Federal Rules of Civil Procedure, the policy of which is to favor the maintenance of class actions and for a liberal interpretation." Pruitt v. Rockefeller Ctr. Props., 167 A.D.2d 14, 20-21 (1st Dept. 1991). Despite the similarities between the two standards, New York State courts are "not required to apply the 'rigorous analysis' standard utilized by the federal courts in addressing class certification motions under rule 23." Stecko v. RLI Ins. Co., 121 A.D.3d 542, 543 (1st Dept. 2014). In particular, the "so-called 'rigorous analysis' standard in evaluating class certification discussed in the United States Supreme Court cases Comcast Corp. v. Behrend (133 S. Ct. 1426 [2013]) and Wal-Mart Stores, Inc. v. Dukes (131 S. Ct. 2541 [2011]) … [is] not controlling" under article 9, and "the state courts have maintained their liberal interpretation of article 9 despite the Comcast and Dukes decisions."

Cardona v. Maramont Corp., 43 Misc. 3d 1230(A) at *7-8 (Sup. Ct. N.Y. Cnty. 2014) (citing Orgill v. Ingersoll-Rand Co., 110 A.D.3d 573 (1st Dept. 2013)).

CPLR Article 9 governing class actions "must be liberally construed." Tosner v. Town of Hempstead, 12 A.D.3d 589, 589 (2d Dept. 2004); see also Englade v. HarperCollins Publishers, Inc., 289 A.D.2d 159, 159 (1st Dept. 2001) ("The statute providing for class action certification (CPLR 901) should be liberally construed."). Any consideration of the Action's underlying merits is limited at this stage, as "[i]nquiry on a motion for class action certification vis-à-vis the merits is limited to a determination as to whether on the surface appears to be a cause of action which is not a sham." Brandon v. Chefetz, 106 A.D.2d 162, 167-68 (1st Dept. 1985). Because Article 9 is a "liberal class action certification statute," Weinstein v. Jenny Craig Operations, Inc., 138 A.D.3d 546, 547 (1st Dept. 2016), "any error, if there is to be one, should be … in favor of allowing the class action." Hurrell-Harring v. State of N.Y., 81 A.D.3d 69, 72 (3d Dept. 2011).

A. The Proposed Class Satisfies the Requirements of CPLR 901(a)

CPLR 901(a) establishes "five prerequisites to class certification" and this case satisfies all of them. They are:

> (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
>
> (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
>
> (4) the representative parties will fairly and adequately protect the interests of the class; and
>
> (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

City of New York v. Maul, 14 N.Y.3d 499, 508 (2010). These prerequisites "are commonly referred to as the requirements of numerosity, commonality, typicality, adequacy of representation and superiority." Id.

1. Numerosity

For numerosity under CPLR 901(a)(1), "[t]here is no 'mechanical test' of prospective class members which must exist." Kllogjeri v. AMB Const., Inc., No. 155544/16, 2020 WL 1229977, at *2 (Sup. Ct. N.Y. Cnty. Mar. 13, 2020). That said, numerosity "is presumed at a level of 40 members," and when the legislature adopted CPLR 901(a), it "contemplated classes involving as few as 18 members." Onadia v. City of New York, 56 Misc. 3d 309, 316 (Sup. Ct. Bronx Cnty. 2017).

Here, the proposed Class easily satisfies the numerosity requirement. While the exact number of Class members can be determined only through additional analysis and investigation of cryptocurrency transaction records, the analysis to date indicates that there are between 150 and 200 members of the proposed Class. Dec. 8, 2023 Charles Zach Aff. ¶¶ 6-7.[19] Joinder is therefore impracticable. This level of numerosity is more than enough to satisfy CPLR 901(a)(1).

2. Commonality and Predominance

Under CPLR 901(a)(2), the Court considers whether there are "questions of law or fact common to the class which predominate over any questions affecting only individual members." CPLR 901(a)(2). Commonality refers to a "common contention … capable of classwide resolution," and the commonality requirement is typically satisfied where "class members have been injured by similar material misrepresentations and omissions." Pub. Emps.' Ret. Sys. of

[19] NYSCEF Doc. No. 30.

Miss. v. Goldman Sachs Grp., Inc., 280 F.R.D. 130, 134 (S.D.N.Y. 2012); see also Weinberg v. Hertz Corp., 116 A.D.2d 1, 6 (1st Dept. 1986) (CPLR 901(a)(2) "clearly envisions authorization of class actions even where there are subsidiary questions of law or fact not common to the class"). "Common does not mean identical in every respect." Weinstein v. Jenny Craig Operations, Inc., 41 Misc. 3d 1220(A), at *4 (Sup. Ct. N.Y. Cnty. 2013). Instead, "the focus is whether the proposed class action will generate common answers apt to drive the resolution of the litigation." Burdick v. Tonoga, Inc., 179 A.D.3d 53, 56 (3d Dept. 2019).

The predominance requirement "is satisfied [where] resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." In re MF Global Holdings Ltd. Inv. Litig., 310 F.R.D. 230, 238 (S.D.N.Y. 2015). Commonality and predominance "should not be determined by any mechanical test, but rather, whether the use of a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated." Friar v. Vanguard Holding Corp., 78 A.D.2d 83, 97 (2d Dept. 1980).

Multiple questions of law and fact are common to the Class and predominate over individual ones here, including not only common questions of law and fact about the cryptocurrency accounts and pivot wallet controlled by Defendants, but also:

A. Defendants representing to Class members that cryptocurrency they sent Defendants would be used in legitimate cryptocurrency transactions when that was not true;

B. Defendants convincing Class members to deposit small initial amounts of cryptocurrency into wallets they controlled as an initial show of legitimacy, followed by larger sums as the scam progressed;

C. Defendants ultimately moving Class members' cryptocurrency assets through a maze of transactions to disguise and obfuscate where the cryptocurrency had gone, through the Pivot Wallet, to certain accounts at Binance.

These questions all spring from the same pig butchering scheme and thus are common to all Class members. See Weinstein v. Jenny Craig Operations, Inc., 138 A.D.3d 546, 547 (1st Dept. 2016) ("Where, as here, 'the same types of subterfuge[ ] [were] allegedly employed . . . ,' commonality of the claims will be found to predominate") (alterations in original); Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d 481, 482 (1st Dept. 2009) (same).

In addition, while the class members have different damages, specific damages here can be determined by reference to publicly-verifiable cryptocurrency transactions – from the initial entry into the pig butchering scheme, through the ecosystem of later transactions and conversions, into the Binance wallets listed in the First Amended Complaint – through investigation and analysis of publicly-available cryptocurrency records.

The Court of Appeals has held that "the legislature enacted CPLR 901(a) with a specific allowance for class actions in cases where damages differed among the plaintiffs, stating 'the amount of damages suffered by each class member typically varies from individual to individual, but that fact will not prevent the suit from going forward as a class action if the important legal or factual issues involving liability are common to the class.'" Borden v. 400 E. 55th St. Assoc., L.P., 24 N.Y.3d 382, 399 (2014). Even in cases where individual damages inquiries may be complex – not the case here – "[t]he need to conduct individualized damages inquiries does not prevent class certification as long as common issues of liability predominate." Diamond v. N.Y.C. Hous. Auth., 179 A.D.3d 525, 527 (1st Dept. 2020).

Because common issues of law and fact predominate, class certification is warranted here.

3. Typicality

Class certification is also appropriate because Plaintiff meets CPLR 901(a)(3)'s typicality requirement. Plaintiffs establish typicality when their claims "derive from the same practice or course of conduct that gave rise to the remaining claims of other class members and [are] based upon the same legal theory." Pludeman v. N. Leasing Sys., Inc., 74 A.D.3d 420, 423 (1st Dept. 2010). Further, "[t]ypicality does not require identity of issues," and plaintiffs may be typical even if "the underlying facts of each individual plaintiff's claim vary, or [defendants'] defenses vary." Id. at 423-24.

Here, Plaintiffs and all Class members bring claims based on the same pig butchering cryptocurrency theft scheme that took place between May and August 2023. Plaintiff's claims are thus typical of all Class members' claims. See, e.g., Pruitt, 167 A.D.2d at 22-23.

4. Adequacy

Plaintiff will "fairly and adequately protect the interests of the class" as CPLR 901(a)(4) requires. The adequacy question considers "whether a conflict of interest exists between the representative and the class members …, the representative's background and personal character, as well as his familiarity with the lawsuit, to determine his ability to assist counsel in its prosecution and, if necessary, to act as a check on the attorneys … and, significantly, the competence, experience and vigor of the representative's attorneys . . . and the financial resources available to prosecute the action." Pruitt, 167 A.D.2d at 24. Plaintiff readily satisfies those conditions.

There is no conflict between Plaintiff's interests and those of absent Class members, as the availability and extent of Plaintiff's and other Class members' recovery are just as dependent on proving the claims alleged in the Complaint. See Cox v. Microsoft Corp., 10 Misc. 3d 1055(A) at *3 (Sup. Ct. N.Y. Cnty. July 29, 2005) ("plaintiffs' interests are aligned with the interests of other

class members because the same alleged conduct has injured the plaintiffs and all class members. There are no allegations that plaintiffs or their counsel have any interests antagonistic to those of the other class members."). We are unaware of any reason why individual Class members might have a special interest in pursuing their own claims, assuming they managed to undertake the cryptocurrency tracing, investigation and analysis necessary to do so. On the contrary, Class members would favor class treatment because there are an abundance of common issues and facts here. E.g., Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 155 (1982) ("Class relief is peculiarly appropriate when the issues involved are common to the class as a whole and when they turn on questions of law applicable in the same manner to each member of the class because it saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23.")

Plaintiff has actively monitored the Action through discussions with counsel and by reviewing filings and relevant documents (and will continue to do so) and is prepared to fulfill any discovery obligations. Plaintiff has retained Mandel Bhandari LLP, Bishop Partnoy LLP and Adam Zarazinski as her lawyers here, highly qualified counsel with relevant expertise in class action litigation and cryptocurrency, who are prosecuting the Action on a fully contingent basis. See Apr. 4, 2024 Affirmation of Rishi Bhandari. Plaintiff should be appointed to serve as Class Representative and Mandel Bhandari LLP, Bishop Partnoy LLP and Adam Zarazinski appointed Class Counsel here.

For these reasons, Plaintiffs satisfy CPLR 901(a)(4)'s adequacy requirement. See Pruitt, 167 A.D.2d at 24; see also Gudz v. Jemrock Realty Co., 105 A.D.3d 625, 626 (1st Dept. 2013) (plaintiffs' "financial ability to adequately represent the class … was adequately shown by counsel's assumption of the risk of costs and expenses in the litigation").

5. Superiority

This Action also satisfies CPLR 901(a)(5)'s superiority requirement.

Defendants' scheme inflicted economic injury on a large number of potentially geographically dispersed persons so much that pursuing individual litigation is impossible. Under the circumstances, the alternative to a class action would likely be no recourse for victims who could not prosecute their claims because it would require resource-intensive and time-consuming cryptocurrency tracing and analysis, and because the Class members' stolen cryptocurrency assets have been frozen in the Binance wallets listed in Appendix A to the First Amended Complaint. If this action concludes and those assets are released before they are fully distributed to Class members, Defendants would be able to immediately move any remaining assets beyond the reach of this or any court, rendering further recovery impossible.

At most, the alternative to a class action here would be a multiplicity of individual lawsuits, resulting in the inefficient administration of justice. Such "[s]eparate actions by each of the class members would be repetitive, wasteful, and an extraordinary burden on the courts." Kennedy v. Tallant, 710 F.2d 711, 718 (11th Cir. 1983). This duplication of actions is the "evil" that class action statutes "were designed to prevent." Califano v. Yamasaki, 442 U.S. 682, 690 (1979).

B. The Proposed Class Satisfies the Requirements of CPLR 902

If the prerequisites of section 901(a) have been satisfied, a court considers the requirements of CPLR 902, which are "illustrative considerations" that are mostly "implicit in CPLR 901." Gilman v. Merrill Lynch, Pierce, Fenner & Smith, 93 Misc. 2d 941, 948 (Sup. Ct. N.Y. Cnty. 1978). They are:

> (1) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
>
> (2) The impracticability or inefficiency of prosecuting or defending separate actions;

> (3) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
>
> (4) The desirability or undesirability of concentrating the litigation of the claim in the particular forum; and
>
> (5) The difficulties likely to be encountered in the management of a class action.

CPLR 902; see also Ferrari v. Nat'l Football League, 153 A.D.3d 1589, 1593 (4th Dept. 2017).[20]

The Action satisfies each of the CPLR 902 factors. Factors (1), (2), (4), and (5) relate to CPLR 901's requirements of commonality, typicality, and superiority, which Plaintiff satisfies as discussed above. First and second, given the time and expense of litigating the claims asserted here in the face of uncertain recovery outside this Action, Class members have little interest in individually controlling the prosecution of separate claims, which would be highly impractical and inefficient. Third, no other action alleges losses from this pig butchering scheme.

Fourth, it is desirable to concentrate the litigation of these claims in New York City. Defendants have been duly served with the First Amended Complaint and Plaintiff's request for a preliminary injunction freezing the relevant Binance accounts and have not appeared, let alone proposed an alternative forum for this dispute. New York has long served "as an international clearinghouse and marketplace for a plethora of international transactions." J. Zeevi and Sons, Ltd. v. Grindlays Bank (Uganda) Ltd., 37 N.Y.2d 220, 227 (1975). The New York Court of Appeals views New York as the preeminent commercial center in the United States, if not the world, 159 MP Corp. v. Redbridge Bedford, LLC, 33 N.Y.3d 353 (2019), and has noted "New

[20] As with the factors under CPLR 901(a), examination of the CPLR 902 factors "is not an occasion for examining the merits of the case." Onadia, 56 Misc. 3d at 320. Additionally, "[t]he discussion of superiority under CPLR 901(a) overlaps with the factors of CPLR 902, particularly CPLR 902(2)." Maor v. Hornblower N.Y., LLC, No. 160993/14, 2016 WL 3240219, at *10 (Sup. Ct. N.Y. Cnty. June 13, 2016).

York's recognized interest in maintaining and fostering its undisputed status as the preeminent commercial and financial nerve center of the Nation and the world." Ehrlich-Bober & Co., Inc. v. University of Houston, 49 N.Y.2d 574, 581 (1980).

Fifth, a class action concerning the scam and resulting cryptocurrency transactions can be appropriately managed. Membership in the Class is based on objective criteria from publicly-available blockchain ledger information about cryptocurrency transactions, which has been held to be a sufficiently definite and objective way to identify Class members in cases involving cryptocurrency. See Balestra v. Cloud With Me, Ltd., Civil Action No. 2:18-cv-00804, 2020 WL 4370392, *5 (W.D. Pa. July 2, 2020) (noting "plaintiffs point[ed] out that there is publicly-available information through public blockchains for cryptocurrencies invested[;] ... investor trading records and records from virtual currency exchanges may provide an adequate method of identifying members, and, of course, there is self-identification"); Audet v. Fraser, 332 F.R.D. 53, 72 (D. Conn. 2019) (finding putative class members' cryptocurrency investments could be "confirmed on the Bitcoin blockchain by searching for customers' wallet addresses" and "any public blockchain website [could] be used to locate and confirm such transactions").

Accordingly, this Action satisfies each of the CPLR 902 factors and should proceed as a class action.

CONCLUSION

For all these reasons, Plaintiff requests that the Court grant her motion for class certification and enter an order (1) certifying a class consisting of all persons and entities whose funds were unlawfully taken by Defendants beginning on May 21, 2023, and whose stolen cryptocurrency is contained in the wallets on the Binance Exchange listed in the First Amended Complaint (NYSCEF Doc. No. 23) and Appendix A in this action (NYSCEF Doc. No. 24), or in other

cryptocurrency accounts at Binance controlled by Defendants;[21] (2) appointing Plaintiff as Class Representative; and (3) appointing Plaintiff's counsel as Class Counsel.

Dated: New York, N.Y.
April 12, 2024

Respectfully submitted,

By: 

Rishi Bhandari
Brice Jastrow
Donald Conklin
MANDEL BHANDARI LLP
80 Pine Street, 33rd Floor
New York, New York 10005
rb@mandelbhandari.com
bj@mandelbhandari.com
dc@mandelbhandari.com
Tel: (212) 269-5600
Fax: (646) 964-6667

Attorneys for Plaintiff Rachel Pouyafar

[21] Excluded from the Class are (i) Defendants, the officers, directors, and affiliates of Defendants at all relevant times, members of their immediate families, their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.