

1 Kyle Roche (*pro hac vice forthcoming*)
 2 Edward Normand (*pro hac vice forthcoming*)
 3 Joseph Delich (*pro hac vice forthcoming*)
 4 Alex Potter (*pro hac vice forthcoming*)
 5 Ivy T. Ngo (SBN 249860)
ROCHE FREEDMAN LLP
 6 99 Park Avenue, 19th Floor
 7 New York, NY 10016
 8 Tel.: (646) 350-0527
 kyle@rochefreedman.com
 tnormand@rochefreedman.com
 jdelich@rochefreedman.com
 apotter@rochefreedman.com
 ingo@rochefreedman.com

Tibor L. Nagy, Jr. (*pro hac vice forthcoming*)
 Gregory N. Wolfe (*pro hac vice forthcoming*)
 William LaGrange (*pro hac vice forthcoming*)
 Heidi R. Schumann (*pro hac vice forthcoming*)
 Susan S. Hu (*pro hac vice forthcoming*)
DONTZIN NAGY & FLEISSIG LLP
 980 Madison Avenue
 New York, NY 10075
 Tel.: (212) 717-2900
 tibor@dnflp.com
 greg@dnflp.com
 wlagrange@dnflp.com
 hschumann@dnflp.com
 shu@dnflp.com

Counsel for Plaintiff Jeffrey Lockhart

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

13 JEFFREY LOCKHART, individually and on behalf of
 14 all others similarly situated,
 15
 16 Plaintiff,
 17
 18 v.
 19
 20 BAM TRADING SERVICES INC. and BRIAN
 SHRODER,
 21
 22 Defendants.

No. _____

JURY DEMANDED

CLASS ACTION COMPLAINT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

TABLE OF CONTENTS ii

INTRODUCTION 1

PARTIES 4

JURISDICTION AND VENUE..... 5

FACTUAL ALLEGATIONS..... 5

I. BACKGROUND ON CRYPTO-ASSETS, CRYPTO-ASSET EXCHANGES AND BINANCE U.S...... 5

 A. The Blockchain And Crypto-Assets Generally 5

 B. Stablecoins..... 7

 C. Algorithmic Stablecoins 8

 D. Crypto-Exchanges And Binance U.S. 8

II. THE TERRA (LUNA / UST) ECOSYSTEM 10

 A. The Creation Of The Terra Ecosystem..... 10

 B. The Interrelationship Of UST/LUNA As Part Of An Economic Scheme..... 12

 C. The Anchor Protocol Created By TFL Formed An Essential Part Of The UST/LUNA Economic Scheme 14

 D. Despite Claiming That The Algorithm Underlying UST Was Sound, TFL Establishes Non-Luna Reserves To Protect The UST Peg..... 15

 E. UST Collapses, Wiping Out Billions Of Dollars In Investments..... 16

III. THE SEC HAS REPEATEDLY INSTRUCTED THAT CRYPTO-ASSETS LIKE UST AND LUNA ARE SECURITIES 21

IV. UST IS AN UNREGISTERED SECURITY 22

 A. UST Is An Investment Contract 22

 1. UST Purchasers Made An Investment Of Money 23

 2. UST Purchasers Invested In A Common Enterprise 23

 3. UST Purchasers Had A Reasonable Expectation Of Profits 25

 4. UST Purchasers Expected Profits In Reliance On The Efforts Of Others 27

 B. UST Is Also An Unregistered Security Because It Is A Derivative Of LUNA, Another Unregistered Security 35

 1. LUNA Purchasers Made An Investment Of Money 36

 2. LUNA Purchasers Invested In A Common Enterprise..... 36

 3. LUNA Purchasers Had A Reasonable Expectation Of Profits..... 36

 4. LUNA Purchasers Expected Profits In Reliance On The Efforts Of Others..... 39

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. BINANCE U.S. ILLEGALLY LISTED AND SOLD UST EVEN THOUGH IT IS NOT REGISTERED, IN VIOLATION OF THE SECURITIES LAWS 40

VI. BINANCE U.S. ILLEGALLY LISTED AND SOLD THE UST SECURITY EVEN THOUGH IT IS NOT REGISTERED AS AN EXCHANGE IN VIOLATION OF THE SECURITIES LAWS 41

VII. BINANCE U.S. LISTED AND SOLD THE UST SECURITY EVEN THOUGH IT IS NOT REGISTERED AS A BROKER-DEALER IN VIOLATION OF THE SECURITIES LAWS 42

VIII. BINANCE U.S.’s ARBITRATION SCHEME IS PUNITIVELY DESIGNED TO DISCOURAGE RETAIL INVESTORS WITH LIMITED RESOURCES FROM FILING CLAIMS—IT IS UNCONSCIONABLE AND UNENFORCEABLE 42

CLASS ALLEGATIONS 48

CAUSES OF ACTION 51

PRAYER FOR RELIEF 67

DEMAND FOR JURY TRIAL 69

1 Plaintiff Jeffrey Lockhart (“Plaintiff”), individually and on behalf of all others similarly
2 situated, alleges the following against BAM Trading Services Inc. (“Binance U.S.”) and its CEO
3 Brian Shroder (“Shroder,” and, together with Binance U.S., “Defendants”), based on personal
4 knowledge, the investigation of counsel, and information and belief.

5 **INTRODUCTION**

6 1. Launched in September 2019 and headquartered in California, Binance U.S. is a
7 crypto-asset exchange that operates a platform on which customers discover, research, buy, and sell
8 digital assets. As trumpeted on its website, Binance U.S.’s business model is premised on selling
9 crypto-assets throughout the United States:

10 *The new economy has arrived. We believe America should lead in*
11 *crypto and we’re committed to helping people across the U.S.*
access the world of digital assets.¹

12 2. Unfortunately for many of these “people across the U.S.,” Binance U.S.’s
13 commitment did not include a commitment to abide by U.S. federal and state securities laws.
14 Between April 13, 2022, and the present (the “Class Period”), Binance U.S. used its website to buy
15 from and sell Terra USD (“UST”) to investors.

16 3. UST is an “algorithmic stablecoin” created and centrally controlled by Terraform
17 Labs (“TFL”), a crypto-asset company based in Singapore that is run by its founder and CEO Kwon
18 Do-hyung (“Do Kwon”). The value of UST depends on and is derivative of the value of “LUNA,”
19 another crypto-asset developed and centrally controlled by TFL.

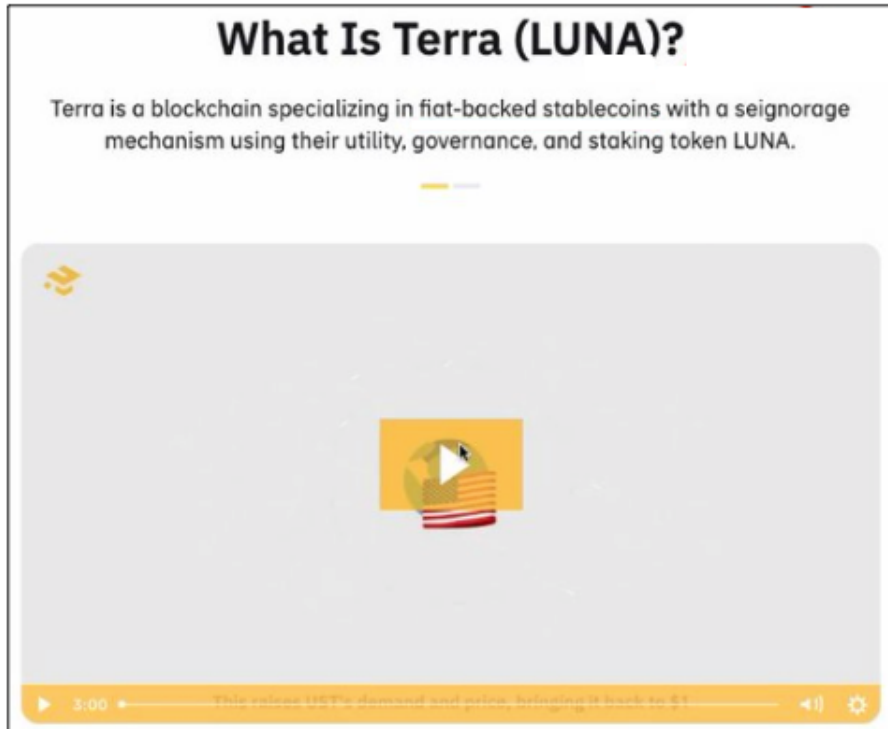
20 4. UST was advertised and sold to investors as a “safe” asset that could be used to earn
21 substantial returns, including in the form of interest. The respective prices of UST and LUNA both
22 depended upon, and continue to depend upon, the efforts and success (or failure) of TFL. For
23 example, the amount of interest that investors earned from UST depended directly upon the success
24 (or failure) of TFL’s efforts in maintaining the Anchor Protocol (the “Anchor Protocol”), which was
25 the platform created and maintained by TFL that generated UST’s interest payments.

26 _____
27 ¹ See <https://www.binance.us/en/about> (last visited on June 12, 2022). Unless otherwise noted, all
28 emphasis in quotations has been added.

1 5. As an early supporter of and investor in TFL, Binance U.S. is intimately familiar
2 with UST and LUNA. As recently as April 2022, Binance U.S. falsely advertised UST as “safe,”
3 as shown in the following advertisement:
4



14 6. Binance U.S also falsely advertised UST as “fiat-backed,” as shown in the following
15 advertisement Binance U.S ran about the relationship between LUNA and UST:
16



1 7. Binance U.S. succeeded in its stated mission of “helping people across the U.S.
2 access the world of digital assets” and was especially successful in the case of UST. Binance U.S.
3 has a daily trading volume in crypto-assets worth hundreds of millions of dollars.

4 8. Despite enjoying those fantastic profits, Binance U.S. plainly failed to comply with
5 federal and state securities laws. Binance U.S. failed to disclose that UST is in fact a security, and
6 that it is selling these securities, even though (i) there is no registration statement in effect for them,
7 and (ii) Binance U.S. itself has refused to register with the U.S. Securities and Exchange
8 Commission (“SEC”) either as a securities exchange or as a broker-dealer.

9 9. Binance U.S.’s failure to comply with the securities laws, and its false
10 advertisements of UST, have led to disastrous consequences for Binance U.S.’s customers: in May
11 2022, in the span of just a few days, UST lost essentially all its value—a loss of approximately \$18
12 billion. Investors who purchased UST on Binance U.S. were wiped out, learning quickly that,
13 contrary to Binance U.S.’s advertisements, UST was not “safe,” “stable,” or “fiat-backed.”

14 10. Since the collapse of UST, Binance U.S. has removed its advertisements touting UST
15 as “safe” and “fiat-backed,” effectively conceding that UST was none of those things.

16 11. Binance U.S. has not, however, stopped selling securities created by TFL. Instead,
17 having reaped hundreds of millions—if not billions—of dollars in profits by selling securities
18 without bothering to comply with federal and state laws, Binance U.S.’s parent company blithely
19 added insult to injury when, on May 31, 2022, it began selling Luna 2.0—a new token which, just
20 like LUNA, is centrally controlled by TFL.

21 12. The securities laws exist to protect investors. These laws were enacted, as the
22 Supreme Court has explained, “[i]n the wake of the 1929 stock market crash and in response to
23 reports of widespread abuses in the securities industry” and “embrace a fundamental purpose . . . to
24 substitute a philosophy of full disclosure for the philosophy of *caveat emptor*.” *Cent. Bank of*
25 *Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 170–71 (1994) (cleaned up).

26 13. In short, if Binance U.S. wants to enjoy the many benefits of operating in the U.S.
27 market, it must comply with U.S. federal and state securities laws. Yet Binance U.S. has chosen
28

1 not to do so. Even though UST and LUNA are both securities, neither is registered with the SEC
2 nor any state regulator. As a result, purchasers do not have access to the disclosures that accompany
3 the issuances generally required of publicly traded securities—the precise disclosures designed to
4 avoid a repeat of the 1929 stock market crash and the Great Depression that followed.

5 14. Binance U.S. has also failed to register under federal or state law as a securities
6 exchange, which it is. As SEC chair Gary Gensler recently told the Senate Banking Committee,
7 Binance U.S. and other exchanges have not registered with the SEC “even though they have dozens
8 of tokens that may be securities.” As to UST and LUNA, there is no doubt that they are securities.

9 15. Binance U.S.’s failure to comply with the securities laws critically enables bad actors
10 like TFL to harm investors. In fact, Binance U.S.’s business model is premised on enabling these
11 bad actors: Binance U.S. profits from every trade, and therefore has a stark incentive to sell crypto-
12 assets irrespective of their compliance with the securities laws. From Binance U.S.’s perspective,
13 the less disclosure, the better, as more disclosure about the riskiness of crypto-assets will predictably
14 lead investors to trade certain assets less and reduce transaction volume and Binance U.S.’s
15 astonishing profits.

16 16. Accordingly, because Binance U.S.’s sale of UST violates both federal and state law,
17 Plaintiff, individually and on behalf of all persons or entities who transacted in UST on Binance
18 U.S. during the Class Period (the “Class”), brings claims to recover damages, consideration paid
19 for UST, and trading fees, together with interest thereon, as well as attorneys’ fees and costs, to the
20 fullest extent permitted by law.

21 **PARTIES**

22 17. Plaintiff Jeffrey Lockhart is a resident of Utah. Like other members of the Class,
23 Lockhart purchased UST on Binance U.S., and pursuant to contracts with Binance U.S., during the
24 Class Period.

25 18. Defendant BAM Trading Services Inc. is a Delaware corporation headquartered in
26 Palo Alto, California, that operates under the trade name Binance U.S.

1 19. Defendant Brian Shroder is the CEO of Binance U.S. and was at all relevant times a
2 control person over Binance U.S. Shroder is a resident of California.

3 **JURISDICTION AND VENUE**

4 20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
5 § 1332(d)(2)(A), because this case is a class action where the aggregate claims of all members of
6 the proposed Classes exceed \$5,000,000.00, exclusive of interest and costs, and the Plaintiff and
7 most members of the proposed Classes are citizens of a state different from Defendants.

8 21. Subject matter jurisdiction of this Court is further proper under 28 U.S.C. § 1331
9 because Plaintiff asserts claims under Sections 5 and 12(a)(1) of the Securities Act of 1933 (the
10 “Securities Act”), 15 U.S.C. §§ 77e, 77l(a)(1), 77o.

11 22. The Court has personal jurisdiction over Defendants. Both Defendants are citizens of
12 California. Moreover, Defendants transacted business, maintained substantial contacts, and,
13 committed overt acts in this District in furtherance of the violations of the securities laws described
14 in this Complaint.

15 23. Jurisdiction of this Court is also founded upon Section 27 of the Securities Exchange
16 Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78aa(a), which provides that federal courts have
17 exclusive jurisdiction over violations of the Exchange Act, including Sections 5, 15(a)(1) and 29(b),
18 15 U.S.C. §§ 78e, 78o(a)(1), 78cc(b).

19 24. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and 18 U.S.C.
20 § 1965, because Defendants transact business in, are found in, and/or have agents in this District,
21 and because some of the actions giving rise to this Complaint took place in this District.

22 **FACTUAL ALLEGATIONS**

23 **I. BACKGROUND ON CRYPTO-ASSETS, CRYPTO-ASSET EXCHANGES AND BINANCE U.S.**

24 **A. The Blockchain And Crypto-Assets Generally**

25 25. By way of background, this case concerns crypto-assets. Crypto-assets are digital
26 assets that use a variety of cryptographic principles to secure transactions, control the creation of
27 additional units, and verify their transfer.

1 26. Bitcoin was the world’s first major crypto-asset. Although the potential of fully
2 digital assets had previously been recognized, Bitcoin’s novel architecture provided three key traits
3 that enabled it to succeed: It is a secure medium of exchange, it is “mined,” and it is decentralized.

4 27. This decentralization distinguishes Bitcoin from other assets. For example, the value
5 of corporate stocks and bonds, regardless of their structure, is tied to the success of the issuing
6 corporation. The value of government bonds is tied to the credit of the government that issues them.
7 The value of a currency is tied to the issuing nation, reflecting factors like its economy, political
8 stability, and the practices of its central bank. None of this is true for Bitcoin.

9 28. The blockchain has become the foundational technology for crypto-assets. While
10 crypto-assets vary tremendously, they generally rely on the blockchain to ensure that transactions
11 are secure and non-duplicable.

12 29. Control of crypto-assets is attested primarily through cryptographic keys. These
13 cryptographic keys have two components: a public key and a private key. This cryptographic
14 system of transfer and exchange is generally the same across most crypto-assets.

15 30. To use Bitcoin as an example, the public key is used to produce the Bitcoin address.
16 As with the account number of a conventional bank account, a Bitcoin address is a destination for
17 transfers of Bitcoin. Bitcoin addresses are long strings of alphanumeric text, often abbreviated by
18 a small group of numbers and letters, such as 1s5F or R3w9. As with a lengthy PIN or password
19 for a conventional bank account, a private key allows the owner of a Bitcoin address to access his
20 or her Bitcoin.

21 31. Just as one transferring funds to a conventional bank account needs to know the
22 account number for that account, those who wish to transfer Bitcoin need to know the recipient’s
23 Bitcoin address. With the recipient’s address, a transferor can use his or her private key to authorize
24 the transfer of Bitcoin, just as one would use a PIN or password to authorize a transfer between
25 traditional bank accounts.

26 32. A transfer of Bitcoin is public to the extent that anyone can see the transferor’s Bitcoin
27 address, the recipient’s Bitcoin address, and the quantity of assets transferred. That is, anyone could
28

1 see that Bitcoin address 1s5F transferred 10.3 Bitcoin to Bitcoin address R3w9. The names of the
2 individuals or entities that control these addresses, on the other hand, are neither recorded on the
3 blockchain nor are they accessible to the public.

4 **B. Stablecoins**

5 33. The advent of Bitcoin in 2009 introduced the promise of a decentralized and
6 programmable form of digital money. The value of many crypto-assets, however, is highly volatile,
7 which can be an undesirable feature for a medium of the exchange.

8 34. A “stablecoin,” as the name implies, is a digital asset whose value is supposed to be
9 stable, not volatile. A stablecoin is designed to maintain a consistent value relative to one or more
10 assets, such as a fiat currency (*e.g.*, the U.S. dollar, the Euro, the Japanese yen etc.) or debt
11 obligations (*e.g.*, short-dated U.S. government obligations). Potentially unlike the underlying asset
12 (*e.g.*, if that asset is a debt obligation), the stablecoin in theory can be transferred between parties
13 across borders instantaneously with minimal transaction cost.

14 35. One of the first stablecoins, Tether (also known as “USDT”), illustrates that the
15 promises of the backers of stablecoins do not always match reality. Launched in 2014, Tether
16 Holdings Ltd. (the company that issues USDT) originally claimed that each USDT minted would
17 “be backed one-to-one by a fully auditable reserve of [U.S.] dollars.” Ostensibly, a USDT holder
18 could exchange his or her USDT for an equal number of U.S. dollars.

19 36. Regulators and the investing public, however, have expressed significant concern over
20 whether USDT is truly backed by an equal number of dollars. Indeed, in 2021, the Commodities
21 Futures Trading Commission ordered Tether Holdings to pay \$41 million in penalties because “from
22 at least June 1, 2016 to February 25, 2019, [the company] misrepresented to customers and the
23 market that [it] maintained sufficient U.S. dollar reserves to back every USDT.”²

24 37. There are now many stablecoins in circulation that purport to be backed by different
25 types of assets. As of the time of this filing, the market capitalization of all stablecoins is more than
26 \$152 billion.

27 _____
28 ² <https://www.cftc.gov/PressRoom/PressReleases/8450-21>.

1 **C. Algorithmic Stablecoins**

2 38. Whereas most traditional stablecoins are backed by non-digital assets, “algorithmic
3 stablecoins” are a special type of stablecoin that typically consist of an arrangement with a second
4 digital asset, with the relationship between the two tokens managed through an algorithm in such a
5 way that the stablecoin should remain pegged to its reference asset (such as the U.S. dollar).

6 39. For example, a given algorithmic stablecoin may purport to be worth \$1 dollar. The
7 issuer of the algorithmic stablecoin, however, does not itself hold dollars for which the algorithmic
8 stablecoin holders can exchange the stablecoin. Instead, the algorithmic stablecoin’s value is kept
9 pegged to the dollar by reference to a second digital asset. At a high level, the algorithm underlying
10 the algorithmic stablecoin monitors the price of the underlying digital asset and constantly acts (by
11 increasing or decreasing supply) to keep the price of the stablecoin pegged to the dollar. The
12 algorithm’s promise, therefore, is to keep the price stable.

13 40. In the case of the algorithmic stablecoin UST—the subject of this lawsuit—TFL
14 purported to keep the value of UST pegged to \$1 stabilized through a system of supply control and
15 profit-taking arbitrage incentives related to LUNA.

16 **D. Crypto-Exchanges And Binance U.S.**

17 41. Just as traditional stock exchanges enable investors to trade stocks, crypto-exchanges
18 enable investors to trade crypto-assets.


19 42. At a high level, there are two primary types of crypto-exchange: decentralized
20 exchanges and centralized exchanges. Decentralized exchanges may use the blockchain itself to
21 match and execute transactions among traders. Generally, for decentralized exchanges, there is no
22 intermediary individual or corporation that matches or clears transactions; instead, a decentralized
23 exchange uses a blockchain technology called a “smart contract” to automatically facilitate trading.
24 While different decentralized exchanges use different approaches, what they have in common is that
25 the crypto-assets exchanged are transferred between individual accounts. Thus, if Angela
26 exchanges one Bitcoin for 10 Ethereum using a decentralized exchange, her one Bitcoin will be sent
27 to Brian, another user on the platform, and Brian’s 10 Ethereum will be sent to Angela.

1 43. These decentralized exchanges resemble Craigslist in their operation. Just like a
2 purchase of a collectible baseball card on Craigslist involves one user sending money and the other
3 sending the card, so too do transactions on decentralized exchanges involve customers sending each
4 other the goods being transacted. These decentralized exchanges, like Craigslist, do not own or
5 hold the assets in question—they simply provide a platform for exchanges between users, along
6 with certain features designed to facilitate trading (*e.g.*, Craigslist’s creation and maintenance of
7 message boards organized by product type or a decentralized exchange’s smart contracts), possibly
8 in exchange for advertising revenue or a transaction fee.

9 44. Binance U.S. is an example of a centralized exchange for crypto-assets. Generally, to
10 trade on Binance U.S., a customer creates an account. Binance U.S. then provides the customer
11 with a deposit address that the exchange controls. When the customer deposits crypto-assets into
12 the deposit address, Binance U.S. credits the customer’s trading account with the corresponding
13 crypto-asset and transfers the crypto-asset into one of Binance U.S.’s internal addresses for storage.

14 45. The trades conducted within Binance U.S., however, do not involve the transfer of
15 any assets between users. Instead, it is Binance U.S. that faces both the buyer and the seller. Thus,
16 if Angela wishes to trade one Bitcoin for 10 Ethereum on Binance U.S., Binance U.S. will update
17 its internal records to debit Angela’s account one Bitcoin and credit the account with 10 Ethereum;
18 no actual crypto-assets are moved on the blockchain. Nor is there any sense in which Angela’s
19 Bitcoin is transferred to anyone other than Binance U.S.: while Binance U.S. may use other traders’
20 orders to determine the relative prices of crypto-assets and the rate at which they are exchanged, the
21 only actual transactions that occur are between (a) the buyer and Binance U.S. and (b) the seller and
22 Binance U.S. Accordingly, the buyer and seller are not in privity with one another. When a user
23 wants to withdraw crypto-assets from Binance U.S. or another centralized exchange, she tells the
24 exchange the address into which she would like her crypto-assets transferred. The exchange then
25 debits the user’s account and transfers a corresponding amount of crypto-asset from the exchange’s
26 reserves to that address. The withdrawn assets come directly from the centralized exchange.

46. As a centralized exchange, Binance U.S. places all deposited assets into a centralized wallet and reflects transactions on its platform only through internal updates to each customer's account. The following table shows the fees charged by Binance U.S. based on USD transaction volume:

Level	30d Trade Volume (USD)	&	BNB Balance	Maker / Taker	Maker / Taker 
VIP 0	< 50,000 USD	or	≥ 0 BNB	0.1000% / 0.1000%	0.0750% / 0.0750%
VIP 1	≥ 50,000 USD	&	≥ 50 BNB	0.0900% / 0.0900%	0.0675% / 0.0675%
VIP 2	≥ 100,000 USD	&	≥ 100 BNB	0.0800% / 0.0900%	0.0600% / 0.0675%
VIP 3	≥ 500,000 USD	&	≥ 200 BNB	0.0700% / 0.0800%	0.0525% / 0.0600%
VIP 4	≥ 1,000,000 USD	&	≥ 400 BNB	0.0500% / 0.0700%	0.0375% / 0.0525%
VIP 5	≥ 5,000,000 USD	&	≥ 800 BNB	0.0400% / 0.0600%	0.0300% / 0.0450%
VIP 6	≥ 10,000,000 USD	&	≥ 1500 BNB	0.0000% / 0.0600%	0.0000% / 0.0450%
VIP 7	≥ 25,000,000 USD	&	≥ 2500 BNB	0.0000% / 0.0500%	0.0000% / 0.0375%
VIP 8	≥ 100,000,000 USD	&	≥ 4000 BNB	0.0000% / 0.0400%	0.0000% / 0.0300%
VIP 9	≥ 250,000,000 USD	&	≥ 6000 BNB	0.0000% / 0.0300%	0.0000% / 0.0225%
VIP 10	≥ 500,000,000 USD	&	≥ 6000 BNB	0.0000% / 0.0200%	0.0000% / 0.0150%

II. THE TERRA (LUNA / UST) ECOSYSTEM

A. The Creation Of The Terra Ecosystem

47. UST and LUNA are crypto-assets that exist as part of a broader Terra ecosystem that was centrally developed by TFL and, among others, TFL's founders Do Kwon and Daniel Shin. The Terra ecosystem has come to encompass numerous "decentralized applications" or "dApps"³ and protocols,⁴ such as the Anchor Protocol—a lending and borrowing platform—and the Mirror Protocol—a platform for trading "mirrored" or synthetic assets, including U.S. stocks traded on major U.S. exchanges (the Mirror Protocol is the subject of an ongoing SEC investigation).

³ A "decentralized application" is a digital application that runs on a blockchain network.

⁴ A "protocol" is essentially a set of rules or foundational layer of code that governs how a system functions.

1 48. Do Kwon is a 30-year old South Korean computer science graduate of Stanford
2 University. He worked at Microsoft and Apple before becoming what the New York Times calls a
3 “trash-talking crypto founder” responsible for the ultimate crash of UST and LUNA.⁵ Do Kwon
4 earned that notoriety through taunts aimed at his critics such as: “I don’t debate the poor.” In
5 addition to LUNA/UST, Do Kwon is also responsible for the launch of another failed algorithmic
6 stablecoin project, Basis Cash.

7 49. Shin is a graduate from the University of Pennsylvania’s Wharton School and was
8 described by TFL as “one of the best known entrepreneurs and investors in East Asia.”⁶ Shin
9 eventually left TFL.

10 50. The first step in the tokenization of the Terra ecosystem was the launch of LUNA,
11 the “native” digital asset of the Terra blockchain. Do Kwon has called LUNA his greatest invention.

12 51. TFL has described LUNA “as the native staking asset from which the family of Terra
13 stablecoins derive their stability, utility, and value, acts both as collateral for the entire Terra
14 economy and as a staking token that secures the PoS network. Luna can be held and traded as a
15 normal crypto-asset but can also be staked to accrue rewards in the network generated from
16 transaction fees. Luna can also be used to make and vote on governance proposals.”

17 52. TFL has advertised LUNA as “backed by” by the parent company of Binance U.S.,
18 which Plaintiff refers to as “Binance-Asia.” Binance-Asia invested in TFL and received LUNA
19 tokens in exchange, the value of which eventually reached \$1.6 billion.

20 53. In April 2019, Do Kwon and several co-authors released the promotional “Terra
21 whitepaper,” which describes the plan to create “Terra Money” in the form of an algorithmic
22 stablecoin that, when pegged to the U.S. dollar, would become UST.

23 54. In September 2020, Do Kwon announced the launch of UST through the secondary
24 crypto-asset exchange Bittrex Global. Do Kwon touted UST as “the first decentralized stablecoin
25 that is scalable, yield bearing and interchain.” Trumpeting the growth potential of UST, Do Kwon

26 _____
27 ⁵ <https://www.nytimes.com/2022/05/18/technology/terra-luna-cryptocurrency-do-kwon.html>.

28 ⁶ <https://kando.tech/person/daniel-shin>.

1 compared UST to a different Terra stablecoin pegged to the South Korean Won, observing that that
2 stablecoin “has been exploding in growth and adoption in Korea, and is today the most actively
3 adopted stablecoin by usership.” Do Kwon explained that UST was a “yield bearing” asset and
4 promoted “the upcoming launch of Anchor, a savings protocol offering stable yield on Terra
5 stablecoins” such that “[UST] will soon be the first censorship-resistant dollar to offer a savings
6 experience competitive with the traditional savings account through Anchor.”

7 **B. The Interrelationship Of UST/LUNA As Part Of An Economic Scheme**

8 55. UST and LUNA are part of a single economic scheme or arrangement. In publicly
9 available informational videos that have been viewed hundreds of thousands of times, TFL describes
10 the way that UST and LUNA work together as a series of understandings, transactions, and
11 contracts. According to TFL, UST is

12 built on Terra’s blockchain. The price of one UST is determined by
13 how many people want it, and by how much UST is available. Let’s
14 imagine the entire Terra economy as a pool. The size of the pool is
15 determined by the total supply of UST. If more people want UST
16 the tide rises, and if less people want UST the tide falls. The height
17 of the pool represents the value of each UST. If you can do more
18 with UST, like buy coffee or invest in stocks, more people will want
19 to buy UST driving up its price. To bring back the water level to
20 one dollar, we can expand the pool by introducing a new supply of
21 UST. But where does new UST come from?

22 56. According to TFL, the central feature of UST as an “algorithmic” stablecoin lies in its
23 guaranteed exchangeability with LUNA and corresponding supply control:

24 At Terra we’ve designed a machine that swaps one dollar worth of
25 Luna to one UST. Investors who predict UST will be more useful
26 and used in the future can buy and hold Luna. When the value of
27 UST rises above one dollar, any Luna holder can swap one dollar
28 worth of Luna for one UST and sell each UST for more than a dollar,
making a profit. The newly introduced UST expands the pool,
bringing its price back to the one dollar peg. Now, Luna is more
scarce and therefore more valuable.

57. Put differently, the LUNA/UST pair was marketed as follows: when the price of UST
goes above \$1 due to increasing demand, the Terra algorithm stabilizes the price by allowing LUNA
holders to mint (*i.e.*, create more) UST—which increases its supply—by exchanging \$1 of LUNA—

1 which is burned (*i.e.*, removed from circulation) to reduce LUNA supply. The trader is incentivized
2 to make that exchange because she can then sell her newly-minted UST for more than \$1 at a profit.
3 Similarly, when demand for UST decreases, causing its price to go below \$1, holders of UST are
4 incentivized by the arbitrage opportunity to mint \$1 of LUNA (which increases its supply) in
5 exchange for UST (which also decreases UST's supply). At least this was the marketing.

6 58. TFL also purported to ensure that UST would be a source of profits through arbitrage,
7 stating: "During times of contraction, any UST holder can profit by swapping UST for Luna raising
8 the price of one UST back to one U.S. dollar. As UST becomes more useful in the long run, Luna
9 holders are rewarded for assuming the risk of short-term price volatility."

10 59. Besides arbitrage, the Terra ecosystem also relies upon "seigniorage," which refers to
11 the profit that a currency-issuer (traditionally, a government) makes through the issuance of the
12 currency. Although issuers of traditional currencies typically incur certain transaction costs that
13 reduce their seigniorage and incentive to issue currency, the Terra whitepaper makes clear that,
14 because UST and LUNA are created from thin air, there is no seigniorage cost to the ecosystem.
15 Indeed, according to the Terra whitepaper, seigniorage is "the value of newly minted currency minus
16 the cost of issuance (which in this case is zero)."

17 60. Fiat currency seigniorage reverts to the government; for UST/LUNA seigniorage,
18 reverts to the "community." As the Terra whitepaper explains: "So how exactly does the machine
19 work? When Luna is swapped for UST a certain percentage is burned and the rest piles up in a
20 community pool. From the other end, new UST is printed. This process is called *seigniorage*. As
21 more applications are built using UST massive demand will cause price to deviate above the one-
22 dollar peg, meaning we need more Luna swapped for UST to expand supply."

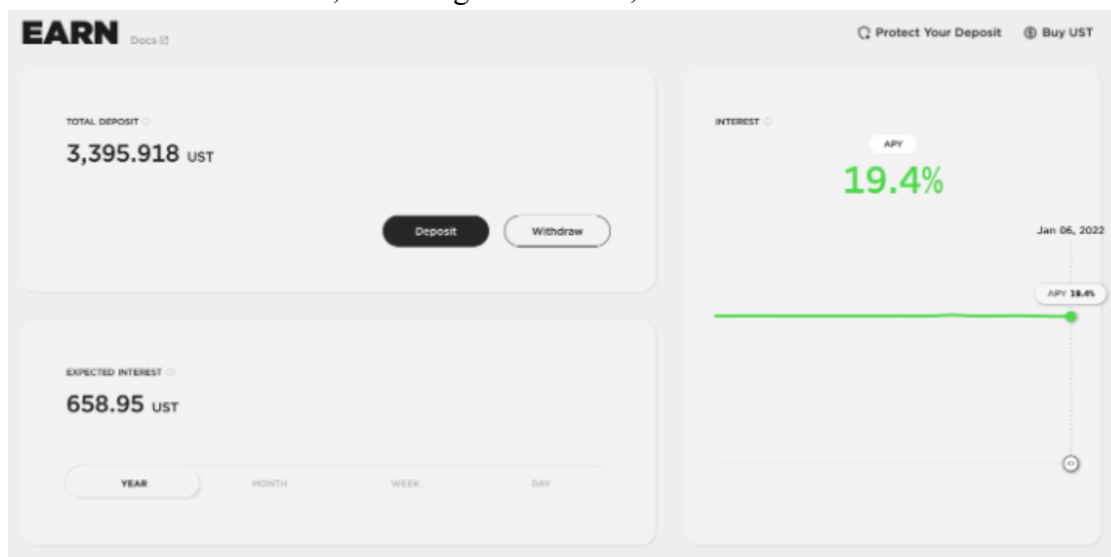
23 61. Through seigniorage, TFL explains: "Luna becomes more and more valuable, and
24 the community pool accumulates more funds. The funds in the community pool are reinvested to
25 build more apps that use UST, and the virtuous cycle of growth continues. Investors who hold Luna
26 see its value rise during times of expansion, and if they choose to stake earn transaction fees in UST.
27 Even when demand for UST is low, Terra's algorithm automatically increases fees so that validators
28

1 are always rewarded with a steady cash flow of UST.” Thus, LUNA allows holders to “earn passive
2 income.”

3 62. According to TFL, LUNA holders are entitled to governance rights analogous to the
4 rights associated with a traditional equity security: “Luna holders can participate in Terra’s
5 governance process, proposing or voting for changes in transaction fees, seigniorage allocation, tax
6 rate, and many more.” Thus, LUNA “collateralizes UST . . . much like the moon—which stabilizes
7 the earth’s rotation—Luna and its stakers are essential to Terra’s stability.”

8 **C. The Anchor Protocol Created By TFL Formed An Essential Part Of The**
9 **UST/LUNA Economic Scheme**

10 63. In July 2020, as Do Kwon had previewed, TFL launched the Anchor Protocol to
11 provide a passive profit-making incentive to UST holders. Nicholas Platias, who was the Head of
12 Research at TFL, announced the launch of the Anchor Protocol as a saving and lending protocol
13 that, he explained, “facilitates depositing and borrowing of Terra stablecoins.” Platias elaborated
14 that the Anchor Protocol would “offer depositors a stable return” as a “household savings product
15 powered by cryptocurrency” and the “gold standard for passive income on the blockchain.” The
16 Anchor Protocol promised lenders annual percentage yields of nearly 20%, and its total value locked
17 (“TVL”) swelled to \$17 billion—about 70% of all value in the Terra ecosystem. And in fact Anchor
18 paid those rates to UST holders, including as of June 6, 2022:



1 64. Coupled with the Anchor Protocol, investors bought UST in droves, looking to
2 capitalize on the promise of tremendous investment returns that, according to the marketing, was
3 safe.

4 65. In insults levied at his critics—some of whom accused LUNA/UST of being a Ponzi
5 scheme—TFL and Do Kwon talked a big game, rejecting such accusations. TFL and Do Kwon
6 maintained that the algorithm underlying UST was sound and its reliance on LUNA appropriate and
7 that UST was a safe investment for investors, who should store UST on the Anchor Protocol to
8 realize fantastic profits. Binance U.S. echoed such claims, claiming that UST was “safe” and
9 promoting UST and the Anchor Protocol.

10 **D. Despite Claiming That The Algorithm Underlying UST Was Sound, TFL**
11 **Establishes Non-Luna Reserves To Protect The UST Peg**

12 66. Perhaps in recognition that UST was in fact susceptible to a “death spiral” in the event
13 of rapidly declining demand in LUNA resulting in a bank run on UST, TFL ultimately decided to
14 depart from the Terra whitepaper’s promise of a purely “algorithmic stablecoin” backed by LUNA
15 by relying instead on collateralizing its value through Bitcoin and other non-LUNA reserves. This
16 was prelude to the crash that would wipe out the value of UST.

17 67. On January 19, 2022, Do Kwon announced the launch of the Luna Foundation Guard
18 (the “LFG” and collectively with TFL and Do Kwon, the “Terra Organization”), an organization
19 “mandated to build reserves supporting the \$UST peg amid volatile market conditions” and to
20 “allocate resources supporting the growth and development of the Terra ecosystem” through grants.

21 68. On March 23, 2022, Jump Trading, one of the investors behind the LFG, proposed a
22 mechanism for how to deploy Bitcoin reserves to prop up UST’s price in a crisis.

23 69. On March 28, 2022, the LFG’s Bitcoin wallet address purchased 27,000 bitcoin worth
24 roughly \$1.3 billion. Over the next month, LFG continued to buy up Bitcoin reserves to defend the
25 UST peg in the event of a crisis. As a result of these open market purchases by LFG, LUNA’s price
26 soared.

27 70. On April 5, 2022, LUNA reached an all-time high of \$119.20.
28

1 71. On April 14, 2022, TFL gave LFG 10 million LUNA tokens, which at the time had a
 2 value of \$820 million.

3 72. Do Kwon ultimately wanted to build a \$10 billion Bitcoin reserve to back UST’s peg,
 4 stating in March 2022 that this reserve would also be funded by seigniorage: “It’s not 10B today -
 5 as UST money supply grows a portion of the seigniorage will go to build BTC reserves bridged to
 6 the Terra chain[.]” But Do Kwon never reached \$10 billion, and the reserves that the Terra
 7 Organization had accumulated proved insufficient to ward off the impending depegging of UST and
 8 its subsequent crash.

9 **E. UST Collapses, Wiping Out Billions Of Dollars In Investments**

10 73. By April 4, 2022, LUNA was trading at \$116.41, with a market capitalization of over
 11 \$40 billion:





74. And by May 5, 2022, the market capitalization of UST had reached an incredible \$18.73 billion, with much of the UST stored on Anchor, where investors raised incredible passive profits.



75. The collapse of the Terra ecosystem was even more sudden than its rise.

1 76. On May 7, 2022, the crash of UST began. On that day alone, UST owners swapped
 2 \$85 million worth of UST for a competitor stablecoin called USDC.

3 77. On May 8, 2022, following a series of large withdrawals of UST on the Anchor
 4 Protocol (and illustrating the central connection between UST and the Anchor Protocol), the price
 5 of UST dipped to \$0.985, below the \$1 peg.

6 78. On May 9, 2022, UST holders withdrew approximately \$5 billion in UST from the
 7 Anchor Protocol, reflecting an incredible capital flight. The price of UST fell to \$0.35.

8 79. On May 9, 2022, Do Kwon sought to reassure investors, tweeting: “Deploying more
 9 capital – steady lads.”

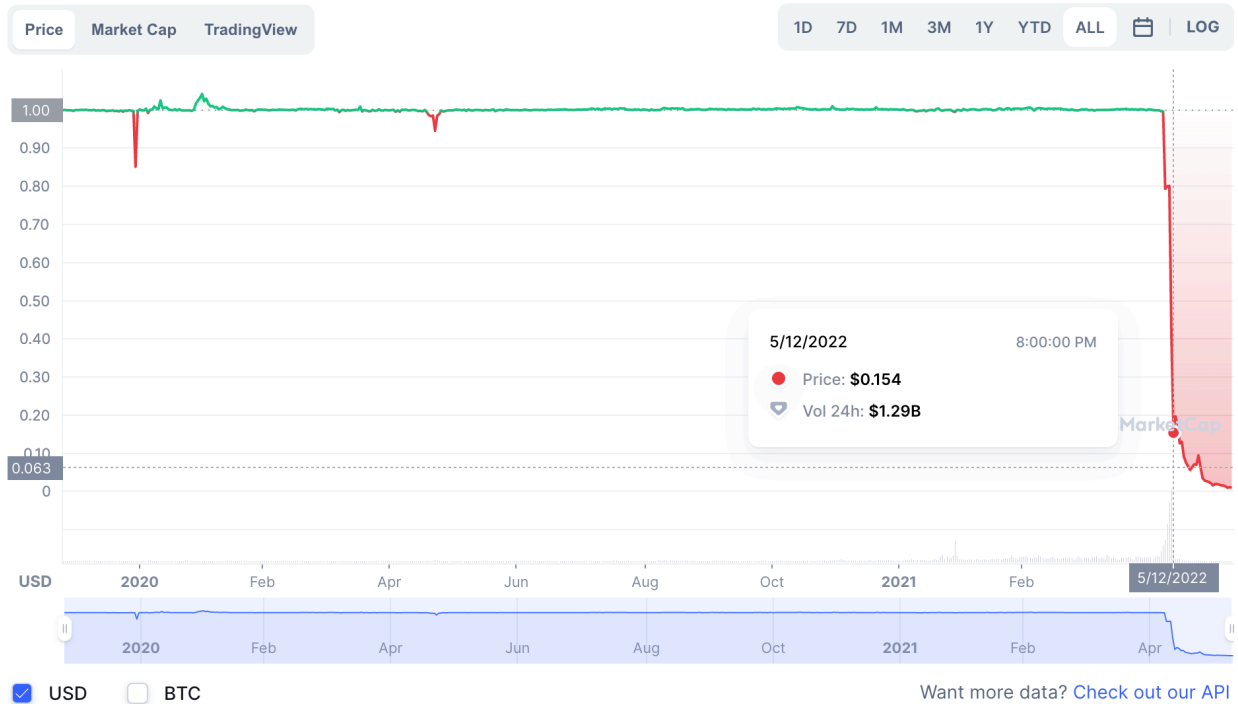


10
 11
 12
 13
 14
 15 80. By May 11, 2022, the market capitalization of LUNA was just \$541 million and its
 16 price had declined to \$.004:





81. By May 12, over the preceding 24 hours, the price of LUNA had fallen 96%. Without the backing of LUNA, the price of UST crashed to 15 cents:



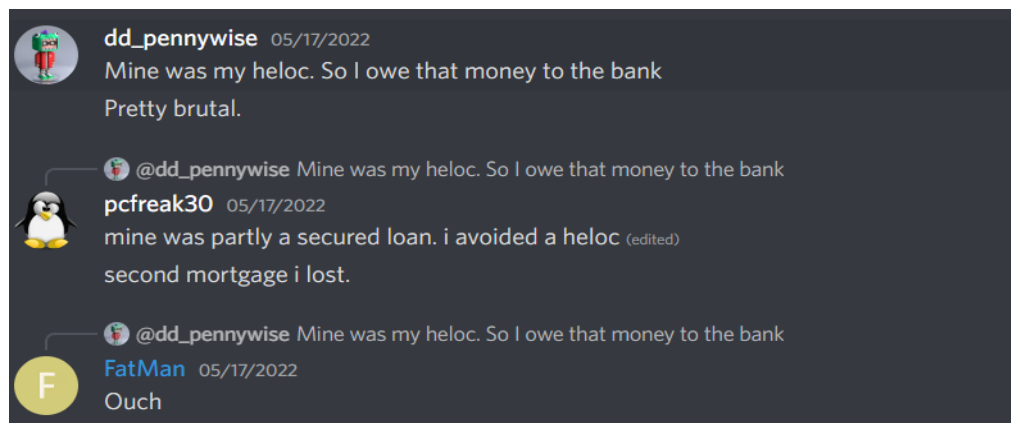
82. A few days later, LFG confirmed that it had attempted to maintain UST’s peg, depleting its Bitcoin reserves from 80,000 Bitcoin (worth approximately \$2.883 billion) to just 313 Bitcoin (worth approximately \$11.2 million). In other words, LFG had failed in its efforts.

1 83. By the end of May 2022, the price of UST was down to approximately 1 cent – leaving
2 investors who had purchased and held the supposed stablecoin with losses of approximately 99%.

3 84. This collapse of UST was devastating for investors, who were made to believe that
4 UST was a “safe” “fiat-backed stablecoin.”

5 85. An incredible number of investors lost much, if not all, of their life savings. As the
6 New York Times noted, “retail traders now grapple with devastating losses” that some have said
7 were caused by the “irresponsible behavior of the institutions backing Mr. Kwon.” Binance U.S. is
8 one of those institutions.

9 86. The stories of retail investors are horrific, as they had investments wiped out, losing
10 so much on the irresistible promise of endless and safe profit. For example, some investors took
11 out home equity loans to purchase UST and have thus been left severe debt.



12
13
14
15
16
17
18
19 87. Other investors were in such despair that they commented in online forums that they
20 were contemplating suicide as a result of the UST/LUNA crash.

21 88. The harm is not limited just to UST/LUNA investors, because as the New York Times
22 reported, “[t]heir meltdowns had a domino effect on the rest of the cryptocurrency market, tanking
23 the price of Bitcoin and accelerating the loss of \$300 billion in value across the crypto economy.”
24 In May 2022, Secretary of the Treasury Janet Yellen even testified to Congress that “TerraUSD
25 experienced a run and declined in value” illustrating that “there are risks to financial stability.”
26
27
28

1 89. The harm suffered as a result of the UST/LUNA scheme cannot be understated—and
2 must be remedied.

3 **III. THE SEC HAS REPEATEDLY INSTRUCTED THAT CRYPTO-ASSETS LIKE UST AND LUNA**
4 **ARE SECURITIES**

5 90. The SEC has repeatedly both provided guidance and engaged in enforcement actions
6 on the basis that crypto-assets are securities. For example., the SEC examined how crypto-assets could
7 qualify as securities under existing law in the SEC’s *Report of Investigation Pursuant to Section*
8 *21(a) of the Securities Act of 1934: The DAO* (the “2017 DAO Report”).⁷ In that report, the SEC
9 examined the application of the Securities Act and the Exchange Act to the issuance and trading of
10 crypto-assets.

11 91. With respect to the application of the Securities Act to crypto-assets, the SEC
12 concluded (1) that crypto-assets may qualify as securities pursuant to the Securities Act and the test
13 articulated in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), and that (2) issuers of crypto-assets that
14 fit within the definition of security under the *Howey* test are subject to the registration and reporting
15 requirements of the Securities Act.⁵

16 92. Similarly, the SEC concluded that crypto-asset trading platforms may satisfy the
17 meaning of “exchange” as defined by the Exchange Act if they “provide[] users with an electronic
18 system that matched orders from multiple parties to buy and sell [digital assets] for execution based
19 on non-discretionary methods.” The SEC noted that a “system that meets the criteria of Rule 3b-
20 16(a), and is not excluded under Rule 3b16(b), must register as a national securities exchange
21 pursuant to Sections 5 and 6 of the Exchange Act or operate pursuant to an appropriate exemption.”

22 93. Following a boom of initial coin offerings (“ICOs”) in 2017, the SEC issued further
23 guidance as to the application of the *Howey* test to crypto-assets in a 2019 report entitled *Framework*

24
25
26 ⁷ *Report of Investigation Pursuant to Section 21(a) of the Securities Act of 1934: The DAO,*
27 **SECURITIES AND EXCHANGE COMMISSION** (Jul. 25, 2017),
28 <https://www.sec.gov/litigation/investreport/34-81207.pdf>.

1 for “Investment Contract” Analysis of Digital Assets (the “Framework”).⁸ The report reiterated that
2 whether a particular crypto-asset is an investment contract, and thus a security, requires an analysis
3 of the facts and circumstances surrounding the crypto-asset’s creation and issuance.

4 94. Following this guidance, the SEC has engaged in enforcement actions on the basis that
5 several different tokens are in fact securities. On September 30, 2019, Block.one, the issuer of the
6 EOS crypto-asset, agreed to pay \$24 million to settle charges that it had raised several billion dollars
7 through an unregistered securities offering when it conducted the ICO for the EOS token. Similarly,
8 on December 22, 2020, the SEC brought charges against Ripple Labs Inc. and two of its executives,
9 alleging that they had raised over \$1.3 billion through an unregistered crypto-securities offering
10 through the ICO of XRP. The case is ongoing.

11 95. On July 21, 2021, speaking to the American Bar Association, SEC Chairman Gensler
12 commented on the fact that digital asset trading platforms were offering tokens that are priced off
13 of securities and resemble derivatives, stating:

14 Make no mistake: It doesn’t matter whether it’s a stock token, a
15 stable value token backed by securities, or any other virtual product
16 that provides synthetic exposure to underlying securities. These
17 platforms—whether in the decentralized or centralized finance
18 space—are implicated by the securities laws and must work within
19 our securities regime.

18 **IV. UST IS AN UNREGISTERED SECURITY**

19 96. Although unregistered, UST is a security because it is an investment contract, or, in
20 the alternative, because it is a derivative product of LUNA. The first bona fide public offering of
21 UST occurred on or about September 2020.

22 **A. UST Is An Investment Contract**

23 97. Analysis of the facts and circumstances surrounding UST tokens shows that they are
24 investment contracts under *Howey* and are therefore securities. Under *Howey*, a contract,
25 transaction, or scheme is an investment contract if it involves (1) an investment of money (2) in a
26

27 ⁸ *Framework for “Investment Contract” Analysis of Digital Assets*, SECURITIES AND
28 EXCHANGE COMMISSION (Apr. 3, 2019), <https://archive.ph/4wS5f> (the “Framework”).

1 common enterprise (3) with the expectation of profit (4) from the essential efforts of another. UST
2 tokens involve contracts, transactions, and schemes, including a series of understandings,
3 transactions, and undertakings, that when viewed as a whole, amount to a security.

4 1. *UST Purchasers Made An Investment Of Money*

5 98. Purchasers of UST, including on Binance U.S., acquired UST in an exchange of value.
6 As the SEC has noted in the *Framework*, the “first prong of the *Howey* test is typically satisfied in
7 an offer and sale of a digital asset because the digital asset is purchased or otherwise acquired in
8 exchange for value, whether in the form of real (or fiat) currency, another digital asset, or other type
9 of consideration.”

10 2. *UST Purchasers Invested In A Common Enterprise*

11 99. Purchasers of UST, including on Binance US, understood that they were investing
12 money in a common enterprise. TFL pooled the money received from UST purchasers and
13 seigniorage, and then used it to develop the Terra ecosystem as well as maintain and expand it. Each
14 UST token is fungible with all others, and the fortunes of all UST investors are “linked to each other
15 [and] to the success of [the Terra Organizations’] efforts.” Indeed, the SEC has stated that “[i]n
16 evaluating digital assets, we have found that a ‘common enterprise’ typically exists.”

17 100. The Terra whitepaper explained that the fortunes of UST users were linked together,
18 since “a medium of exchange is mainly driven by its network effects” and thus in order to succeed
19 it had to “to maximize adoption in order to become useful.” The Terra whitepaper, entitled “Terra
20 Money: Stability and Adoption,” observes a critical difference of UST compared to other crypto-
21 assets was the “clear plan for the adoption” for UST that TFL had developed. As Do Kwon
22 emphasized, the central premise of UST is that all of the fortunes of UST holders are linked with
23 the success of the Terra ecosystem, since “currencies are ultimately backed by the economies that
24 use them”:
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



101. Indeed, during the beginning of the crash of UST/LUNA, TFL emphasized that, “MFers we are the peg,” meaning that the success of UST and LUNA investors is linked with each other and with the Terra ecosystem itself:



102. The Terra whitepaper also explained that the fortunes of UST investors were linked to the success of the overall enterprise and to the fortunes of TFL and the Terra network’s developers

1 and promoters. The whitepaper makes clear that, in order to drive the adoption of the Terra network
 2 and UST, the protocol would have a “growth-driven fiscal policy” relying upon incentivizing the
 3 development of “Terra Platform DApps [that] will help to drive growth and stabilize the Terra
 4 family of currencies by diversifying its use cases.” The Terra whitepaper explains further that a
 5 “portion of seigniorage goes to the Treasury to fund fiscal stimulus” to create “strong incentives for
 6 users to join the network with an efficient fiscal spending regime, managed by a Treasury, where
 7 multiple stimulus programs compete for financing . . . they will be financed with the objective to
 8 increase adoption and expand the potential use cases.” Indeed, “on average 50% of seigniorage is
 9 granted to the Treasury” and thus “returning seigniorage not allocated for stability back to its users.”
 10 Further, when Do Kwon announced the creation of the LFG on January 19, 2022, he specified that
 11 it would “allocate resources supporting the growth and development of the Terra ecosystem”
 12 through grants.

13 103. In the midst of the UST/LUNA crash, Do Kwon emphasized the common enterprise
 14 between UST holders and TFL:



22 104. The statement reflects the reality that purchasers of UST tokens were investing in a
 23 common enterprise.

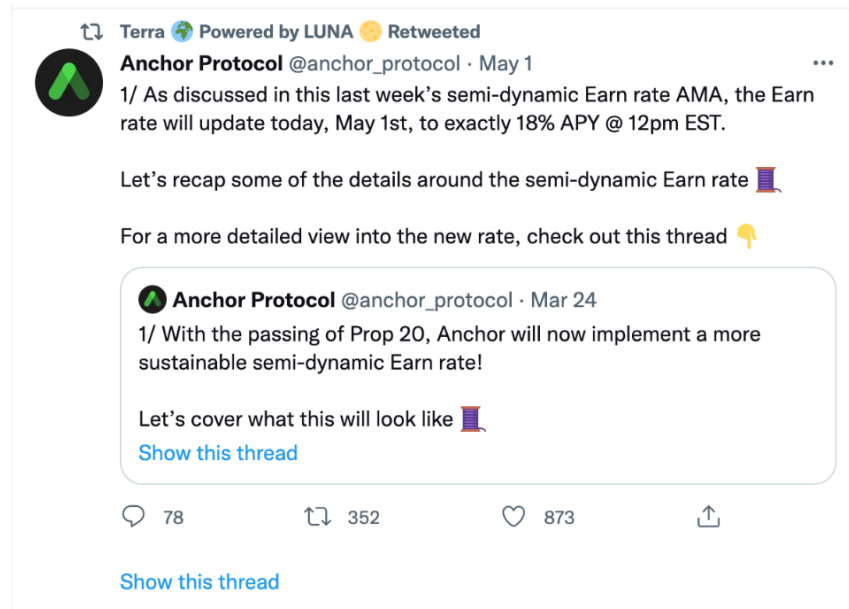
24 3. *UST Purchasers Had A Reasonable Expectation Of Profits*

25 105. Investors in UST, including purchasers of UST on Binance U.S., reasonably expected
 26 to receive profits from their investment in UST in multiple ways.

1 106. For example, as Terra’s whitepaper makes clear, purchasers of both UST and LUNA
2 expect to earn profits through arbitrage. The Terra algorithmic stablecoin system is premised on
3 the ability of LUNA and UST holders to “extract risk-free profit” from arbitrage opportunities
4 between the price of LUNA and UST.

5 107. The Terra whitepaper also explains that the Terra blockchain relies upon a Proof of
6 Stake protocol that creates “predictable rewards in all economic conditions.” The Terra ecosystem
7 accomplishes this profit-earning incentive by making it so that “[a]ll Terra transactions pay a small
8 fee to miners” and through seigniorage, which means that the protocol “burns a portion of earned
9 Luna, which makes mining power scarcer.”

10 108. And purchasers of UST had a reasonable expectation that they would be able to earn
11 profits through staking on the lending the Anchor Protocol. As of April 22, 2022, shortly before the
12 UST/LUNA crash, an astonishing 72 percent of all UST was deposited on the Anchor Protocol to
13 earn approximately 20% interest on deposits—an interest rate that has been called “nuts.” TFL
14 promoted these rates, driving the expectation of profits by UST purchasers:



1 109. Indeed, there are few, if any, goods or services that can be directly purchased using
 2 UST. Accordingly, all or nearly all UST traded on Binance U.S. is not used for any direct utility,
 3 and is instead traded among users who anticipate profiting thereby.

4 4. *UST Purchasers Expected Profits In Reliance On The Efforts Of Others*

5 110. The *Framework* provides that reliance on the efforts of others prong under *Howey* is
 6 likely to be met where “there are essential tasks or responsibilities performed and expected to be
 7 performed by an AP, rather than an unaffiliated, dispersed community of network users (commonly
 8 known as a ‘decentralized’ network).” Such efforts might include “actions to support a market price
 9 of the digital asset, such as by limiting supply or ensuring scarcity, through, for example, buybacks,
 10 ‘burning,’ or other activities.” Investors in UST undoubtedly expected their profits to derive from
 11 the efforts of the Terra Organization.

12 111. Further, with respect to the Anchor Protocol, TFL also took actions to support the
 13 market price of UST by working to ensure that purchasers of UST could make enormous profits
 14 through the Anchor Protocol. In February 2022, TFL intervened to inject \$450 million worth of
 15 UST into the Anchor Protocol’s reserves to ensure that the Anchor Protocol could “tap into its
 16 reserves in order to pay lenders the promised yield” despite dwindling borrowing demand. As Do
 17 Kwon tweeted at the time, TFL had ensured that the Anchor Protocol was “funded”—thereby
 18 guaranteeing UST purchasers’ reasonable expectation of profits.

19 112. The Terra Organization also consistently represented that UST represented
 20 “decentralized money” with Do Kwon tweeting:



1 113. And Do Kwon and TFL advertised that UST represented “decentralized money.”

2 114. In reality, TFL acts as a centralized responsible actor performing essential tasks for
 3 the Terra ecosystem, including supporting the price of UST.

4 115. For example, TFL performed tasks that were essential to the Terra ecosystem in its
 5 role in creating and maintaining “Terra Station” through which purchasers of UST and LUNA are
 6 able to “create a wallet, stake LUNA, send tokens, and participate in governance.” Indeed, much of
 7 the functionality of the Terra ecosystem and Terra-backed tokens, including UST and LUNA, is
 8 directly provided by TFL.

9 116. In addition, a *Framework* factor going to the reasonable expectation of profits is “[t]he
 10 availability of a market for the trading of the digital asset, particularly where the AP implicitly or
 11 explicitly promises to create or otherwise support a trading market for the digital asset.” TFL
 12 marketed the availability of a secondary market for UST; indeed, TFL launched UST on a secondary
 13 market. For example, TFL retweeted the listing announcement of UST by secondary exchanges:



14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26 117. Binance-Asia was an early investor in Terra Labs, with its founder and CEO
 27 Changpeng Zhao (“CZ”) noting that “[w]e invested in Terra as a part of a Binance Labs investment
 28

1 in 2018, and that was a \$3 million investment.” TFL directed UST holders and potential purchasers
2 to Binance for updates and information:



17 118. TFL also touted that investors could “earn” UST through engagement with Binance-
18 Asia’s promotional materials:

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



119. And during the crash of UST and LUNA, CZ made clear that Terra Labs’ directly communicated with Binance-Asia, explaining that Do Kwon “was getting updates from our team. I was looking at the situation. I was telling our team to communicate with [TFL] with specific requests. [Do Kwon] needs to be more responsive. He was somewhat slow in responding to us, to Binance. We’re the biggest liquidity provider for him, and when we reach out, most other projects will always respond to us, and he was kind of slow.” CZ’s comments make clear not only the critical role that Binance played as the “biggest liquidity provider” for UST, but also that the efforts of TFL and Do Kwon critically affect the failure or success of the enterprise, including UST.

120. Still further, the Terra Organization ultimately decided to depart from the Terra whitepaper’s promise of an “algorithmic stablecoin” relying on its exchangeability with LUNA to maintain its 1:1 dollar peg. Instead, the Terra Organization decided to provide additional support for the dollar peg of UST by collateralizing its value through Bitcoin reserves, as noted above.

1 121. Once UST was backed by Bitcoin, the price of both UST and LUNA undoubtedly
 2 became dependent on the efforts of LFG. For example, once UST was backed by Bitcoin, and UST
 3 went off its peg, LFG attempted to reestablish the peg by selling its Bitcoin holdings to inject
 4 liquidity into the market for UST. Underscoring the enormity of its intervention, on May 5, 2021,
 5 TFL and LFG announced that they had acquired approximately \$1.5 billion in Bitcoin reserves:



16
 17 122. But even that was not enough. Further illustrating the interconnectedness of LFP and
 18 TFL with each other and to LUNA and UST, LFG defended the UST peg through the efforts of
 19 TFL, which “managed & executed all finance, administrative, & operational functions & support”
 20 on behalf of LFG to execute the trades:
 21
 22
 23
 24
 25
 26
 27
 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



123. As described further above, LFG was forced to sell a substantial portion of its Bitcoin holdings at a substantial loss to save the plummeting UST, which fell from \$0.995 to \$0.60 in a matter of hours, causing LUNA to fall more than 50% on the same day. In the midst of the crash, Do Kwon made clear that it was the centralized efforts of the Terra Organization's infusion of new capital that was propping up the UST peg, which users on Twitter rightly noted at the time contradicted the Terra Organization's claims of decentralization:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

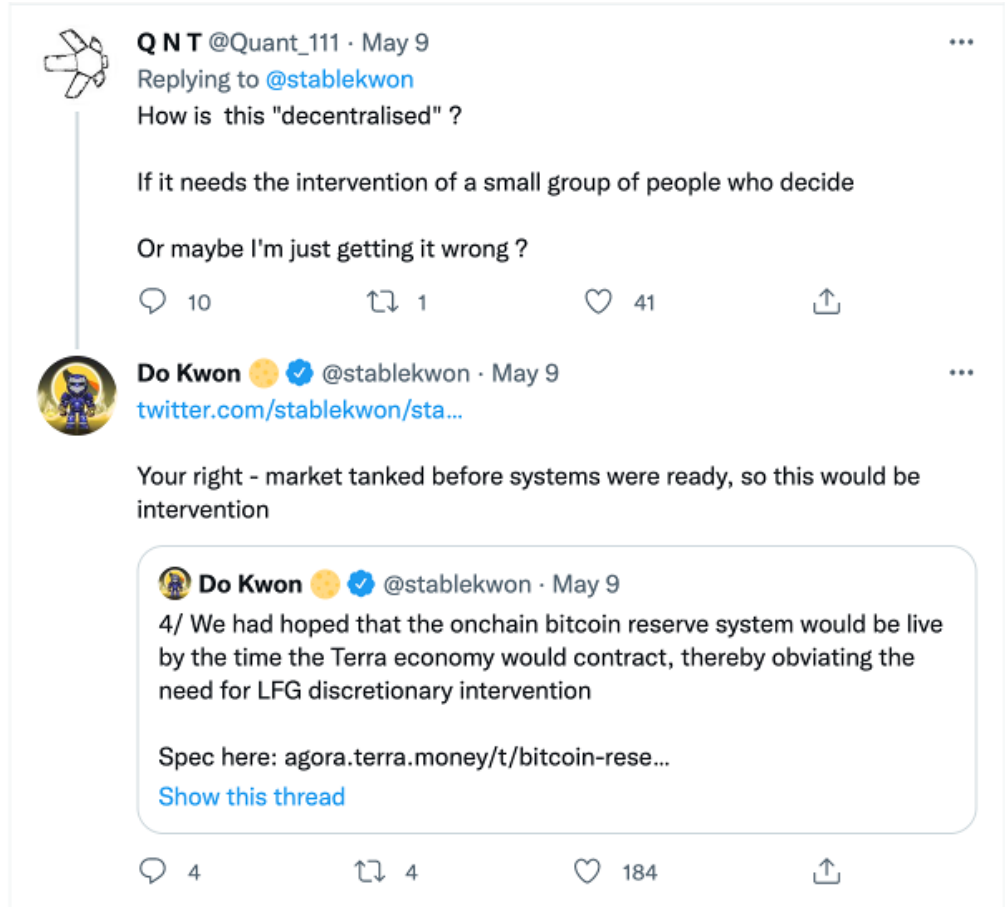


124. Ultimately, LFG’s sale of billions of dollars in Bitcoin was a failed effort to reestablish the 1:1 USD to UST peg, with Do Kwon admitting that all but 313 Bitcoin had been used to defend the price of UST:



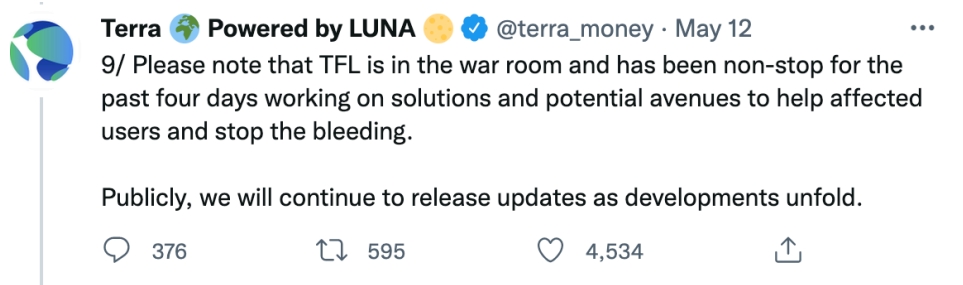
125. Over the next several days, LUNA declined in value to \$0.00001 (from a high of over \$119). Do Kwon has conceded that these efforts demonstrated that the Terra ecosystem never achieved decentralization and was reliant on the managerial efforts of the Terra Organization:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

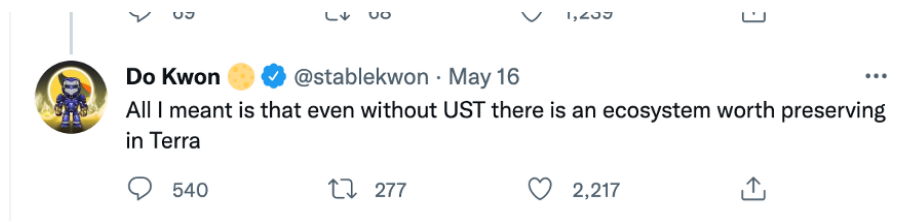


126. That TFL was always, under the *Framework*, “performing or overseeing tasks that are necessary for the network or digital asset to achieve or retain its intended purpose or functionality” is also clear from its other actions during the UST/LUNA crash.

127. TFL unilaterally halted the Terra blockchain during the UST/LUNA crash to buy time “to come up with a plan to reconstitute” the Terra network. TFL restarted the Terra blockchain once it had provided a software update to avoid attacks against the network in the wake of the collapse of UST and LUNA. TFL made clear that its efforts were to try to “stop the bleeding” of UST—in other words, to try halt UST from depegging from the dollar:



1 128. These actions demonstrate that UST was only ever valuable if the team behind TFL,
 2 including the LFG and the core team of technology developers, committed the managerial efforts
 3 needed to develop, maintain, and promote the Terra network and its underlying algorithms. As Do
 4 Kwon has admitted, UST derives its value from the network, such that even if UST did not exist,
 5 the network itself would be “worth preserving”:



12 ***

13 129. Based on the foregoing facts, among others, UST is an investment contract and
 14 therefore a security. However, UST has never been registered as a security.

15 **B. UST Is Also An Unregistered Security Because It Is A Derivative Of LUNA,
 16 Another Unregistered Security**

17 130. Independently, UST is also a security because it is a derivative of another security—
 18 namely, LUNA. This conclusion is consistent with the August 3, 2021, remarks of SEC Chairman
 19 Gensler before the Aspen Security Forum that “a stable value token backed by securities . . . [is]
 20 subject to the securities laws and must work within our securities regime.”

21 131. UST is backed by LUNA. UST is intended to maintain its 1:1 dollar peg through its
 22 exchangeability for \$1 of LUNA. As described in the Terra whitepaper, “Luna also serves as the
 23 most immediate defense against Terra price fluctuations” such that “[w]hen TerraSDR’s price < 1
 24 SDR, users and arbitragers can send 1 TerraSDR to the system and receive 1 SDR’s worth of Luna.”
 25 The Terra whitepaper also describes how the “system finances Terra price making via Luna”
 26 through the minting and burning of LUNA in response to exchanges for UST—in this way,
 27
 28

1 “volatility is moved from Terra price to Luna supply.” Given that the value of UST is backed by a
2 security, LUNA, UST is also a security.

3 132. UST is also an option to purchase LUNA. As the Terra whitepaper explains, “[t]he
4 system uses Luna to make the price for Terra by agreeing to be counter-party to anyone looking to
5 swap Terra and Luna at Terra’s target exchange rate.” That is, purchasers of UST are purchasing
6 the right to buy LUNA at a specified price. An option to purchase a security is likewise a security.

7 133. LUNA is also a security because it meets the *Howey* test for an investment contract.
8 Many of the reasons that LUNA is a security are explained above in Section IV.A, *supra*. To avoid
9 repetition, Plaintiff incorporates those paragraphs by reference and adds the following for clarity:

10 1. *LUNA Purchasers Made An Investment Of Money*

11 134. Investors purchase LUNA through an investment of money—*i.e.*, they exchange
12 value to acquire LUNA.

13 2. *LUNA Purchasers Invested In A Common Enterprise*

14 135. Purchasers of LUNA also invest in a common enterprise. TFL pooled the money
15 received from LUNA purchasers and seigniorage, then used it to develop the Terra ecosystem as
16 well as to maintain and expand it. Each LUNA token is fungible with all others, and the fortunes
17 of all LUNA investors are “linked to each other [and] to the success of [the Terra Organizations’]
18 efforts.”

19 136. LUNA was marketed as deriving value from its ability to act as a governance token
20 of the Terra blockchain. This governance right, which resembles the voting rights of many
21 traditional securities, means that LUNA purchasers participated in a common enterprise with each
22 other and depended on the managerial effort of the issuer in creating and maintaining the algorithms
23 supporting UST and LUNA, as the governance is only valuable if the Terra blockchain is
24 maintained.

25 3. *LUNA Purchasers Had A Reasonable Expectation Of Profits*

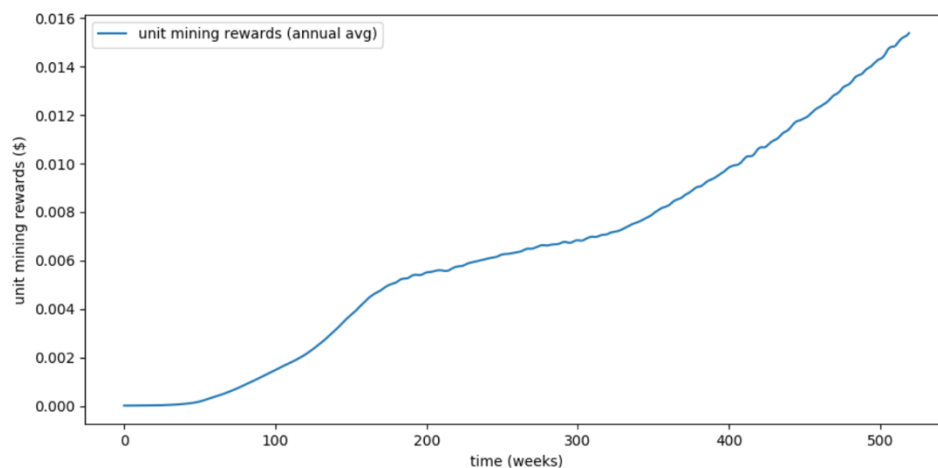
26 137. Purchasers of LUNA had a reasonable expectation that they would profit from their
27 investment. That expectation was driven by the promotion of LUNA by the Terra Organization.
28

1 138. *First*, like UST purchasers, LUNA purchasers also expected to make profits through
 2 arbitrage. The algorithmic Terra stablecoin system is premised on the ability of LUNA and UST
 3 holders to “extract risk-free profit” from arbitrage opportunities between the price of LUNA and
 4 UST.

5 139. *Second*, LUNA purchasers also expected to make profits through mining rewards.
 6 Purchasers expected they would be able “to stake a native cryptocurrency Luna to mine Terra
 7 transactions.” It was so important for Terra that LUNA be able to be mined profitably, that the
 8 Terra whitepaper explained the profit potential of staking LUNA in mathematical terms:

$$P(t) = \frac{\text{TotalRewards}(t)}{\text{LunaSupply}(t)} - \text{UnitMiningCost}(t)$$

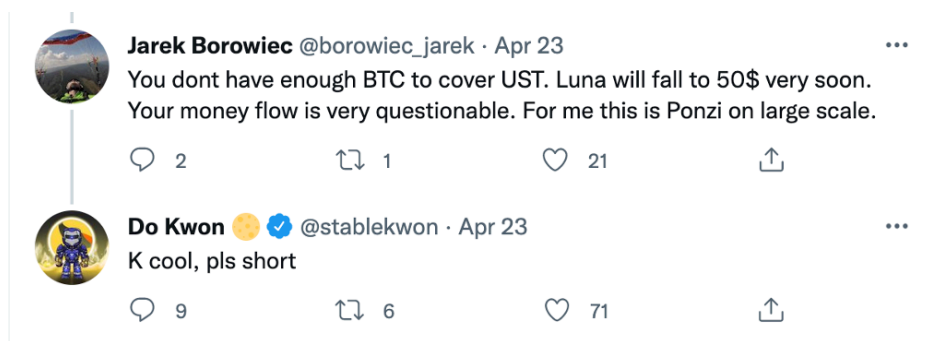
9
 10
 11
 12 A purpose of the Terra protocol was to ensure that this formula would be positive no matter what
 13 over time. As the whitepaper states: “**the protocol creates predictable rewards in all economic**
 14 **conditions.**” (emphasis in original). Indeed, the Terra whitepaper—based on a series of
 15 assumptions about transaction volume, fees, and LUNA burn rate—estimated a 15% annual increase
 16 in rewards for staking LUNA. The whitepaper also graphically illustrated the phenomenal returns
 17 LUNA investors could expect:



1 140. Do Kwon marketed the profits LUNA investors enjoyed, touting in the months before
2 it crashed that LUNA was returning \$4 billion in dividends “collected entirely by fees” and with
3 “no inflation”:



11 141. *Third*, LUNA investors expected LUNA’s market price to appreciate. The Terra
12 Organization actively encouraged secondary trading of investors speculating on the price of LUNA.
13 For example, in the weeks before the crash of UST/LUNA, when someone questioned the price of
14 LUNA on the basis that the Terra ecosystem was a “Ponzi scheme” and UST was not adequately
15 collateralized, Do Kwon cavalierly dismissed the concerns:



23 142. And, until its sudden crash, the price of LUNA increased rapidly to a high of
24 approximately \$119 per token.

25 143. There are few, if any, goods or services that can be directly purchased using LUNA.
26 To the extent that LUNA can be directly exchanged for any goods or services, there is little or no
27 apparent correlation between the market price of those goods or services and the price of LUNA.
28

1 Accordingly, all or nearly all LUNA traded on secondary exchanges is not used for any direct utility,
2 and is instead traded among users who anticipate profiting thereby.

3 4. *LUNA Purchasers Expected Profits In Reliance On The Efforts Of Others*

4 144. LUNA purchasers relied upon the centralized managerial efforts of the Terra
5 Organization to realize the profits that they expected from LUNA.

6 145. *First*, LUNA purchasers expected to receive a portion of the transaction fees of LUNA
7 processed on the Terra network. The Terra whitepaper makes clear that “rewards from fees tend to
8 increase when the economy grows and tend to decrease when the economy shrinks.” LUNA
9 purchasers relied upon the efforts of the LUNA organization to expand the Terra “economy” such
10 that their fees would grow. As discussed above, a portion of LUNA seigniorage “goes to the
11 Treasury to fund fiscal stimulus” which is “used as an efficient stimulus to drive adoption.”

12 146. *Second*, as discussed above with respect to UST, TFL performed tasks that were
13 essential to the Terra ecosystem and LUNA’s value through its role in creating and maintaining
14 Terra Station.

15 147. *Third*, as discussed above with respect to UST, the Terra Organization’s attempt to
16 back the UST 1:1 peg to the dollar through collateral reserve other than LUNA was a centralized
17 effort meant to prop up the price of LUNA. When that centralized effort failed, the price of LUNA
18 accordingly crashed, illustrating that LUNA purchasers were completely dependent upon the Terra
19 Organization’s efforts to maintain LUNA’s market value.

20 148. *Fourth*, following the crash of UST/LUNA, TFL made clear that without its
21 centralized managerial efforts, the Terra network’s infrastructure would have been unable to support
22 LUNA on an ongoing basis (called “LUNA classic” following the crash):

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



149. *Fifth*, TFL marketed the availability of a secondary market for LUNA. For example, Do Kwon retweeted the listing announcement of LUNA by secondary exchanges:



150. Based on the foregoing facts, among others, LUNA is an unregistered security. And UST is accordingly an unregistered security as a derivative of LUNA.

V. BINANCE U.S. LISTED AND SOLD UST EVEN THOUGH UST IS NOT REGISTERED, IN VIOLATION OF THE SECURITIES LAWS

151. Binance U.S. listed and sold UST on its platform on or around April 13, 2022. Because UST is an unregistered security and because Binance U.S. offers UST for sale, Binance

1 U.S. has sold unregistered securities to Plaintiff. In fact, Binance U.S.’s business model is premised
2 on illegally enabling the sales of unregistered securities to as many U.S. investors as possible, as
3 often as possible.

4 152. The structure of Binance U.S. means that it is the counterparty in every transaction in
5 UST on Binance U.S. Customers only exchange funds and crypto-assets with Binance U.S. itself,
6 and never with other users. All transactions in UST made on Binance U.S. are reflected only in
7 Binance U.S.’s internal records, and Binance U.S. itself receives all funds and provides all UST
8 purchased. Binance U.S. is thus in privity with each Binance U.S. customer in each of their
9 transactions, and is the seller whenever a customer buys a token on Binance U.S.

10 153. Moreover, Binance U.S. solicits UST for sale to earn trading fees. Binance U.S.
11 promotes the sale of UST by providing users with descriptions of UST and its purported value
12 proposition. Binance U.S. also participated in direct promotions, including “airdrops” of free UST
13 designed to increase trading volume. Binance U.S. also writes news updates on price movements
14 of the UST and links to stories about the UST published across the internet. These solicitations
15 profit Binance U.S. by increasing the number of transactions on Binance U.S. and thus the fees paid
16 to it; these solicitations are thus motivated at least in part by a desire to serve their own financial
17 interests.

18 **VI. BINANCE U.S. ILLEGALLY LISTED AND SOLD THE UST SECURITY EVEN THOUGH IT IS**
19 **NOT REGISTERED AS AN EXCHANGE, IN VIOLATION OF THE SECURITIES LAWS**

20 154. Binance U.S. satisfies the criteria of Exchange Act Rule 3b-16(a) and is not exempt
21 under Rule 3b-16(b). Binance U.S. brings together orders of multiple buyers and sellers. Binance
22 U.S. receives and stores digital asset buy and sell orders for UST from their users. Binance U.S.
23 provided the means for these orders to interact and execute through the combined use websites,
24 mobile apps, order books, and pre-programmed trading rules protocols defined in the Binance U.S.
25 trading engine. These established non-discretionary methods allowed Binance U.S. users to agree
26 upon the terms of their trades in UST on Binance U.S. during the Class Period.

27 155. Binance U.S. is thus an “organization . . . which . . . maintains [and] provides a
28 marketplace or facilities for bringing together purchasers and sellers” of digital assets. 15 U.S.C.

1 § 78c. Because many of the crypto-assets listed on Binance U.S. are securities, Binance U.S. meets
2 the statutory definition of an exchange under the Exchange Act. *Id.*

3 **VII. BINANCE U.S. LISTED AND SOLD THE UST SECURITY EVEN THOUGH IT IS NOT**
4 **REGISTERED AS A BROKER-DEALER, IN VIOLATION OF THE SECURITIES LAWS**

5 156. Binance U.S.’s activities further meet the definition of a “broker-dealer” under the
6 Exchange Act because Binance U.S. acts as both a broker and a dealer.

7 157. The Exchange Act defines “broker” in relevant part as an entity that is “engaged in
8 the business of effecting transactions in securities for the account of others.” *Id.* § 78c(a)(4)(A). In
9 addition, an entity is a broker if it assists issuers with structuring a securities offering, identifies
10 potential purchasers, or advertises a securities offering. Binance U.S.’s activities with respect to
11 UST meet either criterion.

12 158. Binance U.S.’s activities also meet the Exchange Act’s definition of “dealer”, which
13 includes entities that are “engaged in the business of buying and selling securities . . . for such
14 person’s own account,” insofar as such transactions are part of that person’s “regular business.” 15
15 U.S.C. § 78c(a)(5)A). During the Class Period, Binance U.S. operated as a dealer as defined by the
16 Exchange Act by, *inter alia*, (1) holding itself out as willing to buy or sell securities on a continuous
17 basis and as willing to provide liquidity to the market for UST; (2) maintaining custody over
18 Binance U.S. customers’ UST; (3) by providing customers services such as allowing purchase of
19 UST on credit; (4) by having a regular turnover inventory of UST; (5) by purchasing UST for
20 accounts in Binance U.S.’s name (often at a discount); and (6) selling UST to investors for profit
21 immediately or at a later time after being held in inventory.

22 **VIII. BINANCE U.S.’S ARBITRATION SCHEME IS PUNITIVELY DESIGNED TO DISCOURAGE**
23 **RETAIL INVESTORS WITH LIMITED RESOURCES FROM FILING CLAIMS—IT IS**
24 **UNCONSCIONABLE AND UNENFORCEABLE**

25 159. The crypto-revolution has purported to be retail investor friendly. Major crypto-
26 exchanges, including Binance U.S., are at the forefront of promoting crypto-assets as easy to access,
27 safe, and favorable for the common investor. The underlying theme is that, unlike traditional
28 institutions, crypto-exchanges care about and take care of their customers.

1 160. The reality is very different from the narrative. Major crypto-exchanges routinely
2 impose harsh, unconscionable terms on investors that include draconian purported limitations on
3 liability, class action waivers, one-sided arbitration provisions intended to deprive investors of their
4 day in court, and multi-step informal dispute resolution procedures so convoluted and time-
5 consuming that they discourage the filing of claims in the first place.

6 161. In April 2022, a mere two months ago, this Court in *Bielski v. Coinbase, Inc.*,
7 invalidated one such unconscionable arbitration scheme imposed by another crypto-exchange,
8 Coinbase, Inc. The arbitration scheme there lacked mutuality: Coinbase’s scheme imposed an
9 unfair, burdensome “informal complaint process” only on customers and “no obligation on
10 Coinbase itself to submit its disputes with users to binding arbitration,” meaning Coinbase could
11 file claims in court, while its customers had to arbitrate their claims. 2022 WL 1062049 (N.D. Cal.
12 Apr. 8, 2022) at *4. With respect to the informal complaint process, this Court observed:

13 Coinbase’s tripartite complaint process requires users to jump
14 through multiple, antecedent hoops before initiating arbitration . . .
15 [t]here is no legitimate commercial need for this many burdensome
16 obstacles prior to arbitrating disputes relating to a basic user
agreement for services like those provided by Coinbase. *Id.* at *5.

17 162. The terms Binance U.S. imposes on its customers, including Plaintiff, are equally
18 unfair and unconscionable. The Binance U.S. terms of use in effect as of January 4, 2022⁹ (and in
19 effect as of the time Plaintiff executed his UST trades) imposed a similar multi-part complaint
20 process that required customers to jump through several, antecedent hoops before initiating
21 arbitration and reserved to Binance U.S. the ability to file in Court should it so choose. That
22 arbitration scheme was unenforceable by any measure.

23 163. Rather than looking to the *Bielski* decision as the impetus to fix its process, or to the
24 recent UST/LUNA catastrophe as a chance to help investors, Binance U.S. unilaterally amended its
25 arbitration scheme on June 1, 2022, to make it even more punitive and further discourage customers
26 from obtaining relief.

27 _____
28 ⁹ Available at <https://www.binance.us/en/terms-of-use> (last accessed June 10, 2022).

1 164. As written, the current version of Binance U.S.’s Terms of Use, last updated June 1,
2 2022 (the “Terms of Use”¹⁰), require Binance U.S. customers to arbitrate all disputes with Binance
3 U.S. in accordance with the rules of the American Arbitration Association (the “AAA”). Those
4 same Terms of Use leave Binance U.S. free to litigate disputes with its customers in any forum it so
5 desires. This lack of mutuality, among other reasons, renders any obligation to delegate so-called
6 gateway disputes about the scope of arbitrability to an arbitrator unconscionable and unenforceable
7 (to the extent such an obligation exists—the Terms of Use are silent about delegation but Plaintiff,
8 without conceding that the AAA rules require delegation, assumes Defendants will argue that they
9 do so). It follows that the entire arbitration agreement, including a dependent class action waiver,
10 is unconscionable too.¹¹

11 165. At the outset, any purported delegation requirement is procedurally unconscionable.
12 There is no express warning in the Terms of Use that the doors to the courts are closed with respect
13 to gateway disputes about arbitrability. Instead, a customer like Plaintiff must intuit any delegation
14 obligation from the bare reference to the “AAA rules”—but even that reference is not decisive, as
15 there are hundreds of active and archived versions of AAA rules available on the AAA’s website
16 that apply to different types of disputes and may or may not require delegation.¹² And if a customer,
17 after combing through the various versions of the AAA rules, is able to determine which version
18 applies and whether it contains a delegation provision, his or her only option is to accept delegation
19 or refuse to deal with Binance U.S., as agreements with Binance U.S. are classic contracts of
20 adhesion presented to customers (including Plaintiff) on a take-it-or-leave it basis without any
21 opportunity for negotiation. Exacerbating the unfairness, Binance U.S. reserves to itself the
22 unilateral ability to “amend or modify” the Terms of Services, including with respect to arbitrability.

23 _____
24 ¹⁰ Available at <https://www.binance.us/en/terms-of-use> (last accessed June 10, 2022).

25 ¹¹ Plaintiff does not seek to set forth all of his arguments regarding arbitration here, but rather sets
26 forth facts sufficient to explain why he believes this case belongs in court, instead of in arbitration.
27 Plaintiff focuses on the current Terms of Service because he anticipates that Defendants will argue
28 that they control.

¹² <https://www.adr.org/active-rules> (listing over 50 active AAA rules that apply to different types of
disputes); <https://www.adr.org/ArchiveRules> (listing archived rules).

1 166. Any purported delegation requirement is also substantively unconscionable because
2 it is confusing and lop-sided, and lacks mutuality.

3 167. In order to reach arbitration, including with respect to gateway arbitrability issues,
4 customers like Plaintiff must jump through hoops by going through a lengthy pre-arbitration
5 complaint submission procedure (the “Submitting A Complaint Procedure”), which is described in
6 a thick block of text as follows:

7 **Submitting A Complaint.** If you have a complaint, you must first
8 open a ticket with Customer Service and work with Customer
9 Service to resolve your issue. Once you have already done so, and
10 Customer Service has been unable to resolve your issue, please
11 email your complaint to resolution@binance.us. In that email, you
12 must provide your Customer Service ticket number, state the cause
13 of your complaint, how you would like us to resolve the complaint,
14 and any other information you believe to be relevant. Without a
15 Customer Service ticket, your complaint email will be deemed
16 premature and will not receive a response. Upon receiving your
17 complaint, we will open a support ticket and a user complaints
18 officer (“**Complaint Officer**”) will review your complaint. The
19 Complaint Officer will review your complaint without prejudice,
20 based on the information you provided and any information we
21 may derive from our records. Within thirty business days ((all days
22 excluding Saturday, Sundays, and any bank holiday in the State of
23 California) (“**Business Days**”)) of our receipt of your complaint,
24 the Complaint Officer will use reasonable efforts to address the
25 points raised in your complaint and the Complaint Officer may: (1)
26 offer to resolve your complaint in the way you have requested; (2)
27 reject your complaint and set out the reasons for the rejection; or
28 (3) offer to resolve your complaint with an alternative proposal or
solution. In exceptional circumstances, if the Complaint Officer is
unable to respond to your complaint within thirty Business Days,
the Complaint Officer will use reasonable efforts to send you a
holding response indicating the reasons for a delay in answering
your complaint and specifying the deadline by which the
Complaint Officer will respond to your complaint.

168. Distilled, to complete the Submitting A Complaint Procedure, the customer must first
“open a ticket with Customer Service” (the Terms of Use are silent on how) and “work with
Customer Service to resolve [the] issue.” If no resolution is reached, then the customer must email
Binance U.S. and provide detailed information about his or her complaint, which triggers a

1 complaint review period. There is no outer time limit constraining the review period. At a
2 minimum, it will last 30 *business days* (typically, approximately 45 days). But even then, Binance
3 U.S. may seek to indefinitely extend the “deadline” to “respond” to the Complaint if it is unable to
4 respond within 30 business days.

5 169. The odyssey does not then end, as Binance U.S. imposes another, separate hurdle
6 before an arbitration can be initiated (the “Notice Procedure”). Pursuant to the Notice Procedure,
7 the customer must submit to Binance U.S., in hardcopy, a notice “(1) describe[ing] the nature and
8 basis of the claim or dispute; and (2) sett[ing] forth the specific relief sought.” The Notice Procedure
9 further requires the parties to engage in a separate, informal resolution process for at least 30 days
10 after receipt of the notice before commencing arbitration.

11 170. It is only after completing the Submitting A Complaint Procedure and the separate
12 Notice Procedure that the customer may initiate the arbitration. But unlike Binance U.S., *it is only*
13 *the customer who must complete the Submitting A Complaint Procedure; who is bound to any*
14 *mandatory delegation obligation (and, more broadly, any arbitration agreement); and who waives*
15 *any right to proceed in court or have a jury trial.* Specifically, the Terms of Use provide that:

16 **If we cannot resolve your dispute through the complaint process**
17 **(See *Submitting A Complaint*), you agree that any dispute or**
18 **controversy arising out of or relating to these Terms or the [Binance**
19 **U.S.] Services . . . shall be resolved through binding arbitration**
20 **on an individual basis** (except as specifically noted below).
21 Arbitration shall be conducted in accordance with the rules of the
22 [AAA]. In agreeing to this binding commitment to arbitrate **your**
23 **claims, you agree that you waive any right to proceed in a court**
24 **of law or to have your claims heard by a jury.**

25 171. The lone exception to “individual” arbitration is consolidation of multiple arbitration
26 proceedings—a consolidation procedure Binance U.S. added to its June update to the Terms of
27 Service that is *unavailable to customers, but that Binance U.S. may invoke in its sole discretion.*

28 [I]n the event that **your claim(s)** in an arbitration substantially
implicate or relate to the rights of, or claims by, other [Binance U.S.]
customers who have also initiated arbitration against [Binance
U.S.], **you agree that [Binance U.S.] shall have the right, but not**

1 **the obligation, to join or consolidate such arbitrations into a**
2 **single arbitration, in [Binance' U.S.s] sole discretion.**

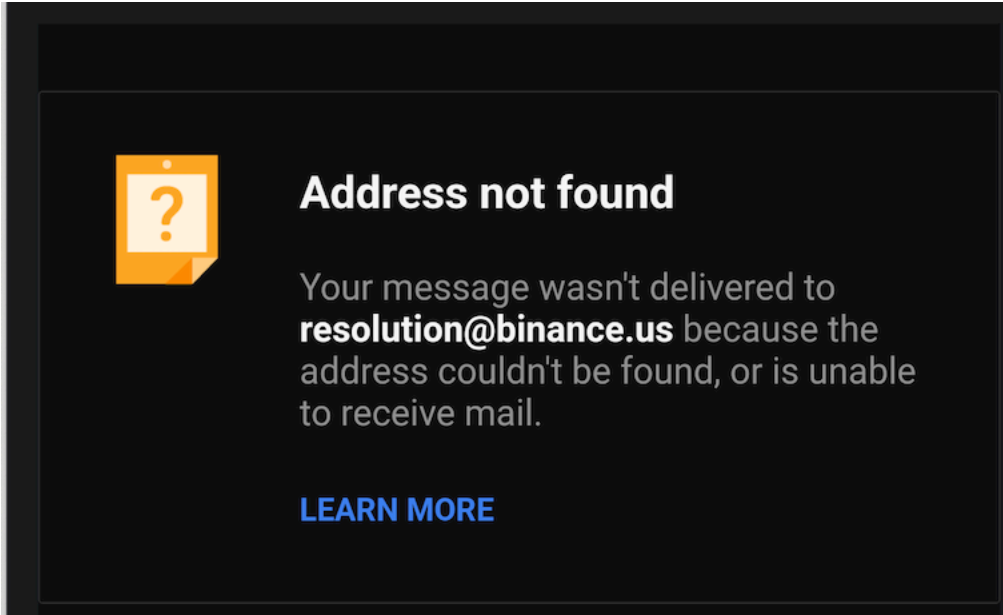
3 172. Meanwhile, Binance U.S. need only complete the Notice Procedure (with its shorter
4 time horizon) before it commences an arbitration. But, while the failure of a *customer* to
5 successfully resolve a dispute through the Submitting A Complaint Procedure triggers a mandatory
6 obligation to arbitrate for the customer, the failure of *Binance U.S.* to resolve a dispute through the
7 Notice Procedure triggers *no* such mandatory obligation for Binance U.S. On this issue, the Terms
8 of Service provide: “We [Binance] agree to use good faith efforts to resolve the claim directly, but
9 if we do not reach an agreement to do so within 30 days after the Notice is received, **you or [Binance**
10 **U.S.] may commence an arbitration proceeding.**” Accordingly, unlike its customers, *Binance*
11 *U.S. may commence actions in court and need not engage in any informal dispute resolution process*
12 *before doing so.* Of course, Binance U.S. derives numerous benefits from this one-sided
13 arrangement, such as the choice of its preferred forum, including broader or narrower discovery at
14 its option; a guaranteed preview of customer claims; and the ability to file claims immediately
15 without risking the passage of any looming statute of limitations.

16 173. And Binance U.S. has stripped further rights from its current Terms of Service.
17 Previously, Binance U.S. agreed to pay the arbitration fee for small claims (those less than \$10,000)
18 in apparent recognition that the prospect of paying a filing fee alone can discourage claims. Now,
19 under the current Terms of Use, Binance U.S. forces all claimants to pay their own fees, regardless
20 of the amount in dispute—a tactic designed to discourage mom and pop retail investors from
21 pursuing claims.

22 174. Plaintiff attempted to follow the Submitting a Complaint Procedure before filing this
23 action by emailing resolution@binance.us, as required under the Terms of Use.

24 175. However, resolution@binance.us is not a working email address, making it
25 impossible to even begin the process necessary to pursue relief:
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



176. This underscores that the arbitration scheme here is unfair and unreasonable.

177. Accordingly, just as with Coinbase’s arbitration scheme, the scheme here is unconscionable and unenforceable, which permits Plaintiff to file his claims in this Court on a class-wide basis.

CLASS ALLEGATIONS

178. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3).

179. Plaintiff seeks class certification on behalf of a nationwide class defined to include all persons or entities who transacted in UST on Binance U.S. during the Class Period.

180. Plaintiff reserves the right to modify or refine the definitions of the Class based upon discovery of new information and to accommodate any manageability of the Court’s concerns.

181. Excluded from the Class are: (a) any Judge or Magistrate Judge presiding over this action and members of their staff, as well as members of their families; Defendants and any Defendant’s predecessors, parents, successors, heirs, assigns, subsidiaries, and any entity in which any Defendant or its parents have a controlling interest, as well as any Defendant’s current or former employees, agents, officers, and directors; (c) persons who properly execute and file a timely request for exclusion from the Class or Subclasses; (d) persons whose claims in this matter have been finally

1 adjudicated on the merits or otherwise released; (e) counsel for Plaintiff and Defendants; and (f) the
2 legal representatives, successors, and assigns of any such excluded persons.

3 182. **Ascertainability.** The proposed Class is readily ascertainable because it is defined
4 using objective criteria so as to allow Class members to determine if they are part of a Class.
5 Further, the Class can be readily identified through records maintained by Defendants.

6 183. **Numerosity (Rule 23(a)(1)).** The Class is so numerous that joinder of individual
7 members herein is impracticable. The exact number of members of the Class and Subclasses, as
8 herein identified and described, is not known, upon information and belief there are thousands of
9 purchasers, if not more, who transacted on Binance U.S.

10 184. **Commonality (Rule 23(a)(2)).** Common questions of fact and law exist for each
11 cause of action and predominate over questions affecting only individual Class members, including
12 the following:

- 13 • whether Binance U.S. offered UST for sale;
- 14 • whether Binance U.S. offered UST for sale that constitute securities
15 under the federal securities laws;
- 16 • whether Binance U.S. knew or should have known that UST it listed
17 for trading were securities;
- 18 • whether Binance U.S. operated as a securities exchange as defined
19 by the federal securities laws;
- 20 • whether Binance U.S. operated as a broker-dealer as defined by the
21 federal securities laws;
- 22 • whether Binance U.S. violated the federal securities laws;
- 23 • whether Plaintiff and the members of the Class are entitled to
24 damages and the amount and measure thereof; and
- 25 • whether Plaintiff and members of the Class are entitled to
26 declaratory and injunctive relief.

27 185. **Typicality (Rule 23(a)(3)).** Plaintiff's claims are typical of the claims of the other
28 members of the proposed Class. Plaintiff and members of the Class suffered injuries as a result of
Binance U.S.'s wrongful conduct that is uniform across the Class.

1 186. **Adequacy (Rule 23(a)(4)).** Plaintiff has and will continue to fairly and adequately
2 represent and protect the interests of the Class. Plaintiff has retained counsel competent and
3 experienced in complex litigation and class actions. Plaintiff has no interest that is antagonistic to
4 those of the Class, and Defendants have no defenses unique to Plaintiff. Plaintiff and his counsel
5 are committed to vigorously prosecuting this action on behalf of the members of the Class, and they
6 have the resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to
7 those of the other members of the Class.

8 187. **Substantial Benefits.** This class action is appropriate for certification because class
9 proceedings are superior to other available methods for the fair and efficient adjudication of this
10 controversy and joinder of all members of the Class is impracticable. The prosecution of separate
11 actions by individual members of the Class would impose heavy burdens upon the courts and
12 Defendants, would create a risk of inconsistent or varying adjudications of the questions of law and
13 fact common to members of the Class, and would be dispositive of the interests of the other members
14 not parties to the individual adjudications or would substantially impair or impede their ability to
15 protect their interests. This proposed class action presents fewer management difficulties than
16 individual litigation, and provides the benefits of single adjudication, economies of scale, and
17 comprehensive supervision by a single court. Class treatment will create economies of time, effort,
18 and expense and promote uniform decision-making.

19 188. Class certification, therefore, is appropriate under Fed. R. Civ. P. 23(b)(3) because the
20 above common questions of law or fact predominate over any questions affecting individual
21 members of the Class, and a class action is superior to other available methods for the fair and
22 efficient adjudication of this controversy.

23 189. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) because Binance
24 U.S. acted or refused to act on grounds generally applicable to the Class, so that final injunctive
25 relief or corresponding declaratory relief is appropriate as to the Class as a whole.

26 190. Plaintiff reserves the right to revise these class allegations and definitions based on
27 facts learned and legal developments following additional investigation, discovery, or otherwise.
28

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Offer and Sale of Unregistered Securities**
4 **Sections 5 and 12(a)(1) of the Securities Act**
5 **(Against Binance U.S.)**

6 191. Plaintiff realleges the allegations above.

7 192. Plaintiff brings this claim within three years of the first *bona fide* public offering of
8 UST.

9 193. Section 5(a) of the Securities Act states: “Unless a registration statement is in effect
10 as to a security, it shall be unlawful for any person, directly or indirectly (1) to make use of any
11 means or instruments of transportation or communication in interstate commerce or of the mails to
12 sell such security through the use or medium of any prospectus or otherwise; or (2) to carry or cause
13 to be carried through the mails or in interstate commerce, by any means or instruments of
14 transportation, any such security for the purpose of sale or for delivery after sale.” 15 U.S.C.
15 § 77e(a).

16 194. Section 5(c) of the Securities Act states: “It shall be unlawful for any person, directly
17 or indirectly, to make use of any means or instruments of transportation or communication in
18 interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any
19 prospectus or otherwise any security, unless a registration statement has been filed as to such
20 security, or while the registration statement is the subject of a refusal order or stop order or (prior
21 to the effective date of the registration statement) any public proceeding or examination under
22 section 77h of this title.” *Id.* § 77e(c).

23 195. UST is, and at all relevant times has been, a security within the meaning of Section
24 12(a)(1) of the Securities Act. *Id.* § 77b(a)(1). No registration statements have been filed with the
25 SEC or have been in effect with respect to UST listed on Binance U.S.

1 196. Throughout the Class Period, Binance U.S. promoted, solicited, offered, and sold
2 12(a)(1) securities—UST— to Plaintiff and members of the Class. Customers on Binance U.S.
3 transact with Binance U.S. itself, and Binance U.S. is thus a seller of UST.

4 197. In addition, by offering UST to Plaintiff and members of the Class, Binance U.S.
5 solicited these purchases, and in doing so was motivated at least in part by a desire to serve its own
6 financial interests or the financial interests of UST holders. Binance U.S. received a direct financial
7 benefit, in the form of transaction fees, from each purchase of UST on its exchange. Binance U.S.
8 further benefitted from purchases of UST on its exchange because such purchases supported a liquid
9 trading market for UST, which in turn makes Binance U.S.’s exchange more attractive to investors
10 and issuers. Binance U.S. thus directly or indirectly made use of means or instruments of
11 transportation or communication in interstate commerce or of the mails, to offer to sell or to sell
12 unregistered securities, or to carry or cause such unregistered securities to be carried through the
13 mails or in interstate commerce for the purpose of sale or for delivery after sale.

14 198. Section 12(a)(1) of the Securities Act provides in relevant part: “Any person who
15 offers or sells a security in violation of section 77e of this title ... shall be liable ... to the person
16 purchasing such security from him, who may sue either at law or in equity in any court of competent
17 jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount
18 of any income received thereon, upon the tender of such security, or for damages if he no longer
19 owns the security.” *Id.* § 77l(a)(1).

20 199. Accordingly, Binance U.S. violated Sections 5(a), 5(c), and 12(a)(1) of the Securities
21 Act, *id.* §§ 77e(a), 77e(c), 77l(a)(1).

22 200. Plaintiff and Class members who during the Class Period purchased UST on Binance
23 U.S. and subsequently sold that UST at a loss seek damages, inclusive of transaction fees. *See id.*
24 § 77l(a)(1). Plaintiff hereby offers to tender to Binance U.S. the UST or substantial equivalent
25 realized upon sale of all UST they purchased on Binance U.S. and later sold at a loss. In exchange
26 for such tender, Plaintiff and the Class are entitled to recover the amount of consideration they paid
27 to purchase the tendered UST.
28

SECOND CAUSE OF ACTION

**Offer and Sale of Unregistered Securities
Control Person Liability for Violations of the Securities Act
Section 15 of the Securities Act
(Against Shroder)**

1
2
3
4
5 201. Plaintiff realleges the allegations above.

6 202. This claim is asserted against Shroder for violations of Section 15 of the Securities
7 Act, 15 U.S.C. § 77o.

8 203. Section 15 of the Securities Act provides: “Every person who, by or through stock
9 ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or
10 understanding with one or more other persons by or through stock ownership, agency, or otherwise,
11 controls any person liable under sections 77k or 77l of this title, shall also be liable jointly and
12 severally with and to the same extent as such controlled person to any person to whom such
13 controlled person is liable, unless the controlling person had no knowledge of or reasonable ground
14 to believe in the existence of the facts by reason of which the liability of the controlled person is
15 alleged to exist.” *Id.* § 77o(a).

16 204. As CEO of Binance U.S., Shroder had the power and authority to direct the
17 management and activities of Binance U.S. and its employees, and to cause Binance U.S. to engage
18 in the wrongful conduct complained of herein. Shroder, at the time of the wrongs alleged herein,
19 had the power to direct or cause the direction of the management and policies of Binance U.S.

20 205. Shroder purposefully exercised his power and influence to cause Binance U.S. to
21 violate the Securities Act as described herein, including by directing Binance U.S. not to register as
22 an exchange or broker-dealer prior to offering and selling securities to Plaintiff and members of the
23 Class in violation of sections 5(a), 5(c), and 12(a)(1) of the Securities Act, *id.* §§ 77e(a), 77e(c),
24 77l(a)(1). Binance U.S. is liable under section 12(a)(1) of the Securities Act, *id.* § 77l(a)(1), for its
25 violations of the Securities Act.
26
27
28

1 206. At the time of the wrongs alleged herein, Shroder had sufficient influence to cause
2 Binance U.S. to refrain from promoting, soliciting, offering, and selling unregistered securities in
3 violation of the Securities Act. Shroder purposefully decided not to do so.

4 207. Shroder knowingly and culpably participated in, and/or aided and abetted, Binance
5 U.S.’s violations of the Securities Act alleged herein. Shroder had knowledge of or reasonable
6 ground to believe in the existence of the facts alleged herein, which form the basis for Binance
7 U.S.’s liability under Section 12(a)(1) of the Securities Act.

8 208. Accordingly, Shroder is jointly and severally liable for the violations of the Securities
9 Act by Binance U.S. complained of herein and is liable to Plaintiff and the Class for damages,
10 inclusive of transaction fees, as to each transaction in which any UST purchased in the Class Period
11 was subsequently sold at a loss. See *id.* § 771(a)(1).

12
13 **THIRD CAUSE OF ACTION**

14 **Contracts to Pay Transaction Fees to an Unregistered Exchanges**
15 **Sections 5 and 29(b) of the Exchange Act**
16 **(Against Binance U.S.)**

17 209. Plaintiff realleges the allegations above.

18 210. In relevant part, Section 5 of the Exchange Act makes it unlawful “for any ...
19 exchange, directly or indirectly, to make use of ... any means or instrumentality of interstate
20 commerce for the purpose of using any facility of a n exchange within or subject to the jurisdiction
21 of the United States to effect any transaction in a security . . . unless such exchange (1) is registered
22 as national securities exchange under section 78f of this title, or (2) is exempted from such
23 registration.” 15 U.S.C. § 78e. An “exchange” is any entity that “constitute[s], maintain[s], or
24 provide[s] ‘a market place or facilities for bringing together purchasers and sellers of securities.’”
25 17 C.F.R. § 240.3b-16 (quoting 15 U.S.C. § 78c).

26 211. Throughout the Class Period, Binance U.S. has made use of means and
27 instrumentalities of interstate commerce for the purpose of using facilities of an exchange within
28 and subject to the jurisdiction of the United States to effect transactions in UST. Binance U.S. has

1 operated its exchange throughout the Class Period through the utilization of the Internet within, and
2 multiple servers throughout, the United States.

3 212. Binance U.S. is an exchange because it provides a marketplace and facilities for
4 bringing together purchasers and sellers of UST. All UST are, and at all relevant times were,
5 securities within the meaning of Section 2(a)(1) of the Securities Act. 15 U.S.C. § 77b(a)(1).

6 213. Binance U.S. and its exchange have never been registered as national securities
7 exchange under 15 U.S.C. § 78f, nor are they exempt from such registration. *See id.* § 78e.

8 214. Binance U.S. has thus operated an unregistered exchange in violation of section 5(e)
9 of the Exchange Act, 15 U.S.C. § 78e, throughout the Class Period.

10 215. Each transaction in UST on Binance U.S. constitutes a contract between Binance U.S.
11 and Plaintiff or a Class member. Pursuant to these contracts, Plaintiff and Class members paid
12 Binance U.S. transaction fees to fulfill purchase orders for UST.

13 216. The foregoing contracts were made in violation of Section 5 of the Exchange Act.
14 The performance of these contracts necessarily involves the violation of Section 5 because,
15 pursuant to each such contract, Binance U.S. was required to continue its practice of operating
16 unregistered exchanges that bring together purchasers and sellers of UST.

17 217. Section 29(b) of the Exchange Act provides in relevant part that “[e]very contract
18 made in violation of any provision of this chapter . . . and every contract (including any contract for
19 listing a security on an exchange) . . . the performance of which involves the violations of, or the
20 continuance of any relationship or practice in violation of, any provision of this chapter . . . shall be
21 void . . . as regards the rights of any person who, in violation of any such provision, . . . shall have
22 made or engaged in the performance of any such contract.” 15 U.S.C. § 78cc(b).

23 218. Section 29(b) affords Plaintiff and the Class the right, which they hereby pursue, to
24 void and rescind the contracts pursuant to which they paid Binance U.S. fees for fulfillment of
25 purchase orders for UST and to recover, as a rescissory remedy, the fees they have paid under those
26 contracts.

FOURTH CAUSE OF ACTION

**Contracts to Pay Transaction Fees
to an Unregistered Broker or Dealer
Sections 15(a)(1) and 29(b) of the Exchange Act
(Against Binance U.S.)**

1
2
3
4
5 219. Plaintiff realleges the allegations above.

6 220. Section 15(a)(1) of the Exchange Act makes it unlawful “for any broker or dealer . . .
7 to make use of . . . any means or instrumentality of interstate commerce to effect any transactions in,
8 or to induce or attempt to induce the purchase or sale of, any security . . . unless such broker or dealer
9 is registered in accordance with subsection (b) of this section.” 15 U.S.C. § 78o(a)(1).

10 221. A “broker” includes an entity “engaged in the business of effecting transactions in
11 securities for the account of others.” *Id.* § 78c(a)(4)(A).

12 222. Binance U.S. has operated as a broker during the Class Period by facilitating the sale
13 of UST in exchange for compensation primarily in the form of transaction fees, including by
14 marketing UST, accepting investors’ orders, providing answers to investor questions about
15 transaction details, accepting payment for orders, and working with the issuer to transfer UST to
16 investors after payment. All UST are, and at all relevant times were, securities within the meaning
17 of Section 2(a)(1) of the Securities Act. *Id.* § 77b(a)(1).

18 223. A “dealer” includes an entity “engaged in the business of buying and selling securities
19 . . . for such person’s own account,” insofar as such transactions are part of that person’s “regular
20 business.” *Id.* § 78c(a)(5).

21 224. Binance U.S. has operated as a dealer during the Class Period by holding itself out as
22 willing to buy or sell securities on a continuous basis and as willing to provide liquidity to the market
23 for digital assets, by having regular customers, by maintaining custody over customers’ UST, by
24 providing customers with access to services allowing purchase of UST on credit, by having a regular
25 turnover inventory of securities, by purchasing UST for accounts in Binance U.S.’s own name (often
26 at a discount), and by selling UST from its inventory to investors for profit.

1 225. Throughout the Class Period, Binance U.S. has made use of means and
2 instrumentalities of interstate commerce to effect transactions in, and to induce or attempt to induce
3 the purchase or sale of, UST.

4 226. Binance U.S. has never registered as a broker or dealer in accordance with section 15(b)
5 of the Exchange Act.

6 227. Binance U.S. has thus operated as an unregistered broker-dealer in violation of section
7 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

8 228. In the course of operating as an unregistered broker-dealer, Binance U.S. has entered
9 into contracts with Plaintiff and Class members pursuant to which Plaintiff and Class members paid
10 Binance U.S. transaction fees to fulfill purchase orders for UST.

11 229. The foregoing contracts were made in violation of Section 15(a)(1) of the Exchange
12 Act. The performance of these contracts necessarily involves the violation of section 15(a)(1)
13 because, pursuant to each such contract, Binance U.S. was required to continue its practice of
14 operating as a broker, dealer, or both, despite not being registered as a broker or dealer.

15 230. Section 29(b) of the Exchange Act provides in relevant part that “[e]very contract
16 made in violation of any provision of this chapter . . . and every contract (including any contract for
17 listing a security on an exchange) . . . the performance of which involves the violations of, or the
18 continuance of any relationship or practice in violation of, any provision of this chapter . . . shall be
19 void . . . as regards the rights of any person who, in violation of any such provision, . . . shall have
20 made or engaged in the performance of any such contract.” 15 U.S.C. § 78cc(b).

21 231. Section 29(b) affords Plaintiff and the Class the right, which they hereby pursue, to
22 void and rescind the contracts pursuant to which they paid Binance U.S. fees for fulfillment of
23 purchase orders for UST and to recover, as a rescissory remedy, the fees they have paid under those
24 contracts.

FIFTH CAUSE OF ACTION

**Contracts to Purchase Securities
from an Unregistered Exchange
Sections 5 and 29(b) of the Exchange Act
(Against Binance U.S.)**

232. Plaintiff realleges the allegations above.

233. In relevant part, Section 5 of the Exchange Act makes it unlawful “for any . . . exchange, directly or indirectly, to make use of . . . any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security . . . unless such exchange (1) is registered as national securities exchange under section 78f of this title, or (2) is exempted from such registration.” 15 U.S.C. § 78e. An “exchange” is any entity that “constitute[s], maintain[s], or provide[s] ‘a market place or facilities for bringing together purchasers and sellers of securities.’” 17 C.F.R. § 240.3b-16 (quoting 15 U.S.C. § 78c).

234. Throughout the Class Period, Binance U.S. has made use of means and instrumentalities of interstate commerce for the purpose of using facilities of an exchange within and subject to the jurisdiction of the United States to effect transactions in UST. Binance U.S. has operated an exchange throughout the Class Period through the utilization of the Internet within, and multiple servers throughout, the United States.

235. Binance U.S. is an exchange because it provides a marketplace and facilities for bringing together purchasers and sellers of UST. All UST are, and at all relevant times were, securities within the meaning of Section 2(a)(1) of the Securities Act. 15 U.S.C. § 77b(a)(1).

236. Binance U.S. has never been registered as a national securities exchange under 15 U.S.C. § 78f, nor is it exempt from such registration. *See id.* § 78e.

237. Binance U.S. has thus operated an unregistered exchange in violation of section 5(e) of the Exchange Act, 15 U.S.C. § 78e, throughout the Class Period.

238. Each transaction in UST on Binance U.S. constitutes a contract between Binance U.S. and a Plaintiff or Class member. Binance U.S. induced Plaintiff and Class members to enter these contracts for the purchase of UST during the Class Period. Binance U.S. did so by promoting,

1 soliciting, offering, and selling UST to Plaintiff and members of the Class. In seeking to induce
2 Plaintiff and members of the Class to purchase UST, Binance U.S. was motivated at least in part by
3 a desire to serve its own financial interests or the financial interests of owners of UST for sale on
4 Binance U.S. Binance U.S. received a direct financial benefit, in the form of transaction fees, from
5 each purchase of UST on Binance U.S. Binance U.S. further benefits from purchases of UST on
6 Binance U.S. because such purchases support a liquid trading market for UST, which in turn makes
7 Binance U.S. more attractive to investors and issuers.

8 239. The contracts that Binance U.S. induced Plaintiff and Class members to enter for the
9 purchase of UST were made in violation of Section 5 of the Exchange Act, 15 U.S.C. § 78e. The
10 performance of these contracts necessarily involves the violation of Section 5 because each such
11 contract could not be performed unless Binance U.S. continued its practice of operating an
12 unregistered exchange that brings together purchasers and sellers of UST.

13 240. Section 29(b) of the Exchange Act provides in relevant part that “[e]very contract
14 made in violation of any provision of this chapter . . . and every contract (including any contract for
15 listing a security on an exchange) . . . the performance of which involves the violations of, or the
16 continuance of any relationship or practice in violation of, any provision of this chapter . . . shall be
17 void . . . as regards the rights of any person who, in violation of any such provision, . . . shall have
18 made or engaged in the performance of any such contract.” *Id.* § 78cc(b).

19 241. Section 29(b) affords Plaintiff and the Class the right, which they hereby pursue, to
20 void and rescind each contract pursuant to which they purchased, on Binance U.S., any UST that
21 they later sold at a loss.

22 **SIXTH CAUSE OF ACTION**

23 **Illegal Contracts to Purchase Securities** 24 **from an Unregistered Broker or Dealer** 25 **Sections 15(a)(1) and 29(b) of the Exchange Act** 26 **(Against Binance U.S.)**

27 242. Plaintiff realleges the allegations above.

1 243. Section 15(a)(1) of the Exchange Act makes it unlawful “for any broker or dealer . . .
2 to make use of . . . any means or instrumentality of interstate commerce to effect any transactions in,
3 or to induce or attempt to induce the purchase or sale of, any security . . . unless such broker or dealer
4 is registered in accordance with subsection (b) of this section.” 15 U.S.C. § 78o(a)(1).

5 244. A “broker” includes an entity “engaged in the business of effecting transactions in
6 securities for the account of others.” *Id.* § 78c(a)(4)(A).

7 245. Binance U.S. has operated as a broker during the Class Period by facilitating the sale
8 of UST in exchange for compensation primarily in the form of transaction fees, including by
9 marketing UST, accepting investors’ orders, providing answers to investor questions about
10 transaction details, accepting payment for orders, and working with issuers to transfer UST to
11 investors after payment. All UST are, and at all relevant times have been, securities within the
12 meaning of Section 2(a)(1) of the Securities Act. *Id.* § 77b(a)(1).

13 246. A “dealer” includes an entity “engaged in the business of buying and selling securities
14 . . . for such person’s own account,” insofar as such transactions are part of that person’s “regular
15 business.” *Id.* § 78c(a)(5).

16 247. Binance U.S. has operated as a dealer during the Class Period by holding itself out as
17 willing to buy or sell securities on a continuous basis and as willing to provide liquidity to the market
18 for digital assets, by having regular customers, by maintaining custody over customers’ UST, by
19 providing customers with access to services allowing purchase of UST on credit, by having a regular
20 turnover inventory of securities, by purchasing UST for accounts in Binance U.S.’s own name (often
21 at a discount), and by selling UST from its inventory to investors for profit.

22 248. Throughout the Class Period, Binance U.S. has made use of means and
23 instrumentalities of interstate commerce to effect transactions in, and to induce or attempt to induce
24 the purchase or sale of, UST.

25 249. Binance U.S. has never registered as a broker or dealer in accordance with section 15(b)
26 of the Exchange Act.

1 250. Binance U.S. has thus operated as an unregistered broker-dealer in violation of section
2 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

3 251. Each transaction in UST on Binance U.S. constitutes a contract between Binance U.S.
4 and a Plaintiff or Class member. Binance U.S. induced Plaintiff and Class members to enter
5 contracts for the purchase UST during the Class Period. Binance U.S. did so by promoting,
6 soliciting, offering, and selling UST to Plaintiff and members of the Class. In seeking to induce
7 Plaintiff and members of the Class to purchase UST, Binance U.S. was motivated at least in part by
8 a desire to serve its own financial interests or the financial interests of owners of UST for sale on
9 Binance U.S. Binance U.S. received a direct financial benefit, in the form of transaction fees, from
10 each purchase of UST on Binance U.S. Binance U.S. further benefits from purchases of UST on
11 Binance U.S. because such purchases support a liquid trading market for UST, which in turn makes
12 the Binance U.S. more attractive to investors and issuers.

13 252. The contracts that Binance U.S. induced Plaintiff and Class members to enter for the
14 purchase of UST were made in violation of Section 15(a)(1) of the Exchange Act, 15 U.S.C. §
15 78o(a)(1). The performance of these contracts necessarily involves the violation of section 15(a)(1)
16 because each such contract could not be performed unless Binance U.S. continued its practice of
17 operating as a broker, dealer, or both, despite not being registered as a broker or dealer.
18 Furthermore, Binance U.S. violated Section 15(a)(1) by inducing Plaintiff and Class members to
19 enter these contracts—and thus engage in the business of effecting transactions in securities for the
20 account of others, the business of buying and selling securities for Binance U.S.’s own account, or
21 both—without being registered as a broker or dealer.

22 253. Section 29(b) of the Exchange Act provides in relevant part that “[e]very contract
23 made in violation of any provision of this chapter . . . and every contract (including any contract for
24 listing a security on an exchange) . . . the performance of which involves the violations of, or the
25 continuance of any relationship or practice in violation of, any provision of this chapter . . . shall be
26 void . . . as regards the rights of any person who, in violation of any such provision, . . . shall have
27 made or engaged in the performance of such contract.” 15 U.S.C. § 78cc.

1 259. At the time of the wrongs alleged herein, Shroder had sufficient influence to cause
2 Binance U.S. either to register as an exchange and broker-dealer or to refrain from acts that are
3 prohibited by the Exchange Act for persons not registered as an exchange and broker-dealer.
4 Shroder purposefully decided not to do so.

5 260. Shroder knowingly and culpably participated in, and/or aided and abetted, Binance
6 U.S.'s violations of the Exchange Act alleged herein. Accordingly, Shroder is jointly and severally
7 liable for the violations of the Exchange Act by Binance U.S. complained of herein and is liable to
8 Plaintiff and the Class for rescission and/or damages as to all transactions in which Plaintiff and
9 Class members purchased, on Binance U.S., any UST that they later sold at a loss.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH CAUSE OF ACTION

**Offer or Sale of Unqualified Securities
Cal. Corp. Code §§ 25110, 25130, and 25503
(Against Binance U.S.)**

261. Plaintiff realleges the allegations above.

262. This claim is brought on behalf of Plaintiff and Class members who bought or sold
UST on Binance U.S. California Corporate Securities Law of 1968 (“California Securities Act”) forbids the offer or sale of unqualified securities. Cal Corp. Code §§ 25110, 25130. Any person who offers or sells a security in violation of section 25110 or 25130 is “liable to any person acquiring from them the security sold in violation of that section, who may sue to recover the consideration they paid for that security with interest thereon at the legal rate, and reasonable attorney’s fees, less the amount of any income received therefrom, upon the tender of that security, or for damages, if they no longer own the security, or if the consideration given for the security is not capable of being returned. Damages, if the plaintiff no longer owns the security, shall be equal to the difference between (a) the purchase price plus interest at the legal rate from the date of purchase, plus reasonable attorney’s fees, and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any income received therefrom by the plaintiff.” *Id.* § 25503.

263. A security includes, *inter alia*, “investment contract[s]” and derivative instruments

1 (such as “call[s]” and “option[s]”). *Id.* § 25019.

2 264. UST is, and at all relevant times has been, securities within the meaning of the
3 California Securities Act. *Id.* § 25019. UST was neither qualified under the California Securities
4 Act nor exempt from qualification. *Id.* §§ 25110, 25130.

5 265. During the Class Period, Binance U.S. offered or sold UST to Plaintiff and Class
6 members through its operations in California. Customers on Binance U.S. transact solely with
7 Binance U.S. itself, and Binance U.S. is thus a seller of UST.

8 266. Moreover, in offering UST to Plaintiff and members of the Class in California,
9 Binance U.S. solicited these purchases, and in doing so was motivated at least in part by a desire to
10 serve its own financial interests or the financial interests of owners of UST for sale on Binance U.S.
11 Binance U.S. received a direct financial benefit, in the form of transaction fees, from each purchase
12 of UST on Binance U.S. Binance U.S. further benefits from purchases of UST because such
13 purchases support a liquid trading market for UST, which in turn makes Binance U.S. more attractive
14 to investors and issuers.

15 267. Throughout the Class Period, Binance U.S. directed the foregoing actions to
16 California, including without limitation through solicitations directed by Binance U.S. to users in
17 California and received by users in California.

18 268. Accordingly, Binance U.S. has violated the California Securities Act through its sale
19 of unqualified securities.

20 269. Plaintiff and members of the Class who purchased UST on Binance U.S. and
21 subsequently sold those UST at a loss seek damages, inclusive of transaction fees, as to each
22 transaction in which any UST was purchased during the Class Period and was subsequently sold at
23 a loss, plus applicable costs, attorneys’ fees, and interest.

NINTH CAUSE OF ACTION

**Sale of Securities by an Unregistered Broker-Dealer
Cal. Corp. Code §§ 2521 and 25501.5(a)
(Against Binance U.S.)**

270. Plaintiff realleges the allegations above.

271. This claim is brought on behalf of Plaintiff and Class members who bought or sold UST on Binance U.S.

272. The California Securities Act forbids any person from transacting business as a broker-dealer or agent unless he is licensed or exempt from licensing under California law. Cal. Corp. Code § 25210.

273. A “broker-dealer” includes “any person engaged in the business of effecting transactions in securities in [California] for the account of others or for that person’s own account” and any “person engaged in the regular business of issuing or guaranteeing options with regard to securities not of that person’s own issue.” *Id.* § 25044. A security includes, *inter alia*, “investment contract[s]” and derivative instruments (such as “call[s]” and “option[s]”). *Id.* § 25019.

274. Binance U.S. has operated as a broker-dealer in California during the Class Period. Binance U.S. has engaged in the business of effecting transactions in securities for the account of others by facilitating the sale of UST in exchange for compensation primarily in the form of transaction fees, including by marketing UST, accepting investors’ orders, providing answers to investor questions about transaction details, accepting payment for orders, and working with issuers to transfer UST to investors after payment. Binance U.S. has engaged in the business of effecting transactions in securities for their own account by holding itself out as willing to buy or sell securities on a continuous basis and as willing to provide liquidity to the market for digital assets, by having regular customers, by maintaining custody over customers’ UST, by providing customers with access to services allowing purchase of UST on credit, by having a regular turnover inventory of securities, by purchasing UST for accounts in their own name (often at a discount), and by selling UST from their inventory to investors for profit. All UST are, and at all relevant times have been, securities as defined by California law. Throughout the Class Period, Binance U.S. directed the

1 foregoing actions to California, including without limitation through solicitations directed by
2 Binance U.S. to users in California and received by users in California.

3 275. Binance U.S. has never registered or applied for registration as a broker-dealer under
4 California law. Binance U.S. does not qualify for any exemption from registration of broker-dealers
5 under California law.

6 276. Binance U.S. has thus operated as an unregistered broker-dealer in violation of Cal.
7 Corp. Code § 25210.

8 277. In the course of operating as an unregistered broker-dealer, Binance U.S. has sold
9 UST to members of the Class. Binance U.S. solicited members of the Class to purchase these UST,
10 and in doing so, was motivated at least in part by a desire to serve its own financial interests or the
11 financial interests of owners of UST for sale on Binance U.S. Binance U.S. received a direct
12 financial benefit, in the form of transaction fees, from each purchase of UST on Binance U.S.
13 Binance U.S. further benefit from purchases of UST because such purchases support a liquid trading
14 market for UST, which in turn makes Binance U.S. more attractive to investors and issuers.

15 278. Under California law, any person who offers or sells a security in violation of Cal.
16 Corp. Code § 25210 is liable to the purchaser for rescission of the sale, or if the purchaser no longer
17 owns the security, for damages. *Id.* § 25501.5(a)(1). A purchaser who no longer owns the security
18 is entitled to damages in an amount equal to the difference between: (i) the price at which the
19 security was bought plus interest at the legal rate from the date of purchase; and (ii) the value of the
20 security at the time it was disposed of by the purchaser plus the amount of any income received on
21 the security by the purchaser. *Id.* § 25501.5(a)(4).

22 279. Accordingly, Binance U.S. has violated Cal. Corp. Code §§ 25210 and 25501.5(a).

23 280. Plaintiff and members of the Class who purchased UST on Binance U.S. and
24 subsequently sold those UST at a loss seek damages, inclusive of transaction fees, as to each
25 transaction in which any UST purchased in the Class Period was subsequently sold at a loss, plus
26 applicable costs, attorneys' fees, and interest.

TENTH CAUSE OF ACTION

**Control Person Liability for Violations of the California Securities Act
Cal. Corp. Code § 25504
(Against Shroder)**

1
2
3
4 281. Plaintiff realleges the allegations above.

5 282. This claim is brought on behalf of Plaintiff and Class members who bought or sold
6 UST on Binance U.S.

7 283. Every person who directly or indirectly controls a person liable under the California
8 Securities Act for unlawfully selling unqualified securities is “liable jointly and severally with and
9 to the same extent as such person, unless the other person who is so liable had no knowledge of or
10 reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged
11 to exist.” Cal. Corp. Code § 25504.

12 284. At the time of the wrongs alleged herein, Shroder controlled Binance U.S. As CEO,
13 Shroder was a principal executive officer of Binance U.S.

14 285. Shroder knew of Binance U.S.’s violations of Cal. Corp. Code §§ 25110 and 25130
15 because he was aware both of Binance U.S.’s lack of appropriate registration and the fact that
16 Binance U.S. was selling the UST.

17 286. Accordingly, as a “principal executive officer” of a liable corporation who had
18 knowledge of the facts by which liability is alleged to exist, Shroder is jointly and severally liable
19 for the violations of Cal. Corp. Code §§ 25110 and 25130 by Binance U.S. complained of herein
20 and is liable to Plaintiff and the Class for damages, inclusive of transaction fees, as to each
21 transaction in which any UST was purchased during the Class Period and was subsequently sold at
22 a loss. *See id.* § 25503.

23 **PRAYER FOR RELIEF**

24 287. WHEREFORE, Plaintiff, individually and on behalf of all others similarly
25 situated, prays for judgment against Defendants as to each and every count, including:

- 26
27 • An order certifying this action and the Class requested herein as a
28 class action, designating Plaintiff as the representative of the Class,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and appointing Plaintiff’s counsel as counsel to the Class;

- An order declaring that Defendants’ actions, as set forth above, constitute violations of the federal and state laws set forth above and that Defendants are liable to Plaintiff and the Class, as described herein, for damages arising therefrom;
- An injunction enjoining Binance U.S. from offering UST for purchase or sale on Binance U.S. without having registered Binance U.S. as a national securities exchange or broker-dealer as required by federal and state securities laws;
- An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Binance U.S. from continuing the unlawful practices alleged herein, and injunctive relief to remedy Binance U.S.’s past conduct;
- A judgment awarding Plaintiff and the Class all appropriate damages, in an amount to be determined at trial;
- A judgment awarding equitable, injunctive, and/or declaratory relief as may be appropriate including, but not limited to, rescission, restitution, and disgorgement;
- A judgment awarding Plaintiff and the Class prejudgment and post-judgment interest to the maximum extent permitted by law;
- A judgment awarding Plaintiff and the Class costs and fees, including attorneys’ fees to the maximum extent permitted by; and
- Grant such other legal, equitable or further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

288. Plaintiff demands a trial by jury for all issues so triable.

Dated: June 13, 2022

Respectfully submitted,

/s/ Ivy T. Ngo

Tibor L. Nagy, Jr. (*pro hac vice forthcoming*)
Gregory N. Wolfe (*pro hac vice forthcoming*)
William LaGrange (*pro hac vice forthcoming*)
Heidi R. Schumann (*pro hac vice forthcoming*)
Susan S. Hu (*pro hac vice forthcoming*)

Kyle Roche (*pro hac vice forthcoming*)
Edward Normand (*pro hac vice forthcoming*)
Joseph Delich (*pro hac vice forthcoming*)
Alex Potter (*pro hac vice forthcoming*)
Ivy T. Ngo (SBN 249860)

DONTZIN NAGY & FLEISSIG LLP

ROCHE FREEDMAN LLP

980 Madison Avenue
New York, NY 10075
tibor@dnflp.com
greg@dnflp.com
wlagrange@dnflp.com
hschumann@dnflp.com
shu@dnflp.com

99 Park Avenue, 1910
New York, NY 10016
Tel.: (646) 350-0527
kyle@rochefreedman.com
tnormand@rochefreedman.com
jdelich@rochefreedman.com
apotter@rochefreedman.com
ingo@rochefreedman.com