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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
CELSIUS NETWORK LLC., *et al.*,[1]	:	Case No. 22-10964 (MG)
	:	
Debtors.	:	(Jointly Administered)

MOTION OF THE UNITED STATES TRUSTEE FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 121 River Street, PH05, Hoboken, New Jersey 07030.

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William K. Harrington, United States Trustee for Region 2 (the "United States Trustee"), through his counsel, files this Motion (the "Motion") for the entry of an order directing the appointment of an examiner pursuant to 11 U.S.C. § 1104(c). In support thereof, the United States Trustee respectfully represents as follows:

I. PRELIMINARY STATEMENT

As acknowledged by the Debtors and all parties in interest, these cases are unique. The Debtors operate a crypto asset-based finance platform that provides financial

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services to institutional, corporate, and retail clients across more than 100 countries. The market for cryptocurrency is relatively new, purposefully opaque, and, at best, loosely regulated. It also lacks transparency, which has resulted in widespread confusion among the Debtors' customers and other parties in interest, requiring the immediate appointment of an examiner under section 1104(c)(1). This lack of visibility didn't start with the bankruptcy filing; it has been ongoing and is evidenced by the sudden changes in types of customer accounts and extensive customer confusion about the status of individual assets. There is no real understanding among customers, parties in interest, and the public as to the type or actual value of crypto held by the Debtors or where it is held. An independent examiner is necessary here to investigate and report in a clear and understandable way on the Debtors' business model, their operations, their investments, their lending transactions, and the nature of the customer accounts to ensure public confidence in the integrity of the bankruptcy system and to neutralize the inherent distrust creditors and parties in interest have in the Debtors.[2]

There are also numerous questions in this case as to the Debtors' management and their role in creating the Debtors' current illiquidity (*i.e.,* the prepetition failure of the Debtors and their affiliates to adequately collateralize their loans on an institutional level and the Debtors' repayment of hundreds of millions of dollars in loans during the ninety days prepetition) that require investigation by an impartial third party. Moreover, the allegations found in the prepetition complaints and regulatory actions against the Debtors are severe, including allegations of offering of unregistered securities, the failure to

[2] An unprecedented number of letters have been filed on the electronic docket in this case by affected customers. *See* Cornell Decl., ¶ 3.

obtain proper licenses, and the failure to hedge against market volatility. If these allegations are true, they could expose further irregularities. An examiner would be able to look into these and other issues to determine if there are any claims or causes of actions that the Unsecured Creditors Committee (the "Committee") can pursue.

The Debtors' professionals acknowledge many of these facts and circumstances and have provided information requested by the United States Trustee. Irrespective of such cooperation, however, the divergent interests of the various estates, the extreme financial irregularities that have taken place, and the extensive mistrust of the Debtors' customers, all make the appointment of an independent and disinterested examiner in the best interests of creditors, equity security holders, and the bankruptcy estates. Moreover, while it is helpful that the Committee has been formed and has already begun the difficult work of advancing the collective interest of the Debtors' creditors, the Committee, as a party in interest, is not neutral and not tasked with providing a public report of its findings for the benefit of all parties in interest and the public. Given the unique nature of these cases, a public report which provides transparency as to the Debtors' business model and operations, their investments, their lending transactions, and the nature of customer accounts is essential.

Based on the limited facts provided, the Debtors' capital structure includes unsecured debt in excess of the $5 million threshold of Bankruptcy Code section 1104(c)(2). Thus, the appointment of an examiner is not only necessary and in the best interest of creditors and parties in interest, but it is also mandatory. Accordingly, an examiner should be appointed to provide the Court, the United States Trustee, creditors,

and other parties in interest with transparency and clarity as to the business structure, practices, and liquidity of the above-captioned Debtors. For these reasons and as discussed below, the United States Trustee respectfully urges the Court to direct the United States Trustee to appoint an Examiner, pursuant to section 1104(d) of the Bankruptcy Code.

II. BACKGROUND

A. The Bankruptcy Filing

1. On July 13, 2022 (the "Petition Date"), Celsius Network LLC, Celsius KeyFi LLC, Celsius Lending LLC, Celsius Mining LLC, Celsius Network Inc., Celsius Network Limited, Celsius Networks Lending LLC, and Celsius US Holding LLC (collectively, the "Debtors") each commenced a voluntary case under Chapter 11 of the Bankruptcy Code. *See* Voluntary Petitions, SDNY Case No. 22-10964(MG), ECF Doc. No. 1; *see also* Declaration of Shara Claire Cornell ("Cornell Decl."), attached hereto and made a part hereof, ¶ 1.

2. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107 and 1008 of the bankruptcy Code. Cornell Decl., ¶ 1. On July 19, 2022, the Court entered an Order directing that these cases be jointly administered. ECF Doc. No. 53.

3. A first day hearing was held on July 18, 2022 granting certain interim relief. *See* Transcript dated July 18, 2022, attached hereto as Exhibit A.

4. An Official Committee of Unsecured Creditors was appointed on July 27, 2022. ECF Doc. No. 241.

5. On July 14, 2022, the Debtors filed their Motion Seeking Entry of Interim and Final Orders (I) Authorizing the payment of Certain Taxes and (II) Granting Related Relief (the "Tax Motion"). ECF Doc. No. 17. The Tax Motion identified that the Debtors had not paid Sales, Use, and VAT Taxes since 2020 and were liable for an estimated $20.2 million. Tax Motion, ¶ 14. The Tax Motion also identified that the Debtors were liable for Customs and Import Duties for an estimated $1.5 million. *Id*., ¶ 15. No trust fund or escrow accounts have been identified as earmarked for the payment of these taxes. Cornell Decl., ¶ 5.

6. Also on July 14, 2022, the Debtors filed their Motion Seeking Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief (the "Utility Motion"). ECF Doc. No. 3. The Utility Motion states that the majority of the Debtors' utilities are paid through its leases. Utility Motion, ¶ 10. The Utility Motion is silent as to how many leases the Debtors have or their monthly costs. Cornell Decl., ¶ 6.

7. On July 25, 2022, the Debtors filed their Motion for an Order to Approve Bidding Procedures ("Bid Procedures") for the sale of its equity interests in GK8, a non-debtor affiliate. ECF Doc. No. 188.

8. Also on July 25, 2022, the Debtors filed their Motion to Approve Procedures for De Minimis Asset Transactions ("De Minimis Motion") whereby the

Debtors would be authorized to complete allegedly ordinary course transactions up to a $5 million cap. ECF Doc. No. 189.

9. Also on July 25, 2022, the Debtors filed their Motion Seeking Entry of an Order (I) Permitting the Sale of the Debtors' Mined Bitcoin in the Ordinary Course and (II) Granting Related Relief (the "Bitcoin Motion") where the Debtors argued, *inter alia*, for the authority to sell, pledge, transfer, assign, or otherwise monetize the Bitcoin generated from their mining activity. ECF Doc. No. 187. The Bitcoin Motion is silent as to the use of the proceeds of any sold bitcoin, how much bitcoin the Debtors currently hold, or why the Debtors are unable to use any of its liquid reserves instead of actively selling bitcoin. Cornell Decl., ¶ 7.

B. The Debtors' Business Model and Corporate Structure

10. The Declaration of Alex Mashinsky, Chief Executive Officer of the Celsius Network LLC, in Support of Chapter 11 Petitions and First Day Motions (the "Mashinsky Decl.") (ECF Doc. No. 23) stated that the Debtors and non-debtor affiliates (collectively, "Celsius") were created in 2017 by founders Alex Mashinsky, S. Daniel Leon, and Nuke Goldstein.

11. The Debtors are a crypto asset based finance platform that provides financial services to institutional, corporate, and retail clients across more than 100 countries. See Mashinsky Decl., ¶ 1. The platform allowed users to transfer their crypto assets and (a) earn rewards on such crypto assets and/or (b) borrow money using those transferred crypto assets as collateral. *Id*.

12. The terms of use that form the basis of the contract between Celsius and its users explicitly state that in exchange for the opportunity to earn rewards on assets, users transfer "all right and title" of their crypto assets to Celsius including "ownership rights" and the right to "pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use" any amount of such crypto, whether "separately or together with other property", "for any period of time," and "without retaining in Celsius's possession and/or control a like amount of [crypto] or any other monies or assets, and to use or invest such [crypto] in Celsius's full discretion."[3] A version of this statement has been in every version of Celsius's "Terms of Use" since 2018. And since 2019, the Company has been clear that it might "experience cyber-attacks, extreme market conditions, or other operational or technical difficulties which could result in immediate halt of transactions either temporarily or permanently. (footnotes omitted)." Mashinsky Decl., ¶ 5.

13. The Celsius platform was launched in 2018, and by March 2021 Celsius had allegedly surpassed $10 billion in digital assets and 200 employees. In December 2021, Celsius announced the first closing of its Series B equity funding for 600 million at an implied enterprise value of approximately $3 billion. Mashinsky Decl., ¶¶ 7 and 40.

14. By July 2022, Celsius had approximately 1.7 million registered users and approximately 300,000 active users with account balances of more than $100 and approximately $6.0 billion in assets and was preparing to go forward with an initial public offering of Debtor Celsius Mining LLC ("Mining"). Mashinsky Decl., ¶ 9.

[3] On August 1, 2022, this Court entered an Order directing the Debtors to file its terms of use on or before August 8, 2022. ECF Doc. No. 301.

15. Celsius Network Inc. (the ultimate parent of the Debtors) disclosed unaudited liabilities of $5.5 billion and assets of $4.31 billion as of July 13, 2022. Mashinsky Decl., ¶ 16.

16. The Celsius business model is centered on deploying digital assets to generate income for Celsius and its operations and growth. Some of Celsius's crypto is tied up in long term and illiquid crypto deployment activities; some of Celsius's crypto assets have been loaned to third parties; and some of Celsius's crypto assets have been pledged in support of borrowings or sold to generate cash used to acquire Bitcoin mining equipment and the GK8 storage business. Because of the variety of asset deployment strategies that the Company engaged in, including the terms and length of time those strategies "lock" the assets, and due to the drop in value of digital assets, Celsius was unable both to meet user withdrawals and to provide additional collateral to support its obligations. Mashinsky Decl., ¶ 13.

17. Extreme market volatility in early 2022, including the implosion of Terra LUNA ("Luna") and its TerraUSD stablecoin ("USTD") as well as the failure of several crypto funds/exchanges, accelerated the onset of a "crypto winter" and an industry-wide sell-off in 2022. Mashinsky Decl., ¶¶ 11-2.

18. As a result of the volatility, Celsius suffered a rapid "run on the bank" that prompted Celsius to pause all withdrawals, swaps, and transfers on its platform on June 12, 2022. Mashinsky Decl., ¶ 14.

19. As of April 2022, the Earn program is only offered to international-based users and U.S. accredited users. U.S. non-accredited users who had a balance in their

Earn account prior to April 15, 2022, are allowed to keep such balances in the Earn program and have continued to earn rewards thereon. As of the Petition Date, there were over 600,000 Earn users, who had transferred approximately 2 billion in digital assets, in the aggregate, with a market value of approximately $4.2 billion as of July 10, 2022, to Celsius. As of the Petition Date, Celsius no longer offers rewards on digital assets transferred to Celsius through the Earn program. Mashinsky Decl., ¶ 49.

20. In April 2022, the Company began providing a new type of service marketed to its users located in the U.S. called the Celsius Custody Service. For eligible users, "Custody Service" serves as the central hub of their digital asset account at Celsius, enabling the user to navigate from Celsius's "Custody Wallet" to various Celsius products (based on the availability of those products in the user's jurisdiction).[4] For example, an eligible customer could elect to transfer their crypto assets from the "Custody Service" program to the Earn program to earn rewards. For clarity, crypto assets held solely in "Custody Service" do not earn rewards from the Earn program as crypto assets held in custody shall "at all times remain with the [user]" and "Celsius will not transfer, sell, loan or otherwise rehypothecate" digital assets in custody unless "specifically instructed by [users], except as required by valid court order, competent regulatory agency, government agency or applicable law." Pursuant to the "Terms of Use," the Company is, however, entitled to set-off any obligations owed by a user to the Company against the user's assets held in custody. Because all user assets are

[4] Certain Custody Service account holders have retained the Togut, Segal & Segal LLP firm to represent as an Ad Hoc Group of Custodial Account Holders in these Bankruptcy Cases. *See Notice of* Appearance, ECF Doc. No. 330.

comingled, custody users are not entitled to the return of their specific digital assets, but rather the return of the same type of digital asset (footnotes omitted). Mashinsky Decl., ¶ 58.

21. Even though Custody Services were only created in April 2022, as of July 10, 2022, the Debtors had $180 million held in its Custody accounts. Mashinsky Decl., ¶ 16, 59.

22. The Mashinsky Declaration is silent as to "Withhold" Accounts.[5] Cornell Decl., ¶ 4.

C. Committee Requests

23. The United States Trustee has received two separate requests for the appointment of formal equity committees that, *inter alia*, allege that their respective constituencies are not adequately represented in this bankruptcy case, not withstanding the appointment of the Committee. Cornell Decl., ¶ 11.

24. Upon information, at least two other ad hoc committees have been formed. On August 2, 2022, a notice of appearance and request for service was filed on behalf of an Ad Hoc Group of Custodial Account Holders. ECF Doc. No. 330. On August 11, 2022, a notice of appearance and demand for notices was filed on behalf of an Ad Hoc Group of Withhold Account Holders. ECF Doc. No. 427.

[5] There are allegations regarding these types of accounts in multiple letters filed on the Court's electronic docket. *See, e.g.,* ECF Doc. No 162 ("It appears that the Debtor has failed to disclose to the court that there is a fourth account type--the "Withhold" account"). The allegations include that in states that prohibited "Custody" accounts, customer assets were instead held in accounts the Debtors labeled as "Withhold" accounts. *Id*. Troutman Pepper Hamilton Sanders LLP has filed a Notice of Appearance as counsel for an Ad Hoc Group of Withhold Account Holders. ECF Doc. No. 427.

D. Prepetition Litigation

25. On July 7, 2022, KeyFi, Inc. ("KeyFi") filed a complaint in the Supreme Court of the State of New York, County of New York against CNL and Celsius KeyFi LLC (the "KeyFi Complaint") alleging five different causes of action asserting breach of contract, negligent misrepresentation, and fraud claims and demanding an accounting. Cornell Decl., ¶ 8.

26. The KeyFi Complaint also specifically alleged that in order to address a liquidity crisis precipitated by customer withdrawals, Celsius offered double-digit interest rates in order to lure new depositors, whose funds were used to repay depositors and creditors, thereby becoming a Ponzi scheme. KeyFi Complaint, ¶ 87.

27. The KeyFi Complaint was filed in response to an ongoing dispute with KeyFi and its chief executive officer. Mashinsky Decl., ¶ 129.

28. On July 13, 2022 a Class Action Complaint was filed in the United States District Court for the District of New Jersey against Celsius Network, LLC, Celsius Lending, LLC, Celsius KeyFi LLC, Alexander Mashinsky, Shomi "Daniel" Leon, David Barse, and Alan Jeffrey Carr (the "Class Action Lawsuit"). The Class Action Lawsuit alleged that the common legal factual questions include, but are not limited to:

a. whether the Celsius Financial Products are securities under the Securities Act;

b. whether the sale of Celsius Financial Products violates the registration of the Securities Act;

c. whether certain Debtors (and management) improperly and misleadingly marketed Celsius Financial Products;

d. whether certain Debtors' (and management's) conduct violates the state consumer protection statutes asserted herein;

e. whether Debtors (and management) conspired to artificially inflate the price of the Celsius Financial Products and then sell their Celsius Financial Products to unsuspecting investors;

f. whether Debtors (and management) have been unjustly and wrongfully enriched as a result of their conduct;

g. whether the proceeds obtained as a result of the sale of Celsius Financial Products rightfully belongs to class members; and

h. whether Management breached the implied covenant of good faith and fair dealing.

Class Action Lawsuit, Exhibit B.

29. The Class Action Lawsuit was not described in the Mashinsky Declaration. Cornell Decl., ¶ 4.

E. State Investigation, Enforcement, and Advisory Actions

30. At least six state regulators also have investigated the operations of Celsius, including whether Celsius was offering unregistered securities through its interest bearing Earn accounts. Cornell Decl., ¶ 12. The six states—Washington, New Jersey, Alabama, Texas, Kentucky, and Vermont—have taken the following actions:

- On September 16, 2019, a consent order was entered into between the State of Washington Department of Financial Institutions Division of Consumer Services and Celsius Network Inc. prohibiting Celsius Network Inc. from holding itself out being able to or providing money services to Washington state consumers until such time as Celsius Network Inc. obtains a license in accordance with the Uniform Money Services Act. It was further agreed that Celsius Network shall cease and desist from making, facilitating, or assisting in making or financing any loans to Washington State residents until such time as Celsius Network obtains a license in accordance with the Consumer Loan Act.

- On September 1, 2021, the New Jersey Bureau of Securities issued a Cease and Desist Order against Celsius Network LLC from (1) offering for sale any security to or from New Jersey without first registering the security or qualifying for an exemption, (2) accepting any additional assets into an existing Earn account, and (3) violating any securities law.
- On September 16, 2021, the Alabama Securities Commission issued an Order to Show Cause Why the Alabama Securities Commission Should Not Order Respondents to Cease and Desist from Further Offers or Sales of Securities in Alabama.
- On September 17, 2021, the Texas State Securities Board, issued a Notice of Hearing scheduled for February 14, 2022, for the purpose of determining whether to issue a proposal for decision for the entry of a Cease and Desist against Celsius Network, LLC, and Celsius Lending, LLC.
- On September 23, 2021, the Department of Financial Institutions for the State of Kentucky issued an Emergency Order to Cease and Desist against Celsius Network LLC prohibiting it from soliciting or selling any security in Kentucky unless that security is registered with the Department and from any and all activity which would violate the Securities Act of Kentucky.
- On July 7, 2022, the Vermont Department of Financial Regulation issued an *Investor Alert: Celsius Network* (Celsius Network LLC and its affiliates) warning, in part, that:

> The Department believes Celsius is deeply insolvent and lacks the assets and liquidity to honor its obligations to account holders and other creditors. Celsius deployed customer assets in a variety of risky and illiquid investments, trading, and lending activities. Celsius compounded these risks by using customer assets as collateral for additional borrowing to pursue leveraged investment strategies. Additionally, some of the assets held by Celsius are illiquid, meaning they may be difficult to sell, and a sale may result in financial losses. The company's assets and investments are probably inadequate to cover its outstanding obligations.

- On August 8, 2022, a Desist and Refrain Order was issued by the State of California Business, Consumer Services and Housing Agency Department of Financial Protection and Innovation ordering Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC,

> Celsius Network LLC, and any of their subsidiaries, and Alexander Mashinsky (collectively, "California Defendants"), to desist and refrain from further offers and sale of securities unless such sales are qualified under California law or an exemption applies. Furthermore, the California Defendants were ordered to desist and refrain from offering securities in California by means of untrue statements of material fact or omissions of material facts necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading in violation of Corporations Code section 24501.

Cornell Decl., ¶ 12.

31. The Mashinsky Declaration is silent as to any regulatory issue or action. Cornell Decl., ¶ 4.

F. Known Prepetition Conduct of the Debtors

32. The Debtors admit that "despite the Company's directive to engage in only market neutral exchange deployments, certain asset deployment decisions were made in the midst of its unexpected asset growth that in hindsight proved problematic. Although the Company took the necessary steps to "unwind" these deployments, unfortunately, the damage was done." Mashinsky Decl., ¶ 92.

33. The Debtors purchased GK8 in the Fall of 2021. Mashinsky Decl., ¶¶ 8, 85. The Company intended to use the acquisition of GK8 to enhance the Company's ability to provide consumers with custody services by April 2022. *Id*.

34. Celsius Network entered into an intercompany loan with Mining for $750 million effective as of November 1, 2022. Mashinsky Declaration, ¶ 66. As of May 31, 2022, the outstanding loan balance owed to Celsius Network is approximately $576 million. Mashinsky Declaration, ¶ 68. The Mashinsky Declaration categorizes this as a revolver but does not identify if the revolver borrower function is still active or if by the

terms of the agreement the loan is only in repayment mode. Cornell Decl., ¶ 4. No terms of the agreement are provided in the Mashinsky Declaration. *Id*.

35. The Debtor took out a third-party loan from October 2019 to February 2021 that is characterized by the Debtor as a "collateralized term loan[]." Mashinsky Decl., ¶ 94. Neither the lender, the amount of the loan, nor the type of collateral are identified. Cornell Decl., ¶ 4. Whether this lender is a non-debtor affiliate, insider, or otherwise related entity is not found in the Mashinsky Declaration. Cornell Decl., ¶ 4. In July 2021, about two and a half years after taking out the loan, Celsius learned that this lender could not return its collateral, which resulted in "Celsius having an approximately $509 million uncollateralized claim against this party after it setoff its own loan obligations to the lender." Mashinsky Decl., ¶ 94. As a result, this unidentified lender has been making payments to the Debtors to repay the lost collateral. *Id*. The aggregate principal owed to the Company stands at approximately $439 million, consisting of $361 million in USD and 3,765 BTC, the latter worth approximately $78 million. *Id*. No description of the types of claims the Debtors may have against this lender are made in the Mashinsky Declaration, nor is there an explanation for why legal recourse was not sought. Cornell Decl., ¶ 4. There is also no description of any investigation by the Debtors into its legal recourse. *Id*..

36. Prior to the Petition Date, on June 27, 2022, the Company had approximately $648 million in loans collateralized by approximately $1.61 billion in digital assets based on a market valuation of June 27, 2022. However, as of the Petition

Date, the Debtors had substantially repaid all of these loans, and the collateral was returned. Mashinsky Decl., ¶ 71.

37. In May and June 2022, Celsius stopped providing Tether, issuer of the stablecoin USDT, additional collateral and agreed to a liquidation of its loan. Tether issued a margin call (exact date not provided) to Celsius with regard to an outstanding $841 million USDT loan. Celsius agreed to a liquidation and settlement of its loan with Tether, which resulted in a loss of approximately $97 million to the Debtors. Mashinsky Decl., ¶ 123.

38. The Debtors have roughly 50% of its mining rigs in operation; it owns 80,850 but only 43,632 are currently mining. Mashinsky Decl., ¶ 67. It is unclear if un-operational rigs are offline because the equipment is obsolete or for another reason. Cornell Decl., ¶ 4.

G. <u>Customer Mistrust</u>

39. Customers of the Debtors have evidenced a high level of mistrust in the Debtors and Debtors' current management. On a regular basis, customers of Celsius file grievance letters on the Court docket. Cornell Decl., ¶ 3. These allegations include (i) that the Debtors ran a Ponzi scheme where the yield was coming from new investors and not from the charged interests on loans; (ii) that employees withdrew their own funds in advance of the account freezing, thereby causing additional market volatility; and (iii) that current management made regular public announcements to customers assuring them of the safety of their crypto assets through regular AMAs (Ask Me Anything) when management was aware of the danger surrounding investments. Cornell Decl., ¶ 3.

III. GROUNDS/BASIS FOR RELIEF

40. Creditors, as well as investors, require an independent, conflict-free, experienced party investigating the financial affairs of these Debtors, free from the constraints of current management, to serve as a clear, easily understood, and trusted source of information.

41. Under 11 U.S.C. § 1104(c), this Court must direct the appointment of an examiner:

> to conduct such an investigation of [the Debtors] as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of [the Debtors] of or by current or former management of [the Debtors], if
>
> (1) such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; or
>
> (2) [the Debtors'] fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5,000,000.

42. As discussed below, this Court should direct the appointment of an examiner under either or both sections 1104(c)(1) and 1104(c)(2).

A. The Appointment of an Examiner Would Be in the Best Interests of the Debtors' Estate and Their Creditors and Equity Security Holders.

43. An order directing the appointment of an examiner would be in the best interests of the Debtors' estates, their creditors, and equity security holders. An investigation by an independent examiner—who would present his or her findings in an understandable way—is essential to provide the Court, the United States Trustee, creditors, and other parties in interest with transparency and clarity as to the business

structure, practices, and liquidity of the Debtors. The Debtors' financial affairs and business operations need to be reviewed and "untangled" by a disinterested person that is removed from the competing interests of the complicated and numerous constituencies in this case. This is all the more important where the sums at stake are enormous as is the distrust felt by those who dealt with the Debtors.

44. Examiners have been held to be particularly appropriate when the subject matter of the investigation involves a complex area of law that may be beyond the bankruptcy court's expertise. *See In re Michigan BioDiesel, LLC*, 466 B.R. 413, 421 (Bankr. W.D. Mich. 2011) (appointing examiner and noting that the court would "appreciate an examiner's independent advice on these complex issues of federal tax and energy policy"). Given that cryptocurrency is an entirely new medium of exchange created in the last decade or so and that it is neither widely used nor widely understood (compared to traditional fiat currencies issued and regulated by central governments), this case fits that novel and complex profile that would benefit from an examiner. Likewise, examiners are appropriate where the investigation pertains to alleged improprieties by the debtor itself or its managers or affiliates. *See In re JNL Funding Corp.*, No. 10-73724, 2010 WL 3448221, at *3 (Bankr. E.D.N.Y. Aug. 26, 2010); *see also First Am. Health Care of Georgia, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 208 B.R. 992, 994–95 (Bankr. S.D. Ga. 1996) (finding that where there was a "fog of uncertainty" regarding the debtor's independence, the debtor's credibility would be "well served by the involvement of an examiner.").

1. <u>There are Credible Allegations of Incompetence or Gross Mismanagement, Including the Offering of Unregistered Securities, Which Warrant the Appointment of an Examiner to Investigate.</u>

45. The offering of unregistered securities, failing to obtain proper licenses, failing to hedge against market volatility, and engaging in risky investments bear the hallmarks of "incompetence" or "gross mismanagement" warranting appointment of a neutral third party as a chapter 11 examiner. *See, e.g., In re Vascular Access Centers, L.P.*, 611 B.R. 742, 764 (Bankr. E.D. Pa. 2020) ("Accordingly, courts have found cause present pursuant to § 1104(a)(1) in circumstances demonstrating conflicts of interest; misuse of assets and funds; inadequate recordkeeping and reporting; failure to file required documents; lack of adequate disclosure; lack of appropriate cost controls; transgressions related to taxes; failure to make required payments; lack of credibility and creditor confidence; and breaches of fiduciary duties."); *Oklahoma Refining Co. v. Blaik (In re Oklahoma Refining Co.)*, 838 F.2d 1133, 1136 (10th Cir. 1988) ("There are many cases holding that a history of transactions with companies affiliated with the debtor company is sufficient cause for the appointment of a trustee where the best interests of the creditors require"); *see also In re PRS Insurance Group*, 274 B.R. 381, 387 (Bankr. D. Del. 2001) (evidence of diversion of assets, or the absence of accurate financial records, constitutes "incompetence or gross mismanagement"). At least six state regulators—Washington, New Jersey, Alabama, Texas, Kentucky, and Vermont—have investigated the operations of the Debtors and found preliminary evidence that it was offering unregistered securities through its interest bearing Earn accounts. A neutral third party is necessary to explain the potential ramifications to parties in interest.

46. The Debtors admit that "despite the Company's directive to engage in only market neutral exchange deployments, certain asset deployment decisions were made in the midst of its unexpected asset growth that in hindsight proved problematic. Although the Company took the necessary steps to 'unwind' these deployments, unfortunately, the damage was done." Mashinsky Decl., ¶ 92. The extent of these missteps and the impact on these bankruptcy cases may be the basis for significant causes of action belonging to the bankruptcy estate and demonstrate that appointment of an examiner is in the best interests of the Debtors' estate and its stakeholders. Because the Debtors' assets may include claims and causes of action against a range of entities and persons, including current management, current management cannot be expected to exercise their fiduciary duty to the Debtors' creditors and "investors" to investigate and prosecute claims against themselves. An impartial third party is therefore crucial to a full and fair investigation.

2. <u>There are Significant Transparency Issues.</u>

47. The lack of transparency in this bankruptcy case along with the lack of visibility into the Debtors' prepetition business operations require a neutral third party to investigate and present to the Court, the United States Trustee, and all interested parties a report that the Debtors' customers can understand. The Debtors have not provided adequate information regarding their liquidity position, their business model, the flow of traditional cash funds, or the value of their crypto assets. An examiner is necessary to explain the gaping holes in Debtors' business model and balance sheet in order for all parties in interest to evaluate any proposed restructuring or sale.

48. The addition of social media in this case has amplified the Debtors' transparency issues because there is a lot of information on the internet, but it is not vetted or explained, thereby leaving hundreds of thousands of customers to form their own conclusions based on the missing facts in this case coupled with the information passed around as truth on the internet. The result has been confusion and anxiety. An examiner can fix this.

49. Interested parties need visibility by a third party neutral who is unbeholden to any constituency on at least the following known missing information:

i. How much crypto is held and where and how is it stored? Are different types of accounts comingled together?

ii. There is no transparency regarding the change in April 2022 from the Earn Program to the Custody Service for some customers while others were placed in a "Withhold Account." Who holds what account and why is particularly confusing for customers who had their accounts unilaterally changed by the Debtors prepetition. This information is important if assets were comingled among the different types of accounts.

iii. Who is the undisclosed third party loan party and what steps did the Debtors take to neutralize their lost collateral?

iv. Why was $648 million repaid and collateral returned prepetition? What were the terms of these loans? Who was a cosigner?

v. There needs to be more information regarding the $750 million intercompany revolver, including, the origins of the loan, terms of this loan, and the uses of the loan proceeds.

vi. Why did Celsius liquidate its Tether loan at a $97 million loss within 90 days of the Petition Date?

vii. There are no details regarding the GK8 acquisition to understand the proposed sale of only the equity interests less than a year later.

viii. There is no information as to why Sales, Use, and VAT taxes have not been paid or if the money to pay these taxes is currently held in escrow.

ix. There is no visibility into the Debtors' mining business and what equipment exists and what equipment is operational, valuable, or in transit.

x. There is no information regarding the costs of the ongoing mining operations. The Debtors state that utilities are paid directly through their leases, but have not provided copies of their leases or how much monthly rents are. The cost of mining is incredibly important to this case as the Debtors suggest that mining and then selling new bitcoin will help fund these bankruptcy cases.

3. <u>Widespread Mistrust in the Debtors.</u>

50. The lack of transparency has created an incredible atmosphere of mistrust of the Debtors and their management. The "appointment [of a trustee] is in the interests of creditors" under 11 U.S.C. § 1104(a)(2), as their hopes for a recovery on account of their claims are tied to the impartial investigation and prosecution of claims and causes of action. *See Manufacturers and Traders Trust Co. v. Morningstar Marketplace, Ltd. (In re Morningstar Marketplace, Ltd.)*, 544 B.R. 297, 305 (Bankr. M.D. Pa. 2016) ("A court is more likely to appoint a trustee under § 1104(a)(2) when reorganization is not possible, and a Debtor's principal may be motivated to protect his own interests rather than the interests of creditors. When coupled with a lack of confidence in management, and the benefits of appointing a trustee outweigh the cost, courts often find the argument for appointment of a trustee to be compelling.") (internal citation omitted); *In re Euro-American Lodging Corp.*, 365 B.R. 421, 427-28 (Bankr. S.D.N.Y. 2007) ("Where a chapter 11 debtor and its managers … suffer from material conflicts of interest, an independent trustee should be appointed"); *In re McCorhill Publ., Inc.*, 73 B.R. 1013, 1017 (Bankr. S.D.N.Y. 1987) (where there are questionable inter-company financial transfers and the principals of the debtor occupy conflicting positions in the transferee companies, appointment of a trustee is warranted in the best interests of all creditors and all parties in interest to investigate the financial affairs of the debtor).

51. In this case, letters are filed on the docket on a regular basis that detail the distrust between customers and the Debtors and Debtors' management. While the allegations may not be aligned, the overall message is clear—the creditors feel misled by the Debtors and current management.

52. An examiner is better positioned to conduct an investigation in this bankruptcy case than a committee because an examiner is a disinterested person who, akin to a trustee, represents the interests of the entire estate—not just a subset of unsecured creditors, equity holders, or some other constituency. The Committee has its own mission with a clear constituency and is by definition not an independent third party, whereas an examiner has no constituency and is truly independent. An examiner can work cooperatively with the Committee as the Committee does its examination on behalf of its own constituents.

53. Moreover, an appropriately tailored independent examination likewise will provide creditors and other parties in interest with important missing information in a timely, cost-effective manner. An examiner would not interfere in the Committee's efforts, nor would there be a duplication of work.[6] Indeed, an examiner will maximize value by having the estate pay once for an examination by a party other than the Debtors, rather than for multiple, duplicative examinations by committees, creditors, and other parties in interest. In fact, there is no better way to support the Committee here than to have a third party that is trusted by all parties in interest to vet all of the necessary

[6] The United States Trustee, pursuant to its statutory duties, will review all fee applications filed in this case.

information so that the Committee can focus on its own obligations in representing its own unsecured creditor constituency.

54. Accordingly, a neutral examiner should be appointed to provide the much-needed visibility into the Debtors, their business model, and their balance sheet and to also bridge the gap between the creditors and the Debtors by fostering trust in the information provided for a successful reorganization.

B. The Debtors Exceed the Unsecured Debt Limit in § 1104(c)(2).

55. The Court should direct the appointment of an examiner because Debtors have both the type and amount of unsecured debts that that make the appointment mandatory under section 1104(c)(2).

56. The Mashinsky Declaration describes the Debtors' capital structure as including funded unsecured debt in excess of the $5 million threshold of section 1104(c)(2). Accordingly, the appointment of an examiner to investigate and report on the affairs of the Debtors is mandatory. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500-01 (6th Cir. 1990) ("[Section 1104(c)(2)] plainly means that the bankruptcy court 'shall' order the appointment of an examiner when the total fixed, liquidated, unsecured debt exceeds $5 million if the United States Trustee requests one."); *In re Loral Space & Communications Ltd.,* No. 04 Civ. 8645RPP, 2004 WL 2979785, at *4, 5 (S.D.N.Y. Dec. 23, 2004) (reversing Bankruptcy Court's decision denying appointment of examiner where $5 million debt threshold under section 1104(c)(2) was met and parties seeking appointment had standing to do so); *In re UAL Corp.,* 307 B.R. 80, 83-86 (Bankr. N.D. Ill. 2004) ("best reading of the statute" is that

appointment of an examiner is mandatory if the requirements of section 1104(c)(2) are satisfied).

57. Although a court has authority under section 1104(c)(2) to specify the appropriate scope of an examination, the "as is appropriate" language in that statutory subsection does not confer discretion to decide whether an examiner should be appointed as a threshold matter once it is clear that the statute's monetary threshold is met. *See In re Loral*, 2004 WL 2979785, at *5 ("[i]t is [the bankruptcy court's] duty to fashion the role of an examiner to avoid substantial interference with the ongoing bankruptcy proceedings."); *In re UAL Corp.,* 307 B.R. at 85, n.2 (construing the "as is appropriate" language in section 1104(c)(2) to vest discretion in the bankruptcy court nullifies its mandate).

WHEREFORE the United States Trustee requests that this Court enter an order directing the appointment of an examiner.

Dated: New York, New York
August 18, 2022

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, Region 2

By: */s/ Shara Cornell*
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Mark Bruh, Esq.
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
CELSIUS NETWORK LLC, *et al.*,[1]	:	Case No. 22-10964 (MG)
Debtors.	:	(Jointly Administered)

DECLARATION OF SHARA CORNELL

I, Shara Cornell, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am a trial attorney for the United States Department of Justice, Office of the United States Trustee, with offices located at 201 Varick Street, Room 1006, New York, NY 10014. I am a member of the bars of the States of New York, New Jersey, and Illinois, and am admitted to practice law in the United States District Court for the Southern District of New York.

2. I represent William K. Harrington, the United States Trustee for Region 2, and am the Trial Attorney with responsibility for this case. I submit this declaration in support of the Motion of the United States Trustee for the Entry of an Order Directing the Appointment of an Examiner (the "Motion").

3. I reviewed the electronic docket for Celsius Network, LLC, *et al.* (the "Debtors") in Bankruptcy Case No. 22-10964 (the "Bankruptcy Case") and the documents filed in this Bankruptcy Case.

4. I reviewed the Petition [ECF Doc. No. 1], Declaration of Alex Mashinsky [ECF Doc. No. 23], and all other corresponding documents filed in this Bankruptcy Case.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 121 River Street, PH05, Hoboken, New Jersey 07030.

5. I reviewed the Motion Seeking Entry of Interim and Final Orders (I) Authorizing the payment of Certain Taxes and (II) Granting Related Relief. ECF Doc. No. 17.

6. I reviewed the Motion Seeking Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief. ECF Doc. No. 3.

7. I reviewed the Motion Seeking Entry of an Order (I) Permitting the Sale of the Debtors' Mined Bitcoin in the Ordinary Course and (II) Granting Related Relief. ECF Doc. No. 187.

8. I have reviewed the complaint filed in the Supreme Court of the State of New York, County of New York against CNL and Celsius KeyFi LLC.

9. To date, the Schedules and Statement of Financial Affairs have not been filed.

10. To date, no monthly operating report has been filed, with the first becoming due on August 15, 2022.

11. The United States Trustee received two requests for the appointment of an equity committee.

12. At least six state regulators have investigated the operations of Celsius.

I declare under penalty of perjury that the information contained in this Declaration is true and correct.

Dated: New York, NY
August 18, 2022

/s/ Shara Cornell
Shara Cornell

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10964-mg

- x

In the Matter of:

CELSIUS NETWORK LLC,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

July 18, 2022

2:00 PM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: MARIA

HEARING re First Day Hearings

HEARING re Debtors' Amended Motion Seeking Entry of an Order (I) Directing Joint Administration of the Chapter 11 Cases and (Il) Granting Related Relief (Doc #7)

HEARING re Debtors' Application Seeking Entry of an Order (I) Authorizing and Approving the Appointment of Stretto, Inc. as Claims and Noticing Agent and (Il) Granting Related Relief (Doc #4)

HEARING re Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (a) Continue to Operate Their Cash Management System, (b) Honor Certain Prepetition Obligations Related Thereto, (c) Maintain Existing Business Forms, and (d) Continue to Perform Intercompany Transactions, (II) Granting Superpriority Administrative Expense Status to Postpetition Intercompany Balances, and (Ill) Granting Related Relief (Doc #21)

HEARING re Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (a) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Expenses and (b) Continue Employee Benefits Programs and (Il) Granting Related Relief (Doc #19)

HEARING re Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors, Foreign Vendors, 503(B)(9) Claimants, and Lien Claimants, (Il) Granting Administrative Expense Priority to All Undisputed Obligations on Account of Outstanding Orders, and (III) Granting Related Relief (Doc #20)

HEARING re Debtors' Motion Seeking Entry of Interim and Final Orders (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (Il) Granting Related Relief (Doc #15)

HEARING re Debtors' Motion Seeking Entry of an Order (I) Authorizing the Debtors to Prepare a Consolidated List of Creditors in Lieu of Submitting A Separate Mailing Matrix for Each Debtor, (II) Authorizing the Debtors to File A Consolidated List of the Debtors Fifty Largest Unsecured Creditors, (III) Authorizing the Debtors to Redact Certain Personally Identifiable Information, (IV) Approving the Form and Manner of Notifying Creditors of Commencement, and (V) Granting Related Relief (Doc #18)

HEARING re Debtors' Motion Seeking Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, (Il) Extending Time to File Rule 2015.3 Financial Reports and (Ill) Granting Related Relief (Doc #8)

HEARING re Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (a) Pay their Obligations Under Prepetition Insurance Policies, (b) Continue to Pay Certain Brokerage Fees, (c) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (d) Maintain their Surety Bond Program and (Il) Granting Related Relief (Doc #16)

HEARING re Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees and (Il) Granting Related Relief (Doc #17)

HEARING re Debtors' Motion Seeking Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of Declarations of Worthlessness with Respect to Common Stock and Preferred Stock and (Il) Granting Related Relief (Doc #5)

HEARING re Debtors' Motion Seeking Entry of an Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and Ipso Facto Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief (Doc #6)

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

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P R O C E E D I N G S

CLERK: Good afternoon. This is Greg White, the Courtroom Deputy. This hearing is in Case Number 22-1094, Celsius Network LLC. It's 2:00 PM on July 18th. At this time, I'd like to take appearances from anyone who plans on speaking during the hearing, please.

MR. NASH: Good afternoon. Pat Nash, from Kirkland & Ellis, proposed counsel to Celsius Network LLC and it's seven affiliated Debtors.

CLERK: Thank you.

MR. JOHN: Good afternoon. It's Dennis John, from Milbank LLP, on behalf of several holders of the Debtors' Series B Preferred Equity Shares.

CLERK: Thank you.

MR. NASH: This is Pat Nash again, from Kirkland & Ellis. I'd also like to make appearances for my partner, Mr. Ross Kwasteniet; a colleague of mine, Ms. Alison Wirtz; and a third colleague of mine, Mr. Simon Briefel, each of whom will be addressing the Court, with the Court's permission, during the course of the hearing today.

CLERK: Okay, thank you.

MR. SUSSBERG: Your Honor, it's Joshua Sussberg, from Kirkland & Ellis. I am not planning to appear today, just participate with my partners and colleagues. Thank you.

CLERK: And I'd also like to just that everyone know that -- please mute your cellphone and make sure there are no electronic devices or notifications that will interfere with the recording. Mute your line if not speaking. A party can mute themselves by clicking mute on the lower left-hand corner of the screen.

Also, this hearing is a court proceeding and any recording other than the official court version is prohibited. No party may record images or sound from any location.

Also, please state your name each time you speak so we can make an accurate record. Thank you.

THE COURT: All right. Good afternoon, everyone. This is Judge Glenn. We're here in Celsius Network LLC, 22-10964. We're here in connection with the first day motions. I am in my courtroom. There is one person who came to Court today, even though this hearing was noticed as a remote hearing on Zoom. And I've permitted him to appear in the courtroom. There is also a court security officer during the hearing as well.

Before we begin, I want to make just a few very preliminary comments. So, the Court -- I received on Friday at 10:41 AM an email addressed to me from what appears to be a creditor. How the person obtained my email address, I don't know. A copy of the email -- of the text of the email

-- is going to be filed on ECF. It has not happened yet (indiscernible). I think it's fair to say the text of the email from this person is very critical of the existing management of the Debtor. I won't comment further.

I would also note that if there are any creditors who intend to file anything, their filling should be filed on the electronic case filing system. No email should be sent to me or to chambers.

There are two other letters or texts addressed to me, but which were filed on ECF. One was filed as ECF Docket Number 26 on July 14th, and the other was filed yesterday, the 17th, as ECF Docket Number 41.

The Court's docket in this case, of course, is a public docket, and people are free to either on their own behalf or if they have lawyers, to file anything in relation to the case. But I just want to caution that nothing should be sent directly to me or to chambers. Rather, they should be sent to -- should be filed on the electronic case filing system.

All right. Who's going to take the lead for the Debtors today?

MR. NASH: That would be me, Your Honor, Pat Nash, from Kirkland & Ellis.

THE COURT: All right. Good afternoon, Mr. Nash. Go ahead.

MR. NASH: Good afternoon, Judge. It's good to be with you today. At the outset, Judge, if you'll permit me, I'd like to thank Your Honor and Your Honor's chambers. Incredibly accommodating in hearing us on short notice and in a very organized fashion, and we greatly appreciate that.

I'd also like to thank the United States Trustee's office, in particular, Ms. Cornell, Mr. Bruh and Mr. Masumoto. They've been very accommodating, made themselves very available. Cautiously optimistic that we've resolved all of their issues in advance of the hearing. To the extent we haven't, anything that's left is very minor.

I'd also, if you'll permit me, Judge, like to draw to your attention, present here on the Zoom is Mr. Alex Mashinsky, CEO and Cofounder -- one of the cofounders -- of Celsius. Mr. Mashinsky filed a declaration at Docket Number 23.

Also with us virtually, Your Honor, participating in the hearing is Mr. Robert Compagna. Mr. Compagna is a Managing Director at Alvarez and Marsal, proposed financial advisor to the Debtors. Mr. Compagna filed a declaration in support of the first day relief that we seek today. That declaration can be found at Docket Number 22.

I have already had an opportunity, Your Honor, to introduce some of my colleagues who will be addressing you today. And so, with that, let me jump into it.

And, you know, Your Honor, I do have a suggestion for, with your permission, how we proceed today. But before I even make that suggestion, again, with Your Honor's permission, would you permit me to make an observation?

THE COURT: Go ahead, Mr. Nash.

MR. NASH: Your Honor, many people are listening to this proceeding this afternoon. And literally tens if not hundreds of thousands of people are paying close attention to what is happening here this afternoon.

This case has generated significant public interest, not only significant, but intense public interest. It's receiving significant media attention, both traditional media, but probably more impactfully, social media attention.

As Your Honor can imagine, when the gates came down on June 12th and the company paused withdrawals, customers were angry, they were irate, they were passionate in these feelings, they had questions, and they were confused.

This anger and frustration has been exacerbated, in my view, by the company's relative silence in the weeks leading up to the filing. As Your Honor is familiar with, but everybody may not be -- everybody who's listening -- in the leadup to a Chapter 11 filing, it's typical that a company is limited in the things that they can say publicly,

limited in what their attorneys allow them to say publicly.

The level of anger and frustration evidenced on social media has caused some employees of Celsius to fear for their personal safety and the safety of their families. And while that sounds dramatic, it is the case. And it is for that reason, Your Honor, that Celsius welcomes the opportunity to be in Chapter 11.

And while in many respects that may be an odd thing to say, and we all wish that the macroeconomic environment and the crypto economic environment was such that the pause would've never been necessary and these proceedings wouldn't be necessary, Chapter 11 gives Celsius the opportunity to start answering at least some of these questions. Chapter 11 affords us a forum to communicate with our customers on the path forward.

This morning, Judge, I received an email from a significant retail customer, seven-figure-plus retail customer, expressing grave concern and his expectation that the goal of these proceedings is to fix claims as of the petition date for the purpose of forcing customers to take recovery in U.S. dollars or other fiat currency.

Celsius wants me to be crystal clear here at this moment, Judge. This is not what we're going to be doing. This is not a liquidation. We do not intend to force customers to take their recovery in fiat currency. All is

not lost. We intend for this to be a reorganization. Our goal is to maximize the value of Celsius' assets for the benefit of our customers.

More than any place I can remember, Judge, we look forward to the UST appointing an official Committee of Unsecured Creditors. We expect that this committee will be essentially, if not literally, a customer committee. We have very little unsecured trade debt. We know that it will be incumbent upon us to work expeditiously on the path forward with this committee. A reorganization plan for Celsius is not going to succeed without the buy-in of our stakeholders and our community.

At a very high level, Judge, what does this plan look like? And this isn't to preordain anything, but we do have a lot of folks listening and paying attention, and they're very interested in what our general game plan is.

THE COURT: Mr. --

MR. NASH: At a high level --

THE COURT: Before you go on, Mr. Nash, then everyone can understand this, there are now two people in my courtroom observing the hearing. But my Zoom screen shows that there are 197 participants who have signed in for the hearing at this point. So, obviously, this is a matter that's had very broad attention and concern. And I'll let you go on in a second.

I just want to make clear to all parties in interest, creditors small or large, that my Court is an open process and I certainly want to give people an opportunity to address issues that come up during the case.

And I'd certainly appreciate it, Mr. Nash, if you and your colleagues, once there is a committee in place, counsel to a committee also is open to listening to any concerns that are expressed by -- whether it's the smallest of customers or the largest of customers, that everyone's voice is heard. And to the extent necessary, I will hear and decide whatever needs to be done.

But go ahead, Mr. Nash.

MR. NASH: Well, thank you, Judge. And it's in that light and consistent with why we welcome the opportunity to be here and have this forum to engage with our community on the path forward. And at a high level, look, we've got a couple hundred thousand customers around the world. Certainly, undoubtedly, some percentage of them, some number of them, will be interested in getting a recovery in U.S. dollars or other fiat currency. It'll be our objective to make that option available to them.

But we definitely expect that the vast majority, dental majority of our customers, are going to be interested in, you know, riding out what you've heard referred to as this crypto winter, remaining long crypto, having the

opportunity to realize their recovery through and appreciation in the macro crypto market or environment. And it's our goal to work closely with the official representative of our customers in order to make that kind of a reorganization possible. That's why we're here.

And so I appreciate Your Honor giving me the opportunity and indulging me, just given, you know, the passionate focus that this is receiving in the community. I wanted to and I appreciate you letting me make those opening remarks.

THE COURT: All right.

MR. NASH: With that, by way of -- oh, sorry, Judge.

THE COURT: It's okay, go on. Your office provided my chambers last night with a slide deck, short slide deck of issues. I don't know whether you're going to cover that, not plan to cover that. What I would ask you to do, again, for the importance of transparency in the case, is that after the hearing today, you file a copy of that slide deck on ECF so everyone can see what it is that the Court has seen.

MR. NASH: We will do that, Judge. And my apologies. We should have done that, frankly, before the hearing. I will say for the benefit of anybody listening, that presentation, Your Honor, is up on the Stretto website,

our claims agent. Why we put it up on the website and didn't file it, Your Honor, I apologize for that. But we will file right away after the hearing.

THE COURT: No, Mr. Nash, I've looked at the docket several times today. I didn't see it there. It could be maybe that I've missed it, but I'm glad it's on the Stretto website.

And you know, in terms of the description of the key legal questions that you identify, I agree. I mean, I think those are key legal questions. None of those are going to be resolved today. Those are issues for the future in terms of your dealings with creditors as you move forward to try and get support for a plan. So, go ahead.

MR. NASH: So, Your Honor, I do think it would be useful, again, not only for Your Honor, but for the benefit of folks who are paying attention to what we're doing here today. If I do give an overview of the assets that we had on the petition date, steps we've taken to secure those assets, the nature of the operations today, little bit of a business overview and then a little bit of the events that led us here, I'm going to be using this deck as a guide, so those who can assess it to the website can follow along. Otherwise, you can listen closely or take notes and it'll be available on the docket here shortly.

Does that work for Your Honor?

THE COURT: Absolutely. And I have a hard copy of it in front of me.

MAN 1: I do too, Judge.

MR. NASH: So, Judge, I'm on Page 2. You know, this is a critical focus for the community. What is our asset base? And what we have here is as of the petition date, $4.3 billion in assets. And this is unaudited, Judge, but you know, it is accurate to the best of our ability. And so $4.3 billion of assets as of the petition date. Approximately $22 billion of assets just a few months earlier on March 30, 2022.

I know what people are most interested in is March 30, 2022, we had cryptocurrency assets in the amount of $14,560,000,000. And on July 13th or 14th, we had crypto assets with a market value of $1,750,000,000. So the depreciation or the reduction in the level of assets from March to the petition date largely relates to the market value depreciation of cryptocurrency.

There are some other assets broken out here. We also have a bridge, Your Honor, here, which is probably useful for both, in terms of user withdrawals accounts for approximately $1.9 billion in the reduction in crypto on hand. Crypto liquidated by third parties, and that's primarily Tether. Tether liquidated about $900 million of our cryptocurrency in the months leading up to the petition

date. We didn't lose that much money there. It was approximately a $97 million loss to the company, because Tether liquidated that crypto collateral in satisfaction of an $800 million loan.

And then there's some other entries here, Judge, that we hope folks will find useful and will inform some questions and feedback from our community in terms of, you know, how our assets got from where they were a while ago to where they are now.

THE COURT: Mr. Nash?

MR. NASH: Yes, sir.

THE COURT: At some point -- you don't have to do it now -- but among the questions I have is with respect to the assets being held in custody accounts. And I understand summer being held by the Debtor, some where the Debtor has used third parties for custody.

In the papers I've read, it indicates that the Debtors' documentation provided that the Debtor could hold it in comingled accounts. And I want to get a sense before we finish today about how much in assets are being held in custody not by the Debtor, by other parties; how much is being held in custody accounts by the Debtor, I think -- or Debtors -- among the -- I think one of the letters that was posted on ECF had questions because of a freeze on withdrawals of 10 customers.

If their cryptocurrency is being held in the custody account, are they able to recover it and what's happening with that? You don't have to cover that now, but at some point in your presentation, I would like you to discuss the custody accounts.

MR. NASH: Yeah, why don't I do that now, Judge, just because it's top of mind and... So, approximately four percent -- and I have this percentage somewhere here in this deck, but I think I'm close enough -- approximately four percent of the cryptocurrency that we hold, our crypto assets, only four percent are in this custody account. So it's a small percentage of our crypto assets.

The crypto, Your Honor, that we hold pursuant to the custody arrangement is isolated and comingled. But all of those proceeds are sitting in a specific and identifiable account. And we are going to keep it that way. And to the -- we think, Your Honor, that it is a legal question as to whether or not it is, you know, truly a custodial account, truly in trust, or despite that having been people's intentions, is that the legal effect?

I anticipate almost for sure that that is a question that Your Honor is going to have to answer at some point in the case. And, you know, what I can assure the Court and assure any of our customers who are party to a custodial arrangement, that crypto is sitting in an account

and it is available, to the extent that Your Honor were to rule that that is their property. And again, it's only a very small percentage of the cryptocurrency assets that we have on hand. Approximately four percent of our cryptocurrency assets are held pursuant to the custodial program.

THE COURT: I can certainly see that customers whose assets are in a custody account would be concerned if that account was frozen and their continue to be fairly wide gyrations of the value of crypto assets, if they're unable to access it. So I won't say anything more about it now, but I certainly understand concerns that have been raised. Four percent is still probably a large dollar value or equivalent dollar, equivalent value. So --

MR. NASH: Oh, it is. It's about $180 million, Judge. So we're talking about big dollars here. And again, I don't expect you to necessarily respond to this observation, Judge, but just so you know that it's not lost on us, you know, we've thought on our side about a little bit unusual, I think, in Bankruptcy Court, but rather than wait, we've got 58 -- so, again, I talk about only four percent of our cryptocurrency in a custody account, but that's 58,000 customers, Judge. So you could be getting a lot more emails, you know, posted to the docket.

And we've had conversations on our side about, you

know, would this be an instance where it would be efficient and worthwhile for the Debtors sooner rather than later to bring some sort of declaratory judgment pleading to get a ruling, rather than wait for what is inevitably going to be 10, 50, 120 lift stay motions for people to get access to those -- you know, to their custody fund. So we are acutely aware of the issue and have thought on our side about how to bring it to a head sooner rather than later.

THE COURT: And I think as soon as you get a committee in place with a professional, you can engage in discussions with them. Additionally, if this has to be brought to a head more quickly, that probably unrelated case some years ago where there was a legal issue like this that affected a lot of people, there were arrangements at the Debtor's expense in that case, that special counsel was selected (indiscernible) dealing with the issue on behalf of those, in that case, customers who were dealing -- it's premature to get to that.

But I can certainly understand $180 million is a lot of money and I can certainly understand the frustration if people believe they signed documentation that this was a custody account that's held in trust. They want to be able to act quickly. If the crypto markets remain volatile, it could have a big impact to the extent the account remains frozen. But let's move on from that. Go ahead, Mr. Nash.

MR. NASH: Thank you, Judge. I'm now -- I'm turning to Page 3, skipping over the key legal questions. We can pick those up at some point in the presentation. If Your Honor has questions for me about them, we can address them.

We did, though, frankly, again in the interest of transparency, what we see as key legal questions -- and some of which are relatively novel -- we wanted to get those out into the public domain so that the universe of attorneys and customers and stakeholders can see real time what we think are going to be determinative legal issues. So that's one reason that you see them here in the presentation.

THE COURT: Let me ask, but -- I know your firm is also Debtors' counsel in the Voyager case that's before my colleague, Judge Wiles. And to what extent are these same issues arising in Voyager?

MR. NASH: They are. There's significant overlap, Judge.

THE COURT: Okay. Go ahead.

MR. NASH: Your Honor, I'm going to talk a little bit about the current status of the company's operations, and I'm really kind of speaking off of Slide Pages 4 and 5. The headline for the status of the company's current operations is that there really aren't any. It is not business as usual, Your Honor. No new customer accounts are

being opened. No new deployment. No new loans. No new staking.

We are not making margin to the extent that we are the lender, and we have retail and institutional borrowers, Judge. We are not issuing margin calls. We are not liquidating collateral. It is --

THE COURT: Let's come back to this point about no margin calls, because one of the communications from a creditor that I read today, that was a particular concern, as to whether they could face margin calls where they're not able to access or liquidate their collateral.

MR. NASH: Yes, Judge. And I think that may have been one of the communications that was filed. Or somehow, I recall seeing that communication.

THE COURT: That one was -- yes.

MR. NASH: I did see that one. And so the way the business operates and what that customer was very understandably concerned about, is probably in the present tense understandably concerned about, is they take out a loan from Celsius and they post coin collateral. And the coin collateral that they post has a greater market value than the amount of the loan.

If during the life of the loan the market value of the posted collateral drops below a certain level, Celsius has the ability to liquidate that collateral in order to

satisfy the loan. So you have customers out there who are very concerned that on the one hand it doesn't make sense to them to post additional collateral to the Celsius platform, in light of the Chapter 11 case.

But on the other hand, they are concerned that their collateral that has been posted, the coins that they posted to secure the loan, will be liquidated at a trough price, albeit one for enabling Celsius to recover on the loan. And that is a very valid concern, an understandable concern.

But I can state here very clearly, Judge, we're not doing that right now. We're not issuing margin calls and we're not liquidating collateral to satisfy loans. And we're not going to restart doing that. Any of these things that I'm talking about, the things that we're not doing today, we're not going to resume doing, absent bringing it to your attention and getting Court authority.

THE COURT: All right. Thank you, Mr. Nash. That's good.

MR. NASH: Again, though, Judge, in the interest of being very clear about what's happening, the one thing that we can't do -- and this is a function of the blockchain -- with respect to existing customers, we have noticed that some coin deposits are showing up into their accounts post-petition. We don't have the ability to approve that. We

don't have the ability to deny that. It's a function of the blockchain. I'm reading here, so I can be precise, because I'm not a cryptocurrency expert, Judge. I know more than I did two weeks ago, but...

So, users transfer digital assets from external wallets to Celsius' platform by recording such transactions on the blockchain. And so to the extent that coins show up form an existing customer's account post-petition, we had no role in approving that. We have no ability to stop or deny that.

But the good news is we do have the ability to track and record that. I don't yet have a view, or even a preliminary one, Judge, over, you know, whether or not post-petition coin deposits, as compared to pre-petition coin deposits is going to be dispositive or even relevant. But to the extent it is, Your Honor, we will track that, and we'll be able to deal with that.

THE COURT: Let me ask a follow-up question on that. If I read the papers correctly, the account agreements provide that when customers deposit crypto assets, title is transferred to Celsius, and with Celsius free to do what it wants with, basically; encumber it further, transfer it, et cetera.

Does that remain true on post-petition deposits that are being made?

MR. NASH: It does, Judge. But recall, we're not actually doing anything with the crypto that is -- and it's a very limited amount. But whatever crypto is being deposited post-petition is sitting there on the platform, because we're not doing any deployment with it.

THE COURT: Go ahead, Mr. Nash.

MR. NASH: Your Honor, I'm talking now off of Page 5, which is a little bit of the flipside of the slide I was just speaking to. And this is the proactive steps that Celsius is taking to safeguard and preserve its assets.

Prior to the filing, Your Honor, Celsius was very focused on pulling crypto assets back into Celsius' custody. Celsius unwound most positions where it had borrowed from a posted collateral to third parties.

And to illustrate that, on June 27, 2022 -- so just, you know, two and a half weeks before the petition date -- Celsius was a borrower, had taken out loans in the amount of approximately $648 million of DeFi or decentralized finance borrowings. So, Celsius owed $648 million pursuant to those arrangements. But Celsius had posted as of June 27th approximately $1.61 billion in market value of collateral to secure those obligations.

And so, in the weeks leading up to the petition date, Your Honor, it was very important to the company that we secure and bring back into the estate, back into our

possession and control, that very meaningful over-collateralization. Because now, you know, that excess crypto assets is in our control. It's not sitting on a third-party platform, where it would be subject to market risk, the specific risk of the platform, you know, the still a volatile market.

And we felt like, you know, we could be describing a scenario for you where we're describing that we've got $1.61 billion of crypto assets on a Tuesday, and then we could be back in front of you on a Thursday and tell you, uh oh, we may not have anymore because there's been a problem with, you know, the third-party platform on which those assets were placed up until very recently.

So, as of the petition date, Judge, we had approximately only $3.2 million in outstanding DeFi borrowings, with about $6.6 million of posted collateral to secure that. So two and a half weeks ago, you had over a billion dollars of our crypto assets on third-party platforms; now you've got a little over six million.

And so, you know, we are pleased to report that those assets are in our custody and control, where we feel good about being able to preserve and safeguard them for ultimate distribution to our stakeholders under a plan.

THE COURT: Let me ask another question that somewhat relates to that, then let's come back to the --

where the Debtors are using third-party custodians. And that's a question of whether -- have you pulled back crypto that's in custody accounts that were being held by any third parties? Have there been any defaults by the third parties that are holding the custody accounts, and what is the value of assets that are held by third-party custodians?

MR. NASH: So, Your Honor, I don't believe that there have been any -- I can tell you that in the first day declaration in describing some of the events that caused us to be where we are, one of the incidents or one of the issues that we cite is approximately 35,000 of our ether being lost in connection by a third-party custodian, in connection with being transferred to the third-party custodian.

THE COURT: Open the account.

MR. NASH: And we -- I apologize, Your Honor. Did I miss...?

THE COURT: Go ahead. No, it's -- go ahead.

MR. NASH: And we have taken steps, Your Honor, then -- and my partner, Mr. Kwasteniet, I think will be able to describe this in more detail in connection with the cash management motion -- but we have taken steps to be comfortable that where are cryptocurrency assets sit, it is as safe a place as we can have them at the moment. And I know that we've been in discussions with the U.S. Trustee,

and I do think they probably can get into that with a little more granularity in connection with the cash management motion. I think Mr. Kwasteniet, frankly, can get into that with a little more granularity than I can right here at this moment.

THE COURT: Go ahead.

MR. NASH: So, Your Honor, to sum it up in terms of, you know, the status of the operations, it's not business as usual, no new deployment. We've been focused on harvesting and safeguarding our assets and we've been doing that because it's very important. Had we not been doing that we might render some of these interesting legal issues moot. You know, are folks entitled to their coin back in kind? That would end up being an academic legal exercise if we, over the course of the case through what otherwise might be considered ordinary course activities, you know, we lost all or a meaningful portion of our coin.

So the coin that we have today, we intend to keep. And I said now, probably more than once, ultimately distribute in connection with a plan of reorganization.

Now, Judge, I'm turning to page 7. For the benefit of folks on the phone, a bit of a business overview and a corporate structure overview. From the outset here, Judge, just to make sure that nobody listening misses it, we have no long-term or funded debt. So, our customers are our

primary creditors. And when you look at this structure chart, Judge, and you look at who the Debtors are, the lead debtor, kind of down, towards the bottom in the middle, Celsius Network LLC; since August 21, since August 19, pardon me, 2021, that entity has been the primary customer facing, you know, the retail business. That is the entity that the retail customers do business with, Judge; Celsius Network LLC.

Right below that, Celsius Lending LLC, that is the entity that conducts the retail lending business. If you go up the chain, Judge, you've got an intermediate holding company, but you get up to Celsius Network Limited, UK, which owns 100 percent of the deposit business, 100 percent of the mining business, which is over on the right, and 100 percent of the non-debtor business, GK8, which I'll talk about in a second.

So, Celsius Network Limited UK is the entity out of which the company has historically conducted, and up until the petition date, its institutional borrowing and lending business. Up until August of 2021, Judge, Celsius Network Limited UK was the customer-facing party for the retail depositors. So, up until about 11 months ago, if you were opening a -- if you were a retail customer and you wanted to open an account, you interfaced with Celsius Network Limited UK. In August of last year, Celsius Network

Limited UK, transferred the existing customer accounts down to Celsius Network LLC. And from that point forward, any new accounts were open by Celsius Network LLC. And so, you know, that history and that transaction may or may not end up being relevant in these cases.

Celsius Network Limited, UK, as I said, Judge, owns 100 percent of Celsius Mining. And I talk about that a little bit later in the presentation. Celsius Mining is a bitcoin mining business, currently operational. Celsius Mining was established and developed through financing from Celsius Network Limited UK. And as of the petition date, Celsius Mining owes approximately $576 million to Celsius Network Limited UK.

Celsius Network Limited UK, Judge, also, again, owns 100 percent of the deposit business. And it also owns, over here on the left, non-Debtor, the Celsius Network Limited Israel, and its subsidiaries, who we refer to as GK8.

In October of 2021, Celsius acquired GK8 for approximately $115 million. GK8 is a market-leading cold storage platform for crypto assets. The company is currently engaged in an out-of-court market process, with respect to GK8. And to the extent that, you know, that process goes well and we receive a bid that we like, we would envision it being sold, and proceeds being available

to be dividended up to Celsius Network Limited UK, and addressed in connection with a plan at Celsius Network Limited UK. And if we don't get a bid that we like, we would intend to fold that business into our operations and include it in our reorganization. So, that's the --

THE COURT: When we get to first day motions, cash management, intercompany transactions, you know, the organizational chart, corporate structure that we're looking at now, has Debtor entities shown in red, and non-Debtor entities shown in blue. One of the things that you're asking, to enable to make critical vendor payments, relates to the efforts by Celsius mining to build out its operations. And you're going to have to explain, you or one of your colleagues, is going to have to explain to me further the flow of funds -- what is going, what is proposed to go to non-Debtors, what goes to Debtors. I mean, Celsius Mining, there's a Debtor and there's a non-Debtor shown in that same -- the Debtor owns a non-Debtor. So, we have to talk about where the funds are going. But I'll wait until you get to it. Since you were on this organizational chart, I wanted to be sure that I understood the flow of funds going forward, to make the relief you're asking for.

MR. NASH: We'll take that up in connection with the specific motion, Judge. You know, Celsius Mining is a Debtor. It started the case with its own cash on the

balance sheet and it needs relief to use that cash to make critical vendor payments. But in any event, you know, we'll deal with that in connection with that motion.

Your Honor, I'm now, I'm speaking off of page 8. Celsius has approximately 1.7 million registered users. That's not how many active and open accounts we have. We have approximately 300,000, a little more than 300,000 active users with account balances of more than $100. So, we've got 300,000 with more than $100. We've got probably a couple of hundred thousand more than that, Judge, who have accounts with balances less than $100,000. And these customers are spread out, literally, all over the world, 100-plus countries.

I'm turning to page 9, Judge, going through the key business segments. Our retail business, we had the Earn program. This is by far and away where most of our crypto assets are held, in what was the most popular product for the customers. The terms of use of the Earn program provided a title to coins as transfer to Celsius. And Celsius is entitled to use, sell, pledge and rehypothecate those coins.

It was Celsius' ability to do those things that allowed it to generate yield and, correspondingly, pay yield, or what we call rewards, to our retail customers.

The Borrow program. This is the folks, charge

retail customers who took out loans, and posted collateral, and could conventionalize this for Your Honor. A moment ago, I talked about having, you know, 300,000 with more than $100 in the account, and as many as 200,000 more with any amount of money in the account.

As of the petition date, of those hundreds of thousands of retail customers, there were approximately 23,000 loans with an open balance of approximately $411 million. So, retail customers, approximately 23,000 of them, maybe you have one customer who's got more than one loan, I don't know. But a small subset of the many hundreds of thousands of retail customers who took out loans, and in the aggregate, owe $411 million to Celsius. And in connection with taking those loans out, collateral with a market value of $765 million is posted on the Celsius platform.

THE COURT: Valued as of when? When was -- that 765 million collateral, valued as of when?

MR. NASH: The petition date, Judge. Sorry I missed your question.

Talking off of page 10 now, Judge, key business segments, the institutional and the mining business. Institutional lending and borrowing program, as I mentioned a minute or two ago, that's conducted out of Celsius Network Limited UK. It is a bespoke lending and borrowing business

or platform with institutional clients such as hedge funds and market makers. Depending on the creditworthiness of the counterparty, loans to institutional investors may be secured, partially secured or unsecured. As of July 11, 2022, Judge, we had 47 institutional borrowers who, in the aggregate owed 93 million, approximately, to Celsius; that had posted coin collateral with a market value as of that July 11 date, of approximately $98.5 million.

Another important business, Your Honor, the mining business. Mining is a Debtor. Celsius, through its Debtor subsidiary, Celsius Mining LLC, operates one of the largest bitcoin mining enterprises in the United States. Celsius operates over 43,000 mining rigs currently, with plans to operate approximately 112,000 mining rings some time in Q2 of 2023.

And a few more stats, Judge, that I think are interesting: In the seven days leading up to the petition date, Celsius mining mined approximately $14.2 bitcoin per day. The operation mined approximately 3,114 bitcoins in 2011. And we expect, if everything goes well, in 2022, to mine approximately 10,100 bitcoin.

And, again, if everything goes well, in 2023, we hope and expect to be in the position to mine approximately 15,000 bitcoin a day. And so, Judge, this mining business, which is wholly owned by a Debtor is, we think, a potential

very valuable source of recovery for our stakeholders, for our customers. It gives us the ability to literally mine bitcoin; which could be relevant in terms of a repayment in kind or, to the extent that we can, repayment in kind type plan. And so, the mining business, Your Honor, we think is interesting and in a world where the crypto market rebounds, we think it has the potential to be quite valuable.

And I should say, it makes money today, Judge, even at these prices. So, to the extent the market improves, it becomes that much more valuable.

Page 11, Judge, I have a slide here that talks about things we used to do historically from a deployment point of view. We're not doing any of these things during the case. And if we ever do, we'll come back to you for approval. So, unless Your Honor has any questions, you know, maybe I'll just move on.

Now, going to page 13, Judge, assets by program, asset breakdown. So, this is a useful slide, Your Honor, when you think about what we were talking about before when you were asking about the custody accounts.

In terms of our cryptocurrency assets, 77 percent of those are held through the Earn program; approximately 4 percent of those are held through the Custody program. Approximately 15 percent of those were provided in connection with collateral for a loan. And approximately 4

percent of our crypto assets consist of the CEL token, which is a company-generated cryptocurrency that acts somewhat like a rewards program, Judge. But when you look at, you know, the assets that we have on hand, the vast majority of those, are cryptocurrency assets held pursuant to the Earn program.

THE COURT: Thanks to this, Mr. Nash, I saw that securities fraud action filed against the Debtor and against officers and directors in the District of New Jersey. Is that right?

MR. NASH: I think that's right, Judge.

THE COURT: Was it filed before or after the Petition was filed?

MR. NASH: It was filed before, I'm told.

THE COURT: Are there other securities -- I guess the gist of the allegations, as I understand it, is that the award program is actually a security, unregistered security. Is that the gist of it?

MR. NASH: I think that is the gist of that lawsuit, yes, Judge.

THE COURT: Are there other similar actions against either any of the Debtor or non-Debtors here, or against any other crypto company, Voyager or Debtors or non-Debtor. So far, I haven't seen that many that have filed bankruptcy so far, but there are some and you know, I got a

chapter 15 case with three arrows. So, there may be more of these. But are there similar kinds of securities fraud actions that have been filed?

MR. NASH: I'm not aware of another securities fraud action, Your Honor. But I do want to make a certain disclosure, and I'm going to read this carefully. With regard to regulatory oversight and the regulatory, you know, framework or dynamic, there is significant regulatory uncertainty in the cryptocurrency industry. Celsius has been working cooperatively with US regulators since before the pause, to respond to information requests and inquiries. Since the pause, Celsius has received additional regulatory inquiries, and the company is continuing to work cooperatively with regulators to address their questions and requests. The investigations relate primarily to compliance with federal and state securities laws.

THE COURT: Did the Debtors change their practice at some point, only to make certain programs available to qualified investors?

MR. NASH: You know, Judge, I know that happened as of April of 2022, it was no longer possible to be a participant in the Earn program if you were a US-based non-accredited investor. That's right. Any more questions, Your Honor, before I move on?

THE COURT: No, why don't you move on, go ahead.

MR. NASH: All right, so the events leading to chapter 11, Judge. I'm working off of page 15. And here, I think it's important to highlight, Your Honor, we're not here because of losses we suffered, you know, directly attributable to the collapse of Terra Luna. We're not here because of losses suffered directly related to the collapse of Three Arrows. I mean, we lost a relatively de minimis amount of money, and I'll speak to it specifically in a bit.

But we're really here because of the collateral consequences of the contagion, and a lack of confidence, on account of the customers; which led to a rapid increase in the pace and level of withdrawals. But we're not here because of, you know, a one or two or three specific -- with the benefit of hindsight -- wrong investment or loan decision, for example, made by the company.

So, as Your Honor is very familiar with, and many paying attention here today are familiar with, 2022 has been marked by a massive selloff in traditional assets. The financial press has characterized the current climate as a risk-off environment. The cryptocurrency market hasn't been immune to this risk-off environment. If anything, it's been hit even harder than the market generally. And we've got a graph here on this page, Your Honor, that shows the price of bitcoin and Ethereum, and just how much they've underperformed, the underwhelming performance of the Dow

Jones Industrial Average and the S&P 500.

As of June 22, Your Honor, the crypto market lost 2 trillion, approximately 2 trillion of value from its 3 trillion market cap peak in November of 2021. As of June 22, 72 of the top 100 digital assets had dropped more than 90 percent from their all-time highs.

So, that's the general macro environment. And then you definitely had a couple of specific circumstances or developments in the May-June timeframe, that really contributed to a run on the bank. And one of those, for sure, is an early May -- the well-publicized Terra Luna collapse, which resulted in the evaporation of approximately $50 billion in market value over a three-day period.

Now, Celsius' loss is attributable to the Terra Luna collapse, are approximately only 15.8 million. So, from that perspective, while 15.8 million is still a lot of money relative to the company's asset base, and relative to the losses many other investors sustained, that is not why we're here; not because we lost $15.8 million to Terra Luna.

What wasn't helpful is that in the immediate wake of the collapse of Terra Luna, there was a relatively widespread and completely misleading Twitter and social media commentary linking Celsius to a proposed bailout of Terra Luna, with the market perception being that if Celsius was focused on bailing out Terra Luna, it must have a lot of

exposure to Terra Luna. And we have the ability to track -- and this chart, which isn't all that easy to read, Judge, but at the bottom left, as you get towards the end, the second bar from the right, that's May of 2022. And you know, we have our highest level of withdrawals ever there in the month of May. And we don't have anywhere close to a corresponding number of new deposits.

Also, in May, you know, we have the well-publicized, by the traditional financial media, and social media, coin basis 10Q and coin basis disclosure; their inclusion of our new risk factor, apprising their customers of the possibility that in an insolvency proceeding, they might be treated as general unsecured creditors. I recall reading about that, back in May when, you know, that disclosure was made and it received that financial media press and that coverage.

THE COURT: Hold on, before you go on Mr. Nash, there's someone speaking in the background. Please mute your line. Greg, are you able to determine who is speaking and mute them? Greg is my --

GREG WHITE: I did just notice a couple that went on mute. I just muted them. I don't hear any longer.

THE COURT: Thank you. Okay, go ahead, Mr. Nash. I just encourage anybody, if you're not -- Mr. Nash should be the only one whose line is not muted as he's talking. Go

ahead, Mr. Nash.

MR. NASH: Thank you, Judge. So, we've got the Terra Luna, we've got the Terra Luna collapse in May. We've got the Coinbase disclosure in May which, again, impacted, you know, market confidence in platforms like Celsius. And then, in June, as Your Honor is definitely familiar with, because you're hosting the recognition proceeding, we had the insolvency or the collapse of Three Arrows Capital, which has had and will likely continue to have collateral consequences for crypto investors who have significant exposure to Three Arrows Capital. But that's not the case with respect to Celsius. As disclosed in our papers, Celsius has a claim of approximately $40 million against Three Arrows Capital; not something that we're, you know, happy about. But also, not the reason that we're here today.

The reason that we're here today is the general macro environment, and a couple of these very specific, very public, very high profile collapses, to cause, right, a lack of confidence in the program, in the platform; a concern over the safety of their assets on the platform, those being customers and, effectively, a run on the bank.

And as the company was endeavoring, in the early part of June, to both satisfy customer withdrawal requests, and satisfy the need to post additional collateral where it

was the borrower, and had a need to protect existing collateral. Because if you don't protect the existing collateral, you run the great risk that the lender liquidates the collateral at a trough, and you end up losing a lot of value that way.

As we got increasingly into June, in advance of June 12, Judge, that just became untenable. And on June 12, the Celsius Board unanimously made the difficult, but in its view necessary, decision to lower the gates.

And this is important. I think it's a concept that Your Honor can appreciate, but if you're someone who's sitting out there and you've got money, you know, value you've deposited on the platform and now you can't get it, you're not nearly so sanguine, and we understand that and we appreciate that.

But the reality is, is that before the gates were closed, what was happening is those customers who were first to the exit, were recovering a hundred cents. And so those customers, who were the first to leave the platform, the end up doing just fine. Those are our most loyal customers, or customers who are at least open to seeing if we can ride it out. They get left holding the bag, so to speak. And so, the pause was put in place with full knowledge of the impact that it would have in the community and the marketplace, to their own reputations. And frankly the, you know, social

media feedback -- blowback I want to say, and the customer blowback -- none of it is a surprise, I don't think. But the reality is, is that the pause was necessary in order to preserve the asserts that the company has, so that they can be ratably and equitably distributed to all of the platform's customers.

And when you think about -- and I'm wrapping up here, Judge -- but when you think about some of the aspects of my presentation here this afternoon, the pause was put in place to make sure we get a handle on the assets that were existing as of June 12. Leading up to the filing, very reasonable steps and appropriate steps in my view were taken to bring our cryptocurrency assets back to our platform and remove the over collateralization and the possibility of third-party risk. And, you know, since the Petition may be going forward, it's not going to be business as usual. We're not going to have a circumstance where what otherwise might have been ordinary course, could lead us to lose valuable crypto assets; thereby rendering academic some of these interesting legal issues that Your Honor is going to have the opportunity to make new law on.

And so, our goal here as we move forward, as I said at the outset, we look forward to the committee being formed. We anticipate it will be a customer committee. I pledge that we are going to be open and transparent with the

customer committee. It's not lost on us that a reorganization of that platform is not going to succeed without the buy-in of our community. So, it would be a fool's errand to be anything other than open and transparent with the official representative of our customers.

But that's what we're going to endeavor to do. We believe we've got some valuable assets that we can reorganize around. And with that, I'm going to, I guess, ask Your Honor if you have any questions, but also, thank you very much for indulging me and giving me the opportunity to somewhat laboriously take you through all this.

THE COURT: That's been very helpful, Mr. Nash. One of the things that you may be reluctant to do, but I ask that you consider -- it may be some weeks away before there is a committee, committee counsel. You should at least consider establishing a dedicated email address at your firm, so that if unrepresented customers of the Debtors want to communicate, they can send emails to a particular email address and you and your colleagues will decide whether to respond. I think, from some of the large cases I've had in the past with a lot of retail customers, there can often be frustration when they don't feel there's anyone listening to any of their questions. It may be that you can't answer some of the questions. But I think, to the extent you're able to be transparent about how things are going --

certainly once there's a committee in place, that will be another avenue where people will reach out. But in would certainly encourage you to find a way that customers with questions can at least direct their questions to somebody who, hopefully, can provide some responses. So, a question about first day motion.

MR. NASH: Thank you, Judge, we're going to do that, take you up on that suggestion. I think it's a good none. And with that, Your Honor, thanks again. Personally, it's great to be back in the Southern District of New York, and I'm going to hand the podium over to my partner, Mr. Ross Kwasteniet.

MR. JOHN: Your Honor, it's Dennis John. I have one question for the Court, if I may.

THE COURT: Please, go ahead. Remind me who you're representing.

MR. JOHN: For the record, this is Dennis John from Milbank LLP. We represent several holders of the Debtor's series B preferred equity. And I have some comments to make about the structure and the preferred's perspective on the case, which I can do now, Your Honor, or in connection with the cash management order; whichever the Court prefers.

THE COURT: Let's deal with it when we get to the cash management.

MR. JOHN: That's fine.

THE COURT: And I certainly will here you, Mr. John. Let me say, who from the US Trustee's Office is appearing today.

MS. CORNELL: Good morning, Your Honor. Shara Cornell at the Office of the United States Trustee.

THE COURT: Good morning, Ms. Cornell. Let me give you a chance to see if there's anything you want to address preliminarily, and also, my question is, have you yet solicited for a committee when you anticipate being able to do that. Go ahead.

MS. CORNELL: Sure. At the outset, we have solicited for a committee. The return date is actually this Wednesday, so we hope to have a committee formed promptly for Your Honor. And just for Your Honor, information, we already have quite a bit of creditors or customers that are interested in the committee, so I think it will be a robust process.

THE COURT: I can imagine it will be. Are there any other comments you want to make at this time, Ms. Cornell?

MS. CORNELL: I can make them with respect to the individual motions. But I just wanted to reiterate some of Your Honor's comments from earlier, and I think that they're similar to what our office was concerned with, with this

case. And that is with overall visibility with respect to what the assets are, what the business structure is, and how some of that information was relayed in the 1007 statement.

I'm happy to give examples to Your Honor now, or with respect to individual motions. But that's something that we're going to be looking at very closely now and throughout this case.

THE COURT: If you have comments that are more general than the specific motions, why don't you go ahead and make them now.

MS. CORNELL: So, with respect to visibility and the need for transparency, specifically, the 1007 failed to give information about the regulatory actions that Your Honor mentioned earlier; both state regulatory action, cease and desist letters. And we currently are not aware of, but there may be foreign regulatory actions out there. They're a little bit harder for us to find, but I think that information needs to be shared with the group.

I think a lot of the reasons that the Debtor was holding back on some of this information, and looking for more confidentiality provisions, is a fear of the market. But I think that what the Debtors and this Court need to need to be are of is that, while that may be a concern in a lot of other cases, most of this information is already out there. And the Internet is a savvy place, particularly with

respect to cryptocurrency and --

THE COURT: We had (indiscernible).

MS. CORNELL: But I've been able to find out more details that weren't in the 1007, or they were alluded to, just by a quick Google search. So, some of those concerns about confidentiality may not be as bold as the Debtor is anticipating the to be. So, I just want to draw your attention to those overarching concerns and I'll speak up with respect to the individual motions as they come up.

THE COURT: And certainly, what I would expect, and it's been true in other cases I've had, your office is not shy about raising its concerns. And I encourage you to talk to Mr. Nash and his colleagues. It may be that supplemental disclosures would help. Because I do think here that, you know, transparency and credibility are going to be keys to making this all work, this process work. So, I do encourage you to talk to Mr. Nash and his colleagues. I'm sure he's got a large team that's working on this. I appreciate your comments, Ms. Cornell.

MS. CORNELL: And I should say that the team over at Kirkland has been very helpful with us since before the filing, and we were in communication over the weekend. And the information is slowly trickling in, but we're working to firm it up for Your Honor and for all of the public.

THE COURT: Thank you very much, Ms. Cornell.

MS. CORNELL: Thank you.

THE COURT: All right, Mr. Nash, which one of your colleagues is going to pick up now?

MR. KWASTENIET: Good afternoon, Your Honor. It's a good segue. Ross Kwasteniet from Kirkland & Ellis on behalf of the Debtors.

I just want to echo the recent colloquy. We have been engaged many times, including over the weekend -- I again, want to share Mr. Nash's compliments and appreciation to the Office of the United States Trustee for working around the clock and over the weekend, to comment on our first days, give us their feedback and to, as much as possible. And I think we'll be able to achieve it, to have a relatively smooth hearing. Not to say that there won't be discussions around particular language, on particular orders as we go through. But overall, I think we've agreed to -- you know, we've made a lot of progress. And one of the things we have discussed is filing a separate seal motion with respect to some of the information that we think needs to or ought to be sealed.

There was an important category that hasn't come up in discussion yet, or at least not in this colloquy, which is personally identifiable information that would be subject to restriction or a prohibition on publishment under EU and UK law. That is something that we are engaged in

discussions with European and UK regulators.

This is an issue that, you know, I've done many cross-border cases. It's an issue that there is a resolution to and I'm confident we'll be able to find one. But any time you have the intersection of conflicting and, in some cases, competing requirements -- disclosure on the one hand, versus nondisclosure on the other -- that requires a little sensitivity. And we're aware that Your Honor has broker compromises in the past about sharing the information with the US Trustee and maybe, you know, doing a code or something for the information that's public. All of that are things that we're aware of and we're welcome to and we will, of course, continue that conversation. But we're already pretty well down the field in at least fleshing out and making sure that both sides understand some of the competing issues and concerns and considerations.

THE COURT: Thank you. Go ahead.

MR. KWASTENIET: Well, Your Honor, I'm tasked with kicking us off on the agenda today. Before we dive into the agenda, I wanted to note that we did file a declaration from Robert Compagna. This was filed at Docket 22. Mr. Compagna is a Managing Director of Alvarez and Marsal. He has over 25 years' experience advising distressed companies, and he leads the A&M team working on a Celsius engagement.

Mr. Compagna's declaration was filed specifically

in support of the first day motions. And Mr. Compagna is on the line. I believe I saw him earlier on the video box, and is available to testify to the extent that any party wishes to cross examine him. But given that his declaration serves as the underpinning for the relief we're requesting, including the establishing the Rule 6003 need for avoiding imminent and irreparable harm, I would move his declaration into evidence at the outset to streamline our presentation.

THE COURT: All right, does anybody have any objections. All right the Compagna declaration, which is ECF Docket 22, was filed on July 14, 2022, is admitted in evidence.

(Compagna Declaration Admitted Into Evidence)

THE COURT: I have both the Compagna declaration, ECF 22 and the Mashinsky declaration, ECF 23, in front of me, so I can refer to it as need be. But why don't you go ahead and offer the -- I assume you're going to offer the Mashinsky declaration as well.

MR. KWASTENIET: We're happy to, Your Honor, although we don't think that we necessarily need to. The Mashinsky declaration was more of the background, how we got here. We wanted to tell Your Honor the story and tell the community the story. It's not so much the basis for the relief. The critical declaration for the first day motions is the Compagna declaration, Your Honor.

THE COURT: That's fine. I read the Mashinsky declaration about three times and I'm still trying to understand cryptocurrency markets and how they all work. But go ahead.

MR. KWASTENIET: Very good, Your Honor. I also just wanted to note at the outset, before jumping into the agenda, that the Kirkland team was, of course, very mindful of Rule 6003, in trying to limit the requests today to the bare minimum relief new thought we needed to avoid immediate and irreparable harm during the first 21 days of the case. I'm sure Your Honor may have questions on particular aspects of that as we go through, and we'll, of course, be happy to address it.

But Your Honor, we also have reviewed transcripts and first day orders from some of your other cases in an attempt to tailor the relief that we're requesting to your stated preferences in other matters.

THE COURT: All right, go ahead.

MR. KWASTENIET: You'll tell us if we -- how well we did and maybe where we blew it or where we got it right. But we did make that effort.

Your Honor, the first item on today's agenda is the Motion for Joint Administration.

THE COURT: Granted. Move on.

MR. KWASTENIET: Thank you. Thank you, Your

Honor, appreciate that.

The next item on the agenda is the Stretto retention. We're proposing to retain Stretto as the Notice and Claims Agent under 28 USC 156, as appointment of the Notice in Claims Agent. We believe this is required in these cases under Rule 57, nor 50751(b) of the local rules, because the number of creditors in this case is over 250. In fact, the actual number of creditors in this case is well over 250,000.

Your Honor, Stretto is highly qualified and experienced, and was selected by Celsius after a competitive search process involving at least two other candidates, who made proposals and made pitches. And similar to the order approved in the Voyager case, where Stretto was also retained, which we think does provide some additional benefit here. To the extent that we have overlapping or similar issues in these two cases, having a claims agent -- you know, get up to speed in one and sort of be able to efficiently, you know, share that sort of learning and experience, in our case, we think is also beneficial. But Stretto has agreed to do two things, both of which were flagged with and discussed with the US Trustee's Office prior to filing the motion; one of which is they've agreed to strike the limitation of liability provision in their engagement letter; which was also a request in the Voyager

case. And they've agreed not to share any information with or receive compensation from X claim in connection with these chapter 11 cases.

THE COURT: I want to make a brief statement about that. And I did review the declarations that were submitted, the Stretto declaration submitted in support. And I did review how it was dealt with in Voyager, and the issue is also quite like had been dealt within the Madison Boys and Girls Club.

And just so that the record is a little more sketched out here, Stretto is one of a number of claims agents that has entered into an agreement with Xclaim Inc., which operates, Xclaim operates a web-based market for trading of bankruptcy claims. And I am going to require that Stretto's current contract with Xclaim be filed on the docket in this case, even though it is being carved out of coverage here. But I want it publicly filed on the docket in this case.

There is some uncertainty in my part whether the contract originally was for exclusive access agreement and whether that exclusivity provision has been altered. But the gist, as I understand it, is that Stretto had a contract with Xclaim to provide Xclaim with access to the claims registers and information in cases in which Stretto is the claims agent; in return for which Xclaim would pay a

commission to Stretto and any of the other claims agents who've signed similar contracts for any claims that are traded on the Xclaim platform.

The issue of those agreements, the Stretto agreement, Epic has a similar -- at least had or has a similar agreement, and perhaps some others, is whether the existence of those agreements was only recently disclosed to this Court.

And I'll speak for myself and the serious question as to the propriety of such an agreement. Stretto was retained in Voyager. It was dealt with with a change in the form of the order that was approved by Judge Wiles. In the Voyager case, I've reviewed the disclosures that were made here and also the carveout that was put into the proposed order.

And at least as to that aspect of it, I'll certainly hear Ms. Cornell whether the -- what the U.S. Trustee could have... I'm satisfied as to that portion of it. But, so if there are other things about the Stretto retention you want to address, please go ahead and do that.

MS. CORNELL: Thank you, Your Honor. I'm sorry, Shara Cornell with the Office of the United States Trustee. I just wanted to echo Your Honor's comments that we're also satisfied with the representations at this time. Thank you.

THE COURT: Thank you, Ms. Cornell. Okay --

MR. KWASTENIET: Okay, thank you -- thank you, Your Honor. With that, we would request entry of the order approving Stretto's engagement. We have submitted prior to the hearing redlines of several other orders where the language is changed a bit since what we filed, but I don't believe the Stretto language has changed. This is something that we worked out prior to filing initially.

THE COURT: Anybody else wish to be heard with respect to the application to retain Stretto as the claims and noticing agent? It's granted.

MR. KWASTENIET: Thank you, Your Honor. Turning to the next item on the agenda which is the Debtors' cash management motion filed at Docket No. 21, we did submit earlier this morning a revised form of order at Docket No. 40 with respect to the cash management order and we've had subsequent conversations with the Office of the U.S. Trustee about still further modifications to that order, which I'm happy to walk through at the end, and then maybe with a suggestion that, assuming Your Honor is inclined to enter the order, that we could submit a revised version because the version you have -- the latest version we've submitted to Your Honor does not yet -- there have been other changes, so we'll cover that.

THE COURT: Go ahead with your description of it and then I'll have Ms. Cornell address it. One of my --

I've had a hard time keeping track of the flow of funds between Debtors, non-debtors, and that the cash management system, if I'm reading the paper (indiscernible), accurately keeps track of all of the transfers. But go ahead with your presentation.

MR. KWASTENIET: Yeah, very good. Thank you, Your Honor. The cash management motion that we filed describes how the Debtors managed cash and cryptocurrency assets historically. As we stand here today, however, a lot of that motion really does just serve to provide context on where we've come from because the way that we are managing cash and trypot assets going forward on a post-petition basis is meaningfully curtailed when compared to prepetition activities.

Your Honor, first, with respect to cash, the Debtors do maintain treasury operating and lending accounts at Signature Bank which is a U.S. authorized depository in the SDNY and we anticipate continuing to use the treasury and operating accounts to fund ordinary course expenses, payroll, payments to vendors, and the like.

We also maintain three brokerage accounts which are at Oppenheimer, Signature Securities, and ED&F Man. Those accounts are all largely inactive at this point. We don't propose terminating those accounts because we can't foresee the future.

There may be circumstances where it makes sense after getting approval from Your Honor and consulting with our constituents to liquidate one or more positions or to otherwise make use of the brokerage accounts which have served us well historically, but given, you know, as Mr. Nash described, we are no longer doing new deployment activities. We're no longer buying, selling, trading, investing cryptocurrencies. The current need or current use of those brokerage accounts is essentially nil.

Your Honor, we also talk in the cash management motion about intercompany transfers and we've had extensive discussions with the United States Trustee and I'm pleased to announce that I think I'm able to simplify the scope of what is going on here. There is language that we've added to the order that we'll walk you through in a few minutes clarifying that we can't be transferring cryptocurrency assets to non-debtors.

There was some concern, understandable, about significant value that's in the estate today leaking out of the estate to non-debtors. And what we are proposing in the interim order is that we be allowed to continue certain transfers to non-debtors, but that that dollar amount be capped at $300,000 U.S. for the interim period. And I could further represent to you, Your Honor, that the purpose of those transfers is to fund payroll and operating expenses at

the Debtors' Cypress subsidiary. That is a facility that provides back office support --

THE COURT: Anybody who's -- anybody other than counsel for the Debtor should have their line muted.

MR. KWASTENIET: Dennis is -- Dennis, your name popped up, so I don't know if you accidentally maybe bumped it off of mute, but --

MR. DUNNE: Think it was the other Dennis, for the record.

THE COURT: Shame on you, Mr. Dunne.

MR. KWASTENIET: There's 30 Dennises on the line, the last I saw, so I'm sure it was somebody else.

So in any event, Your Honor, the issue around intercompany transfers and value leakage, again, I'll let the U.S. Trustee speak for themselves, but by capping it at $300,000 and having identified a back office support function that really does benefit the Debtors because if we didn't have the Cypriot operation, we'd be looking at likely having to replicate that on a more expensive basis in the U.S. We think that that's an appropriate restriction on, and frankly use of intercompany transfers in the interim period.

THE COURT: Let me ask you this. It may be that Ms. Cornell is the one to answer this, but the question I had to myself was, does the U.S. Trustee, does the statute

have any requirements or policies applicable to cryptocurrency storage? I certainly understand about the dollar accounts and 345 -- Section 345, the need for a qualified -- you know, accredited banks, but I've never had this issue arise (indiscernible).

MR. KWASTENIET: Well, I'm happy to start with my perspective, Your Honor, which is that the code does not have specific restrictions with respect to storage of or management of cryptocurrency assets. To my mind, this is a pretty novel issue that's only come up, you know, very recently and you know, generally speaking, when you're looking at cryptocurrency assets, you know, they don't fit the mold in terms of what would be deposited in bank accounts and there are -- there's a whole different ecosystem of companies who've developed with their own specialized proprietary technology designed to most safely and best handle these.

And so from the company's perspective, this is an important topic and it's new and it's something that we will have many more conversations about I'm sure, but at least --

THE COURT: But this was part of the reason for some earlier questions to Mr. Nash, because I asked whether, for example, where the Debtor, you know, where customer property is in custody accounts held by third parties or where the Debtor is transferred. I think Mr. Nash told me

in the papers, certainly disclosed that at least one counterparty can't find the key to unlock the account and consequently hasn't been able to recover substantial sum of money.

So whether the existing code covers it or the U.S. Trustee policies have dealt with it, it's a concern of mine about where the Debtor may be depositing or having third parties hold crypto assets.

MR. KWASTENIET: I understand, Your Honor, and there's probably not a single issue in the whole lead-up to this case that I've spent more time talking to people about and that I've lost more sleep worrying about, and I want to deal with that issue of the lost keys to approximately 35,000 Ether or Ethereum coins.

That transaction involved the Debtors' use of a third party, somebody called StakeHound, to stake the assets at Fireblocks. Fireblocks is one of our biggest relationships. We store -- virtually all of the cryptocurrency that we control is stored at Fireblocks. Best we can tell, Your Honor, and there are legal proceedings happening right now as between StakeHound and Fireblocks about what exactly happened, but somewhere in that handoff the keys were lost.

And keys is an important concept to understand. I only understand enough to give you like a very high overview

and then I have to bring somebody else in who could be more technical. But in order to effectuate a transaction involving a cryptocurrency, you need two things. You need a public key which is readily identifiable, associated with that particular kind of currency and then that needs to match with a private key. And people go through all kinds of security protocols to guard their private keys. Some people will print them out on a piece of paper and laminate them and put it in the safe deposit box -- hopefully not under a mattress, but a physical storage of the code that is needed in order to unlock the crypto.

Other times, they're stored in wallets electronically and those wallets come in different forms. There are hot walls that are tied to or connected to the internet. There are cold wallets that are not connected to the Internet. So there's a variety of ways to store this, but suffice it to say, since the disappointing episode to say the least from the Celsius standpoint of the lost keys to the Ethereum -- and this basically mean, Your Honor, that they still exist. Nobody's stolen them. Somebody isn't, like, on the beach in Tahiti, having spent these coins.

THE COURT: I wish I was as confident as you are.

MR. KWASTENIET: Well, we think we know that they're still there. You can see them. We just can't get at them. We can't access them because we lack the private

key to unlock them. So it's sort of a -- you know, it's the muffin behind the bakery window when my kids are walking by. They see it. They want it. They can't get it. They're missing the access, you know, component to it. So --

THE COURT: Let me stop you for a second, and I do want to hear the U.S. Trustee and anybody else who wants to be heard on this. Assuming that I grant the relief and I -- you know, I've seen the revised order in that and you're describing further revisions. Whatever I agree to today is for the interim period. When there's a Committee in place, I certainly want the Committee and its professionals and the U.S. Trustee to do everything they can to get comfortable about where, not just dollars -- I mean, the code is clear in 345 about what institutions are qualified to hold funds, but assuming that the code doesn't apply it, but I assume I have the authority to say no, can't keep it there anymore.

But I obviously would be heavily guided by what the U.S. Trustee and the Committee does. You know, given the apocalypse of -- in the crypto, worldwide crypto markets, I'm very concerned that, you know, today I'm dealing with Celsius and tomorrow there may be others in this Court or elsewhere. And I don't think you want to find out and I don't want to find out that any substantial value was possession, custody, or control of a third party that winds up in insolvency proceedings here or elsewhere in the

world where you can't find the people.

MR. KWASTENIET: I understand that, Your Honor, completely and I have asked many questions along those lines. And I can report to you that the responses that I've gotten back are, A, that we have learned from the StakeHound situation where keys were lost and now the crypto that we store at Fireblocks, we maintain the keys. Nobody else does. And this is referred to as a self-custody solution.

So in talking to the CEO, I asked him if it was fair to analogize this to renting a storage locker within a safe storage facility where you alone have the lock and the key to the lock. You own what's in that storage locker and you can get it out anytime and the storage facility does not have the key and they don't have an ability to access your stuff, at least if it's a reputable storage company.

THE COURT: Mr. Nash stated early on in the hearing today that among the legal issues that may well have to be decided is with respect to Celsius customers who had a custody agreement with Celsius --

MR. KWASTENIET: Yes.

THE COURT: -- legal relationship that was created, do they really have a right to them. So, you know, Mr. Nash himself acknowledged that there are legal issues or customers of Celsius as to what rights they have in what they thought were custody accounts and I -- at this stage, I

have no reason to believe that those same issues wouldn't arise if the counterparties to Celsius where you believe you have these lockboxes, in effect, in the event of their insolvency, the same issues don't arise. So this is really -- it's a concern of mine. Okay? It was a concern before I heard Mr. Nash said this -- let's move on from there and finish up with your presentation on the cash management, then I'll hear from Ms. Cornell.

MR. KWASTENIET: No -- thank you, Your Honor. The next point that I was going to cover was the actions we're taking to safeguard the crypto assets. I hear you loud and clear. This will be an important topic of conversation. Just a few last points to note, Your Honor, is that we have never -- Celsius has never suffered a loss or a hack of crypto assets that are within our control. We believe that we have exceptionally good security. We have made investments in third parties who have not lived up to or been able to return or promptly return some of the crypto we've placed.

There have been hacks on third party systems, but from Celsius' founding, Celsius has not been the subject of a hack and I have -- I take a lot of comfort in the fact, in their track record and the folks at Celsius are extremely dedicated to this and focused on it. All conversations that we will have with the Committee, further conversations with

the U.S. Trustee, and at any time with Your Honor, this is among the most important issue in the case because we don't want next week Three Arrows Capital, you know, for us to come in and say, Judge, we've lost it all. It was all -- you know, it was all pledged over here or something.

But as I understand it, Judge, we have control and custody over the crypto. It remains ours. Title is ours and it's in a lockbox for -- again, trust, verify. More to come, but I believe, having spent a lot of time with the company on this, that we are as well positioned as we can be right now, which is not to say that there may not be other better, safer solutions for storage, all of which we are open to.

I will flag for Your Honor that the GK8 business that Mr. Nash referred to at the beginning of the case, that is a cutting edge top, best in class, cold wallet storage business and one of the potential next steps that we have identified is perhaps transferring assets into the GK8 cold storage as maybe being yet a further incrementally safer place to store it. But again, those are conversations we'll have with other stakeholders and report back to Your Honor.

THE COURT: Okay, go ahead.

MR. KWASTENIET: Your Honor, in terms of irreparable harm between the cash and the crypto --

THE COURT: Don't spend your time on that one.

MR. KWASTENIET: Yeah. Okay. Thank you, Your Honor. With your permission -- we did also agree with the U.S. Trustee's office that we've got 45 days to bring ourselves into compliance. If we have to comply with 345 for the crypto storage, I'm not sure how that works or if we ever will, but we've got 45 days to further discussions. What we've proposed, if it's okay with Your Honor, is that the U.S. Trustee and the company can extend that by written agreement that we'd file on the docket. If we can't reach agreement on extension --

THE COURT: I've done that before.

MR. KWASTENIET: Yeah. Okay. Great. Thank you, Your Honor. So that is reflected in the order. And with that, maybe we'd turn to, if you have it, the revised form of order that we filed at Docket No. 40.

And I can just walk you through the changes that we've agreed to make. This is a situation, Your Honor, where if we were live it'd be a little easier because I'd approach and hand you a hand markup of the redline.

THE COURT: What do you think?

MR. KWASTENIET: Okay.

THE COURT: Before you do that, let me just ask Ms. Cornell, where do things stand with the U.S. Trustee at this point.

MS. CORNELL: Thank you, Your Honor. Shara

Cornell with the Office of the United States Trustee. Things stand -- we still have some, a few open issues with cash management. I'm happy to go through them with Your Honor and both generally and specifically with the proposed order. I don't know if you want to wait until after the Debtors' presentation, but we certainly had several issues with the current iteration that was filed, I think earlier this morning.

THE COURT: With ECF 40? That's the --

MS. CORNELL: Yes, Your Honor.

MR. KWASTENIET: And I believe we've resolved those and maybe me walking through the changes that we've agreed to make hopefully will address those.

THE COURT: All right. I have ECF 40.

MR. KWASTENIET: Great. So the first change, Your Honor, is in Paragraph 3, and again, we would propose to submit a clean, and to the extent, Your Honor, further redline after the hearing, but in the new section at the end, we provided that intercompany transactions being cash between Debtors and their non-debtor affiliates or for the benefit of their non-debtor affiliates shall be deemed to be, and we're striking loans from the relevant Debtor to the relevant non-debtor affiliates and we're adding in, claims against and loans to the related entities.

So it's a similar concept, but just a little

wordsmithing. And then at the end of that sentence we're adding in a limitation that I referred to earlier --

THE COURT: Right.

MR. KWASTENIET: -- which is that the $300,000 cap in U.S. dollars.

THE COURT: That's for the interim period, right?

MR. KWASTENIET: For the interim period. Correct.

MS. CORNELL: Your Honor, this is Shara Cornell with the Office of the United States Trustee. I just want to confirm that that $300,000 cap, it's not just valued at $300,000, that it's going to be paid in USD and not in crypto.

MR. KWASTENIET: Correct, yeah. Payable only in U.S. dollars. Correct.

And Your Honor, the next changes are really just a series of --

THE COURT: With that change, Ms. Cornell, is Paragraph 3 acceptable to you?

MS. CORNELL: I believe so, Your Honor. I haven't seen a clean version, but I believe so.

THE COURT: Obviously, I'm not going to do anything until I get the revised orders. In principle, that's acceptable to you?

MS. CORNELL: Yes.

THE COURT: All right. Go ahead.

MR. KWASTENIET: Great. Thanks, Your Honor. The next change is in Paragraph 5 where we're talking about the post-petition management of our cryptocurrency assets and at the request of the U.S. Trustee, we added in a -- for the avoidance of doubt, this does not authorize intercompany transactions of cryptocurrency assets from Debtors to non-debtors during the interim period, and we were fine with that.

We proposed further language dealing with the circumstance where we might want to transfer assets to the GK8 non-debtor affiliate that we spoke about, but the U.S. Trustee's office thought that that was better -- something better discussed with the Committee, they'd want more information about it, and so we agreed to strike that request for the interim period.

THE COURT: Ms. Cornell, with that change in principle is that -- you've got to see the final language -- in principle resolve your concerns?

MS. CORNELL: Yes.

THE COURT: Okay. Go ahead.

MR. KWASTENIET: Great. And I believe the last change, Your Honor, is in new Paragraph 6 from the version we filed earlier today. We added that the Debtors are authorized but not directed to sell any Bitcoin mined by Debtor Celsius Mining, LLC. This I think, we're also fine.

The leading from this order but with a preview that this will likely be something that comes up again for the final order. The Celsius Mining business, what it does is --

THE COURT: So --

MR. KWASTENIET: -- uses computer equipment to generate Bitcoin that it then sells. It can, in theory, hold for its own account, but right now, it is completing finalizing the acquisition of the remaining mining equipment that it has bought on installments, finalizing the build-out of a facility. So at this point, part of its own cashflow plan, unless it needs a further infusion from the parent, it will need to sell the Bitcoin at fair market -- we will talk to the Committee about the appropriate parameters.

THE COURT: Just to understand, for now, you're going to come back with a final order where you want that?

MR. KWASTENIET: That's correct, Your Honor.

THE COURT: All right.

MR. KWASTENIET: We're okay deleting it for now, but it will be an important part of how the mining business funds itself on a go-forward basis. And I believe that that was it in terms of further changes to the cash management order, so after the hearing, Your Honor, we propose to email. Would you like a redline to the Version 40?

THE COURT: I would.

MR. KWASTENIET: Okay. Very good. We will do

that and we will --

THE COURT: Clean and redline.

MR. KWASTENIET: Great. We will copy Ms. Cornell on that also and --

THE COURT: I think you know, but the email address -- chambers' email address is MG.chambers@NYSB.USCourts.gov.

MR. KWASTENIET: I think that Ms. Golden may have that on her speed dial, Your Honor, but yes. Thank you. Your Honor, that --

MR. DUNNE: May I be heard --

MR. KWASTENIET: -- that's --

MR. DUNNE: -- in connection with cash management?

MS. CORNELL: And me as well, Your Honor.

THE COURT: First Ms. Cornell then Mr. Dunne, if you want to address this, I'm absolutely going to give you a chance to talk about it. Go ahead --

MS. CORNELL: Thank you. I just wanted to discuss a few overarching issues with respect to cash management and they -- possibly how they relate to some of the other motions. And it goes back to that issue of transparency I mentioned earlier and some of the information missing from the 1007 and maybe from the motion itself.

We need more information from the Debtors about the transfer of their crypto assets and -- or transferring

to cash between Debtors and non-debtor affiliates. The business practice really needs more information about, as you mentioned earlier, about the how, but we also really need to know about the why. Why are they transferring the assets regularly between different Debtor and non-debtor entities and how much and what is the benefit to the company in the past and now going forward in light of the change in market?

And we worked diligently with Debtors' counsel to limit a lot of this language, but there are still some concerns about these intercompany transfers and how much information we're getting and the speed in which we're getting it. As the Debtor indicated earlier, we asked them to change some of the language about the loans. We are concerned about non-debtor entities and their ability to repay any loans made by the Debtor now or in the future and that's something that we're going to be considering particularly because we don't have a great handle on the Debtors' practices, both historically and going forward with respect to its crypto assets and how they're being transferred.

THE COURT: I -- and I just -- let me, that was one of my major concerns when I worked on this over the weekend as well, and one of the questions I have, and I don't know whether this is something you've addressed with

the Kirkland folks, are there any intercompany services agreements that govern the Debtors' payments of non-debtor employees. That was one of the areas in which they're proposing to do, so -- and beyond that. It's really any -- there are other services that some of the non-debtors provide.

Are there agreements that define what they're doing, what they're being paid or compensated for? Those were among the questions I had when I reviewed this over the weekend.

MR. KWASTENIET: Understood, Your Honor. We will track that down with the company and to the extent there are intercompany agreements that govern, we will provide those to the U.S. Trustee's office, to the Committee, to Your Honor if you'd like to see them or if it becomes relevant.

THE COURT: If there aren't agreements, then I think it's important that you provide the U.S. Trustee and the Committee when it's in place with historical practice so that there is no sudden spike in the intercompany transfers. What were the amounts that have been transferred in the past, what were they for, how was it documented. You know, are there entries made --

MR. KWASTENIET: Fair enough, Your Honor, and one of the things that we're expecting to do here is we don't have a DIP and we don't have a use of cash collateral

because nobody has a lien on our cash collateral, and so we don't have the conventional DIP budget, you know, that might otherwise apply, but we are envisioning likely some sort of a budget or schedule of anticipated, just to give people context around these intercompany transfers. It's something I don't have fully developed today, but something that we will work with the parties on developing going forward.

THE COURT: I think you'd go a long way to giving some comfort to a Committee and its professionals and the U.S. Trustee if they could understand what the payments been made, historically what they've -- if there are no current written agreements, put some parameters around them, limits (indiscernible) the interim period -- I'll stop there. I'm not trying to -- I'm trying to understand at this stage. Okay?

MR. KWASTENIET: No, understood and appreciated, Your Honor.

THE COURT: Mr. Dunne, you wanted to speak, too.

MS. CORNELL: Your Honor, if I may? I still have just a few more points I'd like to bring up to Your Honor's attention.

THE COURT: Go ahead.

MS. CORNELL: Thank you. I just wanted to -- you had mentioned the custodial account before and I just wanted to mention two things. The first one, I just want to

confirm that the pause -- I guess capital P, Pause -- has prevented depositors from making any withdrawals from those accounts at this time.

MR. KWASTENIET: Yes.

MS. CORNELL: And then, so the depositors retain title, but there appears to be a statement that in the event of insolvency the depositors may be unsecured. So this just may be an issue going forward, but we wanted to highlight it for Your Honor that it's something that we're looking into and we are concerned about.

THE COURT: Me too.

MR. KWASTENIET: Yeah, the title remains with depositors under the custody program, but the assets are comingled and so it's a more straight -- it's a more complicated analysis than the customers who deposit under the earn program where the terms and conditions there provide clearly and unequivocally that title transfers and that once Celsius has title it's free to use, sell, pledge, et cetera. Like, and on the blockchain also, Your Honor, if you look at, okay, who's the owner of the crypto that got transferred, Celsius shows up as the owner of that.

So that, I think is -- not to say that somebody may not come in with a creative argument or, you know, say it was a constructive trust or something. We can deal with all of that when and if it comes up and we're frankly not

taking any actions today that prejudice somebody from making that argument, but just in terms of how we see the world, we think that is not a close call in terms of those assets being property of the estate.

And again, back to Mr. Nash's point, roughly 95 percent of the assets transferred to Celsius by customers came in from -- through that earn program where we think it's clear that those are assets of the estate, property of the estate.

THE COURT: -- $180 million dollars. It may have only been 5 percent of it, but $180 million --

MR. KWASTENIET: Correct.

THE COURT: -- lot of money.

MR. KWASTENIET: It's -- and it's there and we're not doing anything with it and people's rights are reserved and that's a topic for another day.

THE COURT: All right. Ms. Cornell, is there anything else you wanted to say now?

MS. CORNELL: Just one more thing. I want to confirm that all disbursements, not just the disbursements to the Cypress entity, will be in USD.

MR. NASH: Yes. We are not planning to pay anybody in cryptocurrency. And we understand, Miss Cornell, your office also does not want to be paid in Ether or Bitcoin. There could be upside in it, but, you know, could

be downside.

MS. CORNELL: Thank you.

THE COURT: All right. Any other issue for now, Ms. Cornell.

MS. CORNELL: No, Your Honor. Thank you.

THE COURT: Mr. Dunne, you wanted to be heard.

MR. DUNNE: Thank you, Your Honor. Good afternoon. And for the record, Dennis Dunne from Milbank on behalf of several of the Series B Preferred holders.

I just wanted to focus the Court on some of the perspectives that the Series B Preferred had because they kind of all landed on this cash management order and a lot of our comments with respect to tracking intercompany transfers as loans having maximum transparency I think are comments and language fixes kind of overlapped with and dovetailed with the U.S. Trustee's.

But with the Court's indulgence, to just give you a sense of how the preferred sees these issues, as well as the case. In the fall of last year, the Debtors closed on their largest capital raise by far. The Series A came in before, but it was about 30 million. The Series B is nearly $700 million of investments, and it all came in at the U.K. parent, Celsius Network, Ltd.

One point related to that is given the total enterprise value at that time -- and we all wish it was true

today -- that was not a controlled transaction, so that the founders still retained control then and they do now, and they own the common stock and the common corporate governance rights there.

We understand that the money that was raised last fall was used principally to fund the buildout of the mining rigs and the data mining business, as well as the purchase of a GK entity. That's important because, as Your Honor saw from Mr. Nash's presentation, the corporate chart -- and this is where it's a little different than Voyager, right. Voyager doesn't have the additional business lines that Celsius has. This looks a bit like a conglomerate that owns and manages, you know, several different business lines in different legal entities.

And as you've heard, you know, the U.S. customers are in the U.S. Delaware, LLCs. The U.K. parent owns that entity but has separate silos as well where the mining rig flows up into the U.K. parent, as well as the GK8 entity. We were very focused on making sure that that separateness was tracked and maintained, both in the cash management order and elsewhere, so that we could all figure out later. I mean, you know, I can talk about the key legal issues on Page 3, but that's all for a future date and let's see what, you know, the committee has to say about them.

I think the role today is to make sure that we

don't inadvertently change the realities that existed on the petition date by, you know, post-petition actions or failure to account properly.

Your Honor, this is a different case than I've been involved, frankly, in the sense that the absence of, you know, bank debt, the absence of bondholder debt, no debt for borrowed money at all means that I think we, the preferred equity, are going to play a larger role than you might see other preferred equity holders play in cases where that debt existed.

And I say that because, as Your Honor knows, it's the ad hoc committees of bank or bond debt that often raises and joins issues with the Court. And here on top of that where you have significant value flowing directly up into the U.K. parent, we expect to play an important and active role in these cases.

But with respect to the relief today, and particularly cash management, we commend the Debtors for spending a lot of time with us to kind of go through our concerns and obviating the need for an objection with the language changes that the Court has heard about and we support the entry of the relief today.

I guess more broadly, we remain optimistic about the prospects of a reorganization for certain aspects of the Debtors' business and believe with sufficient time and

stability stakeholders should receive substantial distributions. The Debtors' decision to file when they did, you know, fixes that liability but also, hopefully, has mitigated the noise around that's been endemic I think since the pause on June 12th.

And we hope that provides a breathing spell where the parties can get together and have a pathway for the company to maximize value for all stakeholders and we look forward to being actively involved in negotiations on, hopefully, a consensual plan.

Thank you, Your Honor.

THE COURT: If I shorten what you've said, you support the cash management order with the changes that have been proposed today.

MR. DUNNE: Your Honor, as always, cuts through it. Yes, that's precisely.

THE COURT: All right. Is there anybody else who wishes to be heard with respect to the cash management motion? All right.

Subject to seeing the final form of the order, which hopefully will work out with Ms. Cornell and Mr. Dunne, who have, you know, a dog in this hunt, so see if you can get the final language worked out and submit it to chambers, okay? And indicate in the cover email that you'll copy them on that the form of the order is acceptable to

them, okay?

MR. NASH: Very good. Thank you, Your Honor. We will do that. With that, I am going to cede the podium --

THE COURT: Assuming that will happen, assuming you have their agreement, it'll be approved.

MR. NASH: Great. Thank you very much, Your Honor. With that, I'm going to cede the podium to my colleague, Alison Wirtz, who is going to pick up with the next item on the agenda.

MS. WIRTZ: Good afternoon, Your Honor. For the record, Alison Wirtz from Kirkland & Ellis, proposed counsel for the Debtors. I will be taking us through the next few items on the agenda, beginning with item number 7, the wages motion.

The wages motion was filed at Docket No. 19, and by this motion, the Debtors seek authority to pay prepetition wages, salaries, other compensation, and reimbursable expenses and continue employee benefits programs in the ordinary course of business.

As with many companies, employees are the life blood of the business for Celsius. Without them, the company could not operate. As set forth in the motion and the Compagna declaration, which was filed at Docket No. 22 and provides the evidentiary basis for this motion, the Debtors employ approximately 370 individuals across 14

countries, including the U.S., Australia, Canada, and the United Kingdom, and have approximately 35 additional independent contractors that provide mission critical services to the Debtors in the marketing, mining, engineering, and compliance functions.

The Debtors are seeking to pay approximately 668,000 in the interim period related to employee compensation and benefits. And as my colleagues have noted before me, we have tried to tailor the scope of the relief to that which is ultimately critical for this interim period.

As noted in the motion, we're not seeking to pay any non-insider severance, non-insider ad hoc bonuses, direct compensation, nor are we seeking to pay anyone in excess of the statutory cap during this interim period. We previewed the motion with the Office of the United States Trustee, and they did not have any comments.

I would be happy to address any questions Your Honor may have but, otherwise, we would respectfully request entry of the order.

THE COURT: If I understand it correctly, there are a few employee where prepetition -- non-insider prepetition employees where the amounts owed are in excess of the statutory caps, but you're agreeing for the interim period to limit payments to the statutory cap.

MS. WIRTZ: Correct, Your Honor. On an interim basis, we're not seeking anything above the statutory cap.

THE COURT: So the other question I had is from reading the papers, it looked to me that the Debtor was seeking authority to modify benefit plans. And I want to be sure that this does not -- I don't inadvertently bless what would be described as KEIPs or KERPs.

MS. WIRTZ: To Your Honor's question about modifying existing benefits programs, we're not seeking to, in any way, increase whatever the ordinary course historical practice processes have been in place.

With regard to any sort of retention or insider programming, we're merely trying to maintain on a post-petition basis the existing programs consistent with historical practices.

THE COURT: All right. Ms. Cornell, do you want to be heard?

MS. CORNELL: Your Honor, I have no objection to the interim relief requested. Thank you.

THE COURT: Okay. Does anybody else want to be heard with respect to the wages motion? It's ECF Docket No. 19 is the motion. Hearing no objection, the motion is granted.

MS. WIRTZ: Thank you, Your Honor. The next item on the agenda is the Debtors' critical vendors motion, which

was filed at Docket No. 20, and following discussions with the U.S. Trustee, we filed a revised proposed order at Docket No. 37.

By this motion, the Debtors seek entry of an order authorizing but not directing the Debtors to pay in the ordinary course of business prepetition amounts owed on account of critical vendor claims, foreign vendor claims, lien claims, and 503(b)(9) claims.

We are seeking a total of 3.76 million on an interim basis. In addition, we're seeking administrative expense priority for any goods that are currently in transit that were ordered prior to the petition date but have yet to arrive.

Given the complex global nature of their business, the Debtors' trade partners are critical to their worldwide operations. Within the category of critical vendors, a substantial number of these are associated with the construction of the minings that are in Texas that has been discussed previously.

As mentioned earlier, the Debtors have made significant investments in the construction of the mining center and are currently rushing to complete the final aspect of the center. Once completed in approximately two months, the mining center is expected to be a critical source of value and any delays at this stage in the

construction process would negatively impact the Debtors' ability to operate and it could jeopardize the long-term growth and revenue strategy.

Since this project is nearing completion, it's imperative that we have authority to continue paying these critical vendors to avoid any delays or issues of completion of the project.

Now there had been some questions about where these payments are going with respect to the mining center, and I would like to address those quickly. The payments that are earmarked for the mining operations are all earmarked to be paid for vendors that are contracting on behalf of Celsius Mining, LLC. There are no hard assets that sit at the Israeli entity that sits below the Delaware, LLC, and none of the critical vendor payments would be diverted in any way to that non-debtor entity.

There are some additional critical vendors that provide other critical services, including platform products, that relate to technology, operations, and finance. And then finally, we seek to pay certain 503(b)(9) claims, certain foreign vendors, and latent claims.

THE COURT: Let me just understand because I think this was a question I had for Mr. Nash. I had a little trouble understanding. Looking back to the slide deck, I'm looking at the organizational chart and there are two

entities that the first two names are Celsius Mining. One is Celsius Mining, LLC, which is a Debtor, and then Celsius Mining -- I can't tell what the next initial are -- Ltd.

MS. WIRTZ: I believe it's IL, Ltd.

THE COURT: IL, Ltd., okay. Tell me the difference between them.

MS. WIRTZ: Yes. So the Celsius Mining, LLC, the Delaware entity that is a Debtor entity is the entity that holds all of the main operations of the mining center in Texas, and this is the entity that any critical vendors would be interfacing with and that would be the Debtor entity that is going to be the one ultimately paying any of these vendors.

The Celsius Mining IL, Ltd., the Israeli non-debtor corporation -- or entity, apologies -- that entity was created for certain employment reasons, but it does not actually hold any of the operating assets.

THE COURT: Okay. Anything you want to add before I see if anybody else wants to be heard?

MS. WIRTZ: I was just going to note, as mentioned before, we previewed this motion with the U.S. Trustee and have incorporated their comments to the order.

And again, I would like to echo my colleagues and thank Mr. Cornell and her team for their collaboration and flexibility throughout this process. They went above and

beyond in making themselves available as we went through turns of these motions and orders. And I understand it's, you know, been a process to get all of the information over, but we really appreciate them making themselves available and we look forward to continuing the dialogue as we share information on the vendors and vendor payments going forward.

THE COURT: If I understand correctly, it's $3.76 million on an interim basis for the next 21 days?

MS. WIRTZ: That is correct, Your Honor.

THE COURT: And what's the total that you would be seeking?

MS. WIRTZ: On a final basis, we are seeking 6.52 million.

THE COURT: Okay. Ms. Cornell, do you want to be heard?

MS. CORNELL: Yes, Your Honor. Shara Cornell at the Office of the United States Trustee.

I just wanted to highlight a few issues for the Court with the critical vendors motion in this case. We've been very slow to get information and $3.7 million is a lot of money and it's a lot of money for payments at the discretion of the Debtor and it's a lot of money to be spent on an industry where we're not sure where the future benefits lie.

And with that being said, the Debtors need to meet the doctrine of necessity for a critical vendor motion, and I'm not sure that they have met that in this case. We only just recently received -- my office received a list of the intended critical vendors, but we still don't know which entity each critical vendor relates.

We certainly don't know which critical vendor or trade claimant belongs to this mining facility, we don't know which are foreign, and that's a lot of information that we really need to know in order to understand the necessity for these payments, in particular with this mining facility. I understand that construction is underway and that there may be only two more months of construction, but I don't know if that's true. I don't know the timeline. I don't know what, in fact, has been constructed, what needs to be constructed. And I also don't know if it's going to be benefiting the estate and I think that's best served for a committee to evaluate.

THE COURT: Does anybody else wish to be heard with respect to the critical vendor motion?

So, Ms. Cornell, let me ask you this. I agree completely about the importance of transparency and information sharing. Can you tell me in more detail what specific information you're asking to receive and whether you believe the Debtor is being responsive in providing you

with the information you're asking for.

MS. CORNELL: Sure. So the Debtor, as I understand it, is working -- is trying to work diligently to get us the information; however, it's been very slow. And it's been slow even though the Debtor has known how much money it's needed since the filing of this motion, which is curious to me that we just got the list just within the hour before this hearing, but they knew they needed $3.7 million over a week ago, and I'd like to see that information come more quickly.

And I also think it's really important that we know for which entity these different payments are going because they all seem to do different things and I don't have a good grasp on what those different things are, other than the fact that there's one mining company that I don't believe is currently operable but has cost the Debtor a considerate amount of money and I'm not clear if construction may or may not be the best avenue for the Debtor at this time. Why not just consider liquidating its assets and move on? We don't know.

MS. WIRTZ: If I may address some of those points. So as was discussed previously in Mr. Nash's presentation, we believe that the mining segment is a unique segment that offers value to the enterprise going forward, and we have worked to provide additional detail on that.

In terms of the overall status of the project, as Mr. Nash noted, we currently have part of the whole site up and running and are currently mining approximately 14.23, I believe, Bitcoin per day, which is considerable value as of today. The construction that we are working to complete has to do with the final fourth of the overall mining center. There are three areas that are currently completed and we're working on the fourth set.

To give you a little bit more context on how much the 3.76 million is in the aspect of -- in relation to the enterprise as a whole. In terms of investment on the site build, there has already been approximately 27 million invested to date and approximately 11.7 million of that was spent in June when construction really got underway in earnest.

And so, we come to the unfortunate situation where the Debtors have filed Chapter 11 in the midst of a project that had considerable investment, is nearing completion, and we just want to make sure that we are not disrupting the operational potential for the company because they chose to file Chapter 11 now rather than two months from now when this plant is fully -- when the mining center is fully complete.

THE COURT: So I'm looking at the blackline, Paragraph 4: "The Debtors will provide the U.S. Trustee by

email with a list of holders of each category of trade claims set forth and the function and the amounts owed as of the petition date." I'll stop reading, but it's within seven days; you do this within seven days of the change in characterization of such claim holder or amounts owed. I'm actually not sure what that means.

So what I've done in some other cases -- you know, I don't necessarily say that has to be here -- is the Debtor provides -- you know, and I perfectly understand that debtors usually don't want to tell the world which of their favorite creditors that they want to pay prepetition claims, okay.

So I've usually required that list to be given to the U.S. Trustee and/or committee -- well, there's no committee -- and, you know, give the U.S. Trustee a very short time, like 24 hours, to say yes, no, maybe. And if you can't resolve it, well, you can urgently arrange for a telephone hearing or a Zoom hearing with me and I'll resolve it.

But I didn't understand from the blackline is this looks like an after-the-fact kind of thing. You pay who you want, and you give them a list within seven business day and what do they do then. So they're not -- you know, I've usually found the U.S. Trustee quite responsive if you give them the information.

And I'm not sure I share all of Ms. Cornell's concerns about is the mining business -- you know, is the cryptocurrency mining business the best business for the Debtor to be engaged in. I believe that's a business judgment issue for the Debtor and not something for me or the U.S. Trustee to decide, okay. They're entitled to an explanation, and I think they need the explanation before they say, okay, go ahead.

This, of course, is the order for the interim period. I agree with Ms. Cornell in the aggregate, $3.76 million is a lot of money, but in the larger scope of the case, I'm not sure that it is.

So why can't you give the U.S. Trustee the list tomorrow of here's who we want to pay, these are the amounts we want to pay it, this is what it's for, and give them a very, you know, no more than a day turnaround to say, yes, no, whatever.

MS. WIRTZ: Yes, Your Honor, we would be amenable to that.

THE COURT: Ms. Cornell, does that solve some of your problems? I mean, look, neither you nor me are the ones who ought to make this business judgment in the end. Yes, this is a different sort of issue with respect to critical vendor payments. You make payments of prepetition amounts, and you potentially benefit those creditors to the

exclusion of others who would be entitled to equal distributions.

But I think this can be, particularly for the interim period, if they tell you tomorrow these are the ones we feel we got to pay right away, these are the amounts, this is what it's for, this is what they're doing. And if you don't agree, you get a hearing, you'll get a telephone hearing.

MS. CORNELL: I would also -- Your Honor, Shara Cornell with the Office of the United States Trustee.

Because we'd like the Court to be aware of the critical vendors and what is in the motion that they're approving, I think that it would be appropriate for the list to also be with the Court.

THE COURT: Yes, I get that list. So the list under seal goes to the Court, to the U.S. Trustee, and a committee once it's in place.

MS. WIRTZ: We're amenable to that, yes.

THE COURT: Does that work for you, Ms. Wirtz?

MS. WIRTZ: Yes. Thank you, Your Honor.

THE COURT: Why don't you -- look, I will come up -- I'm not going to wordsmith this change. You've got the concept that I think is appropriate.

MS. WIRTZ: Yes.

THE COURT: I think you and Ms. Cornell will be

able to work out this language, assuming that you come up with -- and I'll see whether anybody else wants to be heard on this issue before ruling. But subject to hearing anybody else, I'd be prepared to approve on an interim basis the critical vendor motion if it's adjusted more or less in the lines of what I've talked about. Will that work for you, Ms. Cornell?

MS. CORNELL: Yes, Your Honor.

THE COURT: Ms. Wirtz.

MS. WIRTZ: Certainly. We will plan to work out the language with the Office of the U.S. Trustee and, similar to the cash management order, send you a revised proposed order after the hearing.

THE COURT: That's fine. Does anybody else want to be heard on the critical vendor motion? All right. Not hearing anybody else, go forward on that basis, Ms. Wirtz, okay.

MS. WIRTZ: Excellent. That turns us to the next item on the agenda, which is the Debtors' case management procedures motion, which is filed at Docket No. 15.

As is customary in complex Chapter 11 cases, the Debtors seek entry of an interim order approving and implementing the notice of case management and administrative procedures. Given the size and the scope of the filing and the number of parties in interest in these

cases, we view these procedures as a guidepost and believe that these procedures will facilitate the efficient administration of these Chapter 11 cases.

Unless Your Honor has any questions, we would respectfully ask that the Court enter the order on an interim basis.

THE COURT: Ms. Cornell.

MS. CORNELL: That's fine, Your Honor.

THE COURT: All right. Ms. Wirtz, once there's a committee in place, I frequently wind up making some adjustments in the procedures. So on an interim basis, it's approved, okay?

MS. WIRTZ: Thank you, Your Honor. Yes, we anticipate that a committee would have feedback and look forward to working with them at that time.

THE COURT: Okay, thank you.

MS. WIRTZ: Thank you, Your Honor. The next item on the agenda is the Debtors' creditors matrix motion, which was filed at Docket No. 18, and this morning, we filed a revised proposed order at Docket No. 38.

By this motion, the Debtor seeks authorization to redact personal identifying information, specifically individuals' home addresses and in some instances pursuant to the U.K. and EU GDPR regulations, and we seek to redact these names and personal identifying information from the

But I have to tell you I have quite a few opinions that deal with 107(b) and (indiscernible) I've been sensitive in other cases to if foreign law, for example, protects information that U.S. law doesn't protect and a creditor is a citizen of the foreign nation, I'm often sensitive to, and I believe I've carved out -- you know, if there's a showing that foreign law precludes the identification of a credit under specific circumstances, the way I've dealt with it is the code sheet that I have the code, the U.S. Trustee has the code and they have the code. But I'm not a big fan of sealing information because I don't think the code permits it.

But Ms. Cornell, do you want to be heard?

MS. CORNELL: Yes, Your Honor. Debtor's counsels' representations are correct. However I would just like to ask that we set a deadline for the filing of the motion, not just that it will be heard at the next hearing but all proper parties have time too, particularly because we have some foreign creditors on the creditors committee.

THE COURT: Well, tell me when we're going to have a creditors committee.

MS. CORNELL: Well, when are we going to have a second day hearing?

THE COURT: Well --

MS. CORNELL: But I --

reasonable request to the Debtors or to the Court that is related to these Chapter 11 cases.

Nothing precludes a party in interest from the right to file a motion requesting that the Court unseal the information redacted by this order. In discussions with the U.S. Trustee, they requested and we agreed to have the redaction relief requested in this creditor matrix motion entered only on an interim basis pending the Debtor's filing of a separate sealing motion for final relief. That sealing motion will be filed in time to be heard at the second day hearing and we wanted to make sure that we noted that on the record.

So unless Your Honor has any questions, we would respectfully request entry of the order.

THE COURT: So I had an emergency motion that I heard last Tuesday morning in Three Arrows, and I commented it was the first time as a judge I can remember anybody wanting to seal a certificate of service. And the Latham partner who argued it said it was the first time he'd made such a motion, and he wasn't aware of it.

So look, yes, I'm very sensitive about parties who are receiving threats of violence. But with all due respect, that doesn't fit within the 107(b) grounds for sealing. I will hear Ms. Cornell. I'm prepared to grant this relief on an interim basis.

creditor matrix, schedules and statements, and other documents, such as affidavits of service and fee applications.

As a bit of background and as previewed by Mr. Nash in his opening, given these cases have generated a lot of press and social media commentary. With that, certain employees have been receiving death threats and hate mail. Without the requested relief, the Debtors would be required to publish individuals' home addresses without their knowledge or consent, and we worry that this could escalate certain situations.

One issue that has arisen after we filed the creditor matrix motion is that we received certain communications from scheduled corporate creditors stating that corporate principals have been receiving death threats and hate mail as well. We informed them that we would raise this concern with the Court at today's hearing.

In sum, we feel we've crafted what we believe is a rational solution that adds a minimal step for the public to access the creditor matrix and other documents. The Debtor is proposed to provide an unredacted version of the creditor matrix, schedules and statements, and any other filings redacted pursuant to the proposed order to the Court, the U.S. Trustee, counsel to any official committee appointed in these Chapter 11 cases, and any party in interest upon a

bunch of sealing opinions.

But Ms. Cornell, work out -- see if you can work out a date. I really want a committee in place to do this. I'm only granting this relief on an interim basis, and we'll see what happens after that, okay?

My regular courtroom deputy is on vacation today. I think she'll be back later this week. So you'll need to hold off. We'll talk about other dates before we finish today, okay? We will set some dates. Okay. All right.

MS. WIRTZ: Certainly --

THE COURT: Ms. Wirtz, so I'm granting the relief, okay?

MS. WIRTZ: Thank you, Your Honor, and certainly we will discuss the dates further and, as necessary, we're happy to brief the issue under 107(c).

THE COURT: Just to say, it may well be that I'm going to decide the motion on the briefs and without scheduling another hearing. I've dealt with 107(b) a lot. So we'll see. Work out -- work out with Ms. Cornell a date for filing the motion, briefing the motion and I'll reserve the right to schedule a hearing after I see the briefs, okay?

MS. WIRTZ: Understood, Your Honor. Thank you. That brings us to the next item on the agenda which is the SOFAs and scheduled extension motion.

THE COURT: -- I want a committee in place --

MS. CORNELL: -- to set the motion to be filed by? Two weeks?

THE COURT: We'll work it out. Let me tell you, because I really -- in a lot of these things, I really want a committee with professionals in place to take position on these. And as well, look, I've commented before on sealing motions, it's ordinarily your office that carries the laboring war on this.

MS. CORNELL: Yeah

THE COURT: I want you to try and agree with the Debtors' counsel on a date, the deadlines. File a letter on the docker and get agreement. If you can't, I will set the date, okay? I really would like to have committee professionals involved because I really do want to hear from them on it, okay?

In the hearing last week in Three Arrows, part of what -- there was actually an arbitration that already was started in the United States against Three Arrows and they don't want to disclose who commenced the arbitration. And I pointed them to an opinion that I wrote in Motors Liquidation Company. I inherited it from Judge Gerber in 2016. So I wrote an opinion specifically about identifying a party who was actually a plaintiff in litigation against the avoidance action or the trust in GM. So, and I have a

By this motion, the Debtor seeks entry of an order extending the deadline to file schedules and statements by the earlier of 30 days or seven days before the 341 meeting and extending the deadline by which the Debtors must file their initial reports of financial information with respect to entities in which the Debtors hold a controlling or substantial interest as set forth under Bankruptcy Rule 2015.3 to the later of 30 days after the 341 meeting and 44 days from the petition date.

Prior to filing the Chapter 11 cases, we previewed this motion with the United States Trustee and incorporated their request that we make clear the extension is until the earlier of 30 days or seven days before the 341 meeting just to be sure that the schedules and statements are available ahead of the 341.

So unless Your Honor has any questions, we respectfully request entry of this order.

THE COURT: Ms. Cornell?

MS. CORNELL: That's correct, Your Honor. The schedules will be filed in advance of the 341 meeting. We're working with the Debtor to come up with a date that works for everybody.

THE COURT: Okay. Granted.

MS. WIRTZ: Excellent. Thank you, Your Honor. And with that, I will turn the podium over to my colleague,

Mr. Simon Briefel, to take us through the remaining items on the agenda. Thank you.

THE COURT: Thank you very much.

MR. BRIEFEL: Good afternoon, Your Honor.

THE COURT: And before Mr. Briefel begins his presentation, I always disclose this when one of my former law clerks appears before me in a matter. What year was it, Simon?

MR. BRIEFEL: It was a long time ago now. It was probably 2017.

THE COURT: It seems like only yesterday, but go ahead.

MR. BRIEFEL: That's right.

THE COURT: Nice to see you.

MR. BRIEFEL: Nice to see you as well. So for the record, Simon Briefel, of Kirkland & Ellis, proposed counsel to the Debtors.

So as my colleague, Ms. Wirtz, mentioned, I will be taking us through the balance of the agenda for today, if that works for Your Honor.

THE COURT: Go ahead.

MR. BRIEFEL: All right. So the next item on the agenda is the Debtors' insurance motion which was filed at Docket Number 16 and which seeks entry of interim and final orders authorizing the Debtors to pay their obligations

under their prepetition insurance policies, to continue to pay certain brokerage fees and to maintain their surety bond program.

Our insurance policies and our surety bond programs are essential to the preservation of the value of the Debtors' business, their property and their assets and their ability to successfully administer these Chapter 11 cases.

Your Honor, as we explain in our papers, we do not believe that there are any amounts that are currently outstanding under the insurance and surety bond programs. However we are still requesting interim relief under Rule 673 because in this instance we are adding in the ordinary course of business additional coverage for our building and construction sites that my colleagues mentioned in relation to the mining business.

And so the premium that will be due under that policy and under that coverage will become due on August 13th which is around the time that we think the second day hearing is going to be scheduled. And so we are asking for that relief in the interim as a comfort in the even that we are not holding that hearing before then.

THE COURT: What is the amount, Mr. Briefel?

MR. BRIEFEL: It is -- I think it's $1.5 million.

THE COURT: Okay. All right. Go ahead.

MR. BRIEFEL: Excuse me. Excuse me. I don't think that's the right amount. It's much smaller than that. It should be on here. It is -- I can get back to you on that number. I think I had it somewhere. I will find it and let Your Honor know.

THE COURT: Okay. That's fine. Go ahead.

MR. BRIEFEL: I think it was $80,000.

THE COURT: All right. Go ahead.

MR. BRIEFEL: Thank you. So we discussed that point with the Office of the United States Trustee, who I understand was satisfied with it and does not object to entry of that interim order.

And I will finally note, Your Honor, that the interim order on that respect expressly provides that there's nothing in the interim order that authorizes the Debtors to accelerate any payments that are not otherwise due under the Debtors' insurance program and surety program prior to the date of the final hearing, and that's at Paragraph Number 7.

THE COURT: All right, and you also included in this motion a request for authority to pay some surety bond premiums; am I correct?

MR. BRIEFEL: Yeah. That is right. It's also part of the relief. But as I mentioned, we don't think there's any amounts that are due under the surety bond

programs either. But we are just asking for that relief as a comfort in the event that any amount that we may not know about may become due or to have the ability to modify the existing surety program or enter into new ones.

THE COURT: Ms. Cornell?

MR. BRIEFEL: Other than that, Your Honor, if you have any --

THE COURT: Ms. Cornell, do you want to be heard on the insurance?

MR. BRIEFEL: Oh, I apologize.

MS. CORNELL: Yes, Your Honor. Again, Shara Cornell, with the Office of the United States Trustee. The insurance -- I had a different understanding of the status of this insurance motion.

The insurance motion is largely a comfort order. There are no known premiums or payments due. The Debtors have nothing that's prepared to lapse in the next 21 days. The Debtors have just given us some vague information that a new policy will be entered on the mining site. But we don't know what the current policy is or why they need new insurance or the extent of the new insurance.

And we just learned of this just prior to the hearing. But I don't believe we have the requisite details to evaluate the new policy and that a committee would be better -- would be the -- it would be better to have a

committee in place.

But if Your Honor's prepared to enter the insurance order, I think it should be more narrowly tailored to include just this one policy that the Debtor is looking to enter into.

THE COURT: Mr. Briefel, do you want to address that?

MR. BRIEFEL: Your Honor, I mean, we'd defer to your judgment. But we think it's important for the Debtors to have the ability, should they need to have that ability, to change their programs in the interim period. It is true that there is only that one single policy that we're trying to pay the premium for. But we do think we need that flexibility in the interim period.

THE COURT: Well, let me -- let's see if we can do it this way. I'll certainly approve the motion for the payment of the one premium that's due.

With respect to any other insurance or surety bond payments the Debtor believes it needs to make in the next 21 days, consult with the Office of the U.S. Trustee and if they provide their consent, I'm satisfied if this is done by email, if I'm told this is what you're going to pay, what you want to pay and you indicate you've gotten the consent from the Office of the U.S. Trustee, I'll certainly approve that as well.

But for now I'm only approving the amount that you know is currently due, okay?

MR. BRIEFEL: Yeah. Sounds good. Thank you.

THE COURT: Ms. Cornell, is that satisfactory?

MS. CORNELL: Yes, Your Honor. Thank you.

THE COURT: All right. Go ahead, Mr. Briefel.

MR. BRIEFEL: Thank you, Your Honor. All right. So going to the next item on the agenda is the Debtors' taxes motion that was filed at Docket Number 17. That motion seeks entry of interim and final orders authorizing the Debtors to remit and pay taxes and fees in the ordinary course of business that are payable or will become payable during these cases.

Your Honor, it is crucial, of course, that the Debtors be allowed to pay and continue paying these taxes going forward because failure to pay taxes may subject the Debtors to various fines and penalties as well as, in certain cases, the accrual of interest.

Your Honor, we are requesting approval of an order on an interim basis here under Rule 6003 because we have estimated there is approximately $1.5 million worth of customs and import duties that will become due during the interim period and that's the reason we're requesting also entry into an interim order.

THE COURT: As I understand it, Mr. Briefel, the

$1.5 million is the amount that's estimated to be due in the interim period. The approximate total amount accrued and unpaid as of the petition date for all -- not just the customs duties. The customs duty is the $1.5 million. But for all taxes, it's $22 million.

MR. BRIEFEL: That's right. The amount that we're seeking on a final basis is $22 million.

THE COURT: Okay. But on the interim basis, just the $1.5 million?

MR. BRIEFEL: That's correct.

THE COURT: Ms. Cornell?

MS. CORNELL: Thank you, Your Honor. A couple of things. So $1.5 in customs and import duties, the Debtor hasn't paid customs or import duty taxes since 2020. That's what their motion clearly states. So they haven't made these payments in over a year-and-a-half. And it's unclear to me why now, what's different and have there been delinquency notes or actions by foreign governments with respect to these.

And my second point is they owe $1.5 million in customs and import duty taxes that haven't been paid since 2020. They owe almost $20 million in sales and back taxes that haven't been paid since 2020. Both of these should have been, in my understanding, escrowed this whole time. I'm concerned --

THE COURT: We're only dealing with what relief they want on an interim basis.

MS. CORNELL: I'm just trying to understand why they're looking to pay it on an interim basis and what separates the two taxes, import and custom versus sales and VAT.

THE COURT: Mr. Briefel, can you address that?

MR. BRIEFEL: Yeah, of course. So my understanding of the amounts first that are due under the customs and import duties is that these amounts are not any -- and aren't related to any amounts that may be outstanding and delinquent.

On the other hand, this is relating to mining rigs that the Debtors are importing from overseas and which are currently sitting with the customs authorities. And so as soon as these rigs are cleared by customs, a payment will be due. And so we ask for that relief because clearance of the rigs that are currently in customs may happen any day now and so we want the ability to pay for these duties.

THE COURT: Okay. All right. The relief is granted on an interim basis, the $1.5 million.

MR. BRIEFEL: Thank you, Your Honor. All right. Moving next to the next item on the agenda is the NOL motion that was filed at Docket Number 7.

As we explain in our papers, the NOL motion does

not seek any substantive relief; rather, the motion is purely procedural and only seeks to establish procedures to allow the Debtors to monitor and object as is necessary to certain transfers of the Debtors' equity into declarations of worthlessness in order to protect the Debtors' tax attributes.

We think the relief here is necessary on an interim basis just because we think certain changes of ownership that may happen within the Debtors' corporate structure and that the NOL motion is trying to prevent may certainly happen during the interim period, and so that's the reason we're trying to obtain that relief in the interim basis.

I will note for Your Honor, I'm sure you saw that there was a revised order that was docketed this morning at Docket Number 39. Initially the proposed order reflected a change to the procedures that we had received and discussed with one of our main equity holders. And as I'm sure you've seen, that modification in the order made clear that there was no requirement to file a declaration of status of substantial shareholder for any equity holders of the Debtors that were listed in the petitions for Celsius Network, Limited. That was the change that we had discussed with one of our equity holders.

But subsequent -- I apologize for -- subsequent to

the filing, we had a conversation with the Office of the United States Trustee about that change, and my understanding is that they would rather leave that change out and maintain that requirement to file a declaration of status for any equity holders.

We are fine with that change, Your Honor, and I understand that counsel for the equity holders with whom we had a conversation does not intend to oppose that today. And so we are planning, with Your Honor's permission, to submit a revised order after the hearing reflecting that change and for entry by the Court after the hearing.

THE COURT: All right. Ms. Cornell?

MS. CORNELL: Yes, Your Honor. That is my understanding as well, and we have no objection to the motion or the proposed order.

THE COURT: All right. Does anybody else want to be heard? All right. It's granted then.

MR. BRIEFEL: Thank you, Your Honor. The last item on the agenda is the Debtors' motion filed at Docket Number 6 that seeks entry of an order restating and enforcing the worldwide automatic stay, antidiscrimination provisions and ipso facto provisions of the Bankruptcy Code.

The Debtors' operations span over a hundred customers and the Debtors' customers and contract counterparties are located in various foreign jurisdictions

and may be unfamiliar with the Chapter 11 process and the Bankruptcy Code. As a result, the Debtors are seeking an order enforcing the automatic stay to make clear what the stay is and what actions it prohibits.

In addition, upon the commencement of the Chapter 11 cases, counterparties to contracts with the Debtors could attempt to terminate these contracts pursuant to an ipso facto provision in contravention to Section 362 and 365 of the Bankruptcy Code and governmental units may also seek to terminate certain licenses that are required for the Debtors' business operations in violation of Section 525 of the Bankruptcy Code.

Your Honor, you also probably saw this morning we filed a proposed order at Docket Number 43 that reflected a comment that we received this morning from the SEC making clear that Paragraph 4 of the proposed order does not go beyond the scope of Section 525, and we wanted to be clear that governmental units are precluded from interfering in any way with property of the Debtors' estate on account of the commencement of the Chapter 11 cases, the Debtors' insolvency or the fact that the Debtors have not paid a debt that is dischargeable in the Chapter 11 cases.

I will note, Your Honor, before concluding that we are not seeking to expand or enlarge any of the rights that are afforded to the Debtors under the Bankruptcy Code but

simply, you know, to seek authorization to serve a notice to creditor -- to creditors, I apologize, so that we can better ensure their compliance with the Bankruptcy Code.

We're also attaching, as I'm sure you've seen, the relevant extracts of the Bankruptcy Code as attachments to the proposed order so that anyone who may not be familiar with the Bankruptcy Code has these provisions readily available.

Other than that, Your Honor, we have not received any other comments or objections, including from the United States Trustee. And so unless the Court has any further questions, we respectfully request entry of the proposed order.

THE COURT: Does anybody else wish to be heard? All right. The motion's granted. Thank you very much.

MR. BRIEFEL: Thank you, Your Honor. So I believe with this, unless the Court has anything else, that ends our agenda for today.

THE COURT: Mr. Nash?

MR. NASH: Good afternoon, Your Honor, and thank you very much for patiently wading through that with us. I have nothing further. I'm just, you know, stepping up to say thank you, and if we want to talk about one, we'll come back or whatnot.

THE COURT: That's what we want to talk about now.

Give me a second here. Let me switch screens. Do you have a request for a specific date? I'm looking at my calendar. But do you have a specific date that you have in mind?

MR. NASH: We don't, Judge. Just, you know, directionally, would you want to bring us back approximately 21 days from now or more like 30?

THE COURT: It would be Monday, August 8th.

MR. NASH: Okay.

THE COURT: And let me ask, I don't know, you know, there were close to 200 people at one point. We're down to 186 who are logged on. I don't know how many people in Europe, for example, have logged on. I'm mindful of the time differences. So I would be inclined to schedule the hearing for 10 a.m. on Monday, August 8th. Does that work for you?

MR. NASH: It doesn't work for me, Your Honor. But it does work for my partner, Mr. Kwasteniet and perhaps it works for Mr. Sussberg. So we can accommodate that date if we want to keep that date.

THE COURT: You tell me what you would like.

MR. NASH: Well, I know I could do Wednesday, August 10th, Your Honor, if that happens to be available.

THE COURT: All right. Let me look again. I've got to just switch. I could schedule for Wednesday, August 10th at 11 o'clock. I have another hearing at 10:00. But

we could do this at 11:00.

MR. NASH: That'd be great, Your Honor. Thank you very much.

THE COURT: All right. Bear with me again. So we'll -- I think we should plan on going forward with the hearing on August 10th at 11 a.m. on Zoom.

I am trying to get people to come back into the courtroom, but having some difficulty at having that accomplished. It usually results in a very quick settlement of whatever it is I'm trying to set for a hearing. So, but I think for the second day on these motions, I think all of my colleagues, we're inclined to do all first day motions on Zoom, even post-pandemic, if we reach that point.

So we'll go forward with Zoom. If anybody believes there are any matters coming up at which evidentiary hearings are required, it's my strong preference to do that in the courtroom, if possible. But otherwise we will continue with Zoom for now. So you can give -- file a notice of that hearing, Mr. Nash.

Again, if there are any other issues that really require very prompt attention, you know, if there are any disagreements about any of the forms of orders that you're working out or anything like that, if you contact my courtroom deputy, I'm usually able to set a hearing the same day and we'll keep this moving along.

MR. NASH: Appreciate that, Judge.

THE COURT: All right. Anybody have anything else they want to address? I'll be looking for the final forms of orders to be entered. Orders should be provided to the Court in Word format and they'll get entered, okay?

MR. NASH: Thanks again, sir. Thank you, sir.

THE COURT: Thank you to Mr. Nash and to your colleagues as well who have spoken today. Okay. We're adjourned.

MR. NASH: Thanks, Judge.

MR. BRIEFEL: Thank you.

(Whereupon these proceedings were concluded at 4:54 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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EXHIBIT B

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TAYLOR GOINES, Individually and on Behalf of Itself and All Others Similarly Situated, Plaintiff, v. CELSIUS NETWORK, LLC, CELSIUS LENDING, LLC, CELSIUS KEYFI LLC, ALEXANDER MASHINSKY, SHLOMI "DANIEL" LEON, DAVID BARSE, and ALAN JEFFREY CARR, Defendants.	Case No. **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Taylor Goines ("Plaintiff" and/or "Goines") brings this action on behalf of himself and all others similarly situated against Defendants Celsius Network LLC ("Celsius"), Celsius Lending LLC, Celsius KeyFi LLC (collectively, the "Celsius Entities") and the company executives Individual Defendants Alexander Mashinsky, Shlomi "Daniel" Leon, David Barse, and Alan Jeffrey Carr. Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to himself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of all people in the United States who purchased Celsius Financial Products by way of a Celsius Earn Rewards Account, the Company's so-called native "CEL Tokens," and/or the Celsius Loans (collectively referred to as the "Celsius Financial Products") from February 9, 2018 to the present (the "Relevant Period").

2. Celsius is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, the sale of its unregistered securities, as well as engaging in proprietary trading.

3. In particular, Celsius has offered and sold Celsius Earn Rewards Accounts to investors, through which investors lend crypto assets to Celsius in exchange for Celsius' promise to provide a variable monthly interest payment. Celsius generated the interest paid out to Earn Rewards Account investors by deploying its assets in various ways, including loans of crypto assets made to institutional and corporate borrowers, lending U.S. dollars and stablecoins to retail investors, and by investing in other highly speculative cryptocurrency ventures. Celsius then pools these cryptocurrencies together to fund its lending operations and proprietary trading.

4. Celsius investors are promised a better-than-market interest rate that is paid monthly in cryptocurrency in exchange for investing in the Earn Rewards Accounts. The Earn Rewards Accounts are not protected by the Securities Investor Protection Corporation (the "SIPC") nor are they insured by the Federal Deposit Insurance Corporation (the "FDIC"). Furthermore, the Earn Rewards Accounts are not registered with the United States Securities and Exchange Commission ("SEC"), the New Jersey Commissioner of Corporations ("Commissioner"), or any other securities regulatory authority, or exempt from registration. Despite the additional risk, and lack of safeguards and regulatory oversight, as of March 2021, Celsius held the equivalent of $10 billion from the sale of these unregistered securities in violation of federal and state securities laws, which peaked at over $25 billion later that year.

5. Since February 9, 2018, Celsius, through its affiliates Celsius Lending LLC and Celsius KeyFi LLC, has been, at least in part, funding its lending operations and proprietary trading through the sale of unregistered securities in the form of Earn Rewards Accounts and CEL tokens, and through providing loans to investors that deposited CEL Tokens or other digital assets in exchange for a fiat cash loan (a "Celsius Loan").

6. The Earn Rewards Accounts and Celsius Loans were securities under the securities test set forth in *Reves v. Ernst & Young*, 494 U.S. 56, 64-66 (1990) and its progeny. Additionally, all of the Celsius Financial Products are investment contracts under the four-prong test set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946) and its progeny, including the cases discussed by the SEC in its Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO.[1]

[1] Securities and Exchange Commission, Release No. 81207, *Report of Investigation Pursuant to Section(a) of the Securities Exchange Act of 1934: The DAO,* (Jul. 25, 2017).

7. Worse still, throughout the Relevant Period, Defendants made a series of misleading statements that induced unsuspecting investors to purchase the Celsius Financial Products at inflated rates.

8. In June 2022, the cryptocurrency market in general faced a downtrend, with the prices of digital assets decreasing across the board. This broader market downturn exposed the fragility of the Celsius ecosystem and, more importantly, that Celsius did not have enough assets on hand to meet its withdrawal obligations. Much like a literal Ponzi scheme, Celsius could only maintain its yield rate promises by continually bringing in new investors whose new influx of money would be used to pay off the yield for old investors.

9. Because of Defendants' unregistered offers and sales of securities, the New Jersey Bureau of Securities, on or around July 20, 2021, issued a cease-and-desist order to Celsius requiring the Company to "halt[] the offer and sale of these unregistered securities."[2]

PARTIES

Plaintiffs

10. Plaintiff Taylor Goines ("Goines") is a citizen of the State of Arkansas and resides in Rogers, Arkansas. Plaintiff Goines purchased the Celsius Financial Products during the Relevant Period and suffered investment losses as a result of Defendants' conduct.

Defendants

11. Celsius Network, LLC ("Celsius") is a Delaware limited liability company, registered on June 14, 2021, with offices at 221 River Street, 9th Floor, Hoboken, New Jersey. Celsius conducts its business on the internet, through a website accessible to the general public at

[2] State of New Jersey Bureau of Securities, *Summary Cease and Desist Order, In the Matter of Celsius Network, LLC*, (Sep. 17, 2021).

https://www.celsius.network (the "Celsius Website"), which is also accessible through Celsius' own proprietary app via smartphone/tablet.

12. Celsius Lending LLC is a Delaware limited liability company, registered on December 29, 2020, with offices at 221 River Street, 9th Floor, Hoboken, New Jersey. Celsius Lending LLC conducts its business on the internet, through a website accessible to the general public at https://www.celsius.network (the "Celsius Website"), which is also accessible through Celsius' own proprietary app via smartphone/tablet.

13. Celsius and Celsius Lending LLC are collectively referred to as the "Company."

14. Celsius KeyFi LLC is a Delaware limited liability company formed on May 28, 2019, with its headquarters located in Hoboken, New Jersey. Celsius KeyFi is a wholly owned subsidiary of Celsius.

15. Defendant Alexander Mashinsky ("Mashinsky") is a resident and citizen of New York, living in New York, New York. Mashinsky is the founder and Chief Executive Officer of Celsius, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

16. David Barse ("Barse") is a resident and citizen of New York, living in Harrison, New York. Barse served as an executive director of Celsius, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

17. Alan Jeffrey Carr ("Carr") is a resident and citizen of New York, living in East Quogue, New York. Carr served as an executive director of Celsius, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

18. Shlomi Daniel Leon ("Leon") is a resident and citizen of New York, living in New York, New York. Leon was the co-founder of Celsius and served as an executive director and the Chief Operating Officer, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

19. Defendants Mashinsky, Barse, Carr, and Leon are collectively referred to as the "Executive Defendants."

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over claims under the Securities Act pursuant to 15 U.S.C. §78aa and 28 U.S.C. §1331, and supplemental jurisdiction over the entire action under 28 U.S.C. §1367.

21. Venue is proper under 28 U.S.C. §1391 because Defendants have their principal place of business in this District and therefore reside in this District. Venue is further proper pursuant to 15 U.S.C. §78aa.

22. This Court has personal jurisdiction over Defendants because they are subject to general jurisdiction in this District because Defendants' principal place of business is in this District.

FACTUAL ALLEGATIONS

A. Celsius Background

There is no rules in this business. – Alexander Mashinsky, CEO and Founder of Celsius

23. Celsius began as Celsius Network Limited – a privately held company that was incorporated on February 9, 2018, with its registered office located at 77-79 New Cavendish Street, London, England and its headquarters at 35 Great St. Helen's, London, England, EC3A 6AP.

24. On June 23, 2021, Celsius Network Limited announced that it was "migrating our main business activity and headquarters from the United Kingdom to the United States" and was withdrawing its "application from the UK Financial Conduct Authority's temporary registration regime for crypto assets."[3] The Company stated that its "efforts will be focused on securing licenses and registrations in the US and other jurisdictions that will ensure the long-term viability of Celsius and its community."[4]

25. In anticipation of this migration to the United States, Celsius formed a new corporate entity, Celsius Networks, LLC and opened its headquarters in Hoboken New Jersey.

26. For its entire existence, Celsius was a financial services company, generating revenue through cryptocurrency trading, lending, and borrowing, as well as by engaging in propriety trading. Since June 2018, Celsius has been, at least in part, funding its lending operations and proprietary trading through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts. Celsius refers to these unregistered securities as its "Earn Rewards" account.

27. Celsius solicits investors to invest in the Earn Rewards accounts by depositing certain eligible cryptocurrencies into the investors' accounts at Celsius. Celsius then pools these cryptocurrencies together to fund its various income generating activities, including lending operations and proprietary trading. In exchange for investing in the Earn Rewards product, investors are promised an attractive interest rate that is paid weekly in the same type of cryptocurrency as originally invested, or, subject to certain conditions, in Celsius' native digital token CEL.

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[3] https://blog.celsius.network/celsius-community-update-june-23-2021-a28fca899091 (last visited Jul. 12, 2022).

[4] *Id.*

28. The Celsius Earn Rewards Accounts, CEL Tokens, and the Celsius Loans are not registered with any state or federal securities regulatory authority, or are they otherwise exempt from registration. Celsius' Earn Rewards accounts are not protected by the SIPC, insured by the FDIC, nor are they insured by the National Credit Union Administration ("NCUA").

29. This lack of a protective scheme or regulatory oversight subject Celsius investors to additional risks not borne by investors who maintain assets with most SIPC member broker-dealers, banks and savings associations, or credit unions.

30. Despite the lack of safeguards that SIPC, FDIC, and the NCUA would offer or the regulatory oversight of registration, Celsius held the equivalent of more than $14 billion from the sale of these unregistered securities in violation of the Securities Law as of August 18, 2021.

31. On September 17, 2021, the New Jersey Bureau of Securities (the "Bureau") issued a Summary Cease and Desist Order against Celsius. In this order, the Bureau made the following findings of fact: (1) the Earns Reward product was a security as defined in N.J. Stat. Ann. § 49:3-49(m) (West); (2) the "Earns Reward product had not been registered with the Bureau, is not exempt from registration, and is not federally covered"[5]; and (3) that Celsius had offered and sold unregistered securities in violation of N.J. Stat. Ann. § 49:3-60 (West) and continues to do so.

32. In conclusion, the Bureau, pursuant to Uniform Securities Law (1997), N.J. Stat. Ann. § 49:3-47 to -89 (West), ordered Celsius to cease and desist from (1) offering for sale any security, including any Earn Rewards product, to or from New Jersey without first registering the security with the Bureau or qualifying for an exemption; (2) accepting any additional assets into an existing Earn Rewards account; and (3) violating any other provision of the Securities Law and any rules

[5] *See* fn.2, *supra*.

promulgated thereunder for the sale of any security in New Jersey.[6] The Bureau also denied that Celsius qualified for any exemptions to the New Jersey registration requirements for securities.

33. Around the same time the Texas Bureau of Securities issued a similar cease and desist notice of hearing against Celsius.[7]

B. The Securities Offered and Sold by Celsius

34. Celsius offers a suite of Financial Products to investors, including its Earn Rewards Accounts, CEL Tokens, and Celsius Loans.

1. Earn Rewards Accounts

35. Celsius offers and sells what it calls Earn Rewards Accounts, which are, in truth, unregistered securities in the form of individual and corporate accounts. Investors in these accounts ("Earn Rewards Investors") deposit certain popular cryptocurrencies with Celsius to earn high interest rates of "up to 17.78% Annual Percentage Yield ("APY")." The promoted interest rates advertised by Celsius are well in excess of the rates currently being offered by short-term investment grade fixed income securities or on bank savings accounts.

36. Celsius offered its Earn Rewards Accounts to anyone over the age of 18, except for residents of certain foreign jurisdictions subject to regulatory restrictions.

37. When an investor signs up with Celsius, they verify their age, identity, and address, provide an identification document, complete a user agreement and a KYC (Know Your Customer) protocol. A link to the Celsius Terms of Use ("Celsius Terms") appears at the bottom of each of its web pages.

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6 *Id.*

7 https://ssb.texas.gov/sites/default/files/2021-09/20210917_FINAL_Celsius_NOH_js_signed.pdf (last visited Jul. 12, 2022)

38. The Celsius Website states that Celsius does not require a minimum amount of cryptocurrency for deposit in an Earn Rewards account.

39. Celsius only accepts certain types of cryptocurrencies for deposit in the Earn Rewards accounts. Although Celsius refers to its payments to Earn Rewards Investors as "Rewards," these "Rewards" are just another way to say "interest," which is clear from Celsius' API Partner disclosures from the Celsius Website. For example, in the "Interest Calculations" section it states: "This pages describes how interest is calculated and disbursed. Celsius pays interest on the value of each asset in a user's wallet. Interest is paid using the same asst(s) that is held in the user's wallet. Obtain current interest rates for each token using the SDK getinterestRates0 method or Get Interest Rates API operation."[8]

40. Earn Rewards Investors earn a variable interest rate on their investment and may withdraw their digital assets at any time, subject to a maximum three-day processing time specified by Celsius.

41. The variable interest rates for the Earn Rewards Investors are posted on the Celsius Website. Celsius' interest rates for deposits of certain cryptocurrencies in its Earn Rewards accounts are "tiered" depending upon the nature and amount of the cryptocurrency invested, as explained on the Celsius Website. Currently, Earn Rewards Investors are entitled to 6.2% on their first Bitcoin deposited and 3.51% on additional deposits of Bitcoin. Rates on other cryptocurrencies range from 13.99% for the Synthetix Network Token (SNX) to 0.0% for Ripple.

42. Celsius also pays interest for deposits of certain Stablecoins in its Earn Rewards accounts, as explained on the Celsius Website.

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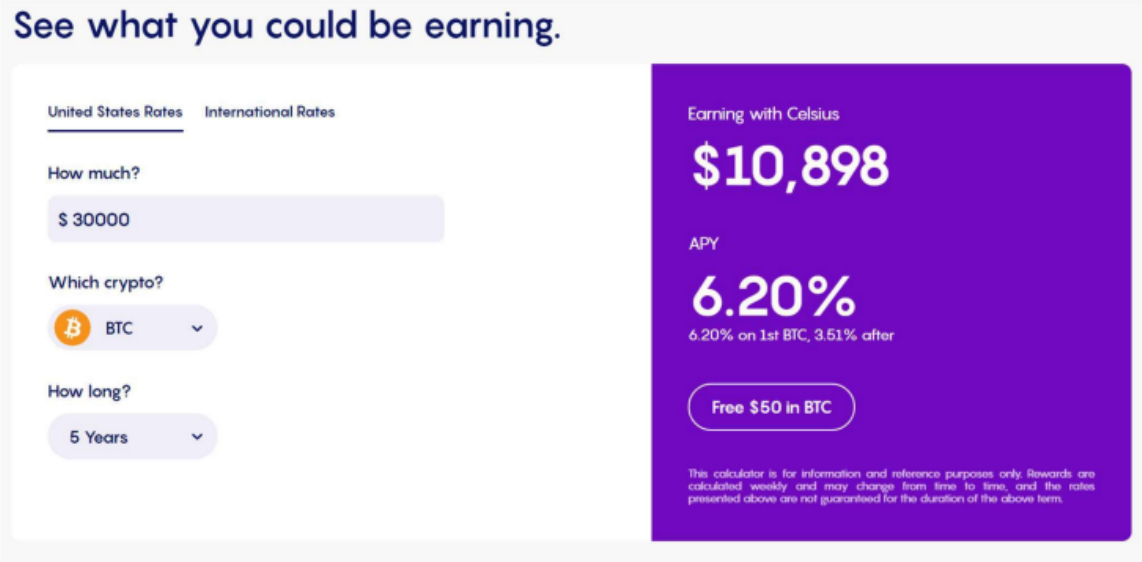
[8] *See* fn.2, *supra*.

43. The manner in which interest is calculated and credited to Earn Rewards Investors illustrated on the Celsius Website and specified in the Celsius Terms, states as follows:



Rewards are payable based on a daily periodic rate applicable to the Loaned Digital Assets. The daily periodic rate is calculated by dividing the then-applicable annual reward rate by three hundred sixty-four (364) days; then it is further divided down to the hour, minute, and second of that day. Loaned Digital Assets, including those received as Rewards from previous weeks, will begin gaining Rewards according to the hour, minute, and second on the timestamp verifying the completion of the applicable transaction and shall cease and/or decrease the amount paid as Rewards at the moment when the User has entered an external transmission, withdrawal or transfer of rights (via CelPay) request, or posted any Loaned Digital Assets as collateral for a Fiat Loan. Therefore, any Loaned Digital Asset transferred mid-week will receive Rewards with no distinction, based on the rates calculated for the relative time within the allocation period.

[9]

44. Celsius advertises that interest on the Earn Rewards product is paid to investors in cryptocurrency (or CEL Tokens depending on certain factors) based on the "daily periodic rate," which is "calculated by dividing the then-applicable annual reward rate by three hundred and sixty-four days (364); then it is further divided in the hour, minute, and second of that day" and is credited to the Earn Rewards Investors' accounts weekly on the first business day of the week.

45. Celsius describes its business model in a now-deleted blog post as one that returns 80% of its total revenue to Earn Rewards Investors: "The Celsius business model is structured to do the exact opposite of what banks do – by giving 80% of total revenue back to our community each

[9] https://celsius.network/ (last visited Jul. 12, 2022)

week in the form of earned interest. We earn profits by lending coins to hedge funds, exchanges, and institutional traders, and by issuing asset-backed loans at an average of 9% interest. We're taking the exact same 80% profit margin that banks have kept for themselves for centuries and returning it to our community of depositors."[10]

46. Prior to the issuance of cease-and-desist orders from Texas and New Jersey, the Earn Rewards Accounts were available for purchase by anyone holding idle digital assets. In the wake of the Bureau's findings of fact, however, Celsius limited the sale of Earn Rewards Accounts in the U.S. to accredited investors.

47. Notably, a similar financial product (i.e. a high APR interest account on crytpo lending) offered by cryptocurrency firm BlockFi was investigated by the SEC in 2022. On February 25, 2022, the SEC announced a settlement with BlockFi for $100 million in penalties for offering unregistered BlockFi interest accounts (BIAs) that offer high APRs to customers to lend out digital tokens. Pursuant to that settlement, the BIAs (which are virtually identical in form and substance to the Celsius Loan products) must now be classified and registered as securities under applicable security laws, as BlockFi was determined not to qualify for an exemption from SEC registration. BlockFi agreed to cease offering or selling BIAs in the U.S. until it registers its crypto lending products.

2. CEL Tokens

48. Celsius provides investors that deposit their crypto assets within the Celsius Network with two choices for how they would like to receive their yield: "In-Kind" or "In-CEL." Celsius pays users who select "In-Kind" in the same asset they deposited and users who choose "In-CEL" in CEL,

[10] *See* https://www.nasdaq.com/articles/voyager-token-is-soaring-as-investors-search-for-yield-in-crypto-space-2021-04-13 (quoting Celsius blog post). (last visited on Jul. 12, 2022).

Celsius' native token, at a higher APY. For example, Celsius currently advertises a 6% APY on Ethereum ("ETH") deposits paid in ETH and 7.87% APY on ETH deposits paid in CEL. Celsius explains this extra CEL in its whitepaper: CEL Tokens are a "platform utility token" that is rewarded to crypto holders in the Celsius Wallet as interest on their coins. That interest is generated from fees, in CEL tokens, collected from institutional traders who use the assets pool. Celsius uses the proceeds from the sale of CEL tokens to cover "all costs and membership growth" for the Celsius Earns Rewards Accounts.

49. These CEL tokens then get distributed back to the users lending their crypto on Celsius' website. In this model, the borrowers are the ones buying CEL. Celsius is simply collecting payment in its native token and transferring the proceeds back to its users.

50. In reality, it appears that, rather than redistributing in-CEL fees from lenders to users, Celsius was purchasing hundreds of millions of dollars of CEL Tokens to meet liabilities to users.

51. On-chain analysis of Celsius' wallets and their CEL Token transactions show the scale of potential CEL repurchases. As detailed in the Arkham Report on the Celsius Network (the "Arkham Report") "from July 2019 to March 2021 Suspected Celsius addresses withdrew over 76 million CEL from the exchange Liquid, worth $127 million at the time of withdrawal. Since December 2021, suspected Celsius addresses have also withdrawn around 82 million CEL from FTX – equivalent to 12% of the total CEL supply and worth $226 million at time of withdrawal."[11] The Arkham Report concluded that because those withdrawals were not "preceded by equivalent CEL

[11] Arkham Report on Celsius Network, Arkham, https://www.arkhamintelligence.com/reports/celsius-report (last visited Jul. 12, 2022).

deposits by Celsius, and because Celsius does not appear to use these exchanges for CEL custody, these withdrawals likely indicate CEL purchases."[12]

52. By purchasing its customers' in-CEL payments rather than collecting them through fees or distributing from the treasury, Celsius profit margins decreased as this added another cost. Additionally, Celsius was required to expend capital that could otherwise be used to meet withdrawal requests, risking a liquidity crisis like Celsius began experiencing in June 2022 (discussed further below).

3. The Celsius Loans

53. The Company also offered and sold various promissory notes to investors that deposited their digital assets within the Celsius Network (the "Celsius Loans").

54. The Celsius Loans were available to eligible investors via the "Borrow" option available on the Celsius mobile app.

55. Borrowers deposited their digital assets as collateral onto the Celsius mobile app in exchange for fiat or one of several stablecoins like USDC, USDT, and DAI. Celsius then would collect monthly interest payments on the Celsius Loans.

56. Celsius marketed these particular Financial Products with the hashtag slogan "#UnbankYourself" on its various social media accounts. For example, on March 22, 2021, the Celsius Twitter account posted the following message to investors: "We know time is money, so we've made it easier to have both by offering loans with interest rates as low as 1%, ZERO

12 *Id.*

origination fees, and same day approval. Get cash in hand today without giving up on your investment."[13]

C. Celsius Misleadingly Promoted Its Financial Products

1. Misleading Statements

57. Celsius made a series of misleading and false statements in connection with the promotion of the Celsius Financial Products. For example, Celsius and Mashinsky repeatedly promoted its Earn Rewards Accounts as "high-yield" and "low-risk" investments for investors. They also claimed the stability of the interest paid was primarily due to all of the institutional payments Celsius received from its Celsius Loan products. Concurrently, Defendants also repeatedly touted the growth prospects for the Company and the CEL Token. These misrepresentations painted a rosy picture for Celsius' future and lured unsuspecting investors into purchasing the Celsius Financial Products at inflated rates.

58. At the outset, the Arkham Report describes the nature of Celsius' misrepresentations:

> Celsius Network positions itself as a wallet that enables users to "Earn" on the assets they "deposit." The "deposit" could be described as an unsecured loan from the user to the organization, and "Earn," or accrual of value to the user over time, could be described as synthetic liability accrual, meaning it is not on-chain.
>
> Celsius attracted users by offering exceptionally high yields on deposits, such as 5% APY for Bitcoin and up to 10% for USD-pegged stablecoins – 100x the average conventional savings account interest rate of 0.1%. For Celsius to make good on its high yield promised to investors it needed it outperform those high returns through its lending and investing to make money and remain solvent. This is impracticable through conventional lending in traditional finance, where interest rates aren't high enough. ***Through Celsius' public materials, they claim such high yields are sustainable by the nature of the cryptocurrency market***.

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13 https://twitter.com/CelsiusNetwork/status/1374010096145952769?s=20&t=sQgj5D1x21gHwOFPs4eLHg

> On the "Why Trust Celsius" section of the website, Celsius directs users to its whitepaper from 2018. ***This whitepaper explains that "members will be able to easily earn interest on their crypto assets the same way they earn on the savings in the bank – but with much better rates."*** When describing where this yield comes from, the whitepaper states, "Hedge funds, family offices and crypto funds still want to play in the world of cryptocurrency. Fortunately for us, they are willing to pay high fees to do so."
>
> In a video on the official Celsius Network YouTube channel titled "How Celsius earns yield," ***CEO Alex Mashinsky explains that Celsius earns its yield through institutional lending***. According to Mashinsky, when an institution needs fast access to crypto assets for arbitrage, market making, or shorting, they borrow those assets from Celsius at a high interest rate for a short period of time. Mashinsky claims that "the key is to get a high yield at a low risk."
>
> Building a banking business on the model of high yield at low risk can be compared to building a business on the model of buying dollars for 50 cents. It's a perfect model, except it requires finding someone who will take the other side of the trade. If other lenders agreed that a loan was low risk then it wouldn't be high yield, so you have to rely on systematically beating the market. This is hard to do with billions of dollars of capital at rates many times those of conventional low-risk loans, which recently have been at zero or even negative interest. In reality, ***despite their public emphasis on institutional lending, Celsius was chasing yield in other places that many would not characterize as low-risk***.[14] (Emphasis added).

59. The Celsius Website also touted the increased return on investment that investors could expect from buying and holding CEL Tokens. For example, according to the promotion on the "CEL Token Explained" page on the Celsius Website, "More CEL. More rewards. It's not rocket science." Celsius also provided the following chart to investors, which outlines the high yield rates that CEL Token investors would receive. Notably, the yields could take the form of "Bonus Rewards" (*i.e.*, extra interest) or a "Loan Interest Discount" (*i.e.*, a credit towards a Celsius Loan product):

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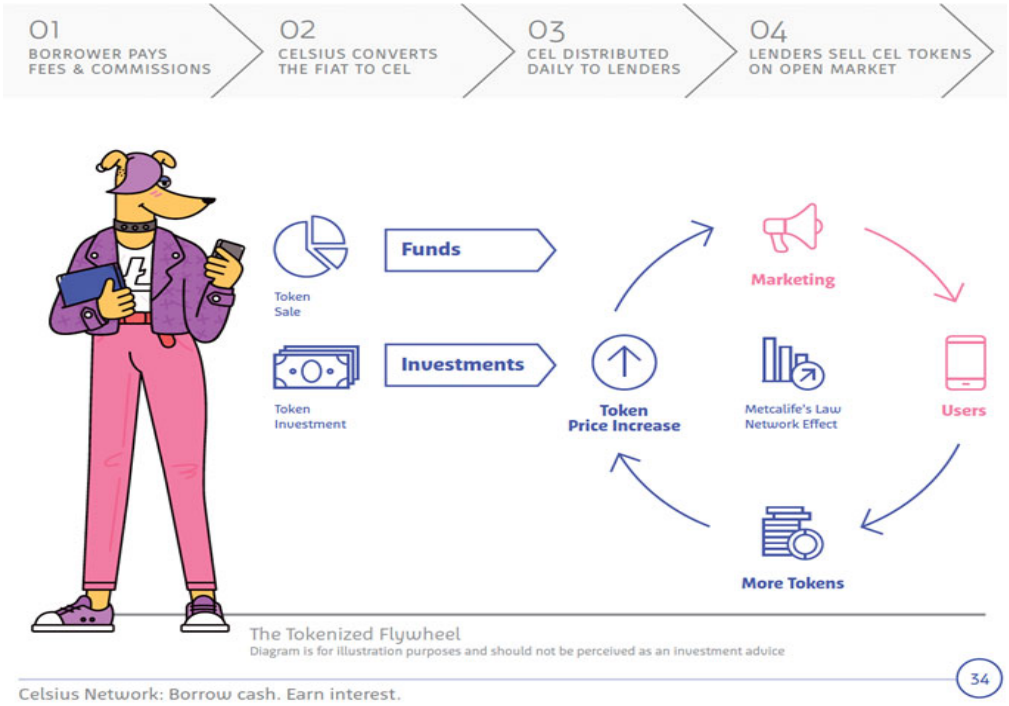
[14] *Id.*

Reward Status	CEL Ratio	or CEL Balance	Bonus Rewards	Loan Interest Discount
NONE	0%-5%	0 CEL	0%	5%
BRONZE	5%-10%	1 CEL	10%	5%
SILVER	10%-15%	1,000 CEL	15%	10%
GOLD	15%-25%	10,000 CEL	20%	15%
PLATINUM	25%-100%	25,000 CEL	30%	25%

60. Celsius promoted the CEL Token as both an investment product that essentially paid dividends and a credit that could be used in the purchase of a Celsius Loan product.

61. The whitepaper further promoted what it calls the "Tokenized Flywheel," which purports to show how the Celsius Financial Products interact with each other to create a perpetual wealth creation system. The following diagram illustrates this notion:



62. A similar version of the Tokenize Flywheel is currently posted on the Celsius Website:

63. Celsius and its executives, including but not limited to Mashinsky, also held weekly podcasts on YouTube throughout the Relevant Period, using the "Ask Me Anything" ("AMA") format, whereby investors could ask questions directly to Mashinsky and other Celsius

representatives. During these podcasts, Mashinsky and Company insiders repeatedly made false and misleading statements regarding Celsius' operations and financial stability.

64. For example, on February 5, 2021, Celsius held an AMA session on YouTube,[15] wherein Mashinsky made several statements promoting the Celsius Loans to investors. In particular, response to a question about whether Celsius would allow borrows to use multiple sources of collateral for their Celsius Loans, Mashinsky proclaimed that crypto investors that held CEL Tokens or other cryptocurrencies should "borrow against it" because "it helps you earn [and] defer your taxes. That's what the rich guys do. That's how they stay rich and famous."[16]

65. Later during that AMA, an investor asked about the circumstances under which Celsius will liquidate a borrower's collateral. Tal Bentov, the VP Lending (Retail) at Celsius, replied:

> First of all, we hate the word 'liquidations.' We really want to avoid it at all costs. If you get a margin call and you don't know how to answer . . . You have different coins, you need some more time . . . You need to contact us and let us know that. We have a big enough team that we can handle all of this . . . ***We liquidate only when someone is not answering our margin calls and he/she keeps being in default. We give a lot of time. A lot more than others. Trust me. Sometimes weeks to answer our margin calls***![17] (Emphasis added).

66. Near the end of the February 5th AMA, Mashinsky promoted the Earn Rewards Accounts' ability to "earn" investors various cryptocurrencies "for free."

67. On February 12, 2021, Mashinsky participated in the weekly Celsius AMA, discussing, among other things, the various future prospects for the Company. Notably, Mashinsky agreed that the purchase of CEL Tokens was "an investment in Celsius' future," and went on to stated that "Celsius has 2 components. Celsius has the CEL Token and also the equity. When you buy the CEL Token, you're basically voting 'yes' or 'no'. You're voting with the community on your need,

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15 https://www.youtube.com/watch?v=2wqD78AnFaw (last visited Jul. 12, 2022).
16 *Id.*
17 *Id.*

or you're wanting to earn more interest. You're going to get that 25% bonus, or that 25% premium."[18]

68. On February 26, 2021, Mashinsky participated in the weekly Celsius AMA on YouTube,[19] discussing, among other things, how Celsius would deal with "handling flash crashes." Mashinsky stated:

> We don't provide high LTV's. . . . Celsius doesn't make money by liquidating you. We don't charge any fees. We don't try to give you these gimmicks and special rates . . . Our goal, our mission is to make sure that we have you as a customer for life. What are the chances that you're going to stick with us if we liquidated you? Most of our loans are 25% or 33% LTV loans. We discourage you from taking 50% LTV loans because that is much higher risk. ***So Celsius did not have any liquidations, because we give you plenty of time***. ***We give you advanced notice most of the time, then we tell you you can put more collateral or return some of the dollars or assets back.*** We have almost 0 liquidations. That's not our business. It's the opposite of our business.[20] (Emphasis added).

69. On April 23, 2021, Mashinsky again made statements regarding Celsius' borrower-friendly stance on liquidations during a Celsius weekly AMA on YouTube.[21] In particular, Mashinsky stated a "margin call doesn't mean we sold your assets or stole your coins. That's what the other guys do. ***We always give you ample time*** to post more collateral, return some of the assets, or instruct us to sell your coins."[22] (Emphasis added).

70. On May 28, 2021, Mashinsky promoted the stability and wherewithal of the CEL Token: "Looking at coins, the CEL token was one of the most stable out there. It did better than Bitcoin or Ethereum. It did not drawdown as much. Obviously Celsians who held CEL did very

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18 *Id.*
19 https://www.youtube.com/watch?v=cZPy7Pu6vxg&t=3s (last visited Jul. 12, 2022).
20 *Id.*
21 https://www.youtube.com/watch?v=bzEyHLgBY7Y&t=350s (last visited Jul. 12, 2022).
22 *Id.*

well as well."[23] Mashinsky congratulated the investors that held onto their CEL Tokens during the brief market downturn and bragged that there were "only 20 liquidations" from the 10,000 margin calls that occurred during that time period because Celsius "does a better job than most. Accommodating, providing enough warning, giving you enough time for doing what's right. We don't make any money from liquidating you."[24] Mashinsky proclaimed that "during these drawdowns is when Celsius shines, both from the fact that it does not crash [CEL]. I think NEXO token was down about 75% from top to bottom just last week. So those are examples of just a different community. A HODL community versus a speculative community. Same thing with Binance and other platforms. Obviously, we only care about doing what's in the best interests of the HODLer."[25]

71. On July 16, 2021, Mashinsky participated in the Celsius AMA on YouTube and asked investors "So, when are you building us a rocket? We're going to the moon! Everyone wants to know when CEL Token is going to the moon [Mashinsky pounds on the desk]! . . . I have to beat these billionaires! I want to be in outer space . . . ."[26] The phrase "going to the moon" in the crypto trading context refers to a drastic increase in the price of digital asset in question. Here, Mashinsky was signaling to investors that the price of the CEL Token was going to increase exponentially in the future.

72. Similarly, Mashinsky stated during a September 10, 2021 AMA on YouTube that "We are shooting to the moon. We might get there before Elon Musk. Because our numbers are just

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23 https://www.youtube.com/watch?v=C7d7rZUEfGo (last visited Jul. 12, 2022).
24 *Id.*
25 *Id.*
26 https://www.youtube.com/watch?v=B9eNsTnpAxk (last visited Jul. 12, 2022).

getting better and better."[27] Again, these promotions were meant to mislead investors into purchasing CEL Tokens on the prospect that the CEL Tokens' value would increase.

73. On December 1, 2021, Celsius held an AMA session on YouTube where investors could ask questions of Celsius representatives. One investor expressed concern about a "CEL token liquidation cascade" and asked whether Celsius was "worried at all," to which Celsius content manager Zachary Wildes replied "I'm personally not . . . I do think we need to bring a lot more time and attention and focus to CEL token and its utilities. I'm not concerned about a cascading liquidation event where everyone gets destroyed."[28] Wildes continued that "We're at a low-point for CEL sentiment and the future of the token" and asked Mashinsky if there was "any level of reassurance we can give . . . to the community to show our commitment to CEL token?"[29] Mashinsky responded that "Earning in CEL allows you to earn twice as many CEL right now with the price lower. If you believe in the viability of the company, then you would know you're getting a 50% discount. If you don't believe in it, then you probably don't want these CELs anyway. If you're not sure about it, how about some of the worlds best investors coughing up 750$ Million? They bought into half of all the CEL tokens out there. Our Treasury, which is mostly CEL token. They're part owners of that . . . ."[30] Mashinsky's statements suggested to investors that the Company's successes would lead to a 50% increase in the CEL Token price in the future and that Celsius had the support of well-capitalized backers who would be able to continue to shore up Celsius' finances.

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27 https://www.youtube.com/watch?v=lc8crMFnRgY (last visited Jul. 12, 2022).

28 https://www.youtube.com/watch?v=1v9zDkWbZJc&list=PL91_dMxDmGklKGDKCX_YFDLeRk0ag2Koj&index=28 (last visited Jul. 12, 2022)

29 *Id.*

30 *Id.*

74. On January 12, 2022, Mashinsky participated in the weekly Celsius YouTube AMA podcast, promoting the "huge demand for CEL Token" that the Company was creating.[31] "We still have new users signing on every day and none of that changes. But this is all new demand that never existed before."[32] Mashinsky further stated that "We believe that the token has not shown its full potential yet. A lot of it is on us. Again, we were not focused on the token performance and all that in 2021. As you can see, we're launching big things this year. And obviously, these things are gonna have major major impact on the price of CEL."[33]

75. Later during the AMA, Mashinsky was confronted by a popular commentator in the crypto sector, Dirty Bubble, who asked if Mashinsky or other Celsius insiders were selling their CEL Tokens. Mashinsky became defensive, vaguely acknowledging that he and his wife "did a bunch of transfers. We did sell some tokens. It's not like we didn't sell any. My wife hasn't sold anything."[34] But then Mashinsky went on to challenge anyone listening "to go and find one project, just one, where the founders hold more tokens in their project than Celsius. Just find one!"[35] Mashinsky excused his selling activities saying "you know, there is no rules in this business. It's not like somebody has to hold the tokens . . . I wouldn't measure what me or Nuke or Krissy or Daniel do as having anything to do with what the company does. You guys should just watch if the company is working for you. Does the company deliver things that are in your best interests?"[36]

76. Dirty Bubble replied that "Celsius is going off of reputation" and asked about whether Celsius would be making the same kind of disclosures of CEL Token sales by Celsius executives as

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31 https://www.youtube.com/watch?v=bPk7rKAXMvU&list=PL91_dMxDmGklKGDKCX_YFDLeRk0ag2Koj&index=22 (last visited Jul. 12, 2022).

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

would be required if Celsius was a public company.[37] Mashinsky bluntly replied "We're not a public company! So what the fuck are you talking about!?"[38]

77. On January 19, 2022, Mashinsky participated in the weekly Celsius "Ask Me Anything" session on YouTube and made a series of statements regarding the CEL Token and how it was poised for future growth in use and, more importantly, price.[39] For example, during this AMA, Mashinsky went on a rant about how everyone at Celsius did not "have to worry about humility" because they instead had "conviction."[40] In a seemingly unintentional moment of honesty, Mashinsky essentially admitted that Celsius relied on con-man style tactics to instill confidence in a target: "Everybody from Celsius on this call has the same conviction. They wouldn't be a part of CEL Team 6 if they didn't have that full conviction. 100%. And they don't need humility. They just need to share with you the conviction and CONVINCE you that it's the right thing."[41] Mashinsky then quickly returned to promoting the CEL Token's future, acknowledging that the Company "took our hand off the wheel" with the CEL Token, but that they had a plan and a "super team" to "get the car back on the road."[42]

78. For example, when asked about how Celsius generates revenue, Mashinsky responded that "***We always make all of our money from institutions*** . . . We don't charge fees, spreads, all of that stuff."[43] (Emphasis added).

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37 *Id.*
38 *Id.*
39 https://www.youtube.com/watch?v=EE4k_WLqldc&list=PL91_dMxDmGklKGDKCX_YFDLeRk0ag2Koj&index=21 (last visited Jul. 12, 2022).
40 *Id.*
41 *Id.*
42 *Id.*
43 *Id.*

79. Celsius' whitepaper also promoted the CEL Token as a necessity for the Company's future growth: "Our lending and borrowing model requires a blockchain and an open ledger technology, it also requires consensus and a global footprint of coin holder in order to really gain traction and complete our mission. Any loan we issue may be collected from thousands of individual coin holders which may be switched at any time. Only a smart contract capable of tracking and paying in micropayments can handle such complexity."[44] In truth, Celsius does not operate a blockchain of its own and the CEL Token is a simply a standard ERC-20 token built on the Ethereum blockchain. Moreover, Celsius' suggestion that managing a loan ownership profile requires a blockchain is not true.

80. As noted in a blog post on January 18, 2022, entitled *Celsius Network: Financials proved it was a Ponzi scam* the "real purpose of this token was to create an Initial Coin Offering ("ICO") that netted them $50 million without strings to start financing their operations. But there is one other valuable feature: they can pay investors with this token they minted out of thin air because non-US investors have the option to receive their returns in the CEL token for an extra 2% yield and it costs Celsius effectively nothing."[45]

81. As such, this token really serves no purpose for investors.

82. Celsius leads consumers to think that most of the yield Celsius offers its users comes from institutional securities lending. When browsing the Celsius Network website, users find multiple explanations of how their return comes from lending assets to institutions on a short-term basis. On the Celsius YouTube channel, customers find videos of the CEO of Celsius praising their institutional lending strategies and even berating the risk of DeFi yield strategies.

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44 https://celsius.network/static/celsius-whitepaper.pdf (last visited Jul. 12, 2022).

45 https://wantfi.com/celsius-network-review.html (last visited Jul. 12, 2022).

83. In a Celsius network video published on May 24th, 2022,[46] CEO Alexander Mashinsky offers his thoughts on the then-breaking Luna-Terra collapse. Mashinsky provided this advice regarding crypto yield-bearing products: "if you do not understand where the yield comes from, then you should not be in the project. If you cannot prove how the yield is earned, do not invest in the project."[47]

84. Notably, Celsius does not make it clear for an average user of Celsius to figure out all of the sources of their money's yield, and their associated risks. Instead, what investors are told is that depositing crypto in Celsius is akin to depositing money in a savings account, and the profit comes from institutional lending. But as noted, Celsius has purposefully refused to provide investors with all of the wallet addresses owned/controlled by Company insiders. Without sophisticated wallet labeling to determine which anonymous addresses belong to Celsius Network and on-chain analysis of the movement and usage of these funds, it is extremely difficult to know Celsius is hunting yield with corporate funds via leveraged positions in DeFi protocols with liquidation risk.

85. On June 4, 2022, Mashinsky posted a message on his official Twitter account, admitting to using risky decentralized finance investments after users accused his company of misleading customers on the source of yield and use of funds: "Celsius lends on DeFi when yields are high and borrows on DeFi when rates are low like now. @CelsiusNetwork is earning income from these activities."[48] Mashinsky then dismissed the criticism of the way Celsius promoted the source of yield and use of funds, calling them "baseless allegations" to make investors doubt the validity of the well-founded criticisms.

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46 https://cryptonews.com/videos/bitcoin-has-never-done-this-before-alex-mashinsky-gives-price-outlook-talks-terra-collapse.htm (last visited Jul. 12, 2022).

47 *Id.*

48 https://twitter.com/Mashinsky/status/1533261237202599938?s=20&t=nHwUESvAsmWNp8dmmyy-dA (last visited Jul. 12, 2022).

86. The Company also misled investors about the future growth potential for the Earn Rewards Accounts, encouraged Earn Rewards Investors to treat their Earn Rewards Accounts as long-term investments as evidenced by the statement on Celsius' homepage: "Start earning top rates on any amount of crypto and get paid every paid every Monday to keep HODLing." According to Celsius, "HODL started as a typo and has become a crypto rallying cry. A misspelling of the word 'hold,' HODLers believe in the future of digital currencies and know it would be a mistake to sell at this early stage."[49]

87. Celsius also touted the ability of Earn Rewards Investors to manage their Earn Rewards accounts as long-term investments using the "HODL Mode" feature of their Celsius account. Celsius describes HODL Mode on its Website as an account security feature "that gives [account holders] the ability to temporarily disable outgoing transactions from [their] Celsius account. [Account holders] control when HODL Mode is activated and it is an ideal feature for those that do not plan on withdrawing or transferring funds from their account for an extended period of time."[50]

88. Celsius' corporate culture of promoting "HODLing," including its description of Celsius as a "HODLing platform," the premium interest rates Celsius pays on its Earn Rewards accounts, the weekly compounding of interest payments, and the availability of HODL Mode makes the Celsius Earn Rewards account an attractive long-term investment to Celsius Earn Rewards Investors.

89. At the same time Celsius and Mashinsky were promoting the Earn Rewards Accounts and the CEL Tokens, Mashinsky was secretly selling millions of dollars' worth of CEL Tokens.

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[49] https://support.celsius.network/hc/en-us/articles/360001716538-What-s-HODL- (last visited Jul. 12, 2022).

[50] https://support.celsius.network/hc/en-us/articles/360007608077-What-is-the-HODL-Mode- (last visited Jul. 12, 2022).

90. According to the Arkham Report, several Ethereum addresses have been identified as likely belonging to Celsius CEO Alexander Mashinsky (the "Mashinsky Wallets").[51] The Mashinsky Wallets regularly sold large amounts of CEL Tokens on decentralized exchanges, totaling $44 million. At the same time that he was promoting CEL Tokens to users and denying that he was selling the token, Mashinsky appears to have been quietly selling millions of dollars of CEL Tokens.

91. The following is a list of the specific addresses comprising the Mashinsky Wallets, which are owned/controlled by Mashinsky and/or his wife Krissy Mashinsky, and were used to sell the CEL Tokens that Mashinsky had set aside for himself at the time of minting:

- 0xf716F34cb7FabfaA930169eC66278f525b6a1597 ($21M in sales)
- 0x34F30e5473fE5D2dcD9A930275Be30ACC1EEF12b ($100k in sales)
- 0x11729acCDA2dA02B453cB4AEA4EFCDeDc0E56bD9 ($1M in sales)
- 0xc33192B79AD149b05169516A8aF2adc6e1E08EF6 ($12M in sales)
- 0x6D27BA372b148A190F0806899e53a6D4009cf5af ($8M in sales)
- 0x23cE2180754AF6207Ee13e745BC903795661e7C9 ($300k in sales)
- 0xd50061dDC6E813F56dF865D450B3cC61973E881A ($2M in sales)
- 0x2a020312Dd646D81acBC81015Df532eAFC2D5257 ($530k in sales)

92. Most of the CEL sales from the Mashinsky Wallets took place on the decentralized exchanges Uniswap and Airswap. Typically, Mashinsky swapped CEL Tokens for the stablecoin USDC. In other instances, Mashinsky opted to take ETH or wBTC. Notably, one of the Mashinsky Wallets also deposited CEL Tokens to the centralized exchange Liquid at the same time that Celsius was purchasing large amounts of CEL Tokens on that same exchange. As discussed in the Arkham

[51] *See* fn.10, *supra*.

Report, this particular Mashinsky Wallet address deposited over 9.1 million CEL Tokens to Liquid from June 2019 to July 2020.[52] During the same time, Celsius appears to have purchased over 29 million CEL from Liquid, creating a situation where Celsius was using corporate funds on the same orderbook the CEO used to exit his CEL Token position.

93. As all of this activity was occurring within the Mashinsky Wallets, Mashinsky publicly promoted CEL and denied that he or other founders were selling. He also gave the impression that he was increasing his CEL holdings by publicizing CEL purchases.

94. For example, on October 9, 2021, Mashinsky tweeted, "Lots to CELebrate here in #London busy week with a lot of large deals and events. It pays to #HODL."[53] Nine hours later on the very same day, one of the Mashinsky Wallets sold 12K CEL on Airswap for $69k in USDC. Similarly, on December 9, 2021, Mashinsky posted a message on his Twitter account, promoting CEL Tokens as a long-term investment for Company insiders and stating: "All @CelsiusNetwork founders have made purchases of #CEL and are not sellers of the token."[54] But only five days earlier, on December 4, 2021, one of the Mashinsky Wallets was selling over 11,000 CEL Tokens for about $43,000 worth of WBTC.

95. Since June 9, 2021, the Mashinsky Wallets sold approximately 2.8 million CEL Tokens valued at over $16 million at the time.

2. Celsius Used the API Partners Program to Sell Earns Rewards Accounts

96. Celsius offers an Application Programming Interface ("API") that allows certain institutional users, known as Celsius "API Partners," to integrate with the Celsius platform.

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52 *Id.*

53 https://twitter.com/Mashinsky/status/1446846073713184772 (last visited Jul. 12, 2022).

54 https://twitter.com/Mashinsky/status/1468995783982825480 (last visited Jul. 12, 2022).

97. Celsius affords its API Partners the ability to offer the Earn Rewards accounts to retail investors in two different ways.

98. First, the Celsius "Segmented Accounts" platform allows API Partners to offer the API Partners' own customers the Celsius Earn Rewards accounts through the API Partners' own portal. An API Partner availing itself of Celsius' Segmented Accounts structure offers the API Partner's own retail customers the opportunity to access the Celsius Earn Rewards account through the API Partner's own portal, as opposed to the API Partner's retail customers accessing the Celsius Earn Rewards account directly from Celsius' own website. Apart from the difference in how the Earn Rewards account is accessed, individual retail customers of API Partners offering the Segmented Account option are subject to the same rights, benefits, terms, and conditions as Celsius' own Earn Rewards Investors.

99. Second, Celsius' API Partners can choose to access the Celsius Earn Rewards accounts through what Celsius refers to as an "Omnibus Account." In the Omnibus Account, the API Partner maintains a direct relationship with Celsius and invests in a Celsius Earn Rewards account for the benefit of its individual customers, whose cryptocurrencies the API Partner has aggregated for the purpose of investing in the Celsius Earn Rewards account on behalf of, and for the benefit of, the API Partner's individual retail customers.

100. Celsius incentivizes the API Partners by paying a fee to Segmented Account partners based on a percentage of rewards payable by Celsius to the end-user, and also pays fees to Omnibus Partners, in addition to the Earn Rewards payable.

101. Celsius is selling unregistered securities in the form of Earn Rewards accounts to it API Partners' Segmented Account customers.

102. Celsius is selling unregistered securities to its API Partners who choose to open API Partner Omnibus Accounts with Celsius.

D. The June 2022 Celsius Crisis

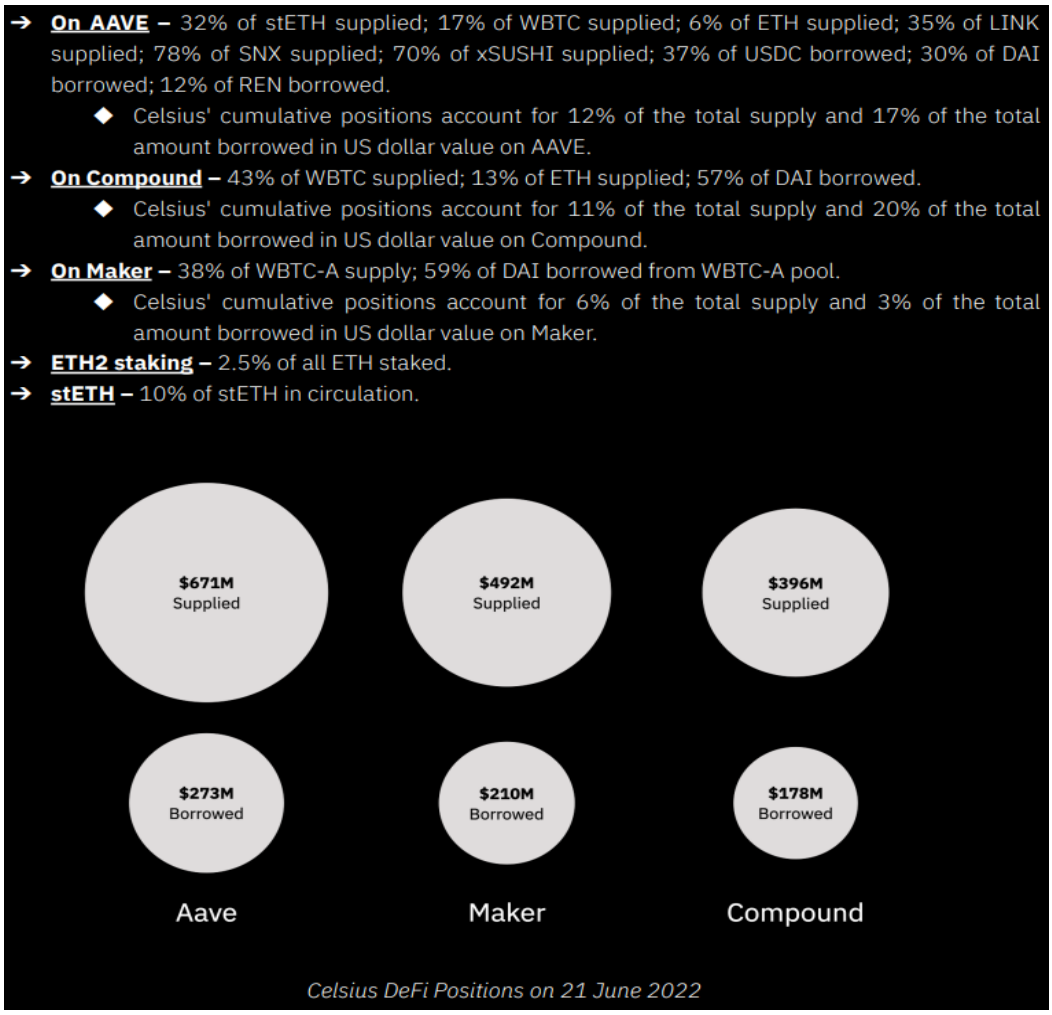
103. On-chain analysis of Celsius owned/controlled wallets indicates that Celsius had billions of dollars in leveraged positions on decentralized finance (DeFi) protocols that were threatened with liquidation when the broader crypto market was in decline. In order to avoid liquidation, it appears Celsius was forced to deploy $750 million of liquid assets that could no longer be used to meet withdrawal obligations.

104. Upon information and belief, it was Celsius taking of these risky, highly-leveraged positions that caused Celsius to pause user withdrawals, swaps and transfers.

105. On July 8, 2022, a research company Arkham published the Arkham Report on Celsius Network, detailing the business practices of Celsius and company insiders like Defendant Mashinsky. According to the Arkham report, "Celsius was one of the biggest players in DeFi, accounting for a huge portion of the funds deployed to the three largest DeFi protocols, Compound, Aave, and Maker."[55]

106. The Arkham Report also provided the following breakdown of Celsius' DeFi positions as of June 21st, 2022, eight days after freezing user accounts:

[55] *See* fn.10, *supra*.



[56]

107. In early June 2022, the broader digital asset and cryptocurrency market saw a steep decline in price, which precipitated Celsius Network's crisis. On June 10th, 2022, Bitcoin began the day trading at around $30,000. Over the following eight days, Bitcoin's price fell over 40% to below $18,000. Other crypto assets saw an even more dramatic crash during this time.

108. The crypto market downturn forced Celsius to deploy significant capital to protect the Company's highly-leveraged DeFi positions from liquidation. Maker allows users to borrow DAI (Maker's native stablecoin pegged to one US dollar), against various collateral options. Each loan has a maximum collateral-to-debt ratio that triggers a liquidation of the posted collateral when

[56] *Id.*

crossed. On June 10, 2022, Celsius had 17.8k WBTC of collateral in Maker and $280 million in DAI borrowed against it. The loan had a minimum collateralization ratio of 145%, meaning the position is liquidated when the collateral posted is worth less than 145% of the debt. At the time, this WBTC was worth $530 million for a 190% collateralization ratio, seemingly a comfortable cushion. But the combination of liability-asset denomination mismatch and volatility caused the strength of the position to deteriorate rapidly.

109. In three days, the price of Bitcoin fell below Celsius' original liquidation price of $22.8k. The fragility of Celsius' leveraged positions forced the company to use liquidity to pay down debt instead of honoring customer withdrawals. Between June 11, 2022 and June 16, 2022, Celsius added 6.2k WBTC as collateral and paid back 53.8 million of its DAI debt, reducing its liquidation price to $13.6k per BTC. Since July 1, 2022, they paid back another $220 million in DAI to close out the position. AAVE rates every position on its platform with a health factor based on various risk parameters and liquidates any position with a health factor below 1.0. At the start of the market downturn, around June 10, 2022, Celsius appears to have had $604 million of collateral against $303 million in debt on AAVE with a health factor of 1.6. On Compound, Celsius appears to have had $421 million of collateral against a $218 million debt. During the market crash, Celsius again gathered liquid capital to shore up these liabilities, adding tens of millions of dollars' worth of BTC, ETH, LINK, SNX, and BAT as collateral on AAVE and paying $30 million toward their debt. On Compound, they paid $40 million towards their debt and added over $1 million UNI as collateral. Since June 10, 2022, Celsius has deployed $546 million in stablecoins, 7.2k BTC, 16.3k ETH, and tens of millions of dollars of other tokens to its leveraged DeFi positions. These deployments were worth roughly $750 million at the time of transactions.

110. On June 13, 2022, Celsius froze all accounts. According to their official announcement, this was done "due to extreme market conditions in order to stabilize liquidity and operations while we take steps to preserve and protect assets."[57]

E. The Celsius Financial Products Are Unregistered Securities

1. Earns Rewards Accounts and Celsius Loans Are Securities Under *Reeves*

111. As noted by the United States Supreme Court, "Congress' purpose in enacting the securities laws was to regulate ***investments***, in whatever form they are made and by whatever name they are called. However, notes are used in a variety of settings, not all of which involve investments. Thus, they are not securities per se, but must be defined using the 'family resemblance' test." *Reves*, 494 U.S. 56, 67.

112. Pursuant to the family resemblance test, a note is presumed to be a "security," and that presumption may be rebutted only by a showing that the note bears a strong resemblance (in terms of the four factors we have identified) to one of the enumerated categories of instrument. *Id.* These factors include: (1) investments in a business enterprise; (2) there was "common trading" of the notes, which offered and sold to a broad segment of the public; (3) the public reasonably perceived from advertisements for the notes that they were investments, and there were no countervailing factors that would have led a reasonable person to question this characterization; and (4) there was no risk-reducing factor that would make the application of the Securities Acts unnecessary, since the notes were uncollateralized and uninsured and would escape federal regulation entirely if the Acts were held not to apply. *Id.*

113. Here, the four enumerated factors do not militate in favor of rebutting the presumption that the Earn Rewards Accounts and Celsius Loans are securities. First, Plaintiff and the class

[57] https://blog.celsius.network/a-memo-to-the-celsius-community-59532a06ecc6

invested fiat and/or other digital assets and cryptocurrencies in a business enterprise, namely Celsius. There was common trading of the Earn Rewards Accounts insomuch as the digital assets deposited by investors were regularly offered and sold to both institutional and retail investors. All of the marketing materials promoted by Defendants led the public to believe that opening up an Earn Rewards Account with Celsius was a "high-yield, low-risk" investment.

2. The Celsius Financial Products Are All Securities Under the *Howey* Test

114. Under Section 2(a)(1) of the Securities Act of 1933 ("Securities Act"), a "security" is defined to include an "investment contract." 15 U.S.C. §77b(a)(1). An investment contract is "an investment of money in a common enterprise with profits to come solely from the efforts of others." *W.J. Howey*, 328 U.S. at 299. Specifically, a transaction qualifies as an investment contract and, thus, a security if it is: (1) an investment; (2) in a common enterprise; (3) with a reasonable expectation of profits; and (4) to be derived from the entrepreneurial or managerial efforts of others. *See United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 852-53 (1975). This definition embodies a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits," and thereby "permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of 'the many types of instruments that in our commercial world fall within the ordinary concept of a security.'" *W.J. Howey*, 328 U.S. at 299. Accordingly, in analyzing whether something is a security, "form should be disregarded for substance," and the emphasis should be "on economic realities underlying a transaction, and not on the name appended thereto." *Forman*, 421 U.S. at 849.

115. Investors who bought Earn Rewards accounts invested money or other valuable consideration, in a common enterprise: namely Celsius. Investors had a reasonable expectation of profit based upon the efforts of the Defendants.

i. Celsius Investors Invested Money

116. Plaintiff and the Class invested fiat, including U.S. dollars, and digital currencies, such as Bitcoin and Ethereum, to purchase Earn Rewards accounts.

117. The Earn Rewards accounts were available on the Company's website and mobile app, which allowed retail investors to purchase Earn Rewards accounts with traditional and other digital currencies.

118. Defendants sold Earn Rewards accounts to the general public through global, online cryptocurrency exchanges during its so-called launch.

119. Every purchase of Earn Rewards accounts by a member of the public is an investment contract.

ii. Celsius Financial Product Investors Were Intertwined in a Common Enterprise with Defendants

120. Additionally, investors were passive participants in the Earn Rewards Accounts' launch and the profits of each Plaintiff, and the Class were intertwined with those of Defendants and of other investors. Celsius concedes that it uses the funds from the CEL tokens to also fund its operations.

121. Defendants also were responsible for supporting the Earn Rewards accounts, pooled investors' assets, and controlled those assets.

122. Further, Defendants held and/or hold a significant stake in the Earn Rewards accounts, and thus shared in the profits and risk of the project.

iii. Investors Purchased the Celsius Financial Products with a Reasonable Expectation of Profit from Owning Them

123. Investors in the Earn Rewards Accounts, including Plaintiff and the Class, made their investment with a reasonable expectation of profits. The Earn Rewards accounts were sold to investors prior to a network or "ecosystem" being fully developed on which they could be used. For pre-functional tokens, such as the Earn Rewards accounts, the primary purpose for purchasing Earn Rewards accounts was to make a profit or accumulate additional "reflections" (*i.e.*, additional tokens of value), rather than to utilize the Earn Rewards accounts themselves for a task.

iv. Investors Expected Profits from the Earn Rewards accounts to Be Derived from the Managerial Efforts of the Executive Defendants

124. Investors' profits in the Earn Rewards accounts were to be derived from the managerial efforts of others – specifically the Company and the Executive Defendant. Earn Rewards Account Investors relied on the managerial and entrepreneurial efforts of the Executive Defendants to manage, oversee, and/or develop the projects funded by sale of the Earn Rewards accounts.

125. Purchasers of pre-functional tokens necessarily rely on the managerial efforts of others to realize value from their investments. The success of these managerial efforts in developing the networks on which these tokens will operate is the primary factor in their price, that is, until such tokens transition into being functional utility tokens.

126. Each of the Earn Rewards accounts was a security at issuance because profit from the Earn Rewards accounts would be derived primarily from the managerial efforts of Celsius' teams developing the associated networks on which the Earn Rewards accounts would function, rather than having their profit derived from market forces of supply and demand, such as might affect the price of a commodity such as gold (or Bitcoin).

127. Investors in Earn Rewards accounts relied on the managerial and entrepreneurial efforts of Celsius and the Executive Defendants to manage, market, and develop the so-called Celsius ecosystem.

128. The Executive Defendants typically held themselves out to investors as experts in the blockchain and crypto field. Investors in the Earn Rewards accounts reasonably expected the Celsius development teams to provide significant managerial efforts after the Earn Rewards accounts' launch.

129. Investors in Earn Rewards accounts thus reasonably expected the Company and Executive Defendants to provide significant managerial efforts after the token launch.

130. This dependency, however, on the managerial efforts of the Company and Executive Defendants was not apparent at issuance to a reasonable investor. Considering the limited available information about how these Earn Rewards accounts were designed and intended to operate, if such an investor were even able to interpret the relevant law at the time, a reasonable investor lacked sufficient bases to conclude whether the Earn Rewards accounts were securities until the platform at issue, and its relevant "ecosystem," had been given time to develop. In the interim, the investor lacked the facts necessary to conclude – let alone formally allege in court – that the tokens she had acquired were securities. It was only after certain revelations that provided more information about Defendants' intent, Celsius' token economics, and how the Executive Defendants operated to hide their ownership in both the Company and the CEL Token, that an investor could reasonably determine that a token that was advertised as something other than a security was a security all along.

3. Investors Would Not Reasonably Have Understood that the Financial Products Sold by Celsius Were Securities

131. In connection with the launch of the Celsius Financial Products, the Company and Executive Defendants made statements that reasonably led Plaintiff and Class members to conclude that the Celsius Financial Products were not securities.

132. As a threshold matter, the Company refused to register any of the Celsius Financial Products with the SEC, which indicated to investors that these were not securities. In fact, Celsius touts its application for an exemption from registrations as if it is an actual exemption, which it is not. No such valid exemption from registration requirements exists for any of the Celsius Financial Products.

133. At the time of the launch of the Celsius Financial Products, Defendants took advantage of the market's lack of understanding and awareness concerning how cryptocurrency projects – particularly decentralized finance projects – work. Considering the new technology at issue and the Company's other statements, many investors were understandably unaware that Celsius Financial Products had fundamentally different features than other cryptocurrencies, which the SEC has determined are not securities.

134. Moreover, the Celsius project was advertised as developing revolutionary and cutting edge blockchain technology that was "high yield" and "low risk" when compared with other existing products.

135. In addition to claiming Celsius' technical superiority over other cryptocurrencies, the Company also indicated that it would benefit financially and use the funds raised through the sale of the Celsius Financial Products to continue to fund the Celsius-related products (*e.g.*, wallet and exchange) and support the growth of the project.

136. At the time the Celsius Financial Products were publicly released, Defendants took advantage of the market's lack of understanding and awareness concerning how this investment contract worked. With promises that Celsius would outperform other cryptocurrencies, many individuals were unaware that the Celsius Financial Products had fundamentally different features than other cryptocurrencies, including being more centralized than Bitcoin or Ethereum. One of these primary differences is that all CEL Tokens were issued by Mashinsky and the Company at creation at very little economic cost – and enormous potential upside – to them.

137. The creation of the Celsius Financial Products occurred through a centralized process, in contrast to Bitcoin and Ethereum. This however would not have been apparent at issuance to a reasonable investor. Rather, it was only after the passage of time and disclosure of additional information about the issuer's intent and process of management that a reasonable purchaser could have known that he or she had acquired a security. Purchasers were thereby misled into believing that the Celsius Financial Products were something other than a security, when it was a security.

138. Accordingly, it was not apparent to a reasonable investor, at issuance, that the Celsius Financial Products were securities under the law, and a reasonable investor would not have believed they were securities.

4. Guidance from the SEC

i. The SEC's 2019 Framework

139. On April 3, 2019, the SEC published its "Framework for 'Investment Contract' Analysis of Digital Assets" (the "Framework") in which it provided "a framework for analyzing

whether a digital asset is an investment contract and whether offers and sales of a digital asset are securities transactions."[58]

140. The Framework described how to analyze the various facts surrounding an ICO in making the determination of whether a given digital asset is a security.

141. In particular, the Framework provides that the "inquiry into whether a purchaser is relying on the efforts of others focuses on two key issues: Does the purchaser reasonably expect to rely on the efforts of an [Active Participant or "AP"]? Are those efforts 'the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise,' as opposed to efforts that are more ministerial in nature?"[59]

142. The Framework further notes that the "stronger the[ ] presence" of the following factors, "the more likely it is that a purchaser of a digital asset is relying on the 'efforts of others.'"[60]

143. The first factor the SEC looked at was whether an AP is responsible for the development, improvement (or enhancement), operation, or promotion of the network, particularly if purchasers of the digital asset expect an AP to be performing or overseeing tasks that are necessary for the network or digital asset to achieve or retain its intended purpose or functionality.

144. At the time of the Celsius Token launch, Defendants actively marketed the token launch and the Celsius project, thereby necessitating the continued managerial efforts of the Company and Executive Defendants. Where the network or the digital asset is still in development and the network or digital asset is not fully functional at the time of the offer or sale, purchasers

58 https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets (last visited Jul. 12, 2022).
59 *Id.*
60 *Id.*

would reasonably expect an AP to further develop the functionality of the network or digital asset (directly or indirectly).

145. Another factor the Framework considers is whether the AP creates or supports a market for, or the price of, the digital asset. This includes, *inter alia*, whether the AP "(1) controls the creation and issuance of the digital asset; or (2) takes other actions to support a market price of the digital asset, such as by limiting supply or ensuring scarcity, through, for example, buybacks, 'burning,' or other activities."[61]

146. As noted above, all of the CEL Tokens in circulation were created at the direction of Mashinsky.

147. The framework further states that "An AP has a continuing managerial role in making decisions about or exercising judgment concerning the network or the characteristics or rights the digital asset represents[.]"[62]

148. Here, the Company and Executive Defendants have discussed the long-term prospects on years-long time frames, continually noting how the Celsius ecosystem will "evolve" in the future.

149. The ability to determine whether and where the digital asset will trade is another factor discussed in the Framework. For example, "purchasers may reasonably rely on an AP for liquidity, such as where the AP has arranged, or promised to arrange for, the trading of the digital asset on a secondary market or platform."[63]

150. Here, the Company and Mashinsky are the liquidity providers for the CEL Tokens that are traded publicly.

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61 *Id.*
62 *Id.*
63 *Id.*

151. Another factor the Framework notes is whether the AP has the ability to determine who will receive additional digital assets and under what conditions. This could be, for example, "[m]aking or contributing to managerial level business decisions, such as how to deploy funds raised from sales of the digital asset."[64]

152. Here, the Company, along with the Controlling Defendants, are the arbiters over the use of the cryptocurrency deposited on Earn Rewards investors.

153. The Celsius Terms provide that an Earn Rewards investor relinquishes control over the deposited cryptocurrency to Celsius and that Celsius is free to use those assets as it sees fit, including commingling the Earn Rewards investor's cryptocurrency with those of other Earn Rewards investors, investing those pooled assets in the market, and lending them to institutional and corporate borrowers. Having relinquished control over the deposited cryptocurrency in their Earn Rewards accounts, the Earn Rewards Investors are passive investors.

154. Specifically, Paragraph 4. D. "Earn Rewards" of the recently-amended Celsius Terms provides:

> Our Earn Rewards service allows you to earn a financing fee from Celsius, referred to as "Rewards," in the form of Digital Assets (either in-kind, i.e. in the same Digital Asset you transfer, or in CEL Tokens, where permitted) in exchange for entering into open-ended loans of your Eligible Digital Assets to Celsius under the terms hereof. If our Earn Service is available to you, upon your election, you will lend your Eligible Digital Assets to Celsius you grant Celsius all rights and title to such Digital Assets, for Celsius to use in its sole discretion while using the Earn Service.[65]

155. Paragraph 13 of Celsius' recently-amended Terms, "Consent To Celsius' Use of Digital Assets," also describes the status of cryptocurrency deposited with Celsius by Earn Rewards Investors:

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64 *Id.*

65 https://celsius.network/terms-of-use (last visited Jul. 12, 2022).

> In consideration for the Rewards payable to you on the Eligible Digital Assets using the Earn Service, for us entering into any Loan Agreement, and the use of our Services, you grant Celsius, subject to applicable law and for the duration of the period during which you elect to utilize the Eligible Digital Assets in the Earn Service (if available to you), all right and title to such Eligible Digital Assets, including ownership rights, and the right, without further notice to you, to hold such Digital Assets in Celsius' own Virtual Wallet or elsewhere, and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership, and for any period of time, and without retaining in Celsius' possession and/or control a like amount of Digital Assets or any other monies or assets, and to use or invest such Digital Assets in Celsius' full discretion. You acknowledge that with respect to the Digital Assets used by Celsius pursuant to this paragraph:
>
> (i) You will not be able to exercise rights of ownership;
>
> (ii) Celsius may receive compensation in connection with lending or otherwise using Digital Assets in its business to which you have no claim or entitlement; and
>
> (iii) In the event that Celsius becomes bankrupt, enters liquidation or is otherwise unable to repay its obligations, any Eligible Digital Assets used in the Earn Service or as collateral under the Borrow Service may not be recoverable, and you may not have any legal remedies or rights in connection with Celsius' obligations to you other than your rights as a creditor of Celsius unders any applicable laws.[66]

156. Celsius then pools the deposited cryptocurrencies together with Celsius' other assets, to, among other income-generating activities, collateralize Celsius' borrowings, purchase securities and digital assets for Celsius' own account, make loans to institutional and corporate borrowers, and mine for cryptocurrency.

157. Celsius does not disclose to investors: (a) the amount of money devoted to each of these investment activities; (b) the nature and creditworthiness of the borrowers, as well as the identity of any borrowers to whom Celsius has lent material amounts of cryptocurrency; (c) the

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66 *Id.*

terms and duration of the loans; (d) the types of securities and digital assets it trades; or (e) the profits or losses derived from these activities.

158. As Celsius' founder, Alexander Mashinsky, stated in an article he authored on March 7, 2021, for the DataDrivenInvestor's website, reposted in the "Media" tab on the Celsius Website, "[u]sers transfer assets with Celsius, Celsius lends funds to institutions and returns up to 80% of earnings to users."[67]

159. Making other managerial judgements or decisions that will directly or indirectly impact the success of the network or the value of the digital asset generally.

160. The Framework also remarks that purchasers would reasonably expect the AP to undertake efforts to promote its own interests and enhance the value of the network or digital asset, including, but not limited to, the instances where the AP "has the ability to realize capital appreciation from the value of the digital asset. This can be demonstrated, for example, if the AP retains a stake or interest in the digital asset."[68] According to the SEC, in these instances, "purchasers would reasonably expect the AP to undertake efforts to promote its own interests and enhance the value of the network or digital asset."[69]

161. Here, Mashinsky and Company insiders retain a significant interest in the Celsius project even after selling off many CEL Tokens throughout the Relevant Period.

ii. SEC's Previous Statements and Findings

162. On May 7, 2021, on CNBC's "Squawk Box" television program, chairman of the SEC Gary Gensler stated that "a lot of crypto tokens – I won't call them cryptocurrencies for this

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67 Alex Mashinsky, *How Celsius creates prosperity for retail and institutional investors alike,* DataDrivenInvestor (Mar. 7, 2021), https://medium.datadriveninvestor.com/how-celsius-creates-prosperity-for-retail-and-institutional-investors-alike-cc086084c6bd

68 *See* fn.42, *supra*.

69 *Id.*

moment – ***are indeed securities***[.]"[70] (Emphasis added). In addition to being the Chairman of the SEC, Mr. Gensler is also a world-renowned expert on cryptocurrencies and blockchain technology, having taught the "Blockchain and Money" course at the Sloan School of Management at the Massachusetts Institute of Technology ("MIT").[71]

163. In a June 14, 2018 speech entitled "Digital Asset Transactions: When Howey Met Gary (Plastic)" that is available on the SEC's website, the following observations were made on "when a digital transaction may no longer represent a security offering."[72]

164. If the network on which the token or coin is to function is sufficiently decentralized – where purchasers would no longer reasonably expect a person or group to carry out essential managerial or entrepreneurial efforts – the assets may not represent an investment contract. Moreover, when the efforts of the third party are no longer a key factor for determining the enterprise's success, material information asymmetries recede. As a network becomes truly decentralized, the ability to identify an issuer or promoter to make the requisite disclosures becomes difficult, and less meaningful.

165. "And so, when I look at Bitcoin today, I do not see a central third party whose efforts are a key determining factor in the enterprise. The network on which Bitcoin functions is operational and appears to have been decentralized for some time, perhaps from inception."[73]

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[70] Jesse Point, *SEC Chairman Gary Gensler says more investor protections are needed for bitcoin and crypto markets*, CNBC (May 7, 2021), https://www.cnbc.com /2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html.

[71] Lectures and Materials from Chairman Gensler's MIT course are available to the public for free at: https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/.

[72] William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic), Remarks at the Yahoo Finance All Markets Summit: Crypto*, SEC (Speech) (Jun. 14, 2018), https://www.sec.gov/news/speech/speech-hinman-061418.

166. A key factor in determining whether a digital asset is a security or not is whether the there is a centralized entity behind the digital asset.[74]

167. As discussed above, the circumstances surrounding the creation of the Celsius Token demonstrate that an exceedingly small number of centralized insiders maintained exclusive control over the Celsius project.

168. Finally, the SEC also already concluded that another virtual currency (*i.e.*, DAO tokens) that is substantially similar to Earn Rewards accounts are "securities and therefore subject to the federal securities laws." As stated by the SEC, "issuers of distributed ledger or blockchain technology-based securities must register offers and sales of such securities unless a valid exemption applies."[75]

169. Stablecoins in particular have come under scrutiny by regulators recently given the rapid growth of the $130 billion market.

170. For example, in June 2021 Representative Warren Davidson from Ohio, one of crypto's loudest advocates on Capitol Hill, said that in his view, not all stablecoins should be treated as securities, but stablecoins that specifically are backed by securities should fall under the same sort of regulatory regime: "if you've got a stablecoin that is essentially backed by securities, it gets hard to say that it's not a security."[76]

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73 *Id.*

74 *Id*. (noting that the "decentralized structure" of Bitcoin and Ethereum placed these digital assets outside the "disclosure regime of the federal securities laws").

75 Press Release, *SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities*, SEC (July 25, 2017), https://www.sec.gov /news/press-release/2017-131.

76 Nikhilesh De, *Opinion – State of Crypto: Stablecoin Rules Are Coming,* CoinDesk.com (Jul. 20, 2021), https://www.coindesk.com/policy/2021/07/20/state-of-crypto-stablecoin-rules-are-coming/.

171. While certain of Celsius' loan products appear to be licensed under various state licensing requirements for money services businesses or money transmitters, the Celsius Earn Rewards product is not currently registered with any federal or state securities regulator, nor is it exempt from registration – as required by law, even though the Earn Rewards product is a "security" and subject to such requirements.

CLASS ALLEGATIONS

172. Plaintiff brings this action, individually, and on behalf of a nationwide class, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3), defined as follows:

> All persons who, during the Class Period, purchased Celsius Financial Products and were subsequently damaged thereby.

173. The Class Period is defined as the period between February 9, 2018 and the date of this filing.[77]

174. Excluded from the Class are: (a) Defendants; (b) Defendants' affiliates, agents, employees, officers, and directors; (c) Plaintiff's counsel and Defendants' counsel; and (d) the judge assigned to this matter, the judge's staff, and any member of the judge's immediate family. Plaintiff reserves the right to modify, change, or expand the various class definitions set forth above, based on discovery and further investigation.

175. **Numerosity**: Upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identity of individual members of the Class is currently unknown, such information being in the sole possession of Luna and/or third parties and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and on that basis

[77] Plaintiff reserves the right to expand or amend the Class Period based on discovery produced in this matter.

alleges, that the Class consists of at least hundreds of people. The number of Class members can be determined based on Luna's and other third party's records.

176. **Commonality**: Common questions of law and fact exist as to all members of the Class. These questions predominate over questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

a. whether the Celsius Financial Products are securities under the Securities Act;

b. whether the sale of Celsius Financial Products violates the registration of the Securities Act;

c. whether Defendants improperly and misleadingly marketed Celsius Financial Products;

d. whether Defendants' conduct violates the state consumer protection statutes asserted herein;

e. whether Individual Defendants conspired to artificially inflate the price of the Celsius Financial Products and then sell their Celsius Financial Products to unsuspecting investors;

f. whether Defendants have been unjustly and wrongfully enriched as a result of their conduct;

g. whether the proceeds that Defendants obtained as a result of the sale of Celsius Financial Products, rightfully belongs to Plaintiff and Class members;

h. whether Defendants should be required to return money they received as a result of the sale of Celsius Financial Products to Plaintiff and Class members;

i. whether Individual Defendants breached the implied covenant of good faith and fair dealing; and

j. whether Plaintiff and Class members have suffered damages, and, if so, the nature and extent of those damages.

177. **Typicality**: Plaintiff has the same interest in this matter as all Class members, and Plaintiff's claims arise out of the same set of facts and conduct as the claims of all Class members. Plaintiff's and Class members' claims all arise out of Luna's uniform misrepresentations, omissions, and unlawful, unfair, and deceptive acts and practices related to the sale of Celsius Financial Products.

178. **Adequacy**: Plaintiff has no interest that conflicts with the interests of the Class and are committed to pursuing this action vigorously. Plaintiff has retained counsel competent and experienced in complex consumer class action litigation. Accordingly, Plaintiff and his counsel will fairly and adequately protect the interests of the Class.

179. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by the Company's conduct. It would be virtually impossible for individual Class members to effectively redress the wrongs done to them. Even if Class members could afford individualized litigation, the court system could not. Individualized litigation would increase delay and expense to all parties, and to the court system, because of the complex legal and factual issues of this case. Individualized rulings and judgments could result in inconsistent relief for similarly situated individuals. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

180. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

Unregistered Offering and Sale of Securities in Violation of Sections 5 and 12(a)(1) of the Securities Act (Against the Celsius Entities and Individual Defendant Mashinsky)

181. Plaintiff restates and realleges all preceding allegations above as if fully set forth herein.

182. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this complaint, and further alleges as follows:

183. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interest commerce for the purpose of sale or for delivery after sale.

184. Celsius Financial Products are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

185. Plaintiff and members of the Class purchased Celsius Financial Product securities.

186. No registration statements have been filed with the SEC or have been in effect with respect to any of the offerings alleged herein. No exemption to the registration requirement applies.

187. SEC Rule 159A provides that, for purposes of Section 12(a)(2), an "issuer" in "a primary offering of securities" shall be considered a statutory seller. 17 C.F.R. §230.159A(a). The Securities Act in turn defines "issuer" to include every person who issues or proposes to issue any security. 15 U.S.C. §77b(a)(4). Celsius is an issuer of Celsius Financial Products.

188. The U.S. Supreme Court has held that statutory sellers under §12(a)(1) also include "the buyer's immediate seller" and any person who actively solicited the sale of the securities to plaintiff and did so for financial gain. *See Pinter v. Dahl*, 486 U.S. 622, 644 n.21, 647 (1988); *accord*, *e.g.*, *Steed Fin. LDC v. Nomura Sec. Int'l, Inc.*, No. 00 Civ. 8058, 2001 WL 1111508, at *7 (S.D.N.Y. Sept. 20, 2001). That is, §12(a)(1) liability extends to sellers who actively solicit the sale of securities with a motivation to serve their own financial interest or those of the securities owner. *Pinter*, 486 U.S. at 647; *Capri v. Murphy*, 856 F.2d 473, 478 (2d Cir. 1988). Celsius and the Defendants are all statutory sellers.

189. By reason of the foregoing, Defendants violated Sections 5(a), 5(c), and 12(a) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c), and 771(a).

190. As a direct and proximate result of Defendants' unregistered sale of securities, Plaintiff and the Class have suffered damages in connection with their Celsius Financial Product purchases.

SECOND CAUSE OF ACTION

Violation of Sections 10b of the Securities Act and Rule 10b-5 (Against all Defendants)

191. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-179, and further alleges as follows:

192. Plaintiff brings this claim for violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5(b) promulgated thereunder, 17 C.F.R. §240.10b-5(b).

193. Plaintiff brings this claim on behalf of all Class members who purchased Celsius Financial Products from February 9, 2018 to the time of this filing.

194. The Celsius Financial Products are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

195. Section 10(b) and Rule 10b-5(b) make it illegal, in connection with the purchase or sale of any security, "for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange . . . to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." *Id.*

196. Defendants carried out a plan, scheme, and course of conduct that Celsius intended to and did deceive the retail investors - Plaintiff and the other Class members - who acquired Celsius Financial Products pursuant to the March 2021 launch offering and thereby caused them to purchase Celsius Financial Products at artificially inflated prices.

197. In connection with the March 2021 launch of Celsius Financial Products, Defendants disseminated, approved, and/or endorsed the false statements described herein, which these Defendants knew or recklessly should have known were materially misleading in that they contained material misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not materially misleading.

198. Defendants employed devices, schemes, and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary to make the statements made not misleading; and engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the Class members that resulted in artificially high market prices for Celsius Financial

Products in connection with the March 2021 launch, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

Misrepresentations and Omissions

199. Defendants' untrue statements and omissions of material facts in connection with the sale of Celsius Financial Products include at least the following:

a. On February 5, 2021, Mashinsky made several statements promoting the Celsius Loans to investors. In particular, when an investor asked about the circumstances under which Celsius will liquidate a borrower's collateral, Tal Bentov, the VP Lending (Retail) at Celsius, replied: "We liquidate only when someone is not answering our margin calls and he/she keeps being in default. We give a lot of time. A lot more than others. Trust me. Sometimes weeks to answer our margin calls!"[78] Near the end of the February 5th AMA, Mashinsky promoted the Earn Rewards Accounts' ability to "earn" investors various cryptocurrencies "for free."[79] In order to make those statements not misleading, Defendants were obligated to disclose that (1) borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice, and (2) that the yield rate offered by Celsius was not "free" but rather was provided off of highly risky, yet undisclosed, investments by Celsius.

b. On February 26, 2021, Mashinsky participated in the weekly Celsius AMA on YouTube, discussing, among other things, how Celsius would deal with "handling flash crashes." Mashinsky stated:

> We don't provide high LTV's. . . . Celsius doesn't make money by liquidating you. We don't charge any fees. We don't try to give you these gimmicks and special rates… Our goal, our mission is to make sure that we have you as a customer for life. What are the chances that you're going to stick with us if we liquidated you? Most of

78 https://www.youtube.com/watch?v=2wqD78AnFaw (last visited Jul. 12, 2022).
79 *Id.*

> our loans are 25% or 33% LTV loans. We discourage you from taking 50% LTV loans because that is much higher risk. ***So Celsius did not have any liquidations, because we give you plenty of time. We give you advanced notice most of the time, then we tell you you can put more collateral or return some of the dollars or assets back.*** We have almost 0 liquidations. That's not our business. It's the opposite of our business.[80]

In order to make those statements not misleading, Defendants were obligated to disclose that borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice.

c. On April 23, 2021, Mashinsky again made statements regarding Celsius' borrower-friendly stance on liquidations during a Celsius weekly AMA on YouTube. In particular, Mashinsky stated a "margin call doesn't mean we sold your assets or stole your coins. That's what the other guys do. ***We always give you ample time*** to post more collateral, return some of the assets, or instruct us to sell your coins."[81] (Emphasis added). In order to make this statement not misleading, Defendants were obligated to disclose that borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice.

d. On May 28, 2021, Mashinsky promoted the stability and wherewithal of the CEL Token: "Looking at coins, the CEL token was one of the most stable out there. It did better than Bitcoin or Ethereum. It did not drawdown as much. Obviously Celsians who held CEL did very well as well."[82] Mashinsky congratulated the investors that held onto their CEL Tokens during the brief market downturn and bragged that there were "only 20 liquidations" from the 10,000 margin calls that occurred during that time period because Celsius "does a better job than most. Accommodating, providing enough warning, giving you enough time for doing what's right. We

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80 https://www.youtube.com/watch?v=cZPy7Pu6vxg&t=3s (last visited Jul. 12, 2022).
81 https://www.youtube.com/watch?v=bzEyHLgBY7Y&t=350s (last visited Jul. 12, 2022).
82 https://www.youtube.com/watch?v=C7d7rZUEfGo (last visited Jul. 12, 2022).

don't make any money from liquidating you."[83] Mashinsky proclaimed that "during these drawdowns is when Celsius shines, both from the fact that it does not crash [CEL]. I think NEXO token was down about 75% from top to bottom just last week. So those are examples of just a different community. A HODL community versus a speculative community. Same thing with Binance and other platforms. Obviously, we only care about doing what's in the best interests of the HODLer."[84] In order to make those statements not misleading, Defendants were obligated to disclose that (1) borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice, and (2) that the CEL Token was far from stable but rather subject to severe volatility because of Company insider selling pressure.

e. On October 9, 2021, Mashinsky stated the following: "Lots to CELebrate here in #London busy week with a lot of large deals and events. It pays to #HODL."[85] In order to make those statements not misleading, Defendants were obligated to disclose that, when this statement was made, Mashinsky intended to (and later did) actually sell a portion of his CEL Tokens.

f. On December 1, 2021, Celsius held an AMA session on YouTube where investors could ask questions of Celsius representatives. One investor expressed concern about a "CEL token liquidation cascade" and asked whether Celsius was "worried at all," to which Celsius content manager Zachary Wildes replied "I'm personally not . . . I do think we need to bring a lot more time and attention and focus to CEL token and its utilities. I'm not concerned about a cascading liquidation event where everyone gets destroyed."[86] Wildes continued that "We're at a low-point for CEL sentiment and the future of the token" and asked Mashinsky if there was "any level of

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83 *Id.*
84 *Id.*

85 *See* fn.38, *supra*.
86 *See* fn.18, *supra*.

reassurance we can give . . . to the community to show our commitment to CEL token?"[87] Mashinsky responded that "Earning in CEL allows you to earn twice as many CEL right now with the price lower. If you believe in the viability of the company, then you would know you're getting a 50% discount. If you don't believe in it, then you probably don't want these CELs anyway. If you're not sure about it, how about some of the worlds best investors coughing up 750$ Million? They bought into half of all the CEL tokens out there. Our Treasury, which is mostly CEL token. They're part owners of that . . . ."[88] In order to make those statements not misleading, Defendants were obligated to disclose that (1) borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice; (2) that there was a significant risk that a CEL Token liquidation cascade not only could happen, but was likely to happen in the near future; (3) that the Company's successes would not automatically lead to a 50% increase in the CEL Token price in the future; and (4) that Celsius did not, in fact, have the support of well-capitalized backers or the ability to maintain the Company's operations in the event of a price collapse.

g. On December 9, 2021, Mashinsky posted a message on his Twitter account, promoting CEL Tokens as a long-term investment for Company insiders and stating: "All @CelsiusNetwork founders have made purchases of #CEL and are not sellers of the token."[89] In order to make those statements not misleading, Defendants were obligated to disclose that only five days earlier Mashinsky sold over 11,000 CEL Tokens for about $43,000 worth of WBTC.

h. On January 19, 2022, Mashinsky made a series of statements regarding the CEL Token and how it was poised for future growth in use and, more importantly, price. For

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87 *Id.*

88 *Id.*

89 *See* fn.39, *supra*.

example, when asked about how Celsius generates revenue, Mashinsky responded that "***We always make all of our money from institutions*** . . . We don't charge fees, spreads, all of that stuff."[90] In order to make that statement not misleading, Defendants were obligated to disclose that depositing digital assets into Earn Rewards Accounts was not akin to depositing money into a savings account and that the profit comes from the Company searching of yield with corporate funds via leveraged positions in DeFi protocols with severe liquidation risk.

Materiality

200. The forgoing misrepresentations and omissions were each material. These representations related to critical issues concerning the security of Celsius Financial Product holders' investments.

201. These misrepresentations and omissions related to, among other things: (i) the extent to which the Defendants and other insiders were restricted from selling substantial amounts of Celsius Financial Products on crypto-asset exchanges; (ii) the extent to which Defendants and its insiders intended to sell their Celsius Financial Product holdings over that same period; and (iii) the extent to which Defendants and its insiders did in fact sell substantial amounts of their Celsius Financial Products crypto-asset exchanges over that same period while simultaneously promoting the same securities as long-term investments. If a reasonable investor knew that the Company and the Executive Defendants were engaging in highly speculative investments in a volatile crypto market to earn the yield necessary to make good on its promises to investors, then that investor would reasonably expect the price of Celsius Financial Products to be substantially lower, given that the investment would be much riskier.

202. Accordingly, there is a substantial likelihood that the disclosure of the omitted facts would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.

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90 *See* fn.27, *supra*.

Scienter

203. The Company and Executive Defendants acted with scienter in engaging in the forgoing misconduct, in that they either had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them.

204. Indeed, the Company and the Executive Defendants created and controlled the software that determined whether they would have the ability to retain control over funds staked in the Earn Rewards Accounts and CEL Token liquidity pool and whether they could draw on those funds. They have likewise admitted that they intentionally decided to retain control over funds supposedly "locked" in liquidity pools because they wanted to provide themselves with flexibility to pay for expenses that could arise in the future.

205. Defendants knew before the 2018 launch that any applicable vesting periods would not preclude the Executive Defendants or their friends and family dumping massive quantities of Celsius Financial Products on the market and Celsius intended to transfer millions of the newly issued Celsius Financial Products to project insiders, and that it, along with those insiders, intended to dump tens of millions of these tokens on crypto-asset exchanges, such that Celsius and its insiders intended to profit massively from the offering, while outside investors would be precluded from doing so.

206. Indeed, Defendants necessarily knew what restrictions were imposed on their own CEL Tokens, as well as the tokens that they issued and allocated to current and former team members, and to outside investors. These Defendants likewise knew that they, along with current and former team members, held a significant amount of the total CEL Token supply in circulation, and that if that portion of the Float were sold, the price of the CEL Tokens would plummet and likely cause the collapse of the other Celsius Financial Products. It was thus highly unreasonable for Defendants to conceal information relating to selling restrictions imposed on them and their insiders' tokens.

207. Defendants' failure to disclose such information, coupled with their constant promotion of the Celsius Financial Products as being "low risk," demonstrates that these Defendants intended that they and their insiders would sell substantial amounts of CEL Tokens at significant profits at a price that was artificially inflated on and during the weeks and months that followed the CEL Token launch.

208. The Company and the Executive Defendants had the motive not to disclose these facts because such disclosure would have been self-defeating. They controlled a significant proportion of Celsius Financial Products, and such a disclosure would decrease the value of those assets. In other words, they had an incentive to ensure that the price of Celsius Financial Products remained inflated.

209. These Defendants executed on that plan, too, by (along with current and former team members) selling billions of Celsius Financial Products on the market during that period.

210. Defendants knew that they had sold Celsius Financial Products on the market on and in the months that followed the Company's launch. They likewise know that their current and former team members sold Celsius Financial Products: in addition to Mashinsky's admission of selling some of his CEL Token holdings, Defendants know which CEL Tokens they allocated to team members and can therefore track the transaction history of that CEL Token on the blockchain.

Reliance, Economic Loss, and Loss Causation

211. As a result of the publication and dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the price of the Celsius Financial Products upon issuance on February 9, 2018, and for a period of time, thereafter, were artificially inflated.

212. In ignorance of the fact that the price of Celsius Financial Products was artificially inflated, and relying directly or indirectly on the false, misleading, and materially incomplete statements that Defendants made and approved, or upon the integrity of the market in which the Celsius Financial Products were sold, or on the absence of material adverse information that these Defendants knew or recklessly should have known of but failed to disclose in public statements,

Plaintiff and the other Class members acquired Celsius Financial Products at artificially high prices and were damaged thereby.

213. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other Class members suffered damages in connection with the respective purchases of Celsius Financial Products and are entitled to an award compensating them for such damages.

214. Indeed, the price of CEL Tokens dropped significantly as Defendants disclosed, and the market discovered, the truth concerning the CEL Tokens project and its prospects. For example, the price of CEL Tokens went from a high of $7.73 on June 3, 2021, to a low of $0.28 just over a year later on June 12, 2021, in the wake of the June Crisis and Celsius freezing its investors accounts.

215. In addition, as a direct and proximate result of Defendants' wrongful conduct, Celsius has generated and retained ill-gotten gains in connection with the launch of Celsius Financial Products, such that Plaintiff and the other Class members are entitled to the disgorgement of Celsius' ill-gotten gains acquired from such misconduct.

216. As a direct and proximate result of Defendants' unregistered sale of securities, Plaintiff and the Class have suffered damages in connection with their Celsius Financial Product purchases.

THIRD CAUSE OF ACTION

Violation of Sections 20(a) of the Securities Act (Against the Celsius Entities and Defendant Mashinsky)

217. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

218. This Count is asserted against the Executive Defendants (collectively, the "Control Person Defendants") under Section 20(a) of the Exchange Act, 15 U.S.C. §78t(a).

219. The Control Person Defendants, by virtue of their offices, ownership, agency, agreements or understandings, and specific acts were, at the time of the wrongs alleged herein, and

as set forth herein, controlling persons within the meaning of Section 15 of the Securities Act. The Control Person Defendants, and each of them, had the power and influence and exercised the same to cause the unlawful scheme to artificially increase the interest in and price of the Celsius Financial Products, particularly the CEL Token.

220. The Control Person Defendants, separately or together, possess, directly or indirectly, the power to direct or cause the direction of the management and policies of Celsius, through ownership of voting securities, by contract, subscription agreement, or otherwise.

221. The Control Person Defendants also have the power to direct or cause the direction of the management and policies of Celsius.

222. The Control Person Defendants, separately or together, have sufficient influence to have caused the Company to engage in the fraudulent conduct described above.

223. The Control Person Defendants, separately or together, jointly participated in the Company's fraudulent conduct described above.

224. By virtue of the conduct alleged herein, the Control Person Defendants are liable for the wrongful conduct complained of herein and are liable to Plaintiff and the Class for rescission and/or damages suffered.

FOURTH CAUSE OF ACTION

Violation of Sections 20A of the Exchange Act
(Against the Celsius Entities and Defendant Mashinsky)

225. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

226. Plaintiff brings this claim under Section 20A of the Exchange Act, 15 U.S.C. §78t-1, against Defendants on behalf of Class members who transacted in CEL Tokens contemporaneously with Defendants' transactions in Celsius Financial Products.

227. Plaintiff brings this claim on behalf of all Class members who purchased Celsius Financial Products from February 8, 2020, to the present.

228. Since 2018, the Celsius Entities and Defendant Mashinsky (collectively referred to in this cause of action as the "Section 20A Defendants") have been in possession of material, non-public information about Celsius and its insiders, as set forth above with respect to the Section 20A Defendants' violation of Section 10(b) and Rule 10b-5, while the Section 20A Defendants have been transacting in CEL Tokens. Section 20A Defendants have thus engaged in insider trading through which they have received at least millions of dollars in profits.

229. The material, non-public information about Celsius and its insiders that the Section 20A Defendants have failed to disclose, during some or all of the time in which they have been transacting in CEL Tokens since 2018, includes the details of any applicable vesting schedules for Celsius and Celsius insiders; that Defendant Mashinsky was not subject to any vesting schedule; that any applicable vesting periods would allow the Section 20A Defendants to transfer tens of millions of the newly issued CEL Tokens to crypto-asset exchanges; that the Section 20A Defendants intended to deposit tens of millions of these tokens on crypto-asset exchanges; that the Section 20A Defendants intended to profit massively from the offering; that the Section 20A Defendants reserved the right to liquidate their tokens far more than necessary to pay expenses; and that the Section 20A Defendants dumped massive amounts of CEL tokens on the market beginning on 2018.

FIFTH CAUSE OF ACTION

Violation of Sections 15 of the Securities Act (Against all the Executive Defendants)

230. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

231. This Count is asserted against the Executive Defendants (collectively referred to in this cause of action as the "Control Person Defendants") under Section 15 of the Securities Act, 15 U.S.C. §77o.

232. The Control Person Defendants, by virtue of their offices, ownership, agency, agreements or understandings, and specific acts were, at the time of the wrongs alleged herein, and as set forth herein, controlling persons within the meaning of Section 15 of the Securities Act. The Control Person Defendants, and each of them, had the power and influence and exercised the same to cause the unlawful offer and sale of Celsius Financial Products securities as described herein.

233. The Control Person Defendants, separately or together, possess, directly or indirectly, the power to direct or cause the direction of the management and policies of Celsius, through ownership of voting securities, by contract, subscription agreement, or otherwise.

234. The Control Person Defendants also have the power to direct or cause the direction of the management and policies of the Company.

235. The Control Person Defendants, separately or together, have sufficient influence to have caused Celsius Financial Products and/or the Company to submit a registration statement.

236. The Control Person Defendants, separately or together, jointly participated in Celsius' failure to register Celsius Financial Products.

237. By virtue of the conduct alleged herein, the Control Person Defendants are liable for the wrongful conduct complained of herein and are liable to Plaintiff and the Class for rescission and/or damages suffered.

SIXTH CAUSE OF ACTION

Unjust Enrichment/Restitution
(New Jersey Common Law, in the Alternative)
(Against the Celsius Entities)

238. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

239. Plaintiff and members of the Class conferred a monetary benefit on Defendants by raising the price and trading volume of the Celsius Financial Products, which allowed Defendants to sell their Celsius Financial Products to Plaintiff and Class members at inappropriately and artificially inflated prices.

240. Defendants received a financial benefit from the sale of their Celsius Financial Products at inflated prices and are in possession of this monetary value that was intended to be used for the benefit of, and rightfully belong to Plaintiff and members of the Class.

241. Plaintiff seeks restitution in the form of the monetary value of the difference between the purchase price of the Celsius Financial Products and the price those Celsius Financial Products sold for.

SEVENTH CAUSE OF ACTION

Declaratory Judgment
(Declaratory Judgment Act, N. J. S. A. 2A:16-51 *et seq*.)
(Against the Celsius Entities)

242. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

243. This Count is asserted against the Celsius Entities under Section 2A:16-59 of the New Jersey Revised Statutes.

244. The Declaratory Judgments Act, N.J. Stat. Ann. § 2A:16-51 *et seq*. (West), authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity. *Chamber of Com. of U. S. v. State*, 89 N.J. 131, 140 (1982). To maintain such an action, there must be a "justiciable controversy" between adverse parties, and plaintiff must have an interest in the suit.

245. Plaintiff and the members of the Class have an obvious and significant interest in this lawsuit.

246. Upon information and belief, each class member who purchased a Celsius Loan product in exchange for a promissory note received a loan agreement that contained misrepresentations and/or omissions of material fact that were made negligently or with the intent to deceive investors about the risks underlying the Celsius Loans.

247. Plaintiff and class members justifiably relied on the representations by the Celsius entities that the Celsius Loans were a "low risk" way to "earn" interest and that, in the event of a margin call, borrowers would have ample time and opportunity to address the underlying issue.

248. If the true facts had been known, Plaintiff and the class would not have purchased a Celsius Loan from the Company and/or would have not purchased the Celsius Loan under the same terms.

249. There is, thus, a justiciable controversy over the legality and enforceability of the Celsius Loan products offering.

250. Plaintiff seeks an order from the Court declaring that all current and/or open Celsius Loans are (a) unauthorized; (b) wrongfully and fraudulently entered into; and as a result (c) void and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, respectfully requests that this Court:

A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more of the Classes defined above;

B. Appoint Plaintiff as a representative of the Class and his counsel as Class counsel;

C. Declare that the Company and Executive Defendants offered and sold unregistered securities in violation of Sections 5(a), 12(a), and 15 of the Securities Act;

D. Declare that all Celsius Loans currently held by the Company are void and unenforceable, and issue an order directing Celsius to rescind any outstanding Celsius Loans;

E. Award all actual, general, special, incidental, statutory, rescission, punitive, and consequential damages and restitution to which Plaintiff and the Class members are entitled;

F. Award post-judgment interest on such monetary relief;

G. Grant appropriate injunctive and/or declaratory relief;

H. Award reasonable attorneys' fees and costs; and

I. Grant such further relief that this Court deems appropriate.

JURY DEMAND

Plaintiff, individually and on behalf of the putative Class, demands a trial by jury on all issues so triable.

DATED: July 13, 2022

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Attorneys for Plaintiff and the Proposed Class

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
CELSIUS NETWORK LLC, *et al.*,1	:	Case No. 22-10964 (MG)
	:	
	:	(Jointly Administered)
Debtors.	:	

ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER PURSUANT TO SECTION 1104(c) OF THE BANKRUPTCY CODE

Upon the motion (the "Motion") of William K. Harrington, the United States Trustee for Region 2 (the "United States Trustee"), by and through his counsel, seeking the appointment of an examiner pursuant to Section 1104(c) of title 11, United States Code (the "Bankruptcy Code") [ECF No. __]; and upon the responses and objections to the Motion that were filed by the above-captioned debtors and debtors in possession (the "Debtors") [ECF No. __]; the official committee of unsecured creditors (the "Committee") [ECF No. __]; and the Court having heard and considered all of the arguments made by parties in interest to the Motion at the hearing held on _____ (the "Hearing"); and due and sufficient notice of the Motion was given; and the Court having considered the evidence in the record and arguments of counsel; and concluded that the appointment of an examiner under 11 U.S.C. § 1104(c)(2) of the Bankruptcy Code to investigate the affairs of the Debtors is mandatory as the Debtors' fixed, liquidated, unsecured debts, other than debts for goods and services or taxes, or owing to an insider, exceed $5 million; and the Court further finds that

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 121 River Street, PH05, Hoboken, New Jersey 07030.

grounds exist for the appointment of an examiner under 11 U.S.C. § 1104(c)(1) as the appointment of an examiner to investigate the affairs of the Debtors and the Debtors' affiliates and subsidiaries in in the best interests of creditors, any equity holders, and other interests of the estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

2. The United States Trustee is directed to appoint an examiner (the "Examiner") in these jointly administered chapter 11 cases pursuant to section 1104(c) of the Bankruptcy Code solely to conduct the examination as set forth herein and to prepare and file a report as described herein.

3. The scope (the "Scope") of the Examiner's investigation shall include:

   i. An examination of the Debtors' crypto holdings, including, a determination as to where it is stored and whether different types of accounts are commingled.
   ii. An examination as to why there was a change in account offerings beginning in April 2022 from the Earn Program to the Custody Service for some customers while others were placed in a "Withhold Account."
   iii. The identification of the undisclosed third party loan party and what steps the Debtors took to neutralize their lost collateral.
   iv. An examination as to why was the $648 million repaid, collateral returned prepetition, and the terms of these loans.
   v. An examination as to the terms of the $750 million intercompany revolver, including how Celsius used the loan proceeds.
   vi. An examination as to the liquidation of the Tether loan.
   vii. An examination of the GK8 acquisition.
   viii. An examination of the Debtors' procedures for paying Sales, Use, and VAT taxes.
   ix. An examination of the current status of the Debtors' mining business.
   x. Otherwise perform the duties of an examiner set forth in 11 U.S.C. § 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code (collectively the "Investigation").

The scope and conduct of the Investigation and the Examiner's budget shall be further detailed in the Examiner's work plan.

4. The Debtors and the Committee shall fully cooperate with the Examiner in the performance of any of the Examiner's duties and the Investigation, and that the Debtors and the Committee shall use their respective best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation.

5. Nothing herein shall preclude the Committee from conducting its own investigation into the affairs of third parties that are not current or former officers, directors, or employees of the Debtors to determine whether the estate has claims or causes of action against such or other third parties.

6. The Debtors shall provide to the Examiner all non-privileged documents and information within their possession that the Examiner deems relevant to perform the Investigation. If the Examiner seeks the disclosure of documents or information as to which the Debtors assert a claim of privilege, or otherwise to disclosing, including on the basis that the request is beyond the scope of the Investigation, and the Examiner and the Debtors are unable to reach a resolution on whether or on what terms such documents or information should be disclosed to the Examiner, the matter may be brought before the Court for resolution.

7. Within seven (7) business days after entry of the order approving the appointment of the Examiner is entered on the docket in these cases, the Examiner shall propose a work plan (the "Work Plan") and shall provide his or her budget for the Investigation consistent with this Order, which shall be subject to the approval of the Court on seven (7) days' notice to all parties that have requested notice pursuant to Bankruptcy Rule 2002.

8. The Examiner shall prepare and file a report setting forth the result of the Examiner's Investigation ("Report"), as is required by 11 U.S.C. § 1106(a)(4), within sixty (60) days following the filing of the Work Plan, unless such time shall be extended by order of the Court on Notice to all parties that have requested notice pursuant to Bankruptcy Rule 2002.

9. The Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the performance of the Investigation of the Examiner's duties until the Examiner's report is filed with the Court, unless otherwise ordered by this Court.

10. The Examiner may retain attorneys and/or other professionals if he or she determines that such professionals are necessary to discharge his or her duties, all of which professionals shall file applications with this Court for approval of their retention, and each application shall be subject to Court approval under standards equivalent to those set forth in section 327 of the Bankruptcy Code.

11. The Examiner and any professionals retained by the Examiner pursuant to any order of this Court shall be compensated and reimbursed for their expenses pursuant to any procedures for interim compensation and reimbursement of expenses of professionals that are established in these cases. Compensation and reimbursement of expenses of the Examiner and any professionals retained by the Examiner shall be determined pursuant to 11 U.S.C. § 330.

12. The Examiner shall have the standing of a "party-in-interest" with respect to the matters that are within the Scope of the Investigation, and shall be entitled to appear and be heard at any and all hearings in these cases; *provided, however*, that the Examiner shall not have the standing to prosecute any claims or cause of actions.

13. This Order is without prejudice to (i) the right of any party in interest to seek relief from the Court to further expand the Scope of the Investigation and (ii) the right of the Examiner to

seek such other relief as he or she may deem appropriate in furtherance of the discharge of his or her duties and the Investigation.

14. Nothing in this Order shall impede the right of the United States Trustee or any other party to request any other lawful relief, including but not limited to the appointment of a trustee.

15. The Examiner shall cooperate fully with any governmental agencies (such cooperation shall not be deemed a public disclosure as referenced above) including, but not limited to, any federal, state or local government agency that may be investigating the Debtors, its management or its financial condition, and the Examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such agencies.

16. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
August ___ , 2022

HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE