

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

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

Index No.: 452784/2023

Plaintiff, :

-against- :

STIPULATION AND
CONSENT TO JUDGMENT

GEMINI TRUST COMPANY, LLC; GENESIS
GLOBAL CAPITAL, LLC; GENESIS ASIA PACIFIC :
PTE. LTD.; GENESIS GLOBAL HOLDCO, LLC; :
DIGITAL CURRENCY GROUP, INC.; SOICHIRO :
MORO (a.k.a. MICHAEL MORO); and BARRY E. :
SILBERT. :

Hon. Melissa A. Crane, J.S.C.
Commercial Div., Part 60M

Defendants. :

----- X

WHEREAS, Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York (the “OAG” or “Plaintiff”) commenced this action in Supreme Court of the State of New York, County of New York, by Summons and Complaint on October 19, 2023 (the “Complaint”), against the above-named defendants Gemini Trust Company, LLC (“Gemini”), Genesis Global Capital, LLC (“Genesis Capital”), Genesis Asia Pacific Pte. Ltd. (“GAP”), Genesis Global Holdco, LLC (“Genesis Holdco” and, collectively with Genesis Capital and GAP, the “Genesis Defendants”), Digital Currency Group, Inc. (“DCG”), Soichiro Moro (a.k.a. Michael Moro) (“Moro”), and Barry E. Silbert (“Silbert” and, collectively with Gemini, the Genesis Defendants, DCG, and Moro, the “Defendants”), and thereafter amended the Complaint against Defendants (NYSCEF Doc. No. 17) on February 9, 2024 (the “Amended Complaint,” and collectively with the Complaint, the “OAG Complaint”);

WHEREAS, certain individuals and entities, including retail customers, loaned¹ digital assets, also known as cryptocurrencies, through a program offered by Gemini and Genesis Capital called Gemini Earn (or “Earn”), where Gemini customers (the “Earn Investor”)² could profit by lending their cryptocurrencies to Genesis Capital.

WHEREAS, the OAG Complaint alleges that Gemini violated New York General Business Law (“GBL”) §§ 352 *et seq.* (the “Martin Act”) and Executive Law § 63(12) by making a series of false and misleading statements and omissions related to Earn, which Gemini portrayed as a low-risk, highly liquid investment that could be redeemed at any time;

WHEREAS, the OAG Complaint seeks damages, restitution of all funds obtained by Defendants in connection with their alleged conduct, disgorgement of all amounts obtained in connection with or as a result of their alleged conduct, and an injunction prohibiting Defendants from engaging in any business related to the issuance, offer, distribution, exchange, promotion, advertisement, negotiation, purchase, investment advice, or sale of securities or commodities within or from this state or violating the Martin Act and Executive Law § 63(12);

WHEREAS, on November 16, 2022, Genesis Capital suspended all withdrawals, including under Earn, leaving at least 232,000 Earn Investors, of which at least 29,000 were New Yorkers, with notional³ value of approximately \$1 billion in unreturned digital assets;

¹ For the avoidance of doubt, the terms “loan”, “lender” and “investment” herein are used solely for ease of reference and in no way reflect a determination of whether such transactions constitute, involve, or relate to the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities or commodities.

² For the avoidance of doubt, the term “Earn Investor” herein is used solely for ease of reference and in no way reflects a determination of whether such transactions constitute, involve, or relate to the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities or commodities.

³ The term “notional” herein means the total value of an underlying asset.

WHEREAS, on January 19, 2023, each of the Genesis Defendants (*i.e.*, Genesis Holdco, Genesis Capital, and GAP, collectively in the bankruptcy proceeding the “Bankruptcy Debtors”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, in the United States Bankruptcy Court, Southern District of New York (the “Bankruptcy Court”), which cases are being jointly administered under the lead case captioned, *In re Genesis Global Holdco, LLC, et al.*, Case No. 23-10063 (the “Genesis Bankruptcy Case”);

WHEREAS, on or about April 19, 2024, the Bankruptcy Court in the Genesis Bankruptcy Case approved a settlement agreement among the Bankruptcy Debtors, Gemini, on its own behalf and on behalf of Earn Investors, and other parties (the “Gemini Bankruptcy Settlement”) that, in relevant part, allowed for certain payments, on an in-kind “coin-for-coin” basis, to be made to the Earn Investors related to their bankruptcy claims. The Gemini Bankruptcy Settlement, including the Bankruptcy Court’s Order approving the Gemini Bankruptcy Settlement, is memorialized under Genesis Bankruptcy Proceeding Doc. Nos. 1499 and 1598, and are incorporated herein by reference;

WHEREAS, on or about May 29, 2024, Gemini made certain payments, on an in-kind “coin-for-coin” basis, to the Earn Investors; however, as of that date, the Earn Investors were not made completely whole. Earn Investors were still owed cryptocurrencies with a combined notional dollar value of approximately \$50 million, referred to as the “Completion Digital Assets” in the Gemini Bankruptcy Settlement and herein.

WHEREAS, Gemini was served with the above-referenced OAG Complaint and Gemini appeared in this action;

WHEREAS, Gemini agrees, among other relief, to provide complete and full restitution for all Earn Investors within seven (7) days of execution of the Stipulation and Consent to Judgment; and

WHEREAS, Plaintiff and Gemini now desire to resolve the claims alleged in the OAG Complaint against them upon the terms set forth below;

WHEREAS, Gemini has agreed to the relief specified herein and in the [Proposed] Order and Judgment on Consent to resolve without further litigation the OAG's claims that Gemini violated the Martin Act, as alleged in the First Cause of Action, and Executive Law § 63(12), as alleged in the Fourth and Sixth Causes of Action; and

NOW, THEREFORE, IT IS HEREBY ACKNOWLEDGED, STIPULATED AND CONSENTED to, by, and among Plaintiff and Gemini, that:

1. Gemini shall be bound by the terms of this Stipulation and Consent to Judgment (the "Stipulation") and the Order and Judgment on Consent and waive appeal thereof.
2. Gemini admits that it has been properly served with the OAG Complaint, and desires to settle and resolve this action as against it in its entirety.
3. Gemini neither admits nor denies the OAG's allegations against Gemini set forth in the OAG Complaint, except as to personal jurisdiction and subject matter jurisdiction, which Gemini admits. Gemini waives any and all arguments concerning lack of personal jurisdiction or subject matter jurisdiction. Following execution of this Stipulation, Gemini shall (i) not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the OAG Complaint or creating the impression that the OAG Complaint is without factual basis; and (ii) not make or permit to be made any public statement to the effect that Gemini does not admit the allegations of the OAG Complaint, or that this Stipulation contains no

admission of the allegations, without also stating that Gemini does not deny the allegations. Nothing in this paragraph affects Gemini's (i) testimonial obligations or (ii) right to take legal or factual positions in litigation or other legal proceedings, including in case of the *Securities and Exchange Commission v. Genesis Global Capital, LLC and Gemini Trust Company, LLC*, filed in the Southern District of New York, under Case No. 23-cv-287.

4. Gemini consents to the jurisdiction of New York State courts with respect to this Stipulation and the Order and Judgment on Consent, and exclusively chooses New York State law to govern any and all disputes arising out of this Stipulation, the Order and Judgment on Consent, and the enforcement thereof. This Court shall retain jurisdiction to enforce this Stipulation and the Order and Judgment on Consent.

Restitution

5. Within seven (7) days of the execution of this Stipulation, Gemini agrees to make full and complete restitution to the Earn Investor on an in-kind "coin-for-coin" basis as described in Paragraph 7 hereof (the "Earn Restitution"), *i.e.*, distributions made in the same amount and types of cryptocurrencies loaned by the Earn Investor. For the avoidance of doubt, for example, where an Earn Investor lent one bitcoin in Earn, following the process described herein, that Earn Investors will have received one bitcoin back.

6. The Earn Investors eligible for the Earn Restitution shall be those Earn Investors who were entitled to receive, and did receive, distributions from Gemini on or about May 29, 2024.

7. Full and complete restitution shall mean distribution of the Completion Digital Assets by Gemini directly through Gemini's platform to the Earn Investor. The Completion Digital Assets are as described in the Gemini Bankruptcy Settlement; that is, for the avoidance of doubt, the difference between the amount of cryptocurrency or cryptocurrencies owed to Earn

Investor as stipulated in the Gemini Bankruptcy Settlement, on an in-kind “coin-for-coin” basis, on the one hand, and the amount of cryptocurrency or cryptocurrencies Gemini distributed to Earn Investor on or about May 29, 2024, on an in-kind basis, on the other hand. For the avoidance of doubt, the Completion Digital Assets equals approximately three-percent (3%) of each cryptocurrency asset owed to Earn Investor, or a notional dollar value of approximately \$50 million worth of various cryptocurrencies.

8. Gemini agrees to make the Earn Restitution contemplated herein in advance of or regardless of Gemini’s receipt or non-receipt of DCG Receipts (as such term is defined in the Gemini Bankruptcy Settlement) and to also provide the OAG with an accounting, or other proof of payment as agreed by the OAG, sufficient to show Gemini’s compliance (“Proof of Compliance”). Gemini will provide Proof of Compliance to the OAG within seven (7) days of making its final Earn Restitution distribution.

9. In the event that Gemini fails to comply with its obligation to distribute the Earn Restitution as described herein, as stated in the Order and Judgment on Consent, Plaintiff may take all steps to obtain the outstanding cryptocurrencies from Gemini for the benefit of the Earn Investor, including by entering a judgment in favor of the Plaintiff and against Gemini in the amount of whatever portion of the Completion Digital Assets described in paragraph 7 remain undistributed. In the event that Plaintiff seeks to enter judgment in favor of the Plaintiff and against Gemini as referenced under this paragraph, the notional dollar value of any undistributed Completion Digital Assets shall be calculated using the time-weighted average price (“TWAP”) of each type of undistributed Completion Digital Assets within a seven (7) day period starting at

4 p.m. eastern time on the day following the execution date of this Stipulation.⁴ The OAG and Gemini shall work in good faith to determine the value of any applicable Completion Digital Assets, including as to those assets which may not be listed on the referenced pricing source. If the OAG and Gemini cannot agree on the value of any applicable Completion Digital Assets pursuant to the terms of this Stipulation, the OAG may seek a determination of this Court regarding the same.

10. Gemini further attests that as of the date of execution of this Stipulation, Gemini is not insolvent and has adequate funds and resources to pay the agreed-upon settlement restitution as set forth in the [Proposed] Order and Judgment on Consent.

Injunctive Relief

11. Gemini is permanently restrained and enjoined from engaging, or attempting to engage in, conduct in violation of any applicable laws, including but not limited to the Martin Act and Executive Law § 63(12).

12. Gemini is permanently restrained and enjoined from directly or indirectly engaging in the lending of any cryptocurrency in the State of New York. Gemini certifies under penalties of perjury that it has ceased Gemini Earn and will not hereafter conduct or transact any business under Gemini Earn, or any other cryptocurrency lending program or business, in or from the State of New York.

13. In the event that future state or federal legislation specifically permits cryptocurrency lending programs in or from the State of New York, Gemini shall notify the OAG,

⁴ The pricing source for the TWAP shall be the same as that used in the Gemini Bankruptcy settlement; that is, for the avoidance of doubt, as referenced in Section 11.11(b) of Genesis Bankruptcy Proceeding Doc. No. 1499.

in writing, and seek the OAG's permission to waive further compliance with this provision, which consent shall be at the OAG's sole discretion but shall not be unreasonably withheld.

Cooperation

14. As stated in the Order and Judgment on Consent, Gemini shall provide full and complete cooperation with the OAG in the present action and in any and all matters relating to the conduct described in the OAG Complaint against Defendants DCG, Silbert, Moro, and/or the Genesis Defendants, until the date upon which all investigations and actions arising out of such conduct are concluded. Gemini agrees to:

- a. Attend all meetings at which OAG requests Gemini's presence and answer all questions truthfully;
- b. Voluntarily appear and fully, fairly, and truthfully testify at any trial or at any other proceeding that OAG may direct, including by affidavit form;
- c. Provide testimony sufficient to authenticate documents and records, including but not limited to any and all documents and records previously produced by Gemini to the OAG or which Gemini may in the future produce to the OAG;
- d. Produce competent witnesses with first-hand knowledge to produce records and provide testimony concerning the facts and subject matter referenced in the OAG Complaint;
- e. Use its best efforts to ensure that its former officers, directors, employees, records custodians, and agents fully and promptly cooperate with any such OAG investigation and related proceedings and actions in New York State, including by responding to requests for information, documents and testimony;

- f. Maintain and preserve books and records concerning the allegations and subject matter referenced in the OAG Complaint, including the retention of true and accurate copies of all documents and records previously produced to the OAG during the OAG's investigation and this action, as well as true and accurate copies of all documents and records that are produced to the OAG pursuant to this Stipulation or the Order and Judgment on Consent;
- g. Furnish to OAG all documents, records and other material in Gemini's lawful possession, custody or control that may be relevant to all inquiries made by OAG;
- h. Accept service of legal process and other legal documents, including subpoenas and requests for information; and,
- i. Cooperate with the OAG's efforts to seek and obtain approval of this Stipulation and Order and Judgment on Consent by this Court, including taking all reasonable and necessary steps needed to obtain court approval.

15. Gemini shall also reasonably respond to requests made by OAG, including making timely responses to any freeze requests as well as information and document requests, including through its law enforcement portal at lawenforcement@gemini.com.

Conduct-Based Relief

16. Within thirty (30) days of the execution of the Order and Judgment on Consent, Gemini shall disclose to its United States customers in an easily accessible manner on its website and mobile applications that: (a) it is not registered with the Securities and Exchange Commission ("SEC") as a national securities exchange, pursuant to section six the Securities and Exchange Act of 1934, and (b) it has not been designated as a contract market by the Commodity Futures Trading Commission ("CFTC"), pursuant to section five of the Commodity Exchange Act, until such time

that it is registered with the SEC as a national securities exchange or the CFTC designates Gemini a contract market, respectively. This disclosure shall remain easily accessible to Gemini's United States customers on Gemini's website and mobile applications.

17. Gemini shall make certain disclosures on Gemini's website and mobile applications to its United States customers describing the risk factors outlined in investor alerts, dated March 1, 2021 and June 2, 2022, that were issued by the OAG (the "OAG Investor Alerts"). Within sixty (60) days of the execution of this Stipulation, Gemini shall draft and propose language to the OAG, in writing, concerning the risk disclosures under this paragraph. Gemini shall use its best efforts to draft and propose risk disclosures in a manner that is consistent with the OAG Investor Alerts and ensure that it is conspicuous and easily accessible to its United States customers via its website and mobile applications. The OAG shall review Gemini's proposal under this paragraph and, at the OAG's sole discretion, the OAG may object to the proposed risk disclosure language. Gemini shall use its best efforts to resolve any objections raised by the OAG within fifteen (15) days of the OAG's objections. Gemini agrees not to use language in its risk disclosure under this paragraph that the OAG, in its sole determination, finds objectionable.

18. Gemini shall publicly disclose to its United States customers in a schedule posted in an easily accessible manner on its website and mobile applications any fee or commission it receives from a third party in connection with the listing of a digital asset or with the trading of a digital asset on its platform by a Gemini customer. This disclosure shall remain easily accessible to Gemini's United States customers on Gemini's website and mobile applications.

19. Subject to consultation with, and with no objection by, other regulators, Gemini shall provide to the OAG with a copy of the following: (a) any Governance and Management Assessment reports, the consulting work conducted by a third-party consulting firm to conduct an

assessment of and report upon Gemini's governance and management effectiveness, and (b) any monthly written updates detailing the status of the Genesis Capital Bankruptcy, including the status of any claims by Earn Investors.

20. Gemini acknowledges that it has received and reviewed a copy of the [Proposed] Order and Judgment on Consent and agrees to the obligations and duties it imposes.

21. Gemini's failure to comply with any provision of the Order and Judgment on Consent shall be deemed to be a violation of the Order and Judgment on Consent, and upon any such violation, the OAG may take any and all steps available to enforce the Order and Judgment on Consent, including by filing for civil or criminal contempt. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the OAG alleges that Gemini violates the Order and Judgment on Consent, or to limit Gemini's defenses to any allegation that it has violated the Order and Judgment on Consent.

22. If a court of competent jurisdiction determines that Gemini has violated the Order and Judgment on Consent, Gemini shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing the Order and Judgment on Consent, including without limitation legal fees, expenses, and court costs.

23. This Stipulation and Consent to Judgment is entered into by Gemini as its own free and voluntary act with full knowledge and understanding of the nature of the actions and the obligations and duties imposed upon them by the Order and Judgment on Consent. Gemini consents to the entry of the Order and Judgment on Consent without further notice, and agrees that no offers, agreements, or inducements of any nature whatsoever have been made to it by Plaintiff or any employee of the OAG to procure this Stipulation and Consent to Judgment, except as set forth in the annexed [Proposed] Order and Judgment on Consent.

24. Gemini expressly agrees and acknowledges that, in the event of a violation of the Order and Judgment on Consent, neither this Stipulation and Consent to Judgment nor the Order and Judgment on Consent shall in any way bar or otherwise preclude the OAG from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Order and Judgment on Consent against Gemini, or from using in any way statements, documents, or other materials produced or provided by Gemini prior to or after the date of this Order and Judgment on Consent, and any statute of limitations or other time-related defenses related to an asserted violation of the Order and Judgment on Consent are tolled from and after the effective date of the Order and Judgment on Consent.

25. In any subsequent civil litigation by the OAG, including in a proceeding to enforce this Stipulation, the Order and Judgment on Consent, or the OAG's rights to any payment or money judgment pursuant to the Order and Judgment on Consent, such as a nondischargeability complaint in any bankruptcy case, the facts alleged in the OAG Complaint shall be taken as true, without further proof thereof. These facts are sufficient to establish all the elements necessary to sustain an action by the OAG pursuant to section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. §523(a)(2)(A), and this Order and Judgment on Consent shall have collateral estoppel effect for such purposes.

26. This Stipulation and Consent to Judgment and the Order and Judgment on Consent are binding on Gemini and all of the Gemini's agents, trustees, servants, employees, predecessors, successors, and assigns.

27. The OAG shall seek approval of this Stipulation and the Order and Judgment on Consent by this Court.

28. Nothing in this Stipulation and the Order and Judgment on Consent shall release any claims that OAG or Gemini may have against the other Defendants (*i.e.*, the Genesis Defendants, DCG, Moro, and Silbert), who are Defendants named in the OAG Complaint. And, for the avoidance of doubt, nothing in this Stipulation and the Order and Judgment on Consent shall (i) bind any other governmental agency or office or (ii) derogate Gemini's rights under the Gemini Bankruptcy Settlement, including without limitation Gemini's subrogation rights described in Paragraph 9 of the order approving such settlement.

29. Nothing in this Stipulation and Consent to Judgment and the Order and Judgment on Consent shall relieve Gemini of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

30. The undersigned signatory on behalf of Gemini represents and warrants that they have the authority to execute this Stipulation and Consent to Judgment on behalf of Gemini.

31. All correspondence required herein shall be delivered or mailed to the following addresses, unless a different address is specified in writing by the Party changing such address:

If to the OAG: Office of the Attorney General of the State of New York
Attn: Gabriel Tapalaga, Senior Enforcement Counsel
Investor Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10005

If to Gemini: Jack Baughman, Esq.
Baughman Kroup Bosse PLLC
One Liberty Plaza –46th Floor
New York, NY 10006

Gemini Trust Company, LLC
Attn: William Costello, General Counsel
315 Park Avenue South, 16th Floor
New York, New York 10010

32. Plaintiff may apply to this Court to make further applications for such other and further relief as it appears to the OAG is proper and necessary for the enforcement of this Stipulation and the Order and Judgment on Consent.

33. The Stipulation and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

34. This Stipulation may be executed in one or more counterparts and by way of electronic signature, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Stipulation by electronic mail in portable document format (.pdf) shall be effective as delivery of an original executed counterpart of this Agreement.

Dated: June 14, 2024

/s/ Gabriel Tapalaga

Gabriel Tapalaga, Esq
Senior Enforcement Counsel
Investor Protection Bureau
Office of the Attorney General of
the State of New York
28 Liberty Street
New York, New York 10005
(212) 416-6177

Counsel for the People of the State of New York

Dated: June __, 2024

Attorney for Gemini Trust Company, LLC

Defendant Gemini Trust Company, LLC

32. Plaintiff may apply to this Court to make further applications for such other and further relief as it appears to the OAG is proper and necessary for the enforcement of this Stipulation and the Order and Judgment on Consent.

33. The Stipulation and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

34. This Stipulation may be executed in one or more counterparts and by way of electronic signature, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Stipulation by electronic mail in portable document format (.pdf) shall be effective as delivery of an original executed counterpart of this Agreement.

Dated: June __, 2024

Gabriel Tapalaga, Esq
Senior Enforcement Counsel
Investor Protection Bureau
Office of the Attorney General of
the State of New York
28 Liberty Street
New York, New York 10005
(212) 416-6177

Counsel for the People of the State of New York

Dated: June 13, 2024

/s/ John F. Baughman
Attorney for Gemini Trust Company, LLC

DocuSigned by:
William Costello
DC08DB8563494DA...
Defendant Gemini Trust Company, LLC