

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

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

STIPULATION AND CONSENT

- against -

Index No. 450703/2023
IAS Part 46
Assigned to Justice Latin

MEK GLOBAL LIMITED and
PHOENIXFIN PTE LIMITED
d/b/a KUCOIN,

Respondents.

WHEREAS on March 9, 2023, Petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York (the “OAG”) filed a Verified Petition in Supreme Court, New York County, Index No. 450703/2023, alleging that Mek Global Limited and Phoenixfin PTE Ltd d/b/a KuCoin operated a cryptocurrency trading platform, located at www.kucoin.com, through which it offered, sold, and purchased securities and commodities, in the form of cryptocurrencies and violated New York Executive Law § 63(12) through its repeated and persistent violation of the General Business Law §§ 359-e(3), 359-e(14), and 352-c(3) (“the Martin Act”). OAG alleges that KuCoin violated the Martin Act by its unlawful offers, sales, and purchases of securities and commodities, in the form of cryptocurrencies in New York State and its unlawful representation of its website as an “exchange”; and

WHEREAS Petitioner served on the New York Secretary of State and mailed to Respondents a copy of Petition, Supporting Affidavits, Affirmation and exhibits thereto, Memorandum of Law and a Notice of Electronic Filing on March 17, 2023; and

WHEREAS on or about July 10, 2023, Respondent’s counsel appeared and informed OAG that Peken Global Limited, an entity located at Room 306, Victoria House, Victoria Mahe, Seychelles, is the

current owner of the KuCoin cryptocurrency trading platform; and

WHEREAS Respondents and Peken Global Limited are collectively referred to herein as “KuCoin”; and

WHEREAS the OAG and KuCoin are collectively referred to herein as the “Parties”; and

WHEREAS the Parties now desire to resolve the claims alleged in the Verified Petition upon the terms set forth below; and

WHEREAS KuCoin has agreed to the relief specified herein and in the [Proposed] Consent Order and Judgment to resolve without further litigation the OAG’s claims that (1) KuCoin acted as an unregistered securities broker or dealer and commodities broker-dealer by offering, selling, and purchasing securities and commodities, including but not limited to the ETH, LUNA, and UST tokens and the KuCoin Earn product, within the State of New York and (2) while engaged in the business of the sale of securities and commodities, KuCoin unlawfully represented itself as an “exchange” in violation of the Martin Act, which are repeated and persistent illegalities in violation of New York Executive Law § 63(12); and

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

1. KuCoin acknowledges receipt of a copy of the Notice of Petition, Verified Petition, Supporting Affidavits, Affirmation, and exhibits thereto, Memorandum of Law, and Notice of Electronic Filing and desires to settle and resolve this proceeding in its entirety.
2. KuCoin waives any and all arguments concerning lack of personal or subject matter jurisdiction.
3. KuCoin admits that it operates a cryptocurrency trading platform on which users, including users in New York State, can purchase and sell cryptocurrencies which are securities or commodities as defined under the laws of New York State and that KuCoin is not registered in New York State as a securities or commodities broker-dealer.

4. KuCoin admits that it represented itself as an “exchange” and was not registered as an exchange pursuant to the laws of New York State.

5. KuCoin acknowledges that it has received and reviewed a copy of the [Proposed] Consent Order and Judgment (the “Consent Order”) and agrees to the terms, obligations, and duties it imposes.

6. KuCoin will terminate access to its services for users in the State of New York (“NY”) and will close the relevant accounts of NY users no later than 120 days after the Effective Date of the Consent Order. KuCoin will continue to prohibit the creation of new NY accounts and will restrict access to its platform to existing NY accounts for the sole purpose of withdrawing assets no later than 30 days from the Effective Date of the Consent Order.

7. While subject to market fluctuation, KuCoin attests that as of November 29, 2023, New York Customers held assets with an approximate notional value of \$16,766,642 worth of fiat and/or cryptocurrencies at KuCoin. For the purposes of this Stipulation and Consent, “New York Customer” means anybody who conducts activity on the KuCoin platform from, within or through New York. KuCoin customers whose current address as indicated in KuCoin’s records is a New York address, whose current phone number as indicated in KuCoin’s records has a New York area code to communicate with KuCoin, or who has accessed KuCoin’s public website or mobile app from an IP address or GPS location associated with New York are presumed to be New York Customers, unless they have completed “know your customer verification” (“KYC Verification”) as a non-US national or as a U.S. individual who has presented a non-NY identification document. KuCoin shall not induce any New York Customer to provide a non-New York address, phone number, IP address or GPS location. Any individual who provides KYC Verification information indicating New York presence to KuCoin shall be entitled to withdraw their assets upon verification of their identity and KuCoin shall not permit such individual to trade on the KuCoin platform.

8. KuCoin has reached an agreement with the OAG to resolve all claims alleged in the OAG’s Verified Petition. KuCoin will pay \$5.3 million to the OAG according to the terms set forth

in the [Proposed] Consent Order and Judgment and will abide by certain injunctive relief set forth therein.

9. KuCoin will also return current account balances held by New York Customers at KuCoin in the approximate amount of \$16,766,642 worth of fiat and/or cryptocurrencies in its possession and control by allowing users to withdraw those balances and transferring any remaining balances after a ninety-day notice period to a third-party fund administrator who, to the extent reasonably possible, will return the remaining balances to New York Customers.

10. KuCoin further attests that as of the date of execution of this Stipulation and Consent KuCoin is not insolvent and has adequate funds and resources to pay the agreed-upon settlement payment to the State of New York as set forth in the [Proposed] Consent Order and Judgment.

11. Li Hang represents and warrants that he is an authorized representative of Peken Global Limited. Li Hang represents and warrants that Peken Global Limited is the current owner and operator of the KuCoin platform, and that he has the authority to execute this Stipulation and Consent on behalf of KuCoin. Li Hang further represents that neither Mek Global Limited nor Phoenixfin Ltd. PTE currently own or operate the KuCoin platform.

12. This Stipulation and Consent is entered into by KuCoin freely and voluntarily with full knowledge and understanding of the nature of the actions, terms, obligations, and duties imposed upon it by the [Proposed] Consent Order and Judgment. KuCoin consents to the entry of the [Proposed] Consent Order and Judgment without further notice and agrees to waive notice of entry thereof.

13. KuCoin agrees and acknowledges that failure to comply with any provision of the [Proposed] Consent Order and Judgment, or any related agreement in this Stipulation and Consent, shall be deemed a violation of the [Proposed] Consent Order and Judgment. Upon any such violation, the OAG may take any and all steps available to enforce the [Proposed] Consent Order and Judgment, including civil or criminal contempt, and nothing in the [Proposed] Consent Order and Judgment shall bar or preclude the OAG from using statements, documents, or materials produced or provided by KuCoin prior to or after the date of entry of the [Proposed] Consent Order and Judgment,

and any statute of limitations or other time-related defenses are tolled from and after the date of entry of the [Proposed] Consent Order and Judgment.

14. Petitioner may apply to the Court for such other and further relief as Petitioner deems necessary for the enforcement of the [Proposed] Consent Order.

Dated: New York, New York
December 8, 2023

By: 

John Ruth, Esq.
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By: 

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Attorneys for Peken Global
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Attorneys for Respondents Mek
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PTE Limited d/b/a KUCOIN


Li Hang,
Director

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At Part 46 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, Borough of Manhattan, City and State of New York, on the ____ day of _____, 2023

PRESENT:

Hon. Richard Latin
Justice

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

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

Petitioner

Index No.: 450703/2023

- against -

**[PROPOSED] CONSENT ORDER
AND JUDGMENT**

MEK GLOBAL LIMITED and
PHOENIXFIN PTE LTD
d/b/a KUCOIN,

Respondents.

Petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York (the "OAG") commenced this special proceeding by Verified Petition on March 9, 2023 against Mek Global Limited and PhoenixFin PTE Limited d/b/a KuCoin ("KuCoin") alleging that KuCoin acted as an unregistered securities broker or dealer and commodities broker-dealer and that while engaged in the business of the offer, purchase, and sale of securities and commodities, including but not limited to the ETH, LUNA, and UST tokens, and the KuCoin Earn product, KuCoin unlawfully represented KuCoin as an "exchange" and used an abbreviation or derivative of the word "exchange" in its name or assumed name in violation of New York General Business Law ("GBL") §§ 359-e(3), 359-e(14), and 352-c(3). The OAG also alleged that these violations of the GBL constituted persistent and repeated illegalities in violation of New York Executive Law § 63(12).

On July 10, 2023, Sherman & Sterling LLP appeared on behalf of KuCoin and informed OAG

that the current owner of the KuCoin cryptocurrency trading platform located at www.kucoin.com is Peken Global Limited. Peken Global Limited and the named Respondents shall, hereinafter, collectively be referred to as “KuCoin.”

KuCoin acknowledges receipt of a copy of the Notice of Petition, Verified Petition, Supporting Affidavits, Affirmation and exhibits thereto, Memorandum of Law, and Notice of Electronic Filing. The OAG and KuCoin, collectively referred to herein as the “Parties”, have reached an agreement to resolve claims alleged in the OAG’s Verified Petition. KuCoin consents to entry of this Consent Order and Judgment (the “Consent Order”) to fully and finally resolve the summary proceeding initiated by the OAG and waive notice of entry thereof.

NOW, on motion of the OAG, consented to by KuCoin, upon the Stipulation and Consent, and upon all the pleadings, it is hereby:

1. ORDERED, ADJUDGED AND DECREED that KuCoin, as well as each of its agents, trustees, servants, employees, successors, heirs and assigns, or any other person under its direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business in New York State, including businesses in which they have any legal or beneficial interest, are bound by the terms of this Consent Order and Judgment with respect to the provisions below and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

Monetary Relief

2. It is further ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the OAG and against KuCoin, in the amount of \$22,066,642, which includes account balances in the approximate notional amount of \$16,766,642 for the value, subject to market fluctuation, of the fiat and/or cryptocurrencies remaining on the KuCoin platform for relevant KuCoin accounts (“Account Balance Returns”) as of November 29, 2023 and \$5.3 million as disgorgement (“Disgorgement”).

3. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall satisfy the judgment by making payment of \$5.3 million, in full to the OAG within thirty days of the effective date (“Effective Date”) of the Consent Order, or as the OAG so extends, by wire transfer payable to the “State of New York” pursuant to wire transfer instructions provided by OAG and shall reference index number 450703/2023. For the purposes of this agreement the Effective Date of the Consent Order shall be the date on which this Court signs the Consent Order.

4. It is further ORDERED, ADJUDGED AND DECREED that, consistent with paragraph 9, KuCoin shall transfer the remaining balances of accounts that have not already been withdrawn by the New York Customers to a third-party fund administrator when the 90-day notice period ends. At the third-party fund administrator’s discretion, KuCoin will liquidate and provide U.S. Dollars for tokens that are not supported by the fund administrator at the then-prevailing market price. Those assets, including both fiat and cryptocurrency, shall be distributed by the third-party fund administrator until all remaining assets are returned to New York Customers or until the conclusion of three years from the Effective Date, at which time the remaining assets will be distributed to OAG.

General Injunction

5. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall not engage in conduct in violation of the Martin Act or Executive Law § 63(12).

6. It is further ORDERED, ADJUDGED AND DECREED that KuCoin, as well as its subsidiaries, affiliates, successors, and assigns, are permanently enjoined from engaging in the issuance, offer, exchange, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities or commodities within or from the State of New York, in any capacity, but may apply, with agreement of OAG (which will not be unreasonably withheld), for modification or dissolution of the permanent injunction following appropriate registration and/or licensure consistent with the laws of New York State.

7. It is further ORDERED, ADJUDGED AND DECREED that KuCoin is enjoined

from the offering, selling, or purchasing of securities and commodities or providing access to its cryptocurrency trading platform, to New York, or within the state of New York.

8. It is further ORDERED, ADJUDGED AND DECREED that KuCoin is enjoined from accepting further investments or deposits of cryptocurrencies into existing KuCoin accounts held by New York Customers. For the purposes of this Consent Order and Judgment, “New York Customer” means anybody who conducts activity on the KuCoin platform from, within or through New York. KuCoin customers whose current address as indicated in KuCoin’s records is a New York address, whose current phone number as indicated in KuCoin’s records has a New York area code to communicate with KuCoin, or who has accessed KuCoin’s public website or mobile app from an IP address or GPS location associated with New York are presumed to be New York Customers, unless they have completed KYC Verification as a non-US national or as a US individual who has presented a non-NY identification. KuCoin shall not induce any New York Customer to provide a non-New York address, phone number, IP address or GPS location. Any individual who provides KYC Verification information indicating New York presence to KuCoin shall be entitled to withdraw their assets upon verification of their identity and KuCoin shall not permit such individual to trade on the KuCoin platform.

9. It is further ORDERED, ADJUDGED AND DECREED that the OAG shall appoint a third-party fund administrator and KuCoin shall bear the cost to acquire and maintain the approved fund administrator’s services to distribute unclaimed assets belonging to New York Customers that remain on the KuCoin platform ninety days after the Effective Date of the Consent Order.

10. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall send weekly emails or SMS messages (depending on communication method that has been registered by the account holder) to all New York Customers instructing each customer that they withdraw the cryptocurrency held in their KuCoin account. KuCoin shall commence this weekly notification within five days of the Effective Date of the Consent Order and shall continue to provide weekly notifications for ninety days and daily notifications for the last two weeks of that ninety-day period.

The subject of the email (or the first line of the SMS message) shall clearly state that the customer must withdraw their assets. The body of the email or SMS message must inform the customer that failure to withdraw their assets within ninety days of the Effective date of the Consent Order will result in a transfer of their account value (as of that date) to the custody of the OAG's third-party fund administrator at the end of the ninety-day period. KuCoin will bear the cost to acquire and maintain the approved fund administrator's services until all remaining assets are returned to New York Customers or after nobody has claimed the assets for three years, at which time they will be distributed to New York State. In addition to the weekly emails/SMS messages, as set forth above, KuCoin shall make separate conspicuous notifications of the directive in the weekly emails to New York Customers on its mobile application within ten days from the date the Consent Order is signed until 90 days after the Effective Date of the Consent Order.

Customer Verification

11. It is further ORDERED, ADJUDGED AND DECREED that KuCoin must maintain mandatory KYC Verification for all prospective new customers to ensure that KuCoin does not provide its trading services to any New York Customers who have not completed KYC Verification and implement geo-restriction to limit access to its website to withdrawal of cryptocurrencies only for New York Customers with accounts in existence on or before December 8, 2023.

Cooperation and Other Terms

12. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall provide the OAG with a complete and accurate list of New York Customers who have an open account at KuCoin as of the date of this Agreement, including, to the extent available, their full name, address, IP address, email, phone numbers, amount and cryptocurrency and/or fiat balances for each cryptocurrency and fiat currency remaining in each New York Customer's Account, and the U.S. Dollar value of the cryptocurrency and fiat currency remaining in the New York Customer's Account as of November 29, 2023.

13. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall provide a written report to the OAG detailing the number of New York Customer accounts that have completed withdrawals (“Withdrawn Accounts”) or KYC Verification (“Non-US Accounts”) every thirty days during the ninety-day period described in Paragraph 10 herein. For each Withdrawn Account, the written report shall include the withdrawal date, email and IP address connected to the account, type of cryptocurrency held and its U.S. dollar equivalent as of the withdrawal date and as of November 29, 2023.

14. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall cooperate with any request by the OAG, including requests for information about any New York Customer including by providing any documents, email correspondence and information requested by the OAG related to customer asset withdrawals. KuCoin shall additionally aid OAG and the third party fund administrator in effecting return of outstanding account balances to New York Customers.

15. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall reasonably respond to requests made by U.S. Law Enforcement Agencies, including making timely responses to any freeze requests and information requests.

16. It is further ORDERED, ADJUDGED AND DECREED that KuCoin shall provide sworn statements verifying that they are not active within New York on an annual basis for the next three years.

Miscellaneous

17. It is further ORDERED, ADJUDGED AND DECREED that failure to comply with any provision of this Consent Order and Judgment, or any related agreement in the Stipulation and Consent by and among the Parties, shall be deemed to be a violation of the Consent Order and Judgment. Upon any such violation, the OAG may take any and all steps available to enforce the Consent Order and Judgment, including civil or criminal contempt, and nothing in the Consent Order and Judgment shall bar or preclude the OAG from using statements, documents, or materials

produced or provided by KuCoin prior to or after the date of entry of the Consent Order and Judgment, and any statute of limitations or other time-related defenses are tolled from and after the date of entry of the Consent Order and Judgment.

18. It is further ORDERED, ADJUDGED AND DECREED that the facts alleged in the Verified Petition shall be deemed admitted by KuCoin solely for purposes of any subsequent proceeding or action taken pursuant Paragraph 17.

19. It is further ORDERED, ADJUDGED AND DECREED that this Consent Order and Judgment is entered into solely for the purpose of resolving this action, and other than the obligations and provisions set forth herein, this Consent Order and Judgment does not limit or create liability for KuCoin nor limit or create defenses for KuCoin to any claims.

20. It is further ORDERED, ADJUDGED AND DECREED that nothing contained in this Consent Order shall be construed to give to or limit the rights of a person or an entity who is not a party to this action.

21. It is further ORDERED, ADJUDGED AND DECREED that nothing in this Consent Order shall be construed as to deprive any party of any private right under the law.

22. It is further ORDERED, ADJUDGED AND DECREED that if any clause, provision, or section of this Consent Order shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision or section of this Consent Order and this Consent Order shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section or provision had not been contained herein.

23. It is further ORDERED, ADJUDGED AND DECREED that nothing in this Consent Order shall be construed as relieving KuCoin of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Consent Order be deemed to grant KuCoin permission to engage in any acts or practices prohibited by such laws and regulations.

24. It is further ORDERED, ADJUDGED AND DECREED that any failure of the OAG to exercise any right under this Consent Order shall not constitute a waiver of any rights of the OAG

hereunder.

25. It is further ORDERED, ADJUDGED AND DECREED that all correspondence required herein shall be delivered or mailed to the following address, unless a different address is specified in writing by the party changing such address:

If to OAG: Office of the Attorney General of the State of New York
Attn: John Ruth, Assistant Attorney General
28 Liberty Street, 21st Floor
New York, New York 10005

If to KuCoin: John A. Nathanson, Esq.
Shearman & Sterling LLP
599 Lexington Ave,
New York, New York 10022

26. It is further ORDERED, ADJUDGED AND DECREED that the Court hereby retains jurisdiction to enforce this Consent Order and any related agreements and all disputes arising thereunder, and the Court retains authority to decide all such disputes.

27. It is further ORDERED, ADJUDGED AND DECREED that a violation by KuCoin of any agreement with the OAG as contemplated in this Consent Order shall be subject to remedies available for violation of this Consent Order.

Date: _____

ENTER:

HON. RICHARD LATIN