

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOPHIA RECA and JAMES K. SUPPLES, individually and
on behalf of all others similarly situated,

Plaintiffs,

-v-

FLASHDOT LIMITED F/K/A PHOENIXFIN LIMITED, MEK
GLOBAL LIMITED, PEKEN GLOBAL LIMITED,
PHOENIXFIN PRIVATE LIMITED (COLLECTIVELY D/B/A
KUCOIN), CHUN (A/K/A “MICHAEL”) GAN, KE (A/K/A
“ERIC”) TANG, AND CHAINALYSIS, INC.,

Defendants.

CIVIL ACTION NO. 24 Civ. 6316 (GHW) (SLC)

REPORT AND RECOMMENDATION

SARAH L. CAVE, United States Magistrate Judge.

TO THE HONORABLE GREGORY H. WOODS , United States District Judge:

I. INTRODUCTION

After unknown bad actors stole millions of dollars’ worth of cryptocurrency from Plaintiffs Sophia Reca (“Reca”) and James K. Supples (“Supples”) (together, “Plaintiffs”) (Dkt. No. 49 ¶¶ 22–23 (the “Amended Complaint”)), Plaintiffs’ efforts to recover the stolen cryptocurrency through litigation against other parties were unsuccessful. (See Dkt Nos. 66 at 8; 13–14; 67-2). Plaintiffs then determined that some portion of their stolen cryptocurrency “was sent to” accounts at KuCoin, the fifth-largest cryptocurrency exchange in the world (“KuCoin”), and filed this putative class action asserting claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. (“RICO”) and state law against entities and individuals

that operated KuCoin (the “KuCoin Defendants”).¹ (Dkt. Nos. 1 (the “Complaint”); 49 ¶¶ 1–33). Plaintiffs subsequently added as a Defendant Chainalysis, Inc. (“Chainalysis”), a vendor that supplied KuCoin with cryptocurrency-tracing software (the KuCoin Defendants and Chainalysis together, “Defendants”). (Dkt. No. 49 ¶¶ 34, 70–78).

Defendants now move under Federal Rule of Civil Procedure 12(b)(6) to dismiss the Amended Complaint (Dkt. Nos. 65 (the “KuCoin Motion”); 68 (the “Chainalysis Motion”, together, the “Motions”)), which the Honorable Gregory H. Woods has referred for this Report and Recommendation. (Dkt. No. 70). For the reasons set forth below, we respectfully recommend that the Motions be **GRANTED**.

II. BACKGROUND

Unless otherwise indicated, we summarize the factual background based on the Amended Complaint and the documents it incorporates, the truth of which we accept for purposes of the Motions. See Roth v. Jennings, 489 F.3d 499, 509 (2d Cir. 2007); Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002); Acklin v. Eichner, No. 20 Civ. 7042 (GHW), 2021 WL 4442819, at *1 (S.D.N.Y. Sept. 27, 2021).²

A. Factual Background

1. Plaintiffs

Reca is an individual domiciled in Florida. (Dkt. No. 49 ¶ 22). In May 2021, while she was a United States resident, “an unknown third party targeted [her] Atomic Wallet account located

¹ The KuCoin Defendants are Flashdot Limited f/k/a PhoenixFin Limited (“Flashdot”), Mek Global Limited (“Mek”), Peken Global Limited (“Peken”), PhoenixFin Private Limited (“PhoenixFin”), Chun (a/k/a “Michael”) Gan (“Gan”), and Ke (a/k/a “Eric”) Tang (“Tang”). (Dkt. No. 49 ¶¶ 26–33).

² Internal citations and quotation marks are omitted from case citations unless otherwise indicated.

in the U.S. and stole from her ten different cryptocurrencies (then valued at approximately \$1,400,000.00 USD).” (Id.; see id. ¶ 161). An “extensive investigation” determined that between May and July 2021, “many of [] Reca’s stolen assets were transferred in a series of transactions to a collection of deposit addresses at KuCoin” that she believes the thief “owned, controlled, or maintained.” (Id. ¶¶ 22, 162). Reca did not have an account at or agreement with KuCoin. (Id. ¶ 22). In September 2021, Reca filed an action in the United States District Court for the Southern District of Florida against a John Doe defendant, who, she alleged, stole the same cryptocurrency at issue in this action, converted it to other forms of cryptocurrency, and transferred it to accounts on other cryptocurrency exchanges. (Dkt. No. 67-1 (the “Florida Action”)).³ In January 2022, the Florida Action was dismissed without prejudice for failure to file proof of service. (Dkt. No. 67-2 at 2).

Supples is an individual domiciled in Puerto Rico. (Dkt. No. 49 ¶ 23). “In December 2024,” while he resided in Puerto Rico, “unknown hackers targeted [his] MEXC.com account located in the U.S. and stole from him six different cryptocurrencies (then valued at approximately \$1,200,000.00).” (Id.) Like Reca, “an extensive investigation” determined that, “in December 2024, a material portion of [Supples’ stolen] cryptocurrency . . . was sent to at least one account at KuCoin.” (Id.; see id. ¶ 163). Supples alleges that his stolen cryptocurrency

³ In considering the Motions, the Court may take judicial notice of Plaintiffs’ filings in other courts “not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.” Global Network Commc’ns, Inc. v. City of New York, 458 F.3d 150, 157 (2d Cir. 2006); see Mangiafico v. Blumenthal, 471 F.3d 391, 398 (2d Cir. 2006) (explaining that “docket sheets are public records of which court could take judicial notice”); Kramer v. Time Warner Inc., 937 F.2d 767, 774 (2d Cir. 1991) (noting that “courts routinely take judicial notice of documents filed in other courts, again not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.”); Press v. Primavera, 685 F. Supp. 3d 216, 224–25 (S.D.N.Y. 2023) (taking judicial notice of federal court filings); Fed. R. Evid. 201(b).

“followed similar types of paths” as Reza’s. (*Id.* ¶ 163). In April 2025, Supples was added as a named plaintiff in a putative class action in the United States District Court for the Northern District of California against another cryptocurrency exchange, OKCoin, involving similar claims—civil RICO, conversion, and aiding and abetting conversion based on the alleged failure to implement adequate Know Your Customer (“KYC”) and anti-money laundering (“AML”) procedures—based on the December 19, 2024 theft of over \$1.34 million in cryptocurrency, a “material portion” of which was sent to an OKCoin account. (Dkt. No. 67-3 at 9 ¶ 22 (the “OKCoin Action”)). The plaintiffs in the OKCoin Action label the alleged RICO enterprise the “OKX Crypto-Wash Enterprise.” (Dkt. No. 67-3 at 5 ¶ 7, 20 ¶ 62).

Plaintiffs claim that after their cryptocurrency was stolen, “it was traceable on the blockchain so the location of the cryptocurrency could, with the assistance of forensic analysis, be identified and potentially recovered.” (Dkt. No. 49 ¶ 164). Plaintiffs contend, however, that KuCoin’s “refus[al] to implement adequate KYC and AML policies and procedures” enabled “the bad actors who stole Plaintiffs’ and Class members’ cryptocurrency . . . to launder it through KuCoin.” (*Id.*) Plaintiffs attribute the loss of “the ability to track and potentially recover their stolen cryptocurrency” to “the laundering of their stolen cryptocurrency through KuCoin[.]” (*Id.*)

Plaintiffs seek to represent, under Federal Rule of Civil Procedure 23, a class comprised of:

All persons or entities in the United States whose cryptocurrency was removed from a digital wallet, account, or protocol as a result of a hack, ransomware attack, or theft, and, between August 21, 2020 and the date of Judgment (the “Class Period”), transferred to a KuCoin account, and who have not recovered some, if not all, of their cryptocurrency that was transferred to KuCoin.

(Dkt. No. 49 ¶ 214 (the “Proposed Class”)).

2. Defendants

a. The KuCoin Defendants

Gan and Tang co-founded, operated, managed, and controlled KuCoin and own 75% of Flashdot's shares. (Dkt. No. 49 ¶¶ 31–33, 35, 174–75). Flashdot, a Cayman Islands company, was the holding company for KuCoin, which at times operated as Mek, a Seychelles company. (Id. ¶¶ 26–27). Since September 2019, Peken, a Seychelles company that Tang and Gan control, has owned and operated KuCoin. (Id. ¶¶ 28, 176). From September 2017 until December 2018, PhoenixFin, a Singapore company of which Gan was the Chief Operating Officer and Tang was the President, operated KuCoin. (Id. ¶¶ 29, 177). From July 2019 until at least June 2023, PhoenixFin owned the “KuCoin.com” domain. (Id. ¶ 29). Since 2017, Flashdot, Mek, Peken, and PhoenixFin have operated KuCoin and have shared “the same founding team, management team, and operation team.” (Id. ¶ 30). They advertise on the same website and their employees have “@kucoin.com” email addresses. (Id.) KuCoin's employees and physical operations are in Singapore and China, among other places. (Id. ¶¶ 30, 36).

b. Chainalysis

Chainalysis, a Delaware corporation with headquarters in New York City, “is a crypto-tracing analysis company” that KuCoin retained “to implement software solutions to identify, analyze, and track cryptocurrency and transactions.” (Dkt. No. 49 ¶¶ 34, 179). “Chainalysis had the resources and expertise to help KuCoin identify bad actors who laundered cryptocurrency through hacks, ransomware attacks, and theft and thereafter launder through KuCoin.” (Id. ¶ 76).

Plaintiffs allege that, on June 1, 2020, “KuCoin announced a partnership with Chainalysis to ‘further deepen KuCoin’s commitment to security and compliance.’” (Dkt. No. 49 ¶ 70; see id. ¶ 34). KuCoin stated that “[w]ith this collaboration, the two companies will continue to promote compliance-first business practices in the crypto world.” (Id. ¶ 72). A Chainalysis executive stated that Chainalysis was “thrilled to partner with exchanges like KuCoin that prioritize compliance and the safety of its users. Our relationship with KuCoin is also an example of our continued commitment to working with leading exchanges in the Asia Pacific region, an important hub of cryptocurrency activity.” (Id. ¶ 74). Plaintiffs claim that KuCoin “highlighted its partnership with Chainalysis to make it appear as though KuCoin was committed to complying with the law when Defendants knew that was not true.” (Id. ¶¶ 78, 179, 202, 272).

KuCoin used Chainalysis’ proprietary “Know-Your-Transaction (‘KYT’) software, which was designed to identify and purportedly block money laundering and other illicit actions in real-time.” (Dkt. No. 49 ¶ 34). KuCoin also used Chainalysis’ “proprietary ‘Reactor’ software [] to investigate suspicious activities.” (Id.) For example, using Chainalysis’ Reactor, in September 2020 KuCoin and government authorities identified “‘hackers [who] stole more than \$275 million worth of cryptocurrency from KuCoin in one of the largest ever exchange hacks.’” (Id. ¶ 75).

“Even though Chainalysis enabled KuCoin to have access to information about illicit transactions, KuCoin refused to take any steps to prevent them.” (Dkt. No. 49 ¶ 34; see ¶¶ 78, 181). Plaintiffs allege that “Chainalysis reaped substantial financial benefits from its partnership with KuCoin[.]” (Id. ¶¶ 34, 181). Plaintiffs contend that the KuCoin Defendants and Chainalysis knew that “even though KuCoin had access to information and red flags alerting KuCoin to

potential crypto laundering and other illicit activities, KuCoin refused to implement adequate KYC and AML policies and procedures or dedicate resources to attempt to prevent those activities.” (Id. ¶ 78). Plaintiffs allege that “Chainalysis was complicit with the KuCoin Defendants’ refusal to prevent money laundering on the KuCoin platform in order to maintain the benefits of its partnership with KuCoin.” (Id. ¶¶ 78, 181).

3. RICO Allegations

a. KuCoin’s Operations

In September 2017, KuCoin launched on KuCoin.com, where customers could open accounts using an email address or telephone number and engage in cryptocurrency transactions. (Dkt. No. 49 ¶¶ 38–39). KuCoin assigned to accountholders “a custodial virtual currency wallet . . . [that] enabled [them] to conduct various types of transactions on the platform[,]” including swaps, funds transfers or withdrawals, and cryptocurrency conversions. (Id. ¶ 39). KuCoin charged customers fees to engage in these transactions. (Id. ¶ 40). By August 2021, KuCoin had executed 810 million transactions with a transaction volume valued at \$400 billion. (Id. ¶ 44). By December 2021, KuCoin had ten million users, making it one of the five largest cryptocurrency exchanges in the world. (Id.) As of June 2024, KuCoin had 30 million registered users. (Id. ¶ 45).

From its founding until at least December 2023, KuCoin solicited and served customers in the United States, where 20% to 50% of KuCoin’s customers were located. (Dkt. No. 49 ¶ 42; see id. ¶¶ 117–26). KuCoin was therefore “required to, but failed to, implement KYC and AML procedures.” (Id. ¶ 43, see id. ¶¶ 127–56). The KuCoin Defendants sought, however, “to conceal the existence of KuCoin’s U.S.-based customers to make it appear as if KuCoin was exempt from

U.S. AML and KYC laws and regulations.” (*Id.* ¶ 138). The United States statutes and regulations with which KuCoin was required to comply included:

- (1) Registering with the United States Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”);
- (2) Registering as a futures commission merchant (“FCM”) and money transmitting business (“MTB”) in compliance with the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.* (“BSA”) and the Commodity Exchange Act and its regulations (“CEA”), 31 C.F.R. §§ 1022.210, 1022.320, 1026.210, 1026.320;
- (3) Filing a suspicious activity report (“SAR”) within 30–60 calendar days of detecting suspicious transactions involving stolen assets; and
- (4) Complying with the Currency and Foreign Transactions Reporting Act, as amended, and related statutes, 12 U.S.C. §§ 1829b & 1951–59, 18 U.S.C. §§ 1956–57 & 1960, and 31 U.S.C. §§ 5311–14 & 5316–32.

(Dkt. No. 49 ¶¶ 2, 58–66; 83).

From its launch in 2017 until at least July 14, 2023, KuCoin enabled customers to open accounts at the “Finished Registration” or “Unverified” (together “Level 1”) and trade “without providing KYC information.” (Dkt. No. 49 ¶ 47). KuCoin permitted customers who underwent KYC verification procedures to withdraw and trade at higher volumes. (*Id.* ¶¶ 47–51). While acknowledging that “‘KYC can effectively reduce fraud, money laundering, and terrorist financing, among other malicious activities,’ KuCoin willfully refused to implement KYC requirements to prevent bad actors from laundering crypto at KuCoin.” (*Id.* ¶ 52). By continuing to permit Level 1 customers to use KuCoin without providing KYC information, “KuCoin knowingly permitted bad actors to freely open accounts and launder crypto through their KuCoin accounts.” (*Id.*) “KuCoin knew, or should have known, that numerous KuCoin customer wallet addresses were associated with prior illicit activity and blacklisted[.]” because the “KuCoin Defendants had access to tools, platforms, and crypto-tracing analysis services, including from [] Chainalysis, that enabled them to easily identify whether crypto was transferred from an external wallet or to a KuCoin account

that had previously been identified as being associated with illicit activity.” (Id. ¶ 53). For example, KuCoin was a member of the Crypto Defender’s Alliance (“CDA”), which had access to “the blacklist” of wallets associated with illicit activities that “continue[d] to transact on the KuCoin platform years after the date of blacklisting.” (Id. ¶ 54; see id. ¶ 55 (listing blacklisted KuCoin wallets)). By failing to block blacklisted wallets from sending or receiving transactions, Plaintiffs allege that KuCoin enabled “bad actors to steal and launder funds[.]” (Id. ¶ 81). Plaintiffs allege that if the KuCoin Defendants had complied with the laws and regulations listed above, “KuCoin would not have become a magnet and hub for cryptocurrency laundering; and it is highly unlikely that Plaintiffs’ and Class Members’ stolen cryptocurrency would have been laundered through KuCoin.com and rendered untraceable[.]” (Id. ¶ 87).

In July 2023, “KuCoin belatedly and purportedly adopted a KYC program requiring verification of identities.” (Dkt. No. 49 ¶ 153). Despite implementing the KYC program, however, “a substantial number of U.S.-based users continued using KuCoin’s platform without providing KYC information—thus demonstrating KuCoin’s KYC program was inadequate and not compliant with the BSA.” (Id. ¶ 155).

b. Cryptocurrency “laundering”

A cryptocurrency wallet “stores the passkeys a cryptocurrency holder uses to sign for their cryptocurrency transactions and provides the interface that lets the user access their crypto on the blockchains, and interact with protocols . . . to send crypto across different blockchains.” (Dkt. No. 49 ¶ 107). Blockchain transactions “are recorded on digital ledgers distributed across a decentralized network of nodes” such that “cryptocurrency can be tracked (within limits) after it is removed from the owner’s wallet or protocol.” (Id. ¶ 108). Victims of cryptocurrency theft,

with forensic assistance, “are regularly able to locate the precise location of their assets through the public ledger on the blockchain.” (*Id.* ¶ 109). “[L]aundering cryptocurrency, i.e., the removal of the ability for the stolen cryptocurrency to be tracked on the [public] ledger, is essential for a criminal to benefit from the theft without detection and eliminates a victim’s ability to recover their stolen cryptocurrency.” (*Id.* ¶ 111).

c. The “KuCoin Crypto-Wash Enterprise”

Plaintiffs allege that the “KuCoin Crypto-Wash Enterprise provided an effective way for bad actors to steal and launder crypto.” (Dkt. No. 49 ¶ 113). By refusing to implement AML and KYC procedures, Plaintiffs allege that “KuCoin affirmatively enabled bad actors to launder crypto at KuCoin.” (*Id.* ¶ 115; see id. ¶ 157 (“Because the KuCoin Defendants failed to implement an adequate KYC or AML program, KuCoin could not and did not monitor its customer transactions for money laundering, terrorist financing, and sanctions violations.”)). “[A] substantial portion of crypto laundered by bad actors [was] transferred to KuCoin from crypto wallets previously identified as wallets associated with illicit crypto activities.” (*Id.* ¶ 116). Plaintiffs contend that, “[h]ad the KuCoin Defendants complied with the law and ensured KuCoin had necessary AML and KYC policies, bad actors would not have been drawn to KuCoin to launder crypto,” or, if they had, the bad actors “would have been prevented from laundering stolen crypto through KuCoin, or KuCoin and the authorities would have been able to identify the bad actors and/or track the stolen assets that were withdrawn from KuCoin[,]” and, “[a]t a minimum, Plaintiffs and members of the Class would not have lost the ability to trace and potentially recover their stolen assets.” (*Id.* ¶ 115 (emphasis added)).

Plaintiffs allege that Defendants “engaged in a fraudulent scheme, common course of conduct, and conspiracy to gain market share and generate revenues for KuCoin (and Chainalysis) by enabling bad actors to launder cryptocurrency stolen from the United States through the KuCoin cryptocurrency exchange[,]” which Plaintiffs label as the “KuCoin Crypto-Wash Enterprise” within the meaning of 18 U.S.C. § 1961(4). (Dkt. No. 49 ¶¶ 167, 183–84). The interstate commercial activities of the KuCoin Crypto-Wash Enterprise included operating a website, operating smartphone applications, and transmitting cryptocurrency to, from, and within KuCoin accounts. (Id. ¶ 185). Plaintiffs allege that Defendants exercised control over and directed the affairs of the KuCoin Crypto-Wash Enterprise by, inter alia:

- structuring KuCoin’s platform to enable United States users to register and use KuCoin without providing KYC information;
- marketing to United States-based users despite knowing that KuCoin lacked adequate KYC or AML policies;
- operating the KuCoin.com domain;
- using a third-party customer service software provider to provide KuCoin customer service to United States customers; and
- the KuCoin Defendants’ allowing United States customers to obtain or maintain anonymous access to KuCoin and use spot, derivative, and margin trading services.

(Id. ¶ 186). Plaintiffs contend that the “KuCoin Crypto-Wash Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which Defendants engaged” and is separate from each Defendant. (Id. ¶ 193).

Plaintiffs allege that Defendants knowingly participated in the affairs of the KuCoin Crypto-Wash Enterprise through a pattern of racketeering activity that included:

- committing, and aiding and abetting, acts constituting indictable offenses under 18 U.S.C. §§ 1960 (relating to illegal money transmitters), 1961(1)(E) (acts indictable under the BSA), 1956 (laundering of monetary instruments), 1957 (engaging in monetary transactions in property derived

from specified unlawful activity), and 2314 (interstate transportation of stolen property); and

- operating an unlicensed MTB in violation of 18 U.S.C. § 1960.

(Dkt. No. 49 ¶¶ 204–11; see id. ¶¶ 223–45).

Plaintiffs also allege that Defendants engaged in a RICO conspiracy “to maximize revenues and/or market share[.]” (Dkt. No. 49 ¶ 195). Plaintiffs contend that the objectives of the conspiracy were: “(i) to execute the scheme; (ii) to enable customers to use KuCoin without requiring KYC or implementing AML policies, including U.S.-based users; and (iii) to gain market share and maximize fees and liquidity.” (Id. ¶ 196). To achieve those objectives, Plaintiffs allege that “Defendants willfully disregarded U.S. laws and regulations and encouraged bad actors to launder crypto at KuCoin.” (Id. ¶ 197). Plaintiffs contend that, because of the conspiracy, their cryptocurrency was stolen “as a result of hacks, ransomware, or theft, [and] laundered at KuCoin.” (Id. ¶ 200). To link Chainalysis to the RICO conspiracy, Plaintiffs allege:

KuCoin publicly highlighted its partnership with Chainalysis to make it appear as if it complied with KYC and AML rules and regulations even though the KuCoin Defendants and Chainalysis knew that KuCoin failed to implement them. Although KuCoin had access to red flags that warned the KuCoin Defendants of potentially illicit transactions, the KuCoin Defendants ignored those red flags. By ignoring the red flags, including those provided by Chainalysis, the KuCoin Defendants willfully permitted bad actors to launder ill-gotten crypto through the KuCoin platform, despite having the means of identifying and halting the illicit activity, or, at a minimum, implementing policies and procedures that would have enabled victims and the authorities to track the stolen assets. Despite the fact that KuCoin categorically failed to utilize Chainalysis’ tools to prevent money laundering and other illicit activity, Chainalysis continued its partnership with KuCoin in order to reap the financial and marketing benefits of the partnership.

(Id. ¶ 202). Plaintiffs claim that “[b]ut for Defendants’ scheme, Plaintiffs and the putative Class [] would have been able to track and potentially recover their stolen crypto.” (Id. ¶ 203).

4. Criminal and Regulatory Proceedings Against the KuCoin Defendants

On December 12, 2023, the New York State Attorney General (“NYAG”) announced that KuCoin had stipulated to the entry of a consent order refunding more than \$16.7 million to over 150,000 New York investors, paying a \$5.3 million fine, and agreeing to a ban on trading securities and commodities in New York and on making its platform available to New Yorkers. (Dkt. No. 49 ¶ 104 (the “NYAG Consent Order”)). In the NYAG Consent Order, KuCoin admitted that it: (i) operated an unregistered cryptocurrency platform on which users purchased and sold cryptocurrencies that are securities or commodities under New York law; (ii) failed to register as an “exchange” under New York law; and (3) as of November 29, 2023, held assets worth over \$16 million for New York customers. (Id. ¶ 105).

In an indictment unsealed on March 26, 2024, the United States Department of Justice (“DOJ”) charged KuCoin, Gan, and Tang with, inter alia, conspiring to operate an unlicensed MTB and conspiring to violate the BSA by willfully failing to maintain an adequate AML program “to prevent KuCoin from being used for money laundering and terrorist financing, failing to maintain reasonable procedures for verifying the identity of customers, and failing to file any [SARs].” (Dkt. No. 49 ¶ 98). The same day, the Commodity Futures Trading Commission (“CFTC”) announced a civil enforcement action charging Mek, PhoenixFin, Flashdot, and Peken with violating the CEA and CFTC regulations by, inter alia, illegally dealing in off-exchange commodity futures transactions, failing to register as an FCM, failing to supervise diligently its FCM activities, and failing to implement an effective customer identification program. (Id. ¶¶ 100–103).

On January 27, 2025, Peken pled guilty to operating an unlicensed MTB in violation of 18 U.S.C. §§ 1960 and 2, agreed to forfeit \$ 184.5 million, agreed to pay a criminal fine of

approximately \$ 112.9 million, and agreed that KuCoin would not conduct business in the United States for at least two years. (Dkt. No. 49 ¶ 88). In the plea allocution, Peken admitted that:

since its launch, KuCoin has served approximately 1.5 million registered users located in the United States, including registered users located in the Southern District of New York. Because KuCoin had a significant number of . . . registered users located in the United States, KuCoin knowingly conducted a money transmitting business that was required to register with . . . FinCEN. KuCoin violated United States law by failing to register with FinCEN as a money transmitting business[.]

(Id. ¶ 91). The same day, DOJ and Gan and Tang entered into a deferred prosecution agreement, pursuant to which Gan and Tang agreed to each forfeit over \$ 2.7 million in illicit gains, admitted that they “knowingly owned, from at least in or about September 2017 through at least in or about December 2023, part of a money transmitting business that was not registered or licensed in the United States[.]”agreed that their conduct violated 18 U.S.C. §§ 1960(a) and (b)(1)(A) and (B), and agreed to refrain from future involvement in KuCoin’s management or operations. (Id. ¶¶ 89–90).

B. Procedural Background

On August 21, 2024, Reca filed the Complaint, which named only the KuCoin Defendants. (Dkt. No. 1). On November 20, 2024, the Court ordered Plaintiffs to show cause why the action should not be dismissed for failure to prosecute based on Plaintiffs’ failure to serve the KuCoin Defendants within the deadline in Federal Rule of Civil Procedure 4(m). (Dkt. No. 13 (the “OTSC”)). Based on Reca’s response to the OTSC, the Court extended the service deadline to January 3, 2025 and set a deadline of December 18, 2024 for Reca to move for alternative service under Federal Rule of Civil Procedure 4(f)(3). (Dkt. No. 15). On December 18, 2024, the Court granted in part and denied in part Reca’s motion for alternative service, permitting service on the

KuCoin Defendants by various alternative means and reiterating the January 3, 2025 deadline for filing proof of service, which Reza subsequently met. (Dkt. Nos. 16–24).

On February 21, 2025, after the KuCoin Defendants filed a pre-motion letter pointing out deficiencies in the Complaint (Dkt. No. 36), to which Plaintiffs responded (Dkt. No. 38), Judge Woods held a conference to discuss their anticipated motion to dismiss the Complaint. (Dkt. Nos. 37; 39 (the “Conference”)). During the Conference, the parties agreed that New York law governed any state law claims, and Judge Woods found good cause to stay discovery pending any motion to dismiss, the briefing schedule for which he also set. (Dkt. No. 40 at 23:21–25, 40:1–45:15; see Dkt. No. 39).

On March 24, 2025, the KuCoin Defendants filed a motion to dismiss the Complaint. (Dkt. Nos. 45–47 (the “First MTD”)). In response to the First MTD, Plaintiffs filed the Amended Complaint, which added Supples as a Plaintiff and Chainalysis as a Defendant. (Dkt. No. 49). The Amended Complaint asserts three claims: (i) against all Defendants, violations of RICO § 1962(c) based on operation of an unlicensed MTB, violating the BSA, money laundering, and transportation of stolen property (the “RICO Claim”) and RICO conspiracy under § 1962(d) (the “RICO Conspiracy Claim”);⁴ (ii) against the KuCoin Defendants only, conversion (the “Conversion Claim”)); and (iii) against all Defendants, aiding and abetting conversion (the “Aiding and Abetting Claim”)). (Dkt. No. 49 ¶¶ 223–74). Judge Woods then denied the First MTD as moot and set a briefing schedule for the Motions. (Dkt. Nos. 52; 56).

⁴ Plaintiffs combine the RICO Claim and the RICO Conspiracy Claim into a single count, Count I (Dkt. No. 49 ¶¶ 223–45), but we discuss them separately below. (See § III.B.1, infra).

On July 29, 2025, Defendants filed the Motions, which Judge Woods referred to the undersigned. (Dkt. Nos. 65–70). On August 29, 2025, Plaintiffs filed an opposition to the Motions, and on September 15, 2025, Defendants filed their replies. (Dkt. Nos. 73–75; 77). At Defendants’ request, on October 16, 2025, the Court heard oral argument on the Motions. (Dkt. Nos. 76; 78).⁵

III.DISCUSSION

A. Legal Standard for Motion to Dismiss

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2). Although Rule 8 “does not require detailed factual allegations, it does demand more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation modified).

To survive a motion to dismiss under Rule 12(b)(6), Plaintiffs must allege in the Amended Complaint facts that, if accepted as true, “state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); accord Acklin, 2021 WL 4442819, at *3. To satisfy this plausibility standard, Plaintiffs must “plead factual content that allows the court to draw the reasonable inference that the defendants are liable for the misconduct alleged.” Acklin, 2021 WL 4442819, at *3 (citation modified).

As noted above, in considering the Motions, the Court “accept[s] all factual allegations as true and draw[s] all reasonable inferences in the [P]laintiff[s]’ favor.” Levy v. Southbrook Int’l

⁵ As of the date of this Report and Recommendation, the transcript for the oral arguments on October 16, 2025 (the “Transcript”) has been prepared and provided to the parties but has not yet been docketed. We refer to the Transcript as “Tr.” and cite the relevant page numbers.

Invs. Ltd., 263 F.3d 10, 14 (2d Cir. 2001). “[T]he Court need not accept legal conclusions as true[,]” however. Acklin, 2021 WL 4442819, at *4 (citing Iqbal, 556 U.S. at 678). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice[]” to meet the plausibility standard. Iqbal, 556 U.S. at 678. “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Id. (quoting Twombly, 550 U.S. at 557). “Determining whether a complaint states a plausible claim is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Acklin, 2021 WL 4442819, at *4 (quoting Iqbal, 556 U.S. at 679).

B. Application

Defendants advance seven reasons why Plaintiffs have failed to state any plausible claim for relief, arguing that the Amended Complaint: (1) fails to allege that Defendants’ alleged racketeering activity was the “proximate” or “but for” cause of Plaintiffs’ injury; (2) fails to allege individualized misconduct by each Defendant; (3) fails to allege a RICO “enterprise” distinct from Defendants’ normal business operations; (4) fails to allege a “nefarious ‘common purpose’” distinct from Defendants’ business operations; (5) alleges an “enterprise” that “is not structured as a criminal organization with defined roles for its members”; (6) fails to allege an “agreement” as required to plead a RICO conspiracy claim; and (7) fails to allege facts showing a “domestic injury” as required under RICO. (Dkt. Nos. 66 at 9–10; 69). Chainalysis advances the additional argument that the Amended Complaint fails to plead that it engaged in two “predicate acts” under RICO. (Dkt. No. 69 at 6, 12–13). We reorganize and address Defendants’ arguments below.

1. RICO Claim

a. Legal Standard

“RICO provides a private cause of action for ‘[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter.’” Hemi Grp., LLC v. City of New York, N.Y., 559 U.S. 1, 6 (2010) (quoting 18 U.S.C. § 1964(c) (emphasis added)). To recover civil damages under RICO, Plaintiffs must allege: “(1) a violation of the RICO statute, 18 U.S.C. § 1962; (2) an injury to business or property; and (3) that the injury was caused by the violation of Section 1962.” Spool v. World Child Int’l Adoption Agency, 520 F.3d 178, 183 (2d Cir. 2008); see Jus Punjabi, LLC v. Get Punjabi Inc., No. 14 Civ. 3318 (GHW), 2015 WL 2400182, at *4 (S.D.N.Y. May 20, 2015).

To plead a RICO violation under § 1962(c)—which Plaintiffs invoke here (Dkt. No. 49 ¶¶ 223–45)—Plaintiffs must first show “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” Kim v. Kimm, 884 F.3d 98, 103 (2d Cir. 2018); see DeFalco v. Bernas, 244 F.3d 286, 305 (2d Cir. 2001); Acklin, 2021 WL 4442819, at *4. The activities of the RICO enterprise must also “affect[] interstate or foreign commerce.” 18 U.S.C. § 1962(c). “[P]laintiffs must adequately plead each element of a substantive RICO claim for each defendant.” Jus Punjabi, 2015 WL 2400182, at *4 (citing DeFalco, 244 F.3d at 306).

b. Pattern of Predicate Acts

To plead a “pattern of racketeering activity” under § 1962(c), Plaintiffs “must plead at least two predicate acts, and must show that the predicate acts are related and that they amount to, or pose a threat of, continuing criminal activity.” GICC Cap. Corp. v. Tech. Fin. Grp., Inc., 67 F.3d 463, 465 (2d Cir. 1995) (citing H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239

(1989)). Plaintiffs must plead that each defendant committed “at least two predicate acts of racketeering activity.” Jus Punjabi, 2015 WL 2400182, at *4 (citing GLCC Cap. Corp., 67 F.3d at 465). The two predicate acts of racketeering activity “must be related, and [either] amount to or pose a threat of continuing criminal activity.” Spool, 520 F.3d at 183. “Continuity may be alleged as a ‘closed-ended pattern’ or an ‘open-ended pattern.’” Jus Punjabi, 2015 WL 2400182, at *9 (quoting Spool, 520 F.3d at 183).

In relevant part, “racketeering activity” is “an act indictable under a number of provisions of the United States Code.” Jus Punjabi, 2015 WL 2400182, at *4 (citing 18 U.S.C. § 1961(1)(B)). Here, Plaintiffs assert that “Defendants’ predicate acts of racketeering . . . include, but are not limited to” (1) operating an unlicensed MTB and violating the BSA in violation of 18 U.S.C. §§ 1960(a) and (b)(1)(B), and 31 U.S.C. §§ 5318(h) and 5322, and (2) money laundering and transporting stolen property in violation of 18 U.S.C §§ 1956 and 1957. (Dkt. No. 49 ¶ 237). If adequately pled, both would qualify as a RICO predicate act under § 1961(1)(B). See MH Pillars Ltd. v. Realini, No. 15 Civ. 1383 (PJH), 2018 WL 1184847, at *6 (N.D. Cal. Mar. 7, 2018) (recognizing that unlawful money transmission under 18 U.S.C. § 1960 may qualify as a predicate act); Jus Punjabi, 2015 WL 2400182, at *4 (recognizing that money laundering under 18 U.S.C. §§ 1956 and 1957 may qualify as a predicate act).

Here, Chainalysis argues that Plaintiffs fail to plead that it engaged in two predicate acts. (Dkt. Nos. 69 at 6, 12–13; 77 at 5, 8–9).⁶ Chainalysis points out that, while the Amended Complaint asserts that “Defendants” engaged in the predicate acts of operating an unlicensed

⁶ The KuCoin Defendants do not argue that Plaintiffs have failed to plead that they committed two predicate acts. (Tr. at 13:11–16).

MTB and money laundering, it “does not show how Chainalysis engaged in either.” (Dkt. No. 69 at 12). Plaintiffs argue that Chainalysis engaged in two predicate acts “by aiding and abetting the KuCoin Defendants’ operation of KuCoin as an unlicensed MTB and aiding and abetting the KuCoin Defendants’” money laundering. (Dkt. No. 73 at 24). When pressed at oral argument to identify Chainalysis’ two predicate acts, however, Plaintiffs’ counsel identified just one—providing its software to KuCoin—and conceded that Plaintiffs’ “stronger” claim against Chainalysis was RICO conspiracy rather than a direct RICO violation. (Tr. at 45:5–46:12).

As the United States Supreme Court recently explained, “[f]ederal aiding and abetting law ‘reflects a centuries-old view of culpability: that a person may be responsible for a crime he has not personally carried out’ if he deliberately ‘helps another to complete its commission.’” Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos, 605 U.S. 280, 291 (2025) (quoting Rosemond v. United States, 572 U.S. 65, 70 (2014)). To aid and abet another’s offense, “a person must ‘take[] an affirmative act in furtherance of that offense[,]’” and “must ‘intend to facilitate [the offense’s] commission.’” Smith & Wesson, 605 U.S. at 291 (quoting Rosemond, 572 U.S. at 71). In other words, “an aider and abettor must ‘participate in’ a crime ‘as in something that he wishes to bring about’ and ‘seek by his action to make it succeed.’” Smith & Wesson, 605 U.S. at 291 (quoting United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938) (L. Hand, J.)).

Three principles underlie this aiding and abetting standard: (i) aiding and abetting is “a rule of secondary liability for specific wrongful acts[]”; (ii) it “usually requires misfeasance rather than nonfeasance[,]” and (iii) “routine and general activity that happens on occasion to assist in a crime—in essence, incidentally—is unlikely to count as aiding and abetting.” Smith & Wesson, 605 U.S. at 292. As to this third principle, the Supreme Court explained in Smith & Wesson that

an “ordinary merchant does not become liable for all criminal misuses of his goods, even if he knows that in some fraction of cases misuse will occur[,]” and “become liable only if, beyond providing the good on the open market, he takes steps to promote the resulting crime and make it his own.” Id. (citation modified). As an illustration of these principles, the Supreme Court rejected victims’ claims against social media companies for aiding and abetting an ISIS terrorist attack because the companies’ relationship with terrorists was “the same as their relationship with their billion-plus other users: arm’s length, passive, and largely indifferent[,]” and there were no allegations that the companies had given the terrorists “any special treatment,” or “encourag[ed], solicit[ed], or advis[ed]” the group. Twitter, Inc. v. Taamneh, 598 U.S. 471, 498–500 (2023). While the companies had provided their platforms for general use and “at most allegedly stood back and watched[,]” id. at 499, the Court held that “[m]ore was needed . . . for a provider of generally available goods or services to be liable for a customer’s misuse of them[.]” Smith & Wesson, 605 U.S. at 293. Thus, “[w]hen a company merely knows that ‘some bad actors’ are taking ‘advantage’ of its products for criminal purposes, it does not aid and abet.” Id. (quoting Twitter, 598 U.S. at 503)).

Here, Plaintiffs allege only that Chainalysis provided to KuCoin its commercially-available blockchain analysis software, the purpose of which, Plaintiffs acknowledge, was to “prevent bad actors from laundering crypto[,]” and that Chainalysis “was complicit with the KuCoin Defendants’ refusal to prevent money laundering on the KuCoin platform in order to maintain the benefits of its partnership with KuCoin.” (Dkt. Nos. 49 ¶¶ 34, 70, 78, 181; Tr. at 45:7–8). As the Supreme Court explained in Smith & Wesson, however, allegations that a vendor failed to “suitably regulate” or “monitor” its customers’ activities represents “‘passive nonfeasance’” –

“omissions” and “inactions” – that do not give rise to aiding and abetting liability. 605 U.S. at 297 (quoting Twitter, 598 U.S. at 489, 500).

In addition, although “[m]ore [is] needed” for Chainalysis to be liable for KuCoin’s misuse of its software, Smith & Wesson, 605 U.S. at 293, Plaintiffs do not allege anything “special” about how Chainalysis provided software or services to KuCoin. Id. at 297. While Plaintiffs try to make much of references to a “partnership” between KuCoin and Chainalysis (Tr. at 45:15–17, 52:23–25), Chainalysis’ statements demonstrate that the software it provided to KuCoin was consistent with its “continued commitment to working with leading exchanges in the Asia Pacific region.” (Dkt No. 49 ¶ 74) (emphasis added). In other words, the Amended Complaint contains no allegations that Chainalysis marketed or provided software to KuCoin any differently than to any other exchange in the Asia Pacific region, so Plaintiffs’ allegations fail to exhibit the kind of “join[der] [of] both mind and hand” with KuCoin that is required to impose aiding and abetting liability on Chainalysis. Direct Sales Co. v. United States, 319 U.S. 703, 713 (1943); see Smith & Wesson, 605 U.S. at 292–93 (contrasting Direct Sales with Twitter).

Accordingly, because Plaintiffs have failed to plead that Chainalysis engaged in two predicate acts of racketeering, the Amended Complaint fails to state a RICO Claim under § 1962(c) against Chainalysis. See Khan Funds Mgmt. Amer., Inc. v. Nations Techs. Inc., No. 22 Civ. 5055 (ER), 2023 WL 6124801, at *12 (S.D.N.Y. Sept. 19, 2023) (dismissing § 1962(c) claim because “only one predicate act is insufficient to plead a pattern of predicate activity”).

c. Causation

For a civil RICO claim under § 1964(c), a plaintiff must plead proximate causation as well as but-for causation. See Holmes v. Secs. Inv. Prot. Corp., 503 U.S. 258, 261–69 (1992); Moore v.

PaineWebber, Inc., 189 F.3d 165, 171–72 (2d Cir. 1999); Doe v. Trump Corp., 385 F. Supp. 3d 265, 275–76 (S.D.N.Y. 2019).⁷ Defendants argue that Plaintiffs have failed to allege both types of causation. (Dkt. Nos. 66 at 17–23; 69 at 13–18).

i. Proximate Causation

In the civil RICO context, the element of proximate causation “is meant to prevent . . . intricate, uncertain inquiries from overrunning RICO litigation.” Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 460 (2006). To allege proximate cause, RICO plaintiffs must allege a “direct relation between the injury asserted and the injurious conduct alleged.” Holmes, 503 U.S. at 268. The causal connection between the RICO violation and the plaintiff’s injury cannot be “too remote, purely contingent, or indirec[t].” Empire Merchants, LLC v. Reliable Churchill LLLP, 902 F.3d 132, 141 (2d Cir. 2018) (“Empire Merchants II”), aff’g, No. 16 Civ. 5226 (ARR) (LB), 2017 WL 5559030 (E.D.N.Y. Mar. 16, 2017) (“Empire Merchants I”). In the RICO context, the focus is not foreseeability, but rather “the directness of the relationship between the conduct and the harm[,]” Hemi Grp., 559 U.S. at 11, and “whether the connection is attenuated by substantial intervening factors or third party conduct.” Doe v. Trump Corp., 385 F. Supp. 3d 265, 276 (S.D.N.Y. 2019) (citing Hemi Grp., 559 U.S. at 12); see Moore, 189 F.3d at 179 (Calabresi, J.,

⁷ As Chainalysis points out (Dkt. No. 69 at 14 n.4), district courts in the Second Circuit have reached different conclusions as to whether a civil RICO plaintiff must plead that each defendant’s conduct was the proximate and but-for cause of the injury. See Khan Funds, 2023 WL 6124801, at *13 (declining to “squarely answer whether the Court may consider only those predicate acts attributed to [defendant], as opposed to the [e]nterprise generally, to determine if the predicate acts proximately caused [p]laintiffs’ injuries”). In the case Plaintiffs cite to try to rebut this contention (Dkt. No. 73 at 35 n.13), however, the Second Circuit explained that “[t]o demonstrate [RICO] standing, a plaintiff must plead, at a minimum . . . causation of the injury by the defendant’s violation.” Baisch v. Gallina, 346 F.3d 366, 372 (2d Cir. 2003); see Edmondson v. Ranieri, 751 F. Supp. 3d 136, 173 (E.D.N.Y. 2024) (noting that “each plaintiff must establish [injury to his business or property by reason of a RICO violation] as to each defendant.”) (quoting Denney v. Deutsche Bank AG, 443 F.3d 253, 266 (2d Cir. 2006)). This precedent leads us to conclude that Plaintiffs must prove proximate and but-for causation as to each Defendant.

concurring) (“[O]ur cases have held RICO plaintiffs to a more stringent showing of proximate cause than would be required at common law.”).

When analyzing a civil RICO claim, generally “a court’s proximate cause inquiry does not ‘go beyond the first step[]’” in the chain of causation. Doe, 385 F. Supp. 3d at 276 (quoting Holmes, 503 U.S. at 271); see Hemi Grp., 559 U.S. at 10 (reaffirming that the “general tendency” “‘not to go beyond the first step’ . . . applies with full force to proximate cause inquiries under RICO”) (quoting Holmes, 503 U.S. at 271–72). Thus, “civil RICO’s direct relation requirement is rigorous and requires dismissal where substantial intervening factors attenuate the causal connection between the defendant’s conduct and the plaintiff’s injury.” Doe, 385 F. Supp. 3d at 276–76 (discussing cases dismissing civil RICO claims for failure to allege proximate cause). Whether the defendant’s conduct falls within the causal “‘first step’ depends in part on . . . an assessment ‘of what is administratively possible and convenient.’” Empire Merchants II, 902 F.3d at 141 (quoting Bank of Am. Corp. v. City of Miami, 581 U.S. 189, 203 (2017)). A civil RICO plaintiff’s theory of causation that requires a court “to move well beyond the first step” in the causal chain “cannot meet RICO’s direct relationship requirement.” Hemi Grp., 559 U.S. at 10.

In summary, “to state a civil RICO claim, the connection between the defendant’s conduct and the plaintiff’s injury must be direct and straightforward, . . . and must not entail intricate, uncertain inquiries into the extent of the defendant’s responsibility for the loss.” Doe, 385 F. Supp. 3d at 278–79. In other words, “the conduct giving rise to the fraud must be the conduct directly causing the harm, . . . unattenuated by substantial intervening factors or third parties.” Id. at 279. Whether conduct falls within the causal

“first step” depends on conditions of judicial administrability, which may include
 (1) the difficulty in ascertaining the quantum of damages attributable to the

alleged RICO violation, as opposed to independent factors, (2) problems of apportionment and multiple recoveries and (3) whether more directly injured victims would be better suited as plaintiffs.

Id. (citing Holmes, 503 U.S. at 269).

Defendants argue that Plaintiffs fail to allege that the racketeering activity proximately caused their injury. (Dkt. Nos. 66 at 18–21; 69 at 13–16). Defendants explain that the “bad actors” who stole Plaintiffs’ cryptocurrency “were intervening causes that severed any purported link to Plaintiffs’ alleged injuries.” (Dkt. No. 66 at 19; see Dkt. No. 69 at 15–16). The KuCoin Defendants count “at least seven” steps in the causal chain in Plaintiffs’ theory of harm, including:

[1] had they implemented AML and KYC procedures,

[2] bad actors would not have been drawn to KuCoin to launder crypto or, [3] if the bad actors had, they would have been prevented from laundering stolen crypto through KuCoin, or [4] KuCoin and the authorities would have been able to identify the bad actors and/or [5] track the stolen assets that were withdrawn from KuCoin. At a minimum, [6] Plaintiffs and members of the Class would not have lost the ability to trace and [7] potentially recover their stolen assets.

(Dkt. No. 66 at 20 (quoting Dkt. No. 49 ¶ 115)). To what they call a “meandering sequence of logic,” the KuCoin Defendants contend six additional assumptions are necessary to validate Plaintiffs’ theory:

(8) KuCoin would have flagged these particular transactions as suspicious (even though the Amended Complaint contains no allegation that these particular transactions appeared suspicious); (9) KuCoin had the technological capability to prevent the transactions from happening or freeze the underlying assets in time; (10) U.S. law enforcement would have chosen to investigate those particular transactions; (11) U.S. law enforcement would have identified evidence of wrongdoing, despite the scammers’ sophisticated scheme; (12) U.S. law enforcement would have been able to seize the stolen funds and return them to Plaintiffs; and (13) Chainalysis could have assisted in completing any of the foregoing twelve steps.

(Dkt. No. 66 at 21). Because Plaintiffs’ theory would require the Court to go multiple steps beyond the “first step” in the causal chain, the KuCoin Defendants ask the Court to dismiss the RICO Claim. (*Id.*) Chainalysis joins in the KuCoin Defendants’ arguments, and adds that Plaintiffs fail to “plead that Chainalysis’s alleged RICO violation caused their injuries[]” because “Plaintiffs concede that only KuCoin could have prevented the alleged money laundering, and Chainalysis is not alleged to have had any control over KuCoin[,]” which is a “gap [that] breaks any possible causal chain.” (Dkt. No. 69 at 15).

Plaintiffs respond by molding the allegations in the Amended Complaint into two phases: “‘Phase 1’ was the removal of the crypto from Plaintiffs’ possession[,]” and “‘Phase 2’ [was] the laundering of the crypto at KuCoin, [which] eliminated Plaintiffs’ ability to track, prove ownership and potentially recover their stolen assets.” (Dkt. No. 73 at 14 (emphasis added)). Having resorted their allegations in that manner—Phase 1 and Phase 2 appearing nowhere in the Amended Complaint—Plaintiffs contend that the RICO Claim “seeks to recover for the concrete injury to their property that occurred during the Phase 2 laundering of the theft, which is a harm separate from, and in addition to, the harm caused during Phase [1] of the theft.” (*Id.* at 29 (citing Spokeo, Inc. v. Robins, 578 U.S. 330, 340 (2016))). Plaintiffs claim that the Amended Complaint adequately alleges a “direct relationship” between their loss of “their ability to track stolen crypto” and the KuCoin Defendants’ aiding and abetting money laundering offenses and operation of an unlicensed MTB, which Plaintiffs claim was “supported by the cover provided by Chainalysis” and “enabled the bad actors to utilize accounts at KuCoin and launder the crypto on KuCoin’s exchange.” (*Id.* at 30 (citing Dkt. No. 49 ¶¶ 113–15, 211–13)).

Plaintiffs' proximate cause theory is implausible for three reasons. First, implicit in Plaintiffs' two-phase formulation is the obvious, indisputable fact that the supposed Phase 2 inability-to-track injury would not exist without the theft injury in Phase 1. "Most courts in this Circuit," however, "have held that concealment of underlying illegal activity cannot be the proximate cause of a plaintiff's injury, because the plaintiff would have suffered the same injury from the underlying illegal activity regardless of whether the concealment occurred." Empire Merchants I, 2017 WL 5559030, at *14; see Vicon Fiber Optics Corp. v. Scrivo, 201 F. Supp. 2d 216, 219 (S.D.N.Y. 2002) ("A predicate act does not proximately cause an injury if it merely furthers, facilitates, permits or conceals an injury that happened or could have happened independently of the act."). Here, while Plaintiffs allege that the conduct causing the racketeering activity is Defendants' operation of an unlicensed MTB and money laundering, "the conduct directly responsible for [Plaintiffs'] harm was" the bad actors' theft of the cryptocurrency, and therefore, "the conduct directly causing the harm was distinct from the conduct giving rise to the" RICO violation. Hemi Grp., 559 U.S. at 11. The Supreme Court has explained that RICO liability does not extend to a situation like this, where a defendant's alleged RICO activity simply "made it easier for a fourth party . . . to cause harm to the plaintiff." Hemi Grp., 559 U.S. at 11; see Petrosurance, Inc. v. Nat'l Ass'n of Ins. Comm'rs, 888 F. Supp. 2d 491, 507 (S.D.N.Y. 2012) (granting motion to dismiss RICO claims for failure to allege proximate cause where "intervening factors [] severed the link between defendants and any injury to plaintiff"), aff'd, 514 F. App'x 51, 52 (2d Cir. 2013) (summary order).

Second, by splitting their injury into two phases, Plaintiffs fall into the hazard that the Supreme Court warned against—that courts tend "not to go beyond the first step" in the causal

chain. Holmes, 503 U.S. at 272. In between what Plaintiffs label Phase 1 and Phase 2 is an indeterminate number of intervening events and circumstances that “may account for Plaintiffs’ inability to recover their” stolen cryptocurrency, Doe, 385 F. Supp. 3d at 280, including, for example, who stole it, when, what investigation was done, when, and by whom, how quickly Plaintiffs realized the theft and attempted to track it, and whether and how they have been able to recover any of it to date. Because Plaintiffs’ theory would require “going beyond the first step in the causal chain,” it fails to adequately allege proximate cause for RICO purposes. Empire Merchants II, 902 F.3d at 142 (citation modified).

Third, “the predicate act[s]” of operating an unlicensed MTB and engaging in money laundering and Plaintiffs’ “separate” inability to track their lost cryptocurrency “do not necessarily follow from one another.” Empire Merchants II, 902 F.3d at 143. The disconnect is apparent from the Amended Complaint, in which Plaintiffs acknowledge that KuCoin did begin using Chainalysis’ KYT software in mid-2020 and Chainalysis did provide KuCoin with bad-actor alerts, but Plaintiffs’ cryptocurrency was subsequently stolen anyway. (Compare Dkt. No. 49 ¶¶ 70–78, with id. ¶¶ 160–63; see also id. ¶¶ 153, 236). Thus, sorting out the “counterfactual” scenarios in which Plaintiffs would have been able to track their cryptocurrency notwithstanding Defendants’ alleged RICO violations “would [] prove speculative in the extreme.” Empire Merchants II, 902 F.3d at 143; see Holmes, 503 U.S. at 269 (explaining that “the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff’s damages attributable to the violation, as distinct from other, independent, factors”); Doe, 385 F. Supp. 3d at 281 (conclusion that plaintiffs failed to allege proximate cause was “buttressed by the profound difficulties that would ensue in ‘ascertain[ing] the amount of [Plaintiffs’] damages

attributable to [Defendants’ RICO] violation, as distinct from other, independent factors.”) (quoting Holmes, 503 U.S. at 269); see also D’Addario v. D’Addario, 901 F.3d 80, 93 (2d Cir. 2018) (“[N]o civil RICO cause of action for treble damages accrues until the amount of damages becomes clear and definite.”).⁸

Tellingly, Plaintiffs do not cite any case in which a court has endorsed the sort of two-phase injury that they propound here. (See Dkt. No. 73 at 30–35 (distinguishing Defendants’ cases)). Nor could they. See Vicon Fiber Optics, 201 F. Supp. 2d at 219 (rejecting plaintiffs’ theory that if they “had known the truth” they would have acted differently “and the pilfering would have ceased”) (citing Sperber v. Boesky, 849 F.2d 60, 64 (2d Cir. 1988)). Even worse, they posit that “it was reasonably foreseeable [that] the KuCoin Defendants’ predicate acts would harm Plaintiffs[,]” (Dkt. No. 73 at 30), but, as discussed above, foreseeability is not the standard for pleading proximate cause in the civil RICO context. See Hemi Grp., 559 U.S. at 12 (rejecting dissent’s proposal to “have RICO’s proximate cause requirement turn on foreseeability”). Plaintiffs cite a single case as demonstrating that proximate cause existed for “an injury [] far more speculative than alleged here,” Alix v. McKinsey & Co. Inc., 23 F.4th 196 (2d Cir. 2022). (Dkt. No. 73 at 33). In Alix, however, where the plaintiff allegedly lost engagements due to defendants’ fraudulent bankruptcy court filings, the Second Circuit deemed Article III courts’ “supervisory responsibilities” to protect the “integrity of the Bankruptcy Court and its

⁸ Indeed, at oral argument, Plaintiffs were unable to articulate how the Amended Complaint alleges the value of the alleged Phase 2 loss of their ability to track their cryptocurrency. (Tr. at 41:11–23). While Plaintiffs are of course not required at the pleading stage to disclose a damages methodology, they are required to plead that Defendants’ RICO violations caused them to lose something of value, and if what they claim to have lost in fact has no value, then they have not alleged standing for RICO purposes. (See n.6, supra).

processes[]” to be “special considerations” warranting the conclusion that proximate cause was adequately alleged, a “resolution [that was] sui generis and of little, if any, application to ‘ordinary’ RICO cases where th[o]se responsibilities were not front and center.” Alix, 23 F.4th at 204. The Second Circuit indeed noted that because the facts were “not within the mine-run of civil RICO cases mean[t] that its proximate cause analysis differ[ed] somewhat from the analysis in” Empire Merchants II, among others. Id. The parameters that the Second Circuit placed around its proximate cause analysis in Alix preclude Plaintiffs from garnering any support from it here.

Accordingly, we find Plaintiffs’ theory of proximate cause to be “remote, contingent, and indirect, and thus wholly inadequate.” Petrosurance, 888 F. Supp. 2d at 507 (citing Hemi Grp., 559 U.S. at 10).

ii. But-For Causation

In addition to proximate cause, a civil RICO plaintiff “must show that the RICO violation was the but-for (or transactional) cause of his injury, meaning that but for the RICO violation, he would not have been injured.” UFCW Local 1776 v. Eli Lilly & Co., 620 F.3d 121, 132 (2d Cir. 2010); accord Peralta v. Peralta, No. 16 Civ. 8890 (ALC), 2018 WL 1384509, at *10 (S.D.N.Y. Mar. 16, 2018); Petrosurance, 888 F. Supp. 2d at 507; Zito v. Leasecomm Corp., No. 02 Civ. 8074 (GEL), 2003 WL 22251352, at *19 (S.D.N.Y. Sept. 30, 2003); see also Paroline v. United States, 572 U.S. 434, 449–50 (2014) (“The traditional way to prove that one event was a factual cause of another is to show that the latter would not have occurred ‘but for’ the former.”).

In the Amended Complaint, Plaintiffs allege that “[b]ut for Defendants’ scheme, Plaintiffs and the putative Class [] would have been able to track and potentially recover their stolen

crypto.” (Dkt. No. 49 ¶ 203 (emphasis added); see id. ¶¶ 115 (“Plaintiffs and members of the Class would not have lost the ability to trace and potentially recover their stolen assets.”) (emphasis added); 164 (same)).

Like their arguments regarding proximate causation, Defendants argue that Plaintiffs’ but-for causation theory rests on several “faulty assumptions,” including that “they would have been able to recover their stolen cryptocurrency” and that:

the bad actors (a) would not have stolen Plaintiffs’ cryptocurrency and sought to launder the stolen assets through a different platform or some other means . . . ; (b) would have tried to launder through a different platform that was BSA-compliant; (c) would have been required by the other platform to identify themselves rather than engage anonymously; (d) would have tried to launder through another platform that had not leveraged Chainalysis software in a manner similar to KuCoin; and (e) would have been prevented from absconding with the ill-gotten cryptocurrency.

(Dkt. No. 66 at 22–23; see Dkt. No. 69 at 13–16). Chainalysis points out that the Amended Complaint alleges that it “worked against the thieves’ interests by providing software that could have been used to potentially identify them”—in other words, absent Chainalysis’ software, “the thieves would have been better off because they would have had an even lower chance of having their illicit transactions blocked by KuCoin.” (Dkt. No. 69 at 16 (citing Dkt. No. 49 ¶¶ 34, 78)).

Plaintiffs respond by doubling down on their two-phase formulation, criticizing Defendants for “inappropriately focus[ing] on the Phase 1 initial theft instead of the Phase 2 laundering that caused Plaintiffs’ RICO injuries[,]” and claim that they do not need to show that the bad actors would not have stolen Plaintiffs’ cryptocurrency absent Defendants’ conduct. (Dkt. No. 73 at 36). Plaintiffs try to reframe the question as “whether the crypto laundering would have occurred at KuCoin ‘but for’ Defendants’ predicate acts[,]” the answer to which they

assert is no. (Id. at 37). As to Chainalysis, Plaintiffs argue that absent “Chainalysis’ conduct, the authorities would have cracked down on KuCoin’s compliance violations sooner.” (Id. at 38).

Even if Plaintiffs are correct that crypto laundering would not have occurred at KuCoin “but for” Defendants’ predicate acts (Dkt. No. 73 at 37), Plaintiffs have not plausibly alleged that but for Defendants’ alleged RICO violations, Plaintiffs “would not have been injured” because Plaintiffs’ allegations demonstrate that absent the bad actors’ theft, Plaintiffs would not have been in the position of needing to recover their cryptocurrency. UFCW Local, 620 F.3d at 132. (Dkt. No. 49 ¶¶ 115, 164). In other words, the but-for cause of Plaintiffs’ alleged loss of the ability to track their cryptocurrency is the bad actors’ theft in the first instance—had Plaintiffs’ cryptocurrency not been stolen, they would have had no reason to try to recover it. Accordingly, Plaintiffs cannot establish that Defendants’ alleged predicate acts are the but-for cause of their losses. See Moore, 189 F.3d at 172 (“To show transaction causation, the plaintiffs must demonstrate that but for the defendant’s wrongful acts, the plaintiffs would not have entered into the transactions that resulted in their losses.”).

Accordingly, Plaintiffs’ failure to plausibly allege that Defendants’ alleged predicate acts were the but-for cause of their injury is also fatal to their RICO Claim.⁹

⁹ Plaintiffs’ attempt to frame Defendants’ predicate acts as the but-for cause of their lost ability to track and “potentially recover” their stolen cryptocurrency appears to stumble on another hurdle—ripeness, or RICO standing. (Dkt. No. 49 ¶¶ 166, 213–14). As Plaintiffs recognize, they must establish “an injury to business or property[]” to support their RICO Claim. (Dkt. No. 73 at 16). As the Second Circuit has explained, however, “a cause of action does not accrue under RICO until the amount of damages becomes clear and definite.” First Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 768 (2d Cir. 1994) (citing Bankers Trust Co. v. Rhoades, 859 F.2d 1096, 1106 (2d Cir. 1988)). Here, Plaintiffs acknowledge that as of the filing of the Amended Complaint—April 2025—they “have not recovered some, if not all, of their stolen cryptocurrency that was transferred to KuCoin.” (Dkt. No. 49 ¶ 166; see id. ¶¶ 12, 213–14). Setting aside the grammatical ambiguity from their use of a double-negative, this allegation gives rise to the inference that Plaintiffs’ efforts to recover their cryptocurrency are ongoing and may yet succeed, in whole or in part, and therefore their damages may be diminished, if not eliminated altogether depending

d. RICO Enterprise

An enterprise under RICO “includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4). RICO “does not specifically define the outer boundaries of the ‘enterprise’ concept[,]” Boyle v. United States, 556 U.S. 938, 944 (2009), but “RICO requirements are most easily satisfied when the enterprise is a formal legal entity.” First Cap. Asset Mgmt., Inc. v. Satinwood, Inc., 385 F.3d 159, 173 (2d Cir. 2004). “[F]or an association of individuals to constitute an enterprise, the individuals must share a common purpose to engage in a particular fraudulent course of conduct and work together to achieve such purposes.” Id. at 174. A RICO enterprise may not, however, consist “merely of a corporate defendant associated with its own employees or agents carrying on the regular affairs of the defendant.” Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., 30 F.3d 339, 344 (2d Cir. 1994). In addition, the “enterprise” must be distinct from both “a ‘person’ for RICO purposes[,]” Cedar Swamp Holdings, Inc. v. Zaman, 487 F. Supp. 2d 444, 452 & n.55 (S.D.N.Y. 2007) (citing, inter alia, Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 162 (2001)), and from the “pattern of racketeering activity.” United States v. Turkette, 452 U.S. 576, 583 (1981).

To plead an “association-in-fact” enterprise, a civil RICO plaintiff must allege “at least three structural features: 1) a purpose, 2) relationships among those associated with the enterprise, and 3) longevity sufficient to permit these associates to pursue the enterprise’s

on future events. See Stochastic Decisions, Inc. v. DiDomenico, 995 F.2d 1158, 1165–66 (2d Cir. 1993) (holding that, where plaintiff’s collection efforts were ongoing and amount of damages was indefinite and unprovable, plaintiff’s RICO claim had not yet accrued). Because Plaintiffs’ formulation of their RICO damages is neither “clear” nor “definite[,]” Plaintiffs also appear to lack RICO standing under § 1962(c). First Nationwide, 27 F.3d at 768.

purpose.” Peterson v. City of New York, No. 11 Civ. 3141 (DLC), 2012 WL 75029, at *3 (S.D.N.Y. Jan. 9, 2012) (citing Boyle v. United States, 556 U.S. 938, 946 (2009)). “In determining whether plaintiffs have alleged the existence of an association-in-fact RICO enterprise, courts analyze the hierarchy, organization, and activities of the alleged association to determine whether its members functioned as a unit.” BWP Media USA Inc. v. Hollywood Fan Sites, LLC, 69 F. Supp. 3d 342, 360 (S.D.N.Y. 2014). Plaintiffs must also “explain each participant’s role in the alleged fraudulent or illegal conduct.” Acklin, 2021 WL 4442819, at *4. “[M]erely stringing together a list of defendants and labeling them an enterprise is insufficient to state a RICO claim.” Cedar Swamp, 487 F. Supp. 2d at 450.

Defendants argue that Plaintiffs have failed to allege a RICO enterprise because: (i) the Amended Complaint impermissibly groups Defendants together “and alleges that all Defendants are both RICO ‘persons’ and comprise a RICO ‘enterprise’”; (ii) Plaintiffs fail to allege facts showing that the “‘enterprise’ was distinct from KuCoin acting through its owners or vendors”; and (iii) the Amended Complaint fails to allege that the alleged enterprise had a common purpose “distinct from KuCoin’s legitimate objective to generate transaction fees and Chainalysis’ legitimate objective to receive payment for its software services.” (Dkt. No. 66 at 24–26). Chainalysis adds that the Amended Complaint “is devoid of any facts that Chainalysis participated in the ‘operation or management’ of the alleged ‘KuCoin Crypto-Wash Enterprise.’” (Dkt. No. 69 at 10 (citing Dkt. No. 49 ¶¶ 34, 78, 181, 204)).

Plaintiffs respond that they have adequately described the role of each Defendant: Gan and Tang owned the entities that have operated KuCoin (Flashdot and Peken), Gan opened the third-party customer service account, and Tang registered the “kucoin.com” domain, and

Chainalysis “partner[ed]” with KuCoin “to make it appear as though KuCoin was committed to complying with the law when Defendants knew that was not true[.]” (Dkt. No. 73 at 17–19 (citing Dkt. No. 49 ¶¶ 26, 28, 77–78, 178, 179, 186(e), 186(f), 259)). At oral argument, however, Plaintiffs conceded that they do not “need Chainalysis” to allege a RICO enterprise. (Tr. at 42:15). As support for the conclusion that the Amended Complaint “alleges [that] each defendant acted as an agent for the enterprise independent of the legal entity KuCoin and its ‘legitimate’ business practices of serving non-U.S. investors[.]” Plaintiffs strangely cite the KuCoin Defendants’ brief. (Dkt. No. 73 at 19). To demonstrate distinctness, Plaintiffs appear to point to the allegations that the KuCoin Defendants “affirmatively attempted to conceal the existence of KuCoin’s U.S. customers to make it appear as if KuCoin was exempt from U.S. AML and KYC requirements,” and marketed KuCoin as an exchange that did not require KYC. (Dkt. No. 73 at 20 (citing Dkt. No. 49 ¶¶ 99(g), 99(h))).

We agree with Defendants that the Amended Complaint fails to satisfy the distinctness requirement, pursuant to which Plaintiffs must allege “the existence of two distinct entities: (1) a ‘person’; and (2) an ‘enterprise’ that is not simply the same ‘person’ referred to by a different name.” Cedric Kushner, 533 U.S. at 161. As the Second Circuit has explained, “a person violates the statute by conducting an enterprise through a pattern of criminality[.]” so “a corporate person cannot violate the statute by corrupting itself.” Cruz v. FXDirectDealer, LLC, 720 F.3d 115, 120 (2d Cir. 2013). Setting aside Chainalysis, whom Plaintiffs failed to allege committed two predicate acts and whom Plaintiffs effectively admitted was not part of any enterprise, (see Tr. at 42:15), the Amended Complaint “does not allege a continuing RICO enterprise distinct from the RICO ‘person.’” Cruz, 720 F.3d at 120. With Chainalysis out of the picture, what remains are

the KuCoin Defendants, who, Plaintiffs allege, are the entities and individuals who founded and operated KuCoin and who “oversaw and directed KuCoin’s strategy of willfully disregarding U.S. KYC and AML laws and regulations so that customers could use KuCoin anonymously and from the United States.” (Dkt. No. 49 ¶¶ 169–78). But the Second Circuit has “long since rejected the idea that a RICO enterprise may consist ‘merely of a corporate defendant associated with its own employees or agents carrying on the regular affairs of the defendant[.]’” Cruz, 720 F.3d at 121 (quoting Riverwoods, 30 F.3d at 344). The KuCoin Crypto-Wash Enterprise, snappy as it may sound, has no “organizational pattern or system of authority . . . other than that embedded in the organization of [KuCoin itself].” Manhattan Telecommc’ns Corp. v. DialAmerica Mktg., Inc., 156 F. Supp. 2d 376, 382 (S.D.N.Y. 2001). Further, the alleged purpose of the KuCoin Crypto-Wash Enterprise is the “pursuit of maximizing revenues and market share[.]” (Dkt. No. 49 ¶ 178), which is indistinguishable from “the business of” KuCoin on a regular basis. Manhattan Telecommc’ns Corp., 156 F. Supp. 2d at 382. Simply “alleging that a corporation has violated [RICO] by conducting an enterprise that consists of itself plus all or some of its officers or employees[.]” as Plaintiffs do here, does not satisfy “[t]he requirement of distinctness[.]” Cruz, 720 F.3d at 121.

As to Chainalysis, even without Plaintiffs’ concessions, the Amended Complaint fails to allege that it “plausibly share[d] a common purpose with [the KuCoin] Defendants and cannot help form an enterprise for purposes of civil RICO.” Weir v. Cenlar FSB, No. 16 Civ. 8650 (CS), 2018 WL 3443173, at *6 (S.D.N.Y. July 17, 2018) (collecting cases dismissing RICO claims against vendors); see Gurung v. MetaQuotes Ltd., No. 23 Civ. 6362 (OEM) (PK), 2024 WL 3849460, at *1, *9 (E.D.N.Y. Aug. 16, 2024) (holding that allegation that vendor “engaged in a standard business

transaction” by providing “software support in exchange for a monthly fee” failed to “provide a plausible inference of a common racketeering purpose”). Plaintiffs’ allegations that Chainalysis knew about “suspicious activities” at KuCoin and that the software it provided to KuCoin “provided [] cover” to the KuCoin Defendants’ predicate acts are insufficient to plead the required common purpose. (Dkt. No. 49 ¶¶ 57, 179, 272). See Gurung, 2024 WL 3849460, at *10 (finding that “conclusory allegations” about software service provider’s knowledge of criminal activity on main defendants’ platform were insufficient to plead common purpose under RICO). In addition, the Amended Complaint nowhere alleges that Chainalysis “participated in the operation or management of the enterprise itself.” Reves v. Ernst & Young, 507 U.S. 170, 183 (1993). For these additional reasons, Plaintiffs fail to state a RICO Claim under § 1962(c) against Chainalysis.

Accordingly, because the Amended Complaint fails to plausibly allege a RICO enterprise distinct from Defendants themselves or a purpose distinct from Defendants’ ordinary businesses, as well as Chainalysis’ participation in the operation or management of the enterprise, Plaintiffs have failed to state a RICO Claim under § 1962(c).

e. Domestic Injury¹⁰

“Section 1964(c) requires a civil RICO plaintiff to allege and prove a domestic injury to business or property and does not allow recovery for foreign injuries.” RJR Nabisco v. European Cmty., 579 U.S. 325, 354 (2016). Civil RICO claims that “rest entirely on injury suffered abroad [] must be dismissed.” Id. In Bascuñán v. Elsaca, 874 F.3d 806, 814–18 (2d Cir. 2017) (“Bascuñán I”),

¹⁰ Plaintiffs’ failure to plausibly allege causation and a RICO enterprise are sufficient grounds on which to grant the Motions and dismiss Plaintiffs’ RICO Claim, but we consider Defendants’ remaining arguments for completeness.

and Bascuñán v. Elsaca, 927 F.3d 108, 117–20 (2d Cir. 2019) (“Bascuñán II”), the Second Circuit explained “guiding principles” to determine whether an injury is domestic for RICO purposes:

- (1) whether an injury is foreign or domestic depends on “the particular facts alleged in each case” and “the specific type of injury alleged,” Bascuñán I, 874 F.3d at 817–18;
- (2) where a plaintiff alleges multiple RICO injuries, each alleged injury must be examined separately to determine whether there is standing to sue thereon, id. at 818;
- (3) the location of the RICO injury is not the location of the defendant’s conduct giving rise thereto, but the location of the property that was harmed, id. at 820–21;
- (4) a defendant’s use of bank accounts located within the United States to effectuate, facilitate or conceal the theft of property located outside of the United States does not establish a domestic injury, id. at 819; and
- (5) where a RICO plaintiff fails to allege the location and ownership of the accounts in which property was harmed, he has failed to allege a domestic injury, Bascuñán II, 927 F.3d at 120.

Kaikov v. Kaikov, No. 19 Civ. 2521 (LDH) (RER), 2020 WL 9812923, at *7 (E.D.N.Y. Oct. 5, 2020).

These principles embody a “property-focused approach” not a “residency-based test.” City of Almaty, Kazakhstan v. Ablyazov, No. 15 Civ. 5345 (AJN), 2018 WL 3579100, at *3 (S.D.N.Y. July 25, 2018). Under this approach, the domestic injury analysis “turns on the location of the plaintiff’s property when it was harmed, not on the location where the defendant’s misconduct took place.” Martin Hilti Fam. Tr. v. Knoedler Gallery, LLC, 386 F. Supp. 3d 319, 347 (S.D.N.Y. 2019). In 2023, the Supreme Court rejected a “bright-line rule” based on a plaintiff’s residence and explained that “courts should look to the circumstances surrounding the alleged injury to assess whether it arose in the United States[,]” including “the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity.” Yegiazaryan v. Smagin, 599 U.S. 533, 543–44 (2023).

Defendants argue that the Amended Complaint does not contain any “well-pled facts to establish that Plaintiffs sustained a domestic injury.” (Dkt. Nos. 66 at 28; 69 at 9; 75 at 12–13). Defendants contend that Plaintiffs offer only their United States residence, “which does not support a domestic injury.” (Dkt. No. 66 at 28 (citing City of Almaty, 2018 WL 3579100, at *3)). Defendants point out that KuCoin is foreign-owned and operates overseas, and that the wallets from which the bad actors stole Plaintiffs’ cryptocurrency—Atomic Wallet and MEXC (Dkt. No. 49 ¶¶ 22–23)—are also operated by foreign entities. (Dkt. No. 66 at 28–29).

Plaintiffs respond that in addition to their United States residences, the Amended Complaint alleges that their cryptocurrency wallets were “located in the U.S.[.]” KuCoin’s exchange was “housed on U.S. servers[.]” and “the KuCoin Defendants actively serviced and targeted U.S.-based customers for KuCoin[.]” (Dkt. No. 73 at 38–39 (citing Dkt. No. 49 ¶¶ 19, 22–24, 42)). Citing Yegiazaryan, 599 U.S. at 545–56, Plaintiffs argue that it is sufficient that Defendants engaged in domestic acts of racketeering that “manifested” in “injurious effects” in the United States. (Dkt. No. 73 at 39).

Taking the allegations of the Amended Complaint as true, as we must (see § III.A, supra), Plaintiffs have sufficiently alleged that they—United States residents—owned the wallets in which they held and from which their cryptocurrency was stolen, that those wallets were “located in” the United States, that servers in the United States stored the KuCoin accounts through which the stolen cryptocurrency allegedly passed, and that a feature of the KuCoin Defendants’ unlicensed MTB and money laundering was targeting and servicing U.S.-based customers. (Dkt. No. 49 ¶¶ 19, 22–24, 42). While Plaintiffs’ residence is not “determinative,” viewing “the circumstances surrounding the alleged injury,” Yegiazaryan, 599 U.S. at 543–44, the

allegations in the Amended Complaint sufficiently give rise to the inference that the injury occurred in Plaintiffs' wallets in the United States, as was the case in Bascuñán I, 874 F.3d at 821, 824, and Bascuñán II, 927 F.3d at 115–17.¹¹ See Khan Funds, 2025 WL 1003964, at *23 (finding that allegations that defendants' racketeering acts injured a New York resident and a New York corporation sufficiently alleged domestic injury).

Accordingly, were Plaintiffs' RICO Claim not otherwise deficient, we would find that Plaintiffs have adequately alleged a domestic injury for purposes of their RICO Claim.

f. RICO Conspiracy Claim

"[T]o establish a RICO conspiracy, a plaintiff must show a conspiracy to commit a substantive RICO violation," Spool, 520 F.3d at 183, and so "the requirement to properly allege a violation of the substantive RICO statute applies with equal force to [] conspiracy claims under 18 U.S.C. § 1962(d)." Jus Punjabi, 2015 WL 2400182, at *4.

Given the pleading failures described above (see § III.A.1, supra), Plaintiffs have failed to adequately allege a substantive RICO Claim under § 1962(c), which "necessitates that [their] allegations of conspiracy to violate RICO also fail." Petrosurance, 888 F. Supp. 2d at 507 (collecting cases dismissing RICO conspiracy claims for failure to state substantive RICO claim); see Gurung, 2024 WL 3849460, at *11 (dismissing RICO conspiracy claim for failure to allege underlying § 1962(c) claim).

Accordingly, we respectfully recommend that the RICO Conspiracy Claim be dismissed.

¹¹ Incidentally, Plaintiffs' reliance, for purposes of showing domestic injury, on the location from which their currency was stolen further undermines their attempt to plead causation. (See § III.B.1.c, supra).

2. State Law Claims

In the first instance, should the Court grant the Motions and dismiss Plaintiffs’ federal claims, the Court may in its discretion decline to exercise supplemental jurisdiction over Plaintiffs’ Conversion and Aiding & Abetting Claims and dismiss those claims without prejudice. 28 U.S.C. § 1367(c)(3). See Gurung, 2024 WL 3849460, at *11 (dismissing state law claims without prejudice after dismissing federal RICO claims); Acklin, 2021 WL 4442819, at *7–8 (same).

Defendants argue for dismissal of the Conversion and Aiding & Abetting Claims with prejudice (see Dkt. Nos. 66 at 29–35; 69 at 16–18 & 7 n.2), so, for completeness, we consider Defendants’ arguments as well.

a. Choice of Law

The parties disagree on which state’s law applies to Reca’s Conversion and Aiding & Abetting Claims. Defendants contend that the parties agreed that New York law applies to Reca, citing Reca’s statements in her response to Defendants’ pre-motion letter and at the Conference that New York law governed. (Dkt. No. 75 at 13 (citing Dkt. Nos. 38 at 3 & n.4 (Plaintiffs citing New York statute of limitations for Conversion and Aiding & Abetting Claims); 40 at 23:20–25, 40:1–8 (Plaintiffs’ counsel agreeing that “New York law applies to the conversion [and] aiding and abetting claims.”))). Notwithstanding those prior statements, Plaintiffs now contend that because Reca is domiciled in Florida, Florida law—which, incidentally, has a longer statute of limitations—applies. (Dkt. No. 73 at 42–43 (citing Dkt. No. 49 ¶ 22)). Plaintiffs do not specify which law they think applies to Supples, a Puerto Rico resident (Dkt. Nos. 49 ¶ 23; 73 at 44–46). At oral argument, Plaintiffs simply asserted that they are “entitled to bring a common law

claim under Florida law because of Ms. Reca’s domicile and the location of the injury.” (Tr. at 49:20–22).

We reject Plaintiffs’ attempt to take advantage of the opportunity to amend to backtrack on their admission that New York law applies to Plaintiffs’ state law claims. Having previously asserted that New York law applies at the pre-motion letter stage and at the Conference, without raising any choice of law issue, Plaintiffs are judicially estopped from arguing that Florida or any other state’s law applies. See Pegram v. Herdrich, 530 U.S. 211, 228 n.8 (2000) (explaining that “[j]udicial estoppel generally prevents” parties from advancing contradictory arguments in different phases of the same case); PaySys Int’l, Inc. v. Atos SE, No. 14 Civ. 10105 (KBF), 2016 WL 10651919, at *5 (S.D.N.Y. July 14, 2016) (rejecting plaintiff’s changed choice of law argument as “merely a tactic to delay”); Intellivision v. Microsoft Corp., 784 F. Supp. 2d 356, 364 (S.D.N.Y. 2011) (finding that judicial estoppel applied where “plaintiffs’ current claims directly contradict their representations at every previous stage of [the] case”), aff’d, 484 F. App’x 616 (2d Cir. 2012) (summary order).

Accordingly, Plaintiffs are bound by their prior agreement that New York law applies to the analysis of the Conversion and Aiding & Abetting Claims. See Fed’l Ins. Co. v. Am. Home Assurance Co., 639 F.3d 557, 566–67 (2d Cir. 2011) (explaining that parties’ agreement “is sufficient to establish choice of law”).

b. Statute of Limitations

New York’s statute of limitations for the Conversion and Aiding & Abetting Claims is three years from “when the conversion or taking occurred . . . not from discovery[.]” Merlino v. Knudson, 214 A.D.3d 642, 645 (2d Dep’t 2023); see Obstfeld v. Thermo Niton Analyzers, LLC, 168

A.D.3d 1080, 1083 (2d Dep’t 2019); N.Y. C.P.L.R. § 214[3]. The three-year period runs from “when the property was taken, even where the property owner was unaware of the unlawful taking at the time it occurred.” Yakubov v. Sharon Towers Realty, 227 F. App’x 64, 65 (2d Cir. 2007) (summary order); accord Lewin v. Richard Avedon Found., No. 11 Civ. 8767 (KMW) (FM), 2015 WL 3948824, at *5 (S.D.N.Y. June 26, 2015).

The KuCoin Defendants argue that the Amended Complaint makes “clear” that Reca’s Conversion and Aiding & Abetting Claims are time-barred. (Dkt. No. 66 at 30). The Amended Complaint asserts that the bad actors stole Reca’s cryptocurrency between May 21, 2021 and July 26, 2021. (Dkt. No. 49 ¶¶ 161–62). Reca filed this action, however, on August 21, 2024, more than three years after the last alleged theft, making her Conversion and Aiding & Abetting Claims untimely. (Dkt. No. 1).

To get around the time-bar, Reca argues that equitable tolling applies because she “exercised reasonable diligence by attempting to sue the bad actor who stole her crypto[,]” and that she was unaware of “KuCoin’s wrongful conduct” until the criminal proceedings discussed above. (Dkt. No. 73 at 43; see § II.A.4, supra). To get the benefit of equitable tolling, Reca must demonstrate that (1) Defendants “wrongfully concealed material facts relating to [their] wrongdoing;” (2) “the concealment prevented [Reca’s] discovery of the nature of the claim within the limitations period;” and (3) she “exercised due diligence in pursuing the discovery of the claim during the period [she] seeks to have tolled.” Koch v. Christie’s Int’l PLC, 699 F.3d 141, 157 (2d Cir. 2012). This doctrine is “applicable only in rare and exceptional circumstances,” Phillips v. Generations Fam. Health Ctr., 723 F.3d 144, 150 (2d Cir. 2013), “when the party is unable,

through due diligence, to discover that [s]he has any claim at all.” Ruso v. Morrison, 695 F. Supp. 2d 33, 46 (S.D.N.Y. 2010).

Exceptional circumstances do not exist here. First, Reca filed the Florida Action, in which she asserted a conversion claim against the John Doe bad actor who stole her cryptocurrency, in September 2021, almost three years before she filed this action. (Dkt. No. 67-1). Second, Reca quotes at length the December 2023 announcement about the NYAG Consent Order describing KuCoin’s failure to register as a securities and commodities broker-dealer and falsely representing itself as a crypto exchange (Dkt. No. 49 ¶¶ 104–106), and yet she waited another nine months to file this action. (Dkt. No. 1). Finally, the Amended Complaint is replete with allegations about KuCoin’s public marketing and solicitation efforts, demonstrating that the acts Plaintiffs now describe as racketeering were hardly a secret. (Dkt. No. 49 ¶¶ 117–23). All of these circumstances demonstrate that Reca was timely aware of her injuries and potential causes of action. Reca has therefore failed to demonstrate the kind of exceptional circumstances or affirmative concealment that would justify extending her the benefit of equitable tolling. See Kumaran v. Nat’l Futures Ass’n, LLC, No. 20 Civ. 3668 (GHW), 2022 WL 1805936, at *4 (S.D.N.Y. June 2, 2022) (declining to apply equitable tolling where plaintiffs “knew of their injury and were not prevented from exercising their rights”).

Accordingly, if the Court were to reach this argument, we respectfully recommend that Reca’s Conversion and Aiding & Abetting Claims be dismissed as time barred.

c. Failure to State a Claim

i. Conversion

The Amended Complaint alleges that the KuCoin Defendants “knowingly and unlawfully retain[ed] possession of [Plaintiffs’] stolen cryptocurrency,” which was “specific, identifiable property . . . placed in KuCoin addresses[.]” (Dkt. No. 49 ¶¶ 251, 258, 265). Defendants argue that Plaintiffs fail to state the elements of a conversion claim. (Dkt. No. 66 at 31–33).

Under New York law, “[c]onversion is any unauthorized exercise of dominion or control over property by one who is not the owner of the property which interferes with and is in defiance of a superior possessory right of another in the property.” Schwartz v. Cap. Liquidators, Inc., 984 F.2d 53, 53–54 (2d Cir. 1993) (quoting Meese v. Miller, 79 A.D.2d 237, 242 (4th Dep’t 1981)). To state a conversion claim, a plaintiff must allege “legal ownership of a specific identifiable piece of property and the defendant’s exercise of dominion over or interference with the property in defiance of the plaintiff’s rights.” Ahles v. Aztec Enters., Inc., 120 A.D.2d 903, 903–904 (3d Dep’t 1986). “When a defendant’s possession of the property was initially lawful, there is no conversion unless the defendant refuses the owner’s demand to return the property or wrongfully transfers or disposes of it before a demand is made.” Regions Bank v. Wieder & Mastroianni, P.C., 526 F. Supp. 2d 411, 414 (S.D.N.Y. 2007). “The reason for this rule is simply ‘that one in lawful possession shall not have such possession changed into an unlawful one until he be informed of the defect of his title and have an opportunity to deliver the property to the true owner.’” Leveraged Leasing Admin. Corp. v. PacifiCorp Cap., Inc., 87 F.3d 44, 49 (2d Cir. 1996) (quoting Employers’ Fire Ins. Co. v. Cotten, 245 N.Y. 102, 106 (1927)). Conversely, “where the defendant holds the property unlawfully—where, for example, he stole the property—no

demand and refusal are necessary to render the defendant liable.” Leveraged Leasing, 87 F.3d at 49.

Defendants first argue that Plaintiffs fail to allege that they asked and Defendants refused to return their stolen cryptocurrency. (Dkt. No. 66 at 32). Plaintiffs respond that Defendants are not “innocent possessors” because they enabled money laundering on KuCoin and so no demand was necessary. (Dkt. No. 73 at 45 (citing Dkt. No. 49 ¶¶ 52, 96)). At oral argument, however, Plaintiffs hinted that they had in fact made demands—although the KuCoin Defendants do not seem to have received any. (Tr. at 19:11–12, 51:11–24). Taking Plaintiffs’ allegations about the KuCoin Defendants’ inadequate AML and KYC policies (Dkt. No. 73 at 45) as true, however, the Amended Complaint still does not allege that the KuCoin Defendants had anything to do with the theft or knew, when they received it, that Plaintiffs’ cryptocurrency was stolen. (See generally Dkt. No. 49 ¶¶ 22–23, 162). Cf. Amusement Indus., Inc. v. Midland Ave. Assocs., LLC, 820 F. Supp. 2d 510, 534 (S.D.N.Y. 2011) (finding conversion claim adequately alleged where downstream defendants “knew that they were receiving money rightfully belonging” to plaintiff). Under these circumstances, Plaintiffs were not excused from making a demand on the KuCoin Defendants.

Even if we excused the demand requirement—or if Plaintiffs adequately alleged that they made demands—the Conversion Claim would fare no better, because Plaintiffs fail to allege “[s]ome affirmative act—asportation by the defendant or another person, denial of access to the rightful owner or assertion to the owner of a claim on the [cryptocurrency], sale, or other commercial exploitation of the [cryptocurrency].” Amusement Indus., 820 F. Supp. 2d at 534 (quoting State v. Seventh Regiment Fund, Inc., 98 N.Y.2d 249, 260 (2002)). Try as they might to connect the KuCoin Defendants’ alleged knowledge of blacklists or alerts from Chainalysis’

software (Dkt. No. 73 at 45–46), Plaintiffs still have not plausibly alleged that the KuCoin Defendants “actually knew” that Plaintiffs’ cryptocurrency was stolen. Marks v. Energy Materials Corp., No. 14 Civ. 8965 (GHW), 2015 WL 3616973, at *5 (S.D.N.Y. June 9, 2015) (dismissing conversion claim where plaintiff “pled no facts whatsoever suggesting that [defendant] actually knew that [third party] lacked authority to sell [plaintiff’s property].”).

Accordingly, if the Court were to reach this argument, we respectfully recommend that the Conversion Claim be dismissed for failure to state a claim.

ii. Aiding & Abetting

To state a claim for aiding and abetting conversion under New York law, Plaintiffs must allege: (1) “a primary violation”; (2) “actual knowledge of the violation on the part of” Defendants; and (3) “substantial assistance.” Kirschner v. Bennett, 648 F. Supp. 2d 525, 533 (S.D.N.Y. 2009) (Lynch, J.). “The knowledge requirement of an aiding and abetting claim is satisfied by alleging actual knowledge of the underlying harm.” Id. at 544. New York “has not adopted a constructive knowledge standard for imposing aiding and abetting liability.” Kolbeck v. LIT Am., Inc., 939 F. Supp. 240, 246 (S.D.N.Y. 1996). “To survive a motion to dismiss,” Plaintiffs “must allege facts giving rise to a strong inference of [D]efendant[s]’ actual knowledge of the underlying harm, or the conscious avoidance of the same such that it can almost be said that the [D]efendant[s] actually knew because [they] suspected a fact and realized its probability, but refrained from confirming it in order later to be able to deny knowledge.” Kirschner, 648 F. Supp. 2d at 544. To plead “substantial assistance,” Plaintiffs must allege that Defendants “affirmatively assisted, helped, concealed, or by virtue of failing to act when required to do so enabled the underlying harm to proceed.” Id. (citation modified).

As with the demand requirement for the Conversion Claim, Plaintiffs' conclusory allegations about blacklists and "cryptocurrency" being "taken" and "transferred" to KuCoin (Dkt. No. 49 ¶¶ 266, 268), fail to give rise to the required "strong inference" of Defendants' actual knowledge of the theft of Plaintiffs' cryptocurrency, as opposed to the general risk of cryptocurrency theft. See Kirschner, 648 F. Supp. 2d at 544–45 (dismissing aiding and abetting claim where plaintiff failed to allege "that the defendants had actual knowledge of wrongful conduct that harmed" the parties on whose behalf plaintiff was suing).

In addition, Plaintiffs' conclusory allegations that Defendants failed to identify or report suspicious transactions and bad actors or inadequately deployed Chainalysis' software to identify thieves (Dkt. No. 73 at 46–47 (citing Dkt. No. 49 ¶¶ 267–71)), similarly fail to connect the myriad bad actors to Plaintiffs and their stolen cryptocurrency. The "mere fact of maintaining the [] account" to or through which the bad actors transferred Plaintiffs' cryptocurrency after stealing it is "completely inadequate to establish substantial assistance." In re Refco Inc. Sec. Litig., Nos. 07 Md. 1902 (JSR), et al., 2011 WL 13168450, at *9–10 (S.D.N.Y. Dec. 8, 2011). Plaintiffs fall even further short as to Chainalysis, given their allegations that Chainalysis actually did provide "the KYT protocol . . . to remedy [the] dangerous shortcomings[]" in the KuCoin Defendants KYC and AML procedures. (Dkt. No. 49 ¶ 271). Plaintiffs' theory of Chainalysis' alleged substantial assistance is non-sensical and implausible.

Accordingly, if the Court were to reach this argument, we respectfully recommend that the Aiding & Abetting Claim be dismissed.

C. Leave to Amend

Plaintiffs request that, if the Court were to grant the Motions, they be granted leave to amend to correct any pleading deficiencies. (Dkt. No. 73 at 47–48). They allude to “additional facts . . . concerning the likelihood of recovery by victims of crypto-theft prior to laundering and the value of transactions at KuCoin through previously identified blacklisted wallets.” (*Id.* at 48). When pressed at oral argument, however, Plaintiffs vaguely alluded to “statistical support for the quantification” of damages and “demands” Plaintiffs made to the KuCoin Defendants, but offered no further clarity nor provided a proposed amended pleading. (Tr. at 41:14–15, 22–23, 51:11–24). In addition, Plaintiffs offered no proposed amendments regarding causation and have not even suggested they had anything further to allege as to Chainalysis. (See generally Tr. at 31–49).

As discussed above, Defendants filed pre-motion letters highlighting the deficiencies in the Complaint, which Judge Woods discussed with the parties at the Conference, following which Plaintiffs filed the Amended Complaint. (See § II.B, supra). To grant Plaintiffs leave to amend, then, would be allowing them a “third bite at the apple,” which courts in this District routinely deny. Binn v. Bernstein, No. 19 Civ. 6122 (GHW) (SLC), 2020 WL 4550312, at *34 (S.D.N.Y. July 13, 2020) (collecting cases), adopted by, 2020 WL 4547167 (S.D.N.Y. Aug. 6, 2020). Furthermore, Plaintiffs’ ambiguous references to additional facts they might allege fail to remedy the defects in the RICO elements of causation and enterprise. Sheridan v. Mariuz, No. 07 Civ. 3313 (SCR) (LMS), 2009 WL 920431, at *2, *9 (S.D.N.Y. Apr. 6, 2009) (dismissing RICO claims with prejudice and without leave to amend where plaintiff could not “overcome the defects concerning [] proximate cause . . . because his theory of RICO liability is defective as a matter of

law"). Any amendment would thus also be futile. Empire Merchants I, 2017 WL 5559030, at *17–18 (denying leave to amend RICO claims where plaintiff did “not—and could not—demonstrate that its injury was proximately caused by defendants’ predicate acts”).

Accordingly, we respectfully recommend that Plaintiffs’ request for leave to amend be **DENIED**.

IV. CONCLUSION

For the reasons set forth above, we respectfully recommend that the Motions be **GRANTED** as follows:

- (1) The RICO Claim and the RICO Conspiracy Claim be **DISMISSED WITH PREJUDICE** and **WITHOUT LEAVE TO AMEND**, and
- (2) The Court decline to exercise supplemental jurisdiction over the Conversion Claim and the Aiding & Abetting Claim, which would be **DISMISSED WITHOUT PREJUDICE**, or
- (3) In the alternative, should the Court exercise supplemental jurisdiction over the Conversion Claim and the Aiding & Abetting Claim, both claims also be **DISMISSED WITH PREJUDICE**.

Dated: New York, New York
November 13, 2025


SARAH L. CAVE
United States Magistrate Judge

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NOTICE OF PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

The parties shall have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed. R. Civ. P. 6(a), (d) (adding three additional days when service is made under Fed. R. Civ. P. 5(b)(2)(C), (D) or (F)). A party may respond to another party's objections within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b)(2). Such objections, and any response to objections, shall be filed with the Clerk of the Court. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), (d), 72(b). Any request for an extension of time for filing objections must be addressed to Judge Woods.

FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), (d), 72(b); Thomas v. Arn, 474 U.S. 140 (1985).