

## **Andreessen Horowitz, Crypto Org. Escape 'Scam Token' Suit**

By **Jessica Corso**

*Law360 (August 30, 2023, 7:28 PM EDT)* -- Decentralized crypto platform Uniswap Labs and its venture capital backers, including Andreessen Horowitz, Wednesday escaped a putative class action accusing them of facilitating the sale of so-called scam tokens, in a ruling on a case of first impression.

A New York federal judge told token purchasers that they were better off appealing to Congress for relief from an unregulated industry.

U.S. District Court Judge Katherine Polk Failla's ruling came in a case accusing Uniswap of profiting off the sale of scam tokens while its users lost money to the anonymous issuers of those coins.

Judge Failla seemed sympathetic to the fact that the buyers lost money on the transactions while being unable to identify those who allegedly scammed them, but said that didn't allow them to sue the platform or the venture capital funders in lieu of the actual wrongdoers.

"Plaintiffs are looking for a scapegoat for their claims because the defendants they truly seek are unidentifiable," she said.

The judge continued, "Whether this anonymity is troublesome enough to merit regulation is not for the court to decide, but for Congress."

She said it was the first time that any court has decided whether Section 29(b) of the Securities Exchange Act of 1934, which invalidates a contract violating the securities laws, applies to a decentralized crypto exchange.

James R. Serritella of Kim & Serritella LLP, one of the firms representing the suing token buyers, told Law360 in an email that the plaintiffs were disappointed but undeterred by the ruling.

"We strongly believe existing laws protect investors from fraudulent activity perpetrated on crypto-asset exchanges," he said. "We are assessing next steps."

Marvin Ammori, chief legal officer for Uniswap, hailed the ruling as a "huge victory for the crypto world & software devs" in a post on the social media platform X, formerly known as Twitter.

Attorneys for Andreessen Horowitz, which is also known as a16z, declined to comment.

Attorneys for the remaining venture capital firms — Paradigm Operations LP and Union Square Ventures LLC — didn't immediately respond to requests for comment.

The lawsuit was filed in 2022 by North Carolina resident Nessa Risley with residents of Idaho, New York and Australia later joining the lawsuit as proposed lead plaintiffs.

All the named plaintiffs say they lost money using Uniswap to trade cryptocurrencies that later turned out to be scam tokens.

Uniswap is a decentralized platform, meaning that it allows anonymous users to create and sell tokens directly on the platform through the issuance of smart contracts drafted by the defendants.

The plaintiffs say that anonymity and lack of barriers of entry for token issuers have "led to rampant fraud on the exchange."

They claim that Uniswap and its VC investors profited off that fraud by charging transaction fees and facilitated the fraud through the drafting of the smart contracts.

But Judge Failla ruled that the contracts were merely a code upon which coin issuers could build their own terms and said "it defies logic that a drafter of computer code underlying a particular software platform could be liable ... for a third party's misuse of that platform."

"While no court has yet decided this issue in the context of a decentralized protocol's smart contracts, the court finds that the smart contracts here were themselves able to be carried out lawfully," she ruled.

She compared the suit to an attempt "to hold an application like Venmo or Zelle liable for a drug deal that used the platform to facilitate a fund transfer."

Tweets by Uniswap CEO Hayden Z. Adams promoting the safety of the platform were also not actionable for the same reason that a traditional stock exchange can't be sued "for tweeting that its exchange was a safe place to trade after that plaintiff had lost money due to an issuer's fraudulent schemes," Judge Failla said.

She said that the federal securities claims were dismissed with prejudice but that the plaintiffs could press their remaining state claims in state court if they wanted.

The token buyers are represented by James R. Serritella, Justin Stone and C. Claudio Simpkins of Kim & Serritella LLP, and Roger E. Barton, Christopher J. McNamara and Michael C. Ward of Barton LLP.

Uniswap Labs, Adams and Union Square Ventures are represented by Elliot Greenfield, Maeve O'Connor and Brandon Fetzer of Debevoise & Plimpton LLP.

Andreessen Horowitz is represented by Susan Engel, Benjamin Naftalis, Douglas Yatter, Julia Miller, Gregory Mortenson and Peter Trombly of Latham & Watkins LLP.

Paradigm Operations is represented by Alexander C. Drylewski and Tansy Woan of Skadden Arps Slate Meagher & Flom LLP.

The case is Risley v. Universal Navigation Inc. dba Uniswap Labs et al., case number 1:22-cv-02780, in the U.S. District Court for the Southern District of New York.

--Editing by Robert Rudinger.

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