UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MISLAV BASIC, NATHAN GRUBER, KEVIN BOUDREAU, DANIEL SCHWAIBOLD, and KEITH ZACHARSKI, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BPROTOCOL FOUNDATION, LOCALCOIN, LTD., GALIA BEN-ARTZI, GUY BEN-ARTZI, EYAL HERTZOG, YEHUDA LEVI, and BANCOR DAO,

Defendants.

Case No: 1:23-cv-00533-ADA

NON-PARTY JENNIFER ALBERT'S MOTION FOR A PROTECTIVE ORDER TO ENFORCE THE STATUTORY STAY OF DISCOVERY

PRELIMINARY STATEMENT

Ms. Albert, a non-party, respectfully moves for a protective order to prevent the improper discovery that Plaintiffs have already demanded of her once, and that they are trying to renew through their motion to open discovery. The wide-ranging discovery Plaintiffs seek would impose an undue burden on Ms. Albert that contravenes the applicable statutory stay of discovery and turns the standard for analyzing a motion for default judgment on its head.

Plaintiffs' attempt to seek discovery from Ms. Albert is a transparent effort to circumvent discovery limitations imposed by Congress in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The PSLRA mandates strict pleading requirements and stays discovery until plaintiffs in securities class actions satisfy that pleading standard. 15 U.S.C. § 78u-4(b). The stay is intended to bar Plaintiffs' precise efforts here: the use of a deficient complaint as a basis to demand discovery in hopes of meeting the pleading burden. Plaintiffs do not deny this problem. Rather, their motion for discovery elides over the statutory stay entirely. In fact, Plaintiffs cite no securities cases at all, much less one allowing discovery prior to satisfying the PSLRA's pleading standard.

A protective order is especially appropriate here because there is no basis to presume Plaintiffs can state a claim or that this Court has jurisdiction. Every person and entity sued in this case (the "Dismissed Defendants") appeared and successfully dismissed themselves. This Court granted their motions to dismiss because: (1) Plaintiffs failed to allege sufficient jurisdictional contacts by *anyone*; and (2) in any event, *all* of Plaintiffs' transactions fall outside the territorial limits of U.S. securities laws. But the case lingers on the basis that Plaintiffs also named a non-existent partnership, Bancor DAO, as a separate defendant.

Now, on the basis that this non-existent partnership never appeared, Plaintiffs seek wide-ranging and burdensome discovery from Ms. Albert, with the express purpose of fishing for information to cure their pleading failures. They argue outright that discovery is "necessary to

establish facts supporting this Court's personal jurisdiction" and "necessary" to establish that Plaintiffs' securities transactions with Bancor DAO were "domestic." (Pls.' Mot. For Leave to Conduct Discovery at 4-5, Dkt. No. 81 ("Mot.").) But this attempt to obtain discovery, after *expressly failing to meet* the threshold pleading burden, is exactly what Congress has prohibited. Naming a non-existent defendant is not a loophole to bypass the discovery stay.

Nor is the discovery Plaintiffs seek from Ms. Albert necessary for their anticipated motion for default judgment. If and when Plaintiffs move for a default judgment, the Court must look to the allegations to assess whether Plaintiffs have satisfied the PSLRA pleading standard. And the Court dismissed the Complaint as against all Dismissed Defendants on that same standard based on the same allegations. There are *no* separate allegations to establish personal jurisdiction over Bancor DAO, and *no* separate transactions within the scope of U.S. securities laws.

Ms. Albert respectfully requests that the Court issue a protective order precluding Plaintiffs from engaging in untimely discovery before they sufficiently state a claim.

BACKGROUND

Plaintiffs filed their First Amended Class Action Complaint (the "Complaint") against six foreign defendants—Bprotocol Foundation, LocalCoin, and four Israeli individuals (the "Dismissed Defendants")—and the Bancor DAO.

Plaintiffs alleged that in 2017, the Dismissed Defendants created and deployed a blockchain software protocol known as Bancor. (¶ 2.[1]) Bancor DAO refers to a feature of the Bancor Protocol added in 2020, which provides an online voting mechanism for users to propose and vote on potential changes to the software. (¶¶ 22, 153.) Plaintiffs' theory of liability against

[1] The Complaint, Dkt. No. 37, is cited as "¶ ___."

Bancor DAO was based on allegations that this software voting mechanism is a partnership in which the Dismissed Defendants are controlling partners. (¶¶ 22, 35.)

The Complaint did not name any other purported controlling partners besides the Dismissed Defendants, did not allege any actions by Bancor DAO other than the alleged acts of the Dismissed Defendants, and sought to attribute all of the allegations in the Complaint to the Dismissed Defendants directly in addition to their partnership theory.

Every human and entity named as a Defendant appeared and successfully moved to dismiss the Complaint in its entirety. (Dkt. No. 54 ("Mot. to Dismiss").) They demonstrated that the Complaint failed to allege contacts with the United States sufficient to plead personal jurisdiction (*id.* at 1, 4-5, 14-20), and that the federal securities laws do not apply to this foreign conduct (*id.* at 2, 21-23). They also explained that Bancor DAO is not a partnership. (*See id*. at 19-20.)

In opposing the Motion to Dismiss, Plaintiffs expressly grouped all Defendants together and argued that the Court should attribute all allegations to the Dismissed Defendants. (Dkt. No. 56 at 9, 19-23.) The Court did attribute *all* allegations to the Dismissed Defendants, and recommended dismissal for failure to allege personal jurisdiction and because Plaintiffs' alleged transactions fall outside the territorial scope of U.S. securities laws. (Dkt. No. 68 (the "R&R").)

On September 6, 2024, the Court adopted the R&R and dismissed the Complaint "for lack of personal jurisdiction and because Plaintiffs fail to allege that their claims fall within the territorial scope of the federal securities laws." (Dkt. No. 72 at 2.) After the Court entered judgment (Dkt. No. 73), Plaintiffs filed a motion to amend the judgment, arguing that the claims against Bancor DAO should be considered separately and not dismissed. (Dkt. No. 74.)

Based on the argument that "Bancor DAO was not a party to the Motion to Dismiss, and parties may not move for dismissal on behalf of other parties," the Court granted Plaintiffs' request

to modify the judgment and reinstate the claims against Bancor DAO. (Dkt. No. 77 at 3-4.) On March 13, 2025 the Clerk entered a default against Bancor DAO. (Dkt. No. 79.)

Plaintiffs have not moved for a default judgment. Instead, they served a subpoena on Ms. Albert, an independent contractor who has worked with BProtocol Foundation,[2] despite the fact that discovery never opened in this case. (*See* Ex. A, Subpoena to Testify at a Deposition in a Civil Action, including Subpoena Schedule A.) Ms. Albert objected to the subpoena. (*See* Mot. at 3.)

Now, Plaintiffs ask for leave to conduct discovery in an effort to find facts that might cure their failure to allege a basis for personal jurisdiction and their failure to allege any domestic transactions. The Proposed Subpoena attached to the Motion is substantively the same as the subpoena served on Ms. Albert. (*Compare* Ex. A *with* Dkt. 81-1.) The requests are wide ranging and directly target discovery at the pleading deficiencies and at the Dismissed Defendants. For example, the Proposed Subpoena defines "Bancor" to include all the Dismissed Defendants, and then seeks all documents and communications with any of the Dismissed Defendants among a host of other topics focused on the Dismissed Defendants throughout 25 separate requests delving into the merits of every topic addressed in the Complaint. (*See* Dkt. No. 81-1.)

ARGUMENT

I. The Court Should Issue a Protective Order Precluding Re-Issuance of the Proposed Subpoena to Ms. Albert and Staying Discovery Until Plaintiffs State a Claim.

The Court may issue a protective order to protect against "undue burden or expense" by precluding or staying discovery. Fed. R. Civ. P. 26(c)(1)(A). A protective order is doubly warranted here. Under the PSLRA, Plaintiffs are required to adequately plead their claims *first,* in order to get discovery, not the other way around. Yet, Plaintiffs expressly admit they are seeking to do the opposite. Moreover, even in non-securities cases, courts grant requests for protective

[2] Plaintiffs mischaracterize Ms. Albert as a "Bancor DAO employee." (Mot. at 3.) That is false.

orders staying discovery from non-parties until "preliminary questions that may dispose of the case are determined." *See Fund Texas Choice v. Deski*, No. 22-CV-859, 2023 WL 8532404, at *2-3 (W.D. Tex. Dec. 8, 2023) (granting non-party's motion for a protective order and stay of discovery (citing *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987))). And where a complaint has been dismissed, it is particularly appropriate to grant a protective order staying discovery until the Court determines that the initial reasons for dismissal no longer apply. *See MacKenzie v. Castro*, No. 15-CV-0752, 2015 WL 8958872, at *2 (N.D. Tex. Dec. 16, 2015) (granting protective order following dismissal of complaint for lack of subject matter jurisdiction until plaintiff repleaded and court determined it had jurisdiction). Here, there is no basis to presume that the Court has jurisdiction at all or that a claim has been stated, given that the reasons for the earlier dismissal apply equally to claims against Bancor DAO.

A. Plaintiffs' Efforts Expressly Violate the PSLRA Discovery Stay.

In 1995, Congress reformed the securities laws specifically to prevent plaintiffs in securities class actions from imposing the burdens of discovery until after a complaint met the pleading standard, and to prevent plaintiffs from using discovery in their effort to meet that standard. Thus, under the PSLRA, discovery in securities class actions is automatically stayed during the pendency of a motion to dismiss, 15 U.S.C. §§ 77z-1(b)(1), 78u-4(b)(3)(b). Courts recognize and enforce "two purposes that underlie the statutory prohibition:

> 1. to prevent the imposition of any unreasonable burden on a defendant before disposition of a motion to dismiss the complaint[;] and
>
> 2. to avoid the situation in which a plaintiff sues without possessing the requisite information to satisfy the Reform Act's heightened pleading requirements, then uses discovery to acquire that information and resuscitate an otherwise dismissable complaint."

In re Comdisco Sec. Litig., 166 F. Supp. 2d 1260, 1263 (N.D. Ill. 2001) (citation omitted); *see also In re Cassava Scis., Inc. Sec. Litig.*, No. 21-cv-00751, 2023 WL 28436, at *2 (W.D. Tex. Jan. 2, 2023) (the PSLRA's automatic discovery stay "protects 'defendants from plaintiffs who would use discovery to substantiate an initially frivolous complaint.'" (quoting *Newby v. Enron Corp.*, 338 F.3d 467, 471 (5th Cir. 2003)).

Indeed, it would be improper to permit discovery where "[p]laintiffs might attempt to use the information in addressing a motion to dismiss or amending their claims in direct contravention of one of the purposes of the PSLRA." *In re Cassava Scis., Inc. Sec. Litig.*, 2023 WL 28436, at *4 (quoting *In re Am. Funds Sec. Litig*, 493 F. Supp. 2d 1103, 1106-07 (C. D. Cal. 2007)). *See also Edwards v. McDermott Int'l, Inc.*, No. 18-cv-04330, 2021 WL 5121853, at *1 (S.D. Tex. Nov. 4, 2021) (noting that the stay is in place to prevent "fishing expedition[s]" by which plaintiffs file complaints in search of sustainable claims); *In re Key Energy Servs., Inc. Sec. Litig.*, 166 F. Supp. 3d 822, 841 (S.D. Tex. 2016) (noting that Congress imposed the stay "[i]n order to prevent costly discovery until the court can determine whether a filed securities fraud suit has merit").

To effectuate the PSLRA's purpose, courts have applied the discovery stay if the claims have not proceeded past a motion to dismiss ruling, regardless of whether a motion to dismiss is technically pending. Courts routinely recognize that the "'Stay of Discovery' provision of the Act clearly contemplates that 'discovery should be permitted in securities class actions *only after the court has sustained the legal sufficiency of the complaint.*'" *SG Cowen Sec. Corp. v. U.S. Dist. Ct. for N. Dist. of Cal.*, 189 F.3d 909, 912-13 (9th Cir. 1999) (emphasis in original) (citation omitted). This is because "Congress clearly intended that complaints in these securities actions should stand or fall based on the actual knowledge of the plaintiffs rather than information produced by the defendants after the action has been filed." *Id.* at 912 (quoting *Medhekar v. U.S. Dist. Ct. for N.*

Dist. of Cal., 99 F.3d 325, 328 (9th Cir. 1996)); *see also In re Comdisco Sec. Litig.*, 166 F. Supp. 2d at 1263 (noting that the purpose of the PSLRA stay is to prevent the situation where a "plaintiff sues without possessing the requisite information to satisfy the [PSLRA]'s heightened pleading requirements, then uses discovery to acquire that information").

Courts in this Circuit similarly recognize that the statutory stay "has been interpreted to mean that discovery is stayed from the filing of the complaint *until* the court has determined the sufficiency of the plaintiff's pleading, unless the plaintiff can establish one of the exceptions." *Newby v. Enron Corp.*, 188 F. Supp. 2d 684, 709 (S.D. Tex. 2002) (enforcing the stay even while no motion to dismiss was pending) (citing S. Rep. 104–98, at 14 (1995), *reprinted in* 1995 U.S.S.C.A.N. 679, 693 ("discovery should 'be permitted in securities class actions only after the court has sustained the legal sufficiency of the complaint"'). To grant a request for "discovery before the court has decided whether [plaintiffs] have satisfied the PSLRA's heightened pleading standard would eviscerate that heightened pleading standard." *Davis v. Duncan Energy Partners L.P.*, 801 F. Supp. 2d 589, 595 (S.D. Tex. 2011).

Plaintiffs ignore the stay entirely and explicitly seek discovery for exactly the reason prohibited by Congress: to fish for information to meet their initial pleading burden. They outright admit that absent the discovery they seek from Ms. Albert, they lack facts "necessary to support this Court's personal jurisdiction." (Mot. at 4.) Moreover, they affirm that "[w]ithout discovery, Plaintiffs cannot develop the factual record necessary to demonstrate that their securities transactions with Bancor DAO fall within the territorial scope of U.S. securities laws." (Mot. at 5.)[3] Those concessions alone are reason to deny all discovery, not a basis to grant discovery. Nor

[3] While Plaintiffs argue that discovery is also necessary for damages and class certification (Mot. at 1, 3, 5-6), those issues are premature until Plaintiffs sufficiently state a claim, and regardless those issues appear *not* to be addressed in the Proposed Subpoena. (Dkt. 81-1.)

could Plaintiffs establish any exception, as any purported prejudice "cannot consist of disadvantage that is inherent in the stay itself, such as the possibility of dismissal when an amended complaint based on newly discovered facts might have survived." *In re Cassava Scis., Inc. Sec. Litig.*, 2023 WL 28436, at *4.

B. Plaintiffs' Anticipated Motion for Default Judgment Will Be Properly Considered Based on the Allegations Without Discovery.

Plaintiffs also cannot demonstrate any need for the discovery they improperly sought from Ms. Albert, because Plaintiffs' anticipated motion for default judgment will be heard on the equivalent of a motion to dismiss standard based on the well-pleaded allegations. *See Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (articulating the standard); *Allstate Fire & Cas. Ins. Co. v. Vernon*, No. 24-CV-00460, 2024 WL 4520687, at *7 (W.D. Tex. Oct. 15, 2024) (articulating the process).

On a motion for default judgment, the court must assess whether: (i) default judgment is appropriate, and (ii) there is a sufficient basis *in the pleadings* for judgment in favor of the plaintiff. *See Vernon*, 2024 WL 4520687, at *5, 7 (denying motion for default judgment, citing *Nishimatsu*). To do so, the court must determine if the complaint states a claim, without accepting conclusions of law or facts that are not well-pleaded. *Nishimatsu*, 515 F.2d at 1206.

Because a motion for default judgment is decided on the basis of the allegations, merits discovery is premature. *See ReSea Project ApS v. Restoring Integrity to the Oceans, Inc.*, No. SA21CA1132, 2022 WL 19575585, at *1 (W.D. Tex. July 19, 2022). And discovery into damages is only appropriate if the complaint states a viable claim. *See, e.g.*, *Rodriguez*, 2019 WL 13472243, at *2 (awarding limited damages discovery only after evaluating a motion for default judgment).

Plaintiffs' allegations against Bancor DAO fail for the same reasons that led to dismissal of all other Defendants. All jurisdictional contacts alleged in the Complaint were imputed to the

Dismissed Defendants and found insufficient to establish personal jurisdiction (R&R at 12-15), and there are no different allegations as to Bancor DAO. Similarly, the Court already held that Plaintiffs failed to allege that their transactions were domestic (*id.* at 1-20); there are no other transactions to permit a different result for Bancor DAO.

As a result, Plaintiffs cannot meet their burden to obtain a default judgment on the existing Complaint. Where "a defending party establishes that the plaintiff has no cause of action," that defense "inures also to the benefit of a defaulting defendant." *McCarty v. Zapata Cnty.*, 243 F. App'x 792, 794 (5th Cir. 2007) (cleaned up). It would be "incongruous and unfair to allow some defendants to prevail, while not providing the same benefit to similarly situated defendants." *Lewis v. Lynn*, 236 F.3d 766, 767-68, 787 (5th Cir. 2001) (per curiam) (cleaned up); *see also Perez v. Steele*, No. 17-CV-113, 2018 WL 10323028, at *4 (N.D. Tex. Mar. 30, 2018) (denying motion seeking discovery concerning dismissed claims).

None of the cases cited in Plaintiffs' motion to open discovery permits the sort of merits discovery they are seeking to bolster pleadings before moving for default judgment. The closest is *Ako v. Arriva Best Security, Inc.*, which arose *after* a motion for default judgment. No. 22-cv-1751, 2024 WL 4995570, at *1 (N.D. Tex. Dec. 5, 2024).[4] And crucially, neither *Ako* nor any other case

[4] The other cases do not address merits discovery at all. *See Cleveland v. Nextmarvel, Inc.*, No. Civil Action 23-1918, 2024 WL 198212, at *2, 4 (D. Md. Jan. 18, 2024) (allowing discovery for class certification and damages after finding allegations were sufficient to establish liability); *Schwartz v. Insured for Life, LLC*, No. 23-cv-443, 2024 WL 3201895, at *1 (S.D. Ohio May 31, 2024) (allowing limited discovery for class certification and damages); *Leo v. Classmoney.net*, No. 18-cv-80813, 2019 WL 238548, at *2 (S.D. Fla. Jan. 10, 2019) (same); *Sheridan v. Oak St. Mortg., LLC*, 244 F.R.D. 520, 522 (E.D. Wis. 2007) (same); *Twitch Interactive, Inc. v. Johnston*, No. 16-cv-03404, 2017 WL 1133520, at *3 (N.D. Cal. Mar. 27, 2017) (allowing limited discovery for damages). Plaintiffs also argue that the Court "has an affirmative duty to look into its jurisdiction over both the subject matter and the parties." (Mot. at 4-5 (citing *LMC Props., Inc. v. Prolink Roofing Sys., Inc.*, No. 23-11090, 2024 WL 4449421, at *6 (5th Cir. Oct. 9, 2024)). Here, that duty weighs in favor of holding Plaintiffs to their pleading burden, and denying default judgment for the same reasons that the Court granted the prior motion to dismiss.

relied on by Plaintiffs was a securities case in which granting discovery before evaluating the claims would run afoul of a Congressionally-mandated stay of discovery.

Plaintiffs' attempt to open discovery gets the law exactly backwards: under the PSLRA, Plaintiffs' concession that they cannot cure pleading failures on their own is the reason to *deny* discovery in a securities case, not a reason to grant discovery.

CONCLUSION

The Court should grant Ms. Albert's Motion for a Protective Order.

DATED: June 9, 2025

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CERTIFICATE OF CONFERENCE

I hereby certify that I called and left voicemails with Ian Sloss and Joe Kendall, both counsel for Plaintiffs, in an attempt to confer regarding the relief requested in this motion, and as of this filing, have not heard back from either.

/s/ *Travis C. Barton*
Travis C. Barton

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ *Travis C. Barton*
Travis C. Barton

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

EXHIBIT A

Mislav Basic et al.
Plaintiff
v.
BProtocol Foundation et al.
Defendant

Civil Action No. 1:23-cv-00533-RP

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Jennifer Albert

(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 2425 E Camelback Rd Suite 150, Phoenix, AZ 85016	Date and Time: 04/08/2025 9:00 am

The deposition will be recorded by this method: audiovisual and stenographic

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: see Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/10/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Mislav Basic et al. on behalf of themselves and others similarly situated, who issues or requests this subpoena, are:

Timothy W. Grinsell, 11 Hanover Sq. Ste. 703, NY, NY 10005, tim@hoppingrinsell.com, 646-475-3550

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:23-cv-00533-RP

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MISLAV BASIC, NATHAN GRUBER, KEVIN BOUDREAU, DANIEL SCHWAIBOLD, and KEITH ZACHARSKI, on behalf of themselves and all others similarly situated,

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Defendants.

Case No: 1:23-cv-00533-RP

SCHEDULE A

DEFINITIONS & RULES OF CONSTRUCTION

As used in these requests (each a "Request" and together the "Requests"), the following words shall have the meanings listed below.

1. Each reference to a corporation, limited liability company, partnership, limited partnership, joint venture, unincorporated association, government agency, or other non-natural person shall be deemed to include each and all of its present and former subsidiaries, parents, affiliates, predecessors, and successors, and with respect to each of such entities, its present and former officers, directors, shareholders, employees, members, partners, limited partners, representatives, agents, accountants, attorneys, and any other person who acted or purported to act on its behalf.

2. Each reference to a natural person shall be deemed to include that person's agents, attorneys, and any other person who acted or purported to act on that person's behalf.

3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Requests all responses that might otherwise be construed to be outside of their scope.

4. "Any," "all," and "each" shall be construed broadly, and each shall mean any, all, and each as necessary to bring within the scope of the Requests all responses that otherwise could be construed to be outside of their scope.

5. "Bancor" means Bancor DAO, BProtocol Foundation, LocalCoin Ltd., Galia Ben-Artzi, Guy Ben-Artzi, Eyal Hertzog, and Yehuda Levi and, with respect to the entities, each and all of their present and former subsidiaries, parents, affiliates, predecessors, and successors, and with respect to each such entity, its present and former officers, directors, shareholders, employees, members, partners, limited partners, representatives, agents, accountants, attorneys, and any other person who acted or purported to act on its behalf.

6. "Bancor DAO" means the unincorporated general partnership that is comprised of certain holders of BNT and vBNT and that purportedly governs the Bancor Protocol.

7. "Bancor Protocol" means the automated platform for trading crypto assets developed and patented by the four Individual Defendants.

8. "Bancor v3" or "v3" means the version of the Bancor Protocol launched on or around May 11, 2022.

9. "BIP15" means the Bancor Improvement Proposal titled "BIP15: Proposing Bancor 3," published on Snapshot for Bancor DAO voting between April 11 and April 15, 2022.

10. "BIP22" means the Bancor Improvement Proposal titled "BIP22: the Bancor DAO Multisig" published to the Governance Forum and published on Snapshot for a Bancor DAO vote between May 5 and May 8, 2022.

11. "BNT" means the native token of the Bancor Protocol.

12. "Communication(s)" means the transmittal of information, in any form and of any type, whether oral, in writing, electronically (including e-mail, instant message, text, or any other electronic means of communication), or otherwise.

13. "Concerning" means comprising, consisting of, concerning, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation for, or being in any way legally, logically, or factually concerned with the matter or document described, referred to, or discussed.

14. "Document(s)" is used in its broadest sense and means any written, typed, printed, electronic, recorded, or graphic matter of any kind, however produced or reproduced, and all non-identical copies thereof, whether different because of notes made thereon or otherwise, including, but not limited to, and by way of example only: letters or other correspondence, messages, emails, facsimiles, memoranda, notations, reports, analyses, summaries, charts, graphs, studies, tabulations, statements, notes, notebooks, work papers, telephone toll records, invoices, books, pamphlets, brochures, press releases, diaries, minutes of meetings or conferences, transcripts of telephone conversations, transcripts of testimony, cost sheets, financial reports, accountants' work papers, opinions or reports of consultants, checks, receipts, ledgers, purchase orders, pictures, photographs, contracts, agreements, advertisements, tape or electronic recordings, videotapes, indices, voice-mails, instant messages, Electronic Data as defined below or other memory units containing such data from which information can be

obtained or translated into usable form, drafts of any of the foregoing, and all similar documents. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Electronic Data" means information stored in electronic format and includes information created automatically by a computer, such as load files, or information created by a user using any software application, including word-processing documents, spreadsheets, databases, charts, graphs and outlines; operating systems; code of all types; data concerning voting with respect to Bancor DAO; data concerning blockchain transactions; PIF, TIF and PDF files, batch files; ASCII files; SGML, HTML and XML files; originals and all copies of e-mail receipt and transmittal; voicemail; audio or video recordings of any kind; programming notes or instructions; portable hard drives; on-line repositories; social network sites; network storage on-site; any "cloud" metadata; and all other electronic files or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, a deleted file or a file fragment. Electronic Data includes information stored on all primary-storage or backup-storage media, whether fixed or removable and whether permanent, write-once or rewritable, including hard drives; floppy disks; optical disks, including compact discs, DVDs and paper disks (e.g., Blu-Ray disks); Bernoulli disks and their equivalent; computer chips, including ROM chips, RAM chips and flash-memory chips; and magnetic tapes of all kinds. Electronic Data also includes the file-folder tabs, containers or labels appended to any storage device containing Electronic Data.

16. **"**Foundation" or "Bancor Foundation" means Defendant BProtocol Foundation.

17. "Governance Forum" means the Bancor community discussion platform located online at https://gov.bancor.network/.

18. **"**Individual Defendants**"** means any one or more of Guy Ben-Artzi, Galia Ben-Artzi, Eyal Hertzog, and Yehuda Levy.

19. "Death Spiral" means the June 2022 events leading to Bancor's suspension of impermanent loss protection.

20. **"**Liquidity Provider**"** or **"**LP" means any person that deposited their crypto assets into the Bancor Protocol.

21. "LocalCoin" means Defendant LocalCoin, Ltd.

22. "LP Program" means the program through which liquidity providers could provide liquidity to Bancor v3 as described by BIP15.

23. "Person" means any natural person or any legal entity, regardless of form and incorporation status, including, without limitation, any business entity, governmental entity, unincorporated association, or partnership.

24. "Multisig" or "MSIG" means the seven-signatory entity authorized by the passage of BIP22.

25. **"**Snapshot" means the platform used to conduct Bancor DAO votes, located online at https://vote.bancor.network/#/.

26. **"**vBNT" means the governance token of the Bancor Protocol.

27. "Wallet" means a digital wallet used to store and manage cryptocurrencies.

28. "Wallet Address" means the unique alphanumeric sequence associated with a particular Wallet.

29. "You" and its inflections means Jennifer Albert.

30. The terms "and," "or," "any," "all," "each," "concerning," "document(s)," "include(s)," and "including" as used above shall have the meanings set forth therein, regardless of whether they are capitalized in the Requests.

INSTRUCTIONS

1. The singular form of a word shall be construed as the plural, and the plural as the singular, as necessary, to bring within the scope of these Requests all documents and responses which may otherwise be considered to be beyond their scope.

2. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these Requests all documents and responses which might otherwise be considered to be beyond their scope.

3. When documents, data, knowledge or information in Your possession, custody or control are requested, the Request includes the knowledge of and documents, data and information in the possession, custody or control of Your attorneys, accountants, agents, representatives and experts, and any professional or person retained by You.

4. A document is deemed to be within Your control if You have any degree of ownership, possession, custody or control of the document or a copy thereof, or the right or practical ability to obtain the document or a copy thereof.

5. The documents responsive to these Requests shall be produced as they have been kept in the usual course of business or shall be organized and labeled to correspond with the enumerated categories in these Requests, but in either event shall be produced in a manner so as to indicate the file from which they were produced.

6. Electronic documents should be produced in their native format.

7. Time period. Unless otherwise specified, the time period covered by these Requests is January 1, 2022 through the present.

8. Continuing Requests. These Requests are continuing. If, after producing the requested documents, You obtain or becomes aware of further documents responsive to these Requests, You are required to produce such additional documents.

9. Privileged Material. In the event any document is withheld, whether in whole or in part, on the basis of any privilege, You shall produce as much of the document concerned as to which no claim of privilege is made. With respect to documents or portions of documents for which a claim of privilege is made, state the following:

a) The date of the document;

b) The general character type of document (*e.g.*, letter, memorandum, notes of meeting, etc.);

c) The identity of the person(s) in possession of the document;

d) The identity of the author(s) of the document;

e) The identity of the original recipient(s), including any copied recipient(s) (indicated or blind), or holder(s) of the document;

f) The relationship of the author(s), addressee(s), and any other recipient(s);

g) The general subject matter of the document; and

h) The legal basis, including each basis upon which the document, or any part, has been withheld.

10. Lost or Destroyed Documents. If any document responsive to these Requests was at one time in existence, but was subsequently lost, discarded, or destroyed, identify such document as completely as possible, including the following information: (a) contents; (b) author(s); (c) recipients(s); (d) sender(s); (e) copied recipient(s) (indicated or blind); (f) date prepared or received; (g) title or subject line of the document; (h) date of destruction or

disposal; (i) manner of disposition; (j) person(s) currently in possession of the document; (k) person(s) who participated in, or where involved in, the decision to destroy or dispose of such document; (l) any document retention or destruction policy under which such document was destroyed or disposed of and any and all persons who participated in, or were involved in, the formulation of any such policy; and (m) the reason for the destruction or disposition of such document.

11. Partial Production. If any document responsive to these Requests cannot be produced in full, produce such documents to the extent possible, stating the reasons for Your inability to produce the remainder, and stating whatever information, knowledge, or belief that You have concerning the unproduced portion.

12. Each Request should be interpreted broadly, so as to include all documents that could be responsive to each Request. The fact that one document may be responsive to more than one Request shall in no way limit the scope of any Request.

13. If You should learn that any response to these Requests was inaccurate or misleading, You shall amend its response promptly after learning such information so as to cure any such inaccuracy or misleading nature.

DOCUMENT REQUESTS

1. All Documents and Communications concerning your job responsibilities, employment agreements, contractor agreements, compensation arrangements, and other formal or informal agreements between You and Bancor (including LocalCoin, the Foundation, Bancor DAO, or any other Bancor-related entity) from January 1, 2022, to the present.

2. Documents sufficient to identify every username, online handle, email address, Wallet and Wallet Address accessed, used, or controlled by You (in whole or in part) at any time since January 1, 2021 in connection with Bancor or v3 on any public forum or any

"Bancor" forum, including but not limited to: (i) the Governance Forum, (ii) Snapshot, (iii) X (formerly Twitter), (iv) Telegram, (v) Discord, (vi) Instagram, (vii) YouTube, (viii) Medium.com, (ix) Reddit.

3. Documents sufficient to identify every Wallet and Wallet Address You owned, operated, accessed or used at any time since January 1, 2022 in connection with Your work on behalf of Bancor, Your investments in v3, Your membership in Bancor DAO, Your participation on the Governance Forum and on Snapshot, and Your promotional efforts for v3.

4. All Communications (including emails, text messages, Telegram messages, Discord messages, direct messages on X (formerly Twitter), Governance Forum communications, and other Electronic Data) between you and any other Bancor personnel, including but not limited to the Individual Defendants, Mark Richardson, Nate Hindman, Rick Barbar, Bancor DAO members, and individuals affiliated with the Foundation or LocalCoin, concerning:

(i) BIP 15;

(ii) BIP22;

(iii) Bancor DAO voting on governance proposals related to v3, including but not limited to communications related to participation in such voting by You or by others;

5. All Documents and Communications concerning the Bancor DAO participants responsible for 3% or more of the vBNT voted in connection with BIP15 or BIP22, including but not limited to Documents and Communications concerning or identifying the persons that controlled the following Wallet Addresses on during the BIP15 and BIP22 votes:

0xc32E1289b5765b2C4d8a6aA925cbd2A29d35cC22

0x157Db2630417A2802CB0a5D75D49163f9c5c064B

0xb4F70F2F0f1A27276571a12e60c64E321f40d47C

0x03984e19e197cad104f8B61978AC483e4B20535a

0x08c788aFdACF6cf81180D2bBBE42A7434D0C7A92

0x9326029b9aF034cc05fdc9af453CeDF249aC7Ed9

0x91c0319c6044A2d2F399f0d4A24f3345BFbe70c6

0xA2C12dBe82f19eF06850d4693F2b2D5724b8eA3E

6. All Documents concerning Bancor's marketing strategy, marketing plans, or marketing materials for Bancor v3 or the LP Program.

7. All Documents and Communications concerning the planning, organization, or execution of any events, meetups, parties, or conference appearances in the United States from January 1, 2022, to the present—including but not limited to DecentralCon, Ethereum Denver, Permissionless, DeFI & Fashion, and Consensus, and related events—concerning Bancor.

8. All Documents and Communications and communications concerning, related to, or consisting of the marketing, promotion, or launch of Bancor v3 or the LP Program to LPs in the United States.

9. All Documents and Communications concerning promotional events with DeFi Dad and ChainLinkGod, including an interview between DeFi Dad and Hindman and Richardson in May 2022 and a "round table" including Levi, Richardson, Hindman, ChainLinkGod, and DeFi Dad in November 2021.

10. All Documents concerning physical Bancor promotional materials, including Bancor condoms and t-shirts.

11. All Documents and Communications concerning Bancor v3 promotional content on X, YouTUbe, Medium, Discord, Reddit, Github, Telegram, the Bancor website, and other online media channels, including its development and publication.

12. All Documents and Communications concerning any instructions, guidance, or directives you received regarding how to discuss Bancor v3, the LP Program, or its features (including but not limited to "impermanent loss protection" and "single-sided staking") with potential investors or liquidity providers.

13. All Communications between you and Mark Richardson, Nate Hindman, Rick Barber, or any Individual Defendant concerning Bancor v3 or the LP Program.

14. All Documents concerning the organization, moderation, or management of Bancor's online communities, including but not limited to the Governance Forum, Snapchat, Telegram channels, Discord servers, or other communication channels used by Bancor, from January 1, 2022 through the present.

15. All Documents concerning the deletion of content from any communication channel, including the Bancor Discord and Telegram channels and the Governance Forum, related to LocalCoin, BProtocol Foundation, the Bancor treasury, and Galia Ben-Artzi, Guy Ben-Artzi, Eyal Hertzog, or Yehuda Levi's ownership interests in Bancor or Bancor's intellectual property, following the June 2022 Death Spiral, and all documents concerning the suspension of any users from these channels.

16. All Documents concerning the "community calls," AMAs, or other public communications You hosted, moderated, or participated in concerning Bancor v3 or the LP Program.

17. All Documents concerning any restrictions, limitations, or eligibility requirements for U.S. investors to participate in Bancor v3 or the LP Program, including any documents relating to geo-blocking, Terms of Use, or other access controls.

18. All documents concerning the "impermanent loss protection" feature of Bancor v3, including but not limited to its promotion, sustainability, funding mechanisms, or limitations.

19. All Documents and Communications concerning the Multisig, including all Documents and Communications concerning, containing, or relating to the identity of any "signatory" nominated for or appointed to the Multisig, to the Multisig nomination and appointment process, or to the identities of the person(s) responsible for Multisig nominations and appointments.

20. All Documents concerning the June 2022 Death Spiral, Bancor's decision to suspend impermanent loss protection, and any communications concerning explanations for that decision provided to LPs and Bancor DAO members.

21. All Documents and Communications concerning the community call moderated by You and including Richardson regarding Bancor's June 2022 suspension of impermanent loss.

22. All Documents concerning reports from Topaze Blue or any other analysis regarding Bancor's ability to cover impermanent loss protection.

23. All Documents concerning the relationship between LocalCoin, the Foundation, and Bancor DAO, including documents relating to the control or management of Bancor DAO.

24. All Documents concerning the marketing or promotion of "Carbon" as a potential way to "restore the reserves in Bancor v3."