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

Hon. Alan D. Albright

PLAINTIFFS' MOTION FOR LEAVE TO CONDUCT DISCOVERY

Plaintiffs Mislav ("Michael") Basic, Nathan Gruber, Kevin Boudreau, Daniel Schwaibold, and Keith Zacharski (collectively, "Plaintiffs") respectfully move this Court for leave to conduct discovery against Defendant Bancor DAO.

INTRODUCTION

Defendant Bancor DAO has failed to appear in this action. In connection with their efforts to seek default judgment against Bancor DAO, Plaintiffs request leave to conduct third-party discovery on issues related to personal jurisdiction over Bancor DAO, the domesticity of the relevant transactions under U.S. securities laws, class certification, and damages. As explained below, good cause exists to grant this motion because Bancor DAO has been properly served but has failed to appear or respond to the Complaint; the Clerk of Court has entered default against Bancor DAO; without the requested discovery, Plaintiffs will be unable to establish facts necessary to support their claims for purposes of obtaining a default judgment and class certification; and courts routinely grant leave to conduct discovery under similar circumstances.

PROCEDURAL BACKGROUND

On May 11, 2023, Plaintiffs filed this securities class action against Defendants Galia Ben-Artzi, Guy Ben-Artzi, Eyal Hertzog, and Yehuda Levi (collectively, the "Individual Defendants"), BProtocol Foundation Inc. (the "Foundation"), and Bancor DAO. Plaintiffs timely filed their First Amended Class Action Complaint (ECF No. 37, the "Complaint"), which added Defendant LocalCoin Ltd. ("LocalCoin," and together with the Foundation, the "Entity Defendants").

Plaintiffs' claims relate to their investments in "Version 3" of the "Bancor Protocol," which Defendants offered and sold beginning on May 11, 2022. The Complaint asserts four U.S. securities law claims against all Defendants, including Bancor DAO: (Count I) unregistered offer and sale of securities in violation of Sections 5 and 12(a)(1) of the Securities Act; (Count II) fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; (Count III) rescission

under Sections 5 and 29(b) of the Exchange Act; and (Count IV) rescission under Sections 15(a)(1) and 29(b) of the Exchange Act.

On January 5, 2024, this Court authorized service of the Complaint on Defendant Bancor DAO by alternative means. ECF No. 50. Plaintiffs served Bancor DAO with the Complaint the next day by publishing the court-approved "Service Post" to Bancor DAO's Governance Forum and requesting it be publicly and prominently displayed for at least 60 days. ECF No. 53.

Bancor DAO has not appeared or responded to the Complaint, and its time to do so has elapsed. The Clerk of Court has entered default against Bancor DAO. ECF No. 79.

On July 31, 2024, United States Magistrate Judge Mark Lane issued a Report and Recommendation (ECF No. 68, the "Report") recommending dismissal of the claims against the Individual and Entity Defendants (collectively, the "Moving Defendants") based on lack of personal jurisdiction and failure to allege a "domestic" transaction for purposes of U.S. securities laws.[1]

On September 6, 2024, this Court issued an Order (ECF No. 72) and accompanying Final Judgment (ECF No. 73) adopting the Report, dismissing the claims against the Moving Defendants, and closing the case.

On October 1, 2024, Plaintiffs filed a Motion to Amend the Final Judgment, Reopen the Case, and Enter Partial Final Judgment (ECF No. 74), which this Court granted in part. The Court reopened this case, vacated its final judgment, and reinstated Plaintiffs' claims against Bancor DAO. ECF No. 77.

[1] Notably, on May 20, 2025, the Entity Defendants filed a patent infringement lawsuit in the Southern District of New York against a U.S. company and others. The patents at issue relate to the technology underlying Bancor DAO. The Entity Defendants allege that they "share[d] the Bancor Protocol with the world," presumably also including the United States, and they seek damages for "lost profits and a reasonable royalty" by the alleged infringers' "making, using, selling, offering for sale, and/or importing into the United States, without authority" products using the Entity Defendants' alleged patents. *See generally Bprotocol Foundation v. Universal Navigation Inc.*, No. 1:25-cv-04214-JGK, ECF No. 1 at 19, 22, 24, 31 (S.D.N.Y. May 20, 2025).

Following the case reopening, on March 17, 2025, Plaintiffs served a Bancor DAO employee with a subpoena for documents and testimony relevant to Plaintiffs' claims against Bancor DAO. The employee, represented by the same counsel as the Individual and Entity Defendants, objected to the subpoena on numerous grounds, including that discovery had not opened in this action.

Plaintiffs now seek leave to conduct discovery in support of default judgment against Bancor DAO.

ARGUMENT

I. Legal Standard for Granting Leave to Conduct Discovery

Federal Rule of Civil Procedure 26(d)(1) provides that "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order." Courts considering whether to open discovery before the Rule 26(f) conference, including in cases where the defendant has failed to appear, typically ask whether there is good cause to justify such early discovery. *See Ako v. Arriva Best Sec., Inc.*, 2024 WL 4995570, at *1 (N.D. Tex. Dec. 5, 2024); *Schwartz v. Insured for Life LLC*, 2024 WL 3201895, at *1 (S.D. Ohio May 31, 2024); *Twitch Interactive, Inc. v. Johnston*, 2017 WL 1133520, at *2 (N.D. Cal. Mar. 27, 2017).

The "good cause" standard "takes into consideration such factors as the breadth of the discovery requests, the purpose for requesting expedited discovery, the burden on the defendants to comply with the requests, and how far in advance of the typical discovery process the request was made," and requires a court to evaluate "the reasonableness of the request in light of all the surrounding circumstances." *Ako*, 2024 WL 4995570, at *1 (quoting *ELargo Holdings, LLC v. Doe–68.105.146.38*, 318 F.R.D. 58, 61 (M.D. La. 2016)).

II. Good Cause Exists to Grant Leave to Conduct Discovery

Courts routinely find good cause to permit discovery after entry of default where a plaintiff seeks information necessary to establish the propriety of a default judgment, including information regarding personal jurisdiction, class certification, and damages. *See Ako*, 2024 WL 4995570, at *2; *Schwartz*, 2024 WL 3201895, at *1 ("Courts have found good cause to open discovery after entry of default where a plaintiff seeks information to ascertain the amount of damages to be assessed against the defaulting defendant."); *Twitch*, 2017 WL 1133520, at *2 (N.D. Cal. Mar. 27, 2017) ("Good cause may also exist in cases where a defendant has failed to appear, resulting in the entry of default against the defendant, and the plaintiff is in need of evidence to establish damages."); *Sheridan v. Oak St. Mortg., LLC*, 244 F.R.D. 520, 522 (E.D. Wis. 2007) ("[T]he Court notes that absent limited discovery to obtain information relevant to the issues of class certification and damages, Sheridan cannot pursue his claims in this action. Since Oak Street has not appeared in this action and is in default, Sheridan is effectively precluded from engaging in a Rule 26(f) conference.").

A. Discovery Is Necessary to Establish Personal Jurisdiction Over Bancor DAO and the "Domesticity" of the Transactions

Discovery is necessary to establish facts supporting this Court's personal jurisdiction over Bancor DAO. Unlike the Moving Defendants, Bancor DAO is "an unincorporated general partnership" that does not purport to reside in any jurisdiction, domestic or foreign. Compl. ¶ 22. Given the unusual nature of Bancor DAO, discovery related to Bancor DAO's partners, its activities, and its connections to the United States is necessary to support this Court's personal jurisdiction in connection with Plaintiffs' anticipated motion for default judgment. *See LMC Props., Inc. v. Prolink Roofing Sys., Inc.*, 2024 WL 4449421, at *6 (5th Cir. Oct. 9, 2024) ("[W]hen entry of default is sought against a party who has failed to plead or otherwise defend, the district

court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties.") (quoting *Sys. Pipe & Supply, Inc. v. M/V VIKTOR KURNATOVSKIY*, 242 F.3d 322, 324 (5th Cir. 2001)).

Furthermore, discovery is necessary to establish that Plaintiffs' securities transactions with Bancor DAO were "domestic" for purposes of U.S. securities laws. The Report's analysis of this issue focused on the Moving Defendants' foreign connections but did not address Bancor DAO's potential domestic activities offering and selling securities. Without 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. *See Allstate Fire & Cas. Ins. Co. v. Vernon*, 2024 WL 4520687, at *5 (W.D. Tex. Oct. 15, 2024) (in evaluating motion for default judgment, "courts assess the substantive merits of the plaintiff's claims and causes of action").

B. Discovery Is Necessary for Class Certification and Damages

Discovery is also necessary to develop evidence supporting class certification and damages. Plaintiffs seek to certify a class of individuals who, like Plaintiffs, invested in Version 3 of the Bancor Protocol. To establish the prerequisites for class certification under Federal Rule of Civil Procedure 23(a), Plaintiffs require information about the number of potential class members, the commonality of their claims, the typicality of Plaintiffs' claims, the predominance of common questions of law and fact, and the ascertainability of the class. Additionally, discovery is necessary to determine the appropriate amount of damages. Plaintiffs' securities law claims, if successful, may entitle them and the putative class to rescission or damages, but calculating these amounts requires information in possession of Bancor DAO or its agents or employees. "In circumstances such as those present here, where a plaintiff has filed a motion for a default judgment, but discovery is necessary to resolve issues such as class certification and damages, courts routinely permit the

plaintiff to conduct limited discovery." *Cleveland v. Nextmarvel, Inc.*, 2024 WL 198212, at *4 (D. Md. Jan. 18, 2024).

C. The Requested Discovery Is Narrowly Tailored and Not Prejudicial

Plaintiffs' proposed discovery is narrowly tailored to obtain information relevant to personal jurisdiction, the "domesticity" of the transactions, class certification, and damages. Plaintiffs propose to issue third-party subpoenas seeking information on (1) Bancor DAO's structure, governance, and operations; (2) the solicitation, offering, and sale of Version 3 of the Bancor Protocol in the United States; (3) Bancor DAO's contacts with the United States, including Bancor DAO's communications with or directed to persons in the United States; (4) records of transactions with U.S. persons, including Plaintiffs; (5) financial records relating to the offering and sale of Version 3; (6) the number and identity of U.S. persons who invested in Version 3; (7) the total amount raised from U.S. investors; and (8) the location and timing of key aspects of the Version 3 transactions. An example of the requests that such subpoenas will include is attached as Exhibit A, though each subpoena will be tailored to its particular recipient and their relevant information drawn from the categories above.

This discovery is not prejudicial to Bancor DAO, which has chosen not to appear or participate in this litigation. Moreover, the proposed discovery is reasonable in scope and proportional to the needs of the case.

III. Absent Discovery, Plaintiffs Would Be Unfairly Prejudiced

Without the requested discovery, Plaintiffs would be unfairly prejudiced in their ability to pursue their claims, including on behalf of the class. "It would be unjust to prevent Plaintiff[s] from attempting to demonstrate the elements for certification of a class without the benefit of discovery, due to Defendant [Bancor DAO's] failure to participate in this case." *Leo v. Classmoney.net*, 2019 WL 238548, at *2 (S.D. Fla. Jan. 10, 2019). Given Bancor DAO's failure

to appear and the entry of default against it, Plaintiffs are effectively precluded from engaging in the normal discovery process.

CONCLUSION

For the reasons set forth herein, this Court should grant Plaintiffs' motion for leave to conduct discovery.

DATED: May 27, 2025

Respectfully Submitted,

/s/ Timothy W. Grinsell

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