

NEW YORK UNIVERSITY
JOURNAL OF LAW & BUSINESS

VOLUME 21

SUMMER 2025

NUMBER 3

SUING A DAO: ARTICULATIONS OF LEGAL
PERSONHOOD AND SERVICE OF PROCESS IN
RECENT LITIGATION

CATHERINE MARTIN CHRISTOPHER*

This Article seeks to understand how litigants are currently grappling with decentralized autonomous organizations (DAOs) as defendants. By analyzing eleven lawsuits that have recently been filed in U.S. courts, this Article provides the first comprehensive evaluation of procedural mechanisms subjecting DAOs to suit. The Article describes the structure of DAOs and compares them to various traditional forms of business entities, finding that no existing structure is a perfect fit. The Article then examines the complaints and motions from the selected lawsuits to identify how plaintiffs are framing DAOs: as entities themselves, as alter egos of their developers and/or investors, or as general partnerships which confer joint and several liability on the developers and/or investors. The Article also discusses the defendants' responses: if they accept the plaintiffs' framing of the DAO as a party or push back on it, or whether the DAO responds to the litigation at all. The Article finds that for "closely-held" DAOs (owned and operated by a small number of developers/investors), the alter-ego framing is effective, while for larger DAOs, plaintiffs generally allege the DAO is a general partnership, so as to seek recovery from key deep-pocketed investors. The Article then goes on to examine how plaintiffs are serving process on DAOs, exploring lawsuits in which service was accepted by a developer on behalf of the DAO, lawsuits where service was apparently not effectuated, and the growing trend of seeking court authorization for alternative service. By eschewing a theoretical approach in favor of analyzing actual litigation, the Article provides practical information for future litigants, whether plaintiffs or defendants, when a DAO is a named defendant in a lawsuit.

* Professor of Law, Texas Tech University School of Law. J.D., University of Pittsburgh School of Law. The author wishes to thank the following: Kara Bruce, Bryan Camp, and Kit Johnson for their valuable comments; Dajiang Nie and Ashley Arrington for research guidance; the Weekly Faculty Writing Program at Texas Tech University for creating dedicated time and space for scholarship; and the Texas Tech University School of Law for financial support.

INTRODUCTION	670
I. BACKGROUND	672
A. DAOs: Description and Features	672
B. DAOs as Business Entities	677
1. Unregistered Entities: Sole Proprietorships/ Alter Egos or General Partnerships	678
2. Limited Liability Entities: Corporations and Limited Partnerships	680
II. ASSERTIONS OF ENTITY STRUCTURE AND LIABILITY IN CURRENT LITIGATION	681
A. Closely-held DAOs as Alter Egos	682
1. Thayer	682
2. Liang	684
3. Beck	688
4. Newton AC/DC Fund	690
B. Large DAOs: The Entity/Partners Tension	692
1. Sarcuni	693
2. Houghton and Samuels	696
3. Basic	702
C. DAOs as Sole Defendant and the Role of Amici	705
1. CFTC v. Ooki DAO, Formerly d/b/a bZx DAO	705
2. True Return Systems, LLC v. MakerDAO	707
III. SERVICE OF PROCESS	713
A. Service Accepted/Not an Issue: Closely-Held DAOs	715
B. No Service/No Response	719
C. Service Not Readily Accepted: Establishing Alternative Service	722
CONCLUSION	731

INTRODUCTION

A decentralized autonomous organization (a “DAO”) is a stacked set of smart contracts, created by one or more developers, which stakeholders buy into in exchange for tokens.¹ Some DAOs are closely-held and are directed and managed by a small

1. For more on the definition of DAOs, see *infra* Part II.A.

number of tokenholders—usually its developers.² For other DAOs, however, large numbers of investors can buy in, often in exchange for governance tokens. Tokenholders in these large DAOs are generally able to pose and vote on proposals,³ with approved proposals then undertaken autonomously via the distributed ledger technology.⁴ Because of this ability to adapt and self-execute new programming, a DAO can be considered as an actor in and of itself. Conversely, a DAO can be seen as simply a new form of technology that effectuates the actions of other individual or entity actors.

In some U.S. jurisdictions, DAOs can be registered business entities.⁵ Such registration, in turn, gives DAOs legal personhood.⁶ Non-registered DAOs, on the other hand, can be considered to be operating alegally (or *outside* the legal system⁷) or as general partnerships. The legal personhood of these unregistered DAOs is unsettled under current U.S. law, along with the implications for the DAO's liability in civil litigation. Establishing the extent of a DAO's legal personhood is important because legal wrongs are allegedly being committed by some DAOs, and plaintiffs need certainty as to how they can seek relief for these wrongs. Likewise, DAO developers and tokenholders need to understand the extent of their liability vis-à-vis the entity itself.

Litigants are grappling with how to seek seek redress from, and in turn, defend DAOs. Some commentators—and DAOs—believe the decentralized technology renders the DAO organization immune from suit, but the first few lawsuits demonstrate that argument has not been successful. These early cases are merely test balloons, however, and most have settled, resulting in a dearth of case law.

2. *See infra* text accompanying note 14.

3. *See infra* note 15.

4. *See infra* note 12.

5. *E.g.*, TENN. CODE ANN. § 48-250-101 (2024); H.B. 357, 2023 Gen. Sess. (Utah); VT. STAT. ANN. tit. 11, §§ 4171-4176 (2024); WYO. STAT. ANN. §§ 17-31-101 to -111 (2023).

6. Catherine Martin Christopher, *Recognizing DAOs as Legal Entities: Balancing Public Policy, Innovation, and Consistency*, 2024 MICH. ST. L. REV. 599, 619 n.168 (2025).

7. MODEL L. FOR DECENTRALIZED AUTONOMOUS ORGANIZATIONS pmbl. n.2 (COAL. OF AUTOMATED LEGAL APPLICATIONS) (2021) [hereinafter COALA MODEL LAW]. A group called the Coalition of Automated Legal Applications (COALA) has promulgated this Model Law for Decentralized Autonomous Organizations, which will be referenced at various points in this Article.

This Article examines eleven recent lawsuits in which a DAO is named as a defendant, all the while studying emerging litigation tactics involving these novel organizational structures. It identifies both effective and ineffective litigation tactics so that future litigants, whether seeking to sue or defend DAOs, can use this Article to develop and pursue winning litigation strategies. Part I describes DAOs generally and explains their relevant features. It provides background information on various forms of business entities in the United States, illustrating how DAOs do not fit neatly into any existing entity structure, raising issues regarding liability. Part II reviews how DAOs are currently being described in complaints and motions, identifying how plaintiffs allege the entity's structure and the implications of that described structure for liability. Part II also analyzes defendant strategies, including whether the DAO seeks to defend itself against the litigation at all. Part III reviews how DAOs are being served with process, noting that while closely-held DAOs tend to be served without difficulty, plaintiffs are increasingly seeking court permission to make alternative service for large DAOs. Finally, the Conclusion identifies questions of civil procedure and litigation strategy that merit further research and analysis.

I.

BACKGROUND

A. DAOs: Description and Features

A decentralized autonomous organization is a higher-tech version of familiar human cooperation.⁸ Individuals have long worked together on common endeavors, and they have drafted

8. See, e.g., Rustin Diehl, *Entity Selection: An Introduction to DAOs*, 112 PRAC. TAX STRATEGIES 8, 8 (2024) ("DAOs are algorithm-based organizations and are as like traditional organizations as a muscle-powered bicycle is to an internal combustion-powered motorcycle" and contrasting DAOs' algorithmic governance with "meat-mechanism-based organization[s]"); Matt Blaszczyk, *Decentralized Autonomous Organizations and Regulatory Competition: A Race Without a Cause*, 99 N.D. L. REV. 107, 108–09 (2024) ("DAOs offer 'a way to convene people on the internet to create an organization, agree on its mission, and set up its governing rules,' quite like companies, nonprofits, or groups, but encoded on the blockchain and usually more decentralized and automated than traditional organizations." (quoting Edward Lee, *Virtual Governments*, 27 UCLA J.L. & TECH. 1, 16 (2022))); Laila Metjahic, Note, *Deconstructing the Dao: The Need for Legal Recognition and the Application of Securities Laws to Decentralized Organizations*, 39 CARDOZO L. REV. 1533, 1542 (2018).

agreements and contracts to both document their plans and make *ex ante* arrangements for future problem-solving. A DAO does this too, using transactional script smart contracts and blockchain technology instead of governing documents such as bylaws and operating agreements.⁹ Along these lines, one lawsuit describes DAOs as “a social coordination technology that deploys blockchain-based smart contracts to facilitate collective action by unrelated parties without a centralized coordinating authority.”¹⁰

A DAO begins when one or more developers write the computer code that will define the DAO.¹¹ Developers determine the mechanics—what the DAO will be able to do, who can buy in, how changes will be made in the future—and write the smart contracts that memorialize and empower those activities. The code they write, in theory, allows “DAOs to self-execute based on the occurrence or nonoccurrence of specified conditions.”¹² In practice, however, it appears that many of the DAOs involved in recent litigation are not perfectly self-executing: the complaints in the *Liang v. Bara* cases, for example, contain evidence that the developers reworked existing smart contracts or added new ones as they deemed necessary.¹³

9. David M. Grant, Eric M. Kirby & Steven R. Hawkins, *Decentralized Autonomous Organizations: To Statutorily Organize or Not?*, 24 WYO. L. REV. 59, 62 (2024) (“Organizational functions can now be accomplished algorithmically, instead of heuristically; with programmers acting as scribes, rather than lawyers; with script, instead of pen or word processor, now documenting offer and acceptance; with custody and escrow functions provided by data centers and programming geeks, rather than filing cabinets, safe deposit boxes, and title agents; with distributed ledgers replacing auditors, and with code being the new bookkeeper.”); Maury Shenk, Sven Van Kerckhoven & Jonas Weinberger, *The Crown, the Market and the DAO*, 6 STAN. J. BLOCKCHAIN L. & POL’Y 244, 245 (2023); Błaszczyk, *supra* note 8, at 113 (first citing Samer Hassan & Primavera De Filippi, *Decentralized Autonomous Organization*, 10 INTERNET POL’Y REV. 1, 2 (2021); and then citing The DAO, Exchange Act Release No. 81207 (July 25, 2017)); Connor Spelliscy et al., *Toward Equitable Ownership and Governance in the Digital Public Sphere*, 7 STAN. J. BLOCKCHAIN L. & POL’Y 110, 118 (2024); Nick Curley, Comment, *Blockchain Disruption: Digital Assets Are Changing How We Do Business*, 25 SMU SCI. & TECH. L. REV. 265, 273 (2022).

10. First Amended Complaint ¶ 47, *Basic v. BProtocol Found.*, No. 1:23-cv-00533-RP (W.D. Tex. Oct. 24, 2023), ECF No. 37 (emphasis omitted).

11. Spelliscy et al., *supra* note 9, at 118–19 (“[T]hese systems are often set up by collaborators who aspire to centralize decision-making and operations among the organization’s contributors.”).

12. Grant, Kirby & Hawkins, *supra* note 9, at 70 (internal quotation marks omitted).

13. Complaint ¶¶ 72–104, *Liang v. Bara*, No. 3:22-cv-00541-JCH (D. Conn. Apr. 14, 2022), ECF No. 1 (alleging developer modified and added new smart contracts during dispute); *see also id.* ¶¶ 107–09 (quoting a developer explaining

Some DAOs are owned entirely by their creators—a “closely-held DAO,” if you will. For example, in *Thayer v. Furie*, the DAO defendant was entirely owned and operated by one individual.¹⁴ In other circumstances, the developers seek investors or crowd-funding. Such developers will set the DAO’s programming to allow third parties to invest; the smart contract will offer a slice of ownership in exchange for purchase. DAO ownership is conceptualized by “tokens” or “coins,” electronic chits akin to shares in a corporation. In exchange for their purchase price, tokenholders usually receive voting rights on certain entity issues.¹⁵ The processes are similar to an initial public offering (IPO) and corresponding shareholder voting rights. But because the DAO technology autonomously executes tokenholders’ decisions, the distinction between owners and directors is diminished.¹⁶

that “[a]ll decisions will be made via snapshot, using [DAO token] OHM as voting power,” and that the developers retained “a few non-critical powers.”).

14. In *Thayer*, the complaint names three defendants: an individual named Matt Furie, an LLC described as being “owned and/or operated by Furie,” and a DAO described as being “owned and operated by Furie and/or Chain/Saw [LLC].” Complaint ¶¶ 3–4, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. Mar. 12, 2022), ECF No. 1. The summonses listed the same address—Furie’s—for all three defendants. Summons, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. Mar. 14, 2022), ECF No. 9–11. Furie accepted service on behalf of himself and DAO. Defendant’s Acceptance of Service, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. Apr. 11, 2022), ECF No. 18. The same counsel entered appearance on behalf of all three defendants. Defendant’s Notice of Appearance, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. May 1, 2022), ECF Nos. 21, 24. From this behavior we can infer that Furie was the sole owner and operator of PegzDAO, and plaintiff and Furie both understood the LLC and the DAO to be Furie’s alter egos—though no one used that term. The case settled about five months after it was filed. Order of Dismissal, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. Aug. 24, 2022), ECF No. 29.

15. Carla L. Reyes, *If Rockefeller Were A Coder*, 87 GEO. WASH. L. REV. 373, 387 (2019). Several scholars distinguish between “utility” tokens, which represent voting and governance rights, and “investment” tokens, which give holders rights to receive income but not govern; likewise, some distinguish between “participatory” DAOs and “algorithmic” DAOs, the latter of which operate in entirely pre-programmed ways. See e.g., Aaron Wright, *The Rise of Decentralized Autonomous Organizations: Opportunities and Challenges*, 4 STAN. J. BLOCKCHAIN L. & POL’Y 152, 156, 158 (2021); see also *id.* at 152–53 (“DAOs are not run by boards or managers, but rather aim to be governed by democratic or highly participatory processes or algorithms. . . . DAOs often attempt to avoid written agreements or other forms of legal formalities, with members primarily agreeing to abide by and govern their affairs using software and the rule of code.” (footnote omitted)).

16. Kyung Taeck Minn, Note, *Towards Enhanced Oversight of “Self-Governing” Decentralized Autonomous Organizations: Case Study of the Dao and Its Shortcomings*, 9 N.Y.U. J. INTELL. PROP. & ENT. L. 139, 147–48 (2019) (discussing how DAOs

As in an IPO, early investors (or the developers themselves) can retain large percentages of the voting tokens, effectively eliminating the ability of minority tokenholders to make impactful changes to the DAO going forward.¹⁷ For example, the first amended complaint in *Houghton v. Leshner* alleges that “[m]ore than 50% of [defendant Compound DAO’s millions of] COMP tokens are controlled by fewer than ten people.”¹⁸ This kind of concentrated governing authority can not only give rise to breach of contract cases (claims that the DAO promised governance powers but did not grant them)¹⁹ but also to claims that the tokens are securities under the *Howey* test (which defines a security as something, *inter alia*, that earns profits derived by the efforts of others).²⁰

Similar to the way public shareholders can buy and sell shares, tokenholders in large DAOs can generally buy and sell tokens easily on online trading platforms, resulting in fluid entrance into and exit from the DAO.²¹ As with shares of stock,

reduce the distinction between principals—that is, an entity’s decision-makers and agents—those who execute the decisions); Blaszczyk, *supra* note 8, at 111 (asserting that “[i]n DAOs . . . owners (token holders) and managers are one and the same,” (citing William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663, 685–86 (1974))); Isabelle M. Thibault, *A Little Laissez-Faire Fiduciary-ness Could Be Okay*, 24 TRANSACTIONS: TENN. J. BUS. L. 285, 288 (2023) (arguing the use of smart contracts “thereby limit[s] the interaction with third parties, [so] there should be less need for fiduciary duties”).

17. Alex Dolphin, Note, *Scaling DAOs Through Fiduciary Duties*, 48 B.Y.U. L. REV. 977, 983 (2022) (“Because DAOs generally follow a ‘one token, one vote’ rule, agency problems naturally arise when a tokenholder owns enough tokens—and corresponding voting power—to control any given DAO proposal.” (footnotes omitted)); Shenk, Van Kerckhoven & Weinberger, *supra* note 9, at 246 (“[I]n some forms of DAOs the amount of tokens one owns delineates their voting power, which could make certain holders much more powerful in voting power, in particular in the absence of legal protections against manipulation or restrictions of actions that could be undertaken by a single individual. This is not the case for all DAOs, as some use different voting mechanisms sometimes even allowing for delegation.”).

18. First Amended Complaint ¶ 2, *Houghton v. Leshner*, No. 3:22-cv-07781 (N.D. Cal. Mar. 31, 2023), ECF No. 76 [hereinafter *Houghton First Amended Complaint*].

19. Plaintiffs in *Houghton* and *Samuels* allege that they were promised governing power but that other tokenholders control so many tokens that the plaintiffs’ voting power was functionally nonexistent. *Samuels v. Lido DAO*, No. 3:23-cv-06492, (N.D. Cal. Dec. 17, 2023), ECF No. 1 [hereinafter *Samuels Complaint*]; see discussion *infra* Section III.D.2.

20. *Houghton First Amended Complaint*, *supra* note 18, ¶¶ 164–93; see generally, *Samuels Complaint*, *supra* note 19.

21. Wright, *supra* note 15, at 156, 158.

the value of a token can fluctuate dramatically based on the DAO's financial health as well as the supply and demand of available tokens.²²

Why set up a DAO? There are practical reasons: they are efficient, replacing human administration with algorithmic systems.²³ A DAO's pre-programmed transparency can prevent theft or fraud by insiders.²⁴ There are ideological reasons to form a DAO, too: many DAO participants are attracted to the idea of collaborations taking place across the globe, unfettered by state boundaries and potentially beyond the practical reach of any state's regulators. Part of the appeal of blockchain technology has always been this cowboy ethos, this alegal operation—particularly where large sums of money are at stake.²⁵ DAOs also have a democratic appeal. They allow tokenholders worldwide who have no other connection to one another to propose and vote on the DAO's operations; as a result, tokenholders may

22. See Lyle Daly, *How Are Cryptocurrency Prices Determined?*, THE MOTLEY FOOL (Feb. 14, 2025, 11:56 AM), <https://www.fool.com/investing/stock-market/market-sectors/financials/cryptocurrency-stocks/prices/>.

23. Wright, *supra* note 15, at 159–60 (2021) (DAOs “streamline group decision-making by either deferring entirely to an algorithmic system or by deploying blockchain-based voting schemes”); Kyle A. Conway, Comment, *Blockchain Technology: Limited Liability Companies and the Need for North Carolina Legislation*, 45 CAMPBELL L. REV. 127, 134–135 (2022) (“To begin with, smart contracts provide heightened speed and efficiency. Once the ‘if/when . . . then’ conditions are met, the contract is automatically executed. There is no paperwork to review and no human error to fix. . . . [And] because there is no need for a third-party intermediary, time and costs spent in executing agreements are substantially lower.” (footnotes omitted)); Metjahic, *supra* note 8, at 1543 (“Unlike the traditional organization, the decentralized autonomous organization does not need to rely on a third party for recordkeeping or enforcement. The blockchain stores information including how many tokens each participant owns in the company or its bylaws. When certain pre-programmed conditions are satisfied, the decentralized autonomous organization automatically executes contractual clauses in the blockchain.” (footnotes omitted)).

24. Wright, *supra* note 15, at 153 (“DAOs . . . implement internal controls that protect member assets and could help reduce the need for ongoing monitoring to detect fraud or other insider abuses.” (footnote omitted)); Shenk, Van Kerckhoven & Weinberger, *supra* note 9, at 248; Conway, *supra* note 23, at 135; Curley, *supra* note 9, at 286.

25. Blockchain technology was first deployed as the technology underpinning Bitcoin. The Bitcoin whitepaper, released in the immediate aftermath of the 2008 financial crisis, positions Bitcoin as a deliberate alternative to the traditional banking system. SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM, <https://bitcoin.org/bitcoin.pdf> (last visited Aug. 6, 2025) (“What is needed is an electronic payment system based on cryptographic proof instead of trust, allowing any two willing parties to transact directly with each other without the need for a trusted third party.”).

own a piece of the DAO and can participate in it or sell their tokens as they like.²⁶

As DAOs have become more common, individuals and entities have begun seeking relief in court for perceived wrongs. By filing suit against a DAO, plaintiffs assume it is an entity that can be sued, either as an actor itself, as an alter ego of developers/investors, or as a means to reach the general partners of a general partnership.²⁷ The next subsection describes various forms of business entities recognized in the United States and articulates how none of them are a perfect analogy for DAOs.

B. DAOs as Business Entities

DAOs, as entirely electronic endeavors, defy state borders.²⁸ Some DAOs believe that because they are operating alegally, they are immune from efforts to enforce legal compliance.²⁹ For example, in a letter to the court, MakerDAO asserted that “MakerDAO, by its organisation and terms, cannot respond to American court proceedings, and our cryptocurrency activities are outside the reach of regulators. Our decentralisation orthodoxy has proved to be our strongest moat against regulatory oversight and unwelcome legal enforcement.”³⁰ This immunity-via-self-declaration is wishful thinking at best. As Professor Blaszczyk stated, “if the founders of a DAO do not choose a formal legal structure, courts will recognize or impose one thereon.”³¹

Some states offer opportunities for DAOs to register as business entities,³² but unregistered DAOs operate in murky

26. Grant, Kirby & Hawkins, *supra* note 9, at 70–71 (“The DAO objective is to put each participant in this smart-contract-based structure on equal footing and remove the layers of oversight, direction, and management which are not only typical, but statutorily required, of traditional governance structures.”); Conway, *supra* note 23, at 134; Dolphin, *supra* note 17, at 982, 985.

27. *See infra* Part III.

28. Wright, *supra* note 15, at 152.

29. Blaszczyk, *supra* note 8, at 113 (citing Usha R. Rodrigues, *Law and the Blockchain*, 104 IOWA L. REV. 679 (2019)); Diehl, *supra* note 8, at 8.

30. Letter, True Return Sys., LLC v. MakerDAO, No. 1:22-cv-08478, (S.D.N.Y. Oct. 5, 2022), ECF No. 15.

31. Blaszczyk, *supra* note 8, at 114. *See also* Diehl, *supra* note 8, at 8 (“U.S. tax law provides that DAOs with no formalized legal entities primarily default to general partnerships.”).

32. For example, Wyoming, Tennessee, Vermont, Utah, New Hampshire etc. *See* statutes cited *supra* note 5; *see also* COALA MODEL LAW, *supra* note 7, at 9 (“Bringing DAOs into a regulatory framework would . . . increase legal

waters.³³ The lawsuits described in this Article demonstrate that plaintiffs typically describe DAOs as alter egos of their owner/developers or as general partnerships, yet no comparison to recognized business entities aligns perfectly with a DAO's features.

1. *Unregistered Entities: Sole Proprietorships/Alter Egos or General Partnerships*

Under U.S. law, people and entities are generally able to conduct business without registering as a formal business entity within a state. An individual who does so will be deemed to be a sole proprietorship, whereby the entity is the alter ego of the individual.³⁴ Two or more individuals who enter into a business together for profit are deemed to have formed a general partnership.³⁵ What unregistered businesses save in registration fees or franchise taxes, they pay in liability for their principals. Sole proprietors, alter egos, and all general partners are held jointly and severally liable for the debts and obligations of the entity.³⁶

Most commentators agree that a DAO will, by default, be considered a general partnership under U.S. law, as it is typically "owned" by two or more tokenholders engaging in business together for profit.³⁷ For a closely-held DAO, this liability structure also probably makes sense. In closely-held DAOs, individuals are operating a business they have not registered with a state. The nature of the DAO being closely-held—the owner/developers' unwillingness to share ownership or governance with others—suggests that they are investing themselves in the entity, and they have not formed a liability shield by registering another form of limited liability entity.

certainty from the perspective of members, participants, administrators, and developers of DAOs, as well as from the perspective of regulators and third parties, including the general public.").

33. Curley, *supra* note 9, at 286 ("The amorphous nature of DAOs makes them difficult to define as business entities."); Minn, *supra* note 16, at 147.

34. See, e.g., *Patterson v. V & M Auto Body*, 589 N.E.2d 1306, 1308 (Ohio 1992) ("A sole proprietorship has no legal identity separate from that of the individual who owns it.").

35. Unif. P'ship Act § 6(1), 6 U.L.A. 1 (1969) (definition of partnership).

36. See, e.g., *Parkside Center Ltd. v. Chicagoland Vending, Inc.*, 552 S.E.2d 557, 562 (Ga. Ct. App. 2001) ("a general partner is liable for the payment of all debts and obligations of the limited partnership") (citation omitted).

37. Blaszczyk, *supra* note 8, at 114; Wright, *supra* note 15, at 166-67. But see Reyes, *supra* note 15, 406 (2019) (asserting that some DAOs could be classified as common-law business ("Massachusetts") trusts rather than general partnerships, which would be a better fit for practical and policy reasons.).

For large DAOs, however, the general partnership framework suggests that each and every tokenholder is jointly and severally liable for the DAO's debts and obligations.³⁸ Such liability might be appropriate for majority or controlling tokenholders, who possess large numbers of tokens and so effectively direct the actions of the organization. This liability structure, however, is unfair and impractical with regard to minority tokenholders. Minority tokenholders likely do not purchase their tokens with the understanding that they are personally accepting joint and several liability for the DAO's obligations. Moreover, because minority tokenholders often cannot meaningfully direct the activities of the DAO, it is unfair to ascribe the organization's debts to them.³⁹ Furthermore, holding minority tokenholders jointly and severally liable for the DAO's obligations is impractical because of the fluid entry and exit of tokenholders from the organization.⁴⁰ Corporate shareholders are entitled to limited liability by virtue of the entity's formation under state law, and most DAOs are unregistered. While it would not be good public policy to extend corporate protections to unregistered entities willy-nilly, considering minority tokenholders to be general partners in all senses also lacks veracity. The absence of corporate formality does not necessarily change the reality of a minority tokenholder's lack of agency within the organization. Notably, many plaintiffs who sue DAO entities for alleged injuries are themselves minority tokenholders.⁴¹ While it is possible under U.S. law for general partners to sue each other and the general partnership, there is cognitive dissonance in a complaint that alleges all tokenholders are jointly and severally liable for a tokenholder plaintiff's causes of action.

38. See Blaszczyk, *supra* note 8, at 112 (2024) ("the threat of incurring joint and several liability by DAO organizers provide[s] a strong incentive to incorporate,").

39. Minority tokenholders are in this way akin to minority corporate shareholders, who possess technical but impractical power to direct the entity. Minority shareholders, of course, are not liable for the corporation's debts and obligations.

40. This is another parallel to corporate shareholders, who buy and sell their shares fluidly, but who are protected from the entity's liability.

41. See, e.g., Houghton First Amended Complaint, *supra* note 18; Samuels Complaint, *supra* note 19.

2. *Limited Liability Entities: Corporations and Limited Partnerships*

There are several U.S. business forms that protect owners from liability: corporations, limited liability companies, and limited partnerships. However, in order to retain limited liability for an entity's owners, an entity must be registered with a state. Yet most DAOs are not registered with any state. Looking beyond the formality of registration, large DAOs in many ways resemble limited liability entities, particularly those large DAOs with groups of controlling and minority tokenholders.

Corporations are owned by their shareholders. These shareholders vote on the corporations' directors, who, in turn, select and oversee the corporate officers. Similarly, DAOs are owned by their tokenholders, and majority/controlling tokenholders can be thought of as the board of directors who effectively direct the organization. The developers and the smart contracts are akin to the officers who effectuate the organization's actions with their disproportionate voting power.⁴² As discussed, minority tokenholders are more like shareholders in that they own small portions of the entity but have little effective power over its operations and enter and exit the organization fluidly.⁴³ Because corporate law holds the board of directors and the shareholders to different levels of liability, it would likewise be logical to hold majority/controlling tokenholders to a different standard than minority tokenholders. Several cases described below illustrate this distinction, particularly *Houghton v. Leshner* and *Samuels v. Lido DAO*,⁴⁴ where allegations include complaints that while plaintiffs were promised governance authority by virtue of owning tokens, the majority tokenholders effectively controlled the DAO.⁴⁵

Other registered business entity forms, such as limited partnerships, provide for differing levels of authority and liability for different owners. A limited partnership consists of at least

42. The COALA MODEL LAW distinguishes a "Developer" ("a person involved in the development or maintenance of the DAO, whether through the contribution of software code, design, business, legal or ancillary support") from an "Administrator" ("a Person [authorized to] "take discretionary actions . . . with regard to specific, predefined operations of the DAO.") COALA MODEL LAW, *supra* note 7, arts. 3(2), 3(8).

43. See *supra* Part II.B.1.

44. See *infra* Part III.B.2.

45. The active governance by a few majority tokenholders is also a key component of these plaintiffs' arguments that the DAO tokens are securities. See *infra* note 151–152.

one general partner, who manages and directs the entity while being exposed to joint and several liability, and limited partners who remain passive regarding management and retain limited liability. This structure again mirrors the distinction between majority/controlling tokenholders and minority tokenholders in large DAOs, and again suggests that perhaps controlling tokenholders should be exposed to differing levels of liability than minority tokenholders.⁴⁶

DAOs are probably best conceived of as limited partnerships. However, limited liability is unavailable due to the unregistered nature of many DAOs. Most states do not offer DAO entity registration, and even those that do fail to distinguish between majority and minority tokenholders vis-à-vis their liability for the entity's debts and obligations.

Whether a DAO should be considered a business entity, and if so, what kind, is no theoretical matter. DAOs have been named as defendants in recent U.S. litigation, a trend likely to continue. Part III, *infra*, analyzes how plaintiffs are describing DAOs in their complaints and how the defendants are responding to claims of DAO personhood and entity status.

II.

ASSERTIONS OF ENTITY STRUCTURE AND LIABILITY IN CURRENT LITIGATION

This Part explores how DAOs are conceptualized as defendants in recent and pending litigation as well as plaintiffs' theories of DAOs' legal personhood. The cases are discussed in three groups. The first subsection analyzes five suits filed against closely-held DAOs, which typically treat the DAO as the alter ego of the developer(s) and have largely ended in voluntary dismissals of the cases or stalled litigation due to defendants' bankruptcy. The second subsection analyzes four suits against large DAOs, where plaintiffs largely argue the DAO is a general partnership and where the DAO itself does not participate in the litigation. The third subsection discusses two lawsuits each brought against a DAO as the sole defendant. In these cases,

46. The COALA MODEL LAW provides a default position that DAOs are limited liability entities, provided they meet certain formation requirements. COALA MODEL LAW, *supra* note 7, art. 4(2), 5. *But see id.* art. 18(2) ("A Failure Event may trigger liability on the Person(s) deploying or upgrading the DAO if that Person(s): (2) acted in manifest bad faith; or (2) engaged in gross negligence.").

the DAO is personified as the relevant actor as opposed to its tokenholders.

In almost all cases to date, however, the litigation has ended with the plaintiff's voluntary dismissal of the case. As a result, robust case law has not yet developed with respect to DAO entities' legal personhood. The frequency of settlements may suggest the financial technology industry's uneasy relationship with the law, but time will tell.

A. *Closely-held DAOs as Alter Egos*

In cases where a defendant DAO is closely held, plaintiffs have tended to describe the DAO as an alter ego of the developers who own and operate the DAO. These developers are also named as defendants, but the complaints tend not to use general partnership framing. This strategy of treating the closely-held DAO and its developers as alter egos has been successful, in that the DAOs have participated in the litigation and the cases typically end with the plaintiff voluntarily dismissing the case, presumably as a result of settlement.

1. *Thayer*

The earliest identified lawsuit to name a DAO as a defendant was filed in the Central District of California on March 12, 2022.⁴⁷ Plaintiff Halston Thayer sued three defendants: an individual named Matt Furie,⁴⁸ an entity called Chain/Saw LLC,⁴⁹ and PegzDAO, "a web-based DAO . . . owned and operated by Furie."⁵⁰ Thayer alleged fraud, asserting that the defendants promised they were auctioning a unique NFT—for which Thayer paid over \$500,000—only to then immediately release forty-six identical NFTs for free.⁵¹ The complaint asserts the federal court has diversity jurisdiction over the action.⁵²

47. See Complaint, Thayer v. Furie, No. 2:22-cv-01640 (C.D. Cal. Mar. 12, 2022), ECF No. 1.

48. *Id.* ¶ 2.

49. *Id.* ¶ 3.

50. *Id.* ¶ 4.

51. There are nine causes of action in the complaint, all under California state law and many alleged in the alternative. These include fraudulent inducement, intentional misrepresentation, negligent misrepresentation, mistake of fact, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and violations of the California business and consumer codes. *Id.* ¶¶ 24–83.

52. *Id.* ¶ 9.

In identifying the defendants, the complaint asserts that Chain/Saw LLC is “owned and/or operated by Furie,”⁵³ and that the DAO is “owned and operated by Furie and/or Chain/Saw [LLC].”⁵⁴ Thereafter, the complaint treats the three defendants as alter egos of each other, asserting that “[d]efendants are agents of one another who have acted and continue to act on each other’s behalf with respect to the allegations herein.”⁵⁵ All allegations in the complaint are addressed to the defendants collectively. For example, it asserts that “[d]efendants conspired together,”⁵⁶ “as a result of Defendants’ conspiracy,”⁵⁷ and “[o]n or about October 5, 2021, Furie, Pegz[DAO] and/or Chain/Saw [LLC] began advertising an auction”⁵⁸ The *Thayer* complaint does not address the legal personhood of the DAO defendant, and it does not seek to establish the ownership, agency, or identity of the DAO in any more detail than it does the LLC defendant.

For their part, Furie, Chain/Saw LLC, and PegzDAO participated in the litigation collectively, and the same counsel entered appearance on behalf of all three defendants.⁵⁹ An answer was filed about two months after the complaint, jointly filed by all three defendants.⁶⁰ The case seemingly settled, as plaintiff moved to dismiss the case with prejudice about five months after filing the complaint.⁶¹

In *Thayer*, then, the plaintiff effectively sued a DAO owned and operated by a single individual by treating the DAO and its developer as one and the same. The complaint made collective allegations against them, and the defendants responded collectively.⁶²

53. *Id.* ¶ 3.

54. *Id.* ¶ 4.

55. *Id.* ¶ 5.

56. *Id.* ¶ 6.

57. *Id.* ¶ 8.

58. *Id.* ¶ 19.

59. Defendant’s Notice of Appearance, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. May 1, 2022), ECF Nos. 21, 24.

60. Answer, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. May 17, 2022), ECF No. 22.

61. Notice of Motion and Motion to Dismiss with Prejudice (Stipulated), *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. Aug. 22, 2022), ECF No. 28; *see also* Stipulated Order of Dismissal of Plaintiff’s Complaint, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. Aug. 24, 2022), ECF No. 29.

62. For information and discussion on how the DAO defendant was served with process, *see infra* Part IV.A.

2. *Liang*

The next cases in which a plaintiff sued a DAO entity also involved a closely-held DAO. Plaintiff Hu Chun Liang filed two related lawsuits against similar defendants with regard to an entity called Olympus DAO. Both suits allege that Liang had contracts with an online crypto “enterprise” known collectively as “Olympus” to promote the enterprise’s OHM tokens and those contracts were breached by the defendants.⁶³

The first lawsuit, filed in the District of Connecticut on April 14, 2022, names Daniel Bara, Hephaestus Foundation AG, Olympus DAO, and John Does 1–5 as defendants.⁶⁴ The causes of action are all state-law breach of contract claims.⁶⁵ The plaintiff asserted that the federal court had subject matter over the case based on diversity jurisdiction.⁶⁶

The complaint alleges that the defendant Olympus DAO “is an organization controlled and operated by” defendant Daniel Bara, another person known only by their online pseudonym “Zeus,” and the John Doe defendants.⁶⁷ Plaintiff alleged “[w]hile marketing itself as a DAO, Olympus is run by an internal circle of promoters, including Bara and Zeus, who can unilaterally withdraw smart contracts.”⁶⁸ As a result, this Article

63. The complaints also allege that Olympus DAO is violating securities laws by selling unregistered securities and by extension making Liang an unwitting promoter of unregistered securities, although these allegations are not framed as a particular cause of action. Complaint ¶¶ 1, 124–41, *Liang v. Bara*, No. 3:22-cv-00541 (D. Conn. Apr. 14, 2022), ECF No. 1. Complaint, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), BL-02.

64. Complaint ¶¶ 14–17, *Liang v. Bara*, No. 3:22-cv-00541 (D. Conn. Apr. 14, 2022), ECF No. 1.

65. The complaint alleges breach of contract, conversion, common-law fraud, and civil conspiracy. *Id.* ¶¶ 174–246.

66. *Id.* ¶ 18. The complaint goes on to note that “Unincorporated entities [such as the DAO here] have no independent citizenship and instead take on the citizenship of each of their members. *See Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990). Because Bara is a citizen of Connecticut, the unincorporated entities Olympus DAO and Hephaestus AG are citizens of Connecticut and are subject to this court’s personal jurisdiction.” *Id.* ¶ 19.

67. *Id.* ¶ 5. Defendant Bara had self-identified online only as “Apollo,” but Plaintiff Liang was able to secure his actual identity. Bara had docusigned a contract with Liang in March of 2021; Bara had also once made a telephone call to Liang, which Liang and his counsel were able to trace in order to identify Bara’s residence in Connecticut.

68. *Id.* ¶ 42; *see also id.* ¶ 121 (“It is clear from Olympus’ actions and communications [it] is not and was at no time functioning as a DAO. Instead,

classifies Olympus DAO as a “closely-held” DAO, as opposed to one with larger numbers of voting token-holders.⁶⁹

The complaint goes on to refer to all defendants collectively as “Olympus.”⁷⁰ Individual acts by Bara and Zeus are occasionally described, but those actions are presented as being on behalf of the Olympus collective, as in, “[i]mmmediately after the May 12 Transaction, Bara on behalf of Olympus called Mr. Liang.”⁷¹ Toward the very end of the complaint, the plaintiff asserts that Olympus is a general partnership and that Bara, Zeus, and the John Doe defendants are jointly and severally responsible for plaintiff’s injuries,⁷² but these assertions are not front and center in the plaintiff’s theory of the case. By contrast, the *Thayer* complaint did not include any assertions that the DAO was a general partnership, instead treating the individual defendant and the DAO as alter egos.⁷³

As did the defendants in *Thayer*, the defendants in *Liang* responded promptly to the litigation. The entity defendants, Olympus DAO and Hephaestus Foundation AG, were amply represented by counsel;⁷⁴ different attorneys entered appearances for the individual defendant, Daniel Bara.⁷⁵ All three named

Bara, Zeus, and other promoters maintained the ability to manipulate the pOHM Smart Contracts.”).

69. The plaintiff’s cause of action accrued during the period when OHM tokens were being released to the public for sale, but Bara and Zeus were still controlling the DAO.

70. *See id.* ¶ 43 (“on or around February 2021, Mr. Liang and Olympus discussed an early-stage investment . . .”); *id.* ¶ 45 (“Olympus and its consultant . . . drafted the TPA [(Token Purchase Agreement)] . . .”).

71. *Id.* ¶ 73.

72. *Id.* ¶¶ 169–73.

73. *See supra* Part III.A.1.

74. *See* docket entries 15, 26, 30, 31, 36, 38, 42. Notice of Appearance, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Apr. 28, 2022), ECF No. 15; Motion for Admission of Daniel B. Ravicher *Pro Hac Vice*, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 3, 2022), ECF No. 26; Motion for Admission of Sumana C. Wolf *Pro Hac Vice*, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 7, 2022), ECF No. 30; Motion for Admission of Meghan H. Sullivan *Pro Hac Vice*, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 7, 2022), ECF No. 31; Notice of Appearance, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 8, 2022), ECF No. 38; Notice of Appearance, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 10, 2022), ECF No. 42. The complaint also recites that before filing suit, plaintiff had been in communication with counsel for Olympus. Complaint ¶¶ 157–58, *Thayer v. Furie*, No. 2:22-cv-01640 (C.D. Cal. Mar. 12, 2022), ECF No. 1.

75. Notice of Appearance, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Apr. 28, 2022), ECF No. 14; Notice of Appearance, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 7, 2022), ECF No. 33; Notice of Appearance, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 7, 2022), ECF No. 34; Notice of

defendants filed a joint motion to dismiss, asserting lack of subject matter jurisdiction and a variety of contract defenses. Defendants argued that all parties are aliens because defendant Bara is an alien, and his membership of the entities makes both of them aliens as well.⁷⁶ Defendants also argued that plaintiff is a member of the entities and therefore his own membership causes the entities to take on his alien citizenship.⁷⁷ The motion thus argues citizenship of the DAO entity but does not dispute its personhood.⁷⁸

These assertions were not thoroughly explored in litigation, however, as the federal suit was short-lived.⁷⁹ Plaintiff voluntarily dismissed the case on July 27, 2022, just over three months after filing the complaint.⁸⁰ Plaintiff did not respond to the defendants' motion to dismiss, no hearing was held on it, and no answer was filed by any defendant.

Just days after dismissing the federal suit, Liang filed a nearly identical suit in Connecticut state court.⁸¹ By this time,

Appearance, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 7, 2022), ECF No. 35.

76. Memorandum of Law in Support of Motion to Dismiss at 11, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. Jun. 3, 2022), ECF No. 21.

77. *Id.* at 11–13 (citing *Americold Realty Trust v. ConAgra Foods, Inc.*, 577 U.S. 378 (2016)).

78. The two entities also filed a joint corporate disclosure statement in which they explicitly did not dispute that they are unincorporated entities. Defendants Hephaestus Foundation AG and Olympus DAO Rule 7.1 Disclosure Statement, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. July 12, 2022), ECF No. 57. That statement also states: "Olympus DAO is a 'Decentralized Autonomous Organization,' a fully autonomous and transparent technological system with no central authority that is instead based on published smart contracts that provide the DAO's fundamental rules and execute decisions made by those possessing DAO tokens. The set of persons possessing DAO tokens constantly changes as those tokens are purchased and sold." *Id.*

79. A joint report summarizes the parties' contentions regarding citizenship as it pertains to subject matter jurisdiction. Joint Report of Rule 26(f) Planning Meeting at 2–3, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. July 15, 2022), ECF No. 60. The joint report also notes that "The Defendants have not contested personal jurisdiction." *Id.* at 3.

80. Notice of Dismissal Without Prejudice, Liang v. Bara, No. 3:22-cv-00541 (D. Conn. July 27, 2022), ECF No. 62. Defendants had filed a Motion to Dismiss on June 3, 2022, but plaintiff did not respond to it and the court did not rule on it. Defendants did not file an answer to the complaint before the suit was voluntarily dismissed.

81. Complaint, Liang v. Bara, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), BL-01. An identical complaint was filed in another state court district that same day, but the suits were consolidated into this case, in the Judicial District of Hartford. *See* Transferal from Superior Court Judicial

the pseudonymous defendant Zeus had been identified as Timothy Gray Troxell and was added as a defendant.⁸² As with the federal case, counsel entered appearances on behalf of defendants.⁸³ No substantive filings were made on behalf of any defendant, however, and the suit was withdrawn by the plaintiff five months after filing the complaint.⁸⁴

The complaints in both lawsuits are virtually identical, including the collective reference to “Olympus” as all defendants.⁸⁵ The state court complaint repeats the assertions that the DAO is a general partnership, in order to assert Bara and Troxell’s joint and several liability.⁸⁶ After the complaint, however, no substantive motions or pleadings were filed by either side, except for a motion to stay proceedings pending arbitration that was filed on September 29, 2022.⁸⁷ The action was withdrawn in January of 2023.⁸⁸

District of Stamford-Norwalk, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), BL-17; Transferal from Superior Court Judicial District of Hartford, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), BL-18.

82. The complaint also named “John Does 1–5” as defendants, but these do not appear to be specific people whose identities have not yet been uncovered, as had been the case with Troxell/Zeus. *See* Complaint ¶ 28, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), BL-02.

83. Fewer appearances were entered in the state court case, but the attorneys overlap, unsurprisingly. *See*, Motion to Appear Pro Hac Vice, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 19, 2022), BL-10 (requesting admission for Daley R. Epstein, plaintiff’s counsel in the federal suit); Motion to Appear Pro Hac Vice, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Sept. 2, 2022), BL-10 (requesting admission for D. Ravicher, counsel for defendants Olympus DAO and Hephaestus Foundation AG in the federal suit); Motion to Appear Pro Hac Vice, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Sept. 7, 2022), BL-21 (requesting admission for A. Pozos, defendant Bara’s counsel in the federal suit).

84. Withdrawal of Action, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Jan. 3, 2023), BL-38.

85. *E.g.*, “After a few messages were exchanged between Mr. Liang and Olympus, it became clear something was wrong. Olympus then stopped responding.” Complaint ¶ 8, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), BL-02; Complaint ¶ 7, *Liang v. Bara*, No. 3:22-cv-00541 (D. Conn. Apr. 14, 2022), ECF No. 1.

86. Complaint ¶¶ 205–209, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), BL-02.

87. Motion for Stay of Proceedings Pending Arbitration and Memorandum of Law in Support of Motion, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Sept. 29, 2022), BL-25.

88. Withdrawal of Action, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Jan. 3, 2023), BL-38.

One interesting takeaway from the *Liang* cases is that defendants appear to have gained some traction in arguing a lack of subject matter jurisdiction. In the federal suit, defendants filed a motion to dismiss for lack of diversity jurisdiction, arguing the DAO's citizenship was that of its members, namely aliens. Although the issue was not adjudicated before the court, plaintiff dismissed the suit promptly and refiled in state court.

3. *Beck*

Beck v. Palmer presents another example of a lawsuit naming a closely-held DAO as a defendant. On June 8, 2023, three individual plaintiffs (Daniel Beck, Cedric Crisolo, and Carline Le) filed suit in the Central District of California against three identified defendants and John Does 1–10.⁸⁹ The identified defendants are an individual, a corporation, and a DAO: Weston J. Palmer, Ecosystem.Art, Inc., and PatronsDAO.⁹⁰ Plaintiffs are computer programmers who allege they were hired by defendants and were not paid for many months of work.⁹¹ The complaint asserts two violations of federal labor law and fourteen violations of California labor, business, contract, and fraud laws.⁹² Plaintiffs assert the federal claims give the court subject matter jurisdiction.⁹³

The complaint alleges that Palmer is “the CEO, Secretary, Chief Financial Officer, Director, and Agent for Service of Process” for the two other defendants, including PatronsDAO.⁹⁴ The complaint goes into some detail asserting that Ecosystem.Art, Inc. and PatronsDAO were alter egos of individual defendant Weston Palmer. For example, plaintiffs assert that “PATRONSDAO was the alter ego of Defendant WESTON J. PALMER, and there existed . . . a unity of interest and ownership . . . such that any separateness between them has ceased to exist in that Defendant Palmer completely controlled,

89. *Beck v. Palmer*, No. 2:23-cv-04525-PA-MAR, 2024 BL 193355 (C.D. Cal. June 04, 2024). No particular allegations are waged against the John Does, who are not specific individuals. Complaint ¶¶ 15–17, *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 12, 2023), ECF No. 1.

90. *Id.* ¶¶ 1–6.

91. *Id.* ¶¶ 26–27.

92. The complaint alleges sixteen causes of action. *Id.* ¶¶ 78–244.

93. *Id.* ¶ 22.

94. *Id.* ¶ 4. The complaint also asserts that Palmer “was and is a ‘managing and/or supervisory agent’” of the other defendants, terms that are relevant under California law. *Id.* ¶ 5.

managed, and operated Defendant PATRONSDAO.”⁹⁵ The complaint continues:

Defendant Palmer directed the activities of Defendant PATRONSDAO. Specifically, at all times relevant hereto, Defendant Palmer controlled the business and affairs of Defendant PATRONSDAO, comingling the funds and assets of Defendant PATRONSDAO and diverted corporate funds and assets for his own personal use, used Defendant PATRONSDAO as a mere shell, instrumentality, or conduit for himself, and disregarded legal formalities and failed to maintain an arm’s length relationship with Defendant PATRONSDAO. As the alter ego of Defendant PATRONSDAO, Defendant Palmer orchestrated, ratified, and was otherwise involved in the conduct described in this Complaint.⁹⁶

This veil-piercing language illustrates plaintiffs’ theory of the case, which was to emphasize the individual defendant’s liability and frame the actions of the DAO and the corporate defendant as actions attributable to the individual. The defendants are generally described collectively. For example, “Defendants breached the Employment Agreements with each Plaintiff”⁹⁷ Where the plaintiffs allege actions by one of the entity defendants, they are careful to attribute those actions to Palmer, e.g., “Defendant Palmer through defendant ECOSYSTEM.ART, INC., issued the first of several monthly wage statements”⁹⁸ There is no suggestion in the *Beck* complaint that the DAO is a general partnership. Instead, the emphasis is on Palmer’s liability (e.g., “Defendant Palmer is individually liable for failing to pay Plaintiffs their wages”⁹⁹) and stresses that the entity defendants are alter egos of the individual defendant, Palmer.¹⁰⁰

95. *Id.* ¶ 13. *See also id.* ¶¶ 72–73 (alleging Palmer’s ownership and control of PatronsDAO).

96. *Id.* ¶ 14. *See also id.* ¶¶ 74–75 (alleging comingling of funds and Palmer’s use of PatronsDAO as “a shell or conduit for his own single venture.”).

97. *Id.* ¶¶ 35, 45.

98. *Id.* ¶ 36.

99. *Id.* ¶ 64.

100. *Id.* ¶¶ 71, 77 (both reading, “Plaintiffs aver that disregarding the alter ego doctrine would result in injustice and is properly applied here due to Defendant Palmer’s abuse of the corporate form, such as creating inadequate capitalization.”).

It is difficult to gauge how successful this strategy was. Defendant Ecosystem.Art, Inc. filed bankruptcy, and plaintiffs voluntarily dismissed it from the case.¹⁰¹ Plaintiffs obtained a default against PatronsDAO but later dismissed it from the case as well.¹⁰² Plaintiffs obtained a default against Palmer, but Palmer also filed bankruptcy.¹⁰³ Plaintiffs filed a notice that they were seeking relief from the automatic stay to pursue claims against Palmer,¹⁰⁴ but their case was later dismissed for lack of prosecution.¹⁰⁵

4. *Newton AC/DC Fund*

A more recent case filed against a closely-held DAO is *Newton AC/DC Fund v. Hector DAO*. On February 7, 2024, an investment fund called Newton AC/DC Fund L.P. filed suit in the District of New Jersey against three defendants: Hector DAO, Farooq Hassan, and John Doe.¹⁰⁶ The complaint alleges that the plaintiff bought HEC tokens from the defendants, who later failed to deploy an action voted on by tokenholders.¹⁰⁷ The complaint also alleges that the defendants squandered the DAO's treasury and failed to avoid theft of treasury funds.¹⁰⁸ The

101. Notice of Pendency of Other Actions or Proceedings, Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Dec. 20, 2023), ECF No. 31; Notice of Dismissal Pursuant to Fed. Rules of Civ. Proc. 41(a) or (c), Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Jan. 8, 2024), ECF No. 37.

102. Default by Clerk F.R.Civ.P. 55(a), Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Dec. 26, 2023), ECF No. 36; Notice of Dismissal Pursuant to Fed. Rules of Civ. Proc. 41(a) or (c), Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Feb. 12, 2024), ECF No. 41.

103. Default by Clerk F.R.Civ.P. 55(a), Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Dec. 26, 2023), ECF No. 35; Notice of Pendency of Other Actions or Proceedings, Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Feb. 27, 2024), ECF No. 42.

104. Notice of Plaintiffs' Bankruptcy Court Filing Seeking Relief from Automatic Stay, Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Mar. 25, 2024), ECF No. 45.

105. Judgment of Dismissal, Beck v. Palmer, No. 2:23-cv-04525-PA-MAR (C.D. Cal. Jun. 4, 2024), ECF No. 48.

106. *Newton AC/DC Fund L.P. v. Hector DAO*, No. 3:24-cv-00722 (D.N.J. Feb. 7, 2024), ECF No. 1. Here, John Doe is a specific though unidentified person. John Doe is "an unknown person who holds an account at the Binance [cryptocurrency] Exchange," Verified Complaint at ¶ 5, *Newton AC/DC Fund L.P.*, No. 3:24-cv-00722, ECF No. 1, specifically wallet 0x86D3E3e-133E32cf2afe8069163a19Da01A5eF7c. *Id.* ¶ 35.

107. *Id.* ¶¶ 20–22.

108. *Id.* ¶¶ 23–33. The complaint goes on to insinuate that a significant hack and theft of tokens was an inside job. *Id.* ¶¶ 34–37.

causes of action include a federal cause of action for the unregistered sale of securities, as well as state law claims for breach of contract, breach of fiduciary duty, and conversion.¹⁰⁹ The complaint asserts the federal court has subject matter jurisdiction under both federal question and diversity jurisdiction.¹¹⁰

The complaint alleges that Hector DAO is “an unincorporated association”¹¹¹ and that Hassan is a “principal” of Hector DAO.¹¹² Although the complaint does not specifically describe Hector DAO as a sole proprietorship or a general partnership, it asserts pass-through liability to Hassan, alleging that “Hassan is liable for the obligations Hector DAO assumed as one of its principals.”¹¹³

The complaint consistently frames Hector DAO as the relevant actor: “Hector DAO sold HEC tokens to investors.”¹¹⁴ “Hector DAO has not protected the Treasury assets[.]”¹¹⁵ “Hector DAO made itself vulnerable to yet another incident.”¹¹⁶ “[Defendant John] Doe was only able to steal so much because Hector DAO irresponsibly deposited substantially all of the Treasury Assets into [a specified wallet].”¹¹⁷ Indeed, unlike the complaint in *Beck*, where plaintiffs emphasized the individual defendant’s liability and treated the DAO as the individual’s alter ego, the complaint here does the opposite. The *Newton*

109. *Id.* ¶¶ 21–33. Specifically, Count I alleges breach of contract, that plaintiff purchased tokens in exchange for voting rights that would direct the DAO’s activities but that after tokenholders voted for the entity to redeem purchased tokens, the defendants failed to do so. *Id.* ¶¶ 40–45. Count II alleges that the defendants engaged in the unregistered offer and sale of securities in violation of sections 5(a) and 12(a)(1) the Securities Act of 1933. *Id.* ¶¶ 46–74 (including analysis of the *Howey* factors, SEC v. W.J. Howey Co., 328 U.S. 293, 300 (1946)). Count III alleges that the defendants breached their fiduciary duty to plaintiff “by dissipating Treasury assets through unduly large payments to its own members,” “by dissipating Treasury assets through unreasonably large payments to third parties without commensurate benefit,” and “through failure to protect the Treasury from the Redemption Cyberattack.” *Newton AC/DC Fund L.P. v. Hector DAO* ¶ 77, No. 3:24-cv-00722 (D.N.J. Feb. 7, 2024), ECF No. 1. Count IV alleges conversion, that John Doe stole plaintiff’s assets and delivered them to Hassan and Hector DAO. *Id.* ¶¶ 79–83.

110. *Newton AC/DC Fund L.P. v. Hector DAO* ¶ 6, No. 3:24-cv-00722 (D.N.J. Feb. 7, 2024), ECF No. 1.

111. *Id.* ¶¶ 3, 45.

112. *Id.* ¶ 3.

113. *Id.* ¶ 45.

114. *Id.* ¶ 15.

115. *Id.* ¶ 23.

116. *Id.* ¶ 32.

117. *Id.* ¶ 34.

AC/DC complaint does not allege any specific actions by the individual defendant; all bad acts are attributed to the DAO or John Doe, with the individual's liability deriving from the actions of the DAO.

As of this writing, the defendants have not been served, no attorneys have entered appearances on behalf of any defendant, and no answers or motions to dismiss have been filed. But the defendants are clearly aware of the litigation: The court was notified that Hector DAO and Hassan are respondents in the receivership proceeding of a related entity, Hector Enterprise, Inc., in the British Virgin Islands.¹¹⁸ Hector DAO also filed bankruptcy in the United States, and notice of that bankruptcy was filed in the *Newton AC/DC* case.¹¹⁹ As a result, this litigation appears to have stalled before service has been effectuated on any defendant.

B. *Large DAOs: The Entity/Partners Tension*

Suits against large DAOs tend to be class actions, brought for violations of securities laws.¹²⁰ In these cases, plaintiffs have attempted to strike a balance in how the DAO defendant is personified in the complaint: The DAO is described as an entity itself, but the active developers/majority investors (who are also named as defendants in the cases) are framed with specificity as general partners actively managing the entity, and who thus bear joint and several liability. Plaintiffs have been successful when they allege particular general partner-like actions of

118. Text Order for Plaintiff's Motion for a Temporary Restraining Order, *Newton AC/DC Fund L.P. v. Hector DAO*, No. 3:24-cv-00722 (D.N.J. Feb. 7, 2024), ECF No. 13. The attorneys for the BVI Interim Receiver participated in a teleconference with plaintiff's counsel and the court, *id.*, and the interim receiver counsel is in contact with plaintiff's counsel. *See* Status Report, *Newton AC/DC Fund L.P.*, No. 3:24-cv-00722 (D.N.J. Feb. 26, 2024), ECF No. 16; Status Report, *Newton AC/DC Fund L.P.*, No. 3:24-cv-00722 (D.N.J. Mar. 1, 2024), ECF No. 18.

119. Notice of Bankruptcy Stay, *Newton AC/DC Fund L.P.*, No. 3:24-cv-00722 (D.N.J. July 17, 2024), ECF No. 26. Analysis of the DAO's personhood or entity status in the bankruptcy case is beyond the scope of this Article.

120. Houghton First Amended Complaint, *supra* note 18; Samuels Complaint, *supra* note 19; and *Basic v. BProtocol Foundation et al.*, No. 1:23-cv-00533 (W.D. Tex. May 11, 2023), all allege violations of securities laws. Demand for Jury Trial, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022) alleges negligence.

the other defendants.¹²¹ Of note, these large DAOs also have huge numbers of minority tokenholders who are not named as defendants. Doing so would be impracticable, given the fluid entry and exit of tokenholders from these DAOs.¹²²

Interestingly, the defendant DAOs have generally not responded to or participated in these lawsuits. Attorneys do not enter appearances on behalf of the DAO, the DAO files no answer or motions. Rather, the other defendants—those framed as the DAO’s general partners—fight the lawsuit. In the most recent cases, some of these active defendants push back on the idea of the DAO as a general partnership.

1. *Sarcuni*

Sarcuni v. bZx DAO was the first class action lawsuit filed against a DAO. The suit was filed in the Southern District of California on May 2, 2022 by nineteen plaintiffs on behalf of themselves and others similarly situated.¹²³ The named defendants include two DAOs (bZx DAO and Ooki DAO, with the latter being the new name of the former), as well as four LLCs¹²⁴ and two individuals.¹²⁵ The suit alleges that defendants negligently allowed the bZx protocol to be hacked by falling for a straightforward phishing scam which resulted in the theft of \$55 million worth of bZx tokens.¹²⁶ The sole cause of action alleged is negligence.¹²⁷ Plaintiffs allege subject matter jurisdiction based on diversity.¹²⁸

121. *See, e.g.*, Order at 18–19, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 49. Three defendants’ motion to dismiss alleged the complaint did not establish them as general partners of the DAO. Two defendants were dismissed on this ground, while plaintiffs’ claims against the other defendants survived.

122. Some of the complaints give lip service to the idea that minority tokenholders are also general partners, but the plaintiffs’ strategies are clearly to go after the large investors/developers with their deep pockets.

123. Complaint, *Sarcuni*, No. 3:22-cv-00618, ECF No. 1.

124. Hashed International LLC, Age Crypto GP LLC, LeverageBox LLC, and bZeroX LLC. *See, e.g.*, First Amended Complaint, *Sarcuni*, No. 3:22-cv-00618, ECF No. 21.

125. Kyle Kistner and Tom Bean, who are alleged to be co-founders of the bZx protocol. *Id.* ¶¶ 22–23.

126. *Id.* ¶ 1.

127. *Id.* ¶¶ 98–102.

128. *Id.* ¶ 30. The complaint also alleges personal jurisdiction over the DAOs “because unincorporated entities take on the citizenship of each of their members” and “[b]ecause at least one member of each DAO is a citizen

The complaint in this case consistently frames the DAOs as general partnerships, with the DAOs themselves as the relevant actors,¹²⁹ but it also emphasizes the contributions (and thus liability) of the other defendants. This duality is signaled in the second paragraph of the complaint:

The Defendants are jointly responsible for making good to the Plaintiffs. Indeed, the [DAO] protocol itself apparently acknowledges its responsibility for the loss. . . . Since the protocol has failed to pay back what was taken as a result of the protocol's negligence, all of these Defendants are jointly and severally responsible for making good to the Plaintiffs. That is because the bZx protocol purports to be a so-called DAO, or decentralized autonomous organization, that lacks any legal formalities or recognition. There is another phrase in American law for that kind of arrangement: general partnership. That means *each* of the partners is jointly and severally liable to the Plaintiffs and must make good on the full amount of its debts.¹³⁰

The complaint spends several pages establishing that DAOs are general partnerships,¹³¹ as well as asserting the actions of the other defendants which constitute partnership activities.¹³² However, the complaint does not assert that *all* tokenholders are general partners, just the four LLC and two individual defendants. Of course, the plaintiffs themselves are minority tokenholders and are bringing suit because their tokens were stolen. This posture evokes the general partner/limited partner distinction in limited partnerships, where general partners direct the actions of the entity and bear liability, while limited partners are passive and do not take on liability for the entity's wrongs.

of California, the DAOs are citizens of California" *Id.* ¶ 34 (citing *Carden v. Arkoma Associates*, 494 U.S. 185 (1990)).

129. *See, e.g.*, "The bZx DAO has recognized its responsibility to compensate the victims of the theft." First Amended Complaint ¶ 62, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 21.

130. *Id.* ¶ 2.

131. *Id.* ¶¶ 67–71.

132. *Id.* ¶¶ 72–79. For example, Kistner and Bean are both alleged to have "participated in decisionmaking of the bZx protocol." *Id.* ¶¶ 72–73; Hashed International LLC "has publicly disclosed that it 'supported the [bZx] team,' 'actually witness[ed] how this team solved' a security issue, and invested in the protocol" *Id.* ¶ 74.

Ultimately, though, the DAO defendants never responded to the suit, even though the LLC and individual defendants did. Nowhere in the docket did any attorney enter an appearance on behalf of either DAO.¹³³ Nor did either DAO file any motions or answers.¹³⁴

In defending the case, however, the other defendants made a motion to dismiss on the grounds, *inter alia*, that “Plaintiffs do not allege a general partnership among the defendants,” and that the complaint does not sufficiently allege the defendants are members of the general partnership.¹³⁵ The parties went back and forth, opposing and replying and responding to each other’s positions,¹³⁶ and the court ultimately held that the complaint sufficiently alleged a general partnership to survive a 12(b)(6) motion to dismiss.¹³⁷ However, the court did find that the complaint failed to plausibly establish that two of the defendants were general partners: The complaint did not allege that Leveragebox LLC or bZeroX LLC “held [DAO] tokens, participated in the management of bZx DAO, or shared in the profits of the DAO,”¹³⁸ and as a result, the claims against these defendants were dismissed.¹³⁹

133. Docket entry 11 includes the text “Attorney Michael Gregory Freeman added to party bZx DAO” but the motion filed at that docket number does not contain any reference to such an attorney, nor is the motion filed on behalf of either DAO as a party. Joint Motion for Extension of Time to File Answer, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 11.

134. Other defendants did. For example, a motion to dismiss was filed by defendants Bean, Kistner, Leveragebox LLC, and bZeroX LLC. Motion to Dismiss, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 27, and another Motion to Dismiss was filed by defendants Hashed International LLC and Age Crypto GP LLC, Motion to Dismiss, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 31.

135. Motion to Dismiss at 18-22, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 27. The other defendants, AGE Crypto GP LLC and Hashed International LLC, joined this motion and also filed their own motion to dismiss. *See* Order at 2, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 49.

136. *See* Response, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 36; Response, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 38; Reply, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. Oct. 3, 2022), ECF No. 41; Reply, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. Oct. 4, 2022), ECF No. 43; Notice, 3:22-cv-00618, ECF No. 47; Response, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. Feb. 27, 2023), ECF No. 48.

137. Order ¶¶ 12-17, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. Mar. 27, 2023), ECF No. 49.

138. *Id.* ¶¶ 18-19.

139. *Id.* ¶ 19.

The remaining defendants filed answers to the complaint,¹⁴⁰ but the case was settled and dismissed about a year and a half after filing with no response made by or on behalf of either of the named DAO entity defendants.¹⁴¹

2. *Houghton and Samuels*

This section analyzes two lawsuits, grouped together here because of their many similarities. *Houghton* and *Samuels* both are class action suits for securities violations filed in the Northern District of California. The suits have significantly overlapping casts of characters, including plaintiffs' counsel and named defendants.¹⁴²

Houghton v. Leshner was filed on December 8, 2022.¹⁴³ The named plaintiffs are Amanda Houghton, Charles Douglas, and Susan Franklin.¹⁴⁴ Plaintiffs name eight defendants: a DAO (Compound DAO), two individuals (DAO developers Robert Leshner and Geoffrey Hays), and five registered business entities (majority tokenholders AH Capital Management LLC, Polychain Alchemy LLC, Bain Capital Ventures (GP) LLC, Gauntlet Networks Inc., and Paradigm Operations LP).¹⁴⁵

Two of these defendants are recurring characters in much of the DAO litigation analyzed in this Article. AH Capital Management LLC is a venture capital firm also known as Andreessen Horowitz and as a16z,¹⁴⁶ and Paradigm Operations is a crypto

140. Sarcuni et al. v. bZx DAO et al, No. 3:22-cv-00618 (S.D. Cal. April 24, 2023), ECF No. 54, 56, 57. Defendant Bean did not file an answer, as the claims against him had also been dismissed. Order ¶¶ 12-17, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. Mar. 27, 2023), ECF No. 49.

141. The case is settled. Minutes and Order Setting Settlement Disposition Conference, Sarcuni et al. v. bZx DAO et al, No. 3:22-cv-00618 (S.D. Cal. Aug 14, 2023), ECF No. 76. A dismissal was ordered. Order of Dismissal, Sarcuni et al. v. bZx DAO et al, No. 3:22-cv-00618 (S.D. Cal. Nov 16, 2023), ECF No. 79.

142. This subsection will discuss multiple appearances of the same plaintiffs' counsel and the same defendants. Also interesting is that the judge presiding over *Houghton v. Leshner*, the Honorable William H. Orrick, also presided over *CFTC v. Ooki DAO*, discussed *infra* Part III.B.3. *Houghton v. Leshner et. al.*, No. 3:22-cv-07781, 2024 U.S. Dist. LEXIS 231827, at *3 (N.D. Cal. Nov. 25, 2024); *CFTC v. Ooki DAO*, No. 3:22-cv-05416-WHO, 2023 U.S. Dist. LEXIS 146460, at *2 (N.D. Cal. June 8, 2023).

143. *Houghton*, 2024 U.S. Dist. LEXIS 231827.

144. Houghton First Amended Complaint, *supra* note 18, ¶¶ 15-17.

145. *Id.* ¶¶ 7-14.

146. *Builders We've Backed*, ANDREESSEN HOROWITZ, <https://a16z.com/portfolio/> (last visited June 29, 2025).

investment firm.¹⁴⁷ The two entities are also named defendants in *Samuels*, discussed *infra*. Both entities also filed amicus briefs in *CFTC v. Ooki DAO* and (through a consortium organization) unsuccessfully attempted to file amicus briefs in *True Return Systems, LLC v. Maker DAO*, also discussed *infra*.

The plaintiffs in *Houghton* allege only one cause of action, the unregistered offer and sale of securities related to the DAO's token, called COMP.¹⁴⁸ Subject matter jurisdiction is asserted because of the federal question.¹⁴⁹

The first amended complaint frames the DAO as a general partnership, with the named defendants described as active general partners.¹⁵⁰ The first amended complaint spends considerable time establishing the acts of the entity defendants as partners in the DAO¹⁵¹ as well as emphasizing the governance authority of those entities, e.g., “As of December 8, 2022, . . . nine people controlled at least 51.56% of the COMP currently issued. . . .”¹⁵² The first amended complaint also describes a particular “vote passed 1,119,629 to 195,969” where “[Defendants] Polychain, Gauntlet, and Andreessen Horowitz alone accounted for nearly 800,000 [yes] votes[.]”¹⁵³ The plaintiffs further allege this concentration of governance authority was intentional: “Compound Labs’ plan was always to ensure that insiders kept control of the business into the distant future . . . [especially] given that the overwhelming majority of COMP holders predictably do not vote.”¹⁵⁴

The emphasis on the majority tokenholders’ voting power is a key component to the plaintiffs’ unregistered securities argument. Under *SEC v. WJ Howey Co.*, the Supreme Court defined a security as “an investment of money in a common enterprise with profits to come *solely from the efforts of others*.”¹⁵⁵ Because the plaintiffs, as minority tokenholders, have no

147. PARADIGM, <https://paradigm.xyz/> (last visited June 29, 2025).

148. Houghton First Amended Complaint, *supra* note 18, ¶¶ 206–216.

149. *Id.* ¶ 18.

150. *Id.* ¶¶ 91–93.

151. Including headings such as “Partner Defendants Make, Discuss, and Vote on Governance Proposals.” *Id.* ¶¶ 94–158. Recall that two defendants in the *Sarcuni* case were dismissed because the plaintiffs failed to sufficiently allege in the complaint that they were general partners. Order, *Sarcuni v. bZx DAO*, No. 3:22-cv-00618 (S.D. Cal. Mar. 27, 2023), ECF No. 49.

152. Houghton First Amended Complaint, *supra* note 18, ¶ 7.

153. *Id.* ¶ 107.

154. *Id.* ¶ 47.

155. *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, at 301 (1946) (emphasis added).

effective governance authority over the DAO, they allege that the defendants, as majority tokenholders, are the ones making governance decisions, which in turn makes the COMP token a security.¹⁵⁶

All defendants other than the DAO were represented by counsel and filed a joint motion to dismiss, arguing that plaintiffs failed to sufficiently plead that the defendants are partners of the DAO.¹⁵⁷ The motion was denied,¹⁵⁸ and all defendants other than the DAO subsequently filed answers.¹⁵⁹ Discovery was slow to get moving, and the defendants eventually filed a motion to compel arbitration.¹⁶⁰ As of this writing that motion is still pending.

It should be mentioned that the named plaintiffs in *Houghton* spent very small sums of money when they purchased their COMP tokens.¹⁶¹ The First Amended Complaint asserts that plaintiff Douglas purchased \$75 worth of COMP tokens, Houghton \$3, and Franklin only \$2.¹⁶² This raises the question, why would these individuals seek to be plaintiffs in a lawsuit, having suffered such small losses?

Perhaps relatedly: the same five lawyers at the same two law firms who represent the plaintiff class in *Houghton* also filed *Samuels v. Lido DAO* in the same district court a year later.¹⁶³

156. Houghton First Amended Complaint, *supra* note 18, ¶¶ 164–193.

157. Defendants' Notice of Motion & Motion to Dismiss, *Houghton v. Leshner*, No. 3:22-cv-07781 (N.D. Cal. Dec 8, 2022), ECF No. 79. Plaintiffs opposed the motion to dismiss. *See* Opposition, *Houghton v. Leshner*, No. 3:22-cv-07781 (N.D. Cal. Dec 08, 2022), ECF No. 82. Defendants replied. *See* Reply, *Houghton v. Leshner*, No. 3:22-cv-07781 (N.D. Cal. Dec 8, 2022), ECF No. 88.

158. Order Denying Motion to Dismiss, *Houghton v. Leshner*, No. 3:22-cv-07781 (N.D. Cal. Dec 08, 2022), ECF No. 94. Defendants' Motions to reconsider were also denied. Motions for Leave to File Motions for Reconsideration Denied, *id.*, ECF No. 132.

159. *Houghton v. Leshner et al.*, No. 3:22-cv-7781-WHO (N.D. Cal. Dec. 18, 2023), ECF No. 120. The answers contained counterclaims, which the plaintiffs answered as well. *Houghton*, No. 3:22-cv-7781-WHO, ECF Nos. 145–150.

160. Motion to Compel Arbitration and Stay Proceedings, *Houghton*, No. 3:22-cv-7781-WHO (N.D. Cal. Aug. 12, 2024), ECF No. 169.

161. Houghton First Amended Complaint, *supra* note 18, ¶¶ 15–17.

162. *Id.* Also noteworthy is the fact that complaint does not allege any specific losses by the plaintiffs.

163. *Samuels* Complaint, *supra* note 19. The firms are Gerstein Harrow LLP and Fairmark Partners LLP. *Compare* *Samuels* Complaint, *supra* note 19, at 34–35 (signature blocks), ECF No. 1, *with* *Houghton* First Amended Complaint, *supra* note 18, at 44–45 (signature blocks). The law firm Susman Godfrey LLP was later added as co-lead counsel for plaintiffs in *Houghton*. Motion to Appoint Counsel, *Houghton v. Leshner*, No. 3:22-cv-07781 (N.D. Cal. Nov 14,

Like *Houghton*, the *Samuels* case is also a class action suit alleging a single cause of action, the unregistered sale of securities.¹⁶⁴ According to the first amended complaint, Samuels bought “approximately 132 LDO tokens in April and May 2023 . . . [and] sold those tokens for a loss in June 2023.”¹⁶⁵ No dollar figures are alleged, but the price of one LDO token in April and May 2023 ranged from about \$2 to \$2.50,¹⁶⁶ which would have made Samuels’ purchase price at most approximately \$330. The price in June 2023 hovered at just under \$2 per token,¹⁶⁷ suggesting that Samuel’s losses were approximately \$70.

The first amended complaint in *Samuels* named five defendants: Lido DAO and four registered business entities who are the DAO’s alleged general partners: AH Capital Management LLC, Paradigm Operations LP, Dragonfly Digital Management LLC, and Robot Ventures LP.¹⁶⁸ Again, the complaint alleges only one cause of action, namely the offering and selling unregistered securities in the form of LDO tokens.¹⁶⁹ As in *Houghton v. Leshner*, the complaint here does not allege particular injuries to the plaintiff class.¹⁷⁰ Instead, the sole cause of action is the sale of unregistered securities,¹⁷¹ and the complaint requests

2023), ECF No. 137; Order Granting Motion to Appoint Counsel, *Houghton v. Leshner*, No. 3:22-cv-07781 (N.D. Cal. Dec 1, 2023), ECF No. 142.

164. Samuels Complaint, *supra* note 19, ¶¶ 132–142.

165. *Id.* ¶ 10.

166. *Lido DAO Token price*, KRAKEN, <https://www.kraken.com/prices/lido-dao-token>, (last visited Aug. 6, 2025).

167. *Id.*

168. Samuels Complaint, *supra* note 19, ¶¶ 5–9. Other individuals are identified in the complaint but not named as defendants. *See also Id.* ¶ 5 (The DAO’s “founders and Defendants’ key collaborators are Kasper Rasmussen, . . . Vasily Shapovalov, . . . Konstantin Lomashuk, . . . and Jordan Fish.”).

169. *Id.* ¶¶ 132–142.

170. For example, there is no allegation that the LDO token has lost value as a result of defendants’ actions. (Plaintiff Andrew Samuels’s declaration, which establishes his standing and injury, does articulate that he sold LDO tokens for less than he paid for them, Declaration of Andrew Samuels ¶ 2, Samuels, No. 3:23-cv-06492-VC, ECF No.41, but the decline in value is not framed as an injury resulting from defendants’ bad acts.) To be sure, token ownership generally confers governance rights, and the complaint alleges that the defendants own so many of the LDO tokens that “ordinary investors have no hope of stopping governance proposals from Partner Defendants.” Samuels Complaint, *supra* note 19, ¶ 79; *see also id.* ¶ 108 (“The functionality of the token as a governance mechanism is illusory for regular investors like Plaintiffs.”) However, this assertion is not repeated in the cause of action pleaded at the end of the complaint.

171. The complaint contains an assertion that the LDO token meets the definition of “security” under the *Howey* test, SEC v. W.J. Howey Co., 328 U.S.

generalized “rescission or rescissory damages as defined by relevant law” along with a “declar[ation] that LDO is a security and that Defendants joined a general partnership that sold LDO without registration, and enjoining Defendants from continuing to sell LDO without registration.”¹⁷²

The complaint alleges that Lido DAO is not incorporated anywhere and that no steps have been taken to provide it with any form of limited liability.¹⁷³ Moreover, the complaint works to establish that the other named entity defendants—which the complaint calls “the Partner Defendants”—are active partners in the general partnership that is the DAO.¹⁷⁴ The complaint quotes Lido PR communications that tout the other defendants’ involvement,¹⁷⁵ some of the entity defendants’ own statements describing their activities with regard to the DAO,¹⁷⁶ and third party reports depicting the entity defendants’ actions.¹⁷⁷

The *Samuels* complaint—again, filed by the same plaintiffs’ attorneys a year after they filed the *Houghton* complaint—is more detailed in describing the entity defendants’ activities alleged to make them general partners. For example, both complaints recite that AH Capital Management’s “crypto fund advertises that it supports the businesses it invests in with its research organization, engineering and security teams, legal and regulatory teams, go-to-market expertise, recruiting services, educational content,

293, 300 (1946), and also under the SEC’s Framework for ‘Investment Contract’ Analysis of Digital Assets. *Samuels Complaint*, *supra* note 19, ¶¶ 69–89.

172. *Samuels Complaint*, *supra* note 19, ¶¶ 33–34.

173. *Id.* ¶ 37.

174. *Id.* ¶¶ 39–47.

175. *Id.* ¶ 41 (Lido describes Paradigm as “a premier participant in the DeFi system uniquely positioned to lend its expertise to LidoDAO governance”); *Id.* ¶ 45 (Lido’s Chief Marketing Officer cites Dragonfly’s and Robot Ventures’ “expertise in the successful development of distributed protocols” as a reason they were chosen as investors).

176. *Id.* ¶ 42 (Paradigm website describes how it “takes a deeply hands-on approach to help projects reach their full potential”); *id.* ¶¶ 43–44 (AH Capital Management announces it will “contribute, as both a staker and governance participant” in Lido DAO specifically and that it “supports [all] the businesses it invests with”); *id.* ¶ 46 (Dragonfly wrote on a Lido forum that it “has been an active supporter of Lido” from its first investment and that “we’re long-term investors and are looking forward to being more active in governance”).

177. *Id.* ¶ 40, quoting a “blog post from a company called Mint Ventures [that] explained Paradigm’s deep involvement in Lido from its inception” including that “they influenced and even guided the development route of Lido Finance” and that “three [named] members of Paradigm can also be counted as team members of Lido Finance to some extent.”

and a Crypto Startup School.”¹⁷⁸ But the *Samuels* complaint goes further, writing: AH Capital Management “when announcing its \$70 million investment in Lido, explained that ‘we actively contribute to the networks and communities in our portfolio We will contribute, as both a staker and governance participant, to help ensure a fair, transparent, and credible staking ecosystem.’”¹⁷⁹ *Samuels*, then, more precisely establishes that this defendant actively participates in the governance of the DAO.

Four of the five defendants—those other than the DAO itself—began promptly defending the lawsuit, including filing motions to dismiss.¹⁸⁰ After the court ruled that the DAO itself had been served with process,¹⁸¹ the tokenholders of the DAO voted to form a registered business entity, Dolphin CL, LLC, to defend the lawsuit on behalf of the DAO.¹⁸² Dolphin filed a Motion to Dismiss, pushing back hard on the idea that the DAO was an entity that could be sued at all, instead repeatedly framing the DAO as nothing more than computer software.¹⁸³ Dolphin also asserts lack of subject matter jurisdiction, lack of personal jurisdiction over the DAO, and failure to state a claim under federal securities laws.¹⁸⁴ The motion was opposed¹⁸⁵ and

178. Houghton First Amended Complaint, *supra* note 18, ¶ 98; *Samuels* Complaint, *supra* note 19, ¶ 44 (cleaned up).

179. *Samuels* Complaint, *supra* note 19, ¶ 43.

180. Numerous attorneys have entered appearances on behalf of the non-DAO defendants, *see, e.g.*, Application for Admission of Attorney Pro Hac Vice, *Samuels*, No. 3:23-cv-06492-VC, (N.D. Cal. Mar. 1, 2023), ECF No. 43 (Defendant AH Capital Management LLC); Notice of Appearance of Zachary Faigen, *Samuels*, No. 3:23-cv-06492-VC, (N.D. Cal. Jan. 1, 2024), ECF No. 23 (Defendant Paradigm Operations LP); Application for Admission of Attorney Pro Hac Vice, *Samuels*, No. 3:23-cv-06492-VC, (N.D. Cal. Feb. 4, 2024), ECF No. 38 (Defendant Andrew Samuels).

181. Order Granting Motion for Alternative Service and Denying Entry of Default, *Samuels v. Lido DAO*, No. 3:23-cv-06492, (N.D. Cal. June 27, 2024), ECF No. 75.

182. Motion to Dismiss at 1–2, *Samuels v. Lido DAO*, No. 3:23-cv-06492, (N.D. Cal. July 11, 2024), ECF No. 82.

183. *Id.* at 3 (“Lido DAO is software Software cannot be sued under FRCP 17(b) as it does not have ‘capacity’ in any one of three enumerated categories within the rule—it is not an ‘individual’ (that is, a natural person), a corporation, or a California general partnership. For these reasons, the [Amended Complaint] should also be dismissed as to Lido DAO under FRCP 12(b)(1) for lack of subject matter jurisdiction. The Court should not extend legal personhood to a global software system.”).

184. *Id.* at 8–15.

185. Plaintiff’s Response to Dolphin CL, LLC’s Motion to Dismiss as to Lido DAO, *Samuels v. Lido DAO*, No. 3:23-cv-06492, (N.D. Cal. Aug. 8, 2024), ECF No. 97. *See also* Dolphin CL, LLC’s Reply in Support of Motion to Dismiss the

the court held oral argument,¹⁸⁶ but as of this writing, the court has not ruled on the motion.

3. *Basic*

Basic v. BProtocol Foundation was filed in the Western District of Texas on May 11, 2023.¹⁸⁷ It is a class action asserting, *inter alia*, violations of securities laws by the defendants.¹⁸⁸ An amended complaint was filed five months later, with a slightly different arrangement of named plaintiffs¹⁸⁹ and the addition of a new defendant (a business entity the individual defendants are alleged to control).¹⁹⁰ The litigation thus proceeded against seven defendants: Bancor DAO, two registered business entities (BProtocol Foundation and LocalCoin, Ltd.), and four individuals (Galia Ben-Artzi, Guy Ben-Artzi, Eyal Hertzog, and Yehuda Levi).¹⁹¹

As compared to the original complaint, the amended complaint sharpens its assertions against the defendants.¹⁹² More specific facts are alleged, and three additional causes of action

Amended Complaint, *Samuels v. Lido DAO*, No. 3:23-cv-06492, (N.D. Cal. Aug. 22, 2024), ECF No. 102.

186. Motion Hearing, *Samuels v. Lido DAO*, No. 3:23-cv-06492, (N.D. Cal. Sep. 5, 2024), ECF No. 104.

187. Class Action Complaint, *Basic et al. v. BProtocol Foundation et al.*, No. 1:23-cv-00533, (W.D. Tex. May 11, 2023), ECF No. 1.

188. *Id.* ¶¶ 154–204; First Amended Class Action Complaint ¶¶ 223–304, *Basic et al. v. BProtocol Foundation et al.*, No. 1:23-cv-00533, (W.D. Tex. Oct. 24, 2023), ECF No. 37. The first amended complaint contains three more causes of action than the original; it adds two claims under Texas securities laws and a claim for breach of fiduciary duty that were not alleged in the original complaint. *See* First Amended Class Action Complaint ¶¶ 267–281, 288–299.

189. *Id.* ¶¶ 15–19. The plaintiffs are Mislav Basic, Nathan Gruber, Kevin Boudreau, Daniel Schwaibold, and Keith Zacharski.

190. *Id.* ¶¶ 20–26.

191. Defendants Galia Ben-Artzi and Guy Ben-Artzi are siblings, and they are alleged to be the niece and nephew of Israeli Prime Minister Benjamin Netanyahu. *Id.* ¶¶ 23–24.

192. For example, where the original complaint asserted that the loss protection program was a security, the amended complaint specifies that version 3 of the program was the security at issue. Contrast the preliminary statements of the original complaint, Class Action Complaint ¶¶, *Basic et al. v. BProtocol Foundation et al.*, No. 1:23-cv-00533, (W.D. Tex. May 11, 2023), ECF No. 1, *with* the First Amended Class Action Complaint ¶¶ 1–14, *Basic et al. v. BProtocol Foundation et al.*, No. 1:23-cv-00533, (W.D. Tex. Oct. 24, 2023), ECF No. 37.

are asserted.¹⁹³ In brief, plaintiffs allege that defendants sold investments in a crypto “Loss Protection” program that was itself a security under the *Howey* test, and that when the program became insolvent, defendants breached the contracts with and fiduciary duties owed to their investors.¹⁹⁴ The causes of action are violations of federal securities laws¹⁹⁵ and various Texas state law causes of action.¹⁹⁶ Subject matter jurisdiction is asserted because the case involves questions of federal law.¹⁹⁷

Notably for the purposes of this Article, the amended complaint carefully describes the structure and function of defendant Bancor DAO. The amended complaint asserts that:

Defendant Bancor DAO is an unincorporated general partnership that is not registered in any jurisdiction and has no physical office, location, mailing address, directors, or appointed agents. Bancor DAO is comprised of all individual holders of vBNT, a “governance token” native to the Protocol . . . Holders of vBNT vote on proposals to govern the DAO much like shareholders vote on proposals to govern a corporation . . . Although Bancor DAO purportedly governs itself and the Protocol in a “democratic and transparent” decentralized system, in reality the Individual and Entity Defendants control the Bancor DAO[.]¹⁹⁸

Yet despite asserting that Bancor DAO is a general partnership governed by *all* token-holders,¹⁹⁹ the amended complaint explains that “the actual governance authority in many DAOs is highly concentrated and the original founders, developers, and promoters of the underlying protocol retain significant control

193. Billionaires and celebrity crypto-enthusiasts Tim Draper and Mark Cuban are also named-dropped in the amended complaint, though no allegations are made against them. *See* First Amended Class Action Complaint ¶¶ 34.e, 60, 62, 131, Basic et al. v. BProtocol Foundation et al., No. 1:23-cv-00533, (W.D. Tex. Oct. 24, 2023), ECF No. 37.

194. *Id.* ¶¶ 223–304.

195. *Id.* ¶¶ 223–266.

196. *Id.* ¶¶ 267–304. The original complaint included one state law cause of action for breach of contract, while the amended complaint added two Texas securities law claims and breach of fiduciary duty.

197. *Id.* ¶¶ 32–33.

198. *Id.* ¶ 22 (footnote omitted).

199. The amended complaint asserts, without citations, that “A growing number of U.S. courts and legal commentators have recognized that DAOs generally constitute partnerships under U.S. law.” *Id.* ¶ 49.

over its management, design, and promotion. This is true for Bancor.”²⁰⁰ As with previous cases, the plaintiffs themselves are minority tokenholders and are not seeking to implicate themselves as general partners of the DAO. Thus, while the complaint recites general partnership language, it really pursues the *governing* tokenholders: the named defendants.²⁰¹

The complaint articulates specific acts by certain defendants (e.g., “In May 2017, Defendants Hertzog, Guy Ben-Artzi, and Galia Ben-Artzi published a draft whitepaper entitled ‘Bancor Protocol’”²⁰²), but by and large it refers to the defendants collectively: “Defendants engaged in in-person and online promotional activities that intentionally targeted U.S. investors”²⁰³; “Defendants not only solicited investments from U.S. investors, but they publicly promoted their success”²⁰⁴; and “Plaintiffs and others similarly situated relied on Defendants’ misrepresentations and omissions to their detriment.”²⁰⁵

The defendants were represented by a variety of attorneys. Of note, three attorneys entered appearances on behalf of the DAO (one of whom accepted service on behalf of the DAO in writing)²⁰⁶ but later removed themselves from that representation.²⁰⁷ The DAO remained unrepresented, and no

200. *Id.* ¶ 50.

201. Interestingly, the complaint also identifies five “non-parties” who are named in the text of the complaint but are not named as defendants; these individuals are alleged to be employees or contractors of defendant LocalCoin. *Id.* ¶¶ 27–31. The non-party individuals are Mark Richardson, Nate Hindman, Stefan Loesch, Jen Albert, and Rick Barber. *Id.*

202. *Id.* ¶ 59.

203. *Id.* ¶ 96.

204. *Id.* ¶ 131.

205. *Id.* ¶ 152.

206. Certificate of Service, Basic et al. v. BProtocol Foundation et al., No. 1:23-cv-00533, (W.D. Tex. Nov. 15, 2023), ECF No. 41 (attorney Kayvan Sadeghi accepting service of the complaint on defendants BProtocol Foundation, Galia Ben-Artzi, Guy Ben-Artzi, Eyal Hertzog, Yehuda Levi and Bancor DAO). Attorney Sadeghi and two of his colleagues had previously entered appearances on behalf of the DAO, as well as defendants BProtocol Foundation, Galia Ben-Artzi, Guy Ben-Artzi, and Eyal Hertzog. Motions for Admission Pro Hac Vice, Basic et al. v. BProtocol Foundation et al., No. 1:23-cv-00533, (W.D. Tex. Aug. 11, 2023), ECF No. 20–22.

207. Attorney Sadeghi, along with two of his colleagues, attempted to remove himself from representing the DAO by filing an “Unopposed Motion for Leave to File Corrected Motions for Admission Pro Hac Vice and to Correct Erroneous Designation of Counsel,” Basic et al. v. BProtocol Foundation et al., No. 1:23-cv-00533, (W.D. Tex. Nov. 16, 2023), ECF No. 42. This motion was denied, and the court instructed counsel to file a motion to withdraw.

motions or other filings were made on behalf of the DAO. The other defendants actively defended the case, including filing a motion to dismiss which asserted lack of personal jurisdiction over the defendants (but did not object to the plaintiffs' framing of the DAO as a general partnership).²⁰⁸ The court granted this motion to dismiss, finding that defendants did not purposely avail themselves of the Western District of Texas and that as a result, the court lacked personal jurisdiction over defendants.²⁰⁹

C. DAOs as Sole Defendant and the Role of Amici

Two lawsuits have been filed against DAOs as the sole defendant—that is, no other individuals or entities are co-defendants with the DAO. These lawsuits put the question of the DAO's personhood squarely at issue. In both cases, the DAO did not immediately respond to the litigation, and amici attempted to make the DAO's case for it. Yet in both cases, the amici were largely unsuccessful, and the DAO either stepped up to defend itself or defaulted.

1. CFTC v. Ooki DAO, formerly d/b/a bZx DAO

This lawsuit, filed by the Commodity Futures Trading Commission on September 22, 2022 in the Northern District of California, alleges that defendant Ooki DAO violated the Commodity Exchange Act and its implementing regulations.²¹⁰ The defendant DAO is alleged to have operated an infringing

Counsel filed a motion to withdraw as attorney for Bancor DAO that same day, Motion to Withdraw, Basic et al. v. BProtocol Foundation et al., No. 1:23-cv-00533, (W.D. Tex. Jan. 3, 2024), ECF No. 48, which was granted.

208. Motion to Dismiss, Basic et al. v. BProtocol Foundation et al., No. 1:23-cv-00533, (W.D. Tex. Jan. 8, 2024), ECF No. 54.

209. Report and Recommendation at 15, Basic et al. v. BProtocol Foundation et al., No. 1:23-cv-00533, (W.D. Tex. July 31, 2024), ECF No. 68, *adopted*, No. 1:23-cv-00533, (W.D. Tex. Sept. 6, 2024), ECF No. 72. The issue of personal jurisdiction over a DAO is an important one, but regrettably exceeds the scope of this Article.

210. Complaint ¶ 1, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. Sep. 22, 2022), ECF No. 1 (alleging that the DAO's predecessor in interest, "which had never registered with the Commission[,] unlawfully engaged in activities that could only lawfully be performed by a registered designated contract market . . . and other activities that could only lawfully be performed by a registered futures commission merchant ("FCM"). . . . In addition, [defendant] failed to conduct know-your-customer ("KYC") diligence on its customers as part of a customer identification program ("CIP") as required of FCMs by the Regulations.").

business while also failing to comply with know-your-customer and customer identification program requirements.

The complaint establishes two time periods during which legal violations occurred. During the first time period (June 1, 2019 to August 23, 2021), the business operations were run by a limited liability company called bZeroX, LLC.²¹¹ The second time period began on August 23, 2021 when bZeroX, LLC transferred the business operations to a decentralized autonomous organization.²¹² The DAO was originally named bZx DAO, but was later renamed Ooki DAO.²¹³ The CFTC alleged the business's promoters specifically transferred the business operations to a DAO to avoid legal enforcement.²¹⁴

Of note, only the DAO is named as a defendant in the complaint; although this is the same DAO being sued by Sarcuni et al., *supra*, none of the LLC or individual defendants in *Sarcuni* are named here as defendants. The CFTC had filed and immediately settled charges against some of those defendants (bZeroX LLC and individuals Bean and Kistner) but the CFTC did not involve those defendants in this suit.²¹⁵

As in *Sarcuni*, *supra*, Ooki DAO did not respond to the complaint, and no attorneys entered appearance on behalf of the DAO. The CFTC moved for entry of default on January 11, 2023,²¹⁶ and default was entered on January 17.²¹⁷ The CFTC moved for default judgment on April 7, 2023,²¹⁸ and judgment was entered on June 8, 2023.²¹⁹

Although the DAO did not participate in the lawsuit, it is noteworthy that four entities attempted to participate as

211. *Id.* ¶¶ 1–2.

212. *Id.* ¶ 4.

213. *Id.* ¶ 2.

214. *Id.* ¶ 3.

215. Press Release, CFTC, CFTC Order Finds, and Complaint Alleges, Ooki DAO is Liable as an Unincorporated Association (Sept. 22, 2022), <https://www.cftc.gov/PressRoom/PressReleases/8590-22>; bZeroX, LLC, CFTC No. 22-31 (2022).

216. Motion for Entry of Default against Defendant Ooki DAO, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. Jan. 11, 2022), ECF No. 64.

217. Entry of Default, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. Jan. 17, 2022), ECF No. 65.

218. Motion for Default Judgement, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. Apr. 18, 2023), ECF No. 68.

219. Judgment, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. June 8, 2023), ECF No. 77.

amici.²²⁰ The amici included Paradigm Operations LP and Andreessen Horowitz a/k/a AH Capital Management LLC, both defendants in *Houghton* and *Samuels*. Since “nobody has appeared to defend the Ooki DAO,” the four amici filed several briefs with regard to service of process upon the DAO.²²¹ The amici argued that the CFTC’s proposed method of service on the entity was insufficient because the CFTC’s own theory was that each tokenholder was a general partner of the entity.²²²

Furthermore, the amici filed a brief in opposition to the CFTC’s motion for default.²²³ The amici urged the court not to make further legal determinations about the status of the DAO and to “make clear that any default judgment it enters in this proceeding will run against only the ‘Ooki DAO’ and assets in the Ooki DAO’s treasury, rather than against any individuals or their personal assets.”²²⁴

After requesting supplemental briefing from the CFTC on the issue of personal jurisdiction,²²⁵ the court granted the motion for default,²²⁶ ordering money damages, enjoining the DAO from engaging in commodities trading, and ordering the DAO’s website be taken down.²²⁷

2. *True Return Systems, LLC v. MakerDAO*

Plaintiff True Return Systems filed a patent infringement case against defendant MakerDAO on October 5, 2022 in the

²²⁰. See *supra* Part II.B.2.

²²¹. Motion for Leave to File Brief of Amici Curiae Paradigm Operations LP, LeXpunch, DeFi Education Fund, and Andreessen Horowitz in Response to Plaintiff’s Motion for Default Judgment at 1, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. Apr. 21, 2023), ECF No. 70 (granted at ECF No. 72, Apr. 24, 2023) [hereinafter Motion for Leave to File Brief of Amici].

²²². *Id.*

²²³. *Id.*

²²⁴. *Id.* Amici also argued that the court should refrain from making extensive factual findings “on the one-sided record before it.” *Id.* at 2.

²²⁵. Proceedings and Minute Order, CFTC v. Ooki DAO, No. 22-cv-05416 (N.D. Cal. May 17, 2023), ECF No. 74. The CFTC’s supplemental brief in response to the order is at docket entry 75. Plaintiff CFTC’s Supplemental Submission Regarding Personal Jurisdiction and Website Removal in Support of Motion for Default Judgment, CFTC v. Ooki DAO, No. 22-cv-05416 (N.D. Cal. June 2, 2023), ECF No. 75.

²²⁶. Order Granting Motion for Default Judgment, CFTC v. Ooki DAO, No. 22-cv-05416 (N.D. Cal. June 8, 2023), ECF No. 76.

²²⁷. Judgment, CFTC v. Ooki DAO, No. 22-cv-05416 (N.D. Cal. June 8, 2023), ECF No. 77.

Southern District of New York.²²⁸ Like *CFTC v. Ooki DAO*, *supra*, this case was filed against a DAO as the sole defendant, with no related entities or individuals named. The complaint alleges that MakerDAO infringed on the plaintiff's patent, nicknamed "the 797 Patent," which covered "distributed computerized ledger technologies that could, among other applications, efficiently integrate on-chain and off-chain data and processes for improved computer system efficiency and security."²²⁹ The plaintiff alleges federal question jurisdiction.²³⁰

The complaint accurately describes DAO technology and decentralization,²³¹ and it also identifies the individual and entity who launched MakerDAO: Rune Christensen and the MakerDAO Foundation.²³² Yet the complaint recites that these developers "turn[ed] over administration and control of MakerDAO to the holders of MakerDAO's MKR token"²³³ and consistently identifies the DAO itself as the sole relevant actor in the case. Unlike other litigation against DAOs, this complaint does not focus on the actions of the developer or tokenholders. The complaint consistently asserts that the DAO is the relevant actor, *e.g.*: "MakerDAO converted its oracles system and processes,"²³⁴ "Defendant has committed acts of patent infringement,"²³⁵ "MakerDAO provides methods and systems that use a processing/storage system,"²³⁶ "MakerDAO authored and published a whitepaper,"²³⁷ etc.

Although the complaint recites a general partnership theory—asserting that individual token holders could be held liable for the DAO's actions and debts²³⁸—the complaint's sole claim for relief is for patent infringement against the DAO itself.²³⁹ It is a curious decision to sue the DAO alone for this

228 See Complaint for Patent Infringement, True Return Systems, LLC v. MakerDAO, No. 1:22-cv-08478 (S.D.N.Y. Oct. 5, 2022), ECF No. 1.

229 *Id.* ¶¶ 21–22. The named plaintiff is True Return Systems, LLC, which the complaint asserts "was founded by Jack Fonss." *Id.* ¶ 17. Mr. Fonss developed the technology and is named on the patent as the inventor. *Id.* ¶¶ 18–22.

230 *Id.* ¶¶ 11–12.

231 *Id.* ¶¶ 9–10.

232 *Id.* ¶ 5.

233 *Id.* ¶ 6.

234 *Id.* ¶ 7.

235 *Id.* ¶ 12.

236 *Id.* ¶ 31.

237 *Id.* ¶ 41.

238 *Id.* ¶ 10.

239 *Id.* ¶¶ 89–100.

cause of action, particularly when the complaint states that “MakerDAO maintains many supporting individuals and teams” including a “Governance Facilitator.”²⁴⁰ Given that the DAO has a valuable treasury of its own tokens, the DAO itself may be the deepest pocket.²⁴¹ Yet it is notable that the complaint does not allege wrongdoing by the majority tokenholders (who, as we shall see, include some familiar characters).²⁴²

After the defendant was notified of the lawsuit,²⁴³ no attorneys immediately entered appearances, nor were any motions or an answer immediately filed. Rather, the DAO filed the first of several “letters” with the court denying its ability to be sued:

MakerDAO, by its organisation and terms, cannot respond to American court proceedings, and our cryptocurrency activities are outside the reach of regulators. Our decentralisation orthodoxy has proved to be our strongest moat against regulatory oversight and unwelcome legal enforcement. . . .

Because of the jurisdiction[sic] ambiguities we meticulously maintain, we are able to maintain a position of no taxation. This court matter unfairly risks our position. We ask that the court respect the need for pseudo anonymity in the cryptocurrency field (personal risk, theft risk, revenue authorities, etcetera) and the principles of cryptocurrency’s immaculate and unattributed origins. Any and all assistance you can provide in vacating this matter quickly and quietly would be greatly appreciated.

240. *Id.* ¶ 35.

241. See Kriztian Sandor, *MakerDAO’s \$1B Tokenized Treasury Investment Plan Draws Interest from BlackRock’s BUIDL, Ondo, Superstate*, COINDESK (July 12, 2024, 9:43 AM), <https://www.coindesk.com/business/2024/07/12/makerdaos-1b-tokenized-treasury-investment-plan-draws-interest-from-black-rocks-buidl-ondo-superstate> (indicating MakerDAO has over \$1 billion in reserves).

242. A nearly identical lawsuit was filed by the same plaintiff the same day against Compound Protocol, alleging infringement of the same patent. See Complaint for Patent Infringement (“Complaint”), *True Return Systems LLC v. Compound Protocol*, 1:22-cv-08483 (S.D.N.Y. Oct. 5, 2022), ECF No. 1. Defendant Compound Protocol is also described as a DAO, and is the sole defendant. *Id.* ¶ 1. Other suits may be filed against DAOs but identify the organization as a “Protocol” or similar term.

243. For more on service of process in this case, see *infra* Part IV.

Kindest regards

@makerDAOdai²⁴⁴

This communication deserves to be parsed. First, it is ironic that the DAO filed this letter with a U.S. court in order to demonstrate that the DAO “cannot respond to American court proceedings”—the filing of the letter demonstrates that it in fact can. Nor does the letter appear to be automatically generated by artificial intelligence. A subsequent letter from the DAO, filed on December 16, 2023, concludes “Kindest regards and Happy Holidays,”²⁴⁵ which demonstrates the author’s situational awareness and ability to respond appropriately. Second, “the principles of cryptocurrency’s immaculate and unattributed origins” are belied by the author’s ability to recognize and respond to litigation, to say nothing of the fact that the complaint identifies the individual and entity developers by name.

The rest of the letter illustrates the theory held by some DAO participants that their alegal operation excludes them from legal compliance.²⁴⁶ The letter refers to this action as “unwelcome legal enforcement,” which it no doubt is; being sued for copyright infringement would be unwelcome for anyone, but not unwarranted if the infringement is occurring. The letter also bemoans that “This court matter unfairly risks our position,” with “unfair” being an opinion rather than a fact. The declarations that the DAO is “outside the reach of regulators” and is “able to maintain a position of no taxation” are so baseless and self-interested as to be laughable.²⁴⁷ The request to *the court* to “assist[] in vacating this matter quickly and quietly” demonstrates either ignorance or hubris.

After the DAO submitted this letter, an organization called the Crypto Council for Innovation (CCI) attempted to insert itself into the litigation as *amicus curiae* on behalf of

244. Letter from MakerDAO to the Court, *True Return Systems, LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Dec. 9, 2023), ECF No. 15 (internal emphasis omitted).

245. Letter from MakerDAO to the Court, *True Return Systems, LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Dec. 16, 2023), ECF No. 20.

246. See *supra* note 28 and text accompanying note 28.

247. If only we could declare ourselves to be beyond the reach of the law!

MakerDAO.²⁴⁸ CCI's counsel did not identify any members of the council, but MakerDAO and Plaintiff's counsel did: CCI's membership includes—among others—a16z (a pseudonym for AH Capital Management), Gemini's Tyler Winklevoss, and Coinbase,²⁴⁹ as well as Paradigm Operations.²⁵⁰

MakerDAO again filed a letter with the court (while still claiming it was not able to participate in litigation²⁵¹), attempting to vouch for CCI's ability to protect MakerDAO's interests:

Both collectively and individually, the Council's investor group has been at the forefront of most of MakerDAO's largest and most important transactions. The Council and its members are more active in governance than many of our internal Core Units, and as MakerDAO moves toward its End-Game restructuring, the Council and its members are expected to play an outsized role.²⁵²

Plaintiff objected to CCI's participation in the litigation on the grounds that:

248. Letter from CCI to the Court, *True Return Systems, LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Dec. 22, 2022), ECF No. 18 (notifying the court of CCI's intent to participate as amicus curiae with respect to default judgments against MakerDAO).

249. Letter from MakerDAO to the Court, ECF No. 20, *supra* note 241. The letter also identifies five individuals who work for a16z who are integral to the company's business with MakerDAO.

250. Letter from True Return Systems, LLC to the Court, *True Return Systems, LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Dec. 23, 2022), ECF No. 19.

251. MakerDAO would go on to file several more of these letters in the coming months. Interestingly, CCI's counsel later clarified that it is not the entity writing or filing the letters on behalf of MakerDAO. Letter from CCI to the Court, *True Return Systems LLC v. MakerDAO*, No. 22-cv-8478 (S.D.N.Y. Mar. 9, 2023), ECF No. 43. MakerDAO continued to file letters directly with the court, to the apparent consternation of both plaintiff and the would-be amicus CCI. *See, e.g.*, Letter From CCI to the Court, *True Return Systems LLC v. MakerDAO*, No. 22-cv-8478 (S.D.N.Y. Mar. 16, 2023), ECF No. 47 (referencing Letter from @makerDAOdai to the Court, *True Return Systems LLC v. MakerDAO*, No. 22-cv-8478 (S.D.N.Y. Mar. 14, 2023, ECF No. 46) (containing an assertion CCI's counsel objected to)); Letter from CCI to the Court, *True Return Systems LLC v. MakerDAO*, No. 22-cv-8478 (S.D.N.Y. June 20, 2023), ECF No. 49 (referencing Letter from True Return Systems LLC to the Court, *True Return Systems LLC v. MakerDAO*, No. 22-cv-8478 (S.D.N.Y. June 15, 2023), ECF No. 48 (containing an assertion to which CCI's counsel objected)).

252. Letter from @makerDAOdai to the Court, *True Return Systems LLC v. MakerDAO*, No. 22-cv-8478 (S.D.N.Y. Dec. 16, 2022), ECF No. 2.

[M]any members of CCI may have a real and direct interest in the outcome of the litigation. Were that the case, the proposed amicus filing could be used as a shield to hide the identity of these parties, enabling those parties to participate and advocate a position without properly appearing before this Court.²⁵³

The court ordered CCI to “disclose whether any of its members own, hold, or owe cryptocurrency interests in MakerDAO[.]”²⁵⁴ By letter, MakerDAO objected to the court’s request.²⁵⁵

CCI ultimately filed a motion for leave to participate as amicus curiae²⁵⁶ but the court denied the motion, noting that “CCI does not have a unique point of view that is not available to the Court from the parties in the underlying action.”²⁵⁷ The court went on to opine:

I also do not believe that CCI is seeking to serve as an objective, neutral, dispassionate friend of the court. . . . As raised by Plaintiff and confirmed by CCI, some of CCI[']s members hold MakerDAO tokens and thus might benefit from CCI’s participation in this case. . . . I find that CCI cannot provide neutral assistance in analyzing these issues before me.²⁵⁸

Three weeks after CCI was denied the ability to advocate on behalf of MakerDAO, six attorneys entered appearances on

253. Letter from True Return Systems LLC to the Court, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Dec. 23, 2022), ECF No. 19.

254. Memo Endorsement, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Feb. 15, 2023), ECF No. 36.

255. Letter from @makerDAO to the Court, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Feb. 16, 2023), ECF No. 37 (“As detailed in our earlier letter, the Council’s members remain the most qualified to represent MakerDAO in this matter given their many years of leadership in governance as voting members, investors and counterparties to the DAO.”).

256. Motion from CCI for Leave to Participate as Amicus Curiae, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Feb. 20, 2023), ECF No. 38; *see also* Memorandum of Law from CCI in Support, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Feb. 20, 2023), ECF No. 39.

257. Order Denying CCI’s Motion for Leave to Participate as Amicus Curiae, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (June 21, 2023), ECF No. 50.

258. *Id.* (quotation marks and citations omitted).

behalf of the DAO itself²⁵⁹ and filed a motion to dismiss.²⁶⁰ In the motion, MakerDAO reasserted its argument that it cannot be sued and that by virtue of the technological structure of the DAO, “[t]here is no way to become a ‘member’ of MakerDAO and MakerDAO therefore has no fixed membership,” and that in turn, “MakerDAO is not an association of persons and does not have the capacity to be sued under New York or federal law.”²⁶¹ Plaintiff opposed the motion, asserting that in previous cases (including *Houghton*, *CFTC v. Ooki DAO*, and *Sarcuni*), “courts have generally recognized that a duck is a duck and the DAO structure—while once novel and technologically clever—does not shield liability in all forms.”²⁶²

Unfortunately, for purposes of this Article, the plaintiff voluntarily dismissed the action before the court could rule on defendant’s motion to dismiss.²⁶³

III.

SERVICE OF PROCESS

Typically, after a lawsuit is initiated by filing a complaint, the defendant(s) must be served with a copy of the complaint

259. Notice of Appearance by Gene W. Lee, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. July 14, 2023), ECF No. 55; Notice of Appearance by James Q Walker, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. July 14, 2023), ECF No. 56; Notice of Appearance by Jacob Joseph Taber, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. July 14, 2023), ECF No. 57; Notice of Appearance by Emily Barbara Cooper, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. July 14, 2023), ECF No. 58; Motion for Roderick O’Dorisio to Appear Pro Hac Vice for MakerDAO, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Nov. 15, 2023), ECF No. 78; Motion for Will M. Conley to Appear Pro Hac Vice for MakerDAO, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Nov. 29, 2023), ECF No. 80.

260. Motion to Dismiss the Complaint, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Nov. 6, 2023), ECF No. 75; *see also* Memorandum of Law in Support of the Motion to Dismiss, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Nov. 6, 2023), ECF No. 76.

261. Memorandum of Law In Support of the Motion to Dismiss at 15–16, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Nov. 6, 2023), ECF No. 76.

262. Memorandum of Law in Opposition, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Dec. 6, 2023), ECF No. 85.

263. Voluntary Dismissal by True Return Services LLC, True Return Systems LLC v. MakerDAO, No. 22-cv-8478 (S.D.N.Y. Aug. 9, 2024), ECF No. 89. No answer was filed.

and a summons.²⁶⁴ This service of process accomplishes two important goals. First, service of process provides notice to the defendant that the suit has been filed, thereby providing the defendant with the opportunity to be heard before life, liberty, or property is taken away.²⁶⁵ Second, service of process enforces the court's power over the defendant as part of the concept of personal jurisdiction.²⁶⁶ The overarching due process inquiry in determining service of process is whether it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."²⁶⁷ This section focuses on how plaintiffs can establish that a DAO has been notified of the suit filed against it.

Most litigation naming a DAO as a defendant has, to date, been in federal court. The federal rules on service of process articulate separate requirements for serving an individual defendant within the United States,²⁶⁸ serving an individual defendant outside the United States,²⁶⁹ serving a minor or incompetent person,²⁷⁰ or, more to the purposes of this Article, serving a corporation, partnership, or unincorporated association.²⁷¹ Partnerships or unincorporated associations—which DAOs presumably are²⁷²—can be served in U.S. federal cases by following the law of the state where the district court is located²⁷³ or by serving "an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive process" and following that service with mailing a copy of the complaint and summons to each defendant.²⁷⁴ State laws typically provide for alternative service by court order if ordinary service is impossible.²⁷⁵

264. Fed. R. Civ. P. 4(c).

265. LARRY L. TEPLY & RALPH U. WHITTEN, *CIVIL PROCEDURE* 312 (4th ed., 2009).

266. Whether and when a U.S. court has personal jurisdiction over a DAO is a delightfully thorny issue, but regrettably exceeds the scope of this Article.

267. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

268. Fed. R. Civ. P. 4(e).

269. Fed. R. Civ. P. 4(f).

270. Fed. R. Civ. P. 4(g).

271. Fed. R. Civ. P. 4(h).

272. *See supra* Part II.B.

273. Fed. R. Civ. P. 4(h)(1)(A) (incorporating by reference Fed. R. Civ. P. 4(e)(1)).

274. Fed. R. Civ. P. 4(h)(1)(B).

275. *See, e.g.*, Cal. Civ. Proc. Code § 413.30 (West).

Recent litigation illustrates that in circumstances where the DAO is closely held, service on the DAO has been effectively accomplished by serving the individual(s) who own the DAO. Yet in one case, plaintiffs filed proof of service on the DAO but the DAO—perhaps strategically—did not respond to the litigation, including to contest service. Still, other plaintiffs have gained authorization from the court to serve larger DAOs (with their more fluid groups of pseudonymous tokenholders) by alternative methods, which seems to be the most effective method of serving a large DAO.

A. Service Accepted/Not an Issue: Closely-Held DAOs

In several recent lawsuits against DAOs, particularly those involving closely-held DAOs, an individual associated with the DAO has simply accepted service on behalf of the DAO and the lawsuit has proceeded. For example, in *Thayer v. Furie*, the plaintiff filed his complaint in the Central District of California against three defendants: an individual named Matt Furie and two entities alleged to belong to Furie, Chain/Saw LLC and PegzDAO.²⁷⁶ Summonses were issued for all defendants,²⁷⁷ and the summons addressed to PegzDAO identified the defendant's address as "c/o Matt Furie" at an apparently residential address.²⁷⁸ The plaintiff promptly filed proofs of service, affirming that defendants Furie and PegzDAO had been served.²⁷⁹ Furie and PegzDAO were also represented by the same counsel,²⁸⁰ who also filed a stipulation accepting

276. Complaint and Demand for Jury Trial at 1, *Thayer v. Furie*, No 2:22-cv-01640 (C.D. Cal. Mar. 12, 2022), ECF No. 1.

277. Summons for Matt Furie, *Thayer v. Furie*, No 2:22-cv-01640 (C.D. Cal. Mar. 14, 2022), ECF No. 9; Summons for Chain/Shaw LLC, *Thayer v. Furie*, No 2:22-cv-01640 (C.D. Cal. Mar. 14, 2022), ECF No. 10; Summons for PegzDAO, *Thayer v. Furie*, No 2:22-cv-01640 (C.D. Cal. Mar. 14, 2022), ECF No. 11.

278. Summons for PegzDAO, *Thayer v. Furie*, No 2:22-cv-01640 (C.D. Cal. Mar. 14, 2022), ECF No. 11.

279. The docket entry for the PegzDAO proof of service recites, "Service of the Summons and Complaint were executed upon PegsDAO [sic] in compliance with Federal Rules of Civil Procedure by substituted service at home address and no service by mail was executed." Proof of Service Upon Matt Furie, *Thayer v. Furie*, No 2:22-cv-01640 (C.D. Cal. Mar. 22, 2022), ECF No. 16; Proof of Service Upon PegzDAO, *Thayer v. Furie*, No 2:22-cv-01640 (C.D. Cal. Mar. 22, 2022), ECF No. 17.

280. All three defendants were represented by the same counsel, Jason Bartlett and Sherman W. Kahn of the law firm Mauriel Kapouytian Woods

service.²⁸¹ Defendants went on to file an answer to the complaint,²⁸² so service of process on the DAO was not an issue in this case.

Similarly, in *Liang v. Bara*, a closely-held DAO was effectively served by serving an individual who owned and operated the entity. In the federal case, service was effectuated on the DAO the day after the complaint was filed.²⁸³ The affidavit of service reports that “service was effected in the following manner: By delivering to and leaving a true copy to Daniel Bara personally, a person who stated to be an authorized agent to receive process service for Olympus DAO.”²⁸⁴ Defendants, including the DAO, later filed a motion to dismiss, but did not contest the issue of service of process.²⁸⁵ After the federal case was dismissed by the plaintiff, a nearly-identical case was filed in Connecticut state court.²⁸⁶ The state court filings are difficult to obtain, but the docket demonstrates that a return of service was

LLP. See Notice of Appearance for Jason Randall Bartlett, Thayer v. Furie, No. 2:22-cv-01640 (C.D. Cal. May 17, 2022), ECF No. 21; Notice of Appearance for Jason Randall Bartlett, Thayer v. Furie, No. 2:22-cv-01640 (C.D. Cal. May 17, 2022), ECF No. 24.

281. Stipulation Regarding Acceptance of Service, Thayer v. Furie, No. 2:22-cv-01640 (C.D. Cal. Apr. 11, 2022), ECF No. 18 (“PegzDAO and Mr. Furie through their counsel hereby accept service of the Summons and Complaint issued and filed in the above-captioned case”).

282. Answer to Complaint & Demand for Jury Trial, Thayer v. Furie, No. 2:22-cv-01640 (C.D. Cal. May 17, 2022), ECF No. 22.

283. Summons & Affidavit of Service for Olympus DAO, Liang v. Bara, No. 3:22-cv-00541-JCH (D. Conn. Apr. 18, 2022), ECF No. 12 (Return of service as to defendant Olympus DAO on April 15, 2022). The complaint was filed April 14, 2022. Complaint, Liang v. Bara, No. 3:22-cv-00541-JCH (D. Conn. Apr. 14, 2022), ECF No. 1.

284. Summons & Affidavit of Service for Olympus DAO, Liang v. Bara, No. 3:22-cv-00541-JCH (D. Conn. Apr. 18, 2022), ECF No. 12.

285. Joint Motion to Dismiss, Liang v. Bara, No. 3:22-cv-00541-JCH (D. Conn. June 3, 2022), ECF No. 21. The DAO was amply represented by counsel, including six attorneys at two firms (distinct from the four attorneys at one firm who represented Bara.) See Opposition to Plaintiff’s Motion to Seal, Liang v. Bara, No. 3:22-cv-00541-JCH (D. Conn. June 8, 2022), ECF No. 37 (signature page lists attorneys representing defendants).

286. Identical complaints were filed in the Hartford and Stamford jurisdictions, but the Stamford case was transferred to Hartford and only that action proceeded. Complaint, Liang v. Bara, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), ECF BL-2; Complaint, Liang v. Bara, No. FST-CV-22-6057690-S (Conn. Super. Ct. Aug. 3, 2022), ECF No. BL-2. Transfer: Transferred from Superior Court Judicial District of Stamford-Norwalk, Liang v. Bara, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), ECF BL-17; Transferred to Superior Court Judicial District of Hartford, Liang v. Bara, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), ECF No. BL-18.

filed,²⁸⁷ and that at least one attorney who represented the DAO in federal court also entered an appearance in the state court action,²⁸⁸ presumably to represent the DAO again. The defendants participated in the lawsuit, for example by filing motions for extension of time to answer the complaint.²⁸⁹ The docket does not reflect any contention about service, and presumably the DAO here did not contest service of process.

The complaint in *Beck v. Palmer* was filed on June 8, 2023, against three defendants: an individual named Weston Palmer, a corporation named Ecosystem.Art, Inc., and a DAO called PatronsDAO.²⁹⁰ Both entity defendants were alleged to be “alter egos” of Palmer,²⁹¹ and the summons for defendant PatronsDAO was addressed to “PatronsDAO, an entity with form unknown, [via] Weston J. Palmer – Agent[.]”²⁹² By September of that year, however, plaintiffs had not effectuated service on Palmer, for any of the three defendants.²⁹³ After some difficulties—

287. Return of Service, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 3, 2022), ECF No. BL-7.

288. Motion for Permission to Appear Pro Hac Vice re Daniel Ravicher, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Sept. 2, 2022), ECF BL-19 (Daniel Ravicher entered appearance in the state court case at docket entry BL-19); Notice of Appearance for Daniel Ravicher, *Liang v. Bara*, No. 3:22-cv-00541-JCH (D. Conn. June 8, 2022), ECF No. 38 (Daniel Ravicher entered appearance on behalf of Olympus DAO in the federal court case at that case’s docket entry 38).

289. Motion for Extension of Time to Answer or Otherwise Respond to Complaint, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Aug. 31, 2022), ECF No. BL-15; Motion for Extension of Time to Answer or Otherwise Respond to Complaint, *Liang v. Bara*, No. HHD-CV-22-6160192-S (Conn. Super. Ct. Oct. 7, 2022), ECF No. BL-27.

290. Complaint, *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 8, 2023), ECF No. 1.

291. *Id.* at 2–3.

292. Summons for PatronsDAO, *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 12, 2023), ECF No. 12.

293. Request for Clerk to Issue Summons on Complaint for Weston J. Palmer, *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 8, 2023), ECF No. 4; Request for Clerk to Issue Summons on Complaint for Ecosystem.Art, Inc., *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 8, 2023), ECF No. 6; Request for Clerk to Issue Summons on Complaint for PatronsDAO, *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 8, 2023), ECF No. 4; Summons for Weston J. Palmer, *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 12, 2023), ECF No. 10; Summons for Ecosystem.Art, Inc. *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 12, 2023), ECF No. 11; Summons for PatronsDAO, *Beck v. Palmer*, No. 2:23-cv-04525 (C.D. Cal. June 12, 2023), ECF No. 12.

Palmer was allegedly in China and evading service²⁹⁴—plaintiffs applied for permission to serve the summons and complaint by email.²⁹⁵ The court denied this motion, holding that California law provided for existing (non-email) methods of service in this situation, none of which had plaintiffs availed themselves.²⁹⁶ Service was eventually effectuated on both Defendant Palmer and PatronsDAO via its agent, Palmer.²⁹⁷ Both services were effectuated at the same time and manner: by leaving the complaint with a person of suitable age and discretion at Palmer's last known address and following with a copy by mail.²⁹⁸

The DAO did not actively participate in the litigation, so the sufficiency of this method of service on a DAO was not tested. Indeed, none of the defendants participated in the litigation—Palmer and Ecosystem.Art filed bankruptcy²⁹⁹—and the plaintiffs apparently lost their enthusiasm for pursuing the case. After seeking defaults against all three defendants,³⁰⁰ plaintiffs voluntarily dismissed the case against Ecosystem. Art³⁰¹

294. Declaration of Kunal Jain in Support of Application for Service via Email at 2, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Oct. 9, 2023), ECF No. 17-2.

295. Application for Order for Permitting Service of Summons and Complaint via Email, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Oct. 9, 2023), ECF No. 17.

296. Court Order, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Oct. 16, 2023), ECF No. 18.

297. Proof of Service as to PatronsDAO, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Nov. 7, 2023), ECF No. 24.

298. *Id.* Palmer himself was not served; the summons was served on another occupant.

299. Notice of Pendency of Other Actions or Proceedings filed by Ecosystem.Art, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Dec. 20, 2023), ECF No. 31; Notice of Pendency of Other Actions or Proceedings filed by Weston J. Palmer, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Feb. 27, 2024), ECF No. 42.

300. Request for Entry of Default Judgment Against Ecosystem.Art, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Nov. 15, 2023), ECF No. 26, *granted*, Default by Clerk, No. 2:23-cv-04525 (C.D. Cal. Nov. 16, 2023), ECF No. 28, *vacated*, Minutes in Chambers, No. 2:23-cv-04525 (C.D. Cal. Nov. 28, 2023), ECF No. 29; Request for Entry of Default Judgment Against Weston J. Palmer, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Dec. 26, 2023), ECF No. 33, *granted*, Default by Clerk, No. 2:23-cv-04525 (C.D. Cal. Dec. 26, 2023), ECF No. 35; Request for Entry of Default Judgment Against PatronsDAO, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Dec. 21, 2023), ECF No. 34, *granted*, Default by Clerk, No. 2:23-cv-04525 (C.D. Cal. Dec. 26, 2023), ECF No. 36.

301. Notice of Dismissal, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Jan. 8, 2024), ECF No. 37.

and PatronsDAO,³⁰² and the court dismissed the remaining case against Palmer for plaintiffs' lack of prosecution.³⁰³

In these four cases, the DAOs were operated by one or two individuals, and service on the entity was effected by serving the individual. Future plaintiffs seeking to sue closely-held DAO entities may likewise not encounter service of process problems if they serve the entity by serving the DAO's owner/operators. If a plaintiff struggles to serve the DAO, however, they should promptly seek a motion for alternative service, as discussed *infra*.

B. No Service/No Response

In one other case, service does not appear to have been effectuated on the DAO entity, and the plaintiffs did not pursue the matter; or, at least, the case was settled before the issue of service on the DAO could come to a head.³⁰⁴ Refusal to participate in the litigation, even to contest service, is most likely a strategic decision that capitalizes on the conceptualization of a DAO as pure technology, not as an actor.

In *Sarcuni v. bZx DAO*,³⁰⁵ service of process was effectuated on the two individual defendants and four LLC defendants, but not on the two DAOs.³⁰⁶ A generic summons was issued as to all named defendants, but the record does not reflect any service on—or attempt to serve—the DAO entities.³⁰⁷ The DAOs were

302. Notice of Dismissal, Beck v. Palmer, No. 3:23-cv-04525 (C.D. Cal. Feb. 12, 2024), ECF No. 41.

303. Judgment of Dismissal, Beck v. Palmer, No. 2:23-cv-04525 (C.D. Cal. Jun. 4, 2024), ECF No. 48.

304. For cases where the issue did come to a head, see *infra* text accompanying note 343 (discussing Samuels v. Lido DAO, where plaintiffs needed to clarify that the DAO had been served before default could be entered against a non-responsive DAO).

305. Complaint, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 1; First Amended Complaint, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. June 27, 2022), ECF No. 21.

306. Waiver of Service Returned Executed for, respectively, Tom Bean and Kyle Kistner, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. May 19 2022), ECF No. 9–10; Summons Returned Executed for, respectively, bZeroX LLC, Leveragebox LLC, Age Crypto LLC, and Hashed International LLC, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. May 12 2022), ECF No. 5–8.

307. Summons, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. May 2, 2022), ECF No. 2; Amended Summons, Sarcuni v. bZx DAO, No. 3:22-cv-00618-LAB-DEB (S.D. Cal. May 3, 2022), ECF No. 4.

not represented by counsel,³⁰⁸ nor did they file any motions or answers, as the other defendants did.³⁰⁹ The plaintiffs' failure to pursue service against the DAO entities was presumably because their real interests lay in pursuing the other defendants. However, the case was settled³¹⁰ shortly after the participating defendants filed answers to the complaint,³¹¹ so the efficacy of service on the DAO was not thoroughly tested.

In another case, however, the DAO did not participate in the litigation, but it was the court clerk who prevented entry of default against the DAO, on the grounds that service had not been established. In *Houghton v. Leshner*, plaintiffs provided proof of service in December, 2022, averring that the complaint had been served on defendant Compound DAO by delivering a copy to a managing agent of "Compound DAO c/o Polychain Alchemy LLC."³¹² A subsequent case filing by the plaintiff averred that Polychain is "the general partner of Compound DAO with the largest stake in its governance process."³¹³ In an

308. Joint Motion for Extension of Time to Respond to Complaint, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. May 23, 2022), ECF No. 11. The docket entry includes the text "Attorney Michael Gregory Freeman added to party bZx DAO" but the motion filed at that docket number does not contain any reference to such an attorney, nor is the motion filed on behalf of either DAO as a party. In any case, an order a few weeks later terminated Attorney Michael Gregory Freeman from the case. Consent Order Granting Substitution of Attorney, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. Jul. 1, 2022), ECF No. 23.

309. See Motion to Dismiss, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. Jul. 18, 2022), ECF No. 27 (filed by defendants Bean, Kistner, Leveragebox LLC, and bZeroX LLC); Motion to Dismiss, Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. Jul. 29, 2022), ECF No. 31 (filed by defendants Hashed International LLC and Age Crypto GP LLC).

310. Minutes and Order Setting Settlement Disposition Conference, Sarcuni v. bZx DAO, No. 3:22-cv-0061 (S.D. Cal. Aug. 14, 2023), ECF No. 76. The case was dismissed a few months after settlement. Order of Dismissal, Sarcuni v. bZx DAO, No. 3:22-cv-00618-LAB-DEB (S.D. Cal. Nov. 16, 2023), ECF No. 79.

311. Sarcuni v. bZx DAO, No. 3:22-cv-00618 (S.D. Cal. Apr. 24, 2023), ECF No. 54, 56–57.

312. Proof of Service, *Houghton v. Leshner*, No. 3:22-cv-07781-WHO (N.D. Cal. Dec. 19, 2022), ECF No. 22 (correcting an electronic filing error from the original certificate of service, filed at docket entry 16 on Dec. 16, 2022.). Plaintiff's lawyers filed another proposed summons as to defendant Compound DAO, but the clerk rejected it because the defendant had already been served. Summons, *Houghton v. Leshner*, No. 3:22-cv-07781-WHO (N.D. Cal. Dec. 29, 2022), ECF No. 28.

313. Motion for Entry of Default as to Compound DAO ¶ 2, *Houghton v. Leshner*, No. 3:22-cv-07781-WHO (N.D. Cal. Feb. 1, 2023), ECF No. 39.

apparent abundance of caution, plaintiffs also served the DAO by posting a message and a link to the complaint on the DAO's online forum, "the online mechanism that Compound DAO has created to allow itself to be contacted by the public."³¹⁴

This abundance of caution approach bit the plaintiffs in the backside, however: Plaintiffs moved for entry of default as to Compound DAO in February, 2023,³¹⁵ but the motion was declined a few days later. In declining the motion, the clerk noted, "Counsel must seek leave of court to serve a party through a compound community forum."³¹⁶ Had the plaintiffs only served the DAO by delivering a copy to the averred general partner, the paper trail of service would have appeared textbook: serve a partnership by serving one of the general partners. Plaintiffs' additional attempted service via online forum may have flagged a service problem the clerk might not have otherwise noticed, particularly since the DAO was not participating in the litigation and did not raise service issues. (However, in at least one other case, the averred general partners objected to service issues regarding the DAO, asserting that service upon them did not constitute service on the DAO).³¹⁷

The *Houghton* plaintiffs filed an amended complaint in March, 2023, and in due time, plaintiffs made a second motion for default as to the DAO, which still had not responded to the litigation.³¹⁸ In this second motion, plaintiffs downplayed the service via community forum and emphasized that the other defendants, who are general partners of the DAO, were all served and do not contest the assertion that they are general partners.³¹⁹ The motion addressed the clerk's previous declination to enter judgment, writing that California law permits service of a general partnership by serving a general partner, and that because Polychain Alchemy is a general partner of the DAO, service was effectuated on December 14, 2022.³²⁰

314. *Id.* ¶ 6.

315. *Id.* at 1.

316. Clerk's Declination of Default as to Compound DAO, *Houghton v. Leshner*, No. 3:22-cv-07781-WHO (N.D. Cal Feb. 7, 2023), ECF No. 48.

317. *See infra* text accompanying note 323.

318. *Houghton* First Amended Complaint, *supra* note 18. Renewed Motion for Entry of Default as to Compound DAO, *Houghton v. Leshner*, No. 3:22-cv-07781-WHO (N.D. Cal. June 22, 2023), ECF No. 83.

319. Renewed Motion for Entry of Default as to Compound DAO ¶¶ 2–5, 8, *Houghton v. Leshner*, No. 3:22-cv-07781-WHO (N.D. Cal June 22, 2023), ECF No. 83.

320. *Id.* ¶¶ 12–13.

Again, however, the clerk declined to enter default, this time noting:

Plaintiff states service was on Co-Defendant Polychain Alchemy LLC, the general partner of Compound DAO with the largest stake in its governance process. We are . . . unable to verify this information. The Agent for Service of Process was not served. Counsel must seek leave of court to serve a party through a compound community forum.³²¹

This now suggests that the original service may not have been sufficient, though no party contested it. It was not until late 2024 that Plaintiffs filed a Motion for Alternative Service on the DAO, requesting that the court deem the existing service on the DAO to be sufficient.³²² As of this writing that motion is pending. Indeed, no attorneys have entered appearances on behalf of the DAO, and the DAO is not a party to any motion or pleading submitted by the other defendants. The other, participating defendants all filed answers to the complaint in December, 2023,³²³ and as of this writing, the participating defendants' motion to compel arbitration is pending.³²⁴

C. *Service Not Readily Accepted: Establishing Alternative Service*

In other cases, where service on the DAO was not readily accepted, plaintiffs have sought court authorization for alternative service on the entity. Getting a court order authorizing alternative service appears to be an effective way to force a DAO to participate in the litigation, as opposed to the DAO simply remaining silent as the litigation proceeds. Interestingly, the

321. Clerk's Declination of Default as to Compound DAO, Houghton v. Leshner, No. 3:22-cv-07781-WHO (N.D. Cal. June 23, 2023), ECF No. 84.

322. Notice of Motion and Memorandum in Support of Motion for Alternative Service on the Compound DAO at 1–2, Houghton v. Leshner, No. 3:22-cv-07781-WHO (N.D. Cal. Sept. 24, 2024), ECF No. 186. The Motion relies heavily on the proceedings in *Samuels v. Lido DAO*, which lawsuit is being brought by the same plaintiffs' firms and has overlapping defendants.

323. Houghton v. Leshner, No. 3:22-cv-07781-WHO (N.D. Cal. Oct. 25, 2023), ECF Nos. 120–126.

324. Defendants' Notice of Motion and Motion to Compel Arbitration and Stay Proceedings, Houghton v. Leshner, No. 3:22-cv-07781-WHO (N.D. Cal. Aug. 12, 2024), ECF No. 169.

courts authorizing alternative service have arrived at the same methods of service as recommended by the COALA Model Law.³²⁵

The first case to tackle the issue of serving a DAO through alternative service was *Commodity Futures Trading Commission v. Ooki DAO*, which has become the foundational case upon which all subsequent motions for alternative service on a DAO rely. In that case, the CFTC filed a motion for alternative service just a week after the complaint was filed.³²⁶ In that motion, plaintiff asserted that:

By choosing to organize itself as a DAO, the Ooki DAO has structured its business in a way that has erected significant obstacles to traditional service of process. The Ooki DAO has no headquarters or physical office location; no mailing address; does not appear to be registered in any jurisdiction; and does not have a listed president, secretary, treasurer, or agent appointed to accept service.³²⁷

In its motion, the CFTC further asserted that it “took extensive steps to attempt to identify an individual authorized to accept service of process on Ooki DAO’s behalf or a physical location to which a summons and complaint could be mailed.”³²⁸ Failing to identify an authorized agent, the CFTC described the additional means it took to provide notice of the suit to the DAO: the CFTC had “provided copies of the summons, complaint,

325. COALA MODEL LAW, *supra* note 7, at 22 (“A jurisdiction that adopts the Model Law should also permit the electronic service of legal documents by any communication mechanism publicly specified by a DAO . . . such as a secure website which the authorities of a jurisdiction can post notice to and from which it can receive cryptographically signed acknowledgement.”).

326. Complaint, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 22, 2022), ECF No. 1; Summons, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 22, 2022); ECF No. 7. Plaintiff’s Motion for Alternative Service Against Defendant Ooki DAO, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 22, 2022), ECF No. 11.

327. Plaintiff’s Motion for Alternative Service Against Defendant Ooki DAO ¶ 6, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 27, 2022), ECF No. 11.

328. *Id.* ¶ 8. The Commission stated that it “searched law enforcement databases for any contact information associated with Ooki DAO; searched the Ooki DAO website and the internet for any information regarding identifiable members associated with the Ooki DAO or a physical address; and searched business registration websites for all 50 states for any registration information and associated identification of authorized agents for service of process.” *Id.*

and additional related papers to the Ooki DAO via the Ooki DAO's Help Chat Box (through a submission with attachments via the Help Chat Box) and further provided notice of the action via the Ooki DAO's Online Forum (which does not permit the posting of attachments).³²⁹ The CFTC went on to note in the few days between filing the complaint and the motion for alternative service, "it appears that the Ooki DAO, and many of its members and platform users are in fact aware of the action," noting that dozens of messages about the suit had appeared on the DAO's Telegram channel, there had been over a thousand posts on Twitter, and that the CFTC's post in the DAO's own online forum had been viewed 112 times.³³⁰

In its motion for alternative service, then, the CFTC requested that the court confirm that the DAO was properly served, suggesting that the help chatbox submission and online forum post were together a "method reasonably calculated to give actual notice to the Ooki DAO because it is the method the Ooki DAO itself holds out to communicate with it."³³¹

The court granted the motion for alternative service,³³² but four entities—none of them defendants in the case, but two of them being Paradigm Operations LP and Andreeson Horowitz³³³—almost immediately filed motions for leave to submit amicus curiae briefs on the issue of serving the complaint.³³⁴ The court held a hearing, at which counsel for the

329. *Id.* ¶ 9.

330. *Id.* ¶ 10. The CFTC also filed a motion to supplement its motion for alternative service later that same day, drawing the court's attention to a post that appeared that day on the Ooki DAO's online forum entitled "Future of Ooki DAO" in reference to the CFTC's suit. Plaintiff's Administrative Motion to Supplement Motion for Alternative Service Against Defendant Ooki DAO at 1–2, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 27, 2022), ECF No. 13 ("This demonstrates clear awareness by the Ooki DAO and its members of the Commissions' actions.").

331. Plaintiff's Motion for Alternative Service Against Defendant Ooki DAO at 9, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 27, 2022), ECF No. 11. The motion for alternative service was itself served on the Ooki DAO by submission through the Help Chat Box and by posting to the online forum. *Id.* at 11.

332. Order Granting Plaintiff's Motion for Alternative Service, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Oct. 3, 2022), ECF No. 17.

333. Defendants in *Houghton* and *Samuels*, see *supra* Part II.B.2, and members of the attempted amicus in *True Return Systems*, see *supra* Part II.C.2.

334. Movant LeXpunK, a DAO advocacy group, argued that posting to the online forum is an insufficient manner of service, given that the CFTC asserted a general partnership theory of the DAO, which in turn would suggest that all tokenholders are partners to the DAO. Notice of Motion and Motion for Leave

CFTC and the four amici were in attendance.³³⁵ During the hearing, it became clear to the judge that despite the CFTC asserting it could not find an individual *authorized* to accept service on behalf of the DAO, the CFTC did in fact know the identity of two of the DAO's primary actors who were Ooki DAO tokenholders and lived in the United States.³³⁶ (The CFTC had even identified the individuals in its motion for alternative service, reciting that “bZeroX, [Tom] Bean, and [Kyle] Kistner resolved charges with the Commission in connection with their unlawful conduct” related to bZx DAO and its successor Ooki

to File Proposed Amicus Curiae Brief of LeXpunk in Response to Plaintiff's Motion for Alternative Service Against Defendant Ooki Dao, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. Oct. 3, 2022), ECF No. 16. The amicus brief appears on the docket at entry 36. Amicus Curiae Brief of LexPunk Regarding Plaintiff's Motion For Alternative Service, CFTC v. Ooki DAO, No. 3:22-cv-05416 (N.D. Cal. Oct. 17, 2022), ECF No. 36. DeFi Education Fund, an advocacy group working to educate policymakers, argued that the proposed method of alternative service was “not ‘reasonably calculated’ to notify the voting token holders” and that the plaintiff had not sufficiently established that the DAO was an unincorporated association of voting token holders, nor had the plaintiff “established that its proposed method of service has occurred ‘in a judicial district of the United States’.” Reply Brief of Amicus Curiae DeFi Education Fund Regarding Plaintiff's Motion for Alternative Service at 2, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Nov. 11, 2022), ECF No. 57; *see also* Exhibit A, Motion for Leave to File Amicus Curiae Brief of DeFi Education Fund Regarding Plaintiff's Motion for Alternative Service at 3, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Oct. 4, 2022), ECF No. 22 (the “proposed method of service attempts to serve Ooki DAO without first demonstrating that the DAO is a proper defendant (or even a legal entity at all) and fails to effectively serve the group of Ooki token holders that the Commission believes are actually liable for violations of federal law.”). Paradigm Operations LP, a crypto and DeFi consulting firm objected to the CFTC's theory that all tokenholders are general partners to the DAO. Motion for Leave to File Amicus Curiae Brief of Paradigm Operations LP and for Leave to Participate in Upcoming Hearing at 3, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Oct. 17, 2022), ECF No. 31. Andreessen Horowitz, a venture capital firm also called a16z or AH Capital Management argued that the plaintiff “failed to make adequate efforts to accomplish service in the way California law requires.” Reply Amicus Curiae Brief of Andreessen Horowitz Regarding Plaintiff's Motion for Alternative Service at 2, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Nov. 21, 2022), ECF No. 56. The CFTC argued, unsurprisingly, that the existing service was sufficient. Plaintiff's Consolidated Opposition to Amicus Curiae Motions for Reconsideration of Order Granting Plaintiff's Motion for Alternative Service at 2, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Nov. 14, 2022), ECF No. 53.

335. Order to Serve Individuals or Show Cause at 1, CFTC v. Ooki DAO, No. 3:22-cv-05416-WHO (N.D. Cal. Dec. 12, 2022), ECF No. 59.

336. *Id.*

DAO).³³⁷ The court ordered the CFTC to serve Bean and Kistner,³³⁸ which it did,³³⁹ and the court concluded that service had been effectuated: “Ooki DAO has received both actual notice and the best notice practicable under the circumstances.”³⁴⁰

This ruling in the *Ooki DAO* case has guided several courts facing the same issues of serving a DAO. In *True Return Systems, LLC v. MakerDAO*, the plaintiff filed a motion for alternative service a month after filing the complaint.³⁴¹ Relying in part on *CFTC v. Ooki DAO*, the plaintiff explained in its motion for alternative service that it had attempted to serve MakerDAO by posting to the DAO’s online forum, by Twitter direct message, and by emailing the DAO’s support email address.³⁴² The plaintiff noted in its motion that, like Ooki DAO, MakerDAO’s online presence demonstrated the DAO was aware of the lawsuit and the DAO’s online community was discussing next steps.³⁴³

The court granted the motion for alternative service but denied the plaintiff’s request to approve the service nunc pro tunc.³⁴⁴ The DAO was re-served in the same manner.³⁴⁵

337. Plaintiff’s Motion for Alternative Service Against Defendant Ooki DAO ¶ 5 at 4, *CFTC v. Ooki DAO*, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 27, 2022), ECF No. 11.

338. Order to Serve Individuals or Show Cause at 2, *CFTC v. Ooki DAO*, No. 3:22-cv-05416-WHO (N.D. Cal. Dec. 12, 2022), ECF No. 59.

339. Certificate of Service, *CFTC v. Ooki DAO*, No. 3:22-cv-05416-WHO (N.D. Cal. Dec. 15, 2022), ECF No. 61.

340. Order Concluding That Service Has Been Achieved, *CFTC v. Ooki DAO*, No. 3:22-cv-05416-WHO (N.D. Cal. Dec. 20, 2022), ECF No. 63.

341. Complaint, *True Return Sys., LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Oct. 5, 2022), ECF No. 1; Plaintiff’s Notice of Ex Parte Motion for Leave to Serve Defendant MakerDAO by Electronic Means, *True Return Sys., LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Nov. 11, 2022), ECF No. 9; Memorandum of Law in Support of Plaintiff’s Ex Parte Motion for Leave to Serve Defendant MakerDAO by Electronic Means, *True Return Sys., LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Nov. 11, 2022), ECF No. 10.

342. Memorandum of Law in Support of Motion to Serve Defendant MakerDAO by Electronic Means at 3–4, 7, *True Return Sys., LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Nov. 11, 2022), ECF No. 10.

343. *Id.* at 4.

344. Order, *True Return Sys., LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Nov. 23, 2022), ECF No. 13. The order directs service by direct message to the DAO’s Twitter account, posting to the DAO’s online forum, by email to the support email address, and by hard copy to an address in Santa Cruz. Neither the docket nor the filings suggest how the address was identified as being connected to the DAO.

345. Certificate of Service, *True Return Sys., LLC v. MakerDAO*, No. 1:22-cv-08478 (S.D.N.Y. Nov. 30, 2022), ECF No. 14.

Eventually, counsel entered appearance on behalf of the DAO³⁴⁶ and the DAO began filing its own motions in the case.³⁴⁷

In *Basic v. BProtocol Foundation*, defense counsel initially accepted service of the complaint on behalf of all defendants,³⁴⁸ but several months later those lawyers withdrew from representing the DAO.³⁴⁹ They remained counsel for the other defendants, however.³⁵⁰ Plaintiffs then filed a motion for alternative service on the DAO, seeking permission from the court to serve the DAO by emailing a copy of the complaint to the DAO's service email address, posting notice of the lawsuit on the DAO's public internet forum, and providing a link to a site where the complaint could be accessed and downloaded.³⁵¹ The court granted the motion for alternative service,³⁵² and service was effected accordingly on the DAO.³⁵³

Similarly, in *Samuels v. Lido DAO*, the plaintiff filed a certificate of service averring that defendant Lido DAO had been served, but the DAO did not actively defend itself. Defendant Lido DAO was served in the same manner as and simultaneously with defendants AH Capital Management, LLC and Dragonfly

346. True Return Sys., LLC v. MakerDAO, No. 1:22-cv-08478 (S.D.N.Y. Jul. 14, 2023), ECF No. 55–58.

347. See Notice of Defendant's Motion to Dismiss the Complaint for Failure to State a Claim, True Return Sys., LLC v. MakerDAO, No. 1:22-cv-08478 (S.D.N.Y. Nov. 6, 2023), ECF No. 75.

348. Certificate of Service, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Nov. 15, 2023), ECF No. 41.

349. Counsel initially tried to "correct" their motions for admission pro hac vice and their designation as counsel for Bancor DAO. Unopposed Motion for Leave to File Corrected Motions for Admission Pro Hac Vice and to Correct Erroneous Designation of Counsel, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Nov. 16, 2023), ECF No. 42. This motion was denied, however. Court Docket at 17, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Jan. 3, 2024). Counsel filed a Motion to Withdraw as Attorney for Bancor DAO, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Jan. 3, 2024), ECF No. 48, which was granted. Court Docket at 18, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Jan. 3, 2024).

350. See Motion to Dismiss Plaintiff's First Amended Class Action Complaint, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Jan. 8, 2024), ECF No. 54 (filed on behalf of all defendants except the DAO).

351. Plaintiffs' Expedited Ex Parte Motion for Alternative Service at 1, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Jan. 4, 2024), ECF No. 49.

352. Order Granting Plaintiffs' Expedited Ex Parte Motion for Alternative Service on Defendant Bancor DAO, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Jan. 5, 2024), ECF No. 50.

353. Certificate of Service, Basic v. BProtocol Found., No. 1:23-cv-00533-RP (W.D. Tex. Jan. 8, 2024), ECF No. 53.

Digital Management LLC: the same process server delivered copies to an entity called The Corporation Trust Company at an address in Wilmington, Delaware.³⁵⁴ Yet while the four limited liability entity defendants have actively defended the case, as of this writing no filings have been made on behalf of Lido DAO and no attorneys have entered appearance on its behalf. This may suggest that actual service has not been effectuated. It is also possible that actual service has been effectuated but the DAO is declining to participate in the litigation.

After early missteps, discussed *supra*, the plaintiffs in *Houghton* eventually filed a motion for alternative service. As of this writing, the motion is pending.³⁵⁵

In *Newton AC/DC Fund v. Hector DAO*, plaintiff filed its complaint on February 7, 2024, and simultaneously filed a motion for a temporary restraining order. Although not styled as such, that motion also contained a motion for alternative service:

Hector DAO is an unincorporated association, and so it does not have a registered agent for service or regular business address. . . . This makes it difficult to serve separately from service upon Hassan, one of its principals. It did until very recently, however, have counsel, Law & Tech, s.r.o. . . . Accordingly, the Fund [Plaintiff] asks for permission to serve it [the DAO] by service to Hassan and by service upon its former counsel. [W]hile Law & Tech, s.r.o. no longer represents Hector DAO, it presumably knows the names and addresses of the organization's principals and can transmit notice to them.³⁵⁶

By the time the court took up the alternative service portion of this motion, Hector DAO had been placed in receivership in the British Virgin Islands.³⁵⁷ The motion for alternative service

354. See Proof of Service, *Samuels v. Lido DAO*, No. 3:23-cv-06492-VC (N.D. Cal. Jan. 3, 2024), ECF No. 10–12 (all three Proof of Service forms identify the same individual as receiving service at the same minute).

355. See *supra* text accompanying notes 312–20.

356. Plaintiff's Memorandum of Law in Support of its Motion for Ex Parte Temporary Restraining Order and Order to Show Cause at 18–19, *Newton AC/DC Fund L.P. v. Hector DAO*, No. 3:24-cv-00722-RK-JBD (D.N.J. Feb. 7, 2024), ECF No. 2-1. In the same document, Plaintiff is also seeking permission to serve defendant John Doe by alternative means. *Id.* at 19.

357. See Order, *Newton AC/DC Fund L.P. v. Hector DAO*, No. 3:24-cv-00722-RK-JBD (D.N.J. Feb. 22, 2024), ECF No. 14-1.

also dealt extensively with a different service issue, namely how to serve a pseudonymous John Doe named in the complaint.³⁵⁸

The first motion for alternative service was denied,³⁵⁹ but a second was filed promptly.³⁶⁰ In that second motion for alternative service, plaintiff argues that “service upon [defendant] Hassan is reasonably calculated to provide Hector DAO notice[because] Hassan is one of Hector DAO’s principals.”³⁶¹ Plaintiff also cited *CFTC v. Ooki DAO* (discussed *supra*)³⁶² to demonstrate that its proposed method of service was sufficient under state law.³⁶³

Plaintiff also proposed to serve Hector DAO by sending an NFT to four identified wallets associated with the DAO.³⁶⁴ Plaintiff asserts that “NFT service is reasonably calculated to provide the defendants notice since it will deliver a copy of the summons and complaint to the defendants, who are sophisticated users of blockchain technology.”³⁶⁵ As of this writing, the motion for alternative service is still pending.

358. Plaintiff’s Memorandum of Law in Support of Its Motion for Ex Parte Temporary Restraining Order and Order to Show Cause at 19, Newton AC/DC Fund L.P. v. Hector DAO, No. 3:24-cv-00722-RK-JBD (D.N.J. Feb. 7, 2024), ECF No. 2-1.

359. Court Docket at 5, Newton AC/DC Fund L.P. v. Hector DAO, No. 3:24-cv-00722-RK-JBD (D.N.J. Apr. 25, 2024).

360. Motion for Alternative Service, Newton AC/DC Fund L.P. v. Hector DAO, No. 3:24-cv-00722-RK-JBD (D.N.J. May 3, 2024), ECF No. 25.

361. Plaintiff’s Memorandum of Law in Support of Its Motion for Alternative Service at 4, Newton AC/DC Fund L.P. v. Hector DAO, No. 3:24-cv-00722-RK-JBD (D.N.J. May 3, 2024), ECF No. 25-1.

362. For discussion of *CFTC v. Ooki DAO*, see *supra* text accompanying notes 325–39.

363. Plaintiff’s Memorandum of Law in Support of Its Motion for Alternative Service at 5–6, Newton AC/DC Fund L.P. v. Hector DAO, No. 3:24-cv-00722-RK-JBD (D.N.J. May 3, 2024), ECF No. 25-1.

364. Proposed Order Permitting Alternative Service, Newton AC/DC Fund L.P. v. Hector DAO, No. 3:24-cv-00722-RK-JBD (D.N.J. May 3, 2024), ECF No. 25-7.

365. Plaintiff’s Memorandum of Law in Support of Its Motion for Alternative Service at 6, Newton AC/DC Fund L.P. v. Hector DAO, No. 3:24-cv-00722-RK-JBD (D.N.J. May 3, 2024), ECF No. 25-1. Plaintiff cites multiple cases and a piece of legal scholarship that support the idea of alternative service via NFT. *Id.* at 6–7. These include: *Cipherblade, LLC v. Cipherblade, LLC*, 2024 U.S. Dist. LEXIS 3159, at *7 (D. Alaska Jan. 5, 2024); *Well v. Defendant*, 2023 U.S. Dist. LEXIS 155537, at *5–6 (S.D. Fla. Sept. 1, 2023) (citing three other similar decisions from federal courts in Florida); Decision and Order on Motion at 2–3, *LCX AG v. John Doe* Nos. 1-25, Index No. 154644/2022, NYSCEF Doc. No. 112 (Sup. Ct. N.Y. Cnty., Aug. 21, 2022); Jenifer Jackson, *Airdropping Justice: The Constitutionality of Service of Process via Non-Fungible Token*, 32 CATH. U. J. L. & TECH. 205, 234–35 (2023).

Thus, in *CFTC*, *True Return*, *Basic*, *Samuels*, *Houghton*, and *Newton AC/DC* the plaintiffs filed motions for alternative service on the DAO defendants. In all those cases, plaintiffs requested permission to serve the DAOs through a native technology, such as posting to the entity's public-facing discussion board, submitting to a designated "help" email address, or the like.³⁶⁶ Many plaintiffs also took pains in their motions to demonstrate that the DAO community was clearly aware of the lawsuit even prior to the court's granting of the motion for alternative service, suggesting to the court that the due process goals of apprising defendants of the action had been met.

Interestingly, the results of the motions for alternative service are quite similar to the notice requirements of the model DAO law proposed by the Coalition of Automated Legal Applications,³⁶⁷ which provides:

A jurisdiction that adopts the Model Law should also permit the electronic service of legal documents by any communication publicly specified by a DAO . . . such as a secure website which the authorities of a jurisdiction can post notice to and from which it can receive cryptographically signed acknowledgments.³⁶⁸

Having certainty on how to serve process on a DAO defendant would streamline litigation efforts and enhance judicial economy. In *CFTC*, for example, amici argued reasonably (if unsuccessfully) that a plaintiff who alleges that all token-holders are general partners of a DAO cannot effectively serve the DAO by posting notice to its governance forum. Numerous

366. *E.g.*, Plaintiff's Motion for Alternative Service, *CFTC v. Ooki DAO*, No. 3:22-cv-05416-WHO (N.D. Cal. Sept. 27, 2022), ECF No. 11; Order, *True Return Sys. LLC v. MakerDAO*, No. 1:22-cv-08478-LTS (S.D.N.Y. Nov. 23, 2022), ECF No. 13; Plaintiffs' Expedited Ex Parte Motion for Alternative Service on Defendant Bancor DAO, *Basic v. BProtocol Found.*, No. 1:23-cv-00533-RP (W.D. Tex. Jan. 4, 2024), ECF No. 49; Ex Parte Motion for Entry of Default Against Lido DAO or, in the Alternative, for Alternative Service on Lido DAO, *Samuels v. Lido DAO*, No. 3:23-cv-06492-VC (N.D. Cal. May 23, 2024), ECF No. 65; Notice of Motion and Memorandum in Support of Motion for Alternative Service on the Compound DAO, *Houghton v. Leshner*, No. 3:22-cv-07781-WHO (N.D. Cal. Sept. 24, 2024), ECF No. 186; Motion for Alternative Service, *Newton AC/DC Fund L.P. v. Hector DAO*, No. 3:24-cv-00722-RK-JBD (D.N.J. May 3, 2024), ECF No. 25.

367. COALA MODEL LAW, *supra* note 7.

368. *Id.* at 22.

filings by plaintiff and amici, as well as court hearings, were required to resolve the issue.

The current service of process framework appears flexible enough to provide service on a DAO entity, particularly using the state's alternative service procedures. This method does require the additional step of requesting alternative service, however, and if DAO litigation grows in popularity, these motions for alternative service may prove to be a burden on the judicial system. In that instance, legislatures should consider amending the rules for service of process to include rules on serving DAOs; the COALA model law can serve as a guide. In the meantime, plaintiffs should file motions for alternative service promptly in any case where service is not immediately and explicitly accepted on behalf of the DAO.

CONCLUSION

This Article analyzes eleven lawsuits in the United States in which a DAO was named as a defendant. After providing background information on DAOs' structure and functioning, the Article discussed how DAOs do not map perfectly onto any existing business entity structure, including that of the general partnership. The Article then analyzed DAO personhood in litigation: how plaintiffs articulate the DAO as an actor itself, as an alter ego of other defendants, or as an amalgamation of partners. The Article found that for closely-held DAOs, plaintiffs had success in framing the entity as an alter ego of the other defendants, while for large DAOs, plaintiffs tended to be successful when the complaint articulated actions by majority tokenholders that amounted to general partner activities. The Article then analyzed how plaintiffs have provided notice of the lawsuit to the DAO via service of process, concluding that if service is not accepted promptly, plaintiffs should seek court authorization to pursue alternative service. Future litigants—whether plaintiffs, DAO defendants, tokenholder defendants, or amici—can study these previous litigation tactics and effectiveness as they develop their own litigation strategies.

This Article cannot, of course, be a comprehensive litigation guide regarding DAOs, in large part because the current number of suits brought against DAOs is small and such lawsuits tend to settle before the court can rule on the substantive allegations. Important questions remain. For example, the *Basic* case was dismissed for lack of personal jurisdiction against the

defendants, but that case may be just the tip of the iceberg in determining DAO personal jurisdiction issues. Future research should carefully consider whether and when personal jurisdiction exists over a DAO, how plaintiffs should demonstrate personal jurisdiction, and how DAO or tokenholder defendants may respond. Likewise, the overlapping concepts of service of process and personal jurisdiction should be studied further, as should the establishment of a DAO's citizenship for purposes of diversity jurisdiction.

Scholarship should also analyze specific causes of action brought against DAOs, including violation of federal laws such as commodities and securities laws, or state law concepts such as breach of contract and breach of fiduciary duty. Future research should also analyze whether plaintiffs should name DAOs as defendants at all, particularly given this Article's demonstration that the large DAO entities rarely respond to litigation. On the other hand, scholars and practitioners should explore how DAOs might file lawsuits as plaintiffs, and what implications this might have on available defenses of DAO-as-technology as opposed to DAO-as-actor. Similarly, whether and how DAOs can file bankruptcy in the United States need to be explored. This Article is limited to discussions of U.S. law, but DAOs defy state borders; all of the foregoing issues can and should be studied from international legal perspectives as well.

The world is at the beginning of an artificial intelligence (AI) revolution, which will surely be incorporated into the drafting of smart contracts and DAO structures. AI also exposes emerging tensions between whether something is a technology or an actor, and scholarship on these questions is urgently needed.

As this Article begins to demonstrate, DAO entities all have the same basic underpinnings—smart contracts that govern the organization *ex ante*—but they vary widely in their practical functions. Scholarship into the future of DAO technology and litigation should thus take care not to oversimplify; what is appropriate for one kind of applied technology may not be applicable to all. As this Article demonstrates, research can be empirical as well as theoretical. The potential for legal development in this area is tremendous, and both scholars and practitioners can develop specialized expertise as these technologies evolve.