SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LCX AG, Plaintiff, -against- JOHN DOE NOS. 1–25, Defendants, ~1.274M U.S. DOLLAR COIN, Defendant *in rem*, -and- CIRCLE INTERNET FINANCIAL, LLC, and CENTRE CONSORTIUM, LLC, Garnishees and Relief Parties.	Index No. 154644-2022 Justice Andrea Masley IAS Part 48 Motion Sequence No. 2

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CONFIRMATION OF SUFFICIENT ALTERNATIVE SERVICE AND TO COMPEL COUNSEL FOR JOHN DOE DEFENDANTS TO DISCLOSE IDENTIFYING INFORMATION OR, IN THE ALTERNATIVE, TO WITHDRAW AS COUNSEL

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Plaintiff LCX AG ("**LCX**"), by and through its undersigned counsel, respectfully submits this memorandum of law in support of its application, pursuant to Civil Practice Law and Rules ("**CPLR**") § 308(5) and Court of Appeals' precedents, including *Banco Frances e Brasileiro S.A. v. Doe*¸ 36 N.Y.2d 592, 599 (1975); seeking an order: (i) confirming that the alternative service of the Summons, Complaint, and the supporting documents submitted contemporaneously therewith (collectively, the "**First-Day Pleadings**"; NYSCEF Nos. 1–14) and the Court's Order to Show Cause, entered June 3, 2022 (the "**Order to Show Cause**"; NYSCEF No. 15, collectively, the "**Service Documents**") via a special-purpose Ethereum based cryptocurrency token (the "**Service Token**") constitutes good and sufficient service; and (ii) to require Sharova Law Firm ("**Sharova**"), counsel of record for at least one of Defendants John Doe Nos. 1–25 (collectively, "**Doe Defendant(s)**") to disclose the name, address, and any other information as so required by the Court concerning the Doe Defendant(s) which it represents, or in the alternative, to withdraw as counsel of record for Doe Defendant(s) in this case.

PRELIMINARY STATEMENT

In the accompanying Order to Show Cause, LCX seeks two forms of relief.

LCX requests that the Court confirm that LCX's service of the Service Token on Doe Defendant(s) constitutes good and sufficient alternative service in satisfaction of CPLR § 308(5). LCX satisfies CPLR § 308(5) for the following reasons.

First, it is impracticable for LCX to serve the Doe Defendant(s) in a "traditional manner" under CPLR § 308(1)–(2) and (4). LCX has no reliable information as to the identifies of the Doe Defendant(s), which is attributable in large part to Doe Defendant(s)' assiduous efforts to thwart disclosure of identifying information. Moreover, although LCX has traced the Doe Defendant(s)' transactions to the Address, its knowledge that the Doe Defendant(s) control the Address is akin

to knowing a person's voice and likeness when it has been digitally altered to protect their identity. LCX thus satisfies the impracticability standard under CPLR § 308(5).

Second, LCX's distribution of the Service Documents via the Service Token accords with due process because it was reasonably calculated to provide the Doe Defendant(s) with notice of these proceedings. LCX has shown that Doe Defendant(s) routinely use the Address, and that they continue to maintain significant assets in the Address in the form of nearly $1.3 million denominated in a virtual asset known as USD Coin ("**USDC**"). Consequently, it more than stands to reason that the Doe Defendant(s)' pattern of accessing the Address, which still holds a valuable asset, renders the notification provided via the Service Token reasonably calculated to reach them.

Finally, while deployment of the Service Token is a novel (and possibly *sui generis*) method of service, it reflects the realization of this Court (and others) that myriad methods of electronic service in the digital age satisfy the time-immemorial standard of due process.

LCX also requests that the Court order Sharova to disclose, at a minimum, the most basic identifying details of the Doe Defendant(s). Given that "every litigant is in justice entitled to know the identity of [his or her] opponent," Sharova should not be permitted to decline to furnish any information on its purported clients. *See In re Kaplan*, 8 N.Y.2d 214, 219 (1960) (citation omitted).

In fact, the Court of Appeals has rejected such conduct in materially similar circumstances. *See Banco Frances e Brasileiro S.A. v. Doe*¸ 36 N.Y.2d 592, 599 (1975) (in fraud action in which John Doe defendant's counsel moved to vacate order of attachment, upholding trial court's order denying motion to vacate directing disclosure by counsel of the "true names" and address of the John Doe defendant). Here, LCX alleges that Doe Defendant(s) pilfered nearly $8 million in cryptocurrency assets from the LCX exchange, attempted to cover their tracks, and then brazenly transferred millions of USDC out of the Address in May 2022. LCX has sought and obtained a

TRO, and its request for preliminary relief pending. Consequently, as in *Banco Frances*, Sharova should be ordered to disclose identifying information concerning the Doe Defendant(s). In the alternative, Sharova should be ordered to withdraw from representing the Doe Defendant(s) in this matter. *See Banco Frances*, 36 N.Y.2d at 599 (holding that an attorney must withdraw in the event the attorney cannot or will not disclose certain identifying details about a John Doe defendant).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The following facts are set forth in detail in the accompanying documents: (1) the Affidavit of Josias N. Dewey, sworn to on June 25, 2022, together with the exhibit attached thereto (the "**Dewey Aff.**"); (2) the Affidavit of Samantha Marlott, sworn to on June 25, 2022, together with the exhibit attached thereto (the "**Marlott Aff.**"); and (3) the Affidavit of Andrew W. Balthazor, sworn to on June 27, 2022, together with the exhibit attached thereto (the "**Balthazor Aff**.").[1]

I. LCX Files the First Day Pleadings and the Court Issues an Order to Show Cause

On June 1, 2022, in order to prevent further unauthorized access and theft of $8 million worth of various assets of LCX (*see* Metzger Aff., NYSCEF No. 6 ¶¶ 2–8; First Balthazor Aff., NYSCEF No. 9 ¶¶ 11–28), it filed the above-captioned action. *See* NYSCEF Nos. 1–14 (entirety of First Day Pleadings). LCX sought emergency injunctive relief, pursuant to CPLR §§ 6301, 6312 and 6313, via an Order to Show Cause for a preliminary injunction, and a temporary restraining order, pending a hearing on the preliminary injunction (the "**Emergency Relief**"), based on the immediate and irreparable injury that LCX would suffer in the event that Doe Defendant(s) dissipated the cryptocurrency known as USDC that had been stolen from LCX by Doe Defendant(s), then valued in the approximate amount of $1.25 million and held in the wallet

[1] In addition, the Affidavit of Monty Metzger (NYSCEF No. 6) (the "**Metzger Aff.**") and the Affidavit of Andrew W. Balthazor (NYSCEF No. 9) (the "**First Balthazor Aff.**"), together with the exhibits attached thereto, provide additional factual background, particularly as to the genesis of this case, that are incorporated by reference here.

with the unique identifier address numbered 0x29875bd49350aC3f2Ca5ceEB1c1701708c795FF3 (the "**Address**"). *See* NYSCEF No. 5.

On June 2, 2022, the Court held a hearing concerning the Emergency Relief.[2] The following day, the Court: (i) entered the Order to Show Cause: (a) directing Doe Defendant(s) to show cause at a hearing (the "**Show Cause Hearing**"), why an order should not be issued: (a) preliminarily enjoining Doe Defendant(s) from, *inter alia*, disposing of, transferring, or conveying Doe Defendant(s)' property, including, but not limited to, the USDC held at the Address; and (b) directing Centre Consortium, LLC ("**CCL**") to deny access to the Address pursuant to Centre Consortium USDC New York Access Denial Policy (the "Policy"; *see* NYSCEF No. 25); and (ii) entered a Temporary Restraining Order (the "**TRO**"), pursuant to CPLR § 6313: (a) prohibiting Doe Defendant(s)' from, *inter alia*, disposing of, transferring, or conveying Doe Defendant(s)' property, including, but not limited to, the USDC held at the Address; and (b) directing CCL to deny access to the Address pursuant to Policy. NYSCEF No. 15.[3]

II. LCX Serves the Doe Defendant(s)' Pursuant to the Order to Show Cause

The Order to Show Cause directed LCX to serve the Service Documents on or before June 8, 2022 upon the person or persons controlling the Address via the Service Token delivered to the Address that contained a hyperlink (the "**Service Hyperlink**"). *See* NYSCEF No. 15 at 2. The Order to Show Cause also directed that the undersigned counsel for LCX create a webpage in order to publish the Service Documents. *Id.*[4] The Order to Show Cause also directed LCX to

[2] Due to an internal logistical issue with its counsel, LCX has yet to obtain the transcript of the June 2, 2022 hearing. Once it obtains the transcript, LCX will upload it via NYSCEF promptly.
[3] LCX understand that, pursuant to the terms of the Policy, CCL has denied access to the Address. *See* First Balthazor Aff. ¶¶ 29–32 & Ex. 1 (explaining and quoting to the Policy's provisions concerning "blacklisting").
[4] The Order to Show Cause stated that "[s]uch service shall constitute good and sufficient service for the purposes of jurisdiction under NY law on the person or persons controlling the Address."

serve CCL and Circle with the Service Documents. *Id.* LCX completed such service, which is uncontroverted. NYSCEF No. 16.

On June 3, 2022, Samantha Marlott ("**Marlott**"), a digital communications specialist at Holland & Knight LLP, created a webpage on Holland & Knight's website (the "**Service Webpage**"). Marlott Aff. ¶ 2.[5] Ms. Marlott uploaded the Service Documents to the Service Webpage. *Id.* ¶ 3 & Ex. 1. On the same day, Andrew Balthazor ("**Balthazor**"), an attorney at Holland & Knight, visited the Service Webpage and verified that the Service Documents had been published to the Service Webpage. Balthazor Aff. ¶ 3.[6] Mr. Balthazor used the Service Webpage and a link-shortening service to create the Service Hyperlink. *Id.* ¶¶ 4–6. Mr. Balthazor visited the Service Hyperlink and verified that it directed the viewer to the Service Webpage. *Id.* ¶ 7.

Balthazor emailed the Service Hyperlink to Josias Dewey ("**Dewey**"), an attorney at Holland & Knight well-versed in the Ethereum blockchain software. Balthazor Aff. ¶ 8; Dewey Aff. ¶ 3. Mr. Dewey created, minted and then served the Service Token. *Id.* ¶¶ 3–6. The Service Token includes the Service Hyperlink. *Id.* ¶ 5. Mr. Dewey then airdropped the Service Token to the Address. *Id.* ¶ 6. On June 6, 2022, the Service Token was delivered to the Address. *Id.* ¶ 7. Consequently, as of that date, anyone viewing the Address (such as, almost certainly, the Doe Defendant(s)) can verify, *inter alia*, the existence of the Service Token and that the Service Hyperlink is included in the name of the Service Token. *Id.* & Ex. 1.

NYSCEF No. 15 at 2. LCX first explained its service of the Service Token via the Affirmation of Elliot A. Magruder, dated June 7, 2022. NYSCEF No. 17.

[5] The Service Website is located at www.hklaw.com/en/general-pages/lcx-ag-v-doe. *See id.*

[6] LCX intends to move for the *pro hac vice* admission of Mr. Balthazor shortly.

Mr. Balthazor later reviewed the tracking statistics for the Service Hyperlink. *See* Balthazor Aff. ¶ 9. He confirmed that, as of June 15, 2022, the Service Hyperlink had been clicked by 256 unique non-bot users. *Id.* & Ex. 1.[7]

III. Sharova Files Notices of Appearance on Behalf of At Least One of the Doe Defendant(s) but Refuses to Disclose Any Information About its Client(s)

On June 15, 2022, two attorneys for Sharova filed Notices of Appearance on behalf of the Doe Defendant(s). *See* NYSCEF Nos. 18–19. Sharova requested an extension of two weeks to respond to the Order to Show Cause. As Sharova would not reveal any information about which Doe Defendant(s) it represented, LCX declined to grant the extension.

IV. Recent Developments in this Matter

On June 22, 2022, as was its right, LCX filed a First Amended Complaint (together with the exhibits, the "**Amended Complaint**"). *See* NYSCEF No. 22. The Amended Complaint, among other things, added new parties, buttressed the bases for jurisdiction, and supplemented the causes of action. *Id.* at ¶¶ 4–9, 54–73. On June 23, 2022, the Court held the Show Cause Hearing. In the hearing, the Court confirmed that the TRO remained in force and directed LCX to file, no later than June 27, 2022 and by show cause, a pleading setting forth its requested relief concerning service of process and the Doe Defendant(s)' purported representation by Sharova.

ARGUMENT

I. LCX has Sufficiently Served the Doe Defendant(s) with the Service Documents

A. Legal Standards

CPLR § 308(1)–(2) and (4) state that a natural person can be served, in relevant part, as follows:

[7] The terms of use of the service that created the Service Hyperlink prohibit disclosure of private information about specific visitors. *See id.*

> 1. by delivering the summons within the state to the person to be served; or
>
> 2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served; or
>
> . . . .
>
> 4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served ….

These provisions do not apply here. As set forth below in greater detail, LCX has no verifiable information concerning the location of the Doe Defendant(s), so it is *per se* impossible for it to serve the Doe Defendant(s) via the methods set forth in CPLR § 308(1)–(2) and (4).

Rather, LCX had to serve the Doe Defendant(s) with the Service Documents by alternative means. CPLR § 308(5) permits alternative service of process "in such manner as the [C]ourt, upon motion without notice, directs, if service is impracticable" via delivery methods reliant on knowing the identity or location of the person to be served or certain details about the person, such as their place of business or residence. Although the impracticability standard is "not capable of easy definition," a showing of impracticability "does not require proof of actual prior attempts to serve a party under the methods outlined pursuant to subdivisions (1), (2), or (4) of CPLR [§] 308." *Safadjou v. Mohammadi*, 105 A.D.3d 1423, 1424 (4th Dep't 2013) (citations omitted).

If service via more conventional methods is impracticable, the Court has broad discretion to fashion alternative service means "adapted to the particular facts of the case before it." *Dobkin v. Chapman*, 21 N.Y.2d 490, 498–99 (1968); *see also Safadjou*. 105 A.D.3d at 1424 ("The meaning of 'impracticable' will depend on the facts and circumstances of the particular case.") (citation omitted). Due process, however, requires that the method of service "be reasonably calculated, under all the of the circumstances, to apprise the defendant of the action." *Contimortgage Corp. v. Isler*, 853 N.Y.S.2d 162 (2d Dep't 2008). However, due process in this context does not require a guarantee that the intended recipient actually receives notice—"[o]ur law has long been comfortable with many situations in which it was evident, as a practical matter, that parties to whom notice was ostensibly addressed would never in fact receive it." *Dobkin*, 21 N.Y.2d at 502. Indeed, "in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights." *Mullane v Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 317 (1950) (discussing sufficiency of notice by print publication).

Courts look to the intended recipient's means of communication as a guide in determining whether an alternative method of service is reasonably calculated to provide them notice. *See, e.g.*, *In re Intl. Telemedia Assoc., Inc.*, 245 B.R. 713, 721 (Bankr. N.D. Ga. 2000) ("If any methods of communication can be reasonably calculated to provide a defendant with real notice, surely those communication channels utilized and preferred by the defendant himself must be included among them."). For example, in *Hollow v. Hollow*, the court approved email service due, in part, to the defendant's exclusive use of that method to communicate to his children and the plaintiff. *See* 747 N.Y.S.2d 704, 708 (Sup. Ct. Oswego Cnty. 2002). Likewise, in *Snyder v. Alternative Energy, Inc.*, the court approved email service because the plaintiffs showed the defendant was

regularly "using an e-mail address that by all indications is his." 857 N.Y.S.2d 442, 448–49 (Civ. Ct. N.Y. Cnty. 2008). Finally, in *Baidoo v. Blood-Dzraku*, the Court approved service by Facebook messenger as the exclusive means of serving a defendant because the plaintiff showed they lacked a physical or email address for the defendant and that the defendant regularly used his Facebook account. *See* 5 N.Y.S.3d 709, 714–15 (Sup. Ct. N.Y. Cnty. 2015).

Moreover, "[h]istory teaches that, as technology advances and modes of communication progress, courts must be open to considering requests to authorize service via technological means of then-recent vintage[.]" *Marvici v. Roche Facilities Maint. LLC*, No. 21CIV4259, 2021 WL 5323748, at *4, 2021 U.S. Dist. LEXIS 193094, at *11 (S.D.N.Y. Oct. 6, 2021) (citation omitted).

Accordingly, courts across the country routinely authorize service via electronic methods previously thought to be unconventional, or even impermissible. *See, e.g.*, *Noco Co., Inc. v. Zhejiang Quingyou Elec.*, 338 F.R.D. 100, 105–06 (N.D. Ohio 2021) (permitting service through Amazon's Message Center, given that defendant's address was unknown and there was evidence that the message had been instantly relayed and did not bounce back), *recons. in part on other grounds*, 2021 WL 374617, 2021 U.S. Dist. LEXIS 20414 (N.D. Ohio Feb. 3, 2021); *Baidoo*, 5 N.Y.S.3d at 714-15 (service by Facebook messenger); *Rule of Law Soc'y v. Dinggang*, Index No. 156963/2022, 2022 WL 1104004, at *1 (Sup. Ct. N.Y. Cnty. Apr. 8, 2022) (authorizing alternative service under CPLR § 308(5) via WhatsApp and Twitter accounts); *Schwartz v. Sensei*, No. 17-CV-04124, ECF No. 70 (S.D.N.Y. Mar. 11, 2019) (authorizing alternative service under CPLR § 308(5) of elusive defendant through "every known Internet account, including, but not limited to: e-mail … iMessage, WhatsApp and Twitter");[8] *E.L.V.H. Inc. v. Bennett*¸ No. 18-cv-00710, 2018

[8] Pursuant to the Court's Rules and Procedures 6(E), a true and correct copy of this Court's Opinion, which LCX's counsel could not find on LEXIS or Westlaw, and was obtained on June 27, 2022 through the Southern District of New York PACER system, is appended as **Appendix 1**.

WL 6131947, at *3, 2018 U.S. Dist. LEXIS 236021, at *8 (C.D. Cal. May 2, 2018) (authorizing alternative service via Facebook messenger to an account known to be used by defendant); *St. Francis Assisi v. Kuwait Fin. House*, No. 16-cv-3240, 2016 WL 5725002, at *2, 2016 U.S. Dist. LEXIS 136152, *5 (N.D. Cal. Sept. 30, 2016) (authorizing alternative service by Twitter).

B. LCX's Service of the Service Token Satisfies CPLR § 308(5)

i. LCX Meets the Impracticability Standard Under CPLR § 308(5) Because Doe Defendant(s)' Anonymity Precludes Other Methods of Service

Here, alternative service is necessary owing to the anonymity that Doe Defendant(s) went to great lengths to maintain and persist in huddling under. As LCX explained in its first day pleadings, Doe Defendant(s) are anonymous hackers who "used a variety of techniques to disguise their tracks and to conceal [their] trail of transactions[.]" *See* Affirmation of Elliot A. Magruder, dated June 1, 2022 (the "**Magruder Aff**"), NYSCEF No. 11 ¶ 5.

Lacking any other means of identifying Doe Defendant(s), LCX traced the Doe Defendant(s)' transacting of the stolen assets through the Ethereum blockchain. *See* Metzger Aff., NYSCEF No. 6 ¶ 8. LCX's investigation led it to the Address. *Id.* However, knowing that Doe Defendant(s) control the Address no more discloses their identity or location than it would if one knows a person's randomly-generated email address. It was thus impracticable to serve the anonymous Doe Defendant(s) via conventional means pursuant to CPLR §§ 308(1)–(2) & (4), all of which require some idea of who Doe Defendant(s) are or where they can be found. In such a context, the Court may permit alternative service under CPLR § 308(5).

ii. LCX's Service of the Doe Defendant(s) Via the Service Token is Reasonably Calculated to Provide Notice and Thus Satisfies CPLR § 308(5)

LCX's proposed service by the Service Token, delivered to the Address, and including the Service Hyperlink, which in turns links to the Service Documents and the Order to Cause, is reasonably calculated to provide Doe Defendant(s) with notice. Indeed, service via the Service

Token, which entailed delivery to a blockchain address controlled by the Doe Defendant(s) hiding behind the pseudonymity of the Ethereum blockchain to launder $8 million in stolen digital assets, is permissible and appropriate. *See* Metzger Aff., NYSCEF No. 6 ¶¶ 4–11; First Balthazor Aff., NYSCEF No. 9 ¶¶ 11–28. Notably, such service uses technological means of the most recent vintage available: the blockchain. Accordingly, LCX satisfies CPLR § 308(5).

Specifically, LCX has shown that the Doe Defendant(s) regularly use the Address—indeed, transacting the Address's assets as recently as May 31, 2022—and that Doe Defendant(s) continue to maintain significant digital assets therein, including nearly $1.3 million in USDC. *See* First Balthazor Aff., NYSCEF No. 9 ¶¶ 27–28. The Doe Defendant(s)' pattern of using the Address and the fact the Address still contains valuable assets makes it likely Doe Defendant(s) will return to the Address; as such, notice provided via the Service Token to the Address is thus reasonably calculated to reach them. *See, e.g.*, *Hollow*, 747 N.Y.S.2d at 708 (approving alternative process via a communications method favored by the intended recipient). That the Address's intangible contents are, in part, the subject of this action, makes it all the more reasonable that notice be published in the same digital terrain. Indeed, serving by digital token is the blockchain equivalent of posting process on a person's door.

Ultimately, Doe Defendant(s)' should not be entitled to use the pseudonymity of the blockchain to escape accountability for their misdeeds committed via such technology. To that end, Doe Defendant(s) have ensconced themselves in a tower they built, permitting only one manner of ingress: a blockchain transaction. It is thus reasonable for LCX to provide notice to Doe Defendant(s) via this sole avenue. "After all, in the law, what is sauce for the goose is normally sauce for the gander." *Heffernan v. City of Paterson*, 578 U.S. 266, 272, (2016).

II. Sharova Should be Compelled to Disclose Identifying Information about the Doe Defendant(s) it Represents, or in the Alternative, Withdraw its Representation

Since Sharova filed notices of appearance on behalf of the Doe Defendant(s) on June 15, 2022, it has consistently refused to disclose any information about the Doe Defendant(s) which it purports to represent, including even their real name and contact information.

In so doing, Sharova is violating Court of Appeals' precedents, including a decision that has stood for nearly 50 years, which proscribes an attorney from refusing to disclose certain identifying information about their client in virtually all circumstances. *See Banco Frances*, 36 N.Y.2d 592, 595–96, 599.[9] Indeed, the Court of Appeals' decision in *Banco Frances*, which concerned similar facts and legal theories, forecloses Sharova from representing any Doe Defendant(s) without disclosing identifying information, such as a name or an address.

In *Banco Frances*, the plaintiff, a Brazilian bank, brought claims for fraud, deceit and conspiracy against 20 unknown John Doe defendants. *Id.* at 595. The plaintiff alleged that the John Doe defendants fraudulently obtained travelers checks in the amount of $1,024,000, which they then deposited into two banks accounts held in New York. *Id.* Plaintiff obtained an order of attachment against the contents of the accounts. *Id.*

Counsel for the anonymous "John Doe No. 1" appeared and moved to vacate the attachment. *Banco Frances*, 36 N.Y.2d at 595–96. Plaintiff moved to compel the attorney for

[9] *See, e.g., Matter of Grand Jury Empaneled Feb. 14, 1978*, 603 F.2d 469, 473 n.4 (3d Cir. 1979) (a client's identity may be privileged if disclosure "would link the client to a previously revealed incriminating confidence") (citation omitted); *Matter of Jacqueline F.*, 47 N.Y.2d 215, 220 (1979) (holding that "an attorney cannot be compelled to reveal a client's identity where the latter is not a party to the pending litigation") (citation omitted and emphasis added); *Waldmann v. Waldmann*, 358 N.E.2d 521, 522–23 (Ohio 1976) ("The confidentiality of a client's address in a domestic relations matter, especially in a divorce action, can be a vital feature of the action; it is not uncommon for a spouse who fears for her or his safety to need assurance that their whereabouts will not be disclosed" and holding that attorney for client in domestic relations matter could not be held in contempt for refusing to divulge the client's address).

"John Doe No. 1" to disclose the true names and addresses. *Id.* The trial court denied the motion to vacate and granted plaintiff's motion to compel, which was affirmed. *Id.* at 596.

The Court of Appeals upheld the trial court and held that "insofar as disclosure is sought from the attorney for John Doe No. 1 of the true names and addresses of [the attorney's] client . . . we conclude that . . . [the trial court] did not abuse its discretion in ordering disclosure." *Id.* at 599. Notably, the Court of Appeals provided an alternative in the event that counsel could not or would not disclose identifying information about the attorney's client: "if the attorney for John Doe No. 1 cannot disclose [the attorney's] client's true identity, [the attorney's] right, alternatively, to withdraw from this case must be recognized." *Id.*

Here, Sharova has refused to divulge any information as to the true identity of the Doe Defendant(s) it represents, even after LCX informed Sharova of the case law set forth immediately above. Moreover, as in *Banco Frances*, this case involves a plaintiff (LCX) seeking provisional relief (a TRO and preliminary injunction) in order to prevent future damage from a fraudulent scheme that caused it substantial losses (among other things, the theft from LCX of the cryptocurrency from the wallet on the Ethereum blockchain, the mixing and obscuring of the stolen cryptocurrency, and the nearly 3 million USDC withdrawn from the Address just in May 2022). *See* Metzger Aff., NYSCEF No. 6 ¶¶ 3–6; First Balthazor Aff., NYSCEF No. 9 ¶¶ 13–27.

Consequently, the same result as in *Banco Frances* is warranted here. Sharova should be forced to disclose identifying information of any and all of the Doe Defendant(s) which it claims to represent, or it should be forced to withdraw from representation of such Doe Defendant(s).[10]

[10] If the Court orders Sharova to withdraw, the Court could also order Sharova to reveal, at the very least, the representative of the Doe Defendant(s) with whom it has communicated. *See, e.g., 1ST Tech., LLC v. Rational Enters. Ltda.*, No. 06-cv-01110, 2008 WL 4571258, at *3-4, 2008 U.S. Dist. LEXIS 106101, at *20–21 (D. Nev. July 15, 2008) (as a condition for withdrawal of

CONCLUSION

For the foregoing reasons, LCX respectfully requests that the Court issue an order, pursuant to CPLR §§ 308(5) and Court of Appeals' precedents, including *Banco Frances e Brasileiro S.A. v. Doe*¸ 36 N.Y.2d 592, 599 (1975): (i) confirming good and sufficient service of the Service Documents via the Service Token; (ii) compelling Sharova to disclose the true name, address, and any other identifying information as so required by the Court concerning the Doe Defendant(s) which it represents, or in the alternative, to require Sharova to withdraw as counsel of record for Doe Defendant(s) in this case; and (iii) any other relief that it finds just and proper.

Dated: New York, New York
June 27, 2022

By:/s/ Elliot A. Magruder, Esq.

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representation, ordering counsel to reveal identities of defendants' representatives "who have the authority to direct and authorize [d]efendants' counsel's actions in this case").

CERTIFICATION PURSUANT TO 22 NYCRR § 202.70(17)

I, Elliot A. Magruder, an attorney duly admitted to practice law before the courts of the State of New York, hereby certifies that this Memorandum complies with the word count limit set forth in 22 NYCRR § 202.70(17) and contains 4,668 words, excluding the parts exempted by the Rule.

Dated: New York, New York
June 27, 2022

/s/ Elliot A. Magruder