THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Civil Action No. 2022-CP-21-01980
Appellate Case No. 2025-002541

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SC Court of Appeals

Noah Veon, on behalf of himself and all others similarly situated ..... Respondent,

v.

Richard James Schueler, A/K/A "Richard Heart," ..... Defendant,

Benjamin DuBard .....Proposed Intervenor/Appellant

RECORD ON APPEAL - VOLUME I OF II

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of him or herself And all others similarly situated,	)	C/A: 2022-CP-21-1980
Plaintiff/Class Representative,	)	
vs.	)	**ORDER**
Richard James Schueler a/k/a Richard Heart,	)	
Defendant.	)	

Plaintiff John Doe moves before this Court for an order approving service of the Defendant, Richard James Shueler, via "other means" pursuant to Rule 4.1, SCRCP. For the reasons stated herein, Plaintiff's motion is **GRANTED**.

PROCEDURAL HISTORY

Plaintiff John Doe filed a putative class action against the Defendant on September 21, 2022. Plaintiff filed the present motion two weeks later on October 5, 2022 along with a supporting memorandum. On October 10, 2022[1], the Court entertained oral argument on the motion at the Florence County Court of Common Pleas. This order follows.

FINDINGS OF FACT

The Plaintiff has sued Defendant Richard James Schueler under state and federal securities laws seeking to hold the Defendant liable for the sale of unregistered securities. The Plaintiff also

[1] The Court notes that the present motion is ex parte and thus the 10-day service/notice requirements of Rule 6(d), SCRCP do not apply.

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seeks a declaratory judgment holding as a matter of law that the Defendant's "HEX" product is a security.

The Plaintiff has produced substantial evidence pertaining to the place of residence of Richard James Schueler in the form of numerous public statements of Defendant Schueler and the results of an investigation performed by a private investigator. This evidence establishes that Defendant Schueler, while a United States citizen, does not reside within the United States. Furthermore, Defendant Schueler actively conceals the nation in which he resides.

STANDARD OF REVIEW

Rule 4.1, SCRCP provides the vehicle with which a Plaintiff may serve an individual in a foreign country. Recently adopted in May of 2022, this new rule of procedure was accompanied by the following official note.

> Rule 4.1 adopts provisions of the federal rule with respect to service of process in foreign countries. This new rule is intended to provide guidance as to the proper methods of service and proof of service in foreign countries, and is not intended to amend or supplant the provisions of existing Rule 4 with respect to the issuance or form of the summons.

Rule 4.1, SCRCP, Official Note. With few exceptions, Rule 4.1, SCRCP is identical to Fed. R. Civ. P. 4(f). The Advisory Committee Notes to Fed. R. Civ. P. 4(f) set forth the following:

> Inasmuch as our Constitution requires that reasonable notice be given, an earnest effort should be made to devise a method of communication that is consistent with due process and minimizes offense to foreign law.

Fed. R. Civ. P. 4, Advisory Committee Note.

ANALYSIS

As an initial matter, the Court must determine which subsection of Rule 4.1(a) controls the proper service of process in this case. Subsections (a)(1) and (a)(2) both envision a "foreign

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country" or "foreign authority" that can be established.[2] As noted above, however, Defendant Schueler has concealed his country of residence. Thus the Plaintiff is left with the requirements of Subsection (a)(3) to serve the summons and complaint upon the Defendant: "by other means not prohibited by international agreement, as the court orders." Rule 4.1(a)(3), SCRCP.

The Due Process Clause requires the following of a means of service of process.

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice 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. … The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected…

Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314–15, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950)(internal citations omitted). The Plaintiff proposes five means of service: 1) via Twitter mention; 2) via Twitter direct message; 3) via email; 4) via Telegram group chat; and 5) via Telegram direct message. I find that these methods are reasonably calculated to apprise Defendant Schueler of this action and therefore approve these methods of service.

As the Plaintiff's memorandum notes, Defendant Schueler uses Twitter to communicate about his HEX product with regularity. Between August 27, 2022 and September 27, 2022, Defendant Schueler "tweeted" 609 times. Also, Defendant Schueler's Twitter account is "verified" by Twitter itself—a characteristic that Twitter's parent corporation uses to ensure that such accounts are authentic. Thus service of the summons and complaint via Twitter is reasonably

[2] Rule 4.1(a)(1) specifically cites methods of service "authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." However, Article I of the Hague Convention notes "[t]his Convention shall not apply where the address of the person to be served with the document is not known." Thus, by concealing his place of residence, Defendant Schueler has rendered the Hague Convention irrelevant to himself.

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calculated to reach Defendant Schueler himself and to reach him within hours (if not minutes). The Court also notes precedent approving Twitter as a means of service. See Cox v. CoinMarketCap OpCo, LLC, et al., No. 3:21-CV-8197-SMB (D. Arizona March 1, 2022); St. Francis Assisi v. Kuwait Finance House, No. 3:16-CV-3240-LB, 2016 WL 5725002, at *1 (N.D. Cal. Sept. 30, 2016).

Defendant Schueler has also provided a publicly-available email address to Etherscan.io, the blockchain explorer associated with Ethereum (the blockchain upon which the Defendant's HEX product operates). Etherscan.io requires this email address to be authentic and warns that inaccurate information could result in the delisting of the HEX product from its website. Thus emailing a copy of the summons and complaint is reasonably calculated to provide Defendant Schueler with notice of the pendency of this case. The Court also notes precedent approving email as a means of service. See WhosHere, Inc. v. Orun, No. 1:13-CV-00526-AJT-TRJ, 2014 WL 670817 (E.D. Va. Feb. 20, 2014); FTC v. PCCare247 Inc., 12-CV-7189-PAE, 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013).

Defendant Schueler has requested that individuals with questions about his HEX product contact him via Telegram, a group chat messaging service. Defendant Schueler has provided to the public the "group address" for questions about HEX as well as his personal address where he may be contacted individually. Thus delivering copies of the summons and complaint to this group address and to Defendant Schueler's personal address are reasonably calculated to provide Defendant Schueler with notice of the pendency of this case.

Having determined that Plaintiff's proposed methods of service comport with Due Process, the Court also finds that no international agreement prohibits these methods of service. As noted

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above with regard to the Hague Convention, by concealing his country of residence, Defendant Schueler has denied himself any procedural protections that he might otherwise enjoy.

CONCLUSION

The best methods of service that comport with Due Process are not immune to technological change. As the Southern District of New York noted over forty years ago,

> [n]o longer do we live in a world where communications are conducted solely by mail carried by fast sailing clipper or steam ships. Electronic communication via satellite can and does provide instantaneous transmission of notice and information. No longer must process be mailed to a defendant's door when he can receive complete notice at an electronic terminal inside his very office, even when the door is steel and bolted shut.

New England Merchants Nat. Bank v. Iran Power Generation & Transmission Co., 495 F. Supp. 73, 81 (S.D.N.Y. 1980). These observations are even more prescient in the age of Twitter, email, and blockchain technology. The Plaintiff has proposed five individual methods of service upon the Defendant. Each of these methods is calculated independently to provide notice of the pendency of this action. The use of all five methods makes the successful notice all the more certain. Thus, for the reasons stated herein, the Plaintiff's motion is **GRANTED**.

IT IS SO ORDERED.

Robert E. Hood
Presiding Judge
Twelfth Judicial Circuit

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Florence Common Pleas

Case Caption: John Doe VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

ELECTRONICALLY FILED - 2022 Nov 15 2:10 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of him or herself And all others similarly situated, Plaintiff/Class Representative, vs. Richard James Schueler a/k/a Richard Heart, Defendant.	IN THE COURT OF COMMON PLEAS TWELTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2022-CP-21-1980 **ENTRY OF DEFAULT AS TO DEFENDANT RICHARD JAMES SCHUELER**

The Plaintiff has shown by affidavit or otherwise that Richard James Schueler, against whom affirmative relief is sought, has failed to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure. Pursuant to Rule 55(a), SCRCP, the Defendant Richard James Schueler's default shall be and is hereby entered upon the calendar. Plaintiff has not requested a damages hearing at this time.

_____
Florence County Clerk of Court

Dated: _____

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Florence Common Pleas

Case Caption: John Doe VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Entry of Default

So Ordered

s/Doris Poulos O'Hara, Florence County Clerk of Court

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of his or herself And all others similarly situated,	)	Case No.: 2022-CP-21-1980
Plaintiff/Class Representative,	)	
vs.	)	**ORDER**
Richard James Schueler a/k/a Richard Heart,	)	
Defendant.	)	

The Plaintiff in the above-styled case has moved pursuant to the South Carolina Supreme Court's Administrative Order #2006-7-26-01 for the designation of this case as complex. Having reviewed the filings and having entertained oral argument, I grant the Plaintiff's motion. Pursuant to the directives of Administrative Order #2006-7-26-01, I order the following.

1. The case is designated as complex;
2. The undersigned Judge Michael G. Nettles shall serve as the Circuit Court judge with exclusive jurisdiction to handle this case from this date until its conclusion.

IT IS SO ORDERED.

_____
Michael G. Nettles
Chief Administrative Judge—Civil
Twelfth Judicial Circuit

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Florence Common Pleas

Case Caption: John Doe VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Complex Case Designation

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2023 Oct 18 3:47 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA **COUNTY OF FLORENCE**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2022-CP-21-01980**
JOHN DOE, PSEUDONYMOUS OWNER OF HEX ERC-20 TOKENS, ON BEHALF OF HIS OR HERSELF AND ALL OTHERS SIMILARLY SITUATED, **PLAINTIFF,** **vs.** **RICHARD JAMES SCHUELER A/K/A RICHARD HEART,** **DEFENDANT.**	**ORDER**

This matter is before the Court on the motion of non-party witness, Lorraine Schueler, seeking a protective order pursuant to Rule 26, SCRCP. Schueler seeks the following relief: 1) dismissal of the case; 2) destruction of materials obtained via subpoena; 3) prevention of the Plaintiff from taking further discovery; 4) the placing of publicly filed subpoenas under seal. As will be detailed below, this motion is denied. The Court issues a *sua sponte* order, however, requiring the Plaintiff to amend the caption to reflect his identity.

I. The Witness's Motion for Protective Order

Lorraine Schueler is a witness who is not a party to this lawsuit. Schueler is the mother of the Defendant, Richard Schueler. Information concerning the witness has been the subject of several subpoenas directed to real estate closing attorneys, a real estate agent, a bank, and a cryptocurrency exchange. The Plaintiff has also served a deposition notice and subpoena upon

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Lorraine Schueler.[1] The movant contends that the requested relief should be granted for two reasons: first, the Plaintiff has failed to properly serve the Defendant and thus the action has not been commenced; and second, the Plaintiff has violated the Rules of Civil Procedure by pleading this case as a pseudonymous "John Doe". The Plaintiff disagrees.

a. The availability of relief to the non-party witness

A threshold question of this motion is whether a non-party witness has the ability to request the dismissal of a case. The movant frames her motion in the form of a Rule 26(c), SCRCP motion for protective order. As the movant notes in her briefing, Rule 26(c), SCRCP provides that a trial court "may make any order which justice requires … that the discovery not be had … [or] that the scope of the discovery be limited to certain matters." The rule, however, does not provide for the dismissal of a case should the trial court grant a motion for protective order. Accordingly, movant does not have ability to request dismissal under Rule 26. However, even to the extent that Mrs. Schueler might be able to request dismissal, the analysis in Section I.b (below) would lead the Court to conclude that the drastic remedy of dismissal would not be an "order which justice requires."

Movant further asserts she may request dismissal of Plaintiff's complaint under the public importance standing doctrine. *See S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022). Mrs. Schueler contends public importance standing applies because there is a need for future guidance on the issues raised in her motion—namely, whether dismissal is appropriate when a plaintiff files suit anonymously without requesting the Court's permission to

[1] In addition to the motion resolved by this order, Lorraine Schueler has also filed a Rule 45, SCRCP motion to quash the deposition subpoena. The Plaintiff and the witness have agreed to hold in abeyance compliance with the deposition subpoena and the hearing of the motion to quash, however, while other discovery is completed in the hope of resolving that disagreement. Thus, this order does not resolve that motion.

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do so. Public importance standing such as that recognized in *Wilson*, however, generally is limited to instances in which an individual party brings its own action. The litany of cases cited by *Wilson* all confront whether a Plaintiff has standing to initiate its own lawsuit rather than intervening in an existing case. Furthermore, these cases require demonstration of the public's interest to give rise to such standing.

> Courts must cautiously balance competing interests—the citizenry's need to hold public officials accountable for alleged injustices and "the concomitant integrity of government action"—to determine whether the issue presented is "inextricably connected to the public need for court resolution for future guidance." Only then can the issue "transcend[ ] a purely private matter and rise[ ] to the level of public importance."

Id. at 341–42, 878 S.E.2d at 895 (string citation omitted). Whether the Defendant will be liable for his actions is a "purely private matter" as is the movant's objections to continuing discovery. Thus, to the extent that public importance standing may impower a non-party to intervene in an existing case, it would be inappropriately invoked here.

Rule 26 does provide, however, that a motion for protective order may be filed "upon motion by a party or by the person from whom discovery is sought." Rule 26(c), SCRCP (emphasis added). Thus Mrs. Schueler does have standing to request relief provided by the rule to protect her "from annoyance, embarrassment, oppression, or undue burden by expense." Rule 26(c), SCRCP. Beyond the dismissal of the case, the movant also requests destruction of materials obtained via subpoena, the prevention of any further discovery, and the placement of publicly filed subpoenas under seal.

b. The discoverability of the information sought

Mrs. Schueler describes the "annoyance, embarrassment, oppression, or undue burden" from which she seeks protection as the disclosure of "sensitive personal information."

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(Memorandum in Support of Motion at 8) Her concerns are understandable, as the subpoenas in question sought and received information pertaining to numerous financial transactions. However, many lawsuits implicate sensitive personal information. Personal injury claims, for example, routinely implicate many years of a party's medical records. Loss of consortium claims expose to discovery the most intimate details of a party's marriage. Thus, it is not the sensitivity of a matter that governs its discoverability, but rather whether the discovery is "reasonably calculated to lead to the discovery of admissible evidence." Hollman v. Woolfson, 384 S.C. 571, 577-578, 683 S.E.2d 495, 498 (2009).

This case alleges that the movant's son has engaged in a pattern of unlawful sales of a cryptocurrency product whose value has since fallen nearly to zero. After the filing of this case, the U.S. Securities and Exchange Commission filed a very similar lawsuit in which it made the same allegations. Plaintiff points to the movant's recent cash purchase of two pieces of real estate as evidence that she may be a beneficiary of her son's allegedly ill-gotten gains. Plaintiff further points to evidence produced from the challenged subpoenas that demonstrate the witness has received a substantial amount of cash from a cryptocurrency exchange. Based on this evidence, I find that the subpoenas issued were reasonably calculated to lead to the discovery of admissible evidence and continuing discovery on these topics also is, as well. Accordingly, the Court refuses to order destruction of the materials received pursuant to subpoena.[2]

c. The service of the complaint

Mrs. Schueler argues that discovery should not be had because the Plaintiff has failed to affect service of the complaint upon the Defendant. The Plaintiff sought and received an order

[2] In his memorandum in opposition to Mrs. Schueler's motion, Plaintiff consented to the deletion of subpoenas from the docket. Accordingly, the Court need not rule on this requested relief, and the Plaintiff and Ms. Schueler shall arrange for the deletion of publicly filed subpoenas.

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from the trial court approving service via "other means" pursuant to Rule 4.1(a)(3), SCRCP. As an initial matter, Mrs. Schueler asserts the trial court erred in approving alternative service because Plaintiff failed to establish Richard Schueler's address was unknown. Movant contends Plaintiff failed to exercise reasonable diligence in attempting to discover Mr. Schueler's international address, and such failure prevented Plaintiff from pursuing alternative service rather than serving Defendant under the Hague Convention. Mrs. Schueler further contends this Court can revisit the prior order approving alternative service because this action was subsequently designated complex, and the undersigned was granted exclusive jurisdiction over the case. The Court has reviewed the previous order. The previous judge carefully considered the requirements of Rule 4.1 and I decline to revisit his rulings.

The trial court approved five means of service: "1) via Twitter mention; 2) via Twitter direct message; 3) via email; 4) via Telegram group chat; and 5) via Telegram direct message." (October 12, 2022 Order) The Plaintiff concedes he was unable to serve the Defendant via Twitter direct message and via Telegram direct message because the Defendant had disabled those modes of communication, but contends that means 1, 3, and 4 were successful. The Court finds Plaintiff was not required to complete all five methods of alternative service approved by the trial court. As the previous order noted, "[e]ach of these methods is calculated independently to provide notice of the pendency of this action."

As an initial matter, the court questions whether a non-party witness has the ability to challenge the effectiveness of service in a Rule 26 motion. Such a challenge generally arises in the form of a Rule 12(b)(5) motion—a procedural vehicle unavailable to a non-party. Nonetheless, the Court finds that the complaint has been served in compliance with Rule 4.1(a)(3), SCRCP. In particular, the Court finds that service "via Twitter mention" and "via email" has been affected.

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Mrs. Schueler contends that the Plaintiff's service via Twitter was ineffective because the "Twitter mention" was not a "public Tweet." However, the order approving Rule 4.1 service specifies service via "Twitter mention," not "public Tweet." Thus her argument is unavailing. The order also specifies service via "a publicly-available email address" associated with the HEX Etherscan.io listing. The Plaintiff has provided an affidavit of service confirming that this has been done. The movant contends this is not enough, but the Plaintiff has complied with the order's directive. The parties dispute whether service "via Telegram group chat" was affected, but that dispute is immaterial in light of the success of the two previously mentioned methods.

d. <u>The pseudonymity of the Plaintiff</u>

Lastly, Mrs. Schueler contends that the Plaintiff's filing of a pseudonymous "John Doe" complaint, without an accompanying request to proceed anonymously, precludes him from any further discovery. Movant relies on Rule 10, SCRCP, which states "[i]n the summons and complaint the title of the action shall include the names of all parties," and which directs the clerk of court not to file any pleadings that do not comply with Rule 10. Rule 10(a), (e), SCRCP. The movant further offers out-of-state authority suggesting that the filing of a pseudonymous complaint requires the dismissal of the complaint. In the face of Mrs. Schueler's challenge to the styling of the complaint's caption, the Plaintiff now requests permission to proceed as "John Doe." The Plaintiff concedes, however, that the putative class action status of this case will require him to reveal his identity to the class if it is certified.

The Court is not persuaded by the movant's out-of-state authority and finds Rule 10 does not provide for dismissal of an anonymous complaint. Plaintiffs filing under pseudonyms is common in the appropriate circumstances. Even if the trial court rules that a Plaintiff may not proceed anonymously, the appropriate remedy is amending the caption of the complaint rather than

dismissing the case. See, e.g., Doe v. Howe, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2004). In light of the movant's challenge of the Plaintiff's litigation of his case under a pseudonym, Plaintiff now requests court approval to do so. As discussed below, this request is denied.

II. *Sua Sponte* Order Reflecting Identity

While the Court has denied the movant's motion for protective order, the Court also finds that the Plaintiff has failed to allege sufficient grounds for proceeding as a "John Doe" under the guidelines set forth in Doe v. Howe, supra. As a result, the Court orders the Plaintiff to amend the caption of the complaint to reflect his identity. All future filings should contain the amended caption.

IT IS SO ORDERED.

Michael G. Nettles
Presiding Judge

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Florence Common Pleas

Case Caption: John Doe VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Jun 25 1:36 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)))	IN THE COURT OF COMMON PLEAS
Noah Veon, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. Richard James Schueler A/K/A Richard Heart, Defendant.	)	Civil Action No. 2022-CP-21-01980 **ORDER GRANTING MOTION FOR CONTINUANCE OF HEARING SET FOR JUNE 25, 2024**

This matter is before the Court upon Benjamin DuBard's ("DuBard") request for a continuance of Plaintiff's motion for class certification in the above-captioned matter, which is currently scheduled for June 25, 2024. Plaintiff has not consented to said motion. For good cause shown, DuBard's motion for continuance is granted.

THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that the hearing on Plaintiff's motion for class certification in the above-captioned case is hereby continued from the June 25, 2024 motion roster to be rescheduled after August 1, 2024.

[*Court's electronic signature page to follow*]

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Florence Common Pleas

Case Caption: John Doe VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Continuance

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Jul 24 2:41 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND NOAH VEON, on behalf of himself and all others similarly situated, Plaintiff, vs. RICHARD JAMES SCHUELER A/K/A RICHARD HEART, Defendant.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2022-CP-21-1980 **ORDER**

This matter is before the Court on the Rule 59 and Rule 60 motions of non-party witness Lorraine Schueler. Both motions refer to the Court's previous ruling of October 18, 2023 denying Ms. Schueler's motion for a protective order. Ms. Schueler filed her motion to reconsider that ruling on October 30, 2023 and a supplement to that motion on December 19, 2023. On April 24, 2024, Ms. Schueler then filed a Rule 60 motion for relief from the order based upon newly discovered evidence. Having considered all filings and oral argument, the Court rules as follows.

Rule 59(e) Motion

As to the witness's Rule 59(e), SCRCP motion, the Court finds that it has appropriately considered all arguments made pertaining to the witness's motion for protective order and declines to alter or amend its previous rulings. Therefore, the motion to reconsider is denied.

Rule 60 Motion

As to the witness's Rule 60, SCRCP motion, the witness points to proof-of-service filings in parallel litigation between her son (the Defendant) and the Securities and Exchange Commission that is pending in the Eastern District of New York. These December 11, 2023 filings indicate that the SEC served the Defendant with its summons and complaint on October 31, 2023 in Helsinki, Finland. According to Ms. Schueler, this indicates that the Plaintiff may have done the same had he employed "reasonable efforts" in locating the Defendant. This argument fails for three reasons.

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First, the Plaintiff already has demonstrated "reasonable efforts" in locating the Defendant. In petitioning this court for an order approving service "by other means," the Plaintiff set forth the efforts he made to locate the Defendant. (Oct 5, 2022 Memorandum pp. 1-7) Recognizing these efforts, Judge Hood made the following findings of fact.

> The Plaintiff has produced substantial evidence pertaining to the place of residence of Richard James Schueler in the form of numerous public statements of Defendant Schueler and the results of an investigation performed by a private investigator. This evidence establishes that Defendant Schueler, while a United States citizen, does not reside within the United States. Furthermore, Defendant Schueler actively conceals the nation in which he resides.

(Oct 12, 2022 Order at 2) Judge Hood's findings contradict Ms. Schuler's assertion that the Plaintiff "simply moved for 'alternative service' under Rule 4.1(a)(3) without providing evidence that Plaintiff had attempted to search for or to locate Defendant in Europe." (April 24, 2024 Memorandum at 3) Ms. Schueler's "newly discovered evidence" does not alter those findings of fact. Thus her motion must be denied.

Second, the "newly discovered evidence" cited by Ms. Schueler did not exist at the time the Plaintiff filed his complaint, moved for "service by other means", and eventually served the Defendant. As the time-stamped filings indicate, the proof-of-service did not exist until October 31, 2023 and did not become publicly available until December 11, 2023—over a year after the Clerk of Court entered default against the Defendant in this case. Thus this "newly discovered evidence" was of no use to the Plaintiff at the time he sought service via "other means."

Third, to the extent the "newly discovered evidence" suggests methods that may have been employed to locate the Defendant, it only does so as to the time frame it references: October 31, 2023. The documents say nothing of the Defendant's whereabouts a year prior.

Fourth, while Ms. Schueler insists that the SEC's location of the Defendant is evidence of

the fruits of "reasonable efforts" of search, she does not suggest how the Plaintiff would have determined to conduct such a search in Finland considering, as Judge Hood found, "Defendant Schueler actively conceals the nation in which he resides." (Oct 12, 2022 Order at 2)

Finally, the Court also notes that the hearing of these motions occurred on June 25, 2024, when they were scheduled to be heard alongside a previously scheduled motion for class certification that the Court has continued. The Plaintiff has produced evidence that he provided notice of that hearing to the Defendant's attorneys representing him in the parallel litigation. Neither the Defendant nor his attorneys appeared at this hearing. While the Defendant may argue he received no notice of this action in the Fall of 2022, he certainly has notice now. And yet the Defendant continues to decline to participate in this litigation despite his mother's active involvement.

For the reasons stated above, Lorraine Schueler's Rule 59 and Rule 60 motions are denied. IT IS SO ORDERED.

/s/
Michael G. Nettles
Presiding Judge

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Florence Common Pleas

Case Caption: John Doe VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2025 Jan 27 4:34 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	CASE NO. 2022-CP-21-01980
NOAH VEON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFF, vs. RICHARD JAMES SCHUELER, DEFENDANT.	**CONSENT ORDER**

On January 24, 2025, the Honorable Michael G. Nettles held a telephonic conference to discuss the scheduling of various pending motions. Based on the matters discussed during the conference and with the consent of all counsel, the Court rules as follows:

The motions scheduled to be heard on January 29, 2025, are carried over. The parties shall confer on a date in the near future that will be mutually convenient for those motions to be heard. On that date, the Court will also consider whether it has jurisdiction to hear motions to quash filed in counties other than Florence that pertain to depositions or documentation sought via subpoena. Should the parties agree that the Court does have jurisdiction to do so, or should the Court so rule, the Court will also hear the pending motions to quash on the aforementioned mutually convenient date.

IT IS SO ORDERED.

[*Court's electronic signature page to follow*]

ELECTRONICALLY FILED - 2025 Jan 27 4:34 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

Florence Common Pleas

Case Caption: John Doe , plaintiff, et al VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Consent Order

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2025 Jul 23 1:48 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
NOAH VEON, on behalf of himself and All others similarly situated,	)	C/A No.: 2022-CP-21-1980
Plaintiff,	)	
vs.	)	**ORDER**
RICHARD JAMES SCHUELER, A/K/A "RICHARD HEART",	)	
Defendant.	)	

This matter is before the court on the motion of Benjamin Dubard, a non-party, to intervene in this case as a defendant. Dubard seeks to file an answer contesting the allegations of the complaint which, thus far, have been admitted through the default of the Defendant. Dubard also seeks to intervene in this action to oppose the pending motion for class certification. For the reasons stated herein, the motion is denied.

FACTUAL AND PROCEDURAL BACKGROUND

This case, filed in September of 2022, focuses on a cryptocurrency known as "HEX". HEX is an ERC-20 "smart contract" that operates on the Ethereum blockchain. In layman's terms, HEX is a computer program that converts other digital assets such as Ether or "ETH" (the native currency of the Ethereum blockchain) into HEX tokens. The value of one HEX token peaked at approximately 50 cents per token in September of 2021. However, this value quickly plummeted, and, by June of 2023, one HEX token was worth less than one penny where it has remained since that time (it now trades at approximately 0.15 cents).

The Plaintiff, Noah Veon, purchased approximately $1,800 of HEX near its peak value in September of 2021. He seeks the return of his investment, which is now worth less than six dollars.

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Veon contends that HEX is an unregistered security and, under Section 5 of the Securities Act of 1933, the Defendant must compensate him for his losses. Veon also seeks the certification of a class of similarly situated HEX investors and the return of their losses.

THE DEFENDANT

The Defendant, Richard J. Schueler, has not answered the complaint in this matter and is in default. Schueler, an American thought to be residing in Finland, is a controversial figure and is currently listed as one of Europol's "most wanted fugitives" for tax fraud "counted in the hundreds of millions of euros."[1] While Schueler has not appeared in this matter, the Plaintiff alleges that the Defendant has been conducting a "shadow defense" through several law firms retained, first, by his mother, and now, by the proposed intervenor.

THE PROPOSED INTERVENOR

Benjamin Dubard is a South Carolina resident and is active in the cryptocurrency industry. Dubard first purchased HEX in 2020 and continues to hold the asset. According to his filings, Dubard first learned of this lawsuit shortly after it was filed in the Fall of 2022. On September 2, 2023, Dubard "retweeted" a five-page bulletin prepared by a HEX proponent operating under the pseudonym of "Mati ALLin" which described this lawsuit in detail including the name of the presiding judge, links to filed documents, and predictions of "next steps" in the litigation. Despite this detailed knowledge of the proceedings, Dubard did not move to intervene in this matter until June 24, 2024—the day before the scheduled hearing on class certification.

On June 18, 2024—six days prior to the filing of Dubard's motion—"Mati ALLin" publicly tweeted his desire to raise $100,000 of cryptocurrency to retain South Carolina counsel "to contribute to the Amicus brief for HEX in South Carolina." "Mati ALLin" named the specific law

[1] See https://eumostwanted.eu/#/schueler-richard-james (last visited July 16, 2025).

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firm and the attorney he sought to retain and provided a cryptocurrency "address" to which donations could be made. On June 19, 2024, "Mati ALLin" announced the funds had been raised. An analysis of the cryptocurrency "address" "Mati ALLin" revealed that the funds came from a single donation. The pseudonymous nature of cryptocurrency conceals the identity of that donor.

Dubard's motion to intervene was soon thereafter filed by the exact lawyer and law firm referencing by "Mati ALLin" in his June 18, 2024 tweet. Plaintiff's counsel served a notice of deposition upon Dubard including a subpoena duces tecum seeking, among other things, "all records of transfer of money to you by any other person pertaining to your motion to intervene." Dubard moved to quash that deposition notice and subpoena. That motion remains pending.

CRYPTOCURRENCY SECURITIES LITIGATION

The present lawsuit is one of a large number of cryptocurrency securities class actions filed in the last decade. A non-exhaustive list of cryptocurrency class actions tracked by Stanford Law School indicates that at least 102 such cases have been filed since 2016.[2] At the heart of every securities class action is one fundamental question: is the investment in question a "security" under applicable law. In a 2017 advisory, the SEC made it clear that "the automation of certain functions through this (cryptocurrency) technology, 'smart contracts,' or computer code, does not remove conduct from the purview of the U.S. federal securities laws."[3] But the Commission was also careful to note that not all cryptocurrencies are necessarily securities.

> Whether or not a particular transaction involves the offer and sale of a security—regardless of the terminology used—will depend on the

[2] https://securities.stanford.edu/current-trends.html (last visited July 16, 2025).

[3] "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO" at 2 https://www.sec.gov/files/litigation/investreport/34-81207.pdf (last visited July 16, 2025).

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> facts and circumstances, including the economic realities of the transaction.[4]

Thus, the analysis of whether a particular cryptocurrency is subject to federal or state securities laws is truly a case-by-case endeavor.

ANALYSIS OF THE MOTION TO INTERVENE

Dubard seeks to intervene in this lawsuit both as a matter of right under Rule 24(a), SCRCP and via permissive intervention under Rule 24(b), SCRCP. Each will be analyzed in turn.

I. Intervention of Right

Rule 24(a) provides for intervention of right in the following circumstances.

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Dubard does not claim a statutory right to intervention, thus the analysis of his motion is confined to subsection Rule 24(a)(2). Two problems defeat Dubard's motion for intervention of right: first, the motion is untimely; and second, the interest he seeks to protect is insufficient to give rise to intervention.

a. Dubard's motion is untimely

South Carolina has adopted a four-part test for considering the timeleness of a motion to intervene.

> (1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial.

[4] Id. at 17-18.

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Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991). "[F]ailure to satisfy any one of the four requirements precludes intervention." Ex parte Reichlyn, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). As shown below, consideration of each of the four elements weigh against Mr. Dubard's intervention in this state.

i. The time that has passed and the reason for the delay

Dubard admits that he "became aware that a lawsuit was filed against Richard Schueler related to HEX shortly after the litigation commenced in 2022." (Motion to Intervene at 3) This case was filed on September 21, 2022. DuBard filed his motion to intervene on June 24, 2024. As a result, DuBard waited approximately 20 months before seeking to intervene in this case. This lengthy wait contrasts with that found permissible in Davis v. Jennis, where the Supreme Court noted the intervenor's "motion was filed within one month of the [challenged] order." Id. at 504, 405 S.E.2d at 603.

Nevertheless, Dubard insists that he "was unaware until the week of June 17, 2024, that Plaintiff sought a declaratory judgment that HEX is a security or that any procedure existed pursuant to which Dubard could become personally involved in the action." But this claim is contradicted by Dubard's retweeted bulletin of September 2, 2023, which detailed the following:

- "(The Plaintiff) claims to bring the case on behalf of all similarly situated HEX purchasers. But the case will not become a class action unless the Court allows this and approves (the Plaintiff) as a suitable class representative. If and until that happens, it is essentially an action by the one plaintiff."

- "Claims: Claims for issuance of unregistered securities under federal and South Carolina securities laws. The plaintiff seeks money and various other action by the Court."

Thus, Dubard was quite aware that this case had been filed as a putative class action and sought to invoke federal and state securities laws.

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The factual record establishes that Dubard was aware of this lawsuit almost immediately upon its filing. The record further establishes that Dubard was aware of the details of the lawsuit within approximately one year of the suit's filing and was disseminating information about the lawsuit to his social media audience. Nevertheless, Dubard made no attempt to intervene until 20 months after the filing of the case.

ii. Stage of the proceedings

Significant proceedings have taken place in this case and the case is now nearly three years old. The Plaintiff has taken two depositions, both of which have required court intervention. Numerous motions have been filed seeking to prevent the Plaintiff from taking additional discovery, including one motion filed by Dubard, himself. The case has been appealed to both the Court of Appeals and South Carolina Supreme Court before being returned to the Circuit Court for adjudication. Dubard's filed his motion to intervene one day before Plaintiff was scheduled to argue his motion for class certification. Dubard immediately moved to continue the motion, which the Plaintiff opposed.

iii. Prejudice to original parties and applicant

Prejudice to the Plaintiff has already been self-evident as Dubard's motion has resulted in delaying this action for nearly one year. Should Dubard's motion be denied, however, he will not be prejudiced at all. Dubard is not subject to losing any sort of property interest should the Plaintiff win this case. In fact, Dubard may gain the right to recover the losses he has suffered at the hands of the Defendant. However, should Dubard wish to do so, he may always opt-out of any class action and leave his Due Process rights unimpacted.

Furthermore, it should be noted that Dubard's clear intent in moving to intervene is to prejudice the original parties to this case. The Defendant is in default, yet Dubard seeks to file an answer seeking to litigate the factual and legal allegations of the complaint. Dubard has also filed

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a memorandum seeking to defeat class certification—not to promote it. For all of these reasons, Dubard's motion is untimely, prejudicial, and must be denied.

b. Dubard's interest is insufficient

"Intervention of right requires a direct, substantial, legally protectable interest in the proceedings." Ex parte Reichlyn, 310 S.C. 495, 499, 427 S.E.2d 661, 664 (1993), citing State of Arizona v. Motorola, Inc., 139 F.R.D. 141, 144 (D.Ariz.1991). Dubard claims two interests justify his intervention.

- "Dubard seeks to ensure that Plaintiff's expansive view of the federal and state securities laws does not improperly interfere with the rights, financial interests, and legal activities of HEX owners like himself." (Motion at 2)
- "Dubard asserts that a determination by the Court that HEX is a security would adversely impact the value of his financial position in HEX tokens." (Motion at 2)
- "Dubard is a member of the class that Plaintiff seeks to represent." (Motion at 4)

Neither interest is sufficient to give rise to intervention of right.

First, Dubard's objection to "Plaintiff's expansive view of the federal and state securities laws," such an objection is not a protectible interest. South Carolina courts reject motions to intervene when the "main reason for seeking intervention is to affect any legal precedent that may result from the case. This alone is an insufficient basis for intervention." S.C. Tax Comm'n v. Union Cnty. Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988), citing 3B J. Moore, Moore's Federal Practice Section 24.07[2] (2d ed. 1987).

Second, Dubard's concern of an "adverse impact" on the value of his HEX portfolio is also insufficient to give rise to intervention. Similar concerns exist throughout corporate litigation. But the Fourth Circuit has rejected the notion that stockholders' interest in the outcome of litigation allows for intervention.

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> In a sense, every company's stockholders, bondholders, directors and employees have a stake in the outcome of any litigation involving the company, but this alone is insufficient to imbue them with the degree of 'interest' required for Rule 24(a) intervention.

Gould v. Alleco, Inc., 883 F.2d 281, 285 (4th Cir. 1989). Indeed, Dubard's interest in how this case may impact the value of his HEX tokens is no different than that of any other HEX investor. The court notes that no South Carolina reported case has held that the possibility or even probability of an indirect economic effect, such as what Dubard argues, is sufficient for intervention. The burden, rather, is on Dubard to establish that he "will suffer an individualized injury; a mere interest in a problem is not enough." Hill v. S.C. Dept. of Health & Environ. Control, 389 S.C. 1, 23 n. 12, 698 S.E.2d 612, 624 n. 12 (2010). Dubard has not shown that he will suffer an individualized injury if intervention is not granted.

Third, Dubard's status as a putative class member does not give him a right of intervention unless "its interest is inadequately represented by other parties." In re Horry Cnty. State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004). Dubard does not contend that the Plaintiff is inadequately representing his interests under the Securities Act of 1933. Instead, despite the fact that Dubard may be entitled to significant compensation should the Plaintiff be successful in his case, Dubard wishes to argue *against* his interests by insisting the law does not apply. Dubard has shown no authority that permits an intervenor to assume a position contrary to his financial well-being in order to create the specter of "inadequate representation."

Finally, the Court notes that evidence suggests Dubard has worked in concert with a third party to fund and file his appearance as an intervenor. This evidence—which has not been contradicted by Dubard—suggests that it is another person's interest that Dubard seeks to promote. Plaintiff's counsel suggest the likely "benefactor" is the Defendant, who is otherwise declining to participate publicly in this litigation. The Court makes no ruling on that point but does note that

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the purpose of intervention is to protect the interest of the intervenor, not the interest of some unknown person or entity on whose behalf the intervenor is action.

DuBard has not established what he must in order to show a right to intervene. Id.; Ex parte Reichlyn, 310 S.C. at 499.

II. Permissive Intervention

DuBard may not employ the more permissive standard of Rule 24(b) to intervene.

> An intervenor seeking permissive intervention must: (1) establish timely application; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties.

Ex parte Builders Mut. Ins. Co., 431 S.C. 93, 101, 847 S.E.2d 87, 91 (2020). As shown above, DuBard's motion to intervene was both untimely and prejudicial to the adjudication of the rights of the actual parties to this case. In addition, he lacks claims or defenses that have questions of law or fact in common with those of this case.

Accusations of wrongdoing in this case have been limited to Defendant Richard Schueler.

> The typical situation for which the Rule was designed is one where the prospective intervenor might institute or be called upon to defend a separate proceeding that would substantially duplicate the one in question. With this analogy to permissive joinder, it seems clear the better rule is that permissive intervention should be allowed only where the prospective intervenor has a cause of action or defense it could bring or assert.

S.C. Tax Comm'n v. Union Cnty. Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75–76 (Ct. App. 1988). Not having been accused of wrongdoing, Dubard has no defenses to assert. Furthermore, his proposed answer asserts no counterclaims or crossclaims. Thus, permissive intervention provides no avenue for Dubard to participate in this case.

CONCLUSION

For the reasons stated above, Benjamin Dubard's motion to intervene is denied.

_____
Michael G. Nettles
Presiding Judge

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Florence Common Pleas

Case Caption: John Doe , plaintiff, et al VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Intervene

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2101980

Noah Veon
PLAINTIFF(S)

Richard James Schueler et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter comes before the Court on the defendant's Motion to Alter or Amend. After careful consideration of the written memoranda submitted by the parties and the oral arguments presented at the hearing, the Court finds no basis upon which to disturb its prior ruling. Accordingly, the Motion to Alter or Amend is hereby DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/09/2025 .

Richard Heart
Richard James Schueler

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Dec 09 2:46 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Florence Common Pleas

Case Caption: John Doe , plaintiff, et al VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2101980

Noah Veon
PLAINTIFF(S)

Richard James Schueler et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This Order amends the previous Order where Benjamin Dubard is incorrectly stated as a defendant in the matter.

This matter comes before the court on Benjamin's Dubard Motion to Alter or Amend. After careful consideration of the written memoranda submitted by the parties and the oral arguments presented at the hearing, the Court finds no basis upon which to disturb its prior ruling. Accordingly, the Motion to Alter of Amend is hereby DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/17/2025 .

Richard Heart
Richard James Schueler

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Dec 17 10:13 AM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2025 Dec 17 10:13 AM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980

Florence Common Pleas

Case Caption: John Doe , plaintiff, et al VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2022 Sep 21 12:21 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of his or herself And all others similarly situated,	)	
Plaintiff/Class Representative,	)	
vs.	)	**COMPLAINT (Class Action) (Jury Trial Demanded)**
Richard James Schueler a/k/a Richard Heart,	)	
Defendant.	)	

The Plaintiff, by and through his attorneys and on behalf of all others similarly situated, complains of the Defendant as follows:

I. INTRODUCTION

1. Defendant Richard James Schueler a/k/a "Richard Heart" (hereinafter "Defendant Schueler") is the creator, promoter, and manager of an investment scheme known as "HEX."

2. The HEX investment scheme offers investors profit through the use of a "smart contract"—essentially, a computer program—that operates on the Internet. The computer code underlying Defendant Schueler's "smart contract" receives payments of money from an investor and awards the investor HEX "tokens." These tokens are not physical items; rather, they are computerized credits that are stored on the Ethereum blockchain, a decentralized open source blockchain.

3. The HEX token has no intrinsic function. It is not accepted as payment anywhere. The HEX token only has one potential use to an investor: profit.

4. There are only two ways in which an investor in Defendant Schueler's HEX "smart contract" may generate a profit: one, "staking" one's tokens (where an investor agrees to relinquish

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his tokens in exchange for a promise of a greater balance of the same token in the future); and two, price speculation.

5. To generate profit from his or her investment, the investor relies on the efforts of others.

6. As such, Defendant Schueler's investment "smart contract" fall within the definition of a "security" under South Carolina and federal law.

7. Despite these facts, Defendant Schueler has never registered the HEX investment scheme as a security with the Securities and Exchange Commission or the South Carolina Securities Commissioner, nor has he provided the required investment disclosures.

8. On August 9, 2022—from his mother's living room in Bluffton, South Carolina—Schueler appeared on the YouTube channel of Jordan Belfort.[1] There Schueler provided his opinion on United States registration requirements of investment contracts.

> Belfort: I know both worlds. Wall Street is not as bad as crypto and Wall Street is corrupt as shit. Ok? If Wall Street is a sewer of corruption and crypto is a sewer of corruption times a thousand. There's no disclosure in crypto, that's the problem.
>
> Schueler: But disclosure is a scam. Disclosure is a fucking scam.
>
> Belfort: How's that?
>
> Schueler: You know, you know a hundred percent that no one reads those fucking documents. You know a hundred percent that no one really gives a shit about those disclosures. You know a hundred percent that when you tell someone they could lose everything they don't really fucking believe you.
> …
> I think that disclosures are weak, limp-dick legalese that doesn't actually save fucking nobody.

[1] Belfort is most famous (or infamous) for serving as the real-world inspiration for The Wolf of Wall Street.

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See https://www.youtube.com/watch?v=hcZwYsV65OA at 17:50 (last visited September 20, 2022).

9. On September 20, 2021, the HEX token reached its peak value on online cryptocurrency exchanges at 50.6 cents per token. On September 20, 2022, the value of the HEX token had plummeted to 3 cents per token, or a 94.1% collapse in value.

10. Over 300,000 people have invested in Defendant Schueler's sale of unregistered securities. These investors now face losses totaling in the billions of dollars.

11. This lawsuit seeks to enforce the securities registration and disclosure requirements that Defendant Schueler dismisses as "weak, limp-dick legalese."

II. PARTIES AND JURISDICTION

12. Plaintiff John Doe, pseudonymous owner of HEX ERC-20 tokens, is a citizen and resident of the United States of America and the State of South Carolina. The Plaintiff is pleading a pseudonymous identity due to the aggressive and threatening actions of others towards those who have criticized the HEX investment scheme and the Defendant in the recent past. The Plaintiff will reveal his identity to the Defendant and Defendant's counsel when court-ordered protections are instituted.

13. Defendant Richard James Schueler is a United States citizen but is not domiciled within any state of the United States or its territories.

14. The South Carolina Court of Common Pleas possesses subject matter jurisdiction over this case pursuant to Article I, Section 11 of the South Carolina Constitution and 15 U.S.C.A. § 77v.

15. The South Carolina Court of Common Pleas possesses personal jurisdiction over Defendant Richard James Schueler in that the Defendant's acts and omissions complained of

within this complaint occurred, in part, in South Carolina and the Defendant has otherwise purposefully availed himself of the privilege of conducting activities within this State.

16. Venue is appropriate in the Florence County Court of Common Pleas pursuant to S.C. Code Ann. § 15-7-30(D), as the Plaintiff was living in this county at the time the cause of action arose.

III. DESCRIPTION OF THE HEX INVESTMENT CONTRACT

17. The HEX "smart contract" is an investment contract in which investors exchange money for a cryptocurrency token that investors hope will appreciate in value.

18. Cryptocurrency tokens are traded on the Internet through online exchanges. These online exchanges generally can be grouped into two types: centralized exchanges and decentralized exchanges.

19. Centralized online exchanges typically are owned by a private company and are forced to adhere to state and federal securities and financial regulations. These regulations include securities and investment company registration requirements designed to inform investors of the risks and benefits of potential investments and "Know Your Customer" laws designed to prohibit money laundering, fraud, and other financial crimes.

20. Examples of centralized online exchanges include Coinbase, Binance.US, Kraken, and Gemini. The HEX token is not sold on any of these exchanges.

21. Decentralized exchanges, in contrast, are not owned by a single entity. Decentralized exchanges typically operate as peer-to-peer software allowing computers to communicate online in a manner similar to BitTorrent or Napster. Because of their decentralized nature, decentralized exchanges are difficult to regulate and oftentimes violate state and federal laws and regulations. An example of a decentralized exchange is Uniswap, which is currently under investigation by the Securities Exchange Commission and whose developer is facing a class action involving alleged

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violations of federal securities laws (see Risley v. Universal Navigation Inc. et al., 1:22-cv-02780 (S.D.N.Y)).

22. Defendant Schueler's HEX token is traded largely, if not entirely, on decentralized online exchanges. Decentralized online exchanges do not accept fiat currency such as U.S. dollars. Instead, investors who seek to purchase HEX must do so with other forms of cryptocurrency.

23. The exchange of cryptocurrency for HEX tokens is accomplished with the use of the HEX investment "smart contract" designed by (or on behalf of) Defendant Schueler.

24. In exchange for the consideration of the initial investment, Defendant Schueler's HEX "smart contract" promises two methods of profit-making potential referenced in paragraph four: "staking" and price speculation.

IV. Investment of Money

25. Participation in the HEX investment contract requires the investment of money. Specifically, investors must exchange cryptocurrency in exchange for HEX tokens. One of the most common forms of cryptocurrency used to purchase HEX tokens is Ether (ETH), now the second-most valuable cryptocurrency by unit. As of the date of this complaint, one unit of Ether may be purchased on federally-regulated exchanges such as Coinbase.com for approximately $1,360.00 (USD).

26. As of the date of this complaint, an investor may exchange 1 unit of Ether cryptocurrency on unregistered online exchanges for approximately 45,333 HEX tokens.

27. On September 23, 2021, Plaintiff John Doe purchased approximately 0.587 units of Ether cryptocurrency from an online exchange licensed with both the federal and South Carolina governments in exchange for approximately $1,806.00 U.S. dollars.

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28. On September 24, 2021, Plaintiff John Doe purchased approximately 3,675 HEX tokens from Defendant Schueler's investment smart contract in exchange for 0.56 units of Ether.

29. On the date of his investment in the HEX investment contract, Plaintiff John Doe's 3,675 HEX tokens traded on unregistered online exchanges for approximately 47 cents (U.S. dollars) per token. As of the date of this complaint, the HEX token price has collapsed to approximately 3 cents (U.S. dollars) per token, resulting in a 93.7% loss to Plaintiff John Doe's investment.

V. Common Enterprise

30. Participation in the HEX investment contract requires investment of money into a common enterprise.

31. The HEX investment contract produces both horizontal commonality between the fellow investors and vertical commonality between its investors and HEX's creator and promotor, Defendant Schueler.

32. The HEX investment contract produces horizontal commonality between the fellow investors in that the value of each HEX token held rises and falls at an equal rate. Management and promotion successes and failures benefit and damage each investor equally.

33. The HEX investment contract produces vertical commonality between HEX investors and the project founder and promoter—Defendant Schueler—in that the HEX investors are essentially dependent upon Defendant Schueler's expertise in both designing and promoting the HEX investment contract.

VI. Expectation of Profit

34. Investors in the HEX investment contract have a reasonable expectation of profit.

35. Defendant Schueler advertises the HEX investment contract as "the first high yield blockchain certificate of deposit."

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36. Lures of profit Defendant Schueler offers to HEX investors also include the following:

a. "The price of HEX appreciated faster than anything else."

b. "Cryptocurrencies are the highest appreciating asset class in the history of mankind."

c. "HEX stakes average around 40% APY."

d. "HEX is a Nobel Prize-worthy economics breakthrough."

VII. Efforts of Others

37. Investors in the HEX investment scheme have a reasonable expectation of profit generated from the works of others. More specifically, Defendant Schueler consistently holds himself out to be an expert in the field of cryptocurrency investment and has done so for years. Schueler's public Twitter profile, which he utilizes several times per day, over 50,000 times total since 2017, and which boasts over 250,000 follows contains the following motto: "I make people rich."

38. Defendant Schueler created an expectation that investors would profit from the efforts of others through the creation of his "crypto expert" persona, the creation of the HEX investment contract, the promotion of the HEX investment contract, the provision of the HEX investment

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contract to the public, and through the continuing promotion of the HEX investment contract after its public release. Furthermore, a substantial number of these activities occurred while Defendant Schueler was present physically within the State of South Carolina.

a. Schueler's Creation of the "Richard Heart" Persona and the HEX Investment Contract

39. In January of 2017, Defendant Schueler assumed the pseudonym of "Richard Heart" and began publicly promoting his wisdom and expertise in cryptocurrency investing on both YouTube (https://www.youtube.com/c/RichardHeart) and Twitter (https://twitter.com/RichardHeartWin).

40. Originally promoting investment in Bitcoin, Schueler's public proclamations became increasingly frustrated over the next eighteen months as alternative cryptocurrency tokens (sometimes known as "Altcoins") began to appear and divest Bitcoin investors of market share. Most of these "Altcoins" operated as "smart contracts" on the Ethereum blockchain. On September 17, 2017, Schueler railed against the use of "smart contracts" on his YouTube livestream.

> Smart contracts are useless. They're just terrible. Because, let's say you need a smart contract to protect you. "Hey, I got screwed." How can the smart contract tell if you got screwed or not? It's gonna ask a human. … There is no reason to ever use a blockchain or ever use a program—which is all a smart contract is, it's just a program, it's just a stupid word for a program that has external inputs.

See https://www.youtube.com/watch?v=VcxDsDgm5z4 at 25:10 (last visited September 20, 2022).

41. On May 19, 2018, however, Schueler's tune changed. On that date, from his Twitter handle, @RichardHeartWin, Schueler announced the creation of a new crypto token, BitcoinHEX.com. Schueler further encouraged his followers to "use VPN," (a virtual private network), "if USA sign-up not allowed."

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42. The next day, May 20, 2018, Schueler made the first copy of the computer code for his new investment contract available at https://github.com/bitcoinhex/contract.

43. On May 21, 2018, Schueler further explained on Twitter his about-face on the use of smart contracts:

> Now that I'm putting out a token with BitcoinHEX.com I take back everything I said about everyone else's favorite, world changing, amazing tokens haha. I'm not going to just pretend all the network failures and hacks are growing pains. Lol.

44. On July 25, 2018, Schueler's promotion of his new crypto token scheme extended to YouTube.

> Regulation doesn't work. Trying to tell people to stop getting scammed doesn't work. So what's the only thing that could actually work? Having more good projects out-compete the bad projects. It's the only chance you have.

See https://www.youtube.com/watch?v=WDDaI8W_RQg (last visited September 20, 2022).

45. On or about Saturday, November 17, 2018, Defendant Schueler publicly began to promote investment in HEX tokens at public events (still branded as "BitcoinHEX").

46. On that date, Defendant Schueler appeared as a guest speaker at the CryptoFinance 2018 conference in Oslo, Norway.

47. At the CryptoFinance 2018 conference, Defendant Schueler opened his presentation with the following observation:

> I think a lot of crypto is about talking about how good the technology is and how it's gonna change the world but I don't think most people really give a shit. I think they wanna make money. I think they buy a bag and they hope their bag goes up to a really high price.

See https://www.youtube.com/watch?v=9d0iz0qxQ3k at 1:20 (last visited September 19, 2022).

48. Defendant Schueler explained the HEX investment model as follows:

> If we have programmable money, what should the first thing be we program? Interest. So, instead of giving your coins to a centralized

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> third party to make profit, you can just give your coins to the smart contract that minted them, and then the same contract that allowed those coins to exist in the first place is the same contract that will pay you your interest for locking your coins. So I invented it. And I've had it coded.

See https://www.youtube.com/watch?v=9d0iz0qxQ3k at 7:22 (last visited September 19, 2022).

49. Within three days, Defendant Schueler uploaded the video of his presentation to his publicly-available YouTube channel which, at the time, boasted 35,000 subscribers. Since that time, Schueler's YouTube channel subscriptions have increased to approximately 142,000 and the video of Schueler's November 17, 2018 presentation has received over 37,000 views.

50. Almost immediately, Defendant Schueler faced questions as to whether the HEX investment scheme constituted a security. On November 27, 2018, during a YouTube livestream, Schueler responded to such questions as follows:

> If my understanding of the language is correct, then if you don't accept money and it doesn't go to a common pool and there is no future work because it's a smart contract—it can't be changed, there's no editing it, it's what it is, it's unchangeable—and they're not receiving money back from you, pretty hard to make the case it's a security. Like, no money, no common pool, no work. If there's any profit, that's on you, bro. It's not a security. You have to, like, it fails every leg of the test that I can think of.

See https://www.youtube.com/watch?v=9eyeyZUYLU4 at 1:10:45 (last visited September 19, 2022). Schueler saved this livestream video to his YouTube Channel. To date, the video has received over 48,000 views.

51. On January 14, 2019, Defendant Schueler livestreamed on his YouTube channel and announced the following:

> The whole concept of this coin is to get everyone to lock their coins up to drive the price to the fucking moon. That's the idea behind it. That's how real companies work.

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See https://www.youtube.com/watch?v=22utcv74FBU at 1:32:50 (last visited September 19, 2022). As of today, this video has received nearly 34,000 views.

52. Again answering the question as to whether HEX was a security, Defendant Schueler explained why he did not register the HEX token with the SEC.

> I'm gonna tell you why this isn't a security. Ok? A security, in the United States, is as follows, based on the Howey test: did you pay money, into a common pool, with the expectation of profit from the work of others?
>
> …
>
> If you did those four things, you are a security and you need to register. And you need to do a lot of shit that crypto people don't particularly like. Like be an accredited investor, or file a public offering with an S-1, or do a Reg A+ that has a $50 million max, or I could give you a long list of every funding mechanism out there, right?
>
> Cause I was gonna do that shit. And it was just too fucking hard. And I'm like "man, that's fucking hard." Let's see if we can do something amazing that gets to market without so many years passing.

See https://www.youtube.com/watch?v=22utcv74FBU&t=9866s at 2:25:03 (last visited September 19, 2022).

53. Within the same video, Defendant Schueler detailed his efforts in promoting HEX: "I'm the founder of the project. … I'm out here marketing it. I'm out here making claims." Nevertheless, he also insisted "I need you to understand this is not a security." See https://www.youtube.com/watch?v=22utcv74FBU&t=9866s at 2:26:50 (last visited September 19, 2022). To date, that video has received nearly 34,000 views.

54. On January 20, 2019, Defendant Schueler underscored his role in promoting the HEX product in the face of a skeptical interviewer.

> INTERVIEWER: What I don't understand about BitcoinHEX is, you have a pretty elaborate plan on how you plan to distribute these

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> coins by staking and all that, but what I don't understand is how this token or coin does get any value. Because, at some point you have all these people who have all these coins because they staked and they probably want to flood the market with them or they want to buy some real Bitcoin or whatever, Ethereum or whatever with that, but why would somebody give them Ethereum or Bitcoin for these tokens. So why would they have any value at all?
>
> SCHUELER: See, I can tell that you are not a speculator. Because if you were a speculator, you would already understand that these coins are worth billions and billions and billions of dollars for no particularly good reason. Coins with no adoption, bad teams, hacked, garbage—worth billions of dollars.
>
> So you are asking me a silly question. I can tell you technically why my coin is awesome. But why people are so interested in buying something that is experimental and new and doesn't work sometimes—we went from zero to twenty thousand on that idea. So, I can't explain it to you.

See https://www.youtube.com/watch?v=fZi9Y1pJ7GQ at 12:46 (last visited September 19, 2022).

55. On March 6, 2019, Defendant Schueler announced he was rebranding BitcoinHEX to "HEX." See https://www.youtube.com/watch?v=D6DuUFNy6vA at 19:08 (last visited September 19, 2022).

56. Within the same livestream, Defendant Schueler continued to insist that the HEX token was not a security.

> I'm careful about making promises as to what, you know, I'll do. Because I'm so—since I founded the project I don't want to have securities problems. And I know that one of the legs of the Howey test is like expectation of profits from the work of others.
>
> I think I'm ok if I tell you I am likely to do work before you could've possibly done anything to like pay me theoretically or whatever, right? So as a caveat or a disclaimer, I'm not going to actually do any work for you. Don't expect it. I just really want this thing to work for my own reasons. Nothing to do at all with you buying it or whatever. I don't know.

> It sucks that I have to like pretend not to do work for something that I want to work on to try to avoid some security crap. You're welcome. Whatever. That's the game. I'll play it.

https://www.youtube.com/watch?v=D6DuUFNy6vA at 19:08 (last visited September 19, 2022).

57. Within the same livestream, Defendant Schueler described the usefulness of the "origin address" (the Internet address where Schueler receives the initial investment) to the HEX token.

> If that thing (the origin address) has enough money to be cash positive advertising then it might advertise. Or if it wants to list on an exchange and it costs like a million dollars to list, it might do that. I can't promise anything because no one knows who it is.
>
> (laughing, pointing at camera)

https://www.youtube.com/watch?v=D6DuUFNy6vA at 58:09 (last visited September 19, 2022).

58. Schueler further emphasized the necessity of his promotional actions.

> I'm just saying, if you want to make a successful crypto, this concept of make sure everyone is broke as fuck so no one can buy any ads and no one can get listed anywhere and we'll just beg everyone to do everything for free—that shit don't work. You will get your ass kicked by cryptos that have got their shit together and can be effective and have media teams. Period.

https://www.youtube.com/watch?v=D6DuUFNy6vA at 1:00:41 (last visited September 19, 2022).

59. Defendant Schueler's doublespeak continued on March 15, 2019 on yet another YouTube livestream. Answering the question "what does HEX do," Schueler answered (in part):

> There's an origin address that, hey maybe if it's smart might buy a lot of ads but I can't tell you about it because you don't know who it is and it can't make you any guarantees because of the Howey test. So you have to expect nothing from it. Expect no work from it, right? Because this ain't a security.
>
> …
>
> I think optimal play for it is to move its coins to other addresses to appear to have divested and then for those addresses to stake to show belief in the project. Seems like optimal game play, right? But if it wanted to like pump its bags with ads it would need to sell some. So, we'll see how it works out.

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See https://www.youtube.com/watch?v=E4n_hIESPHw at 2:15:34 (last visited September 19, 2022).

b. Schueler's Development and Promotion of the HEX Launch Phase

60. Defendant Schueler first published his HEX website (www.hex.win) on or about April 18, 2019. That website contained many representations about the HEX token, including advertising the backgrounds and talents of the team in which investors would be investing:

a. "Richard Heart is a Bitcoin, Blockchain, cryptocurrency and internet marketing expert who has founded and managed several successful Internet startups, the largest having 150 employees with a turnover of $60M and operating in mortgage and consumer finance markets."

b. "(Smart contract developer) is a full stack developer having written mostly javascript and smart contracts for the Ethereum blockchain. (Developer) was the lead blockchain developer for Brickblock, TV-two and a back end developer for Adidas along with other major companies."

61. On July 16, 2019, Defendant Schueler was asked in a YouTube question & answer session "are you putting up your own fee to get HEX listed on exchanges?" Schueler answered affirmatively that he would be promoting the HEX token to the various online exchanges:

> I don't know. Look, I'm not sure of the benefit for me answering this question because I don't want it to sound like I'm doing work. I can tell you that before the contract launches—once we go to audit—I'm going to personally call everyone and see where I can get listed. I would like the coin to be listed everywhere.

See https://www.youtube.com/watch?v=vchHIRxfiDg at 2:23:00 (last visited September 19, 2022).

62. On July 22, 2019, Defendant Schueler was asked yet another question on a YouTube livestream regarding the potential for HEX to be listed on exchanges. He answered as follows:

> Well, IDEX, who has the most volume of any 'dex on Ethereum said they want to list it. … When we are in audit, I'll be making the phone

> calls to all the, you know, normal exchanges—people we have heard of, to see if they want to list.
>
> You know, I'm careful about what I tell you is gonna happen because, in order to not be a security, you have to not give money to a common pool with the expectation of profit from the work from others. Which means, I gotta make sure you, you know, expect no work from me. Right? So if great things happen, after lunch, great. But I'm not promising you and don't expect it. Because I don't want to be a security so I can't give you those expectations. Right?

See https://www.youtube.com/watch?v=k2YZLkPf9Lk at 1:09:53 (last visited September 19, 2022).

63. Six days later, on November 16, 2019, Schueler stated once again that HEX was not a security while also suggesting that he may pursue advertising on behalf of the investment scheme.

> I have to tell you, we are not a security. I am not promising you work, ok? I am not promising you I'm buying ads. I'm telling you that as a referrer, there is margin as a referrer that I could use to buy advertisements if I chose to.

See https://www.youtube.com/watch?v=8xdJ1GWHnow at 7:08 (last visited September 19, 2022).

64. On November 17, 2019, Defendant Schueler announced via his YouTube channel that the HEX token would become active on December 2, 2019. See https://www.youtube.com/watch?v=Uv2mFAOMzkM (last visited September 19, 2022).

65. On November 18, 2019, Defendant Schueler's Hex.win website posed the following question and answer:

> HOW CAN HEX MAKE YOU RICH?
>
> Example: The HEX/USD price could go up 1,000x. Your HEX stake could return 10x your HEX. 1,000x times 10x = 10,000x profit.

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66. Also on November 18, 2019, the Hex.win website advertised a HEX "team" of eight individuals, including Defendant Schueler, a smart contract developer, a contributor, two analysts, a marketing executive, an "evangelist", and a "director of operations, Asia."

67. Four days later, November 21, 2019, Defendant Schueler again denied HEX's status as a security while hinting at his intentions to continue promoting the project:

> Can you imagine how much more exciting it would be if I could just tell you, hey, all that Ethereum, you know, what it's gonna be used for? I'm gonna do this, I'm gonna do that, I'm gonna do this, I'm gonna do that. It would be very easy to do that. But, I don't wanna be a security. And so, I have to tell you that when you send Ethereum to the contract you can expect no, nothing. No benefit of the work of others. Because this is the Howey test.
>
> …
>
> I have this unfortunate problem that because the way the laws are written even if I was going to do something nice that you might like I can't tell you about it. Because law. So yeah. It sucks for me. But, hey you know what? This thing's so awesome, I'm pretty sure amazing things will happen whether I'm alive or dead or—it's just that well designed.

See https://www.youtube.com/watch?v=bZvJargXmC8 at 1:17:38 (last visited September 19, 2022).

68. The HEX investment contract finally launched and became available to public investment on December 3, 2019.

c. Schueler's Design of the HEX Investment Contract Computer Code

69. The design of the computer code underlying the HEX investment "smart contract" was conducted solely by Defendant Schueler or those working under the employment of Defendant Schueler.

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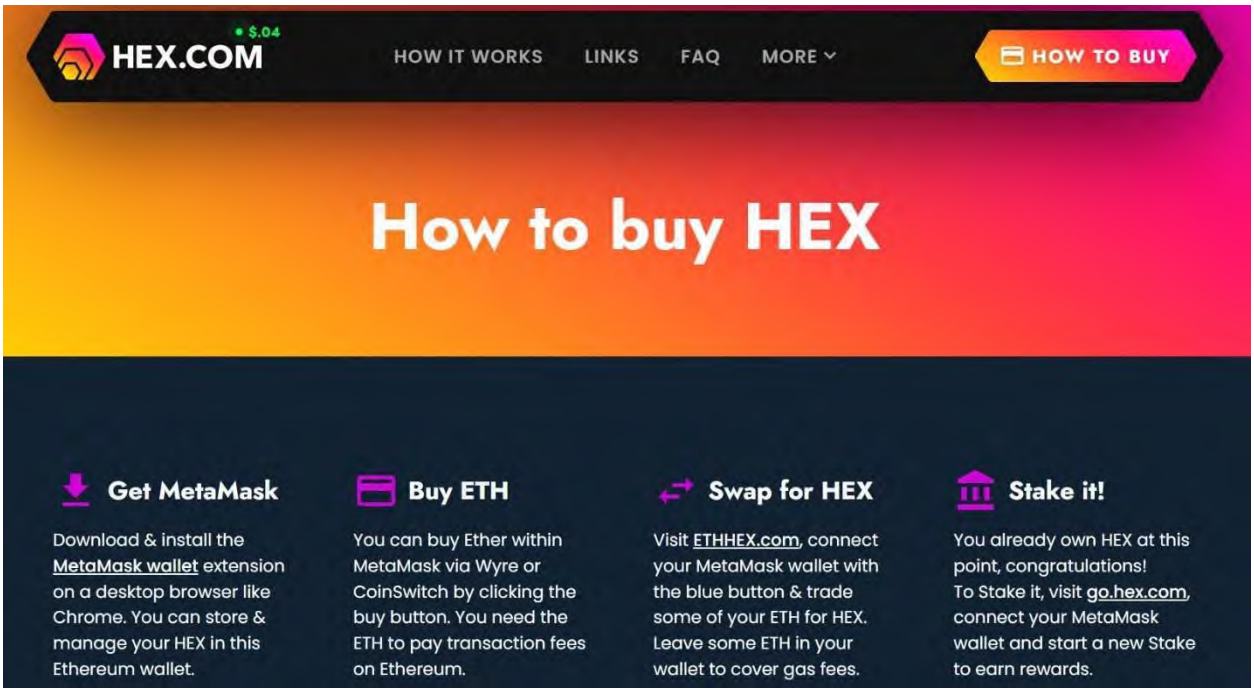
70. Once Defendant Schueler made available to the public the HEX investment "smart contract" on December 3, 2019, the computer code underlying the contract became immutable. It cannot be changed.

71. Whether the HEX investment "smart contract" truly works as Defendant Schueler advertised (and continues to advertise) depends solely on the skill and expertise of Defendant Schueler and/or the individuals he employed in assisting him in designing the computer code underlying the HEX investment "smart contract."

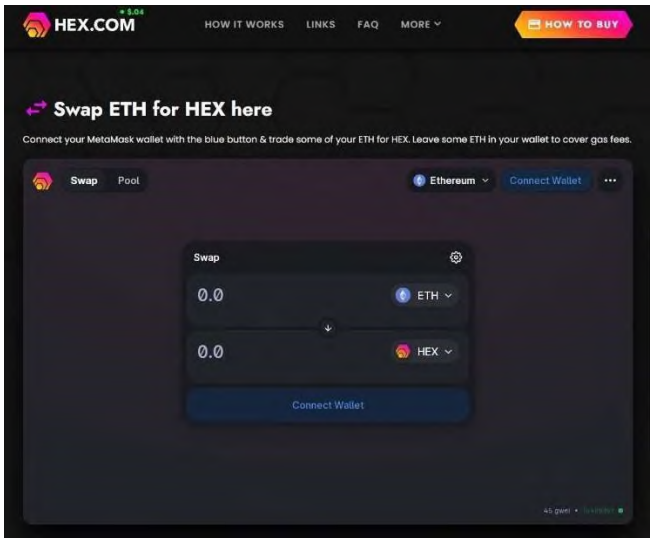
d. Schueler's Development of the Website/Investor Interface

72. Throughout the class period, Schueler has maintained the HEX.win and HEX.com websites that permit investors to purchase HEX tokens including from within South Carolina.

73. The HEX.com website prominently features a "How to buy HEX" page that details the steps necessary for investors, including those in South Carolina, to purchase HEX tokens.



74. The HEX.com website provides an electronic tool with which investors can exchange ether for HEX tokens directly from the website.



75. Defendant Schueler provided these electronic contacts and tools to the class members—including those living in South Carolina—throughout the entirety of the class period. In so doing, Schueler directed electronic activity into South Carolina with the manifested intent of engaging business interactions within South Carolina.

e. Schueler's Continuing Promotion of the HEX Investment Contract

76. Though the HEX smart contract launched on December 3, 2019, Defendant Schueler has continued to promote the HEX investment scheme in order to lift the value of the HEX token.

77. However, as he hinted he would, Defendant Schueler expended substantial funds advertising the HEX investment scheme. For example, Schueler funded the adorning of taxis with "wraps" advertising HEX. An example of which is below.

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78. Defendant Schueler funded the advertisement of HEX in magazines. An example of which is below.

79. And Defendant Schueler funded the advertisement of HEX in newspapers. An example of which is below.

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80. Defendant Schueler also posted these advertisements on the Hex.win website on or before the same date to inform HEX investors and potential investors of his promotional efforts.

81. Defendant Schueler also continued to utilize YouTube to promote the HEX investment scheme. Between the launch of the HEX smart contract on December 3, 2019, and the present, Defendant Schueler has published 138 YouTube videos on his YouTube channel, the vast majority of which promote the HEX investment scheme. Defendant Schueler's YouTube channel boasts 142,000 subscribers.

82. Defendant Schueler has also utilized Twitter to promote the HEX investment scheme. Defendant Schueler's Twitter account—@RichardHeartWin—has posed over 51,700 tweets since it was first opened in January of 2017. The account boasts over 250,000 followers.

83. In February of 2022, Defendant Schueler provided for the sponsorship of a NASCAR team seeking to qualify in the 2022 Daytona 500.

VIII. DEFENDANT SCHUELER'S DIRECT CONTACT WITH SOUTH CAROLINA

84. Though a United States citizen, Defendant Schueler is not domiciled within any State of the United States or its territories.

85. Nevertheless, Defendant Schueler has maintained direct contact with South Carolina customers throughout the class period.

86. Furthermore, Defendant Schueler personally has promoted and sold the HEX investment scheme while he was physically present within the State of South Carolina during the class period.

87. From approximately August 5, 2022 until August 11, 2022, Defendant Schueler temporarily visited his mother in Bluffton, South Carolina. While Schueler was physically present in South Carolina, Schueler's HEX investment contract generated over 30,000 transactions involving nearly $25 million. In so doing, Defendant Schueler repeatedly and purposefully availed himself of the privilege of conducting activities within this State.

88. From August 5, 2022 until August 11, 2022, while physically present in the State of South Carolina, Defendant Schueler tweeted at least 11 times promotional messages for the HEX investment scheme. These communications generated 15,474 "likes" and 3,684 "retweets."

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89. On August 7, 2022, while physically present in the State of South Carolina, Defendant Schueler provided to HEX investors an electronic tool with which they could purchase HEX tokens via credit card.

90. On August 9, 2022—from his mother's living room in Bluffton, South Carolina—Schueler appeared on the aforementioned YouTube channel of Jordan Belfort mentioned in Paragraph 6, above. There, Schueler continued to promote HEX as a promising investment opportunity.

CLASS ALLEGATIONS

91. Plaintiff John Doe seeks to certify a class action pursuant to Rule 23(a), SCRCP. To that extent, the Plaintiff proposes the following class definition:

> All individuals or entities who purchased HEX tokens within the applicable statutes of limitation.

92. Numerosity: members of the proposed class are so numerous that joinder of all members is impracticable. Nearly four million transactions have occurred between investors and the HEX investment contract. Over 310,000 unique electronic wallets now hold HEX digital tokens. Thus, the likely number of class members is in the tens of thousands if not hundreds of thousands.

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93. Commonality: common questions of law and fact exist within the proposed class. Such common questions include, but are not limited to, the following:

a. Is the HEX investment smart contract a security as defined within the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005?

94. Typicality: the claims of Plaintiff John Doe are typical of the claims of the proposed class. The Plaintiff John Doe has owned HEX digital tokens throughout the entirety of the class period. Any defenses to Plaintiff John Doe's claim are typical of those applicable to the claims of the class.

95. Adequacy of Representation: Plaintiff John Doe will fairly and adequately protect the interests of the proposed class. The plaintiff and proposed class representative is an educated individual who has retained counsel that is experienced in the litigation of class actions, complex litigation, and securities litigation.

96. The amount in controversy exceeds one hundred dollars for each member of the class.

COUNT ONE
(DECLARATORY JUDGMENT)

97. The allegations of paragraphs one through ninety-six are incorporated within Count One.

98. S.C. Code § 15-53-30 provides as follows:

> Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

S.C. Code Ann. § 15-53-30.

99. The Plaintiff's rights, status or other legal relations—and those of all class members—are affected by the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005.

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100. The Plaintiff seeks a determination that the HEX investment smart contract is a security within the meaning of the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005.

COUNT TWO
(ILLEGAL SALE OF AN UNREGISTERED SECURITY)

101. The allegations of paragraphs one through ninety-six are incorporated within Count Two.

102. Section 5 of the Securities Act of 1933 provides as follows:

> Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—
>
> (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or
> (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

15 U.S.C.A. § 77e(a).

103. The laws of the United States recognize that a "security" is:

> a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.

S.E.C. v. W.J. Howey Co., 328 U.S. 293, 298–99, 66 S. Ct. 1100, 1103, 90 L. Ed. 1244 (1946).[2]

[2] Courts have since retreated from the use of the word "solely."

> [I]n light of the remedial nature of the legislation, the statutory policy of affording broad protection to the public, and the Supreme Court's admonitions that the definition of securities should be a flexible one, the word "solely" should not be read as a strict or literal limitation on the definition of an investment contract, but rather must be construed realistically, so as to include within the definition those schemes which involve in substance, if not form, securities.

Sec. & Exch. Comm'n v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476, 482 (9th Cir. 1973), cert. denied, 414 U.S. 821, 94 S.Ct. 117, 38 L.Ed.2d 53 (1973).

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104. The HEX investment contract requires the following:

a. An initial investment of cryptocurrency by the investor,

b. Into the common enterprise of the HEX "smart contract" operating on the Ethereum blockchain,

c. With the expectation of profit,

d. Generated from the design of the HEX "smart contract" and/or the promotional managerial efforts of Defendant Schueler—both of which are the efforts of third parties.

105. Thus, the HEX investment smart contract is a security.

106. Defendant Schueler has failed to file a registration statement for the HEX security as required by 15 U.S.C.A. § 77e(a).

107. Defendant Schueler utilized the Internet to market and sell the HEX security to Plaintiff John Doe and all members of the proposed class. In so doing, Defendant Schueler has made use of interstate commerce and is in violation of 15 U.S.C.A. § 77e(a) and 15 U.S.C.A. § 77e(c).

108. Because Defendant Schueler sold the HEX security in violation of both Section 77e and 77c, he is liable to Plaintiff and all proposed class members for the full consideration paid for the HEX security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security. 15 U.S.C.A. § 77l(a). Plaintiff also seeks the equitable relief of disgorgement of Defendant Schueler's ill-gotten gains.

COUNT THREE

(VIOLATION OF THE SOUTH CAROLINA UNIFORM SECURITIES ACT OF 2005)

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109. The allegations set forth in paragraphs one through ninety-six are incorporated into Count Three.

110. The South Carolina Uniform Securities Act of 2005 provides that "it is unlawful for a person to offer or sell a security in this State unless: 1) the security is a federal covered security; 2) the security, transaction, or offer is exempted from registration under Sections 35-1-201 through 35-1-203; or 3) the security is registered under this chapter." S.C. Code Ann. § 35-1-301.

111. The HEX investment smart contract is not a "federal covered security" as defined by South Carolina law. The HEX investment contract is not exempted from registration under Sections 35-1-201 through 35-1-203. And, the HEX investment smart contract has not been registered with the government of the State of South Carolina under Chapter 1 of Title 23 of the South Carolina Code of Laws.

112. Despite these facts, Defendant Schueler sold the HEX security to Plaintiff John Doe and all members of the proposed class. In so doing, Defendant Schueler's sale of the HEX security violated S.C. Code Ann. § 35-1-301.

113. South Carolina law provides that "a person is liable to the purchaser if the person sells a security in violation of Sections 35-1-301." S.C. Code Ann. § 35-1-509(b).

114. South Carolina law further provides that "[t]he purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court." S.C. Code Ann. § 35-1-509(b)(1).

115. Thus Defendant Schueler is liable to the Plaintiff and the Plaintiff class in an amount equal to the consideration paid for the HEX investment contract, interest from the date of the purchase,

costs, and reasonable attorneys' fees. Plaintiff also seeks the equitable relief of disgorgement of Defendant Schueler's ill-gotten gains.

PRAYER FOR RELIEF

The aforementioned being pleaded, the Plaintiff, on behalf of him or herself and the proposed class, prays for the following relief:

1. A trial by jury;
2. An order establishing a class action;
3. Judgment in full;
4. Actual damages;
5. Disgorgement of the Defendant's ill-gotten gains;
6. Costs;
7. Reasonable attorneys' fees; and
8. All other relief that justice may require.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS CASE NO. 2022-CP-21-01980
NOAH VEON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, **PLAINTIFF,** **vs.** **RICHARD JAMES SCHUELER A/K/A RICHARD HEART,** **DEFENDANT.**	**NOTICE OF AMENDED CAPTION**

Plaintiff Noah Veon, pursuant to court order, hereby gives notice of the amended caption in this case.

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STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	TWELTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of him or herself And all others similarly situated,)	C/A: 2022-CP-21-1980
Plaintiff/Class Representative,)	**MEMORANDUM IN SUPPORT OF *EX PARTE* MOTION TO APPROVE SERVICE BY OTHER MEANS**
vs.)	
Richard James Schueler a/k/a Richard Heart,)	
Defendant.)	

Plaintiff John Doe, on behalf of him or herself and all others similarly situated, seeks an order approving service of Defendant Richard James Schueler, a/k/a "Richard Heart", "by other means not prohibited by international agreement" pursuant to Rule 4.1(a)(3), SCRCP. The Plaintiff seeks to serve Defendant Schueler via five means: via Twitter "mention"; via Twitter "direct message"; via email; via Telegram channel post; and via Telegram direct message. For the reasons stated herein, the motion should be granted.

I. FACTS RELEVANT TO THE MOTION

Defendant Richard James Schueler is a self-styled cryptocurrency expert who created and promotes a multi-billion dollar investment scheme known as "HEX." The Plaintiff contends HEX is an illegal offering of an unregistered security the value of which has collapsed by approximately 95% in the past year. Schueler is a United States citizen but does not reside in the United States. Defendant Schueler professes to reside in Europe but will not identify the country in which he resides. The Plaintiff bases these assertion upon two categories of fact: 1) Defendant Scheuler's

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public statements regarding his residence; and 2) a private investigator's report as to Defendant Schueler's whereabouts.

a. Defendant Schueler's public statements regarding his residence

Defendant Schueler utilizes two primary means of communication through social media in the promotion of the HEX investment scheme: YouTube and Twitter. In a December 27, 2021 interview, Schueler stated the following during a YouTube interview.

> **INTERVIEWER:** Where do you live, if you don't mind me asking?
>
> **SCHUELER:** Secret, I don't tell anybody. But I used to live in Florida. I lived in Florida for a long time. If you listen to my livestreams, you'll hear European sirens sometimes.

See www.youtube.com/watch?v=_tspPUVKyXY at 35:36 (last visited September 26, 2022).

On May 25, 2022, in a YouTube debate with a fellow "crypto king", Schueler admitted that he had not been in the United States for at least 16 years.

> **ERIC WALL:** When was the last time you went to the US?
>
> **SCHUELER:** I went to the Super Bowl in, like, 2006.

See https://www.youtube.com/watch?v=dIScpOyTs98 at 18:05 (last visited September 30, 2022). Within the same YouTube debate, Schueler was accused of expatriating himself to evade the jurisdiction of American legal authorities.

> **ERIC WALL:** There's a very easy explanation to why Richard doesn't go to the US. It's because he conducts illegal ICO's and illegal securities offerings where he accepts money from retail from the public which is under US law an illegal securities offering. … And you know that if you go to the US you are gonna get your ass hounded by the SEC.

See https://www.youtube.com/watch?v=dIScpOyTs98 at 19:18 (last visited September 30, 2022). Schueler denied this as his reason for abandoning the United States and offered the following explanation.

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> **SCHUELER:** I'm not afraid. I don't like going there.
>
> **ERIC WALL:** You don't like meeting your own community?
>
> **SCHUELER:** Bro, I like my HEX community. … If I go to America, I have to wear a (bullet-proof) vest. If I go to America, it's just always crappy over there, bro.
>
> **ERIC WALL:** I think it sounds like a bullshit excuse.

See https://www.youtube.com/watch?v=dIScpOyTs98 at 20:50 (last visited September 30, 2022).

Throughout the summer of 2022, Schueler continued to maintain the secrecy of his place of residence. On July 22, 2022, on another YouTube interview, Schueler again explained why he would not reveal his location.

> **INTERVIEWER:** This is Richard Heart. He's founder in the crypto world of a company called HEX and a company called Pulsechain. He's been in the crypto universe for over 11 years which is a lifetime when we talk about crypto. We don't know where he is because he's in an undisclosed location on purpose. But Richard, welcome in.
>
> **SCHUELER:** Hey, how's it going? Yeah, all my friends that I party with—they know where I live. But random people on the Internet? You know, what are they sending ya? They're not usually sending you birthday gifts.

See www.youtube.com/watch?v=dN6Lm3AvcwM at 0:10 (last visited on September 30, 2022).

On August 5, 2022, Schueler stated in another YouTube video the following:

> **SCHUELER:** Only let the people who that have enough value to have earned your physical location know where you are. … I still am more anonymous than most. People don't know where I live. It's like … unless you wanna grow boobs and dance near me, probably not gonna know where I live.

See https://www.youtube.com/watch?v=87MvhP7wQsw at 2:04:35 (last visited September 28, 2022). And on August 19, 2022, on yet another YouTube video, Schueler stated the following:

> **INTERVIEWER:** So we're here in Fort Lauderdale. Are we allowed to disclose this location? 'Cause I know that you kinda keep things…

> **SCHUELER:** I, you know what, when I'm on vacation I'm flexing hard. I'm going out everywhere, I'm posting where I'm at if everyone wants to meet up and say hi. But in normal daily life, no one knows where I live.

See https://www.youtube.com/watch?v=lW8h09B5YAw at 2:25 (last visited September 26, 2022).

An analysis of Schueler's interaction on Twitter over the past four months reveals a similar pattern of activity within Europe. Since late May 2022, Schueler has identified Europe as his location six times.

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Ben Armstrong @Bitboy_Crypto · Jul 14

When are we going to hang out @RichardHeartWin? I get jealous you show everyone your watch collection and not me.

193 205 1,387

Richard Heart
@RichardHeartWin

Replying to @Bitboy_Crypto

Come to Europe!

10:36 AM · Jul 15, 2022 · Twitter for Android

AH @andrewhillman · Aug 17

Replying to @FundingGym @RichardHeartWin and 2 others

Why did his dad pick him up at the airport in a rusted out pickup truck? Was kinda shocked to hear this since he is on a car buying spree.

8 8

Richard Heart
@RichardHeartWin

Replying to @andrewhillman @FundingGym and 2 others

Cuz my cars are in Europe and Florida isn't?

10:35 AM · Aug 17, 2022 · Twitter for Android

Richard Heart
@RichardHeartWin

Replying to @BENBALLER @DragTimes and 2 others

Haha I got u man. Btw I'm in Europe. Car market different here.

3:00 PM · Aug 31, 2022 · Twitter for Android

4 Retweets **51** Likes

Prescelto @Prescelto4 · Sep 3

@RichardHeartWin i just touched down in miami, wya?

1 1

Richard Heart
@RichardHeartWin

Replying to @Prescelto4

Europe

12:05 PM · Sep 3, 2022 · Twitter Web App

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Plaintiff's counsel's review of Schueler's social media accounts revealed that Schueler did visit the United States from approximately August 5, 2022 until August 11, 2022 to visit his ailing mother who lives in Bluffton, South Carolina. As detailed in Plaintiff's complaint, Schueler continued to promote and sell HEX while in South Carolina. Additional posts on Schueler's social media accounts indicate that he may have visited Atlanta, GA and Miami, FL before ultimately returning to Europe before the end of August 2022.

b. Private investigator's investigation into Schueler's residence

In view of Defendant Schueler's repeated assertions that he resides in Europe—and his temporary operation within the United States in August of 2022—Plaintiff's counsel retained the services of Delta Group, Inc., a private investigation company, to determine whether Schueler resides within the United States. Delta Group, Inc. conducted a thorough search for Defendant Schueler within the United States that consisted of:

- A public records searches of:
  - U.S. government agency sources
  - Regulatory agencies
  - Professional and occupational licensing databases
  - Telephone listings
  - Florida driver's license database
  - Arrest and court records
- Open-source Internet searches including:
  - Social media companies
  - Search engine websites
- Utility service records
- Real property records
- Personal property records
- Email address record searches
- Credit header records
- Global sanctions records
- Social Security Administration death records
- Voter registration records

See **Exhibit A**—Affidavit of Diligent Search and Inquiry

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Despite the breadth of resources utilized in the search, very little information was revealed about Defendant Schueler. The search did, however, produce the following information:

- A previous address located in Fort Lauderdale, FL that presently appears to be owned by the Defendant's father;
- Several business entities for which the Defendant served as a registered agent or officer between 2000 and 2007, all registered in the State of Florida;
- A Florida driver's license issued 1994, renewed in 2005, but expired as of October 2009;
- A potential (but unconfirmed) paternity action involving the Defendant in 2001;
- A potential (but unconfirmed) domestic violence report involving the Defendant in 2001;
- Social media postings of Schueler's presence in South Florida in August of 2022.

In sum, the evidence of Defendant Schueler's residence in the United States ends in approximately 2005. This evidence is consistent with Schueler's claim that his last visit to the United States prior to his brief sojourn in August of 2022 was in 2006. As such, Plaintiff's counsel asserts that the weight of the factual evidence supports Schueler's public assertion that he resides in Europe, though his country of residence cannot be determined. This motion follows.

II. STANDARD OF REVIEW

Rule 4.1, SCRCP was adopted by order of the South Carolina Supreme Court on May 2, 2022. This new rule of procedure was accompanied by the following official note.

> Rule 4.1 adopts provisions of the federal rule with respect to service of process in foreign countries. This new rule is intended to provide guidance as to the proper methods of service and proof of service in foreign countries, and is not intended to amend or supplant the provisions of existing Rule 4 with respect to the issuance or form of the summons.

Rule 4.1, SCRCP, Official Note. With very few stylistic exceptions, Rule 4.1, SCRCP is identical to Fed. R. Civ. P. 4(f). The Advisory Committee Notes to Fed. R. Civ. P. 4(f) set forth the following:

> Inasmuch as our Constitution requires that reasonable notice be given, an earnest effort should be made to devise a method of communication that is consistent with due process and minimizes offense to foreign law.

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Fed. R. Civ. P. 4, Advisory Committee Note.

III. ANALYSIS

The facts pertaining to Defendant Richard Schueler's residence support service of the summons and complaint filed in this case pursuant to Rule 4.1, SCRCP. Rule 4.1 provides for means of "alternative service" in the following circumstance.

> (a) Serving an Individual in a Foreign Country. Unless otherwise provided by law, an individual--other than a minor or an incompetent person--may be served at a place not within any judicial district of the United States:
>
> (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
>
> (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
> (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
> (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
> (C) unless prohibited by the foreign country's law, by:
> (i) delivering a copy of the summons and of the complaint to the individual personally; or
> (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
>
> (3) by other means not prohibited by international agreement, as the court orders.

Rule 4.1, SCRCP. As a threshold consideration, because Defendant Schueler has concealed his country of residence, the proper method of service under Rule 4.1(a) is found in subsection 3. Next, the plaintiff's suggested methods of service are "consistent with due process," and thus should be court-ordered pursuant to Rule 4.1(a)(3), SCRCP.

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a. Because Defendant Schueler does not reside in the United States of America and his country of residence is unknown, Rule 4.1(a)(3) provides the appropriate means of service of process

As an initial matter, the Plaintiff must establish that Defendant Schueler does not reside within the United States of America in order for the service provisions of Rule 4.1, SCRCP to apply. South Carolina law pertaining to previous Rule 4(f), SCRCP is silent on how to establish the foreign residence of a United States citizen. Federal courts, however, have observed "[a] court may decide such jurisdictional issues by reference to affidavits, after a pretrial evidentiary hearing, or at trial if the issues are intertwined with the merits of the suit." Brand v. Mazda Motor of Am., Inc., 920 F. Supp. 1169, 1171 (D. Kan. 1996), citing Federal Deposit Ins. Corp. v. Oaklawn Apartments, 959 F.2d 170, 174 (10th Cir.1992). To establish Defendant Schueler's non-US residency, the Plaintiff offers both the words of Defendant Schueler and the sworn affidavit of Plaintiff's private investigator in Section II, above. Because the weight of evidence supports Schueler's European evidence and inability to identify his specific nation of residence, service of the Defendant is proper pursuant to Rule 4.1(a)(3).

b. The requested means of service is not prohibited by international agreement and is consistent with due process

The Plaintiff's proposed means of service do not violate the Hague Convention's terms. Article I of the Hague Convention on service itself states that the agreement "shall not apply where the address of the person to be served with the document is not known." Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, art. 1, adopted November 15, 1965, 20 UST 361; TIAS 6638; 658 UNTS 163.[1] No other international agreement

[1] The text of this document may be accessed at the Hague Conference's website: https://www.hcch.net/en/instruments/conventions/full-text/?cid=17 (last visited October 5, 2022).

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applies. Thus the sole consideration left to the court is whether the proposed means of service "is consistent with due process." Fed. R. Civ. P. 4, Advisory Committee Notes.

Federal courts have emphasized that the "other means" service provision found within Rule 41(a)(3), SCRCP, does not require demonstration of failed attempts of service prior to petitioning the court for "other means."

> [E]xamining the language and structure of Rule 4(f) and the accompanying advisory committee notes, we are left with the inevitable conclusion that service of process under Rule 4(f)(3) is neither a "last resort" nor "extraordinary relief." It is merely one means among several which enables service of process on an international defendant.

Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002). A wide variety of "other means" of service has been approved, "including publication, ordinary mail, mail to the defendant's last known address, delivery to the defendant's attorney, telex, and most recently, email." Id. at 1016. As noted above, Plaintiffs seeking approval of such means must demonstrate compliance with notions of due process.

> To meet this requirement, the method of service crafted by the district court must be "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."

Id. at 1016-17, quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (Jackson, J.). As the Ninth Circuit has recognized, "this broad constitutional principle unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance." Rio Properties at 1017.

The Plaintiff proposes five means of "other service" on Defendant Schueler: via Twitter "mention"; via Twitter "direct message"; via email; via Telegram channel post; and via Telegram

direct message. The facts as to how each method of service will be used and how each method comports with notions of due process is discussed below.

1. Service via Twitter "mention"

Defendant Schueler operates on Twitter under the handle @RichardHeartWin. Defendant Schueler has confirmed this to be his Twitter handle on Twitter itself.

In the 31-day period between August 27, 2022 and September 27, 2022, Defendant Schueler tweeted from this handle 609 times for an average of 19.6 tweets per day. Also, as the blue checkmark on Schueler's profile indicates, Schueler's @RichardHeartWin Twitter handle is "verified." Twitter demands satisfaction of stringent requirements before it "verifies" a handle, including those related to authenticity. See https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts (last visited September 28, 2022).

Plaintiff proposes tweeting a link to the summons and complaint to Defendant Schueler via a Twitter "mention" to @RichardHeartWin. Twitter describes its "mention" function as follows:

- **Definition:** A Tweet containing another account's Twitter username, preceded by the "@" symbol. For example: "Hello @TwitterSupport!"
- **Where it appears for the sender:** On the sender's profile page of public Tweets.
- **Where it appears for the recipient:** In the recipient's Notifications tabs, which is accessible only by them. Additionally, mentions will appear in the recipient's Home timeline view (not on their profile) if they are following the sender.

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See https://help.twitter.com/en/using-twitter/types-of-tweets (last visited September 28, 2022). In view of the Defendant's extraordinary use of the Twitter platform, he is likely to be notified of the pending lawsuit with hours—if not minutes—of being served via public message on Twitter.

Despite its relatively new introduction into the marketplace, Twitter has been approved by at least two courts as a means of non-traditional service. Most recently, the District of Arizona approved Twitter service in the case of Cox v. CoinMarketCap OpCo, LLC, et al. (21-cv-8197). There the Court found that service of three individual defendants via their verified Twitter accounts "is the best method available to give notice to Defendants of the pendency of this action." See **Exhibit B**—Cox v. CoinMarketCap Order at 5. The Cox ruling also noted prior precent of Twitter service. See St. Francis Assisi v. Kuwait Finance House, No. 3:16-CV-3240-LB, 2016 WL 5725002, at *1 (N.D. Cal. Sept. 30, 2016) (authorizing service via Twitter to individual in Kuwait and noting Kuwait was not a signatory to the Hague Convention). The order also noted two other approved means of service via social media. See WhosHere, Inc. v. Orun, No. 1:13-cv-00526-AJT-TRJ, 2014 WL 670817 (E.D. Va. Feb. 20, 2014) (authorizing service on an individual in Turkey by email and through Facebook and LinkedIn); FTC v. PCCare247 Inc., No. 12 Civ. 7189(PAE), 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013) (authorizing service on individuals in India by email and through Facebook).[2]

2. Service via Twitter direct message

Plaintiff proposes serving Defendant Schueler through a "direct message" to @RichardHeartWin. Twitter describes "direct messages" as follows:

[2] Somewhat ironically, the Cox lawsuit is a putative class action brought by a holder of HEX cryptocurrency seeking redress for wrongs allegedly caused by other members of the cryptocurrency community.

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- You can start a private conversation or create a group conversation with anyone who follows you.
- Anyone you do not follow can send you a Direct Message if:
- You have opted in to receive Direct Messages from anyone* or;
- You have previously sent that person a Direct Message.
- Anyone in a conversation can send Direct Messages to the group. Everyone in a group can see all messages, even if everyone doesn't follow each other.
- In group conversations, anyone in the conversation can add other participants. Newly added participants won't see the prior history of the conversation.
- Some accounts, particularly businesses on Twitter, have enabled a setting to receive Direct Messages from anyone. You can send a Direct Message to these accounts even if they don't follow you.

See https://help.twitter.com/en/using-twitter/direct-messages#basics (last visited October 5, 2022). It should be noted, however, that Defendant Schueler's Twitter biography states that "Richard doesn't read msgs or email." Thus a "direct message" may not result in Schueler's actual notice of the summons and complaint. This fact further underscores the necessity of serving Schueler via Twitter mention.

3. Service via the email address associated with the HEX token

Etherscan.io—a website that is the primary means of analyzing transactions involving smart contracts such as HEX—requires owners of a smart contract to provide an email address associated with the contract. The website describes this requirement as follows:

- Project/Sender's email address should be an email address created with the project's official domain (*e.g.: yourusername@yourwebsitedomain.com*) or the official primary email address as shown on the website

See https://info.etherscan.com/token-update-guide/ (last visited September 28, 2022). Etherscan warns that providing inaccurate information in the token profile could result in the delisting of the token. Defendant Schueler provided the following email address associated with the HEX token:

2b591e99afE9f32eAA6214f7B7629768c40Eeb39@protonmail.ch

Plaintiff proposes serving an electronic copy of the summons and complaint via this email address.

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4. Service via Telegram Channel Post

Telegram is a cloud-based mobile and desktop messaging app that allows users to create "group chats" based on a central theme or subject matter. Defendant Schueler created the Telegram channel "t.me/HEXcrypto" and actively promotes its use online including as a method of reaching out to him, personally.

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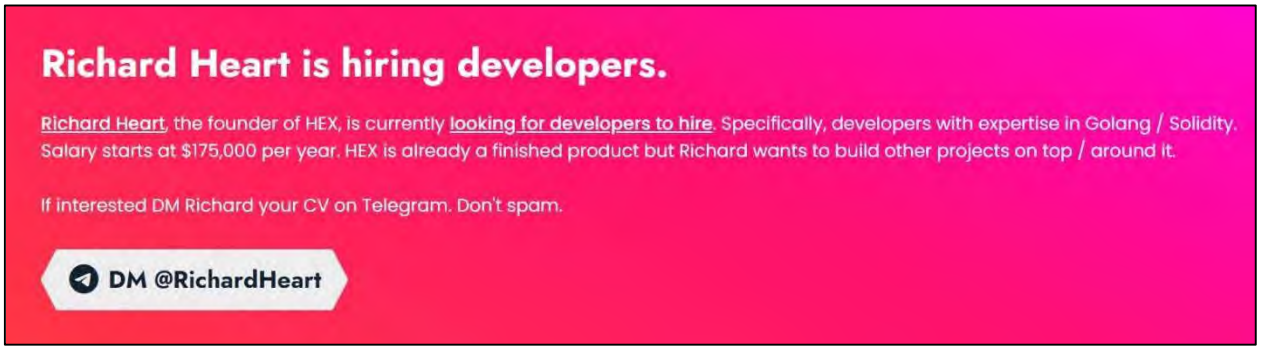
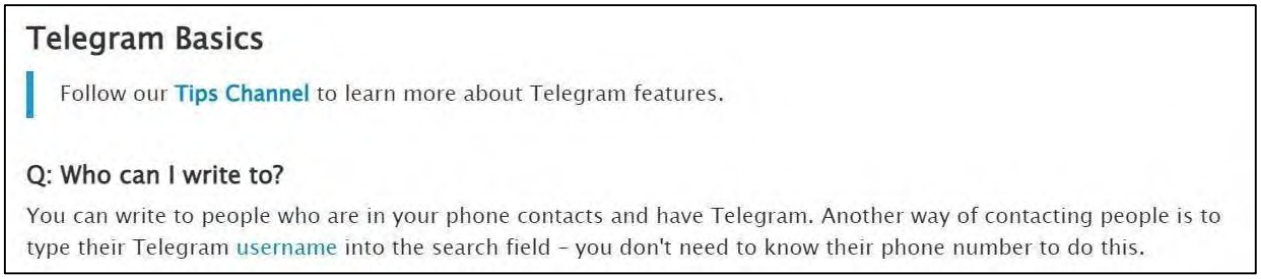
Plaintiff proposes uploading an electronic copy of the summons and complaint to the Telegram channel t.me/HEXcrypto.

5. Service via Telegram Direct Message

The Telegram program also supports a direct message feature similar to that previously referenced in Twitter. On his website, HEX.com, Defendant Schueler invites those looking to work on the HEX investment scheme to direct message him via Telegram.



See https://hex.com/dev/ (last visited October 5, 2022). The link provided for Defendant Schueler's personal "Telegram" direct message address is https://t.me/RichardHeart. The Telegram FAQ section provides the process for direct messaging an individual via their Telegram username.



See https://telegram.org/faq (last visited October 5, 2022). Plaintiff proposes serving an electronic copy of the summons and complaint upon Defendant Schueler by delivering it to him via his Telegram direct message address.

IV. CONCLUSION

As shown above, Defendant Richard Schueler resides on the continent of Europe but successfully conceals his nation of residence. As a result, Schueler may be served with the summons and complaint in this case via "other means" as provided in Rule 4.1(a)(3), SCRCP. The five "other means" of service proposed by the Plaintiff are consistent with concerns of due process and are reasonably calculated to apprise Defendant Schueler of the pendency of this action. For these reasons, Plaintiff's motion should be granted.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

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EXHIBIT A

(Affidavit of Diligent Search and Inquiry)

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of his or herself And all others similarly situated,	)	
Plaintiff/Class Representative,	)	
vs.	)	**AFFIDAVIT**
Richard James Schueler a/k/a Richard Heart,	)	
Defendant.	)	

AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, Beverly G. Carter being sworn, certify that the following information is true:

1. I have made a diligent search and inquiry to discover and confirm a current residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart, reporting the date of birth [redacted]1979, with diligent efforts including a "Confidential and Privileged Locate Report" detailing efforts to locate and confirm a current residence address within the United States.

☒ The names and addresses of relatives, contacts with those relatives, and inquiries about the whereabouts of Richard James Schueler *aka* Richard James Schuler and Richard Heart last known address.

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☒ Using analytic data and U.S. government agency sources, Delta Group conducted searches of regulatory agencies, including professional or occupational licensing databases to ascertain the whereabouts of in the United States of America for Richard James Schueler *aka* Richard James Schuler and Richard Heart.

☒ Telephone listings in the last known location of Richard James Schueler *aka* Richard James Schuler and Richard Heart.

☒ Driver's license record search using data analytics and Florida Department of Motor Vehicles reporting an expired U.S. driver's license record for Richard James Schueler, date of birth [redacted] 1979. The driver's license expired as of October 9, 2009.

Name:	SCHUELER, RICHARD JAMES		
DOB:	[redacted]		
DL Number:			
Issue State:	FL	Report Date:	06/24/2010
Gender:	MALE	Race:	WHITE
Height:	5 09"		
License Type:	REGULAR LICENCE		
Original Issue Date:	10/25/1994		
Issue Date:	07/27/2005	Expiration Date:	10/09/2009

☒ Open-Source Internet searches, including social media companies and search engine web entries report, and while Richard James Schueler *aka* Richard James Schuler and Richard Heart report an association with multiple entries, none provide information as to his whereabouts in the United States.

☒ Using analytic data and government agency sources, conducted searches for arrest and court records using the search terms Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] The latest court case reports a filing date of November 21, 2001, providing no information as to the parties whereabouts.

☒ Utility service record search using data analytics and government sources did not yield a residence address.

☒ Real property record search within the jurisdiction of the United States including commonwealth and territorial properties did not yield a record.

☒ Personal property record search using data analytics and government sources did not yield a current motor vehicle registration record.

☒ Email address record searches using data analytics and open-source resources yielded two email addresses, bigrich9@gmail.com and marnieleaf@gmail.com which did not provide a residence address in the United States.

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☒ Equifax, Experian, and TransUnion credit header records did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Global Sanctions did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ SSA death records using data analytics did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Voter registration record search using data analytics did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Warrant search within the United States did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Work affiliations using data analytics sources did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

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2. Attached, is a "Confidential and Privileged Locate Report" detailing these efforts, additional efforts, and the possible current residence address.

3. I understand that I am swearing or affirming under oath the truthfulness of the claims made in this declaration of facts and that the punishment for knowingly making a false statement includes fines and imprisonment.

, Affiant

STATE OF FLORIDA

COUNTY OF PINELLAS

Sworn to and subscribed before me in my physical presence this 30 day of September 2022 by Beverly G Carter, who is well-known to me or who has produced a driver's license as identification.

Notary Public

JOSEPH ENRIQUE GARCIA
MY COMMISSION #HH 3994
EXPIRES: MAY 26, 2024
Bonded through 1st State Insurance

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DELTA GROUP

CONFIDENTIAL AND PRIVILEGED LOCATE REPORT

Thursday, September 01, 2022

Subject:	Richard Schueler
Client No.:	Not Provided
Date of Loss:	Not Provided
Insured:	Not Provided
Alleged Injury:	Not Provided
Delta File No.:	134712-22
Assignment:	Locate Services
Provided Address:	Multiple
Date of Service:	Thursday, September 1, 2022

INVESTIGATIVE SYNOPSIS

Delta Group conducted a thorough Locate Investigation for the Subject, Richard Schueler, also referred to as Richard Heart; however, a residential address was not confirmed.

[redacted] Fort Lauderdale, FL 33315, is owned by Richard Schueler and is the most frequently reported address for the Subject. Please note that records do not specify whether the Subject or his father, Richard W. Schueler, owns this property; however, historical property records display ownership by Richard Schueler and Lorraine Schueler, both together and individually. It may be likely that once Richard and Lorraine Schueler divorced, Richard W. Schueler became the sole owner of the property.

Our research did yield several business entities previously affiliated with the Subject as registered agents or officers between 2000 and 2007, all of which are currently inactive. Research into the provided and reported addresses did find that the addresses of [redacted] Dania, FL 33312, [redacted] Fort Lauderdale, FL 33315, or [redacted] Doral, FL 33122 were previously utilized for the Subject's business entities.

The Subject reports a Driver's License, number [redacted] initially issued in 1994 and currently expired. The license most recently reported the address of [redacted] Fort Lauderdale, FL 33315.

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Analytic data sources do not report any current registered vehicle information for the Subject; however, previous vehicles registered to the Subject were reported at [redacted] Fort Lauderdale, FL 33315.

A review of the Subject's social media, websites, and publicly available information did yield several instances of his surroundings being referred to as/pictured as the South Florida area, including other Instagram users tagging the Subject in photos in locations such as Miami and Sunny Isles, FL. Additionally, the research did identify many discussion boards, threads, and social media posts of individuals referring to the Subject as a "scam artist" or involved in a "Ponzi scheme." Our research did not indicate any confirmed residence address or suggestion of any address outside of those provided or reported in databases.

Research utilizing whois.com and ICANN did identify that the websites utilized by the Subject, hex.com and richardheart.com, as registered discreetly through domain service providers GoDaddy.com, LLC and NameCheap, Inc. and therefore, personal registrant location and contact information were not reported. *Should this information be advantageous to your case, subpoenas to domain service providers GoDaddy.com, LLC, and NameCheap, Inc. for registration records that may reveal the Subject's location and contact information upon registering each domain name may be suggested?*

A review of the recent county and federal court filings did not indicate any residential information for the Subject; however, the following record was regarding paternity, which may indicate that he is the father of [redacted] Sunrise, FL 33322. Additionally, the maternal party referenced in the case is [redacted] Maiden, NC 28650. Additionally, two records regarding domestic violence between the Subject and [redacted] were reported in 2001. It may prove helpful to the investigation to question the parties as to the Subject's whereabouts discreetly.

Attempts to discreetly inquire with the Subject's parents, Lorraine and Richard Schueler, regarding the Subject's residence address were made; however, they were unsuccessful.

Remark: Delta Group is the industry leader in remote surveillance. This proprietary method is highly discreet, runs 24/7, and would be undetected by the residents at [redacted] Fort Lauderdale, FL 33315. It would determine if the Subject of inquiry resided at this address.

Please see **Details of Investigation** for additional information.

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DETAILS OF INVESTIGATION

Subject: The Subject of inquiry, Richard James Schueler, is 42 years of age, reporting [redacted] for a date of birth. Delta Group will provide the reported Social Security number upon request.

Address History: Analytic data sources report several recent addresses for the Subject.

ADDRESS	COUNTY	DATE
[redacted] ST, FT LAUDERDALE, FL 33315	BROWARD	01/01/1984-03/31/2018
[redacted] GAINESVILLE, FL 32608	ALACHUA	01/01/2011-08/31/2011
[redacted] ST, FORT LAUDERDALE, FL 33312	BROWARD	05/09/2003-04/13/2004

Associates & Relatives: The following individuals were reported as the subject's relatives.

NAME	ADDRESS	PHONE
LORRAINE M. SCHUELER (66)	[redacted] BLUFFTON, SC 29909	[redacted]
RICHARD W. SCHUELER (67)	[redacted] FORT LAUDERDALE, FL 33315	[redacted]

Contact Information: Telephone numbers [redacted] are associated with the Subject.

Property Record: [redacted] Fort Lauderdale, FL 33315, is owned by Richard Schueler. The purchase date was September 1, 1983, by Richard Schueler and Lorraine Mary Schueler, husband and wife. A Quit-Claim Deed filed by Lorraine Mary Schueler of [redacted] Hilton Head, Island, SC 29926, on October 19, 2015, deeded the property to Richard.

Property Record: Provided address, [redacted] Dania, FL 33312 is situated within property appraiser site address [redacted] Dania Beach, FL 33312 and reports a Quit-Claim Deed on August 26, 2008, from Ravenswood Diesel Corporation to Jackson Property 2150 LLC.

Property Record: [redacted] Doral, FL 33122 is a commercial property owned by Alphaterra LTD. This address appears to be previously associated with a business entity associated with the Subject, A Plus Performance, LLC.

Driving Record: The Subject reports a Driver's License, number [redacted], initially issued in 1994 and currently expired. The license most recently reported the address of [redacted] Fort Lauderdale, FL 33315.

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FL Online Driver Report **Order Date: 08/31/2022**

3 Year Report

Ordered for:	Delta Associated Investigations Inc.	**Reference:**	SCHUELER
DL# Searched:	[redacted]	**License:**	[redacted]
Name Searched:	SCHUELER	**Name:**	RICHARD JAMES SCHUELER
DOB Searched:		**Address:**	[redacted] FT LAUDERDALE, FL 33315
Searched on:	08/31/2022		
Control #:	23610367		

Hair:		**Gender:**	MALE	**Medical Exp:**	
Eyes:		**DOB:**	10/09/1979	**Tot St Pts:**	
Height:	5'8	**Age:**	42	**Cust Pts:**	
Weight:				**Comp Score:**	

Lic Issued:	07/27/2005
Lic Expires:	10/09/2009
Class:	E
Status:	EXPIRED

License Information

License: PERSONAL **Orig Issue:** 10/25/1994 **Issue:** 07/27/2005 **Expire:** 10/09/2009 **Status:** EXPIRED
Class E: CLASS E NON-COMMERCIAL ANY TYPE NON COMMERCIAL VEH

Violations, Accidents and Failures to Appear Information

***** NONE TO REPORT*****

Actions

***** NONE TO REPORT*****

Additional State Information

ISSUANCE HISTORY
10/10/1995 CLASS E REPLACEMENT
5/19/2000 CLASS E CDR/CDT CLEARANCE
8/31/2002 CLASS E DUPLICATE
10/9/2003 CLASS E DUPLICATE
EXAMS TAKEN:
11/29/2000. TYPE: VISION. ATTEMPTS: 1. STATUS. PASS
10/25/1994. TYPE: ROAD SIGN. ATTEMPTS: 1. STATUS: PASS
10/25/1994. TYPE: ROAD RULES. ATTEMPTS: 1. STATUS: PASS
10/10/1995. TYPE: DRIVING. ATTEMPTS: 1. STATUS: PASS
N/A. TYPE: MOTORCYCLE RULES. ATTEMPTS: 0. STATUS: N/A
N/A. TYPE: MOTORCYCLE SKILLS. ATTEMPTS: 0. STATUS: N/A
SAFE DRIVER
US CITIZEN
BLOCKED PERSONAL INFORMATION
BLOCKED FOR MAILING LIST
PERSON HAS A DIGITAL IMAGE
ELIGIBLE TO ELECT DRIVER SCHOOL. DRIVER HAS MADE 0 ELECTIONS. VIOLATIONS COMMITTED WHILE A CDL HOLDER OR IN A CMV VEHICLE ARE NOT ELIGIBLE FOR DRIVING SCHOOL ELECTION.

Motor Vehicles: Analytic data sources do not report any current registered vehicle information for the Subject; however, previous vehicles registered to the Subject were reported at [redacted] Fort Lauderdale, FL 33315.

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Business Affiliations: A review of the Florida Department of State, Division of Corporations reported the following entities with a registered agent or officer named Richard Schueler.

Officer/RA Name	Entity Name	Entity Number
SCHUELER, RICHARD	CPULEND, L.L.C.	L04000003246
SCHUELER, RICHARD	POSITIVE LIFE PRODUCTS, LLC	L04000029772
SCHUELER, RICHARD	A PLUS PERFORMANCE, LLC	L07000038690
SCHUELER, RICHARD	MERIDIEN MARKETING SERVICES, LLC	M03000001413
SCHUELER, RICHARD	MERIDIEN MARKETING SERVICES, LLC	M03000001413
SCHUELER, RICHARD	DOORSTAM RESEARCH AND DEVELOPMENT, LLC	M03000003133
SCHUELER, RICHARD	DOORSTAM RESEARCH AND DEVELOPMENT, LLC	M03000003133
SCHUELER, RICHARD	EFFICIENT SYSTEMS INC.	P01000030377
SCHUELER, RICHARD J	AUDIO ECSTASY, INC.	P00000002910
SCHUELER, RICHARD J	AUDIO ECSTASY, INC.	P00000002910
SCHUELER, RICHARD W.	SEA BREEZE AIR CONDITIONING, INC.	G29411
SCHUELER, RICHARD W.	SEA BREEZE AIR CONDITIONING, INC.	G29411

Records indicate that each of the entities listed above, except Sea Breeze Air Conditioning, Inc. (Richard W. Schueler – purported father of Subject), were initially registered between 2000 and 2007 and are currently inactive. The address affiliated with each of the entities above was [redacted] Dania, FL 33312, [redacted] Fort Lauderdale, FL 33315, or [redacted] Doral, FL 33122.

Web Address Data: Research was conducted with whois.com to identify registration information for the web addresses affiliated with the Subject, such as hex.com and richartheart.com. Records with whois.com report hex.com as registered on October 25, 1997, and richardheart.com registered on February 15, 2019; however, domain service providers were utilized, concealing personal registration information from the public. *Should this information be advantageous to your case, subpoenas to domain service providers GoDaddy.com, LLC and NameCheap, Inc. for registration records that may reveal the Subject's location and contact information upon registering each domain name may be suggested?*

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hex.com

Updated 5 days ago

Domain Information

Domain:	hex.com
Registrar:	GoDaddy.com, LLC
Registered On:	1997-10-25
Expires On:	2025-10-23
Updated On:	2020-07-24
Status:	clientDeleteProhibited clientRenewProhibited clientTransferProhibited clientUpdateProhibited
Name Servers:	ns-1505.awsdns-60.org ns-1537.awsdns-00.co.uk ns-304.awsdns-38.com ns-791.awsdns-34.net

Registrant Contact

Name:	Registration Private
Organization:	Domains By Proxy, LLC
Street:	DomainsByProxy.com [redacted]
City:	Tempe
State:	Arizona
Postal Code:	85284
Country:	US
Phone:	[redacted]
Fax:	[redacted]
Email:	Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=hex.com

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richardheart.com

Updated 1 second ago

Domain Information

Domain:	richardheart.com
Registrar:	NameCheap, Inc.
Registered On:	2019-02-15
Expires On:	2023-02-15
Updated On:	2022-01-16
Status:	clientTransferProhibited
Name Servers:	ns1.cfdtoken.com ns2.cfdtoken.com

Registrant Contact

Organization:	Privacy service provided by Withheld for Privacy ehf
Street:	Kalkofnsvegur 2
City:	Reykjavik
State:	Capital Region
Postal Code:	101
Country:	IS
Phone:	[redacted]
Email:	5497dcb837c3401409f0d766bb0e7b06.protect @withheldforprivacy.com

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Court Records: A review of the recent county and federal court filings did not indicate any residential information for the Subject; however, the following record was located regarding paternity, which may indicate that he is the father of [redacted] of [redacted] Sunrise, FL 33322. Additionally, the maternal party referenced in the case is [redacted] of [redacted] Maiden, NC 28650.

April Ann Fry Petitioner vs. Richard James Schueler Respondent

Broward County Case Number: FMCE01022759	State Reporting Number: 062001DR022759AXXXCE
Court Type: Family	Case Type: Paternity - - Paternity
Incident Date: N/A	Filing Date: 11/21/2001
Court Location: Central Courthouse	Case Status: Disposed
Magistrate Id / Name: 90 Woods Allana Robinson	Judge ID / Name: 38 Davis Michael

Additionally, two records regarding domestic violence between the Subject and April Ann Fry were reported in 2001.

Case Number	Case Style	Case Type	Filing Date	Case Status	Access Level
FMCE01000774	[redacted] vs. Richard J Schueler Respondent	Recast Violence	01-16-2001	Disposed	ANONYMOUS
6100064CCF16A	State of Florida Vs Schueler Richard J	Domestic Violence	01-17-2001	Disposed	ANONYMOUS

OSINT: A review of the Subject's social media, websites, and publicly available information did yield several instances of his surroundings being referred to as/pictured as the South Florida area, including other Instagram users tagging the Subject in photos in locations such as Miami and Sunny Isles, FL. Additionally, the research did identify many discussion boards, threads, and social media posts of individuals referring to the Subject as a "scam artist" or involved in a "Ponzi scheme." Our research did not indicate any confirmed residence address or suggestion of any address outside of those provided or reported in databases.

Vehicle Sightings: Research of the Subject's social media did yield him driving a sedan in what he referenced as "South Florida."

A vehicle sighting report was processed for the last sedan vehicles registered to the Subject, a 2003 BMW and 1998 Lexus, with their respective plates and VINs; however, no sightings were reported.

Investigative Research: On Wednesday, August 31, 2022, Delta Group attempted to conduct discreet inquiries with Lorraine and Richard W. Schueler, the Subject's parents, regarding his residence address; however, our multiple attempts were unsuccessful.

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Neighborhood Canvass: The following individual was reported as a neighboring resident of the Subject's most recently reported address.

NAME	ADDRESS	PHONE
WILLIAM SMITH	[redacted] ST, FT LAUDERDALE, FL 33315	[redacted]
NO CURRENT RESIDENT REPORTED	[redacted] ST, FT LAUDERDALE, FL 33315	NONE REPORTED
CURTIS NICHOLSON	[redacted] ST, FT LAUDERDALE, FL 33315	[redacted]

Investigative Research: On Wednesday, Delta Group conducted a discreet inquiry with William Smith, telephone number [redacted] who indicated that he no longer lives on [redacted] and does not recall whether anyone by the Subject's name resides there.

On Thursday, September 1, 2022, Delta Group attempted to conduct discreet inquiries with Curtis Nicholson regarding the Subject's residence address; however, our multiple attempts were unsuccessful.

End of Report

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EXHIBIT B

(Cox v. CoinMarketCap Order)

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WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ryan Cox, Plaintiff, v. CoinMarketCap OpCo LLC, et al., Defendants.	No. CV-21-08197-PCT-SMB **ORDER**

Pending before the Court is Plaintiff's Second Motion for Extension of Time for Service and For Alternative Service by Email, Social Media, Publication, and/or Other Methods ("Motion"). (Doc. 50.) The Court heard oral argument on the Motion on February 25, 2022. The Court has reviewed the Motion and applicable law and now issues this ruling granting the Motion.

I. BACKGROUND

Plaintiff, Ryan Cox, filed a Complaint with this Court against CoinMarketCap OpCo, LLC ("CoinMarketCap.com"), Binance Capital Management Co. Ltd. ("Binance"), and Bam Trading Services Inc. d/b/a Binance.US ("BAM"), as well as individuals Changpeng Zhao, Catherine Coley, Yi He, Ted Lin, and Does I–X for artificially suppressing the value of the cryptocurrency HEX and artificially inflating the value of other cryptocurrencies. (Doc. 1 ¶ 3.) Plaintiff notes that Binance has been described as an international cryptocurrency exchange that hops around from jurisdiction to jurisdiction to avoid regulators. (Doc. 24 at 2.)

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Plaintiff has successfully served process on the corporate entities in this lawsuit but has failed to serve each of the individual Defendants, who Plaintiff notes are Chinese nationals whose country of domicile cannot be ascertained. (*Id.* at 2.) Defendant Zhao, the CEO of Binance, has been on record as stating, "Binance.com has always operated in a decentralized manner as we reach out to our users across more than 180 nations worldwide. As well as pushing the envelope in experimenting on how to become a true DAO (decentralized autonomous organization)." (*Id.*) Plaintiff has taken extensive action to locate the whereabouts of the individual Defendants, who are officers of Binance. (*Id.* at 5.) All of Plaintiff's efforts have been fruitless. (*Id.* at 5.) Plaintiff describes these individual Defendants as "international ghosts." (*Id.* at 2 (internal quotation marks omitted).) A private investigator hired by Plaintiff could not even identify the country of residency for a single Binance officer. (*Id.*; Doc. 24-1 at 2.) The private investigator was, however, able to identify the Twitter accounts associated with Defendants Zhao, Ted Lin, and Yi He. (Doc. 24-1 at 6–7.) On November 12, 2021, undersigned counsel tweeted a copy of the summons and a link to the Complaint in this case to all three Twitter accounts. (Doc. 24 at 6.) Twitter has verified each individual account, and Plaintiff notes that each user utilizes their account on a regular basis. (*Id.* at 7.)

On December 13, 2021, the Court entered an order denying Plaintiff's Motion for Alternative Service, asking the Court for permission to serve the individual Defendants in this case via social media. (*See* Doc. 29.) On February 1, 2022, the Court denied Defendant Coley's Motion to Dismiss for lack of service, finding that an extension of the time to serve Defendant Coley was warranted given the difficulties in locating the individual Defendants in this case. (Doc. 49 at 3.)

Plaintiff once again moves this Court for an extension of time to serve the individual Defendants in this case and to serve the individual Defendants in this case via alternative means, including by email, social media, and publication. (Doc. 50.) Since Plaintiff's last motion to serve by alternate means, he has taken additional steps to locate and serve the individual Defendants. Despite Plaintiff's continued efforts to locate Defendants

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Changpeng Zhao, Ted Lin, and Yi He by hiring an additional investigator and by following the Twitter accounts of all three, Plaintiff was, again, unsuccessful in located the whereabouts of all three. (Doc. 50 at 3.) Additionally, Plaintiff attempted to serve Defendant Coley at addresses in Puerto Rico, Florida, and North Carolina. (*Id.* at 4.) All efforts have been unsuccessful. (*Id.*)

II. DISCUSSION

A. Good Cause Exists for an Extension

A court must extend the time for service if the plaintiff shows good cause for the failure to serve. Fed. R. Civ. P. 4(m). Rule 4(m) "*requires* a district court to grant an extension of time when the plaintiff shows good cause for the delay." *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007).

The Court will grant Plaintiff with an extension of time in which to serve the individual Defendants in this case. Plaintiff has shown good cause for its delay in failing to serve Defendant Coley. Plaintiff attempted to serve Defendant Coley in at three addresses associated her and were unsuccessful. Additionally, despite speaking with Defendant Coley's mother in North Carolina, Plaintiff was unable to get an address for Defendant Coley whose mother described her as a "nomad." (*Id.* at 5.) Further, Plaintiff has made extensive efforts to locate and serve Defendants Changpeng Zhao, Ted Lin, and Yi He, all of which have been unsuccessful. Accordingly, because Plaintiff has shown good cause for the delay, the Court will extend the time to serve the individual Defendants by 60 days.

B. Alternate Service

Rule 4(f) provides three methods of serving an individual in a foreign country: (1) "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents" ("Hague Convention"); (2) "if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice …"; or (3) "by other means not

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prohibited by international agreement, as the court orders."

District courts are given discretion to determine when the particularities and necessities of a given case require alternative service of process under Rule 4(f). *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002). A party does not need to attempt to serve process under Rule 4(f)(1) and (2) before requesting to serve under Rule 4(f)(3); it stands independently. *See id.* at 1014–1015 ("[S]ervice of process under Rule 4(f)(3) … is merely one means among several which enables service of process on an international defendant."). A court may order service under Rule 4(f)(3) so long as the service (1) comports with constitutional notions of due process and (2) is not prohibited by international agreement. *Id.* at 1015. "[T]rial courts have authorized a wide variety of alternative methods of service including publication, ordinary mail, mail to the defendant's last known address, delivery to the defendant's attorney, telex, and most recently, email." *Id.* at 1016.

1. Defendants Zhao, Lin, and He

Plaintiff argues that the Court should allow it to serve Defendants Zhao, Lin, and He via Twitter pursuant to Rule 4(f)(3). The Court previously denied Plaintiff's attempt to serve via social media. (Doc. 29.) However, in light of the fact that Plaintiff's continued efforts to locate Defendants Zhao, Lin, and He—"international "ghosts"—have failed despite diligent efforts, the Court will now grant Plaintiff's request to serve the three Defendants via Twitter. As Plaintiff points out, the Hague Convention does not apply where, as here, "the address of the person to be served with the documents is not known." *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, art. 1, T.I.A.S. No. 6638 (Feb. 10, 1969). Further, other courts have authorized service by social media to international defendants. *See WhosHere, Inc. v. Orun*, No. 1:13-cv-00526-AJT-TRJ, 2014 WL 670817 (E.D. Va. Feb. 20, 2014) (authorizing service on an individual in Turkey by email and through Facebook and LinkedIn); *FTC v. PCCare247 Inc.*, No. 12 Civ. 7189(PAE), 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013) (authorizing service on individuals in India by email and through Facebook);

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St. Francis Assisi v. Kuwait Finance House, No. 3:16-CV-3240-LB, 2016 WL 5725002, at *1 (N.D. Cal. Sept. 30, 2016) (authorizing service via Twitter to individual in Kuwait and noting Kuwait was not a signatory to the Hague Convention). The Court finds that, under the circumstances, service via Twitter is the best method available to give notice to Defendants of the pendency of this action. Accordingly, the Court will authorize service by tweeting a copy of the summons and a link to the Complaint to the verified Twitter accounts of Defendants Zhao, Lin, and He pursuant to Rule 4(f)(3).

2. Defendant Coley

Plaintiff also requests to serve Defendant Coley by serving her counsel or by publication. (Doc. 50 at 12.) Plaintiff has undertaken extensive efforts to locate Defendant Coley but has been unsuccessful. The Court notes that serving Defendant Coley via publication is not the best method to give her notice of the pendency of this action because, as Plaintiff notes, her whereabouts are a mystery. (*Id.*) Thus, the Court will consider other alternate means of service.

Plaintiff requests authority to serve Defendant Coley's counsel. "Courts analyze the communications between a defendant and defendant's counsel in deciding whether, as a method of alternative service, a defendant's counsel may accept process that he would otherwise be unauthorized to accept." *BMO Harris Bank, N.A. v. Gunthmiller*, No. CV-14-00275-PHX-JAT, 2014 WL 2600362, at *4 (D. Ariz. June 10, 2014). Indeed, courts may authorize service on a defendant's counsel where the circumstances show that defendant was likely in communication with his or her counsel regarding the suit. *Rio Properties*, 284 F.3d at 1017 (authorizing service on defendant's lawyer, but noting the attorney "had been specifically consulted by [the defendant] regarding this lawsuit."); *Guthmiller*, 2014 WL 2600362, at *4 (authorizing service on a domestic defendant where defendant had notice of the suit through his attorney); *FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531, 536 (E.D. Va. 2005) (authorizing service on a defendant's attorney under Rule 4(f)(3) because his many motions evidenced that defendant had some form of notice of the action).

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Here, service through Defendant Coley's counsel is appropriate. Plaintiff's extensive attempts to locate and serve Defendant Coley have been unfruitful. Even her own mother described her as a nomad. Defendant Coley clearly has notice of the suit as evidenced by her Motion to Dismiss for lack of service and by her counsel's subsequent appearance at oral argument. Under the circumstances, the Court finds that serving her counsel is the best method to apprise her of the pendency of this action. Service on Defendant Coley's counsel is appropriate under Rule 4(f)(3) if she is an international defendant, *see Dagra*, 228 F.R.D. at 536, but can also be authorized if she is a domestic defendant, *see Ginthmiller*, 2014 WL 2600362, at *4. Accordingly, the Court will authorize alternate service on Defendant Coley by emailing a copy of the summons and Complaint to her counsel of record in this case.

The Court will also require service by mailing a copy of the summons and Complaint to her mother's address in North Carolina and the second home in North Carolina by first class mail.

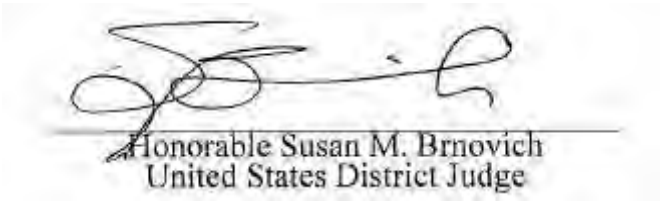
III. CONCLUSION

Accordingly,

IT IS ORDERED granting Plaintiff's Second Motion for Extension of Time for Service and for Alternative Service as outlined above. (Doc. 50.)

IT IS FURTHER ORDERED extending the time to serve Defendants Zhao, Lin, He, and Coley by 60 days.

Dated this 1st day of March, 2022.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C.A. No: 2023-CP-07-0831
	)	
	)	

NON-PARTY'S MOTION TO QUASH PLAINTIFF'S SUBPOENA DUCES TECUM ISSUED BY THIS COURT IN RE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No: 2022-CP-21-01980
	)	
John Doe, pseudonymous owner of HEX ERC-20 Tokens, on behalf of his or herself and all others similarly situated,	)	
Plaintiff,	)	
vs.	)	
Richard James Schueler a/k/a Richard Heart,	)	
Defendant.	)	

2023 MAY -4 PM 4:29
JEANNE ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: GRAHAM L. NEWMAN, ESQUIRE, MARK D. CHAPPELL, ESQUIRE, ANDREW S. RADEKER, ESQUIRE, AND LAWRENCE P. EAGEL, ESQUIRE ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that non-party subpoena recipient, Lorraine Schueler, hereinafter "Mrs. Schueler," by and through her undersigned counsel for purposes as described herein, and pursuant to Rules 26 and 45 of the South Carolina Rules of Civil Procedure, hereby moves to quash Plaintiff's Subpoena to Mrs. Schueler issued by this Court on April 10, 2023, for which Mrs. Schueler's counsel voluntarily accepted service on April 20, 2023, and for which the parties agreed via email to move the deposition and compliance date to May 16, 2023 (hereinafter the "Subpoena"). Mrs. Schueler also

moves for a protective order related to the Subpoena. A copy of the Subpoena is attached hereto as Exhibit A. This Motion is made on at least the following grounds:

1. the Subpoena seeks information not relevant to the narrow issues in the action captioned *Doe v. Richard James Schueler,* C.A. No: 2022-CP-21-01980 (the "Lawsuit"), and so is beyond the scope of discovery permitted by SCRCP Rule 26(b)(1);

2. the Subpoena is unduly burdensome on Mrs. Schueler in light of:

   (a) its overbreadth;

   (b) her serious and life-threatening medical conditions; and

   (c) her complete lack of knowledge with respect to any of the matters at issue in the Lawsuit;

3. the Subpoena is beyond the scope of discovery permitted by SCRCP Rule 26(a);

4. the Subpoena is issued from an anonymous John Doe Plaintiff and the Subpoena recipient does not know for whose benefit she will be giving her deposition or to whom she might be providing her private and personal bank account information and personal communications;

5. the complaint filed in the Lawsuit is not sufficient to permit a subpoena because it does not comply with SCRCP Rules 10(a) and 10(e), should not have been accepted for filing, and should be declared a nullity;

6. it is unclear whether service of process has been established to properly give subject matter jurisdiction to any Court in South Carolina with respect to the Lawsuit;

7. the Subpoena appears intended only to annoy, embarrass, and harass Mrs. Schueler based solely on the fact that she is the mother of the defendant in the Lawsuit and notwithstanding her complete and total lack of involvement in any of the matters alleged in the complaint, and so is appropriate for preclusion by quashing the subpoena and by issuing a protective order from an appropriate Court under SCRCP Rule 26(c);

8. Mrs. Schueler's serious health and serious mental health condition is not conducive to a deposition, and further, this objection will be supplemented with additional materials filed under seal before a hearing on the matter; and

9. other grounds to be set forth at a hearing or in a supplemental filing.

Accordingly, Mrs. Schueler respectfully requests that the court quash the Subpoena in full and issue a protective order. Further, Mrs. Schueler requests an award of attorney's fees. Mrs. Schueler expressly reserves the right to supplement this motion, including but not limited to, filing a memorandum in support.

Counsel with respect to this Subpoena for Mrs. Schueler hereby affirms that he has consulted with opposing counsel and attempted in good faith to resolve the matter contained in the motion pursuant to SCRCP Rule 11, and further, that additional efforts will be made to resolve the motion prior to a hearing on the same.

This motion is made pursuant to the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings on file, and such further evidence as may be presented and upon such other law as is applicable.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley
J. ASHLEY TWOMBLEY
S.C. Bar #72916
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombley@twlawfirm.com
Attorney for Non-Party Subpoena Recipient,
Lorraine Schueler, Related to the Subpoena

Beaufort, South Carolina

May 4, 2023

CERTIFICATE OF SERVICE

The undersigned, J. Ashley Twombley, Attorney for Non-Party Subpoena Recipient, Lorraine Schueler, hereby avers that on the 4th day of May 2023 a true and accurate copy of the attached was served via E-Mail as well as placed in an envelope with first class postage thereon prepaid through the United States Postal Service, and mailed to the following:

Graham L. Newman, Esquire
S.C. Bar #72845
Mark D. Chappell, Esquire
S.C. Bar #1197
Chappell, Chappell & Newman
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(803) 929-3600
graham@chappell.law
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Attorney for Plaintiff

Andrew S. Radeker, Esquire
S.C. Bar #73743
Harrison, Smith & Radeker, P.A.
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drew@harrisonfirm.com
Attorneys for Plaintiff

Lawrence P. Eagel, Esquire
(pro hac vice forthcoming)
Bragar, Eagel & Squire, P.C.
810 Seventh Avenue, Ste 620
New York, NY 10019
(212) 308-5888
eagel@bespc.com
Attorneys for Plaintiff

2023 MAY -4 PM 4:29
JEBRA ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley
J. ASHLEY TWOMBLEY
S.C. Bar #72916

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF BEAUFORT

John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of him or herself And all others similarly situated,

Plaintiff

v.

Richard James Schueler a/k/a Richard Heart,

Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 2022-CP-21-1980

Pending in Florence County

TO: **Lorraine M. Schueler, 31 Candlelight Lane, Bluffton, SC 29909**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Twenge & Twombley, LLC **31 Carteret Street** **Beaufort, SC 29902**	**Friday, April 21, 2023, 9:30** AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

Documents and objects set forth on Exhibit A.

PLACE	DATE AND TIME
Twenge & Twombley, LLC **31 Carteret Street** **Beaufort, SC 29902**	**Friday, April 21, 2023, 9:30** AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
	AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES

Attorney/Issuing Officer's Signature Indicate if Attorney for Plaintiff or Defendant **ATTORNEY FOR THE PLAINTIFF**	**April 10, 2023** Date	**Graham L. Newman** Print Name

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

Attorney's Address and Telephone Number :
Post Office Box 61170

Columbia, SC 29260

(803) 929-3600

Clerk of Court/Issuing Officer's Signature | Date | Print Name

Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(III) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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

EXHIBIT A

1. A copy of all public keys utilized by you on decentralized ledgers including (but not limited to) Bitcoin, Ethereum, Ripple, Binance Smart Chain, Polkadot, and Cardano.

2. A copy of all public addresses utilized by you on decentralized ledgers including (but not limited to) Bitcoin, Ethereum, Ripple, Binance Smart Chain, Polkadot, and Cardano.

3. A copy of all cryptocurrency centralized exchange account information possessed by you. Such accounts may be hosted by centralized exchanges such as Coinbase or Binance.

4. A copy of all bank account numbers (including routing number and account number) possessed by you at any time from January 1, 2018 to the present.

5. A copy of all correspondence (whether written or electronic) between you and Richard J. Schueler from January 1, 2018 to the present.

6. A copy of all text messages between you and Richard J. Schueler from January 1, 2018 to the present.

7. Any device provided to you by Richard J. Schueler that is capable of retaining electronic data. This may include (but should not be limited to) a computer, an external hard drive, a "cold wallet", or a USB drive.

TWENGE + TWOMBLEY LAW FIRM LLC

311 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29902
PH:: 843.982.0100 + FX:: 843.982.0103

WEB:: TWLAWFIRM.COM

J. ASHLEY TWOMBLEY+
KARL D. TWENGE+

+LICENSED IN SC + GA
+SC CIRCUIT COURT MEDIATOR

May 4, 2023

Via Hand Delivery

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
102 Ribaut Road
Beaufort, SC 29902

RE: John Doe, pseudonymous owner of HEX ERC-20 Tokens, on behalf of his or herself and all others similarly situated v. Richard James Schueler a/k/a Rihcard Heart Civil Action No.: 2022-CP-21-01980

Dear Jerri:

2023 MAY 5 PM 2:29
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Please find enclosed the original and one (1) copy of a Certificate of Technical Failure or Technical Difficulties and Non-Party's Motion to Quash Plaintiff's Subpoena Duces Tecum Issued by This Court regarding the referenced matter. I would appreciate it if you would file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope. Additionally, enclosed is my firm's check in the amount of $35.00, which represents the requisite filing fee.

By copy of this letter, I am providing a copy of the same to Graham L. Newman, Esquire, Mark D. Chappell, Esquire, Andrew S. Radeker, Esquire and Lawrence P. Eagel, Esquire, Attorneys for Plaintiff.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kind regards, I remain,

Cordially,

J. Ashley Twombley

cc: Graham L. Newman, Esquire
Mark D. Chappell, Esquire
Andrew S. Radeker, Esquire
Lawrence P. Eagel, Esquire

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS C.A. No: 2022-CP-21-01980
John Doe, pseudonymous owner of HEX ERC-20 Tokens, on behalf of his or herself and all others similarly situated, Plaintiff, vs. Richard James Schueler, Defendant.	)	**NON-PARTY'S MOTION FOR A PROTECTIVE ORDER**

TO: GRAHAM L. NEWMAN, ESQUIRE, MARK D. CHAPPELL, ESQUIRE, ANDREW S. RADEKER, ESQUIRE, AND LAWRENCE P. EAGEL, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that non-party subpoena recipient and target of third-party discovery, Lorraine Schueler, hereinafter "Mrs. Schueler," by and through her undersigned counsel for the purposes described herein, and pursuant to Rule 26 of the South Carolina Rules of Civil Procedure (SCRCP), hereby moves for a protective order preventing Plaintiff from seeking discovery in this matter, and further, ordering that the publicly filed subpoenas containing personal information about Mrs. Schueler be placed under seal and that "John Doe" and his or her attorneys to return and destroy information already improperly obtained through discovery and replace the sealed subpoenas with redacted versions concealing personal information about Mrs. Schueler. This Motion is made on at least the following grounds:

1. Because the complaint does not identify the named Plaintiff, it does not comply with the mandates of Rules 10(a) and 10(e), SCRCP, should not have been accepted for filing, and should be declared a nullity or dismissed. Thus, the unnamed Plaintiff has not "commenced" this action as a matter of law and is not entitled to use the authority of the Court to gather information

about Mrs. Schueler from her or third parties through discovery, or conduct any other discovery.

2. The anonymous Plaintiff has neither sought nor received permission from the Court to conceal his or her identity nor provided any justification for doing so. Therefore, because the South Carolina Rules of Civil Procedure do not contemplate, envision, or otherwise provide for a secret suit, without the Court or the litigants even knowing on whose behalf the claims are allegedly being brought, there is no jurisdiction for discovery in this action. In short, the anonymous Plaintiff—whoever he or she is—is not entitled to use the authority of the Court to gather information about Mrs. Schueler from her or third parties through discovery, or conduct any other discovery.

3. The unnamed Plaintiff never properly served the summons and complaint. His purported alternative service did not comply with SCRCP Rule 4.1, and his affidavits of service demonstrate that the methods of service he proposed undertaking were not accomplished. Thus, pursuant to Rule 3(a), SCRCP, this action has not commenced, and the secret litigant is not entitled to use the authority of the Court to gather information about Mrs. Schueler from her or third parties through discovery, or otherwise enjoy the benefits of civil litigation discovery.

4. Mrs. Schueler and third parties possessing information about her should not be required to provide testimony or any other information to an anonymous person when no one—including the Court—knows for whose benefit any such information might be provided. This is especially true here when the secret Plaintiff has already sought and obtained, inter alia, Mrs. Schueler's private and personal banking account records, an attorney's closing file, and other sensitive and non-public information.

5. Such other grounds to be set forth at a hearing, in a memorandum in support of this Motion, or in a supplemental filing.

Accordingly, Mrs. Schueler respectfully (i) requests that the Court enter a protective order (a) preventing the unnamed Plaintiff from taking or using discovery in this matter, (b) ordering "John Doe" and his or her counsel to return and/or destroy any information previously obtained regarding Mrs. Schueler through discovery, and (c) that the publicly filed subpoenas containing personal information about Mrs. Schueler be placed under seal and replaced with redacted versions concealing her personal information; and (ii) requests that any discovery by Plaintiff or his or her counsel related to the issues here be enjoined until they have properly filed, served, and commenced a new action in

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place of the present defective one, which should be dismissed *sua sponte*, as it has never been properly filed, served, or commenced.

The undersigned counsel for Mrs. Schueler related to this Motion for a Protective Order hereby affirms that, upon information and belief, consultation pursuant to Rule 11, SCRCP, would serve no useful purpose and in the alternative, that the undersigned counsel is not required to seek consultation in an action brought by an unnamed Plaintiff that has never been commenced. Notwithstanding this belief, the undersigned counsel nonetheless will endeavor to try and resolve this unorthodox Motion prior to a hearing on the same.

This Motion is made pursuant to the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings on file, and such further evidence as may be presented and upon such other law as is applicable.

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

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Attorneys for non-party Lorraine Schueler

Sumter, South Carolina

July 7, 2023

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CERTIFICATE OF SERVICE

The undersigned, G. Murrell Smith, Jr., Attorney for Non-Party Subpoena Recipient, Lorraine Schueler, hereby avers that on the 7th day of July 2023 a true and accurate copy of the attached was served via E-Mail as well as placed in an envelope with first class postage thereon prepaid through the United States Postal Service, and mailed to the following:

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ATTORNEYS FOR PLAINTIFF

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s/ G. Murrell Smith, Jr.
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Attorneys for non-party Lorraine Schueler

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Doe, pseudonymous owner of HEX ERC-20 Tokens, on behalf of his or herself and all others similarly situated, Plaintiff, vs. Richard James Schueler, Defendant.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT C.A. No: 2022-CP-21-01980 **MEMORANDUM IN SUPPORT OF NON-PARTY LORRAINE M. SCHUELER'S MOTION FOR A PROTECTIVE ORDER**

SUMMARY

An anonymous Plaintiff is running amok in this Court, seeking unchecked and invasive discovery of non-party Lorraine M. Schueler ("Mrs. Schueler") and others. Mrs. Schueler is a senior citizen with various cognitive and physical impairments. *See* Exhibit 1. Aside from being the mother of the Defendant, she has no connection to this case and no knowledge of the "HEX" cryptocurrency token at issue. Nevertheless, the anonymous Plaintiff has deployed this Court's subpoena power to seek all manner of sensitive information about Mrs. Schueler, both from her directly and from numerous other third parties. But all the discovery this anonymous Plaintiff has undertaken is invalid, because his complaint violates Rule 10 of the South Carolina Rules of Civil Procedure and should never have been filed. And even if it could have been filed, it was never properly served. Respectfully, therefore, the Court should prohibit further discovery and dismiss Plaintiff's complaint *sua sponte*.

The complaint is improper because it violates Rule 10. South Carolina's constitution provides that "courts shall be public." S.C. Const. art. I, § 9. In furtherance of that important objective, Rule 10(a) requires every complaint to "include the names of *all* parties." Rule 10(a),

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SCRCP (emphasis added). That is a rule, not a guideline. Indeed, Rule 10(e) further states that the clerk "***shall not file*** any pleadings" that do not comply. Rule 10(e), SCRCP (emphasis added).

Even under the more permissive federal rules,[1] a wealth of case law makes clear that the "[f]ailure to seek permission to proceed under a pseudonym is *fatal* to an anonymous plaintiff's case." *Citizens for a Strong Ohio v. Marsh*, 123 Fed. Appx. 630, 637 (6th Cir. 2005) (emphasis added) (affirming dismissal of complaint filed by "John Doe" plaintiff who failed to seek and obtain permission to proceed under a pseudonym); *see also Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989) (dismissing complaint and noting that "unnamed plaintiffs" lacking permission to proceed anonymously had not actually commenced an action).

The Plaintiff here had no basis to file his complaint anonymously, and he never even bothered to seek permission to do so. As a result of that failure to comply with Rule 10(a), his complaint should not have been filed at all. Rule 10(e), SCRCP. The Court should dismiss Plaintiff's improperly filed anonymous pleading *sua sponte* and halt all discovery. *See W.N.J. v. Yocom*, 257 F.3d 1171, 1172 (10th Cir. 2001) (raising issue and dismissing *sua sponte*). *See infra* Point I.

Plaintiff failed to abide by the Hague Service Convention. Rule 4.1(a)(3), SCRCP, requires any method of alternative service to comply with international agreements, which includes the Hague Service Convention, an international agreement to which the United States is a signatory. As the anonymous Plaintiff concedes, the Hague Convention governs service unless a defendant's international address is unknown. And a plaintiff cannot claim that a defendant's

[1] Unlike Rule 10, SCRCP, the corresponding Federal rule does not expressly require the clerk of court to reject pleadings that fail to comply with Rule 10's requirements. *See* Rule 10, Fed. R. Civ. P.

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international address is unknown without first exercising "reasonable diligence in attempting to discover that address." *Compass Bank v. Katz*, 287 F.R.D. 392, 394 (S.D. Tex. 2012).

Here, counsel for Mrs. Schueler has learned from Plaintiff's filings that Plaintiff failed to undertake any diligence to locate and serve Defendant abroad, instead skipping over that prerequisite step and purporting to serve the Defendant by social media. As a result, service was defective under international agreement, and therefore under Rule 4.1. Because the complaint was never served, the case was never commenced. It should be dismissed *sua sponte*, *see* Rule 5(d), SCRCP, and all discovery halted. *See infra* Point II.A.

Plaintiff failed to accomplish alternative service. A civil action is commenced by filing and service of a summons and complaint. Rule 3(a), SCRCP. "If a plaintiff files but fails to make actual service upon the defendant the action has not yet commenced." *Blyth v. Marcus*, 322 S.C. 150, 153-54, 470 S.E.2d 389, 391 (Ct. App. 1996).

Here, service never occurred. In his motion for alternative service, Plaintiff promised to serve Defendant through five alternative methods: (1) Twitter direct message; (2) public Twitter post; (3) Telegram chatroom post; (4) Telegram direct message; and (5) email. But a careful review of Plaintiff's attempts reveals that, in reality, he failed to properly execute *any* of them. Plaintiff chose to paper over his errors rather than correct them, and thereby hoodwinked this Court into allowing this action to proceed. In view of Plaintiff's failure to serve the complaint, it is no surprise that Defendant never appeared, leaving the anonymous Plaintiff as the only active ostensible party in this lawsuit. A plaintiff cannot be permitted to continue with third-party discovery in an action where the defendant was never duly served and no action properly commenced. *See infra* Point II.B.

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If the anonymous Plaintiff wishes to invoke the powers of this Court, he must follow its rules. Because he did not, the Court must require him to begin again and properly commence an action. Mrs. Schueler respectfully requests the Court to halt Plaintiff's abusive fishing expedition for discovery from and about her, order the return or destruction of all materials already obtained, place all references to this information in the Court files under seal, and dismiss this invalid complaint *sua sponte*.

BACKGROUND

The movant, Mrs. Schueler, is a 67-year-old retiree and a resident of Bluffton. Having no knowledge or understanding of this case, she received a subpoena from the anonymous Plaintiff demanding broad categories of documents and a deposition of unlimited scope and length. After hiring counsel to address the subpoena, she learned that, with no notice to her and only partial notice to the Court, the anonymous Plaintiff had already obtained a large swath of documents about her, including: (1) over one hundred pages of her itemized personal bank transactions across *several years*; (2) her bank account numbers; (3) her email address and phone number; (4) her current and prior home addresses; (5) dozens of her private emails; (6) details relating to the purchase of her home, and more. All without Mrs. Schueler receiving notice of the identity of the covert Plaintiff collecting her data or his reasons for doing so.

Following these alarming discoveries, Mrs. Schueler's counsel has investigated the unusual circumstances surrounding Plaintiff's filing of this action and the discovery taken to date. The results are troubling.

The pseudonymous plaintiff, "John Doe," claims to be a citizen of South Carolina who allegedly swapped 0.56 units of a cryptocurrency known as Ether for 3,675 HEX cryptocurrency

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tokens on September 24, 2021, a transaction worth approximately $1,700. Compl. ¶¶ 12, 28-29.[2] Plaintiff brought this lawsuit claiming, inaccurately, that he purchased HEX tokens from "Defendant Schueler's investment smart contract." Compl. ¶ 28.[3] He filed suit in this Court even though the Defendant's only alleged nexus to South Carolina was making a brief visit to his ailing mother, Mrs. Schueler. Compl. ¶ 87. His suit seeks to establish that HEX tokens are "unregistered securities" and to pursue damages on behalf of a class of HEX purchasers. Compl. ¶¶ 91, 100. Without divulging his identity or motives, Plaintiff purports to be a typical and adequate class representative. Compl. ¶¶ 94-95.

In violation of Rule 10(a), Plaintiff unilaterally declared that he was "pleading a pseudonymous identity" due to unspecified "aggressive and threatening actions" by unidentified persons toward unidentified critics of HEX in unspecified places at unspecified times. Compl. ¶ 12. At no point before or after filing the complaint did Plaintiff ever ask the Court's permission to proceed under a fictitious name. Nor did he ever provide any evidence, or even particularized allegations, to substantiate his supposed fears or to justify his remarkable decision to sue anonymously in, of all things, a case about a small investment in cryptocurrency tokens.

After filing his anonymous complaint, "John Doe" then set out to serve it on the Defendant, Mrs. Schueler's son, who Plaintiff acknowledges has not lived in the United States for at least 16 years. *See* Plaintiff's October 5, 2022 Memorandum In Support of *Ex Parte* Motion to Approve Service by Other Means, attached as Exhibit 2, ("Plaintiff's Alternative Service Memo") at 2, 7. The anonymous Plaintiff hired a private investigator to confirm what he already knew—that

[2] 3,675 HEX tokens purchased at a value of 47 cents per HEX token amounts to $1,727.25.

[3] Plaintiff's own complaint contradicts that allegation, stating elsewhere that the "HEX token is traded largely, if not entirely, on decentralized online exchanges," such as "Uniswap," rather than directly on the HEX smart contract. Compl. ¶¶ 21-22. Public blockchain transaction records confirm that Plaintiff's September 24, 2021 swap for 3,675 HEX tokens did in fact occur on the Uniswap exchange and not on the HEX smart contract. *See* https://etherscan.io/tx/0x6245c0b796e7c625e05d703b93dafadf6378efb9b5e719b889af71775afa9855.

Defendant did not live in the United States—but did not attempt to locate him abroad so that he could be served under applicable international laws. *See* Exhibit 2 (Plaintiff's Alternative Service Memo) at Ex. A, page 1 (noting "efforts to locate and confirm a current residence address *within the United States*") (emphasis added).

Although the Hague Service Convention requires a diligent inquiry to locate a defendant abroad, Plaintiff simply claimed that the international Hague Service Convention did not apply because "the address of the person to be served . . . [was] not known." Exhibit 2 at 9. But he described not a single attempt to find that address or otherwise locate the Defendant, instead relying on YouTube videos in which the Defendant declined to broadcast his home address publicly. *Id.* at 2-4. With that declaration, Plaintiff thus skirted the Hague Service Convention, a treaty between the United States and 81 other countries, while neglecting to inform the Court that he and his private investigator had not made the required effort to locate the Defendant abroad.

The anonymous Plaintiff then purported to undertake alternative service, proposing to serve the Defendant using social media rather than conventional service. But as his own affidavits reveal, in reality he failed at every method of service that he proposed to undertake, including Twitter, Telegram, and email—leaving the Defendant unserved.

With no other party having appeared, the anonymous Plaintiff used the resulting lack of adversarial checks to commence an invasive third-party subpoena campaign, beginning with seven subpoenas as listed on the public docket. *See* Subpoenas dated Nov. 15, 2022; Nov. 16, 2022; Jan. 11, 2023; Jan. 13, 2023. And it is unknown how many other subpoenas this Plaintiff has issued under the cloak of secrecy. With an ironic disregard for the elderly Mrs. Schueler's own privacy, the anonymous Plaintiff publicly identified Mrs. Schueler's name, her town of residence, and her bank, through some of those publicly docketed subpoenas. *See* November 15, 2022 subpoena to

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Hale and Hale (identifying Mrs. Schueler by name and town of residence) and similar language in November 15, 2022 Subpoena to Homesfinder Realty; January 13, 2023 subpoena to Wells Fargo Bank, NA (identifying Mrs. Schueler as a customer).

Plaintiff did all this without notifying Mrs. Schueler beforehand or revealing the identity of the covert Plaintiff who was collecting her data, or his reasons for doing so. And all without implementing any sort of confidentiality order, leaving Mrs. Schueler without any assurances that her personal and banking information would be handled with care. No guarantee that confidential information would be filed under seal. No promise that the data would only be used for this litigation. No assurance that the anonymous Plaintiff would refrain from selling, transferring, or otherwise misusing her sensitive information.

In addition to those seven docketed subpoenas, Plaintiff has been relentlessly scrounging for still more discovery off the docket, including through a subpoena directed to Mrs. Schueler herself. That subpoena seeks to drag the ailing movant out of her home and subject her to a deposition of unbounded scope and length. It also seeks numerous categories of irrelevant and highly sensitive personal and financial information. To wit:

> 1. A copy of all public keys utilized by you on decentralized ledgers including (but not limited to) Bitcoin, Ethereum, Ripple, Binance Smart Chain, Polkadot, and Cardano.
>
> 2. A copy of all public addresses utilized by you on decentralized ledgers including (but not limited to) Bitcoin, Ethereum, Ripple, Binance Smart Chain, Polkadot, and Cardano.
>
> 3. A copy of all cryptocurrency centralized exchange account information possessed by you. Such accounts may be hosted by centralized exchanges such as Coinbase or Binance.
>
> 4. A copy of all bank account numbers (including routing number and account number) possessed by you at any time from January 1, 2018 to the present.
>
> 5. A copy of all correspondence (whether written or electronic) between you and Richard J. Schueler from January 1, 2018 to the present.

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> 6. A copy of all text messages between you and Richard J. Schueler from January 1, 2018 to the present.
>
> 7. Any device provided to you by Richard J. Schueler that is capable of retaining electronic data. This may include (but should not be limited to) a computer, an external hard drive, a "cold wallet," or a USB drive.
>
> *See* Attachment A to April 10, 2023 subpoena to Mrs. Schueler (attached as Exhibit 3).[4]

Hackers have to do a lot of work to get their hands on elderly women's bank information. This covert Plaintiff is abusing the judicial process to get the same information. He provided no explanation for his demands, despite their irrelevance to the subject matter of this litigation and Mrs. Schueler's lack of involvement in this case. Even more troubling, Mrs. Schueler has recently learned that Plaintiff has accessed or is attempting to obtain even *more* of her personal records through additional subpoenas to third parties off the docket that Plaintiff did not inform her about until after the fact. For instance, Plaintiff has issued a subpoena to another law office seeking still more information about the purchase of Mrs. Schueler's home, along with a subpoena to a cryptocurrency exchange for additional financial records, including Mrs. Schueler's "complete transaction history" and "know your customer data" for her accounts. *See* Exhibit 4.

Mrs. Schueler is gravely concerned about the sensitive personal information that has already been handed over through subpoenas known and unknown, without any protections, to an unnamed litigant with unknown motives, who seeks to pry still more information from her and others. And the clandestine Plaintiff, while masking his own identity, continues to engage in a relentless and abusive discovery crusade against Mrs. Schueler and others. This must come to a stop. With no defendant appearing in this case due to Plaintiff's own intractable errors, Mrs.

[4] In violation of Rule 45(a)(3), SCRCP, Plaintiff's counsel never signed this subpoena.

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Schueler now requests that this Court step in to examine Plaintiff's actions, issue a protective order halting discovery, and dismiss this invalidly commenced action *sua sponte*.[5]

LEGAL STANDARD

This Court may "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden" in discovery, including by ordering that "discovery not be had" or that "the scope of discovery be limited to certain matters." Rule 26(c), SCRCP. "The rules of civil procedure allow the trial judge broad latitude in limiting the scope of discovery when the discovery process threatens to become abusive." *Gattison v. S.C. State Coll.*, 318 S.C. 148, 150, 456 S.E.2d 414, 415 (Ct. App. 1995) (citing *Hamm v. S.C. Public Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994)). Such abuse is not only threatened but manifest here.

ARGUMENT

The civil discovery process and the attendant authority to issue subpoenas for documents and testimony presuppose the existence of a validly filed and served case. Here, no such case exists. This Court should grant the requested relief to protect Mrs. Schueler and other third parties from being subjected to subpoenas that the anonymous Plaintiff in this case is not authorized to issue. The anonymous Plaintiff was never entitled to commence an action under a fictious name, and accordingly he has not filed a valid complaint. The Court should dismiss his improperly filed complaint and forbid further discovery in this action. *See infra* Point I. And even if the anonymous Plaintiff had validly filed an action, he would not be entitled to take discovery because he never

[5] On May 4, 2023, Mrs. Schueler filed a motion to quash the subpoena issued to her in the Court of Common Pleas in Beaufort County, where she resides and where the subpoena was issued. In view of the broader relief she seeks in the plenary action here, the court in Beaufort has continued the hearing on that motion pending resolution of this one.

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properly served the summons and complaint. *See infra* Point II. To pursue the alleged claims, he must file and properly serve a new summons and complaint under his true name.

I. The anonymous Plaintiff is not entitled to invoke this Court's subpoena power because he has not properly filed a complaint pursuant to Rule 10.

Rule 10(a), SCRCP, requires that "[i]n the summons and complaint the title of the action shall include the names of all parties." Rule 10 is more strict than its federal analogue because it expressly provides that the clerk "shall not file" pleadings that do not comply with that rule, forbidding defective complaints at the outset. *Compare* Rule 10(e), SCRCP, *with* Fed. Rule Civ. P. 10. The requirement that all parties be identified by name, "though seemingly pedestrian, serves the vital purpose of facilitating public scrutiny of judicial proceedings and therefore cannot be set aside lightly." *Publicola v. Lomenzo*, No. 1:21-CV-1303, 2022 WL 1027099, at *19 (N.D.N.Y. Apr. 5, 2022). Allowing such public scrutiny is particularly important in South Carolina, where open courts are fundamental to this state's governance. *See* S.C. Const. art. I, § 9 ("All courts shall be public."); *see also Doe v. Mass. Inst. Of Tech.*, 46 F.4th 61, 67 (1st Cir. 2022) ("A judicial system replete with Does and Roes . . . undermines public confidence in the courts' work."). Accordingly, the rules of civil procedure require plaintiffs to identify themselves, Rule 10(a), SCRCP, and they "make no provision for suits by persons using fictitious names or for anonymous plaintiffs." *See Gibbs*, 886 F.2d at 1245. Ignoring the rules, Plaintiff filed his complaint anonymously without so much as asking permission. This Court should dismiss Plaintiff's defective complaint and halt the ensuing discovery.

A. This Court should address Plaintiff's impermissible anonymity.

This Court can and must confront Plaintiff's anonymity on Mrs. Schueler's motion. Invasive discovery has dragged her and her personal information into an essentially unmonitored litigation between an anonymous Plaintiff and a foreign, non-appearing Defendant, leaving no one

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else to challenge Plaintiff's improper use of a fictious name and his issuance of subpoenas from behind that cloak of anonymity. And regardless of who raises the issue, this Court has "a judicial duty to inquire into the circumstances of particular cases to determine whether the dispensation [of anonymity] is warranted." *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993).

In view of the public nature of our court system, "when a party seeks to litigate under a pseudonym, a [court] has an *independent obligation* to ensure that extraordinary circumstances support such a request." *See Doe v. Pub. Citizen*, 749 F.3d 246, 274 (4th Cir. 2014) (emphasis added). For that reason, "the privilege of suing or defending under a fictitious name should not be granted automatically even if the opposing party does not object." *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997) (noting that "the use of fictitious names is disfavored" because "[t]he people have a right to know who is using their courts"). And where, as here, a plaintiff files an anonymous complaint without justification or permission, courts may properly dismiss the complaint *sua sponte*. *See, e.g.*, *Doe v. Accurate Background*, *LLC*, 2017 WL 7803798, at *1 (C.D. Cal. Nov. 29, 2017) (*sua sponte* order to "show cause why Plaintiff's Complaint should not be stricken for failure to comply with Rule 10(a)"); *Doe v. Rostker*, 89 F.R.D. 158, 163 (N.D. Cal. 1981) (dismissing anonymous complaint *sua sponte* for failure to provide plaintiff's identity in compliance with Rule 10).

Moreover, courts should protect third parties who are subpoenaed by plaintiffs who improperly proceed under a fictitious name, as an opinion from the Virginia Supreme Court makes clear. *See Am. Online, Inc. v. Anonymous Publicly Traded Co.*, 542 S.E.2d 377 (Va. 2001). In that case, another jurisdiction's trial court had permitted the plaintiff to proceed anonymously, but "no hearing was held concerning the question, no evidence was received by the court, no reasons for the decision were given, and the order permitting anonymous maintenance of the action was

granted in a non-adversarial, *ex parte* proceeding." *Id.* at 383. A third party moved to quash a subpoena because the anonymous plaintiff who issued it had failed to identify itself. *Id.* at 380. The Virginia trial court denied the motion to quash, and the third party appealed. *Id.* at 380-81. The Virginia Supreme Court noted that plaintiffs may proceed anonymously only in "exceptional case[s]," concluded that the plaintiff "ha[d] not borne its burden to show special circumstances justifying anonymity," and reversed the trial court's denial of the motion to quash. *Id.* at 384-85. So too here, the Court should consider this issue on Mrs. Schueler's motion and grant the relief she seeks.

B. The anonymous complaint was not validly filed and must be dismissed.

Rule 10's mandate that Plaintiff identify himself in his pleading is not a requirement to be taken lightly. To the contrary, Rule 10 expressly provides that "[t]he clerk of the court ***shall not file*** any pleadings . . . not prepared in accordance with this rule." Rule 10(e), SCRCP (emphasis added). South Carolina courts have interpreted "the clear language" of the rule strictly, noting that it "requires a party to include the names of *all parties* in the caption." *See Thurmond Guess v. Benedict Coll.*, No. 2001-CP-40-4804, 2002 WL 33957108 (S.C. Com. Pl. May 16, 2002) (emphasis added). Thus, courts in this state may dismiss a complaint that "fail[s] to comply with the requirements of [Rule 10(a)]." *See Trexler v. AP*, No. 2010-CP-40-1249, 2012 WL 11966380, at *2-3 (S.C. Com. Pl. Oct. 30, 2012) (dismissing claims in amended complaint as time-barred where original complaint failed to identify parties as required by Rule 10); *see also Trexler*, 2013 WL 9963459, at *1-2 (S.C. Com. Pl. Apr. 30, 2013) (denying motion for reconsideration and noting that "Rule 10 does require a caption on a summons and complaint to 'include the names of all parties'"). This Court's analysis can begin and end with that threshold requirement. Plaintiff failed to identify himself in his own complaint and never asked the Court for permission to deviate from his express obligation to do so. Rule 10(e) provides that such a defective complaint "shall

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not" be filed. Rule 10(e), SCRCP. Thus, his pleading was tainted from the outset and should be dismissed. If he wishes to file a lawsuit, he must file a new one under his true name.

This outcome is supported by a wealth of federal court opinions interpreting the more lenient Federal Rule of Civil Procedure 10, which does not forbid the clerk from filing defective pleadings. "Courts have interpreted [the requirement of Federal Rule 10] as a general prohibition on pseudonymous litigation." *Doe v. Va. Polytechnic Inst. & State Univ.*, No. 7:20CV00711, 2021 WL 2156411, at *1-2 (W.D. Va. May 27, 2021). Under the federal rule, plaintiffs are permitted to proceed anonymously only in "exceptional circumstances" and, even then, only "with leave of the court." *Id.* (quoting *Doe*, 749 F.3d at 273). Indeed, "some courts have held that, absent permission to proceed anonymously, if a complaint fails to comply with Rule 10(a) and does not divulge the plaintiff's identity, its filing is ineffective to commence an action and the court lacks jurisdiction over the unnamed parties." *Richard S. v. Sebelius*, No. CA 3:12-007-TMC, 2012 WL 1909344, at *1 (D.S.C. May 25, 2012) (noting that "[t]he court does not condone the filing of an action anonymously without permission"); *see also Gibbs*, 886 F.2d at 1245.

Thus, numerous federal courts have concluded that "[w]hen a party wishes to file a case anonymously or under a pseudonym, it must first petition the [court] for permission to do so." *Yocom*, 257 F.3d at 1172 (addressing issue *sua sponte*). And if "the unnamed plaintiffs have made no request . . . for permission to proceed anonymously . . . a case *has not been commenced* with respect to them." *Gibbs*, 886 F.2d at 1245 (emphasis added); *see also Loa-Herrera v. Trominski,* 231 F.3d 984, 991 (5th Cir. 2000); *Va. Polytechnic Inst. & State Univ.*, No. 7:20-CV-00711, 2021 WL 2156411, at *1-2; *Est. of Rodriquez v. Drummond Co.*, 256 F. Supp. 2d 1250, 1255-56 (N.D. Ala. 2003) (dismissing complaint "because plaintiffs failed to seek [leave to proceed anonymously] prior to filing the complaint currently before this court"); *M.A.C. v. Gildner*, 853

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Fed. Appx. 207, 210 (10th Cir. 2021) (affirming *sua sponte* dismissal of complaint based on "plaintiff's failure to provide her full name or seek permission to do otherwise"); *Roe v. New York*, 49 F.R.D. 279, 281 (S.D.N.Y. 1970) (complaint with anonymous plaintiff is "ineffective to commence an action").

The anonymous Plaintiff here "not only filed anonymously, [he] evidently never even bothered to *ask* [this Court] for permission to do so." *In re U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 84 (D.C. Cir. 2019). Instead, he simply proclaimed that he was "pleading a pseudonymous identity" due to unspecified "aggressive and threatening actions" toward critics of the HEX cryptocurrency. Compl. ¶ 12. His decision to "simply *announce*" that he was proceeding under a pseudonym "cannot square with the [rules] or our longstanding commitment to openness, much less the rule referred to earlier of treating failure to *request* permission as fatal to jurisdiction over such parties." *See In re U.S. Off. Of Pers. Mgmt.*, 928 F.3d at 84 (emphasis in original).

That "[f]ailure to seek permission to proceed under a pseudonym is fatal to an anonymous plaintiff's case." *Citizens for a Strong Ohio*, 123 Fed. Appx. at 637. For instance, in *Klayman v. Obama*, the plaintiffs brought their case anonymously without permission, asserting that they faced "serious threat of harm and retaliation" because they were "suing a recognized terrorist organization." 125 F. Supp. 3d 67, 89-90 (D.D.C. 2015) (internal quotation marks omitted). The court recognized that those concerns "may well be true, but Plaintiffs did not request leave to proceed anonymously." *Id.* The court therefore held that "the claims brought by anonymous plaintiffs will be dismissed." *Id.* at 90; *see also Doe v. Kamehameha Sch*., 596 F.3d 1036, 1046 (9th Cir. 2010) (upholding district court's decision to "dismiss[] [a] case based on plaintiffs' failure to disclose their identities").

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So too here, this Court should reject Plaintiff's complaint as defective because he failed to identify himself and "did not seek leave of the court to proceed pseudonymously." *See Va. Polytechnic Inst. & State Univ.*, 2021 WL 2156411, at *1-2 ("Even if Plaintiff had properly served all Defendants, his claim would be dismissed because he has improperly proceeded under a pseudonym."). This outcome makes good sense. If plaintiffs were not required to identify themselves or contemporaneously seek leave to file under a pseudonym, there would be nothing to discourage them from filing anonymously without justification and placing the burden of challenging that misconduct on other parties or the Court. Those incentives cannot be squared with this state's longstanding principle that its courts shall be open. S.C. Const. art. I, § 9.

Nor is this a drastic outcome, as Plaintiff is free to file and serve a new case under his true name. Or if Plaintiff really believes that he is entitled to anonymity, he can seek permission to file a new case under seal, and, after disclosing his identity to the Court and allowing a conflict check, seek leave to bring it anonymously. A similar procedure under the less restrictive federal rule was suggested in *Klayman.* 125 F. Supp. 3d at 89-90. But such a motion would inevitably be denied, as Plaintiff here can identify no "extraordinary circumstances" that remotely justify "undermin[ing] the public's right of access to judicial proceedings" through his use of a pseudonym. *Co. Doe*, 749 F.3d at 274. Plaintiff's lawsuit concerns his purchase of $1,700 worth of cryptocurrency tokens, which is not "a matter of sensitive and highly personal nature" as required to justify the use of a pseudonym, had he bothered asking permission to do so. *See id.* at 273 (quoting *Jacobson*, 6 F.3d at 238); *see also Doe v. Howe*, 362 S.C. 212, 217, 607 S.E.2d 354, 356-57 (Ct. App. 2004) (considering same factors in context of child sexual abuse claims). Plaintiff may wish to avoid placing his cryptocurrency transaction under scrutiny, but "use of a

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pseudonym 'merely to avoid the annoyance and criticism that may attend . . . litigation' is impermissible." *Doe*, 749 F.3d at 275 (quoting *Jacobson*, 6 F.3d at 238).

Nor would Plaintiff's hypothetical request, if he had made one, be justified by his supposed fear of unsubstantiated "aggressive and threatening actions of others towards those who have criticized the HEX investment scheme and the Defendant in the recent past." Compl. ¶ 12. Such "generalized, subjective assertions of fear [are] simply not the kind of risk of physical or other injury required to treat [him] differently than other plaintiffs." *In re Chiquita Brands Int'l, Inc.*, 965 F.3d 1238, 1248, 1251 (11th Cir. 2020) (internal quotation marks omitted); *see also Rupa Vickers Russe v. Harman*, No. 1:21-CV-00270-MR-WCM, 2021 WL 5043358, at *1, 3-4 (W.D.N.C. Oct. 28, 2021) (rejecting motion for anonymity despite alleged fears of "violence, harassment, humiliation or threats" because "criticism and annoyance often attends the litigation process"); *Roe v. CVS Caremark Corp.*, No. 4:13-CV-3481-RBH, 2014 WL 12608588, at *2-3 (D.S.C. Sept. 11, 2014) (rejecting motion for anonymity despite "fear of possible retaliation").[6]

The anonymous Plaintiff here failed to comply with Rule 10, did not even bother to ask this Court for permission to deviate from its unambiguous requirements, and would not have been justified even if he had. Rule 10 provides a straightforward solution to that misconduct: Such pleadings "shall not" be filed. Rule 10(e), SCRCP. As such, the complaint should be dismissed as defective. *See Nicolette v. Blue Cross Blue Shield of N.C.*, No. 6:20-CV-1411-WWB-GJK, 2021 WL 2689387, at *3 (M.D. Fla. May 28, 2021) (striking anonymous complaint for failing to comply with Rule 10 or move to proceed under pseudonym, and noting that plaintiff's "predicament . . . is entirely of his and his counsel's own making"). Should Plaintiff wish to

[6] Compounding the iniquity of Plaintiff's unilateral decision to proceed anonymously is his lack of regard for Mrs. Schueler's privacy, having publicly identified her name, her town of residence, and her bank through his subpoenas, while hiding all aspects of his own identity.

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"invoke the state's coercive apparatus, [he] must do so openly, i.e., under '[his] real name[],'" in a new action. *See In re U.S. Off. Of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 82 (D.C. Cir. 2019). And because Plaintiff's case should never have been filed, the discovery he has pried from third parties about Mrs. Schueler should be returned or destroyed. *See Zendejas v. Redman*, No. 15-81229-CV, 2017 WL 2782034, at *3 (S.D. Fla. June 26, 2017) (ordering that any documents received in connection with invalidly issued subpoenas "shall be returned to the third party and no copies may be maintained by Plaintiff's counsel").

II. Plaintiff cannot use this Court's subpoena power because he never served the summons and complaint.

This Court should also dismiss the case and halt discovery because the unambiguous record shows that Plaintiff never properly served the complaint on the foreign Defendant. The South Carolina Rules of Civil Procedure provide that, "[u]pon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party." Rule 5(d), SCRCP; *see also Johnson v. Palmetto Solar, LLC*, Op. No. 2023-UP-125, 2023 WL 2674633, at *2 (Ct. App. 2023) (requiring dismissal where "record shows [plaintiff] failed to serve [defendant] with the summons and complaint"); *Christian v. Healy*, 435 S.C. 507, 510-11, 868 S.E.2d 403, 405 (Ct. App. 2021) (same); *Fox v. Eagle Harbor*, C.A. No. 2022-CP-08-01053, 2023 S.C. C.P. LEXIS 118, at *2 (S.C. Com. Pl. Feb. 6, 2023) (dismissing the case for failing "to serve the summons and complaint . . . pursuant to Rule 5(d), SCRCP"). Dismissal is warranted in such a circumstance because, without service, no case has been commenced. *See Venture Eng'g, Inc. v. Avery*, No. 2008-UP-002, 2008 WL 9832815, at *2 (Ct. App. 2008) ("In South Carolina, a civil action is commenced if the summons and complaint are filed with the clerk of court and proper service is effectuated."); *see also Shanbhag v. Yannic Dupont & Titan Transp.*, No. 7:20-CV-00120-BHH, 2020 WL 6689138, at *2 (D.S.C. Nov. 12,

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2020) ("South Carolina requires both *filing* of the summons and complaint and *service* on the defendant to commence a civil action.") (emphasis in original); S.C. Code Ann. § 15-3-20(B); Rule 3(a), SCRCP. Moreover, where a defendant is never served, the Court lacks jurisdiction to proceed with the case. *See Langley v. Graham*, 322 S.C. 428, 432, 472 S.E.2d 259, 261 (Ct. App. 1996).

The record is clear that Plaintiff failed to serve the complaint. His alternative service was defective because he neglected to undertake any search for Defendant internationally and thereby failed to serve him in accordance with international law. *See infra* Point II.A. And even if his five proposed methods of alternative service were valid, Plaintiff's own filings demonstrate that he failed to accomplish even one of them. *See infra* Point II.B. With no action commenced and no jurisdiction, Plaintiff cannot be allowed to continue using this Court's subpoena power to obtain information from Mrs. Schueler and others.

A. Plaintiff was not entitled to pursue alternative service because he did not attempt to locate Defendant internationally.

Rule 4.1 of the South Carolina Rules of Civil Procedure allows service of process on individuals in foreign countries by means "not prohibited by international agreement, as the court orders." Rule 4.1(a)(3), SCRCP. Crucially, this rule requires any method of service to comply with "international agreement[s]," including the Hague Service Convention, an international treaty to which the United States and 81 other countries are signatories.[7] Under the Hague Convention, rather than serving a defendant directly, "the party seeking service will send its request to the Central Authority designated by the foreign nation in which service is to be made." 4B Wright & Miller, *Federal Practice and Procedure* § 1136 (4th ed. 2017); *UnderSea Recovery Corp. v.*

[7] *See* Status Table, *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (last update June 23, 2023), https://www.hcch.net/en/instruments/conventions/status-table/?cid=17.

Madero Holdings, S.A. de C.V., No. 1:19-CV-00286-SDG, 2020 WL 13544376, at *3 (N.D. Ga. May 19, 2020); *Compass Bank*, 287 F.R.D. at 396.

Where the Hague Convention applies, its requirements cannot be set aside by this or any other court. The Hague Convention "specifies certain approved methods of service and 'pre-empts inconsistent methods of service' wherever it applies." *Water Splash, Inc. v. Menon*, 581 U.S. 271, 273 (2017) (quoting *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698 (1988)); *see also Smart Study Co. v. Acuteye-US*, 620 F. Supp. 3d 1382, 1393 (S.D.N.Y. 2022) (rejecting service by email and noting that under "binding Supreme Court precedent[,] . . . methods of service that are not specifically authorized are impermissible under the Convention"). The convenience of the parties or this Court "must yield to the Convention's rules," as "the systemic comity interests embodied in the [Hague] Convention shouldn't be sacrificed in the name of concrete case management concerns." *Facebook, Inc. v. 9 Xiu Network Shenzhen Tech. Co.*, 480 F. Supp. 3d 977, 987 (N.D. Cal. 2020) (rejecting service by email) (internal quotation marks omitted).

Hoping to avoid those immovable requirements, the anonymous Plaintiff represented to the Court that the Hague Convention did not govern service here because it does not apply where the Defendant's international address is "not known." Exhibit 2 at 9. But he cannot rely on that exception. Although the Hague Convention does not apply if a defendant's address is unknown, "[a] plaintiff cannot close its eyes to the obvious to avoid the Hague Service Convention; the plaintiff must make reasonably diligent efforts to learn the defendant's mailing address." *Luxottica Grp. S.p.A. v. P'ships & Unincorporated Ass'ns Identified on Schedule "A"*, 391 F. Supp. 3d 816, 822 (N.D. Ill. 2019). Thus, numerous courts have held that an address is considered "not known" for purposes of the Hague Convention only if "the plaintiff exercised reasonable diligence in attempting to discover a physical address for service of process and was unsuccessful in doing so."

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Kelly Toys Holdings, LLC. v. Top Dep't Store, No. 22-CIV-558-PAE, 2022 WL 3701216, at *6 (S.D.N.Y. Aug. 26, 2022) (internal quotation marks omitted); *Indagro, S.A. v. Nilva*, No. 07-CV-03742-SDW-MCA, 2014 WL 1515587, at *4 (D.N.J. Apr. 17, 2014) (same); *Compass Bank*, 287 F.R.D. at 394 (same); *see also Opella v. Rullan*, Civ. No. 10-21134, 2011 WL 2600707, at *6 (S.D. Fla June 29, 2011) (concluding that plaintiff "has not carried his burden to show that he could not determine [defendant's international] address after a reasonably diligent search").

Plaintiff's own filings demonstrate that he did not search for Defendant's international address diligently, or at all. Plaintiff's investigator made only "efforts to locate and confirm a current residence address *within the United States*." *See* Exhibit 2, at Ex. A page 1 (emphasis added); *see also* Exhibit 2 at 6 ("Plaintiff's counsel retained the services of Delta Group, Inc., a private investigation company, to determine *whether [defendant] resides within the United States*.") (emphasis added). That *domestic* search cannot possibly establish that the Defendant's *international* address could not be determined.

Rather than attempt to determine Defendant's international address, or even his country of residence, Plaintiff moved for alternative service a mere two weeks after filing his complaint, contending that the Defendant could not be found because he had stated in some YouTube videos that he preferred not to disclose his address to "random people on the Internet." Exhibit 2 at 3. But Defendant's decision not to publicize his personal location online does not relieve Plaintiff of his obligation to "put forth reasonable diligence in attempting to discover defendant's address" before he "can circumvent the methods for service of process authorized by the Hague Convention." *Compass Bank*, 287 F.R.D. at 395; *see also Jimena v. UBS AG Bank*, No. CV-F-07-367-OWW-SKO, 2010 WL 2465333, at *11 (E.D. Cal. June 10, 2010) ("Merely because

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[defendant's] personal address is not available via the internet does not mean he evaded service of process.").

Plaintiff's lack of diligence stands in stark contrast to cases in which alternative service was permitted only after the plaintiff had made extensive efforts to locate and properly serve a defendant abroad via the Hague Convention. For instance, one district court in the Fourth Circuit allowed alternative service only after plaintiffs exerted "best efforts over the past year and a half" including by "engag[ing] the services of an investigative firm in Pakistan" and "searching through telephone records, utility records, property records, various housing authorities' records, law enforcement records and other personal identifying databases in Pakistan," but only being able to determine that a defendant resided "somewhere in Karachi, Pakistan." *BP Prod. N. Am., Inc. v. Dagra*, 232 F.R.D. 263, 264 (E.D. Va. 2005). Another allowed alternative service only after "plaintiffs hired two different foreign service firms and spent nearly twelve months attempting to serve [defendant] in Argentina in accordance with the Hague Convention," and after "Argentinian authorities . . . attempted to serve [defendant] at his known address and discovered that it was vacant and under construction." *Automobili Lamborghini S.P.A. v. Garcia*, 467 F. Supp. 3d 385, 401 (E.D. Va. 2020). Yet another determined that a defendant's address was unknown only after "the office of the sheriff in Saskatoon [Canada] attempted to locate the defendants" and discovered that they "had moved out of the province to an unknown address" and were "no longer in business . . . in Saskatoon." *Shanbhag*, 2020 WL 6689138, at *5 (internal quotation marks omitted).[8]

[8] *See also Chanel, Inc. v. Song Xu*, No. 2:09-CV-02610-CGC, 2010 WL 396357, at *1 (W.D. Tenn. Jan. 27, 2010) (plaintiff requested "an investigator in China" to "verify the accuracy of the physical contact addresses and research alternative addresses"); *UnderSea Recovery*, 2020 WL 13544376, at *4 (plaintiff "directed the Mexican Central Authority to serve [defendant]" at two addresses, searched "at least seven different databases" and "official registry records" in Mexico); *Virgin Enters. Ltd. v. Virgin LLC*, No. 19-CV-220-F, 2020 WL 13564061, at *3 (D. Wyo. Apr. 16, 2020) ("Plaintiff hired a private investigator to locate an address for [defendant] in Poland that turned out to be an abandoned building" and was "unable to obtain a current valid address"); *Kelly Toys*, 2022 WL 3701216, at *6 (local counsel in Beijing "failed to identify a physical address").

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Even Plaintiff's principal authority, *Cox v. CoinMarketCap OpCo LLC*, exposes the deficiencies in Plaintiff's efforts. *See* Exhibit 2 at 12. The court in that case initially *rejected* plaintiff's petition for alternative service, concluding that the plaintiff "ha[d] not presented the Court with enough information to determine the country in which Defendants reside or, by extension, determine if service via Twitter would violate international law." *Cox v. CoinMarketCap OpCo LLC*, No. CV-21-08197-PCT-SMB, 2021 WL 5908206, at *2 (D. Ariz. Dec. 13, 2021). The court later approved alternative service only after plaintiffs had spent months attempting to locate the defendants, including by hiring two private investigators who "could not even identify [defendant's] country of residency." *Id.* at *2.

Simply put, Plaintiff failed to undertake any diligence to locate and serve the Defendant abroad. The mere fact that the Defendant's desire for privacy online may have required Plaintiff to put more effort into his diligence is no excuse. *See Jimena*, 2010 WL 2465333, at *9-10 (rejecting alternative service where plaintiff's motivation was "that he cannot afford to investigate the local address for [defendant] in order to serve him via the Hague Convention procedures"). Because Plaintiff was not entitled to sidestep international requirements for service of process, his purported alternative service was manifestly defective.

B. Plaintiff failed to execute any of his proposed methods of alternative service.

Putting service in a bottle and throwing it into the ocean is not valid service merely because the defendant drinks water. "When a defendant is not properly served, the Court has no jurisdiction of the defendant, and all proceedings based on the pretended service are void." *Momani v. Van Surdam*, 296 S.C. 409, 410, 373 S.E.2d 691, 692 (Ct. App. 1988) (internal quotation marks and citation omitted). Even if Plaintiff were entitled to use the means of alternative service that he sought from this Court, the record shows unequivocally that service was never effectuated because the anonymous Plaintiff did not in fact serve the complaint in any of the ways that he promised.

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Judge Hood approved Plaintiff's *ex parte* motion to *attempt* five alternative service methods: (1) Twitter direct message, (2) Twitter public message, (3) Telegram HEX chatroom, (4) Telegram direct message, and (5) e-mail. Order, Oct. 12, 2022. But, as shown below, Plaintiff failed to properly accomplish *any* of them, despite representing to the Court that service had been accomplished "per the order of the Court." Fuller Affidavit of Service ¶ 2 (Oct. 14, 2022), attached as Exhibit 5.[9]

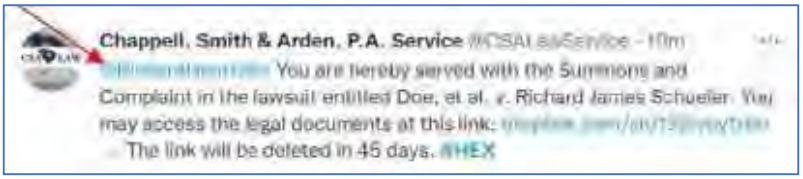
1. Plaintiff failed to serve Defendant via Twitter direct message.

Plaintiff, through counsel, stated in an October 14, 2022 affidavit that "[s]ervice was attempted via Twitter direct message to @RichardHeartWin," but conceded that the direct messaging function of the Defendant's Twitter account was "disabled." *See* Exhibit 5 at ¶ 4. Therefore, this proposed method of service was not made at all.

2. Plaintiff failed to serve Defendant by a public Twitter message.

Plaintiff stated that he would serve Defendant via "public message on Twitter." *See* Exhibit 2, at 12. But he did not do so. Instead, he committed an obvious and fundamental error by posting a "semi-private" Tweet visible to almost no one. That method fell far short of what Plaintiff committed to do in his motion for alternative service, and it could not have apprised Defendant of this action.

Plaintiff's Twitter post began with Defendant's alleged Twitter username, @RichardHeartWin:



[9] Furthermore, these alternative forms of service violate Rule 4.1 because they are "prohibited by international agreement," Rule 4.1, SCRCP, as they are not authorized under the unavoidable parameters of the Hague Convention. *See supra* Point II.A. *See, e.g.*, *9 Xiu Network*, 480 F. Supp. 3d at 987 (rejecting service by email as not authorized under Hague Convention).

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See Exhibit 5, at Ex. A page 3. The problems begin there. It is common knowledge among Twitter users that a Twitter post *beginning* with a username is not a public post at all. That type of post is known as a "semi-private" Tweet[10] and is a "big mistake" when it comes to publicizing posts.[11] Twitter's official Help Center webpage, which Plaintiff cited in his own brief (Exhibit 2 at 12), makes this clear. That page warns: "When you post a Tweet beginning with a username, *only people who follow both you and the account you are mentioning will see the Tweet*." (emphasis added).[12] In other words, the Tweet was not a "public message," as Plaintiff promised to publish. Rather, it would be displayed only to users who followed *both* the @RichardHeartWin account *and* the @CSALawService account, a brand new account created by Plaintiff's counsel to make the post. Without a public post or any attendant engagement by members of the public, Plaintiff could not have reasonably counted on his Tweet capturing Defendant's attention—particularly since 9 months later, it has still garnered no comments, no retweets, and only 3 likes.[13] Indeed, Plaintiff's own motion concedes that Defendant makes "extraordinary use of the Twitter platform" and sends out many Tweets daily. Ex. 2 at 12. And at the time, he had more than 250,000 Twitter followers, with his profile warning that he "doesn't read msgs [messages]."[14] Plaintiff could not have plausibly relied on Defendant picking out Plaintiff's one obscure Tweet from all of Defendant's Twitter activity, the vast scope of which Plaintiff himself recognizes.

There is no justification for Plaintiff's use of a semi-private Tweet rather than a public Twitter post. Making the post public would have been as simple as moving the

[10] Alice Keeler, *3 Twitter Tips for Interacting* (July 2, 2018), https://alicekeeler.com/2018/07/02/3-twitter-tips-interacting/ (last visited Aug. 2, 2023).
[11] Social Media Week, *Unless You Are Replying, Don't Begin Tweets with the '@' Symbol* (Oct. 15, 2014), https://socialmediaweek.org/blog/2014/10/unless-replying-dont-begin-tweets-symbol/ (last visited Aug. 2, 2023).
[12] *About different types of Tweets*, https://help.twitter.com/en/using-twitter/types-of-tweets (last visited Aug. 2, 2023).
[13] https://twitter.com/CSALawService/status/1580923552034828288 (last visited Aug. 2, 2023).
[14] https://web.archive.org/web/20220928090154/https://twitter.com/RichardHeartWin (archive of Twitter profile from September 28, 2022).

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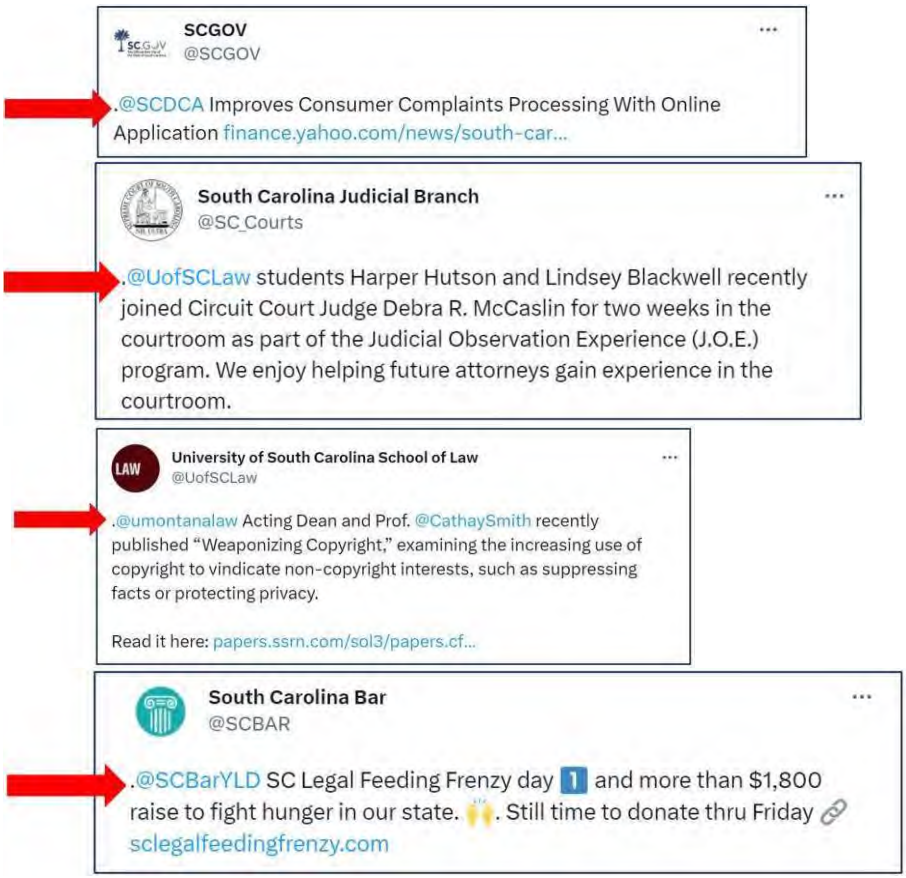
@RichardHeartWin username to the end of the post, or putting a "." or any other character at the beginning of the post, before that username. That is a basic practice that anyone who relies on Twitter to communicate should know. By way of example, official Twitter accounts across this state know this practice, including @SCGOV (the government of South Carolina), @SC_Courts (the South Carolina Judicial Branch), @UofSCLaw (University of South Carolina School of Law), and @SCBAR (the South Carolina Bar Association):



[15]

Each of those accounts knew that, to make their posts public, they must put a "." or some other text before the name of the Twitter account being mentioned. That is Twitter 101, and it was

[15] https://twitter.com/SCGOV/status/610508553762287616; https://twitter.com/SC_Courts/status/1546539165856194560; https://twitter.com/UofSCLaw/status/1532053858695843841; https://twitter.com/SCBAR/status/1528817826739458048.

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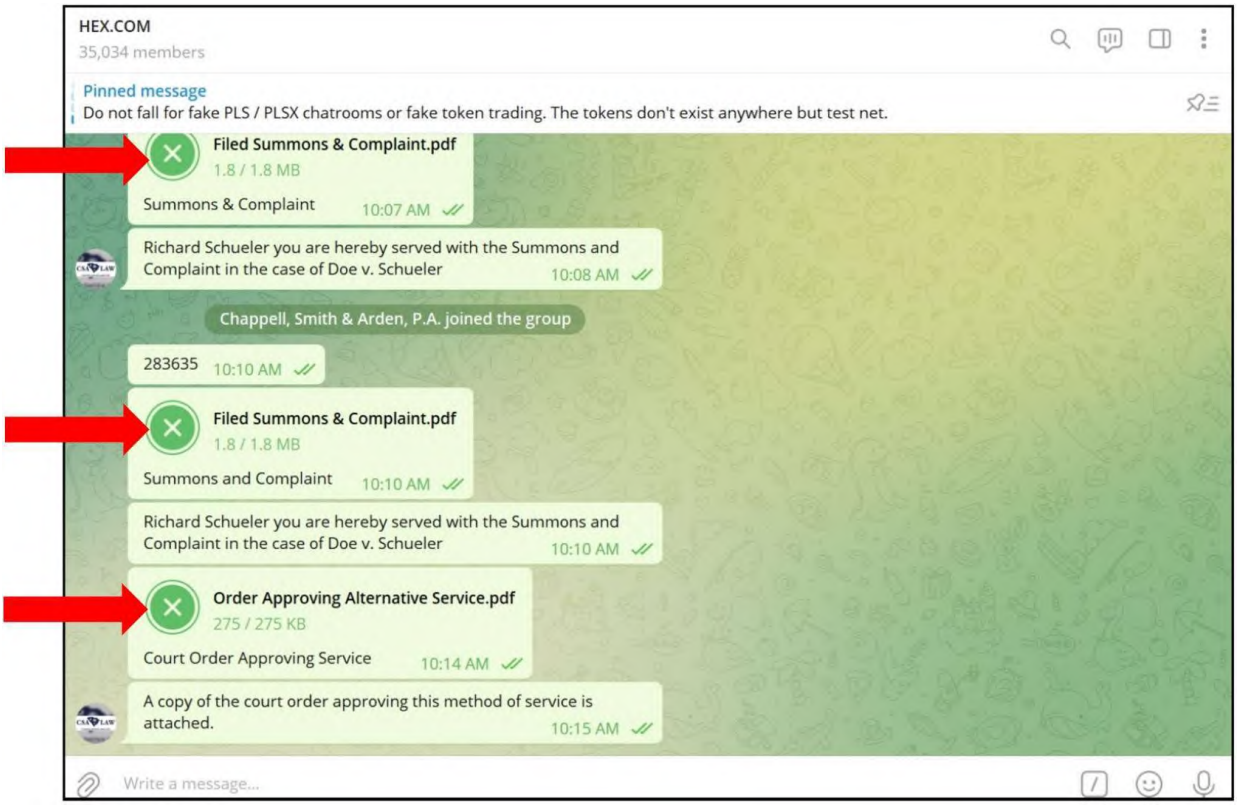
inexcusable for Plaintiff to rely on service by Twitter without doing the same. Perhaps his failure was intentional, aimed at claiming service without actually notifying the Defendant or anyone else of the lawsuit—in keeping with his desire to use this Court's power without exposing himself to public scrutiny. Or perhaps he was merely careless. Either way, his Twitter post was private, not public, and could not have reasonably put the Defendant on notice of this action.

3. Plaintiff failed to serve Defendant in the Hex.com Telegram chatroom.

Plaintiff represented that he served Defendant "via Telegram group chat." Exhibit 5 at ¶ 3. But his service exhibits contradict that representation, showing that he *failed* to transmit the summons and complaint to that group chatroom. Plaintiff knew or should have known that the exhibits he purportedly attempted to transmit failed to upload, as indicated by the icons prominently visible in his exhibit:



See Exhibit 5, at Ex. A page 1.

The next page of Plaintiff's own affidavit shows the difference between a failed upload and a successful upload. A successful upload should show a "file" icon: . *See* Exhibit 5, at Ex. A page 2. In contrast, the icon shows that Plaintiff failed to upload the summons and complaint to the Telegram group chat, as indicated by a test by a paralegal for Mrs. Schueler's counsel. *See* Affidavit of Andrea Smith ¶¶ 7-8, attached as Exhibit 6. The Defendant could not have been served if the summons and complaint were never transmitted.

Equally problematic, the messages that Plaintiff purportedly left in the Hex.com Telegram chatroom cannot be found, leaving it unclear whether they were posted in the correct chatroom at all. A paralegal for Mrs. Schueler's counsel entered this chatroom and was unable to locate any of the messages shown in Plaintiff's service exhibit after searching the date and time when Plaintiff supposedly left those messages. Instead, she located *other* unrelated public messages in the Hex.com chatroom that occur between 10:07 am and 10:15 am ET on October 14, 2022, the day and time that Plaintiff claims to have posted on the channel. *Compare* Exhibit 5, at Ex. A page 1 (Plaintiff's exhibit showing messages purportedly sent between 10:07 am and 10:15 am), *with* Exhibit 6 ¶¶ 3-4 (locating unrelated messages during same time period). If Plaintiff was in the chatroom he claimed to have joined, his screenshot of that chatroom should have included those public chats from other users—but they are all missing. With no sign of Plaintiff's messages or the purportedly served documents in the Telegram chatroom, Plaintiff cannot have accomplished service through this method.

4. Plaintiff failed to serve Defendant by Telegram direct message.

Plaintiff also claimed that he served the summons and complaint on Defendant "via Telegram direct message." Exhibit 5 ¶ 3. Once again, his own exhibit proves that he did not.

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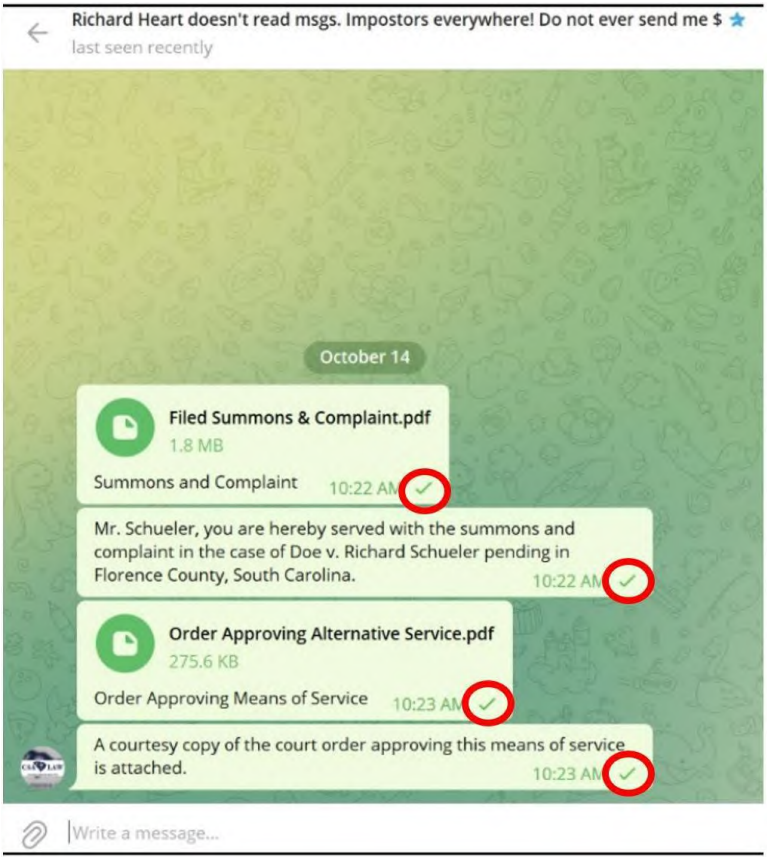
Telegram has a built-in method to demonstrate whether a message has been received by a recipient's messaging system on their phone or computer. If a message is sent to Telegram's servers but *not* yet received and opened by the recipient, Telegram shows only one checkmark: ✓.[16] A message's attachment cannot be downloaded without Telegram displaying two checkmarks. If a message is received and opened on the recipient's system, Telegram displays two checkmarks: ✓✓. This was confirmed by a test by a paralegal for Mrs. Schueler's counsel. *See* Exhibit 6 ¶ 6. Accordingly, messages that display only one checkmark could *not* have been received by the recipient, as is the case with the messages featured in Plaintiff's own screenshot:



See Exhibit 5, at Ex. A page 2. The Defendant could not have been served if, per Plaintiff's own evidence, the messages Plaintiff attempted to transmit were never even received and opened.

[16] *See* https://www.thetechedvocate.org/what-do-the-check-marks-in-telegram-mean/ (last visited Aug. 2, 2023).

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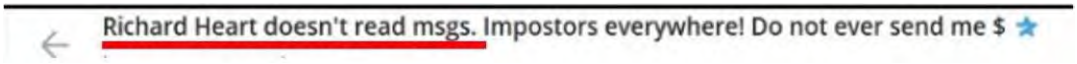
Moreover, even if the messages had been received and opened, Plaintiff's exhibit confirms that he could not have expected the Defendant to have actually *read* the messages. Defendant's user information clearly warns that he "doesn't read msgs [messages]":



See Exhibit 5, at Ex. A page 2. Thus, even if there had been two "checkmarks" (contrary to Plaintiff's affidavit), Plaintiff could not reasonably expect to provide adequate notice through a means of communication that the Defendant publicly stated he did not monitor. *See McGillvary v. Holom*, 2019 WL 2124509, at *2 (D.N.J. May 15, 2019) (rejecting service where plaintiff failed to show that defendant's Facebook "account is active, or that defendant actually receives the messages sent to the account").

5. Plaintiff failed to serve Defendant by email.

Finally, Plaintiff claimed that he would serve Defendant "via email directed to 2b591e99afE9f32eAA6214f7B7629768c40Eeb39@protonmail.ch." Exhibit 5 ¶ 3. But sending an email to that bizarre address was not reasonably calculated to reach the Defendant.

Plaintiff represented to the Court that the Defendant "*provided* the following email address associated with the Hex token." *See* Exhibit 2, at 13 (emphasis added). Not a shred of evidence supports Plaintiff's bare assertion that the Defendant provided, controls, or is even aware of this unusual email address. Instead, Plaintiff simply infers that it must be the Defendant's email address because it is "associated" with the HEX smart contract on a third-party website called "Etherscan.io." *Id.* Again, Plaintiff's own evidence refutes his theory. The Etherscan webpage that Plaintiff relies on states that an address associated with a project should be "created with the project's official domain . . . or the official primary email address as shown on the website." *Id.* (citing https://info.etherscan.com/token-update-guide/). But the email address that Plaintiff served

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is "@protonmail.ch," a domain having nothing to do with the HEX token, and that is featured nowhere on the HEX.com website or anywhere else. In fact, a Google search of this obscure email address yields *no* results.

Nor did Plaintiff provide any evidence that the Defendant owned, used, or monitored that email address. Thus, there is "no indication that [the] defendant will actually receive or be made aware of plaintiff's emails," and the Court "could not infer that defendant[] received any future email plaintiff might send." *Asiacell Commc'ns PJSC v. Doe*, No. 17-CV-07203-PJH, 2018 WL 3496105, at *3 (N.D. Cal. July 20, 2018) (rejecting service by email). Consequently, Plaintiff cannot reasonably believe that an email to that address would reach the Defendant. Without a "clear indication that the proposed email address[] will be directed to [Defendant]" and is "current," service cannot be effected through that address. *Venice Pi, LLC v. Galbatross Techs., LLP*, No. CV 18-00192 LEK-RT, 2019 WL 7493521, at *4 (D. Haw. June 28, 2019).

Because Plaintiff failed to effect service through any of his proposed means, he has not in fact commenced a civil action. *See* S.C. Code Ann. § 15-3-20(B); Rule 3(a), SCRCP; *Venture Eng'g, Inc.,* 2008 WL 9832815, at *2. He cannot continue to use this non-commenced action as a vehicle to obtain third-party discovery to which he is not entitled.[17]

[17] Plaintiff's counsel also filed a declaration describing his being contacted by a pseudonymous individual going by "Gamma" who supposedly "held himself out to be an administrator of the HEXcrypto group chat." Newman Decl. ¶ 3 (Oct. 14, 2022). Plaintiff does not appear to contend that this was a means of service, nor could he. Putting aside that an attorney in an action may not serve the complaint, Rule 4(c), SCRCP, there is no evidence that this pseudonymous individual was in fact an administrator, nor that he had any relationship with the Defendant. To the contrary, this individual appears to have been a likely scammer attempting to obtain counsel's cryptocurrency "wallet address" and information about other "holder[s] of HEX." Newman Decl. Ex. A at 3. Rather than confirm the individual's identity or secure evidence of any official role, Plaintiff's counsel simply took "Gamma" at his word without any diligence. But merely stating that this pseudonymous individual "was an agent of the defendant[]" is "nothing more than [plaintiff's] conclusion," and reliance on it would be "so manifestly unsound as not to warrant discussion." *Cannon v. Time, Inc.*, 115 F.2d 423, 426 (4th Cir. 1940) (quashing service); *see also Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996) (quashing service where plaintiff "failed to show [agent] was authorized to accept service either on behalf of [defendant] or [his] firm").

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CONCLUSION

The Court must halt all discovery for the simple reason that this action has not been filed under Rule 10, SCRCP, nor commenced under Rule 3(a), SCRCP. As Mrs. Schueler has discussed in detail above, the anonymous Plaintiff prosecuting this lawsuit never properly filed nor served the summons and complaint. Until he does so, Plaintiff cannot seek discovery from Mrs. Schueler or anyone else. Mrs. Schueler respectfully requests the Court to enter a protective order providing the following relief:

(a) preventing the unnamed Plaintiff from taking or using discovery in this matter;

(b) ordering Plaintiff and his counsel to return and/or destroy any information previously obtained regarding Mrs. Schueler through discovery;

(c) ordering that the publicly filed subpoenas containing personal information about Mrs. Schueler be placed under seal and replaced with redacted versions concealing her personal information; and

(d) dismissing Plaintiff's anonymous complaint *sua sponte*.

SMITH | ROBINSON
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Sumter, South Carolina

August 4, 2023

EXHIBIT 2

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STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	TWELTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of him or herself And all others similarly situated,)	C/A: 2022-CP-21-1980
Plaintiff/Class Representative,)	**MEMORANDUM IN SUPPORT OF *EX PARTE* MOTION TO APPROVE SERVICE BY OTHER MEANS**
vs.)	
Richard James Schueler a/k/a Richard Heart,)	
Defendant.)	

Plaintiff John Doe, on behalf of him or herself and all others similarly situated, seeks an order approving service of Defendant Richard James Schueler, a/k/a "Richard Heart", "by other means not prohibited by international agreement" pursuant to Rule 4.1(a)(3), SCRCP. The Plaintiff seeks to serve Defendant Schueler via five means: via Twitter "mention"; via Twitter "direct message"; via email; via Telegram channel post; and via Telegram direct message. For the reasons stated herein, the motion should be granted.

I. FACTS RELEVANT TO THE MOTION

Defendant Richard James Schueler is a self-styled cryptocurrency expert who created and promotes a multi-billion dollar investment scheme known as "HEX." The Plaintiff contends HEX is an illegal offering of an unregistered security the value of which has collapsed by approximately 95% in the past year. Schueler is a United States citizen but does not reside in the United States. Defendant Schueler professes to reside in Europe but will not identify the country in which he resides. The Plaintiff bases these assertion upon two categories of fact: 1) Defendant Scheuler's

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public statements regarding his residence; and 2) a private investigator's report as to Defendant Schueler's whereabouts.

a. Defendant Schueler's public statements regarding his residence

Defendant Schueler utilizes two primary means of communication through social media in the promotion of the HEX investment scheme: YouTube and Twitter. In a December 27, 2021 interview, Schueler stated the following during a YouTube interview.

> **INTERVIEWER:** Where do you live, if you don't mind me asking?
>
> **SCHUELER:** Secret, I don't tell anybody. But I used to live in Florida. I lived in Florida for a long time. If you listen to my livestreams, you'll hear European sirens sometimes.

See www.youtube.com/watch?v=_tspPUVKyXY at 35:36 (last visited September 26, 2022).

On May 25, 2022, in a YouTube debate with a fellow "crypto king", Schueler admitted that he had not been in the United States for at least 16 years.

> **ERIC WALL:** When was the last time you went to the US?
>
> **SCHUELER:** I went to the Super Bowl in, like, 2006.

See https://www.youtube.com/watch?v=dIScpOyTs98 at 18:05 (last visited September 30, 2022). Within the same YouTube debate, Schueler was accused of expatriating himself to evade the jurisdiction of American legal authorities.

> **ERIC WALL:** There's a very easy explanation to why Richard doesn't go to the US. It's because he conducts illegal ICO's and illegal securities offerings where he accepts money from retail from the public which is under US law an illegal securities offering. … And you know that if you go to the US you are gonna get your ass hounded by the SEC.

See https://www.youtube.com/watch?v=dIScpOyTs98 at 19:18 (last visited September 30, 2022). Schueler denied this as his reason for abandoning the United States and offered the following explanation.

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> **SCHUELER:** I'm not afraid. I don't like going there.
>
> **ERIC WALL:** You don't like meeting your own community?
>
> **SCHUELER:** Bro, I like my HEX community. … If I go to America, I have to wear a (bullet-proof) vest. If I go to America, it's just always crappy over there, bro.
>
> **ERIC WALL:** I think it sounds like a bullshit excuse.

See https://www.youtube.com/watch?v=dIScpOyTs98 at 20:50 (last visited September 30, 2022).

Throughout the summer of 2022, Schueler continued to maintain the secrecy of his place of residence. On July 22, 2022, on another YouTube interview, Schueler again explained why he would not reveal his location.

> **INTERVIEWER:** This is Richard Heart. He's founder in the crypto world of a company called HEX and a company called Pulsechain. He's been in the crypto universe for over 11 years which is a lifetime when we talk about crypto. We don't know where he is because he's in an undisclosed location on purpose. But Richard, welcome in.
>
> **SCHUELER:** Hey, how's it going? Yeah, all my friends that I party with—they know where I live. But random people on the Internet? You know, what are they sending ya? They're not usually sending you birthday gifts.

See www.youtube.com/watch?v=dN6Lm3AvcwM at 0:10 (last visited on September 30, 2022).

On August 5, 2022, Schueler stated in another YouTube video the following:

> **SCHUELER:** Only let the people who that have enough value to have earned your physical location know where you are. … I still am more anonymous than most. People don't know where I live. It's like … unless you wanna grow boobs and dance near me, probably not gonna know where I live.

See https://www.youtube.com/watch?v=87MvhP7wQsw at 2:04:35 (last visited September 28, 2022). And on August 19, 2022, on yet another YouTube video, Schueler stated the following:

> **INTERVIEWER:** So we're here in Fort Lauderdale. Are we allowed to disclose this location? 'Cause I know that you kinda keep things…

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> **SCHUELER:** I, you know what, when I'm on vacation I'm flexing hard. I'm going out everywhere, I'm posting where I'm at if everyone wants to meet up and say hi. But in normal daily life, no one knows where I live.

See https://www.youtube.com/watch?v=lW8h09B5YAw at 2:25 (last visited September 26, 2022).

An analysis of Schueler's interaction on Twitter over the past four months reveals a similar pattern of activity within Europe. Since late May 2022, Schueler has identified Europe as his location six times.

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Ben Armstrong @Bitboy_Crypto · Jul 14

When are we going to hang out @RichardHeartWin? I get jealous you show everyone your watch collection and not me.

193 205 1,387

Richard Heart
@RichardHeartWin

Replying to @Bitboy_Crypto

Come to Europe!

10:36 AM · Jul 15, 2022 · Twitter for Android

AH @andrewhillman · Aug 17

Replying to @FundingGym @RichardHeartWin and 2 others

Why did his dad pick him up at the airport in a rusted out pickup truck? Was kinda shocked to hear this since he is on a car buying spree.

8 8

Richard Heart
@RichardHeartWin

Replying to @andrewhillman @FundingGym and 2 others

Cuz my cars are in Europe and Florida isn't?

10:35 AM · Aug 17, 2022 · Twitter for Android

Richard Heart
@RichardHeartWin

Replying to @BENBALLER @DragTimes and 2 others

Haha I got u man. Btw I'm in Europe. Car market different here.

3:00 PM · Aug 31, 2022 · Twitter for Android

4 Retweets **51** Likes

Prescelto @Prescelto4 · Sep 3

@RichardHeartWin i just touched down in miami, wya?

1 1

Richard Heart
@RichardHeartWin

Replying to @Prescelto4

Europe

12:05 PM · Sep 3, 2022 · Twitter Web App

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Plaintiff's counsel's review of Schueler's social media accounts revealed that Schueler did visit the United States from approximately August 5, 2022 until August 11, 2022 to visit his ailing mother who lives in Bluffton, South Carolina. As detailed in Plaintiff's complaint, Schueler continued to promote and sell HEX while in South Carolina. Additional posts on Schueler's social media accounts indicate that he may have visited Atlanta, GA and Miami, FL before ultimately returning to Europe before the end of August 2022.

b. Private investigator's investigation into Schueler's residence

In view of Defendant Schueler's repeated assertions that he resides in Europe—and his temporary operation within the United States in August of 2022—Plaintiff's counsel retained the services of Delta Group, Inc., a private investigation company, to determine whether Schueler resides within the United States. Delta Group, Inc. conducted a thorough search for Defendant Schueler within the United States that consisted of:

- A public records searches of:
  - U.S. government agency sources
  - Regulatory agencies
  - Professional and occupational licensing databases
  - Telephone listings
  - Florida driver's license database
  - Arrest and court records
- Open-source Internet searches including:
  - Social media companies
  - Search engine websites
- Utility service records
- Real property records
- Personal property records
- Email address record searches
- Credit header records
- Global sanctions records
- Social Security Administration death records
- Voter registration records

See **Exhibit A**—Affidavit of Diligent Search and Inquiry

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Despite the breadth of resources utilized in the search, very little information was revealed about Defendant Schueler. The search did, however, produce the following information:

- A previous address located in Fort Lauderdale, FL that presently appears to be owned by the Defendant's father;
- Several business entities for which the Defendant served as a registered agent or officer between 2000 and 2007, all registered in the State of Florida;
- A Florida driver's license issued 1994, renewed in 2005, but expired as of October 2009;
- A potential (but unconfirmed) paternity action involving the Defendant in 2001;
- A potential (but unconfirmed) domestic violence report involving the Defendant in 2001;
- Social media postings of Schueler's presence in South Florida in August of 2022.

In sum, the evidence of Defendant Schueler's residence in the United States ends in approximately 2005. This evidence is consistent with Schueler's claim that his last visit to the United States prior to his brief sojourn in August of 2022 was in 2006. As such, Plaintiff's counsel asserts that the weight of the factual evidence supports Schueler's public assertion that he resides in Europe, though his country of residence cannot be determined. This motion follows.

II. STANDARD OF REVIEW

Rule 4.1, SCRCP was adopted by order of the South Carolina Supreme Court on May 2, 2022. This new rule of procedure was accompanied by the following official note.

> Rule 4.1 adopts provisions of the federal rule with respect to service of process in foreign countries. This new rule is intended to provide guidance as to the proper methods of service and proof of service in foreign countries, and is not intended to amend or supplant the provisions of existing Rule 4 with respect to the issuance or form of the summons.

Rule 4.1, SCRCP, Official Note. With very few stylistic exceptions, Rule 4.1, SCRCP is identical to Fed. R. Civ. P. 4(f). The Advisory Committee Notes to Fed. R. Civ. P. 4(f) set forth the following:

> Inasmuch as our Constitution requires that reasonable notice be given, an earnest effort should be made to devise a method of communication that is consistent with due process and minimizes offense to foreign law.

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Fed. R. Civ. P. 4, Advisory Committee Note.

III. ANALYSIS

The facts pertaining to Defendant Richard Schueler's residence support service of the summons and complaint filed in this case pursuant to Rule 4.1, SCRCP. Rule 4.1 provides for means of "alternative service" in the following circumstance.

> (a) Serving an Individual in a Foreign Country. Unless otherwise provided by law, an individual--other than a minor or an incompetent person--may be served at a place not within any judicial district of the United States:
>
> (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
>
> (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
> (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
> (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
> (C) unless prohibited by the foreign country's law, by:
> (i) delivering a copy of the summons and of the complaint to the individual personally; or
> (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
>
> (3) by other means not prohibited by international agreement, as the court orders.

Rule 4.1, SCRCP. As a threshold consideration, because Defendant Schueler has concealed his country of residence, the proper method of service under Rule 4.1(a) is found in subsection 3. Next, the plaintiff's suggested methods of service are "consistent with due process," and thus should be court-ordered pursuant to Rule 4.1(a)(3), SCRCP.

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a. Because Defendant Schueler does not reside in the United States of America and his country of residence is unknown, Rule 4.1(a)(3) provides the appropriate means of service of process

As an initial matter, the Plaintiff must establish that Defendant Schueler does not reside within the United States of America in order for the service provisions of Rule 4.1, SCRCP to apply. South Carolina law pertaining to previous Rule 4(f), SCRCP is silent on how to establish the foreign residence of a United States citizen. Federal courts, however, have observed "[a] court may decide such jurisdictional issues by reference to affidavits, after a pretrial evidentiary hearing, or at trial if the issues are intertwined with the merits of the suit." Brand v. Mazda Motor of Am., Inc., 920 F. Supp. 1169, 1171 (D. Kan. 1996), citing Federal Deposit Ins. Corp. v. Oaklawn Apartments, 959 F.2d 170, 174 (10th Cir.1992). To establish Defendant Schueler's non-US residency, the Plaintiff offers both the words of Defendant Schueler and the sworn affidavit of Plaintiff's private investigator in Section II, above. Because the weight of evidence supports Schueler's European evidence and inability to identify his specific nation of residence, service of the Defendant is proper pursuant to Rule 4.1(a)(3).

b. The requested means of service is not prohibited by international agreement and is consistent with due process

The Plaintiff's proposed means of service do not violate the Hague Convention's terms. Article I of the Hague Convention on service itself states that the agreement "shall not apply where the address of the person to be served with the document is not known." Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, art. 1, adopted November 15, 1965, 20 UST 361; TIAS 6638; 658 UNTS 163.[1] No other international agreement

[1] The text of this document may be accessed at the Hague Conference's website: https://www.hcch.net/en/instruments/conventions/full-text/?cid=17 (last visited October 5, 2022).

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applies. Thus the sole consideration left to the court is whether the proposed means of service "is consistent with due process." Fed. R. Civ. P. 4, Advisory Committee Notes.

Federal courts have emphasized that the "other means" service provision found within Rule 41(a)(3), SCRCP, does not require demonstration of failed attempts of service prior to petitioning the court for "other means."

> [E]xamining the language and structure of Rule 4(f) and the accompanying advisory committee notes, we are left with the inevitable conclusion that service of process under Rule 4(f)(3) is neither a "last resort" nor "extraordinary relief." It is merely one means among several which enables service of process on an international defendant.

Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002). A wide variety of "other means" of service has been approved, "including publication, ordinary mail, mail to the defendant's last known address, delivery to the defendant's attorney, telex, and most recently, email." Id. at 1016. As noted above, Plaintiffs seeking approval of such means must demonstrate compliance with notions of due process.

> To meet this requirement, the method of service crafted by the district court must be "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."

Id. at 1016-17, quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (Jackson, J.). As the Ninth Circuit has recognized, "this broad constitutional principle unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance." Rio Properties at 1017.

The Plaintiff proposes five means of "other service" on Defendant Schueler: via Twitter "mention"; via Twitter "direct message"; via email; via Telegram channel post; and via Telegram

direct message. The facts as to how each method of service will be used and how each method comports with notions of due process is discussed below.

1. Service via Twitter "mention"

Defendant Schueler operates on Twitter under the handle @RichardHeartWin. Defendant Schueler has confirmed this to be his Twitter handle on Twitter itself.

In the 31-day period between August 27, 2022 and September 27, 2022, Defendant Schueler tweeted from this handle 609 times for an average of 19.6 tweets per day. Also, as the blue checkmark on Schueler's profile indicates, Schueler's @RichardHeartWin Twitter handle is "verified." Twitter demands satisfaction of stringent requirements before it "verifies" a handle, including those related to authenticity. See https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts (last visited September 28, 2022).

Plaintiff proposes tweeting a link to the summons and complaint to Defendant Schueler via a Twitter "mention" to @RichardHeartWin. Twitter describes its "mention" function as follows:

- **Definition:** A Tweet containing another account's Twitter username, preceded by the "@" symbol. For example: "Hello @TwitterSupport!"
- **Where it appears for the sender:** On the sender's profile page of public Tweets.
- **Where it appears for the recipient:** In the recipient's Notifications tabs, which is accessible only by them. Additionally, mentions will appear in the recipient's Home timeline view (not on their profile) if they are following the sender.

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See https://help.twitter.com/en/using-twitter/types-of-tweets (last visited September 28, 2022). In view of the Defendant's extraordinary use of the Twitter platform, he is likely to be notified of the pending lawsuit with hours—if not minutes—of being served via public message on Twitter.

Despite its relatively new introduction into the marketplace, Twitter has been approved by at least two courts as a means of non-traditional service. Most recently, the District of Arizona approved Twitter service in the case of Cox v. CoinMarketCap OpCo, LLC, et al. (21-cv-8197). There the Court found that service of three individual defendants via their verified Twitter accounts "is the best method available to give notice to Defendants of the pendency of this action." See **Exhibit B**—Cox v. CoinMarketCap Order at 5. The Cox ruling also noted prior precent of Twitter service. See St. Francis Assisi v. Kuwait Finance House, No. 3:16-CV-3240-LB, 2016 WL 5725002, at *1 (N.D. Cal. Sept. 30, 2016) (authorizing service via Twitter to individual in Kuwait and noting Kuwait was not a signatory to the Hague Convention). The order also noted two other approved means of service via social media. See WhosHere, Inc. v. Orun, No. 1:13-cv-00526-AJT-TRJ, 2014 WL 670817 (E.D. Va. Feb. 20, 2014) (authorizing service on an individual in Turkey by email and through Facebook and LinkedIn); FTC v. PCCare247 Inc., No. 12 Civ. 7189(PAE), 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013) (authorizing service on individuals in India by email and through Facebook).[2]

2. Service via Twitter direct message

Plaintiff proposes serving Defendant Schueler through a "direct message" to @RichardHeartWin. Twitter describes "direct messages" as follows:

[2] Somewhat ironically, the Cox lawsuit is a putative class action brought by a holder of HEX cryptocurrency seeking redress for wrongs allegedly caused by other members of the cryptocurrency community.

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- You can start a private conversation or create a group conversation with anyone who follows you.
- Anyone you do not follow can send you a Direct Message if:
- You have opted in to receive Direct Messages from anyone* or;
- You have previously sent that person a Direct Message.
- Anyone in a conversation can send Direct Messages to the group. Everyone in a group can see all messages, even if everyone doesn't follow each other.
- In group conversations, anyone in the conversation can add other participants. Newly added participants won't see the prior history of the conversation.
- Some accounts, particularly businesses on Twitter, have enabled a setting to receive Direct Messages from anyone. You can send a Direct Message to these accounts even if they don't follow you.

See https://help.twitter.com/en/using-twitter/direct-messages#basics (last visited October 5, 2022). It should be noted, however, that Defendant Schueler's Twitter biography states that "Richard doesn't read msgs or email." Thus a "direct message" may not result in Schueler's actual notice of the summons and complaint. This fact further underscores the necessity of serving Schueler via Twitter mention.

3. Service via the email address associated with the HEX token

Etherscan.io—a website that is the primary means of analyzing transactions involving smart contracts such as HEX—requires owners of a smart contract to provide an email address associated with the contract. The website describes this requirement as follows:

- Project/Sender's email address should be an email address created with the project's official domain (*e.g.: yourusername@yourwebsitedomain.com*) or the official primary email address as shown on the website

See https://info.etherscan.com/token-update-guide/ (last visited September 28, 2022). Etherscan warns that providing inaccurate information in the token profile could result in the delisting of the token. Defendant Schueler provided the following email address associated with the HEX token:

2b591e99afE9f32eAA6214f7B7629768c40Eeb39@protonmail.ch

Plaintiff proposes serving an electronic copy of the summons and complaint via this email address.

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4. Service via Telegram Channel Post

Telegram is a cloud-based mobile and desktop messaging app that allows users to create "group chats" based on a central theme or subject matter. Defendant Schueler created the Telegram channel "t.me/HEXcrypto" and actively promotes its use online including as a method of reaching out to him, personally.

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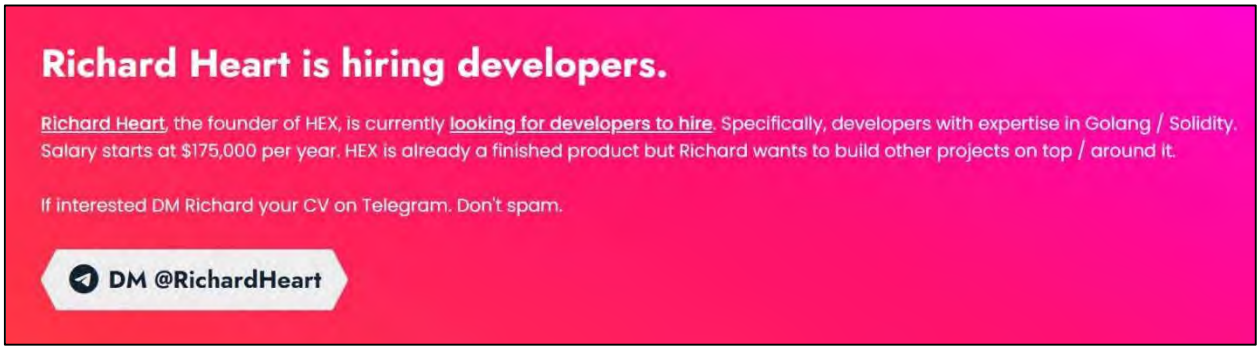
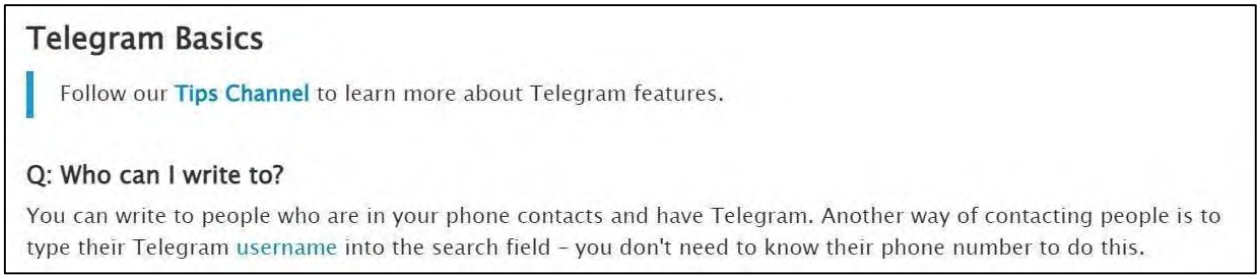
Plaintiff proposes uploading an electronic copy of the summons and complaint to the Telegram channel t.me/HEXcrypto.

5. Service via Telegram Direct Message

The Telegram program also supports a direct message feature similar to that previously referenced in Twitter. On his website, HEX.com, Defendant Schueler invites those looking to work on the HEX investment scheme to direct message him via Telegram.



See https://hex.com/dev/ (last visited October 5, 2022). The link provided for Defendant Schueler's personal "Telegram" direct message address is https://t.me/RichardHeart. The Telegram FAQ section provides the process for direct messaging an individual via their Telegram username.



See https://telegram.org/faq (last visited October 5, 2022). Plaintiff proposes serving an electronic copy of the summons and complaint upon Defendant Schueler by delivering it to him via his Telegram direct message address.

IV. CONCLUSION

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As shown above, Defendant Richard Schueler resides on the continent of Europe but successfully conceals his nation of residence. As a result, Schueler may be served with the summons and complaint in this case via "other means" as provided in Rule 4.1(a)(3), SCRCP. The five "other means" of service proposed by the Plaintiff are consistent with concerns of due process and are reasonably calculated to apprise Defendant Schueler of the pendency of this action. For these reasons, Plaintiff's motion should be granted.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

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EXHIBIT A

(Affidavit of Diligent Search and Inquiry)

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of his or herself And all others similarly situated,	)	
Plaintiff/Class Representative,	)	
vs.	)	**AFFIDAVIT**
Richard James Schueler a/k/a Richard Heart,	)	
Defendant.	)	

AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, Beverly G. Carter being sworn, certify that the following information is true:

1. I have made a diligent search and inquiry to discover and confirm a current residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart, reporting the date of birth [redacted]1979, with diligent efforts including a "Confidential and Privileged Locate Report" detailing efforts to locate and confirm a current residence address within the United States.

☒ The names and addresses of relatives, contacts with those relatives, and inquiries about the whereabouts of Richard James Schueler *aka* Richard James Schuler and Richard Heart last known address.

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☒ Using analytic data and U.S. government agency sources, Delta Group conducted searches of regulatory agencies, including professional or occupational licensing databases to ascertain the whereabouts of in the United States of America for Richard James Schueler *aka* Richard James Schuler and Richard Heart.

☒ Telephone listings in the last known location of Richard James Schueler *aka* Richard James Schuler and Richard Heart.

☒ Driver's license record search using data analytics and Florida Department of Motor Vehicles reporting an expired U.S. driver's license record for Richard James Schueler, date of birth [redacted] 1979. The driver's license expired as of October 9, 2009.

Name:	SCHUELER, RICHARD JAMES		
DOB:	[redacted]		
DL Number:			
Issue State:	FL	Report Date:	06/24/2010
Gender:	MALE	Race:	WHITE
Height:	5 09"		
License Type:	REGULAR LICENCE		
Original Issue Date:	10/25/1994		
Issue Date:	07/27/2005	Expiration Date:	10/09/2009

☒ Open-Source Internet searches, including social media companies and search engine web entries report, and while Richard James Schueler *aka* Richard James Schuler and Richard Heart report an association with multiple entries, none provide information as to his whereabouts in the United States.

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☒ Using analytic data and government agency sources, conducted searches for arrest and court records using the search terms Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] The latest court case reports a filing date of November 21, 2001, providing no information as to the parties whereabouts.

☒ Utility service record search using data analytics and government sources did not yield a residence address.

☒ Real property record search within the jurisdiction of the United States including commonwealth and territorial properties did not yield a record.

☒ Personal property record search using data analytics and government sources did not yield a current motor vehicle registration record.

☒ Email address record searches using data analytics and open-source resources yielded two email addresses, bigrich9@gmail.com and marnieleaf@gmail.com which did not provide a residence address in the United States.

☒ Equifax, Experian, and TransUnion credit header records did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Global Sanctions did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ SSA death records using data analytics did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Voter registration record search using data analytics did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Warrant search within the United States did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

☒ Work affiliations using data analytics sources did not yield a residence address for Richard James Schueler *aka* Richard James Schuler and Richard Heart and the date of birth [redacted] 1979.

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2. Attached, is a "Confidential and Privileged Locate Report" detailing these efforts, additional efforts, and the possible current residence address.

3. I understand that I am swearing or affirming under oath the truthfulness of the claims made in this declaration of facts and that the punishment for knowingly making a false statement includes fines and imprisonment.

, Affiant

STATE OF FLORIDA

COUNTY OF PINELLAS

Sworn to and subscribed before me in my physical presence this 30 day of September 2022 by Beverly G Carter, who is well-known to me or who has produced a driver's license as identification.

Notary Public

JOSEPH ENRIQUE GARCIA
MY COMMISSION #HH 3994
EXPIRES: MAY 26, 2024
Bonded through 1st State Insurance

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DELTA GROUP

CONFIDENTIAL AND PRIVILEGED LOCATE REPORT

Thursday, September 01, 2022

Subject:	Richard Schueler
Client No.:	Not Provided
Date of Loss:	Not Provided
Insured:	Not Provided
Alleged Injury:	Not Provided
Delta File No.:	134712-22
Assignment:	Locate Services
Provided Address:	Multiple
Date of Service:	Thursday, September 1, 2022

INVESTIGATIVE SYNOPSIS

Delta Group conducted a thorough Locate Investigation for the Subject, Richard Schueler, also referred to as Richard Heart; however, a residential address was not confirmed.

[redacted] Fort Lauderdale, FL 33315, is owned by Richard Schueler and is the most frequently reported address for the Subject. Please note that records do not specify whether the Subject or his father, Richard W. Schueler, owns this property; however, historical property records display ownership by Richard Schueler and Lorraine Schueler, both together and individually. It may be likely that once Richard and Lorraine Schueler divorced, Richard W. Schueler became the sole owner of the property.

Our research did yield several business entities previously affiliated with the Subject as registered agents or officers between 2000 and 2007, all of which are currently inactive. Research into the provided and reported addresses did find that the addresses of [redacted] Dania, FL 33312, [redacted] Fort Lauderdale, FL 33315, or [redacted] Doral, FL 33122 were previously utilized for the Subject's business entities.

The Subject reports a Driver's License, number [redacted] initially issued in 1994 and currently expired. The license most recently reported the address of [redacted] Fort Lauderdale, FL 33315.

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Analytic data sources do not report any current registered vehicle information for the Subject; however, previous vehicles registered to the Subject were reported at [redacted] Fort Lauderdale, FL 33315.

A review of the Subject's social media, websites, and publicly available information did yield several instances of his surroundings being referred to as/pictured as the South Florida area, including other Instagram users tagging the Subject in photos in locations such as Miami and Sunny Isles, FL. Additionally, the research did identify many discussion boards, threads, and social media posts of individuals referring to the Subject as a "scam artist" or involved in a "Ponzi scheme." Our research did not indicate any confirmed residence address or suggestion of any address outside of those provided or reported in databases.

Research utilizing whois.com and ICANN did identify that the websites utilized by the Subject, hex.com and richardheart.com, as registered discreetly through domain service providers GoDaddy.com, LLC and NameCheap, Inc. and therefore, personal registrant location and contact information were not reported. *Should this information be advantageous to your case, subpoenas to domain service providers GoDaddy.com, LLC, and NameCheap, Inc. for registration records that may reveal the Subject's location and contact information upon registering each domain name may be suggested?*

A review of the recent county and federal court filings did not indicate any residential information for the Subject; however, the following record was regarding paternity, which may indicate that he is the father of [redacted] Sunrise, FL 33322. Additionally, the maternal party referenced in the case is [redacted] Maiden, NC 28650. Additionally, two records regarding domestic violence between the Subject and [redacted] were reported in 2001. It may prove helpful to the investigation to question the parties as to the Subject's whereabouts discreetly.

Attempts to discreetly inquire with the Subject's parents, Lorraine and Richard Schueler, regarding the Subject's residence address were made; however, they were unsuccessful.

Remark: Delta Group is the industry leader in remote surveillance. This proprietary method is highly discreet, runs 24/7, and would be undetected by the residents at [redacted] Fort Lauderdale, FL 33315. It would determine if the Subject of inquiry resided at this address.

Please see **Details of Investigation** for additional information.

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DETAILS OF INVESTIGATION

Subject: The Subject of inquiry, Richard James Schueler, is 42 years of age, reporting [redacted] for a date of birth. Delta Group will provide the reported Social Security number upon request.

Address History: Analytic data sources report several recent addresses for the Subject.

ADDRESS	COUNTY	DATE
[redacted] ST, FT LAUDERDALE, FL 33315	BROWARD	01/01/1984-03/31/2018
[redacted] GAINESVILLE, FL 32608	ALACHUA	01/01/2011-08/31/2011
[redacted] ST, FORT LAUDERDALE, FL 33312	BROWARD	05/09/2003-04/13/2004

Associates & Relatives: The following individuals were reported as the subject's relatives.

NAME	ADDRESS	PHONE
LORRAINE M. SCHUELER (66)	[redacted] BLUFFTON, SC 29909	[redacted]
RICHARD W. SCHUELER (67)	[redacted] FORT LAUDERDALE, FL 33315	[redacted]

Contact Information: Telephone numbers [redacted] are associated with the Subject.

Property Record: [redacted] Fort Lauderdale, FL 33315, is owned by Richard Schueler. The purchase date was September 1, 1983, by Richard Schueler and Lorraine Mary Schueler, husband and wife. A Quit-Claim Deed filed by Lorraine Mary Schueler of [redacted] Hilton Head, Island, SC 29926, on October 19, 2015, deeded the property to Richard.

Property Record: Provided address, [redacted] Dania, FL 33312 is situated within property appraiser site address [redacted] Dania Beach, FL 33312 and reports a Quit-Claim Deed on August 26, 2008, from Ravenswood Diesel Corporation to Jackson Property 2150 LLC.

Property Record: [redacted] Doral, FL 33122 is a commercial property owned by Alphaterra LTD. This address appears to be previously associated with a business entity associated with the Subject, A Plus Performance, LLC.

Driving Record: The Subject reports a Driver's License, number [redacted], initially issued in 1994 and currently expired. The license most recently reported the address of [redacted] Fort Lauderdale, FL 33315.

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FL Online Driver Report — **Order Date: 08/31/2022**

3 Year Report

Ordered for:	Delta Associated Investigations Inc.	**Reference:**	SCHUELER
DL# Searched:	[redacted]	**License:**	[redacted]
Name Searched:	SCHUELER	**Name:**	RICHARD JAMES SCHUELER
DOB Searched:		**Address:**	[redacted] FT LAUDERDALE, FL 33315
Searched on:	08/31/2022		
Control #:	23610367		

Hair:		**Gender:**	MALE	**Medical Exp:**	
Eyes:		**DOB:**	10/09/1979	**Tot St Pts:**	
Height:	5'8	**Age:**	42	**Cust Pts:**	
Weight:				**Comp Score:**	

Lic Issued:	07/27/2005
Lic Expires:	10/09/2009
Class:	E
Status:	EXPIRED

License Information

License: PERSONAL **Orig Issue:** 10/25/1994 **Issue:** 07/27/2005 **Expire:** 10/09/2009 **Status:** EXPIRED
Class E: CLASS E NON-COMMERCIAL ANY TYPE NON COMMERCIAL VEH

Violations, Accidents and Failures to Appear Information

***** NONE TO REPORT*****

Actions

***** NONE TO REPORT*****

Additional State Information

ISSUANCE HISTORY
10/10/1995 CLASS E REPLACEMENT
5/19/2000 CLASS E CDR/CDT CLEARANCE
8/31/2002 CLASS E DUPLICATE
10/9/2003 CLASS E DUPLICATE
EXAMS TAKEN:
11/29/2000. TYPE: VISION. ATTEMPTS: 1. STATUS. PASS
10/25/1994. TYPE: ROAD SIGN. ATTEMPTS: 1. STATUS: PASS
10/25/1994. TYPE: ROAD RULES. ATTEMPTS: 1. STATUS: PASS
10/10/1995. TYPE: DRIVING. ATTEMPTS: 1. STATUS: PASS
N/A. TYPE: MOTORCYCLE RULES. ATTEMPTS: 0. STATUS: N/A
N/A. TYPE: MOTORCYCLE SKILLS. ATTEMPTS: 0. STATUS: N/A
SAFE DRIVER
US CITIZEN
BLOCKED PERSONAL INFORMATION
BLOCKED FOR MAILING LIST
PERSON HAS A DIGITAL IMAGE
ELIGIBLE TO ELECT DRIVER SCHOOL. DRIVER HAS MADE 0 ELECTIONS. VIOLATIONS COMMITTED WHILE A CDL HOLDER OR IN A CMV VEHICLE ARE NOT ELIGIBLE FOR DRIVING SCHOOL ELECTION.

Motor Vehicles: Analytic data sources do not report any current registered vehicle information for the Subject; however, previous vehicles registered to the Subject were reported at [redacted] Fort Lauderdale, FL 33315.

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Business Affiliations: A review of the Florida Department of State, Division of Corporations reported the following entities with a registered agent or officer named Richard Schueler.

Officer/RA Name	Entity Name	Entity Number
SCHUELER, RICHARD	CPULEND, L.L.C.	L04000003246
SCHUELER, RICHARD	POSITIVE LIFE PRODUCTS, LLC	L04000029772
SCHUELER, RICHARD	A PLUS PERFORMANCE, LLC	L07000038690
SCHUELER, , RICHARD	MERIDIEN MARKETING SERVICES, LLC	M03000001413
SCHUELER, RICHARD	MERIDIEN MARKETING SERVICES, LLC	M03000001413
SCHUELER, RICHARD	DOORSTAM RESEARCH AND DEVELOPMENT, LLC	M03000003133
SCHUELER, RICHARD	DOORSTAM RESEARCH AND DEVELOPMENT, LLC	M03000003133
SCHUELER, RICHARD	EFFICIENT SYSTEMS INC.	P01000030377
SCHUELER, RICHARD J	AUDIO ECSTASY, INC.	P00000002910
SCHUELER, RICHARD J	AUDIO ECSTASY, INC.	P00000002910
SCHUELER, RICHARD W.	SEA BREEZE AIR CONDITIONING, INC.	G29411
SCHUELER, RICHARD W.	SEA BREEZE AIR CONDITIONING, INC.	G29411

Records indicate that each of the entities listed above, except Sea Breeze Air Conditioning, Inc. (Richard W. Schueler – purported father of Subject), were initially registered between 2000 and 2007 and are currently inactive. The address affiliated with each of the entities above was [redacted] Dania, FL 33312, [redacted] Fort Lauderdale, FL 33315, or [redacted] Doral, FL 33122.

Web Address Data: Research was conducted with whois.com to identify registration information for the web addresses affiliated with the Subject, such as hex.com and richartheart.com. Records with whois.com report hex.com as registered on October 25, 1997, and richardheart.com registered on February 15, 2019; however, domain service providers were utilized, concealing personal registration information from the public. *Should this information be advantageous to your case, subpoenas to domain service providers GoDaddy.com, LLC and NameCheap, Inc. for registration records that may reveal the Subject's location and contact information upon registering each domain name may be suggested?*

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hex.com

Updated 5 days ago

Domain Information

Domain:	hex.com
Registrar:	GoDaddy.com, LLC
Registered On:	1997-10-25
Expires On:	2025-10-23
Updated On:	2020-07-24
Status:	clientDeleteProhibited clientRenewProhibited clientTransferProhibited clientUpdateProhibited
Name Servers:	ns-1505.awsdns-60.org ns-1537.awsdns-00.co.uk ns-304.awsdns-38.com ns-791.awsdns-34.net

Registrant Contact

Name:	Registration Private
Organization:	Domains By Proxy, LLC
Street:	DomainsByProxy.com [redacted]
City:	Tempe
State:	Arizona
Postal Code:	85284
Country:	US
Phone:	[redacted]
Fax:	[redacted]
Email:	Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=hex.com

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richardheart.com

Updated 1 second ago

Domain Information

Domain:	richardheart.com
Registrar:	NameCheap, Inc.
Registered On:	2019-02-15
Expires On:	2023-02-15
Updated On:	2022-01-16
Status:	clientTransferProhibited
Name Servers:	ns1.cfdtoken.com ns2.cfdtoken.com

Registrant Contact

Organization:	Privacy service provided by Withheld for Privacy ehf
Street:	Kalkofnsvegur 2
City:	Reykjavik
State:	Capital Region
Postal Code:	101
Country:	IS
Phone:	[redacted]
Email:	5497dcb837c3401409fad766bb0e7b06.protect @withheldforprivacy.com

POWERED BY DELTA GROUP

Private and Confidential Attorney Work Product

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Court Records: A review of the recent county and federal court filings did not indicate any residential information for the Subject; however, the following record was located regarding paternity, which may indicate that he is the father of [redacted] of [redacted] Sunrise, FL 33322. Additionally, the maternal party referenced in the case is [redacted] of [redacted] Maiden, NC 28650.

April Ann Fry Petitioner vs. Richard James Schueler Respondent	
Broward County Case Number: FMCE01022759	State Reporting Number: 062001DR022759AXXXCE
Court Type: Family	Case Type: Paternity - - Paternity
Incident Date: N/A	Filing Date: 11/21/2001
Court Location: Central Courthouse	Case Status: Disposed
Magistrate Id / Name: 90 Woods Allana Robinson	Judge ID / Name: 38 Davis Michael

Additionally, two records regarding domestic violence between the Subject and April Ann Fry were reported in 2001.

Case Number	Case Style	Case Type	Filing Date	Case Status	Access Level
FMCE01000774	[redacted] vs. Richard J Schueler Respondent	Recast Violence	01-16-2001	Disposed	ANONYMOUS
6100064CCF16A	State of Florida Vs Schueler Richard J	Domestic Violence	01-17-2001	Disposed	ANONYMOUS

OSINT: A review of the Subject's social media, websites, and publicly available information did yield several instances of his surroundings being referred to as/pictured as the South Florida area, including other Instagram users tagging the Subject in photos in locations such as Miami and Sunny Isles, FL. Additionally, the research did identify many discussion boards, threads, and social media posts of individuals referring to the Subject as a "scam artist" or involved in a "Ponzi scheme." Our research did not indicate any confirmed residence address or suggestion of any address outside of those provided or reported in databases.

Vehicle Sightings: Research of the Subject's social media did yield him driving a sedan in what he referenced as "South Florida."

A vehicle sighting report was processed for the last sedan vehicles registered to the Subject, a 2003 BMW and 1998 Lexus, with their respective plates and VINs; however, no sightings were reported.

Investigative Research: On Wednesday, August 31, 2022, Delta Group attempted to conduct discreet inquiries with Lorraine and Richard W. Schueler, the Subject's parents, regarding his residence address; however, our multiple attempts were unsuccessful.

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Neighborhood Canvass: The following individual was reported as a neighboring resident of the Subject's most recently reported address.

NAME	ADDRESS	PHONE
WILLIAM SMITH	[redacted] ST, FT LAUDERDALE, FL 33315	[redacted]
NO CURRENT RESIDENT REPORTED	[redacted] ST, FT LAUDERDALE, FL 33315	NONE REPORTED
CURTIS NICHOLSON	[redacted] ST, FT LAUDERDALE, FL 33315	[redacted]

Investigative Research: On Wednesday, Delta Group conducted a discreet inquiry with William Smith, telephone number [redacted] who indicated that he no longer lives on [redacted] and does not recall whether anyone by the Subject's name resides there.

On Thursday, September 1, 2022, Delta Group attempted to conduct discreet inquiries with Curtis Nicholson regarding the Subject's residence address; however, our multiple attempts were unsuccessful.

End of Report

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EXHIBIT B

(Cox v. CoinMarketCap Order)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ryan Cox, Plaintiff, v. CoinMarketCap OpCo LLC, et al., Defendants.	No. CV-21-08197-PCT-SMB **ORDER**

Pending before the Court is Plaintiff's Second Motion for Extension of Time for Service and For Alternative Service by Email, Social Media, Publication, and/or Other Methods ("Motion"). (Doc. 50.) The Court heard oral argument on the Motion on February 25, 2022. The Court has reviewed the Motion and applicable law and now issues this ruling granting the Motion.

I. BACKGROUND

Plaintiff, Ryan Cox, filed a Complaint with this Court against CoinMarketCap OpCo, LLC ("CoinMarketCap.com"), Binance Capital Management Co. Ltd. ("Binance"), and Bam Trading Services Inc. d/b/a Binance.US ("BAM"), as well as individuals Changpeng Zhao, Catherine Coley, Yi He, Ted Lin, and Does I–X for artificially suppressing the value of the cryptocurrency HEX and artificially inflating the value of other cryptocurrencies. (Doc. 1 ¶ 3.) Plaintiff notes that Binance has been described as an international cryptocurrency exchange that hops around from jurisdiction to jurisdiction to avoid regulators. (Doc. 24 at 2.)

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Plaintiff has successfully served process on the corporate entities in this lawsuit but has failed to serve each of the individual Defendants, who Plaintiff notes are Chinese nationals whose country of domicile cannot be ascertained. (*Id.* at 2.) Defendant Zhao, the CEO of Binance, has been on record as stating, "Binance.com has always operated in a decentralized manner as we reach out to our users across more than 180 nations worldwide. As well as pushing the envelope in experimenting on how to become a true DAO (decentralized autonomous organization)." (*Id.*) Plaintiff has taken extensive action to locate the whereabouts of the individual Defendants, who are officers of Binance. (*Id.* at 5.) All of Plaintiff's efforts have been fruitless. (*Id.* at 5.) Plaintiff describes these individual Defendants as "international ghosts." (*Id.* at 2 (internal quotation marks omitted).) A private investigator hired by Plaintiff could not even identify the country of residency for a single Binance officer. (*Id.*; Doc. 24-1 at 2.) The private investigator was, however, able to identify the Twitter accounts associated with Defendants Zhao, Ted Lin and Yi He. (Doc. 24-1 at 6–7.) On November 12, 2021, undersigned counsel tweeted a copy of the summons and a link to the Complaint in this case to all three Twitter accounts. (Doc. 24 at 6.) Twitter has verified each individual account, and Plaintiff notes that each user utilizes their account on a regular basis. (*Id.* at 7.)

On December 13, 2021, the Court entered an order denying Plaintiff's Motion for Alternative Service, asking the Court for permission to serve the individual Defendants in this case via social media. (*See* Doc. 29.) On February 1, 2022, the Court denied Defendant Coley's Motion to Dismiss for lack of service, finding that an extension of the time to serve Defendant Coley was warranted given the difficulties in locating the individual Defendants in this case. (Doc. 49 at 3.)

Plaintiff once again moves this Court for an extension of time to serve the individual Defendants in this case and to serve the individual Defendants in this case via alternative means, including by email, social media, and publication. (Doc. 50.) Since Plaintiff's last motion to serve by alternate means, he has taken additional steps to locate and serve the individual Defendants. Despite Plaintiff's continued efforts to locate Defendants

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Changpeng Zhao, Ted Lin, and Yi He by hiring an additional investigator and by following the Twitter accounts of all three, Plaintiff was, again, unsuccessful in located the whereabouts of all three. (Doc. 50 at 3.) Additionally, Plaintiff attempted to serve Defendant Coley at addresses in Puerto Rico, Florida, and North Carolina. (*Id.* at 4.) All efforts have been unsuccessful. (*Id.*)

II. DISCUSSION

A. Good Cause Exists for an Extension

A court must extend the time for service if the plaintiff shows good cause for the failure to serve. Fed. R. Civ. P. 4(m). Rule 4(m) "*requires* a district court to grant an extension of time when the plaintiff shows good cause for the delay." *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007).

The Court will grant Plaintiff with an extension of time in which to serve the individual Defendants in this case. Plaintiff has shown good cause for its delay in failing to serve Defendant Coley. Plaintiff attempted to serve Defendant Coley in at three addresses associated her and were unsuccessful. Additionally, despite speaking with Defendant Coley's mother in North Carolina, Plaintiff was unable to get an address for Defendant Coley whose mother described her as a "nomad." (*Id.* at 5.) Further, Plaintiff has made extensive efforts to locate and serve Defendants Changpeng Zhao, Ted Lin, and Yi He, all of which have been unsuccessful. Accordingly, because Plaintiff has shown good cause for the delay, the Court will extend the time to serve the individual Defendants by 60 days.

B. Alternate Service

Rule 4(f) provides three methods of serving an individual in a foreign country: (1) "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents" ("Hague Convention"); (2) "if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice …"; or (3) "by other means not

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prohibited by international agreement, as the court orders."

District courts are given discretion to determine when the particularities and necessities of a given case require alternative service of process under Rule 4(f). *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002). A party does not need to attempt to serve process under Rule 4(f)(1) and (2) before requesting to serve under Rule 4(f)(3); it stands independently. *See id.* at 1014–1015 ("[S]ervice of process under Rule 4(f)(3) … is merely one means among several which enables service of process on an international defendant."). A court may order service under Rule 4(f)(3) so long as the service (1) comports with constitutional notions of due process and (2) is not prohibited by international agreement. *Id.* at 1015. "[T]rial courts have authorized a wide variety of alternative methods of service including publication, ordinary mail, mail to the defendant's last known address, delivery to the defendant's attorney, telex, and most recently, email." *Id.* at 1016.

1. Defendants Zhao, Lin, and He

Plaintiff argues that the Court should allow it to serve Defendants Zhao, Lin, and He via Twitter pursuant to Rule 4(f)(3). The Court previously denied Plaintiff's attempt to serve via social media. (Doc. 29.) However, in light of the fact that Plaintiff's continued efforts to locate Defendants Zhao, Lin, and He—"international "ghosts"—have failed despite diligent efforts, the Court will now grant Plaintiff's request to serve the three Defendants via Twitter. As Plaintiff points out, the Hague Convention does not apply where, as here, "the address of the person to be served with the documents is not known." *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, art. 1, T.I.A.S. No. 6638 (Feb. 10, 1969). Further, other courts have authorized service by social media to international defendants. *See WhosHere, Inc. v. Orun*, No. 1:13-cv-00526-AJT-TRJ, 2014 WL 670817 (E.D. Va. Feb. 20, 2014) (authorizing service on an individual in Turkey by email and through Facebook and LinkedIn); *FTC v. PCCare247 Inc.*, No. 12 Civ. 7189(PAE), 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013) (authorizing service on individuals in India by email and through Facebook);

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St. Francis Assisi v. Kuwait Finance House, No. 3:16-CV-3240-LB, 2016 WL 5725002, at *1 (N.D. Cal. Sept. 30, 2016) (authorizing service via Twitter to individual in Kuwait and noting Kuwait was not a signatory to the Hague Convention). The Court finds that, under the circumstances, service via Twitter is the best method available to give notice to Defendants of the pendency of this action. Accordingly, the Court will authorize service by tweeting a copy of the summons and a link to the Complaint to the verified Twitter accounts of Defendants Zhao, Lin, and He pursuant to Rule 4(f)(3).

2. Defendant Coley

Plaintiff also requests to serve Defendant Coley by serving her counsel or by publication. (Doc. 50 at 12.) Plaintiff has undertaken extensive efforts to locate Defendant Coley but has been unsuccessful. The Court notes that serving Defendant Coley via publication is not the best method to give her notice of the pendency of this action because, as Plaintiff notes, her whereabouts are a mystery. (*Id.*) Thus, the Court will consider other alternate means of service.

Plaintiff requests authority to serve Defendant Coley's counsel. "Courts analyze the communications between a defendant and defendant's counsel in deciding whether, as a method of alternative service, a defendant's counsel may accept process that he would otherwise be unauthorized to accept." *BMO Harris Bank, N.A. v. Gunthmiller*, No. CV-14-00275-PHX-JAT, 2014 WL 2600362, at *4 (D. Ariz. June 10, 2014). Indeed, courts may authorize service on a defendant's counsel where the circumstances show that defendant was likely in communication with his or her counsel regarding the suit. *Rio Properties*, 284 F.3d at 1017 (authorizing service on defendant's lawyer, but noting the attorney "had been specifically consulted by [the defendant] regarding this lawsuit."); *Guthmiller*, 2014 WL 2600362, at *4 (authorizing service on a domestic defendant where defendant had notice of the suit through his attorney); *FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531, 536 (E.D. Va. 2005) (authorizing service on a defendant's attorney under Rule 4(f)(3) because his many motions evidenced that defendant had some form of notice of the action).

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Here, service through Defendant Coley's counsel is appropriate. Plaintiff's extensive attempts to locate and serve Defendant Coley have been unfruitful. Even her own mother described her as a nomad. Defendant Coley clearly has notice of the suit as evidenced by her Motion to Dismiss for lack of service and by her counsel's subsequent appearance at oral argument. Under the circumstances, the Court finds that serving her counsel is the best method to apprise her of the pendency of this action. Service on Defendant Coley's counsel is appropriate under Rule 4(f)(3) if she is an international defendant, *see Dagra*, 228 F.R.D. at 536, but can also be authorized if she is a domestic defendant, *see Ginthmiller*, 2014 WL 2600362, at *4. Accordingly, the Court will authorize alternate service on Defendant Coley by emailing a copy of the summons and Complaint to her counsel of record in this case.

The Court will also require service by mailing a copy of the summons and Complaint to her mother's address in North Carolina and the second home in North Carolina by first class mail.

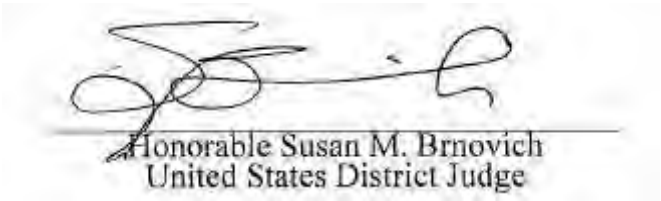
III. CONCLUSION

Accordingly,

IT IS ORDERED granting Plaintiff's Second Motion for Extension of Time for Service and for Alternative Service as outlined above. (Doc. 50.)

IT IS FURTHER ORDERED extending the time to serve Defendants Zhao, Li, He, and Coley by 60 days.

Dated this 1st day of March, 2022.



Honorable Susan M. Brnovich
United States District Judge

EXHIBIT A

1. A copy of all public keys utilized by you on decentralized ledgers including (but not limited to) Bitcoin, Ethereum, Ripple, Binance Smart Chain, Polkadot, and Cardano.

2. A copy of all public addresses utilized by you on decentralized ledgers including (but not limited to) Bitcoin, Ethereum, Ripple, Binance Smart Chain, Polkadot, and Cardano.

3. A copy of all cryptocurrency centralized exchange account information possessed by you. Such accounts may be hosted by centralized exchanges such as Coinbase or Binance.

4. A copy of all bank account numbers (including routing number and account number) possessed by you at any time from January 1, 2018 to the present.

5. A copy of all correspondence (whether written or electronic) between you and Richard J. Schueler from January 1, 2018 to the present.

6. A copy of all text messages between you and Richard J. Schueler from January 1, 2018 to the present.

7. Any device provided to you by Richard J. Schueler that is capable of retaining electronic data. This may include (but should not be limited to) a computer, an external hard drive, a "cold wallet", or a USB drive.

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EXHIBIT 4

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF RICHLAND

John Doe, pseudonymous owner of HEX
[redacted], on [redacted] of him or [redacted]
And all others similarly situated,

[redacted]

v.

SUBPOENA IN A [redacted]

[redacted] James Schuele a/k/a [redacted] Heart,

Case Number: 2022-CP-21-1980

Defendant

Pending in [redacted] County

TO: [redacted]

☐ [redacted] ARE COMMANDED to appear in the above named court at the place, and time specified below to [redacted] in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to [redacted] at the place, date, and time specified below to [redacted] at the [redacted] of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND [redacted] AM

☒ YOU ARE COMMANDED to produce and [redacted] inspection and copying of the following documents or objects in your possession, custody or [redacted] at the place, date and time specified below (list documents of objects):

Items and objects set forth on Exhibit A.

PLACE	DATE AND [redacted]
Chappell, Chappell & Newman **2801 [redacted], Suite 300** **Columbia, South Carolina 29205**	**Monday, May 1, 2023, 9:30 AM**

☐ YOU ARE COMMANDED to [redacted] inspection of the following premises at the date and time specified [redacted]

PREMISES	DATE AND TIME AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING [redacted], OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS [redacted], SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's [redacted] Indicate if [redacted] for Plaintiff or Defendant **ATTORNEY FOR THE PLAINTIFF** [redacted] Address and Telephone Number :	**April 21, 2023** Date	**Graham L. Newman** Print Name

SCCA 254 (05/2015) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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Post Office Box 61170
Columbia, SC 29260
(803) 929-3600

Clerk of Court/Issuing Officer's | Date | Print Name

Pro Se Litigant's Name, Address and Number :

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PROOF OF SERVICE

[illegible]	DATE PLACE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐YES ☐ NO AMOUNT $
[illegible] ON		MANNER OF SERVICE
[illegible] BY		TITLE

DECLARATION OF SERVER

I certify that the [illegible] information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF [illegible]

_____
ADDRESS OF [illegible]

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons [illegible] to Subpoenas.

(1) A party or an [illegible] responsible for the issuance and service of a subpoena shall take reasonable steps to avoid [illegible] undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or [illegible] in breach of this duty an appropriate sanction, which may include, but is not limited to, lost [illegible] and a reasonable attorney's fee.

(2)(A) A person commanded to [illegible] and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of [illegible]s need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an [illegible] responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so [illegible] upon written request. The party [illegible] copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to [illegible] and permit inspection and copying may, within 14 days after service of the subpoena or before the time [illegible] for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written [illegible] to inspection or copying of any or all of the designated materials or of the premises—or to [illegible] electronically stored information in the form or forms requested. If [illegible] is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the [illegible]s except [illegible] to an order of the court by which the subpoena was issued. If [illegible] has been made, the party serving the subpoena may, upon notice to the person commanded to [illegible] move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or [illegible] a subpoena commanding appearance at a deposition or production or inspection directed to a [illegible], the court in the county where the [illegible] resides, is employed or [illegible] transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or [illegible] transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of [illegible] or otherwise protected matter and no exception or waiver [illegible]; or

(iv) [illegible] a person to undue burden.

(B) If a subpoena

(i) [illegible] disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained [illegible] opinion or information not describing specific events or occurrences in dispute and resulting from the [illegible] study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(5)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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

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EXHIBIT A

1. Complete transaction history—including both fiat currency and cryptocurrency—of [redacted] registered to [redacted] from the account's creation to date

2. All cryptocurrency wallet addresses linked to the [redacted] registered to [redacted];

3. All identifying information related to bank accounts linked with [redacted] registered to [redacted] This information should include, but not necessarily be limited to:

   a. Name of account owner
   b. Name of bank
   c. Routing number
   d. Account number

4. All identifying information related to other [redacted] accounts transacting with [redacted] any time during the existence of this user's account. This information should include, but not necessarily be limited to, the following:

   a. User ID
   b. User Name
   c. Email address
   d. Mailing address
   e. Birthdate
   f. Phone Number

5. All information possessed by [redacted] pertaining to bank accounts transacting with [redacted] registered to [redacted] from the account's creation to date. This information should include, but not necessarily be limited to, the following:

   a. Name of account owner
   b. Name of bank
   c. Routing number
   d. Account number

6. All data logged by [redacted] during the creation of the [redacted]. This data should include, but not necessarily be limited to:

a. IP address utilized by the individual opening the account

7. Complete transaction history of all other [redacted] registered to the following individual:

a. Lorraine Schueler

8. All "know your customer" data retained by [redacted] registered to the following individual:

a. Lorraine Schueler

9. All linked institution data [redacted] to the "Payment Method Details" depicted on the account data spreadsheet of Lorraine Schueler

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EXHIBIT 5

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STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	TWELTH JUDICIAL CIRCUIT
John Doe, pseudonymous owner of HEX ERC-20 tokens, on behalf of him or herself And all others similarly situated,)	C/A: 2022-CP-21-1980
Plaintiff/Class Representative,)	
vs.)	**AFFIDAVIT OF SERVICE**
Richard James Schueler a/k/a Richard Heart,)	
Defendant.)	

1. Being sworn, the undersigned, Julia K. Fuller, attests that she served the Summons and Complaint on Defendant Richard James Schueler on October 14, 2022.

2. The affiant served the Summons and Complaint upon the Defendant per the order of the Circuit Court dated October 12, 2022.

3. The affiant affected service in the following ways: via Twitter mention directed to @RichardHeartWin; via email directed to 2b591e99afE9f32eAA6214f7B7629768c40Eeb39@protonmail.ch; via Telegram group chat at https://t.me/HEXcrypto; via Telegram direct message directed to https://t.me/RichardHeart. Evidence of these forms of service is attached to this affidavit as **EXHIBIT A**.

4. Service was attempted via Twitter direct message to @RichardHeartWin, but the Defendant has disabled that function of his account.

5. The affiant is over the age of 18 and is neither an attorney nor a party to the action.

Julia K. Fuller

Sworn to before me this 14th

day of October, 2022

Notary Public for South Carolina
My commission expires: 9/20/29

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EXHIBIT A

(Evidence of Service)

ELECTRONICALLY FILED - 2022 Oct 14 1:59 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980
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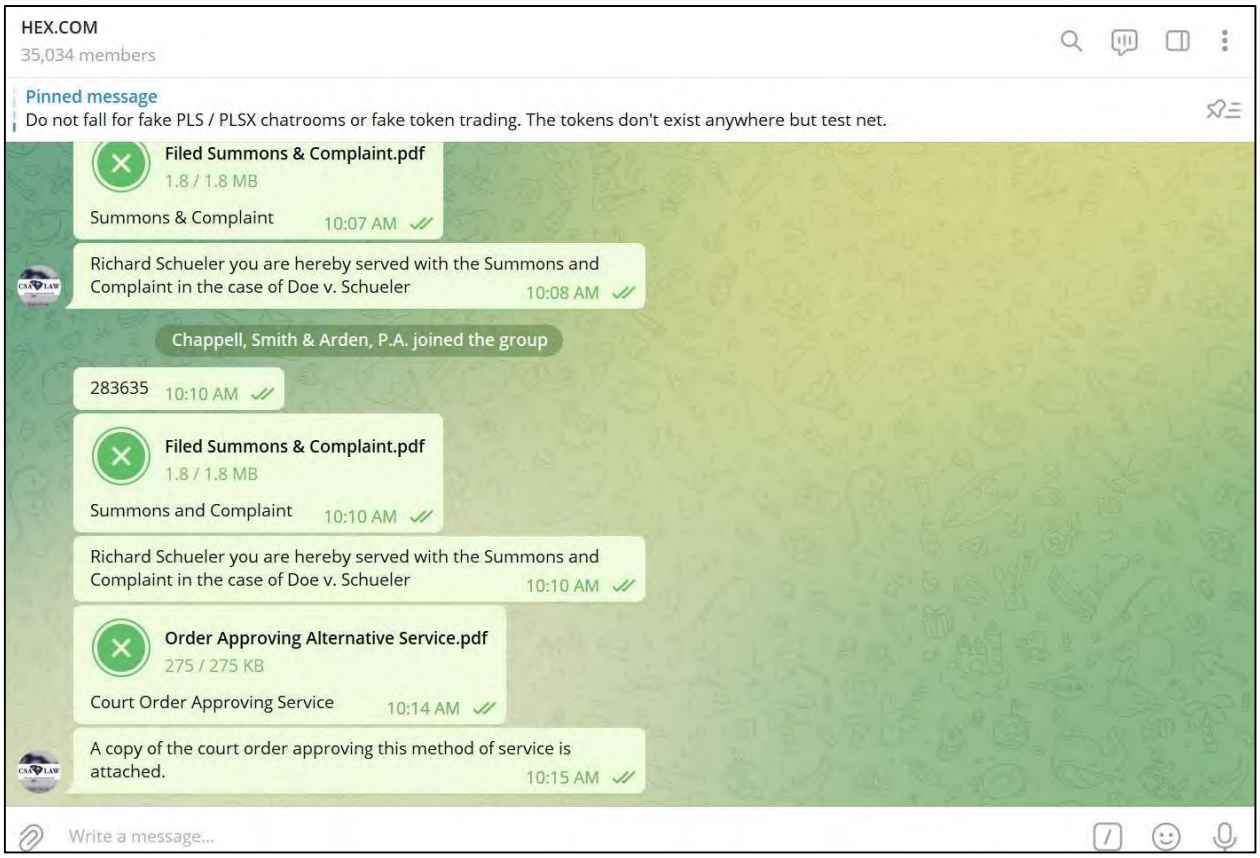

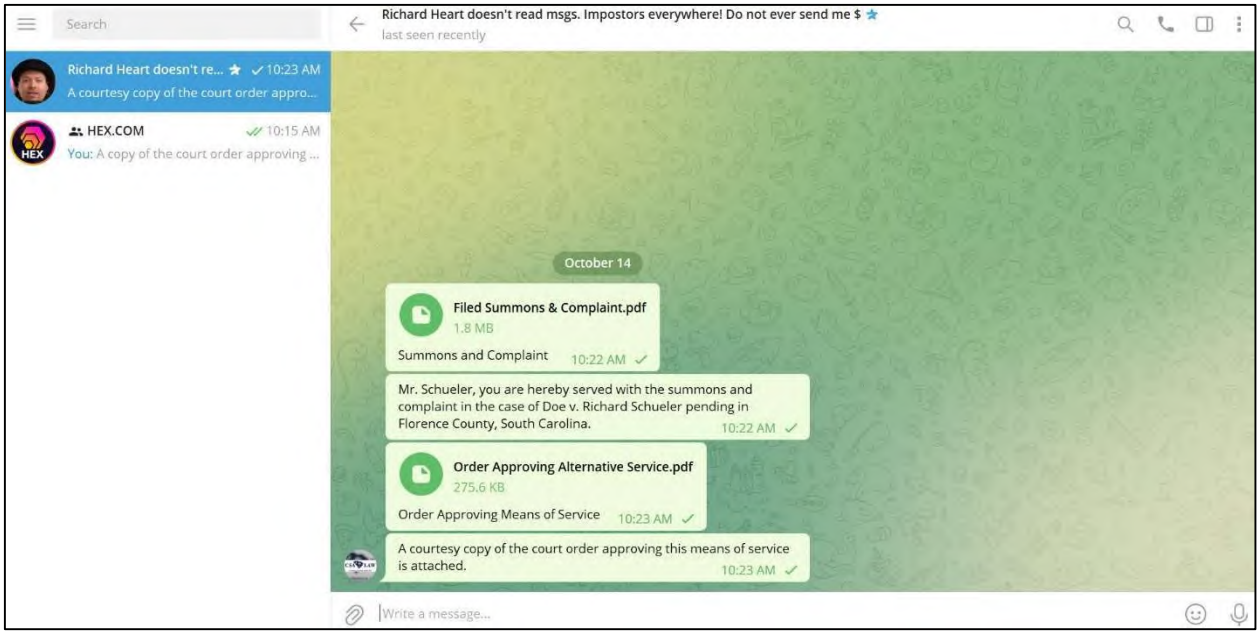

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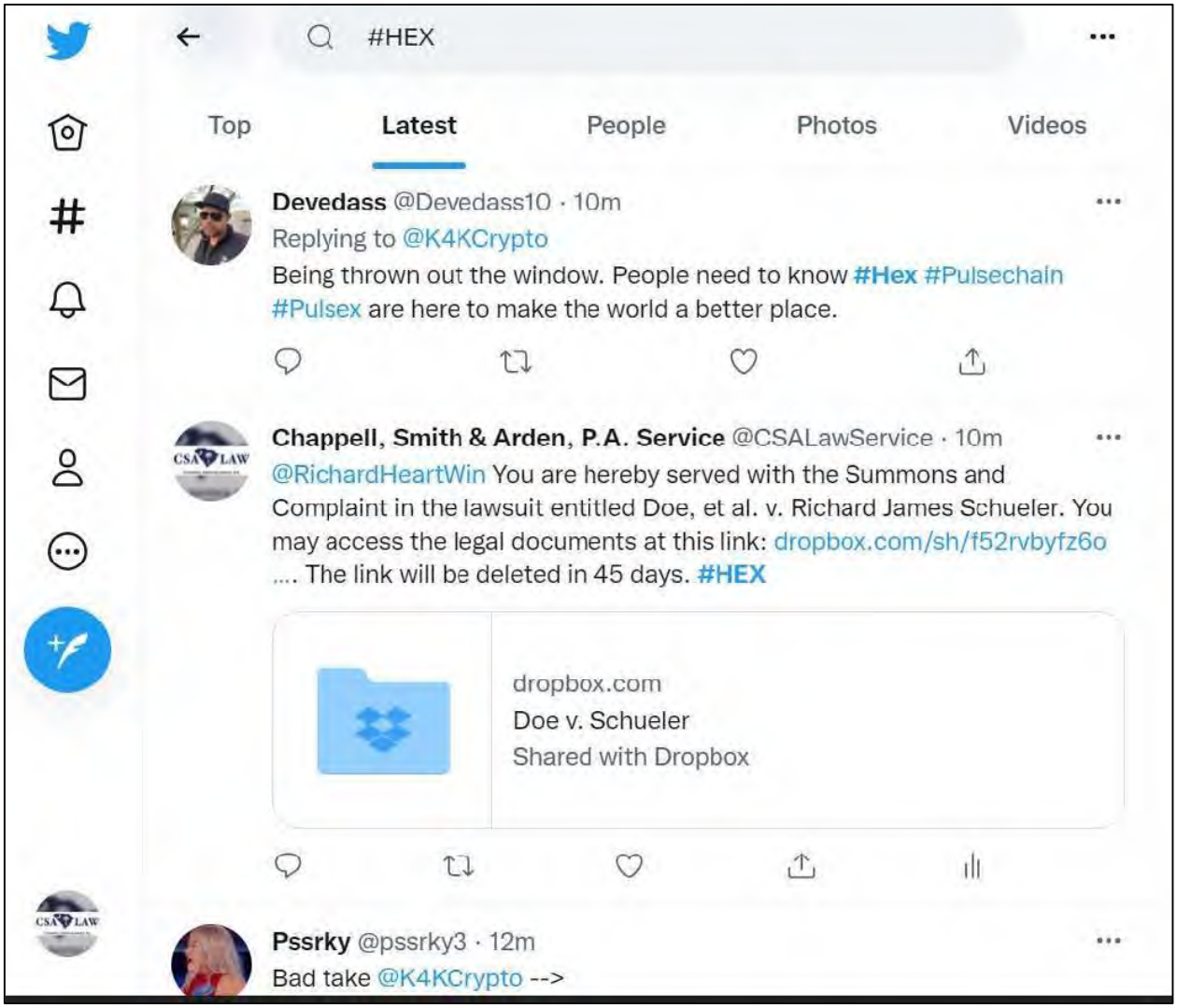

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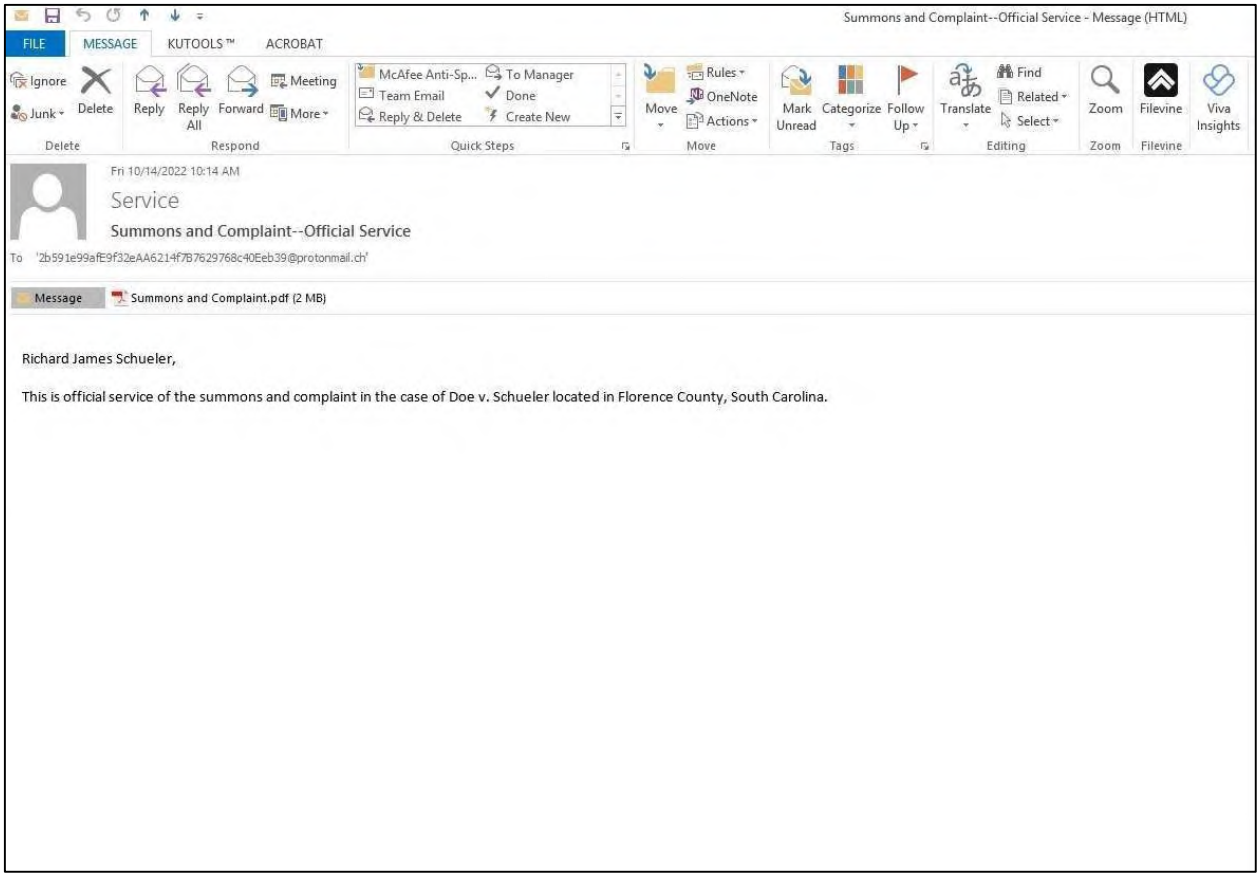

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EXHIBIT 6

ELECTRONICALLY FILED - 2023 Aug 04 10:06 AM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Doe, pseudonymous owner of HEX ERC-20 Tokens, on behalf of his or herself and all others similarly situated, Plaintiff, vs. Richard James Schueler, Defendant.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT C.A. No: 2022-CP-21-01980 **AFFIDAVIT OF ANDREA SMITH**

1. Being sworn, the undersigned, Andrea Smith, is a paralegal to J. Ashley Twombley of the Twenge Twombley Law Firm. The affiant attests as follows:

2. On June 21, 2023, the affiant accessed the t.me/hexcrypto chatroom via the Telegram application (the "Hex Telegram Chatroom").

3. The affiant scrolled through the Hex Telegram Chatroom to the time the summons and complaint and other messages were purportedly posted by Julia K. Fuller (between 10:07am and 10:15am ET on October 14, 2022) including several minutes before and after those times. Ms. Fuller's messages purporting to serve the summons and complaint were not located.

4. A screenshot of the messages that were located in the Hex Telegram Chatroom during that time interval is attached to this affidavit as EXHIBIT A. These messages did not appear in the affidavit of Ms. Fuller.

5. The affiant also searched for a unique number that Ms. Fuller purportedly posted in the Hex Telegram Chatroom, "283635." No results were found.

6. On July 11th, 2023, the affiant tested the direct send message feature of Telegram and noticed that one checkmark ✓ appeared when a message was sent but not viewed by the recipient, and two checkmarks ✓✓ appeared when the recipient received and opened the message.

7. On July 11th, 2023, the affiant tested uploading a file using Telegram. When the file was successfully uploaded, a "file" icon appeared: .

8. The affiant was also able to reproduce an "X" icon . This icon appeared when the file did not upload and the intended recipient of the file did not receive it.

The affiant is over the age of 18 and is neither an attorney nor a party to the action.

Andrea Smith

Sworn to and Subscribed before me
this 11th day of July 2023.

Tiffany Zareva
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 5/26/2026

TIFFANY A. ZAREVA NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 05/26/2026

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EXHIBIT A

Screenshot of t.me/hexcrypto chatroom from 10:00 am and 10:16am on October 14th, 2022

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ELECTRONICALLY FILED - 2023 Oct 30 5:03 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS CASE NO. 2022-CP-21-01980
NOAH VEON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFF, vs. RICHARD JAMES SCHUELER, DEFENDANT.	**NOTICE OF MOTION AND MOTION TO RECONSIDER**

Lorraine M. Schueler respectfully moves, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and the Court's inherent authority, for reconsideration of the Court's Order filed October 18, 2023 (the "Order") denying Mrs. Schueler's motion for a protective order. Respectfully, the Order does not explicitly address each of the arguments made by Mrs. Schueler in her briefs and her arguments at the hearing on October 3, 2023.[1]

1. The Order does not address Mrs. Schueler's argument that all discovery must be enjoined because this lawsuit has not been properly commenced under Rules 3 and 10 of the South Carolina Rules of Civil Procedure, and, thus, there is no jurisdiction for discovery in this improperly filed and unserved case.

2. The Order does not address Mrs. Schueler's argument that Plaintiff failed to comply with the Hague Convention and that, accordingly, he did not effectuate service under Rule 4.1 of the South Carolina Rules of Civil Procedure, which does not permit service by means "prohibited by international agreement." *See* Rule 4.1(a)(3), SCRCP.

3. The Order does not address Mrs. Schueler's argument demonstrating that designating this case as complex and reserving exclusive jurisdiction in this Court enables this Court to revisit Judge Hood's prior order erroneously permitting alternative service.

[1] *See, e.g.*, *Leggett v. Smith*, 386 S.C. 63, 81, 686 S.E.2d 699, 709 (Ct. App. 2009) (discussing the applicability of a Rule 59(e) motion where the trial judge "makes a general ruling on an issue, but does not address the specific argument raised by the [party]").

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4. The Order fails to account for the fact that it is Mrs. Schueler who is being burdened by Plaintiff's discovery efforts in a case that has not commenced; thus, she is entitled to seek a protective order and an injunction against further discovery from her.

    a. Mrs. Schueler has standing to address this matter because the Order directly affects the ability of Plaintiff to obtain discovery from and about her.

    b. Mrs. Schueler has standing under the public importance standing doctrine because the public has an inherent interest in third parties not being subjected to discovery in lawsuits that have not been properly commenced. *See S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 341-42, 878 S.E.2d 891, 895 (2022). There is also a need for future guidance as to how a nonparty that is subject to invasive discovery in a lawsuit that has not been properly commenced may raise arguments relating to the Court's jurisdiction when the defendant is in default such that no named party to the case can raise these challenges. The Order did not address the fact that no person other than Mrs. Schueler is in a position to raise these legal questions.

    c. The Order does not account for Mrs. Schueler's authorities demonstrating that the Court is authorized and obligated to dismiss an invalidly filed anonymous Complaint *sua sponte*. *See* Rule 10(e), SCRCP; *M.A.C. v. Gildner*, 853 F. App'x 207, 210 (10th Cir. 2021). Nor did it address the Court's authority to dismiss a case *sua sponte* upon a failure to serve the Complaint. *See* Rule 5(d), SCRCP ("[T]he action may be dismissed by the court on the court's own initiative . . . ."). Accordingly, the Court failed to address Mrs. Schueler's alternative argument that her standing to request dismissal of the case is not required, as the Court is inherently empowered to take such action on its own accord.

5. The Order does not account for the fact that amending the caption of the case is not an adequate substitute for filing and serving an amended complaint containing Plaintiff's true name. Thus, while Plaintiff's complaint should have been dismissed *sua sponte*, even if he were permitted to amend his pleadings to disclose his true identity, doing so requires filing and serving an amended complaint.

6. The Order fails to address Mrs. Schueler's arguments that Plaintiff cannot be allowed to continue issuing third-party subpoenas to seek information about her, without any notice to her, the Court, or the public, thereby leaving her, the Court, and the public unable to monitor Plaintiff's third-party discovery practices for potential abuse in the absence of any other appearing party.

7. The Order fails to address Mrs. Schueler's argument that Plaintiff must implement an adequate confidentiality order to ensure that Mrs. Schueler's and other third parties' confidential information is not misused by Plaintiff. Further discovery should not be permitted until Plaintiff and all third parties reach agreement on a suitable confidentiality order.

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8. The Order is inconsistent with the Court's ruling from the bench in the following ways:

    a. The Order states that Mrs. Schueler challenges the "styling of the complaint's caption," but that is a mischaracterization of Mrs. Schueler's argument. Rather, Mrs. Schueler contends that Plaintiff's failure to comply with Rules 10(a) and 10(e), SCRCP, means that this lawsuit has not been commenced under Rule 3, SCRCP. The Order correctly recognizes that Rule 10 "directs the clerk of court not to file any pleadings that do not comply with Rule 10." Order at 6; *see* Rule 10(e), SCRCP ("The clerk of the court *shall not file* any pleadings or other papers not prepared in accordance with this rule . . . ." (emphasis added)). But, inconsistent with that interpretation, the Order erroneously states that "Rule 10 does not provide for dismissal of an anonymous complaint." Order at 6.

    b. Although the Court correctly concluded that Plaintiff "failed to allege sufficient grounds for proceeding as a 'John Doe' under the guidelines set forth in *Doe v. Howe*," Order at 7, the Order did not address the fact that, to avoid dismissal, a party must have filed for leave to proceed anonymously, which Plaintiff failed to do here. *See Doe v. Howe*, 362 S.C. 212, 217 (Ct. App. 2004) (considering "motion to proceed anonymously"). The Order erred in not recognizing that a failure to file such a motion "is fatal to an anonymous plaintiff's case." *Citizens for a Strong Ohio v. Marsh*, 123 Fed. Appx. 630, 637 (6th Cir. 2005); *see also* Rule 10(e), SCRCP.

    c. The Order erroneously concluded that the subpoenas were reasonably calculated to lead to the discovery of admissible evidence, even though the scope of the subpoena was not at issue in Mrs. Schueler's motion and had not been briefed by the parties.

The Court should also reconsider its rulings as to the following arguments:

9. Filing a complaint that does not name the plaintiff as required by Rules 10(a) and 10(e) renders the complaint a nullity because the clerk of the court "shall not file" such a complaint. Without a properly filed complaint, an action is not commenced. Because the unnamed Plaintiff has therefore not "commenced" this action as a matter of law, it must be dismissed.

10. Even if there were a permissible basis on which compliance with the Hague Convention could be excused, Plaintiff still failed to complete the methods of service ordered by Judge Hood.

    a. The Order errs in concluding "Plaintiff was not required to complete all five methods of alternative service approved by the trial court." Order at 5. Judge Hood ordered Plaintiff to accomplish all the alternative methods of service: "The use of all five methods makes the successful notice all the more certain." Hood Order at 5.

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b. The Order fails to address evidence showing that Plaintiff failed to upload the summons and complaint to a Telegram group chat, as required by Judge Hood's order.

c. The Order fails to address the fact that Plaintiff was ordered to serve Defendant via public Twitter mention, but that he instead used a semi-private Twitter mention.

d. The Order fails to address the fact that Plaintiff's purported service by email used an email address with no known connection to the Defendant, thereby rendering service ineffective.

Accordingly, Mrs. Schueler respectfully requests that the Court reconsider its October 18 Order denying Mrs. Schueler's motion for a protective order.

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

s/ G. Murrell Smith, Jr.
G. Murrell Smith, Jr. SC Bar #66263
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Attorneys for Lorraine M. Schueler

Sumter, South Carolina

October 30, 2023

ELECTRONICALLY FILED - 2024 May 10 12:26 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA **COUNTY OF FLORENCE**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2022-CP-21-01980**
NOAH VEON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, **PLAINTIFF,** **vs.** **RICHARD JAMES SCHUELER A/K/A RICHARD HEART,** **DEFENDANT.**	**MOTION FOR CLASS CERTIFICATION**

The Plaintiff, on behalf of himself and the putative class, moves to certify this case as a class action pursuant to Rule 23, SCRCP. For the reasons stated herein, the motion should be granted.

FACTS

Plaintiff Noah Veon (hereinafter "Plaintiff") brought this action alleging that Defendant Richard James Schueler a/k/a "Richard Heart" (hereinafter "Defendant Schueler") has engaged in the unlawful sale of unregistered securities resulting in monetary damages to the Plaintiff and the putative class in violation of Section 5 of the Securities Act of 1933.[1] The asset the Plaintiff contends is an unregistered security is a digital "token" known as "HEX." At its highest value, each HEX token sold for approximately 50 cents. As of the writing of this memorandum, each HEX token trades for less than 0.2 cents—a 99.6% collapse in value.

[1] Approximately 10 months after the Plaintiff filed this case, the United States Securities Exchange Commission filed a similar lawsuit alleging Section 5 violations. [15 U.S.C. §§ 77e(a) and (c). That lawsuit remains pending in the Eastern District of New York as *Securities and Exchange Commission v. Schueler, et al.*, 1:23-cv-05749.

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Defendant Schueler is the creator, promoter, and manager of the HEX investment scheme. A "token" such as HEX offers an investment scheme for investors to profit through the use of a "smart contract," which is essentially, a computer program that operates on the Internet. The computer code underlying Defendant Schueler's "smart contract" receives payments of money from any investor and awards the particular investor HEX "tokens." These tokens are not physical items; rather, they are computerized credits that are stored on the Ethereum blockchain. The HEX token has no functional use. It is not accepted as payment anywhere. The HEX token only has one potential use to an investor: profit.

Beyond the mere computer program, however, Defendant Schueler went to great lengths to create an image of expertise and success. Defendant Schueler engaged in significant efforts to advertise his wealth, the alleged "10,000x" returns on his now worthless investment scheme, and his supposed 145 intelligent quotient ("IQ").

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Defendant Schueler's claim, shown above, that "I make people rich" is a phrase he adopted and portrayed to the world. Contrary to this claim, the HEX investment scheme has caused thousands of investors to lose millions of dollars.

STANDARD OF REVIEW

This action has been brought and may be maintained as a class action pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure. Class actions are favored in South Carolina. *Grazia v. South Carolina State Plastering*, LLC, 390 S.C. 562, 577, 703 S.E.2d 197, 204 (2010). Courts are encouraged to give Rule 23 a "liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case 'best serve the ends of justice for the affected parties and . . . promote judicial efficiency.'" *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003). The proposed class here satisfies Rule 23(a):

> One or more members of a class may sue or be sued as representative parties on behalf of all only if the court finds, (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Rule 23(a) SCRCP.

In the interest of judicial economy, South Carolina courts give Rule 23 an "expansive, rather than a restrictive construction, adopting a standard of flexibility in application which best serves the affected parties and promotes efficiency in a particular case." *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 354-55, 523 S.E.2d 781, 784 (1999). Class actions serve to "vindicate the rights of individuals who otherwise might not consider it worth the candle to embark on litigation

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in which the optimum result might be more than consumed by costs.*"* *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003). "In deciding whether class certification is proper, the court must apply a rigorous analysis to determine each prerequisite is satisfied." *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003).

South Carolina courts have wide discretion in certifying for class action, and a court may certify a class if, following a "rigorous analysis," the court finds the Rule 23(a) requirements have been met. *Waller v. Seabrook Island Prop. Owners Assoc.*, 300 S.C. 465, 467, 388 S.E.2d 799, 801 (1990). The issue for class certification does not center on the merits of the case; instead, it revolves around whether the prerequisite elements of Rule 23, SCRCP have been satisfied. *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 508 S.E.2d 16, 21 (1998).

ANALYSIS

The Plaintiff proposes that the Court issue an order certifying the following class:

> All individuals or entities that purchased HEX while located in the United States or its territories at any time between 12:00 AM EST September 21, 2021 and May 10, 2024 and have suffered a financial loss in excess of one hundred dollars while either (a) retaining the HEX, or (b) selling the HEX at a loss.

The Plaintiff also requests an order naming him class representative and the law firms of Chappell, Chappell & Newman, Attorneys, LLC and Radeker Law, P.A. as class counsel. An analysis of the facts of this case and within the context of Rule 23 is below.

I. NUMEROSITY

To satisfy Rule 23(a)'s numerosity requirement, Plaintiffs must demonstrate "the class is so numerous that joinder of all members is impracticable." Rule 23(a)(1), SCRCP. Numerosity is "not dependent on a specific number of class members," and "[t]here is no mechanical test for

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determining whether in a particular case the requirement of numerosity has been satisfied." *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984).

There is not a requirement at the "pleading stage of the case [that] either the exact number of persons compromising the class be specified or the class members be identified." *McGann v. Mungo*, 287 S.C. 561,570, 340 S.E.2d 154, 159 (Ct. App. 1986). "To meet the numerosity requirement, a plaintiff 'need not demonstrate with precision the number of persons in the purported class to satisfy the requirement that joinder be impracticable where such a conclusion is clear from reasonable estimates.'" *Simpson v. Specialty Retail Concepts*, 149 F.R.D. 94, 98 (M.D.N.C. 1993).

Thus, there is no "magic number" necessary to establish numerosity. *See Green v. Cauthen*, 379 F. Supp. 361, 371-72 (D.S.C. 1974). The court had wide discretion on the issue of numerosity. *See, e.g., Bates v. Tenco Services, Inc.* 132 F.R.D. 160, 162 (D.S.C. 1990) (180 plaintiffs in one subdivision satisfied numerosity requirement); *Cypress v. Newport News Gen & Non-Sectarian Hosp. Ass'n*, 375, F. 2d 648, 653 (4th Cir, 1967) (Fourth Circuit approving certification of a class of 18 members).

As a general rule of thumb, many courts have found that classes of at least 40 plaintiffs are sufficiently large enough to satisfy this requirement. *Peoples v. Wendover Funding*, Inc., 179 F.R.D. 492, 497 (D.Md. 1998). Where most members of the putative class live in other states… resolution of the legal issues would be more economical; thus, the numerosity requirement was satisfied. *Kohl v. Association of Trial Lawyers of America*, 183 F.R.D. 475, 483-484 (D.Md. 1998) (Certifying a class of between 14 and 35 members); *Armsted v. Pingree*, 629 F.Supp. 273, 279 (M.D.Fla. 1986) (Certifying a class of 25 members); *Cypress v. Newport News Gen. and Nonsec. Hosp. Assoc*., 375 F.2d 648, 653 (4th Cir. 1967) (Certifying a class of 18 members). Additionally,

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a class action is especially appropriate where an individual plaintiff's damages are relatively small, while collectively the damages are large. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

Here, the large number of potentially affected investors, sellers, consumers, and/or buyers clearly satisfies the requirement of "numerosity." As Plaintiff's expert report shows, 187,479 traders purchased HEX between September 21, 2021 and January 5, 2023 (the date the report was completed. (**Exhibit A**—Expert Report) This number has, of course, only risen since the report was completed. Thus the proposed class vastly exceeds numbers of claimants deemed to satisfy Rule 23's numerosity requirement.

II. COMMONALITY

Rule 23(a)(2) requires a showing of the existence of questions of law or fact common to the class. Rule 23(a)(2), SCRCP. The South Carolina Court of Appeals discussed the issue of common questions of law or fact in the case of *McGann v. Mungo,* 287 S.C. 561, 340 S.E. 2d 154 (Ct. App. 1986):

> "[i]t is important to note that the subsection [Rule 23(a)(2), SCRCP] does not demand that all questions of law and fact be common, only that there be common issues among the class. In fact, a single common issue will suffice if it is important enough. It also follows that the mere existence of individual issues does not defeat class action status."

Id. at 568, 340 S.E.2d at 157-158, *quoting H. Lightsey & J. Flanagan*, *South Carolina Civil Procedure,* at 19 (2d ed. 1985). "Commonality does not require every issue in the case to be common to all class members." *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Ct. App. 2011). "Rather, commonality is met when the class shares a determinative issue." *Id*. "In practical terms this means the party must articulate the existence of 'significant common, legal, or factual issues' which bind the proposed class together." *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003).

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The central question of this case is whether the HEX investment scheme constitutes a "security" as the term is used within Section 5 of the Securities Act of 1933. For nearly 80 years, the U.S. Supreme Court has defined the term as

> a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.

S.E.C. v. W.J. Howey Co., 328 U.S. 293, 298–99, 66 S. Ct. 1100, 1103, 90 L. Ed. 1244 (1946). The four-pronged *Howey* test "is an objective one focusing on the promises and offers made to investors; it is not a search for the precise motivation of each individual participant." *Sec. & Exch. Comm'n v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 326 (S.D.N.Y. 2023), *quoting Sec. & Exch. Comm'n v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352, 371 (S.D.N.Y. 2020). Therefore "significant common, legal, or factual issues" exist with regard to the proposed class and the commonality requirement is satisfied for the purposes of class certification.

The method of calculating damages for each of the class members is controlled by statue. Violators of Section 5

> shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

15 U.S.C.A. § 77l. This statutorily prescribed method of calculation has been found to satisfy Rule 23's commonality requirement. *See, e.g., Tsereteli v. Residential Asset Securitization Tr. 2006-A8*, 283 F.R.D. 199, 207 (S.D.N.Y. 2012)(finding commonality where damages are "calculated by a

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statutory method set forth in Section 11(e)"); *In re Oppenheimer Rochester Funds Grp. Sec. Litig.*, 318 F.R.D. 435, 443 (D. Colo. 2015)(finding commonality where "damages are calculated using a common formula").

Finally, courts routinely have found that common issues in securities litigation satisfy Rule 23's commonality requirement.

> Securities claims are particularly well suited for class actions because they allow for the policies behind the securities laws to be enforced in circumstances where there are numerous investors with small individual claims that otherwise would be effectively barred from litigation.

Edgington v. R.G. Dickinson & Co., 139 F.R.D. 183, 188 (D. Kan. 1991).

In this case, Plaintiff has alleged numerous questions of law and fact common to the class, including that the HEX investment scheme was an illegal security as defined within the Securities Act of 1933.[2] As a result, the commonality requirement of Rule 23 is satisfied.

III. TYPICALITY

To establish the typicality requirement, the "claims or defenses of the representative parties [must be] typical of the claims or defenses of the class." Rule 23(a)(3), SCRCP; *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Ct. App. 2011). The typicality requirement will compare the named representatives claim to the claim(s) of the entire class. *Id*. "Courts routinely find that the proposed class representative's claims are typical even if the amount of damages sought differ from those of the class or if there are differences among class members

[2] The Plaintiff does not seek class certification of his claim stemming from the South Carolina Uniform Securities Act of 2005.

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in the amount of damages each is claiming." *Newberg and Rubenstein on Class Actions*, § 3:42 at 492 (6th Ed. 2022).

For purposes of Rule 23(a)(3), the representative party's claims are "typical" if they arise from the same course of conduct that gives rise to the claims of the class members and if the claims of the class are based on the same legal theories. *Central Wesleyan College v. W.R. Grace & Co.,* 243 F.R.D. 628, 637 (D.S.C. 1992). "The typicality test does not require that the representatives have identical claims which other members of the class might present… The question of typicality focuses on the similarity of the legal and remedial theories of claims of the named and unnamed plaintiffs." *Bates v. Tenco Servs., Inc.*, 132 F.R.D. 160, 163 (D.S.C.), *amended,* 132 F.R.D. 165 (D.S.C. 1990). "The plaintiffs' claims for damages stem from effects of the defendants' activities on the plaintiffs…Whether each potential member of the class has suffered the same degree of harm, or each and every type of harm, does not preclude a finding of typicality." *Id.*

Here, Plaintiff Noah Veon has owned HEX digital tokens throughout the entirety of the class period. Any defenses to Plaintiff's claim are typical of those applicable to the claims of the class. Plaintiff and the proposed class claim arise out of a common course and pattern of wrongdoing. The fact pattern is the same with respect to all prospective class members, and the same legal theory is asserted on behalf of all. The named Plaintiff having presented evidence indicating that they have suffered a wide variety of harm which persons similarly situated may have also suffered presents that the claims of named Plaintiff are typical of the claims of the proposed class. Accordingly, the typically requirement has been satisfied.

IV. ADEQUACY OF REPRESENTATION

In determining whether a particular named plaintiff will adequately represent a proposed class pursuant to Rule 23(a)(4) the first factor a court must consider is whether the named plaintiff

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has interests that are antagonistic or adverse to those of the rest of the class. *Waller v. Seabrook Island Prop. Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990), citing *Runion v. U.S. Shelter,* 98 F.R.D. 313 (D.S.C.1983). Class representatives "must demonstrate they have no interest antagonistic to or in conflict with the interests of the unnamed members of the class such that they are fairly and adequately able to protect the interests of the purported class." *Waller*, 300 S.C. at 468, 388 S.E.2d at 801. The second factor in determining the adequacy of class representatives is whether the Plaintiffs have the ability and commitment to prosecute the action vigorously. *S.C. Nat. Bank v. Stone*, 139 F.R.D. 325, 329-30 (D.S.C. 1991).

The class representative must voluntarily accept a fiduciary obligation towards all the members of the putative class they thus have undertaken to represent. *Shelton v. Pargo, Inc.,* 582 F.2d 1298, 1305 (4th Cir.1978); *Runion v. U.S. Shelter*, 98 F.R.D. 313, 317 (D.S.C. 1983).

Plaintiff's claim does not conflict with the economic interests of the putative class. Second, there is nothing to suggest that the representative Plaintiff has any interest antagonistic to the vigorous pursuit of the class claims against Defendant Schueler. Plaintiff shares with the putative class the interest in establishing that the Defendants conduct is a violation of the Securities Act of 1933. Accordingly, the representative Plaintiff is an educated individual that will fairly and adequately protect the interests of the proposed class. Both prongs of the "adequacy" test are met here.

Finally, Plaintiff has retained counsel that is experienced in the litigation of class actions and other complex litigation. Class actions successfully litigated by Plaintiff's counsel include:

- *Parler v. SCANA Corporation, et al.*, 2017-CP-40-6621 (S.C. Ct. Common Pleas 2017)(class action resulting in $63 million settlement)

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- *Temporary Services, Inc. v. American Internatoinal Group, Inc.*, 3:08-cv-0271 (D.S.C. 2008)(class action resulting in $4 million settlement)
- *Rowles v. Chase Home Finance, LLC*, 9:10-cv-01756 (D.S.C. 2010)(class action resulting in $66 million settlement)
- *Montague v. Dixie Nat. Life Ins. Co.*, 3:09-cv-687 (D.S.C. 2009)(class action resulting in $3,362,822.00 settlement)
- *Ward v. Dixie Nat. Life Ins. Co.*, 3:03-cv-3239 (D.S.C. 2003)(class action resulting in $7,828,071.39 judgment)

As a result, the adequacy of representation consideration is satisfied.

V. AMOUNT IN CONTROVERSY

The final prerequisite is that the amount in controversy must exceed one hundred dollars for each member of the class, and this amount is based on the amount claimed by the Plaintiff, and whether it is apparent that the claim is made in good faith. Rule 23(a)(5), SCRCP; *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 331, 404 S.E.2d 200, 202 (1991). As shown within Plaintiff's proposed class definition, inclusion within the proposed class will be limited to individuals or entities who have suffered a financial loss in excess of one hundred dollars.

CONCLUSION

Plaintiff has satisfied the requirements of Rule 23(a) of the South Carolina Rules of Civil Procedure and have moved for certification of this action as a class action under Rule 23(d)(1). Certification would streamline the adjudication of potentially thousands of claims and provide an avenue for much needed relief to an entire group of investors, sellers, consumers, and/or buyers of the investment scheme, HEX. For the reasons stated herein, the Court should grant the Plaintiff's motion and certify the proposed class. The Court should also name Noah Veon as class

representative and the law firms of Chappell, Chappell & Newman, Attorneys, LLC and Radeker Law, P.A. as class counsel.

Respectfully submitted,

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EXHIBIT A

(Expert Report)

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ERMProtect
Cybersecurity Solutions

Report for CSA Law

Cryptocurrency Investigation

Summary of Observations

January 18, 2022

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Use Warning: All information provided in this report or other deliverable ("Information") is considered confidential information under the terms hereof. The Chainalysis Reactor software is not a forensic accounting tool, it is a tool that assists investigators with their investigations. Any leads generated by, or evidence obtained as a result, of the information is to be used for intelligence lead purposes only, unless ERMProtect has been granted express consent.

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Introduction

ERMProtect was contacted by CSA Law to perform cryptocurrency investigation services. The cryptocurrency investigation services were broken down into small phases. This report covers Phase One.

Objectives

For Phase One of this project, ERMProtect identified the likely number of discrete purchasers of the HEX product. This can be used to move for certification of the class action.

Methodology

ERMProtect performed this cryptocurrency analysis using Chainalysis, an investigation software that links real world entities to cryptocurrency activities. ERMProtect also used other open-source intelligence tools such as Google to identify wallet software.

Summary of Findings

ERMProtect estimates that there are thousands of unique purchasers of the HEX token. Below is a table summarizing the estimated number of holders, by type of analysis. All data was collected on January 5, 2023. Our data includes information from the beginning of the HEX token to January 5, 2023. All dates and times are in UTC +00:00.

Analysis Method	Estimated Number of Traders
Using Etherscan	315,785
Using Chainalysis to estimate **total traders**	290,853
Using Chainalysis to estimate **total private wallet traders**	290,632
Using Chainalysis to estimate **total individual traders**	257,994
Using Chainalysis to estimate number of traders **since May 1st, 2021**	239,347
Using Chainalysis to estimate number of private wallet traders **since May 1st, 2021**	239,187
Using Chainalysis to estimate number of individual traders **since May 1st, 2021**	210,003
Using Chainalysis to estimate number of traders **since September 21st, 2021**	187,479
Using Chainalysis to estimate number of private wallet traders **since September 21st, 2021**	187,337
Using Chainalysis to estimate number of individual traders **since September 21st, 2021**	160,450
Using Chainalysis to estimate number of traders **since September 24th, 2021**	185,926
Using Chainalysis to estimate number of private wallet traders **since September 24th, 2021**	185,784
Using Chainalysis to estimate number of individual traders **since September 24th, 2021**	158,948

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Using Chainalysis to estimate number of traders **between August 5th, 2022, and August 11th, 2022**	5,698
Using Chainalysis to estimate number of private wallet traders **between August 5th, 2022, and August 11th, 2022**	5,660
Using Chainalysis to estimate number of individual traders **between August 5th, 2022, and August 11th, 2022**	3,207
Using Chainalysis to estimate number of traders **on September 24th, 2021**	1,896
Using Chainalysis to estimate number of private wallet traders **on September 24th, 2021**	1,870
Using Chainalysis to estimate number of individual traders **on September 24th, 2021**	1,064

Further details for each row can be found further in this report.

Investigation Background

HEX is a token traded on the Ethereum blockchain. Like all cryptocurrencies, it is exchanged between digital addresses, and the purchasers are pseudonymous. For this assignment, our analysts used Chainalysis Reactor, an investigation software that links real world entities to cryptocurrency addresses, to estimate the number of HEX purchasers.

To understand the analysis, the following should be noted:

- HEX is an ERC20 token that transacts on the Ethereum blockchain using Ethereum addresses which are publicly visible.
- Ethereum addresses are generated using a private key. Unlike in Bitcoin, each private key generates only one address rather than multiple addresses. Typically, but not always, HEX traders use only one address.
- It is possible to quantify the number of unique HEX addresses on the Ethereum blockchain due to its public nature. That number, however, may overestimate the number of real-world HEX traders because some traders may use multiple addresses.
- To solve this problem and reach a more credible estimate, ERMProtect used Chainalysis Reactor, the world's largest database of cryptocurrency transactions which uses proprietary software, data analysis, and open-source intelligence to connect transactions to real-world entities and people. So, for example, Chainalysis groups together HEX addresses believed to be owned by the same trader.
- Please note that while Chainalysis is a global leader in linking transactions to real world owners, it is not possible to state with 100 percent certainty the number of HEX traders using this or any other software or technique.

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Investigation Details

This section of the report explains the basis for our analysis.

Estimating total number of unique traders

Etherscan, a public block explorer for the Ethereum blockchain, reported **315,785** unique addresses that traded HEX through January 5, 2023. As mentioned above, this number could include traders using multiple addresses, overestimating the number of unique traders.

To come up with a more reliable estimate, ERMProtect utilized Chainalysis to estimate that approximately **290,853** unique traders likely engaged in HEX transactions through January 5, 2023. Some of the traders included centralized and decentralized exchanges. To better estimate the number of individual traders, ERMProtect identified that **290,632** traders utilized private wallets, an indication that these traders may be individuals, as opposed to exchanges, institutions, or otherwise.

To further ensure that our estimate represents individual HEX traders, rather than exchanges, ERMProtect limited our scope to private wallets with 10 or less transactions. We found **257,994** such wallets, which we believe is the best estimate for the number of individual HEX traders.

Estimating number of unique traders since May 1, 2021

ERMProtect was also asked to estimate the number of discrete purchasers of the HEX product from May 1st, 2021, until January 5, 2023. ERMProtect identified over 1 million transactions during this time.

ERMProtect utilized Chainalysis to estimate that approximately **239,247** unique traders likely engaged in HEX transactions from May 1, 2021, through January 5, 2023. Some of the traders included centralized and decentralized exchanges. To better estimate the number of individual traders, ERMProtect identified that **239,187** traders utilized private wallets, an indication that these traders may be individuals, as opposed to exchanges, institutions, or otherwise.

To further ensure that our estimate represents individual HEX traders, rather than exchanges, ERMProtect limited our scope to private wallets with 10 or less transactions. We found **210,003** such wallets, which we believe is the best estimate for the number of individual HEX traders during the specified time period.

Estimating number of unique traders since September 21, 2021

ERMProtect was also asked to estimate the number of discrete purchasers of the HEX product from September 21st, 2021, until January 5, 2023. ERMProtect identified over 1 million transactions during this time.

ERMProtect utilized Chainalysis to estimate that approximately **187,479** unique traders likely engaged in HEX transactions from September 21, 2021, through January 5, 2023. Some of the traders included centralized and decentralized exchanges. To better estimate the number of individual traders, ERMProtect identified that **187,337** traders utilized private wallets, an

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indication that these traders may be individuals, as opposed to exchanges, institutions, or otherwise.

To further ensure that our estimate represents individual HEX traders, rather than exchanges, ERMProtect limited our scope to private wallets with 10 or less transactions. We found 160,450 such wallets, which we believe is the best estimate for the number of individual HEX traders during the specified time period.

Estimating number of unique traders since September 24, 2021

ERMProtect was asked to identify wallets that transacted from September 24th, 2021, until present. ERMProtect identified over 1 million transactions during this time.

ERMProtect utilized Chainalysis to estimate that approximately **185,926** unique traders likely engaged in HEX transactions from September 24, 2021, through January 5, 2023. Some of the traders included centralized and decentralized exchanges. To better estimate the number of individual traders, ERMProtect identified that **185,784** traders utilized private wallets, an indication that these traders may be individuals, as opposed to exchanges, institutions, or otherwise.

To further ensure that our estimate represents individual HEX traders, rather than exchanges, ERMProtect limited our scope to private wallets with 10 or less transactions. We found **158,948** such wallets, which we believe is the best estimate for the number of individual HEX traders on the specified date.

Estimating number of unique traders between August 5, 2022, and August 11, 2022

ERMProtect did additional analysis during key time periods in respect to the lawsuit. One such key time period was August 5th, 2022, through August 11th, 2022. According to the lawsuit, during this time period the defendant was in South Carolina, the state where the suit was filed. ERMProtect identified 31,845 transactions during this time.

ERMProtect utilized Chainalysis to estimate that approximately **5,698** unique traders likely engaged in HEX transactions from August 5, 2022, to August 11, 22022. Some of the traders included centralized and decentralized exchanges. To better estimate the number of individual traders, ERMProtect identified that **5,660** traders utilized private wallets, an indication that these traders may be individuals, as opposed to exchanges, institutions or otherwise.

To further ensure that our estimate represents individual HEX traders, rather than exchanges, ERMProtect limited our scope to private wallets with 10 or less transactions. We found **3,207** such wallets, which we believe is the best estimate for the number of individual HEX traders during the specified time period.

Estimating number of unique traders on September 24th, 2021

Another key time frame stated in the lawsuit is the date September 24th, 2021. According to the lawsuit, the plaintiff bought HEX tokens on this day. ERMProtect identified 6,974 transactions on September 24th, 2021.

ERMProtect utilized Chainalysis to estimate that approximately **1,896** unique traders likely engaged in HEX transactions on September 24, 2021. Some of the traders included centralized and decentralized exchanges. To better estimate the number of individual traders, ERMProtect identified that **1,870** traders utilized private wallets, an indication that these traders may be individuals, as opposed to exchanges, institutions or otherwise.

To further ensure that our estimate represents individual HEX traders, rather than exchanges, ERMProtect limited our scope to private wallets with 10 or less transactions. We found **1,064** such wallets, which we believe is the best estimate for the number of individual HEX traders on the specified date.

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	CASE NO. 2022-CP-21-01980
NOAH VEON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, **PLAINTIFF,** **vs.** **RICHARD JAMES SCHUELER A/K/A RICHARD HEART,** **DEFENDANT.**	**MOTION FOR CONTINUANCE**

The Plaintiff, on behalf of himself and the putative class, moves to continue the trial of this case beyond the May 20, 2024 term. The Plaintiff further requests that a status conference be convened to establish a scheduling order for the next phases of this case. The grounds of this motion are as follows:

1. This case has been designated complex and assigned to the Honorable Michael G. Nettles for disposition.
2. Since the outset of this case, Plaintiff has been diligently conducting discovery with numerous third parties.
3. Four motions remain pending in this case: three in Florence County; one in Beaufort County.
4. Two deposition notices remain pending in this case: one in Beaufort County, South Carolina; one in Suffolk County, Massachusetts.

5. Should the Court grant the Plaintiff's motion for class certification, a plan for class notice will need to be coordinated.
6. Plaintiff anticipates a substantial amount of additional discovery may be needed to confirm class damages in this case and such discovery potentially involves foreign jurisdictions.

Plaintiff asserts that the above grounds establish good cause for the requested continuance. Plaintiff further requests that the Court schedule a status conference with all interested parties and movants.

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)))	IN THE COURT OF COMMON PLEAS
Noah Veon, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. Richard James Schueler A/K/A Richard Heart, Defendant.	)	Civil Action No. 2022-CP-21-01980 **BENJAMIN DUBARD'S MOTION TO INTERVENE**

Pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, Benjamin DuBard ("DuBard") hereby moves the Court for leave to intervene in this action to protect his substantial interest in the outcome because his interests are unrepresented by any existing party.

BACKGROUND

In this purported class action Plaintiff seeks to represent "all individuals or entities who purchased HEX tokens within the statute of limitations." Compl. ¶ 91. Hex is a software program comprising a digital token (HEX) that runs on a cryptographically secured, decentralized network of computers known as the Ethereum blockchain. Plaintiff alleges that HEX "offers investors profit through the use of a 'smart contract'—essentially, a computer program—that operates on the internet." *Id.* ¶ 2. Among other claims, Plaintiff requests a declaratory judgment that "the HEX investment smart contract is a security within the meaning of the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005." *Id.* ¶ 100.

Benjamin DuBard is a resident of South Carolina, raised in Florence County, who has owned HEX tokens continuously since 2020 and purchased tokens within three years before this action commenced. Thus, he is a member of the purported class.

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However, DuBard offers a perspective different than that provided by the Plaintiff and their interests do not align. Specifically, DuBard seeks to ensure that Plaintiff's expansive view of the federal and state securities laws does not improperly interfere with the rights, financial interests, and legal activities of HEX owners like himself. Moreover, DuBard asserts that a determination by the Court that HEX is a security would adversely impact the value of his financial position in HEX tokens. Because no existing party to this litigation represents DuBard's interest in the outcome of this case, DuBard requests an order permitting him to intervene.[1]

ARGUMENT

Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *In Re Horry County State Bank*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004) (citing *Black's Law Dictionary* 826 (7th ed.1999). Intervention may be of right or permissive. Intervention of right is governed by Rule 24(a), SCRCP, and permissive intervention is governed by Rule 24(b), both of which are modeled after the federal rule. Our appellate courts have emphasized that "[i]ntervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected." *Id*.

I. DuBard is entitled to intervene as of right under Rule 24(a).

A party seeking to intervene as of right under Rule 24(a) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest

[1] As required by Rule 24(c), SCRCP, a proposed pleading is attached to this motion as **Exhibit A**. Due to time constraints—specifically the need to file this motion before the hearing on class certification scheduled for June 25, 2024—the pleading is abbreviated and focuses on DuBard's opposition to a finding that HEX is a security. If granted leave to intervene, DuBard expects to file a more fulsome amended response to Plaintiff's extensive Complaint.

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is inadequately represented by other parties. *Horry County State Bank*, 361 S.C. at 507, 604 S.E.2d at 725. In addition, the United States Supreme Court has recognized that "[m]embers of a class have a right to intervene if their interests are not adequately represented by existing parties." *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 594, 133 S.Ct. 1345, 1349, 185 L.Ed.2d 439 (2013) (quoting 5 Alba Conte & Herbert Newberg, Newberg on Class Actions § 16:7, at 154 (4th ed. 2002)).

A. DuBard's application is timely.

The Court reviews four factors to determine whether a motion intervene is timely. The factors include "(1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial." *Davis v. Jennings*, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

Application of these factors establishes that DuBard's motion to intervene is timely. Regarding the first and second factors, although DuBard became aware that a lawsuit was filed against Richard Shueler related to HEX shortly after the litigation commenced in 2022, DuBard was unaware until the week of June 17, 2024, that Plaintiff sought a declaratory judgment that HEX is a security or that any procedure existed pursuant to which DuBard could become personally involved in the action. After he became aware of these facts, DuBard promptly retained counsel and filed this motion less than a week later. Regarding the third and fourth factors, the action remains in the preliminary stages and the defendants has not appeared. No significant discovery has occurred, and no class has been certified. And, most importantly, the Court has not yet addressed the primary issue for which DuBard requests to intervene—namely, whether or not

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HEX is a security. Accordingly, no party would be prejudiced DuBard's intervention to protect his interest.

B. DuBard's holds an interest related to the subject action.

DuBard has owned HEX tokens continuously since 2020, and he purchased HEX tokens within three years before Plaintiff filed this action. He therefore has an interest in the outcome of this action, particularly in the determination whether HEX is a security under federal and South Carolina securities laws. Indeed, Plaintiff cannot possibly argue that DuBard lacks an interest in this action, given that DuBard is a member of the class that Plaintiffs seeks to represent.

C. Denial of intervention would impair or impede DuBard's ability to protect his interest.

If the Court does not permit DuBard to intervene, the Court will never hear his perspective or argument on the ultimate issue in this case. The Court has placed the Defendant in default. Other than Plaintiff, no party has appeared in this action to address whether HEX is a security. If the Court denies DuBard's request to intervene, no one will represent his interest and the Court will hear only one side of the argument. The Court of Appeals has recognized that where, as in this case, "the interest of the absentee is not represented as all" or where "all existing parties are adverse to him" the case presents "an obvious lack of adequate representation" warranting intervention. *Horry County State Bank*, 361 S.C. at 509, 604 S.E.2d at 726.

D. DuBard's interest is inadequately represented in the action.

As discussed above, DuBard's interest is not represented in this action *at all*. The question whether cryptocurrencies are securities is currently being litigated in federal courts across the country. Before addressing the issue here, this Court should hear from parties representing both sides of the issue. Because no existing party to this action represents the position that HEX is not

a security, the Court should permit DuBard to intervene for that purpose and to protect his substantial interest in the outcome.

II. The Court should grant DuBard permissive intervention.

"To warrant intervention under Rule 24(b) an applicant should ordinarily show ... he has a claim or defense involving a question of law or fact in common with the main action." *Ex Parte Trustgard Ins. Co.*, 442 S.C. 485, 513, 900 S.E.2d 448, 463 (Ct. App. 2023).

The Court should grant DuBard leave to intervene under Rule 24(b) for the same reasons stated above. In addition, DuBard's interest in the determination whether HEX is a security is a question of law that is squarely at issue in the instant action. The Court should therefore exercise its discretion to allow DuBard to intervene so that it can receive argument from both sides of the issue and declare the rights of all affected parties. *See Stoney v. Stoney*, 425 S.C. 47, 63, 819 S.E.2d 201, 210 (Ct. App. 2018) ("Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.").

CONCLUSION

For the reasons discussed above, this Court should grant DuBard leave to intervene in this action to protect his interests.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS
Noah Veon, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. Richard James Schueler A/K/A Richard Heart, Defendant.	)	Civil Action No. 2022-CP-21-01980 **[PROPOSED] ANSWER OF BENJAMIN DUBARD**

Benjamin DuBard ("DuBard"), by and through his undersigned counsel, hereby answers the Complaint of Noah Veon, on Behalf of Himself and All Others Similarly Situated ("Plaintiff"), in the above-cited case as set forth below. All allegations in the Complaint not expressly admitted below are denied.

ANSWER

1. DuBard currently lacks information sufficient to answer the factual allegations regarding Defendant in the Complaint and therefore denies them, along with all allegations in the Complaint, at this time.

2. DuBard specifically denies the allegation in Paragraphs 97 through 115, and elsewhere in the Complaint, that the HEX contract is a security as defined within the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005.

WHEREFORE, having answered the Complaint, DuBard requests that the Complaint be dismissed, and for such further relief as the Court deems proper.

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S.C. Bar No. 104662
E-mail: ashley.hawkins@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Benjamin DuBard

Charleston, South Carolina
June 24, 2024

ELECTRONICALLY FILED - 2024 Jun 24 4:17 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)))	IN THE COURT OF COMMON PLEAS
Noah Veon, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. Richard James Schueler A/K/A Richard Heart, Defendant.	)	Civil Action No. 2022-CP-21-01980 **BENJAMIN DUBARD'S MOTION FOR CONTINUANCE OF HEARING SET FOR JUNE 25, 2024**

Benjamin DuBard ("DuBard") hereby moves the Court for an order continuing the hearing on Plaintiff's motion for class certification, which is currently scheduled for June 25, 2024, at 10am, to a motions term not before August 1, 2024. The basis for this request is that undersigned counsel appeared today for the first time in this action and simultaneously filed a motion to intervene on behalf of DuBard. A continuance of the hearing, therefore, is necessary to allow undersigned counsel sufficient time to prepare a response to Plaintiff's motion for class certification and prepare for oral argument to properly represent DuBard's interests, which are stated in the Motion to Intervene filed simultaneously herewith. The undersigned counsel consulted Plaintiff's counsel in accordance with Rule 11, SCRCP, but Plaintiff's counsel did not consent to the requested continuance.

This is DuBard's first request for a continuance of this hearing, which is made in good faith and not for the purposes of undue delay. For good and sufficient cause shown, DuBard requests that the hearing scheduled for June 25, 2024, be continued to a motions term not before August 1, 2024.

[Signatures on following page]

ELECTRONICALLY FILED - 2024 Jun 24 4:17 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ MERRITT G. ABNEY
Merritt G. Abney
S.C. Bar No. 71893
E-mail: merritt.abney@nelsonmullins.com
Ashley N. Hawkins
S.C. Bar No. 104662
E-mail: ashley.hawkins@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Benjamin DuBard

Charleston, South Carolina
June 24, 2024

ELECTRONICALLY FILED - 2024 Jul 19 3:44 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)))	IN THE COURT OF COMMON PLEAS
Noah Veon, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. Richard James Schueler A/K/A Richard Heart, Defendant.	)	Civil Action No. 2022-CP-21-01980 **BENJAMIN DUBARD'S MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA**

Pursuant to Rule 26(c) and 45(c)(3) of the South Carolina Rules of Civil Procedure, Benjamin DuBard ("DuBard") hereby moves the Court for an order quashing the subpoena issued by Plaintiff to DuBard on July 12, 2023 (the "Subpoena," **Exhibit A**), requesting documents and deposition testimony. This motion is made on the following grounds, which DuBard will detail more fully in a memorandum of law filed before the hearing on this motion.

RELEVANT BACKGROUND

In this purported class action Plaintiff seeks to represent "all individuals or entities who purchased HEX tokens within the statute of limitations." Compl. ¶ 91. Hex is a software program comprising a digital token (HEX) that runs on a cryptographically secured, decentralized network of computers known as the Ethereum blockchain. Plaintiff alleges that HEX "offers investors profit through the use of a 'smart contract'—essentially, a computer program—that operates on the internet." *Id.* ¶ 2. Plaintiff requests a declaratory judgment that "the HEX investment smart contract is a security within the meaning of the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005." *Id.* ¶ 100.

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On June 24, 2024, DuBard filed a Motion to Intervene, which remains pending and has not yet been heard by the Court. DuBard seeks only to ensure that Plaintiff's expansive view of the federal and state securities laws does not improperly interfere with the rights, financial interests, and legal activities of HEX owners like himself. Moreover, DuBard asserts that a determination by the Court that HEX is a security would adversely impact the value of his financial position in HEX tokens. Because no existing party to this litigation represents DuBard's interest in the outcome of this case, DuBard seeks to intervene for the limited purpose of protecting his interests and providing the Court with his different perspective on the merits.

On June 26, 2024, Plaintiff's counsel wrote to DuBard's counsel, requesting the deposition of Mr. DuBard to take place in July. DuBard's counsel responded that any deposition of Mr. DuBard would, at a minimum, be premature because DuBard remains a non-party to the action and counsel for DuBard was retained only a few days prior to filing the Motion to Intervene. **Exhibit B**. On July 12, 2024, Plaintiff's counsel delivered the Subpoena to DuBard's counsel, noticing DuBard's deposition for July 23, 2024 and requiring the production of documents by DuBard on or before the same date.

The Subpoena should be quashed, or a protective order issued, for the following reasons:

1. The Subpoena is premature because DuBard's Motion to Intervene has not been granted, or even fully heard by the Court. Therefore, at this point, DuBard remains a non-party to this action, and, even if the Court grants the Motion to Intervene, the Court may limit the scope of DuBard's participation, which would impact the scope of discovery as to him.

2. Plaintiff also is not entitled to depose DuBard for the purpose of opposing the Motion to Intervene. Intervention is evaluated based on allegations in the motion and accompanying pleading, which the Court must accept as true for purposes of the motion. *Nat'l*

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Park Conservation Assn. v. U.S. E.P.A., 759 F.3d 969, 973 (8th Cir. 2014) ("A court ruling on a motion to intervene must accept as true all material allegations in the motion to intervene and must construe the motion in favor of the prospective intervenor. This standard is identical to the standard applied to a typical motion to dismiss for lack of jurisdiction.").[1] Because the Court applies the same standard used to decide a motion to dismiss—and does not take or consider evidence on the propriety of intervention—Plaintiff is not entitled to discovery for the purpose of challenging the Motion to Intervene.

3. DuBard's instant Motion should also be granted because Lorraine Schueler's Motion for Protective Order filed July 7, 2023, which is the subject of a pending motion for reconsideration, may dispose of the entire case, rendering further discovery unnecessary. Lorraine Schueler argues that Plaintiff failed to properly serve the Defendant and that this action must consequently be dismissed. If the Court rules for Ms. Schueler, then DuBard's Motion to Intervene, and Plaintiff's request for discovery from DuBard, will become moot. Thus, any discovery from DuBard should also await the Court's ruling on that issue. Mr. DuBard incorporates Ms. Schueler's Motion and any related filings, including the Memorandum of Support filed August 4, 2023, herein by reference.

4. DuBard's instant Motion should also be granted because DuBard has no relevant information for which discovery would be necessary or appropriate. The issue framed by the Complaint is whether HEX is security under South Carolina and federal securities laws. That determination is primarily a legal issue and it requires no factual discovery from DuBard.

[1] South Carolina Rule 24(a) is identical to the federal rule.

WHEREFORE, for the foregoing reasons, and any additional grounds asserted prior to or at the hearing on this matter, DuBard requests that the Court issue an Order quashing the Subpoena or, in the alternative, a protective order limiting its scope.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ MERRITT G. ABNEY
Merritt G. Abney
S.C. Bar No. 71893
E-mail: merritt.abney@nelsonmullins.com
Ashley N. Hawkins
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(843) 853-5200

Attorneys for Benjamin DuBard

Charleston, South Carolina
July 19, 2024

ELECTRONICALLY FILED - 2024 Jul 19 3:44 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980

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EXHIBIT A

ELECTRONICALLY FILED - 2024 Jul 19 3:44 PM - FflorENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND NOAH VEON, on behalf of himself and all others similarly situated, Plaintiff, vs. RICHARD JAMES SCHUELER A/K/A RICHARD HEART, Defendant.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2022-CP-21-1980 **NOTICE OF DEPOSITION**

To: **BENJAMIN DUBARD**, c/o Merritt G. Abney, Esq., 151 Meeting Street, Sixth Floor, Charleston, SC 29401:

YOU WILL PLEASE TAKE NOTICE that Graham L. Newman with Chappell, Chappell & Newman, Attorneys, LLC will take the deposition listed below on oral examination, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, before a Notary Public, or some other officer authorized by law to take depositions, the deposition to continue from day to day until completed. Pursuant to Rule 30(j)(8) SCRCP, counsel for Plaintiffs hereby reserves the right to use any documents produced by any party or secured by subpoena in the case in the examination of the witness. You are invited to attend and take such part as is fit and proper.

DATE/TIME:	July 23, 2024, 10:00 AM EST
DEPONENTS:	Benjamin Dubard
PLACE:	Nelson, Mullins, Riley & Scarborough 151 Meeting Street, 6th Floor Charleston, SC 29401

CHAPPELL, CHAPPELL & NEWMAN, ATTORNEYS

BY: _____

Graham L. Newman
Attorney for the Plaintiff
4500 Fort Jackson Blvd, Ste. 250
Columbia, South Carolina 29209
(803) 233-7050

July 12, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF CHARLESTON

NOAH VEON, on behalf of himself and all others similarly situated, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

RICHARD J. SCHUELER, a/k/a RICHARD HEART, Defendant

Case Number: 2022-CP-21-1980

Pending in Florence County

TO: Benjamin Dubard, c/o Merritt Abney, Esq., 151 Meeting St., 6th Floor, Charleston, SC 29401

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Nelson, Mullins, Riley & Scarborough 151 Meeting Street, Sixth Floor Charleston, SC 29401	July 23, 2024 10:00 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

All communications of any type between you and any other person not your attorney regarding this case, the HEX ERC-20 token, or your motion to intervene. All records of transfers of money to you by any other person pertaining to your motion to intervene. All distributed ledger public addresses utilized by you on any blockchain.

PLACE	DATE AND TIME
Nelson, Mullins, Riley & Scarborough 151 Meeting Street, Sixth Floor Charleston, SC 29401	July 23, 2024, 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
	, AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature	July 12, 2024	Graham L. Newman
	Date	Print Name

Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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Clerk of Court/Issuing Officer's Signature	Date	Print Name
Pro Se Litigant's Name, Address and Telephone Number :		

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

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(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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

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EXHIBIT B

ELECTRONICALLY FILED - 2024 Jul 19 3:44 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980

Merritt Abney

From: Graham Newman <graham@chappell.law>
Sent: Friday, July 12, 2024 3:00 PM
To: Merritt Abney; Drew Radeker; Will Detwiler
Cc: Lauren Lynch; Ashley Hawkins
Subject: RE: Courtesy NEF RE: 2022CP2101980
Attachments: Dubard Depo Notice & Subpoena.pdf

External Source/Sender notice
Use caution responding or clicking links/attachments.
Report Suspicious

Merritt,

Attached is a copy of Dubard's depo notice and subpoena. I understand you plan to move for a protective order and/or file a motion to quash. I will not insist on the deposition moving forward until you receive a ruling on those motions and will agree to hold the deposition and document production in abeyance until such time as Judge Nettles rules on those matters.

The original copies will follow in the mail.

Have a nice weekend.

Graham L. Newman
CHAPPELL, CHAPPELL & NEWMAN
Post Office Box 61170
Columbia, South Carolina 29260
(803) 233-7050

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written

to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

From: Merritt Abney <merritt.abney@nelsonmullins.com>
Sent: Friday, June 28, 2024 11:46 AM
To: Graham Newman <graham@chappell.law>; Drew Radeker <Drew@radekerlaw.com>; Will Detwiler <will@chappell.law>
Cc: Lauren Lynch <lauren.lynch@nelsonmullins.com>; Ashley Hawkins <ashley.hawkins@nelsonmullins.com>
Subject: RE: Courtesy NEF RE: 2022CP2101980

Thanks for this proposal, Graham. But I disagree that you're entitled to depose my client on the propriety of intervention. Intervention is evaluated based on allegations in the motion and accompanying pleading, which the Court must accept as true for purposes of the motion. It's the same standard used to decide a motion to dismiss, and the Court does not take or consider evidence on the propriety of intervention. Moreover, I suspect that you and I would have very different views on where to draw the line between topics related to intervention and topics related to the merits, so I doubt your proposal could work as a practical matter. And, even if you were entitled to depose my client on the propriety of intervention, I don't think it makes sense for my client to be deposed while the Court still has under advisement Lorraine Schueler's motion, which could potentially result in dismissal of the entire action.

As always, I'm happy to discuss further at your convenience. I hope you all have a good weekend.

Best,

Merritt

From: Graham Newman <graham@chappell.law>
Sent: Thursday, June 27, 2024 9:53 AM
To: Merritt Abney <merritt.abney@nelsonmullins.com>; Drew Radeker <Drew@radekerlaw.com>; Will Detwiler <will@chappell.law>
Cc: Lauren Lynch <lauren.lynch@nelsonmullins.com>; Ashley Hawkins <ashley.hawkins@nelsonmullins.com>
Subject: RE: Courtesy NEF RE: 2022CP2101980

Merritt,

Drew and I spoke on this yesterday afternoon. We don't want to put you in a tight spot with you just getting into the case. However, we do think we are entitled to depose Mr. DuBard on the necessity and propriety of his intervention. We'll agree to limit the questioning to that subject matter with the understanding that—should the court grant the motion to intervene—we'll have the ability to reconvene to address other subject matters.

Would that suit you?

Graham

From: Merritt Abney <merritt.abney@nelsonmullins.com>
Sent: Wednesday, June 26, 2024 11:51 AM
To: Graham Newman <graham@chappell.law>; Drew Radeker <Drew@radekerlaw.com>; Will Detwiler <will@chappell.law>

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Cc: Lauren Lynch <lauren.lynch@nelsonmullins.com>; Ashley Hawkins <ashley.hawkins@nelsonmullins.com>
Subject: RE: Courtesy NEF RE: 2022CP2101980

I will accept service.

Thanks.

Merritt

From: Graham Newman <graham@chappell.law>
Sent: Wednesday, June 26, 2024 11:45 AM
To: Merritt Abney <merritt.abney@nelsonmullins.com>; Drew Radeker <Drew@radekerlaw.com>; Will Detwiler <will@chappell.law>
Cc: Lauren Lynch <lauren.lynch@nelsonmullins.com>; Ashley Hawkins <ashley.hawkins@nelsonmullins.com>
Subject: RE: Courtesy NEF RE: 2022CP2101980

I understand your position. Will you accept a subpoena for his appearance, or should I plan to serve him in person?

Graham

From: Merritt Abney <merritt.abney@nelsonmullins.com>
Sent: Wednesday, June 26, 2024 11:43 AM
To: Graham Newman <graham@chappell.law>; Drew Radeker <Drew@radekerlaw.com>; Will Detwiler <will@chappell.law>
Cc: Lauren Lynch <lauren.lynch@nelsonmullins.com>; Ashley Hawkins <ashley.hawkins@nelsonmullins.com>
Subject: RE: Courtesy NEF RE: 2022CP2101980

Graham – It was great meeting you all as well, and I look forward to working together.

As for your request for a deposition of my client, I think that's premature. Our motion to intervene has not been granted, or even fully heard, so we don't know whether my client will be a party to the action or whether, even if the Court grants my motion, it may impose limitations on his participation that may impact the scope of discovery as to him. In addition, I've now been involved in the case for about 72 hours, and am still working to get up to speed in a case in which you all have a significant head start, so it would be unfair to my client to have to sit for a deposition at this stage under the circumstances. Furthermore, as I understand the motion filed by Lorraine Schueler that was heard yesterday, she argues that you never properly served the Defendant and that this action must consequently be dismissed. If the Court rules for Ms. Schueler, then obviously my motion to intervene, and your request for a deposition of my client, will be moot. Thus, any discovery of my client should await the Court's ruling on that issue as well.

I'm happy to discuss any of the above at your convenience.

Best regards,

Merritt

NELSON MULLINS

MERRITT G. ABNEY PARTNER

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merritt.abney@nelsonmullins.com
LIBERTY CENTER | SUITE 600
151 MEETING STREET | CHARLESTON, SC 29401
T 843.534.4110 F 843.722.8700
NELSONMULLINS.COM VCARD VIEW BIO

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From: Graham Newman <graham@chappell.law>
Sent: Tuesday, June 25, 2024 2:59 PM
To: Merritt Abney <merritt.abney@nelsonmullins.com>; Drew Radeker <Drew@radekerlaw.com>; Will Detwiler <will@chappell.law>
Cc: Lauren Lynch <lauren.lynch@nelsonmullins.com>
Subject: RE: Courtesy NEF RE: 2022CP2101980

Merritt,

Very nice meeting you at court this morning. We'd like to take Mr. DuBard's deposition. Do Friday 7/12 or Tuesday 7/16 work for you and him?

Thanks,

Graham

From: Merritt Abney <merritt.abney@nelsonmullins.com>
Sent: Tuesday, June 25, 2024 8:46 AM
To: Graham Newman <graham@chappell.law>
Cc: Lauren Lynch <lauren.lynch@nelsonmullins.com>
Subject: Re: Courtesy NEF RE: 2022CP2101980

Graham- can you send me copy of what you filed? It's not on the clerk's site yet. Thanks

Merritt

Sent from my iPhone

On Jun 25, 2024, at 7:40 AM, efiledonotreply@sccourts.org wrote:

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2022CP2101980

Official File Stamp: 06-25-2024 07:39:27 AM

Court:	CIRCUIT COURT Common Pleas Florence
Case Caption:	John Doe VS Richard James Schueler , defendant, et al
Document(s) Submitted:	Memo/Memo in Opposition - Exhibit/Filing of Exhibits
Filed by or on behalf of:	Graham L. Newman

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

George Murrell Smith, Jr. for Lorraine Schueler
Merritt Gordon Abney for Benjamin Dubard
Mark D. Chappell
William Sellars Detwiler for Noah Veon
James David George, Jr.
Andrew Sims Radeker for Noah Veon
Graham L. Newman for Noah Veon
Frederick Newman Hanna, Jr. for Lorraine Schueler

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Richard Heart
Richard James Schueler

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ELECTRONICALLY FILED - 2024 Jul 25 8:15 PM - BEAUFORT - COMMON PLEAS - CASE#2024CP0701645

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C.A. No: 2024-CP-07-____
	)	
	)	**NON-PARTY'S MOTION FOR A PROTECTIVE ORDER AND TO QUASH PLAINTIFF'S SUBPOENA DUCES TECUM ISSUED BY THIS COURT IN RE**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No: 2022-CP-21-01980
Noah Veon, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
vs.	)	
Richard James Schueler a/k/a Richard Heart,	)	
Defendant.	)	

TO: GRAHAM L. NEWMAN, ESQUIRE, MARK D. CHAPPELL, ESQUIRE, AND ANDREW S. RADEKER, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that non-party subpoena recipient, Twenge & Twombley, LLC, hereinafter "Twenge & Twombley," by and through its undersigned counsel for purposes as described herein, and pursuant to Rules 26 and 45 of the South Carolina Rules of Civil Procedure, hereby moves to quash Plaintiff's Subpoena to Twenge & Twombley issued by the Richland County Circuit Court on July 9, 2024, which was served on July 12, 2024, and which the parties agreed to move the deadline to respond or otherwise object to the subpoena to July 26, 2024 (hereinafter the "Subpoena"). Twenge & Twombley also moves for a protective order related to the Subpoena. A copy of the Subpoena is attached hereto as Exhibit A.

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A similar subpoena was also issued to Smith Robinson Holler DuBose and Morgan, LLC, (hereinafter "Smith Robinson") in Richland County. Both law firms, Twenge & Twombley and Smith Robinson, represent the same client in the underlying pending action, Lorraine Schueler, who herself is a non-party subpoena recipient and the mother of the Defendant.

The Subpoena to Twenge + Twombley improperly was issued from Richland County. *See* Rule 45(a)(2), SCRCP ("If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the county in which production or inspection is to be made. Provided, however, that *a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person*." (emphasis added)). Retaining that objection, Twenge + Twombley has also moved the Richland County court to quash the Subpoena in addition to this Court.

This Motion is made on at least the following grounds:

1. The subpoena is improper because the documents Plaintiff requests have no relevance to this case. Plaintiff's claims relate to whether the Defendant's alleged marketing and sale of the HEX cryptocurrency violated state and/or federal securities laws. Specifically, Plaintiff seeks (1) a declaratory judgment that HEX is a security within the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005; (2) the repayment of consideration paid for the purported security, as well as damages and disgorgement under the Securities Act of 1933; and (3) the repayment of consideration paid for the purported security, interest, attorneys' fees, and disgorgement under the South Carolina Uniform Securities Act. Plainly, information related to my firm's representation of Mrs. Schueler, a non-party subpoena recipient, regarding the propriety

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of discovery into her affairs, is not "relevant to the subject matter" in this action or to Plaintiff's claims or defenses of any party. Rule 26(b)(1), SCRCP; *Ex parte Smith*, 407 S.C. 422, 423, 756 S.E.2d 386, 386 (2014) (information sought must be "relevant and necessary to a determination of the issue in this case"); *see also HDSherer LLC v. Nat. Molecular Testing Corp.*, 292 F.R.D. 305, 308 (D.S.C. 2013) ("[T]he scope of discovery allowed under a subpoena is the same as the scope of discovery allowed under Rule 26."). To the contrary, similar to Plaintiff's previous subpoenas seeking irrelevant personal and financial information of Mrs. Schuler from her bank, her real estate attorney, and her realty company, this subpoena appears calculated to further burden and harass Mrs. Schueler and her agents.

2. The subpoena is improper because the lawsuit is not commenced, and, consequently, there is no jurisdiction for discovery. In the underlying Florence County lawsuit, Plaintiff has failed to properly serve the Defendant under Rule 4.1 of the South Carolina Rules of Civil Procedure and the mandatory requirements of the Hague Convention. Without proper service, the lawsuit has not commenced under Rule 3, SCRCP. Further, Plaintiff failed to accomplish and demonstrate valid alternate means of service. Finally, the purported lawsuit was filed under an improper anonymous name in violation of Rule 10, SCRCP, "amending" the caption of the original anonymous complaint is not a proper or adequate remedy, and the Plaintiff has not served an amended complaint. Although Judge Nettles has rejected these arguments in ruling on Mrs. Schueler's motion for protective order and related Rule 59(e) and Rule 60(b) motions, Mrs. Schueler reserves her rights to further challenge those rulings.

3. The subpoena is improper because it is issued from the wrong county. The subpoena is issued from Richland County, not Beaufort County. *See* Rule 45(a)(2), SCRCP ("If separate from a subpoena commanding the attendance of a person, a subpoena for production or

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inspection shall issue from the court for the county in which production or inspection is to be made. *Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person*." (emphasis added)).

4. The subpoena is improper because compliance with the subpoena would require us to violate our ethical duty of confidentiality to our client. *See* Rule 1.6(a), RPC, Rule 407, SCACR ("A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent."); *Id.* at cmt. 3 (explaining that the "confidentiality rule . . . applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source"); American Bar Association, Formal Opinion 94-385, at 2–3 (July 5, 1994) ("[T]he lawyer has a professional responsibility to seek to limit the subpoena, or court order, on any legitimate available grounds (such as the attorney-client privilege, work product immunity, relevance or burden), so as to protect documents as to which the lawyer's obligations under Rule 1.6 apply."); South Carolina Bar Ethics Advisory Committee, Ethics Advisory Opinion 90-14 ("If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) requires the lawyer to invoke the privilege when it is applicable.").

5. The subpoena is improper because it seeks privileged communications and trial preparation materials. For example, the plain language of Plaintiff's request covers both billing entries containing descriptions of legal services provided and communications with co-counsel for Mrs. Schueler. Materials such as these, which contain the "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the

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litigation," enjoy absolute protection from disclosure. Rule 26(b)(3), SCRCP; Rule 45(c)(3)(A)(iii), SCRCP; *see also U.S. v. (Under Seal)*, 748 F.2d 871, 874 (4th Cir. 1984) (explaining that the privilege may "be extended to protect communications by the lawyer to his client, agents, or superiors or to other lawyers in the case of joint representation").

6. The requested production is also overly broad, vague, and unduly burdensome. By simply requesting all documents that relate to (i) "payment for your services concerning this lawsuit" and (ii) "communications about this lawsuit," the subpoena lacks the required nexus to the issues at play in this case. *In re Subpoena Duces Tecum to AOL, LLC*, 550 F. Supp. 2d 606, 612 (E.D. Va. 2008) (noting a subpoena is overbroad if "it does not limit the documents requested to subject matter relevant to the claims or defenses"). It would also be overly burdensome to force Twenge & Twombley's employees to divert their attention from the firm's clients to gather documents which, again, have no relevance to the case. Rule 45(c)(3)(A)(iv), SCRCP; *see Taylor v. Taylor*, 434 S.C. 307, 324, 863 S.E.2d 335, 344 (Ct. App. 2021) ("Our courts have interpreted 'undue burden' as requesting materials irrelevant to the matter before the court.") (citing *Ex parte Smith*, 407 S.C. at 422–23, 756 S.E.2d at 386).

7. Other grounds to be set forth at a hearing or in a supplemental filing.

Accordingly, Twenge & Twombley respectfully requests that the court quash the Subpoena in full and issue a protective order. Further, Twenge & Twombley requests an award of attorney's fees. Twenge & Twombley expressly reserves the right to supplement this Motion, including but not limited to, filing a memorandum in support and raising additional objections.

This motion is made pursuant to the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings on file, and such further evidence as may be presented and upon such other law as is applicable.

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TWENGE + TWOMBLEY LAW FIRM

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Beaufort, South Carolina

July 25, 2024

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CERTIFICATE OF SERVICE

The undersigned, J. Ashley Twombley, Attorney for Non-Party Subpoena Recipient, Lorraine Schueler, of TWENGE + TWOMBLEY LAW FIRM, hereby avers that, pursuant to Order 2022-05-06-04 of the South Carolina Supreme Court, the attached is being served via electronic mail only to the below individual(s) on this 25th day of July 2024 and no hard copy will follow unless requested:

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TWENGE + TWOMBLEY LAW FIRM

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ELECTRONICALLY FILED - 2025 Jun 06 4:12 PM - FLORENCE - COMMON PLEAS - CASE#2022CP2101980

STATE OF SOUTH CAROLINA **COUNTY OF FLORENCE**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2022-CP-21-01980**
NOAH VEON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, **PLAINTIFF,** **vs.** **RICHARD JAMES SCHUELER A/K/A RICHARD HEART,** **DEFENDANT.**	**BENJAMIN DUBARD'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Non-party and proposed intervenor, Benjamin DuBard, ("DuBard"), by and through his undersigned counsel, hereby submits this memorandum in opposition to Plaintiff's Motion for Class Certification ("Motion").

INTRODUCTION

Plaintiff Noah Veon ("Plaintiff") is suing Richard Schueler, who lives in a foreign country, in South Carolina state court over a blockchain software program known as HEX. HEX is an open-source communication technology used and enjoyed by a decentralized community of thousands of people across the world, yet Plaintiff claims that Schueler violated U.S. and South Carolina securities laws by offering and selling what Plaintiff inaccurately refers to as an "investment contract."

The United States District Court for the Eastern District of New York recently dismissed similar claims against Schueler related to HEX, finding that the Securities and Exchange Commission ("SEC") failed to state a claim against Schueler for violation of federal securities laws. *See SEC v. Schueler, et. al.*, Case No. 1:23-cv-05749 (August 22, 2024, E.D.N.Y.) Doc No.

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57, 850-880. In addition to ruling that the SEC failed to establish personal jurisdiction in federal court over Schueler, the Court also held that the SEC failed to sufficiently allege that the HEX offering occurred within the United States, a necessary requirement for application of federal securities laws. *Id*. at 22. Accordingly, the district court dismissed all claims against Schueler related to HEX and other crypto assets, concluding that they lacked a sufficient nexus to the United States. *Id*. The SEC neither appealed nor amended its complaint. The dismissal is now final and with prejudice.

Plaintiff's claims are similarly deficient here and should be dismissed for the same reasons, and others. Nevertheless, Plaintiff seeks to obtain certification of a nationwide class to assert the same baseless securities claims that the federal district court dismissed, and to put the cart before the horse by obtaining class certification before the sufficiency of his Complaint has been tested or any discovery has taken place. This Court should deny Plaintiff's motion for class certification because the motion is premature and Plaintiff—who initially filed this action anonymously to conceal his identity from the very class members he purports to represent—is an inadequate representative of the class and fails to otherwise meet the requirements for class certification under South Carolina law.

While no class should be certified, should the Court conclude otherwise, the class definition proposed by Plaintiff is inappropriate. Plaintiff seeks to certify a class of anyone who purchased HEX tokens, regardless of whether they purchased those tokens from the Defendant or a third party. But the class cannot include individuals who purchased HEX tokens from individuals other than the Defendant because there are no claims concerning such purchases. In addition, the class cannot include members outside of South Carolina because this Court would lack jurisdiction over such claims under Supreme Court precedent.

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FACTUAL & PROCEDURAL BACKGROUND

Plaintiff's Complaint alleges that HEX is a cryptocurrency that works through the use of a "smart contract," a computer code that receives payment in exchange for HEX "tokens." (Compl. ⁋ 2.) HEX tokens are not tangible items but are "computerized credits that are stored on the Ethereum blockchain, an open source blockchain." (Compl. ⁋ 2.)

In September 2021, Plaintiff allegedly purchased 3,567 HEX tokens "from Defendant Schueler's investment smart contract in exchange for 0.56 units of Ether." (Compl. ¶ 28.) This allegation, however, is demonstrably false. Defendant Schueler launched HEX in December 2019 with a one-year claim period where individuals holding Ethereum (ETH) could claim HEX directly from the smart contract.[1] After the claim period ended in November 2020, HEX could only be purchased or traded on the open market via cryptocurrency exchanges. Because Plaintiff alleges that he purchased HEX on September 24, 2021, he clearly purchased it on a cryptocurrency exchange[2]—not directly from Defendant Schueler or Defendant Schueler's smart contract, as his Complaint incorrectly alleges. (*See* Compl. ¶¶ 28, 107.)

The SEC's own detailed (and now-dismissed) complaint makes this clear as well. As attorneys at the SEC correctly alleged, the claim period (known as the "Adoption Amplifier") ended on November 19, 2020, and no HEX tokens could be purchased from the smart contract after that date. (*See SEC v. Schueler, et. al.*, Case No. 1:23-cv-05749 (August 22, 2024, E.D.N.Y.) Doc No. 57, 850-880, Order Granting Heart's Motion to Dismiss at p. 2, 14; SEC Complaint, Doc. No. 1, ¶¶ 3, 29-30.) As a result, the SEC itself acknowledged that its claim against Defendant

[1] *See* *https://hex.com/howitworks#history* (last accessed June 5, 2025).
[2] Public blockchain transaction records confirm that Plaintiff's September 24, 2021 swap for 3,675 HEX tokens occurred on a decentralized cryptocurrency exchange (DEX), the Uniswap exchange, and not on the HEX smart contract. *See* https://etherscan.io/tx/0x6245c0b796e7c625e05d703b93dafadf6378efb9b5e719b889af71775afa9855 (last accessed June 5, 2025).

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Schueler for issuing HEX tokens as unregistered securities—the same claim that Plaintiff attempts here—could only cover transactions through November 19, 2020, when the Adoption Amplifier closed and the alleged "offering" period ended. *See id*. Plaintiff's September 24, 2021 alleged purchase is nearly a year too late to be a part of that alleged "offering," demonstrating that his representation that he purchased HEX from the smart contract is false.

In any event, Plaintiff brought this action, under the pseudonym John Doe, seeking to obtain a declaratory judgment that "the HEX investment smart contract is a security within the meaning of the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005." (Compl. ¶ 100.) Plaintiff purports to represent "all individuals or entities who purchased HEX tokens within the statute of limitations." (Compl. ¶ 91.)

As demonstrated by the fact that Plaintiff chose to file this action under a fake name, the community of HEX owners does not support him and, in fact, many oppose the relief he seeks, purportedly on their behalf. Consequently, on June 24, 2024, Benjamin DuBard ("DuBard"), a South Carolina resident and a member of the purported class, filed a Motion to Intervene under Rule 24 of the South Carolina Rules of Civil Procedure to represent his position, and that of other HEX owners, that HEX is not a security. In addition, almost 40,000 HEX owners, all of whom would be members of the purported class, signed a petition in support of an amicus brief to be filed in the SEC's action against Schueler, asserting that HEX is not a security.[3] The public opposition to Plaintiff's claims, and DuBard's willingness to intervene in this action to actively oppose the relief Plaintiff seeks, demonstrate that Plaintiff does not adequately represent the purported class, and thus, class certification should not be granted in this case.

[3] *See* PulseChain Amicus Brief, filed in *SEC v. Schueler, et. al.*, Case No. 1:23-cv-05749 at Dkt. No. 37-1; PulseChain Hex Petition for Amicus Brief, https://pulsepetition.org/ (last accessed June 6, 2025).

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LEGAL STANDARD

Rule 23 of South Carolina's Rules of Civil Procedure ("SCRCP") allows class certification only if a court finds:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory . . . the amount in controversy exceeds one hundred dollars for each member of the class.

Waller v. Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 467, 388 S.E.2d 799, 801 (1990) (citing Rule 23(a), SCRCP)). Plaintiff, as the "[p]roponen[t] of class certification[,] ha[s] the burden of proving these prerequisites of class certification have been met." *Id.* Plaintiff bears this burden because a class action is an "exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *see also Gunnells v. Healthplan Serv's.*, 348 F.3d 417, 458 (4th Cir. 2003). Plaintiff's "failure . . . to satisfy any one of the prerequisites is fatal to class certification." *Waller*, 300 S.C. at 467, 388 S.E.2d at 801.

The South Carolina Supreme Court has emphasized that "[i]t is imperative" that courts apply "a rigorous analysis" to assure that each of these prerequisites has been satisfied. *Waller*, 300 S.C. at 467, 388 S.E.2d at 801. Courts may not simply accept the complaint's allegations or counsel's assurances that Rule 23 has been satisfied. *See Comcast Corp.*, 569 U.S. at 33-34 (emphasizing that it "may be necessary for the court to probe behind the pleadings before coming to rest on the certification question," and that "[s]uch an analysis will frequently entail overlap with the merits of the plaintiff's underlying claim" (citations and internal quotation marks omitted)). "[P]laintiffs wishing to proceed through a class action must actually *prove*—not simply

plead—that their proposed class satisfies each requirement of Rule 23 . . . ." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) ("Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.").

The courts' rigorous application of the Rule 23 requirements is also intended to "avoid the real risk . . . of a composite case being much stronger than any plaintiff's individual action would be." *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 345 (4th Cir. 1998) ("It is axiomatic that the procedural device of Rule 23 cannot be allowed to expand the substance of the claims of class members."). The commonality and typicality requirements of Rule 23 "ensure that only those plaintiffs or defendants who can advance the same factual and legal arguments may be grouped together as a class." *Broussard*, 155 F.3d at 340 (citation and internal quotation marks omitted). If class members are not similarly situated and factual differences exist on crucial issues, the requisite Rule 23 commonality is lacking and the case is not a proper class action. *See Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 577 S.E.2d 190 (2003). Further, "[t]he adequacy-of-representation requirement 'tend[s] to merge' with the commonality and typicality criteria of Rule 23(a)," which serve to determine "whether the named plaintiff's claim and the class claims are so interrelated" that the named plaintiff can "fairly and adequately represent the interests" of the class. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (quoting *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982)).

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ARGUMENT

I. The Court should deny Plaintiff's Motion because it is premature.

As an initial matter, class certification is inappropriate at this stage of litigation because the parties, including proposed intervenor DuBard, have not had the opportunity to engage in discovery. Courts generally wait until extensive discovery has been completed to hear class certification motions. *See e.g. Smith v. Progressive Halcyon Ins. Co.*, No. 2015-UP-392, 2015 WL 4642794, at *1 (S.C. Ct. App. Aug. 5, 2015) ("After the parties had engaged in extensive discovery, Smith moved for class certification."); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 301, 705 S.E.2d 475, 477 (Ct. App. 2011) ("After discovery, SCE & G filed its motion addressing the class action allegations."). Discovery will provide essential information this Court will need to determine whether this suit should proceed as a class action—which DuBard argues it cannot for the reasons described in sections II and III below. Crucially, there has been no fact discovery concerning Plaintiff and his adequacy or inadequacy as a class representative. Nor has there been any discovery to prove—or, in this case, disprove—Plaintiff's demonstrably false allegation that he purchased HEX tokens from the HEX software program.

II. The Court should deny Plaintiff's motion because he cannot meet the typicality requirement of Rule 23.

a. Plaintiff has not suffered a cognizable injury.

"The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class." *Broussard*, 155 F.3d at 340. If Plaintiff has not suffered a cognizable injury at the hands of the Defendant, similar to the injury suffered by the putative class, then his claims are not typical. *McClain v. S. C. Nat'l Bank*, 105 F.3d 898, 903 (4th Cir. 1997); *Gen. Tel. Co. of Northwest, Inc. v. EEOC*, 446 U.S. 318, 330 (1980) (The "[t]ypicality requirement . . . limit[s] the class claims to those fairly encompassed by the named plaintiffs' claims."); *Edisto*

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Fleets, Inc. v. South Carolina Tax Comm'n, 256 S.C. 350, 182 S.E.2d 713, 714 (1971) (disposing of class action and recognizing "[i]t is fundamental that one without interest in the subject matter of a law suit has no legal standing to prosecute it").

As an initial matter, the alleged harmful conduct by Defendant has already been investigated by the Securities & Exchange Commission (SEC) in a formal complaint and resolved via full dismissal by a federal court. The SEC brought a formal complaint against Defendant, alleging he violated various federal securities laws by promoting, offering, and selling unregistered cryptocurrency asset securities, including HEX, the same alleged offering at issue here. *See SEC v. Schueler*, 1:23-cv-05749 (E.D.N.Y). In February 2025, the federal district court granted Defendant's motion to dismiss SEC's complaint, and because the SEC did not file an amended complaint, the matter is now closed. *See SEC v. Schueler, et. al.*, Case No. 1:23-cv-05749 (August 22, 2024, E.D.N.Y.) Doc No. 57, 850-880.

Assuming the jurisdiction of this Court and the truth of Plaintiff's allegations for purposes of this Motion, Plaintiff still fails to demonstrate an injury attributable to Defendant. Plaintiff claims that he purchased the HEX tokens from Defendant Schueler or his smart contract—but that clearly is not the case. *See* Compl. ¶ 28 (alleging Plaintiff "purchased approximately 3,675 HEX tokens from "Defendant Schueler's investment smart contract"); *id.* ¶ "107 ("Defendant Schueler utilized the Internet to market and sell the HEX security to Plaintiff John Doe and all members of the proposed class.") Plaintiff acquired his tokens on a decentralized cryptocurrency exchange (DEX) called Uniswap.[4] Public blockchain transaction records confirm that Plaintiff's September 24, 2021 swap for 3,675 HEX tokens occurred on a DEX, the Uniswap exchange, and not on the

[4] Notably, Plaintiff and his counsel are well aware of this distinction, as the Complaint explains that Uniswap is a decentralized exchange, (Compl. ¶ 21), and that HEX tokens are "traded largely, if not entirely, on decentralized online exchanges." (Compl. ¶ 22).

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HEX smart contract.[5] Because Plaintiff purchased HEX on a secondary market, his harm is not traceable to Defendant.

Plaintiff's allegations to the Court regarding an essential element of the securities claim in this case are misleading. Specifically, Plaintiff alleged:

> 28. On September 24, 2021, Plaintiff John Doe purchased approximately 3,675 HEX tokens from Defendant Schueler's investment smart contract in exchange for 0.56 units of Ether.
>
> 29. On the date of his investment in the HEX investment contract, Plaintiff John Doe's 3,675 HEX tokens traded on unregistered online exchanges for approximately 47 cents (U.S. dollars) per token.

Compl. ¶¶ 28–29. Plaintiff's allegations demonstrate he was fully aware that HEX tokens trade on decentralized exchanges such as Uniswap, and he must have also been aware that he had purchased his HEX tokens on Uniswap and not "from Defendant Schueler's investment smart contract." (Compl. ¶ 28.) Nevertheless, Plaintiff chose not to allege that he purchased his tokens from the Uniswap exchange. Instead, Plaintiff chose to inaccurately claim that he purchased his tokens directly from "Defendant Schueler's investment smart contract." (*Id.*)

The reason Plaintiff did so is obvious. Because he purchased HEX tokens from a secondary market decentralized exchange such as Uniswap, and not directly from the Defendant, his securities claims against the Defendant fail because he engaged in no securities transaction with the Defendant. Plaintiff's transaction was with another seller on the Uniswap secondary market exchange, and any rescission right Plaintiff could arguably have is with that seller, not Defendant.

This puts Plaintiff in a critically different category from other purchasers of HEX tokens who *did* purchase HEX directly from the HEX smart contract. Those are the HEX transactions

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[5] *Etherscan*, https://etherscan.io/tx/0x6245c0b796e7c625e05d703b93dafadf6378efb9b5e719b889af71775afa9855 (last accessed June 5, 2025).

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that the SEC challenged, and they took place between December 3, 2019, and November 19, 2020, as the federal court recognized. After that date, HEX tokens were sold only on the secondary market.

The consequence of Plaintiff's secondary-market purchase is that he has no claim against the Defendant that he can recover on, placing him in a different category from individuals who purchased HEX tokens from the "investment smart contract." Plaintiff's claim was filed under 15 U.S.C.A. § 77l(a). That provision is expressly limited to persons that purchased securities directly from the issuer—not persons that purchased securities from other sellers on the secondary market:

> Any person who offers or sells a security in violation of section 77e of this title … shall be liable, subject to subsection (b), ***to the person purchasing such security from him***, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

15 U.S.C.A. § 77l(a) (emphasis added). Plaintiff apparently recognizes that this is the applicable standard, because he quoted from it in the Complaint and cited this provision as his basis for his claim. (*See* Compl. ¶ 108.)

The United States Supreme Court has for decades been clear on this point:

> One important consequence of this provision is that § 12(1) imposes liability on only the buyer's immediate seller; ***remote purchasers are precluded from bringing actions against remote sellers***. ***Thus, a buyer cannot recover against his seller's seller.***

Pinter v. Dahl, 486 U.S. 622, 643 n. 21 (1988) (emphasis added); *see also Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 49 (2d Cir. 1991) ("Under *Pinter*, plaintiffs may not therefore assert a claim against their seller's seller.").

Unlike those purchasers who purchased tokens directly from the smart contract, Plaintiff's purchase on a secondary market is not traceable to the Defendant, and nor is any supposed harm.

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Indeed, courts have expressly recognized this distinction in considering what type of class may be certified. In *AAL High Yield Bond Fund v. Ruttenberg*, the federal district court concluded that "Section 12(a)(2) does not apply to aftermarket purchasers of securities." 229 F.R.D. 676, 683 (N.D. Al. 2005). Consequently, the court certified a class consisting *only* of the original direct purchasers of the securities at issue, concluding that "while the named Plaintiffs may represent a subclass of approximately 45 original purchasers of the JFF Notes, ***they may not represent a subclass of aftermarket purchasers of the Notes***." *Id.* at 684 (emphasis added).

The same result should follow here. Plaintiff's claims can extend ***only*** to individuals who purchased HEX tokens directly from Mr. Schueler and his "investment smart contract," Compl. ¶ 28, because his Section 12 claims cannot extend to those who purchased HEX tokens in secondary sales, such as through Uniswap or other decentralized exchanges. As such, the class would have to be limited to the subset of individuals that directly purchased tokens from the HEX smart contract when such tokens were available for sale. Unlike in *AAL*, however, this limitation makes Plaintiff unfit to serve as a class representative, because, contrary to his representation in the Complaint, he purchased HEX tokens in aftermarket transaction on the secondary markets, and not directly from the Defendant—so he has no Section 12 remedy available. Plaintiff cannot adequately represent the class when he himself has no claim.

Plaintiff also claims the "HEX token price has collapsed" from the date he invested, "resulting in a 93.7% loss." (Compl. ¶ 29.) But this loss is speculative and attributable to market volatility, not Defendant Schueler. As the South Carolina Supreme Court held in *Gardner*, "a plaintiff may not sue a defendant unless the plaintiff has suffered an injury *at the hands of the defendant*." *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 23 n.14, 577 S.E.2d 190, 201 (2003)

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(emphasis added). Because Plaintiff has not suffered a cognizable injury at the hands of Defendant Schueler, he cannot maintain this class action.

b. Plaintiff's claims are different from the class.

Additionally, Plaintiff's claims are not typical because his legal or factual positions are different from those of other putative class members. *See* 7A Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1764 (4th ed.) (noting FRCP 23(a)(3), which is identical to SCRCP 23(a)(3), may be "used to screen out class actions in which the legal or factual position of the representatives is markedly different from that of other members of the class even though common issues of law or fact are present").

First of all, as set out above, Plaintiff's legal and factual positions are different from other putative class members. While some individuals did in fact purchase HEX tokens directly from the "HEX investment smart contract," including all of the HEX transactions that were challenged by the SEC, Plaintiff did not. He merely purchased HEX tokens on a secondary market, placing his transactions in a legally and factually separate category for which there is no recovery. In any case, it certainly distinguishes his claim from those of other class members, which makes a class action an inappropriate vehicle for litigating Plaintiff's claim.

In addition, it is crucial to note that Plaintiff's position is antagonistic to that of almost 40,000 members of the purported class, which is why DuBard intervened in the matter. DuBard and other HEX owners do not want the Court to classify HEX as a security because they believe that such a decision is contrary to the federal securities laws and principles of blockchain technology, and because it would be detrimental to their financial position. (*See* Motion to Intervene). In line with this belief, these purported class members do not claim they have suffered an injury or are entitled to damages. Instead, they seek to maintain the status quo or a declaration

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that HEX is *not* a security; the complete opposite of what Plaintiff seeks to accomplish through this litigation.

This difference in position is not a surprise to Plaintiff. In fact, Plaintiff has been aware of the contentious split in opinion amongst HEX owners since he initiated his lawsuit, which is why Plaintiff, Noah Veon, used a pseudonym during the beginning stages of litigation. (Compl. ¶ 12.) Plaintiff alleges he wanted to shield his identity "due to the aggressive and threatening actions of others toward those who have criticized the HEX investment scheme and the Defendant [Schueler] in the recent past." (*Id.*) In other words, Plaintiff knew his position was an outlier in the HEX community, and he wanted to protect himself from the criticism of other HEX owners who disagree with him and would be negatively impacted by his lawsuit. However, Plaintiff still sought class certification without regard for, or arguably in spite of, the large faction of HEX owners who are against HEX being classified as a security. Thus, Plaintiff has failed to satisfy the typicality element because he does not fairly or adequately represent the interests of the purported class, and as a result, his request for class certification must be denied.

III. Class certification should be denied because Plaintiff cannot establish the adequacy requirement of Rule 23.

The "adequacy-of-representation requirement 'tend[s] to merge' with the commonality and typicality criteria of Rule 23(a) . . . ." *Amchem*, 521 U.S. at 626 n.20. To fairly and adequately represent the class, a class representative must belong to the class that he or she seeks to represent and suffer the same injury as the class members. *See* Rule 23(a), SCRCP; *E. Texas Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977); *Broussard*, 155 F.3d at 338. One factor the court should consider when determining adequacy "is whether the named plaintiff has interests that are antagonistic or adverse to those of the rest of the class." *See Waller v. Seabrook Island Prop. Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990) (citing *Runion v. U.S. Shelter*, 98

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F.R.D. 313 (D.S.C.1983)). Antagonism that "relates to the subject matter in controversy" will "defeat the maintenance of a class action," such as when the position of the class representative "conflicts with the economic interests of the class." *Id.* (citing *Sperry Rand Corp. v. Larson*, 554 F.2d 868 (8th Cir.1977)). If the class representatives are inadequate, the class is not properly represented and the action is not a proper class action, and if the action is nevertheless certified as a class action, it is not binding on the putative class. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014) (stating that adequate representation and due process are essential to finality of class actions).

Here, Plaintiff does not adequately represent the purported class of HEX owners because his claims and position are adverse to other owners, like DuBard. As previously discussed, DuBard and almost 40,000 HEX owners vehemently disagree with the position of Plaintiff and do not want HEX to be considered a security. Moreover, because of their opposing position, DuBard and his supporters also do not allege any illegal conduct, injury, or seek any damages in this suit. If anything, they seek a declaration that HEX is *not* a security; a position that contradicts the entire purpose of Plaintiff's suit. *C.f. Singletary v. East Cooper Community Hospital, Inc.*, No. 04-CP-10-4211, 2005 WL 5601363 (S.C. Com. Pl. June 20, 2005) (finding no conflicts between plaintiff and potential class where "class members suffered from the same illegal conduct of Defendants and seek the same remedies: a declaratory judgment that Defendants have violated the statute, disgorgement and injunctive relief, and return of monies Defendants unjustly obtained").

Analogous cases denying class certification under Federal Rule 23 demonstrate that class certification is inappropriate under these circumstances. For example, in *Morris v. Wachovia Securities, Inc.*, the court refused to certify a class seeking rescission of investments, noting that "it is not clear how many potential class members would seek rescission and how many would be

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opposed to rescission." 223 F.R.D. 284, 299 (E.D. Va. 2004). The court also took issue with the declaratory judgment sought on behalf of the class, noting that it "would seriously impugn the Masters Program and would present the prospect of jeopardy to the assets of current Masters Program investors. Because the conflict of interests over appropriate relief in this case is fundamental, it defeats the adequacy of representation requirement." *Id.*

Similarly, the Fourth Circuit affirmed a denial of class certification where the district court had noted a "'serious lack of a common interest' on the part of all members of the alleged class" and had "found that the interests of the *overwhelming majority* of the purchasers . . . were 'antagonistic' to the claims asserted by the plaintiffs." *Lukenas v. Bryce's Mountain Resort, Inc.*, 538 F.2d 594, 596 (4th Cir. 1976) (emphasis added); *see also Morris v. Wachovia Sec., Inc.*, 223 F.R.D. 284, 297 (E.D. Va. 2004) (observing that "a majority of courts in other circuits that have addressed the issue have refused to certify a class action where a rescissionary remedy is sought" and noting that "claims seeking rescission must be given special scrutiny").

The same result should follow here. Plaintiff seeks a declaratory judgment that HEX is a security, a declaration that the overwhelming majority of class members would likely be opposed to and that is antagonistic to their interests. Moreover, he seeks to rescind the class members' purchases of HEX, even though he has not identified a single other member of the class that seeks rescission, and even though many class members are likely opposed to it. *See Morris v. Wachovia Sec., Inc.*, 223 F.R.D. 284, 297 (E.D. Va. 2004) (denying class certification and describing conflict between class members seeking rescission and class members opposed to rescission). Plaintiff's objectives are antagonistic to DuBard and other class members, making him an inadequate class representative.

IV. Plaintiff's proposed class definition is inappropriate and overbroad.

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Although no class should be certified for the foregoing reasons, even if a class were to be certified, the proposed class definition is inappropriate and must be curtailed in two significant respects.

First, as discussed above, the class must be limited only to purchasers of HEX tokens directly from Defendant Schueler or the HEX investment smart contract. Under the plain terms of Section 12 and well-established case law, the seller of a security can be liable only "to the person purchasing such security from him." 15 U.S. Code § 77l(a). Plaintiff's proposed class definition includes "[a]ll individuals or entities that purchased HEX while located in the United States or its territories," Motion for Class Certification at 4, ***regardless of who they purchased HEX tokens from.*** That definition is plainly impermissible, as it does not limit the scope of the class to those who purchased HEX tokens from Defendant, as Section 12 requires.

Second, the class of individuals should be limited to those members, like Plaintiff Noah Veon and Intervenor Ben DuBard, who are South Carolina residents. This Court does not have the jurisdiction to create a nationwide class against a foreign Defendant, and it should reject Plaintiff's request that it impermissibly bind the tens of thousands of class members who likely purchased HEX tokens while located outside of South Carolina. Those individuals have no business in this case.

This principle was set out in *Bristol-Myers Squibb v. Superior Court of California*, 582 U.S. 255 (2017). In that case, the United States Supreme Court reversed the California Supreme Court's conclusion that its Superior Court had jurisdiction over the defendant with respect to the claims of nonresident plaintiffs in a nationwide mass tort case involving the drug Plavix. *Id.* at 264. In so holding, the Court noted that the nonresident plaintiffs "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not

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injured by Plavix in California," *id.*, and concluded that the California courts lacked specific personal jurisdiction over the defendant with respect to the claims of *nonresidents*, and only had specific personal jurisdiction with respect to the claims of *residents*. *Id.* at 265. In so holding, the Court noted that the plaintiffs in other states had the option to "sue together in their home States," *id.* at 268, and also noted that the question was left open as to whether the same jurisdictional limitations would apply to a nationwide group of plaintiffs who sued in federal court as opposed to state court. *Id.* at 269.

The same principles set out in *Bristol-Myers Squibb* require this Court to limit the class here—if it certified any class at all—to residents of South Carolina, such as Plaintiff Veon and proposed intervenor DuBard. Mirroring the nonresident plaintiffs in *Bristol-Myers Squibb*, the non-South Carolina plaintiffs here did not use the HEX software in South Carolina, did not purchase HEX tokens in South Carolina, and were not injured in South Carolina. Accordingly, this Court should properly conclude that it lacks specific personal jurisdiction as to the purported claims of non-South Carolina class members and limit the class only to individuals residing in South Carolina.

South Carolina's door-closing statute prohibits certification of a nationwide class. Under that statute, an individual residing outside of South Carolina may bring an action against a foreign corporation in the circuit court only "when the cause of action shall have arisen or the subject of the action shall be situated within this State." S.C Code Ann. § 15-5-150(2). The South Carolina Supreme Court has held that this requirement must be satisfied as to every class member. *Farmer v. Monsanto Corp.*, 353 S.C. 553, 556, 579 S.E.2d 325, 327 (2003). The door-closing statute, by its text, applies only to suits against a corporation. However, the statute was drafted before novel blockchain technology became widespread. As Plaintiff's complaint makes clear, an individual

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can create blockchain software that creates tokens and functions in many ways like a business. This Court should interpret the door-closing statute as applying to individuals who are sued in their capacity as creators of a blockchain software program, which takes the place of a business corporation in the context of such software and should be given the same treatment under the door-closing statute.

Even if the court is not inclined to interpret the door-closing statute in the context of blockchain software, the policy objectives of the statute still apply with great force here. That statute makes clear that this State's circuit courts should not be used to litigate nationwide commercial class actions unless the events in question took place within the State. In light of that policy objective, the Court's lack of jurisdiction over the claims of prospective class members outside of South Carolina, and the fact that tens of thousands of potential class members outside of South Carolina disagree with Plaintiff's case, the Court should limit the class definition to members within South Carolina, if any class is certified.

This limitation will not affect Plaintiff Veon's ability to pursue his claim, nor would it affect proposed Intervenor DuBard's ability to participate in this litigation, as they are both South Carolina residents. But the claims of individuals outside of South Carolina need not and should not be pursued in this Court, where jurisdiction is lacking. Notably, Plaintiff has not identified a *single* nonresident class member who wants to be a part of this class or who agrees with Plaintiff's claims and desired class remedies. As noted above, many of these class members vehemently disagree with Plaintiff's contention that HEX tokens constitute securities under the federal securities laws, and do not wish to rescind their purchases of HEX tokens. There is no allegation that these class members have any connection to this state, and to force their claims to be litigated

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in this Court would risk contravening the desires of the class members, the jurisdictional limits of the Court, and South Carolina policy.

CONCLUSION

Plaintiff has failed to satisfy the required elements for class certification under Rule 23(a) of the South Carolina Rules of Civil Procedure. Certification in this case would deprive Benjamin DuBard and thousands of putative class members of their rights as owners of HEX and endanger their financial interests. Thus, for the reasons stated herein, the Court should deny Plaintiff's Motion for Class Certification.

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Charleston, South Carolina
June 6, 2025

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE NOAH VEON, on behalf of himself and all others similarly situated, Plaintiff, vs. RICHARD JAMES SCHUELER A/K/A RICHARD HART, Defendant.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2022-CP-21-1980 **MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE**

This matter is before the Court on the motion of non-party Benjamin DuBard to intervene in this case. For the reasons stated herein, the motion should be denied.

FACTS AND PROCEDURAL HISTORY

Noah Veon filed this case in September of 2022. On June 24, 2024, on the eve of the hearing of the Plaintiff's motion to certify the case as a class action, Benjamin DuBard (a previously unknown person to the Plaintiff) filed a motion to intervene in the case and a motion to continue the certification motion.

Benjamin DuBard, the proposed intervenor, is a HEX investor and relatively active promoter of the cryptocurrency on social media platforms such as YouTube[1] and Twitter.[2] DuBard holds himself out to the public as a "crypto tutor" on social media[3] and on his website, https://thecryptoacademy.win/.

DuBard claims the following interest in this litigation.

> Specifically, DuBard seeks to ensure that Plaintiff's expansive view of the federal and state securities laws does not improperly interfere with the rights, financial interests, and legal activities of HEX owners like himself. Moreover, DuBard asserts that a determination by the Court that HEX is a

[1] https://www.youtube.com/@CryptoWithBen
[2] https://x.com/Crypto_With_Ben
[3] https://www.linkedin.com/in/ben-dubard-70960324a

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> security would adversely impact the value of his financial position in HEX tokens.

(Motion to Intervene at 2) DuBard states that he "has owned HEX tokens continuously since 2020, and he has purchased HEX tokens within three years before Plaintiff filed this action." (Motion to Intervene at 4)

Word of a potential intervention in this case first spread on social media on Tuesday, June 18, 2024. The Twitter handle "@MatiALLin" referenced by this tweet as having "been putting in work talking to lawyers in SC" is controlled by an Illinois resident named Matthew Picchietti. Picchietti, a well-known HEX "influencer" who has hosted numerous conferences for HEX investors, provided the referenced "donation address" in the tweet, below.

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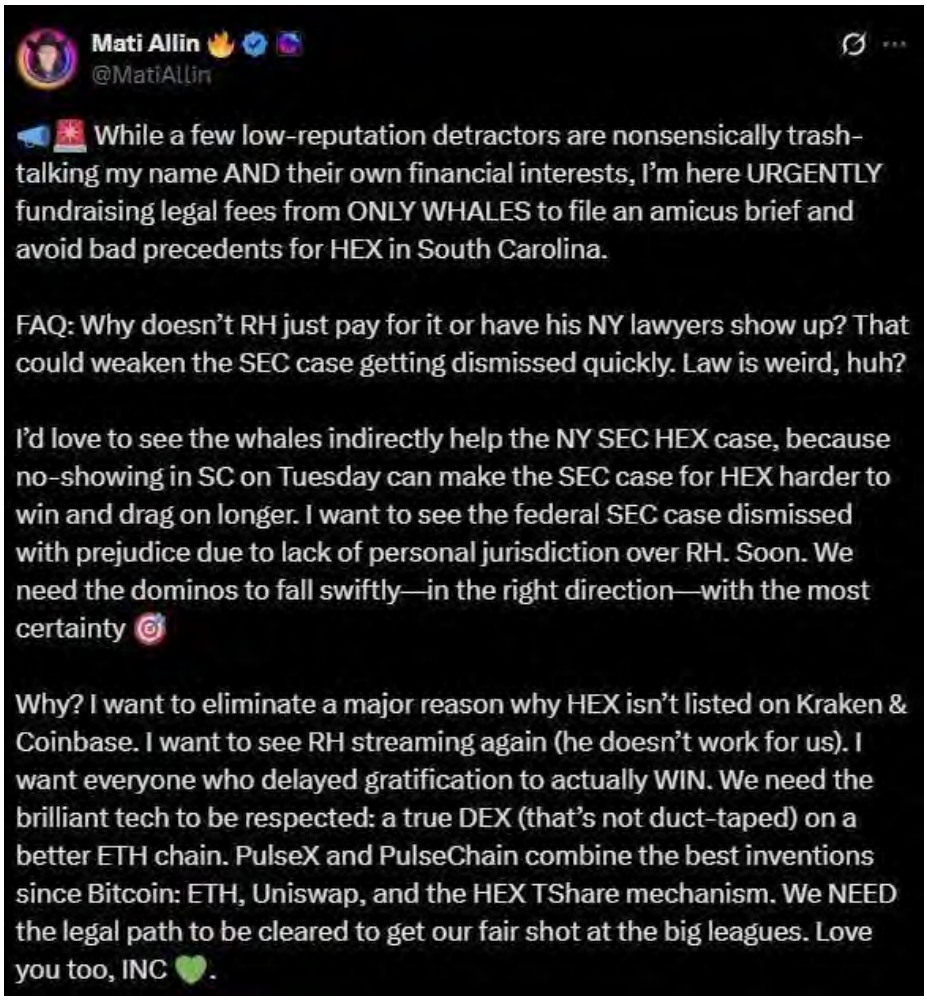
See https://x.com/MatiAllin/status/1803232237262967170. The publicly disclosed cryptocurrency address is as follows:

0xfCFdf912F6387e8cc14774418D9456C493c9BF5E

Picchietti's suggested "donation" faced criticism on Twitter, in part, because of questions of why the Defendant would not fund his own defense to the class certification motion. Via tweet on June 19, 2024 at 3:27 PM EST, Picchietti explained that this "could weaken the SEC case getting dismissed quickly." He further argued,

> no-showing in SC on Tuesday can make the SEC case for HEX harder to win and drag on longer. I want to see the federal SEC case dismissed with prejudice due to lack of personal jurisdiction on RH. Soon. We need the dominos to fall swiftly—in the right direction—with the most certainty.



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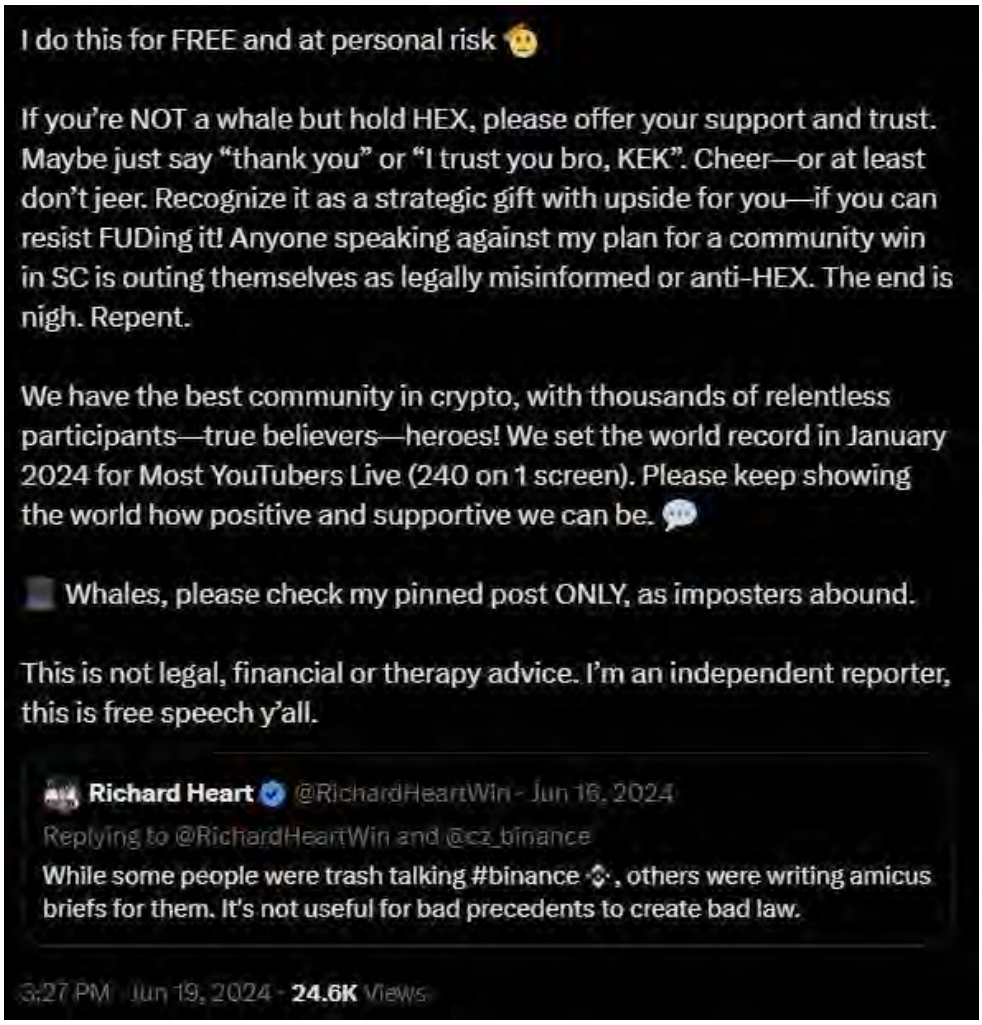
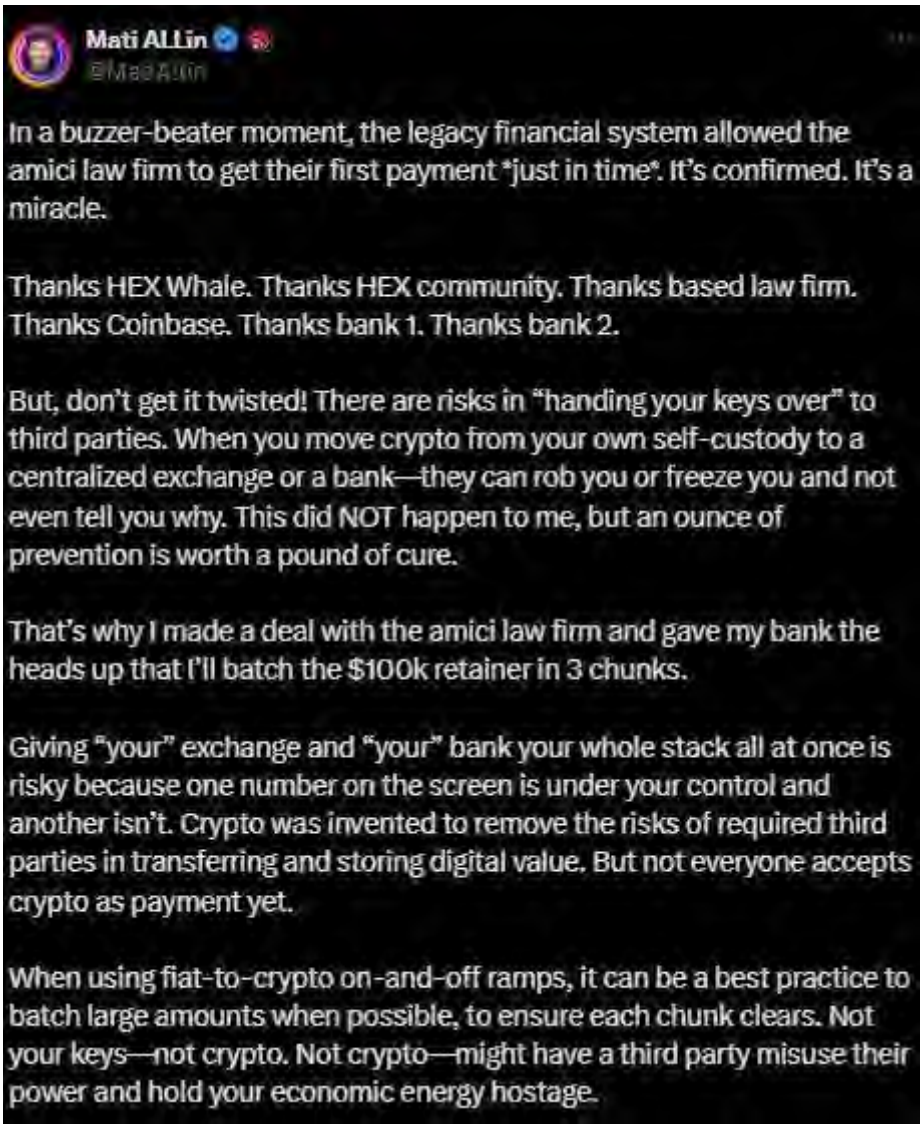


See https://x.com/MatiAllin/status/1803510009814458846. Picchietti got what he wanted as 30 Ether (worth approximately $105,000) was transferred to the "donation address" in a single transaction by an unknown individual at 5:32 PM EST on the same day. Picchietti later detailed his transfer of the $100,000 on Twitter.



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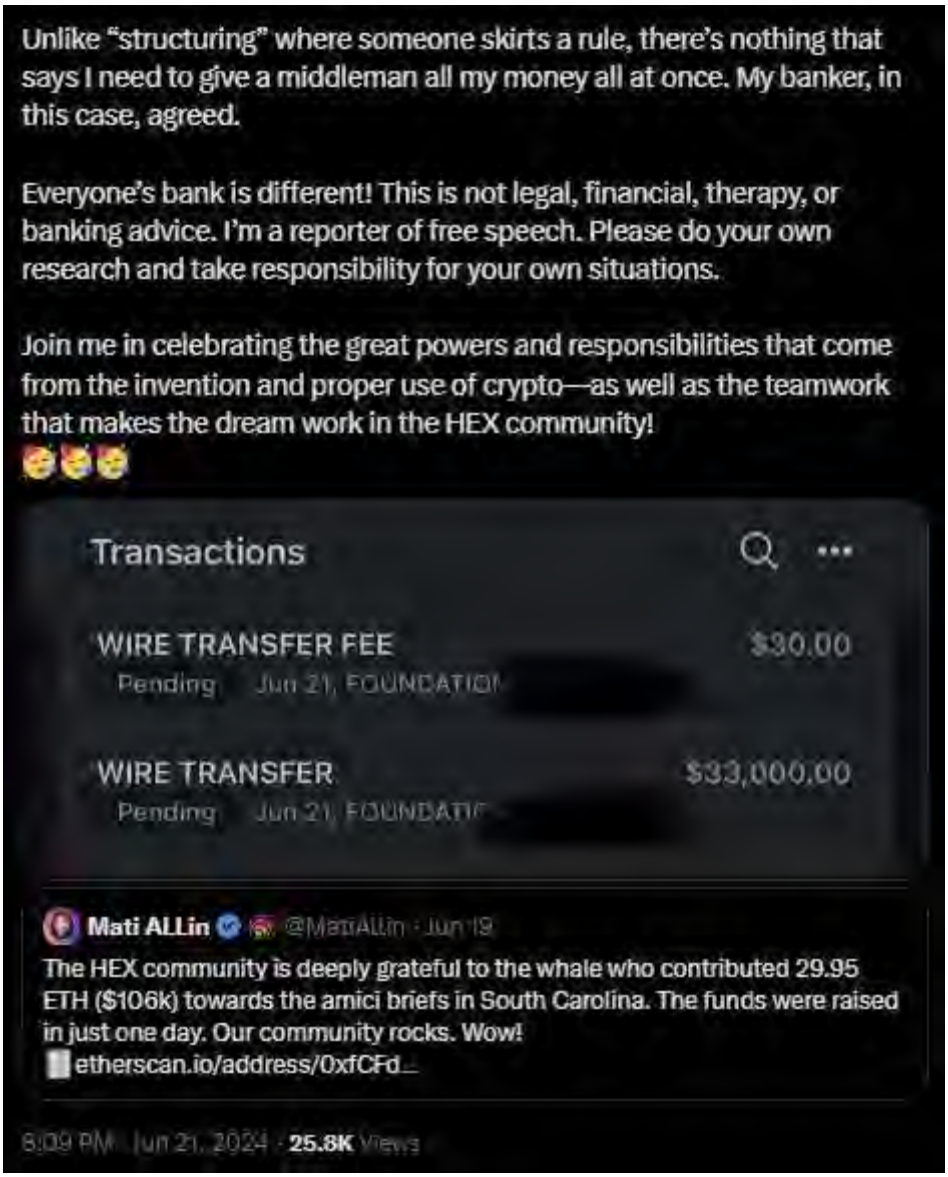

See https://twitter.com/MatiAllin/status/1804305649523904743. Two days later, June 23, 2024, Plaintiff's counsel received notice that DuBard's counsel had been retained. The next day, June 24, 2024, the pending motion to intervene was filed on behalf of Mr. DuBard.

THE MOVANT'S KNOWLEDGE OF THIS CASE

DuBard admits that he "became aware that a lawsuit was filed against Richard Schueler related to HEX shortly after the litigation commenced in 2022." (Motion to Intervene at 3) Nevertheless, DuBard insists that he "was unaware until the week of June 17, 2024, that Plaintiff

sought a declaratory judgment that HEX is a security or that any procedure existed pursuant to which DuBard could become personally involved in the action." Id. However, DuBard's retweeted bulletin of September 2, 2023 discussed, in detail, both this litigation and the parallel federal action pending in New York. (**Exhibit A**) The bulletin discussed the lawyers involved, the judge assigned to the case, the basic factual allegations, and the procedural history of the case. The bulletin describes this case as "claims for issuance of unregistered securities under federal and South Carolina securities law." (**Exhibit A** at 4) The bulletin contained hyperlinks to the documents filed in this case as well as instructions on how to access the documents through the public index.

Ironically, DuBard's retweeted bulletin was originally tweeted by none other than Matthew Picchietti, the self-professed leader of this motions practice.

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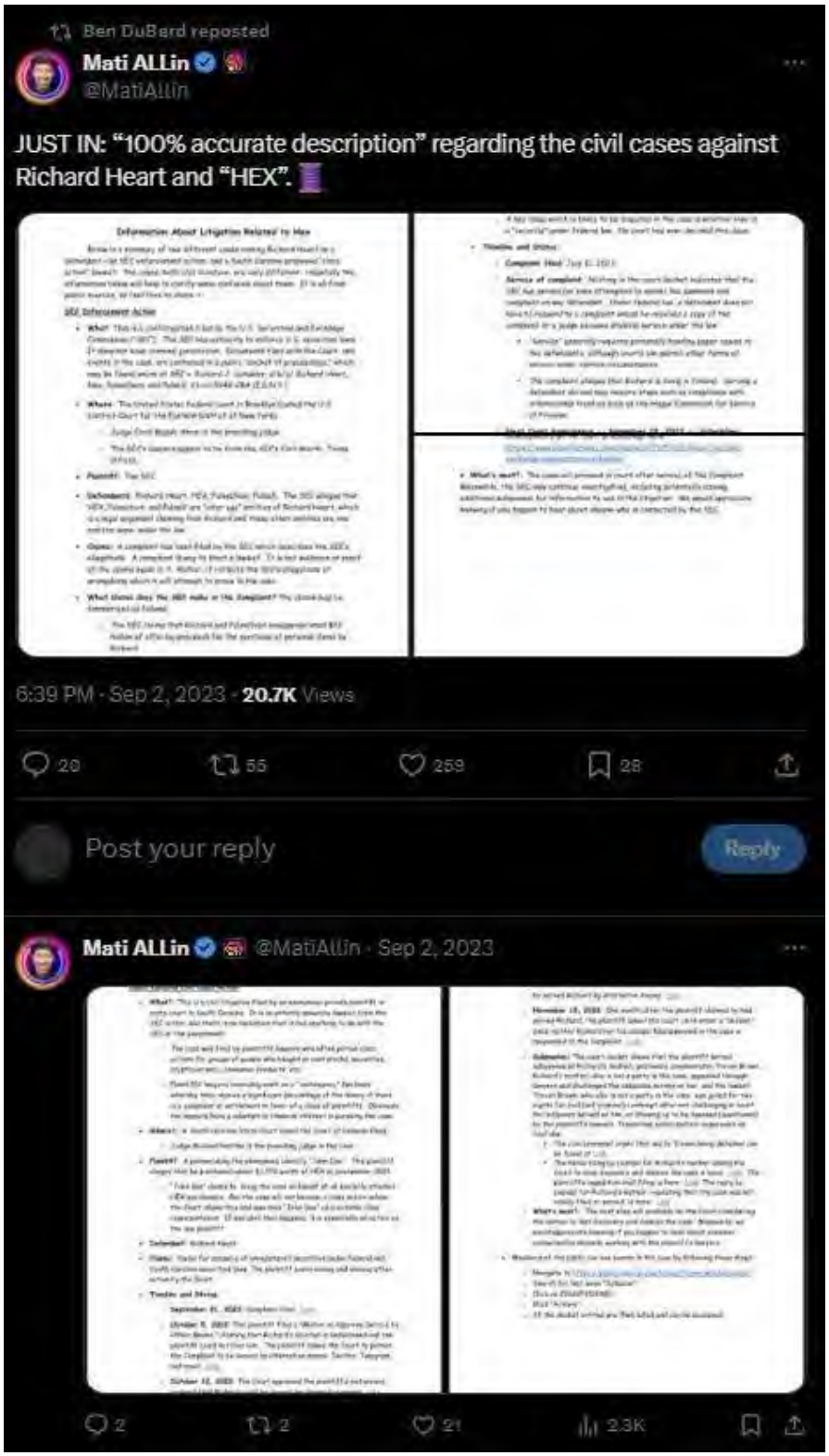

See https://x.com/MatiAllin/status/1698103370710433823.

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STANDARD OF REVIEW

"The decision to grant or deny a motion to … intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." Ex parte Builders Mut. Ins. Co., 431 S.C. 93, 98, 847 S.E.2d 87, 90 (2020).

ANALYSIS

DuBard's motion to intervene should be denied because 1) he lacks standing to intervene, 2) his motion is untimely, and 3) he possesses no defenses or claims to assert in this case.

I. DuBard Lacks Standing to Intervene

DuBard's motion to intervene should be denied because he has inadequate standing to insist on becoming a party in this case.

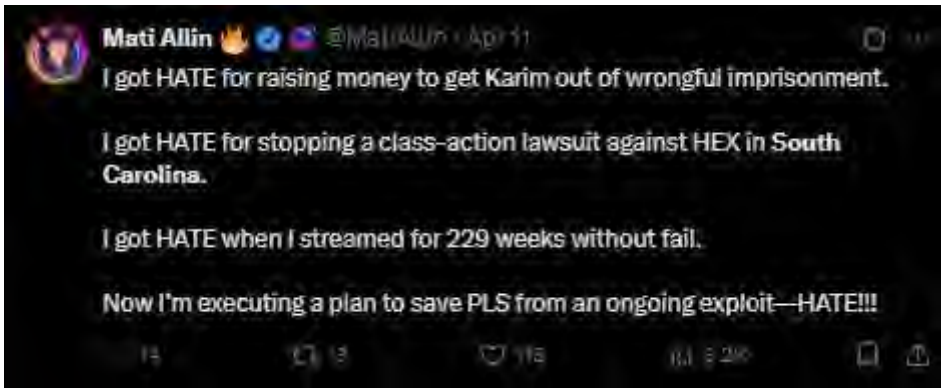
> To have standing, a party must have a personal stake in the subject matter of the lawsuit. In South Carolina, a party must also be the 'real party in interest.' A real party in interest … is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with the action.

Bailey v. Bailey, 312 S.C. 454, 441 S.E.2d 325, 327 (1994). The Bailey court went on to state that a "real party in interest" possesses "a real proprietary interest in the subject matter of the proceedings." Id. at 458, 441 S.E.2d 327.

Mr. DuBard has no "real proprietary interest" in this case. The damages the Plaintiff is seeking would be paid by the Defendant—not by Mr. DuBard. Mr. DuBard asserts that he "has owned HEX tokens continuously since 2020" and "therefore has an interest in the outcome of this action." (Motion to Intervene at 4) But Mr. DuBard's ownership interest in his HEX tokens will not be altered by any outcome of this case. As exhibited by his proposed answer, Mr. DuBard's primary legal "interest" appears to be denying "that the HEX contract is a security as defined within the Securities Act of 1933 and the South Carolina Uniform Securities Act of 2005." (Motion

to Intervene, Exhibit 1 at ¶ 2) However, South Carolina courts reject motions to intervene when the "main reason for seeking intervention is to affect any legal precedent that may result from the case. This alone is an insufficient basis for intervention." S.C. Tax Comm'n v. Union Cnty. Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988), citing 3B J. Moore, Moore's Federal Practice Section 24.07[2] (2d ed. 1987).

Of course, the real "interest" DuBard appears to have in this case is to either stop it or slow it down at the behest of others. As shown in previous briefing, Matthew Pichietti—a visible HEX "influencer"—appears to have played a prominent role in encouraging DuBard to file his motion to intervene and secured substantial financing for his legal expenses from unknown sources. Pichietti continues to take credit for DuBard's motions practice since the filing of the motion, boasting of "stopping a class-action lawsuit against HEX in South Carolina" as recently as April 11, 2025.



See https://x.com/MatiAllin/status/1910816664846823702. Just three days ago, one hour and 17 minutes after DuBard filed his latest document, Pichietti announced the filing to the public as "[y]et another example of how I volunteer to help at no benefit to myself."

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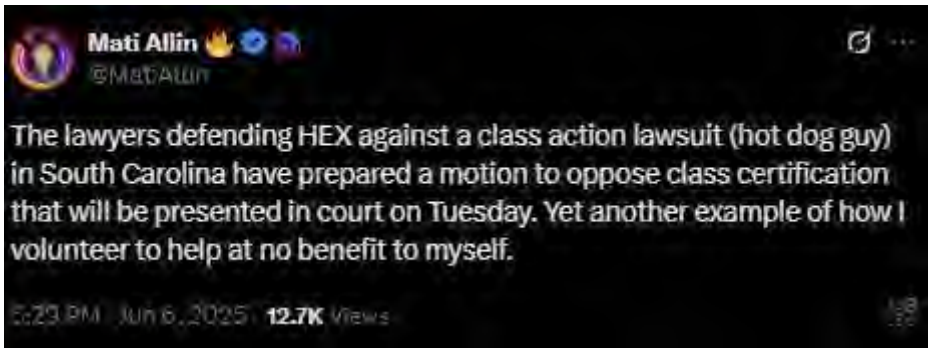

See https://x.com/MatiAllin/status/1931101127329857681

In sum, DuBard possesses inadequate standing to intervene in this case. This fact is doubly true if the only interest seeks to protect is that possessed by others.

II. DuBard's Motion Is Not Timely

Both intervention of right and permissive intervention require "timely application." Rule 24(a), (b), SCRCP. South Carolina has adopted a four-part test for considering the timeleness of a motion to intervene.

> (1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial.

Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991). "[F]ailure to satisfy any one of the four requirements precludes intervention." Ex parte Reichlyn, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). As shown below, consideration of each of the four elements weigh against Mr. DuBard's intervention in this state.

a. The time that has passed and the reason for the delay

DuBard admits that he "became aware that a lawsuit was filed against Richard Schueler related to HEX shortly after the litigation commenced in 2022." (Motion to Intervene at 3) This case was filed on September 21, 2022. DuBard filed his motion to intervene on June 24, 2024. As a result, DuBard waited approximately 20 months before seeking to intervene in this case. This

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lengthy wait contrasts with that found permissible in Davis v. Jennis, where the Supreme Court noted the intervenor's "motion was filed within one month of the [challenged] order." Id. at 504, 405 S.E.2d at 603.

Nevertheless, DuBard insists that he "was unaware until the week of June 17, 2024, that Plaintiff sought a declaratory judgment that HEX is a security or that any procedure existed pursuant to which DuBard could become personally involved in the action." Id. However, DuBard's retweeted bulletin of September 2, 2023 discussed, in detail, both this litigation and the parallel federal action pending in New York. (**Exhibit A**) The bulletin discussed the lawyers involved, the judge assigned to the case, the basic factual allegations, and the procedural history of the case. The bulletin describes this case as "claims for issuance of unregistered securities under federal and South Carolina securities law." (**Exhibit A** at 4) The bulletin contained hyperlinks to the documents filed in this case as well as instructions on how to access the documents through the public index.

The factual record establishes that DuBard was aware of this lawsuit almost immediately upon its filing. The record further establishes that DuBard was aware of the details of the lawsuit within approximately one year of the suit's filing and was disseminating information about the lawsuit to his social media audience. Nevertheless, DuBard made no attempt to intervene until 20 months after the filing of the case.

b. Stage of the proceedings

DuBard's filed his motion to intervene one day before Plaintiff was scheduled to argue his motion for class certification. DuBard immediately moved to continue the motion, which the Plaintiff opposed. DuBard continues to insist that the motion for class certification is premature and again requested that the Court delay its ruling on June 6, 2025.

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c. Prejudice to original parties and applicant

Prejudice to the Plaintiff has already been self-evident as DuBard's motion has resulted in delaying this action for nearly one year. Should DuBard's motion be denied, however, he will not be prejudiced at all. DuBard is not subject to losing any sort of property interest should the Plaintiff win this case. In fact, DuBard may gain the right to recover the losses he has suffered at the hands of the Defendant. However, should DuBard wish to do so, he may always opt-out of any class action and leave his Due Process rights unimpacted.

To the extent DuBard fears he will be bound by the judgment in this case, this fear is a paper tiger. No one is forced to be a member of a class and, thus, be bound by a judgment in a class action. Intervention is not required for DuBard to avoid that. When the time comes, he will be notified of how he can opt out of the class. If he does not wish to be bound by the outcome of the case, easy-peasy: just opt out of the class. There is no need for him to intervene to guard against this "danger."

III. DuBard Does Not Share Claims or Defenses with This Case

DuBard may not employ the more permissive standard of Rule 24(b) to intervene.

> An intervenor seeking permissive intervention must: (1) establish timely application; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties.

Ex parte Builders Mut. Ins. Co., 431 S.C. 93, 101, 847 S.E.2d 87, 91 (2020). As shown above, DuBard's motion to intervene was both untimely and prejudicial to this case. However, he also lacks claims or defenses that have questions of law or fact in common with this case.

Accusations of wrongdoing in this case have been limited to Defendant Richard Schueler.

> The typical situation for which the Rule was designed is one where the prospective intervenor might institute or be called upon to

> defend a separate proceeding that would substantially duplicate the one in question. With this analogy to permissive joinder, it seems clear the better rule is that permissive intervention should be allowed only where the prospective intervenor has a cause of action or defense it could bring or assert.

S.C. Tax Comm'n v. Union Cnty. Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75–76 (Ct. App. 1988). Not having been accused of wrongdoing, DuBard has no defenses to assert. Furthermore, his proposed answer asserts no counterclaims or crossclaims. Thus, permissive intervention provides no avenue for DuBard to participate in this case.

CONCLUSION

As shown above, Benjamin DuBard's motion to intervene fails at several stages of the legal analysis and should be denied.

Respectfully submitted,

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EXHIBIT A

(Bulletin RE HEX Litigation)

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Information About Litigation Related to Hex

Below is a summary of two different cases naming Richard Heart as a defendant – an SEC enforcement action, and a South Carolina proposed "class action" lawsuit. The cases, both civil in nature, are very different. Hopefully the information below will help to clarify some confusion about them. It is all from public sources, so feel free to share it.

SEC Enforcement Action

- **What:** This is a civil litigation filed by the U.S. Securities and Exchange Commission ("SEC"). The SEC has authority to enforce U.S. securities laws. It does not have criminal jurisdiction. Documents filed with the Court, and events in the case, are contained in a public "docket of proceedings," which may be found online at *SEC v. Richard J. Schueler, a/k/a/ Richard Heart, Hex, PulseChain, and PulseX*, 23-cv-5949-CBA (E.D.N.Y.).
- **Where:** The United States federal court in Brooklyn (called the U.S. District Court for the Eastern District of New York).
    - Judge Carol Bagley Amon is the presiding judge.
    - The SEC's lawyers appear to be from the SEC's Fort Worth, Texas offices.
- **Plaintiff:** The SEC.
- **Defendants:** Richard Heart, HEX, PulseChain, PulseX. The SEC alleges that HEX, Pulsechain, and PulseX are "*alter ego*" entities of Richard Heart, which is a legal argument claiming that Richard and these other entities are one and the same under the law.
- **Claims:** A complaint has been filed by the SEC which describes the SEC's allegations. A complaint is way to start a lawsuit. It is not evidence or proof of the claims made in it. Rather, it reflects the SEC's allegations of wrongdoing which it will attempt to prove in the case.
- **What claims does the SEC make in the Complaint?** The claims may be summarized as follows:
    - The SEC claims that Richard and PulseChain misappropriated $12 million of offering proceeds for the purchase of personal items by Richard.

- The SEC further alleges that the sale of Hex tokens was an "unregistered offering" under the securities laws, and that it involved "recycling" transactions so that Richard could "surreptitiously" control more tokens.
- If unregistered securities are sold to members of the public, as the Complaint alleges, this may amount to a violation of federal securities laws, including those requiring various disclosures and registration with the SEC before a public sale.
- The SEC asserts fraud under the federal securities laws.
- A key issue which is likely to be disputed in the case is whether Hex is a "security" under federal law. No court has ever decided this issue.

- **Timeline and Status:**
  - **Complaint filed:** July 31, 2023.
  - **Service of complaint:** Nothing in the court docket indicates that the SEC has served (or even attempted to serve) the summons and complaint on any defendant. Under federal law, a defendant does not have to respond to a complaint unless he receives a copy of the complaint or a judge excuses physical service under the law.
    - "Service" generally requires personally handing paper copies to the defendants, although courts can permit other forms of service under certain circumstances.
    - The complaint alleges that Richard is living in Finland. Serving a defendant abroad may require steps such as compliance with international treaties such as the Hague Convention for Service of Process.
  - **Next Court Appearance -- November 28, 2023 -- Scheduling Conference:** This is a routine type of hearing before a Magistrate Judge which is typically attended by attorneys for the parties. Issues usually discussed include discovery (potential evidence in the case), case and trial scheduling, and other practical matters.
  - If the defendants have not been served by the time of the Scheduling Conference, the hearing may be put over to a later date.

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- **Notable public documents:** The only notable public documents in the case thus far are the SEC's Complaint and the SEC's press release:
    - **Press release:** https://www.sec.gov/news/press-release/2023-143
    - **Complaint:** https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-143.pdf
    - **Docket tracking:** Any member of the public can track the latest developments on the court proceedings here: https://www.courtlistener.com/docket/67649362/securities-and-exchange-commission-v-schueler/

- **What's next?:** The case will proceed in court after service of the Complaint. Meanwhile, the SEC may continue investigating, including potentially issuing additional subpoenas for information to use in the litigation. We would appreciate knowing if you happen to hear about anyone who is contacted by the SEC.

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South Carolina Civil Class Action

- **What?:** This is a civil litigation filed by an anonymous private plaintiff in state court in South Carolina. It is an entirely separate lawsuit from the SEC action, and there is no indication that it has anything to do with the SEC or the government.
    - The case was filed by plaintiffs' lawyers who often pursue class actions for groups of people who bought or sold stocks, securities, cryptocurrency, consumer products, etc.
    - Plaintiffs' lawyers invariably work on a "contingency" fee basis whereby they receive a significant percentage of the money if there is a judgment or settlement in favor of a class of plaintiffs. Obviously the lawyers have a substantial financial interest in pursuing the case.
- **Where?:** A South Carolina State Court called the Court of Common Pleas.
    - Judge Michael Nettles is the presiding judge in the case.
- **Plaintiff:** A person using the anonymous identity "John Doe." This plaintiff alleges that he purchased about $1,700 worth of HEX in September, 2021.
    - "John doe" claims to bring the case on behalf of all similarly situated HEX purchasers. *But* the case will not become a class action unless the Court allows this and approves "John Doe" as a suitable class representative. If and until that happens, it is essentially an action by the one plaintiff.
- **Defendant:** Richard Heart.
- **Claims:** Claims for issuance of unregistered securities under federal and South Carolina securities laws. The plaintiff seeks money and various other action by the Court.
- **Timeline and Status:**
    - **September 21, 2022:** Complaint filed. Link.
    - **October 5, 2022:** The plaintiff filed a "Motion to Approve Service by Other Means," claiming that Richard's location is undisclosed and the plaintiff could not find him. The plaintiff asked the Court to permit the Complaint to be served by alternative means: Twitter, Telegram, and email. Link.
    - **October 12, 2022:** The Court approved the plaintiff's motion and ordered that Richard could be served by alternative means. Link.

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- **October 14, 2022:** The plaintiff submitted documents claiming that he served Richard by alternative means. Link.
- **November 15, 2022:** One month after the plaintiff claimed he had served Richard, the plaintiff asked the court clerk enter a "default" since neither Richard nor his counsel had appeared in the case or responded to the Complaint. Link.
- **Subpoenas:** The court docket shows that the plaintiff served subpoenas on Richard's *mother*, and media commentator Trevon Brown. Richard's mother, who is *not* a party in the case, appeared through lawyers and challenged the subpoena served on her, and the lawsuit. Trevon Brown, who also is *not* a party in the case, was jailed for two nights for civil (not criminal) contempt after not challenging in court the subpoena served on him, or showing up to be deposed (questioned) by the plaintiff's lawyers. Trevon has publicized his experience on YouTube.
  - The civil contempt order that led to Trevon being detained can be found at Link.
  - The initial filing by counsel for Richard's mother asking the Court to stop discovery and dismiss the case is here: Link. The plaintiff's opposition that filing is here: Link. The reply by counsel for Richard's mother, repeating that the case was not validly filed or served, is here: Link
- **What's next?:** The next step will probably be the Court considering the motion to halt discovery and dismiss the case. Meanwhile, we would appreciate knowing if you happen to hear about someone contacted by anybody working with the plaintiff's lawyers.

- Members of the public can see events in the case by following these steps:
  - Navigate to https://publicindex.sccourts.org/florence/publicindex/
  - Search for last name "Schueler"
  - Click on 2022CP2101980
  - Click "Actions"
  - All the docket entries are then listed and can be accessed.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS
Noah Veon, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. Richard James Schueler A/K/A Richard Heart, Defendant.	)	Civil Action No. 2022-CP-21-01980 **BENJAMIN DUBARD'S MOTION TO ALTER OR AMEND ORDER DENYING MOTION TO INTERVENE**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Benjamin DuBard ("DuBard") respectfully requests reconsideration of the Court's July 23, 2025 Order ("the Order") denying DuBard's Motion to Intervene ("Motion"), and asks the Court to vacate the Order and grant DuBard's Motion.

INTRODUCTION

Intervention as of right is mandatory, not discretionary. A motion to intervene that meets the applicable criteria *must* be granted, and an erroneous denial of such a motion constitutes an immediately appealable error. The Court's Order, which adopted verbatim Plaintiff's proposed order, contained several legal errors that warrant reconsideration and correction.

First, the Order sets out an erroneous, overly demanding legal standard to determine whether a motion to intervene is timely. Relying on Plaintiff's misuse of a quotation concerning a *different* test, the Order ruled that DuBard must satisfy all four factors concerning the timeliness of his motion, and that a failure to satisfy every factor precludes intervention. ***That is not the law, and Plaintiff's misstatement has caused the Court to set forth an incorrect legal standard***. The Order also erred in relying on Plaintiff's inaccurate assertion that DuBard delayed his motion by

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twenty months, where the record shows he sought to intervene mere days after learning of his interest.

Second, the Order incorrectly determined that DuBard lacks an interest in the litigation by comparing him to intervenors who were not class members or who did not hold a direct interest in the subject of the litigation. DuBard *is* a class member, and the case law is clear that class members have an interest sufficient to justify intervention. Moreover, DuBard has an acute interest in the proceeding. He and thousands of other potential class members own the very assets in dispute and will be dramatically affected by a declaratory judgment that those assets are securities.

Third, the Order erroneously concluded that DuBard's interests could be adequately represented by a Plaintiff who is taking ***legal positions that are directly opposed to the positions that DuBard seeks to raise as a HEX owner and a class member***. The Order erroneously did not consider serious concerns regarding Plaintiff's adequacy to represent the class, which jeopardizes the interests of thousands of potential class members, many of whom signed petitions vehemently opposing efforts to label HEX a security and celebrated when a suit filed by the SEC concerning HEX was dismissed with prejudice.

The errors in the Order stem from Plaintiff's desire to cover up the flaws that DuBard has identified in Plaintiff's case and proposed class. Plaintiff intends to represent thousands of unnamed class members while being unwilling to address their concerns or demonstrate his adequacy to represent their interests. Plaintiff, the *only* known class member who supports this litigation, should not be permitted to carry on unchecked. But absent intervention, that is precisely what will happen.

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LEGAL STANDARD

Under Rule 59(e), a court may correct factual or legal errors in an order by way of a motion to alter or amend. *See Doe v. Doe,* 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996); *see also* James F. Flanagan, et al., *South Carolina Civil Procedure* 702 (4th ed. 2020) ("A Rule 59(e) motion provides an opportunity for the trial court to correct errors in the findings and perhaps change the result."). A party may file a Rule 59(e) motion "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *See Elam v.* S*.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Rule 59(e) thus permits a party "one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Id*. at 22. Indeed, South Carolina's preservation rules require "[t]he losing party [to] first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *Id*. at 24 n.4. A party "must file a [Rule 59(e)] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id*. at 24.[1] Rule 59(e) is designed to give the trial court a fair opportunity to rule on the issues and provide the appellate court with a platform for meaningful appellate review. *See Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012).

ARGUMENT

Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *In re*

[1] DuBard expressly incorporates by reference and re-raises each and every argument in favor of his Motion from his prior filings and all hearings in this matter, including his initial Motion to Intervene and proposed order in connection with the same, and his Opposition to Plaintiff's Motion for Class Certification.

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Horry County State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004) (citing *Black's Law Dictionary* 826 (7th ed. 1999)). Intervention may be of right or permissive. Intervention of right is governed by Rule 24(a), SCRCP, and permissive intervention is governed by Rule 24(b), both of which are modeled after the federal rule. South Carolina appellate courts have emphasized that "[i]ntervention should be ***liberally granted***, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected." *Id*. (emphasis added).

I. The Court erred in ruling that DuBard is not entitled to intervene as of right under Rule 24(a).

A person seeking to intervene as of right under Rule 24(a) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *Horry County State Bank*, 361 S.C. at 507, 604 S.E.2d at 725. A proposed intervenor who meets these criteria "***shall*** be permitted to intervene." Rule 24(a), SCRCP (emphasis added). Thus, allowing a qualified applicant to intervene as of right is mandatory, and denying a qualifying motion to intervene constitutes a "reversible error." *See Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986). *See also Loyd v. Ala. Dep't of Corr.*, 176 F.3d 1336, 1340-41 (11th Cir. 1999) ("Once a party establishes all prerequisites to intervention, ***the trial court has no discretion to deny the intervention***.") (emphasis added).

In addition, the United States Supreme Court has recognized that "[m]embers of a class ***have a right to intervene*** if their interests are not adequately represented by existing parties." *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 594 (2013) (quoting 5 Alba Conte & Herbert Newberg, Newberg on Class Actions § 16:7, at 154 (4th ed. 2002)) (emphasis added).

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The Order erred in denying DuBard's motion to intervene because he has thoroughly satisfied the four factors for intervention as of right.

A. DuBard's application is timely.

In determining that DuBard's motion to intervene was untimely, the Order erred in several respects. First, the Court considered the following to be a four-part test of whether a motion intervene is timely: "(1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial." *Davis v. Jennings*, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991). However, the law is clear that these are mere factors to be considered, not a four-part test that must be satisfied.

The Order misstated the law by ruling that the "failure to satisfy any one of the four requirements precludes intervention." (Order at 5 (quoting *Ex parte Reichlyn*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993)).) That is not the law; it is an error resulting from Plaintiff's misuse of the quotation from *Ex parte Reichlyn* in its proposed order. That case, as well as the case that it in turn cites, makes clear that the "four requirements" in question are the ***four requirements for intervention as of right, not the four factors considered with respect to timeliness***. *See Ex parte Reichlyn*, 310 S.C. at 498, 427 S.E.2d at 663 (referencing the four-part test for intervention as of right); *id.* at 500, 664 (declining to consider "the remaining factors required for intervention") (citing *Mothersill D.I.S.C. Corp. v. Petroleos Mexicanos, S.A.*, 831 F.2d 59, 62 (5th Cir. 1987) (also referencing the four factors for considering a motion to intervene)). None of the authorities relied upon by the Order suggest that the intervenor must "satisfy" all four timeliness factors. As a result, the Court applied an erroneous and overly stringent legal standard.

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Properly viewed as factors to consider rather than a four-part test to satisfy, it is clear that each factor strongly favors a determination that DuBard's motion is timely.

i. The time that has passed and the reason for delay

The Court erred by finding the Motion untimely on the ground that DuBard moved to intervene twenty months after this action was commenced. The relevant passage of time cannot be measured from when the action commenced, or even from when DuBard learned about the lawsuit. Rather, it must be measured as the "time that has passed since the applicant knew or should have known of his or her interest in the suit." *Davis v. Jennings*, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991). DuBard's interest in the suit is to challenge Plaintiff's attempt to certify an inappropriate class of HEX owners and to oppose Plaintiff's request for a declaratory judgment that HEX is a security. Plaintiff did not move to certify a class until May 10, 2024—and DuBard intervened a mere six weeks later. And DuBard alleged that he "was ***unaware until the week of June 17, 2024***, that Plaintiff sought a declaratory judgment that HEX is a security or that any procedure existed under which DuBard could become personally involved in the action." (*Id*. at 3). "After he became aware of these facts, DuBard promptly retained counsel and filed this motion less than a week later." (*Id*.). These allegations must be accepted as true for purposes of DuBard's Motion. *Nat'l Park Conservation Assn. v. U.S. E.P.A.*, 759 F.3d 969, 973 (8th Cir. 2014) ("A court ruling on a motion to intervene must accept as true all material allegations in the motion to intervene and must construe the motion in favor of the prospective intervenor. This standard is identical to the standard applied to a typical motion to dismiss for lack of jurisdiction."). Thus, the record is clear that DuBard moved to intervene promptly after learning of his interests.

However, instead of focusing on when DuBard learned of his *interest* in the litigation, the Order erroneously focused on DuBard's candid assertion that he became generally aware of this

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lawsuit sometime in late 2022. (Mot. to Intervene at 3). The Court engaged in impermissible fact-finding, determining that DuBard's allegations were "contradicted" by an online bulletin that DuBard "reposted" on September 2, 2023, nearly a year after the case was filed. (Order at 5.) It is undisputed that DuBard did not author the bulletin, but merely "reposted" it on the platform "X". (Opp. to Mot. to Amend at 8.) Even assuming—without conceding—that DuBard read and understood every comment in the bulletin, nothing in the bulletin suggests that DuBard was aware of Plaintiff's objective of obtaining a declaratory judgment that HEX is a security. Indeed, the "bulletin" that the Order relies upon says nothing about a declaratory judgment at all; it states only that the Plaintiff "seeks money and various other action by the Court." (Order at 5.) Thus, even if DuBard had read and understood the entire bulletin before "reposting" it, none of that language would have informed him that Plaintiff was seeking a declaratory judgment that HEX is a security.

Furthermore, numerous authorities make clear that it is an error to rely on "general awareness of the case," as the Court does here. *See United States ex rel Hernandez v. Team Finance, L.L.C.*, 80 F.4th 571, 578 (5th Cir. 2023) (reversing a denial of intervention based on a delay of "approximately 1.5 to 2.5 years" from commencement of litigation). Rather, the lapse of time must be "measured from the moment that the prospective intervenor knew that his interests would 'no longer be protected.'" *Id.*[2] *See also Legal Aid Soc. of Alameda Co. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980) (determining timeliness based on "when the intervenor became aware that its interest no longer would be protected adequately by the parties."). Here, DuBard moved to

[2] South Carolina Rule 24(a) is identical to the federal rule, and this Court should therefore look to federal case law interpreting the rule. *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987) (noting that where the state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive).

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intervene within mere *days* after becoming aware that his interests were in jeopardy. Finding delay in those circumstances constitutes clear error.

ii. Stage of the proceedings

The Court also erred in determining that DuBard's petition was untimely because "significant proceedings have taken place in this case." (Order at 6.) To the contrary, nothing substantive in this case had happened by the time DuBard sought to intervene, and, in fact, very little has occurred since then. The action undeniably remains in the preliminary stages. The Court relies primarily on the fact that Plaintiff has taken "two" depositions and that "numerous motions have been filed seeking to prevent the Plaintiff from taking additional discovery." (Order at 6.) Putting aside that the Court still has not even *heard* most of these motions[3], and the discovery addressed in the motions has not taken place, the Order does not explain how any of those matters have any bearing on DuBard or his intervention concerning whether HEX is a security.

The Order errs in this regard because timeliness must be assessed in relation to the *purpose* of the movant's intervention. The United States Supreme Court has held that intervention is timely where the "later motion to intervene in [the] case [is] for a wholly different purpose" than the events in the litigation that have already transpired. *See United Airlines, Inc. v. McDonald*, 432 U.S. 385, 392, 97 S. Ct. 2464, 2468 (1977) (affirming intervention to allow appellate challenge to class certification ruling despite not intervening for "five years" from filing of the litigation). Similarly, the Fourth Circuit reversed a denial of permissive intervention to intervenors who waited until after an adverse ruling on a petition for writ of certiorari, concluding that the

[3] Several discovery motions were scheduled to be heard with DuBard's Motion on June 10, 2025, but the Court instructed the parties at the hearing that the Court would hear only the Motion to Intervene and would hear the remaining discovery motions and Plaintiff's motion for class certification at a later date.

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intervenors "were under no obligation to seek intervention until the Supreme Court denied plaintiff's petition." *Hill v. W. Elec. Co.*, 672 F.2d 381, 386 (4th Cir. 1982).

Here, the Order erroneously relies upon a handful of actions in this litigation that are unrelated to DuBard's intervention and so cannot render his motion untimely. DuBard moved to intervene promptly after Plaintiff moved to certify a nationwide class. No class has yet been certified, and, most importantly, neither Plaintiff nor the Court has yet *begun* to address the primary issue for which DuBard requests to intervene—namely, whether or not HEX is a security. Thus, far from being untimely, DuBard's proposed intervention comes *before* any of the issues pertaining to his intervention have been decided.

iii. Prejudice

"The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*, § 1916 (3rd ed. 2008); *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970) ("In fact, [prejudice] may well be the *only* significant consideration when the proposed intervenor seeks intervention of right.") (emphasis in original).

The Court erred by finding that allowing DuBard to intervene would prejudice Plaintiff. First, the Court incorrectly, and without any factual basis, ruled that DuBard's Motion to Intervene has *already* prejudiced Plaintiff by "delaying this action for nearly one year." (Order at 6). DuBard requested *one* continuance of a hearing on *one* motion—Plaintiff's motion for class certification—on the basis that his counsel was retained only two days before and needed additional time to get up to speed. (6/24/2024 Mot. for Continuance at 1). Moreover, DuBard requested a continuance

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of that motion for only 36 days.[4] (*Id.*) (requesting an "order continuing the hearing on Plaintiff's motion for class certification, which is currently scheduled for June 25, 2024, at 10am, to a motions term not before August 1, 2024"). All counsel appeared for that hearing, at which other motions were heard and decided. (**Exhibit A**, 6/25/2024 Hr'g. Tran.). DuBard did not request *any* further continuances and is not responsible for the delays in this case, which have been largely the result of delays that occurred *before* DuBard sought to intervene (September 21, 2022 to June 24, 2024), delay that resulted from an interlocutory appeal by non-party subpoena recipient Lorraine Schueler (July 26, 2024 to November 18, 2024), and delays due to scheduling difficulties between the Court and counsel other than DuBard's. The Court's finding that DuBard is somehow responsible for a one-year delay in this case by attempting to intervene is completely inaccurate and unfair to DuBard.

Even worse, the Court accused DuBard, without basis, of filing his Motion to Intervene with the "clear intent . . . to prejudice the original parties to the case." (Order at 6). Nothing in the record supports that determination. DuBard seeks only to protect his interest and prevent this Court from erroneously deciding that HEX is a security simply because it has heard only one side of the argument. DuBard also seeks to protect his interest in ensuring that Plaintiff is not allowed to certify an improper class consisting of DuBard and thousands of other individuals that Plaintiff does not adequately represent, simply because no other party has appeared in the case to challenge Plaintiff's adequacy. The Order erroneously states that DuBard's arguments are prejudicial because he wishes to oppose the class rather than to support it. (Order at 6.) But that is not prejudicial to anyone—DuBard is opposed to the proposed class because it is legally flawed and

[4] The Court granted the continuance in part because "[a]n international complex case is not something that I deal with frequently. I would like to hear what [DuBard's] got to say about whether or not it should be certified as a class." (6/25/2024 Hr'g. Tr. at 24).

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Plaintiff is not fit to represent it. It is no prejudice to Plaintiff to have to defend his legal positions on the merits, particularly where he seeks declaratory and class relief that will affect DuBard and thousands of others. The Court erred in finding that permitting DuBard's intervention would prejudice anyone.

B. DuBard holds an interest related to the subject action.

Next, the Court erred by concluding that DuBard's interest in the outcome of this action is insufficient to justify intervention. DuBard has just as much of an interest in the case as Plaintiff does—they both own HEX and therefore have a clear interest in whether or not HEX is deemed to be a security under state and federal securities laws. The Court expressly recognized that DuBard has owned HEX tokens continuously since 2020, that he purchased HEX tokens within three years before Plaintiff filed this action, and that DuBard is a member of the very class that Plaintiff seeks to represent. (Order at 2, 8). Thus, the only difference between DuBard and Plaintiff is that DuBard believes and alleges that Plaintiff's action is detrimental to DuBard and thousands of other potential class members and owners of HEX tokens. At the hearing on the motion to intervene, Plaintiff even conceded that, if DuBard "would continue to own [HEX], he would have a sufficient interest." (**Exhibit B**, 6/10/2025 H'rg Tr. 11:7-8). Inexplicably, however, the Court concluded that DuBard lacks a sufficient interest in the outcome of this case to intervene despite his ownership of HEX. If DuBard has no sufficient interest in the outcome of this case, then neither does Plaintiff.

The Court also incorrectly concluded that DuBard merely seeks to intervene to "affect legal precedent." (Order at 7). That is not the purpose of his proposed intervention. DuBard seeks to avoid a declaratory judgment that HEX—*property that he currently owns*—is subject to state and federal securities laws. Such a declaration would impact the value of HEX and make it more difficult, complicated, and legally risky to trade. That will impact DuBard and other members of

the purported class, irrespective of whether they are personally bound by the judgment. In that circumstance, intervention is appropriate to allow DuBard to protect those interests. *See Teague v. Bakker*, 931 F.2d 259, 262 (4th Cir. 1991) (holding that where "declaratory judgment action would impair or impede the [proposed intervenors'] ability to protect their interest," intervenors were "entitled to intervention as of right").

The Order erroneously cited *Gould v. Alleco, Inc.*, 883 F.2d 281, 285 (4th Cir. 1989) for the proposition that DuBard's interest in how this case will impact his HEX holdings is too remote to warrant intervention. (Order at 8). In *Gould*, a group of Corporation's stockholders sued that Corporation claiming violations of federal securities laws and state common law. The parties ultimately agreed upon a settlement without objection from any class member, but a non-class member, a bondholder of the Corporation, filed an "opposition." *Id.* at 283. Later, after the bondholder and others filed their own lawsuit, they moved to intervene in the stockholders' suit. *Id*. The primary basis for the motion to intervene was that payment of the settlement would reduce the assets available to the bondholder if they prevailed in the second lawsuit. *Id*. at 285.

In affirming the District Court's denial of intervention, the Fourth Circuit noted that "[m]erely claiming a general interest in [Corporation's] assets based on a speculative recovery in an unrelated civil action does not, however, satisfy Rule 24's requirement that the claim be 'relating to the property or transaction which is the subject of the action.'" *Id*. In other words, a mere *potential* judgment creditor of a corporation lacks a sufficient interest to intervene in litigation involving the company. *Id*.

Gould is plainly inapposite here. DuBard's interest is not that of a judgment creditor or even remotely similar. Unlike the bondholder in *Gould*, who was *not* a member of the class certified in the case in which the bondholder sought to intervene, DuBard *is* a member of the

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purported class in this case, and therefore has a direct and substantial interest in Plaintiff's request for a declaratory judgment that HEX is a security.

Indeed, despite the Order's ruling to the contrary, courts in stockholder class actions *do* permit stockholder class members to intervene to protect their interests where, as here, those interests are not adequately protected. For instance, the Seventh Circuit reversed the denial of a stockholder's motion to intervene where the stockholder was a class member and alleged that class counsel were not representing his interests. *Alcarez v. Akorn, Inc.*, 99 F.4th 368, 375 (7th Cir. 2024). The Court permitted intervention because the stockholder had moved to intervene soon after learning about the mootness fee that he challenged, concluding that "as an investor in [the company] whose shares' value was affected . . . [the stockholder] has a claim in common with the main action; how could it be otherwise?" *Id.* The same result must follow here.

Moreover, DuBard has meritorious arguments for why HEX is not a security. Plaintiff's Complaint acknowledges that the *Howey* test applies here for purposes of determining whether HEX tokens are "investment contracts" and therefore securities under state and federal securities laws. *See* Compl. ¶¶ 52, 56, 59, 103; S.C. Code Ann. § 35-1-102(29); U.S.C. § 78c(a)(10); *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). In *Howey*, the Court held that an "investment contract" is a "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." 328 U.S. at 298–99.

In subsequent decisions, courts have affirmed that for a contract or agreement to create an expectation of profit as required by *Howey*, one party must have a continuing obligation to another to generate profits. *See, e.g.*, *SEC v. Edwards*, 540 U.S. at 395, 397 (2004); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230, 239–40 (2d Cir. 1985) (finding

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assets were investment contracts where investors relied on the skill, financial stability, and ongoing monitoring of their wealth manager); *SEC v. Aqua-Sonic Products Corp.*, 687 F.2d 577, 578 (2d Cir. 1982) (sales license was an investment contract because it created ongoing sales obligations). Conversely, where no continued obligation is owed from one party to another, courts have rejected assertions that an investment contract exists. *See, e.g.*, *Revak v. SEC Realty Corp.*, 18 F.3d 81 (2d Cir. 1994) (condominium purchase contracts, without more, were not investment contracts); *Rodriguez v. Banco Cent. Corp.*, 990 F.2d 7, 11 (1st Cir. 1993) (no investment contract without a showing that any "obligated person or entity was promising the buyers to build or provide anything").

DuBard has an interest in advancing the argument that HEX is not a security under the *Howey* test because it does not have the expectation of profits derived from others or continuing obligation necessary for the formation of an "investment contract." For example, Plaintiff alleges that the HEX software allowed individuals to use their Ethereum tokens to create HEX tokens, (Compl. ¶¶ 25-28), and to "stake" their HEX tokens to programmatically create additional HEX tokens. (*Id.* ¶ 4). DuBard contends, however, that those functions were built into the HEX software from the start and required no further input from anyone but those who chose to use it, thereby requiring no ongoing managerial efforts, as required by *Howey*. The Complaint does not allege otherwise. Accordingly, DuBard contends that HEX tokens are a simple digital asset with no intended or promised functionality beyond its software code, like other cryptocurrencies that have been treated as non-security commodities.

Further, without the possibility of continued efforts through a common enterprise, there can be no investment contract. As the Complaint concedes, the HEX software was published on an existing blockchain network, Ethereum. (Compl. ¶ 2). Many software programs and tokens exist

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on the Ethereum network, and "smart contract tokens can be created by anyone with a basic understanding of Ethereum . . . ." *See Risley v. Universal Navigation Inc.*, 690 F. Supp. 3d 195, 203 (S.D.N.Y. 2023). The Complaint does not allege that Defendant Schueler's efforts were required to maintain or develop the HEX software.

Moreover, as DuBard pointed out in his Memorandum in Opposition to Class Certification filed June 6, 2025, ***the United States District Court for the Eastern District of New York recently dismissed similar claims against Defendant related to HEX, finding that the Securities and Exchange Commission ("SEC") failed to state a claim against Schueler for violation of federal securities laws.*** *See SEC v. Schueler, et. al.*, Case No. 1:23-cv-05749 (Feb. 28, 2025, E.D.N.Y.) Doc No. 57, 850-880, attached as **Exhibit C**. In addition to ruling that the SEC failed to establish personal jurisdiction in federal court over Schueler, ***the Court also held that the SEC failed to sufficiently allege that the HEX offering occurred within the United States, a necessary requirement for application of federal securities laws***. *Id*. at 22. The SEC neither appealed nor amended its complaint. The dismissal is now final and with prejudice. DuBard contends that dismissal is warranted here for the same reasons, and that he should be permitted to assert these positions in this Court.

DuBard also raises important issues regarding the scope of the class that implicate his interests as an owner of HEX tokens, including whether secondary market purchases from persons other than the Defendant may be included within the class definition based on important differences in how the federal securities laws treat primary offerings by a seller, as opposed to secondary market trades. (6/6/2025 Class Cert. Opp'n at 10). These distinctions may differentiate the potential claims of purported class members that directly purchased HEX tokens during its initial offering period as opposed to those that purchased HEX tokens on a secondary market, as

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DuBard asserts the Plaintiff did here. For instance, DuBard points out that the SEC only alleged the initial offering of HEX tokens was a security, while the Plaintiff here suggests that the tokens themselves are securities and include secondary market sales within the class definition. (Class Cert. Opp'n at 4). DuBard also raises issues concerning whether the class should be limited to members within South Carolina under the U.S. Supreme Court's ruling in *Bristol-Myers Squibb v. Superior Court of California*, 582 U.S. 255 (2017). (6/6/2025 Class Cert. Opp'n at 16–17).

These issues give rise to interests distinct from those represented by the Plaintiff. As the Court previously recognized, without DuBard's intervention, these issues impacting DuBard and other class members will not receive the benefit of full briefing. (6/25/2024 Hr'g. Tr. at 24) ("***I would like to hear what [DuBard's] got to say about whether or not [this case] should be certified as a class***.") (emphasis added).

C. Denial of intervention would impair or impede DuBard's ability to protect his interest.

"The 'impairment' factor is not designed to be a difficult standard." *Ex Parte DeBordieu Colony Community Assn., Inc.*, 442 S.C. 285, 291, 898 S.E.22d 170, 182 (Ct. App. 2024). "[A] party need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene." *Id*.

The Order did not directly address this factor, but Plaintiff argued at the hearing on DuBard's Motion that DuBard can protect his interests simply by opting out of the purported class. As discussed above, however, a declaration from this Court that HEX is a security will adversely affect the value of his HEX tokens, regardless of whether DuBard is personally bound by this Court's judgment. (Sec. I.B. *supra*). Moreover, the Defendant is in default; other than Plaintiff, no party has appeared in this action to address whether HEX is a security and which transactions involving HEX can properly be brought within the class action framework. If the Court does not

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permit DuBard to intervene, it will hear only one side of the argument on the significant legal issues of state and federal securities law in this case that will affect DuBard as well as other absent class members. Therefore, denial of intervention would impair DuBard's ability to protect his interests.

D. DuBard's interest is inadequately represented in the action.

This factor, too, is a "minimal" burden for DuBard, and "***the applicant need only show that the representation of his interests 'may be' inadequate***." *Ex Parte DeBordieu Colony Community Assn., Inc.*, 442 S.C. at 291, 898 S.E.22d at 182 (emphasis added). To determine whether the proposed intervenors' interest is adequately represented, the court must consider (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent. The Court of Appeals has recognized that where, as in this case, "the interest of the absentee is not represented as all" or where "all existing parties are adverse to him," the case presents "***an obvious lack of adequate representation***" warranting intervention. *Horry County State Bank*, 361 S.C. at 509, 604 S.E.2d at 726 (emphasis added). The Court erred by considering none of these factors and by ruling, without basis, that Plaintiff would adequately represent DuBard's interests.

Although the Court appeared to correctly recognize that class members typically have the right to intervene under Rule 24(a)[5], the Court erred by concluding that DuBard has no such right

[5] Courts have noted the importance of the intervention mechanism to protect class members' interests. *See Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 594 (2013) ("[M]embers of a class have a right to intervene if their interests are not adequately represented by existing parties.") (quoting 5 A. Conte & H. Newberg, Class Actions § 16:7, p. 154 (4th ed. 2002)); *Smith v. SEECO, Inc.*, 865 F.3d 1021, 1022 (8th Cir. 2017) (noting that "a member of a class should have the right to intervene in a class action if he can show the inadequacy of the representation of his interest by the representative parties before the court") (quoting advisory notes to Fed. R. Civ. P. 24).

here because his interest is adequately represented by ***Plaintiff***. (Order at 8 ("DuBard's status as a putative class member does not give him a right of intervention unless 'its interest is inadequately represented by other parties.'").) ***But Plaintiff cannot possibly represent DuBard's interest because Plaintiff and DuBard want exactly the opposite outcome***. Plaintiff seeks a declaration that HEX is a security, while DuBard contends that it is not. The Court appears to have recognized this dichotomy but nevertheless concluded that Plaintiff is adequately representing what Plaintiff suggests that DuBard's interest *should* be. (Order at 8 ("[D]espite the fact that DuBard may be entitled to significant compensation should the Plaintiff be successful in his case, DuBard wishes to argue against his interests by insisting the [Securities Act] does not apply. DuBard has shown no authority that permits an intervenor to assume a position contrary to his financial well-being in order to create the specter of 'inadequate representation'").) But neither Plaintiff, nor this Court, can dictate to DuBard what his "interest" is. The interest that DuBard seeks to protect by intervention is a finding that HEX is not a security. Plainly, that interest is not adequately represented by a Plaintiff who seeks the *opposite* outcome.

Case law makes clear that intervention is mandatory in such circumstances. For instance, the Fourth Circuit held that it was "reversible error" to deny intervention as of right where the intervenor's arguments on the merits were opposed to those of the litigants, concluding that "the nature of [the litigant] and its conduct in this litigation to date indicate that [it] cannot adequately represent the interests of intervenors." *See Feller v. Brock*, 802 F.2d 722, 729, 730 (4th Cir. 1986). The Court found that the differences in their arguments, including legal authorities that "[o]nly the intervenors have drawn [to] the court's attention," made it impossible for the intervenors' interests to be adequately represented by the existing parties. *Id.* That is precisely the problem at hand. DuBard wishes to raise important arguments and authorities that Plaintiff has not only failed to

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raise, but that are directly opposed to Plaintiff's erroneous legal theories. There is no legal basis for concluding that DuBard's interests can be represented by Plaintiff in such a circumstance.

Beyond the distinct legal interests and issues discussed above, DuBard also raises serious concerns regarding Plaintiff's adequacy to represent the class in light of the Complaint's mischaracterizations regarding Plaintiff's investment. Public blockchain records demonstrate that Plaintiff knowingly purchased HEX tokens on a secondary market exchange, contrary to what he alleged in the Complaint. These facts place Plaintiff outside of any proper class definition and may disqualify him from serving as a class representative. (*See* Class Cert. Opp'n at 9.)

Absent intervention, DuBard and other potential class members will be unable to vindicate their significant interest in scrutinizing Plaintiff's fitness to serve as their representative. Equally problematic, with no one to raise these issues, the Court will be left unable to determine whether Plaintiff has proposed a proper class and whether he and his counsel can adequately represent the interests of thousands of unnamed class members. By failing to address this issue, the Order does not account for the substantial risk that Plaintiff's factual misrepresentations and lack of standing as a class member render him an inadequate representative of the class.

The Court also improperly denied DuBard's Motion based on what it characterized as "evidence suggest[ing that] DuBard has worked in concert with a third party to fund and file his appearance as an intervenor." (Order at 8.) As an initial matter, the Order does not explain how that suggestion has any bearing on the question of whether DuBard's interests are adequately represented by the *Plaintiff* here. Moreover, as DuBard explained at the hearing on this matter, there is a large community of HEX owners who are opposed to a ruling that HEX is a security. ***Almost 40,000 HEX owners, many of whom may be members of the purported class, signed a***

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petition asserting that HEX is not a security.[6] That DuBard shares this interest with many members, some of whom may wish to assist with his legal expenses, is no reason to deny him the right to intervene. Instead, the Court should grant DuBard's Motion so these voices can be heard and so the Court can receive the benefit of advocacy on both sides of the issue.

In addition, the Order erroneously adopted Plaintiff's unfortunate and unfounded accusation that, because DuBard sought assistance with payment of his legal fees, "it is another person's interest that DuBard seeks to promote." (Order at 8.) As part of its denial of the motion to intervene, the Order opined that "the purpose of intervention is to protect the interest of the intervenor, not the interest of some unknown person or entity on whose behalf the intervenor is act[ing]." (Order at 9.) This conclusion is an error of law because it improperly conflates a third party's decision to pay a person's legal fees with representing that payor's legal interests.

As Plaintiff admitted at the hearing, "there's nothing wrong with a third-party raising money here." (6/10/2025 Hr'g. Tr. at 10:23.) Yet the Order erroneously assumes, without any basis, that a third party's assistance with legal fees compromises the ability of DuBard and his counsel to represent DuBard's own interests. DuBard's counsel will advocate for his interests regardless of who pays his legal fees. *See* S.C. R. Prof. Conduct 1.8(f)(3) (requiring "no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship"). The Order takes issue with the fact that the community fundraising was anonymous, but the lack of any identifiable person only *reinforces* the fact that DuBard and his counsel are representing DuBard's interests, not the unspecified interests of persons unknown to them.

[6] *See* PulseChain Amicus Brief, filed in *SEC v. Schueler, et. al.*, Case No. 1:23-cv-05749 at Dkt. No. 37-1; PulseChain Hex Petition for Amicus Brief, https://pulsepetition.org/ (last accessed June 6, 2025).

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The Order in effect concludes that DuBard cannot truly represent his own interests if he cannot pay his own legal fees. If that logic were adopted, however, then the same would be true of Plaintiff, whose substantial legal work is doubtless being covered by his counsel on a contingency basis. By the same logic, Plaintiff would be serving the interests of his counsel in earning contingency fees, rather than Plaintiff's own interests or the interests of the class. Of course, this is not, and should not be, how a party's interests in litigation are determined.

What the Order should have considered is that DuBard has specifically and emphatically alleged that his interests diverge significantly from Plaintiff's. ***DuBard and thousands of other potential class members have voiced their disagreement with harmful attempts to declare HEX a security***. DuBard is unaware of ***any*** other putative class members who agree with Plaintiff's position. By concluding that DuBard may not intervene because he asked for the HEX community to assist with his legal fees, the Court has left him and other potential class members unable to adequately represent their interests. ***That reversible error will risk nullifying all rulings pertaining to the putative class going forward, should a class be certified***.

II. The Court erred in denying DuBard permissive intervention under Rule 24(b).

"To warrant intervention under Rule 24(b) an applicant should ordinarily show ... he has a claim or defense involving a question of law or fact in common with the main action." *Ex Parte Trustgard Ins. Co.*, 442 S.C. 485, 513, 900 S.E.2d 448, 463 (Ct. App. 2023). Permissive intervention under Rule 24(b) is discretionary with the Court. *South Carolina Tax Com'n v. Union County Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988).

The Court should grant DuBard leave to intervene under the more lenient standard of Rule 24(b) for the same reasons stated above, and the Court's denial of DuBard's request under Rule 24(b) suffers from the same errors discussed above. In addition, the Court erred in finding that

DuBard lacks "a claim or defense involving a question of law or fact in common" with this action. (Order at 9). DuBard's interest in the determination whether HEX is a security is a question of law that is squarely at issue in this action.

The Order erroneously focuses on the fact that DuBard cannot assert defenses because he has not "been accused of wrongdoing." (Order at 9). But DuBard has made clear from the outset that he intends to argue that HEX is not a security, thereby defending against Plaintiff's declaratory judgment claim. DuBard is defending against that declaratory judgment claim because it will negatively affect him, not because it involves any alleged "wrongdoing" on his part. Plaintiff's claims seek a declaratory judgment that HEX is a security, and DuBard seeks the opposite, thereby clearly implicating claims and defenses concerning a common question of law. Should the Court require that DuBard style his responsive pleading after intervention to include a declaratory judgment claim or defense, DuBard will do so. Either way, the Court should allow DuBard to intervene so that it can receive argument from both sides of the issue and declare the rights of all affected parties. *See Stoney v. Stoney*, 425 S.C. 47, 63, 819 S.E.2d 201, 210 (Ct. App. 2018) ("Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties."). Denial of permissive intervention constitutes abuse of the Court's discretion.

CONCLUSION

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DuBard incorporates by reference all of the arguments made in his Motion to Intervene and proposed order submitted to the Court in connection with the same, his Opposition to Plaintiff's Motion for Class Certification, and at all hearings in this matter.

For all of those reasons, and the reasons stated herein, DuBard respectfully requests that this Court: 1) grant DuBard's Motion to Alter or Amend, 2) vacate the Order Denying DuBard's Motion to Intervene, and 3) issue an order granting DuBard's Motion to Intervene under Rule 24(a) as a matter of right, or, in the alternative, under Rule 24(b) in the Court's discretion.

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EXHIBIT A

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State of South Carolina	)	In the Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2022-CP-21-01980
	)	
	)	
	)	
	)	
Noah Veon,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Richard Schueler,	)	
	)	
Defendant.	)	
	)	

June 25, 2024
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
	(No Exhibits Presented)		

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption or change in thought
ellipses	. . .	trailing off
[*ph*]		phonetically written
[*sic*]		written as said

(WHEREUPON, the proceedings began at 10:03 a.m.)

THE COURT: All right. I apologize for meeting in the jury assembly room. The -- the courts -- the courtrooms upstairs were supposed to be occupied. There's one of them has come available, but since we're here, we're just going to go ahead where we are. And I'll be glad to hear from the moving party.

MR. NEWMAN: Judge, we've got several motions today. The plaintiffs have a motion for class certification. We've had an additional third party appear yesterday. We have a motion to continue that motion.

And Mr. Smith has two motions. What I envision is Mr. Smith going first with his. If he wants to stick around for the others, he can. If not, if he needs to get back.

THE COURT: You're welcome to stay if you'd like.

MR. NEWMAN: That's right.

MR. SMITH: It's a billable hour, Judge.

THE COURT: Double bill them then.

MR. NEWMAN: And then we could address Mr. Abney's motion to continue. And based on that ruling, we can --

THE COURT: Okay.

MR. NEWMAN: -- do the motion for certification.

THE COURT: Let's hear from Mr. Smith first.

MR. SMITH: Thank you, Your Honor. May it please the

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Court. For the record, I'm Murrell Smith, and I represent Lorraine Schueler in this matter, who, as you know, is a witness who was subpoenaed by the plaintiffs.

First, obviously, they -- we found out during the process that they subpoenaed a bunch of her financial records. And alternatively, also, she was subpoenaed to give a deposition. Mr. Twombley in Beaufort had filed a motion to quash that deposition. That's when we came up here and filed this protective order. So that's what brings us before you today with this case.

Judge, the two rules -- two motions for you for us is a Rule 59(e) and a 60(b) motion as a result of your order last October where we heard this motion. And so, you know, Judge, I -- I don't want to -- just for the record, obviously, when we came before you, there were a couple of issues that we brought before the Court.

One was the anonymous plaintiff being in here, and that was part of our motion for a protective order. We wanted a protective order, but also found some deficiencies through this process. And obviously there was a plaintiff that was anonymous at that point, and then also the fact that there was not appropriate service of this action, to which we allege that the Court didn't have jurisdiction because there wasn't service under the Hague Convention.

You ruled that -- that -- obviously in the case that

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under Rule 10 that that did not dismiss the action, but you required the plaintiff to publish the name of the plaintiff, and then you denied our action for -- for -- for the dismissal for non -- and lack of jurisdiction for nonservice on this and not complying with the -- with the Hague Convention. So we filed the 59(e) and the -- and 60.

And, Judge, I have the 59(e). It lists everything in there and, obviously, I don't want to rehash all that here today, but the 60(b) motion, which was 60(b)(1), I think it was, under newly discovered evidence, and that's what's before the Court, and that's really what I want to concentrate on today. So I'll preserve all those arguments that are in the motion, and the Court can look at those and obviously make its ruling.

But what I'm most concerned with is this newly discovered evidence that was in here. And so, Judge, when we looked at this and we were before you last time, we talked about the fact that the SEC -- and I understand that when they filed the action that the SEC complaint against Mr. Schueler was not -- was not live at that point, but at some point and before the statute of limitations -- and the statute of limitations to my understanding still hasn't expired -- there was some information that -- that there was -- that he was residing in Finland.

And so the SEC had that complaint and we had that

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discussion last October. They were saying they couldn't serve him. They still -- service was still out. Well, what we found out shortly after your order was issued is that they served him, in fact, and he was residing in Helsinki, Finland. So we know that's where he was and where he has been for some period of time.

And so, you know, Judge, when we look at this, you look at the alternative service that occurred in this case. And just for the record, I'm sure you recall this, is Judge Hood allowed some alternative service after an affidavit and motion from the plaintiffs and allowed them to serve him in a chat room and to send to some email and -- and, Judge, we argued then and, not to rehash it, that was dubious service as to whether it was him in the chat room, whether that actually was his email. But nonetheless, that's what they did. And so, you know --

THE COURT: I think we talked about that before is do I have the ability to reverse what Judge Hood did.

MR. SMITH: Well, Judge, I -- respectfully, I think you do because you have been vested in the jurisdiction in this case, and you've got exclusive jurisdiction in this case. And I think at some point as you go here, jurisdiction is always an issue that the Court should and could review at any time.

And so, you know, to me -- and, you know, I believe this, Judge. I believe that they have some deficient service and

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that this case just does not -- they have not attached jurisdiction. And unfortunately, what -- you know, this is obviously going to go through some appellate reviews, Judge, and, you know, I don't -- now that they know where he is, you know, I would respectfully submit they need to probably go and engage through the Hague Convention and Hague Treaty and to serve the plaintiff in Helsinki, Finland. But nonetheless, that's their call. And I'm -- you know, I'm not going to get into that issue for them.

But, you know, what they have to do is -- you know, when you look at this -- and this is what the evidence is before the Court is that they only looked for him in the United States. They did not engage any foreign service, any foreign process service or any foreign investigators, and their own filing reveals that.

And, you know, they discuss that they hired Delta Group to find the defendant's address, and they said -- and in their motion, it says the Delta Group conducted a thorough search for Defendant Schueler within the United States, not out, not abroad, but in the United States, and the weight of the factual evidence supported Schueler's public assertion that he resides in Europe.

So before they even did this, it's -- they -- they knew through their process server that the evidence, public evidence, was that he resided in Europe, and most European, if

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not all European, countries are members of the Hague Treaty. And so if they are, then you probably should have gone that next step, and that went to Judge -- and, you know, obviously it went to Judge Hood and Judge Hood granted that, but I still say it's flawed, Judge.

When you look at this, it just doesn't -- you know, when you -- when you have someone that you hire to find the defendant and they did not locate him and they put in their affidavit or report or whatever it was that the evidence points that he lives in Europe, that surely doesn't square with the Hague Convention. If that's the case, then you're required to undergo the Hague Convention.

And, you know, we quote the law in here, Judge, and I'm just going to -- I know I argued it last time, but plaintiff cannot close his eyes to the obvious to avoid the Hague Service Convention. They must make reasonable, diligent efforts to learn the defendant's mailing address, and that -- the record is absolutely devoid of any reasonable evidence to find him, serve overseas.

And they consistently say that international -- if -- say, that if an international address is only unknown, the plaintiff exercised reasonable diligence in an attempt to discover a physical address for service of process and was unsuccessful -- unsuccessful in doing so. That's the standard to which you get to use alternative service under the Hague

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Convention, and that was not complied with.

So we haven't seen any reasonable diligence, and that's really the reason that we -- that we brought this 60(b) motion and why we're before the Court. The filings show the SEC now that they -- that he resides in Helsinki, Finland. In fact, he's got attorneys now after they served him with the SEC case, and they have filed responsive pleadings. They have filed motions to dismiss.

And I know, Judge, they pointed out in the -- in the -- well, they filed a motion to dismiss, we presume, because they're all sealed at this point. They don't unseal them until -- until after all the briefing, and I think that's about in August when we'll see that.

But they wrote a letter to the judge, and in there they did say we challenge service, but then there is a motion and a memorandum in law, Judge, that we attached as an exhibit of this, which -- which we got from Bloomberg presumably. They -- that's where they -- where they got the information from the plaintiff's filing. But in there, they never challenged service in their memorandum of law to dismiss the case. They challenged jurisdiction and him being a resident of Europe and all his -- all his business being conducted out of Europe.

So, you know, Judge, we respectfully submit that you do have the authority under Judge Hood's order, since this was designated complex, to review jurisdiction. We would ask that

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you review jurisdiction.

And so I know -- I quote this *Sellers v. Nichols*, that one -- you know, one judge's orders cannot be set aside except another applies except in cases where the right -- where the judge has the right reserved -- to do so has been reserved to the succeeding judge. And so, Judge, we think that you have the right to make all rulings, and you should be able to revisit that.

And so, you know, Judge, I would submit, obviously, that they need to comply with the Hague Convention. That will resolve every issue. And if it doesn't, then it's going to be resolved by the Supreme Court, the United States Supreme Court, at some point, and I think the plaintiffs would -- it would behoove the plaintiffs before they go down this road to get this cured, and I would ask the Court to order them to either comply with it or, alternatively, then you can dismiss the action.

One issue that we had, Judge, and we argued it over there before and I'm not going to repeat that, but -- but the fact that, you know, standing. You found that we did not have standing last time and, obviously, we argued that we did under the -- under the Public Interest Doctrine. So -- Public Importance Doctrine. So, you know, Judge, I don't want to go through all that all over again. We respectfully submit that we do have standing, and we'd ask that. One last -- ask that

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you find that.

One last thing, Judge, is also when they -- when they -- they raised the thing about the civil registry in their -- in their -- in their argument, their response to us, and said that the civil registry -- and they submitted an affidavit of an attorney from Finland that said basically that -- that -- that -- you know, that only can be used by the public or banks and not -- may only be used by government, banks, and not available to the public.

And, Judge, we respectfully submit, we put in here that the Ministry of Justice is who the SEC -- who the SEC worked through with that serving Mr. Schueler, and obviously the plaintiffs could work through the Ministry of Justice, just like the SEC did. And it's the Ministry of Justice that found his address. They know where his address is now. They can submit that and be able to get service upon him.

So, Judge, we would ask that you respectfully reconsider your order that you issued under Rule 59, but especially in light of the SEC filing and the evidence that they have located him, they know where he resides, under 60(b) that you reverse that order and find that they should serve -- comply with the Hague Convention.

THE COURT: All right. I'll be glad to hear response. And one of the obvious things is that, you know, I'm inclined to say it was good service for a number of different reasons,

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but what if I'm wrong? When does the statute run?

MR. NEWMAN: Judge, the -- Section 5 of the Securities Act of 1933 has a one-year statute. My client purchased his HEX token in September of '21, which was at the peak of the market. We filed this case shortly before the year statute expired. So September of '22 would have been the expiration of the statute of limitations. It's a very short statute, but it is what it is. And so whether --

THE COURT: So either you win or lose on my ruling?

MR. NEWMAN: Correct. What we fear is that, you know, even if we attempted to comply with the Hague Convention at this point, the 180-day rule under either Rule 4 or 5 would prohibit us from being able to effectively serve the -- the defendant.

THE COURT: Oh, okay.

MR. NEWMAN: So --

THE COURT: All right. I'll be glad to hear from you.

MR. NEWMAN: Yes, sir. Just briefly.

You know, as Mr. Smith mentioned, most of these issues have been set forth before you already. We think that Judge Hood was correct in his order in October of '22. We think that you were correct in your order last fall and would ask you to -- to deny the Rule 59 motion.

Before I get to the Rule 60 motion, Judge, I want to point out that notification of the class certification --

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class certification motions hearing was provided to Mr. Schueler's attorneys that are representing him in the SEC matter. We received two green cards back from those attorneys confirming their receipt. I emailed them as well. Received no response.

However, last week there was a tremendous response on Twitter by this HEX community that this hearing was coming up. This is how we see Mr. Abney in this case at this point.

THE COURT: Well, I think they disparaged Florence County too. They said what in the world do they know about anything in Florence County. I don't even know where that is.

MR. NEWMAN: Well, I think I was referred to as a douche wagon attorney, Your Honor. So I think I know what my next personalized license plate is.

THE COURT: I had to ask my clerk what WTF meant, but at any rate, go ahead.

MR. NEWMAN: Yes, sir. But what we think that indicates is there's clear coordination between the defendant and/or his lawyers and third parties that are now seeking to participate in this motions hearing. So the defendant is still hiding out, using proxies, we believe, to make his argument.

In terms of the potential for, you know, appellate review of this case, that's up to Mr. Smith. If he files it, we think it would be an improper notice of intent to appeal, but it does threaten delay. However, I'm glad that we're putting

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that on the record now so that the transcript can reflect that later.

The one piece of newly discovered evidence is the certificate --

THE COURT: You're saying that that would be an interlocutory appeal, and we need to try it through to its conclusion, and then that would be the appropriate time for an appeal?

MR. NEWMAN: Correct.

THE COURT: That's your feeling on that?

MR. NEWMAN: And for an example of, you know, evidence that we would need that would be helpful to the appellate court in this situation, would be, frankly, if Mr. Schueler is using his mother as a proxy and has known this entire time that this motion is pending and has chose to have her take the heat on his behalf.

In terms of the newly discovered evidence, the only piece that's being offered is a certificate of service dated October of '23, which was over a year after our case was filed, and it indicates that Mr. Schueler was living -- living in Finland in 2023. It provides no evidence as to where he was living in 2022.

Mr. Smith apparently thinks we should have searched between Portugal and the Ural Mountains for Mr. Schueler. I would contend that that's completely unreasonable and that the

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basis for our previous motion was sound. Judge Hood did that.

THE COURT: You're saying that in 2023 the statute had already run?

MR. NEWMAN: Correct. And frankly, the defendant may have been living anywhere in 2022 when he needed to be served. So that certificate of service offers no evidence to support Mr. Smith's position at this point.

So, Judge, with all that being said, we'd like for the Court to respectfully deny the motions in conjunction with your ruling on the class certification motion itself.

THE COURT: All right.

MR. NEWMAN: Thank you, Judge.

THE COURT: Well, I'm going to ask that both of y'all submit proposed orders and let me -- give me an opportunity to digest all of that and a proposed order on the 59 -- Rule 59 and 60 motions.

MR. NEWMAN: Yes, sir.

MR. SMITH: Judge, can I have one reply argument?

THE COURT: Yes.

MR. SMITH: Just for the Court and everybody else?

THE COURT: Yes. I'll be glad to hear it.

MR. SMITH: I just want to --

THE COURT: Y'all need to educate me.

MR. SMITH: Oh, it's not even really about the case. I'm trying to help Mr. --

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THE COURT: All right.

MR. SMITH: -- Mr. Newman, when he -- about his Twitter designations. I didn't see all that stuff. I'm -- fortunately, I'm not on there, but Twitter --

THE COURT: I've never looked at it. Apparently, my law clerk --

MR. SMITH: Okay.

THE COURT: -- called it to my attention this morning.

MR. SMITH: Well, I just wanted to remind everybody, as Dave Chappelle said, Twitter ain't a real place. So I don't give a you know what, and that's what I remind everybody. My staff reminds me of that all the time.

THE COURT: It ain't a real place.

MR. RADEKER: Thank goodness.

THE COURT: All right. Very good.

MR. NEWMAN: All right. Judge, I believe the next motion would be Mr. Abney's motion to continue the motion for class certification.

THE COURT: All right.

MR. ABNEY: Thank you, Your Honor. Merritt Abney and, Your Honor, I represent a gentleman named Benjamin Dubard, who is from -- grew up here in Florence. He lives in Charleston now.

And Mr. Dubard purchased HEX tokens beginning in the fall of 2020, and he has purchased continuously, had holdings in

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HEX up to the present day, purchased additional tokens after that initial purchase in 2020 on multiple occasions.

Mr. Dubard is, therefore, part of the class that the plaintiff purports to represent in this case. However, he does not agree with the relief that the plaintiff is seeking, specifically a declaration by this Court that HEX is a security. He thinks that would be devastating to HEX, to its value, to its future value, to the ability of the token to be exchanged or traded on exchanges at some point in time.

All of that, Mr. Dubard believes, along with many other people in the HEX community, would be devastating to their interests. So we have filed a motion to intervene in the action, and we submitted a brief yesterday as to why we believe we satisfy the elements under Rule 24(a) or Rule 24(b) for intervention, first, as a matter of right and then, secondarily, permissive intervention.

The key issue here, Your Honor, is that there's no question Mr. Dubard has an interest that's entitled to be protected in this case. He is, as I said, part of the class that the plaintiff purports to represent.

THE COURT: This has nothing to do with the merits of the case. What -- what amount, what value does he have in it?

MR. ABNEY: I'm not exactly sure what his total value is. I know it's more than the plaintiff's value. As I understand it, the plaintiff has less than $2,000 --

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THE COURT: Right.

MR. ABNEY: -- worth of HEX. It exceeds that amount, but I can't -- I'm not sure what the total value is.

THE COURT: It doesn't really matter. I was just curious.

MR. ABNEY: Sure.

THE COURT: Yeah.

MR. ABNEY: But I believe it is a significant stake.

And the real issue is, you know, you're only hearing -- I know you really haven't gotten to the merits in this case yet of whether or not HEX is a security, but as it stands, you're only going to hear one side of that argument, and this is a cutting-edge issue.

There are opinions coming out of federal courts fast and furious every day, determining what aspects of cryptocurrency is and is not a security and subject to securities regulation. And it would do a disservice to the Court and the public for you to make a determination on that issue without hearing from the other side. Mr. Dubard brings that other side, and if he is not allowed to intervene, no one in this litigation is going to represent the other side of that issue.

On the timeliness of the issue, I saw in the response that Mr. Newman filed this morning there is some argument that Mr. Dubard knew about this case a while back, and I've acknowledged that in the brief that he knew there was a

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lawsuit against Richard Schueler shortly after this litigation was initially filed. He's not a lawyer. He didn't necessarily understand all the implications of that.

Mr. Newman has provided a -- I'm not exactly sure where -- I think it's also from HEX, but where my client retweeted a summary of what was happening in the South Carolina litigation and the federal litigation back in the fall of last year. We acknowledge that.

But the -- the mere time that has passed between the time he became aware of a lawsuit and filed a motion to intervene is not dispositive. The Court must also look at whether there is prejudice to any existing party from allowing my client to intervene and how far the litigation has really progressed. And while this litigation has been around for a long time, it really has not progressed substantively very far.

THE COURT: Right.

MR. ABNEY: So there would be no prejudice to anyone by allowing my client to intervene. And again, I think it would be to the benefit of the Court to hear his perspective and the other side of this critical --

THE COURT: All right.

MR. ABNEY: -- complicated issue.

THE COURT: Okay. Let me interrupt for just for one minute.

MR. ABNEY: Sure.

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THE COURT: That sort of has -- that has a ring of truth to it there, and I'll hear what he's got to say about it. But before we get to that, let's determine when did y'all receive notice of his motion?

MR. NEWMAN: Yesterday at 4 o'clock, Your Honor.

THE COURT: All right.

MR. NEWMAN: Now, Mr. Abney has --

THE COURT: Now, what do you -- what do you think about -- are you prepared to argue that today or --

MR. NEWMAN: No, sir. I don't believe it's ripe under the Rules of Civil Procedure --

THE COURT: Right.

MR. NEWMAN: -- unless we were --

THE COURT: And -- and you want to continue it? Do you want a continuance?

MR. ABNEY: That's -- that's it. So, I mean, I had to file the motion to intervene --

THE COURT: Right.

MR. ABNEY: -- I guess, to establish the right to seek a continuance of this hearing.

THE COURT: Right.

MR. ABNEY: I was retained at 5 o'clock on Friday.

THE COURT: Right. Okay.

MR. ABNEY: And so that was the --

THE COURT: Well, clearly, I think everybody needs to --

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I haven't even read your motion --

MR. ABNEY: Yeah.

THE COURT: -- to tell you the truth. I just received that this morning. So we're going to -- the merits of the motion is -- it's not ripe to be heard.

So I'll grant your motion for continuance and ask that you prepare an order to that effect. And -- and I want -- and certainly, you need to have the opportunity to -- to brief that, and I understand there's a lot of federal litigation that addresses these issues and it'll be a good opportunity for me to take a look at it.

MR. NEWMAN: Yes, sir. My -- my understanding is that the substance of Mr. Abney's motion to continue is to continue the class certification motion. We agree with him that the motion to intervene would not be ready to be argued at this point, but we'd like to continue with the class certification motion at the conclusion of this.

MR. ABNEY: Well --

THE COURT: Well, that kind of -- I think -- don't you think it would be good for us to hear the opposing view as to whether or not that should take place?

MR. NEWMAN: As to whether the class should be certified?

THE COURT: Yes.

MR. NEWMAN: What worries me, Judge, is Mr. Smith has got his notice of intent to appeal polished up. And assuming that

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you rule in our favor on that, we'll be in front of the Court of Appeals and the Supreme Court for six months to a year trying to get that resolved, if we're successful in getting those appeals dismissed, and then this morning we hear Mr. Smith mentioned a possible petition for writ of certiorari to the United States Supreme Court, which will take us certainly to the end of its term next year.

So June of 2025. In the meantime, if we should have been -- if we could be representing the class as a class representative instead of a putative class representative, that would give us a better opportunity to operate in the best interests of -- of the class members.

Now, in terms of whether -- this opposing viewpoint that Mr. Abney is discussing, he's mentioning whether or not this -- this instrument is actually a security that he's assuming his intervention is correct. At that point in time, you know, there's nothing to prohibit him from taking that position once this class has been certified. In fact, if that -- if you grant summary judgment on that point with the certified class, it's actually better for his client's perspective because that would be binding on all the class members at that point.

So it's our position, Judge, what we'd like is to certify the class and allow Mr. Abney to continue with his motion to intervene. Mr. Smith can do what he wants to do.

As an example of things that we may need as a class

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instead of as a putative class, we have discovered that the defendant has bank accounts in Finland where some of these ill-gotten gains have been deposited. Now that we have that knowledge, we can use the Hague Convention -- there's that -- there it comes again -- to subpoena documents from this bank.

We may have issues with a foreign court that says with an $1,800 interest, we're not going to -- to prohibit you to delve into this evidence at this point, but with an interest delving into the potential of tens of millions, in the interim we may be able to represent this class better once the class is certified.

THE COURT: I'll tell you -- I'll tell you what -- what I think, and I'll -- I'll be glad to hear from you.

MR. NEWMAN: Thank you.

THE COURT: It seems to me that the motion to intervene is not ripe, and that we'll put that off. An international complex case is not something that I deal with frequently. I would like to hear what he's got to say about whether or not it should be certified as a class.

MR. NEWMAN: Okay.

THE COURT: So we're going to -- and we aren't -- that isn't going to cause a huge delay because everybody knows, you know, we have chambers weeks, we have non-jury weeks. We can set it up at the end of a General Sessions term. If the case is delayed, it ain't going to be on my account.

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MR. NEWMAN: Yes, sir.

THE COURT: So all y'all have to do is get together, determine when y'all want to hear it, and I'll make it happen.

MR. NEWMAN: Okay.

THE COURT: But we aren't going to -- we aren't going to delay it on my account.

MR. ABNEY: Judge, a delay won't be on my account either, Your Honor. I think I need -- I could do 30 days and brief the class certification motion and be right back here to argue.

THE COURT: All right. Well, that'll be good. Y'all -- I'll leave that up to y'all and -- and just let me know when and we'll -- we'll do that. We'll mount up and we'll get to hear -- get to hear everybody's position on that.

MR. NEWMAN: Yes, sir.

THE COURT: All right.

MR. ABNEY: Thank you, Your Honor.

THE COURT: Is there anything else we can do before we adjourn on this matter?

MR. NEWMAN: We spoke briefly, Judge, last week about Ms. Schueler's pending protective order motion in Beaufort County and whether that should be appropriately heard by you.

THE COURT: Well, I've given that some thought, and I think we had a case like that. I don't even remember what my ruling was on that. I think we probably never did really

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decide on it, but this case is different than that in that I've been assigned it and it's a complex case. If Twombley -- is it Twombley who is --

MR. NEWMAN: Yes, sir.

THE COURT: Yeah. If -- my ruling -- and I'm going to ask that you issue an order. I will hear the hearing and as an accommodation to him, we can do it by WebEx. If he doesn't want to come up here from Beaufort, that's fine. We'll do that, but I think under these circumstances, clearly, I should hear that. And put in the order that if he has an objection to me hearing it, we will hear that -- hear that at the time of the motion.

MR. NEWMAN: Yes, sir.

THE COURT: And then I'll rule on that after he's had an opportunity to speak on it. But preliminarily, I'm the one that's going to hear it. And if he has an objection to it, he can put that on the record.

MR. NEWMAN: Yes, sir.

THE COURT: And then we'll -- and then I'll rule and we'll go forward.

All right. Anything else?

MR. NEWMAN: I believe that's it.

THE COURT: And you'll prepare that order with regard to Twombley?

MR. NEWMAN: Yes, sir.

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THE COURT: Okay. All right. And proposed orders on the other?

MR. ABNEY: And you asked me to prepare an order on the continuance?

THE COURT: Yes.

MR. ABNEY: I'll do that.

THE COURT: And proposed -- and, Mr. Smith, you can prepare a proposed order on the 59 and the 60 motion.

MR. SMITH: How long, Judge?

THE COURT: Well, how long do you need?

MR. SMITH: Well, to be forthright, my --

THE COURT: Do you need abundant --

MR. SMITH: -- associate is on his honeymoon.

THE COURT: Yes.

MR. SMITH: So unless you want me writing the order, which --

THE COURT: Okay.

MR. SMITH: -- I'm getting on a plane Friday and I'm being gone for two weeks.

THE COURT: Right.

MR. SMITH: Can I have 20 days? Fifteen -- 20 days?

THE COURT: I think, certainly, that would be fine. And if there's a real problem about that, let me know, but let's try to get it within 20.

MR. SMITH: Okay.

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THE COURT: If you have a problem, let us know.

MR. SMITH: All right. Will do.

THE COURT: All right. All right. Thank y'all.

MR. RADEKER: Thank you, Your Honor.

MR. NEWMAN: Thank you, Judge. We appreciate your --

MR. ABNEY: Thank you, Your Honor.

THE COURT: All right.

MR. NEWMAN: -- accommodation on a non-roster day.

(WHEREUPON, the proceedings ended at 10:34 a.m.)

--- END REQUESTED TRANSCRIPT ---

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State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, notary public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 28, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 25th day of June, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

July 2, 2024

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EXHIBIT B

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STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
	*	
COUNTY OF FLORENCE	*	TRANSCRIPT OF RECORD

JOHN DOE, pseudonymous owner of HEX ERC-20 tokens, on behalf of his or herself, and all others similarly situated,	*	
Plaintiff/Class Representative,	*	
vs.	*	Case No. 2022-CP-21-01980
RICHARD JAMES SCHUELER a/k/a RICHARD HEART,	*	
Defendant.	*	

June 10, 2025

B E F O R E:

The Honorable Michael G. Nettles, Presiding Judge

A P P E A R A N C E S:

Graham Newman, Esq.
Andrew Radeker, Esq.
Mark Chappell, Esq.
Attorneys for the Plaintiff

Merritt Abney, Esq.
Attorney for the Defendant

Ashley Twombley, Esq.
Murrell Smith, Esq.
Attorneys for Lorraine Schueler

Recorded by: WebEx Recording

Court Transcriber: Bobbi Fisher, RPR
SC Official Court Reporter III

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

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P R O C E E D I N G S

THE COURT: All right. I apologize for my tardiness; I'm doing General Sessions, and they kept me going a little bit late, and I had to get a quick bite to eat. So I apologize for my tardiness, but I'll be glad to hear from the moving party.

How can I help y'all?

MR. NEWMAN: Thank you, Your Honor. Graham Newman here for the plaintiff.

There are several motions that are pending right now. I have a few thoughts on what to take up first. I thought we'd start with the oldest motion first, but I think Mr. -- I'm sorry. Is he here? Yes, there he is. I'm sorry. It's sort of like Hollywood Squares.

I think Mr. Abney had some thoughts on what should go first.

MR. ABNEY: Judge, Merritt Abney from Charleston. I represent Ben Dubard, who filed a Motion to Intervene in this action about a year ago.

And you may recall, you may not; we held a hearing on that motion in June of last year. There was, at that time, pending the Motion for Class Certification as well. And at that hearing, we effectively argued the entire Motion to Intervene, and Your Honor had indicated at that point that you were inclined to let my client intervene and wanted to hear

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from us on the issue of class certification. But, ultimately, you continued the motions based on the fact that we filed our Motion to Intervene on the eve of that hearing and actually requested to have the motion continued for that reason.

And so it just makes sense to me that, for purposes of the rest of the motions, which I may have comment on, it would help me to know whether I'm in the case or not before we go through all the remaining motions. And it also seems to me that the next motion probably ought to be the class certification motion because, you know, my client has filed a response in opposition to that motion and set forth some reasons why it shouldn't go forward as a class and reasons as well why it shouldn't go forward at all.

And so it seems to me that, you know, for purposes of determining the scope of discovery with respect to these remaining motions, particularly when you're involving third parties, it may help the Court to at least have some sense of whether this is a class action that, you know, with significant money at issue, or whether this is just an individual case with about, you know, less than $2,000 in damages.

So those were my thoughts on sort of the order of how we ought to proceed.

THE COURT: And refresh my memory: With regard to your Motion to Intervene, I recall that. Was there not a ruling on

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that? We continued all of it; is that correct?

MR. ABNEY: That's my recollection, Judge. And I went back and looked at the transcript, and there was no ruling. You had indicated that you were inclined to hear from my client because, you know, as it stands, there's nobody taking the other side of this issue, particularly the issue of whether or not this particular cryptocurrency is a security or not because the defendant is in default.

And what I understood Your Honor to say is that you wanted that advocacy from both sides before you ruled on an issue like that, and I think that makes a lot of sense.

I'm happy to, you know, essentially -- I can go about this however you want. I'm happy to re-argue the motion if you want, but if you were inclined to --

THE COURT: I tell you what, I'm going to let you hit the high points, and I'm going to allow them to respond and then I just might make a ruling.

As far as the Motion to Intervene, I'll be glad to hear from you in the skinny version of it.

MR. ABNEY: I'll do my best to keep it skinny, Judge.

THE COURT: All right.

MR. ABNEY: Let me just sort of try to briefly explain why my client wanted to get involved. So the plaintiff brought this action against Richard Schueler seeking to represent a class that I understand is essentially a worldwide

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class, defined as all individuals or entities who purchased HEX tokens within the statute of limitations.

Now, HEX is an open-source software program available to the general public comprising of a digital token called HEX that runs on a secure decentralized network of computers known as the Ethereum blockchain.

Plaintiff alleges that HEX offers profit through the use of what is called a smart contract, essentially a computer program that operates on the internet. Along with his claim seeking damages against Mr. Schueler, the plaintiff requests a declaratory judgment from this Court that the HEX investments in smart contract is a security within the meaning of the Federal Securities Act and the South Carolina Uniform Securities Act of 2005.

So my client, Ben Dubard, is a resident of South Carolina, raised in Florence County, and he's owned HEX tokens since 2020 and purchased tokens within three years before this action commenced. So Mr. Dubard is a member of the purported class. However, Mr. Dubard has a very different perspective than that provided by the plaintiff, and their interests do not align at all.

It's Mr. Dubard's position that HEX is not a security, and he wants to ensure that Plaintiff's view of the federal and state's security laws doesn't interfere with the rights, the financial interests, and legal activities of HEX owners

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like himself.

He asserts that a determination by the Court that HEX is a security would adversely impact the value of his position in HEX tokens and make it more difficult and inefficient to trade HEX and other cryptocurrencies on various exchanges. Because there's no existing party to this litigation that represents Dubard's interest in the outcome of this case, he wants to -- he's requesting an order allowing him to intervene in the action.

Intervention can be allowed as a matter of right or it can be permissive under Rule 24. We have gone through in our brief the four elements under Rule 24(a). We have to establish timely application. We have to assert an interest relating to the property or transaction which is the subject of the action. We have to demonstrate that our client is in a position such that, without intervention, disposition of the action may impair or impede visibility to protect his interests and demonstrate that his interest is inadequately represented by other parties.

The U.S. Supreme Court, in addition, has recognized that members of a class have a right to intervene if their interests are not adequately represented by an existing party to the action. And, in fact, class members regularly intervene in actions purportedly brought on their behalf to protect their unique interests all the time.

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So going through those elements just as quickly as I can, Dubard clearly holds an interest related to the subject of the action. As I said, he's owned HEX tokens continuously since 2020, and he purchased tokens within three years before the plaintiff filed the action. Plaintiff cannot possibly argue he doesn't have an interest in this action because he is a member of the class that the plaintiff purports to represent.

Next, denial of intervention would impair or impede his ability to protect his interests. If the Court doesn't permit Dubard to intervene, the Court will not hear his perspective or any argument on the ultimate issue -- his side of the ultimate issue of the case, which is whether or not HEX is a security.

The Court has placed the defendant in default, and he has not appeared. So other than the plaintiff, there's nobody who has appeared to take that side of the issue. And if the Court doesn't allow Dubard to do it, you're only going to hear one side of the argument of a very significant issue that is playing out across the country.

THE COURT: All right.

MR. ABNEY: Go ahead, Your Honor.

THE COURT: I'll tell you, what I'm going to do, unless I hear some compelling reason not to do it, is -- I've got a courtroom full of people, and I think -- I was talking to my law clerk or he set up this hearing because it was so

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difficult to get all of y'all together, and this was the only time that was convenient for everybody.

But what I would like to do is to hear from everybody with regard to the Motion to Intervene, and then I am going to make a ruling on that by the end of the week -- a week after I receive proposed orders. And then I think, within the week thereafter, we'll address the issue of class action.

Does that sound reasonable to y'all, given my predicament?

MR. ABNEY: It does to me, Your Honor.

MR. NEWMAN: Yes, Your Honor.

MR. SMITH: Yes, sir, Your Honor.

THE COURT: All right. Let me hear from anybody who would like to be heard on whether or not the Motion to Intervene should be granted.

MR. NEWMAN: This is Graham Newman on behalf of the plaintiff. Judge, this is the first of several issues that will come up today where people who are not the defendant are attempting to do the defendant's bidding. We believe that the defendant is both funding and directing these actions behind the scenes, leading to what you have, the large number of motions that are pending before the Court today.

I understand that Mr. Abney's client is not happy with Mr. Schueler's decision to not appear in this case, but that's Mr. Schueler's doing. He has chosen to avoid participation in

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the judicial process and hope that things fall where they may.

We also believe that he's attempting to direct these third parties -- the first being his mother, the second being Mr. Dubard -- in order --

THE COURT: You're saying that the defendant has solicited the help of Dubard?

MR. NEWMAN: Someone other than Mr. Dubard, we know, has solicited his help. And we've placed that within the record. It's on social media. You know, we first started seeing that a few days before --

THE COURT: Do you have evidence of that?

MR. GRAHAM: Yes, sir. It's in our filings.

And it may not be the defendant, Judge, but according to the post on social media, $100,000 was raised from a single source to pay for Mr. Dubard's representation. We had no idea that this was going to happen until we started seeing that the week before the class certification motion was to be heard, and then, the day before or two days before, I believe, Mr. Abney reached out to me to let me know that he had been retained.

Now, that's fine; Mr. Abney has done nothing wrong in this case and neither have the other lawyers in this case, and there's nothing wrong with a third-party raising money here. One of my primary problems with what's going on in this Motion to Intervene is Mr. Dubard is not representing his interest.

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He's representing the interests of somebody else, and we don't know who that is.

Now, Judge, after we had this --

THE COURT: Well, he has a direct financial interest in it if he owns it and if the decision would affect his ability or the value of what he owns. Wouldn't you agree?

MR. GRAHAM: I don't think that -- I think, if he would to continue to own it, he would have a sufficient interest, if we were seeking to move his assets from one place to another.

But, Judge, in terms of the value of it, it's sitting on 0.2 cents today. It can't go much lower. In fact, the value to Mr. Dubard at this point would, frankly, be a positive one if it would be successful. He would actually be able to get his money back if he wants to.

One way or the other in this case, no matter how it turns out, he's keeping his HEX tokens, unless he wants to turn them in and get his money back. But we're not trying to take them from him. You know, we're not trying to -- in fact, we're trying promote the value, if nothing else.

Mr. Dubard, having a difference of opinion with the plaintiff in terms of the securities law, simply isn't -- under South Carolina law, there's got to be a real proprietary interest, and I don't believe that whether the speculative value of this crypto token goes up or down is sufficient to get there.

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But, Judge, again, we don't believe it's his interest that he's looking out for; it's the interest of other people who have apparently funded six figures for his participation in this litigation, and who we strongly suspect may be the defendant, whether he knows it or not. I suspect the best thing Mr. Dubard can do is tell us that he doesn't know where the $100,000 winds up, which, to me, may be even worse. We've got no idea whose interest he's looking out for.

Beyond that, Judge -- and, again, the time limits, it's an absolute requirement, and this motion was filed one day before the Motion for Class Recertification was to be granted. And we've placed in the record and also on social media, these third parties were concerned about how that motion was going to turn out.

Now, Mr. Dubard has admitted in his filings that he knew as early as October of 2022 that this case could be filed -- that this case has been filed, rather, and he did nothing.

Fast forward until September of 2023. Mr. Dubard is re-posting memoranda that details exactly what this case is, who the judge is, who the parties are, what the claims are, that this is a potential class action, and he does nothing. He sits on his hands and he does not file this motion until the day before the class certification is to be filed and then asks for it to be continued.

Now, I want to go back to the first question. Mr. Abney

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suggested that you were inclined to grant the Motion to Intervene. That was not my recollection. My recollection was that you were inclined to grant his motion to continue the case so that we could then argue the Motion to Intervene later on. So he was successful --

THE COURT: Well, I have not ruled on it one way or the other. I just want to hear the merits of the argument, and I'm going to receive proposed orders and make a decision from there.

MR. GRAHAM: Yes, sir. Thank you.

Now, Mr. Dubard intended to stop the Motion for Certification, and he did. And then, later, the people who had recruited him celebrated about it and continued to celebrate about it as recently as April of 2025. All that's been placed in the record.

So, again, the motion was not timely. The motion -- the interest that he's seeking to protect were not his own.

And then lastly, Judge, with regard to permissive intervention, Mr. Dubard has got to demonstrate that he has claims and defenses in this case in order to intervene.

And as far as defenses go, no one has accused Mr. Dubard of having done anything wrong. There's no legal interest that he needs to protect in terms of, you know, defending himself from some sort of accusation. There's no claim that he has here. There's not a property interest that he can protect.

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There is simply whether or not this token is going to be declared a security, which has nothing to do with him possessing it going forward or actually promotes his monetary interest.

What he is doing -- and with regard to the Motion for Class Certification, Judge -- is asserting defenses that do not belong to him. For example, within the class certification issue, he argues that the class definition is inappropriate because it extends beyond the realms of personal jurisdiction.

The personal jurisdiction argument is an argument for Mr. Schueler to make, but it has been waived because he's not shown up. Now, Mr. Schueler decided to do that -- as we all know, this case has gotten a fair amount of publicity, and we've contacted other lawyers who absolutely are representing him, and he's still choosing not to show up.

Now, why is he doing that? It's because Mr. Schueler has a red notice out. He's on Europol's top 10 most wanted list right now. As soon as he hits an airport, he's getting arrested.

I'm sorry for Mr. Schueler, but, you know, he's decided that's the best thing he could do for himself. We think he's using these other folks to attempt to have this case dealt with at the same time, but Mr. Schueler can't have his cake and eat it too. So we think intervention in this case would

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be inappropriate, Your Honor.

THE COURT: All right. Who else would like to be heard on that issue?

MR. TWOMBLEY: Your Honor, my name is Ashley Twombley. I represent Mr. Schueler's mother. She lives down here in Beaufort. And without -- you know, reserving all our arguments as to her issues, I would just point out that, you know, notwithstanding the things that Mr. Schueler has been accused of but not been convicted of, the central question in this case involves a novel and cutting-edge legal issue related to whether or not cryptocurrencies are securities.

Plaintiff seeks a worldwide class action regarding that issue. It's my client's position that it would be very wise for the Court to hear from Mr. Abney on the question of whether or not this is a security or not. As I've said, this issue is being litigated all over the country. It's been litigated in several federal district courts. The Securities and Exchange Commission are litigating some of these cases. It's is a very important and significant issue, and I think it would be wise for the Court to at least hear from Mr. Abney on what his position is.

Irrespective of all of the bad things that have been said about my client's son, none of those relate to the critical question in the case, which is: Is HEX a security under federal law and state law? That is the central question.

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The second question, Your Honor -- and I think this is more of a practical question, but if it would --

THE COURT: The issue with regard to the question of whether or not it is a security probably would be best dealt with later. We need to determine whether or not he has a right to intervene first. Wouldn't you agree?

MR. TWOMBLEY: I would agree, but I think the reason that he wants to intervene is important and the significance of the issue is important, and I think that the Court hearing about other arguments as to why this is not a security is important.

One last point I'll make, Your Honor, is that the other issue I think that's so important is, even if HEX is a security, the next question is: Does the plaintiff -- is he an adequate representative of the class of people that he would like to represent? That is so critical, Your Honor, because that's going to determine whether or not this is a case about $1,600 or, in the alternative, a case about hundreds of millions of dollars.

And it would seem to me that it would be wise to determine exactly what the Court is dealing with and how big this potential problem is and what the impact of any decision the Court would make before the Court makes those decisions.

And so, reserving all of the arguments that we have related to my client's motion, we think it's wise for the Court to hear opposing arguments from Mr. Abney.

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MR. NEWMAN: Judge, just briefly in response and not to belabor it, but the central issue of whether HEX is a security was answered as soon as the defendant fell into default. Even if Mr. Abney's client appears, he does not have the ability to stand in the defendant's shoes and lift the default against him.

So I'm not sure what Mr. Abney's client is going to do beyond attempt to (indiscernible) class certification at this point. The question has been answered as soon as the defendant -- the promulgator and the seller of this instrument -- chose not to challenge that factual and legal contention that was set forth in the Complaint and served upon him.

MR. ABNEY: Your Honor, if I may, I'd like to respond to Mr. Newman.

MR. REDEKER: Can anyone hear me?

THE COURT: Yes. First, on that timing issue, I filed this Motion to Intervene a year ago --

THE COURT: I'm trying to determine who is speaking.

MR. ABNEY: It's Merritt Abney, representing --

THE COURT: Okay. I'm sorry. You're in a shadow. I couldn't tell that that was you speaking. Go ahead.

MR. ABNEY: Can you see me?

THE COURT: Yes, I can.

MR. ABNEY: Okay. On the timing issue, it is true -- and we disclosed out of the gate before anyone asked the question

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-- that my client was aware of the lawsuit being filed shortly after it was filed. But he is not a lawyer. He did not recognize the fact that what this plaintiff is seeking is a declaration from this Court that HEX is a security under federal security laws.

He did not recognize that there was a way for him to step in and try to prevent that from happening. And once that became apparent, he moved to intervene. And there's simply no prejudice to any party by letting him in at this point. Not a lot of discovery at all has been done in this case since before the motion was filed and nothing has happened in the past year since we moved to intervene.

So there's simply no prejudice. The only prejudice would be to the Court and to my client by the Court not hearing the other side of the issue and the explanation for why HEX is not a security. But as for the issue of --

THE COURT: Your position as to whether or not it's a security, let me hear your views on that.

MR. ABNEY: Yeah, it's simply, under the Howey test that determines whether or not a particular instrument is a, quote, "investment contract," it just doesn't meet that definition.

And Mr. -- you know, Mr. Newman is arguing that this Court has already decided that issue by virtue of a default. Well, that's simply not the case. A default judgment where the Court has made no determination is very different from the

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Court weighing in to this worldwide debate that is happening on whether cryptocurrencies are securities and making a pronouncement on that. That affects people beyond this particular lawsuit.

If there were no issue here other than damages against Mr. Schueler, we might have a very different situation. But they are seeking a broad determination from a South Carolina state court that HEX is a security under federal law. And that impacts a lot of people.

So while it is absolutely true, as Mr. Newman said, that there's been a lot of chatter involving my client's decision to intervene in this action, that is because there is a huge contingency of people out there who are very concerned about that ruling coming from this Court.

And as you'll see, in connection with our arguments opposing class certification, the interest that this plaintiff is attempting to assert are antagonistic to an enormous group of people who own HEX and have an interest in seeing that cryptocurrencies like HEX are not deemed to be securities, so much so that they filed amicus briefs in connection with an action in federal court in New York that the SEC brought in connection with the same issue.

So, Your Honor, all we are asking is the chance to come into the court and be heard and allow the Court to hear both sides of a sort of cutting-edge issue that you've been asked

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to decide.

THE COURT: All right.

MR. NEWMAN: Your Honor, I think Mr. Redeker was attempting to say something earlier.

MR. REDEKER: Yeah, I had started talking and Mr. (indiscernible) and then Mr. Abney started talking.

MR. NEWMAN: Drew, we can't hear you very well.

THE COURT: That might be the problem. We can't hear you.

MR. REDEKER: I'm sorry. I don't know what to do.

THE COURT: Sit a little bit -- sit a little bit closer to the computer and talk loud.

MR. REDEKER: All right. Can you hear me now?

THE COURT: That's better.

MR. REDEKER: Okay. Well, I'll just kind of yell it.

THE COURT: That's the extent of my technical knowledge. Talk louder and sit closer.

MR. REDEKER: One of the things I was going to say is, merely because there is some tangential financial effect that will be or could be occasioned by some ruling, our courts have never said that that is a direct interest in the litigation sufficient to allow someone to intervene.

Two, if Mr. Dubard does not want to be bound by the ultimate decision in this case, all he's got to do is, when the opportunity to opt out of the class, if one is certified,

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is presented to him, is to opt out and then he won't be bound by it.

And the other one is this: I'm curious about why Lorraine Schueler, if she's not a party and doesn't herself have an interest in this litigation, is arguing in favor of this third party's Motion to Intervene. If this really has nothing to do with her, she shouldn't care at all about how the Motion to Intervene comes out, but she -- "she" -- obviously does; the real litigant, Richard Schueler, behind her obviously does. And that's what I have to say.

THE COURT: All right.

MR. TWOMBLEY: And, if I could, I'll just say that we have an interest in the Court receiving accurate representations and making a correct decision based on the law. And I don't care who I represent; I would always want the Court to know what the truth is and to make an appropriate decision based on the law. I don't want to argue those issues, but I believe it can be shown that some of the things that are said in the Complaint are fundamentally incorrect, and that bears on the ultimate question.

So whether I represent the janitor, Ms. Schueler, or Mr. Schueler, that's my position.

MR. ABNEY: Your Honor, if I may, I'd like to just respond to Mr. Redeker very briefly on the issue of my client being able to opt out.

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Certainly, again, if all this was about was damages against Mr. Schueler, yeah, maybe. But it's not. You can't opt out of a declaration by a South Carolina state court that HEX is a security under both federal and state securities laws.

Markets react to that. Exchanges react to that. That imposes regulation on everyone that has to anticipate what that means. And so it's not a situation where we can -- you know, it can be cured simply by opting out of the class.

Irrespective of whether this is a class or not, a ruling that HEX is a security is going to impact a lot of people.

MR. REDEKER: I don't see how the value of HEX could get much lower than it is now. And also, again, I note that the law in this state is our courts have never held that tangential economic effects, which is all that Mr. Abney has just described, constitute a direct interest in litigation to allow someone to intervene.

Nobody is trying to take anything away that Mr. Dubard owns. Maybe it might declare that his worthless security is worthless. It's worthless now.

THE COURT: All right. Does anybody else want to be heard on that?

MR. NEWMAN: I have got a change tangential point, Judge, but I'll wait to see if anyone else wants to speak.

Judge, after this motion was filed, we served a

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deposition notice and subpoena on Mr. Dubard to get some information from him about what exactly his role was in deciding to file this motion, who contacted him, who he relied on and, eventually, a Protective Order to quash that subpoena is currently pending.

Perhaps, while we put together these orders, it's a good time for us to put Mr. Dubard under oath to answer some of these questions. One way or the other, I'm going to want to depose him because I think he's a witness at this point. And so if you deny the Motion to Intervene, I think I'd be entitled to depose him.

MR. ABNEY: I can respond to that if you want, Judge.

THE COURT: Yes.

MR. ABNEY: I mean, I moved to quash on the basis that I don't know whether I'm in or out right now. And so, the subpoena for documents and deposition testimony was premature. You don't get to depose someone to determine whether or not they can intervene. It's a decision that is based on the pleadings, and all the allegations in the pleadings must be accepted as true, just as in a Complaint at the Motion to Dismiss stage.

So I'd agree that Mr. Newman, at some point, if I'm allowed to stay in -- and even if I'm not -- may be allowed to depose my client. But until I know whether we are a party or not a party, we don't necessarily know how to approach that

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subpoena and the scope of the subpoena.

So all I was saying with the motion was let's not put the cart before the horse. Find out whether we're going to be a party or not, and then we'll deal with the discovery.

THE COURT: Y'all have been living with this case for a pretty good while. What is the body of law with regard to whether or not this type of investment is indeed a security? I mean, how is it -- is it divided amongst the district courts?

MR. NEWMAN: It's a case-by-case basis, Your Honor. And the Howey test, which Mr. Abney spoke about earlier, is a case from 1948. So the law as well-established. How the law is presented in these instruments is --

THE COURT: Okay. That's what I want to know. And I would ask that y'all address that in your proposed order and how the cases have come out and for what reason.

Does anybody else want to be heard on that?

MR. TWOMBLEY: Well, Your Honor, I just want to make sure you're aware it's in the filings, but, you know, the Securities and Exchange Commission just brought a case in the federal courts in New York alleging that HEX is a security. And the federal district court dismissed that case and gave the Securities and Exchange Commission an opportunity to amend their Complaint, and the Securities and Exchange Commission declined to do so.

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And this issue, you know --

THE COURT: And that's what I want to be addressed in the proposed orders and let me look at it and study it and ponder on it.

MR. ABNEY: Just so I'm clear, Your Honor, on the proposed orders on the Motion to Intervene, you want discussion of --

THE COURT: I do want a discussion on that. Yes, I do.

MR. ABNEY: Okay.

THE COURT: Does anybody else want to be heard?

How long will it take for y'all to get these riveting briefs and proposed orders in?

MR. NEWMAN: Riveting? That's a...

MR. ABNEY: The addition of the security issue makes it -- makes it a little more complicated.

THE COURT: Well, I would like -- I think I need to know about that.

MR. NEWMAN: Mr. Abney, do you think the end of next week would be too soon?

MR. ABNEY: I think that's ambitious. Can we say 30 days?

THE COURT: Well, this is sort of an emergency that's been brewing for at least a year. So I would think 30 days ought to be fine unless anybody has an objection to it.

MR. NEWMAN: No objection, Your Honor.

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THE COURT: All right. And then I imagine we probably need to go ahead and move with speed and dispatch with regard to the remaining motions. But given the fact that we've got those people in the courtroom waiting on me, I probably need to go ahead and do that. I look forward to receiving those proposed orders.

MR. NEWMAN: Yes, sir.

MR. ABNEY: Thank you, Your Honor.

THE COURT: Thank y'all.

(The above hearing concluded.)

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Certificate of Transcriber

CASE NAME: John Doe v. Richard Schueler

DATE OF HEARING: 6/10/25

RECORDING METHOD: WebEx Recording

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Bobbi Fisher

/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

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EXHIBIT C

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

RICHARD J. SCHUELER, a/k/a RICHARD HEART, HEX, PULSECHAIN, and PULSEX,

Defendants.

----------x

MEMORANDUM & ORDER
23-cv-5749 (CBA) (PK)

AMON, United States District Judge:

INTRODUCTION

Plaintiff Securities and Exchange Commission ("SEC") brought this action against Defendants Richard J. Schueler (a/k/a Richard Heart) ("Heart"), Hex, PulseChain, and PulseX. (ECF Docket Entry ("D.E.") # 1 ("Compl.").)[1] The SEC alleges that Heart violated the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77a, et seq., and the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78a, et seq., by promoting, offering, and selling unregistered crypto asset securities and defrauding investors by misappropriating investor funds.

Pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, Heart moves to dismiss all claims both for lack of personal jurisdiction and for failure to state a claim. For the reasons stated below, the motion to dismiss is GRANTED.

[1] The SEC failed to respond to Heart's challenge to the SEC's purported "alter ego" theory regarding Hex, PulseChain, and PulseX. (D.E. # 50 ("Def. Mot.") 22-24.); (see generally D.E. # 52 ("SEC Opp.").) At oral argument, the SEC conceded that it failed to respond to this argument and that the alter ego claims were "not part of [its] theory for why the Court would have personal jurisdiction." (D.E. # 56 ("Oral. Arg. Tr.") 7:2-8:14.) I therefore find that the SEC chose to abandon any arguments it could have made regarding the alleged alter ego entities. See Maher v. All. Mortg. Banking Corp., 650 F. Supp. 2d 249, 267-68 (E.D.N.Y. 2009); Lipton v. Cnty. of Orange, 315 F. Supp. 2d 434, 446 (S.D.N.Y. 2004) ("This Court may, and generally will, deem a claim abandoned when a plaintiff fails to respond to a defendant's arguments that the claim should be dismissed.")

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BACKGROUND

The following facts are taken from the Complaint and are assumed true for purposes of this motion. I draw all reasonable inferences in the SEC's favor. See Buon v. Spindler, 65 F.4th 64, 76 (2d Cir. 2023).[2]

Heart is a United States citizen currently residing in Finland. (Compl. ¶ 1.) He is the founder of Hex, PulseChain, and PulseX, each alleged to be a crypto asset security (collectively, "Heart's Crypto Assets").[3] (Id.)

I. The Offer Periods

a. Hex

From December 3, 2019, to November 19, 2020, Heart offered and sold Hex tokens to investors, some of whom resided in the United States, in exchange for ETH ("Hex Offer Period").[4] (Id. ¶¶ 20, 29; Bahr Decl. ¶ 12.) Hex is an "ERC Token," which is a technical standard that defines how "fungible tokens" operate on the Ethereum blockchain.[5] (Compl. ¶ 12 n.1.) Heart designed Hex to operate on Ethereum as a "smart contract." (Id. ¶ 20.)[6]

The Hex offering and communications occurred globally through social media and Heart's websites.[7] (Id. ¶ 34; Bahr Decl. ¶ 6.) To facilitate the Hex offering, Heart created several digital

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[2] I also rely, as appropriate, on certain of the exhibits attached to the Declaration of Derek Kleinmann ("Kleinmann Decl." (D.E. #53)), including a transcript from the PulseChain Conference in Las Vegas, Nevada in September 2022 ("PulseCon Tr." (D.E. #53-4)) and the Declaration of Kyle Bahr ("Bahr Decl." (D.E. #53-5)).

[3] "Crypto-assets, which are also called cryptocurrency or tokens, are decentralized digital commodities . . . ." In re Bibox Grp. Holdings Ltd. Sec. Litig., 534 F. Supp. 3d 326, 329 (S.D.N.Y. 2021) (internal quotations omitted).

[4] ETH is a unit of cryptocurrency that is the native token, or digital asset, of the Ethereum blockchain. SEC v. Telegram Grp. Inc., 448 F. Supp. 3d 352, 360 n.3 (S.D.N.Y. 2020) (internal citation omitted).

[5] Blockchains are decentralized digital ledgers that serve to validate transfers of cryptocurrency. Id. at 360 n.2. "Blockchains consist of 'blocks' of data that track the ownership and transfer of crypto assets on a given network, dating back to the first-ever transaction on that network." Risley v. Universal Navigation Inc., 690 F. Supp. 3d 195, 202 (S.D.N.Y. 2023).

[6] Smart contracts perform self-executing functions when predetermined conditions are met. (Compl. ¶ 20 n.2.)

[7] Heart allegedly operates and controls: hex.com, hex.win, ethhex.com, pulsechain.com, and pulsex.com. (Compl. ¶¶ 12-14.)

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wallet addresses which he allegedly owns and controls.[8] (Compl. ¶ 36.) Heart created a digital wallet address on the Ethereum blockchain known as the "Hex contract address" ("Hex CA") and a separate private wallet address known as the "Hex Flush Address," which was programmed directly into Hex's code before he sold any Hex tokens. (Id. ¶¶ 30, 35-36; Bahr Decl. ¶ 13.) Investors sent ETH to the Hex CA and received Hex tokens in return. (Compl. ¶¶ 29-30.) The ETH in the Hex CA would then be automatically transferred, or "flushed," to the Hex Flush Address. (Id. ¶ 35; Bahr Decl. ¶ 14.)

According to the SEC, after investors' ETH transferred into the Hex Flush Address, it was sent through a series of transactions, known as "recycling," involving intermediary digital wallet addresses on crypto asset trading platforms before eventually being sent back into the Hex CA. (Compl. ¶ 37.) The holders of the digital wallet addresses perpetuating the "recycling" transactions would receive additional Hex for each transaction. (Bahr Decl. ¶ 21.) During its investigation, the SEC discovered that approximately 94 to 97 percent of the ETH deposited into the Hex CA went through this "recycling" process. (Compl. ¶ 37.) The SEC alleges that Heart created a false appearance of significant organic demand for Hex tokens, when in reality, the majority of these transactions were "recycling" transactions that let Heart gain control over a large number of Hex tokens. (Id.)

During the Hex Offer Period, Heart marketed and promoted Hex using several online and social media platforms, including Twitter, YouTube livestreams ("YouTube Live") and the Hex.com website. (Id. ¶ 34.) For example, Heart marketed Hex's "staking" feature, frequently referring to Hex as the first high yield "Blockchain Certificate of Deposit" on Ethereum. (Id. ¶ 44;

[8] "Digital wallets, pieces of software akin to a bank account for digital assets, store private keys, which grant control over individual tokens, and permit users to easily send and receive tokens via the blockchain." Telegram, 448 F. Supp. 3d at 362 n.4 (internal quotations omitted).

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Bahr Decl. ¶ 35.) Staking allows investors to "lock up"[9] their Hex tokens for a designated period in exchange for additional Hex tokens as a return on their investment. (Compl. ¶¶ 21, 45; Bahr Decl. ¶ 35.) Heart likened "staking" to conventional interest payments, claiming that investors would receive an average investment return of 38 percent. (Compl. ¶¶ 21-22, 46.) Heart also explained that the "staking" protocol benefitted everyone who held Hex tokens because "when people lock up their [Hex] coins," that would "cause[] the price to go up" and "the market cap to go down," allowing investors to "keep building appreciations and mad gains." (Id. ¶¶ 22-23, 49.)

The Complaint further alleges that Heart touted Hex's capacity for profitability claiming to investors that "if you want to get rich, [Hex is] built for that" and that Hex was "designed to surpass ETH" and become "the highest appreciating asset that has ever existed in the history of man." (Id. ¶¶ 24-25.)

It also recounts Heart's efforts to make Hex a success. Heart shared with potential investors "how to videos" describing how investors could purchase and stake their Hex tokens. (Id. ¶ 26.) Heart promised investors he would "personally call [crypto asset trading platforms]" to get Hex listed. (Id. ¶ 28.) Heart sent private Twitter messages to a crypto asset trading platform which subsequently listed Hex on its platform in December 2019. (Id.) Heart further claimed to investors that "almost all" of his time was going towards developing the Hex ecosystem. (Id. ¶ 27.) Two U.S. investors invested in Hex after learning about Hex through Heart's online activities. (Kleinmann Decl. ¶¶ 12-13.)

Heart also used incentives to attract investors. He promoted a rewards program called "BigPayDay" that rewarded investors who "staked" their Hex tokens with bonus payments of

[9] The Hex tokens would be sent to an ownerless address on the Ethereum blockchain. The "locked up" tokens could not be transferred out until the smart contract recognized the necessary predetermined conditions. (Compl. ¶ 22.)

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unclaimed Hex tokens. (Compl. ¶¶ 32, 47.)[10] Heart also orchestrated two separate airdrops to generate additional investor interest in Hex. (Id. ¶ 33.)[11] He identified significant holders of both Bitcoin and ETH and directed his developers to deposit Hex tokens into the holders' digital wallets. (Id.) The alleged purpose of these airdrops was to increase market awareness for Hex. (Bahr Decl. ¶ 24.)

Ultimately, the Hex offering received at least 2,371,362 ETH deposits from 21,156 identifiable digital wallet addresses, including deposits from 10 U.S. investors. (Compl. ¶ 34; Kleinmann Decl. ¶ 11.)

b. PulseChain

From July 15, 2021, to August 3, 2021, Heart coordinated an offering to raise investor funds to allegedly develop PulseChain ("PulseChain Offer Period"). (Compl. ¶ 51.) The SEC alleges that the PulseChain Offer Period was "unofficially" extended to April 6, 2022. (Id. ¶ 51 n.6; Bahr Decl. ¶ 53.)

PulseChain is a hard fork[12] of the Ethereum blockchain with its own native token Pulse ("PLS"). (Compl. ¶ 13.) The primary purpose of PulseChain was to run faster and with cheaper "gas" fees than Ethereum. (Id. ¶ 51; Bahr Decl. ¶ 47.)[13]

[10] Throughout the Hex offering, Heart allegedly distributed at least $1 billion worth of Hex tokens through this program. (Compl. ¶ 47.)

[11] An airdrop is a distribution of crypto assets where the recipient receives crypto assets without providing cash consideration or taking any steps to accept. (Compl. ¶ 33 n.11.)

[12] A "fork" occurs when an existing blockchain, in this case Ethereum, is copied and then a new set of rules applies independent of the copied blockchain. (Bahr Decl. ¶ 46); see also Raina S. Haque, Rodrigo Seira Silva-Herzog, Brent A. Plummer, Nelson M. Rosario, Blockchain Development and Fiduciary Duty, 2 STAN. J. BLOCKCHAIN L. & POL'Y 139, 164 (2019) ("[A hard fork] effectively allows any individual to copy the current publicly-available source code of a certain public blockchain's software application, modify it to reflect a new ruleset, re-release it to the public and coalesce a community around the revised protocol.").

[13] "Gas" fees are akin to a transaction fee that enables users to execute transactions on the network. PulseChain uses PLS as "gas." (Compl. ¶¶ 51 n.5, 54, 57.)

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To participate in the PulseChain offering, investors deposited or "sacrificed" crypto assets, including ETH, into a digital wallet address ("PulseChain SA"). (Compl. ¶ 51.) In exchange, PulseChain investors ultimately received PLS tokens in May 2023, when PulseChain launched. (Id. ¶¶ 52, 53.)

During the PulseChain Offer Period, Heart promoted and marketed PulseChain through his websites and social media. For example, Heart touted the expected profits for potential PulseChain investors, claiming that "14,000x is a reasonable estimate for what could be possible for Pulse[.]" (Id. ¶ 58.) Heart also emphasized his efforts to develop PulseChain. On YouTube Live, Heart described his progress to get PulseChain ready for the launch. (Id. ¶ 65.)

Ultimately, the PulseChain offering collected crypto asset deposits worth over $354 million, including deposits from at least 10 U.S. investors. (Id. ¶ 55; Kleinmann Decl. ¶ 11.)

c. PulseX

From December 29, 2021, to February 26, 2022, Heart coordinated an offering to raise investor funds to allegedly develop PulseX ("PulseX Offer Period"). (Compl. ¶ 67.) The SEC alleges that the PulseX Offer Period, like the PulseChain Offer Period, was also "unofficially" extended to April 6, 2022. (Id.; Bahr Decl. ¶ 53.) Heart developed PulseX and its native token PLSX around the same time as PulseChain. PulseX is a decentralized protocol on the Ethereum blockchain that acts as PulseChain's "decentralized crypto asset trading platform" through a fork of the Uniswap platform. [14] (Compl. ¶ 14.)

[14] According to the SEC, most secondary market transactions occur on Uniswap, a decentralized crypto asset trading platform. (Compl. ¶ 41.) On Uniswap, users identify which tokens they want to trade, and which tokens they want to receive, and then Uniswap "swaps" the identified tokens. See Risley, 690 F. Supp. 3d at 207 (discussing how Uniswap executes token swaps).

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To participate in the PulseX offering, investors similarly deposited, or "sacrificed," crypto assets to a PulseX digital wallet address ("PulseX SA"). (Id. ¶ 67.) In exchange, investors ultimately received PLSX in May 2023, when PulseX launched. (Id. ¶¶ 67, 69.)

During the PulseX Offer Period, Heart promoted and marketed PulseX through his websites and social media. Heart claimed PulseX was the "coolest, highest liquidity automated market maker exchange" and that it was "well within the realm of possibility" that PLSX would appreciate around "10,000x in two years." (Id. ¶ 70.) According to the SEC, Heart tied the launch of PulseX and PulseChain to an increase in profits for investors in Heart's Crypto Assets. Heart explained that when an investor deposits Hex tokens during the PulseX Offer Period, hundreds of millions of dollars in Hex tokens are removed from the supply. (Id. ¶ 72.) With this reduced supply of Hex tokens in circulation, Heart claimed that Hex tokens would appreciate and be "more valuable" on Pulse than on Ethereum. (Id.)

Ultimately, the PulseX offering received crypto asset deposits worth over $676 million, including deposits from at least 10 U.S. investors. (Id. ¶ 67; Kleinmann Decl. ¶ 11.)

II. Post-Offer Period Statements

a. Hex

After the Hex Offer Period, Heart continued to market and promote Hex to allegedly drive Hex's demand on the secondary market. (Compl. ¶ 38.) Hex's websites published statements claiming that "Hex appreciated faster than anything else" and that "Hex's primary design intention is price appreciation . . . ." (Id. ¶ 39.) Heart also directed potential investors to visit his website Ethhex.com, which allowed investors to transact in secondary market purchases directly through Uniswap. (Id. ¶¶ 41-42.)

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Heart also made two virtual appearances before audiences in the United States. In the SEC's view, Heart continued to promote Hex, PulseChain and PulseX during these appearances. Heart appeared at a conference known as "Hex Conference" in March 2022 and a conference known as "PulseCon" in September 2022. (Kleinnman Decl. ¶¶ 5, 8-10.) During these appearances, Heart touted Hex's "giant volume" on decentralized exchanges and that he "wouldn't be surprised if at some point Hex started doing the same things that it used to do, which is just overperforming like crazy." (Id. ¶¶ 5, 9.) On August 15, 2022, Heart also appeared in person for a live podcast interview in Miami, Florida, where he discussed Hex, PulseChain, and PulseX ("Miami Interview"). (Id. ¶ 6.) Heart again bragged about Hex's performance, claiming Hex produced "10,000x" returns in two years. (Id.)

b. PulseChain and PulseX

After the PulseChain and PulseX Offer Periods, Heart continued to market and promote PulseChain and PulseX. He stated at PulseCon that his developers are "geniuses; they find bugs other people don't" and that "before we launch . . . we want everything to be right." (PulseCon Tr. 2-3.) These statements are alleged to have led investors to believe that if Heart and his developers did not complete PulseChain's development, the value of their investment would collapse. (Compl. ¶ 65.) Heart also stated that because PulseChain is "gonna launch at zero . . . it's pretty hard to beat the ROI of something that goes from zero to anything . . . it's like infinite ROI." (Id. ¶ 59.) Based on Heart's statements, one Brooklyn investor believed that his deposits were being used to develop PulseChain and that PLS tokens would increase in value. (Id. ¶¶ 59, 64.)

Regarding PulseX, Heart, through a Telegram chat, described how PulseX functioned to one potential U.S investor. (Id. ¶ 70.) Heart provided the investor with step-by-step instructions

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on how to purchase crypto assets and how to transfer them to PulseChain and swap on PulseX. (Id.) Further, on YouTube Live, when asked about an update on the launch of PulseChain and PulseX, Heart replied that "[i]t's done when it's done. Software is hard. The [developers] are working hard on it. That's all there is to it." (Id. ¶ 75.)

III. PulseChain Fraud Allegations

The SEC further alleges that Heart defrauded PulseChain investors and engaged in deceptive conduct. From August 3, 2021, through September 22, 2022, the SEC alleges that Heart misappropriated $12.1 million of PulseChain investor deposits to purchase luxury items, including cars, watches, and diamonds. (Id. ¶¶ 61, 62.) To disguise these transactions, PulseChain deposits were first transferred to Heart's private wallet and then transferred through a series of "mixer"[15] transactions before ending up on three crypto asset platforms. (Id.) According to the Complaint, these mixer transactions ultimately benefited Heart through his personal purchases. (Id. ¶¶ 61-62.) Heart never disclosed to investors that their deposits would be used to fund such purchases. (Id. ¶ 66.)

IV. Complaint's Causes of Action

Based upon these allegations, the SEC asserts two basic claims for relief against Heart. First, it alleges that Heart violated Section 5 of the Securities Act by failing to register the offer and sale of Heart's Crypto Assets as required by the securities laws ("Unregistered Securities Claims"). 15 U.S.C. §§ 77e(a), 77e(c). Second, it alleges that Heart violated the antifraud provisions of the federal securities laws with respect to the offer and sale of his crypto asset PulseChain ("PulseChain Fraud Claims"). 15 U.S.C. §§ 77q(a)(1), 77q(a)(3), 78j(b); 17 C.F.R. §§ 240.10b-5(a), 10b-5(c).

[15] Mixer transactions anonymize transactions by disguising the origin, destination, and parties involved. (Compl. ¶ 61.)

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STANDARD OF REVIEW

I. Rule 12(b)(2)

To defeat a motion to dismiss for lack of personal jurisdiction, the plaintiff "need make only a prima facie showing that jurisdiction exists." Hoffritz for Cutlery, Inc. v. Amajac, Ltd., 763 F.2d 55, 57 (2d Cir. 1985) (internal citation omitted). Under this standard, a plaintiff "must plead facts which, if true, are sufficient in themselves to establish jurisdiction as to each defendant," Balestra v. ATBCOIN LLC, 380 F. Supp. 3d 340, 349 (S.D.N.Y. 2019) (internal quotation omitted), and to "each claim asserted." Sunward Elecs., Inc. v. McDonald, 362 F.3d 17, 24 (2d Cir. 2004). A plaintiff "can make this showing through his own affidavits and supporting materials, containing an averment of facts that, if credited, would suffice to establish jurisdiction over the defendant." Whitaker v. Am. Telecasting Inc., 261 F.3d 196, 208 (2d Cir. 2001) (internal quotations omitted). Further, the plaintiff may make a prima facie showing "notwithstanding a controverting presentation by the moving party," because "all pleadings and affidavits are construed in the light most favorable to the plaintiff, and [because] where doubts exist, they are resolved in the plaintiff's favor." Hoffritz, 763 F.2d at 57 (internal citation omitted).

II. Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint that "fail[s] to state a claim upon which relief can be granted." To survive dismissal, a complaint must state a claim that is "plausible on its face" by alleging sufficient facts for "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation and citation omitted). A court must dismiss a claim if the "well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id. at 679. Although courts will not credit "conclusory statements" or "[t]hreadbare recitals of the

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elements of a cause of action," id. at 678, the court must accept as true all material allegations and draw all reasonable inferences in the plaintiff's favor, Johnson v. Priceline.com, Inc., 711 F.3d 271, 275 (2d Cir. 2013). "In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010) (internal citation omitted).

DISCUSSION

I. Personal Jurisdiction

Heart first asserts that the SEC has failed to establish personal jurisdiction as to any of its claims. "To establish personal jurisdiction over a defendant, due process requires a plaintiff to allege (1) that a defendant has certain minimum contacts with the relevant forum, and (2) that the exercise of jurisdiction is reasonable in the circumstances." In re Terrorist Attacks on Sept. 11, 2001, 714 F.3d 659, 673 (2d Cir. 2013) (internal quotation omitted); see, e.g., Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). For purposes of the minimum contacts analysis, the SEC only asserts that I have specific jurisdiction over Heart. "Specific jurisdiction exists when a court exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contact with the forum . . . ." In re Platinum & Palladium Antitrust Litig., 61 F.4th 242, 269 (2d Cir. 2023) (internal quotation omitted). In determining whether specific jurisdiction exists, courts must assess the "quality and nature" of "the defendant's contacts with the forum state under a totality of the circumstances test." Best Van Lines, Inc. v. Walker, 490 F.3d 239, 242 (2d Cir. 2007) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)). "The crucial question is whether the defendant has purposefully availed itself of the privilege of conducting

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activities within the forum State, thus invoking the benefits and protections of its laws, such that the defendant should reasonably anticipate being haled into court there." Id. (cleaned up).

Section 77v(a) of the Securities Act and Section 78aa of the Exchange Act, which together govern all causes of action in the Complaint, authorize nationwide service of process, meaning that courts "look[] to contacts with the entire United States rather than with the forum state" when determining whether to exercise personal jurisdiction over defendants. SEC v. Stubos, 634 F. Supp. 3d 174, 186 (S.D.N.Y. 2022) (internal quotation omitted); see, e.g., Balestra, 380 F. Supp. 3d at 349-350 (analyzing defendants' contacts with the United States when determining personal jurisdiction for claims arising under the Securities Act); SEC v. Sharef, 924 F. Supp. 2d 539, 544 (S.D.N.Y. 2013) (same for the Exchange Act). In determining which contacts to consider, the "guiding principle" of the minimum contacts test is whether the suit "relates to the defendant's contacts with the forum." CFTC v. TFS-ICAP, LLC, 415 F. Supp. 3d 371, 382 (S.D.N.Y. 2019) (quoting SEC v. Straub, 921 F. Supp. 2d 244, 253 (S.D.N.Y. 2013)); see also Steel v. United States, 813 F.2d 1545, 1549 (9th Cir. 1987) ("[C]ourts must examine the defendant's contacts with the forum at the time of the events underlying the dispute when determining whether they have jurisdiction.") The SEC then must show "some sort of causal relationship between [Heart's] U.S. contacts and the episode in suit, and the [SEC's] claim must in some way arise from [Heart's]

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purposeful contacts with the forum." Charles Schwab Corp. v. Bank of Am. Corp., 883 F.3d 68, 84 (2d Cir. 2018) (internal quotation omitted).

Because the SEC must establish this Court's jurisdiction with respect to its Unregistered Securities Claims and its PulseChain Fraud Claims, I address each set of claims in turn.

a. Unregistered Securities Claims

In support of its Unregistered Securities Claims, the SEC relies on contacts that occurred before, during, and after the offer periods. I will first consider Heart's contention that the SEC's alleged post-offer period contacts are not relevant to the inquiry. (Def. Reply 5, 11.)

i. Post-Offer Period Contacts

Heart argues that his virtual attendance at the Hex Conference, PulseCon and his in-person appearance at the Miami Interview are irrelevant because investors could no longer participate in the alleged offer and sale of Heart's Crypto Assets. (Id. 4-6, 10-12.) The SEC argues generally that Heart's "mix of online plus in-person promotions" together, were specifically directed towards the United States and thus constitute sufficient minimum contacts. (SEC Opp. 10-15; Oral. Arg. Tr. 19-24.) But fails to adequately address the timing issue raised by Heart.

Here, the "relevant 'suit related conduct'" is the "conduct that could have subjected [Heart] to liability" under Sections 5(a) (sale of unregistered securities) and 5(c) (offer of unregistered securities) of the Securities Act for registration violations. Waldman v. Palestine Liberation Org., 835 F.3d 317, 335 (2d Cir. 2016). Contacts that postdate the offer periods could not subject Heart to liability because investors could no longer purchase Heart's Crypto Assets pursuant to the offer. See Sarkisian v. OpenLocker Holdings, Inc., 700 F. Supp. 3d 105, 110 (S.D.N.Y. 2023) (finding no personal jurisdiction where the only alleged contacts with the forum did not occur during the "events giving rise to liability"). For Hex, the offer period closed in November 2020

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(Compl. ¶ 20), well before the conferences took place. Although Heart did discuss Hex extensively during the Hex Conference, it is irrelevant to the offer and sale of unregistered securities because investors could no longer participate in the offer period. The Complaint alleges that since the "Hex Offering closed, Hex investors can only purchase Hex tokens from third parties" on platforms such as Uniswap. (Id. ¶ 41.) But Heart is not alleged to have any control or involvement in Uniswap.

Regarding PulseChain and PulseX, although the Hex Conference took place before the end of the "unofficially extended" offer periods for PulseChain and PulseX, nothing was said of significance that related to those offerings. Heart only mentioned PulseChain and PulseX as having a "product market fit" with "a lot of traction, a lot of demand." (Kleinmann Decl. ¶ 5.) The Hex Conference instead focused on Hex's post-offer performance. (Id.) Without more, Heart's presence at a virtual conference focused on a different post-offering asset is insufficient to establish personal jurisdiction. The remaining alleged contacts, PulseCon and the Miami interview, took place after the PulseChain and PulseX offer periods ended.

Moreover, there is no allegation that Heart received investor deposits after the Hex, PulseChain, and PulseX Offer Periods closed. Absent such allegations, Heart's suit-related conduct does not "arise out of or relate to" his post-offer period contacts. See 7 W. 57th St. Realty Co., LLC v. Citigroup, Inc., No. 13 Civ. 981 (PGG), 2015 WL 1514539, at *10 (S.D.N.Y. Mar. 31, 2015) (finding no personal jurisdiction where the"[p]laintiff has not pled facts suggesting that the [defendant's] conduct . . . took place within the relevant time period"), aff'd, 771 F. App'x 498 (2d Cir. 2019); Callahan v. Wisdom, No. 3:19-CV-00350 (KAD), 2020 WL 2061882, at *11

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(D. Conn. Apr. 29, 2020) (refusing to consider certain forum contacts because they were "unrelated to the instant suit").

Accordingly, I find that Heart's participation in the virtual conferences and his in-person interview are not relevant contacts that could subject Heart to liability for the alleged offer and sale of Heart's Crypto Assets.

ii. Contacts Before and During the Offer Period

For the relevant periods, the SEC relies on Heart's online marketing efforts through social media and his websites. Because this conduct occurred outside of the United States, courts employ the effects test, which permits a court to assert specific personal jurisdiction over a defendant "if the defendant expressly aimed its conduct at the forum." Dennis v. JPMorgan Chase & Co., 343 F. Supp. 3d 122, 203 (S.D.N.Y. 2018) (quoting Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161, 173 (2d Cir. 2013)). Incidental effects, or even foreseeable effects are insufficient; instead, the defendant "must have intentionally caused—i.e., expressly aimed to cause—an effect in the forum through his conduct elsewhere." 7 W. 57th St. Realty Co., LLC, 2015 WL 1514539, at *9.

1. Heart's Internet Contacts

The SEC alleges that Heart extensively marketed Heart's Crypto Assets on his websites and social media. (SEC Opp. 14.) Heart counters that his online efforts to market and promote Heart's Crypto Assets were globally available and not expressly directed towards the United States. (Def. Mot. 18-19.) For the reasons stated below, the remaining suit-related internet contacts, even considered collectively, are insufficient to establish personal jurisdiction.

When determining whether to exercise personal jurisdiction over a defendant because of activity on his website, the Second Circuit considers as a relevant factor a websites' interactivity

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in determining "whether the defendant, through the website, purposefully avail[ed] himself of the privilege of conducting activities" in the forum. Best Van Lines, Inc., 490 F.3d at 252 (internal quotation omitted) (alteration in original).

A website's degree of "interactivity" exists on a spectrum. Id. at 251 (citing Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997)). At one end of the spectrum are active websites – sites where a defendant "clearly does business over the Internet" because he contracts with residents of a foreign jurisdiction through "knowing and repeated" internet communications. Zippo, 952 F. Supp. at 1124. On the other end are passive websites, which do not confer jurisdiction. Passive websites generally do not give users "any ability to directly purchase the services through the website." A.W.L.I. Grp., Inc. v. Amber Freight Shipping Lines, 828 F. Supp. 2d 557, 568, 574 (E.D.N.Y. 2011) (internal citation omitted) ("Most courts have found that the maintenance of a web site alone, without more, does not rise to the level of purposeful availment of [a forum's] laws."). Finally, the middle of the spectrum involves "interactive sites," which "permit[] the exchange of information between users in another state and the defendant, which depending on the level and nature of the exchange may be a basis for jurisdiction." Citigroup Inc. v. City Holding Co., 97 F. Supp. 2d 549, 565 (S.D.N.Y. 2000).

The SEC argues that Heart conducted business over the internet through his websites and social media campaigns, but the facts as alleged fail to support that position. In making this argument, the SEC relies on my decision in SEC v. PlexCorps, No. 17-CV-7007 (CBA) (RML), 2018 WL 4299983 (E.D.N.Y. Aug. 9, 2018), but that reliance is misplaced. In PlexCorps, the SEC brought suit against the defendants for violations of federal securities laws for promoting and selling their crypto asset to U.S.-based customers. I rejected the defendants' motion to dismiss for lack of personal jurisdiction because the defendants created several significant internet contacts

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with the United States while promoting their "initial coin offering," or ICO. Id. at *20. The defendants used Facebook to directly message information about the ICO to U.S.-based customers, respond to questions, and provide links to the defendants' websites. Id. at *14. The defendants also facilitated sales on their websites through payment portals through which users could "provide their credit-card information and purchase" the crypto asset. Id. at *16. In part because the defendants' website contacts "evince[d] that they clearly d[id] business over the internet," id. at *19 (internal quotation omitted), I determined that personal jurisdiction was proper.[16]

Here, unlike in PlexCorps, Heart's website contacts were not "active." The Complaint fails to allege that Heart facilitated transactions, collected credit card information, or entered into contracts with U.S.-based investors through his websites. Therefore, Heart did not "clearly do[] business" over his websites. Zippo, 952 F. Supp. at 1124. Nor do Heart's website contacts fall towards the middle of the spectrum. The Complaint alleges that Heart provided information via YouTube and on his website on how users could invest in Heart's Crypto Assets. (Compl. ¶¶ 26, 67.) However, Heart did not directly message U.S.-based investors or respond to questions through his websites. Rather, Heart disseminated "how to" information, which alone is not sufficient.

Heart's website contacts instead fall closer to the passive end of the Zippo spectrum. As alleged, Heart's websites included clickable tabs that provided information on how to purchase Heart's Crypto Assets (SEC Opp. 15-16 (citing Compl. ¶¶ 26, 41-42, 51, 67))[17], but "simply

[16] In addition to the defendants' website contacts, I determined in PlexCorps that the defendants' trip to the United States to promote the ICO and numerous accounts with U.S.-based payment servicers to facilitate sales constituted significant contacts in support of exercising personal jurisdiction. Id. at *19. At oral argument, the SEC rightly acknowledged that it did not "have all th[e] contacts that existed in PlexCorps." (Oral Arg. Tr. 28:21-22.)

[17] The SEC's reliance on Ethhex.com is also misplaced. The SEC argues that Heart "directly facilitate[d] sales" through designing Ethhex.com, a website interface that allows investors to engage in secondary market transactions through Uniswap. (SEC Opp. 16; Compl. ¶ 42.) However, Ethhex.com does not sell Hex; instead, it provides a link to a third-party platform wherein users can swap tokens directly with other users which is insufficient to support

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post[ing] information on an Internet Web site which is accessible to users in foreign jurisdictions . . . is not grounds for the exercise [of] personal jurisdiction." Best Van Lines, 490 F.3d at 251 (quoting Zippo, 952 F. Supp. at 1124); see, e.g., Atwal v. iFinex Inc., No. 22-CV-149 (JLS) (LGF), 2023 WL 3063450, at *9 (W.D.N.Y. Mar. 22, 2023) ("Defendants did not purposefully avail themselves of the privilege of conducting business in [the forum] simply because a [forum] resident submitted a support ticket on their website and briefly communicated with a representative . . . ."); Safex Found., Inc. v. SafeLaunch Ventures Ltd., 694 F. Supp. 3d 1, 16 (D.D.C. 2023) (finding the accessibility of a foreign cryptocurrency company defendant's website and some of its interactive features, including a clickable link to a third-party cryptocurrency exchange, insufficient to support a finding of personal jurisdiction under the D.C. long-arm statute). Accordingly, Heart's website contacts simply provided globally available information and lack sufficient interactivity to constitute a significant contact.

Heart's social media statements fare no better. Heart claimed on YouTube that Hex "was built to outperform Ethereum and Bitcoin and all other cryptocurrencies." (Compl. ¶ 25.) But such statements are not alleged to be "expressly targeted" at the United States any more than at other forums. See 79th Grp., Inc. v. Moore, No. 1:23-CV-02521 (JLR), 2024 WL 36992, at *13 (S.D.N.Y. Jan. 3, 2024) (finding that a social media post accessible to forum residents but not "expressly targeted" at them could not establish personal jurisdiction); cf. Hardin v. TRON Found., No. 20-CV-2804 (VSB), 2024 WL 4555629, at *7 (S.D.N.Y. Oct. 23, 2024) (finding that the

exercising personal jurisdiction. See Novak v. Overture Servs., Inc., 309 F. Supp. 2d 446, 456 (E.D.N.Y. 2004) (finding that a website that "sells no goods" but "provides links to other sites that sell goods . . . does not provide grounds for personal jurisdiction . . . ."). What is more, the Complaint fails to allege that any U.S. investor used Ethhex.com to purchase Hex through the secondary market. See Royalty Network Inc. v. Dishant.com, LLC, 638 F. Supp. 2d 410, 420 (S.D.N.Y. 2009) (finding it unnecessary to reach the jurisdictional question regarding the defendant's transaction of business where the plaintiff provided "no evidence that any [forum] resident actually engaged in any such transactions" through the defendant's website).

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defendants' social media statement, "If your friends ask you where is the best exchange to buy $TRX in United States and Europe, the best answer is @krakenfx!" targeted the U.S. market).

In sum, the relevant online communications described in the Complaint during the offer periods consist of untargeted, globally available information. The SEC failed to plead sufficient facts to suggest that Heart's online statements were "purposefully directed to [the forum] rather than a [global] audience." Best Van Lines, 490 F.3d at 253.

2. U.S.-Based Developer

The SEC argues half-heartedly[18] that Heart's involvement with Bahr, a software developer, to develop Heart's Crypto Assets constitutes purposeful conduct directed at the United States. (SEC Opp. 18.) For the reasons discussed below, Bahr's involvement with Heart falls short of what is necessary to exercise personal jurisdiction over Heart.

First, there is no allegation that Bahr was in the United States while he worked with Heart. The affidavit says only that Bahr "currently" lives in the United States. (Bahr Decl. ¶ 2.)[19] Even if Bahr were in the United States, he was not an employee of Heart; instead, he was only a volunteer, and his activities were purely incidental to his presence in the forum. (Id. ¶¶ 2-3, 56); see Outdoor Partners LLC v. Rabbit Hole Interactive Corp., No. 13 Civ. 1797 (KBF), 2013 WL 6503525, at *6 (S.D.N.Y. Dec. 9, 2013) (finding that a defendant who "did nothing more than to contract with a [forum resident]" who "tested and de-bugged [defendant's] games in [the forum]" did not have minimum contacts with the forum); Callahan, 2020 WL 2061882, at *12 (finding that "merely . . . engaging a consultant, who, purely incidental to his work for the [defendant], was located in [the forum]" did not establish personal jurisdiction). Further, Bahr's activities are not

[18] At oral argument, the SEC acknowledged that Bahr was "not one of our princip[al] contacts we're relying on." (Oral. Arg. Tr. 29:2-12.)

[19] Further, the SEC admits that there was nothing to "suggest[] that Mr. Heart knew that he was dealing with somebody in the United States when he was engaging him for work on Hex and PulseChain." (Id.)

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alleged to relate to efforts to market and promote the alleged securities at issue. Cf. SEC v. Terraform Labs Pte Ltd., No. 22-368, 2022 WL 2066414, at *3 (2d Cir. June 8, 2022) (affirming a finding of personal jurisdiction where the defendant "retained U.S.-based employees" that were directly involved in promoting the digital assets at issue).

Because Heart did not engage in substantial suit-related conduct in or directed at the United States in connection with the offer and sale of Heart's Crypto Assets, I find that Heart does not have sufficient contacts with the United States for specific jurisdiction. See Walden v. Fiore, 571 U.S. 277, 284 (2014) ("[T]he defendant's suit-related conduct must create a substantial connection with the forum State.") Since I conclude that minimum contacts are lacking, I need not determine whether exercising personal jurisdiction over Heart for the Unregistered Securities Claims would satisfy the Fifth Amendment's "reasonableness" requirement. See In re EHang Holdings Ltd. Sec. Litig., 646 F. Supp. 3d 443, 455 (S.D.N.Y. 2022).

b. PulseChain Fraud Claims

I further find that there is no personal jurisdiction over Heart for the PulseChain Fraud Claims. As discussed above, because the relevant conduct for Heart's alleged fraudulent conduct occurred entirely out of forum, the Second Circuit relies on the "effects test." Licci, 732 F.3d at 173 (citing Calder v. Jones, 465 U.S. 783, 789 (1984)). Pursuant to the "effects test," personal jurisdiction is proper if Heart "expressly aimed [his] conduct at the forum." Id. The SEC fails to meet this test.

The SEC's allegations of Heart's misuse of investor funds and material omissions all occurred abroad. (SEC Opp. 38-42). Heart's alleged deceptive acts include misappropriating investor funds between August 2021 and September 2022 and using devices to conceal the funds' movement. (Compl. ¶¶ 61-63.) To the extent the Complaint shows that Heart misappropriated

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investor funds through deceptive mixer transactions, those actions occurred entirely outside of the United States. The alleged misappropriation occurred through digital wallets and crypto asset platforms, none of which were alleged to have any connection with the United States. See In re Aegean Marine Petroleum Network, Inc. Sec. Litig., 529 F. Supp. 3d 111, 137 (S.D.N.Y. 2021) (finding that the defendant did not direct his conduct toward the United States because "[t]o the extent that the complaint establishes that [the defendant] embezzled funds, those actions were entirely outside of the United States").

The SEC alleges that Heart's material omissions included telling investors about PulseChain's development progress and that their investments supported free speech ideals, while failing to disclose his luxury purchases. (Compl. ¶¶ 64-66, 75.) As an initial matter, although the timeline for the PulseChain Fraud Claims encompasses Heart's attendance at the virtual conferences and his in-person interview in Miami, the SEC "does not allege that these events relate in any way to the conduct underlying" its fraud claims. [20] Aegean, 529 F. Supp. 3d at 137 (internal quotation omitted). What remains are online statements wherein Heart allegedly spoke about the use of PulseChain investor funds to develop the blockchain. As discussed above, globally

[20] The SEC conceded that that it was "not using any of the conferences" as a part of its fraud claims. (Oral Arg. Tr. 25:14-22.)

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available internet content not expressly directed at the United States is insufficient to establish minimum contacts. See Best Van Lines, 490 F.3d at 253; 79th Grp., 2024 WL 36992, at *13.

Accordingly, "a focus on the relationship of [Heart], the forum, and [Heart's] suit-related conduct points to the conclusion that there is no specific personal jurisdiction over [Heart]" for the PulseChain Fraud Claims in this case. [21] Waldman, 835 F.3d at 337.

II. Application of the United States Securities Laws

Even if the SEC had established personal jurisdiction over Heart, the Complaint cannot stand because it fails to adequately plead that either the transactions or conduct at issue were domestic under the federal securities laws.

a. Section 5(a) Sales of Securities Claim

It is a "longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." Morrison v. Nat'l Australia Bank Ltd., 561 U.S. 247, 255 (2010) (internal quotation omitted). The SEC alleges that Heart sold securities without filing a registration statement in violation of 15 U.S.C. § 77e(a).

In Morrison, the Court determined that the Exchange Act applied to "[1] securities listed on domestic exchanges, and [2] domestic transactions in other securities." Morrison, 561 U.S. at 267.[22] A plaintiff, therefore, must show that "transactions at issue were either listed on domestic

[21] The SEC also raised — for the first time at oral argument — that because Heart talked about the test set forth in SEC v. W.J. Howey Co., 328 U.S. 293 (1946), his online conduct was directed towards U.S. investors. (Oral Arg. Tr. 26-27.) However, "federal district courts generally reject arguments raised for the first time at oral argument." N-N v. Mayorkas, 540 F. Supp. 3d 240, 255 (E.D.N.Y. 2021) (collecting cases); see United States v. Barnes, 158 F.3d 662, 672 (2d Cir. 1998) ("Normally, [the court] will not consider arguments raised for the first time in a reply brief, let alone [at or] after oral argument.") (quoting Keefe v. Shalala, 71 F.3d 1060, 1066 n.2 (2d Cir. 1995)). In any event, it is unclear whether the allegations in the Complaint support the SEC's new argument. The Complaint only alleges that "Heart is familiar" with the Howey test but does not allege specific statements tracking Howey's language directed towards U.S. investors.

[22] The Morrison framework also applies to Securities Act claims. Williams v. Binance, 96 F.4th 129, 136 (2d Cir. 2024).

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exchanges, or that the purchase or sale occurred in the United States." Hardin, 2024 WL 4555629, at *14 (internal quotation omitted). Heart's Crypto Assets did not trade on domestic exchanges. (SEC Opp. 29; Def. Mem. 24.) Thus, the relevant inquiry is limited to the second prong: whether the SEC has alleged domestic transactions in crypto assets.

To establish the existence of a "a domestic securities transaction in securities not listed on a domestic exchange, . . . a plaintiff must allege facts suggesting that irrevocable liability was incurred or title was transferred within the United States." Absolute Activist Value Master Fund Ltd. v. Ficeto, 677 F.3d 60, 68 (2d Cir. 2012). "[I]rrevocable liability can be used to determine the locus of a securities purchase or sale." Id. Parties may become irrevocably bound if there was a "meeting of the minds." Id. at 68. Factual allegations "including, but not limited to, facts concerning the formation of the contracts, the placement of purchase orders, the passing of title, or the exchange of money" in the United States may be sufficient to show that parties became irrevocably bound within the United States. Id. at 70. But merely asserting in "conclusory fashion . . . that transactions took place in the United States is insufficient to adequately plead the existence of domestic transactions." Id. (internal quotation omitted).

Heart contends that the federal securities laws do not apply to the sale of Heart's Crypto Assets because the Complaint merely alleges that an unspecified number of U.S.-based investors participated in the offerings. (Def. Mem. 29; Def. Reply 16-17.) The SEC argues that irrevocable liability attached when U.S.-based investors deposited crypto assets into digital wallets located on the blockchain in exchange for Heart's Crypto Assets. (SEC Opp. 32.) In support of its position, the SEC relies on the Second Circuit's recent decision in Williams v. Binance which addressed the extraterritorial application of securities law under Morrison to transactions in crypto assets.

In Williams, the court held that the plaintiffs had plausibly alleged that their securities law

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claims involved domestic transactions for the purposes of Morrison. Williams, 96 F.4th at 141. There, the plaintiffs were U.S.-based purchasers of crypto assets on defendant Binance's digital asset exchange. Id. at 132. The plaintiffs alleged that while in the United States, they registered accounts with Binance, accepted Binance's terms of use, and placed buy orders which were matched on Binance's servers – the majority of which were in the United States. Id. at 134-35. Pursuant to the terms of use, once the trades were matched, they could not be cancelled. Id. at 135. Further, Binance disclaimed having any physical location or being subject to any country's securities regulation regime. Id. at 133, 136, 139. Binance did, however, have a "substantial presence, with servers, employees, and customers throughout" the United States. Id. at 133.

The court acknowledged that determining where irrevocable liability attaches is "particularly difficult when a transaction takes place over an exchange that claims to have no physical location in any geographic jurisdiction and not be subject to the oversight of any country's regulatory authority." Id. at 136-37. Despite this difficulty, the court noted that transactions on such a digital exchange cannot occur "nowhere." Id. at 138. The court determined that "two transactional steps" gave rise to an inference that irrevocable liability occurred in the United States. Id. at 137.

Under the first transactional step, the court found it was "appropriate to determine where matching occurred solely based on the location of the servers" because "Binance ha[d] not registered in any country, purport[ed] to have no physical or official location whatsoever, and the authorities in Malta, where its nominal headquarters are located, disclaim[ed] responsibility for regulating Binance." Id. at 139. The court distinguished cases involving trades executed over a foreign exchange because "the application of United States securities law here does not risk incompatibility with the applicable laws of other countries." Id. (internal quotation omitted). The

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court held that the first transactional step occurred when the "transactions at issue were matched, and therefore became irrevocable, on servers located in the United States." Id. at 137.

The court next determined that the transactions were domestic for a "second, interrelated reason." Id. at 139. The court explained that "in the context of transactions not on a foreign exchange, our cases look to facts concerning the formation of the contracts, the placement of purchase orders, the passing of title, or the exchange of money to determine when and where an investor becomes irrevocably bound to complete a transaction." Id. at 140 (internal quotation omitted). In considering these factors, the court concluded that irrevocable liability attached when the plaintiffs "entered into the Terms of Use with Binance, placed their trade orders, and sent payments, all of which they claim occurred from their home states within the United States." Id. In a prior case, the Second Circuit held "that the 'mere placement of a buy order in the United States for the purchase of foreign securities on a foreign exchange' was not, 'standing alone,' sufficient to allege that a purchaser incurred irrevocable liability in the United States." Id. (quoting City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG, 752 F.3d 173, 181 (2d Cir. 2014)). The Williams court distinguished City of Pontiac because the plaintiffs in Williams made "domestic payments" pursuant to Binance's terms of use, which rendered their agreements to purchase crypto assets binding, and because of the "lack of sovereignty and comity concerns" where no country claimed its regulatory regime applied. Id.

Here, unlike in Williams, the Complaint fails to allege that investors' deposits were "matched" on servers in the United States.[23] Nor does the Complaint allege that the deposits were first validated on the blockchain in the United States. Cf. Williams v. Block one, No. 20-CV-2809

[23] The Williams court also relied on Binance's "substantial presence" in the United States, including "servers, employees, and customers" to find that matching plausibly occurred on Binance's U.S.-based infrastructure. Williams, 96 F.4th at 133, 138 (internal citation omitted). Here, as alleged, Heart does not have a presence, let alone a substantial one, in any way comparable to Binance.

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(LAK), 2022 WL 5294189, at *7 (S.D.N.Y. Aug. 15, 2022) (noting that "[i]n general, irrevocable liability is incurred when the transaction has been verified by at least one individual node of the blockchain") (internal quotation omitted). Thus, the Complaint fails to satisfy the first transactional step under Williams.

The SEC interprets Williams, however, to stand for the proposition that "sending buy orders and payments from the United States" is a "second, separate basis" to establish irrevocable liability. (SEC Opp. 32.) Therefore, under this standalone basis, irrevocable liability occurred in the United States when U.S.-based investors deposited crypto assets into digital wallets on the blockchain. (Id.) In response, Heart argues that the Second Circuit expressly observed that placing purchase orders from the United States was only a "second, interrelated reason" to find that irrevocable liability attached in the United States. (Def. Reply 17) (citing Williams, 96 F.4th at 139).

Whether it is or is not an independent basis to show that the parties became irrevocably bound within the United States, there are insufficient allegations to apply this basis. First, the Second Circuit specifically expressed that "we have reason here to consider" where the trades originated because "Binance expressly disclaims having any physical location" and therefore the "sovereignty and comity concerns" are "less present." Williams, 96 F.4th at 140; see SEC v. Binance Holdings Ltd., 738 F. Supp. 3d 20, 73 (D.D.C. 2024) (explaining that because "Binance disclaimed having any location or being subject to any other particular jurisdiction . . . [the Williams court] reject[ed] its argument that the plaintiffs' transactions were not domestic").

Here, Heart made no such disclaimers. Rather, the Complaint alleges that Heart is a resident of Finland. (Compl. ¶ 1.) Unlike Malta's express disclaimer of regulatory responsibility over Binance, Finland is not alleged to have made any such disclaimer. Further, the SEC attempts

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to assert in "conclusory fashion" that the transactions took place in the United States. The investors did not enter into terms of use with Heart; instead, the SEC relies on allegations that investors deposited crypto assets into digital wallets, "including from investors in the United States," which is insufficient. (Id. ¶¶ 29, 34, 55, 67); cf. Messieh v. HDR Glob. Trading Ltd., No. 20-CV-3232 (ALC), 2024 WL 1436755, at *3 (S.D.N.Y. Apr. 3, 2024) (finding irrevocable liability incurred in the United States because customers "entered into Terms of Use Agreements," "purchased the tokens" from within the United States, and the defendants' employees liquidated the plaintiffs' crypto holdings from within the United States).

Courts have required far more U.S.-centric allegations to show that the crypto asset transactions at issue were sufficiently domestic. In Barron v. Helbiz Inc., the court found that the alleged transactions were domestic because the digital wallets that generated crypto assets for U.S.- based investors were controlled by a U.S. resident and operated out of the United States and the defendants were in the United States when they sold their own crypto assets to the public. No. 20 CIV. 4703 (LLS), 2023 WL 5672640, at *6 (S.D.N.Y. Sept. 1, 2023). In In re Tezos Sec. Litig., the court determined the alleged transactions were domestic because users participated in the transactions from the United States through an interactive website hosted in the United States and operated by a U.S. resident, and the transaction was "validated by a network of global nodes clustered more densely in the United States than in any other country." No. 17-CV-6779-RS, 2018 WL 4293341, at *8 (N.D. Cal. Aug. 7, 2018). Here, no similar allegations are present; instead, the SEC's allegations fall short of adequately pleading a domestic transaction.

I acknowledge the Second Circuit's concern that transactions on a digital exchange cannot occur "nowhere," but as alleged, I cannot reasonably infer that these transactions occurred in the United States. Accordingly, the SEC has failed to adequately allege domestic transactions for its

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Section 5(a) claims.

b. Section 5(c) Offers of Securities Claims

Section 5(c) prohibits offering a security without a registration statement. 15 U.S.C. § 77e(c). The parties disagree about what test I should apply to determine whether Heart's alleged offer of Heart's Crypto Assets without a registration statement was domestic. Heart argues that the relevant consideration is the location of the offeror. (Def. Mem. 26; Def. Reply 18.) The SEC claims that it is what the offerees heard while in the United States that should control, and because Heart engaged in conduct, albeit abroad, that targeted U.S. investors, there is sufficient domestic conduct to apply U.S. securities laws. (SEC Opp. 33-37.)

Courts in this district have determined that for an "offer" to be domestic under the Securities Act, "a person or entity must (1) attempt or offer, in the United States, to dispose of securities or (2) solicit, in the United States, an offer to buy securities." SEC v. Goldman Sachs & Co., 790 F. Supp. 2d 147, 165 (S.D.N.Y. 2011) (cleaned up); see SEC v. Ripple Labs, Inc., No. 20 Civ. 10832 (AT) (SN), 2022 WL 762966, at *13 (S.D.N.Y. Mar. 11, 2022) ("[I]t is the location of the offerors . . . that is relevant.") Here, the Complaint does not allege that Heart attempted to offer securities during the relevant offer periods while in the United States. Cf. Ripple, 2022 WL 762966, at *13 (finding that the defendants made domestic offers because the defendants resided in the United States when they directed their offers of crypto assets). Accordingly, I find that the

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SEC has failed to show that Heart made domestic offers of Heart's Crypto Assets.[24]

c. PulseChain Fraud Claims

The SEC asserts its PulseChain Fraud Claims under Section 10(b) of the Exchange Act and under Section 17(a) of the Securities Act. The parties dispute which test governs these claims. The SEC argues that Congress, through the Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010) ("Dodd-Frank"), overrode Morrison's transactional test and reinstated the previously applied "conduct and effects" test for SEC antifraud actions. (SEC Opp. 22-24.) Heart argues that Morrison's transactional tests governs because Dodd-Frank's plain language does not rebut the presumption against extraterritoriality, and also because the Second Circuit explicitly questioned of the impact of Dodd-Frank on Morrison. (Def. Reply 14) (citing Parkcentral Glob. Hub Ltd. v. Porsche Auto. Holdings SE, 763 F.3d 198, 211 n.11 (2d Cir. 2014)). I need not determine which test should govern because the SEC has failed to state a claim for its PulseChain Fraud Claims under either inquiry.

Under Morrison, the SEC again fails to sufficiently allege that participants in the PulseChain offering became irrevocably bound in the United States. As discussed above, allegations that crypto assets were deposited into digital wallets on the blockchain by an unknown number of U.S. investors is insufficient. (Compl. ¶¶ 55, 60, 64.)

To satisfy the conduct and effects test, the SEC must show "(1) conduct within the United States that constitutes significant steps in furtherance of the violation" or "(2) conduct occurring

[24] The SEC relies on SEC v. Balina, No. 1:22-CV-00950-DAE, 2024 WL 2332965, at *1 (W.D. Tex. May 22, 2024), motion to certify appeal granted, 2024 WL 4607048 (W.D. Tex. Aug. 16, 2024). There, the court held that the defendant made a domestic offer of his crypto asset from outside the United States through extensive marketing efforts on social media platforms. 2024 WL 2332965, at *6. Aside from being an out-of-circuit decision, the facts in Balina are not present here. Unlike here, the defendant was a U.S. resident who traveled abroad for two months while he promoted an ICO through social media, including to a pool of investors known to reside in the United States. Id. at *1-2, 6. The court also discussed "public policy" concerns that counseled against encouraging others to "temporarily leav[e] the United States, to evade United States securities regulations while targeting United States investors." Id. at *8. The Complaint is devoid of similar allegations or public policy concerns that warrant following Balina.

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outside the United States that has a foreseeable substantial effect within the United States." 15 U.S.C. § 77v(c); 15 U.S.C. § 78aa(b).

Here, the SEC fails to allege sufficient facts that place Heart's conduct within the United States. For example, the SEC alleges that Heart discussed the benefits of PulseChain, its profit potential, and his development efforts on PulseChain's website and YouTube. (Compl ¶¶ 56, 58- 59, 64-65, 72, 75.) Notably, the Complaint fails to allege that this conduct was directed at the United States; instead, it merely alleges this conduct originated abroad through online activities. See Cornwell v. Credit Suisse Grp., 666 F. Supp. 2d 381, 391 (S.D.N.Y. 2009) (finding alleged misrepresentations and omissions that originated abroad did not satisfy the conduct test). As such, I cannot reasonably infer that Heart's conduct was "conduct within the United States." 15 U.S.C. § 77v(c); 15 U.S.C. § 78aa(b); cf. SEC v. Scoville, 913 F.3d 1204, 1219 (10th Cir. 2019) (finding the defendants engaged in conduct within the United States in furtherance of their fraud because the defendants created and promoted investments while residing in the United States through their website which was housed on servers located in the United States).

The SEC also fails to satisfy the effects test. The Complaint alleges that some investors in the U.S. deposited crypto assets during the PulseChain Offer Period. (Compl. ¶ 55.) This fails to show that the alleged fraud had a "substantial effect in the United States." 15 U.S.C. § 77v(c); 15 U.S.C. § 78aa(b); see Cornwell, 666 F. Supp. 2d at 395 ("[T]he Court has no information regarding the percentage of [the defendant's] shares that were owned by United States investors . . . [and] therefore cannot find that the fraud would have had a substantial effect in the United States or upon United States citizens.") (internal quotation omitted); cf. Consol. Gold Fields PLC v. Minorco, S.A., 871 F.2d 252, 262 (2d Cir. 1989), amended, 890 F.2d 569 (2d Cir. 1989) (finding the effects test satisfied "where American residents representing 2.5 percent of Gold Fields' shareholders

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owned 5.3 million shares with a market value of about $120 million"); In re SCOR Holding (Switzerland) AG Litig., 537 F. Supp. 2d 556, 561 (S.D.N.Y. 2008) ("Given such broad U.S. holdings [between 14 percent and 29 percent], it must be concluded at this stage that the alleged fraud, even if it occurred entirely outside the United States, would have had a substantial effect in the United States or upon United States citizens.") (internal quotation omitted).

For the reasons discussed above, I find that the SEC has failed to state a claim for its PulseChain Fraud Claims.

III. Leave to Amend

The SEC asks that should I grant Heart's motion, I grant the SEC leave to amend the Complaint. (SEC Opp. 62.) "The court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). This is a "liberal" and "permissive" standard that is "consistent with our strong preference for resolving disputes on the merits." Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (internal quotation omitted).

If the SEC believes in good faith that it can amend the Complaint to remedy the deficiencies identified herein, any such amended complaint must be filed within twenty days of the date of this Order.

CONCLUSION

For the reasons set forth, Heart's motion to dismiss is granted.

SO ORDERED.

Dated: February 28, 2025
Brooklyn, New York

s/Carol Bagley Amon
Carol Bagley Amon
United States District Judge

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
NOAH VEON, on behalf of himself and All others similarly situated,	)	C/A No.: 2022-CP-21-1980
Plaintiff,	)	
vs.	)	MEMORANDUM IN OPPOSITION TO MOTION TO ALTER OR AMEND
RICHARD JAMES SCHUELER, A/K/A "RICHARD HEART",	)	
Defendant.	)	

The Plaintiff believes the Court's order denying Benjamin DuBard's motion to intervene adequately addresses each element of the appropriate legal analysis and that DuBard's motion to alter or amend that order should be denied. Plaintiff submits this memorandum to address several points of contention with the arguments offered by DuBard.

I. The Court's "timeliness" analysis was correct

DuBard argues that the Court "applied an erroneous and overly stringent legal standard" in finding the motion to intervene was untimely. However, the Court's order expressly finds that "consideration of each of the four elements weigh against Mr. Dubard's intervention" (Order at 5) and then proceeded to analyze each of the four factors of timeliness set forth in Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991) which DuBard concedes sets forth the "four-part test of whether a motion to intervene is timely…". (Motion to Alter or Amend at 5) As a result, the Court's analysis is sound and complete.

II. The Court did not engage in "impermissible fact-finding" in ruling that DuBard's motion to intervene was untimely

DuBard concedes that the timeliness of his intervention must be measured from the "time that has passed since the applicant knew or should have known of his or her interest in the suit."

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(Motion to Alter or Amend at 6) This point in time, he contends, is the week of June 17, 2024 and any determination to the contrary constitutes "impermissible fact-finding" (Motion to Alter or Amend at 7) by the Court.

The sole support DuBard offers for limiting the Court's timeliness analysis to DuBard's factual allegations within his motion to intervene is an out-of-context citation of Nat'l Parks Conservation Ass'n v. U.S. E.P.A., 759 F.3d 969, 973 (8th Cir. 2014). According to the opinion, National Parks addressed the question of "what information should a court consider when determining a proposed intervenor's stake in pending litigation", Id. at 973, in the face of a challenge to the intervenor's Article III standing. The Eighth Circuit *did not* address questions of timeliness of the motion. Nor did any of the sources cited by National Parks on that point of law. See Am. C.L. Union of Minnesota v. Tarek ibn Ziyad Acad., 643 F.3d 1088, 1092 (8th Cir. 2011)(Construing "the motion to intervene in favor of the prospective intervenor, accepting all material allegations as true" in the context of a challenge to Article III standing.); United States v. Metro. St. Louis Sewer Dist., 569 F.3d 829, 834 (8th Cir. 2009)("When a party seeks to dismiss a suit for lack of standing, we 'must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.' The same standards apply when a party opposes a motion to intervene.")

In this case, an analogous challenge to DuBard's standing would be that DuBard does not, in fact, own HEX and therefore has no standing to intervene. But the Plaintiff has accepted DuBard's factual allegation of HEX ownership. Thus, the Eighth Circuit's ruling in National Parks (to the extent it has any authority here) is not implicated.

III. The Plaintiff did not concede the sufficiency of DuBard's interest in the litigaiton

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DuBard takes Plaintiff's counsel's words out of context when he insists Plaintiff's counsel conceded DuBard's interest was sufficient based on continuing ownership. (Motion to Alter or Amend at 11) Plaintiff's full colloquy with the Court was as follows:

> The Court: Well, he has a direct financial interest in it if he owns it and if the decision would affect his ability or the value of what he owns. Wouldn't you agree?
>
> Mr. Graham (sic): I don't think that—I think, if he would continue to own it, he would have a sufficient interest, **if we were seeking to move his assets from one place to another**."

(Motion to Alter or Amend, Exhibit B at 11)(emphasis added) In his Motion to Alter or Amend, DuBard chose to delete the emboldened portion of the colloquy—a revision that completely changes the meaning of the discussion.

IV. *Alcaraz v. Akorn, Inc.* does not hold that all stockholders are entitled to intervene in stockholder class actions

DuBard points to the case of Alcaraz v. Akorn, Inc., 99 F.4th 368 (7th Cir. 2024) in support of his broad contention that "stockholder class actions do permit stockholder class members to intervene to protect their interests…". (Motion to Alter or Amend at 13) Alcaraz, however, highlights precisely why DuBard's interest is insufficient to intervene in this case. The proposed intervenor in Alcaraz was a shareholder whose shares were subject to a challenged corporate merger worth approximately $4 billion. The legal challenges to the merger were resolved through a payment of $322,500 to attorneys, which the Court ruled was "some loss from diversion of corporate money, which affects the value of [the intervenor's] shares." Id. at 374. In this case, however, there is no potential "diversion of corporate money." In fact, there is no corporation. The only money potentially diverted is that possessed by Richard Schueler. As Plaintiff's counsel noted during the motions hearing,

> One way or the other in this case, no matter how it turns out, [DuBard is] keeping his HEX tokens, unless he wants to turn them in and get his money back. But we're not trying to take them from him. You know, we're not trying to—in fact, we're trying to promote the value, if nothing else.

(Motion to Alter or Amend, Exhibit B at 11)

CONCLUSION

The Court's analysis in denying DuBard's motion to intervene was accurate and complete. For this reason, the motion to alter or amend the previous order should be denied.

Respectfully submitted,

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