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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

PETER JOHNSON, individually and on behalf of all others similarly situated, Plaintiff, v. **MAKER ECOSYSTEM GROWTH HOLDINGS, INC. NKA METRONYM, INC.**, a foreign corporation; and **MAKER ECOSYSTEM GROWTH FOUNDATION,** a foreign corporation, Defendants.	Case No. 3:20-cv-02569-MMC **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS BY PLAINTIFF PETER JOHNSON**

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INTRODUCTION

Defendants Maker Ecosystem Growth Holding Inc. and Maker Ecosystem Growth Foundation developed a cryptocurrency platform. The currency itself is called DAI (previously known as SAI)[1], and to trade in it, one must first become a "Vault Holder" by creating a CDP, or collateralized debt position. At the top of their website's home page (https://cdp.makerdao.com/), Defendants presented an FAQ section and stated the following:

> **Is there any risk involved in creating a CDP?**
>
> As long as you monitor your CDP and make sure that the value of the locked up ETH is always more than 150% of the SAI stablecoins that you have generated, your CDP will not be liquidated. If the value of the collateral comes close to 150% you can add more collateral, or pay back some of the debt. If the value of the locked up collateral falls below 150% then your CDP will be liquidated. *This means that your collateral is being sold by the system in order to cover the value of the Sai stablecoins that you generated. Any leftover collateral is returned to your CDP so you can withdraw it.* [2]

In short: Defendants promised consumers that they would only lose a modest percentage of their investment (a 13% liquidation penalty) if their vault was liquidated, and that the remainder of their investment would be sold at market value (through an auction), thereby preventing a total loss. This promise was not buried in their website, it was the primary content, advertised in the top-center of the home page just below the text "Welcome to the Collateralized Debt Position Portal."

But a total loss is exactly what happened. Defendants knew their platform had defects that would make impractical, if not impossible, execution of the stability and safety features they advertised and marketed. But they marketed it and signed up users all the same. Those defects

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[1] *See supra* n. 3 for a discussion of the differences between Sai and Dai. Though the differences are substantial, for purposes of this brief, they are not material.

[2] *See supra* p. 4 (emphasis added). Documents referenced in the pleadings may be cited in opposing a motion to dismiss without converting it to a motion for summary judgment. And this website is referenced as one of the ways Defendants repeatedly advertised the auction features of the DAI platform. (SAC ¶43).

resulted in losses that users could not have foreseen (but Defendants did). And now, Defendants seek to avoid any liability for those misrepresentations.

First, Defendants argue Defendant Maker Ecosystem Growth Foundation (the "Foundation") cannot be sued because it has been dissolved. But before the Foundation can be dismissed, it must answer some questions in limited jurisdictional discovery because the Foundation's purported dissolution contradicts other public representations made by an entity holding itself out as the "Foundation." At minimum, Mr. Johnson should be permitted leave to amend to name the Foundation's successor-in-interest as a defendant.

Second, Defendants claim the negligent and intentional misrepresentation claims are not pleaded with sufficient particularly under Rule 9(b). In fact, Mr. Johnson identifies the "who, what, where, when, and how" of the fraud. Defendants made repeated representations on their website and in other forums that the auction feature was designed to prevent the sort of mass loss of collateral the public saw in March 2020. Yet, they knew the design was flawed and vulnerable to exactly the sort of attack Mr. Johnson and others suffered on March 12, 2020. And in either event, whether Defendants' misrepresentations are actionable is a factual question that California courts have repeatedly found inappropriate for resolution on the pleadings. *Ham v. Hain Celestial Group, Inc.* 70 F. Supp. 3d 1188, 1193 (N.D. Cal. 2014) (citing *Freeman v. Time, Inc.,* 68 F.3d 285, 289 (9th Cir. 1995)).

And finally, Defendants contend the "economic loss rule" precludes the negligence claim. But in California, the economic loss rule is not a rigid doctrine. Its application "hinges, not on some rigid, default rule," but instead "turns on a careful consideration of the 'the sum total' of the policy considerations at play, not a mere tallying of some finite, one-size-fits-all set of factors." *S. Cal. Gas Leak Cases*, 7 Cal. 5th 391, 401 (2019). And Mr. Johnson's claims do not implicate either policy concern behind the economic loss rule: First, there is no risk of unlimited liability for financial harm to an unascertainable class of plaintiffs. In fact, the unique ledger (blockchain) technology at issue in this case precisely identifies exactly which wallet addresses were harmed and by how much and when. Second, there is no contract at issue and no risk of contract law being dissolved by tort law.

Mr. Johnson respectfully requests the Court deny the motion to dismiss and allow this case to proceed to discovery or, at the very least, allow leave to amend to cure any deficiencies the Court identifies.

STANDARD OF REVIEW

"In considering a motion to dismiss, a court must accept all of the plaintiff's allegations as true and construe them in the light most favorable to the plaintiff." *Rubio v. U.S. Bank N.A.*, Case No. C 13-05752, 2014 U.S. Dist. LEXIS 45677, at *11 (N.D. Cal. Apr. 1, 2014). "The complaint must plead 'enough facts to state a claim [for] relief that is plausible on its face.'" *Fabian v. Lemahieu*, No. 19-cv-00054-YGR, 2019 U.S. Dist. LEXIS 172906, at *20 (N.D. Cal. Oct. 4, 2019) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

In reviewing a motion to dismiss, the Court is generally limited to the four corners of the complaint, with, however, some notable exceptions: "[(1)] documents attached to the complaint, [(2)] documents incorporated by reference in the complaint, or [(3)] matters of judicial notice." *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). In short, the Court may "consider documents in situations where the complaint necessarily relies upon a document or the contents of the document are alleged in a complaint, the document's authenticity is not in question and there are no disputed issues as to the document's relevance." *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). This brief refers throughout to Mr. Johnson's declaration that, in turn, references a number of websites that Mr. Johnson has accessed and which are referenced in the Second Amended Complaint. Plaintiff requests the Court take judicial notice of these websites and the materials referenced in Mr. Johnson's declaration, because: 1) each is a document that is relied upon or otherwise referenced in the Second Amended Complaint; 2) the websites are provided and their existence and contents authenticated by Mr. Johnson; and, 3) as discussed in this brief, their relevance is not in dispute.

Importantly, "[i]f the court dismisses the complaint, it should grant leave to amend even if no request to amend is made "unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Rubio*, 2014 U.S. Dist. LEXIS 45677, at *11 (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)). And so, at the very least, even if the Court is not inclined to take judicial notice of each website or believes there are deficiencies in the pleadings, the various factual details highlighted in this brief demonstrate there are clear factual disputes that preclude adjudication on the pleadings and thus, Mr. Johnson should be given leave to amend.

BACKGROUND

I. Defendants developed a cryptocurrency platform.

Defendants developed a digital currency stablecoin, DAI, and the protocol and various applications for transacting in DAI.[3] That protocol is called the Maker Protocol. (SAC ¶ 13). Like any stablecoin currency whose value is stable relative to the US dollar, "Dai is a store of value, a medium of exchange, a unit of account and a standard of deferred payment." (SAC ¶ 15).

Anybody could sign up on this new platform by forming what is called a collateralized debt

[3] There were two versions of the crypto platform, the prior "Sai System" and the subsequent "Dai System." "While the distinction between the two [systems] is substantive and has been critical in this litigation – most notably in the arbitration ordered by the Court and ultimately resolved in favor of the Plaintiff, Mr. Johnson – the distinction only became an issue when Defendants sought to remove this case to arbitration." SAC ¶ 4 n.2. For purposes of the pending motion to dismiss, the distinctions between the two systems are not material. And so, to avoid confusion, Plaintiff refers to either platform or currency as Dai. And while users under the Sai System were called CDP holders and users under the Dai System are called Vault Holders, again for purposes of this brief, they are all referred to as Vault Holders.

position, or CDP, thereby becoming a Vault Holder. Through that CDP, any user could generate the currency, DAI, by leveraging as collateral a digital asset called Ethereum ("ETH") (which is a different crypto currency that exists independent of DAI). If the CDP's collateral dropped below a certain ratio, the CDP would be automatically liquidated and a 13% "liquidation fee" would be imposed on the remaining collateral. (SAC ¶¶ 19, 20, 25). In other words, a Vault Holder could rest assured that the auction feature would prevent complete loss of their collateral investment in the event its price dropped significantly.

II. Defendants expressly marketed the auction features as a stabilizing, safety feature.

Defendants advertised and represented that a key feature of DAI was its over-collateralization and auction features. (SAC ¶ 24). That is, Defendants promised that the value of the security (Ethereum) and an automated liquidation auction would protect the user's assets on their platform from becoming worthless. Instead, the worst-case scenario was a 13% "liquidation fee" charged by Defendants in the event of an automated liquidation.

To create a CDP, one had to first access the CDP portal website (which Mr. Johnson did on or around November 29, 2018). (SAC ¶ 4). Defendants included on the top of their website's home page the following declarations:

> **Is there any risk involved in creating a CDP?**
>
> As long as you monitor your CDP and make sure that the value of the locked up ETH is always more than 150% of the SAI stablecoins that you have generated, your CDP will not be liquidated. If the value of the collateral comes close to 150% you can add more collateral, or pay back some of the debt. If the value of the locked up collateral falls below 150% then your CDP will be liquidated. *This means that your collateral is being sold by the system in order to cover the value of the Sai stablecoins that you generated. Any leftover collateral is returned to your CDP so you can withdraw it.*[4]

[4] Declaration of Peter Johnson ("Johnson Decl.") ¶¶ 5-6 (emphasis added). Again, the Court may reference this website without converting this motion into one for summary judgment because these representations are referenced in the Second Amended Complaint and Mr. Johnson's declaration puts the authenticity of the document beyond dispute.

> **Does it cost anything?**
>
> If your CDP becomes liquidated, then there is a 13% liquidation penalty that will be subtracted when the locked collateral is sold.[5]

In November 2019, Mr. Johnson migrated to Defendants' DAI system. (SAC ¶ 4 n.2). At the time that Mr. Johnson created his Vault, Defendants' official GitHub page—a repository for source code and related technical documents—Defendants included the following:[6]

> ### How much collateral is left after a Liquidation?
>
> To determine how much collateral you would possess after a Liquidation you can use the following simplified formula:
>
> ```
> (Collateral * Oracle Price * PETH/ETH Ratio) - (Liquidation Penalty * Stability Debt) - Stability Debt = (Remaining Collateral * Oracle Price) DAI
> ```
>
> Assuming:
>
> - The Oracle Price of one ETH is 350USD
> - The total Locked PETH is 10 ETH
> - The ratio of PETH/ETH is 1.012
> - The Liquidation Penalty is 13%
> - The CDP has a Stability Debt of 1000 DAI
>
> ```
> (10 × 350 × 1.012) - (13% × 1000) - 1000 = 2412 DAI or 6.891428571 ETH
> ```

In short, the GitHub page similarly advertised that in the event of liquidation, a user would see a return of *at least some of* the value of their collateral, Ethereum, less a 13% liquidation penalty.

III. Black Thursday.

"In the early morning hours of March 12, 2020, the price of ETH dipped significantly and rapidly, dropping from over $190 the day before to a low of below $90 within several hours. (SAC ¶ 26). "As this significant dip accelerated, the Maker Protocol triggered liquidations for CDP that went below the requisite collateral-to-debt ratio of 150%." (SAC ¶¶ 27-28).

Several issues affected the liquidation process, however.

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[5] *Id.*

[6] Johnson Decl. ¶¶ 7-8. Notably, the current iteration of Defendants' GitHub states simply that "[s]ince Liquidations occur through Collateral Auctions, there is no way to accurately predict the exact amount of collateral one would receive." *See* Johnson Decl. ¶¶ 9-10.

"First, the Maker Protocol's utilized oracles—again, price feeds provided by third parties and programs—failed to maintain accurate and updated prices, resulting in price reporting at levels much higher than the actual spot price of ETH." (SAC ¶ 30)

"Second, the crashing price caused extraordinarily high traffic on the Ethereum blockchain as parties attempted to transfer or sell their digital assets; the Ethereum network therefore experienced significant congestion and bottlenecking which slowed transactions by orders of magnitude. To push transactions through in a timely manner, therefore, parties were forced to spend upwards of ten times more than their usual transaction fees." (SAC ¶ 31).

Third, the Maker Protocol's lone process of Vault liquidation failed. Instead, of allowing a market-based auction, the Maker Foundation limited who could participate as "Keepers." And during the crash of March 12 and 13, all but two Keepers were squeezed out of the auctions, who in turn made opening bids of $0.00 on multiple auctions and, because they were the lone bidders on separate CDP auctions, won hundreds of auctions at no cost. (SAC ¶ 32).

"At least one researcher concluded that, out of 3,994 liquidation transactions, 1,462 of them (36.6%) were realized with a 100 percent discount, and cumulative losses from these zero-dollar auctions amounted to $8.325 million." (SAC ¶ 34). That was 62,892.93 ETH or $80.251 million in today's dollars (62,892.93 ETH x @1276 ETH/USD).[7]

This researcher noted that they were able to achieve such a precise calculation because they "collected this data from the Ethereum blockchain."[8] Due to the nature of blockchain technology—which is a "type of digital ledger"— "[e]very ledger transaction is added to a chain and authenticated, effectively creating an audit trail that's transparent, traceable, and accessible to all."[9] Accordingly, every single transaction conducted on the Ethereum blockchain—including without limitation those transactions which affected the Plaintiff and the putative class—is auditable, "transparent, traceable, and accessible to all."[10]

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[7] Johnson Decl. ¶¶11-12.
[8] Johnson Decl. ¶ 12.
[9] Johnson Decl. ¶13.
[10] *Id.*

IV. Defendants knew their product was not working as advertised but marketed the auction feature all the same.

While developing the future Dai system, the Maker Foundation envisioned a Black Thursday-like-scenario in its December 2017 whitepaper when it noted that “a number of unforeseen events could potentially occur” related to “pricing errors, irrationality and unforeseen events,” noting that “the Maker community will need to incentivize a sufficiently large capital pool to act as Keepers of the market in order to maximize rationality and market efficiency and allow the Dai supply to grow at a steady pace without major market shocks.” (SAC ¶ 35). In other words, Defendants knew that Black Thursday was just a matter of time and that it needed to take steps to avoid the catastrophic result—steps that Defendants did not take. Worse, Defendants’ promises to its users glossed over these dangerous defects in its platform.

Yet, Defendants “did little or nothing to sufficiently incentivize the creation and maintenance of adequate Keepers.” (SAC ¶ 36). They “allowed for highly suspicious changes to the Maker Protocol; specifically during the coding process, the Maker Protocol was adjusted multiple times from an auction window of three hours down to one hour (June 26, 2019), and then from one hour down to only ten minutes (October 1, 2019), allowing for even less fair market bidding.” (SAC ¶ 37). “Further, the Maker Foundation tightly controls the process of programming and deploying a Keeper bot, which had procured the only model code to program and deploy a bot, leading to an unacceptably low number of Keepers patrolling the liquidation auctions.” (SAC ¶ 39).

The Defendants’ own CEO called out some of the issues that plagued the Maker ecosystem weeks before the events of Black Thursday, but no action was taken. On or about February 28, 2020, Mr. Christensen stated as follows:

> It will be very important to track data related to [the final liquidation penalty], . . . and use that to see if we need to change the related risk parameters. *For instance the bid duration could be longer if we want to decrease the likelihood of a big loss during a big crash.*[11]

ARGUMENT

Defendants raise three primary defenses: 1) The Foundation was dissolved and is therefore not a proper defendant; 2) intentional and negligent misrepresentation are not sufficiently pleaded under Rule 9(b); and 3) the economic loss rule bars the negligence claim. Mr. Johnson addresses each argument in turn.

I. The Foundation's dissolution does not justify dismissal.

Defendants assert that the Foundation is dissolved and that under federal law and Cayman Islands law, it can no longer be sued. Defendants submitted a declaration that stated that Universal DeFi Holding Company, LLC is the successor in interest to the Foundation. ECF No. 72-1, ¶ 5.

First, at a minimum, plaintiff should be granted leave to name Universal DeFi Holding Company, LLC as the successor in interest to the Foundation. *See City & Cty. of S.F. v. Purdue Pharma L.P.*, 491 F. Supp. 3d 610, 644 (N.D. Cal. 2020) ("Personal jurisdiction over a successor company exists where "(i) the court would have had personal jurisdiction over the predecessor and (ii) the successor company effectively assumed the subject liabilities of the predecessor."). Here, the court had personal jurisdiction over the Foundation and the defendants have provided evidence of the Foundation's successor in interest: Universal DeFi Holding Company, LLC. "The court should freely give leave [to amend a pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2). Here, the Foundation has clearly identified its successor-in-interest, and justice requires that plaintiff be allowed to pursue its claims against the Foundation's successor.

[11] Johnson Decl. ¶¶ 14-16 (emphasis added).

Second, as separately stated in Plaintiff's Application for Jurisdictional Discovery, before the Court considers dismissal of the Foundation, Mr. Johnson should be permitted to conduct limited discovery on the existence and/or dissolution of the Foundation. The Foundation continues to hold itself out as a functioning entity online:

> **What is the Legal Structure of The Maker Foundation?**
>
> The various entities associated with the Maker Foundation are currently held under the Maker Ecosystem Growth Foundation (MEGF), a Cayman Islands foundation company limited by guarantee.[12]

Thus, it is not clear that the Foundation has ceased to exist or that it could not be sued as a "partnership or other unincorporated association" that may be "sued in its common name." Fed. R. Civ. P. 17(b)(3)(A).

Discovery regarding a jurisdictional challenge (like lack of Article III standing to be sued) is permitted. *In re Infosonics Corp. Derivative Litig*., No. 06cv1336 BTM, 2007 U.S. Dist. LEXIS 20450, at *5-6 (S.D. Cal. Mar. 21, 2007). "Discovery should ordinarily be granted where 'pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.'" *Id*. (quoting *Butcher's Union Local No. 498 v. SDC Investment, Inc*., 788 F.2d 535, 540 (9th Cir. 1986)). Here, there is some confusion about the Foundation's continued existence after "dissolution;" discovery should be permitted.

II. Mr. Johnson's intentional and negligent misrepresentation claims satisfy Rule 9(b).

With respect to the claims for intentional and negligent misrepresentation, Rule 9(b) requires Mr. Johnson identify "the who, what, when, where, and how of the misconduct charged."

[12] Johnson Decl. ¶¶ 17-18.

United States v. United Healthcare Ins. Co., 832 F.3d 1084, 1101 (9th Cir. 2016) (citations omitted). "'[R]ule 9(b) does not require nor make legitimate the pleading of detailed evidentiary matter.' Nor does Rule 9(b) require any particularity in connection with an averment of intent, knowledge or condition of the mind. It only requires the identification of the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations." *Walling v. Beverly Enters.*, 476 F.2d 393, 397 (9th Cir. 1973) (citations and alterations omitted). But, importantly, Rule 9(b)'s heightened pleading requirements are *relaxed when information rests exclusively with defendants. Wool v. Tandem Computs., Inc.*, 818 F.2d 1433, 1439 (9th Cir. 1987), *superseded by statute on other grounds*, 15 U.S.C. §78u-4(b)(2), *as recognized in In re Tut Sys. Sec. Litig.*, No. C 01-02659, 2002 U.S. Dist LEXIS 27902 at *25-26 (N.D. Cal. Aug. 15, 2002) ("'Allegations of fraud based on information and belief usually do not satisfy the degree of particularity required under Rule 9(b). However, 'the rule may be relaxed as to matters peculiarly within the opposing party's knowledge.' Such 'an exception exists where, as in cases of corporate fraud, the plaintiffs cannot be expected to have personal knowledge of the facts constituting the wrongdoing.' In such cases, the particularity requirement may be satisfied if the allegations are accompanied by a statement of the facts upon which the belief is founded." (internal citations omitted)); *United States ex rel. Tamanaha v. Furukawa Am., Inc.*, 445 F3d. Appx. 992, 994 (9th Cir. 2011).

The "who, what, when, where, and how" of the fraud are as follows:

The "Who"	Defendants themselves maintained their own websites—including the CDP portal, GitHub, and blogs—and corporate officers, including Defendants' CEO Rune Christensen, made frequent public statements regarding their platform, systems, processes, and controls.
The "What"	The official CDP portal website home page states "[i]f the value of the locked up collateral falls below 150%, then your CDP will be liquidated . . . Any leftover collateral is returned to your CDP so you can withdraw it." It also states: "If your CDP becomes liquidated, then there is a 13% liquidation penalty that will be subtracted when the locked collateral is sold." And in

	November 2019, when Mr. Johnson migrated to the Dai system, Defendants' official GitHub page—a repository for source code and related technical documents—Defendants included a calculation for how to determine how much collateral would be left after liquidation and assumed a proper return on the collateral less the liquidation penalty.
The "When"	When Mr. Johnson both established his CDP November 29 2018 and then migrated his CDP to a Vault November 19, 2019. And on March12, 2020, Black Thursday, when his Vault was liquidated for $0.
The "Where"	The official CDP portal and Defendant's GitHub page.
The "How"	Defendants represented their auction feature as a safety mechanism of its product that would protect against precipitous drops in the value of Ethereum. They were aware of the risk of a "Black Thursday" event and did nothing to prevent it (while continuing to still promote their safety features). The Defendants' careless programming and governance; their changes to the Maker Protocol; and their deployment and management of the Keeper bots all directly led to the conditions on Black Thursday that resulted in zero-dollar auctions.

The point of Rule 9(b) is "to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *Dooms v. Fed. Home Loan Mortg. Corp.*, No. CV F 11-0352 LJO DLB, 2011 U.S. Dist. LEXIS 38550, at *30-33 (E.D. Cal. Mar. 30, 2011) (*citing Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985)). And Defendants are certainly on notice of the exact nature of the fraud alleged. To the extent there are any gaps in the pleadings, that is a product of nobody knowing the inner workings of Defendants' corporate activities. And for that exact reason, "the requirement of specificity is relaxed when the allegations indicate that 'the defendant must necessarily possess full information concerning the facts of the controversy." *Tarmann v. State Farm Mut. Auto. Ins. Co.*, 2 Cal. App. 4th 153, 157-58 (1991) (citing *Bradley v. Hartford Acc. & Indem. Co.* 30 Cal. App. 3d 818, 825 (1973)), *overruled on other grounds, Silberg v. Anderson*, 50 Cal. 3d 205, 218 (1990)).

a. Defendants' other attacks amount to little more than improper factual challenges.

Defendants raise a bevy of other arguments. Each is without merit.

1. Defendants ratified and published the misrepresentations at issue; no further specificity is required.

First, they contend the complaint neither alleges which individual within the companies made the false statements nor differentiates between each Defendant's respective roles. But again, Mr. Johnson cannot reasonably know who within the companies posted the statements at issue, though the Court can reasonably infer that the statements, being on the website and later confirmed by officers, have been ratified and approved by the company and its highest officers. *Cf. Glovatorium, Inc. v. NCR Corp.*, 684 F.2d 658, 661 (9th Cir. 1982) ("California law provides for corporate liability where 'the advance knowledge, ratification, or act of oppression, fraud, or malice [is] . . . on the part of an officer, director, or managing agent of the corporation.'"). And as to the differentiation between the two defendants, Mr. Johnson has pleaded that Metronym and the Foundation "overlap[] in the management, operation, and development of the Maker Protocol." Mr. Johnson acknowledges he does not know where each entities' respective roles begin and end. But that is because Defendants have been opaque about that. Mr. Johnson is not a corporate insider and has no way of knowing how these affiliates manage the IP and run their companies. This is precisely why these pleading requirements are relaxed when Defendants are uniquely in possession of that information – and nobody else.

2. On Black Thursday, the Maker Protocol functioned exactly as it was designed to, just not as it was advertised.

Defendants next argue the representation claims fail because they adequately disclosed the types of risk that occurred on Black Thursday. The argument fails for at least several reasons.

First, in each instance, the supposed disclosure relates to risks not implicated in this case. For instance, the Multi-Collateral Dai Whitepaper states that "[i]n the worst-case scenario, all decentralized digital assets held as collateral in the Protocol are stolen, and recovery is impossible." ECF No. 72 at 17. But that scenario described, or risk disclosed, is not what happened on Black Thursday. The Maker Protocol functioned exactly as it was designed to, just not as it was advertised. Similarly, the Keeper bots functioned as they were allowed to by the Maker Protocol. They did not twist or re-write code. The problem is that the code simply wasn't programmed in a way that would function as advertised.

Second, under California law, whether a given statement qualifies as a misrepresentation and is therefore actionable, is a question of fact. *Hobbs v. Brother Int'l Corp.*, Case No. CV 15-1866, 2016 U.S. Dist. LEXIS 195911, * 14-15 (C.D. Cal. August 31, 2016) (citing *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008)); *Takano v. P&G,* No. 2:17-cv-00385, 2018 U.S. Dist. LEXIS 182777, at *35 (E.D. Cal. Oct. 24, 2018) (declining to dismiss negligent misrepresentation claim because it was not appropriate to assess whether a reasonable consumer would be misled by the product label on a motion to dismiss.)[13] And, when there are supposed "disclaimers" which contradict a claimed misrepresentation or misleading statement, those "disclaimers must be specific." "Boilerplate and mandatory disclosures on the labels of the supplements is insufficient to completely disclaim and change the apparent meaning of representations on the bottles and the studies on the website." *Flowers v. Doctors' Best*, Case No. CV 13-08174 DMG, 2015 U.S. Dist. LEXIS 200423 *16 (C.D. Cal. March 31, 2015) (adopting the reasoning from *F.T.C. v. Direct Marketing Concepts, Inc.*, 624 F.3d 1, 12 (1st Cir. 2010)).

Here, Defendants' supposed "warnings" are no defense. For their part, Defendants argue that their warnings about catastrophic failure of cryptocurrencies or theft should have put Mr. Johnson on notice, such that Black Thursday and his loss of 100% of his additional collateral is completely excusable. But boilerplate warnings are insufficient to overcome the affirmative and

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[13] Courts generally phrase this question as the "reasonable consumer" standard. But importantly, the "reasonable consumer" standard is not limited to product labels or product liability/consumer actions; it includes other types of affirmative statements. *See e.g.*, *Cullen v. Netflix*, 880 F. Supp. 2d 1017 (N.D. Cal. 2012).

material statements made in public and directly to Vault holders. In short: Defendants promised Vault Holders that they would only lose a percentage of their investment in the form of a 13% liquidation penalty if their vault was liquidated, and that the remainder of their investment would be protected, thereby preventing a total loss. No reasonable Vault Holder would understand a statement that a loss would be limited to 13% of their investment via a liquidation penalty, to mean they would lose 100% of their investment. And yet, on Black Thursday, that is exactly what happened.

3. Defendants also attack the "intent" and "reliance" prongs of the misrepresentation claims, but each is a factual question inappropriate for resolving on the pleadings.

Defendants also allege that Mr. Johnson has not adequately pleaded Defendants knew the statements were untrue when they made them. As an initial matter, this "knowledge" prong is only an element of the intentional, and not the negligent, misrepresentation claim. *Anderson v. Deloitte & Touche*, 56 Cal. App. 4th 1468, 1476 (1997) ("Negligent misrepresentation is the assertion of a false statement, honestly made in the belief it is true, but without reasonable ground for such belief.") Claims for intentional misrepresentation, on the other hand, "require that the defendant knew of the material fact and either misrepresented or concealed that fact to induce reliance by the plaintiff." *Tomek v. Apple Inc*., 636 F. App'x 712, 713 (9th Cir. 2016). And with respect to the intentional misrepresentation claim, the allegations plainly state Defendants envisioned the sort of crash experienced on March 12, 2020 as early as 2017 and chose to take no action to correct the programming to avoid the issue and continued to market the virtues of the auction system regardless. (SAC ¶¶ 35-37). Indeed, Metronym's CEO specifically identified some of the issues that led to Black Thursday in the weeks immediately prior yet *took no corrective* *actions while nonetheless promoting the auction features.*[14]

Defendants also argue that Mr. Johnson failed to plead they "lacked a reasonable basis for believing the challenged statements to be true." ECF No. 72 at 25. Not so. Mr. Johnson alleges Defendants envisioned the events of Black Thursday as far back as 2017 yet Defendants advertised the security features of their platform as if those risks did not exist. And, when the Vault auction mechanisms were being implemented, Mr. Johnson alleged that the Keeper system was woefully understaffed, (SAC ¶ 39), that critical programming regarding the timing of auctions was adjusted prior to Black Thursday, (SAC ¶ 37), and, as set forth above, these vulnerabilities were on the minds of the highest officers and employees of Defendants. Unfortunately for Plaintiff and the class, Defendants took no action to prevent the risks known to them.

Defendants also argue their misrepresentations are not actionable because they are predictions of future events and not statements of past or present fact. Not true. Defendants developed a crypto platform and represented that it had safety features that were dangerously defective. Defendants' platform was dangerous at the time that it invited users to join – users who were ignorant of the risks they were taking. It was only a matter of time until those dangers manifests in substantial losses for Mr. Johnson and the class.

With respect to Defendants' intent to induce reliance and Mr. Johnson's reasonable reliance on their misrepresentations, he need only plead that "the [D]efendant[s] intended that the [P]laintiff rely on the representation" and that he "reasonably relied on the representation" to his detriment. *Welk v. Beam Suntory Import Co.*, 124 F. Supp. 3d 1039, 1044 (S.D. Cal. 2015). The California Court of Appeal has opined on reliance, noting that it "exists when the misrepresentation or nondisclosure was an immediate cause of the plaintiff's conduct which altered his or her legal

[14] Johnson Decl. ¶¶ 17-18.

relations, and when without such misrepresentation or nondisclosure he or she would not, in all reasonable probability, have entered into the contract or other transaction." Moreover, "[e]xcept in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a *question of fact." Manderville v. PCG&S Grp., Inc.*, 146 Cal. App. 4th 1486, 1498–99 (2007) (emphasis added).

Here, and as discussed above and in the favorable light shed on Mr. Johnson's pleadings, Defendants clearly made affirmative statements with the intent to attract more users. And it was eminently reasonable for Mr. Johnson and the class to rely on the representations of Defendants that his Vault would in fact have the protection that the auction features promised.

Finally, with respect to pleading damages, as set forth above, Mr. Johnson has pleaded with specificity the causation, fact, and calculation of his damages. It was not the drop in ETH or the Keeper bots that led to Mr. Johnson losing 100% of his Ethereum on March 12, 2020; it was Defendants' anticipating drops in Ethereum and defects in the auction process but nonetheless failing to deliver the product they promised, that caused Mr. Johnson's injuries. But for Defendants' misrepresentations, Mr. Johnson would not have become a Vault holder and would not have lost the Ethereum he did.

4. To the extent there are pleading deficiencies, they can all easily be remedied through amendment.

Even if the Court determines that there are any pleading deficiencies or fatal omissions, any such deficiencies can be amply and easily remedied via amendment. This Court is to liberally allow such amendments unless such amendment would be an exercise in futility, at which point the court may appropriately dismiss the claim without leave to amend. *DeSoto v. Yellow Freight Sys.*, 957 F.2d 655, 658 (9th Cir. 1992).

III. The negligence claim presents a factual question inappropriate for dismissal on the pleadings.

Defendants simultaneously ask the Court to dismiss the negligence claim because it lacks specificity required by Rule 9(b) but also that the Court should dismiss the negligence claim because the economic loss rule precludes it. The economic loss rule is explained more blow. But as an initial matter, Defendants' argument is inherently contradictory and can be disregarded as a result. Rule 9(b)'s heightened pleading requirements apply only to claims or averments of fraud, *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-05 (9th Cir. 2003), while the economic loss rule expressly does *not* apply to any claims of fraud. *Kalitta Air, L.L.C. v Cent. Tex. Airborne Sys.*, 315 Fed. Appx. 603, 607 (9th Cir. 2008) (affirming N.D. Cal. order denying JMOL on negligent misrepresentation claim, because negligent misrepresentation is a species of fraud and therefore "economic loss is recoverable").

Defendants cannot have their cake and eat it too. Either Mr. Johnson's negligence claim sounds in fraud and is subject to the heightened pleading requirements of 9(b) but NOT subject to attack on the economic loss rule, or Mr. Johnson's negligence claim does not sound in fraud and is not subject to 9(b) but might be subject to the economic loss rule. Defendants must clarify under which theory they are asking the Court to dismiss this claim because their current position collapses on itself.

Either way, Defendants' arguments have no merit.

a. Rule 9(b) does NOT apply to negligence claims.

State law negligence claims are *not* subject to Rule 9(b)'s heightened pleading requirement. Rather, they are subject only to the "notice" pleading requirements of Rule 8, which Mr. Johnson's allegations clearly meet. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) ("To the extent a party does not aver fraud, the party's allegations need only satisfy the requirements of

Rule 8(a)(2)"). Even if the claim were subject to Rule 9(b), it would survive for the same reasons the misrepresentation claims survive.

b. Mr. Johnson's negligence claim does not trigger the economic loss rule.

"In California, the 'general rule' is that people owe a duty of care to avoid causing harm to others and that they are thus usually liable for injuries their negligence inflicts." *S. Cal. Gas Leak Cases*, 7 Cal. 5th at 398. The economic loss rule is an exception to that general rule: "In general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage." *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal.5th 905, 922 (2022). But the economic loss rule is not a fixed or rigid doctrine; rather, its application hinges on a balancing of various policy considerations. The rule is "deceptively easy to state" and by no means absolute. *Id.* So, whether the economic loss doctrine applies hinges, not on some rigid, default rule, but instead "turns on a careful consideration of 'the sum total' of the policy considerations at play, not a mere tallying of some finite, one-size-fits-all set of factors." *S. Cal. Gas Leak Cases*, 7 Cal. 5th at 401; *id.* at 399 ("At core, . . . the inquiry hinges not on mere rote application of these separate so-called *Rowland* factors, but instead on a comprehensive look at the 'sum total' of the policy considerations at play in the context before us.").[15]

The economic loss rule implicates two policy considerations. "First, [the rule] carries force when courts are concerned about imposing 'liability in an indeterminate amount for an indeterminate time to an indeterminate class.'" *Sheen*, 12 Cal. 5th at 922-24. And second, "the

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[15] As an initial point, it should be noted the economic loss doctrine does not apply to the negligent misrepresentation claim in any event, only the negligence claim. *Whittington v. Kidsembrace*, No. CV 21-1830-JFW, 2021 U.S. Dist. LEXIS 138713, at *16-18 (C.D. Cal. July 19, 2021); *Kalitta Air, L.L.C. v. Cent. Tex. Airborne Sys., Inc.,* 315 Fed. App'x 603, 607 (9th Cir. Oct. 8, 2008) (holding negligent misrepresentation is a "species of fraud" under California law, for which "economic loss is recoverable").

rule functions to bar claims in negligence for pure economic losses in deference to a contract between litigating parties." *Id.* In other words, "the economic loss rule 'prevents the law of contract and the law of tort from dissolving one into the other.'" *Robinson Helicopter Co., Inc. v. Dana Corp*., 34 Cal. 4th 979, 988 (2004).

Mr. Johnson's negligence claim implicates neither policy concern. First, the nightmare scenario of unlimited and unpredictable liability for purely economic damages is *impossible* under the facts of this case. In *Bily v. Arthur Young & Co.*, the Court used the example of a defendant that "negligently causes an automobile accident that blocks a major traffic artery such as a bridge or tunnel. Although defendant would be liable for personal injuries and property damage suffered in such an accident, it is doubtful any court would allow recovery by the myriad of third parties who might claim economic losses because the bridge or tunnel was impassible." 3 Cal. 4th 370, at 400-401, n.11 (1992). And in the *Southern California Gas Leak Cases*, the Court again distinguished those cases justifying the economic loss rule – "where purely economic losses flow . . . from an industrial accident caused by the defendant (and which happens to occur near the plaintiff)" – from those that do *not* justify the economic loss rule – "where purely economic losses flow . . . from a financial transaction meant to benefit the plaintiff (which is later botched by the defendant)." 7 Cal. 5th at 401-03. In Mr. Johnson's case there is, in fact, an exceptionally finite number of claims that could ever be brought in connection with the events of Black Thursday. The crypto platform at issue is a digital platform and currency. Like any digital currency based on a publicly accessible blockchain that shows the balance of each wallet in real time, all digital transactions can be traced on the electronic ledger, which is the Ethereum blockchain. That is, Defendants in this case can pinpoint with exact precision exactly which wallet addresses were using Dai, and how much Dai, and how much Ethereum that respective CDP holder lost on Black

Thursday. There is literally zero risk of infinite or indeterminate liability for an indeterminate class of people.

Nor does this case implicate policy concerns about tort and contract law overlapping. There is no contract between the parties, and Mr. Johnson has brought no contract claims. He does not seek contract remedies. He is not entitled to contract remedies. There is no risk in this case of "the law of contract and the law of tort . . . dissolving one into the other.'" *Robinson Helicopter*, 34 Cal. 4th at 988.

Defendants argue the economic loss rule "applies even where plaintiff is not in privity of contract with the defendant." ECF No. 72 at p. 29. But that statement misses the point. Of course contractual privity is not necessary to trigger the economic loss rule; otherwise, concerns about unlimited tort liability like in the examples above (which do not involve contracts) would be irrelevant. But where there is no contractual privity (or functional equivalent), and thus no risk of contract and tort law dissolving into each other, then *necessarily* this second policy concern is not implicated. *See Takano*, 2018 U.S. Dist. LEXIS at *33 ("Because Defendant cannot point to any case law where the economic loss rule bars recovery in non-contractual tort actions, Defendant's motion to dismiss Plaintiffs' fraud and intentional misrepresentation claims because they are barred by the economic loss rule is denied.").

The point is this: There is no rigid or fixed test for determining application of the economic loss rule, but rather it requires the balancing of the relevant policy considerations. Defendants treat application of the rule here as a foregone conclusion and skip right to whether there is a "special relationship" sufficient to justify an exception to the rule. But that is a distortion. If a case does not implicate either policy concern behind the rule, the Court has no reason to even apply the rule, or any exception to it, in the first place. Again, Mr. Johnson's negligence claim *implicates* *neither policy concern.* In short, this is *not* the type of case that triggers the rule.

c. Even should the Court apply the economic loss rule, the parties have a "special relationship" justifying an exception to the rule.

A "special relationship" between the parties is a well-established exception to the economic loss rule. And again, whether the parties have a "special relationship" is not an automatic or fixed determination. Instead, it is a balancing test. Specifically, courts weigh the following six factors in finding a "special relationship:" "(i) the extent to which the transaction was intended to affect the plaintiff, (ii) the foreseeability of harm to the plaintiff, (iii) the degree of certainty that the plaintiff suffered injury, (iv) the closeness of the connection between the defendant's conduct and the injury suffered, (v) the moral blame attached to the defendant's conduct, and (vi) the policy of preventing future harm." *S. Cal. Gas Leak Cases*, 7 Cal. 5th at 401. But as with the economic loss rule in general, "[d]iscerning whether there is a special relationship justifying liability of this sort can nonetheless be a subtle enterprise" because "[a]t core, . . . the inquiry hinges not on mere rote application of these separate . . . factors, but instead on a comprehensive look at the 'sum total' of the policy considerations at play in the context before us." *S. Cal. Gas Leak Cases*, 7 Cal. 5th at 401 and 399; *see also Whitesides v. E*TRADE Sec., LLC*, No. 20-cv-05803-JSC, 2021 U.S. Dist. LEXIS 46082, at *15-16 (N.D. Cal. Mar. 11, 2021).

Here, weighing these factors underscores this is *not* a case for the economic loss rule.

The second, third, and fourth factors –the foreseeability of harm, the degree of certainty the plaintiff suffered injury, and the closeness of the connection between the defendant's conduct and the injury suffered – each point to a "special relationship." Defendants' express representations led to Mr. Johnson creating a Vault and losing all his Ethereum collateral on March 12, 2020. The nature of the blockchain ledger at issue can identify with exact precision Mr. Johnson's damages. And Defendants themselves foresaw the risks of their auction features not working properly and did nothing to prevent it.

The fifth and sixth factors – the moral blame attached to the defendant's conduct and the policy of preventing future harm – are similarly non-controversial. Defendants knew there was a risk of zero-bid auctions. They nonetheless advertised that investor holdings were protected by the same system they knew was vulnerable to zero-bid auctions. They prioritized recouping their losses over those of the investors. What further moral blame could they have? And as for preventing future harm, under Defendants' argument, there is no cause of action that could ever be brought against them. Their representations, they claim, were coupled with disclaimers and thus are not actionable. And their negligence, they claim, is foreclosed by the economic loss rule. Their misrepresentations go unpunished, and their negligence – resulting in millions of dollars in investor losses – is not actionable.

Finally, as to the first factor – the extent to which the transaction was intended to affect the plaintiff – Defendants were aware there was a risk of their auction systems not working. They did nothing to prevent or disclose that risk. And after the events of Black Thursday, Defendants "prioritized and covered [their] own losses before those of [Mr. Johnson], by '[beginning] the process of minting and auctioning off new MKR to cover debts that were undercollateralized as a result of the zero-dollar exploit.'" (SAC ¶ 44). Defendants argue that the transaction at issue here had to be targeted specifically at Mr. Johnson to be actionable. But Mr. Johnson is the lead plaintiff in a putative class action. And Defendants' conduct targeted the class by advertising their auctions as a way of preventing investor loss.

The court's *Fabian* decision is instructive. 2019 U.S. Dist. LEXIS 172906. In *Fabian*, the court found a duty of care existed where a cryptocurrency platform had specifically represented and promoted its website as a "safe and reliable exchange on which to purchase and stake [the currency].” *Id.* at *18. First, “[i]t was foreseeable that a lack of security on the primary exchange for Nano coins would cause harm to individuals who, like plaintiff, deposited their Nano Coins on that exchange and that any security failure on that exchange would result in harm to plaintiff and other similarly situated individuals.” *Id.* at *34. Second, “it is plausible that Nano Defendants' alleged conduct, if true, could be viewed as morally reprehensible and this type of action could further the goal of preventing future harm.” *Id.* Third, “[i]mposing a duty to exercise care in this instance will not result in an undue burden on the Nano Defendants or the industry at large.” And finally, “Nano Defendants' conduct was proximately connected to plaintiff's injury, even if through the actions of the BitGrail Defendants.” *Id.* Similarly, Defendants in this case promised a more stable currency that was protected by the auction feature. Yet, like the *Fabian* Defendants, the Defendants in this case similarly failed to deliver that promised stability even though they foresaw the risks to the system.

Defendants focus their challenge on the “intent” factor, citing *Whitesides* to support an argument that Mr. Johnson's status as a vault holder is not individualized enough to find Defendants had intent to harm him. But in *Whitesides*, the court emphasized that Defendants' “intent” must be analyzed within the context of “important policy considerations which disfavor recognizing a duty of care . . . [that] would create limitless liability and unending litigation.” 2021 U.S. Dist. LEXIS 46082, at *19-20. As already noted, that is not a concern in this case, where the very nature of the product and the injury at issue limit, very precisely, the number of claimants and the type of claims they can bring. There is zero threat of unending or limitless liability. Defendants also defend their “moral blame,” arguing they had no obligation to defendant Mr. Johnson from the conduct of third parties. But Defendants advertised a product *for its safety features*. They were aware the product was nonetheless at risk of being manipulated by third actors. They do nothing to prevent the very thing that would undermine their supposed safety features. They compensate themselves, while doing nothing for their users that lost millions. Yet, they now want us to believe this was entirely the fault of third-party actors. As *Whitesides* states: "To establish moral blame, courts look for allegations that the defendants knew of a deficiency and failed to act." *Id.* at *23. And that is exactly what happened here.

d. Causation is adequately pleaded.

Defendants argue Mr. Johnson cannot establish causation because any harms at issue were the result of superseding causes – the unanticipated traffic on the Ethereum blockchain, the resulting increase in transaction fees, and the third-party bots programmed to take advantage of that scenario. In each instance, Defendants ignore or misstate the actual allegations. Mr. Johnson addresses these arguments in the foregoing section and will not repeat them here. In short, Paragraphs 35-39 of the SAC belie Defendants' arguments that superseding actors – and not their own ownership and mismanagement of the protocol, the bots, and the auction window – caused Mr. Johnson's harm.

CONCLUSION

Dismissal is not inappropriate. Mr. Johnson's allegations demonstrate Defendants' representations created losses to a finite class of users who lost millions of dollars as a result of Defendants' misrepresentations and false assurances. The very features Defendants marketed and advertised did not work as advertised, leading to massive losses. And at the very least, Mr. Johnson should be given leave to amend. Plaintiff respectfully requests the Court deny Defendants' motion.

DATED: December 14, 2022

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER JOHNSON, individually and on behalf of all others similarly situated, Plaintiff, v. **MAKER ECOSYSTEM GROWTH HOLDINGS, INC. NKA METRONYM, INC.**, a foreign corporation; and **MAKER ECOSYSTEM GROWTH FOUNDATION,** a foreign corporation; Defendants.	Case No. 3:20-cv-02569-LB **<u>SECOND AMENDED CLASS ACTION COMPLAINT</u>** **<u>JURY TRIAL DEMANDED</u>**

Lead Plaintiff, Peter Johnson, individually and on behalf of all others similarly situated, by his undersigned attorney, brings this suit against the Defendants, two affiliated foreign companies that collectively operate, run, and manage the Maker Ecosystem, a cryptocurrency platform (the two entities, detailed more below, are collectively referred to herein as "Defendant" or "The Maker Foundation"). Lead Plaintiff's allegations herein are based upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff's attorney, which included, among others things, a review of media reports, interviews, and other publicly disclosed reports and information about Defendant. Lead Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein, after a reasonable opportunity for discovery.

SUMMARY OF ACTION

1. This is a class action lawsuit against The Maker Foundation. Despite representing that it manages a decentralized, open, digital currency platform that boasts overcollateralized (and therefore secure) currency and has certain measures in place to prevent significant investor loss, The Maker Foundation in fact has promoted a system that it maintains primary control and ownership over while actively misrepresenting to investors in its platform (or "Vault Holders") the risks associated with it. The Maker Foundation has developed and now actively promotes the use of its digital currency, DAI, which it claims is more secure and stable than others because DAI are "over"-collateralized by other digital currency. Should the value of that collateral drop, The Maker Foundation assures its investors, then that triggers a liquidation event wherein the investor's collateral is auctioned off to pay off the outstanding DAI plus a modest, 13% liquidation penalty. Otherwise, however, a Vault Holder gets back the balance of their collateral. But on March 12, 2020 – what is now known as "Black Thursday" – the value of Ethereum, or ETH (a digital currency that is the primary collateral for DAI) dropped dramatically, triggering mass liquidation events for Vault Holders. But instead of triggering actual auctions that would have resulted in minimal, or at least mitigated, losses for its investors, The Maker Foundation's protocol instead triggered "pseudo auctions." During a 36-hour period spanning March 12-13, The Maker Foundation's protocol allowed two bots to continuously operate, buying up the liquidated Vaults' collateral in lots of 50 ETH for zero-dollar bids. In other words, Vault Holders, despite being

promised that auction and over-collateralization policies in place would mitigate against dramatic drops in the value of collateral, instead lost 100% of the collateral they invested with The Maker Foundation. Vault Holders lost at least $8.325 million during this time of liquidation, which currently is worth over $160 million.[1]

2. While misrepresenting to Vault Holders the actual risks they faced, The Maker Foundation neglected its responsibilities to its investors by either fostering or, at the very least, allowing the conditions that led to Black Thursday, all after actively soliciting millions of dollars of investment into its ecosystem.

3. The Lead Plaintiff files this complaint in order to compensate victims of The Maker Foundation's neglect and malfeasance that directly created the conditions leading to the $0 bid vulnerability that took place on Black Thursday.

PARTIES

4. Lead Plaintiff Peter Johnson is an individual who at all times mentioned, was and is a resident of Denver, Colorado. Mr. Johnson was an early investor in ETH (dating back to March 2017) and actively participated in The Maker Foundation's software offerings; was among a handful of early Maker adopters and evangelists; became a user of Maker software and finance offerings in November 2018;[2] and was entirely liquidated on Black Thursday when a singular bot

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[1] At the time of the liquidations, ETH reached a spot low of approximately $80 per 1 ETH. As of August 1, 2022, the spot price of ETH was approximately $1,620 per 1 ETH—or more than 20x the low of Black Thursday.

[2] In 2017, the Defendants published the very first white paper, introducing their platform. The first iteration of their virtual currency was known as Sai. And that system is referred to herein as the "Sai System." Two years later, the Defendants introduced a new platform meant to ultimately replace the Sai System. Among other differences, the new platform could utilize different types of collateral. This latter system is referred to herein as the "Dai System." Under the Sai System, users held collateralized debt positions (CDPs) and were referred to as CDP holders, while under the latter, debt positions were referred to as Vaults, and users as Vault Holders. While the distinction between the two is substantive and has been critical in this litigation—most notably in the arbitration ordered by the Court and ultimately resolved in favor of the Plaintiff, Mr. Johnson—the distinction only became an issue when Defendants sought to remove this case to arbitration. Now that the arbitration has resolved that Mr. Johnson's claims are wholly related to his creation of a Vault on the Defendants' Dai System, the distinction is less meaningful for

bid on and won all his remaining collateral for zero dollars. Mr. Johnson had 1713.7 ETH collateral locked up in a Vault with a liquidation price of $121.49 (worth $208,000 at the time of liquidation). Had the zero-bid auctions not occurred and had Maker made fair compensation on its 13% penalty, Mr. Johnson would have no less than 348 ETH remaining (worth at least $42,000 at the time of the liquidation, or $563,760 as of August 1, 2022).[3]

5. The Maker Ecosystem Growth Holdings, Inc. ("Maker Growth") is a foreign company (organized and operating under the laws of the Cayman Islands), with its primary place of business in California. On information and belief, Maker Growth has recently renamed itself as, Metronym, Inc. ("Metronym"). Metronym has stepped into the shoes of Maker Growth and assumed its business assets and liabilities. Metronym, like Maker Growth is a foreign company (organized and operating under the laws of the Cayman Islands). For purposes of this Complaint, Maker Ecosystem Growth Holdings, Inc. is referred to as Metronym or Maker Growth. But in each instance, all references are to the current, active corporate entity previously known and operated as Maker Ecosystem Growth Holdings, Inc.

6. Maker Ecosystem Growth Foundation is a foreign company (organized and operating under the laws of the Cayman Islands), with its primary place of business in California. On information and belief, Maker Ecosystem Growth Foundation is an affiliate of Maker Growth and overlaps in the management, operation, and development of the Maker Protocol (defined below) and its related ecosystem. On information and belief, Maker Ecosystem Growth Foundation has recently dissolved.

purposes of this complaint. Notwithstanding and just to be clear, Plaintiff's claims arise out of his use of the Dai System in 2020.

[3] Based on the spot price of ETH at $1,620 per 1 ETH.

7. Maker Growth, Metronym, Maker Ecosystem Growth Foundation are agents of each other and in all respects relevant to the allegations herein, act on each other's behalf and jointly manage all material operations with respect to the management of the Maker Protocol and its related platform and ecosystem for the trading and mining of DAI. Each entity is collectively referred to herein as "Defendant" or "The Maker Foundation."

JURISDICTION AND VENUE

8. This Complaint is filed, and these proceedings are instituted, to recover damages and to obtain other relief that the Lead Plaintiff and others similarly situated have sustained due to Defendant's misrepresentations and negligent maintenance of its cryptocurrency platform. The Lead Plaintiff brings common-law California state-law claims.

9. The Court has subject matter jurisdiction over this case because there is diversity of citizenship among the parties, and the amount in controversy, exclusive of costs and interests, exceeds $75,000.00. Accordingly, pursuant to 28 U.S.C. § 1332, the Court has subject matter jurisdiction over this case.

10. This Court has both general personal jurisdiction and specific personal jurisdiction over Defendant. As to general personal jurisdiction, Defendant has expressly represented that it does business out of San Francisco and Santa Cruz, California. Indeed, Defendant has expressly advertised that its headquarters are located 575 Market St. San Francisco, California 94105. Defendant's key officers and employees, including but not limited to the COO, the operations manager, and the head of marketing are based in and work out of either San Francisco or San Mateo counties in California. Accordingly, Defendant conducts a significant, if not majority, of its business throughout the state. Further, given that Defendant's marketing, including its head of

marketing, is based in California, Defendant's specific acts of deception and misrepresentation and neglect, described more specifically below, occurred in California where Defendant operates.

11. Venue is proper in this case because, pursuant to 28 U.S.C. § 1391, this venue is where "a substantial part of the events or omissions giving rise to the claim occurred."

INTRADISTRICT ASSIGNMENT

12. Pursuant to Civil L.R. 3-2(c), this action occurred in San Francisco County, California and should be assigned to the San Francisco Division.

FACTUAL ALLEGATIONS

I. The Maker Protocol is a platform for collateralizing digital assets and "minting" and transacting in DAI – a unique cryptocurrency.

13. The Maker Foundation is an organization that has developed a digital currency, DAI, and more importantly the protocol and various applications necessary for minting, collateralizing, and transacting the DAI. That protocol is called The Maker Protocol.

14. At its core, the Maker Protocol involves the collateralization of digital assets (such as cryptocurrencies like ETH) in order to create a "stable coin"—DAI—which is a "decentralized, unbiased, collateral-backed cryptocurrency soft-pegged to the US Dollar."

15. DAI is a store of value, a medium of exchange, a unit of account and a standard of deferred payment. And in practice, DAI is meant to be exchanged digitally between peers in exchange for other digital assets or services, just like US Dollars may be exchanged for goods and services.

II. The Maker Foundation boasts that it has created a decentralized cryptocurrency, which means that its currency (the DAI) is governed by its holders, not a central bank or other centralized financial institution.

16. Among other things, The Maker Foundation created the Maker Decentralized Autonomous Organization (or MakerDAO), which enables holders of its governance token, MKR,

to manage the MakerDAO organization "[t]hrough a system of scientific governance involving Executive Voting and Governance Polling . . . to ensure its stability, transparency, and efficiency." MKR are available to any willing buyers on any open markets that transact digital currency.

17. The Maker Foundation has boasted that it, together with the "global Maker community," is working "to bootstrap decentralized governance of the project and drive it toward complete decentralization."

18. In other words, MakerDAO is the governing body that sets all of the rules and regulations of the Maker platform. Those rules are "codified" as the Maker Protocol. If you transact in DAI, the rules of that currency are governed by MakerDAO (through the Maker Protocol). And because MakerDAO is comprised of MKR holders – which can be literally anyone or any entity – then MakerDAO, and therefore the governance of the Maker Protocol, is theoretically an open, decentralized, democratic platform. As discussed below, however, the truth is more complex than what The Maker Foundation has represented.

III. DAI is characterized by its collateralization, which The Maker Foundation has represented as a way to ensure the security of DAI-facilitated transactions.

19. An important distinguishing characteristic of DAI is that it must be collateralized by another digital currency, primarily by ETH. An individual or entity wishing to transact in or otherwise procure DAI can either trade ETH (or other Ethereum tokens) directly for DAI through Maker's "Oasis" portal, purchase DAI with USD via cryptocurrency exchanges such as Coinbase, or create a collateralized debt position ("CDP"), thereby becoming a Vault Holder. That person wishing to procure DAI through a CDP may purchase $10,000 of ETH from an exchange, deposit that ETH into a CDP contract as collateral, from which that person is then able to borrow against their collateralized debt position by withdrawing DAI. How much ETH a person may leverage into DAI, however, is subject to the Maker Protocol's "liquidation ratio." The Maker Protocol's

Liquidation Ratio is 150% of collateral to debt. Failure to maintain that ratio results in a "liquidation," described in more detail below.

20. By way of illustration: If an individual deposits $150 worth of ETH into a CDP, then, in order to maintain the 150% collateral-to-debt ratio, that same individual may borrow against that ETH only $100 worth of DAI. But of course, the value of ETH is dynamic and so, if the value of the ETH drops by 50% (thereby cutting the value of the person's $150 worth of ETH to $75 worth of ETH), then suddenly that person's $100 worth of outstanding DAI is under-collateralized, and a liquidation event is triggered.

21. As explained more below, the collateralization of the DAI, and this collateral-to-debt ratio, is crucial to the events at issue in this case and ultimately what led to a whole class of Vault Holders becoming liquidated. The $0 bid vulnerability that two bots took advantage of for 36 hours straight caused these Vault Holders to lose 100% of their initial investment, losing millions of dollars of value and investment.

IV. The Maker Foundation touted its strict collateralization requirements as a way to ensure the security of DAI-centered transactions and as a way of mitigating investor risk.

22. As noted, when the value of the collateral supporting a cache of DAI drops below the 150% described above, that automatically triggers a liquidation event.

23. The Maker Protocol utilizes a price-feed mechanism called "oracles"—price feeds provided by third parties and programs. These oracles monitor the price of ETH and thereby inform the Maker Protocol at large whether a given Vault Holder's DAI becomes undercollateralized. As soon as it does, liquidation is supposed to occur. And when liquidation happens, the Vault Holder's collateral—the ETH deposited into the CDP—is auctioned off to settle the debt with the Maker Protocol, with the balance of the ETH being returned to the Vault Holder.

24. Significantly, The Maker Foundation and other third-party user interfaces repeatedly advertised and represented to Vault Holders users that, because their CDPs would be significantly overcollateralized, liquidation events would *only result in a 13% liquidation penalty applied against the drawn DAI amount*, after which the remaining collateral would be returned to the user.

25. To illustrate: A Vault Holder may have $1,000.00 in ETH collateralizing $500 in DAI. The price of ETH suddenly drops, however, bringing the value of the ETH to $700. That triggers a liquidation event, wherein the Vault Holder's ETH (valued at $700) is auctioned. The highest bidder, in this scenario, pays $700 for the ETH. That $700 is, in turn, used to first pay off the $500 in debt (i.e., the DAI), PLUS there is a 13% liquidation penalty. The Vault Holder gets to keep whatever remaining ETH there is (in this case, there would likely be some small amount of ETH leftover once The Maker Foundation is paid for the debt plus the 13% penalty fee).

V. Yet, despite The Maker Foundation's many assurances of security, transparency, and decentralization, the events of March 12, 2020, or "Black Thursday," lead to massive investor losses.

26. In the early morning hours of March 12, 2020, the price of ETH dipped significantly and rapidly, dropping from over $190 the day before to a low of below $90 within several hours.

27. From 1:00 am Pacific Time to 5:00 am Pacific Time, ETH dipped from approximately $171 to under $130—a change of -23.5%.

28. As this significant dip accelerated, the Maker Protocol triggered liquidations for CDP that went below the requisite collateral-to-debt ratio of 150%.

29. Several issues affected the normal liquidation process, however.

30. First, the Maker Protocol's utilized oracles—again, price feeds provided by third parties and programs—failed to maintain accurate and updated prices, resulting in price reporting at levels much higher than the actual spot price of ETH.

31. Second, the crashing price caused extraordinarily high traffic on the Ethereum blockchain as parties attempted to transfer or sell their digital assets; the Ethereum network therefore experienced significant congestion and bottlenecking which slowed transactions by orders of magnitude. To push transactions through in a timely manner, therefore, parties were forced to spend upwards of ten times more than their usual transaction fees.

32. Third, and most disastrously, the Maker Protocol's lone process of CDP liquidation failed. Instead of automatically liquidating ETH held as collateral in CDPs through liquid markets and subtracting the 13% liquidation fee, the Maker Protocol had established a system of auctions whereby CDPs that had fallen below the requisite 150% collateral-to-debt ratio would have their ETH sold in lots of 50 to bidders participating on the Maker Protocol. The Maker Foundation severely limited who could participate as “Keepers” in those auctions however, restricting them to coded algorithms – often referred to as "bots" – which could programmatically patrol distressed CDPs, trigger liquidation, and then bid on the remaining collateral. Keepers are “persons” who run these liquidation-specific “bots” on the Maker Protocol. In theory, such auctions would result in multiple Keepers operating bots making bids on the liquidated collateral, encouraging the best price to prevail. But during the flash crash of March 12 and 13 and its resultant network congestion, only four Keepers (running multiple bots) were active. The Maker Foundation operated one of the four Keeper bots, which immediately ran into technical issues and wasn’t able to operate. The majority of the other Keeper bots quickly ran out of DAI liquidity and were frozen out of bidding for several hours. This left only two bots participating in all the remaining bids. Those two remaining bots, however, were programmed to increase their paid transaction fees according to the relative network congestion and were able to successfully place numerous $0 bids on liquidated ETH collateral; these two successful Keeper bots made opening bids of $0.00 on

multiple auctions and, because they were the lone bidders on separate CDP auctions, won hundreds of auctions at no cost.

33. In other words, in contrast with Defendant's representations that in the event of liquidation there would be only a 13% penalty applied against the drawn DAI amount (with a return of all remaining collateral), Vault Holders lost 100% of their collateral. Their investments became, in an instant, nothing.

34. At least one researcher concluded that, out of 3,994 liquidation transactions, 1,462 of them (36.6%) were realized with a 100 percent discount, and cumulative losses from these zero-dollar auctions amounted to $8.325 million.

VI. The Maker Foundation's own neglect and malfeasance led to the events of Black Thursday, which could have and should have been avoided.

35. While developing the future Dai system, the Maker Foundation envisioned this very scenario in its December 2017 whitepaper when it noted that "[a] number of unforeseen events could potentially occur" related to "[p]ricing errors, irrationality and unforeseen events," noting that "[t]he Maker community will need to incentivize a sufficiently large capital pool to act as Keepers of the market in order to maximize rationality and market efficiency and allow the Dai supply to grow at a steady pace without major market shocks."

36. Despite that foresight over two years prior, The Maker Foundation did little or nothing to sufficiently incentivize the creation and maintenance of adequate Keepers.

37. Worse, The Maker Foundation allowed for highly suspicious changes to the Maker Protocol; specifically during the coding process, the Maker Protocol was adjusted multiple times from an auction window of three hours down to one hour (June 26, 2019), and then from one hour down to only ten minutes (October 1, 2019), allowing for even less fair market bidding.

38. With that change in place, Keepers which placed $0.00 bids on ETH collateral were uncontested and therefore successful due to high network congestion and the difficulty of having transactions mined. In short, the newly abbreviated window prevented anyone but specifically programmed, bespoke Keeper bots, from participating in a meaningful auction, thereby ensuring that these Keepers (owners of these custom bots) earned a windfall from the auctions. The Vault Holders were, as a result, left with nothing.

39. Further, The Maker Foundation tightly controls the process of programming and deploying a Keeper bot, which had produced the only model code to program and deploy a bot, leading to an unacceptably low number of Keepers patrolling the liquidation auctions.

VII. The Maker Foundation had, however, expressly advertised its services as being immune from the exact type of threats presented by the zero-bid auctions.

40. On or around July 26, 2019, The Maker Foundation partnered with Coinbase—the United States' premiere cryptocurrency and digital asset exchange—to launch a tutorial for users called the "Dai Advanced Task."

41. In the Dai Advanced Task, Coinbase users were gifted .01 ETH (roughly $2.00 at the time) and taught how to generate Dai by opening a CDP with Maker through The Maker Foundation's CDP Portal.

42. In a single weekend, the Dai Advanced Task took CDP generation from 9,000 CDPs in the previous 11 months to "over 10,000 CDPs" opened in one weekend.

43. With that unprecedented burst in user activity and training from the Dai Advanced Task, the Maker Protocol never informed Vault Holders that the entirety of the CDPs could be forfeited. Rather, in all materials presented to CDP creators, The Maker Foundation and other third-party user interfaces informed users that, because their CDPs would be significantly overcollateralized, liquidation events would only result in a 13% liquidation penalty applied

against the drawn DAI amount, after which the remaining collateral would be returned to the user.

44. Worse, The Maker Foundation prioritized and covered its own losses before those of the Lead Plaintiff and other similarly situated Vault Holders. Mere days after Black Thursday, The Maker Foundation began the process of minting and auctioning off new MKR to cover debts that were undercollateralized as a result of the zero-dollar exploit, a process which undeniably inured to the benefit of MKR holders.

45. In summary, The Maker Foundation developed and maintained a system that ensured its interests were protected (and in fact enhanced) before any of its investors. While Vault Holders lost millions of dollars in investment, The Maker Foundation enhanced and lined its own pockets with liquidation penalties and collateral auctions.

VIII. Remarkably, in fact, The Maker Foundation has acknowledged that it failed to properly message the risks of being a Vault Holder, that it was aware of those risks (despite its public representations), and that its messaging was flat-out wrong and misleading.

46. In their March 24, 2020 Governance and Risk meeting, Maker Foundation members—led by Richard Brown, Maker Foundation's Head of Core Community—addressed Black Thursday specifically, and admitted that they had not messaged the risks to Vault Holders that liquidation of CDPs could result in a total loss of collateral (rather than the 13% liquidation penalty).

47. The call participants—some named, others anonymous—also opined that Black Thursday, and specifically the zero-dollar bid exploit, was the result of nefarious actors who had extensive, highly intelligent knowledge of the Maker Protocol, suggesting that the Keeper programmers were intimately familiar with and associated with the broader Maker community.

48. Several call members dismissed concerns with the Protocol, failure to message risks, and the perceived negligence on the part of The Maker Foundation, but did note that the

philosophy and the optics of Black Thursday weren't "fantastic," and that compensating effected Vault Holders wouldn't be "that big of a deal" given the relatively low amount of damages at stake.

IX. Further, despite its proclamation of an open, decentralized platform, The Maker Foundation still manages the Maker Protocol, maintains every financial incentive to attract more Vault Holders (and their capital), and continues to "run the show."

49. From its inception, every material application, component, and feature of the Maker Protocol has been designed and controlled by The Maker Foundation.

50. In its December 2017 White Paper, The Maker Foundation admitted its crucial and central role in the Maker Protocol, stating that

> The Maker Team plays a major role in the development and governance of the Maker Platform in its early days: budgeting for expenses, hiring new developers, seeking partnerships and institutional users, and interfacing with regulators and other key external stakeholders. Should the Maker Team fail in some capacity—for legal reasons, or due to internal problems with management—the future of Maker could be at risk without a proper backup plan.

51. Beginning in 2016, The Maker Foundation began selling the Maker Protocol governance token MKR through its forum and in private deals, and later through sell orders on third party exchanges as well as its own.

52. Among other features, the MKR token promises to reward MKR holders, who are effectively paid the interest from CDPs and a portion of liquidation fees collected.

53. Since its formation, The Maker Foundation has solicited and received investment from multiple entities, including 1confirmation, Polychain Capital, Andreesen Horowitz, Distributed Capital Partners, Scanate, FBG Capital, Wyre Capital, Walden Bridge Capital.

54. In a statement made in 2017 and published on the social media website Reddit, Rune Christensen—CEO of The Maker Foundation—stated that "we sold about 25% [of MKR] and gave about 20% as salary."

55. In December 2019 sold 5.5% of the MKR token supply to Dragonfly Capital

Partners and Paradigm for $27.5 million, still leaving at least a plurality, if not a majority, of MKR in the hands of The Maker Foundation and its agents and employees.

56. Despite those sales, and on information and belief, The Maker Foundation—whether as an entity or together with its officers, employees, and members—still owns and controls a majority of the MKR Tokens.

57. And as explained above and as further evidence of this, The Maker Foundation prioritized and covered its own losses before those of the Lead Plaintiff and other similarly situated Vault Holders. Mere days after Black Thursday, The Maker Foundation began the process of minting and auctioning off new MKR to cover debts that were undercollateralized as a result of the zero-dollar exploit, a process which undeniably inured to the benefit of MKR holders.

CLASS ACTION ALLEGATIONS

58. Lead Plaintiff brings this action as a class action pursuant to rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class of persons:

> All persons or entities who held CDP on any Maker-run exchanges that were forced to liquidate their ETH on March 12 or 13, 2020 and received zero compensation at auction.

59. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes there are over one thousand members in the proposed Class.

60. The Class is readily ascertainable and identifiable via the blockchain itself. In fact, each and every CDP that was opened can be determined with perfect precision through the same blockchain.

61. Lead Plaintiff will fairly and adequately protect the interest of the Class because Lead Plaintiff's claims are typical and representative of the claims of all members of the Class.

Lead Plaintiff suffered injury in fact when he lost no less than 348 ETH of collateral (worth at least $42,000 at the time of the liquidation, or $75,000 as of May 8, 2020).

62. Lead Plaintiff's claims are typical of the claims of all Class members, as all members of the Class are similarly affected by the events of "Black Thursday," only the amount of loss distinguishing each.

63. There are no unique defenses that may be asserted against Lead Plaintiff individually, as distinguished from the other members of the Class, and the relief sought is common to the Class. Lead Plaintiff is typical of other members of the Class, does not have any interest that is in conflict with or is antagonistic to the interests of the members of the Class, and has no conflict with any other members of the Class.

64. Lead Plaintiff has retained competent counsel to represent him and the Class.

65. Questions of law and fact common to the Class that predominate over any questions that may affect only individual members of the Class, include but are not limited to:

a. Whether Defendant misrepresented, intentionally or negligently, the consequences of a liquidation event on one of its exchanges;

b. Whether Defendant misrepresented, intentionally or negligently, its own interest or involvement in the Keepers and therefore, its own interest in the liquidation events;

c. Whether Defendant's conduct was negligent; and

d. The type and measure of damages suffered by Lead Plaintiff and the Class.

66. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for Class members to redress individually the

wrongs done to them. In the absence of a class action, Defendant will retain the benefits of its wrongful conduct.

<u>FIRST CLAIM FOR RELIEF</u>

Negligence

67. Lead Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint.

68. Defendant has a duty to Vault Holders to manage the Maker Protocol and its platform both as it has advertised and also in a reasonable, prudent, non-negligent manner.

69. By failing to prevent and/or actively allowing the events of the $0 bid exploit to continue for 36 hours straight during Black Thursday, as outlined in Paragraphs 27-40 above, Defendant breached that duty.

70. Defendant's breach of that duty, again as outlined in Paragraphs 27-40 above, was the direct cause of Lead Plaintiff's losses as described above.

71. And as described above, Lead Plaintiff was injured and lost money in the amounts described above in Paragraph 4. The Class was injured and lost money in an amount to be proven at trial but not less than $8.325 million.

<u>SECOND CLAIM FOR RELIEF</u>

Intentional Misrepresentation

72. Lead Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint.

73. Defendant misrepresented the nature of how liquidations would work, how liquidation penalties would work, and how liquidation auctions would work.

74. Defendant's misrepresentations were knowingly false. Defendant was aware of the problems that existed within the Maker Protocol and the potential for exploitation. Despite that, it continued to misrepresent the risks associated with a liquidation event. Further, it did so in a way that minimized its own losses. Defendant's subsequent statements regarding Black Thursday further confirm that it fully knew and understood the risks associated with liquidation events but actively misrepresented those risks nonetheless.

75. Lead Plaintiff relied on Defendant's representations when he purchased CDP, having been falsely assured that his purchases were subject to little risk and that, even in the event of liquidation, he would have the protection of a legitimate, bona-fide auction.

76. As a result of Defendant's misrepresentations, Lead Plaintiff was injured and lost money in the amounts described above in paragraphs 4. The Class was injured and lost money in an amount to be proven at trial but not less than $8.325 million.

77. Defendant's behavior was intentional and fraudulent. Defendant intentionally misrepresented the risks associated with CDP ownership. Lead Plaintiff and the Class are, as a result, entitled to punitive damages in an amount to be proven at trial, but not less than $20 million.

THIRD CLAIM FOR RELIEF

Negligent Misrepresentation

78. In the alternative, Lead Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint and allege this claim for negligent misrepresentation.

79. Defendant misrepresented the nature of how liquidations would work, how liquidation penalties would work, and how liquidation auctions would work.

80. Defendant could not have had any reasonable ground for believing the foregoing representations were true. The events of Black Thursday immediately exposed numerous defects within the Maker Protocol, whether those were intentional or simply negligent. Thus, Defendant could not have reasonably stress-tested or otherwise concluded that its representations regarding auction events were immune from the zero-bid auctions that occurred *en masse* on Black Thursday.

81. Lead Plaintiff relied on Defendant's representations when he purchased CDP, having been falsely assured that his purchases were subject to little risk and that, even in the event of liquidation, he would have the protection of a legitimate, bona-fide auction.

82. As a result of Defendant's misrepresentations, Lead Plaintiff was injured and lost money in the amounts described above in paragraphs 4. The Class was injured and lost money in an amount to be proven at trial but not less than $8.325 million.

WHEREFORE, Plaintiff prays that the Court grant it the following relief against Defendant:

A. As to the First Claim for Relief, Negligence, damages in an amount to be proven at trial but not less than $8.325 million.

B. As to the Second Claim for Relief, Intentional Misrepresentation, damages in an amount to be proven at trial but not less than $8.325 million, plus punitive damages in an amount not less than $20 million.

C. As to the Third Claim for Relief, Negligent Misrepresentation, damages in an amount to be proven at trial but not less than $8.325 million.

D. As to all causes of action, pre- and post-judgment interest;

E. Costs; and

F. Any other relief available at law or equity.

DATED September 8, 2022.

JURISLAW LLP

By: s/ Adam S. Heder
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Of Attorneys for Lead Plaintiff