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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANDREW SAMUELS, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

LIDO DAO, a general partnership; AH CAPITAL MANAGEMENT, LLC; PARADIGM OPERATIONS LP; DRAGONFLY DIGITAL MANAGEMENT LLC; ROBOT VENTURES LP,

Defendants.

Case No. 3:23-cv-06492

PLAINTIFF'S RESPONSE TO DOLPHIN CL, LLC'S MOTION TO DISMISS AS TO LIDO DAO

CLASS ACTION

JURY TRIAL DEMANDED

Date: September 5, 2024
Time: 10:00 AM
Courtroom 4
Before the Hon. Vince Chhabria

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PRELIMINARY STATEMENT

After this Court granted Plaintiff's Motion for Alternative Service on Lido DAO, *see* ECF 75, Lido DAO's tokenholders voted to appoint a newly created entity called "Dolphin CL, LLC" to appear "with respect to Lido DAO." *See* Dolphin CL, LLC's Motion to Dismiss ("Mot."), ECF 82 at 1 & n.2.[1] That entity has now filed a motion to dismiss "as to Lido DAO." *Id.* at 15. The Motion should be denied.

Dolphin's primary argument for dismissal is that Lido DAO is mere "software" that is incapable of being sued. This characterization of Lido DAO contradicts the plausible allegations of the Complaint and so must be rejected. As the "O" in the acronym "DAO" reveals—the "O" stands for "organization"—the Complaint plausibly alleges that Lido DAO is an *organization* composed of holders of the LDO token at issue here. *See, e.g.*, Amended Complaint ("AC"), ECF 54, at ¶ 20. Those tokenholders are not "software," as Dolphin asserts in direct contradiction to the Complaint's allegations. Instead, they are humans and business entities who use those tokens to jointly operate the Lido software and accompanying business—a business that controls more than $30 billion of staked Ether. *See, e.g.*, AC ¶¶ 24–47. Lido DAO is the crypto equivalent of the company "Microsoft"—the one with tens of thousands of employees and investors—not Microsoft Excel, a piece of software that the company produces. Lido DAO's argument to the contrary ignores its own sources and flies in the face of the one decision to have directly addressed the issue. *See CFTC v. Ooki DAO*, No. 22-cv-05416, 2022 WL 17822445, at *4 (N.D. Cal. Dec. 20, 2022) (rejecting argument "that Ooki DAO cannot be sued at all, and therefore cannot be served at all, because it is not an entity that can be sued").

Dolphin's other arguments fare no better, as they largely recapitulate arguments already made and addressed in prior briefing. First, Dolphin argues that Lido DAO is not plausibly alleged to be a general partnership, but as explained before and again below, Lido DAO unquestionably is a business run jointly by two or more people for a profit, which makes it a general partnership. Dolphin's contrary arguments are based on mischaracterizations of fact and misapplications of

[1] Dolphin's Motion includes two sets of pages numbered 1, 2, and 3. Unless otherwise noted, this brief's citations refer to the second set of pages so numbered.

law. Second, there is personal jurisdiction over Lido DAO because it purposefully targeted its solicitation activities at the United States, including by getting the LDO token listed on several U.S.-based crypto exchanges for sale to U.S. persons, including Plaintiff. Those U.S. contacts plainly suffice in light of the Securities Act's nationwide service-of-process provision. Finally, Dolphin incorporates—but adds no substance to—a handful of other arguments made by the other defendants. Those arguments remain meritless. Dolphin's Motion should be denied.

FACTUAL BACKGROUND

The facts in this matter are clearly pleaded in the Amended Complaint, and nothing in Dolphin's request for judicial notice (which Plaintiff does not oppose) contradicts those facts: Lido DAO runs a large, lucrative, and illegal business that sold securities to the American public without registration.

In 2020, three people created Lido DAO by generating one billion LDO tokens. *See* AC ¶ 32. Lido DAO's founders also incorporated business entities abroad to run Lido DAO's website—called a "front-end interface" in crypto parlance—but *not* for the purpose of conducting Lido DAO's staking business. AC ¶ 28 (explaining that the website's legal disclosures explicitly say that these entities do not control Lido DAO and do not operate its business); *see also* Dolphin CL, LLC's Request for Judicial Notice ("RJN"), ECF 83 at 4:24 (citing Lido front-end website, at the bottom of which is a link to terms of service, which read "[t]he Interface maintainers do not own, operate or control the blockchain systems, wallets or devices, validator nodes, or the Middleware [defined as "the publicly available Lido Smart Contract Systems"]").

Lido DAO makes decisions about how to operate its Ethereum staking business by binding votes of those holding LDO tokens. AC ¶ 33; RJN at 4:24 (citing website describing Lido governance process). As initially distributed, Silicon Valley venture capitalists and Lido's founders controlled 64% of the tokens, giving them full control of the business. AC ¶ 32; *see generally* RJN (citing nothing to contest this proposition). The insiders controlling Lido DAO use that control to run a business where users have, so far, staked more than $30 billion of Ether and where Lido DAO charges a 5% fee that is kept in the DAO treasury. AC ¶¶ 30, 31, 35; *see also* RJN at 4:20–21 (citing a Lido DAO blog post explaining, in a graphic, that users stake Ether

through LDO and Lido DAO keeps a 5% fee in its treasury). Defendant AH Capital Management and a member of Lido DAO's Treasury Committee have both admitted—in public statements that Dolphin does not and cannot dispute (*see generally* RJN (citing nothing to the contrary))—that the plan is to distribute the spoils of this business to LDO tokenholders. AC ¶¶ 35, 36.

Lido DAO and its Silicon Valley backers were not content to run a large and lucrative business—they wanted to sell something like equity in that business to the public. *See id.* According to Dolphin's brief, LDO tokens were initially "distributed widely to users of Lido (*i.e.*, persons who staked ETH in Lido) through a free public software-based distribution known as an 'airdrop.'" Mot. at 5:4–5. In support of this supposedly "wide" distribution, Dolphin cites a Lido DAO governance proposal distributing just 0.5% of LDO to actual users. RJN at 4:25–26. According to Dolphin's brief, "secondary markets [then] developed for trading LDO tokens and users may buy and sell them in such markets." Mot. at 5:7–8. Dolphin offers no citation for the proposition that these secondary markets developed all on their own. What actually happened—and what this Court must take as true for purposes of this Motion—is that Lido DAO worked with centralized U.S.-based exchanges to *create* secondary markets for LDO tokens. AC ¶¶ 48-70; *see generally* RJN (citing noting to contradict this). Why did Lido DAO do that? Hasu, who works for Lido DAO *and* Defendant Paradigm, explained: "Later this year, LDO owned by well-connected venture firms … is going to unlock due to the vesting schedule. Wouldn't it be natural to assume that they will help get LDO listed on [centralized exchanges] because it is in their own best interest to do so?" AC ¶ 51; *see generally* RJN (citing nothing to contradict this); *see also* Paradigm, *Hasu*, https://www.paradigm.xyz/team/hasu (last accessed Aug. 2, 2024) (listing Hasu on Paradigm's website). Once LDO tokens were indeed listed on many exchanges, *e.g.*, AC ¶ 54, Lido DAO solicited the public to buy them for its own gain, *see generally id.* ¶¶ 48–70.

Plaintiff Andrew Samuels bought LDO tokens on Gemini, a centralized exchange, and sold them for a loss. *Id.* ¶ 10. He brought this suit on his own behalf and on behalf of other purchasers against Lido DAO and its Partners, was appointed lead plaintiff without opposition, ECF 42, and effected service on Lido DAO through alternative means with this Court's approval, ECF 75. In response, Lido DAO did not appear. Instead, Lido DAO's tokenholders came together and voted

to "appoint and fund Dolphin CL, LLC, a Delaware limited liability company ("Dolphin") to engage legal counsel (currently expected to be Brown Rudnick, led by partner Stephen Palley) and make a limited appearance as 'Lido DAO.'" RJN at 4:12–14 (citing governance vote of Lido DAO appointing and funding Dolphin). Of the 52 million LDO tokens voted in snapshot polling, the 13 million voted by Paradigm's Hasu represent the largest single share. *Id.* The vote was unanimous. *Id.* Dolphin, it seems, did not exactly follow Lido DAO's instructions—although Lido DAO voted to appoint a representative to appear "as 'Lido DAO,'" Dolphin seems to have appeared as itself "on behalf of Lido DAO," RJN at 4:2–3, or "with respect to 'Lido DAO,'" Mot. at 1:3–4. It is unclear whether Dolphin purports to have the authority to bind Lido DAO and who has authority to make litigation decisions for Dolphin and instruct its counsel. Still, because Dolphin's arguments are meritless, Plaintiff responds to them here while reserving his position that Lido DAO still has not appeared in this case.[2]

ARGUMENT[3]

I. LIDO DAO IS AN ENTITY CAPABLE OF BEING SUED.

Even if the Court considers the Dolphin's arguments for why Lido DAO should be dismissed, the Motion should be denied. Lido DAO is, as its name suggests, a DAO, which stands for "Decentralized Autonomous Organization." AC ¶ 20. A DAO takes actions, like hiring people, spending money, and distributing profits, through votes of its governance tokens. *Id.* Those votes aren't suggestions; they determine the actions that the DAO *will* take by altering the code of its

[2] While Plaintiff defers for now the question whether Lido DAO has validly appeared through Dolphin, the very fact that Lido DAO tokenholders voted to appoint Dolphin to appear on its behalf defeats Dolphin's argument that Lido DAO is not any kind of partnership or entity. Dolphin was not appointed by a sentient "domain name" or "software system," but by LDO tokenholders, who cast 52 million votes to approve a proposal that Lido DAO "appoint and fund Dolphin … to engage legal counsel … and … make all necessary or desirable legal arguments to cause the case to be dismissed against Lido DAO." RJN 4:12–14 (citing governance-vote website). Dolphin itself notes that this vote was "open to all LDO token holders" but disavows it as an action of any Lido DAO partnership "because this vote did not in fact obtain the votes, or even come to the attention of, all LDO token holders." Mot. 1 & 1 n.1. Left out of this analysis is any authority for the non-sensical proposition that an entity may act only through an action in which every single partner, shareholder, or member affirmatively votes for or against an action.

[3] Dolphin's motion is governed by the well-established motion-to-dismiss standard. *E.g.*, *Disability Rts. Montana, Inc. v. Batista*, 930 F.3d 1090, 1096 (9th Cir. 2019).

underlying business, *id.*, which in Lido DAO's case consists mostly of selecting validators for its $30+ billion Ethereum staking business and managing the fees that business charges, *id.* ¶ 30. Lido DAO's founders—thinking, or at least hoping, that they could "avoid the potential of [an] SEC enforcement action"—chose a DAO, instead of a corporation or LLC, to create a business "with no legal entities." *Id.* ¶ 29. That is, they hoped they could set up a software system to collect votes and implement joint decisions to do tens of billions of dollars of illegal business, and then, when called to account, create an LLC to say "Lido DAO is software," Mot. at 3:3, and, by that magical incantation, avoid liability for what this Court said "seems like an obvious violation of the law[:] offering to sell . . . unregistered securities," Transcript of June 27, 2024 Proceedings ("Trans."), ECF 78 at 43:13–14. This plan fails. Lido DAO is a business, run jointly by two or more people, for a profit. Lido DAO therefore is, as Plaintiff previously explained and as courts considering similar questions have held, a general partnership. *See Sarcuni v. bZx DAO*, 664 F. Supp. 3d 1100, 1115 (S.D. Cal. 2023) (reaching that conclusion for Ooki DAO). Dolphin's attempt to pull this plan off relies on nothing more than contradicting the Complaint's well-pleaded allegations with verifiably false factual statements and unsupported legal arguments.

A. Lido DAO Is An Association of Two or More People Jointly Operating

The first element of a general partnership under California law, which Dolphin concedes governs this action, Mot. at 8:15, is the association of two or more people working together, *id.* (citing Cal. Corp. Code § 16202(a)). Lido DAO consists of two or more people jointly working together: Lido DAO operates a software protocol through which users stake Ether on the Ethereum blockchain and collect the rewards from that activity, and that software protocol is *governed* by votes of LDO holders. *E.g.*, AC ¶ 30. As Lido's website currently states: "Lido is managed by the Lido DAO. The DAO members govern Lido." Lido DAO, https://docs.lido.fi/lido-dao/ (last accessed Aug. 2, 2024).

To argue otherwise, Dolphin first contends that "the facts here are different" from *Sarcuni* because "the AC pleads that only a narrow subset of LDO token holders constitute the general partnership and, moreover, it is not their ownership of LDO tokens which makes them members of the general partnership." Mot. at 8:24–26. For this reason, Dolphin contends, "unlike in *Sarcuni*,

Lido DAO's alleged business is not 'DAO governance.'" *Id.* at 9:2. But that is no different from *Sarcuni*. In *Sarcuni*, the DAO's alleged business was to operate "a protocol for tokenized margin trading and lending" of crypto assets, not "DAO governance," whatever Dolphin means by that. 664 F. Supp. 3d at 1109. Here, the DAO's business is a massive, fee-generating Ethereum staking operation. *E.g.*, AC ¶ 1. DAO governance is not a business—it is a way human beings *conduct* business, in this case with the stated intention of avoiding accountability for violating the law, AC ¶ 29. This case is identical to *Sarcuni* on the facts.

Next, while Dolphin is correct that Plaintiff has not pleaded a roster of every general partner in Lido DAO, Mot. at 8:24–25, that is not a reason to dismiss the case and permit Lido DAO to carry on with its "obvious violation of the law." Trans. at 43:13. Neither Dolphin nor any other defendant has provided any authority for the proposition that plaintiffs suing general partnerships must identify in the Complaint every partner in the enterprise. Instead, a partnership under California law is the association of two or more people to jointly operate a business for profit. Cal. Corp. Code § 16202(a). Plaintiff here has alleged that Lido DAO is governed by at least two people who work together to govern the Lido Ethereum staking protocol and that this joint governance is effected by votes of LDO tokens. AC ¶ 30. As explained in prior briefing and at the hearing on the other Defendants' motions to dismiss, this Court need not determine whether anyone other than the Partner Defendants is plausibly alleged to be a general partner to conclude that Lido DAO is a general partnership and deny all pending motions to dismiss. *E.g.*, Trans. at 19:21–23:24 (discussion between Court and Plaintiff's counsel on general partnerships whose membership is uncertain). As alleged in the Amended Complaint, Lido DAO is jointly operated by "large" holders of LDO voting those tokens to cause the DAO to make business decisions. Plaintiff's legal theory is that Lido DAO's partners are those that have the capacity to meaningfully participate in Lido DAO's business. Pltf.'s Resp. to Mot. to Dismiss, ECF 64 at 20 (explaining *Houghton v. Leshner*'s conclusion that liability for a DAO's illegal actions is "more appropriately tested on a full evidentiary record at summary judgment or trial"); *see Houghton*, 2023 WL 6826814 (N.D. Cal. Sep. 20, 2023)). The *Sarcuni* court concluded that this is true of every holder of a governance

token. *Id.* at 19:22–28. Plaintiff doesn't think this is necessarily so, *see, e.g.*, Trans. at 20:13, but either way Dolphin's motion must be denied.

The mere fact that Lido DAO's partnership interests are freely tradeable (*see* Mot. at 10:9–26) is also of no moment. In support of this argument, the Partner Defendants conjured something they call the "mutual selection test" from *Rivlin v. Levine*, in which the Court of Appeal said that "in all general partnerships, and also in *bona fide* limited partnerships, there is the right to *delectus personam*, the right to determine membership." 195 Cal. App. 2d 13, 21 (1961). But *Rivlin* wasn't distinguishing general partnerships from non-entities that can do anything they want without creating any legal consequences for anyone. Rather, it was distinguishing *bona fide* partnerships (shares of which could be sold privately without registration under then-existing California law) from "*sham partnerships*, either general or limited, which masquerade[] as such to exploit investors" by pretending to involve people as partners who are, in fact, securities-violation victims, and which are not exempt from state registration requirements. *Id.* at 22 (emphasis added). Plaintiff couldn't have described Lido DAO any better himself: Small holders of LDO are sold illegal securities that occasionally masquerade as "coordination" devices to "decentralize the Ethereum blockchain"—or whatever other palaver Lido DAO resorts to when it needs to evade accountability, having initially sold LDO tokens as a way to "make lots of money . . . for LDO holders," AC ¶ 36—but the business is *actually* governed by *large* holders of LDO, jointly operating a business for profit.

Regardless, if this Court becomes the first to conclude as to a DAO that literal, person-by-person, individualized selection of partners—rather than consent to admit partners who buy enough tokens by agreeing to a governance structure in which this is possible—is a *sine qua non* of a general partnership, Plaintiff would respectfully request leave to amend the complaint to allege that Lido DAO is an unincorporated association in the alternative. *See* Trans. at 42:9–12 (Paradigm's counsel conceding that "mutual selection test" does not apply to unincorporated associations); *Webster v. San Joaquin Fruit & Vegetable Growers' Protective Ass'n*, 32 Cal. App. 264, 265 (1916) ("An unincorporated association organized for business or profit is in legal effect a mere partnership so far as the liability of its members to third persons is concerned.").

Faced with these straightforward conclusions, Dolphin would have this Court rely on verifiably false factual statements rather than the allegations in the Complaint. Dolphin contends, concededly contrary to the Amended Complaint, that "Lido DAO . . . is a smart contract system that polls LDO users on their views about potential Lido parameter changes[,] … similar to an agency doing surveys on the street and asking consumers about their preference for a product." Mot. at 4:26–5:2. In support of this "fact," Dolphin cites Lido's explanation of its voting process, which explains that, in the ordinary course, LDO tokenholders have a non-binding "discussion" before voting. *Id.* But Dolphin neglects to mention that the very same explanation goes on to say that votes are then conducted "on-chain" and "execut[ed]" whenever "quorum … has been reached" and "more than 50% of the tokens used to vote were for the 'Yes' option." Indeed, Dolphin itself immediately contradicts its argument that LDO holders are really just chatting instead of working together by saying, in the next sentence, that recipients of free LDO tokens have "*the power to determine* parameter settings." Mot. at 5:6 (emphasis added); *see also* Mot. at 11 (acknowledging that the parameters of the Lido protocol are "set by the Lido DAO"). Without conceding that Dolphin may contradict the Amended Complaint's facts with its own alternative facts at this stage, Dolphin has not even done so here—its own source confirms the inaccuracy of its statements. Indeed, Dolphin should know that its statements are false, as its own counsel previously acknowledged: "[F]or a DAO to operate in a world in which legal relationships are formalized by contracts, and enforced by courts, I don't see how a DAO can act unless it is either a corporation or it has no corporate form and it is simply an extension of its human members." Stephen D. Palley, *How to Sue a Decentralized Autonomous Organization*, COINDESK, March 20, 2016, https://perma.cc/ZZ5A-J9G4/. Exactly.

Dolphin's remaining arguments are legally irrelevant. *First*, Dolphin contends that "[a]nyone can deploy copies of . . . the source code to Lido . . . to Ethereum or any similar blockchain system, and each such deployment would constitute an instance of Lido similar to the one alleged in the complaint." Mot. at 4:16–18. This is a non sequitur. Even if in theory anyone could create their own version of the DAO and its business, Plaintiff is suing the actual people who actually operate the "deployment" of Lido DAO that currently manages a $30 billion

Ethereum staking business and sells unregistered securities to the public. The fact that some other group of people, in some other universe, or in the future of this one, could do the same illegal things, is irrelevant. Nor does it matter whether "Lido DAO did such deployment." Mot. at 4:20. As the Complaint makes clear, liability in this case does not flow from merely creating software; it flows to this specific DAO for its "obvious violation of the law," Trans. at 43:13, and thence to its partners under California law.

Second, Dolphin contends that "LDO holders' interests are often adverse to one another and Lido's staking users." But this is true of every partnership and does not change the legal analysis. In a law firm, for example, every nickel paid to one partner is one that doesn't go to another. And in every business, economic surplus that goes to the business doesn't go to its customers. Whatever Partners' "understandings of what Lido and Lido DAO mean to them," Mot. at 7:10, they appear able to coordinate to run a profitable business quite well, ¶¶ AC 35, 79, 80 (explaining major governance proposal to "self limit" the percentage of the Ethereum blockchain staked through Lido failing 99.81% to 0.19% despite more than 40% of users supporting it because "ordinary investors have no hope of stopping governance proposals from Partner Defendants," whose interest is *admittedly* to "focus on growth" rather than limitation and then to explore "token buyback mechanisms" to distribute the spoils of that growth).

B. Lido DAO is a Business

Having established that Lido DAO is jointly operated by two or more people, Plaintiff must next plead that it is a business. Cal. Corp. Code § 16202(a). He has done so. *See, e.g.*, Trans. at 23:6–7 ("I don't think you need to worry about that part."). Although Dolphin protests that Lido DAO "does not and cannot control the statements" of "the large and diverse group of people who . . . contribute to Lido," Mot. at 3 n.4, it does not and cannot contend that those statements are *irrelevant* to whether Lido DAO is plausibly alleged to be a business, and they are not irrelevant. Lido DAO's members and employees amply describe it as a business indeed, Trans. at 23:6–7, which it is: Lido DAO pools its customers' assets together, hires service providers to stake those assets, and keeps 5% of the proceeds from staking for itself. AC ¶ 1. That's a business. Dolphin attempts to go well beyond the Complaint by arguing that Lido DAO's employees are actually

"volunteer[s]," but even if this could be considered (and it may not), Dolphin concedes that these "volunteers" get paid through "grant[s]" to do things *they* describe as "business development activities." Mot. at 7. Dolphin also says that Lido DAO is no more than a "polling mechanism that queries LDO holders on whether[] an applicant should receive a grant in the form of crypto assets (which are not legal tender)." But any business could be characterized as a "polling mechanism" to determine whether to take actions with valuable assets, legal tender or otherwise. On Dolphin's characterization, Microsoft is not a business because it pays some employees in stock (not legal tender!) based on a poll of its board or shareholders. No court has ever reasoned this way.

C. Lido DAO is a For-Profit Business

Finally, Plaintiff must show that Lido DAO's business operates as a for-profit business. Cal. Corp. Code § 16202(a). Again, this is obvious: Just ask AH Capital Management, which publicly stated its desire to earn money from the enterprise, AC ¶ 35, or Lido DAO's "treasury committee," which succinctly explained that the goal is to "make lots of money," *id.* ¶ 36. Dolphin contends that it "is untrue" that "the purported general partners all profit from the alleged Lido staking business." Mot. at 9:4–6. But that's straightforwardly disputing the well-pleaded facts, which cannot be done at this stage. Anyway, Dolphin points to no evidence that Lido DAO's general partners cannot profit from the Ethereum staking business. Of course they do: the purpose of Lido DAO is "to make lots of money" and use that money to "provide an economic reward to LDO holders," AC ¶ 36, which all Partner Defendants are.

II. THIS COURT HAS PERSONAL JURISDICTION OVER LIDO DAO.

Dolphin next disputes personal jurisdiction over Lido DAO. *See* Mot. at 12. That is easily answered. Personal jurisdiction is proper when (1) the defendant "purposefully direct[ed] his activities or consummate[d] some transaction with the forum or resident thereof"; (2) the claim "arises out of or relates to the defendant's forum-related activities"; and (3) the exercise of jurisdiction "comport[s] with fair play and substantial justice." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). Although the "forum" for this analysis is often the forum state, the Securities Act's nationwide-service-of-process provision authorizes district courts "to exercise [personal] jurisdiction nationwide over any person who has minimum contacts *with*

the United States." *SEC v. Ross*, 504 F.3d 1130, 1139 (9th Cir. 2007) (emphasis added); *see* 15 U.S.C. § 77v(a). Accordingly, and contrary to Dolphin's narrow focus on California, "the question [is] whether [Lido DAO] has sufficient contacts with the United States, not any particular state." *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985); *see also CFTC v. Ooki Dao*, No. 3:22-cv-05416-WHO, 2023 WL 5321527, at *3 (N.D. Cal. June 8, 2023) ("[T]he inquiry to determine 'minimum contacts' is thus 'whether the defendant has acted within any district of the United States or sufficiently caused foreseeable consequences in this country.'").

Lido DAO has minimum contacts with the United States. Lido DAO collaborated with and sold ownership stakes to multiple U.S.-based companies, including defendants Paradigm, AH Capital Management, Dragonfly, and Robot. AC ¶¶ 6–9, 13, 38. Each of those companies participated in the DAO general partnership from the United States. *Id.* ¶ 6–9, 40–47. Lido DAO purposefully targeted its solicitation activities at the United States, including by collaborating with multiple U.S.-based crypto exchanges to induce secondary-market purchases of LDO tokens by U.S. persons. *Id.* ¶¶ 13, 53–62. For example, the Amended Complaint alleges that Lido DAO "actively collaborated with Gemini," a New York-based crypto exchange, to get the LDO token listed for purchase by U.S. persons, *id.* ¶ 60, and took similar steps with respect to two other U.S.-based exchanges, Coinbase and Kraken, *id.* ¶¶ 58, 62. Lido DAO then actively promoted those U.S.-based-exchange listings to U.S. investors. *Id.* ¶¶ 54, 59, 61, 63. Lido also has "U.S.-based employees and contractors" and has entered into business relationships with several other U.S.-based companies, including "Compound, MetaMask, and many more." *Id.* ¶ 13.

Dolphin ignores these allegations and asks the Court to do the same. Instead of addressing the allegations or explaining how they could be insufficient to show minimum contacts, Dolphin wishes them away, stating: "*Aside from the . . . allegations that Defendant listed and promoted its illegal securities for trading on California-based exchanges and other U.S. exchanges and to California persons*, Plaintiff provides no other facts to show purposeful availment of California or the United States." Mot. at 13 (emphasis added, alterations omitted). But Dolphin never explains why the Court should cast those allegations "[a]side" or why, in light of those allegations, any "other facts" are necessary. *Id.* Dolphin calls the allegations "conclusory" and "baseless," Mot. at

13, but never explains or justifies either objection. In fact, Plaintiff's allegations are far from conclusory: the Amended Complaint specifically details the extensive steps Lido DAO took to get its token listed on U.S. exchanges and to solicit U.S. persons to purchase them. AC ¶¶ 53–63. Dolphin's assertion that the allegations are "baseless" is false, but in any event irrelevant at this stage, as courts must "take as true all uncontroverted allegations in the complaint and resolve all genuine factual disputes in the plaintiff's favor." *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1106 (9th Cir. 2020).

Plaintiff's claim "arises out of or relates to" Lido DAO's contacts with the United States. *Schwarzenegger*, 374 F.3d at 802. Plaintiff is a U.S. resident who was targeted by Lido DAO's solicitations and purchased his LDO tokens on the U.S.-based Gemini exchange while in the United States. *Id.* ¶ 10. Dolphin disputes this element, Mot. at 13, but once again fails to engage with the relevant allegations, never explaining how Plaintiff's purchase of LDO tokens on Gemini did not arise out of or relate to Lido DAO's efforts to get LDO listed on Gemini and to promote it to U.S. investors. *See* AC ¶¶ 10, 54, 60-61.

Finally on this point, Dolphin argues that "Plaintiff fails to show that this Court's exercise of jurisdiction comports with fair play and substantial justice (*i.e.*, reasonableness)." Mot. at 14. But Dolphin has the burden of proof backwards on this element, as it is the *defendant* who must "'present a compelling case' that the exercise of jurisdiction would be unreasonable and therefore violate due process." *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1079 (9th Cir. 2011). Dolphin has not even attempted to meet its burden. In any event, there is nothing unfair or unjust about exercising personal jurisdiction over an entity that issued, promoted, and sold unregistered securities to U.S. investors on U.S.-based exchanges, all after setting itself up as a DAO with the specific goal of evading the U.S. laws that it was so obviously violating.

III. PLAINTIFF STATED A CLAIM AGAINST LIDO DAO.

Dolphin joins a handful of the arguments on the merits that the Partner Defendants previously made. Mot. at 14–15. None of the arguments is any more persuasive than when originally presented. First, Dolphin joins the argument that Plaintiff failed to plausibly allege that Lido DAO sold unregistered securities. *Id.* at 15. As previously explained, however, "Lido DAO

is a statutory seller of LDO tokens because it designed and executed a wildly successful plan to enable and encourage the general public to buy LDO, including by getting it listed on every major crypto exchange and then broadly promoting those listings to the general public." Pltf.'s Resp. to Mot. to Dismiss, ECF 64 at 5; *see id.* at 10-19; *see also* Trans. at 28:7–9 ("I don't think there's any question you've adequately alleged that the Lido DAO was engaged in solicitation.").

Second, Dolphin joins the argument that "Plaintiff's Section 12 Claim fails because he does not allege that he purchased securities in a public offering." Mot. at 15. This argument has taken various forms over the course of the parties' briefing, but every version of it is meritless. If Dolphin's argument is that Section 5 is limited to *initial* public offerings and therefore does not reach secondary-market transactions, that argument is foreclosed by circuit precedent: "By its terms, Section 5 of the 1933 Act . . . does not limit liability to initial distribution." *SEC v. Phan*, 500 F.3d 895, 902 (9th Cir. 2007); *see also* ECF 81.

If Dolphin's argument is that Section 5 is limited to *public* offerings (as opposed to *private* offerings), that is only partially true and in any event does not help Dolphin's case. Section 5 is not itself limited to public offerings—its language is capacious and embraces all sales of unregistered securities, *see infra*—but Section 4 of the Act does exempt from Section 5 liability "transactions by an issuer not involving any public offering." 15 U.S.C. § 77d(a)(2). This "private offering" exemption, however, does not help Dolphin, for two reasons. First, the defendant bears the burden of proving a Section 4 exemption's applicability, making the issue improper for resolution on a motion to dismiss. *See SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953). Second, the "private offering" exemption is narrow and not applicable here—it applies only to "a limited distribution to highly sophisticated investors," *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1090-91 (9th Cir. 2010), not, like here, an undifferentiated offering of unregistered securities to the public at large through a widely accessible crypto exchange.

If Dolphin's argument is that Section 5 *itself* is limited to public offerings—*i.e.*, independently of a Section 4 exemption—that is both incorrect and irrelevant. It is incorrect because Section 5 contains no such limitation, and in fact has no limitation at all. Courts have uniformly held that, to be legal, "[e]ach sale of a security . . . must either be made pursuant to a

registration statement or fall under a [Section 4] registration exception." *Phan*, 500 F.3d at 902; *see also SEC v. Cavanagh*, 155 F.3d 129, 133 (2d Cir. 1998) ("Each sale of a security … must either be made pursuant to a registration statement or fall under a registration exemption."); *Owen v. Elastos Found.*, No. 19-cv-5462, 2021 WL 5868171, at *12 (S.D.N.Y. Dec. 9, 2021) (noting that *every* securities transaction is either "registered, exempt [under Section 4], or illegal") (quoting 1 Thomas L. Hazen, *Law Sec. Reg.* § 4.2 (May 2024 update)); *Masa Fukuda v. Nethercott*, No. 13-cv-917, 2016 U.S. Dist. LEXIS 92462, at *7 (D. Utah July 15, 2016) ("Nor does Section 5 limit liability to 'public offerings.'"); 1 Louis Loss *et al.*, *Securities Regulation* 591 (4th ed. 2006) ("On its face, § 5 is all embracing.")). Dolphin does not cite—and no defendant has cited—a single case holding that Section 5 itself is limited to public offerings or limited in any other way; rather, any defendant seeking to be excused from the Securities Act's registration requirement must "look to Section 4," not Section 5. *Owen*, 2021 WL 5868171, at *14.

Defendants refuse to "look to Section 4" because, as noted above, Section 4's "private offering" exemption does not apply here and in any event is an affirmative defense rather than a pleading requirement. Defendants' effort to invent a similar limitation directly in Section 5 not only contradicts the cases, it also makes mincemeat of the statutory scheme. Most obviously, reading Section 5 as *itself* limited to public offerings would render Section 4's exemption for "transactions by an issuer not involving any public offering" entirely superfluous. 15 U.S.C. § 77d(a)(2); *see Marx v. General Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). Put another way, if Section 5 were itself limited to public offerings as Defendants insist, Congress would have had no reason to separately provide in Section 4 that Section 5's prohibitions "shall not apply to . . . transactions by an issuer not involving any public offering." 15 U.S.C. § 77d(a)(2). Defendants have no answer for this.

Defendants try to draw support from the Supreme Court's decision in *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561 (1995), but they draw the wrong lesson from that case. In *Gustafson*, the Supreme Court read the word "prospectus" in Section 12(a)(2) narrowly in part because Section 4's exemptions *do not apply to Section 12(a)(2)*, meaning that a narrow reading of Section 12(a)(2)

would not pose the superfluity problems noted above. *Id.* at 573. Here, in contrast, the Section 4 exemptions do apply to Section 5, distinguishing *Gustafson* and compelling courts' uniformly broad reading of Section 5. *See, e.g.*, *Owen*, 2021 WL 5868171, at *13 ("[N]othing in *Gustafson* limits claims under [Section 5]."); *Zakinov v. Ripple Labs, Inc.*, No. 18-cv-06753, 2020 WL 922815, at *12 (N.D. Cal. Feb. 26, 2020) ("[D]efendants' reliance upon *Gustafson* is misplaced."). Furthermore, *Gustafson* interpreted only the word "prospectus" in Section 12(a)(2); in contrast, Section 5 prohibits selling unregistered securities "through the use or medium of any prospectus *or otherwise*," 15 U.S.C. § 77e(a)(1)—plainly broader language than addressed in *Gustafson*. *See, e.g.*, *Zakinov*, 2020 WL 922815, at *12 (holding that Section 5 "provides a broader basis for assigning liability" than Section 12(a)(2)").

In any event, even if Defendants' counter-textual reading were correct, Defendants do not and cannot explain why limiting Section 5 to "public offerings" would provide them any more refuge than Section 4's exemption for non-public offerings—*i.e.*, no refuge. As noted above, an offering is "private" rather than "public" only if it is "a limited distribution to highly sophisticated investors." *Platforms Wireless*, 617 F.3d at 1090-91; *see Ralston Purina*, 346 U.S. at 125 (holding that only "[a]n offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering'"). Plaintiff purchased his LDO tokens in undifferentiated offering the public at large through a widely accessible crypto exchange, not a limited distribution that would qualify as "private" under *Ralston Purina*. And because Lido DAO was a "seller" under *Pinter* in that public offering of unregistered securities, *see supra*, it is liable in rescission under the Securities Act.

Finally, Dolphin joins Dragonfly's and Robot's argument "that the *in pari delicto* doctrine bars Plaintiff's . . . claims." Mot. at 15. As previously explained, however, that defense is available only when "the plaintiff bears at least substantially equal responsibility for the violations he seeks to redress," and "the comparative fault here is not even close to equal." Pltf.'s Resp. to Mot. to Dismiss, ECF 64 at 22-23.

CONCLUSION

For the foregoing reasons, Dolphin CL, LLC's motion to dismiss should be denied.

Respectfully submitted,

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