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11 *Payward Ventures, Inc.*

12  
13 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15  
16 SECURITIES AND EXCHANGE  
COMMISSION,

17 Plaintiff,

18 v.

19 PAYWARD, INC. and PAYWARD  
20 VENTURES, INC.,

21 Defendants.

**CASE NO. 3:23-CV-06003-WHO**

**KRAKEN'S ANSWER  
TO PLAINTIFF'S COMPLAINT**

**JURY TRIAL DEMANDED**

1 Defendants Payward, Inc. and Payward Ventures, Inc. (together, “Kraken”), by and  
2 through their undersigned counsel, hereby answer and assert defenses to Plaintiff Securities and  
3 Exchange Commission’s (“Plaintiff” or “SEC”) Complaint (ECF No. 1) (the “Complaint”).

4 **PRELIMINARY STATEMENT**

5 Kraken was founded in 2011 and it has been operating a digital asset trading platform since  
6 2013 that has employed thousands of American workers nationwide. Driven by the global demand  
7 for an alternative to the traditional finance and currency systems, Kraken has sought to make the  
8 United States the center of the digital asset revolution. For more than a decade, Kraken operated  
9 openly without any suggestion by the SEC that its mere existence violated the securities laws. In  
10 fact, in 2021, the Chair of the SEC told Congress that “the exchanges trading in these crypto assets  
11 do not have a regulatory framework [] at the SEC,” and “it is only Congress that could really  
12 address this lack of a framework.”<sup>1</sup>

13 Kraken has tried to work with the SEC to make registration feasible. But the industry’s  
14 efforts have been stonewalled at every step, as the SEC has instead chosen to pursue a strategy of  
15 fighting with its sister regulators for enforcement authority its Chair admitted it did not have. This  
16 has predictably led to a patchwork of inconsistent and irreconcilable court decisions in an area that  
17 is plainly in need of a uniform regulatory approach.

18 Kraken has worked to comply with the SEC’s unwritten and shifting approach to digital  
19 asset regulation. But during the investigation that preceded this lawsuit, the SEC refused even to  
20 identify which digital asset transactions on Kraken’s trading platform it claimed were investment  
21 contracts. It was only when the SEC filed its Complaint that Kraken learned for the first time that  
22 the SEC’s allegations related to 11 alleged “crypto asset securities” traded on Kraken. The Court  
23 has rejected the SEC’s invented asset class – “crypto asset securities” – and held that these 11  
24 digital assets are not themselves investment contracts. The SEC has pointed to no transactions  
25 where investment contracts were allegedly formed on Kraken. The digital assets themselves  
26

27 <sup>1</sup> *Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide,*  
28 *Part III*, 117th Cong. 12 (May 6, 2021), <http://tinyurl.com/3u2cynya>.

1 cannot be the investment contracts because they carry none of the rights and obligations of a share  
2 of stock, a bond, or any other financial asset that Congress has said is subject to SEC regulation.  
3 The digital assets themselves are the *only* things that are traded, brokered, or settled on Kraken.

4 **RESPONSES TO PLAINTIFF’S ALLEGATIONS**

5 Kraken denies that it has engaged in illegal conduct. Kraken denies that Plaintiff is entitled  
6 to judgment in its favor or any relief whatsoever, including the relief requested in Plaintiff’s prayer  
7 for relief.

8 All allegations not expressly admitted in this Answer are denied and any factual averment  
9 admitted is admitted only as to the specific facts and not as to any conclusions, characterizations,  
10 implications, or speculations that are contained in the averment or in the Complaint as a whole.  
11 Unless otherwise noted, footnotes, appendices, headings, and subheadings do not purport to state  
12 factual allegations, and no response is required. To the extent any response is required, all answers  
13 to allegations in a particular paragraph of the Complaint should be construed to apply equally to  
14 the allegations contained in the footnotes, subparts, headings, subheadings, or appendices, if any,  
15 accompanying, comprising or relating to such paragraph of the Complaint, unless expressly stated  
16 otherwise.

17 Use of certain terms or phrases defined in the Complaint is not an acknowledgment or  
18 admission of any characterization the Plaintiff may ascribe to the defined terms or the existence  
19 of the thing defined by the term or phrase. Unless otherwise defined, capitalized terms shall refer  
20 to the capitalized terms defined in the Complaint, but any such use is not an acknowledgment or  
21 admission of any characterization the Plaintiff may ascribe to the capitalized terms or the existence  
22 of the thing defined by the capitalized term. Without limiting the foregoing, the Complaint  
23 employs multiple ambiguous or undefined terms, including, but not limited to, “crypto asset  
24 securities,” “Kraken-Traded Securities,” “proprietary assets,” and “investors,” to which no  
25 response is required. Kraken specifically denies that it engaged in the conduct of a securities  
26 exchange, broker, dealer, or clearing agency.

1           The Complaint also contains many purported quotations from, and references to, a number  
2 of sources and documents, some identified, some not. Plaintiff does not provide copies of the  
3 sources and documents quoted or referenced, which has impaired Kraken’s ability to confirm or  
4 deny the accuracy of the quotations and references in the Complaint as compared to the source or  
5 document. Kraken, therefore, does not admit the authenticity or accuracy of any sources or  
6 documents quoted or referenced and reserves the right to challenge the accuracy of the quotations  
7 and references (including in the context of the entire source or document). Furthermore, with  
8 reference to all quotations, references to documents, or any such averments that might be offered  
9 into evidence, Kraken specifically reserves the right to object to any use of such averments or the  
10 Complaint as a whole in evidence for any purpose whatsoever.

11           This statement is incorporated, to the extent appropriate, into each numbered paragraph of  
12 this Answer.

13           1.       Kraken admits that it has operated its trading platform since 2013 and that it has  
14 not registered with the SEC as a national securities exchange, a broker-dealer, or a clearing agency  
15 because it was never required to do so. Kraken denies that the term “crypto asset securities” fairly  
16 or accurately describes the assets identified by that term and denies that crypto assets “that form  
17 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
18 on Mot. to Dismiss, ECF No. 90. Kraken denies any remaining allegations in Paragraph 1.

19           2.       To the extent Paragraph 2 purports to quote, characterize, or summarize statements  
20 made in Kraken’s financial statements and audit plan, the statements speak for themselves, and  
21 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
22 contents. To the extent Paragraph 2 mischaracterizes the cited statements, Kraken denies the  
23 allegations. Kraken denies any remaining allegations in Paragraph 2.

24           3.       Paragraph 3 states legal conclusions to which no response is required.

25           4.       Kraken denies the allegations in the first sentence of Paragraph 4. The second  
26 sentence of Paragraph 4 states legal conclusions to which no response is required. To the extent a  
27 response is required, Kraken denies that *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), set forth  
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1 the relevant test for determining whether an “instrument,” as opposed to a “contract, transaction,  
2 or scheme,” is an investment contract. Kraken respectfully refers the Court to *Howey* for an  
3 accurate and complete record of its contents. Kraken further denies the allegation in the third  
4 sentence of Paragraph 4 that the SEC in July 2017 “remind[ed] members of the public that crypto  
5 assets may be considered investment contracts subject to securities laws” because this was the first  
6 alleged guidance of this kind that the SEC issued. Kraken respectfully refers the Court to the  
7 SEC’s 2017 Report for an accurate and complete record of its contents. Kraken further  
8 respectfully refers the Court to the SEC’s other enforcement actions for a complete and accurate  
9 record of their contents. Finally, Kraken admits the allegation in the final sentence of Paragraph  
10 4 that it has not registered as a national securities exchange, broker-dealer, or clearing agency with  
11 the Commission because it was never required to do so, but otherwise denies that the allegations  
12 in the final sentence present a fair and complete description of the matters described, and therefore  
13 denies the remaining allegations in the final sentence of Paragraph 4.

14 5. Kraken denies the allegations in Paragraph 5.

15 6. Paragraph 6 states legal conclusions to which no response is required. To the extent  
16 a response is required, Kraken denies that the Commission has authority to bring this action.

17 7. Paragraph 7 consists of a prayer for relief to which no response is required. To the  
18 extent a response is required, Kraken denies that the Commission has authority to bring this action  
19 and that it is entitled to the relief it seeks.

20 8. Paragraph 8 states legal conclusions to which no response is required. To the extent  
21 a response is required, Kraken denies that the Commission has authority to bring this action and  
22 that the Court has jurisdiction.

23 9. Paragraph 9 states legal conclusions to which no response is required.

24 10. Paragraph 10 states legal conclusions to which no response is required. To the  
25 extent a response is required, Kraken denies the allegations in Paragraph 10.

26 11. Paragraph 11 states legal conclusions to which no response is required.  
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1           12.     Kraken admits it is a Delaware corporation founded in 2011, that it has a number  
2 of wholly owned subsidiaries, including Payward Ventures, Inc, and that many of these do  
3 business as Kraken. Kraken also admits that Payward has not registered with the Commission as  
4 a national securities exchange, broker-dealer, or clearing agency because it was never required to  
5 do so. Kraken otherwise denies the allegations in Paragraph 12.

6           13.     Kraken admits it is a Delaware corporation founded in 2013. Kraken also admits  
7 that Payward Ventures has not registered with the Commission as a national securities exchange,  
8 broker-dealer, or clearing agency because it was never required to do so. Kraken further admits  
9 that Payward Ventures consented to the entry of final judgment in the cited action without  
10 admitting or denying the SEC's allegations. Kraken specifically denies any allegation that the  
11 allegations in the Complaint in that action are admissions of fact or law or are legally binding on  
12 Kraken, and avers that the settled action did not allege that Payward Ventures acted as an  
13 exchange, broker-dealer, or clearing agency. Kraken respectfully refers the Court to the settled  
14 action for a complete and accurate record of its contents.

15           14.     Paragraph 14 states legal conclusions to which no response is required. To the  
16 extent a response is required, Kraken denies the allegations in Paragraph 14.

17           15.     Paragraph 15 states legal conclusions to which no response is required. To the  
18 extent Paragraph 15 purports to quote, characterize, or summarize *Slack Tech., LLC v. Pirani*, 598  
19 U.S. 759 (2023), the case speaks for itself, and Kraken respectfully refers the Court to the full text  
20 of *Pirani* for an accurate and complete record of its contents. To the extent Paragraph 15 purports  
21 to quote, characterize, or summarize sections of the Securities Act of 1933 and the Securities  
22 Exchange Act of 1934, the cited sections speak for themselves, and Kraken respectfully refers the  
23 Court to the full text of these sections for an accurate and complete record of their contents. To  
24 the extent Paragraph 15 mischaracterizes the cited statements, Kraken denies the allegations.

25           16.     Paragraph 16 states legal conclusions to which no response is required. To the  
26 extent Paragraph 16 purports to quote, characterize, or summarize *Howey*, the case speaks for  
27 itself, and Kraken respectfully refers the Court to the full text of *Howey* for an accurate and  
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1 complete record of its contents. To the extent Paragraph 16 purports to quote, characterize, or  
2 summarize cases interpreting *Howey*, these cases speak for themselves, and Kraken respectfully  
3 refers the Court to their full text for an accurate and complete record of their contents. To the  
4 extent Paragraph 16 mischaracterizes the cited statements, Kraken denies the allegations.

5 17. Paragraph 17 states legal conclusions to which no response is required. To the  
6 extent Paragraph 17 purports to quote, characterize, or summarize sections of the Exchange Act,  
7 the Exchange Act speaks for itself, and Kraken respectfully refers the Court to its full text for an  
8 accurate and complete record of its contents. To the extent Paragraph 17 mischaracterizes the  
9 cited statements, Kraken denies the allegations.

10 18. Paragraph 18 defines terms to which no response is required.

11 19. Kraken denies that the allegations in Paragraph 19 present a fair and complete  
12 description of the matters described and therefore denies the allegations in Paragraph 19.

13 20. Kraken denies that the allegations in Paragraph 20 present a fair and complete  
14 description of the matters described and therefore denies the allegations in Paragraph 20.

15 21. Kraken denies that the allegations in Paragraph 21 present a fair and complete  
16 description of the matters described and therefore denies the allegations in Paragraph 21.

17 22. Kraken denies that the allegations in Paragraph 22 present a fair and complete  
18 description of the matters described and therefore denies the allegations in Paragraph 22.

19 23. Kraken denies that the allegations in Paragraph 23 present a fair and complete  
20 description of the matters described and therefore denies the allegations in Paragraph 23.

21 24. Kraken denies that the allegations in Paragraph 24 present a fair and complete  
22 description of the matters described and therefore denies the allegations in Paragraph 24.

23 25. Kraken denies that the allegations in Paragraph 25 present a fair and complete  
24 description of the matters described and therefore denies the allegations in Paragraph 25.

25 26. Kraken denies that the allegations in Paragraph 26 present a fair and complete  
26 description of the matters described and therefore denies the allegations in Paragraph 26.

1           27.     Kraken denies that the allegations in Paragraph 27 present a fair and complete  
2 description of the matters described and therefore denies the allegations in Paragraph 27.

3           28.     Paragraph 28 states legal conclusions to which no response is required. To the  
4 extent a response is required, Kraken denies that the allegations in Paragraph 28 present a fair and  
5 complete description of the matters described and therefore denies the allegations in Paragraph 28.  
6 To the extent that Paragraph 28 contains any remaining allegations, Kraken lacks knowledge or  
7 information sufficient to form a belief as to the truth of these allegations, and therefore denies  
8 them on that basis.

9           29.     To the extent Paragraph 29 purports to quote, characterize, or summarize public  
10 statements made by issuers, these statements speak for themselves, and Kraken respectfully refers  
11 the Court to their full text for an accurate and complete record of their contents. Kraken otherwise  
12 lacks knowledge or information sufficient to form a belief as to the truth of these allegations, and  
13 therefore denies them on that basis.

14           30.     Kraken denies that the allegations in Paragraph 30 present a fair and complete  
15 description of the matters described and therefore denies the allegations in Paragraph 30. To the  
16 extent the allegations in Paragraph 30 describe offerings of other crypto asset trading platforms,  
17 Kraken lacks knowledge or information sufficient to form a belief as to the truth of these  
18 allegations, and therefore denies them on that basis.

19           31.     Kraken denies that the allegations in Paragraph 31 present a fair and complete  
20 description of the matters described and therefore denies the allegations in Paragraph 31. To the  
21 extent the allegations in Paragraph 31 describe services of other crypto asset trading platforms,  
22 Kraken lacks knowledge or information sufficient to form a belief as to the truth of these  
23 allegations, and therefore denies them on that basis.

24           32.     Kraken denies that the allegations in Paragraph 32 present a fair and complete  
25 description of the matters described and therefore denies the allegations in Paragraph 32. To the  
26 extent the allegations in Paragraph 32 describe offerings of other crypto asset trading platforms,  
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1 Kraken lacks knowledge or information sufficient to form a belief as to the truth of these  
2 allegations, and therefore denies them on that basis.

3 33. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
4 the allegations in Paragraph 33, and therefore denies them on that basis.

5 34. Kraken denies that the allegations in Paragraph 34 present a fair and complete  
6 description of the matters described and therefore denies the allegations in Paragraph 34. Kraken  
7 specifically denies that it solicits, accepts, or handles orders for securities and specifically denies  
8 that it maintains a central securities depository for the settlement of securities transactions. To the  
9 extent the allegations in Paragraph 34 describe functions of other crypto asset trading platforms,  
10 Kraken lacks knowledge or information sufficient to form a belief as to the truth of these  
11 allegations, and therefore denies them on that basis.

12 35. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
13 the allegations in Paragraph 35 with respect to registered national securities exchanges and the  
14 functions of other crypto asset trading platforms, and therefore denies them on that basis. To the  
15 extent any of the allegations in Paragraph 35 are made against Kraken specifically, Kraken denies  
16 that they present a fair and complete description of the matters described and therefore denies the  
17 allegations in Paragraph 35. Finally, Kraken specifically denies that it operates as a national  
18 securities exchange, clearing agency, or broker-dealer.

19 36. Kraken denies the allegations in Paragraph 36.

20 37. To the extent Paragraph 37 purports to quote, characterize, or summarize the DAO  
21 Report, the Report speaks for itself, and Kraken respectfully refers the Court to the full text of the  
22 Report for an accurate and complete record of its contents. To the extent Paragraph 37  
23 mischaracterizes the cited statements, Kraken denies the allegations.

24 38. To the extent Paragraph 38 purports to quote, characterize, or summarize the DAO  
25 Report, the Report speaks for itself, and Kraken respectfully refers the Court to the full text of the  
26 Report for an accurate and complete record of its contents. To the extent Paragraph 38  
27 mischaracterizes the cited statements, Kraken denies the allegations.

1           39. To the extent Paragraph 39 purports to quote, characterize, or summarize  
2 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
3 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
4 To the extent Paragraph 39 mischaracterizes the cited statements, Kraken denies the allegations.  
5 To the extent a further response is required, Kraken admits that it launched its trading platform in  
6 2013.

7           40. Kraken admits that it currently provides the alleged services for customers and  
8 otherwise denies that the allegations in Paragraph 40 present a fair and complete description of the  
9 matters described and therefore denies the remaining allegations in Paragraph 40.

10           41. Kraken admits that it launched its trading platform in 2013. Kraken also admits  
11 that it lists more than 220 crypto assets globally. It also admits that it permits margin trading and  
12 offers an over-the-counter trading desk, instant buy features, and customer applications, but denies  
13 that any of these services are “securities trading services.” Kraken specifically denies that these  
14 services transform its platform into a securities exchange, clearing agency, or broker-dealer, and  
15 specifically denies that it offers securities trading. To the extent there are any remaining  
16 allegations in Paragraph 41, Kraken denies that the allegations in Paragraph 41 present a fair and  
17 complete description of the matters described and therefore denies the allegations in Paragraph 41.

18           42. To the extent Paragraph 42 purports to quote, characterize, or summarize  
19 statements made on Kraken’s website or in its Terms of Service, these statements speak for  
20 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
21 record of their contents. To the extent Paragraph 42 mischaracterizes the cited statements, Kraken  
22 denies the allegations. To the extent any further response is required, Kraken admits that it  
23 provides the services described in Paragraph 42 under certain circumstances. To the extent there  
24 are any remaining allegations in Paragraph 42, Kraken denies that the allegations in Paragraph 42  
25 present a fair and complete description of the matters described and therefore denies the allegations  
26 in Paragraph 42.

1           43. To the extent Paragraph 43 purports to quote, characterize, or summarize  
2 statements made in Kraken’s financial statements, these statements speak for themselves, and  
3 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
4 contents. To the extent Paragraph 43 mischaracterizes the cited statements, Kraken denies the  
5 allegations.

6           44. Kraken admits that its platform and some services are available to customers inside  
7 and outside of the United States who meet Kraken’s eligibility criteria, but otherwise denies that  
8 the allegations in Paragraph 44 present a fair and complete description of the matters described  
9 and therefore denies the allegations in Paragraph 44.

10           45. Kraken admits that it uses servers located in the United States, but otherwise denies  
11 that the allegations in Paragraph 45 present a fair and complete description of the matters described  
12 and therefore denies the allegations in Paragraph 45.

13           46. Kraken denies the allegations in the first sentence of Paragraph 46. To the extent  
14 Paragraph 46 purports to quote, characterize, or summarize statements made in Kraken’s Terms  
15 of Service, these statements speak for themselves, and Kraken respectfully refers the Court to their  
16 full text for an accurate and complete record of their contents. To the extent Paragraph 46  
17 mischaracterizes the cited statements, Kraken denies the allegations.

18           47. To the extent Paragraph 47 purports to quote, characterize, or summarize  
19 statements made in Kraken’s Terms of Service, organizational structure, promotional videos,  
20 media interviews, and marketing materials, these statements speak for themselves, and Kraken  
21 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
22 To the extent Paragraph 47 mischaracterizes the cited statements, Kraken denies the allegations.  
23 Kraken otherwise denies that the allegations in Paragraph 47 present a fair and complete  
24 description of the matters described and therefore denies the allegations.

25           48. Kraken admits that crypto assets are available for trading to customers who meet  
26 Kraken’s criteria. Kraken also admits that these customers may buy, sell, or exchange crypto  
27 assets for U.S. dollars, other fiat currency, and other crypto assets. Kraken otherwise denies that  
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1 the allegations in Paragraph 48 present a fair and complete description of the matters described  
2 and therefore denies the allegations in Paragraph 48.

3 49. Kraken denies that the allegations in Paragraph 49 present a fair and complete  
4 description of the matters described and therefore denies the allegations in Paragraph 49.

5 50. Kraken denies that the allegations in Paragraph 50 present a fair and complete  
6 description of the matters described and therefore denies the allegations in Paragraph 50.

7 51. To the extent Paragraph 51 purports to quote, characterize, or summarize  
8 statements made on Kraken's website, these statements speak for themselves, and Kraken  
9 respectfully refers the Court to the schedule for an accurate and complete record of their contents.  
10 To the extent Paragraph 51 mischaracterizes the cited statements, Kraken denies the allegations.

11 52. Kraken denies that the allegations in Paragraph 52 present a fair and complete  
12 description of the matters described and therefore denies the allegations in Paragraph 52.

13 53. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
14 the allegations in Paragraph 53 with respect to the format of trading applications offered by  
15 registered broker-dealers in the traditional securities market, and therefore denies them on that  
16 basis. Kraken denies that the allegations in Paragraph 53 present a fair and complete description  
17 of the matters described and therefore denies the allegations in Paragraph 53. Kraken respectfully  
18 refers the Court to its Terms of Use, which specify certain criteria that users must meet to be  
19 eligible to use Kraken's services, as well as certain acceptable and unacceptable uses of those  
20 services.

21 54. To the extent Paragraph 54 purports to quote, characterize, or summarize  
22 information available on Kraken's website, these statements speak for themselves, and Kraken  
23 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
24 To the extent Paragraph 54 mischaracterizes the cited statements, Kraken denies the allegations.  
25 Kraken specifically denies that these webpages promote a purchase of an asset as an investment  
26 into the asset promoter's efforts to develop, create, grow, and/or maintain the asset's ecosystem in  
27 the hope that this will increase the asset's value.

1           55. Kraken admits that it has not registered as a broker, dealer, national securities  
2 exchange, or clearing agency, because it was never required to do so. The remaining allegations  
3 in Paragraph 55 state characterizations and legal conclusions to which no response is required.  
4 Kraken otherwise denies the allegations in Paragraph 55.

5           56. Kraken specifically denies the allegations that there are no restrictions on the  
6 amount of units of a crypto asset a customer may purchase, and that customers may purchase  
7 crypto assets on Kraken for any amount and for any purpose. To the extent there any remaining  
8 allegations in Paragraph 56, Kraken denies that the allegations in Paragraph 56 present a fair and  
9 complete description of the matters described and therefore denies the allegations in Paragraph 56.

10           57. Kraken specifically denies the allegations that crypto assets are immediately  
11 eligible for resale and denies that there are no restrictions on resale on Kraken. Kraken otherwise  
12 denies that the allegations in Paragraph 57 present a fair and complete description of the matters  
13 described and therefore denies the allegations in Paragraph 57.

14           58. Kraken denies that it makes securities available for trading on its platform. Kraken  
15 also denies that the term “crypto asset securities” fairly or accurately describes assets identified  
16 by that term. Kraken further denies any allegation that crypto assets “that form the basis of  
17 transactions on Kraken are investment contracts, or are themselves securities.” Order on Mot. to  
18 Dismiss, ECF No. 90. Kraken further denies that these assets are traded as investment contracts  
19 on Kraken’s platform. Kraken admits that the assets listed in Paragraph 58 are available on Kraken  
20 and were alleged to be securities in the cited complaints. Kraken denies that these assets have a  
21 “status as crypto asset securities.” Kraken also denies that the SEC brought enforcement actions  
22 against the issuers of those assets, and further denies that any of those assets are securities. To the  
23 extent there are any remaining allegations in Paragraph 58, Kraken denies the allegations.

24           59. Paragraph 59 states legal conclusions to which no response is required. To the  
25 extent a response is required, Kraken denies that the terms “crypto asset securities” or “Kraken-  
26 Traded Securities” fairly or accurately describes assets identified by those terms. Kraken further  
27 denies any allegation that crypto assets “that form the basis of transactions on Kraken are  
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1 investment contracts, or are themselves securities.” Order on Mot. to Dismiss, ECF No. 90.  
2 Kraken otherwise denies the allegations in Paragraph 59.

3 60. Kraken admits that ADA, ALGO, ATOM, FIL, ICP, MANA, MATIC, NEAR,  
4 OMG, and SOL were available for trading on its platform at certain points during the Relevant  
5 Period. Kraken denies that the term “Kraken-Traded Securities” fairly or accurately describes  
6 assets identified by that term and otherwise denies the allegations in Paragraph 60.

7 61. Kraken denies the allegations in Paragraph 61.

8 62. Kraken denies the allegations in Paragraph 62.

9 63. Kraken denies the allegations in Paragraph 63.

10 64. Kraken denies the allegations in Paragraph 64.

11 65. To the extent Paragraph 65 purports to quote, characterize, or summarize public  
12 statements by Protocol Labs, the statements speak for themselves, and Kraken respectfully refers  
13 the Court to their full text for an accurate and complete record of their contents. To the extent  
14 Paragraph 65 mischaracterizes the cited statements, Kraken denies the allegations.

15 66. To the extent Paragraph 66 purports to quote, characterize, or summarize  
16 statements on Kraken’s website, the purported statements speak for themselves, and Kraken  
17 respectfully refers the Court to the full text of the purported statements for an accurate and  
18 complete record of their contents. To the extent Paragraph 66 mischaracterizes the cited  
19 statements, Kraken denies the allegations. Kraken admits that FIL has been available for trading  
20 on Kraken at various points since October 2020.

21 67. Paragraph 67 consists of characterizations of the Complaint’s allegations to which  
22 no response is required. To the extent a response is required, Kraken denies that the term “Kraken-  
23 Traded Securities” fairly or accurately describes assets identified by that term and otherwise denies  
24 the allegations in Paragraph 67.

25 68. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
26 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
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1 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
2 on Mot. to Dismiss, ECF No. 90. Kraken otherwise denies the allegations in Paragraph 68.

3 69. Paragraph 69 states legal conclusions to which no response is required.

4 70. Kraken denies the allegations in Paragraph 70.

5 71. Paragraph 71 states legal conclusions to which no response is required. To the  
6 extent a response is required, Kraken admits that it has not registered with the Commission as a  
7 national securities exchange, broker, dealer, or clearing agency because it was never required to  
8 do so. Kraken denies that it has ever functioned as a national securities exchange, broker, dealer,  
9 or clearing agency for purposes of the federal securities laws.

10 72. Paragraph 72 purports to quote, characterize, or summarize Section 2(3) of the  
11 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
12 for an accurate and complete record of its contents. To the extent Paragraph 72 mischaracterizes  
13 the cited statements, Kraken denies the allegations.

14 73. Paragraph 73 purports to quote, characterize, or summarize Sections 5, 3(a)(1), and  
15 6 of the Exchange Act, the sections speak for themselves, and Kraken respectfully refers the Court  
16 to their full text for an accurate and complete record of their contents. To the extent Paragraph 73  
17 mischaracterizes the cited statements, Kraken denies the allegations.

18 74. Paragraph 74 purports to quote, characterize, or summarize Section 3(a)(1) of the  
19 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
20 for an accurate and complete record of its contents. To the extent Paragraph 74 mischaracterizes  
21 the cited statements, Kraken denies the allegations.

22 75. Paragraph 75 purports to quote, characterize, or summarize Exchange Act Rule 3b-  
23 16(a), the rule speaks for itself, and Kraken respectfully refers the Court to its full text for an  
24 accurate and complete record of its contents. To the extent Paragraph 75 mischaracterizes the  
25 cited statements, Kraken denies the allegations.

26 76. Paragraph 76 states legal conclusions to which no response is required.  
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1           77. Paragraph 77 purports to quote, characterize, or summarize Section 6 of the  
2 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
3 for an accurate and complete record of its contents. To the extent Paragraph 77 mischaracterizes  
4 the cited statements, Kraken denies the allegations.

5           78. Paragraph 78 purports to quote, characterize, or summarize Section 19 of the  
6 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
7 for an accurate and complete record of its contents. To the extent Paragraph 78 mischaracterizes  
8 the cited statements, Kraken denies the allegations.

9           79. Kraken denies that the term “Kraken-Traded Securities” fairly or accurately  
10 describes assets identified by that term. Kraken denies the allegations in Paragraph 79.

11           80. Kraken admits that more than 220 crypto assets are available globally on the  
12 Kraken Trading Platform. Kraken denies that the terms “crypto asset securities” or “Kraken-  
13 Traded Securities” fairly or accurately describes assets identified by those terms. Kraken further  
14 denies any allegation that crypto assets “that form the basis of transactions on Kraken are  
15 investment contracts, or are themselves securities.” Order on Mot. to Dismiss, ECF No. 90.  
16 Kraken otherwise denies that the allegations in Paragraph 80 present a fair and complete  
17 description of the matters described and therefore denies the allegations in Paragraph 80.

18           81. Kraken admits that the Kraken Trading Platform uses a trading engine that matches  
19 customer orders based, in part, on price and time priority. Kraken otherwise denies that the  
20 allegations in Paragraph 81 present a fair and complete description of the matters described and  
21 therefore denies the allegations in Paragraph 81.

22           82. Kraken admits that certain orders are entered into separate central limit order books  
23 for each crypto asset trading pair. To the extent the allegations in Paragraph 82 describe other  
24 crypto asset trading platforms, Kraken lacks knowledge or information sufficient to form a belief  
25 as to the truth of these allegations, and therefore denies them on that basis. Kraken otherwise  
26 denies that the allegations in Paragraph 82 present a fair and complete description of the matters  
27 described and therefore denies the allegations in Paragraph 82.

1           83. To the extent Paragraph 83 purports to quote, characterize, or summarize  
2 statements contained in Kraken document(s), the statement(s) speak for themselves, and Kraken  
3 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
4 To the extent Paragraph 83 mischaracterizes the cited statements, Kraken denies the allegations.  
5 To the extent a further response is required, Kraken specifically denies that it engaged in the  
6 conduct of a securities exchange or described itself as a securities exchange. Kraken otherwise  
7 denies that the allegations in Paragraph 83 present a fair and complete description of the matters  
8 described and therefore denies the allegations in Paragraph 83.

9           84. To the extent Paragraph 84 purports to quote, characterize, or summarize  
10 statements made in Kraken document(s), the statements speak for themselves, and Kraken  
11 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
12 To the extent Paragraph 84 mischaracterizes the cited statements, Kraken denies the allegations.  
13 Kraken denies any allegation that the purported use of the term “exchange” or analogizing to stock  
14 exchanges transform Kraken into a national securities exchange, broker-dealer, or clearing agency  
15 under the federal securities laws, or subjects Kraken to those laws. To the extent a further response  
16 is required, Kraken denies any allegation that use of the word “investors” subjects Kraken to  
17 federal securities laws.

18           85. Kraken denies that it has ever acted as an exchange for purposes of the federal  
19 securities laws. Kraken otherwise denies that the allegations in Paragraph 85 present a fair and  
20 complete description of the matters described and therefore denies the allegations in Paragraph 85.

21           86. Kraken admits the allegation in the first sentence in Paragraph 86. The second  
22 sentence in Paragraph 86 defines a term to which no response is required.

23           87. Kraken denies that the allegations in Paragraph 87 present a fair and complete  
24 description of the matters described and therefore denies the allegations in Paragraph 87.

25           88. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
26 assets identified by those terms. Kraken further denies any allegation that crypto assets “that form  
27 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
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1 on Mot. to Dismiss, ECF No. 90. Kraken denies that Kraken customers can buy and sell securities  
2 through Kraken's customer applications or API. Kraken denies that the remaining allegations in  
3 Paragraph 88 present a fair and complete description of the matters described and therefore denies  
4 the remaining allegations in Paragraph 88.

5 89. Kraken admits that customers can view their own account information, but Kraken  
6 denies that the remaining allegations in Paragraph 89 present a fair and complete description of  
7 the matters described and therefore denies the remaining allegations in Paragraph 89.

8 90. Kraken admits it has more than one customer application. To the extent Paragraph  
9 90 purports to quote, characterize, or summarize statements made about Kraken's applications,  
10 the statements speak for themselves, and Kraken respectfully refers the Court to their full text for  
11 an accurate and complete record of their contents. To the extent Paragraph 90 mischaracterizes  
12 the cited statements, Kraken denies the allegations.

13 91. To the extent Paragraph 91 purports to quote, characterize, or summarize  
14 statements made about Kraken's applications, the statements speak for themselves, and Kraken  
15 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
16 To the extent Paragraph 91 mischaracterizes the cited statements, Kraken denies the allegations.  
17 Kraken denies any allegation that purportedly having features similar to those of registered  
18 securities intermediaries subjects Kraken to federal securities laws.

19 92. To the extent Paragraph 92 purports to quote, characterize, or summarize  
20 statements made about Cryptowatch, the statements speak for themselves, and Kraken respectfully  
21 refers the Court to their full text for an accurate and complete record of their contents. To the  
22 extent Paragraph 92 mischaracterizes the cited statements, Kraken denies the allegations. To the  
23 extent a further response is required, Kraken admits that an application named Cryptowatch was  
24 available from 2017 until September 30, 2023.

25 93. To the extent Paragraph 93 purports to quote, characterize, or summarize  
26 statements made on Kraken's website, the statements speak for themselves, and Kraken  
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1 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
2 To the extent Paragraph 93 mischaracterizes the cited statements, Kraken denies the allegations.

3 94. To the extent Paragraph 94 purports to quote, characterize, or summarize  
4 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
5 respectfully refers the Court to the statements for an accurate and complete record of their contents.  
6 To the extent Paragraph 94 mischaracterizes the cited statements, Kraken denies the allegations.

7 95. To the extent Paragraph 95 purports to quote, characterize, or summarize  
8 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
9 respectfully refers the Court to the statements for an accurate and complete record of their contents.  
10 To the extent Paragraph 95 mischaracterizes the cited statements, Kraken denies the allegations.

11 96. To the extent Paragraph 96 purports to quote, characterize, or summarize  
12 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
13 respectfully refers the Court to the statements for an accurate and complete record of their contents.  
14 To the extent Paragraph 96 mischaracterizes the cited statements, Kraken denies the allegations.

15 97. To the extent Paragraph 97 purports to quote, characterize, or summarize  
16 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
17 respectfully refers the Court to the statements for an accurate and complete record of their contents.  
18 To the extent Paragraph 97 mischaracterizes the cited statements, Kraken denies the allegations.  
19 To the extent a further response is required, Kraken admits that it offers multiple order types.

20 98. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
21 the allegations in the first sentence in Paragraph 98 regarding the purported similarity between the  
22 parameters used on Kraken and those “used in trading non-crypto securities,” and therefore denies  
23 them on that basis. Kraken denies that the remaining allegations in Paragraph 98 present a fair  
24 and complete description of the matters described and therefore denies the remaining allegations  
25 in Paragraph 98.

26 99. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
27 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
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1 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
2 on Mot. to Dismiss, ECF No. 90. Kraken specifically denies that customers can buy and sell  
3 securities on Kraken. Kraken denies that the remaining allegations in Paragraph 99 present a fair  
4 and complete description of the matters described and therefore denies the remaining allegations  
5 in Paragraph 99.

6 100. Kraken admits the allegation in Paragraph 100.

7 101. Kraken admits that certain customer orders are entered into the order book, but  
8 denies that the allegations in Paragraph 101 present a fair and complete description of the matters  
9 described.

10 102. To the extent Paragraph 102 purports to quote, characterize, or summarize  
11 statements made on the Fee Schedule page on Kraken’s website, the statements speak for  
12 themselves, and Kraken respectfully refers the Court to the statements for an accurate and  
13 complete record of their contents. To the extent Paragraph 102 mischaracterizes the cited  
14 statements, Kraken denies the allegations. Kraken specifically denies that it is a broker or an  
15 exchange.

16 103. To the extent Paragraph 103 purports to quote, characterize, or summarize  
17 statements made on the Fee Schedule page on Kraken’s website, the statements speak for  
18 themselves, and Kraken respectfully refers the Court to the statements for an accurate and  
19 complete record of their contents. To the extent Paragraph 103 mischaracterizes the cited  
20 statements, Kraken denies the allegations.

21 104. To the extent Paragraph 104 purports to quote, characterize, or summarize  
22 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
23 respectfully refers the Court to the statements for an accurate and complete record of their contents.  
24 To the extent Paragraph 104 mischaracterizes the cited statements, Kraken denies the allegations.

25 105. Kraken denies that the allegations in Paragraph 105 present a fair and complete  
26 description of the matters described and therefore denies the allegations in Paragraph 105.

1           106. To the extent Paragraph 106 purports to quote, characterize, or summarize  
2 statements made on the Fee Schedule page on Kraken’s website, the statements speak for  
3 themselves, and Kraken respectfully refers the Court to the statements for an accurate and  
4 complete record of their contents. To the extent Paragraph 106 mischaracterizes the cited  
5 statements, Kraken denies the allegations.

6           107. To the extent Paragraph 107 purports to quote, characterize, or summarize  
7 statements made on the Fee Schedule page on Kraken’s website, the statements speak for  
8 themselves, and Kraken respectfully refers the Court to the statements for an accurate and  
9 complete record of their contents. To the extent Paragraph 107 mischaracterizes the cited  
10 statements, Kraken denies the allegations.

11           108. Kraken denies that the allegations in Paragraph 108 present a fair and complete  
12 description of the matters described and therefore denies the allegations in Paragraph 108.

13           109. Kraken admits that software performs certain checks after a buyer or seller enters  
14 an order, but denies that the remaining allegations in Paragraph 109 present a fair and complete  
15 description of the matters described and therefore denies the remaining allegations in Paragraph  
16 109.

17           110. Kraken denies that the allegations in Paragraph 110 present a fair and complete  
18 description of the matters described and therefore denies the allegations in Paragraph 110.

19           111. Kraken admits that it seeks to be available for trading 24 hours a day.

20           112. Kraken admits that it uses certain servers that are located within the United States,  
21 but denies that the allegations in Paragraph 112 present a fair and complete description of the  
22 matters described.

23           113. Kraken denies that the allegations in Paragraph 113 present a fair and complete  
24 description of the matters described and therefore denies the allegations in Paragraph 113.

25           114. Kraken admits that there is an order book for each crypto asset and that the Kraken  
26 Matching Engine matches orders based on price-time priority within the order book. Kraken  
27 denies that the term “crypto asset securities” fairly or accurately describes assets identified by that  
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1 term. Kraken further denies any allegation that crypto assets “that form the basis of transactions  
2 on Kraken are investment contracts, or are themselves securities.” Order on Mot. to Dismiss, ECF  
3 No. 90.

4 115. To the extent Paragraph 115 purports to quote, characterize, or summarize  
5 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
6 respectfully refers the Court to the statements for an accurate and complete record of their contents.  
7 To the extent Paragraph 115 mischaracterizes the cited statements, Kraken denies the allegations.

8 116. Kraken denies that the term “Kraken-Traded Securities” fairly or accurately  
9 describes assets identified by that term. Kraken otherwise denies that the allegations in Paragraph  
10 116 present a fair and complete description of the matters described and therefore denies the  
11 allegations in Paragraph 116.

12 117. Kraken denies the allegations in Paragraph 117.

13 118. Kraken denies the allegations in Paragraph 118.

14 119. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
15 any allegation regarding sales on other crypto asset trading platforms, and therefore denies them  
16 on that basis. Kraken otherwise denies that the allegations in Paragraph 119 present a fair and  
17 complete description of the matters described and therefore denies the allegations in Paragraph  
18 119.

19 120. To the extent Paragraph 120 purports to quote, characterize, or summarize  
20 statements made in an email from Market Maker 1, the statements speak for themselves, and  
21 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
22 contents. To the extent Paragraph 120 mischaracterizes the cited statements, Kraken denies the  
23 allegations.

24 121. To the extent Paragraph 121 purports to quote, characterize, or summarize  
25 statements made in an email from a Kraken representative, the statements speak for themselves,  
26 and Kraken respectfully refers the Court to their full text for an accurate and complete record of  
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1 their contents. To the extent Paragraph 121 mischaracterizes the cited statements, Kraken denies  
2 the allegations.

3 122. Paragraph 122 purports to define terms as to which no response is required.

4 123. To the extent Paragraph 123 purports to quote, characterize, or summarize  
5 statements made in an email from a Kraken representative, the statements speak for themselves,  
6 and Kraken respectfully refers the Court to their full text for an accurate and complete record of  
7 their contents. To the extent Paragraph 123 mischaracterizes the cited statements, Kraken denies  
8 the allegations.

9 124. Kraken denies the allegations in Paragraph 124.

10 125. Kraken denies the allegations in Paragraph 125.

11 126. Kraken denies the allegations in Paragraph 126. Kraken also denies that the terms  
12 “crypto asset securities” and “Kraken-Traded Securities” fairly or accurately describes assets  
13 identified by those terms. Kraken further denies any allegation that crypto assets “that form the  
14 basis of transactions on Kraken are investment contracts, or are themselves securities.” Order on  
15 Mot. to Dismiss, ECF No. 90.

16 127. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
17 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
18 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
19 on Mot. to Dismiss, ECF No. 90. Kraken otherwise lacks knowledge or information sufficient to  
20 form a belief as to the truth of the allegations in Paragraph 127, and therefore denies them on that  
21 basis.

22 128. Kraken denies that the allegations in Paragraph 128 present a fair and complete  
23 description of the matters described and therefore denies the allegations in Paragraph 128.

24 129. Paragraph 129 purports to quote, characterize, or summarize Section 15(a) of the  
25 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
26 for an accurate and complete record of its contents. To the extent Paragraph 129 mischaracterizes  
27 the cited statements, Kraken denies the allegations.

1           130. Paragraph 130 purports to quote, characterize, or summarize Section 3(a)(4) of the  
2 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
3 for an accurate and complete record of its contents. To the extent Paragraph 130 mischaracterizes  
4 the cited statements, Kraken denies the allegations.

5           131. Paragraph 131 purports to quote, characterize, or summarize Section 3(a)(5) of the  
6 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
7 for an accurate and complete record of its contents. To the extent Paragraph 131 mischaracterizes  
8 the cited statements, Kraken denies the allegations.

9           132. Paragraph 132 states legal conclusions to which no response is required.

10           133. Paragraph 133 purports to quote, characterize, or summarize Section 11(a) of the  
11 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
12 for an accurate and complete record of its contents. To the extent Paragraph 133 mischaracterizes  
13 the cited statements, Kraken denies the allegations.

14           134. Paragraph 134 purports to quote, characterize, or summarize 17 C.F.R. §§ 240.17a-  
15 3, 17a-4 and 240.15c3-3, the sections speak for themselves, and Kraken respectfully refers the  
16 Court to their full text for an accurate and complete record of their contents. To the extent  
17 Paragraph 134 mischaracterizes the cited statements, Kraken denies the allegations. The final  
18 sentence in Paragraph 134 states legal conclusions to which no response is required.

19           135. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
20 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
21 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
22 on Mot. to Dismiss, ECF No. 90. Kraken otherwise denies the allegations in Paragraph 135.

23           136. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
24 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
25 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
26 on Mot. to Dismiss, ECF No. 90. Kraken otherwise denies the allegations in Paragraph 136.

1           137. Kraken denies the allegations in Paragraph 137.

2           138. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
3 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
4 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
5 on Mot. to Dismiss, ECF No. 90. Kraken otherwise denies the allegations in Paragraph 138.

6           139. Kraken denies the allegations in Paragraph 139.

7           140. To the extent Paragraph 140 purports to quote, characterize, or summarize  
8 statements made in Kraken internal documents, the statements speak for themselves, and Kraken  
9 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
10 To the extent Paragraph 140 mischaracterizes the cited statements, Kraken denies the allegations.  
11 To the extent a further response is required, Kraken denies that purportedly referring to itself as a  
12 “broker” or stating that its operations are “similar to brokers” suggests that Kraken is a broker for  
13 purposes of the federal securities laws. Kraken specifically denies that it has acted as a broker  
14 within the meaning of the federal securities laws.

15           141. To the extent Paragraph 141 purports to quote, characterize, or summarize  
16 statements made in Kraken internal documents, the statements speak for themselves, and Kraken  
17 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
18 To the extent Paragraph 141 mischaracterizes the cited statements, Kraken denies the allegations.  
19 To the extent a further response is required, Kraken denies that purportedly referring to itself as a  
20 “broker” or labeling its operations as a “Broker Entity” suggests that Kraken is a broker for  
21 purposes of the federal securities laws. Kraken specifically denies that it has acted as a broker  
22 within the meaning of the federal securities laws.

23           142. To the extent Paragraph 142 purports to quote, characterize, or summarize  
24 statements made in Kraken internal policies, the statements speak for themselves, and Kraken  
25 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
26 To the extent Paragraph 142 mischaracterizes the cited statements, Kraken denies the allegations.  
27 To the extent a further response is required, Kraken denies that purportedly referring to itself as a  
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1 “Local Spot Broker” or as a “LSB” suggests that Kraken is a broker for purposes of the federal  
2 securities laws. Kraken specifically denies that it has acted as a broker within the meaning of the  
3 federal securities laws.

4 143. To the extent Paragraph 143 purports to quote, characterize, or summarize  
5 statements made in Kraken documents, the statements speak for themselves, and Kraken  
6 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
7 To the extent Paragraph 143 mischaracterizes the cited statements, Kraken denies the allegations.  
8 To the extent a further response is required, Kraken denies that purportedly referring to accounts  
9 as a “brokerage account” suggests that Kraken is a broker for purposes of the federal securities  
10 laws. Kraken specifically denies that it has acted as a broker within the meaning of the federal  
11 securities laws.

12 144. To the extent Paragraph 144 purports to quote, characterize, or summarize  
13 statements made in Kraken’s marketing and posts on its website, applications, and on social media,  
14 the statements speak for themselves, and Kraken respectfully refers the Court to their full text for  
15 an accurate and complete record of their contents. To the extent Paragraph 144 mischaracterizes  
16 the cited statements, Kraken denies the allegations. To the extent a further response is required,  
17 Kraken denies that the term “Kraken-Traded Securities” fairly or accurately describes assets  
18 identified by that term. Kraken otherwise denies that the allegations in Paragraph 144 present a  
19 fair and complete description of the matters described and therefore denies the allegations in  
20 Paragraph 144.

21 145. To the extent Paragraph 145 purports to quote, characterize, or summarize  
22 statements Kraken has posted on X, the statements speak for themselves, and Kraken respectfully  
23 refers the Court to their full text for an accurate and complete record of their contents. To the  
24 extent Paragraph 145 mischaracterizes the cited statements, Kraken denies the allegations. To the  
25 extent a further response is required, Kraken denies that the term “crypto asset securities” fairly  
26 or accurately describes assets identified by that term. Kraken further denies any allegation that  
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1 crypto assets “that form the basis of transactions on Kraken are investment contracts, or are  
2 themselves securities.” Order on Mot. to Dismiss, ECF No. 90.

3 146. To the extent Paragraph 146 purports to quote, characterize, or summarize  
4 statements Kraken has posted on Reddit, the statements speak for themselves, and Kraken  
5 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
6 To the extent Paragraph 146 mischaracterizes the cited statements, Kraken denies the allegations.

7 147. To the extent Paragraph 147 purports to quote, characterize, or summarize  
8 statements Kraken has posted on its blog, the statements speak for themselves, and Kraken  
9 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
10 To the extent Paragraph 147 mischaracterizes the cited statements, Kraken denies the allegations.  
11 To the extent a further response is required, Kraken denies that the term “crypto asset securities”  
12 fairly or accurately describes assets identified by that term. Kraken further denies any allegation  
13 that crypto assets “that form the basis of transactions on Kraken are investment contracts, or are  
14 themselves securities.” Order on Mot. to Dismiss, ECF No. 90. Kraken specifically denies that  
15 Kraken encourages customers to trade securities.

16 148. To the extent Paragraph 148 purports to quote, characterize, or summarize  
17 statements Kraken has made on various communication channels, the statements speak for  
18 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
19 record of their contents. To the extent Paragraph 148 mischaracterizes the cited statements,  
20 Kraken denies the allegations. Kraken denies that the allegations in Paragraph 148 present a fair  
21 and complete description of the matters described, and therefore denies the allegations in  
22 Paragraph 148.

23 149. To the extent Paragraph 149 purports to quote, characterize, or summarize  
24 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
25 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
26 To the extent Paragraph 149 mischaracterizes the cited statements, Kraken denies the allegations.  
27 To the extent a further response is required, Kraken denies that the term “Kraken-Traded  
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1 Securities” fairly or accurately describes assets identified by that term. Kraken otherwise denies  
2 that the allegations in Paragraph 149 present a fair and complete description of the matters  
3 described and therefore denies the allegations in Paragraph 149.

4 150. Kraken admits that it launched the Kraken Affiliate Program in November 2019.  
5 To the extent Paragraph 150 purports to quote, characterize, or summarize statements Kraken has  
6 made in customer programs, the statements speak for themselves, and Kraken respectfully refers  
7 the Court to their full text for an accurate and complete record of their contents. To the extent  
8 Paragraph 150 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
9 a further response is required, Kraken denies that the allegations in Paragraph 150 present a fair  
10 and complete description of the matters described and therefore denies the allegations in Paragraph  
11 150.

12 151. To the extent Paragraph 151 purports to quote, characterize, or summarize  
13 statements Kraken has made in its financial statements, the statements speak for themselves, and  
14 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
15 contents. To the extent Paragraph 151 mischaracterizes the cited statements, Kraken denies the  
16 allegations. Kraken denies that the allegations in Paragraph 151 present a fair and complete  
17 description of the matters described and therefore denies the allegations in Paragraph 151.

18 152. Kraken denies that the allegations in Paragraph 152 present a fair and complete  
19 description of the matters described and therefore denies the allegations in Paragraph 152. Kraken  
20 avers that it maintains hot and cold wallets that hold customer and proprietary crypto assets and  
21 segregated bank accounts for customer fiat held on Kraken’s platform. It also avers that customer  
22 fiat is held in bank accounts for the benefit of customers that are designated as “custodial.”

23 153. Kraken admits that a customer may transfer crypto assets to a Kraken trading  
24 account and may deposit fiat currency to a Kraken-controlled bank account. Kraken otherwise  
25 denies that the allegations in Paragraph 153 present a fair and complete description of the matters  
26 described and therefore denies the remaining allegations in Paragraph 153.

1           154. Kraken denies that the allegations in Paragraph 154 present a fair and complete  
2 description of the matters described and therefore denies the allegations in Paragraph 154.

3           155. To the extent Paragraph 155 purports to quote, characterize, or summarize  
4 statements Kraken has made in its Terms of Service, the statements speak for themselves, and  
5 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
6 contents. To the extent Paragraph 155 mischaracterizes the cited statements, Kraken denies the  
7 allegations.

8           156. Kraken denies that the allegations in Paragraph 156 present a fair and complete  
9 description of the matters described and therefore denies the allegations in Paragraph 156.

10          157. To the extent Paragraph 157 purports to quote, characterize, or summarize  
11 statements Kraken has made in documents provided to its auditor, the statements speak for  
12 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
13 record of their contents. To the extent Paragraph 157 mischaracterizes the cited statements,  
14 Kraken denies the allegations.

15          158. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
16 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
17 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
18 on Mot. to Dismiss, ECF No. 90. Kraken specifically denies that customers can buy and sell  
19 securities on Kraken. Kraken otherwise denies that the remaining allegations in Paragraph 158  
20 present a fair and complete description of the matters described and therefore denies the allegations  
21 in Paragraph 158.

22          159. To the extent Paragraph 159 purports to quote, characterize, or summarize  
23 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
24 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
25 To the extent Paragraph 159 mischaracterizes the cited statements, Kraken denies the allegations.  
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1           160. Kraken admits that certain margin transactions use the Kraken Matching Engine.  
2 Kraken otherwise denies that the allegations in Paragraph 160 present a fair and complete  
3 description of the matters described and therefore denies the allegations in Paragraph 160.

4           161. Kraken denies that the allegations in Paragraph 161 present a fair and complete  
5 description of the matters described and therefore denies the allegations in Paragraph 161.

6           162. To the extent Paragraph 162 purports to quote, characterize, or summarize  
7 statements Kraken has made on the Fee Schedule page on its website, the statements speak for  
8 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
9 record of their contents. To the extent Paragraph 162 mischaracterizes the cited statements,  
10 Kraken denies the allegations.

11           163. To the extent Paragraph 163 purports to quote, characterize, or summarize  
12 statements Kraken has made on the Fee Schedule page on its website, the statements speak for  
13 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
14 record of their contents. To the extent Paragraph 163 mischaracterizes the cited statements,  
15 Kraken denies the allegations.

16           164. Kraken denies that the term “crypto asset securities” fairly or accurately describes  
17 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
18 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
19 on Mot. to Dismiss, ECF No. 90. Kraken also specifically denies that Kraken has engaged in  
20 buying and selling securities for its own account, and denies any remaining allegations in  
21 Paragraph 164.

22           165. To the extent Paragraph 165 purports to quote, characterize, or summarize  
23 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
24 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
25 To the extent Paragraph 165 mischaracterizes the cited statements, Kraken denies the allegations.  
26 To the extent a further response is required, Kraken denies that the term “Kraken-Traded  
27 Securities” fairly or accurately describes assets identified by that term.  
28

1           166. To the extent Paragraph 166 purports to quote, characterize, or summarize  
2 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
3 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
4 To the extent Paragraph 166 mischaracterizes the cited statements, Kraken denies the allegations.

5           167. To the extent Paragraph 167 purports to quote, characterize, or summarize  
6 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
7 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
8 To the extent Paragraph 167 mischaracterizes the cited statements, Kraken denies the allegations.

9           168. To the extent Paragraph 168 purports to quote, characterize, or summarize  
10 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
11 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
12 To the extent Paragraph 168 mischaracterizes the cited statements, Kraken denies the allegations.

13           169. To the extent Paragraph 169 purports to quote, characterize, or summarize  
14 statements Kraken has made on its website, including its Fee Schedule page, the statements speak  
15 for themselves, and Kraken respectfully refers the Court to their full text for an accurate and  
16 complete record of their contents. To the extent Paragraph 169 mischaracterizes the cited  
17 statements, Kraken denies the allegations.

18           170. To the extent Paragraph 170 purports to quote, characterize, or summarize  
19 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
20 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
21 To the extent Paragraph 170 mischaracterizes the cited statements, Kraken denies the allegations.

22           171. To the extent Paragraph 171 purports to quote, characterize, or summarize  
23 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
24 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
25 To the extent Paragraph 171 mischaracterizes the cited statements, Kraken denies the allegations.

1           172. Kraken admits that it considers the pending orders in its order book on the Kraken  
2 Trading Platform when providing the price quote to a customer in the Instant Buy feature, but  
3 otherwise denies that the allegations in Paragraph 172 present a fair and complete description of  
4 the matters described.

5           173. Kraken admits the allegations in the first sentence in Paragraph 173. Kraken denies  
6 that the term “Kraken-Traded Security” fairly or accurately describes the asset identified by that  
7 term. Kraken otherwise denies that the allegations in the second sentence of Paragraph 173 present  
8 a fair and complete description of the matters described and therefore denies the allegations in the  
9 second sentence of Paragraph 173.

10           174. To the extent Paragraph 174 purports to quote, characterize, or summarize  
11 statements Kraken has made on its website, the statements speak for themselves, and Kraken  
12 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
13 To the extent Paragraph 174 mischaracterizes the cited statements, Kraken denies the allegations.  
14 To the extent a further response is required, Kraken admits that the OTC Desk allows traders to  
15 execute orders of crypto assets.

16           175. Kraken admits the allegations in the first sentence in Paragraph 175. Kraken  
17 otherwise denies that the allegations in Paragraph 175 present a fair and complete description of  
18 the matters described and therefore denies the allegations in Paragraph 175.

19           176. Kraken denies the allegations in Paragraph 176.

20           177. Kraken denies that the allegations in Paragraph 177 present a fair and complete  
21 description of the matters described and therefore denies the allegations in Paragraph 177.

22           178. Kraken admits the allegations in Paragraph 178.

23           179. Paragraph 179 purports to quote, characterize, or summarize statements Kraken has  
24 made on its website, which statements speak for themselves, and Kraken respectfully refers the  
25 Court to their full text for an accurate and complete record of their contents. To the extent  
26 Paragraph 179 mischaracterizes the cited statements, Kraken denies the allegations.

1           180. Paragraph 180 purports to quote, characterize, or summarize statements Kraken has  
2 made on in its Terms of Service, which statements speak for themselves, and Kraken respectfully  
3 refers the Court to their full text for an accurate and complete record of their contents. To the  
4 extent Paragraph 180 mischaracterizes the cited statements, Kraken denies the allegations.

5           181. Kraken denies that the allegations in Paragraph 181 present a fair and complete  
6 description of the matters described and therefore denies the allegations in Paragraph 181. To the  
7 extent Paragraph 181 mischaracterizes the cited statements, Kraken denies the allegations.

8           182. Kraken admits that the OTC Desk allows traders to execute orders of crypto assets.  
9 Kraken specifically denies that it offered the OTC desk for orders of securities and further denies  
10 that the term “Kraken-Traded Securities” fairly or accurately describes assets identified by that  
11 term. Kraken otherwise denies that the allegations in Paragraph 182 present a fair and complete  
12 description of the matters described and therefore denies the allegations in Paragraph 182.

13           183. Kraken denies that the terms “crypto asset securities” and “Kraken-Traded  
14 Securities” fairly or accurately describe assets identified by those terms. Kraken further denies  
15 any allegation that crypto assets “that form the basis of transactions on Kraken are investment  
16 contracts, or are themselves securities.” Order on Mot. to Dismiss, ECF No. 90. Kraken also  
17 denies that it engaged in proprietary trading of securities. Kraken otherwise denies that the  
18 allegations in Paragraph 183 present a fair and complete description of the matters described and  
19 therefore denies the allegations in Paragraph 183.

20           184. Paragraph 184 purports to quote, characterize, or summarize statements Kraken has  
21 made in its financial statements, which statements speak for themselves, and Kraken respectfully  
22 refers the Court to their full text for an accurate and complete record of their contents. To the  
23 extent Paragraph 184 mischaracterizes the cited statements, Kraken denies the allegations.

24           185. Paragraph 185 purports to quote, characterize, or summarize statements Kraken has  
25 made in its financial statements, which statements speak for themselves, and Kraken respectfully  
26 refers the Court to their full text for an accurate and complete record of their contents. To the  
27 extent Paragraph 185 mischaracterizes the cited statements, Kraken denies the allegations.  
28

1           186. Paragraph 186 purports to quote, characterize, or summarize Section 17A of the  
2 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
3 for an accurate and complete record of its contents. To the extent Paragraph 186 mischaracterizes  
4 the cited statements, Kraken denies the allegations

5           187. Paragraph 187 purports to quote, characterize, or summarize Section 17A of the  
6 Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its full text  
7 for an accurate and complete record of its contents. To the extent Paragraph 187 mischaracterizes  
8 the cited statements, Kraken denies the allegations.

9           188. Paragraph 188 purports to quote, characterize, or summarize Section 3(a)(23)(A)  
10 of the Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to its  
11 full text for an accurate and complete record of its contents. To the extent Paragraph 188  
12 mischaracterizes the cited statements, Kraken denies the allegations.

13           189. Paragraph 189 states legal conclusions to which no response is required.

14           190. Kraken denies that the term “crypto asset securities” fairly or accurately describe  
15 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
16 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
17 on Mot. to Dismiss, ECF No. 90. Kraken otherwise denies the allegations in Paragraph 190.

18           191. Kraken denies that the terms “crypto asset securities” and “Kraken-Traded  
19 Securities” fairly or accurately describe assets identified by those terms. Kraken further denies  
20 any allegation that crypto assets “that form the basis of transactions on Kraken are investment  
21 contracts, or are themselves securities.” Order on Mot. to Dismiss, ECF No. 90. Kraken otherwise  
22 denies the allegations in Paragraph 191.

23           192. Kraken admits that after a customer order is matched, Kraken records the trade  
24 through its internal ledger system by debiting and crediting the relevant balances of funds or crypto  
25 assets in the customer’s (or customers’) accounts. Kraken otherwise denies that the allegations in  
26 Paragraph 192 present a fair and complete description of the matters described and therefore denies  
27 the allegations in Paragraph 192.

1           193. To the extent Paragraph 193 purports to quote, characterize, or summarize  
2 statements Kraken has made in an internal document, the statements speak for themselves, and  
3 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
4 contents. To the extent Paragraph 193 mischaracterizes the cited statements, Kraken denies the  
5 allegations. To the extent a further response is required, Kraken denies any allegation that  
6 purportedly analogizing to accounts used by broker-dealers suggests that Kraken is a broker-dealer  
7 for purposes of the federal securities laws or subjects Kraken to those laws.

8           194. To the extent Paragraph 194 purports to quote, characterize, or summarize  
9 statements Kraken has made, the statements speak for themselves, and Kraken respectfully refers  
10 the Court to their full text for an accurate and complete record of their contents. To the extent  
11 Paragraph 194 mischaracterizes the cited statements, Kraken denies the allegations.

12           195. Paragraph 195 purports to quote, characterize, or summarize statements Kraken has  
13 made on its website, which statements speak for themselves, and Kraken respectfully refers the  
14 Court to their full text for an accurate and complete record of their contents. To the extent  
15 Paragraph 195 mischaracterizes the cited statements, Kraken denies the allegations

16           196. Paragraph 196 purports to quote, characterize, or summarize statements Kraken has  
17 made in its Terms of Service, which statements speak for themselves, and Kraken respectfully  
18 refers the Court to their full text for an accurate and complete record of their contents. To the  
19 extent Paragraph 196 mischaracterizes the cited statements, Kraken denies the allegations

20           197. Kraken denies that the terms “crypto asset securities” and “Kraken-Traded  
21 Securities” fairly or accurately describe assets identified by those terms. Kraken further denies  
22 any allegation that crypto assets “that form the basis of transactions on Kraken are investment  
23 contracts, or are themselves securities.” Order on Mot. to Dismiss, ECF No. 90. Kraken otherwise  
24 denies the allegations in Paragraph 197.

25           198. Kraken denies that the term “crypto asset securities” fairly or accurately describe  
26 assets identified by that term. Kraken further denies any allegation that crypto assets “that form  
27 the basis of transactions on Kraken are investment contracts, or are themselves securities.” Order  
28

1 on Mot. to Dismiss, ECF No. 90. Kraken specifically denies that it “provides a system for the  
2 central handling of securities,” and otherwise denies that the allegations in Paragraph 198 present  
3 a fair and complete description of the matters described and therefore denies the allegations in  
4 Paragraph 198.

5 199. Kraken denies the allegations in Paragraph 199.

6 200. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
7 allegations in the first sentence of Paragraph 200, and therefore denies them on that basis. The  
8 remaining allegations in Paragraph 200 state legal conclusions to which no response is required.

9 201. Kraken denies the allegations in Paragraph 201.

10 202. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
11 allegations in the first sentence of Paragraph 202, and therefore denies them on that basis. The  
12 remaining allegations in Paragraph 202 state legal conclusions to which no response is required.

13 203. Kraken admits that it is not a member of FINRA because Kraken is not a broker-  
14 dealer and is therefore not required to become one.

15 204. Paragraph 204 states legal conclusions to which no response is required.

16 205. Kraken denies the allegations in Paragraph 205.

17 206. To the extent Paragraph 206 purports to quote, characterize, or summarize Section  
18 17 of the Exchange Act, the section speaks for itself, and Kraken respectfully refers the Court to  
19 its full text for an accurate and complete record of its contents. To the extent Paragraph 206  
20 mischaracterizes the cited statements, Kraken denies the allegations. The remaining allegations  
21 in Paragraph 206 state legal conclusions to which no response is required.

22 207. Kraken denies the allegations in Paragraph 207.

23 208. Paragraph 208 states legal conclusions to which no response is required.

24 209. Kraken denies the allegations in Paragraph 209.

25 210. Paragraph 210 states legal conclusions to which no response is required. To the  
26 extent a response is required, Kraken denies the allegations in Paragraph 210.

1           211. Paragraph 211 purports to quote, characterize, or summarize statements Kraken has  
2 made in its Terms of Service, which statements speak for themselves, and Kraken respectfully  
3 refers the Court to their full text for an accurate and complete record of their contents. To the  
4 extent Paragraph 211 mischaracterizes the cited statements, Kraken denies the allegations.

5           212. Kraken denies the allegations in Paragraph 212.

6           213. Paragraph 213 states legal conclusions to which no response is required. To the  
7 extent a further response is required, Kraken denies any allegation that it has put customer assets  
8 at risk, and otherwise denies any remaining allegations in Paragraph 213.

9           214. Paragraph 214 purports to quote, characterize, or summarize statements made by  
10 Kraken’s auditor, which statements speak for themselves, and Kraken respectfully refers the Court  
11 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
12 214 mischaracterizes the cited statements, Kraken denies the allegations.

13           215. Paragraph 215 purports to quote, characterize, or summarize statements Kraken has  
14 made in its Terms of Service, which statements speak for themselves, and Kraken respectfully  
15 refers the Court to their full text for an accurate and complete record of their contents. To the  
16 extent Paragraph 215 mischaracterizes the cited statements, Kraken denies the allegations.

17           216. Kraken admits that customer fiat is held in bank accounts for the benefit of  
18 customers that are designated as “custodial.” Kraken otherwise denies that the allegations in  
19 Paragraph 216 present a fair and complete description of the matters described and therefore denies  
20 the allegations in Paragraph 216.

21           217. Kraken denies that the allegations in Paragraph 217 present a fair and complete  
22 description of the matters described and therefore denies the allegations in Paragraph 217.

23           218. Kraken denies the allegations in Paragraph 218.

24           219. Paragraph 219 purports to quote, characterize, or summarize statements made by  
25 Kraken in its 2020 and 2021 financial statements, which statements speak for themselves, and  
26 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
27

1 contents. To the extent Paragraph 219 mischaracterizes the cited statements, Kraken denies the  
2 allegations.

3 220. Paragraph 220 purports to quote, characterize, or summarize statements made by  
4 Kraken’s independent auditor, which statements speak for themselves, and Kraken respectfully  
5 refers the Court to their full text for an accurate and complete record of their contents. To the  
6 extent Paragraph 220 mischaracterizes the cited statements, Kraken denies the allegations.

7 221. Kraken denies the allegations in Paragraph 221.

8 222. Kraken denies that it commingles customer and corporate fiat, and otherwise denies  
9 that the allegations in Paragraph 222 present a fair and complete description of the matters  
10 described and therefore denies the allegations in Paragraph 222.

11 223. Paragraph 223 purports to quote, characterize, or summarize statements made by  
12 Kraken’s independent auditor, which statements speak for themselves, and Kraken respectfully  
13 refers the Court to their full text for an accurate and complete record of their contents. To the  
14 extent Paragraph 223 mischaracterizes the cited statements, Kraken denies the allegations.

15 224. Kraken denies that the allegations in Paragraph 224 present a fair and complete  
16 description of the matters described and therefore denies the allegations in Paragraph 224.

17 225. Kraken denies the allegations in Paragraph 225.

18 226. Paragraph 226 purports to quote, characterize, or summarize statements made by  
19 Kraken in materials provided to its auditor, which statements speak for themselves, and Kraken  
20 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
21 To the extent Paragraph 226 mischaracterizes the cited statements, Kraken denies the allegations.

22 227. Paragraph 227 purports to quote, characterize, or summarize statements made by  
23 Kraken’s auditor, which statements speak for themselves, and Kraken respectfully refers the Court  
24 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
25 227 mischaracterizes the cited statements, Kraken denies the allegations.

26 228. Kraken denies that the terms “crypto asset securities” and “Kraken-Traded  
27 Securities” fairly or accurately describe assets identified by those terms. Kraken further denies  
28

1 any allegation that crypto assets “that form the basis of transactions on Kraken are investment  
2 contracts, or are themselves securities.” Order on Mot. to Dismiss, ECF No. 90. Kraken otherwise  
3 denies the allegations in Paragraph 228.

4 229. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
5 allegations in Paragraph 229, and therefore denies them on that basis.

6 230. Kraken denies the allegations in Paragraph 230.

7 231. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
8 allegations in Paragraph 231, and therefore denies them on that basis.

9 232. To the extent Paragraph 232 purports to quote, characterize, or summarize  
10 statements made on Cardano’s website, the statements speak for themselves, and Kraken  
11 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
12 To the extent Paragraph 232 mischaracterizes the cited statements, Kraken denies the allegations.  
13 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
14 allegations in Paragraph 232, and therefore denies them on that basis.

15 233. To the extent Paragraph 233 purports to quote, characterize, or summarize  
16 statements made on Cardano’s website, the statements speak for themselves, and Kraken  
17 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
18 To the extent Paragraph 233 mischaracterizes the cited statements, Kraken denies the allegations.  
19 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
20 allegations in Paragraph 233, and therefore denies them on that basis.

21 234. Kraken admits that ADA has been available for trading on the Kraken Trading  
22 Platform at various points since September 2018.

23 235. Kraken denies the allegations in Paragraph 235.

24 236. To the extent Paragraph 236 purports to quote, characterize, or summarize public  
25 statements made by the Cardano Foundation, IOHK, and Emurgo, the statements speak for  
26 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
27 record of their contents. To the extent Paragraph 236 mischaracterizes the cited statements,  
28

1 Kraken denies the allegations. Kraken otherwise lacks knowledge or information sufficient to  
2 form a belief as to the truth of allegations in Paragraph 236, and therefore denies them on that  
3 basis.

4 237. Kraken denies the allegations in Paragraph 237.

5 238. To the extent Paragraph 238 purports to quote, characterize, or summarize public  
6 statements made on Kraken's website, the statements speak for themselves, and Kraken  
7 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
8 To the extent Paragraph 238 mischaracterizes the cited statements, Kraken denies the allegations.

9 239. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
10 allegations in Paragraph 239, and therefore denies them on that basis.

11 240. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
12 allegations in Paragraph 240, and therefore denies them on that basis.

13 241. Kraken denies the allegations in Paragraph 241.

14 242. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
15 allegations in Paragraph 242, and therefore denies them on that basis.

16 243. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
17 allegations in Paragraph 243, and therefore denies them on that basis.

18 244. To the extent Paragraph 244 purports to quote, characterize, or summarize public  
19 statements made by the Algorand Foundation, the statements speak for themselves, and Kraken  
20 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
21 To the extent Paragraph 244 mischaracterizes the cited statements, Kraken denies the allegations.  
22 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
23 allegations in Paragraph 244, and therefore denies them on that basis.

24 245. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
25 allegations in Paragraph 245, and therefore denies them on that basis.

26 246. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
27 allegations in Paragraph 246, and therefore denies them on that basis.

1           247. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
2 allegations in Paragraph 247, and therefore denies them on that basis.

3           248. Kraken admits that ALGO is available to trade on Kraken in exchange for fiat and  
4 crypto assets, but otherwise lacks knowledge or information sufficient to form a belief as to the  
5 truth of allegations in the first sentence of Paragraph 248 with respect to other platforms, and  
6 therefore denies them on that basis. Kraken admits that ALGO has been available for trading on  
7 the Kraken Trading Platform at various points since January 2020.

8           249. Kraken denies the allegations in Paragraph 249.

9           250. To the extent Paragraph 250 purports to quote, characterize, or summarize  
10 statements made by the Algorand Foundation, the statements speak for themselves, and Kraken  
11 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
12 To the extent Paragraph 250 mischaracterizes the cited statements, Kraken denies the allegations.  
13 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
14 allegations in Paragraph 250, and therefore denies them on that basis.

15           251. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
16 allegations in Paragraph 251, and therefore denies them on that basis.

17           252. Paragraph 252 purports to quote, characterize, or summarize public statements  
18 made by Steve Kokinos, which statements speak for themselves, and Kraken respectfully refers  
19 the Court to their full text for an accurate and complete record of their contents. To the extent  
20 Paragraph 252 mischaracterizes the cited statements, Kraken denies the allegations.

21           253. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
22 allegations in Paragraph 253, and therefore denies them on that basis.

23           254. To the extent Paragraph 254 purports to quote, characterize, or summarize public  
24 statements made by the Algorand Foundation, the statements speak for themselves, and Kraken  
25 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
26 To the extent Paragraph 254 mischaracterizes the cited statements, Kraken denies the allegations.

1 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
2 allegations in Paragraph 254, and therefore denies them on that basis.

3 255. Kraken denies the allegations in Paragraph 255.

4 256. Paragraph 256 purports to quote, characterize, or summarize statements made by  
5 the Algorand Foundation, which statements speak for themselves, and Kraken respectfully refers  
6 the Court to their full text for an accurate and complete record of their contents. To the extent  
7 Paragraph 256 mischaracterizes the cited statements, Kraken denies the allegations.

8 257. To the extent Paragraph 257 purports to quote, characterize, or summarize  
9 statements made by the Algorand Foundation, the statements speak for themselves, and Kraken  
10 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
11 To the extent Paragraph 257 mischaracterizes the cited statements, Kraken denies the allegations.  
12 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
13 allegations in Paragraph 257, and therefore denies them on that basis.

14 258. Paragraph 258 purports to quote, characterize, or summarize statements made by  
15 the Algorand Foundation, which statements speak for themselves, and Kraken respectfully refers  
16 the Court to their full text for an accurate and complete record of their contents. To the extent  
17 Paragraph 258 mischaracterizes the cited statements, Kraken denies the allegations.

18 259. Paragraph 259 purports to quote, characterize, or summarize statements on  
19 Algorand, Inc. and Algorand Foundation's websites, which statements speak for themselves, and  
20 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
21 contents. To the extent Paragraph 259 mischaracterizes the cited statements, Kraken denies the  
22 allegations.

23 260. Paragraph 260 purports to quote, characterize, or summarize statements made by  
24 the Algorand Foundation, which statements speak for themselves, and Kraken respectfully refers  
25 the Court to their full text for an accurate and complete record of their contents. To the extent  
26 Paragraph 260 mischaracterizes the cited statements, Kraken denies the allegations.

1           261. To the extent Paragraph 261 purports to quote, characterize, or summarize  
2 statements made by the Algorand Foundation, the statements speak for themselves, and Kraken  
3 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
4 To the extent Paragraph 261 mischaracterizes the cited statements, Kraken denies the allegations.  
5 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
6 allegations in Paragraph 261, and therefore denies them on that basis.

7           262. To the extent Paragraph 262 purports to quote, characterize, or summarize  
8 statements made by the Algorand Foundation, the statements speak for themselves, and Kraken  
9 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
10 To the extent Paragraph 262 mischaracterizes the cited statements, Kraken denies the allegations.  
11 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
12 allegations in Paragraph 262, and therefore denies them on that basis.

13           263. Kraken denies the allegations in Paragraph 263.

14           264. Kraken denies the allegations in Paragraph 264.

15           265. To the extent Paragraph 265 purports to quote, characterize, or summarize  
16 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
17 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
18 To the extent Paragraph 265 mischaracterizes the cited statements, Kraken denies the allegations.  
19 To the extent a further response is required, Kraken denies any allegation that use of the word  
20 “investors” subjects Kraken to federal securities laws and otherwise denies that the allegations in  
21 Paragraph 265 present a fair and complete description of the matters described.

22           266. To the extent Paragraph 266 purports to quote, characterize, or summarize  
23 statements made on the Cosmos website, the statements speak for themselves, and Kraken  
24 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
25 To the extent Paragraph 266 mischaracterizes the cited statements, Kraken denies the allegations.  
26 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
27 allegations in Paragraph 266, and therefore denies them on that basis.

1           267. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
2 allegations in Paragraph 267, and therefore denies them on that basis.

3           268. To the extent Paragraph 268 purports to quote, characterize, or summarize  
4 statements made on the Cosmos website, the statements speak for themselves, and Kraken  
5 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
6 To the extent Paragraph 268 mischaracterizes the cited statements, Kraken denies the allegations.  
7 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
8 allegations in Paragraph 268, and therefore denies them on that basis.

9           269. To the extent Paragraph 269 purports to quote, characterize, or summarize  
10 statements about ATOM, the statements speak for themselves, and Kraken respectfully refers the  
11 Court to their full text for an accurate and complete record of their contents. To the extent  
12 Paragraph 269 mischaracterizes the cited statements, Kraken denies the allegations. Kraken  
13 otherwise lacks knowledge or information sufficient to form a belief as to the truth of allegations  
14 in Paragraph 269, and therefore denies them on that basis.

15           270. To the extent Paragraph 270 purports to quote, characterize, or summarize  
16 statements made by the ICF, Kraken respectfully refers the Court to their full text for an accurate  
17 and complete record of their contents. To the extent Paragraph 270 mischaracterizes the cited  
18 statements, Kraken denies the allegations. Kraken otherwise lacks knowledge or information  
19 sufficient to form a belief as to the truth of allegations in Paragraph 270, and therefore denies them  
20 on that basis.

21           271. Kraken denies the allegations in Paragraph 271.

22           272. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
23 allegations in Paragraph 272, and therefore denies them on that basis.

24           273. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
25 allegations in Paragraph 273, and therefore denies them on that basis.

26           274. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
27 allegations in Paragraph 274, and therefore denies them on that basis.

1           275. Kraken admits that ATOM has been available for trading on the Kraken Trading  
2 Platform at various points since April 2019.

3           276. Kraken denies the allegations in Paragraph 276.

4           277. The first sentence of Paragraph 277 contains a legal conclusion to which no  
5 response is required. To the extent a response is required, Kraken denies the allegations in the  
6 first sentence of Paragraph 277. To the extent Paragraph 277 purports to quote, characterize, or  
7 summarize statements made by the ICF, the statements speak for themselves, and Kraken  
8 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
9 To the extent Paragraph 277 mischaracterizes the cited statements, Kraken denies the allegations.  
10 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
11 allegations in Paragraph 277, and therefore denies them on that basis.

12           278. To the extent Paragraph 278 purports to quote, characterize, or summarize  
13 statements made in the 2017 Cosmos Whitepaper and “Fundraiser Plan,” the statements speak for  
14 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
15 record of their contents. To the extent Paragraph 278 mischaracterizes the cited statements,  
16 Kraken denies the allegations.

17           279. Paragraph 279 purports to quote, characterize, or summarize statements on the  
18 Cosmos and ICF websites, which statements speak for themselves, and Kraken respectfully refers  
19 the Court to their full text for an accurate and complete record of their contents. To the extent  
20 Paragraph 279 mischaracterizes the cited statements, Kraken denies the allegations.

21           280. Kraken denies the allegations in Paragraph 280.

22           281. To the extent Paragraph 281 purports to quote, characterize, or summarize  
23 statements on Kraken’s website, the statements speak for themselves, and Kraken respectfully  
24 refers the Court to their full text for an accurate and complete record of their contents. To the  
25 extent Paragraph 281 mischaracterizes the cited statements, Kraken denies the allegations.

26           282. To the extent Paragraph 282 purports to quote, characterize, or summarize  
27 statements made by Protocol Labs, Inc., the statements speak for themselves, and Kraken  
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1 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
2 To the extent Paragraph 282 mischaracterizes the cited statements, Kraken denies the allegations.  
3 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
4 allegations in Paragraph 282, and therefore denies them on that basis.

5 283. Paragraph 283 purports to quote, characterize, or summarize statements made in a  
6 whitepaper entitled “Filecoin: A Cryptocurrency Operated File Storage Network,” the statements  
7 speak for themselves, and Kraken respectfully refers the Court to their full text for an accurate and  
8 complete record of their contents. To the extent Paragraph 283 mischaracterizes the cited  
9 statements, Kraken denies the allegations.

10 284. To the extent Paragraph 284 purports to quote, characterize, or summarize  
11 statements made about Protocol Labs’ 2017 token sale, the statements speak for themselves, and  
12 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
13 contents. To the extent Paragraph 284 mischaracterizes the cited statements, Kraken denies the  
14 allegations. Kraken otherwise lacks knowledge or information sufficient to form a belief as to the  
15 truth of allegations in Paragraph 284, and therefore denies them on that basis.

16 285. To the extent Paragraph 285 purports to quote, characterize, or summarize  
17 statements made about Protocol Labs’ 2017 token sale, the statements speak for themselves, and  
18 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
19 contents. To the extent Paragraph 285 mischaracterizes the cited statements, Kraken denies the  
20 allegations. Kraken otherwise lacks knowledge or information sufficient to form a belief as to the  
21 truth of allegations in Paragraph 285, and therefore denies them on that basis.

22 286. To the extent Paragraph 286 purports to quote, characterize, or summarize  
23 statements made about Protocol Labs’ 2017 token sale, the statements speak for themselves, and  
24 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
25 contents. To the extent Paragraph 286 mischaracterizes the cited statements, Kraken denies the  
26 allegations. Kraken otherwise lacks knowledge or information sufficient to form a belief as to the  
27 truth of allegations in Paragraph 286, and therefore denies them on that basis.  
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1           287. Kraken denies the allegations in Paragraph 287.

2           288. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
3 allegations in Paragraph 288, and therefore denies them on that basis.

4           289. To the extent Paragraph 289 purports to quote, characterize, or summarize  
5 statements made in Protocol Labs' SEC filings, the statements speak for themselves, and Kraken  
6 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
7 To the extent Paragraph 289 mischaracterizes the cited statements, Kraken denies the allegations.  
8 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
9 allegations in Paragraph 289, and therefore denies them on that basis.

10           290. To the extent Paragraph 290 purports to quote, characterize, or summarize  
11 statements made in Protocol Labs' SEC filings, the statements speak for themselves, and Kraken  
12 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
13 To the extent Paragraph 290 mischaracterizes the cited statements, Kraken denies the allegations.  
14 Kraken lacks knowledge or information sufficient to form a belief as to the truth of allegations in  
15 Paragraph 290, and therefore denies them on that basis.

16           291. Paragraph 291 contains a legal conclusion to which no response is required. To the  
17 extent a response is required, Kraken denies the allegations in Paragraph 291.

18           292. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
19 allegations in Paragraph 292, and therefore denies them on that basis.

20           293. Kraken admits that FIL has been available for trading on the Kraken Trading  
21 Platform at various points since October 2020.

22           294. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
23 allegations in Paragraph 294, and therefore denies them on that basis.

24           295. Kraken denies the allegations in Paragraph 295.

25           296. Paragraph 296 purports to quote, characterize, or summarize statements made by  
26 the Protocol Labs Filecoin Team, which statements speak for themselves, and Kraken respectfully  
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1 refers the Court to their full text for an accurate and complete record of their contents. To the  
2 extent Paragraph 296 mischaracterizes the cited statements, Kraken denies the allegations.

3 297. Paragraph 297 purports to quote, characterize, or summarize statements made in a  
4 document titled “Filecoin Token Sale Economics,” the statements speak for themselves, and  
5 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
6 contents. To the extent Paragraph 297 mischaracterizes the cited statements, Kraken denies the  
7 allegations.

8 298. Paragraph 298 purports to quote, characterize, or summarize statements made in a  
9 document titled “Filecoin Token Sale Economics,” the statements speak for themselves, and  
10 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
11 contents. To the extent Paragraph 298 mischaracterizes the cited statements, Kraken denies the  
12 allegations.

13 299. Paragraph 299 purports to quote, characterize, or summarize statements made in a  
14 document titled “Filecoin Token Sale Economics,” the statements speak for themselves, and  
15 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
16 contents. To the extent Paragraph 299 mischaracterizes the cited statements, Kraken denies the  
17 allegations.

18 300. Paragraph 300 purports to quote, characterize, or summarize statements made in a  
19 July 2017 blog post, which statements speak for themselves, and Kraken respectfully refers the  
20 Court to their full text for an accurate and complete record of their contents. To the extent  
21 Paragraph 300 mischaracterizes the cited statements, Kraken denies the allegations.

22 301. Paragraph 301 purports to quote, characterize, or summarize statements made in  
23 the “Filecoin Token Sale Economics” and the Filecoin Primer, which statements speak for  
24 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
25 record of their contents. To the extent Paragraph 301 mischaracterizes the cited statements,  
26 Kraken denies the allegations.

1           302. Paragraph 302 purports to quote, characterize, or summarize statements made in  
2 the Filecoin Primer, which statements speak for themselves, and Kraken respectfully refers the  
3 Court to their full text for an accurate and complete record of their contents. To the extent  
4 Paragraph 302 mischaracterizes the cited statements, Kraken denies the allegations.

5           303. Paragraph 303 purports to quote, characterize, or summarize statements made in  
6 the PPM, which statements speak for themselves, and Kraken respectfully refers the Court to their  
7 full text for an accurate and complete record of their contents. To the extent Paragraph 303  
8 mischaracterizes the cited statements, Kraken denies the allegations.

9           304. To the extent Paragraph 304 purports to quote, characterize, or summarize  
10 statements made in an August 2, 2017 Q&A, the statements speak for themselves, and Kraken  
11 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
12 To the extent Paragraph 304 mischaracterizes the cited statements, Kraken denies the allegations.  
13 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
14 allegations in Paragraph 304, and therefore denies them on that basis.

15           305. Paragraph 305 purports to quote, characterize, or summarize statements made in an  
16 August 2, 2017 Q&A, which statements speak for themselves, and Kraken respectfully refers the  
17 Court to their full text for an accurate and complete record of their contents. To the extent  
18 Paragraph 305 mischaracterizes the cited statements, Kraken denies the allegations.

19           306. To the extent Paragraph 306 purports to quote, characterize, or summarize  
20 statements made in an August 2, 2017 Q&A, the statements speak for themselves, and Kraken  
21 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
22 To the extent Paragraph 306 mischaracterizes the cited statements, Kraken denies the allegations.  
23 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
24 allegations in Paragraph 306, and therefore denies them on that basis.

25           307. To the extent Paragraph 307 purports to quote, characterize, or summarize  
26 statements made in the “Filecoin Token Sale Economics” document, the statements speak for  
27 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
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1 record of their contents. To the extent Paragraph 307 mischaracterizes the cited statements,  
2 Kraken denies the allegations. Kraken specifically denies that the factors listed in the first sentence  
3 of Paragraph 307 would lead reasonable investors to conclude that FIL investors' interests were  
4 aligned with those of FIL's developers. Kraken otherwise lacks knowledge or information  
5 sufficient to form a belief as to the truth of allegations in Paragraph 307, and therefore denies them  
6 on that basis.

7 308. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
8 allegations in the first sentence of Paragraph 308, and therefore denies them on that basis. Kraken  
9 denies the allegations in the second sentence of Paragraph 308.

10 309. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
11 allegations in Paragraph 309, and therefore denies them on that basis.

12 310. To the extent Paragraph 310 purports to quote, characterize, or summarize  
13 statements made by Raul Kripalani and posted to the Protocol Labs Twitter account, the statements  
14 speak for themselves, and Kraken respectfully refers the Court to their full text for an accurate and  
15 complete record of their contents. To the extent Paragraph 310 mischaracterizes the cited  
16 statements, Kraken denies the allegations. Kraken otherwise lacks knowledge or information  
17 sufficient to form a belief as to the truth of allegations in Paragraph 310, and therefore denies them  
18 on that basis.

19 311. Paragraph 311 purports to quote, characterize, or summarize statements made by  
20 the Protocol Labs team, which statements speak for themselves, and Kraken respectfully refers the  
21 Court to their full text for an accurate and complete record of their contents. To the extent  
22 Paragraph 311 mischaracterizes the cited statements, Kraken denies the allegations.

23 312. Paragraph 312 purports to quote, characterize, or summarize statements made by  
24 in a February 3, 2023 blog post, which statements speak for themselves, and Kraken respectfully  
25 refers the Court to their full text for an accurate and complete record of their contents. To the  
26 extent Paragraph 312 mischaracterizes the cited statements, Kraken denies the allegations.

1           313. Kraken denies the allegations in Paragraph 313.

2           314. Paragraph 314 purports to quote, characterize, or summarize statements made in on  
3 Kraken’s website, which statements speak for themselves, and Kraken respectfully refers the Court  
4 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
5 314 mischaracterizes the cited statements, Kraken denies the allegations.

6           315. To the extent Paragraph 315 purports to quote, characterize, or summarize  
7 statements made about Flow, the statements speak for themselves, and Kraken respectfully refers  
8 the Court to their full text for an accurate and complete record of their contents. To the extent  
9 Paragraph 315 mischaracterizes the cited statements, Kraken denies the allegations. Kraken  
10 otherwise lacks knowledge or information sufficient to form a belief as to the truth of allegations  
11 in Paragraph 315, and therefore denies them on that basis.

12           316. Paragraph 316 purports to quote, characterize, or summarize statements made on  
13 the Flow website, which statements speak for themselves, and Kraken respectfully refers the Court  
14 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
15 316 mischaracterizes the cited statements, Kraken denies the allegations.

16           317. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
17 allegations in Paragraph 317, and therefore denies them on that basis.

18           318. To the extent Paragraph 318 purports to quote, characterize, or summarize  
19 statements made on the Flow website, the statements speak for themselves, and Kraken  
20 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
21 To the extent Paragraph 318 mischaracterizes the cited statements, Kraken denies the allegations.  
22 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
23 allegations in Paragraph 318, and therefore denies them on that basis.

24           319. Kraken denies the allegations in Paragraph 319.

25           320. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
26 allegations in Paragraph 320, and therefore denies them on that basis.

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1           321. Kraken admits that FLOW has been available for trading on the Kraken Trading  
2 Platform at various points since January 2021.

3           322. Paragraph 322 purports to quote, characterize, or summarize statements made on  
4 the Flow website, which statements speak for themselves, and Kraken respectfully refers the Court  
5 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
6 322 mischaracterizes the cited statements, Kraken denies the allegations.

7           323. To the extent Paragraph 323 purports to quote, characterize, or summarize publicly  
8 available statements by Dapper Labs and the Flow development team, the statements speak for  
9 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
10 record of their contents. To the extent Paragraph 323 mischaracterizes the cited statements,  
11 Kraken denies the allegations. Kraken otherwise denies the allegations in Paragraph 323.

12           324. Kraken denies the allegations in Paragraph 324.

13           325. To the extent Paragraph 325 purports to quote, characterize, or summarize  
14 statements made on the Flow website, the statements speak for themselves, and Kraken  
15 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
16 To the extent Paragraph 325 mischaracterizes the cited statements, Kraken denies the allegations.  
17 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
18 allegations in Paragraph 325, and therefore denies them on that basis.

19           326. To the extent Paragraph 326 purports to quote, characterize, or summarize  
20 statements made on the Flow website, the statements speak for themselves, and Kraken  
21 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
22 To the extent Paragraph 326 mischaracterizes the cited statements, Kraken denies the allegations.  
23 Kraken otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
24 allegations in Paragraph 326, and therefore denies them on that basis.

25           327. Kraken denies the allegations in Paragraph 327.

26           328. Paragraph 328 purports to quote, characterize, or summarize statements made on  
27 the Flow website, which statements speak for themselves, and Kraken respectfully refers the Court  
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1 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
2 328 mischaracterizes the cited statements, Kraken denies the allegations.

3 329. Paragraph 329 purports to quote, characterize, or summarize statements made on  
4 the Flow website, which statements speak for themselves, and Kraken respectfully refers the Court  
5 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
6 329 mischaracterizes the cited statements, Kraken denies the allegations.

7 330. Paragraph 330 purports to quote, characterize, or summarize statements made in a  
8 Flow announcement and at a 2022 town hall, the statements speak for themselves, and Kraken  
9 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
10 To the extent Paragraph 330 mischaracterizes the cited statements, Kraken denies the allegations.

11 331. Paragraph 331 purports to quote, characterize, or summarize statements made on  
12 the Flow website, which statements speak for themselves, and Kraken respectfully refers the Court  
13 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
14 331 mischaracterizes the cited statements, Kraken denies the allegations.

15 332. Kraken denies the allegations in Paragraph 332.

16 333. Paragraph 333 purports to quote, characterize, or summarize statements made on  
17 Kraken's website, which statements speak for themselves, and Kraken respectfully refers the Court  
18 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
19 333 mischaracterizes the cited statements, Kraken denies the allegations.

20 334. Paragraph 334 purports to quote, characterize, or summarize statements made on  
21 Kraken's website, which statements speak for themselves, and Kraken respectfully refers the Court  
22 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
23 334 mischaracterizes the cited statements, Kraken denies the allegations.

24 335. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
25 allegations in Paragraph 335, and therefore denies them on that basis.

26 336. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
27 allegations in Paragraph 336, and therefore denies them on that basis.

1           337. Paragraph 337 purports to quote, characterize, or summarize statements made in an  
2 April 8, 2017 Medium post, which statements speak for themselves, and Kraken respectfully refers  
3 the Court to their full text for an accurate and complete record of their contents. To the extent  
4 Paragraph 337 mischaracterizes the cited statements, Kraken denies the allegations.

5           338. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
6 allegations in Paragraph 338, and therefore denies them on that basis.

7           339. Paragraph 339 purports to quote, characterize, or summarize statements made in a  
8 post released by DFINITY and a tweet by Williams, which statements speak for themselves, and  
9 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
10 contents. To the extent Paragraph 339 mischaracterizes the cited statements, Kraken denies the  
11 allegations.

12           340. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
13 allegations in Paragraph 340, and therefore denies them on that basis.

14           341. Kraken denies the allegations in Paragraph 341.

15           342. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
16 allegations in Paragraph 342, and therefore denies them on that basis.

17           343. Kraken admits that ICP has been available for trading on the Kraken Trading  
18 Platform at various points since March 2022.

19           344. Kraken denies the allegations in Paragraph 344.

20           345. To the extent Paragraph 345 purports to quote, characterize, or summarize  
21 statements made by DFINITY, the statements speak for themselves, and Kraken respectfully refers  
22 the Court to their full text for an accurate and complete record of their contents. To the extent  
23 Paragraph 345 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
24 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
25 as to the truth of allegations in Paragraph 345, and therefore denies them on that basis.

26           346. Paragraph 346 purports to quote, characterize, or summarize statements made in an  
27 April 4, 2018 Medium post, which statements speak for themselves, and Kraken respectfully refers  
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1 the Court to their full text for an accurate and complete record of their contents. To the extent  
2 Paragraph 346 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
3 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
4 as to the truth of allegations in Paragraph 346, and therefore denies them on that basis.

5 347. Paragraph 347 purports to quote, characterize, or summarize public statements  
6 made by DFINITY, which statements speak for themselves, and Kraken respectfully refers the  
7 Court to their full text for an accurate and complete record of their contents. To the extent  
8 Paragraph 347 mischaracterizes the cited statements, Kraken denies the allegations.

9 348. Paragraph 348 purports to quote, characterize, or summarize tweets by Williams,  
10 which statements speak for themselves, and Kraken respectfully refers the Court to their full text  
11 for an accurate and complete record of their contents. To the extent Paragraph 348  
12 mischaracterizes the cited statements, Kraken denies the allegations.

13 349. To the extent Paragraph 349 purports to quote, characterize, or summarize  
14 statements made by Williams, the statements speak for themselves, and Kraken respectfully refers  
15 the Court to their full text for an accurate and complete record of their contents. To the extent  
16 Paragraph 349 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
17 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
18 as to the truth of allegations in Paragraph 349, and therefore denies them on that basis.

19 350. Paragraph 350 purports to quote, characterize, or summarize statements made in an  
20 ICP whitepaper released in January 2022, tweets by Williams on January 23, 2023, and  
21 DFINITY's website, which statements speak for themselves, and Kraken respectfully refers the  
22 Court to their full text for an accurate and complete record of their contents. To the extent  
23 Paragraph 350 mischaracterizes the cited statements, Kraken denies the allegations. Kraken denies  
24 the allegations in the final sentence of Paragraph 350. To the extent a further response is required,  
25 Kraken lacks knowledge or information sufficient to form a belief as to the truth of allegations in  
26 Paragraph 350, and therefore denies them on that basis.

1           351. Kraken denies the allegations in Paragraph 351.

2           352. Paragraph 352 purports to quote, characterize, or summarize statements made on  
3 Kraken’s website, which statements speak for themselves, and Kraken respectfully refers the Court  
4 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
5 352 mischaracterizes the cited statements, Kraken denies the allegations. To the extent a further  
6 response is required, Kraken denies any allegation that use of the word “investors” subjects Kraken  
7 to federal securities laws and otherwise denies the allegations in Paragraph 352.

8           353. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
9 allegations in Paragraph 353, and therefore denies them on that basis.

10           354. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
11 allegations in Paragraph 354, and therefore denies them on that basis.

12           355. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
13 allegations in Paragraph 355, and therefore denies them on that basis.

14           356. Kraken denies the allegations in Paragraph 356.

15           357. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
16 allegations in Paragraph 357, and therefore denies them on that basis.

17           358. Kraken admits that MANA has been available for trading on the Kraken Trading  
18 Platform at various points since December 2020.

19           359. Kraken denies the allegations in Paragraph 359.

20           360. Paragraph 360 contains a legal conclusion to which no response is required. To the  
21 extent a response is required, Kraken denies the allegations in Paragraph 360. To the extent  
22 Paragraph 360 purports to quote, characterize, or summarize statements made in a July 5, 2017  
23 blog post, the statements speak for themselves, and Kraken respectfully refers the Court to their  
24 full text for an accurate and complete record of their contents. To the extent Paragraph 360  
25 mischaracterizes the cited statements, Kraken denies the allegations.

26           361. Paragraph 361 purports to quote, characterize, or summarize statements made in a  
27 July 5, 2017 blog post, which statements speak for themselves, and Kraken respectfully refers the  
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1 Court to their full text for an accurate and complete record of their contents. To the extent  
2 Paragraph 361 mischaracterizes the cited statements, Kraken denies the allegations.

3 362. Paragraph 362 purports to quote, characterize, or summarize statements made in a  
4 blog post, which statements speak for themselves, and Kraken respectfully refers the Court to their  
5 full text for an accurate and complete record of their contents. To the extent Paragraph 362  
6 mischaracterizes the cited statements, Kraken denies the allegations.

7 363. To the extent Paragraph 363 purports to quote, characterize, or summarize  
8 statements made by the Decentraland Team and Meilich, the statements speak for themselves, and  
9 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
10 contents. To the extent Paragraph 363 mischaracterizes the cited statements, Kraken denies the  
11 allegations. To the extent a further response is required, Kraken lacks knowledge or information  
12 sufficient to form a belief as to the truth of allegations in Paragraph 363, and therefore denies them  
13 on that basis.

14 364. Paragraph 364 purports to quote, characterize, or summarize statements made in a  
15 blog post, which statements speak for themselves, and Kraken respectfully refers the Court to their  
16 full text for an accurate and complete record of their contents. To the extent Paragraph 364  
17 mischaracterizes the cited statements, Kraken denies the allegations.

18 365. Paragraph 365 purports to quote, characterize, or summarize statements made in  
19 the Decentraland Whitepaper, which statements speak for themselves, and Kraken respectfully  
20 refers the Court to their full text for an accurate and complete record of their contents. To the  
21 extent Paragraph 365 mischaracterizes the cited statements, Kraken denies the allegations.

22 366. To the extent Paragraph 366 purports to quote, characterize, or summarize  
23 statements made by Meilich and Decentraland, the statements speak for themselves, and Kraken  
24 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
25 To the extent Paragraph 366 mischaracterizes the cited statements, Kraken denies the allegations.  
26 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
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1 form a belief as to the truth of allegations in Paragraph 366, and therefore denies them on that  
2 basis.

3 367. Paragraph 367 purports to quote, characterize, or summarize statements made in  
4 the Decentraland Whitepaper, which statements speak for themselves, and Kraken respectfully  
5 refers the Court to their full text for an accurate and complete record of their contents. To the  
6 extent Paragraph 367 mischaracterizes the cited statements, Kraken denies the allegations.

7 368. Paragraph 368 purports to quote, characterize, or summarize statements made in  
8 the Decentraland Whitepaper and website, which statements speak for themselves, and Kraken  
9 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
10 To the extent Paragraph 368 mischaracterizes the cited statements, Kraken denies the allegations.

11 369. Kraken denies the allegations in Paragraph 369.

12 370. To the extent Paragraph 370 purports to quote, characterize, or summarize  
13 statements posted on Kraken’s website, the statements speak for themselves, and Kraken  
14 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
15 To the extent Paragraph 370 mischaracterizes the cited statements, Kraken denies the allegations.  
16 To the extent a further response is required, Kraken denies any allegation that use of the word  
17 “investors” subjects Kraken to federal securities laws and denies that the allegations in Paragraph  
18 370 present a fair and complete description of the matters described.

19 371. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
20 allegations in Paragraph 371, and therefore denies them on that basis.

21 372. Paragraph 372 purports to quote, characterize, or summarize statements posted on  
22 the Polygon website, which statements speak for themselves, and Kraken respectfully refers the  
23 Court to their full text for an accurate and complete record of their contents. To the extent  
24 Paragraph 372 mischaracterizes the cited statements, Kraken denies the allegations.

25 373. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
26 allegations in Paragraph 373, and therefore denies them on that basis.

1           374. Paragraph 374 purports to quote, characterize, or summarize statements made in  
2 the initial whitepaper for MATIC, which statements speak for themselves, and Kraken respectfully  
3 refers the Court to their full text for an accurate and complete record of their contents. To the  
4 extent Paragraph 374 mischaracterizes the cited statements, Kraken denies the allegations.

5           375. To the extent Paragraph 375 purports to quote, characterize, or summarize  
6 statements made about the MATIC “initial exchange offering,” the statements speak for  
7 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
8 record of their contents. To the extent Paragraph 375 mischaracterizes the cited statements,  
9 Kraken denies the allegations. To the extent a further response is required, Kraken lacks  
10 knowledge or information sufficient to form a belief as to the truth of allegations in Paragraph  
11 375, and therefore denies them on that basis.

12           376. Kraken denies the allegations in Paragraph 376.

13           377. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
14 allegations in Paragraph 377, and therefore denies them on that basis.

15           378. Kraken admits that MATIC has been available for trading on the Kraken Trading  
16 Platform at various points since May 2021.

17           379. Kraken denies the allegations in Paragraph 379.

18           380. Paragraph 380 purports to quote, characterize, or summarize statements made by  
19 Polygon, which statements speak for themselves, and Kraken respectfully refers the Court to their  
20 full text for an accurate and complete record of their contents. To the extent Paragraph 380  
21 mischaracterizes the cited statements, Kraken denies the allegations.

22           381. To the extent Paragraph 381 purports to quote, characterize, or summarize  
23 statements made on Polygon’s blog, the statements speak for themselves, and Kraken respectfully  
24 refers the Court to their full text for an accurate and complete record of their contents. To the  
25 extent Paragraph 381 mischaracterizes the cited statements, Kraken denies the allegations. To the  
26 extent a further response is required, Kraken lacks knowledge or information sufficient to form a  
27 belief as to the truth of allegations in Paragraph 381, and therefore denies them on that basis.  
28

1           382. Paragraph 382 purports to quote, characterize, or summarize statements made by  
2 Polygon, the statements speak for themselves, and Kraken respectfully refers the Court to their  
3 full text for an accurate and complete record of their contents. To the extent Paragraph 382  
4 mischaracterizes the cited statements, Kraken denies the allegations.

5           383. To the extent Paragraph 383 purports to quote, characterize, or summarize  
6 statements made by Polygon, the statements speak for themselves, and Kraken respectfully refers  
7 the Court to their full text for an accurate and complete record of their contents. To the extent  
8 Paragraph 383 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
9 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
10 as to the truth of allegations in Paragraph 383, and therefore denies them on that basis.

11           384. Paragraph 384 purports to quote, characterize, or summarize statements made on  
12 Polygon's blog, which statements speak for themselves, and Kraken respectfully refers the Court  
13 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
14 384 mischaracterizes the cited statements, Kraken denies the allegations.

15           385. Kraken admits that MATIC has been available for trading on Kraken since May  
16 2021, but otherwise lacks knowledge or information sufficient to form a belief as to the truth of  
17 allegations in Paragraph 385, and therefore denies them on that basis.

18           386. To the extent Paragraph 386 purports to quote, characterize, or summarize  
19 statements made on Sandeep Nailwal's X account, the statements speak for themselves, and  
20 Kraken respectfully refers the Court to their full text for an accurate and complete record of their  
21 contents. To the extent Paragraph 386 mischaracterizes the cited statements, Kraken denies the  
22 allegations. To the extent a further response is required, Kraken lacks knowledge or information  
23 sufficient to form a belief as to the truth of allegations in Paragraph 386, and therefore denies them  
24 on that basis.

25           387. Paragraph 387 purports to quote, characterize, or summarize statements made on  
26 Twitter, CNBC, and social media, which statements speak for themselves, and Kraken respectfully  
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28

1 refers the Court to their full text for an accurate and complete record of their contents. To the  
2 extent Paragraph 387 mischaracterizes the cited statements, Kraken denies the allegations.

3 388. To the extent Paragraph 388 purports to quote, characterize, or summarize  
4 statements made by Polygon, the statements speak for themselves, and Kraken respectfully refers  
5 the Court to their full text for an accurate and complete record of their contents. To the extent  
6 Paragraph 388 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
7 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
8 as to the truth of allegations in the first four sentences of Paragraph 388, and therefore denies them  
9 on that basis. Kraken denies the allegations in the final sentence of Paragraph 388.

10 389. Kraken denies the allegations in Paragraph 389.

11 390. Paragraph 390 purports to quote, characterize, or summarize statements made on  
12 Kraken's website, the statements speak for themselves, and Kraken respectfully refers the Court  
13 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
14 390 mischaracterizes the cited statements, Kraken denies the allegations.

15 391. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
16 allegations in Paragraph 391, and therefore denies them on that basis.

17 392. To the extent Paragraph 392 purports to quote, characterize, or summarize  
18 statements made about the NEAR Foundation, the statements speak for themselves, and Kraken  
19 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
20 To the extent Paragraph 392 mischaracterizes the cited statements, Kraken denies the allegations.  
21 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
22 form a belief as to the truth of allegations in Paragraph 392, and therefore denies them on that  
23 basis.

24 393. To the extent Paragraph 393 purports to quote, characterize, or summarize  
25 statements made in Near's SEC filings or about the NEAR Foundation, the statements speak for  
26 themselves, and Kraken respectfully refers the Court to their full text for an accurate and complete  
27 record of their contents. To the extent Paragraph 393 mischaracterizes the cited statements,  
28

1 Kraken denies the allegations. To the extent a further response is required, Kraken lacks  
2 knowledge or information sufficient to form a belief as to the truth of allegations in Paragraph  
3 393, and therefore denies them on that basis.

4 394. Kraken denies the allegations in Paragraph 394.

5 395. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
6 allegations in Paragraph 395, and therefore denies them on that basis.

7 396. Kraken admits that NEAR has been available for trading on the Kraken Trading  
8 Platform at various points since June 2022. Kraken otherwise lacks knowledge or information  
9 sufficient to form a belief as to the truth of allegations in Paragraph 396, and therefore denies them  
10 on that basis.

11 397. Kraken denies the allegations in Paragraph 397.

12 398. To the extent Paragraph 398 purports to quote, characterize, or summarize  
13 statements made about NEAR, the statements speak for themselves, and Kraken respectfully refers  
14 the Court to their full text for an accurate and complete record of their contents. To the extent  
15 Paragraph 398 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
16 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
17 as to the truth of allegations in Paragraph 398, and therefore denies them on that basis.

18 399. Paragraph 399 purports to quote, characterize, or summarize statements made in  
19 Near's SEC filings, which statements speak for themselves, and Kraken respectfully refers the  
20 Court to their full text for an accurate and complete record of their contents. To the extent  
21 Paragraph 399 mischaracterizes the cited statements, Kraken denies the allegations.

22 400. To the extent Paragraph 400 purports to quote, characterize, or summarize  
23 statements made by the NEAR Foundation, which statements speak for themselves, and Kraken  
24 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
25 To the extent Paragraph 400 mischaracterizes the cited statements, Kraken denies the allegations.

26 401. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
27 allegations in Paragraph 401, and therefore denies them on that basis.

1           402. Paragraph 402 purports to quote, characterize, or summarize statements made in  
2 one of the NEAR Foundation’s blogs, which statements speak for themselves, and Kraken  
3 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
4 To the extent Paragraph 402 mischaracterizes the cited statements, Kraken denies the allegations.

5           403. To the extent Paragraph 403 purports to quote, characterize, or summarize  
6 statements made on Near’s website, the statements speak for themselves, and Kraken respectfully  
7 refers the Court to their full text for an accurate and complete record of their contents. To the  
8 extent Paragraph 403 mischaracterizes the cited statements, Kraken denies the allegations. To the  
9 extent a further response is required, Kraken lacks knowledge or information sufficient to form a  
10 belief as to the truth of allegations in Paragraph 403, and therefore denies them on that basis.

11           404. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
12 allegations in the first and second sentence of Paragraph 404, and therefore denies them on that  
13 basis. Kraken denies the allegations in the third sentence of Paragraph 404.

14           405. Kraken denies the allegations in Paragraph 405.

15           406. To the extent Paragraph 406 purports to quote, characterize, or summarize  
16 statements made on Kraken’s website, the statements speak for themselves, and Kraken  
17 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
18 To the extent Paragraph 406 mischaracterizes the cited statements, Kraken denies the allegations.  
19 To the extent a further response is required, Kraken denies any allegation that use of the word  
20 “investors” subjects Kraken to federal securities laws.

21           407. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
22 allegations in Paragraph 407, and therefore denies them on that basis.

23           408. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
24 allegations in Paragraph 408, and therefore denies them on that basis.

25           409. Kraken admits that OMG tokens have been available for trading on the Kraken  
26 Trading Platform at various points since October 2019.

1           410. Kraken denies the allegations in Paragraph 410.

2           411. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
3 allegations in Paragraph 411, and therefore denies them on that basis.

4           412. Paragraph 412 contains a legal conclusion to which no response is required. To the  
5 extent a response is required, Kraken denies the allegations in Paragraph 412. To the extent  
6 Paragraph 412 purports to quote, characterize, or summarize statements made in OMG's  
7 "Crowdfunding Whitepaper," the statements speak for themselves, and Kraken respectfully refers  
8 the Court to their full text for an accurate and complete record of their contents. To the extent  
9 Paragraph 412 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
10 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
11 as to the truth of allegations in Paragraph 412, and therefore denies them on that basis.

12           413. Paragraph 413 purports to quote, characterize, or summarize statements made in  
13 OMG's "Crowdfunding Whitepaper," which statements speak for themselves, and Kraken  
14 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
15 To the extent Paragraph 413 mischaracterizes the cited statements, Kraken denies the allegations.

16           414. Kraken denies the allegations in the first sentence in Paragraph 414. To the extent  
17 the second sentence in Paragraph 414 purports to quote, characterize, or summarize statements  
18 made about OMG tokens, the statements speak for themselves, and Kraken respectfully refers the  
19 Court to their full text for an accurate and complete record of their contents. To the extent  
20 Paragraph 414 mischaracterizes the cited statements, Kraken denies the allegations. Kraken lacks  
21 knowledge or information sufficient to form a belief as to the truth of any remaining allegations  
22 in Paragraph 414, and therefore denies them on that basis.

23           415. Kraken denies the allegations in Paragraph 415.

24           416. Paragraph 416 purports to quote, characterize, or summarize statements made in  
25 OMG's "Crowdfunding Whitepaper," which statements speak for themselves, and Kraken  
26 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
27 To the extent Paragraph 416 mischaracterizes the cited statements, Kraken denies the allegations.

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1           417. To the extent Paragraph 417 purports to quote, characterize, or summarize  
2 statements made in OMG’s “Crowdfunding Whitepaper,” the statements speak for themselves,  
3 and Kraken respectfully refers the Court to their full text for an accurate and complete record of  
4 their contents. To the extent Paragraph 417 mischaracterizes the cited statements, Kraken denies  
5 the allegations. To the extent a further response is required, Kraken lacks knowledge or  
6 information sufficient to form a belief as to the truth of allegations in Paragraph 417, and therefore  
7 denies them on that basis.

8           418. Paragraph 418 purports to quote, characterize, or summarize statements made on  
9 the OmiseGo website and in a document purporting to establish the terms under which users  
10 purchased OMG during the ICO, which statements speak for themselves, and Kraken respectfully  
11 refers the Court to their full text for an accurate and complete record of their contents. To the  
12 extent Paragraph 418 mischaracterizes the cited statements, Kraken denies the allegations.

13           419. To the extent Paragraph 419 purports to quote, characterize, or summarize  
14 statements made by the OMG Network team, the statements speak for themselves, and Kraken  
15 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
16 To the extent Paragraph 419 mischaracterizes the cited statements, Kraken denies the allegations.  
17 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
18 form a belief as to the truth of allegations in Paragraph 419, and therefore denies them on that  
19 basis.

20           420. To the extent Paragraph 420 purports to quote, characterize, or summarize  
21 statements made by the OMG Network teams, the statements speak for themselves, and Kraken  
22 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
23 To the extent Paragraph 420 mischaracterizes the cited statements, Kraken denies the allegations.  
24 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
25 form a belief as to the truth of allegations in Paragraph 420, and therefore denies them on that  
26 basis.

1           421. To the extent Paragraph 421 purports to quote, characterize, or summarize  
2 statements made by GBV, the statements speak for themselves, and Kraken respectfully refers the  
3 Court to their full text for an accurate and complete record of their contents. To the extent  
4 Paragraph 421 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
5 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
6 as to the truth of allegations in Paragraph 421, and therefore denies them on that basis.

7           422. Kraken denies the allegations in Paragraph 422.

8           423. Kraken denies the allegations in Paragraph 423.

9           424. Paragraph 424 purports to quote, characterize, or summarize statements made on  
10 Kraken's website, which statements speak for themselves, and Kraken respectfully refers the Court  
11 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
12 424 mischaracterizes the cited statements, Kraken denies the allegations.

13           425. To the extent Paragraph 425 purports to quote, characterize, or summarize  
14 statements made on Kraken's website, the statements speak for themselves, and Kraken  
15 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
16 To the extent Paragraph 425 mischaracterizes the cited statements, Kraken denies the allegations.

17           426. To the extent Paragraph 426 purports to quote, characterize, or summarize  
18 statements made on Solana's website, the statements speak for themselves, and Kraken  
19 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
20 To the extent Paragraph 426 mischaracterizes the cited statements, Kraken denies the allegations.  
21 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
22 form a belief as to the truth of allegations in Paragraph 426, and therefore denies them on that  
23 basis.

24           427. To the extent Paragraph 427 purports to quote, characterize, or summarize  
25 statements made on Solana's website, the statements speak for themselves, and Kraken  
26 respectfully refers the Court to their full text for an accurate and complete record of their contents.  
27 To the extent Paragraph 427 mischaracterizes the cited statements, Kraken denies the allegations.

1 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
2 form a belief as to the truth of allegations in Paragraph 427, and therefore denies them on that  
3 basis.

4 428. To the extent Paragraph 428 purports to quote, characterize, or summarize  
5 statements made in Solana Labs' SEC filings, the statements speak for themselves, and Kraken  
6 respectfully refers the Court to their full text for an accurate and complete record of their contents.

7 To the extent Paragraph 428 mischaracterizes the cited statements, Kraken denies the allegations.

8 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
9 form a belief as to the truth of allegations in Paragraph 428, and therefore denies them on that  
10 basis.

11 429. To the extent Paragraph 429 purports to quote, characterize, or summarize  
12 statements made about Solana Labs' SOL sales, the statements speak for themselves, and Kraken  
13 respectfully refers the Court to their full text for an accurate and complete record of their contents.

14 To the extent Paragraph 429 mischaracterizes the cited statements, Kraken denies the allegations.

15 To the extent a further response is required, Kraken lacks knowledge or information sufficient to  
16 form a belief as to the truth of allegations in Paragraph 429, and therefore denies them on that  
17 basis.

18 430. To the extent Paragraph 430 purports to quote, characterize, or summarize  
19 statements made in a September 17, 2022 Twitter posts, the statements speak for themselves, and  
20 Kraken respectfully refers the Court to their full text for an accurate and complete record of their

21 contents. To the extent Paragraph 430 mischaracterizes the cited statements, Kraken denies the  
22 allegations. To the extent a further response is required, Kraken lacks knowledge or information  
23 sufficient to form a belief as to the truth of allegations in Paragraph 430, and therefore denies them  
24 on that basis.

25 431. Kraken denies the allegations in Paragraph 431.

26 432. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
27 allegations in Paragraph 432, and therefore denies them on that basis.

1           433. Kraken admits that SOL has been available for trading on the Kraken Trading  
2 Platform at various points since June 2021.

3           434. Kraken denies the allegations in Paragraph 434.

4           435. Paragraph 435 purports to quote, characterize, or summarize statements by Solana  
5 Labs, which statements speak for themselves, and Kraken respectfully refers the Court to their full  
6 text for an accurate and complete record of their contents. To the extent Paragraph 435  
7 mischaracterizes the cited statements, Kraken denies the allegations.

8           436. Paragraph 436 purports to quote, characterize, or summarize statements by Solana  
9 Labs, which statements speak for themselves, and Kraken respectfully refers the Court to their full  
10 text for an accurate and complete record of their contents. To the extent Paragraph 436  
11 mischaracterizes the cited statements, Kraken denies the allegations.

12           437. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
13 allegations in Paragraph 437, and therefore denies them on that basis.

14           438. To the extent Paragraph 438 purports to quote, characterize, or summarize  
15 statements by Solana Labs, the statements speak for themselves, and Kraken respectfully refers  
16 the Court to their full text for an accurate and complete record of their contents. To the extent  
17 Paragraph 438 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
18 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
19 as to the truth of allegations in Paragraph 438, and therefore denies them on that basis.

20           439. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
21 allegations in Paragraph 439, and therefore denies them on that basis.

22           440. To the extent Paragraph 440 purports to quote, characterize, or summarize  
23 statements by Solana Labs, the statements speak for themselves, and Kraken respectfully refers  
24 the Court to their full text for an accurate and complete record of their contents. To the extent  
25 Paragraph 440 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
26  
27  
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1 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
2 as to the truth of allegations in Paragraph 440, and therefore denies them on that basis.

3 441. To the extent Paragraph 441 purports to quote, characterize, or summarize  
4 statements by Solana Labs, the statements speak for themselves, and Kraken respectfully refers  
5 the Court to their full text for an accurate and complete record of their contents. To the extent  
6 Paragraph 441 mischaracterizes the cited statements, Kraken denies the allegations. To the extent  
7 a further response is required, Kraken lacks knowledge or information sufficient to form a belief  
8 as to the truth of allegations in the first three sentences of Paragraph 441, and therefore denies  
9 them on that basis. Kraken denies the allegations in the final sentence of Paragraph 441.

10 442. Kraken lacks knowledge or information sufficient to form a belief as to the truth of  
11 allegations in Paragraph 442, and therefore denies them on that basis.

12 443. Paragraph 443 purports to quote, characterize, or summarize statements made on  
13 Kraken's website, which statements speak for themselves, and Kraken respectfully refers the Court  
14 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
15 443 mischaracterizes the cited statements, Kraken denies the allegations.

16 444. Paragraph 444 purports to quote, characterize, or summarize statements made on  
17 Kraken's website, which statements speak for themselves, and Kraken respectfully refers the Court  
18 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
19 444 mischaracterizes the cited statements, Kraken denies the allegations.

20 445. Paragraph 445 purports to quote, characterize, or summarize statements made on  
21 Kraken's website, which statements speak for themselves, and Kraken respectfully refers the Court  
22 to their full text for an accurate and complete record of their contents. To the extent Paragraph  
23 445 mischaracterizes the cited statements, Kraken denies the allegations.

24 446. Kraken incorporates by reference its responses to Paragraphs 1 through 445.

25 447. Paragraph 447 states legal conclusions to which no response is required. To the  
26 extent any response is required, Kraken denies the allegations in Paragraph 447.

1 448. Paragraph 448 states legal conclusions to which no response is required. To the  
2 extent any response is required, Kraken denies the allegations in Paragraph 448.

3 449. Kraken incorporates by reference its responses to Paragraphs 1 through 445.

4 450. Paragraph 450 states legal conclusions to which no response is required. To the  
5 extent any response is required, Kraken denies the allegations in Paragraph 450.

6 451. Paragraph 451 states legal conclusions to which no response is required. To the  
7 extent any response is required, Kraken denies the allegations in Paragraph 451.

8 452. Kraken incorporates by reference its responses to Paragraphs 1 through 445.

9 453. Paragraph 453 states legal conclusions to which no response is required. To the  
10 extent any response is required, Kraken denies the allegations in Paragraph 453.

11 454. Paragraph 454 states legal conclusions to which no response is required. To the  
12 extent any response is required, Kraken denies the allegations in Paragraph 454.

13 **PRAYER FOR RELIEF**

14 The SEC's prayer for relief does not require a response, but to the extent any response is  
15 required, Kraken denies that the SEC is entitled to the requested relief and judgment or to any  
16 relief whatsoever, and therefore requests that the Court:

- 17 1. Dismiss the Complaint with prejudice and enter judgment in favor of Kraken on all  
18 claims; and  
19 2. Award Kraken such other and further relief as the Court may deem just and proper.

20 **ADDITIONAL DEFENSES**

21 Kraken alleges, asserts, and states the following defenses as separate and distinct defenses  
22 to the Complaint. By virtue of alleging these further defenses, Kraken does not assume any  
23 burden of proof, persuasion, or production not otherwise legally assigned to it.

24 **FIRST DEFENSE: FAILURE TO STATE A CLAIM**

25 The Complaint fails to state a claim upon which relief may be granted.  
26  
27  
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1 **SECOND DEFENSE: THE DIGITAL ASSETS WERE NOT SOLD AS INVESTMENT**  
2 **CONTRACTS**

3 Kraken did not violate Sections 5, 15(a) and 17A of the Securities Exchange Act of 1934  
4 because ADA, ALGO, ATOM, FIL, FLOW, ICP, MANA, MATIC, NEAR, OMG, and SOL  
5 (together, the “Digital Assets”) are not securities or investment contracts, and trades of the Digital  
6 Assets on Kraken do not form the basis of “investment contracts.”

7 **THIRD DEFENSE: NO AUTHORITY TO REGULATE KRAKEN’S DIGITAL ASSET**  
8 **TRADING PLATFORM**

9 The SEC has no authority to regulate Kraken’s digital asset trading platform under Sections  
10 5, 15(a), or 17A of the Exchange Act because the Digital Assets are not securities or investment  
11 contracts, and sales of the Digital Assets on Kraken do not form the basis of investment contracts,  
12 within the meaning of the Exchange Act.

13 **FOURTH DEFENSE: NO SECURITIES TRADED ON KRAKEN’S DIGITAL ASSET**  
14 **TRADING PLATFORM**

15 Kraken did not violate Sections 5, 15(a), or 17(b) of the Exchange Act because no  
16 securities or investment contracts were, or could have been, traded, brokered, or settled on Kraken.

17 **FIFTH DEFENSE: KRAKEN IS NOT AN EXCHANGE**

18 Kraken did not violate Section 5 of the Exchange Act because Kraken is not an exchange  
19 within the meaning of the Exchange Act.

20 **SIXTH DEFENSE: KRAKEN IS NOT A BROKER-DEALER**

21 Kraken did not violate Section 15(a) of the Exchange Act because Kraken is not a broker-  
22 dealer within the meaning of the Exchange Act.

23 **SEVENTH DEFENSE: KRAKEN IS NOT A CLEARING AGENT**

24 Kraken did not violate Section 17A of the Exchange Act because Kraken is not a clearing  
25 agent within the meaning of the Exchange Act.

26 **EIGHTH DEFENSE: MAJOR QUESTIONS DOCTRINE**

27 Were there ambiguity regarding the SEC’s authority to regulate Kraken under Sections 5,  
28

1 15(a), or 17A of the Exchange Act, application of the Major Questions Doctrine would require  
2 that the ambiguity be resolved against a finding of authority.<sup>2</sup>

3 **NINTH DEFENSE: LACK OF DUE PROCESS AND FAIR NOTICE**

4 Kraken did not have, and Plaintiff failed to provide, fair notice that Kraken’s conduct was  
5 in violation of the law, in contravention of its due process rights. Due process requires that laws  
6 give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. *F.C.C.*  
7 *v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (“A fundamental principle in our legal  
8 system is that laws which regulate persons or entities must give fair notice of conduct that is  
9 forbidden or required.”).

10 Here, due to the lack of clarity and fair notice regarding Kraken’s obligations under the  
11 law, in addition to the lack of clarity and fair notice regarding Plaintiff’s interpretation of the law,  
12 Kraken lacked fair notice that its conduct was prohibited.

13 **TENTH DEFENSE: LACK OF DUE PROCESS AND VOID FOR VAGUENESS AS**

14 **APPLIED**

15 The Due Process Clause requires that “laws give the person of ordinary intelligence a  
16 reasonable opportunity to know what is prohibited.” *Grayned v. City of Rockford*, 408 U.S. 104,  
17 108 (1972). As applied to the transactions alleged by Plaintiff, the securities laws and the test  
18 formulated by the Supreme Court in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) are  
19 impermissibly vague. Among other things, a person of ordinary intelligence could not reasonably  
20 know when the SEC (or a court) will determine that a digital asset rises to the level of a “security”  
21 or “investment contract” under the Securities Act of 1933 and the Exchange Act. Moreover, a  
22 third-party trading platform like Kraken does not even have access to the type of private  
23 information about the digital asset promoter that the SEC claims is essential to determining  
24 whether an investment contract transaction occurred. Due process is violated when a potentially  
25 liable party cannot reasonably know whether and when it has violated the securities laws.

26 \_\_\_\_\_  
27 <sup>2</sup> Kraken recognizes the Court’s ruling on this defense in its Motion to Dismiss Order (ECF No.  
28 90), and includes this defense here in order to preserve the issue for summary judgment and  
appeal.

1           The two primary statutes defining a “security” are the Securities Act of 1933 and the  
2 Exchange Act. Neither statute includes digital assets, such as the Digital Assets here, in their  
3 definitions of security. The Exchange Act specifically states that currencies are not securities.

4           In addition to the two statutes, the Supreme Court provided further guidance on  
5 the definition of “investment contract” in *Howey*. In *Howey*, the Court examined two different  
6 types of contracts to determine whether they were “investment contracts” under the securities  
7 laws. 328 U.S. at 295–297. While *Howey* provided guidance on the definition of “investment  
8 contract” in a situation where there was a “land sales contract and a service contract,” nothing  
9 in *Howey* suggests that there can be an investment contract *when no contract exists*. 328 U.S. at  
10 295. Under these circumstances, a person of ordinary intelligence would not have had a  
11 reasonable opportunity to know that any of the Digital Assets are a “security” or could form an  
12 “investment contract” on Kraken under the securities laws. A law imposing liability on a  
13 “security,” that does not meet the statutory definition of a “security,” or on an “investment  
14 contract,” when no contract exists, is impermissibly and unconstitutionally vague.

15           **ELEVENTH DEFENSE: NO LIKELIHOOD OF FUTURE VIOLATIONS**

16           The SEC is not entitled to the relief requested in the Complaint, in whole or in part,  
17 because the Complaint fails to allege a reasonable likelihood of future violations by Kraken.

18           **TWELFTH DEFENSE: ABUSE OF DISCRETION**

19           Plaintiff abused its discretion by bringing this enforcement action instead of engaging in  
20 notice-and-comment rulemaking.

21           **THIRTEENTH DEFENSE: COLLATERAL ESTOPPEL**

22           Plaintiff is collaterally estopped from pursuing its claims.

23           **FOURTEENTH DEFENSE: EQUITABLE ESTOPPEL**

24           Plaintiff is equitably estopped from pursuing its claims.

25           **FIFTEENTH DEFENSE: UNCLEAN HANDS**

26           The Complaint is barred by Plaintiff’s unclean hands.  
27  
28



1 Answer and to assert any additional defenses as they become known or available.

2 **RESERVATION OF RIGHTS**

3 Kraken presently has insufficient knowledge or information upon which to form a belief  
4 as to whether there may be other, as yet unstated, defenses available to it, and therefore expressly  
5 reserves, in accordance with applicable law, the right to amend or supplement its Answer, defenses  
6 and all other pleadings, and the right to assert any and all other additional and further defenses as  
7 appropriate.

8 **DEMAND FOR JURY TRIAL**

9 Kraken hereby demands a jury trial for all issues so triable.

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1 Dated: September 12, 2024

Respectfully Submitted,

2 /s/ Matthew C. Solomon

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