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December 22, 2022

Via ECF

The Honorable Vernon S. Broderick
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *True Return Systems LLC v. MakerDAO*, No. 22-cv-8478 (VSB)

Dear Judge Broderick:

On behalf of the Crypto Council for Innovation (“CCI”), we write respectfully to notify the Court that, to the extent default judgment is sought against MakerDAO in the above-captioned case, CCI intends to seek the Court’s permission to participate as an *amicus curiae* with respect to any default judgment proceedings.

CCI is an alliance of crypto industry leaders with a mission to communicate the opportunities presented by crypto (*i.e.*, digital assets) and demonstrate the transformational promise of crypto. CCI members span the crypto ecosystem and include eight of the leading global companies and investors operating in the industry.¹ CCI members share the goal of encouraging the responsible global regulation of crypto in order to unlock economic potential, improve lives, foster financial inclusion, protect national security, and disrupt illicit activity.

CCI’s interest in this case concerns plaintiff’s attempt to bring claims for monetary and injunctive relief against a decentralized autonomous organization (“DAO”). In its simplest form, a DAO is a tool designed to allow unrelated parties to use software code deployed on a blockchain (called “smart contracts”) to take actions without the need for a centralized coordinating authority. Parties holding “tokens” of the DAO may use those tokens for several

¹ Crypto Council for Innovation, *The Alliance*, <https://cryptoforinnovation.org/team/#alliance> (last visited Dec. 19, 2022).

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purposes, including to “vote” their tokens in support of or opposition to proposals to modify a particular smart contract-based protocol separate from the DAO in accordance with permissions in the protocol.

Plaintiff here seeks to hold MakerDAO liable as a general partnership (or unincorporated association) under New York law. *See* Memorandum of Law in Support of Plaintiff’s Ex Parte Motion for Leave to Serve Defendant MakerDAO by Electronic Means at 8 & n.3 (Dkt. No. 10). And plaintiff suggests that each individual token holder could be held liable for any judgment against MakerDAO, regardless of whether the token holder participated in or had knowledge of the allegedly infringing activity. *See* Compl. ¶ 10 (Dkt. No. 1). Among other things, this theory raises issues important to the broader crypto and digital assets community, including the proper legal characterization of a DAO, whether plaintiff has properly established jurisdiction in the matter, and whether all individual token holders may be held jointly and severally liable (in their personal capacities) for claims against a DAO.

Based on the current record, it appears that MakerDAO has not appeared to defend the matter. CCI respectfully submits that these novel and important legal issues—which could have industry-wide implications—should not be decided in uncontested default judgment proceedings. Rather, *amicus* participation “should normally be allowed when a party is not represented competently or is not represented at all.” *C & A Carbone, Inc. v. Cnty. of Rockland, NY*, 2014 WL 1202699, at *3 (S.D.N.Y. Mar. 24, 2014) (quoting *Ryan v. FTC*, 125 F.3d 1062, 1063 (7th Cir.1997)). Therefore, to the extent default judgment is sought by plaintiff or considered by the Court in the above-captioned case, CCI respectfully requests an opportunity to file a motion requesting leave to submit an *amicus curiae* brief, consistent with any schedule the Court sets.

Respectfully submitted,

/s/ James M. McDonald

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cc: All Counsel of Record (via ECF)