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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DANIEL VALENTI, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

DFINITY USA RESEARCH LLC, DFINITY  
FOUNDATION and DOMINIC WILLIAMS,

Defendants.

Case No.: 3:21-cv-06118-JD

**DEFENDANTS' MOTION  
TO DISQUALIFY ROCHE  
FREEDMAN LLP AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

Date: November 17, 2022

Time: 10:00 a.m.

Courtroom: 11, 19th Floor

Judge: Hon. James Donato

**NOTICE OF MOTION AND MOTION**

TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF  
RECORD:

PLEASE TAKE NOTICE THAT on November 17, 2022, at 10 a.m., or as soon thereafter  
as counsel may be heard, in the courtroom of the Honorable James Donato, 450 Golden Gate  
Ave., San Francisco, CA 94102, Courtroom 11, 19th Floor, Defendants Dfinity USA Research,  
LLC, Dfinity Foundation, and Dominic Williams (together, “Defendants”) will and do hereby  
move the Court for an order disqualifying Roche Freedman LLP as Lead Counsel in the above-  
captioned action.

This motion is made pursuant to California Rules of Professional Conduct Rule 1.7 and  
Rule 1.10, and is based upon this Notice of Motion and the Memorandum of Points and  
Authorities in Support, the Declaration of Kevin J. Orsini and exhibits attached thereto, the  
Request for Judicial Notice filed herewith, and such argument as may be heard.

**ISSUE TO BE DECIDED**

Whether Roche Freedman LLP should be disqualified from representing Lead Plaintiffs  
and the putative class in the above-captioned action because Kyle Roche violated California Rule  
of Professional Conduct 1.7 and that violation is imputed to Roche Freedman LLP pursuant to  
California Rule of Professional Conduct 1.10.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendants respectfully ask this Court to disqualify Roche Freedman LLP (“Roche Freedman”) as Lead Counsel to Lead Plaintiff and the putative class due to violations of the California Rules of Professional Conduct recently revealed in a shocking series of video clips of Kyle Roche—a founding partner of Roche Freedman. On camera, Mr. Roche details his misuse of the legal system to advance the commercial interests of Ava Labs, a cryptocurrency client in which he owns substantial equity. Mr. Roche boasts that he uses litigation as a “tool [for] competition” by (1) filing lawsuits against Ava Labs’ competitors on behalf of purported classes he refers to as “10,000 idiots,” (2) obtaining confidential information by “su[ing] half the companies in this space” in order to “see[] the insides” of other blockchain companies to advise Ava Labs, (3) “making sure the SEC and the CFTC have other magnets to go after” to deflect attention from Ava Labs, and (4) enforcing the personal vendettas of Ava Labs’ CEO. As described herein, Mr. Roche demonstrates a disregard for the integrity of the judicial system, calling jurors and his own clients “idiots” and boasting that he has the “power” and “resources” to take Ava Labs’ competitors “to the end”, thus disregarding the best interests of the putative class.

In a clear attempt to avoid the disqualification of his firm, Mr. Roche *individually* withdrew as counsel of record for the putative class soon after the videos were released. He has taken this same approach in several other class actions he and his law firm filed against other Ava Labs competitors, in which defendants and co-lead counsel have similarly moved to disqualify Roche Freedman. *See* Declaration of Kevin J. Orsini, Exhibits 2 to 11 attached thereto (“Ex(s).”).

Mr. Roche’s individual withdrawal is insufficient to cure the professional conduct violations, stated conflict of interest, and impropriety that now taint Roche Freedman’s representation of the putative class. In putative class actions such as this one, appointed lead counsel are subject to a heightened standard, and must be able to show they can fairly and adequately represent the interests of the class. Courts in this circuit have held that

disqualification in the class action context is more compelling and more likely than in individual representations, as the court has an obligation to closely scrutinize counsel’s ability to represent absent class members. Here, Mr. Roche’s statements reveal that Roche Freedman does not meet that heightened standard. The video clips demonstrate that Mr. Roche has violated California Rule of Professional Conduct 1.7(b), which prevents a lawyer from representing a client if there is a risk that the representation will be impacted by the lawyer’s own interests or those of another client. This violation, in turn, prevents Roche Freedman from continuing as counsel pursuant to California Rule of Professional Conduct 1.10, providing for vicarious disqualification of the associated firm.

Given Roche Freedman’s size—a boutique firm with fewer than ten partners—and Mr. Roche’s position as a named and founding partner, disqualification of Roche Freedman is necessary to resolve the impropriety exposed in the videos. Moreover, Mr. Roche is not the sole beneficiary of Roche Freedman’s agreement with Ava Labs. Other Roche Freedman partners similarly received tokens for the strategic “legal services” provided to Ava Labs, including at least one other partner who has entered an appearance in this litigation and has not withdrawn. Mr. Roche’s individual withdrawal from this action serves as an admission that he is unable to adequately represent the putative class. Neither is Roche Freedman. Disqualification would not prejudice Lead Plaintiff or the putative class at this early stage of the litigation as they may be afforded sufficient time to obtain replacement counsel.

## **II. RELEVANT FACTS**

On August 9, 2021, Roche Freedman filed this action on behalf of a putative class of “[a]ll persons who purchased ICP tokens from May 10, 2021, to the present”. (ECF No. 1 at 28.) On October 12, 2021, Henry Rodriguez filed a motion for appointment as Lead Plaintiff and to appoint Roche Freedman as Lead Counsel. (ECF No. 21.) In emphasizing that “Roche Freedman’s lawyers [] have unique and unparalleled expertise with respect to litigation involving cryptoassets like ICP”, the motion identifies Mr. Roche as “a lead attorney from Roche Freedman”, and “a recognized thought leader in the industry” who “has published multiple articles on the intersection of cryptoassets and the law” and “represents plaintiffs in some of the

most significant disputes in the crypto industry”. (*Id.* at 10.) On December 20, 2021, the Court appointed Roche Freedman as Lead Counsel in this Action. (ECF No. 42.)

On August 26, 2022, *Crypto Leaks* released a report and a series of video clips in which Mr. Roche describes his firm’s close ties to Ava Labs—a company that develops a blockchain called Avalanche—and its executives, his financial interest in Ava Labs, and his firm’s improper use of litigation against Ava Labs’ competitors. *See* Ex. 1, *Ava Labs (Avalanche) attacks Solana & cons SEC in evil conspiracy with bought law firm, Roche Freedman* (Aug. 26, 2022), <https://cryptoleaks.info/case-no-3>. Mr. Roche states that he formed Roche Freedman on August 1, 2019, the same day that Ava Labs launched, and that both companies shared the same co-working space.<sup>1</sup> Mr. Roche says he “agreed to provide legal services in exchange for a certain percentage” of the cryptocurrency tokens issued by Ava Labs (“AVAX”), and was one of the first people to receive such tokens, along with equity in Ava Labs, for his services.<sup>2</sup> Indeed, Mr. Roche explains that “obviously, I’m biased”, as he has “an interest in Ava Labs . . . a big one. I did very well.”<sup>3</sup> Specifically, Mr. Roche indicates that he owns approximately 1% of the AVAX token supply and the equity of Ava Labs,<sup>4</sup> worth tens of millions of dollars or more. Mr. Roche admits his personal bias in favor of Ava Labs, agreeing that they have the “same

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<sup>1</sup> Video 1 (<https://d33wubrfki0l68.cloudfront.net/1a432cb907f50390478d5c7b5c2c30c24547d110/5ca00/videos/c3-00-office-ava-labs-launch.mp4>).

<sup>2</sup> Video 2 (<https://d33wubrfki0l68.cloudfront.net/ba470e47132c5cb938f344be9ff8d261adc0eca2/6c3ea/videos/c3-01-office-deal-for-perc-token-supply.mp4>). On September 13, 2022, Ava Labs co-founder Emin Gün Sirer claimed in a blog post that Mr. Roche’s “equity interest in Ava Labs . . . will end”. *See* Emin Gün Sirer, *My Statement about the Crypto Leaks Lies*, Medium.com (updated September 13, 2022) (<https://el33th4x0r.medium.com/my-statement-about-the-crypto-leaks-lies-ef2005da752>). At a recent hearing in the Southern District of New York, Roche Freedman attorneys nonetheless confirmed that at least some other partners at the Firm continue to hold interests in Ava Labs.

<sup>3</sup> Video 3 (<https://d33wubrfki0l68.cloudfront.net/96d2fbdbfb4ac619f2656ce923aa707cfca9cbe/3d59f/videos/c3-02-office-i-got-1-point-on-both.mp4>).

<sup>4</sup> *Id.* The market capitalization of AVAX is currently approximately \$5 billion dollars, meaning Mr. Roche’s interest would be worth tens of millions of dollars. Mr. Roche also explains that this interest amounts to “a third of what [Ava Labs co-founder] Kevin” Sekniqi received. Video 4 (<https://d33wubrfki0l68.cloudfront.net/7360f4c61d57fad10a087c767c32f5e1551088c1/f4e42/videos/c3-03-office-one-third-of-what-kevin-got.mp4>).



interests, same goals”.<sup>5</sup> Mr. Roche describes his relationship with Ava Labs’ co-founders Emin Gün Sirer and Kevin Sekniqi as “like brothers”,<sup>6</sup> and Mr. Roche even says he now lives with Mr. Sekniqi.<sup>7</sup> Mr. Roche confirms that he helps Ava Labs “in many situations”, including regarding “regulation issues” and “competitors”.<sup>8</sup> According to Mr. Roche, “litigation is an underused tool”, one he confirms he uses as “a strategic instrument to support Ava Labs”.<sup>9</sup> Because Mr. Roche was “fortunate in that I did the Ava Labs deal”, he claims that “it’s not about the money anymore for me it’s about taking you guys to trial and the sport of it”.<sup>10</sup> Mr. Roche emphasizes: “I don’t f\*\*\*ing care about settling . . . I’m just a crazy motherf\*\*\*er and I have resources, and I will take you to the end. And taking you to the end . . . it won’t be a nuisance settlement. It will be, I’ve got a piece of paper that says I own your company now. That is power . . . .”<sup>11</sup>

Mr. Roche describes at least four ways that Roche Freedman uses litigation to support Ava Labs. *First*, Mr. Roche states that Roche Freedman files class action lawsuits against Ava Labs’ competitors, because as Mr. Roche states, “litigation can be a tool to competition . . . a fantastic tool to competition”.<sup>12</sup> There is no dispute that Dfinity is a competitor to Ava Labs.

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<sup>5</sup> Video 5 (<https://d33wubrfki0l68.cloudfront.net/61dabcad45d46c6207e4acded4ab34a49a0aa163/fc7a7/videos/c3-04-office-same-interests-same-goals.mp4>).

<sup>6</sup> Video 5 (<https://d33wubrfki0l68.cloudfront.net/61dabcad45d46c6207e4acded4ab34a49a0aa163/fc7a7/videos/c3-04-office-same-interests-same-goals.mp4>).

<sup>7</sup> Video 7 (<https://d33wubrfki0l68.cloudfront.net/789531f0f9b4b55626c52801967703b1968bca18/b171a/videos/c3-06-office-i-live-with-kevin-in-miami.mp4>).

<sup>8</sup> Video 4 (<https://d33wubrfki0l68.cloudfront.net/7360f4c61d57fad10a087c767c32f5e1551088c1/f4e42/videos/c3-03-office-one-third-of-what-kevin-got.mp4>).

<sup>9</sup> Video 6 (<https://d33wubrfki0l68.cloudfront.net/a799bb8bcde3170c313e3ad7662a41148621c4d1/2fbf3/videos/c3-05-office-litigation-is-a-strategic-instrument.mp4>).

<sup>10</sup> Video 19 (<https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a254850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4>).

<sup>11</sup> Video 18 (<https://d33wubrfki0l68.cloudfront.net/2f1313a474fff7dedbb5432d16e848725ce51e04/4f9ab/videos/c3-16-im-a-crazy-motherfucker.mp4>).

<sup>12</sup> Video 10 (<https://d33wubrfki0l68.cloudfront.net/1edf92baa6d2ec8203a8568c7869ef5e4b326a71/428f7/videos/c3-09-magnets-for-sec-and-competitive-attacks.mp4>).

1 Indeed, Mr. Roche says that “litigation is the most uncorrelated asset that exists, period”.<sup>13</sup>

2 Mr. Roche explains:

3 Q: Has Ava Labs filed a complaint against one of their  
competitors?

4 Roche: No, they have me to do that on behalf of the class. Their  
name was never . . .

5 Q: Explain.

6 Roche: So, I can sue Solana . . .

7 Q: Yeah.

8 Roche: But a plaintiff will purchase Solana. . .

**Q: And what about Dfinity?**

**Roche: Oh yeah.**<sup>14</sup>

9 Thus, by filing lawsuits on behalf of absent class members and unsuspecting lead plaintiffs,  
10 Mr. Roche implies that Roche Freedman is able to conceal the true party in interest, Ava Labs,  
11 while inflicting harm on Ava Labs’ competitors. *Second*, Mr. Roche explains that he acts as  
12 “Ava Labs’ crypto expert”—expertise he gained “because [he] sue[d] half the companies in the  
13 [cryptocurrency] space” and has “seen the insides of every single crypto company”.<sup>15</sup> In other  
14 words, Mr. Roche implies that he uses the confidential information produced in discovery in  
15 actions Roche Freedman files against blockchain companies to support Ava Labs. *Third*,  
16 Mr. Roche agrees that he is Ava Labs’ “solver”, and boasts that he “deal[s] with making sure that  
17 . . . the SEC and the CFTC have other magnets to go after” instead of Ava Labs.<sup>16</sup> Mr. Roche  
18 emphasizes that since the CEO of Ava Labs “signed [him] up”, he has “ensured that there’s no  
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21 <sup>13</sup> Video 25 ([https://d33wubrfki0l68.cloudfront.net/443e70d9f96180e7219809abc4926](https://d33wubrfki0l68.cloudfront.net/443e70d9f96180e7219809abc492626856fbde02/7f50a/videos/c3-23-litigation-is-the-most-uncorrelated-asset.mp4)  
22 [26856fbde02/7f50a/videos/c3-23-litigation-is-the-most-uncorrelated-asset.mp4](https://d33wubrfki0l68.cloudfront.net/443e70d9f96180e7219809abc492626856fbde02/7f50a/videos/c3-23-litigation-is-the-most-uncorrelated-asset.mp4)).

23 <sup>14</sup> Video 19 ([https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a254](https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a254850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4)  
24 [850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4](https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a254850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4)). Mr. Roche also confirms that Dfinity is  
25 a competitor of Ava Labs. Video 17 ([https://d33wubrfki0l68.cloudfront.net/b660cb79f51a](https://d33wubrfki0l68.cloudfront.net/b660cb79f51a071ece800cda7fc3521e5e21a59d/0467e/videos/c3-16-0-dfinity-is-a-competitor-to-avalanche.mp4)  
[071ece800cda7fc3521e5e21a59d/0467e/videos/c3-16-0-dfinity-is-a-competitor-to-](https://d33wubrfki0l68.cloudfront.net/b660cb79f51a071ece800cda7fc3521e5e21a59d/0467e/videos/c3-16-0-dfinity-is-a-competitor-to-avalanche.mp4)  
[avalanche.mp4](https://d33wubrfki0l68.cloudfront.net/b660cb79f51a071ece800cda7fc3521e5e21a59d/0467e/videos/c3-16-0-dfinity-is-a-competitor-to-avalanche.mp4)).

26 <sup>15</sup> Video 8 ([https://d33wubrfki0l68.cloudfront.net/68e1d6812f6e7b039402f74be62f](https://d33wubrfki0l68.cloudfront.net/68e1d6812f6e7b039402f74be62f625271142a20/73af8/videos/c3-07-office-i-sue-crypto-companies-to-see-inside.mp4)  
27 [625271142a20/73af8/videos/c3-07-office-i-sue-crypto-companies-to-see-inside.mp4](https://d33wubrfki0l68.cloudfront.net/68e1d6812f6e7b039402f74be62f625271142a20/73af8/videos/c3-07-office-i-sue-crypto-companies-to-see-inside.mp4)).

28 <sup>16</sup> Video 10 ([https://d33wubrfki0l68.cloudfront.net/1edf92baa6d2ec8203a8568c7869ef](https://d33wubrfki0l68.cloudfront.net/1edf92baa6d2ec8203a8568c7869ef5e4b326a71/428f7/videos/c3-09-magnets-for-sec-and-competitive-attacks.mp4)  
[5e4b326a71/428f7/videos/c3-09-magnets-for-sec-and-competitive-attacks.mp4](https://d33wubrfki0l68.cloudfront.net/1edf92baa6d2ec8203a8568c7869ef5e4b326a71/428f7/videos/c3-09-magnets-for-sec-and-competitive-attacks.mp4)).

1 such thing as regulation for what they want to do”.<sup>17</sup> *Fourth*, Mr. Roche describes litigation used  
 2 to enforce the personal vendettas of Ava Labs CEO, Emin Gün Sirer (“Gün”). Mr. Roche says  
 3 that he “took down one of Gün’s biggest archnemeses”,<sup>18</sup> and sued another individual who  
 4 criticized Gün on social media, emphasizing “that’s why Gün loves me”.<sup>19</sup>

5 Mr. Roche also describes his views of the legal process, particularly with respect to  
 6 securities class actions: “I don’t think there’s any reason to settle for less than half a billion to a  
 7 billion. But for me, if we get \$100 million settlement we are in the front page of all the legal  
 8 press and so it’s good for my partners and my firm.”<sup>20</sup> Mr. Roche goes on to disparage the  
 9 plaintiff classes he purports to represent, describing them as “100,000 idiots”. Mr. Roche says:  
 10 “I go to the Court, and I say, ‘hey Court, I got \$100 million for these 100,000 idiots out here.  
 11 Give me \$30 million and then I will administer’”.<sup>21</sup> As for juries, Mr. Roche characterizes them  
 12 as “10 idiots [who] control the flow of all the money that happens in American class actions”.<sup>22</sup>

13 On September 1, 2022, following the release of these videos, Roche Freedman filed a  
 14 Notice of Withdrawal of Kyle W. Roche as Counsel for Plaintiffs in this action, noting that  
 15 “Mr. Roche is no longer involved in [Roche Freedman’s] class action practice and is therefore  
 16 withdrawing as counsel of record in this case”. (ECF No. 70.) Around that same day,  
 17 Mr. Roche filed similar notices in several other actions his law firm brought against Ava Labs  
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19 <sup>17</sup> Video 11 (<https://d33wubrfki0l68.cloudfront.net/91987bc2f582f24ecb688ab4c137a485d139dfe1/b4646/videos/c3-10-office-theres-no-such-thing-as-regulation.mp4>).

20 <sup>18</sup> Video 15 (<https://d33wubrfki0l68.cloudfront.net/54bcd83ef86e546fa4f97c2e481fba064e228c8d/483a3/videos/c3-14-gun-goes-after-craig-wright.mp4>).

21 <sup>19</sup> Video 14 (<https://d33wubrfki0l68.cloudfront.net/ccce812b0d07fc6c1bb9928d1a7a99db011ed1af/13125/videos/c3-13-gun-watches-video-once-a-month.mp4>); *see also* Video 12  
 22 (<https://d33wubrfki0l68.cloudfront.net/09acbd864d61cc489ffeb0fe889e19f7c0fce682/6e048/videos/c3-11-troll-says-gun-member-feto.mp4>).

23 <sup>20</sup> Video 23 (<https://d33wubrfki0l68.cloudfront.net/6ab1d54cf47b4b43a28ec4d52d2a12be5078b5d7/8826b/videos/c3-21-no-reason-to-settle-less-than-500m.mp4>).

24 <sup>21</sup> Video 24 (<https://d33wubrfki0l68.cloudfront.net/ca154b2403c4f503206afd0666cf4694c23c8dd3/de306/videos/c3-22-these-100000-idiots.mp4>).

25 <sup>22</sup> Video 22 (<https://d33wubrfki0l68.cloudfront.net/f580f15300ae3305352a21a810a4cbce4b1247a7/73e42/videos/c3-20-ten-idiots-control-the-flow.mp4>).

competitors. *See* Ex. 2 (*Young v. Solana Labs, Inc. et al.*, 22-cv-03912 (N.D. Cal.) (ECF No. 28)); Ex. 3 (*Lockhart v. BAM Trading Services Inc., et al.*, 22-cv-03461 (N.D. Cal.) (ECF No. 33)); Ex. 4 (*Jeong v. Nexo Financial LLC, et al.*, 21-cv-02392 (N.D. Cal.) (ECF No. 70)); Ex. 5 (*Hardin and Williams v. TRON Foundation, et al.*, 20-cv-02804 (S.D.N.Y.) (ECF No. 88)); Ex. 6 (*Anderson, et al. v. Binance, et al.*, 20-cv-02803 (S.D.N.Y.) (ECF No. 80)); Ex. 7 (*Messieh v. HDR Global Trading Ltd.*, No. 20-cv-3232 (S.D.N.Y.) (ECF No. 105)); and Ex. 8 (*In re Tether and Bitfinex Crypto Asset Litigation*, 19-cv-9236 (S.D.N.Y.) (ECF No. 229)). In another case, Roche Freedman, as a firm, voluntarily filed a motion to withdraw its representation of the putative class “[g]iven recent restructuring of its class action practice group, the press of its current business, and the early stage of this litigation”. *See* Ex. 9 (*Williams et al. v. Block.one, et al.*, 20-cv-2809 (S.D.N.Y.) (ECF No. 154)).

Counsel in at least four actions also have moved to disqualify Roche Freedman as counsel in light of these recent developments. *See* Ex. 8 (*In re Tether and Bitfinex Crypto Asset Litigation*, 19-cv-9236 (S.D.N.Y.) (ECF Nos. 230–236, 248)); Ex. 5 (*Hardin and Williams v. TRON Foundation, et al.*, 20-cv-02804 (S.D.N.Y.) (ECF Nos. 89, 92–93)); Ex. 7 (*Messieh v. HDR Global Trading Ltd.*, No. 20-cv-3232 (S.D.N.Y.) (ECF Nos. 106–09)); Ex. 10 (Motion to Disqualify Roche Freedman LLP, *Kleiman v. Wright*, No. 22-11150 (11th Cir. September 6, 2022)). In three of these cases, not only do counsel for *Defendants* seek to disqualify Roche Freedman, but co-Lead Counsel for the *class* also seek to have Roche Freedman removed because “Roche Freedman’s continued involvement in the litigation is not in the best interests of the class”. Ex. 5 (*Hardin and Williams* (ECF No. 93)); *see also* Ex. 8 (*In re Tether and Bitfinex Crypto Asset Litigation* (ECF No. 234)) (“Roche Freedman’s continued representation of the class would likely spawn significant discovery and motion practice as to the veracity and/or import of the allegations [in the videos]. These issues are likely to unnecessarily distract from the merits of this dispute, and can be avoided by the removal of Roche Freedman as class counsel.”); Ex. 7 (*Messieh v. HDR Global Trading Ltd.* (ECF Nos. 107–108)) (same).

In responding to these motions, Mr. Roche did not contest the authenticity of the video clips. Instead, he indicated that they were taken without his knowledge while he was intoxicated,

1 although certain video clips appear to have been taken at different times and when Mr. Roche is  
 2 not drinking nor exhibiting any signs of intoxication. *See* Ex. 8 (Affidavit of Kyle W. Roche, *In*  
 3 *re Tether and Bitfinex Crypto Asset* (ECF No. 232-1)).

### 4 **III. LEGAL STANDARD**

5 Attorneys practicing in the Northern District of California must adhere to the California  
 6 Rules of Professional Conduct (the “Rules”).<sup>23</sup> Civ. L.R. 11-4; *see also Visa U.S.A., Inc. v. First*  
 7 *Data Corp.*, 241 F. Supp. 2d 1100, 1103 (N.D. Cal. 2003). Disqualification of counsel based on  
 8 a violation of the Rules is governed by California state law. *See Rodriguez v. West Publ’g Corp.*,  
 9 563 F.3d 948, 967 (9th Cir. 2009); *In re Cty. of Los Angeles*, 223 F.3d 990, 995 (9th Cir. 2000).  
 10 The “right to disqualify counsel is within the discretion of the trial court as an exercise of its  
 11 inherent powers”. *First Data Corp.*, 241 F. Supp. 2d at 1103 (citing *United States v. Wunsch*,  
 12 84 F.3d 1110, 1114 (9th Cir. 1996)). In deciding a motion to disqualify counsel, “[t]he  
 13 paramount concern must be to preserve public trust in the scrupulous administration of justice  
 14 and the integrity of the bar.” *People ex rel. Dep’t of Corps. v. Speedee Oil Change Sys., Inc.*, 20  
 15 Cal. 4th 1135, 1145 (1999). While clients have the “right to counsel of one’s choice”, that right  
 16 “must yield to ethical considerations that affect the fundamental principles of our judicial  
 17 process”. *Id.*

18 “Two requirements must be met in order for the Court to disqualify counsel. First,  
 19 counsel must have violated the Rules of Professional Conduct. . . . Second, the Court must  
 20 conclude that it is appropriate to order disqualification.” *Klein v. Facebook, Inc.*, No. 20-cv-  
 21 08570, 2021 WL 3053150, at \*4 (N.D. Cal. July 20, 2021) (internal citations omitted). In a class  
 22 action governed by Federal Rule of Civil Procedure 23 and the Private Securities Litigation  
 23 Reform Act of 1995 (“PSLRA”), “disqualification is more likely because putative class counsel  
 24 are subject to a ‘heightened standard’ which they must meet if they are to be allowed by the  
 25 Court to represent absent class members”. *Huston v. Imperial Credit Com. Mortg. Inv. Corp.*,

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26 <sup>23</sup> On November 11, 2021, Mr. Roche and each of the other Roche Freedman attorneys  
 27 appearing in this action filed Motions for leave to appear Pro Hac Vice, in which they each  
 28 agreed to abide by the Local Rules of this Court including the “Standards of Professional  
 Conduct for attorneys”. (ECF Nos. 24–27.)

1 179 F. Supp. 2d 1157, 1167 (C.D. Cal. 2001) (quoting *Palumbo v. Tele-Communications, Inc.*,  
 2 157 F.R.D. 129, 132–33 (D.D.C. 1994)).

#### 3 **IV. ARGUMENT**

##### 4 **A. Mr. Roche Violated the California Rules of Professional Conduct.**

5 California Rule of Professional Conduct 1.7(b) provides that “[a] lawyer shall not . . .  
 6 represent a client if there is a significant risk the lawyer’s representation of the client will be  
 7 materially limited by the lawyer’s responsibilities to or relationships with another client, a former  
 8 client or a third person, or by the lawyer’s own interests.” Cal. R. Prof’l Conduct 1.7(b). The  
 9 Comment to Rule 1.7 emphasizes: “Even where there is no direct adversity, a conflict of interest  
 10 . . . under paragraph (b) exists if there is a significant risk that a lawyer’s ability to consider,  
 11 recommend or carry out an appropriate course of action for the client will be materially limited  
 12 as a result of the lawyer’s other responsibilities, interests, or relationships, whether legal,  
 13 business, financial, professional, or personal.” Cal. R. Prof’l Conduct 1.7, Comment 4.  
 14 Attorneys “have a duty to maintain undivided loyalty to their clients to avoid undermining public  
 15 confidence in the legal profession and the judicial process”. *Speedee Oil Change*, 20 Cal. 4th at  
 16 1146; *see also Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1465 (9th Cir. 1995) (“The  
 17 responsibility of class counsel to absent class members whose control over their attorneys is  
 18 limited does not permit even the appearance of divided loyalties of counsel. . . . The ‘appearance’  
 19 of divided loyalties refers to differing and potentially conflicting interests and is not limited to  
 20 instances manifesting such conflict.”).

21 On camera, Mr. Roche vividly states—in his own words that he never thought would be  
 22 discovered by the Court—that his personal interests and loyalties to Ava Labs come before, and  
 23 predominate over, the interests of the putative class. Mr. Roche agrees that he uses litigation as a  
 24 “strategic instrument to support Ava Labs”, and specifically states that he files class action  
 25 lawsuits—including against Dfinity—so that Ava Labs does not appear as plaintiff.<sup>24</sup>

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26 <sup>24</sup> Video 6 ([https://d33wubrfki0l68.cloudfront.net/a799bb8bcde3170c313e3ad7662a41](https://d33wubrfki0l68.cloudfront.net/a799bb8bcde3170c313e3ad7662a41148621c4d1/2fbf3/videos/c3-05-office-litigation-is-a-strategic-instrument.mp4)  
 27 [148621c4d1/2fbf3/videos/c3-05-office-litigation-is-a-strategic-instrument.mp4](https://d33wubrfki0l68.cloudfront.net/a799bb8bcde3170c313e3ad7662a41148621c4d1/2fbf3/videos/c3-05-office-litigation-is-a-strategic-instrument.mp4)); Video 19  
 28 ([https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a](https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a254850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4)  
[254850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4](https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a254850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4)).

Mr. Roche’s admissions regarding the use of “strategic” litigation as a competitive tool for Ava Labs provide ample evidence that Mr. Roche has compromised his ability to consider, recommend or carry out an appropriate course of action for the putative class in violation of Rule 1.7(b). Indeed, Mr. Roche states that his priorities are to use litigation as a tool against competitors of Ava Labs, obtain confidential information regarding “the companies in the [crypto] space” to benefit Ava Labs,<sup>25</sup> and maintain lawsuits to direct the attention of regulators to “other magnets” to avoid scrutiny of Ava Labs.<sup>26</sup> Mr. Roche has referred to litigation itself as a “tool to competition”, and has implied that he misuses the discovery process to “see the insides” of his clients’ competitors. (*Id.*)

Mr. Roche further explains that, because of the payment he has received from Ava Labs, he doesn’t “care about settling”. Mr. Roche specifically states that because of the compensation he has received from Ava Labs, “it’s not about the money anymore for me it’s about taking you guys to trial and the sport of it”.<sup>27</sup> While he considers a large settlement “good for my partners and my firm” if it’s on “the front page of all the legal press”, he disparages the clients he is meant to represent as “idiots”.<sup>28</sup> Prioritizing payment and publicity of Roche Freedman at the expense of the putative class members is a conflict of interest that directly violates the Rules. *See Cal Pak Delivery, Inc. v. United Parcel Serv., Inc.*, 52 Cal. App. 4th 1, 11 (1997) (case in which lawyer offered to “sell out” client for payment was “factually distinguishable from most of the disqualification cases, but the most notable difference is the magnitude of the ethical lapse”).

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<sup>25</sup> Video 8 (<https://d33wubrfki0l68.cloudfront.net/68e1d6812f6e7b039402f74be62f625271142a20/73af8/videos/c3-07-office-i-sue-crypto-companies-to-see-inside.mp4>).

<sup>26</sup> Video 10 (<https://d33wubrfki0l68.cloudfront.net/1edf92baa6d2ec8203a8568c7869ef5e4b326a71/428f7/videos/c3-09-magnets-for-sec-and-competitive-attacks.mp4>).

<sup>27</sup> Video 18 (<https://d33wubrfki0l68.cloudfront.net/2f1313a474fff7dedbb5432d16e848725ce51e04/4f9ab/videos/c3-16-im-a-crazy-motherfucker.mp4>); Video 19 (<https://d33wubrfki0l68.cloudfront.net/b4a2e7900f289e01ce2b25dfa5a254850a22496d/e7035/videos/c3-17-i-can-sue-solana.mp4>).

<sup>28</sup> Video 23 (<https://d33wubrfki0l68.cloudfront.net/6ab1d54cf47b4b43a28ec4d52d2a12be5078b5d7/8826b/videos/c3-21-no-reason-to-settle-less-than-500m.mp4>).



1 Mr. Roche not only demeans the putative classes he claims to represent—referring to  
 2 them as “100,000 idiots”<sup>29</sup>—but also derisively refers to juries as “10 idiots [who] control the  
 3 flow of all the money that happens in American class actions”.<sup>30</sup> Such statements mock the legal  
 4 profession and the judicial process.

5 As described above, on September 1, 2022, after Mr. Roche’s breach of the Rules was  
 6 exposed, he withdrew as counsel of record in this action. (ECF No. 70.)

7 **B. Mr. Roche’s Individual Withdrawal Does Not Cure the Violation.**

8 California Rule of Professional Conduct 1.10 provides that “[w]hile lawyers are  
 9 associated in a firm, none of them shall knowingly represent a client when any one of them  
 10 practicing alone would be prohibited from doing so by rule[] 1.7”. “The vicarious  
 11 disqualification rule recognizes the everyday reality that attorneys, working together and  
 12 practicing law in a professional association, share each other’s, and their clients’, confidential  
 13 information.” *Speedee Oil Change*, 20 Cal. 4th at 1153–54. Mr. Roche has violated Rule 1.7,  
 14 and pursuant to the plain language of Rule 1.10, such violation is imputed to Roche Freedman.

15 The individual withdrawal of Mr. Roche does not address the serious issues regarding his  
 16 statements about the misuse of class action lawsuits generally and the potential misuse of  
 17 discovery imputed to Roche Freedman. Even though Mr. Roche is no longer counsel of record,  
 18 there can be no dispute that, as the named partner of the small firm that he founded, should this  
 19 action proceed with Roche Freedman as counsel there would be an ongoing concern about his  
 20 access to discovery materials and he would retain the ability to direct the conduct of other  
 21 lawyers at the firm. Mr. Roche’s declaration that he uses lawsuits such as this one as a “tool to  
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26 <sup>29</sup> Video 24 (<https://d33wubrfki0l68.cloudfront.net/ca154b2403c4f503206afd0666cf4694c23c8dd3/de306/videos/c3-22-these-100000-idiots.mp4>).

27 <sup>30</sup> Video 22 (<https://d33wubrfki0l68.cloudfront.net/f580f15300ae3305352a21a810a4cbce4b1247a7/73e42/videos/c3-20-ten-idiots-control-the-flow.mp4>).



1 competition”<sup>31</sup> and that he has “seen the insides” of blockchain companies<sup>32</sup> offers further  
 2 support for vicarious disqualification, as Mr. Roche seems to say that it was his intention all  
 3 along to abuse the discovery process in order to advise Ava Labs—a client in which Mr. Roche  
 4 and Roche Freedman have a substantial financial interest through their ownership of tens of  
 5 millions of dollars in AVAX tokens.

6 These concerns are magnified by Mr. Roche’s position at his namesake firm, and Roche  
 7 Freedman’s extensive relationship with Ava Labs. Mr. Roche is a founding and named partner  
 8 of Roche Freedman, a boutique firm with fewer than ten partners across all practice areas. In a  
 9 résumé filed with this Court, Roche Freedman identifies only two attorneys under  
 10 “Cryptocurrency Expertise”: Kyle Roche and co-founding partner Devin “Velvel” Freedman.  
 11 (ECF No. 21-6.) Both Mr. Roche and Mr. Freedman apparently own substantial amounts of  
 12 AVAX tokens, as do other attorneys at Roche Freedman, including Edward Normand, who has  
 13 entered an appearance in this litigation and has not withdrawn. *See* Ex. 11 (Compl. Ex. A,  
 14 *Cyrulnik v. Roche Freedman, et al.*, No. 2021-5837-CA-01 (Fla. 11th Cir. Ct., Mar. 9, 2021),  
 15 Dkt. No. 2).<sup>33</sup> The small size of the firm and the widespread relationship with Ava Labs  
 16 “exacerbates the problem of proximity” contemplated by Rule 1.10. *Hitachi, Ltd. v. Tatung Co.*,  
 17 419 F. Supp. 2d 1158, 1165 (N.D. Cal. 2006).

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18 <sup>31</sup> Video 10 (<https://d33wubrfki0l68.cloudfront.net/1edf92baa6d2ec8203a8568c7869ef5e4b326a71/428f7/videos/c3-09-magnets-for-sec-and-competitive-attacks.mp4>).

19 <sup>32</sup> Video 8 (<https://d33wubrfki0l68.cloudfront.net/68e1d6812f6e7b039402f74be62f625271142a20/73af8/videos/c3-07-office-i-sue-crypto-companies-to-see-inside.mp4>).

20 <sup>33</sup> Ongoing litigation between former and current Roche Freedman partners over the  
 21 distribution of tokens from Ava Labs provides further evidence of Roche Freedman’s ties to Ava  
 22 Labs. Mr. Roche and Roche Freedman were sued by a former Roche Freedman partner who  
 23 alleges that Mr. Roche and others “illegally oust[ed]” him from the firm to take his portion of “a  
 24 fee payable in cryptocurrency by one of the Firm’s clients that only days before had suddenly  
 25 appreciated exponentially to more than \$250 million”. Ex. 11 (Compl. at p. 1, *Cyrulnik v. Roche*  
 26 *Freedman, et al.*, No. 2021-5837-CA-01 (Fla. 11th Cir. Ct., Mar. 9, 2021), Dkt. No. 2). The  
 27 complaint appends a Memorandum of Understanding, which provides that “[i]n exchange for  
 28 legal services, Ava Labs has agreed to pay Roche Freedman LLP a certain amount of Tokens  
 over a thirty-six month period beginning on September 30, 2019”, and identifies distribution of  
 Ava Labs tokens to Mr. Roche, Mr. Freedman, Mr. Normand and others. *Id.* Ex. A.

Accordingly, any attempt by Roche Freedman to impose an ethical wall or screen between Mr. Roche and other attorneys at Roche Freedman would not cure the violation. *See id.* (holding that “screening procedures utilized” at small firm were “insufficient to adequately . . . prevent the appearance of impropriety”). Should this action survive Defendants’ motion to dismiss, Defendants have serious concerns about proceeding to discovery based on Mr. Roche’s stated intention to “see[] inside” Ava Labs’ competitors for the benefit of Ava Labs. There is no doubt that Mr. Roche will continue to have “substantial contact” with the other attorneys in this practice that seek to continue to represent the class in this action (*id.*), including Mr. Normand, who remains in the case and who reportedly receives Ava Labs tokens pursuant to a firm agreement. *See* Ex. 11 (Compl. Ex. A, *Cyrulnik v. Roche Freedman, et al.*, No. 2021-5837-CA-01 (Fla. 11th Cir. Ct., Mar. 9, 2021), Dkt. No. 2). Roche Freedman should not be permitted to continue as Lead Counsel when there is even a suggestion that it may use knowledge that it gains in discovery to benefit another client. Mr. Roche’s violations of the Rules must be imputed to Roche Freedman under Rule 1.10.

**C. Disqualification of Roche Freedman is Appropriate.**

Mr. Roche’s statements regarding his and his firm’s abuse of the class action mechanism, his conflicted motivations for filing this and other suits, and improper use of confidential materials obtained in discovery, coupled with disparaging comments about clients and the judicial system, provide ample reason for this Court to disqualify Roche Freedman from serving as counsel for the class in this action. *See In re Coordinated Pretrial Proc. in Petroleum Prod. Antitrust Litig.*, 658 F.2d 1355, 1360–61 (9th Cir. 1981) (“In order that the court may in fact control the conduct of attorneys appearing before it, the court should have the ability to disqualify attorneys if their conduct actually interferes with the integrity of the court, or actually produces an appearance of impropriety.”). The “paramount concern” when considering a motion to disqualify “must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar.” *Klein*, 2021 WL 3053150, at \*8 (quoting *Speedee Oil Change*, 20 Cal. 4th at 1145).

1 The critical factor that weighs heavily in favor of disqualifying Roche Freedman is that  
 2 this is a putative class action governed by Fed. R. Civ. P. 23 and the PSLRA, in which class  
 3 counsel is subject to a heightened standard to fairly represent absent class members. “In the  
 4 class action context, the Court has an obligation to closely scrutinize the qualifications of counsel  
 5 to assure that all interests, including those of as yet unnamed plaintiffs are adequately  
 6 represented.” *Huston*, 179 F. Supp. 2d at 1167 (citing Fed. R. Civ. P. 23(a)(4)). It is “[p]recisely  
 7 because of the responsibility to absent class members” that counsel “in the class action context  
 8 are subject to a heightened standard”. *Cal Pak Delivery*, 52 Cal. App. 4th at 12. Accordingly,  
 9 disqualification of counsel where a breach of the Rules has occurred in the class action setting is  
 10 “even more compelling”, *id.*, and “more likely” than individual representations, *Huston*, 179  
 11 F. Supp. 2d at 1167. This heightened standard applies even before a class is certified, during  
 12 which time Lead Counsel is still obligated to “protect the interests of the putative class” and “act  
 13 in the best interests of the class as a whole”. Fed. R. Civ. P. 23, Advisory Committee’s notes to  
 14 2003 amendments. Absent class members may not be aware of Roche Freedman’s “betrayal of  
 15 their interests”; if they were, they may “harbor continuing doubts about [the firm’s] loyalty and  
 16 the integrity of the judicial proceedings”, which is reason alone to grant this motion to disqualify.  
 17 *Cal Pak Delivery*, 52 Cal. App. 4th at 12.

18 These same issues also would prevent Roche Freedman’s appointment as class counsel at  
 19 the class certification stage under Fed. R. Civ. P. 23(g), which requires the Court to determine,  
 20 among other things, that class counsel “fairly and adequately represent[s] the interests of the  
 21 class” considering “any . . . matter pertinent to counsel’s ability” to do so. Fed. R. Civ. P.  
 22 23(g)(1), (4). Indeed, Roche Freedman all but admitted it will fail to overcome this hurdle in  
 23 another class action, when it recently withdrew from that action. In *Williams v. Block.one, et al.*,  
 24 20-cv-2809 (S.D.N.Y.), the court denied lead plaintiff’s motion for final approval of a proposed  
 25 class action settlement because lead plaintiff’s interests conflicted with the class. Ex. 9  
 26 (*Block.one* (ECF No. 146)). Roche Freedman quickly filed a motion to substitute as lead  
 27 plaintiff an individual that selected Roche Freedman as counsel, and to appoint Roche Freedman  
 28 as co-lead counsel. *Id.* (ECF Nos. 148–49). Before its motion was decided, these videos were

1 released and Roche Freedman withdrew, citing “recent restructuring of its class action practice  
 2 group, the press of its current business, and the early stage of this litigation”. *Id.* (ECF No. 154).  
 3 Roche Freedman’s filing evidences its recognition that the firm is unable to fairly and adequately  
 4 represent a class in an action against Ava Labs competitors. Indeed, co-lead counsel for other  
 5 putative classes have sought to remove Roche Freedman as class counsel because “Roche  
 6 Freedman’s continued involvement in the litigation is not in the best interests of the class”. Ex. 5  
 7 (*Hardin and Williams* (ECF No. 93)); *see also* Ex. 8 (*In re Tether and Bitfinex Crypto Asset*  
 8 *Litigation* (ECF No. 234)); Ex. 7 (*Messieh v. HDR Global Trading Ltd.* (ECF Nos. 107–108)).

9 Disqualifying Roche Freedman would not prejudice Lead Plaintiff or the putative class,  
 10 particularly given the early stage of the litigation. *See Beltran v. Avon Prod., Inc.*, 867 F. Supp.  
 11 2d 1068, 1084 (C.D. Cal. 2012) (“[P]rejudice to Plaintiff is minimal given the early stage of the  
 12 litigation.”). The motion to dismiss has not yet been decided, and the PSLRA automatic stay  
 13 remains in effect. *See Diva Limousine, Ltd. v. Uber Techs., Inc.*, No. 18-cv-05546, 2019 WL  
 14 144589, at \*14 (N.D. Cal. Jan. 9, 2019) (finding that “[non-movant] has not described any  
 15 particular prejudice it would suffer as a result of” counsel’s disqualification because “[t]his case  
 16 is still in its early stages; no discovery has been conducted”). Accordingly, Lead Plaintiff and  
 17 the putative class will not be prejudiced by identifying replacement counsel, but will benefit  
 18 from lead counsel who is driven by the best interests of the putative class rather than the interests  
 19 of itself and third parties.

## 20 **V. CONCLUSION**

21 For the foregoing reasons, Defendants respectfully request that Roche Freedman be  
 22 disqualified from representing Lead Plaintiff and the putative class in this Action.

Dated: October 4, 2022

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