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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

DANIEL VALENTI, Individually	)	
and On Behalf of All Others	)	
Similarly Situated,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. C 21-06118 JD
	)	
DFINITY USA RESEARCH LLC,	)	
DFINITY FOUNDATION, and	)	
DOMINIC WILLIAMS,	)	
	)	
Defendants.	)	
	)	

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San Francisco, California  
Thursday, February 2, 2023

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

FREEDMAN NORMAND FRIEDLAND LLP  
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**BY: EDWARD NORMAND, ATTORNEY AT LAW**

For Defendants:

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**BY: KEVIN J. ORSINI, ATTORNEY AT LAW**  
**EVAN D. SIEGEL, ATTORNEY AT LAW**

REPORTED BY: Ana Dub, RDR, CRR, CSR No. 7445  
Official United States Reporter

Thursday - February 2, 2023

10:47 a.m.

P R O C E E D I N G S

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**THE CLERK:** Calling Civil 21-6118, Valenti vs. Dfinity Research LLC.

Counsel, state your appearances.

**MR. NORMAND:** Your Honor, it's Ted Normand from Freedman Normand Friedland for the plaintiffs.

**MR. ORSINI:** Good morning, Your Honor. Kevin Orsini, Cravath Swain & Moore, along with my colleague Evan Siegel from Cravath on behalf of defendants.

**THE COURT:** Okay. Well, this has not gone well in other courts. So let me just tell you what I'm thinking. That will help guide our discussion.

My main concern -- I'm not seeing this as a disqualification matter. I think this is really protecting the putative class and the named plaintiffs, under Rule 23 and the PSLRA, with counsel who are going to have an untarnished allegiance on a fiduciary duty basis to the putative class and the named plaintiffs.

So, really, my only concern is, after all this to-do about -- what was that fellow's name? Roche? Is that how you say it?

**MR. NORMAND:** Yes, Your Honor.

**THE COURT:** Mr. Roche.

1       -- after all the to-do about Mr. Roche, this new law firm,  
2       the successor law firm which grew out of that, is in any way  
3       going to have its fiduciary duty clouded or muddied in such a  
4       way that it will be a disservice to the named plaintiffs or the  
5       putative class. That's really what I'm focusing on.

6       Now, my colleague in the Southern District of New York  
7       concluded that there is enough in the air that she wasn't going  
8       to let the firm itself, the reconstituted firm, go forward, and  
9       that's really what I want to hear about.

10       On the one hand, I do share the concern that this is a  
11       relatively small law firm. Mr. Roche was the lead named lawyer  
12       on the masthead before the firm was reconstituted without him.  
13       And it does seem to be a reasonable inference that others at  
14       the firm today may have had some problems that are similar to  
15       Mr. Roche's.

16       On the other hand, I'm advised that Mr. Roche has been --  
17       is out of the firm. He's out of this case. He has no  
18       financial stake in anything that might happen in this case.  
19       And he's all in the rearview mirror, so to speak. Right?

20       **MR. NORMAND:** That's right, Your Honor.

21       I think it's important to note that when Judge Failla made  
22       her decision, the firm actually had not been reconstituted.  
23       Mr. Roche was still at the firm. This is part of an ongoing  
24       process, and she made her decision in the course of an ongoing  
25       process.

1       The beginning of the process was that we immediately  
2 removed him from the firm's class action practice, took him out  
3 of that case.

4       And that process has now culminated, I can represent to  
5 the Court, after hundreds of attorney hours of work, over  
6 \$200,000 spent, the review of tens of thousands of e-mails, our  
7 firm has seen no evidence of what Judge Failla, who said she  
8 was making no factual findings, of what Judge Failla said she  
9 was concerned about.

10       We've not brought class actions for clients other than the  
11 plaintiffs. We haven't pursued class actions for clients other  
12 than the plaintiffs. We had not at that time misused any  
13 discovery or disclosed it to any third parties improperly.  
14 We're not going to do that. And that's what we've concluded  
15 looking back.

16       Going forward, as Your Honor says, since that order, we've  
17 reconstituted. Mr. Roche, as part of that ongoing process, is  
18 out. And so the defendants' motion -- there are several issues  
19 presented; but to the extent Your Honor has framed it,  
20 defendants' motion reduces to the notion that you should impute  
21 to the 25 or 27 remaining lawyers in the firm -- including  
22 myself who has expressly represented that I haven't done  
23 anything that Judge Failla was concerned about; my six  
24 partners, who have expressly represented that they haven't done  
25 anything that Judge Failla said she was concerned about --

1 questions whether to impute this remaining law firm with  
2 anything Mr. Roche said.

3 So, one, we've concluded that what Mr. Roche said was  
4 self-aggrandizing; obviously profane; obviously inappropriate;  
5 obviously meant to make him look more important and bigger than  
6 he was; and the things he said were untrue.

7 And looking forward, he's not part of the firm. And we're  
8 not going to misuse discovery. We're not going to ask for  
9 discovery for the wrong reasons. We're bringing a meritorious  
10 case.

11 And with respect to the Court's understandable interest in  
12 the administration of justice, the overall interests of the  
13 class, we submit that the legal standards that govern a motion  
14 to disqualify --

15 **THE COURT:** Okay. That's not how I'm looking at it.

16 **MR. NORMAND:** Understood, Your Honor.

17 **THE COURT:** I'm just doing Rule 23, and I'm using my  
18 discretion.

19 **MR. NORMAND:** Understood.

20 **THE COURT:** Are you trustworthy, and are you going to  
21 honor your fiduciary duties? That's all I'm asking.

22 **MR. NORMAND:** Yes, we are going to. And we think the fact  
23 of the motion underscores that it would be in the interest of  
24 the class to have us on, because if the defendants were  
25 unconcerned with our quality as lawyers and the quality of the

1 complaint, they wouldn't have brought their motion. And that's  
2 what the law says the Court should presume.

3 **THE COURT:** I'm happy to hear you say here today,  
4 Mr. Normand, that your former colleague was on the wrong side  
5 of the line, because your brief -- I was going to mention this  
6 to you, but you're helping me correct it -- your brief was a  
7 little bit defensive about the situation, talking about  
8 entrapment and so on. I don't buy that.

9 That lawyer, had it been my case, I would have done  
10 exactly what the judge in the Southern District of New York  
11 did. Okay? I'm not going to buy this idea that he was duped,  
12 drunk, and talkative. He was completely inappropriate as lead  
13 counsel and Rule 23 and under the PSLRA. So I would have had  
14 no problem at all reaching that prior conclusion.

15 So, Mr. Orsini, the only thing that I want to hear from  
16 you is why -- I'm not sure why this is any of the defendants'  
17 business because you're not really here vindicating the  
18 interests of the putative class or the named plaintiffs. So  
19 you can tell me a little bit about that. I don't see any  
20 evidence -- you can help me if I'm wrong. I don't see any  
21 evidence that this is in any way prejudicial to Dfinity. But  
22 I'm happy to hear whatever you have to say about why you think  
23 the reconstituted firm --

24 The new firm, I know the initials are F, as in "frank,"  
25 N-F. But what's the name?

1       **MR. NORMAND:** Freedman Normand Friedland, Your Honor.

2       **THE COURT:** Freedman Normand Friedland, FNF.

3       -- Freedman Normand Friedland, is not okay to go forward  
4 with the case.

5       **MR. ORSINI:** Thank you, Your Honor.

6       And I think Your Honor is absolutely right to be looking  
7 at this from the Rule 23 perspective.

8       Why does it impact us? The reason it impacts us is  
9 because the reprehensible conduct and statements of Mr. Roche  
10 have fundamentally tainted this case going forward if his firm,  
11 even with him gone, continues to represent the putative class.

12       This case is different from Judge Failla's case in one  
13 very significant respect that bears upon the prejudice to us;  
14 and that is, in his boasting that was recorded, Mr. Roche  
15 specifically identified this case and my clients as examples of  
16 his abuse and misuse of the judicial process. He explained the  
17 interrelationship between the prosecution of class actions like  
18 this against blockchain providers and crypto companies and the  
19 firm's relationship with Ava Labs, which he admitted was a  
20 competitor of my client's.

21       And what's critically important is Mr. Roche, who is the  
22 first named partner, the founding partner of this small  
23 litigation boutique, explained in that video -- points he's not  
24 refuted; points he's not refuted -- explained in that video the  
25 close interrelationship between the firm, which is basically

1 still that firm minus him, and Ava Labs, which he claimed they  
2 were acting on behalf of in filing these class actions.

3 They were created at the same time in a joint workspace.  
4 There's significant financial interest that this firm and these  
5 lawyers still have.

6 **THE COURT:** Well, let me just pause on that because --

7 **MR. ORSINI:** Yes, Your Honor.

8 **THE COURT:** -- your colleague here, in one of the filings  
9 for this motion, says that they're not doing anything  
10 further -- what is it called? Ava?

11 **MR. ORSINI:** Ava Labs.

12 **THE COURT:** -- they're not doing anything further with  
13 Ava Labs other than some defamation suit or something.

14 What was the -- what's the one case you have left?

15 **MR. NORMAND:** We are local counsel with a very  
16 circumscribed role for an executive at Ava Labs.

17 **THE COURT:** Oh, okay. So that's it.

18 **MR. ORSINI:** Well, that's not it, Your Honor.

19 **THE COURT:** No other financial ties or work relationships  
20 of any sort.

21 **MR. ORSINI:** That's not what the record demonstrates,  
22 respectfully, Your Honor.

23 The individual is one of the two founders. So he's not  
24 just some executive at Ava Labs. He's one of the key players  
25 there.



1 But the ongoing financial relationship is this firm, based  
2 on the record, was founded and funded in no small part based  
3 upon a business relationship between it and Ava Labs that  
4 involved providing Ava tokens to Mr. Roche, counsel, and  
5 various others at his firm.

6 So there is still a financial relationship between those  
7 firms. They grew up together. That was the genesis of these  
8 two entities. And as Mr. Roche said in his video-recorded  
9 statements, he has acted on their behalf, including by filing  
10 this case.

11 And so how does it affect us? If you look at their  
12 brief -- and I understand counsel has recalibrated a little bit  
13 today, as Your Honor noted -- but one of the things that was  
14 really striking to us was they said: Well, don't worry about  
15 the conflict because at the end of the day, the best thing that  
16 Dfinity has pointed out is that Ava Labs wants bad things for  
17 Dfinity --

18 **THE COURT:** Let's just pause here.

19 **MR. ORSINI:** Yes, Your Honor.

20 **THE COURT:** What conflict are you referring to?

21 Let me just think out loud here. People's motivations in  
22 filing a lawsuit typically are irrelevant. They don't have to  
23 like you. They don't have to wish you success. They don't  
24 have to have your interests at heart. They can sue. That's  
25 just the way our system works.

1       **MR. ORSINI:** I agree with that.

2       **THE COURT:** And the fact that somebody had an axe to grind  
3 isn't ever a reason to throw out a lawsuit.

4       Now, if it turns out that that was such an overwhelming  
5 impulse that the lawsuit was frivolous or a violation of  
6 Rule 11, you have ample sanction opportunities at the end of  
7 the case to get your money back and maybe even more. Okay?

8       But, you know, whether someone likes you or dislikes you  
9 or wants to salt the earth you walk on is not really relevant  
10 to this. The only thing that is relevant is if you can tell me  
11 that there is a conflict between the current law firm without  
12 this offender, Mr. Roche, and the putative class or the named  
13 plaintiffs.

14       **MR. ORSINI:** And I --

15       **THE COURT:** Now, I don't know why that would be anything  
16 you'd worry about, but I'd be happy to hear it, since you've  
17 spent a lot of time thinking about it.

18       **MR. ORSINI:** I appreciate that, Your Honor. And I agree  
19 that the mere dislike of me or my client is not sufficient.  
20 I've, unfortunately, become accustomed to that.

21       The problem here is not Ava Labs' dislike of us or  
22 counsel's dislike of Dfinity and desire for it to have bad  
23 results. The point here is the potential competing interests  
24 between their financial stake and their, you know, grown-up  
25 desire to support Ava Labs and their duty to the class.

1       They could both want Dfinity to lose this case, but you  
2       can absolutely see circumstances in which -- and Mr. Roche  
3       talks about this during the video -- in which it could become  
4       in the best interests of the absent class members -- which is  
5       who we really have to be concerned about here -- in the best  
6       interests of the absent class members to resolve the case on  
7       certain terms.

8       **THE COURT:** Let me just jump in.

9       That's what I'm wondering about. And let me just be  
10      up-front about it. That is the concern. Okay, Mr. Normand?  
11      For example, there may -- an opportunity to settle the case on  
12      terms favorable to the putative class presented itself but  
13      let's say Mr. Roche had such a vendetta against the defendant  
14      because of his allegiance to this Ava Labs company and there  
15      was some strategic value in not settling for Ava Labs, an  
16      opportunity to resolve would be lost.

17      So why do I not have to worry about that with you?

18      **MR. NORMAND:** Well, two things, Your Honor.

19      One, under the law, the issue is not backwards-looking and  
20      punitive. We have seen no evidence that Mr. Roche did file a  
21      lawsuit in a context in which you would have any such conflict.

22      But let's take the worst-case scenario and assume he might  
23      have privately had that intent. We've seen no evidence of  
24      that. He's disclaimed it.

25      I've had no conversations with Ava Labs in my three years

1 at the firm. I don't have that motivation.

2 Let's assume Mr. Roche did. He's not part of the firm  
3 anymore. I'm representing to the Court that's not going to  
4 happen. We don't have those motivations. I never had them.  
5 No one on my team has them.

6 **THE COURT:** Let me ask you this. Mr. Orsini is suggesting  
7 that there are deeper ties between your firm and Ava Labs than  
8 I'm aware of at this point. Now, what's the status of that?

9 **MR. NORMAND:** There are no deeper ties. We don't  
10 represent Ava Labs. As I said, we have a local counsel  
11 circumscribe role for one executive.

12 Ava Labs has publicly disclaimed that we brought any suits  
13 on their behalf. In fact, they were angry that we brought the  
14 Solana suit. They've said that publicly, among the many things  
15 the Court can take judicial notice of.

16 **THE COURT:** Other than this one case for the executive  
17 that you're local counsel on, are you getting any other fees or  
18 money from Ava Labs?

19 **MR. NORMAND:** No. The firm does not have an equity stake  
20 in Ava Labs. I think there's a suggestion in the briefing that  
21 we do. I have no equity stake in Ava Labs.

22 Several partners at the firm were paid in AVAX tokens.  
23 One, there's nothing unethical about being paid in non-cash  
24 form. Two, there's no connection between that payment and how  
25 this lawsuit's going to be prosecuted.

1 They've not offered any coherent theory of how --

2 **THE COURT:** Let me ask you this, because crypto is a big  
3 black box for everybody, particularly me. Is there any  
4 possibility that the value of that coin that your partners are  
5 holding is going to be affected by developments in this case?

6 **MR. NORMAND:** Your Honor, a moment of levity. No one  
7 knows what's going to happen with crypto; right?

8 So we have no designs, no prediction, no intent in that  
9 regard.

10 **THE COURT:** I understand. But is there any reasonable --

11 **MR. NORMAND:** There's no connection, and they haven't  
12 offered a coherent theory of how any way this suit gets  
13 prosecuted, it could result in any effect on AVAX tokens.

14 **THE COURT:** All right. Let me pause on that.

15 Mr. Orsini, what's your view of that?

16 **MR. ORSINI:** So my view of that is quite different, which  
17 is these are both, as Mr. Roche admitted, competing blockchain  
18 companies. They're developing technology on the blockchain.  
19 These tokens are utility tokens that are used to conduct  
20 activity on the blockchain that's being developed by these  
21 different entities. There are also people who use the tokens  
22 for different purposes.

23 Crypto is also a bit of a mystery to me, notwithstanding  
24 me representing the company. It's complicated.

25 **THE COURT:** It's an intentional mystery. It's --

1       **MR. ORSINI:** Yes.

2       **THE COURT:** -- in my view, structured to be mysterious.  
3       Anyway, go ahead.

4       **MR. ORSINI:** Whether that's true or not, Your Honor, the  
5       reality is, when you have these two different competing  
6       blockchain entities where the value of the token turns, in no  
7       small part, on how it can be used on the blockchain that each  
8       one is developing, the notion that they're unrelated is just  
9       fundamentally false.

10       **THE COURT:** Let's just put some specifics on this.

11       **MR. ORSINI:** Sure.

12       **THE COURT:** Okay. So there are a couple of partners at  
13       this FNF law firm holding an Ava Labs-related token, the value  
14       of which is going to fluctuate over time. How is anything in  
15       this lawsuit going to be -- how would anything in this lawsuit  
16       affect the value that those partners hold?

17       **MR. ORSINI:** Harming Dfinity's ability financially to  
18       continue to develop its competing blockchain technology will  
19       benefit its competitors and, by definition, drive up the value  
20       of the tokens on those competing --

21       **THE COURT:** But this is a securities lawsuit. This isn't  
22       a products lawsuit. This isn't a patent lawsuit. Why would a  
23       resolution of a securities claim in any way, shape, or form  
24       directly influence the value of the token that these partners  
25       hold?

1       **MR. ORSINI:** Well, we, Your Honor, don't believe they have  
2 a securities claim, but let's assume -- let's play this out.  
3 Let's assume for a second that they have the claims they've  
4 asserted, which is that this was an unregistered offering of  
5 securities. There are two claims. There's a Section 11 claim,  
6 which is the unregistered offering of securities for which they  
7 want full rescission; and then there are 10b-5  
8 misrepresentation and market manipulation claims. Right?

9       If they were to win, particularly the rescissionary  
10 damages claim -- and we don't believe they can, should, or  
11 will --

12       **THE COURT:** I understand.

13       **MR. ORSINI:** -- but we're in possibilities here.

14       If they did, Your Honor, that would be a massive judgment  
15 that would hobble this company's ability to continue to develop  
16 the blockchain --

17       **THE COURT:** Okay. I get that. You could be ground to  
18 dust. How is that going to enrich the partners at this law  
19 firm who hold the Ava Labs-related token?

20       **MR. ORSINI:** Because to the extent destroying my client  
21 helps them attract more people onto their blockchain, that  
22 therefore increases the value of those tokens --

23       **THE COURT:** All right. Well, that's --

24       **MR. ORSINI:** -- which benefits those who hold them.

25       **THE COURT:** -- highly, highly speculative.

1       **MR. ORSINI:** Well, Your Honor, the only reason I disagree  
2 with that is because it's not as simple as they hold a couple  
3 of shares of Apple stock and they're suing Google or Meta or  
4 Epic, something Your Honor is familiar with.

5       **THE COURT:** By the way, I'm not even sure it's a problem  
6 in itself.

7       **MR. ORSINI:** No, I agree with that. I agree with that. I  
8 agree with that. But this is not that situation. This is a  
9 firm that was created with Ava Labs. They have been  
10 intermeshed since their beginning, according to not only --

11       **THE COURT:** Okay. I understand. Let's pause here.

12       I understand that, but your colleague here is representing  
13 they have zero ties to Ava Labs except for one tiny legacy role  
14 as the mailbox local counsel for one executive in the firm.  
15 So, okay. They may have been joined at the hip a year ago,  
16 five years ago, but now they've been severed. So that's what  
17 matters now.

18       So what is it today that's a problem?

19       **MR. ORSINI:** So I think, Your Honor, first of all, I think  
20 the continued holding of the tokens against that backdrop is  
21 still a problem. I've already addressed that.

22       **THE COURT:** But you haven't. You've just said maybe  
23 someday something might happen way down a chain of a series of  
24 events that could enrich these partners. That's really quite  
25 tenuous.



1       **MR. ORSINI:** What the Ninth Circuit has said, Your Honor,  
2 in terms of the discretion that the Court can exercise in a  
3 class context, is even the appearance of a potential conflict,  
4 the appearance of a potential conflict -- and this is from the  
5 *Kayes* case -- is sufficient to remove counsel.

6       **THE COURT:** I'm well aware of this. I take  
7 extraordinarily seriously, as all of my colleagues do,  
8 entrusting the fate of a putative class in the hands of a  
9 lawyer because that is my job. I have an independent duty,  
10 separate from you, separate from him, separate from everyone  
11 but the putative class, to protect them. That's the only thing  
12 I'm interested in.

13       So your best shot -- and I think it's a weak one -- seems  
14 to be someday, somehow, some way somebody at the firm who holds  
15 an old token from Ava Labs might make a little money on the  
16 devise of Dfinity.

17       **MR. ORSINI:** That's Part 1, Your Honor.

18       **THE COURT:** Fairly weak. What's --

19       **MR. ORSINI:** Part 2, Your Honor --

20       **THE COURT:** What's second prize? Let me ask that.

21       **MR. ORSINI:** Part 2 --

22       **THE COURT:** Yes.

23       **MR. ORSINI:** Part 2 is the reasonable inferences about the  
24 ongoing concerns of the culture of this firm that  
25 Judge Failla --

1       **THE COURT:** Tell me about that.

2       **MR. ORSINI:** -- that I believe is appropriate.

3       And it comes back, again, to where this firm was created  
4       from and the fact that Mr. Roche specifically identified this  
5       lawsuit against my clients as an example of the type of abuse  
6       of the legal system that they've undertaken.

7       And I think there are absolutely reasonable inferences  
8       that can be drawn that we can continue to have significant  
9       concern about turning over our internal, highly confidential  
10      information to these lawyers. Right? We're not here --

11      **THE COURT:** Because why?

12      **MR. ORSINI:** Why?

13      **THE COURT:** Yeah.

14      **MR. ORSINI:** Because of this firm. Because of the nature  
15      of this firm. Because of the conduct we've seen from  
16      Mr. Roche. Because of the way in which they --

17      **THE COURT:** But why -- what is the -- you're afraid  
18      they're going to leak it to Ava Labs? Is that what you're  
19      saying?

20      **MR. ORSINI:** We're afraid that the culture at this firm is  
21      consistent with its founder's culture, as he described, which  
22      is to abuse the discovery process to understand competing  
23      blockchain technologies to assist others rather than just  
24      pursue the best interests of the class.

25      **THE COURT:** All right. That's --

1       **MR. ORSINI:** That's what we're concerned about.

2       **THE COURT:** -- a long tap dance.

3       Just put it more plainly. Just say "yes" or "no." Is  
4       your concern that the lawyers at FNF are going to improperly  
5       disclose confidential litigation materials to Ava Labs?

6       **MR. ORSINI:** Yes.

7       **THE COURT:** Why?

8       **MR. ORSINI:** Because that's what --

9       **THE COURT:** What is the basis for that?

10       **MR. ORSINI:** That's what their founder said they do.  
11       That's what their founder --

12       **THE COURT:** Okay. But he's been cut out like a bad apple;  
13       so --

14       **MR. ORSINI:** And if this were -- if this were --

15       **THE COURT:** Like the bad apple he apparently was, he's  
16       been cut out of the bushel.

17       So the rest of the bushel, you're going to say "Just  
18       because"? I mean, I need some evidence. I need some facts.  
19       It can't be "Just because."

20       **MR. ORSINI:** Well, it's not "Just because," Your Honor.  
21       It's a reasonable inference, we believe, based on the fact that  
22       this is a small litigation boutique that operates almost  
23       exclusively, if not exclusively, in the crypto space, and that  
24       you would expect their founder's ethos to be part and parcel of  
25       the firm's dynamic and the fact that they have a former

1 partner who's --

2 **THE COURT:** Let me just jump in.

3 What you're saying is Mr. Roche's spirit so permeates the  
4 firm that even though he's long gone, financially, personally,  
5 everything else, even though he's long gone, he's left a  
6 mind-set, an attitude, a culture that irrevocably taints all of  
7 these lawyers so you can't trust them with a burnt match. That  
8 seems a little over the top, Mr. Orsini.

9 **MR. ORSINI:** Your Honor --

10 **THE COURT:** If your firm, for example, had a bad guy or a  
11 bad woman who did insider trading, I guarantee you, you would  
12 not be telling any judges: We should -- we're voluntarily  
13 extracting ourselves from every securities case.

14 **MR. ORSINI:** I completely agree.

15 **THE COURT:** Okay.

16 **MR. ORSINI:** And I think it's fundamentally different.

17 **THE COURT:** So how is this different?

18 **MR. ORSINI:** I think it's fundamentally different because  
19 this is a small litigation boutique that was born with Ava in a  
20 co-working space, who are their best friends, who provided them  
21 the funding to get going, on whose behalf their founder, who  
22 shaped the firm and developed the firm, has said they engaged  
23 in misconduct for, and that continues to be the same firm minus  
24 one individual and continues to prosecute cases almost entirely  
25 in the crypto space.

1 And I think, given that history that's brought us here,  
2 right, there is a reasonable concern on our part that cutting  
3 out the one bad apple doesn't save us and doesn't protect us,  
4 it certainly doesn't ameliorate our concerns and doesn't take  
5 away the taint on this potential process going forward,  
6 especially when that can be -- when we have an overlapping  
7 class, an identical class, Your Honor, being pursued in state  
8 court down the Peninsula and we can easily have an opportunity  
9 for the named plaintiff to bring in counsel who is free of any  
10 appearance -- any potential appearance of impropriety.

11 **THE COURT:** Well, I will tell you, one difference here  
12 from Southern District of New York is they're the only show in  
13 town right now for the putative class.

14 **MR. ORSINI:** In this case.

15 **THE COURT:** Yes. So if they're gone, I mean, that  
16 effectively, I think, terminates the case because there's no  
17 lawyer. The head has been cut off the body. And that's -- I  
18 don't know -- nobody asked -- nobody came in and pitched for  
19 this other than this firm, your colleague here, Mr. Normand's  
20 firm. Nobody told me they were interested.

21 I have considered, and I may very well do, put this out to  
22 bid again and see if anybody comes forward. I think that might  
23 be an easy way of resolving all this.

24 But if they don't, I'm very reluctant to hand you what is  
25 effectively a procedural gimme in terms of getting out of this

1 case. I just don't think that's right.

2 **MR. ORSINI:** Judge --

3 **THE COURT:** Now, why isn't it adequate -- you have what we  
4 used to call in law school a parade of horrors that might  
5 happen. I'm not gainsaying that, but it hasn't yet. And you  
6 don't have any evidence that they have had -- have happened or  
7 even likely to happen.

8 But why not, if they do -- you've got plenty of ammo to  
9 fire at them if it happens. You have Rule 11. You have  
10 Rule 23. You have my inherent disciplinary authority over  
11 counsel and parties. You have a plethora of solutions if  
12 anything goes wrong.

13 And if it ever turned out, for example -- and I'm not --  
14 I'm just saying the obvious that everybody will know. But if  
15 it ever turned out that some lawyer at the FNF firm,  
16 Mr. Normand or one of his colleagues inappropriately disclosed  
17 confidential information, they would be disbarred in all  
18 likelihood. I happen to chair that committee. So I can't  
19 predict what would happen because we have a third-party  
20 process, but they would, at a minimum, face significant  
21 personal, professional conduct sanctions.

22 So with all of these safeguards, why not just go forward  
23 and be vigilant? What's wrong with that?

24 **MR. ORSINI:** And I think, Your Honor, that, in part, is  
25 exactly the problem, given that this is a putative

1 class action.

2 We are going -- if they go forward as class counsel in  
3 this case, it's going to create an ongoing set of questions  
4 about all of those issues and an ongoing sideshow about those  
5 potential concerns that we don't believe is fair to our client,  
6 given the taint that comes with this case from Mr. Roche's  
7 statement, and we don't believe is the best protective means  
8 for the absent class members.

9 And I agree with Your Honor. If we find evidence of that  
10 six months from now, I have no doubt that when I bring it to  
11 this Court, the Court will take it seriously. That, I'm sure  
12 of.

13 But going through every stage of this litigation with that  
14 hanging over us, with that hanging over the class unnecessarily  
15 raises significant complications and problems with their  
16 potential representation.

17 And that's why we believe that, given that it's a putative  
18 class -- we might have a different conversation if it was just  
19 a one-on-one case. I still think the same result would be  
20 appropriate, but we wouldn't be talking about Rule 23. But  
21 given that it's a putative class, that sideshow, that concern,  
22 that continued vigilance we're going to have to put in and the  
23 distraction it's going to do, I don't believe, Your Honor, is  
24 appropriate for them to continue on as lead counsel.

25 And to your earlier point about not wanting to hand us a

1 procedural gimme, I get that. Right? Two responses to that.

2 One, it wouldn't end our litigation because --

3 **THE COURT:** It would.

4 **MR. ORSINI:** No.

5 **THE COURT:** There's no other lawyer on deck.

6 **MR. ORSINI:** We have the state court case which is an  
7 overlapping class.

8 **THE COURT:** It would end it here.

9 **MR. ORSINI:** Two, Your Honor, I do think one easy  
10 potential solution to that is -- there are two potential  
11 solutions to that I thought of coming in today.

12 One is the one Your Honor mentioned, which is you can do  
13 the process again and see if anybody comes in. If this is such  
14 a meritorious case that is worth so much money, you'd think  
15 someone else would show up. Right?

16 Or we could give the putative class representative,  
17 Mr. Valenti, an opportunity to identify potential substitute  
18 counsel.

19 **THE COURT:** I thought he was no longer -- is he the -- is  
20 he still the named --

21 **MR. ORSINI:** I'm sorry. It's not Mr. Valenti. You're  
22 right, Your Honor.

23 **THE COURT:** It's someone else, isn't it?

24 **MR. ORSINI:** The client, it's someone else.

25 **THE COURT:** Do you remember who it is?



1       **MR. NORMAND:** Mr. Rodriguez.

2       **MR. ORSINI:** Thank you. Yes.

3       **THE COURT:** I'm not -- I just wanted to make sure.

4       **MR. ORSINI:** Yes. I had the caption in my mind,  
5 Your Honor.

6       **THE COURT:** No, I understand. I do too.

7       **MR. ORSINI:** But you're absolutely right.

8       **THE COURT:** But it's Mr. Rodriguez.

9       Okay. How about this? Let's just think out loud here.  
10 I'm concerned, but I'm not going to hit any buttons quite yet.

11       **MR. NORMAND:** Your Honor, can I say --

12       **THE COURT:** One thing that I'm --

13       **MR. NORMAND:** -- if it helps --

14       **THE COURT:** -- not clear about --

15       **MR. NORMAND:** -- to a couple of Mr. Orsini's --

16       **THE COURT:** Hold on.

17       **MR. NORMAND:** -- comments?

18       (Simultaneous speaking; court reporter interrupts.)

19       **THE COURT:** When I start, you just need to stop.

20       **MR. NORMAND:** Sorry, Your Honor.

21       **THE COURT:** I'm just not clear about your Ava ties.

22 Basically, Mr. Orsini is saying you sprang from the head of  
23 Ava Labs like Athena from Zeus. So maybe some discovery on  
24 that might be worthwhile.

25       I'm operating in an evidentiary vacuum. Mr. Orsini is

1 giving me some concerns; you're denying them. I don't have an  
2 independent set of facts on which to make my own informed  
3 decision.

4 So it could be as easy as -- you've heard what we  
5 discussed today -- you swear out a declaration and got it under  
6 oath. And if there's any problem with that, the consequences  
7 would be swift and certain and unfavorable to you and your  
8 future. When I say "you," I mean you personally and your firm.

9 Or maybe take a deposition. I think it's a novel  
10 situation that may require a novel response. Maybe Mr. Orsini  
11 sits down for an hour or two with some designee of the firm,  
12 basically 30(b)(6), goes over the books, so to speak, between  
13 what the status of you and Ava Labs is.

14 And if there's anything that comes out of it, you can let  
15 me know. What do you think about that, Mr. Orsini?

16 **MR. ORSINI:** So as you might imagine, Your Honor, my first  
17 answer will be we don't believe such discovery is necessary;  
18 but if the Court believes such discovery is necessary --

19 **THE COURT:** I do.

20 **MR. ORSINI:** That's why I said you wouldn't be surprised  
21 by my first answer.

22 My second answer is, I'd have no objection to taking that  
23 discovery.

24 **THE COURT:** Well, I should say, I'm thinking it is.

25 **MR. ORSINI:** I would have no objection --

1       **THE COURT:** Well, how about that? What if you take this  
2 deposition under penalty of perjury, everything is answered in  
3 a way that suggests that although your fears are -- your fears  
4 are hypothetical. That seems like enough, don't you think?

5       **MR. ORSINI:** I think we would need a deposition of the  
6 firm and Mr. Roche to understand sort of both sides of this.

7       **THE COURT:** Why Mr. Roche? We all know that he's out of  
8 the picture. What difference does it make for him?

9       **MR. ORSINI:** Mr. Roche is now claiming that some of his  
10 statements were false and not false. I think, you know --

11       **THE COURT:** Look, he's done. Okay? He was dealt with, in  
12 my view, in an appropriate fashion, which means he was kicked  
13 out of the case, kicked out of the firm, kicked out of the  
14 picture. Okay? So who cares whether he's back-hoeing or not?  
15 It's irrelevant. I can't attribute that to the current  
16 lawyers.

17       **MR. ORSINI:** So -- so I respectfully disagree with that,  
18 Your Honor, but I understand your --

19       **THE COURT:** Well, tell me why.

20       **MR. ORSINI:** Because I think, frankly, to test what the  
21 current firm that has a financial interest in continuing in  
22 this case is saying versus what their named founding partner,  
23 who started all of this by saying he brought this case --

24       **THE COURT:** That guy can say whatever he wants and  
25 apparently has. So I just -- I mean, I'm not worried about

1 that.

2 But what's your next point?

3 **MR. ORSINI:** My next point is simply, Your Honor --

4 **THE COURT:** I'm not going to do that.

5 **MR. ORSINI:** -- I'm not going to say "no" to taking their  
6 deposition.

7 **THE COURT:** All right. Mr. Normand, what do you think?

8 **MR. NORMAND:** Three things, Your Honor.

9 One, we've already put in a declaration, myself and my six  
10 partners, in the Avaton case, under oath, saying that we didn't  
11 misuse any discovery; we're not going to misuse any discovery;  
12 we haven't brought actions for the wrong reasons.

13 **THE COURT:** No, I understand that, but this is really  
14 focused on the --

15 **MR. NORMAND:** Understood.

16 **THE COURT:** -- labs ties.

17 What do you think about that?

18 **MR. NORMAND:** We can do it. It's going to be redundant of  
19 things we've already said under oath because we've already  
20 spoken to the issue of our motivations, supposedly, with  
21 respect to these AVAX tokens.

22 **THE COURT:** I think it's going to be a lot of  
23 nuts-and-bolts questions. Like, when was the last time you  
24 received an invoice from the labs? Or what's the value of  
25 these tokens? You know, that kind of stuff. Are you okay with

1 that?

2 **MR. NORMAND:** Understood, Your Honor. We're an open book,  
3 subject to attorney-client privilege, of course; but we're  
4 happy to do that if that's what the Court, in a fact finding  
5 capacity, thinks is appropriate.

6 **THE COURT:** Well, it would help me because I just have two  
7 conflicting narratives and no place to drop my anchor.

8 **MR. NORMAND:** I would say a second thing, Your Honor,  
9 which is, as you know because we briefed it in detail on the  
10 law, the law makes relevant defendants' motivation in bringing  
11 their motion. So I think what would be symmetrical and  
12 appropriate and warranted under the law is a corresponding  
13 deposition of their clients to ask about their role in the  
14 Crypto Leaks and to ask what their motivations were --

15 **THE COURT:** No.

16 **MR. NORMAND:** -- in bringing the motion.

17 **THE COURT:** I'm not going to do that. Look, I really  
18 cannot -- oddly enough, I had to deal with this. There's  
19 actually Supreme Court case law on this.

20 You don't have to have good motivations. Now, you can't  
21 violate Rule 11. You can't violate the other rules that  
22 require civility and professionalism and honesty. There's no  
23 question about that. But you don't have to have goodness in  
24 your heart when you're a litigant. Okay?

25 So it doesn't matter what Dfinity -- I'm not reopening the

1 books on this Mr. Roche guy and Sweden and all that. I'm not  
2 doing it. I don't care. It's irrelevant to me. It's  
3 irrelevant to my protection of the putative class.

4 So when can you do this? A week? Two weeks?

5 **MR. NORMAND:** We can work out a schedule and let the Court  
6 know.

7 **THE COURT:** Three hours, Mr. Orsini, max. This shouldn't  
8 take anything more than that. Probably should be shorter.  
9 I'll give you three hours max. All right?

10 I don't want this to be the shootout at the O.K. Corral.  
11 You come in; you ask your questions; you answer them; and  
12 that's it. All right? I don't want -- I don't want any  
13 theatrics, fireworks, drama. I don't want any questions about  
14 Mr. Roche other than confirming that he's in every way, shape,  
15 and form been excised out of the firm. That's it. Okay? But  
16 I don't a want to hear any questions about what happened in  
17 Sweden, none of that.

18 This is just from today on, and that's on the suitability  
19 of this firm to go forward in a way that is appropriate. Okay?

20 **MR. ORSINI:** Can I ask one clarifying question,  
21 Your Honor?

22 **THE COURT:** Sure.

23 **MR. ORSINI:** I understand that. I understand all of that,  
24 and I appreciate that, Your Honor.

25 When you say "from today forward," I understand your

1 point, you don't want me asking any questions about Kyle Roche  
2 and what he did and what he said. But one of the issues that  
3 I've addressed to the Court is sort of the way in which the  
4 firm itself was created and the interrelationships they've had  
5 from the beginning with Ava Labs.

6 Is that -- would that be --

7 **THE COURT:** Let me just pause on that.

8 I mean, is there any dispute about -- look, it may be that  
9 it was in the mists of time you were, as I said earlier, joined  
10 at the hip.

11 But just tell me, Mr. Normand.

12 **MR. NORMAND:** I think it's irrelevant. I agree with what  
13 I understood to be --

14 **THE COURT:** Well, but is it true? Did it sort of start  
15 out that way and things have developed since, or what's the  
16 formation story?

17 **MR. NORMAND:** There was a -- if I'm following the question  
18 and Mr. Orsini's point, Ava Labs was a client --

19 **THE COURT:** The client?

20 **MR. NORMAND:** -- towards the beginning --

21 **THE COURT:** A major client?

22 **MR. NORMAND:** -- of this firm's life, a previous iteration  
23 of this firm.

24 **THE COURT:** Okay. So the old firm, Roche -- what was the  
25 old firm called?

1       **MR. NORMAND:** Roche Freedman.

2       **THE COURT:** Roche Freedman. Okay. Its first big client  
3 was Ava Labs.

4       **MR. NORMAND:** I don't know if it was his first big client,  
5 but it was one of the original clients.

6       **THE COURT:** Okay. I don't think he disagrees with you  
7 about this. So it may have started that way. The question is  
8 what's happening today and what's going to happen tomorrow.

9       **MR. ORSINI:** I understand that, Your Honor. My point is  
10 simply that the nature of that relationship, at least alleged  
11 by one of their former partners with whom they're in  
12 litigation --

13       **THE COURT:** Ask a few. Don't go nuts.

14       **MR. ORSINI:** Understood.

15       **THE COURT:** Okay? Because I think it's of questionable  
16 utility. But if you want to ask a little bit, that's fine.

17       **MR. ORSINI:** I appreciate that.

18       **THE COURT:** Don't spend a third or a quarter of the  
19 deposition on it. Just ask some foundational questions. Move  
20 on. Okay?

21       **MR. ORSINI:** Understood, Your Honor.

22       **THE COURT:** If you cannot get this done, we'll just do the  
23 deposition here and I'll just watch you.

24       **MR. NORMAND:** Point of --

25       **THE COURT:** I really don't want to do that, so...



1       **MR. NORMAND:** Point of clarification, Your Honor.

2       **THE COURT:** Yes.

3       **MR. NORMAND:** Do you want a 30(b)(6), or do you want me to  
4 appear personally?

5       **THE COURT:** How do you want to do it?

6       **MR. ORSINI:** I think a 30(b)(6) would be most appropriate  
7 so we get the testimony from the firm, and whomever they'd like  
8 to designate is fine with me.

9       **THE COURT:** Like, four topics. Okay? Four or five  
10 topics. That's it. All right?

11       **MR. ORSINI:** Understood, Your Honor.

12       **THE COURT:** Okay. And you can -- have you been there  
13 since day one at the firm?

14       **MR. NORMAND:** Not technically, no. It started off with  
15 Roche and Freedman and one other lawyer for six months, and  
16 then --

17       **THE COURT:** You've been there all but six months?

18       **MR. NORMAND:** That's correct.

19       **THE COURT:** Okay. You pick whoever you want. It's  
20 30(b)(6). But make sure they can answer. It might be better  
21 to have -- how long has the firm been around, by the way, just  
22 in both iterations?

23       **MR. NORMAND:** About three and a half years.

24       **THE COURT:** Oh, okay. So you don't have to go too far  
25 back. Okay.

1 All right. So really remember, at the end of the day, my  
2 major concern, my overriding concern is the protection of the  
3 putative class and the named plaintiffs. That's what I'm  
4 most -- really, that's all I'm interested in.

5 But I also want to make sure that what happens today  
6 doesn't change tomorrow and that we have some of the problems  
7 that Mr. Orsini has sketched in his parade of horrors -- I'm  
8 not making any findings about that. This will help me make my  
9 findings about that. Okay?

10 So do you want to come back in 30 days?

11 Here's what I'm thinking. You'll take the depo, say, in  
12 the next two weeks, and then you'll both file a supplemental  
13 statement for the pending requests. Okay? Now, it's not a  
14 disqualification. Just report on what you found.

15 Now, if it is the case, Mr. Orsini, that you don't -- you  
16 till the field and no potatoes come up, be forthright about  
17 that. Okay?

18 **MR. ORSINI:** Understood, Your Honor.

19 **THE COURT:** You can still have your concerns. You've got,  
20 as I said, plenty of opportunities -- if you believe something  
21 has gone wrong in an objectively reasonable way, you've got  
22 plenty of things you can do to bring the issue before me. But  
23 if you take this deposition and there's nothing there, I'm  
24 expecting you to be candid about it.

25 And then, Mr. Normand, obviously, this goes without

1 saying, but I'll saying it. I'm expecting your designee,  
2 whoever it is, to be completely forthright, unevasive and just  
3 answer the questions. Okay?

4 **MR. NORMAND:** Sure.

5 **THE COURT:** All right. Anything else for today?

6 **MR. ORSINI:** Not for today, Your Honor. Thank you for the  
7 time.

8 **THE COURT:** Mr. Normand?

9 **MR. NORMAND:** No.

10 **THE COURT:** Okay. Thanks very much.

11 **MR. ORSINI:** Thank you, Your Honor.

12 **MR. NORMAND:** Thanks.

13 **THE COURT:** Yes.

14 (Proceedings adjourned at 11:27 a.m.)

15 ---o0o---

16 **CERTIFICATE OF REPORTER**

17 I certify that the foregoing is a correct transcript  
18 from the record of proceedings in the above-entitled matter.

19  
20 DATE: Sunday, February 5, 2023

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22 

23  
24 \_\_\_\_\_  
25 Ana Dub, CSR No. 7445, RDR, CRR  
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