THE HONORABLE RICHARD A. JONES
(On Reference to the Honorable S. Kate Vaughn)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

CHRIS HUNICHEN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

ATONOMI LLC, a Delaware LLC, CENTRI TECHNOLOGY, INC., a Delaware Corporation, VAUGHAN EMERY, DAVID FRAGALE, ROB STRICKLAND, KYLE STRICKLAND, DON DELOACH, WAYNE WISEHART, WOODY BENSON, MICHAEL MACKEY, JAMES SALTER, and LUIS PARIS,

Defendants.

ATONOMI LLC, a Delaware LLC,

Counterclaimant,

v.

CHRIS HUNICHEN,

Counter-Defendant.

ATONOMI LLC, a Delaware LLC,

Third Party Plaintiff,

v.

DAVID PATRICK PETERS, SEAN GETZWILLER, DAVID CUTLER, CHANCE KORNUTH, and DENNIS SAMUEL BLIEDEN,

Counter-Defendants.

No. 19-2-cv-00615-RAJ-SKV

MOTION FOR CLASS CERTIFICATION
NOTING DATE: JULY 2, 2021

ORAL ARGUMENT REQUESTED

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I. Introduction

Named Plaintiff Chris Hunichen respectfully submits this Motion for Class Certification and requests that, pursuant to Federal Rule of Civil Procedure ("Rule") 23(a) and 23(b)(3), this Honorable Court certify this case as a class action, appoint Hunichen as Class Representative, and appoint Joel Ard of Ard Law Group PLLC, Angus Ni of AFN Law PLLC, and William Restis of The Restis Firm, P.C. as Class Counsel pursuant to Rule 23(g). Plaintiff seeks certification of the following Class or such Class or subclass as the Court deems appropriate:

> *All persons who purchased ATMI tokens via a Series 1 or Series 2 Simple Agreement for Future Tokens (SAFT) with Atonomi, LLC in 2018.*
>
> *Excluded from the Class are Defendants and persons or entities directly affiliated with any Defendant, and persons who affirmatively assented to the Atonomi "Terms of Token Sale."*

Certification is appropriate because the requirements of Rule 23(a) are satisfied. Concerning ***numerosity, commonality, typicality, and adequacy***, all 76 members of the proposed Class executed the *same* SAFT contract as Hunichen. Each of those materially identical contracts sold the same unregistered securities. The rescission and damages Hunichen seeks under the Washington State Securities Act ("WSSA") is the *same* relief under the *same* strict liability claim that the WSSA makes available to every member of the proposed Class. Because Hunichen and all Class members lost all or most of their investments in the Atonomi LLC "Initial Coin Offering," and in the same manner, the method of calculating their loss is the *same* for all members of the proposed Class. Indeed, having lost a minimum of over $160,000, Hunichen has a strong incentive to get the Class their money back, by getting back his own. He is thus typical and adequate to represent the interests of every other SAFT investor. His proposed Class Counsel are similarly adequate and adept litigating securities class actions.

The requirements of Rule 23(b)(3) are likewise satisfied. Concerning ***predominance***, common issues predominate because the central issues in the case are issues that involve Defendants' conduct of the ICO. Here, the SAFT is an admittedly unregistered security—it says so right on page two. Accordingly, the core issues are:

1. Can Atonomi satisfy the elements of an "exempt offering" safe harbor under Securities and Exchange Commission Rules 502 and 506 of "Regulation D"?

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2. Whether each of the Defendants is jointly and severally liable because each was a "substantial contributive factor" to the unregistered offering, or a person "who directly or indirectly control[led]s a seller", or "materially aid[ed] in the transaction." *See* RCW 21.20.430(3).

Both questions – and others described below - are common to all members of the Class. Indeed, all relevant issues involve *objective* inquiries that focus on the actions of *Defendants*, not individual circumstances of any particular Class member. As such, the WSSA claim sought to be certified applies to *all members of the Class* equally. This is because Hunichen's class wide WSSA claim provides for strict liability, and no element of the WSSA claim depends on any individual Class members' *subjective* mental state such as intent, objective, opinion or reliance. Defendants are even precluded from asserting equitable defenses such as estoppel, waiver, and unclean hands, eliminating the possibility of those theoretical individual issues.

And even if Defendants are able to identify any relevant issues requiring individualized evidence, those issues can be tried with minimal burden on the Court. While sufficiently numerous, all 76 members of the proposed class are known and identified. Thus, even if some individual issues arise, they will be manageable. Finally, Atonomi is a Washington based company, with Washington based agents, employees, evidence, and applicable law. There are no other lawsuits related to the Atonomi ICO. Thus, joining all Class members in one lawsuit in the Western District of Washington is the superior method for adjudicating SAFT investors' claims. This case is prototypically certifiable.

II. Facts Relevant To Certification

In approximately August 2017, in the middle of the first crypto asset bubble, Defendant Emery and others conceived an "Initial Coin Offering" or ICO to capitalize on the market mania.

To launch the ICO, Defendants Emery, Salter and some people at LaunchCapital LLC ("Launch") began working on a "white paper" because "Token Market [is] definitely looking for white papers." Ni Decl., Ex. 1, at 2.[1] The whitepaper was prepared for "potential ICO buyers"

[1] All Exhibits referenced are exhibits to the Declaration of Angus Ni filed in support of this Motion.

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before "the technical details of the architecture" of any use or application of a token was even conceived. *Id.*; *see also* Exs. 2 & 3.

Defendants then created Atonomi as a subsidiary of CENTRI Technology, Inc. ("CENTRI") for the specific purpose of conducting the ICO, to "allow cash from an ICO to come back to CENTRI holdings to retire the debt" owed to Launch. Ex. 4.

In October 2017, Emery announced to his partners the plan for "*minimal product*, marketing and social out reach, *and sufficient time between pre-sale [and public sale] to have $10m committed, then open public sale*… [¶] … to push hard on the M[inimum]V[iable]P[roduct] and the pre-sale process." Ex. 5 (emphasis added). Defendants were looking to develop the "mvp … *to increase the value of our ICO."* Ex. 6, at 1 (emphasis added).

Defendants worked backward from the get-rich-scheme of an ICO to the technology and product they thought was needed to justify it. Ex. 7 (re "notes from ryan at token market" discussing "rivetz raised 18m"; "atomic recevd 30m investment"; "ads go to: token market re-targeting [->] white listed sites: coin telegraph, reddit. 1-3$ bid range"; "will make intros on investors this week… need to talk to investors ALL THE TIME, ASAP"). As a part of this process, Defendants quickly threw together their ICO promotional materials before they had any product, joking that perhaps only the "'Blair Witch Trial' was made quicker. :-)". Ex. 8. In short, the business of Atonomi *was the ICO.*

While Defendants intended to use the funds raised by the ICO to repay CENTRI's debt to Launch, the individual Defendants all planned to pay themselves allocations of ATMI tokens. *See* Ex. 9; Ex. 10. Defendants expected the self-allocated ATMI tokens to appreciate in price, squabbled over token allocation even well before the ICO, and were obsessed with the USD price of ETH they would receive from investors. Exs. 11, 12, and 13 ("ETH … Up to $500"). Thus, a key aspect of the ICO would revolve around "token economics." Ex. 14 (Oct 2017 comments about token value for ICO whitepaper). After Atonomi began receiving ICO investments, Defendants squabbled more. As one Defendant later explained, "*Once ICO money was certain, Vaughan [Emery] … wanted to use funds for Centri which was failing.*" Dkt. 60 (Ex. H to injunction reply), at

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2 (emphasis added). Today, CENTRI and Atonomi are defunct. Neither has made a public announcement since May 2019. Dkt. 44-1 (Ex. K to injunction motion). According to its own website, Atonomi no longer has any employees at all.[2]

A. The Atonomi ICO

Defendants were advised in the ICO by Perkins Coie, whose attorneys knew months *prior* to the fundraiser that the SEC considered ICOs to be offers and sales of securities that required registration.[3] Yet, to get around the well-known registration and exemption requirements under the securities laws, Atonomi chose to conduct a two-stage offering copied and pasted from other recent ICOs, including one conducted by a company known as Kik. Ex. 1, at 1 (Gray on Aug 27, 2017: "we can be a little bit hokey if you have a 1b company (Kik), but not if we are technical IoT data security experts."); Ex. 15 (identifying Kik and several other then-recent ICOs that "successful[ly] … raised.").

The first of the two stages was the sale of Simple Agreement[s] for Future Tokens, or "SAFTs" to eighty individuals. Ex. 16 (Atonomi Rog responses 1 and 2). In the SAFTS, early investors were invited to invest large amounts at discounted prices to a second stage "public sale" that would occur later. Defendants publicly and widely solicited investors for both stages, intending to take the position that the ICO was exempt from registration because the public sale sold only tokens and not securities, and the private sale only included accredited investors. As set forth below, however, the two stages were components of one "integrated" offering. As a result, a failure in either stage to satisfy the exemption requirements infects the other.

1. Defendants' Public Solicitation.

As of November 2017, Emery was identifying "firm[s] making crypto investments [to] add them to the ICO contact list." Ex. 17. Defendants drafted a list of frequently asked questions "all

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2 *See, e.g.*, https://atonomi.io/company#leadership, last accessed May 5, 2021 (showing a blank space when clicking to the site's "leadership" link).

3 *See* Perkins Coie January 11, 2018 client alert that the SEC was prosecuting ICOs as illegal unregistered securities offerings, available at https://www.perkinscoie.com/en/news-insights/sec-takes-aim-at-initial-coin-offerings-again.html (last accessed May 4, 2021).

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intended to address the question 'why would I write a check?' From an investor viewpoint." Ex. 18. Despite creating a blockchain token in supposed furtherance of a blockchain product, Emery admitted internally at the time that Atonomi's "primary weakness [was that] we are not blockchain experts." Ex. 19.

In lieu of blockchain expertise, Defendants retained the Wachsman PR firm to assist in press releases for the Atonomi ICO. Ex. 20 ("we could strengthen the angle by putting more emphasis on the fact that it's a VC-backed project…") Defendants tasked Wachsman to get "working to get more analyst coverage and interviews" for the ICO. Ex. 19. Atonomi also "launch[ed] a couple new media outlets on Reddit and Telegram to build a blockchain and [*sic*] crypto followers." *Id.* On December 7, 2017, Defendant Emery "did a live interview on Bloomberg Market Watch" about the ICO. *Id.* Atonomi sent out its first press release promoting the ICO on December 12, 2017. *Id.* "It was picked up by 392 media outlets." *Id.*

Atonomi also determined it needed "one-on-one selling [of the ICO] and being present at event [*sic.*] where there are active ICO participants." *Id.* Emery worked with Atonomi's "PR Firm" to "do a better job making introductions during these events." *Id.* In December 2017, Defendants "officially launched" the promotion of the Atonomi ICO "at Token Summit II, a crypto currency event in San Francisco." *Id.* Emery was there with "more than 300 attendees" to whom defendants "promote[d] our ICO pre-sale." *Id.* After another one of these crypto events, Defendant Fragale described a "mob scene after panel. Took 2 hours to talk to everyone about Atonomi afterward!" Ex. 21.

On January 5, 2018, Atonomi created an "Official" Telegram group chat, open to the public, advertising a Twitter page, a "registration" page on Atonomi's website, a Facebook site, a Reddit thread, and "recent news and interviews." Ex. 22. On January 8, 2018, a participant in the Telegram channel noted that its membership had topped a hundred. Ex. 23. By February 17, 2018, another participant in the Telegram channel noted that membership had swelled to over fourteen thousand. Ex. 24. By May 4, 2018, potential investors in the Telegram chat were reporting that more than 28,676 people had joined the "queue" to invest. Ex. 25. As one of Atonomi's investor-

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relations managers candidly stated in Telegram when justifying the Atonomi ICO to investors, "I'm sure if Amazon could have raised money via ICO when they started 20 years ago they would have! In fact – the goal of most startups is either to be acquired or do an IPO. Which is the stock version of an ICO. So unlike those startups, Atonomi was able to do this early, thanks to blockchain and the crypto marketplace." Ex. 26.

2. The SAFTs

The SAFT was a standardized form contract between defendant Atonomi and each proposed Class member. The SAFTs are "***identical***" in all material respects except the "specific information pertaining to [the investor] including [their] investment amount." Dkt No. 81, Atonomi Counterclaim, ¶¶ 16-20; Dkt No. 82, ¶¶ 15-19 (emphasis added); *cf.* Ex. 27 (Template SAFT).

Eighty people, including some defendants, purchased ATMI through SAFTs. Ex. 28 (list of SAFT investors). On page 2 of each SAFT, Atonomi and each member of the Class agreed to "purchase" ATMI tokens in exchange for ETH cryptocurrency pursuant to a formula. Ex. 29 at 2 (Hunichen invested 225 ETH). In exchange for early investment, SAFTs sold ATMI tokens at a discount to the retail offering price in the public sale. *Id.* at § 1(b) (Hunichen got a "25%" discount); Hunichen Decl. ¶ 7.

Atonomi and each Class member "agree[d] the Purchase Amount [of their SAFT] has a value of US$ [amount]..." *Id.*, at p. 2 (Hunichen's SAFT "has a value of US$ $191,250"). The total face value of all SAFTS was $23,157,869.60. Ex. 16, at Resp. Rogs 5.

Atonomi has identified by name, address, and electronic mail address each person who signed a SAFT. Ex. 16, at Resp. Rog 9; Ex. 28 (class member list). The class member list identifies the investors' contact information and their country of residence. *Id.*[4] Defendants thus have the

[4] The class members' personal contact information and addresses have been redacted pursuant to LCR 5(g)(1)(B) ("Parties must protect sensitive information by redacting sensitive information (including, but not limited to, the mandatory redactions of LCR 5.2) that the court does not need to consider.")

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ability to contact all Class members, and have previously sent Class members form emails concerning the ICO. *See e.g.*, Ex. 30.

Atonomi raised 31,548 ETH from SAFT investors, and in exchange sold them 365,000,000 discounted ATMI tokens. Ex. 31 (Terms of Token Sale), at Ex. B, ¶ 1.[5] Atonomi later gave the ETH raised a "balance on paper of $17,856,479.30 USD, as reflected in Atonomi's December 2018 Financials." Ex. 16, at Resp. Rog. 7.

3. The "Public Sale"

The "public sale" was intended to be a "bona fide transaction…, pursuant to which [Atonomi] … sells Tokens **to the general public** in an intentionally publicized product launch of the Tokens." Ex. 29 Hunichen SAFT, ¶ 2 (emphasis added). To be "eligible to participate in the [public] Token Sale," investors were required to "Complete the registration process [], which require[d] [them] to (i) provide all information requested by our vendor Token Market." Ex. 31 (Terms of Token Sale § 2(c) and § 8, stating that "Registration is provided by our vendor Token Market…"); Ex. 16, at Resp. Rogs 14, 15. The "public sale" took place on June 6, 2018. Ex. 31, at 14; Ex. 32. Atonomi sold 135,000,000 ATMI to just over 14,000 investors in a few hours. Ex. 16, at Resp. Rog 3 (admitting 14,000 public sale investors). The price per ATMI during the Public Sale was "0.00010526316 ETH per ATMI." Ex. 31, at Ex. B, ¶ 3.

Atonomi consolidated the receipts from the SAFT sale and the Public Sale as one in its internal accounting. Ex. 33 (CENTRI and Atonomi funding disbursements in same CENTRI document); Ex. 34 (ICO proceeds earmarked to pay for CENTRI /Atonomi expenses throughout 2018-19). Atonomi's "Token Distribution" document defined the SAFT "Pre-Sale" and "Public Sale" as "together, the 'Token Sale.'" Ex. 35.

4. Release and Trading of ATMI

Approximately five weeks after the ICO closed, Atomoni released ATMI tokens to all SAFT and Public Sale investors simultaneously on July 12, 2018. Ex. 36 (Atonomi RFA responses),

[5] *See* Atonomi Network — July 16 AMA, available at https://medium.com/@vaughanemery/atonomi-network-july-16-ama-bf9a35fb999b (last accessed May 4, 2021).

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at Resp. RFA 39. ATMI tokens were automatically delivered to Plaintiff and other proposed Class members with no additional action taken after signing the SAFT and sending ETH. Dkt. 40, at 13:10-13. That same day, to encourage trading, Atonomi announced in Telegram that ATMI was listed on at least *six exchanges* and were available for trading. Dkt. 97-1, at 27.

A wave of selling immediately hit ATMI, causing its price to fall below the public sale ICO price on the *very first* day of trading. *Id.* at 30-31. By July 13, 2018, the price of ATMI had crashed approximately 50% below the ICO price. *See* Dkt. 97-1, at 31. On July 16, 2018, Atonomi attempted to stop the freefall by encouraging investors that "we are cooperating with a number of exchanges interested in listing ATMI." *Id.* at 34. Indeed, procuring an exchange listing was Emery's "top priority" immediately following the ICO. Ex. 37.[6] Emery spent months to get ATMI tokens listed on U.S. and Asian exchanges to help generate "liquidity." Dkt. 60-1, at 33.

By April 16, 2019, ATMI were trading at $0.00068 per token, a 99% collapse from the ICO price. Ex. 36, at Resp. RFA 83; *Cf.* Dkt. 46, at 49-51 (December 19, 2019 ATMI trading chart from coinmarketcap.com, noting that ATMI had "$23.67 traded over the last 24 hours.") Today, the ATMI token is a "dead" coin. The last known trading price was 0.00010005 USD and had moved "0.00 over the last 24 hours."[7] There is currently no demand for ATMI, and zero trading. *Id.*

5. The Defendants' Roles

Atonomi and CENTRI are both Delaware entities with their offices in the same location. Ex. 38. Atonomi was a "subsidiary" of CENTRI.[8] Defendants also described Atonomi as "the

[6] *See also* Dkt. 46, at 22-23 (1/10/18 Emery in Telegram: "[w]e are planning to be listed on the major exchanges, including Bittrex for sure. [¶] Bittrex is one of the largest US exchanges … so we are planning to work closely with them as one of the first exchanges. [¶] Legal governance is advising us not to have discussions we [*sic*] exchanges until after the ICO. [¶] … **We are being cautious about any public discussions that might raise the attention of the SEC**. …") (emphasis added).

[7] ATMI's current price can be found at https://coinmarketcap.com/currencies/atonomi/ (last accessed May 4, 2021).

8 CENTRI November 11, 2018 and February 2, 2019 press releases, available at https://www.centritechnology.com/resources-why-iot-security/press-releases (last accessed May 4, 2021).

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blockchain based arm" of CENTRI.[9] CENTRI and Atonomi board meetings were held by the same people at the same time. *Id.*, Ex. 38. Atonomi and CENTRI maintained "shared services between [the] companies." *Id.* Atonomi and CENTRI maintained consolidated financial statements. Ex. 39 (CENTRI 2018 financials); Ex. 40 ("Very important we sync the cash flows between CENTRI and Atonomi")

Defendant Emery is the founder "of both CENTRI and Atonomi." Ex. 41; *see also* Ex. 42 ("[Emery] 'runs' the place!!! (and Mike Mackey)"). Defendant Strickland was on the board at both companies. He later became "the CEO for both companies." Exs. 41-45 (Rob Strickland is Atonomi's "longest standing Board member.") Defendants Deloach, Emery, and Wisehart were all board members of both Atonomi and CENTRI. Exs. 46-48. The two companies were indistinguishable other than in their names.

B. The Proposed Class Representative

Hunichen is an individual residing in Las Vegas, Nevada. Hunichen Decl., ¶ 2. On February 22, 2018, Hunichen signed a SAFT with Atonomi. Ex. 29 (Hunichen SAFT). Hunichen purchased 2,137,500 ATMI tokens for 225 ETH tokens, valued at the date of investment at $191,2450. *Id.,* ¶ 6. He received these tokens on July 12, 2018. Hunichen Decl. ¶ 7. On September 7, 2018, he also received 534,375 bonus ATMI tokens from Atonomi that represented his "25%" discount to public sale investors. *See Id.*

Hunichen transferred 67,291 tokens on July 12, 2018 and another 90,250 tokens on July 13, 2018 to buyers who both previously committed to purchase ATMI over the counter from him. Ex. 49 (Hunichen Rog Responses) at 6, 8; Hunichen Decl. ¶¶ 8-9. He received 27 ETH in exchange, valued at $13,667.70 and $10,218.36 on the dates he received the ETH. *Id.* He also sold 97,834 ATMI on an exchange on July 12, 2018, receiving the equivalent of $5,848.95 in ETH valued as of

[9] Atonomi 8/8/18 press release, available at: https://www.prnewswire.com/news-releases/centri-technology-launches-atonomi-network-to-bring-security-and-trust-to-internet-of-things-300566257.html (last accessed May 4, 2021).

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that date. *Id.* ¶ 12. He is still holding 2,707,049.8 ATMI. Hunichen's locked-in losses, *excluding* the interest permitted by statute, total at a minimum $161,514.99. *Id.*, ¶ 15.[10]

III. Argument

Class actions combine multiple identical or similar claims onto a single suit, thereby promoting judicial economy. "They permit[] litigation of a suit involving common questions when there are too many plaintiffs for proper joinder." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). The Court's analysis must be "rigorous" which "may 'entail some overlap with the merits of the plaintiff's underlying claim[.]'" *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 465-66 (2013) Nevertheless, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage." *Amgen*, 568 U.S. at 466. "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Id.*

A. The Proposed Class Satisfies Rule 23(a).[11]

Rule 23(a) sets forth four requirements for class certification: (1) the class must be so numerous that joinder of all members is impractical; (2) there must be questions of law *or* fact common to the class; (3) the claims of the representative parties must be typical of the claims of the class; and (4) the representative parties must fairly and adequately protect the interests of the class. Each of these are easily satisfied here.

1. The Proposed Class Is So Numerous That Joinder Is Impracticable.

The proposed Class of SAFT investors satisfies Rule 23(a)(1)'s numerosity requirement. "There is no threshold number of class members that automatically satisfies this requirement," however, "[g]enerally, 40 or more members" is sufficient. *Dunakin v. Quigley*, 99 F. Supp. 3d 1297,

[10] Under Washington law and pursuant to the prayer for relief, class members are entitled to recovery of the consideration paid for the security, namely, the invested Ethereum. Because a federal court can only order payment of money damages in U.S. dollars, investors are entitled to the greater of a money judgment equal to the present dollar value of the 45,550 ETH invested by class members, or the dollar value of the investment when made.

[11] Because many courts review common questions and predominance together, Plaintiff combines them here as well. *See* § III.B.1 *infra*.

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1326–27 (W.D. Wash. 2015) (internal citations omitted). As this Court recognized a decade ago when its case load was much lighter, judicial economy is "a very important consideration" served by class litigation, even when the proposed class size is small. *McCluskey v. Trustees of Red Dot Corp. Employee Stock Ownership Plan & Tr.*, 268 F.R.D. 670, 674 (W.D. Wash. 2010) (certifying a 27 member class and citing cases certifying classes of 20, 7, 35, 17, 18, 14, 16, 13 while noting that "[g]enerally, courts will find that the numerosity requirement has been satisfied when the class compromises 40"); *see also Aguilar v. Melkonian Enterprises, Inc.*, 2007 WL 201180, at *3 (E.D. Cal. Jan. 24, 2007) (finding that "[n]umerosity is also satisfied where joining all Class members would serve only to impose financial burdens and clog the court's docket"). Here, the proposed class comprises 76 members after excluding certain Defendants, which would be impracticable to join as individual plaintiffs. Ex. 28. Numerosity is satisfied.

2. Hunichen's Claims Are Typical Of The Class.

The test of typicality is "whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (internal citation omitted). Representative claims are 'typical' "if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036, 1042 (9th Cir. 2012). "In determining whether typicality is met, the focus should be 'on the defendants' conduct and plaintiff's legal theory,' not the injury caused to the plaintiff." *Lozano v. AT&T Wireless Servs.*, 504 F.3d 718, 734 (9th Cir. 2007) citing *Simpson v. Fireman's Fund Ins. Co.*, 231 F.R.D. 391, 396 (N.D. Cal. 2005); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (typicality is a "permissive standard[]").

As detailed in the Facts section above, Hunichen and all proposed Class members signed a standardized SAFT that was prepared as a template by Atonomi. As such, Hunichen invested in the same illegally unregistered offering of securities as all proposed Class members, and therefore has the same claim under the WSSA as every other Class member. And each of Defendants' joint and several liability rises or falls for every member of the proposed Class in the same way it does

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for Hunichen. *See, e.g.*, *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wash. 2d 107, 125-6 (1987), *amended*, 109 Wash. 2d 107 (1988) (evaluating defendants' conduct to determine seller liability as to all plaintiffs); *Burdick v. Rosenthal Collins Grp., LLC*, 194 Wash. App. 1016 (2016) (evaluating defendant's "material aid" to sale to determine liability as to all investor plaintiffs).

3. Hunichen Will Fairly And Adequately Protect The Interests Of The Class.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Foremost, a class representative must be part of the class, possess the same interest, and suffer the same injury as other class members. *In re First American Corp. Erisa Litig.*, 258 F.R.D. 610, 619-20 (C.D. Cal. 2009); *Hanlon*, 150 F.3d at 1020. Adequacy of a class representative focuses on two issues: (1) whether named plaintiffs and their counsel have "any conflicts of interest with other class members," and (2) whether named plaintiffs and their counsel will "prosecute the action vigorously on behalf of the class." *Hanlon*, 150 F.3d at 1020.

The adequacy requirement is satisfied here. Hunichen is a member of the Class, as he signed a SAFT with Atonomi in 2018 to receive ATMI. Like all proposed Class members, Hunichen's ATMI tokens are worthless, even though he paid 225 ETH for these tokens, valued at $191,250 at the time of his investment. Hunichen has every interest in establishing Defendants' liability and obtaining the maximum possible recovery for himself and absent Class members. As such, his interests are aligned with the proposed Class.

Further, Hunichen is willing to serve as a class representative, understands his role as class representative and the fiduciary duties such responsibility entails. Hunichen Decl., ¶¶ 16-19. Additionally, Hunichen has and will actively monitor the litigation, has no conflicts with other Class members, and will "vigilantly protect and advance the rights of the other members of the class." Hunichen Decl., ¶¶ 15-18. Finally, Hunichen has "acted vigorously to prosecute this action on behalf of the class members by providing information and documentation, responding to written discovery requests from Defendants, and [stands ready to] provid[e] deposition testimony." *See Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, at * 4 (E.D. Cal. Oct. 31, 2012); *cf.* Hunichen Decl., ¶ 17.

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Hunichen's choice of counsel also satisfies the adequacy prong of Rule 23(a)(4). The undersigned counsel have vigorously pursued these claims on behalf of the Class since April 25, 2019. *See* Dkt. 1. Proposed Class Counsel defeated motions to dismiss and to compel arbitration. Dkts. 31, 36, 40-43, 66. They sought a preliminary injunction against Defendants, and obtained important preliminary findings on the merits. *See* Dkts. 44-61, 86, 177. They joined a potentially liable investor in Atonomi, and successfully negotiated a class-wide settlement with it and two individual defendants. Dkts. 136-137, 190 (Notice of Settlement).

Finally, proposed Class Counsel are highly capable in the areas of securities litigation, class actions, and other complex litigation. Ex. 50 (*Curriculum Vitae* of Joel Ard), Ex. 51 (CV of Angus Ni), Ex. 52 (CV of William Restis). They have been, and continue to be willing to efficiently and expeditiously prosecute this class action.

B. Rule 23(b)(3) Is Satisfied.

Hunichen seeks class certification under Rule 23(b)(3). Under Rule 23(b)(3), certification is appropriate if (i) questions of law or fact common to the members of the class *predominate* over any questions affecting only individual class members and (ii) the class action is *superior* to other available methods for the fair and efficient adjudication of the controversy. Rule 23(b)(3) is intended to cover cases "in which a class action would achieve economies of time, effort, and expense, and promote ... uniformity of decisions as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997). Both are easily satisfied here.

1. There Are Common Questions, And They Predominate.

Under Rule 23(a)(2), there must be "questions of law *or* fact" common to the class. A common question "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is *central* to the validity of each one of the claims *in one stroke*." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis added). A common question "is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof."

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Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453 (2016) (internal citation omitted). The key question is whether a "classwide proceeding [will] generate common *answers* apt to drive the resolution of the litigation." *Id.* (emphasis added).

However, the commonality requirement is "subsumed under, or superseded by, the more stringent Rule 23(b)(3) requirement that questions common to the class 'predominate over' other questions." *Amchem*, 521 U.S. at 609. The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Tyson Foods*, 577 U.S. at 453 (quoting *Amchem*, 521 U.S. at 623).

When considering whether common issues predominate, the court should begin with "***the elements of the underlying cause of action***." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011) (emphasis added). This is because "[p]redominance is not … a matter of nose-counting. Rather, more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to [class] claims." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016) (internal citation omitted). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022 (internal quotation omitted).

Therefore, "even if just one common question predominates, 'the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately.'" *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557-58 (9th Cir. 2019) quoting *Tyson Foods*, 577 U.S. at 453; *see also Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 988 (9th Cir. 2015) ("[D]ifferences in damage calculations do not defeat class certification.")

Common legal and fact questions predominate here. The questions common to all members are the sole questions raised. Indeed, there are *no* individual issues because claims under the WSSA for an illegal, unregistered sale of securities are *strict liability*. *See In re Jensen-Ames*, 2011 WL 1238929, at *9 (Bankr. W.D. Wash. Mar. 30, 2011) ("Washington law provides for strict

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liability where a person offers or sells a security without registration.") As such, the statute neither requires nor permits any subjective individualized issues such as intent, knowledge, opinion, or reliance—which frequently arise in securities *fraud* cases.

Under RCW 21.20.140, "i[t] is unlawful for any person to offer or sell any security in this state unless: (1) The security is registered …; (2) the security or transaction is exempted …; or (3) the security is a federal covered security, …" Consequently,

> Any person, who offers or sells a security in violation of … 21.20.140 (1) or (2), … is liable to the person buying the security … who may sue … to recover the [net] consideration paid … or for damages if he or she no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

RCW 21.20.430. That liability falls upon "[e]very person who directly or indirectly controls a seller . . . every partner, officer, director or person who occupies a similar status or performs a similar function of such seller . . .[and] every employee . . . who materially aids in the transaction . . . unless such person sustains the burden of proof that… in the exercise of reasonable care could not have known, of the existence of the facts [upon] which the liability is alleged to exist." RCW 21.20.430(3). Due to strict liability, the only factual and legal questions *relevant* to the WSSA are:

(i) Whether Plaintiff and members of the proposed class signed the same SAFT form contract.

They classwide answer is yes. As detailed above, the evidence shows that all SAFTs for each Class member were materially identical except for the date and value of the contract.

(ii) Whether that SAFT form contract is a security.

All SAFTS say right on the cover page that they are securities. Ex. 29 (Hunichen SAFT), at 1 ("THE OFFER AND SALE OF THIS SECURITY INSTRUMENT…").

(iii) Whether the SAFT offering was registered.

It was not. *Id.* (stating "…THIS SECURITY INSTRUMENT HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933 … OR UNDER THE SECURITIES LAWS OF CERTAIN STATES.")

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(iv) Whether the SAFT offering satisfied any exemption from registration by complying with the SEC Rule 506 safe harbors

Atonomi filed a "Notice of Exempt Offering" Form D with the SEC on March 20, 2018 claiming to be exempt from registration pursuant to "Rule 506(b)," so Defendants will certainly assert that registration was not required. *See* 17 C.F.R. § 230.506(b). However, under Rule 506(b) "neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of *general solicitation or general advertising*…" 17 CFR 230.502(c) (emphasis added); *SEC v. Schooler*, 106 F. Supp. 3d 1157, 1162 (S.D. Cal. 2015) ("To qualify for an exemption under Rule 506(b), an offering must meet the general conditions set forth in 17 C.F.R. §§ 230.501—.502, including … refraining from general solicitation or advertising").

Here, Hunichen will present classwide evidence that many of the individual Defendants explicitly and repeatedly engaged in public solicitation and general advertising. This included hiring public relations firms to issue press releases about the ICO and disseminating FAQs "all intended to address the question 'why would I write a check?'" Ex. 18, *supra*. Defendants did "live interview[s]" about the ICO. Ex. 19. Atonomi also used "one-on-one selling [of the ICO] and being present at event[s] where there are active ICO participants." *Id.* The individual Defendants attended scores of "cryptocurrency event[s]." *Id.* At one event alone, "[t[here were more than 300 attendees" to whom Defendants "promote[d] our ICO pre-sale." *Id.* Atonomi had a Telegram chat through which Defendants solicited investors. Ex. 53. By the time of the "public sale", this Telegram chat had more than 28,676 members. *Id.*

Regardless of whether this and other evidence establishes general solicitation or advertising as a matter of law, the answer to the question is a common to all Class members.

(v) Whether the SAFT sales were part of a single integrated securities offering with the direct "public sale" of ATMI tokens.

Defendants are also anticipated to argue that the SAFT-based first stage of the ICO complied with Rule 506(c). But, even if stage one of the ICO was completely compliant, no exemption is available because the SAFT and the so-called "public sale" portion of the ICO are

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part of a single "integrated offering," and the public sale certainly included non-accredited investors and was publicly advertised. 17 C.F.R. § 230.502(a).

In *SEC v. KIK Interactive, Inc.*, 492 F. Supp. 3d 169 (S.D.N.Y. 2020), the court determined that a virtually identical two-stage ICO involving a virtually identical SAFT followed by a public sale, constituted one single integrated offering that failed to satisfy the requirements of Regulation D. An integrated offering occurs when two or more sales (a) are "part of a single plan of financing"; (b) "involve issuance of the same class of securities"; (c) are "made at or about the same time"; (d) result in "the same type of consideration [] being received"; and (e) were "made for the same general purpose." *KIK Interactive*, 492 F. Supp. 3d at 181; *see also SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352, 367 (S.D.N.Y. 2020); appeal withdrawn 2020 WL 3467671 (2d Cir. May 22, 2020) ("*Telegram I*") (same finding in another crypto case).

Here, Hunichen will show evidence that Defendants internally considered the ICO as a single fundraising event. Ex. 39 (CENTRI 2018 financials). The SAFT and the "public sale" both resulted in ATMI tokens being sold. *See KIK Interactive*, 492 F. Supp. 3d at 181 (finding that the crypto tokens sold through the SAFT and a follow-on public sale were securities under the "*Howey* test"); *Telegram I*, 448 F. Supp. 3d at 367 (rejecting Telegram's argument "that there are two distinct sets of transactions," namely, sale of the "[Token] Purchase Agreements" and sale of the tokens themselves). Class members executed SAFTs in two rounds in February 2018 and April 2018. Ex. 54; Ex. 55. The Public Sale followed shortly thereafter on June 6, 2018. Ex. 31. Terms of Token Sale, at 14. Atonomi received only ETH in both segments of the ICO. Ex. 16 Atonomi Supp. Resp. Rogs 1 and 2.

Whether the finder of fact determines there was or was not an "integrated offering," that finding applies equally for the entire Class. *SEC v. Telegram Grp., Inc.*, 2020 WL 1547383, at *1 (S.D.N.Y. Apr. 1, 2020) ("*Telegram II*"), ("the 'security' was neither the [Token] Purchase Agreement nor the [Token] but ***the entire scheme*** that comprised the [Token] Purchase Agreements and the accompanying understandings and undertakings made by Telegram ….") (emphasis added).

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(vi) Whether any specific defendant is liable to Class members.

The individual defendants are each jointly and severally liable to the Class if: (1) they "offer[ed] or s[old]" the SAFT. RCW 21.20.430(1); (2) "directly or indirectly control[ed] a seller liable…" RCW 21.20.430(3); (3) was a "partner, officer, director [of Atonomi] or person who occupies a similar status or performs a similar function …" *id.*; or (4) was an "employee [of Atonomi] … who materially aid[ed] in the transaction…" *Id.*

If any of these elements are established as to a particular Defendant, the one remaining question is whether that Defendant is entitled to an affirmative defense because he "sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist." *Id.*

Here, all these questions concern the conduct of Defendants vis-à-vis the whole Class. For any particular Defendant, the answer to these questions depends *solely* on that person's actions, status, control, or constructive knowledge. Defendants' liability is therefore susceptible to common determination as to all Class members.

Defendants also have no equitable defenses to the WSSA claims as a matter of law. This is because WSSA "is a remedial statute that we will construe liberally 'to suppress the evil and advance the remedy.'" *Go2net, Inc. v. FreeYellow.com, Inc.*, 126 Wash. App. 769, 783 (2005) ("We hold that equitable defenses are not available in an action under the Securities Act of Washington...") As such, proof which establishes a Defendant's liability to Hunichen will simultaneously establish liability for the Class as a whole. *Wal-Mart*, 564 U.S. at 350 (a common question is one where "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims *in one stroke*.")

Finally, damages calculations are a simple matter of arithmetic as provided by the WSSA itself. The measure is cost of tokens minus any offsetting remuneration, plus interest. RCW 21.20.430. There is therefore no question that "damages are capable of measurement on a classwide basis." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34-35 (2013).

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2. The WSSA Applies To Claims Of The Entire Class, Regardless Of Where Members Reside

Under Rule 23(b)(3)'s predominance inquiry, courts typically inquire whether a state law can apply to out of state class members. *See Jabbari v. Farmer*, 965 F.3d 1001, 1006 (9th Cir. 2020) ("The potential applicability of variations in state law can complicate the predominance determination") (citing cases). However, cases applying Washington's "most significant relationship" analysis (which applies to a federal court sitting in diversity) have uniformly held that the WSSA applies to claims by foreign purchasers of securities.

For example, in *Ito Inter. Corp. v. Prescott, Inc.*, 83 Wash. App. 282 (Div. 1 1996), the court found that Washington "has a strong interest in applying its securities act" to claims involving Washington companies and their offerings. *Id.* at 289. The court noted that "the WSSA expressly invalidates provisions waiving compliance with the statute," and found that the statute should apply even when "(1) the offering materials and advertisements emanated in Japan, (2) the misrepresentations took place in Japan, (3) the transaction documents were signed in Japan, and (4) [the plaintiff]'s principal offices were located in Tokyo." *Id.* at 289. In the end, it did not matter that "both Washington and Japan had significant contacts with the transaction" because "we hold that public policy favors the application of Washington law. Washington residents were involved in the sale and should not escape any potential liability simply because the purchasers happened to be Japanese nationals. … The application of Washington law would also encourage Washington residents involved in business transactions to behave responsibly" *Id.* at 290 (citing *Butte Mining PLC v. Smith*, 76 F.3d 287, 290 (9th Cir. 1996) ("We do not want to encourage persons who wish to defraud foreign securities purchasers or sellers to use the United States as a base of operations and, in effect, create a haven for such defrauders and manipulators.")))

In *Bertin-Peterson v. Graoch Assocs. #111 Ltd. P'ship*, 2012 WL 254264, (W.D. Wash. Jan. 26, 2012), this Court made the same determination, holding that "If both Washington and the other jurisdiction have 'significant contacts with the transaction, . . . public policy favors the application of Washington law.'" *Id.,* at *3 (citing *Ito Inter.*, 83 Wash. App. at 290). This ensured

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"Washington residents involved in business transactions to behave responsibly." *Id.* As such, there is no choice of law issue that might undermine predominance, because the WSSA applies to the claims of Hunichen and all putative Class members, regardless of where they reside.

3. The Proposed Class Satisfies Rule 23(b)(3)'s "Superiority" Requirement.

Rule 23(b)(3) requires that a "class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy." Four factors are pertinent to this inquiry: (a) the class members' interests in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already begun by or against class members; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (d) the likely difficulties in managing a class action. Rule 23(b)(3). "The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case. . . This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Hanlon*, 150 F.3d at 1023.

Here, although many members of the proposed Class have significant damages, the additional trouble and expense of individual adjudication is overwhelming where the factual and legal claims are identical. No individual Class member has an interest in an identical adjudication of issues, as demonstrated by the fact that no one else has filed such an action. *See* Ex. 16, at Resp. Rog 10 (There are no other "lawsuit[s or] arbitration[s] that assert[] claims against any defendant in this Action related to Atonomi's SAFT or]public sale of ATMI tokens."); *see also MacDonald v. Cashcall, Inc.*, 333 F.R.D. 331, 348 (D.N.J. 2019) (finding that the absence of other lawsuits reflected "a lack of individual interest [by absent class members] in control over their actions"). Further, should any members have an interest in individually litigating their claims, such litigation would almost certainly occur in this forum, the home state of the corporate Defendants, the state whose law governs the controversy, and the state and Court that has personal jurisdiction over all Defendants.

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As to manageability, this inquiry "encompasses the whole range of practical problems that may render the class action format inappropriate." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 164 (1974). This typically includes "potential difficulties in notifying class members of the suit, calculation of individual damages, and distribution of damages." *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1304 (9th Cir. 1990).

Here, all putative Class members are identified, and their contact information is available for direct notice. Ex. 28. Their damages are simple to calculate, and easy to distribute. Even if there are some individualized issues or administrative headaches, those concerns would be ameliorated by the small size of the Class. As such, Hunichen is aware of no manageability issues that may impact certifiability. *Cf. Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128 (9th Cir. 2017) (there is a "well-settled presumption that courts should not refuse to certify a class merely on the basis of manageability concerns," but rather should look to "manageability as one component of the superiority inquiry.")

4. There is no evidence that a foreign court has personal jurisdiction over defendants; Hunichen has shown that countries with SAFT investors will recognize this Court's judgment.

As part of the superiority inquiry, some courts have considered whether a class can include members from countries whose courts would not recognize the *res judicata* effect of a district court's judgment. In *Cromer Finance Ltd v. Berger*, 205 F.R.D. 113 (S.D.N.Y. 2001), the court considered the res judicata effect of a class action judgment as a factor going to superiority, but distinguished cases "in which there is a 'possibility' that a foreign court may not recognize a judgment, and those in which there is 'near certainty' that it will not be recognized." *Id.* at 134-135. Where it was "at most a 'possibility'" that foreign courts would not recognize a U.S. judgment, the court certified a class including foreign class members. *Id.* at 135.[12]

[12] *See also In re Vivendi Universal, S.A. Sec. Litig.*, 242 F.R.D. 76, 95 (S.D.N.Y. 2007) ("evaluat[ing] the risk of nonrecognition along a continuum. Where plaintiffs are able to establish a probability that a foreign court will recognize the res judicata effect of a U.S. class action judgment, plaintiffs will have established this aspect of the superiority requirement."); *In re U.S. Fin. Sec. Litig.*, 69 F.R.D. 24, 50 (S.D. Cal. 1975) (noting that cases do "not preclude foreign nationals from membership in any class alleging violations of the federal securities acts simply because of res judicata problems" and "[a]lthough the res judicata problem

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In a recent "cryptocurrency" case more apposite to this one, another court rejected the above approach altogether, and instead put the burden on defendants to show that a foreign court would have jurisdiction over them before it would exclude foreigners from the class. In *Audet v. Fraser*, 332 F.R.D. 53 (D. Conn. 2019), the court noted that "[t]his lawsuit is based on alleged misrepresentations by companies that have a principal place of business in Connecticut and were allegedly controlled by individuals living in the United States. … [The defendant] has not explained how a foreign court would have personal jurisdiction over him and … [nothing] suggest[s] that any of [the defendant]'s conduct described in the complaint occurred outside the United States or that [the defendant] has any connection to any non-U.S. jurisdictions." *Id.* at 85.

The court knew of "no authority declining to certify a class on this basis *in a case involving class members from inside and outside the United States* and defendants ***whose conduct took place exclusively within the United States.*** While Plaintiffs bear the burden of establishing each element of Rule 23, they need not rebut objections to class certification that rest on speculative scenarios." *Id.* (citing *Marsden v. Select Medical Corp.*, 246 F.R.D. 480, 486 (E.D. Pa. 2007)) (emphasis added).

In *Mardsen*, the court certified a class including foreign individuals because the claim was "based on alleged misrepresentations made in the U.S. by an American company whose shares traded on an American stock exchange." *Id.* at 486. The *Marsden* court distinguished *In re Vivendi*, and explained that the "mere fact" that some members of the proposed class "hail[] from another country does not change the fact that this action falls squarely under the securities laws of the United States." *Id.* It further explained that "it is far from clear how an Austrian court would even have jurisdiction over a suit arising from the alleged fraud here, and Defendants offer no legal support for their insinuation that it would . . . Such a speculative argument is simply not sufficient

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is one factor to consider . . . it should not be used to deny [class certification] . . . especially when this Court otherwise has subject matter jurisdiction").

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to support the exclusion . . . of foreign investors, especially when they are otherwise entitled to sue in U.S. courts." *Id.*[13]

The framework set forth by *Audet* and *Mardsen* is the most applicable here and should be applied by this Court. There is no evidence that any Defendant has any connection with any foreign country in which SAFT investors reside sufficient to confer jurisdiction there. All the liability determinative conduct occurred here in the United States, by Seattle companies Atonomi and CENTRI. Almost all of the non-settling individual defendants are also Washington residents.

Yet, regardless of the analytical framework the Court chooses to apply, it doesn't impact the superiority analysis here. Hunichen has provided a country-by-country analysis as suggested by the court in *Vivendi* to demonstrate there are no enforceability issues *if the Court deems the res judicata inquiry relevant to superiority*. As set forth in the analysis, all of these countries have robust regimes for enforcing foreign judgments, and are more likely than not to enforce a final judgment of a U.S. court. *See* Appendix A.[14]

IV. Conclusion.

A 76 member class of SAFT investors is sufficiently numerous. Plaintiff Hunichen is typical of the other SAFT investors because he signed the same contract, and seeks the same recovery under the same WSSA. Hunichen and proposed Class Counsel are adequate because they have no conflicts, and have vigorously represented the proposed Class thus far. Common questions predominate because of the nature of the WSSA's strict liability claim, and the paucity of defenses

[13] In *In re Lloyd's Am. Trust Fund Litig.*, 1998 WL 50211, at *15 (S.D.N.Y. Feb. 6, 1998), the court certified the class involving foreign claimants, concluding that "a foreign court may look to the results achieved here for guidance, thereby contributing to the superiority of the class action procedure." *Id.*

[14] "Where appropriate, the district court may redefine the class." *Reichert v. Keefe Commissary Network, L.L.C.*, 331 F.R.D. 541, 550 (W.D. Wash. 2019) citing *Armstrong v. Davis*, 275 F.3d 849, 872 n.28 (9th Cir. 2001). Pursuant to the analytical framework in *Audet* and *Mardsen*, Hunichen does not propose excluding any foreign investors, all of whom lost significant sums and would otherwise be left without recourse. Should the Court conclude that instead the *Vivendi* rule should apply, or if Defendants meet their burden to show that a foreign court would have jurisdiction over them, the Court is free to narrow the class certified to exclude investors in any problematic countries.

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available to it. The small class size, absence of other litigation, universally applicable Washington law, and other easily triable issues render this class litigation superior and manageable.

As such, Hunichen respectfully requests this Honorable Court certify the proposed Class, appoint Hunichen as Class Representative and the undersigned as Class Counsel. Hunichen then respectfully requests the Court set a hearing to review and approve a direct (likely email) notice plan to the certified Class.

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May 7, 2021.

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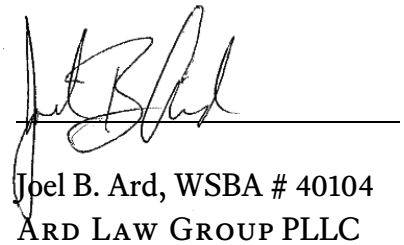
By: 

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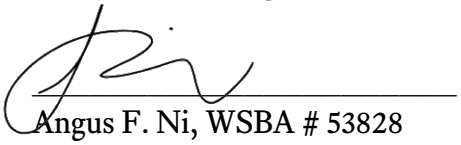
By: 

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