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Client Alert: Court Authorizes First-Ever Service of Court Documents via Air-Drop of Non-Fungible Token (NFT) to Cryptocurrency Wallet Address

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On June 2, 2022, the Supreme Court of the State of New York issued an Order to Show Cause and Temporary Restraining Order (collectively, the Order) that authorized the plaintiff's counsel to serve a copy of the Order and other legal papers, including the underlying Summons and Complaint, upon the person or persons controlling a cryptocurrency (Ethereum) wallet address via "airdrop" of a unique special-purpose token (the Service Token) to that wallet address. The Service Token contains a hyperlink to a website created by the plaintiff's counsel where the Order and other legal papers for service can be accessed (the Service Hyperlink). The Service Hyperlink also includes a mechanism to track when a person clicks on it. The Order specifies that such service "shall constitute good and sufficient service for the purposes of jurisdiction under NY law on the person or persons controlling the [Wallet] Address."

The action was filed by LCX AG (LCX), a cryptocurrency exchange and fintech company based in Lichtenstein. In January 2022, LCX was hacked and lost almost \$8 million as a result. Fortunately, a majority of the stolen funds were eventually traced to two cryptocurrency wallet addresses operated by the hacker (or hackers), and those funds were frozen. However, the identity of the hacker remains unknown, outside of the cryptocurrency wallet addresses. As such, LCX filed suit against "John Doe Nos. 1-25" as placeholder names until the perpetrator's true identity is known.

This appears to be the first time ever that a court in the United States has authorized service of process of legal documents via tokenized airdrop. This is obviously a landmark ruling that could eventually lead to substantial changes in the authorized methods for service under the Rules of Civil Procedure, especially as

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the use of blockchain technology becomes more commonplace and better understood within the business and legal community. The ruling also evidences another potential use case for non-fungible tokens, commonly known as “NFTs,” the utility of which has been frequently questioned by crypto detractors.

It remains to be seen whether courts in other jurisdictions will adopt this alternative means of service. To be clear, service by such means should be reserved for those cases where the traditional means of service have been exhausted or cannot be utilized because the true identity of the defendant is unknown (as it was here). Nonetheless, in cases of virtual theft of cryptocurrency and other crypto assets, this seems to be a viable means of service where the traditional methods fail or fall short due to lack of identifying information.