John T. Jasnoch (CA 281605)
SCOTT+SCOTT ATTORNEYS AT LAW LLP
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: 619-233-4565
Facsimile: 619-233-0508
jjasnoch@scott-scott.com

Counsel for Plaintiff Daniel Ocampo

[Additional Counsel on Signature Page.]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

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

Plaintiff,

v.

DFINITY USA RESEARCH LLC, DFINITY STIFTUNG, AH CAPITAL MANAGEMENT LLC, POLYCHAIN CAPITAL, DOMINIC WILLIAMS, and JOHN DOES 1-20,

Defendants.

Case No. 21-CIV-03843

FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE SECURITIES ACT OF 1933

JURY TRIAL DEMANDED

Plaintiff Daniel Ocampo ("Plaintiff"), individually and on behalf of all others similarly situated, by Plaintiff's undersigned attorneys, alleges the following based upon personal knowledge as to Plaintiff's own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of governmental filings and commentary, publicly available reports and information, analyst and media reports, and other commentary analysis. Plaintiff's investigation into the matters alleged herein is continuing and many relevant facts are known only to, or are exclusively within the custody and control of, the Defendants. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for formal discovery.

NATURE AND SUMMARY OF ACTION

1. Plaintiff brings this securities class action under §§5, 12(a)(1), and 15 of the Securities Act of 1933 (the "Securities Act") against (1) Dfinity USA Research LLC (the "Company"); (2) Dfinity's parent organization, Dfinity Foundation ("the "Foundation", together with the Company, collectively referred to as "Dfinity"); (3) Polychain Capital ("Polychain"); (4) AH Capital Management LLC ("Andreessen"); and (5) Dfinity's controlling executive and director, Dominic Williams (together with Polychain and Andreessen, to as the "Controlling Defendants").[1] Plaintiff alleges that Defendants sold unregistered securities to investors in violation of the Securities Act. Defendants are liable in their capacities as issuers, statutory sellers, and/or direct or indirect offerors of ICP.

2. Plaintiff brings this action on behalf of all investors who purchased Internet Computer Project tokens ("ICP" tokens) on or after May 10, 2021 and were damaged thereby.

3. ICP qualify as securities under Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1). The purchase of ICP constitutes an investment contract as ICP purchasers, including Plaintiff, provided consideration (in the form of fiat, *i.e.*, U.S. dollars or other cryptocurrencies) in exchange for ICP. ICP is an investment in a common enterprise and purchasers reasonably expected to derive profits from their ownership of ICP. Defendants promoted this profit motive as a reason to purchase ICP.

4. No registration statements have been filed with the SEC or have been in effect with respect to the ICP offerings alleged herein.

[1] Dfinity, DF, and the Controlling Defendants are collectively referred to as "Defendants."

5. All 469,213,710 ICP made available during the "Genesis" listing event were created out of thin air by Dfinity. At least twenty-four percent (24%) of all ICP in existence, were given to the Controlling Defendants, in particular, Polychain and Andreessen.

6. Defendants have since earned massive profits by selling the retained ICP to the public, without complying with federal securities laws, in what is essentially an ongoing initial coin offering ("ICO"). Like an initial public offering ("IPO"), in an ICO, digital assets are sold to consumers in exchange for legal tender or other cryptocurrencies (most often Bitcoin and Ethereum).

7. Defendants sell ICP from the retained supply and use the proceeds from the sales to fund Company operations, to reward investors, and as governance tokens.

8. In order to increase demand for ICP, and thereby increase the profits derived by selling ICP, Defendants portray ICP as a good investment, solicit sales, and express optimistic and misleading predictions on ICP's ability to disrupt established technologies. Dfinity greatly increased these efforts to push ICP on the general public in recent years and months.

9. These solicitation efforts were conducted by interstate means, as were the sales of ICP.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction over this action pursuant to the California Constitution, Article VI, §10 and Section 22 of the Securities Act, 15 U.S.C. §77v. The claims alleged herein arise under §§5, 12(a)(1), and 15 of the Securities Act. *See* 15 U.S.C. §§77e, 77l, and 77o. Section 22 of the Securities Act, 15 U.S.C. §77v(a), expressly states that "[e]xcept as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States." Section 77p(c) refers to "covered class action[s] brought in any State court involving a covered security, as set forth in subsection (b)," and subsection (b) of §77p in turn includes within its scope only covered class actions "based upon the statutory or common law of any State or subdivision thereof." *See* 15 U.S.C. §77p. This is an action asserting only federal law claims. Thus, this action is not removable to federal court.

11. Venue is proper in this jurisdiction pursuant to the provisions of California Code of Civil Procedure §395(a) because certain Defendants reside in San Mateo County.

12. This Court has personal jurisdiction over Defendants as a result of acts of Defendants occurring in and/or aimed at the state of California in connection with Defendants' unregistered offer and sale of securities in violation of §§5, 12(a)(1), and 15 of the Securities Act.

13. This Court also has personal jurisdiction over Defendants because they reside in or have their principal places of business in California.

PARTIES

14. Plaintiff Daniel Ocampo is an individual and a resident of the State of California. Plaintiff made purchases of ICP Tokens shortly after the opening of the Genesis Launch on May 10, 2021 through June 25, 2021 on the U.S. based cryptocurrency exchange Coinbase, and suffered losses on those investments as a result of the scheme alleged herein.

15. Defendant Dfinity USA Research LLC is a Delaware corporation with its principal place of business at 411 Acacia Avenue, Palo Alto, California 94306. Dfinity operates as a U.S.-based subsidiary of its parent organization, Dfinity Foundation.

16. Defendant Dfinity Foundation, is a Zurich-based not-for-profit organization or "stiftung," and is the corporate entity behind all of ICP's operations. The Foundation created ICP and, at all relevant times, solicited purchases of ICP by Plaintiff and the Class for its own benefit and the benefit of its executives and owners.

17. Defendant Dominic Williams is the Founder, President, member of the Board of Directors, and Chief Scientist of Dfinity and Internet Computer project and has been since October 2016. Williams is a resident of Santa Clara County. Williams exercised control over Dfinity and directed and/or authorized, directly or indirectly, the sale and/or solicitation of ICP to the public.

18. Defendant AH Capital Management ("Andreessen") is a private venture capital firm founded in 2009. Andreessen is California company with its headquarters in Menlo Park, California in this County. Andreessen exercised control over Dfinity and directed and/or authorized, directly or indirectly, the sale and/or solicitation of ICP to the public. Andreesen is also known by "AH Capital Management, L.L.C."

19. Defendant Polychain Capital is a cryptocurrency investment firm managing portfolios of digital assets and has been since 2016. Polychain is headquartered in San Francisco, California. Polychain

exercised control over Dfinity and directed and/or authorized, directly or indirectly, the sale and/or solicitation of ICP to the public.

20. The defendants referred to in ¶¶17-19 are referred to as the "Controlling Defendants."

SUBSTANTIVE ALLEGATIONS

A. Background of Cryptocurrency

21. A cryptocurrency is a digital asset designed to work as a medium of exchange or a store of value or both. Cryptocurrencies use various cryptographic principles to secure transactions, control the creation of additional units, and verify the transfer of the underlying digital assets.

22. Created in 2009, Bitcoin was the world's first decentralized cryptocurrency.

23. With a market capitalization of approximately $1.4 trillion, Bitcoin is also at the top of the cryptocurrency market by a wide margin.

24. Bitcoin functions as a ledger that tracks the ownership and transfer of every bitcoin in existence. This ledger is called a blockchain.

25. Blockchains act as the central technical commonality across most cryptocurrencies. While each blockchain may be subject to different technical rules and permissions based on the preferences of its creators, they are typically designed to achieve the similar goal of decentralization.

26. Accordingly, blockchains are generally designed as a framework of incentives that encourages some people to do the work of validating transactions while allowing others to take advantage of the network. In order to ensure successful validation, those completing the validation are also required to solve a "Proof of Work" problem by expending computational resources, which has the effect of making a blockchain more accurate and secure. For Bitcoin, those who validate the blockchain transactions and solve the "Proof of Work" program are rewarded with newly minted bitcoin. This process is colloquially referred to as "mining." Mining is one method by which an individual can acquire cryptocurrencies like Bitcoin. A second and more common manner is to obtain cryptocurrencies from someone else. This is often accomplished by acquiring it through an online "cryptocurrency exchange."

27. Online cryptocurrency exchanges are one place to purchase bitcoin and other cryptocurrencies. These exchanges are similar to traditional exchanges in that they provide a convenient marketplace to match buyers and sellers of virtual currencies.

28. In April 2013, there were only seven cryptocurrencies listed on coinmartketcap.com, a popular website that tracks the cryptocurrency markets. As of this filing, the site monitors more than 2,000 cryptocurrencies.

29. Another popular cryptocurrency, Ethereum, was designed to enable "smart contract" functionality unlike Bitcoin's blockchain.

30. A smart contract is a program that verifies and enforces the negotiation or performance of a contract. Smart contracts can be self-executing and self-enforcing, which theoretically reduces the transaction costs associated with traditional contracting. By way of example of how a smart contract works, consider a situation where two people want to execute a hedging contract. They each put up $1,000 worth of ether. They agree that, after a month, one of them will receive back $1,000 worth of ether at the dollar exchange rate at that time, while the other receives the rest of the ether. The rest of the ether may or may not be worth more than it was at the beginning of the month.

31. A smart contract enables these two people to submit the ether to a secure destination and automatically distribute the ether at the end of the month without any third-party action. The smart contract self-executes with instructions written in its code which get executed when the specified conditions are met.

32. By the end of 2016, interest in cryptocurrencies like Bitcoin, Ethereum, and other "alt coins" began to accelerate, with prices growing at a rate historically unprecedented for any asset class. Over the course of 2017 alone, bitcoin's price increased from approximately $1,000 to approximately $20,000. Ethereum's growth was even more startling. On January 1, 2017, Ethereum was trading at approximately $8 per ether. Approximately one year later, it was trading at over $1,400 per ether – a return of approximately 17,000 percent over that period.

33. Seeking to capitalize on the growing enthusiasm for cryptocurrencies, many entrepreneurs sought to raise funds through ICOs.

34. Between 2017 and 2018, nearly $20 billion was raised through ICOs. None of these ICOs was registered with the SEC.

35. These ICOs were typically announced and promoted through public online channels. Issuers typically released a "whitepaper" describing the project and terms of the ICO and promoted the sale of the tokens. They typically advertised the creation of a "new blockchain architecture."

36. The whitepapers contained vastly less information than would have been included in an SEC registration statement. For example, whitepapers (just like the ICP whitepaper[2]) typically did not include a "plain English" description of the offering; a list of key risk factors; a description of important information and incentives concerning management; warnings about relying on forward-looking statements; an explanation of how the proceeds from the offering would be used; or a standardized format that investors could readily follow.

37. As a result of the lack of information, trading of tokens on exchanges such as Coinbase and Binance was rife for manipulation.

38. For example, the Tezos Foundation had an ICO in 2017, which raised $232 million for the company and insiders. This ICO, however, resulted in a class action lawsuit that settled for $25 million.[3] Commentators viewed this settlement as a means to avoid a possible future enforcement action by the SEC for the sale of an unregistered security.[4] According to Quentin Herbrecht, CEO of blockchain marketing platform Markchain, that the plaintiffs in that action "think that Tezos agreed to settle this fine to prevent the SEC from re-characterizing their ICO as illegal securities offering, and this could have been a fatal blow to the project."[5]

39. Similarly, in 2018, Block.One's held an ICO for the EOS blockchain. After a year-long offering, Block.One raised a staggering $4.1 billion for the company and insiders.[6] Shortly after the ICO

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[2] *See* Dominic Williams, *et al*., *DFINITY Technology Overview Series Consensus System*, DFINITY STIFTUNG (Jan. 23, 2018), https://dfinity.org/pdf-viewer/pdfs/viewer?file=../ library/dfinity-consensus.pdf.

[3] Lucas Cacioli, *Tezos Settles Class-Action Lawsuit Over 2017 $232 Million ICO to the Tune of $25 Million*, BLOCKCHAIN.NEWS (Sept. 2, 2020), https://blockchain.news/news/tezos-settles-class-action-lawsuit-over-2017-XTZ-232-million-25-million.

[4] Osato Avan-Nomayo, *Tezos Likely Avoiding SEC Action With $25M Class-Action Lawsuit Settlement*, COINTELEGRAPH.COM (June 28, 2020), https://cointelegraph.com/news/tezos-likely-avoiding-sec-action-with-25m-class-action-lawsuit-settlement.

[5] *Id*.

[6] Brady Dale, *The First Yearlong ICO for EOS Raised $4 Billion. The Second? Just $2.8 Million*, COINDESK.COM (Sept. 17, 2019), https://www.coindesk.com/the-first-yearlong-ico-for-eos-raised-4-billion-the-second-just-2-8-million.

was completed, on September 30, 2019, the Securities and Exchange Commission ("SEC") completed an investigation and found that one Issuer, Block.one, had violated the Securities Act by selling the digital token EOS, an unregistered security, to the public. As a result of this SEC enforcement action, Block.one was required to pay a $24 million fine.[7]

40. The founder of another cryptocurrency exchange (Bibox), Aries Wanlin Wang, previously noted that the secondary market for digital assets can be "rigged by manipulators. If you put major currencies such as Bitcoin and Ethereum aside, many of the tokens you'll find issued through ICOs are there to be manipulated."[8]

41. According to Mr. Wang, "[t]hese tokens are similar to penny stocks. And everyone wants to believe they've discovered the next Bitcoin and Ethereum."[9]

42. Mr. Wang also candidly acknowledged that:

> [t]he problems facing the secondary market in crypto are similar to the problems that were faced by American stock exchanges 100 years ago. When a market lacks certain regulations and oversights, predictable things happen. ***Pump and dumps are very common in the secondary market of cryptocurrency***, just as they were on the US stock exchange so many years ago. Fraudsters spreading false news about new crypto in a chat room have a great deal in common with con artists who sent false telegrams with information that might impact a stock in 1919. In any traditional financial market, the practice of market manipulation is illegal. And it should be. The lack of regulation that lets some people make a quick dollar hurts everyone else because it hurts our faith in the system."

[Emphasis added.]

43. Notably, Bibox was one of only four cryptocurrency exchanges that have excluded ICP from trading.

B. The Background of ICP

44. Dfinity's so-called "Internet Computer" project purports to be a decentralized version of the internet itself. In essence, it is a smart contract platform designed to power blockchain versions of the internet's most popular applications – decentralized alternatives to WhatsApp, LinkedIn, eBay, TikTok, etc.

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[7] Press Release, *SEC Orders Blockchain Company to Pay $24 Million Penalty for Unregistered ICO* (Sept. 30, 2019), https://www.sec.gov/news/press-release/2019-202; SEC Release No. 10714, 2019 WL 4793292 (Sept. 30, 2019).

[8] Aries Wanlin Wang, C*rypto Economy: How Blockchain, Cryptocurrency, and Token-Economy Are Disrupting the Financial World* (2018).

[9] *Id*.

– which would displace the need to use centralized, gatekeeping hosting services like Amazon Web Services.[10]

45. The purported native cryptocurrency for Dfinity's Internet Computer project is the ICP token. Thus, ICP is both an investment in the Company (as sales are used to fund Company operations with the expectation that such investments in the Company will increase the value of ICP) and an investment in itself (with the expectation that the value of ICP will increase), as well as a means of exchange and governance promoted by Dfinity.

46. Unlike cryptocurrencies such as Bitcoin and Ethereum, which are mined by computer hardware validating transactions on their networks, all 469,212, 166.84 ICP tokens in existence were simply created by Dfinity in May 2021 as a part of the Company's functional equivalent of an ICO (the "Genesis Launch"). As discussed more thoroughly below (see supra, Section B) a significant amount of the total ICP supply was given to Controlling Defendants, with the remaining amount left retained by Dfinity.

47. Dfinity's plan was to publicly offer the ICP tokens it created and retained for sale to retail investors when the tokens were listed on various cryptocurrency exchanges. Dfinity would then use the proceeds to fund the Foundation's operations, including, but not limited to, the Internet Computer Project or "ICP."

48. Controlling Defendants have financially benefitted from their ICP being merchandized and enabled the large-scale launch through their connection to the largest cryptocurrency exchanges that made ICP widely available to the public.

49. Defendants have control over how many ICP are in the market.

50. No registration statement has been filed for ICP with the SEC and no registration statement is in effect for ICP.

[10] Mike Butcher & Ingrid Lunden, *DFINITY raises $102M from a16z and Polychain for a decentralized 'Internet Computer' to rival AWS*, TECHCRUNCH (Aug. 29, 2018), https://techcrunch.com/2018/08/29/dfinity/.

C. Polychain and Andreessen Horowitz Are Significant Stakeholders of ICP

51. In February 2017, Dfinity held a "Seed" fundraising round for the Company to use for its operations and investments in projects developed using ICP technology, receiving approximately $40 million in fiat cash and digital assets "primarily from enthusiasts who followed the project."[11]

52. Dfinity initially promised the "Seed Contributors" that the Company would run a "Main" fundraising round, akin to an ICO, at which time the seed contributors could cash out.[12]

53. "However," as noted in a May 21, 2021 ICP analyst report, "after the 2017 boom, the project realized its valuation target was set too low" and the Company believed that "running an ICO fundraiser could have ***placed it in a grey legal territory where securities law was concerned***."[13]

54. Upon information and belief, Polychain and Andreessen were among those initial "enthusiasts" who were the Seed Contributors to ICP.

55. The single "Main" round of Dfinity's funding model was subsequently changed to a two-part model. First, Dfinity would hold "Strategic" and "Private Presale" fundraising rounds. Second, Dfinity would hold what for all intents and purposes was the very same type of ICO-style fundraiser Defendant Williams claimed might run afoul of securities laws.

56. Defendant Williams conceded that Dfinity needed to change the original model because the Foundation's initial promise would have capped the Seed Contributors' returns with a "figure that we later realized was far too low – ***this would hardly satisfy a single large player now***, and it's clear our years in the crypto trenches had left us completely unprepared for the explosion in scale of the crypto industry."[14]

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[11] Dominic Williams, *Announcing DFINITY Fundraising Plans, and a Massive Welcome to Polychain Capital and Andreessen Horowitz* (Feb. 7, 2018), https://medium.com/dfinity/announcing-dfinity-fundraising-plans-and-a-massive-welcome-to-polychain-capital-and-andreessen-2ceb34769cd3 (last visited May 20, 2021).

[12] *See id.*

[13] Mira Christanto & Wilson Wthiam, *An Introduction to Dfinity and the Internet Computer* (May 10, 2021) https://messari.io/article/an-introduction-to-dfinity-and-the-internet-computer (emphasis added).

[14] Dominic Williams, *Announcing DFINITY Fundraising Plans, and a Massive Welcome to Polychain Capital and Andreessen Horowitz* (Feb. 7, 2018), https://medium.com/dfinity/announcing-dfinity-fundraising-plans-and-a-massive-welcome-to-polychain-capital-and-andreessen-2ceb34769cd3 (last visited May 20, 2021) (emphasis added).

57. In response, Defendant Williams and Dfinity designed this two-part funding model so that it would "ensure the position of Seed participants will receive 24.72% of the network tokens that will exist at Genesis . . . however much future funding is now raised."[15]

58. Sometime around January or February 2018, Dfinity ultimately held the "Strategic" fundraising round.

59. Andreessen and Polychain participated in this fundraising round as well, jointly contributing another $61 million.[16]

60. The "Strategic Round" investors were entitled to receive 7% of the initial supple of ICP tokens.[17]

61. As described in Defendant Williams' February 7, 2018 blog post "Announcing DFINITY Fundraising Plans, and a Massive Welcome to Polychain Capital and Andreessen Horowitz":

> [Dfinity] also decided that before going any further, we would raise a "Strategic" fundraising round that would bring in key partners who could help accelerate progress of our project. Polychain Capital – a successful and now famous crypto hedge fund backed by Andreessen Horowitz, Sequoia, USV, Founders Fund and many other notable LPs – contacted us during the summer of 2017, while we were still only an "aficionado's" project not many people knew about, and we found we worked extremely well with them. They are distinguished by bullish optimism about what our industry can achieve balanced by realism and operational smarts.
>
> It was decided that Polychain would lead a relatively small round, and also help establish a substantial "DFINITY Ecosystem Venture Fund" that will now fund projects building on the DFINITY Internet Computer or otherwise supporting it. Andreessen Horowitz, one of Silicon Valley's preeminent venture capital funds joined the round too, who are also well known for their forward thinking and the support they provide to investee projects. Today it was announced that, with the DFINITY Ecosystem Venture Fund, total funding for our project will exceed $100M. With this, you can expect DFINITY to begin to emerge from the dark.

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[15] *Id*.

[16] *See* Gertrude Chavez-Dreyfuss, *Blockchain project raises $61 million from Andreessen Horowitz, U.S. hedge fund*, REUTERS.COM (Feb. 7, 2018), https://www.reuters.com/article/us-blockchain-investment-andreessen/blockchain-project-raises-61-million-from-andreessen-horowitz-u-s-hedge-fund-idUSKBN1FR1IX.

[17] Mira Christanto & Wilson Wthiam, *An Introduction to Dfinity and the Internet Computer* (May 10, 2021) https://messari.io/article/an-introduction-to-dfinity-and-the-internet-computer (emphasis added).

62. Later in August 2018, Dfinity held its "Private Presale," wherein Polychain and Andreessen (among others), contributed $97 million, which was enough to make them eligible to receive 4.96% of the initial supply of ICP tokens.[18]

63. On August 29, 2018, Defendant Williams (via his blog) announced the successful completion of the Strategic and Private Presale funding round. According to Defendant Williams, this round was led by "returning investors" Andreesen and Polychain, who raised approximately $111 million in total for Dfinity's "operations."[19]

64. Ryan Zurrer, venture partner of Polychain, described the investment in Dfinity as Polychain's "largest-ever capital deployment."[20]

65. The following chart from Messari, shows the total token distribution in the Genesis allocation as of May 10, 2021:

MESSARI

Genesis Token Allocation

Total token distribution on May 10 2021

	Genesis Initial State Allocations	%	Number of Participants
Early Contributors	44,575,228	9.50%	<50
Seed	115,986,694	24.72%	370
Strategic Partnerships	32,845,140	7.00%	<50
Presale	23,295,828	4.96%	110
Strategic Partnerships	17,795,770	3.79%	<50
Community Airdrop	3,763,448	0.80%	50,000+
Initial Community and Developer	2,242,179	0.48%	<50
Node Operators	1,050,000	0.22%	57
Internet Computer Association	20,000,000	4.26%	1
Team Members	84,480,829	18.00%	200
Advisors and Other Third-parties	11,239,705	2.40%	<50
DFINITY Foundation	111,938,888	23.86%	1
Total	**469,213,709**	**100.0%**	

Data as of: May 10, 2021
Source: Dfinity, Messari

66. Notably, 24.72% of available ICP tokens went to "Seed Investors." Another 23.9% went to the Company itself. 7% and 4.96% went to Strategic and Private Presale Investors, respectively. Thus, in

[18] Mira Christanto & Wilson Wthiam, *An Introduction to Dfinity and the Internet Computer* (May 10, 2021), https://messari.io/article/an-introduction-to-dfinity-and-the-internet-computer.

[19] Dominic Williams, *Announcing the Completion of DFINITY's Presale Round* (Aug. 29, 2018), https://medium.com/dfinity/dfinitys-presale-round-completed-238da6b42fa1 (last visited May 20, 2021).

[20] *See* Gertrude Chavez-Dreyfuss, *Blockchain project raises $61 million from Andreessen Horowitz, U.S. hedge fund*, REUTERS.COM (Feb. 7, 2018), https://www.reuters.com/article/us-blockchain-investment-andreessen/blockchain-project-raises-61-million-from-andreessen-horowitz-u-s-hedge-fund-idUSKBN1FR1IX.

total as much as 60% of the ICP tokens available at the Genesis launch were held by Dfinity and insiders like the Controlling Defendants.[21]

67. Upon information and belief, Polychain and Andreessen together supplied a significant portion of the capital that Dfinity had received during the Seed, Strategic, and Private Presale fundraising rounds. In particular, as Seed Contributors, "enthusiasts" like Polychain and Andreessen were likely entitled to a significant portion of the 24.72% seed contributor allotment of available ICP tokens.

68. Polychain and Andreessen's contribution in the Strategic funding round was at least 50% higher than their collective contribution to Dfinity during the Seed funding round.

69. As significant stakeholders with corporate governance rights provided by their Seed and Strategic contributor allotments of ICP tokens, Polychain and Andreessen stood to gain a significant amount if the price of, and interest in, ICP was pumped up as high as possible prior to the token's listing on open exchanges.

70. As one analyst observed, the token distribution given to early investors like Polychain and Andreessen "amounts to a windfall for early backers of the Dfinity project . . . who will be able to hold on to the tokens or sell them on a secondary market"[22] like Coinbase and others.

71. In particular, seed investors received the ICP token allotment at a price of $0.03. Strategic investors' allotment price was $0.62 per token. And Private Presale investors received ICP tokens for $4.16. Thus, at the $731 peak of ICP's token price on opening day of the Genesis launch – when massive selling pressure caused the ICP price to drop exponentially – Polychain and Andreessen saw a staggering return on investment of approximately 2,436,566%, 117,803%, and 17,472% on the seed, strategic, and private presale investments, respectively.

72. Even at the current price of approximately $36, Polychain and Andreessen's seed, strategic, and private presale investments are still up over 119,000%, 5,700%, and 765%, respectively.

[21] Mira Christanto & Wilson Wthiam, *An Introduction to Dfinity and the Internet Computer* (May 10, 2021), https://messari.io/article/an-introduction-to-dfinity-and-the-internet-computer.

[22] Jeff John Roberts, *Exclusive: Dfinity Announces $35M 'Air Dro' for Blockchain-Based Cloud*, FORTUNE.COM (May 29, 2018), https://fortune.com/2018/05/29/blockchain-dfinity-air-drop/.

D. Defendants Solicit ICP Sales

73. From 2016 to the present, Defendants and their affiliates have been engaged in an ongoing scheme to promote the Internet Computer project and sell ICP tokens to the general public in order to further their financial benefits.

74. Indeed, Dfinity dedicated an entire section of its website to providing advice on "How to Access 'Seed' and 'Airdrop ICP Tokens and Participate in the Internet Computer Network." This section also stresses that "it is very important that the flow of liquid ICP tokens around the network is released on a schedule for the safety and security of ICP holders, the network, and its users while the underlying technology is betting fettled and its ecosystem is being established."

75. Defendant Williams initiated a public relations campaign to convince potential investors of the merits of ICP over others developing blockchain technology projects. Notably, Defendant Williams repeatedly extolled Dfinity's virtues and insisted that the Company was not seeking a quick cash grab-style ICO.

76. For example, in an August 2017 blog post, Defendant Williams used the ICO's of Tezos and EOS as a foil to Dfinity's supposedly altruistic approach to fundraising. Defendant Williams suggested that "those a who have just run ICOs" like Tezos and EOS were just "wishing to earn bounties."[23]

77. Defendant Williams further criticized the Tezos and EOS ICOs, suggesting that those companies were "chasing ICO money and press coverage" while ICP was putting together a "stellar team and science first."[24] Defendant Williams further touted the depth of Dfinity's "team," bragging that the Company had "many more HUGE hires in the pipeline that will rock the tech world. Superstars are now joining us in droves because of our authentic novel science and the team we already have."[25]

78. In a further effort to distance Dfinity from "unscrupulous projects . . . some whose primary aim was in fact simply to collect monies from people seeking a quick buck or to launch a dubious token that

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[23] Domenic Williams, *On Accelerating Blockchain Evolution Using Different Funding and Team Models* (Aug. 25, 2017), https://medium.com/dfinity/on-accelerating-blockchain-evolution-using-different-funding-and-team-models-1c04c3d0893a (last visited May 20, 2021).

[24] *Id.*

[25] *Id*.

speculators would send to the moon so that the founders could cash out," Defendant Williams explained that:

> The state of the ICO market creates some challenges for DFINITY. The lack of discrimination between good and bad projects means there is very poor price discovery and, if we run a traditional ICO we might also become guilty by association in many eyes. Furthermore, we fear that a legal and regulatory hornets' nest has been created, and we don't want to have our project – which has an important purpose and involves a distinguished team of senior researchers and engineers – distracted by legal problems.[26]

79. Dfinity announced that it would instead of having a traditional ICO, the Company would proceed with two funding rounds. The first was a "Presale" round with select investors. And despite Defendant Williams ardent criticisms against opportunistic ICOs, Dfinity announced it would also have a second ICO-style round of fundraising from ICP's public listing on exchanges.

80. On February 7, 2018, Defendant Williams personally advised potential investors: "The second round may or may not happen, and will be termed the 'ICO,'" which would be "run by regulated traditional exchanges at the moment the network goes live, setting a new milestone in the sale of utility tokens powering decentralized networks." Defendant Williams offered that Dfinity was eager to "begin preparing our early community for the [ICP] token Presale," and told potential investors: "If you are interested in getting involved, stay tuned!"[27]

81. Concurrently, Defendant Williams boasted to potential investors: "It will be extraordinarily easy to build on Dfinity . . . Developers building on the Internet Computer will have super powers. The word will get around that these guys are building with all these amazing benefits. And uptake will be pretty rapid once the word gets out."[28]

82. On January 23, 2020, Defendant Williams continued touting ICP's blockchain technology at the Davos Summit hosted by the World Economic Forum, arguing that its prototype of an "open" social network "LinkedUp" was superior to existing social networks like LinkedIn because it would give users a

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[26] Dominic Williams, *Announcing DFINITY Fundraising Plans, and a Massive Welcome to Polychain Capital and Andreessen Horowitz* (Feb. 7, 2018), https://medium.com/dfinity/announcing-dfinity-fundraising-plans-and-a-massive-welcome-to-polychain-capital-and-andreessen-2ceb34769cd3 (last visited May 20, 2021).

[27] Mo Marshall, *Dfinity raises $61 million for blockchain-based cloud*, VENTUREBEAT.COM (Feb. 7, 2018), https://venturebeat.com/2018/02/07/dfinity-raises-61-million-for-blockchain-based-cloud/.

[28] *Id*.

"deeper understanding of how the proprietary algorithms work" and make them "more empowered to fight against monopolistic trends in the existing internet infrastructure."[29]

83. On June 25, 2020, the official Dfinity twitter account issued a tweet that stated that "Billions of dollars are waiting to invest in the open web" and highlighted an event with Polychain founder Olaf Carlson-Wee.

84. On July 9, 2020, Dfinity published an article on Medium.com authored by Polychain founder Olaf Carlson-Wee entitled "Investing in the Open Web: A New Thesis." In this article, Carlson-Wee, on behalf of Dfinity, promoted investment in the Internet Computer and highlighted investors' expectations of profit. The article stated that "Financial backers see tremendous upside in the open web's ability to create financial opportunities for innovation that previously didn't exist." The article further stated that "venture capitalists with billions in assets under management are eyeing decentralized infrastructure that will make it easier for developers to innovate and scale-out their internet services to billions of users" and that "VCs are eager to deploy billions in capital to foster the decentralized web[.]"

85. On February 18, 2021, Dfinity held a virtual event in conjunction with Forbes called "Trillion Dollar Opportunity: How a New Internet Will Completely Reimagine Your Business Model."[30] The event "convened top investors and entrepreneurs" to discuss "how businesses can seize this opportunity to reset, rethink and reinvest in how they interact with the internet[.]"

86. Leading up to the Genesis launch, and in the days following its opening, Defendants relentlessly marketed ICP in an effort to ensure ICP's favorable listing on the various exchanges, which, in turn, would serve to inflate ICP's opening price. Part of this strategy was to have Defendant Williams launch a press tour continued to promote ICP.

87. Defendant Williams went on a press tour to solicit investment in the Internet Computer and ICP tokens. For example, in a May 7, 2021 interview Defendant Williams ahead of the ICP launch, Defendant Williams proclaimed ICP will be "humanity's primary compute platform for building software"

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[29] Michael Nunez, *This Startup Thinks Blockchain Is The Only Thing That Can Save Social Media*, FORBES.COM (Jan. 23, 2020), https://www.forbes.com/sites/mnunez/2020/01/23/this-startup-thinks-blockchain-is-the-only-thing-that-can-save-social-media/?sh=250f85ec5097.

[30] *See* https://www.forbes.com/sites/forbesinnovationteam/2021/01/20/trillion-dollar-opportunity-how-a-new-internet-will-completely-reimagine-your-business-model/?sh=7292d9d361d8.

in 20 years.[31] During the same Genesis Launch event that Williams made these statements, Dfinity employee Liz Yang (who is based in the San Francisco Bay Area) advised investors that they could "begin acquiring the ICP utility token through approved channels such as exchanges very soon." Dfinity employee Michael Hunte (also based in the San Francisco Bay Area) described the launch of Dfinity network as "the dawn of the new open and free internet."

88. On May 8, 2021, in an live-streamed interview with Bloomberg, Defendants Williams boasted how on ICP "you can build things on a blockchain now that [ ] never would have been possible."[32] Defendant Williams further suggested that ICP users could create disruptive social media networks that could displace rivals like Facebook and innovate "tokenized social media."[33]

89. Williams likewise told Business Insider that mainstream venture capital firms are sitting on "billions and billion of dollars" that they're ready to invest in crypto and so-called "open internet" startups.[34]

90. On May 10, 2021, ICP was listed on multiple cryptocurrency exchanges like Coinbase, Binance, Huobi, OKEx and others. By way of the internet, including Dfinity' website, Defendant Williams's blog, Twitter, and the over 25 cryptocurrency exchanges that trade ICP, interstate means are used in connection with the offer and sale of ICP.

91. Through Defendant Williams' bombastic solicitations, and the out of nowhere top-10 debut that was enabled by the Controlling Defendants, ICP capitalized on investors' "fear of missing out" on the next big thing.

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[31] Ariana Hamacher, *Get Set For 'a Wild Ride': Dfinity's Dom Williams on the Launch of the Internet Computer* (May 7, 2021), https://decrypt.co/70175/get-set-for-a-wild-ride-dfinitys-dom-williams-on-the-launch-of-the-internet-computer.

[32] *Internet Computer Works Differently Than Any Other Blockchain: Dominic Williams*, BLOOMBERG.COM (May 8, 2021), https://www.bloomberg.com/news/videos/2021-05-08/internet-computer-works-differently-than-any-other-blockchain-dominic-williams-video; *see also* Nicolas Pongratz, *Internet Computer (ICP) Market Value Reaches $45B Two Days after Launch*, YAHOO!FINANCE (May 12, 2021), https://finance.yahoo.com/news/internet-computer-icp-market-value-110516675.html?guccounter=1.

[33] *Internet Computer Works Differently Than Any Other Blockchain: Dominic Williams*, BLOOMBERG.COM (May 8, 2021), https://www.bloomberg.com/news/videos/2021-05-08/internet-computer-works-differently-than-any-other-blockchain-dominic-williams-video.

[34] Shalini Nagarajan, *Internet Computer is already one of the top 10 cryptocurrencies with a market cap of $45 billion – just two days after launching*, Markets Insider (May 12, 2021), https://markets.businessinsider.com/currencies/news/internet-computer-dfinity-top-digital-assets-market-cap-dominic-williams-2021-5

92. Despite having less than $200 million total from its Seed and Strategic fundraising rounds as capital and being relatively unknown at its debut (notwithstanding Controlling Defendants marketing efforts), ICP catapulted to the eighth largest token in terms of market capitalization.[35]

93. ICP debuted at a price of $731 on its first day and its valuation rose to more than $45 billion.[36]

94. Immediately after being listed on the most popular exchanges, however, ICP's price plummeted. As reported on the crypto-related online forum, Coinspeaker.com:

> Internet Computer (ICP) made a debut with an incredible display of $45 billion market value. However, the moment was short-lived as the price took a nosedive from $731 debut price to $146 within a few minutes.[37]

95. As crypto journalist, Samuel Wan, observed in a NewsBTC article, *Internet Computer (ICP) Drops From Nowhere to Storm The Top Ten*, "it's not often that a relatively unknown token enters the top 10. This has many wondering if ICP is a legit project."[38]

96. Wen further reported that "ICP enter[ed] the top ten on CoinMarketCap following its exchange debut. ICP was sitting as high as the fourth spot, but following heavy sell pressure, it's since dropped to the seventh position. . . ."[39]

97. The price of ICP continued to drop in the following weeks. Throughout this time, however, Defendants continued to promote the ICP and its potential for success.

98. On May 12, 2021, Defendant Williams repeated the claim that ICP was the "third major innovation in blockchain," following Bitcoin and Ethereum.[40]

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[35] Brenden Rearick, *Internet Computer (ICP) Crypto: 10 Things to Know as ICP Snags No. 8 Spot*, INVESTORPLACE.COM (May 12, 2021), https://investorplace.com/2021/05/internet-computer-icp-crypto-10-things-to-know-as-icp-snags-no-8-spot/.

[36] Matthew Leising and Olga Kharif, *Overnight Crypto Sensation Sets Out to Undo Internet's Failings*.BLOOMBERG.COM (May 12, 2021), https://www.bloomberg.com/news/articles/2021-05-12/crypto-s-overnight-sensation-is-taking-on-the-web-as-we-know-it.

[37] https://www.coinspeaker.com/internet-computer-falls-price-endorphin/.

[38] https://www.newsbtc.com/news/internet-computer-icp-drops-from-nowhere-to-storm-the-top-ten/.

[39] *Id*.

[40] Brenden Rearick, *Internet Computer (ICP) Crypto: 10 Things to Know as ICP Snags No. 8 Spot*, INVESTORPLACE.COM (May 12, 2021), https://investorplace.com/2021/05/internet-computer-icp-crypto-10-things-to-know-as-icp-snags-no-8-spot/.

99. That same day, the founder of Polychain, Olaf Carlson-Wee, echoed that statement in an interview with Bloomberg: "Dfinity is the most important technology launched since Ethereum."[41] Carlson-Wee even personally endorsed Dfinity's prospects of displacing Ethereum, saying "People like me in the crypto world recognize the magnitude of the technology breakthroughs Dfinity represents. . . . Even with the changes Ethereum is going through to improve its speed and performance it won't be able to compete with what the Internet Computer will enable . . . Dfinity will enable novel types of apps that aren't possible to build on any other blockchain."[42]

100. Simultaneously, Defendants leveraged their relationships with various exchanges to further boost sales of ICP.

101. For example, besides being a large investor in ICP, Andreessen also happens to be the biggest outside investor in one of the largest crypto exchanges, Coinbase. Andreessen's stake in Coinbase is worth approximately $9.7 billion.[43]

102. Furthermore, according to filings with the Securities and Exchange Commission, Marc Andreessen personally owns 5,516,037 Class A shares and 23,961,498 Class B shares of Coinbase stock and is the largest individual shareholder behind Coinbase's CEO and co-founder Brian Armstrong.

103. Andreessen's co-founders and general partners, Marc Andreessen and Kathryn Haun also both serve as members of Coinbase's board of directors.[44]

104. Andreessen used its relationship with Coinbase to secure a favorable listing and price of ICP during its debut on Coinbase.

105. Indeed, Coinbase's opening listing price for ICP was one of the highest of all crypto exchanges participating in ICP's Genesis event.

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[41] Matthew Leising and Olga Kharif, *Overnight Crypto Sensation Sets Out to Undo Internet's Failings*.BLOOMBERG.COM (May 12, 2021), https://www.bloomberg.com/news/articles/2021-05-12/crypto-s-overnight-sensation-is-taking-on-the-web-as-we-know-it.

[42] *Id*.

[43] Ari Levy, *Here's who just got rich from the Coinbase debut*, CNBC (Apr. 14, 2021), https://www.cnbc.com/2021/04/14/coinbase-who-gets-rich.html.

[44] https://investor.coinbase.com/governance/board-of-directors/default.aspx.

106. Crypto analysts covering ICP noted that, compared to other decentralized ecosystem projects like Polkadot and Terra, it appeared that "ICP is priced above peers."[45]

107. Additionally, as crypto journalist Samuel Wen observed: "The sudden appearance of ICP in the top ten has caused a stir in that ICP has achieved a lot in a relatively short time. For example, ICP is already listed on Coinbase Pro, whereas ADA, which has been around since late 2017, only achieved this in March this year."[46]

108. Another example of Dfinity having leverage to gain a favorable listing price can be seen between Dfinity and the cryptocurrency and derivatives exchange OKEx. On May 12, 2021, OKEx announced the public listing of ICP on the exchange. That same announcement also disclosed that Dfinity had previously agreed to help collaborate and fund OKEx's "Blockdream Ventures fund," jointly providing $10 million in special funding.[47] OPEx Chief Executive Officer, Jay Hao, personally endorsed the ICP's public listing in the announcement:

> We are pleased to support the launch of the Internet Computer as a Day 1 partner and be a part of this global movement to reinvent the internet as we gradually move toward a decentralized future. We hope that this will be the first big step in allowing entrepreneurs, developers or enterprises to host secure software systems built on top of computer science, and really just backing the long-term evolution of the internet.[48]

109. Defendant Williams was quoted in the OPEx press release stated, in a press release for the listing of ICP on the OKEx exchange, that "The Internet Computer represents the third major innovation in blockchain after Bitcoin and Ethereum. . . . It represents the product of an unprecedented multi-year R&D effort, orchestrated by the DFINITY Foundation from research and development centers in Zurich, Palo Alto, San Francisco and Tokyo."[49]

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[45] Mira Christanto & Wilson Wthiam, *An Introduction to Dfinity and the Internet Computer* (May 10, 2021), https://messari.io/article/an-introduction-to-dfinity-and-the-internet-computer.

[46] https://www.newsbtc.com/news/internet-computer-icp-drops-from-nowhere-to-storm-the-top-ten/.

[47] Press Release, *OKE Lists DFINITY's Internet Computer Token, ICP* (May 12, 2021), https://www.prnewswire.com/news-releases/okex-lists-dfinitys-internet-computer-token-icp-301290037.html.

[48] *Id*.

[49] *Id*.

110. These efforts were not enough to stem the increasing losses as ICP's token price continued to fall since its debut. In response, Defendant Williams made another announcement this time about a new program being launched by Dfinity: "Endorphin."

111. On May 14, 2021, Defendant Williams and Dfinity announced the Company's plan for Endorphin, a decentralized operating system for phones, laptops, and other user devices.[50] Defendant Williams claimed that Dfinity was "looking for ways to accelerate the program, and I'm hopeful announcement will be made shortly." The message that some analysts in the cryptocurrency sector received was that the launch of Endorphin would "create huge demand which will in response have an impact on the price of ICP."[51]

112. This announcement, however, did not have the desired effect. As of May 16, 2021, ICP had lost 60% of its debut price and was valued at only $32 billion.[52]

113. On May 17, 2021, the Coinspeaker website reported that "[d]espite the coin's price falling from its debut price of $731 to $258 over the past weekend, the networks digital currency has continued to nosedive. . . . At the time of writing, Internet Computer is trading at a price of $209.15, down 16.43% in the past 24 hours and by 70% from its all-time high (ATH) of $737.20 according to CoinMarketCap."[53]

114. The report noted that ICP holders had "enjoyed a robust and well-acclaimed debut," but that they are now looking towards "disruptive use cases to bounce back to its winning ways."[54]

115. As of May 22, 2021, the price of ICP had crated to $134 a token.

116. As noted in a May 22, 2021 video by the popular crypotocurrency YouTube channel, Coin Bureau, the current drop in ICP's price chart "looks more in line [a] downward price trend, which I believe

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[50] Dominic Williams, *Plans for "Endorphin," a Free and Open Crypto OS for Smartphones and Other End-User Devices* (May 14, 2021), https://medium.com/dfinity/plans-for-endorphin-a-free-and-open-crypto-os-for-smartphones-and-other-end-user-devices-9ebb763a711e.

[51] John K. Kumi, *Internet Computer (ICP) Falls Heavily from Debut Price Despite Dfinity's Plans to Launch Endorphin* (May 16, 2021), https://www.coinspeaker.com/internet-computer-falls-price-endorphin/.

[52] *Id.*

[53] Benjamin Godfrey, *Dfinity's Internet Computer (ICP) Continues on Its Price Decline amid Ongoing Market Correction* (May 17, 2021), https://www.coinspeaker.com/internet-computer-icp-correction/.

[54] *Id.*

will continue for some time. This is because there seems to be much more sell pressure than buy pressure for the ICP token."[55]

117. As Linda Kreitzman, Assistant Dean at University of California at Berkley's Haas School of Business who helps oversee the Berkeley Haas Blockchain Initiative noted, the "timing" of ICP's listing and its "cool" name "created the perfect situation for an explosive debut" for the Dfinity's ownership token.[56]

118. Defendants took advantage of this carefully timed ICO to sell their ICP holdings both when the cryptocurrency market was generally reaching all-time highs amidst the 2021 "crypto bull run" and when the ICP tokens, in particular, were exponentially inflated during the debut. The ICO also was also conducted shortly after Coinbase's Direct Listing, which brought Coinbase shares to the NASDAQ stock exchange.

119. On June 14, 2021, Defendant Williams posted a thread on the Dfinity's page on Reddit titled "An ICP Tokenomics NNS Proposal is in the works – Dominic Williams," which made the following admission:

> It is arguably the case that many ECT/Seed holders don't care much about the fair price for ICP because they have achieved extraordinary gains. Even at $60, they are still 1800X up. Of course, experience crypto holders want to maximize their gains . . . . ***[T]here has been a lot of sell volume so far, mainly from ECT/Seed and ex and early employees and affiliates that lucked out***. The latter group will exhaust their reserved rather quickly [in my opinion] which will be no bad thing. ***ECT/Seed not so quickly***. With healthier future volumes and demand, that should not be an issue, but anyway . . . .
>
> I am working on a tokenomics proposal to address the situation, which I'm hoping will be proposed to the NNS in about 2-3 weeks. The IC is fully adaptive, and that means that it can constantly improve the protocol *and* the tokenomics. ***Advanced cryptoeconomics can be used to weaken the "prisoner's dilemma" dynamic that has arisen***.[57]

120. On June 28, 2021, Arkham Intelligence released a report on the "Internet Computer Token" (the "Arkham Report").[58] Summing up the ICP story to that point, the Arkham Report stated:

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[55] *Internet Computer (ICP): BIGGEST Launch of 2021??*, https://www.youtube.com/watch?v=YGrFj3pav_A.

[56] Danielle Abril, *What is Internet Computer? A guide to the latest buzzy cryptocurrency* (May 12, 2021), https://fortune.com/2021/05/12/what-is-internet-computer-cryptocurrency-digital-currency/#:~:text=Dfinity%20is%20backed%20by%20investors,Aspect%20Ventures%2C%20and%20Eterna%20Capital.

[57] *See* https://www.reddit.com/r/dfinity/comments/nz715r/an_icp_tokenomics_nns_proposal_is_in_the_works/ (emphasis added).

[58] https://arkhamintelligence.com/icp/report.pdf.

> As of this writing, the Internet Computer token (ICP) has lost 95% of its value from its launch event in May, dropping from $730 to $30, and wiping out over $300 billion dollars of value based on ICP's total supply. These are astounding numbers in the crypto world and financial world overall, even with the current market's volatile prices and soaring valuations. At its peak, ICP was the third most valuable crypto-asset, behind Bitcoin and Ethereum, and was worth as much by market cap as Mastercard, Bank of America, and PayPal. In its first month ICP's price decreased more than any other top 100 token by a good margin. Altogether retail investors who bought ICP on Coinbase or other major crypto exchanges have lost millions if not billions of dollars.

121. The Arkham Report found that the Dfinity Treasury and project insiders deposited billions of dollars' worth of ICP to exchanges at the time of the Genesis listing and the following weeks. By analyzing the transactions made by various exchanges, the Arkham Report notes that deposits made by the Dfinity Treasury provided initial liquidity on exchanges. In addition to the Dfinity Treasury itself, the Arkham Report found that the Dfinity Treasury also sent 34.1 million ICP tokens to 34 suspected insider addresses. These addresses have deposited 10.7 million ICP tokens to exchanges (very likely for sale) during the Genesis listing and intermittently in the weeks following the Genesis listing. The Arkham Report identified a fundamental pattern of activity of many suspected insiders: a large transfer from the Treasury before listing day, followed by intermittent exchange deposits post-listing. These transfers were very likely for sale and the exceptional decrease in the price of ICP since its listing is indicative of massive selling.

122. In addition, the Arkham Report found that Dfinity did not follow industry practices meant to demonstrate good faith and assure investors that project insiders would not trigger a price collapse through massive selling. The Arkham Report called into question the lack of transparency from Dfinity on Token Allocation and unlocking schedules, and determined, based on a review of Dfinity's public materials, there was no widely distributed public statement that included the allocation and unlocking schedules.

123. Indeed, there was no clear and detailed breakdown of token allocation and unlocking schedules, only the total supply of tokens and different categories of holders. By failing to provide such critical information, retail investors were caught in a "rug pull," a "team dump" or a "VC dump" as Defendants collapsed the ICP price by offloading large amounts of ICP tokens.

E. Investors Would Not Reasonably Have Understood that ICP Tokens Were Securities

124. In connection with the Genesis launch, Dfinity and Defendant Williams made statements that reasonably led Plaintiffs and Class members to conclude that the ICP tokens were not securities.

125. As a threshold matter, Dfinity refused to register ICP tokens with the SEC, which indicated to investors that these were not securities. No such valid exemption from registration requirements exists for ICP.

126. Additionally, Dfinity repeatedly asserted that ICP tokens were "utility tokens," rather than "security tokens" (which would be securities that would have to be registered with the SEC). For example, in a May 6, 2021 blog post titled "Understanding the Internet Computer's Network Nervous System, Neurons, and ICP Utility Tokens" – as the names indicates – refers to ICP as "native utility tokens."[59]

127. Similarly, another Dfinity blog post four days later echoes the statement that "ICP are native utility tokens."[60]

128. That same day, May 10, 2021, Dfinity published a second blog post titled "How to Access 'Seed' and 'Airdrop' ICP Tokens and Participate in the Internet Computer Network," which again referred to ICP as "utility tokens."[61]

129. Defendants also misleadingly compared ICP to Bitcoin and Ethereum, which are commodities. Defendant Williams, for example, wrote in August 2020 that the Internet Computer "fits" on a "continuum" that included Bitcoin and Ethereum.[62] In particular, Williams stated the following:

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[59] https://medium.com/dfinity/understanding-the-internet-computers-network-nervous-system-neurons-and-icp-utility-tokens-730dab65cae8.

[60] Dfinity, *Getting Started Using the ICP Wallet and Network Nervous System Dapp on the Internet Computer* (May 10, 2021), https://medium.com/dfinity/getting-started-on-the-internet-computers-network-nervous-system-app-wallet-61ecf111ea11.

[61] Dfinity, *How to Access 'Seed' and 'Airdrop' ICP Tokens and Participate in the Internet Computer Network* (May 10, 2021), https://medium.com/dfinity/how-to-access-seed-and-airdrop-icp-tokens-and-participate-in-the-internet-computer-network-e6cd663a0c3c.

[62] https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-network-afc513bf15e1.

> On this spectrum is Bitcoin, which is a pure cryptocurrency designed as a digital gold, through Ethereum, which is a highly programmable cryptocurrency capable of supporting sophisticated DeFi, through to the Internet Computer, which can run mainstream enterprise systems and hyperscale internet services. All three are blockchains, but they provide different things.

130. In that same blog, Defendant Williams further stated that the Internet Computer's software canisters were "tamperproof just like Ethereum smart contracts."[63]

131. In an October 7, 2020 blog post "A Closer Look at Software Canisters, an Evolution of Smart Contract," the Foundation stated software canisters were a "key concept" for ICP, and noted how, among other things, an Ethereum developer may associate these canisters with smart contracts.[64] Dfinity went on to endorse this comparison as "correct."

132. At the time of the Genesis launch, Dfinity took advantage of the market's lack of understanding and awareness concerning how this particular investment contract worked. In the face of promises that ICP would be similar to Bitcoin and Ethereum, and considering the new technology at issue and Dfinity's other statements, many investors were understandably unaware that ICP tokens had fundamentally different features than other cryptocurrencies, which the SEC has determined are not securities.[65]

133. Moreover, the Internet Computer project was advertised as being an improvement on Bitcoin, Ethereum, and other cryptocurrencies. For example, on August 28, 2020, Defendant Williams published an article on the Dfinity blog titled "How Ethereum Could Be Supercharged by the Internet Computer Network" that made several statements proclaiming the benefits of ICP over "traditional blockchains."[66] In particular, Williams offered that:

> The Internet Computer works differently than traditional blockchains, and this enables Ethereum developers to incorporate its capabilities into their dapps with relative ease. For

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[63] https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-network-afc513bf15e1.

[64] Dfinity, *A Closer Look at Software Canisters, an Evolution of Smart Contract* (October 7, 2020), https://medium.com/dfinity/software-canisters-an-evolution-of-smart-contracts-internet-computer-f1f92f1bfffb.

[65] Note – there is some statement of policy on the Ethereum which noted that the ICO was problematic, but noted it was long after any SOL had run out.

[66] Dominic Williams, *How Ethereum Could Be Supercharged by the Internet Computer Network* (August 28, 2020), https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-network-afc513bf15e1.

> example, whereas Ethereum requires users to submit some amount of ETH with every transaction to pay for the gas that fuels the computation resulting from smart contract code being invoked, on the Internet Computer canisters (a form of smart contracts) are pre-charged with "cycles" (the equivalent of gas) and pay for computation themselves.[67]

134. Defendant Williams further touted advantages of the Internet Computer over Ethereum:

a) "Ethereum dapps can use [ICP's] software canisters to expand their capabilities in a multitude of exciting ways, including scaling data storage and processing, and serving Web experiences."

b) "To store 1GB of data inside a smart contract on the Ethereum network would cost millions of dollars, which can make it prohibitively expensive to maintain anything beyond fiduciary data. By contrast, the cost of storing 1GB of data inside a canister on the Internet Computer over some substantial period of time can cost as little as a few cents, providing an incredible solution for Ethereum dapps that need to maintain and process large data sets."; and

c) "The Internet Computer's protocols also apply far more advanced cryptography and computer science [than Ethereum], making it more difficult for community developers to drive R&D alone. . . ."[68]

135. In addition to claiming ICP's technical superiority over other cryptocurrencies, Dfinity also indicated that it would benefit financially and use the funds raised through Genesis launch to continue to enhance the ICP software and support the growth of the project.

136. At the time of the Genesis launch, Defendants took advantage of the market's lack of understanding and awareness concerning how this investment contract worked. With promises that ICP would be better than other cryptocurrencies like Ethereum, many individuals were unaware that ICP tokens had fundamentally different features than other cryptocurrencies, including being more centralized than Bitcoin or Ethereum. One of these primary differences is that all ICP tokens were issued by the Foundation at creation at very little economic cost – and enormous potential upside – to Defendants.

137. The creation of ICP tokens at the direction of Dfinity occurred through a centralized process, in contrast to Bitcoin and Ethereum. This would not have been apparent at issuance, however, to a

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[67] *Id.*

[68] *Id.*

reasonable investor. Rather, it was only after the passage of time and disclosure of additional information about the issuer's intent, process of management, and success in allowing decentralization to arise that a reasonable purchaser could know that he or she had acquired a security. Purchasers were thereby misled into believing that ICP was something other than a security, when it was a security.

138. Accordingly, it was not apparent to a reasonable investor, at issuance, that the ICP tokens were securities under the law, and a reasonable investor would not have believed they were securities.

F. ICP Is a Security

139. Under Section 2(a)(1) of the Securities Act, a "security" is defined to include an "investment contract." 15 U.S.C. §77b(a)(1). An investment contract is "an investment of money in a common enterprise with profits to come solely from the efforts of others." *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946). Specifically, a transaction qualifies as an investment contract and, thus, a security if it is: (1) an investment; (2) in a common enterprise; (3) with a reasonable expectation of profits; and (4) to be derived from the entrepreneurial or managerial efforts of others. *See United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852-53 (1975). This definition embodies a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits," and thereby "permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of 'the many types of instruments that in our commercial world fall within the ordinary concept of a security.'" *W.J. Howey Co.*, 328 U.S. at 299. Accordingly, in analyzing whether something is a security, "form should be disregarded for substance," and the emphasis should be "on economic realities underlying a transaction, and not on the name appended thereto." *Forman*, 421 U.S. at 849.

140. Investors who bought ICP tokens invested money or other valuable consideration, in a common enterprise: namely Dfinity. Investors had a reasonable expectation of profit based upon the efforts of the Defendants, including, among other things, Defendant obtaining favorable listings of their ICP tokens on cryptocurrency exchanges such as Coinbase and Binance.

1. ICP Investors Invested Money

141. Plaintiff and the Class invested fiat, including U.S. dollars, and digital currencies, such as Bitcoin and Ethereum, to purchase ICP tokens.

142. The ICP tokens were listed on cryptocurrency exchanges like Coinbase and Binance, which allowed retail investors to purchase ICP tokens with traditional and other digital currencies.

143. Defendants sold ICP tokens to the general public through global, online cryptocurrency exchanges during its so-called "Genesis" listing. ICP can be bought or sold on over 25 exchanges.

144. Every purchase of ICP by a member of the public is an investment contract.

2. ICP Investors Were Intertwined in a Common Enterprise with Defendants

145. Additionally, investors were passive participants in the ICP tokens' Genesis launch and the profits of each Plaintiff and the Class were intertwined with those of Defendants and of other investors. Dfinity concedes that it uses ICP to fund its operations and promote projects on the Internet Computer, even criticizing other blockchain technology developers for not using their proceeds from previous ICOs to hire more quantity and quality employees.[69]

146. Defendants also were responsible for supporting the ICP tokens, pooled investors' assets, and controlled those assets.

147. Further, Defendants hold a significant stake in the ICP tokens, and thus shared in the profits and risk of the project.

148. For example, Defendant Williams himself explained the objectives of Dfinity's investing rounds and Genesis launch was to fund the Dfinity Foundations operations and investments.

3. Investors Purchased the ICP Tokens with a Reasonable Expectation of Profit from Owning Them

149. Investors in the ICP tokens, including Plaintiffs and the Class, made their investment with a reasonable expectation of profits. The ICP tokens were sold to investors prior to a network or "ecosystem" being fully developed on which they could be used. For pre-functional tokens, such as the ICP tokens, the primary purpose for purchasing ICP tokens was to make a profit or secure governance rights, rather than to utilize the ICP tokens themselves for a task.

[69] Domenic Williams, *On Accelerating Blockchain Evolution Using Different Funding and Team Models* (Aug. 25, 2017), https://medium.com/dfinity/on-accelerating-blockchain-evolution-using-different-funding-and-team-models-1c04c3d0893a (last visited May 20, 2021).

4. Investors Expected Profits from the ICP Tokens to Be Derived from the Managerial Efforts of Defendants

150. Investors' profits in the ICP tokens were to be derived from the managerial efforts of others – specifically the Foundation, the Company, and Defendant Williams. ICP investors relied on the managerial and entrepreneurial efforts of the Foundation, and its executive and development teams (which included Defendant Williams) to manage, oversee, and/or develop the projects funded by the Genesis launch.

151. Purchasers of pre-functional tokens necessarily rely on the managerial efforts of others to realize value from their Investments. The success of these managerial efforts in developing the networks on which these tokens will operate is the primary factor in their price, that is, until such tokens transition into being functional utility tokens.

152. Each of the ICP tokens was a security at issuance because profit from the ICP tokens would be derived primarily from the managerial efforts of Dfinity's teams developing the associated networks on which the ICP tokens would function, rather than having their profit derived from market forces of supply and demand, such as might affect the price of a commodity such as gold (or Bitcoin).

153. Investors in ICP relied on the managerial and entrepreneurial efforts of Dfinity and its executive and development team to manage and develop the NNS system and Internet Computer Project.

154. Dfinity's executive teams typically held themselves out to investors as experts in the blockchain and crypto field. Investors in the ICP tokens reasonably expected the Dfinity' development teams to provide significant managerial efforts after the ICP tokens' launch.

155. For example, Defendant Williams boisterously touted the "superstars" that would "rock the world" whom Dfinity was able to recruit to the "stellar team" working on the Internet Computer project.[70] Dfinity praised that team as being integral to the success of Internet Computer project.

[70] Domenic Williams, *On Accelerating Blockchain Evolution Using Different Funding and Team Models* (Aug. 25, 2017), https://medium.com/dfinity/on-accelerating-blockchain-evolution-using-different-funding-and-team-models-1c04c3d0893a.

156. Defendant Williams also bragged that ICP is "backed by a large team of full-time engineers and cryptographers who are currently distributed across four dedicated international research centers, as well as remote teams."[71]

157. Investors in ICP thus reasonably expected Dfinity, co-founder Defendant Williams, and Dfinity's development team to provide significant managerial efforts after the Genesis launch.

158. This dependency, however, on the managerial efforts of Dfinity and Defendant Williams was not apparent at issuance to a reasonable investor. Considering the limited available information about how these ICP tokens were designed and intended to operate, if such an investor were even able to interpret the relevant law at the time, a reasonable investor lacked sufficient bases to conclude whether the ICP tokens were securities until the platform at issue, and its relevant "ecosystem," had been given time to develop. In the interim, the investor lacked the facts necessary to conclude – let alone formally allege in court – that the tokens she had acquired were securities. It was only after certain revelations that provided more information about Defendant's intent, Dfinity's token economics, and how the governance structure of ICP tokens would resulting in the centralization in Dfinity, that an investor could reasonably determine that a token that was advertised as something other than a security was a security all along.

5. Guidance from the SEC

a. The SEC's 2019 Framework

159. On April 3, 2019, the SEC published its "Framework for 'Investment Contract' Analysis of Digital Assets" (the "Framework") in which it "provided a framework for analyzing whether a digital asset is an investment contract and whether offers and sales of a digital asset are securities transactions."

160. The Framework described how to analyze the various facts surrounding an ICO in making the determination of whether a given digital asset is a security.

161. In particular, the Framework provides that the "inquiry into whether a purchaser is relying on the efforts of others focuses on two key issues: Does the purchaser reasonably expect to rely on the efforts of an [Active Participant or "AP"]? Are those efforts 'the undeniably significant ones, those

[71] https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-network-afc513bf15e1.

essential managerial efforts which affect the failure or success of the enterprise,' as opposed to efforts that are more ministerial in nature?"

162. The Framework further notes that the "stronger the[ ] presence" of the following factors, "the more likely it is that a purchaser of a digital asset is relying on the 'efforts of others.'"

163. The first factor the SEC looked at was whether an AP is responsible for the development, improvement (or enhancement), operation, or promotion of the network, particularly if purchasers of the digital asset expect an AP to be performing or overseeing tasks that are necessary for the network or digital asset to achieve or retain its intended purpose or functionality.

164. At the time of the Genesis launch, Defendants actively market the Genesis launch and the Internet Computer project, thereby necessitating the continued managerial efforts of Dfinity and Defendant Williams. Where the network or the digital asset is still in development and the network or digital asset is not fully functional at the time of the offer or sale, purchasers would reasonably expect an AP to further develop the functionality of the network or digital asset (directly or indirectly).

165. Another factor the Framework considers is whether the AP creates or supports a market for, or the price of, the digital asset. This includes, *inter alia*, whether the AP "(1) controls the creation and issuance of the digital asset; or (2) takes other actions to support a market price of the digital asset, such as by limiting supply or ensuring scarcity, through, for example, buybacks, "burning," or other activities."

166. As noted above (*see supra*, ¶¶132-33), all of the ICP tokens in circulation were created at the direction of Dfinity and Defendant Williams. Additionally, Dfinity and Defendant Williams also created the protocols by which the ICP tokens are burned in the software canisters.

167. The Framework also looks to whether the AP "plays a lead or central role in deciding governance issues . . . that occur with respect to the digital asset."

168. As noted above, the ICP tokens provide various governance rights over the Internet Computer project, and the token economics structure (that was designed and implemented by Dfinity) results in the centralization of those rights within Defendants.

169. The framework further states that "An AP has a continuing managerial role in making decisions about or exercising judgment concerning the network or the characteristics or rights the digital asset represents[.]"

170. Here, Dfinity and Defendant Williams have discussed the long-term prospects on decade-long time frames, continually noting how the Internet Computer will "evolve" in the future.

171. For example, when discussing "WebAssembly specification" in Dfinity noted it would be "adding support for new features as they become mature enough." Similarly, Dfinity remarked that "Over a longer time horizon, we expect to see end-to-end formally verified WebAssembly execution environments, for additional security."[72]

172. The ability to determine whether and where the digital asset will trade is another factor discussed in the Framework. For example, "purchasers may reasonably rely on an AP for liquidity, such as where the AP has arranged, or promised to arrange for, the trading of the digital asset on a secondary market or platform."

173. Here, Dfinity's website admits that the control of the "flow of liquid ICP tokens around the network" was "very important" to ICP's success.[73] Consequently, Dfinity scheduled the ICP tokens' released "for the safety and security of ICP holders, the network, and its users while the underlying technology is be[ing] fettled and its ecosystem is being established."[74]

174. Another factor the Framework notes is whether the AP has the ability to determine who will receive additional digital assets and under what conditions. This could be, for example, "[m]aking or contributing to managerial level business decisions, such as how to deploy funds raised from sales of the digital asset."

175. Here, Dfinity, along with the Controlling Defendants, are the arbiters of funding for Internet Computer project. For example, in September 2020, Dfinity and the Controlling Defendants created the

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[72] Dfinity, *A Closer Look at Software Canisters, an Evolution of Smart Contract* (Oct. 7, 2020), https://medium.com/dfinity/software-canisters-an-evolution-of-smart-contracts-internet-computer-f1f92f1bfffb.

[73] Dfinity, *How to Access 'Seed' and 'Airdrop' ICP Tokens and Participate in the Internet Computer Network* (May 10, 2021), https://medium.com/dfinity/how-to-access-seed-and-airdrop-icp-tokens-and-participate-in-the-internet-computer-network-e6cd663a0c3c.

[74] *Id*.

"Beacon Fund," which provided $14 million in funding to support those building software on the Internet Computer.[75]

176. Dfinity also announced that the Foundation has provided over $225 million in "non-dilutive financing in the form of developer grants to teams building on the Internet Computer" as a part of Dfinity's Developer Ecosystem Program.[76]

177. Making other managerial judgements or decisions that will directly or indirectly impact the success of the network or the value of the digital asset generally.

178. The Framework also remarks that purchasers would reasonably expect the AP to undertake efforts to promote its own interests and enhance the value of the network or digital asset, including, but not limited to, the instances where the AP "has the ability to realize capital appreciation from the value of the digital asset. This can be demonstrated, for example, if the AP retains a stake or interest in the digital asset." According to the SEC, in these instances, "purchasers would reasonably expect the AP to undertake efforts to promote its own interests and enhance the value of the network or digital asset."

179. Here, Defendants retain a significant interest in the Internet Computer project even after selling off many ICP tokens at the height of the Genesis launch (*see supra*).

b. SEC's Previous Statements and Findings

180. On May 7, 2021, on CNBC's "Squawk Box" television program, chairman of the SEC Gary Gensler stated that "a lot of crypto tokens – I won't call them cryptocurrencies for this moment – ***are indeed securities***[.]"[77] In addition to being the Chairman of the SEC, Mr. Gensler is also a world renowned expert on cryptocurrencies and blockchain technology, having taught the "Blockchain and

[75] Dfinity, *DFINITY Announces CHF 200 Million Program to Support the Internet Computer Developer Ecosystem* (May 25, 2021), https://medium.com/dfinity/dfinity-announces-chf-200-million-program-to-support-the-internet-computer-developer-ecosystem-c65aa290548c.

[76] *Id*.

[77] Jesse Point, *SEC Chairman Gary Gensler says more investor protections are needed for bitcoin and crypto markets* (May 7, 2021), https://www.cnbc.com/2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html.

Money" course at the Sloan School of Management at the Massachusetts Institute of Technology ("MIT").[78] [Emphasis added.]

181. In a June 14, 2018 speech entitled "Digital Asset Transactions: When Howey Met Gary (Plastic)" that is available on the SEC's website,[79] the following observations were made on "when a digital transaction may no longer represent a security offering":

> If the network on which the token or coin is to function is sufficiently decentralized – where purchasers would no longer reasonably expect a person or group to carry out essential managerial or entrepreneurial efforts – the assets may not represent an investment contract. Moreover, when the efforts of the third party are no longer a key factor for determining the enterprise's success, material information asymmetries recede. As a network becomes truly decentralized, the ability to identify an issuer or promoter to make the requisite disclosures becomes difficult, and less meaningful.
>
> And so, when I look at Bitcoin today, I do not see a central third party whose efforts are a key determining factor in the enterprise. The network on which Bitcoin functions is operational and appears to have been decentralized for some time, perhaps from inception.

182. A key factor in determining whether a digital asset is a security or not is whether the there is a centralized entity behind the digital asset.[80]

183. As discussed above, the structure of the ICP token's governance structure is far from decentralized.

184. Finally, the SEC also already concluded that another virtual currency (*i.e.*, DAO tokens) that substantially similar to ICP are "securities and therefore subject to the federal securities laws." As stated by the SEC, "issuers of distributed ledger or blockchain technology-based securities must register offers and sales of such securities unless a valid exemption applies."[81]

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[78] Lectures and Materials from Chairman Gensler's MIT course are available to the public for free at: https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/.

[79] William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, Remarks at the Yahoo Finance All Markets Summit, Crypto (June 14, 2018), https://www.sec.gov/news/speech/speech-hinman-061418.

[80] *Id*. (noting that the "decentralized structure" of Bitcoin and Ethereum placed these digital assets outside the "disclosure regime of the federal securities laws").

[81] Press Release*: SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities*, SEC (July 25, 2017), https://www.sec.gov/news/press-release/2017-131.

6. Crypto Community Sentiment

185. The cryptocurrency community has been "wary" of the Internet Computer project since it burst onto the market with the Genesis launch seemingly from out of nowhere. One of the key complaints raised concerns the governance structure of the ICP token economics.

186. As discussed above, ICP token holders are given various governance and voting rights over the Internet Computer Project. Put another way, ICP is a "governance token, meaning holders of ICP having voting power on Internet Computer proposals."[82]

187. However, "Dfinity's grandiose vision for the ICP has been greeted with a mixed reaction among many in the crypto community, with questions raised over how decentralized the project's governance actually is."[83] As reported in CoinTelegraph.com's May 26, 2021 article "$223M fund for Internet Computer builders – but community is wary":

> In an illustrative thread on the "r/dfinity" subreddit on May 25, user "u/Additional_Plant" noted "I don't doubt that it is a powerful, game changing project. But that doesn't mean it's good for us common folks," adding that: "There are too many red flags. For all intents and purposes, Dfinity have total control through the NNS. Is it really a crypto? Not really. Is it actually decentralized? Far from it."[84]

188. Coin Bureau reported that the governance issue with ICP was a "nightmarish scenario" where "what the Dfinity Foundation is trying to do with the internet computer is not eliminate the tyranny of today's tech giants, but instead crown themselves as rulers of the internet." The video further elaborated on the "huge problem" this issue presented, noting that:

> While the amount of ICP tokens allocated to the Dfinity Foundation and its affiliates is not greater than 50%, they are likely the only entities who are willing to lock their tokens for that eight-year [maturation] period. The longer you lock your ICP in NNS, the more voting power and the more ICP rewards you have and the more ICP you earn from inflation. These can then be compounded back into governance. ***What this means is the Dfinity Foundation has total control over the internet computer. It can probably vote on whatever proposals it wants and this voting power will only increase over time if its tokens stay locked***.[85]

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[82] Brenden Rearick, *Internet Computer (ICP) Crypto: 10 Things to Know as ICP Snags No. 8 Spot*, INVESTORPLACE.COM (May 12, 2021), https://investorplace.com/2021/05/internet-computer-icp-crypto-10-things-to-know-as-icp-snags-no-8-spot/.

[83] *Internet Computer (ICP): BIGGEST Launch of 2021??*, https://www.youtube.com/watch?v=YGrFj3pav_A.

[84] *Id.*

[85] *Id.* (emphasis added).

189. As Coin Bureau observed in its ICP video: "That doesn't sound at all like a cryptocurrency. . . ."[86]

190. In sum, Defendant marketed and sold ICP as a security under the guise of it being a cryptocurrency. And Dfinity promoted the Internet Computer as being decentralized when its token governance and economics scheme would inevitably result in control over the Internet Computer becoming centralized in Defendants. Due to Defendants' conduct as alleged herein, investors have suffered massive damages as the price of ICP has fallen from highs of $731 to a low of $20.08 on June 14, 2021. As of the date of filing, the price of ICP is approximately $36.

G. Dfinity Directly Passed Title to ICP Investors

191. According to the transaction history publicly available on the Internet Computer blockchain, which is corroborated by the findings in the Arkham Report, Dfinity deposited approximately 3.1 million ICP tokens, worth around $744 million at the time, on various exchanges on opening day of the Genesis Launch on May 10, 2021. The majority of those deposits were made onto the Coinbase exchange where Plaintiff Ocampo made his purchases. In particular, Dfinity deposited approximately two million ICP tokens (valued at approximately $480 million) to three Coinbase custodial wallet addresses.

192. During the creation of the ICP Tokens on May 6, 2021, a total of 469,212,166 ICP tokens were minted. One particular wallet, Wallet Address 125013e95bd5e008bd6d26f86f5ddda2b16c382372b3067672505c1f11418817 (the "Dfinity Wallet"), received 107,024,038 ICP tokens. This was roughly 23% of all ICP Tokens minted. This percentage of the Float tracks closely to both the number of ICP Tokens and related percentage amounts of all minted ICP Tokens that the Dfinity Foundation received prior to the Genesis Launch. The Dfinity Wallet is directly owned and controlled by the Dfinity Foundation.

193. The Internet Computer blockchain demonstrates that the Dfinity Wallet used several pass-through wallets to transfer ICP Tokens onto various cryptocurrency exchanges, including Coinbase.

[86] *Id.*

194. In particular, the Dfinity Wallet made a total of nine deposits of ICP Tokens that supplied the trading liquidity to Coinbase on opening day. Nine pass-through wallet addresses received those deposits and, in turn, transferred the ICP Tokens to three custodial wallet addresses that provided the trading liquidity for Coinbase on May 10, 2021. These nine deposits by Dfinity provided all of the liquidity for ICP trading on Coinbase on the first day of the Genesis Launch.

195. The specific wallet addresses are as follows:

Pass-Through Wallets

- 87e57a268b99be0568254159f85279321abb7b2b391ef96f35ae03ef82cd03ac ("Pass-Through Wallet 1")
- e4aee62593ec8a660066df4c15dd704d91ecdd082fe19c0fb6d77e50f99c9922 ("Pass-Through Wallet 2")
- 7b8c0a103851d344b09f278fd52533b16a887f7d3a8cd0c20f999fbfbf262056 ("Pass-Through Wallet 3")
- 0032a91f86c8aa3982bdc7ce0899d47c072b11bd3a805dd8e69d1f35004465ea ("Pass-Through Wallet 4")
- cb749bf3c884df6bf0a4738f0c106446710e269166e3c9955208697502f096ba ("Pass-Through Wallet 5")
- 05ad474665f1eec0714c1a4ec941c3a395c703e14bb43100bd946d80b87828af ("Pass-Through Wallet 6")
- 27d17170508492a35f5b0a5cd62ba7fefb43a24.e09daa41239b6d5c9c67a613f ("Pass-Through Wallet 7")
- 00504a7e1190451cb96bd51d059ba2f9f415a5dc955203c5d132cb1a86a282bb ("Pass-Through Wallet 8")
- 000a1f0436e925af8ae9ca45786f0ae85bd66f357fb0d19c9d3320e180710cf1 ("Pass-Through Wallet 9")

Custodial Wallets

- dd15f3040edab88d2e277f9d2fa5cc11616ebf1442279092e37924ab7cce8a74 ("Coinbase Wallet 1")

- 660b1680dafeedaa68c1f1f4cf8af42ed1dfb8564646efe935a2b9a48528b605 ("Coinbase Wallet 2")
- a6ed987d89796f921c8a49d275ec7c9aa04e75a8fc8cd2dbaa5da799f0215ab0m ("Coinbase Wallet 3")

196. An examination of the transactions in these wallet addresses shows how Dfinity was able to sell its ICP Tokens directly to investors on Coinbase, including to Plaintiff who received title from Dfinity to the ICP Tokens he purchased shortly after the opening of the Genesis Launch.[87]

197. For example, on May 10, 2021, a few hours prior to the time of the Genesis launch, the Dfinity Wallet, over the course of three transactions, transferred 200,001 total tokens to Pass-Through Wallet 5. Within minutes of receipt, Pass-Through Wallet 5 sent 200,000 ICP Tokens (valued at $48M) to Coinbase Wallet 1.

198. Similarly, Pass-Through Wallet 8 received its ICP Tokens directly from the Dfinity Wallet and two minutes later sent those 40,000 ICP Tokens (valued at $9.6M) to Coinbase Wallet 1.

199. Pass-Through Wallet 9 likewise sent 626,515 ICP Tokens (valued at $156.3M) to Coinbase Wallet 1 within two minutes after receiving them from the Dfinity Wallet.

200. Pass-Through Wallet 1 received 1,000,000 ICP Tokens from Wallet Address 32c46b6795b0993b9f2edf1845f52eebce172ff2db5e1a76b6af08163955937d ("Top Level Pass-Through Wallet"), which, had received those ICP Tokens directly from the Dfinity Wallet. Shortly thereafter, Pass-Through Wallet 1 transferred 100,000 of those ICP Tokens (valued at $24M) to Coinbase Wallet 1.

201. A similar series of transfers can be tracked based on the transaction history of Coinbase Wallet 2. Within three hours of the Genesis Launch, the Dfinity Wallet transferred 200,000 ICP

[87] This examination covers transactions occurring prior to the actual moment the ICP Tokens were publicly launched on exchanges, including Coinbase. Notably, according to the Internet Computer blockchain, the same pass-through wallets and Coinbase custodial wallets discussed herein continued to pass title to retail investors in a similar fashion to what transpired leading up to the Genesis Launch. Moreover, the Internet Computer blockchain also shows that the same pass-through wallets similarly supplied liquidity to other cryptocurrency exchanges like Huobi, OKEx and Binance. Thus, while Dfinity alone provided all of the liquidity available on Coinbase at the open of listing day and, thus, passed title to Plaintiff who purchased ICP Tokens shortly after the launch began, the Internet Computer blockchain transactions publicly available show that Dfinity continued to pass title in a similar fashion to Plaintiff and other class members after opening day by continuing to supply ICP tokens to satisfy the artificially high demand.

Tokens (valued at $48M) to Wallet Address 7. Two minutes later Wallet Address 7 sent those ICP Tokens to Coinbase Wallet 2.

202. Coinbase Wallet 3 shows this same pattern of transactions. Pass-Through Wallet 3 received ICP Tokens directly from the Dfinity Wallet. Minutes later, Pass-Through Wallet 3 sent 75,000 ICP Tokens (valued at $18M) to Coinbase Wallet 3.

203. The transaction histories of Coinbase Wallets 1-3 shows that these wallets each have more than ten thousand transactions. The sheer volume of transactions indicates that these are not an individual investor's wallets but rather that they belong to an exchange that is facilitating trading on its platform. Upon information and belief, Coinbase Wallets 1-3 are the custodial wallets owned and directly controlled by Dfinity.

204. Coinbase's own terms of service demonstrate that it was Dfinity, and not an intermediary, that directly passed title to Plaintiff and class members who purchased ICP Tokens on Coinbase beginning on May 10, 2021, during opening of the Genesis Launch. According to the Coinbase User Agreement's relevant sections on title and ownership of digital assets (like ICP):

> **2.6. Digital Asset Custody and Title.** All Supported Digital Assets held in your Digital Asset Wallet are custodial assets held by Coinbase for your benefit, as described in further detail below.
>
> **2.6.1 Ownership.** ***Title to Supported Digital Assets shall at all times remain with you and shall not transfer to Coinbase.*** As the owner of Supported Digital Assets in your Digital Asset Wallet, you shall bear all risk of loss of such Supported Digital Assets. Coinbase shall have no liability for Supported Digital Asset fluctuations or loss. ***None of the Supported Digital Assets in your Digital Asset Wallet are the property of, or shall or may be loaned to, Coinbase; Coinbase does not represent or treat assets in User's Digital Asset Wallets as belonging to Coinbase.*** Coinbase may not grant a security interest in the Supported Digital Assets held in y.our Digital Asset Wallet. Except as required by law, or except as provided herein, Coinbase will not sell, transfer, loan, hypothecate, or otherwise alienate Supported Digital Assets in your Digital Asset Wallet unless instructed by you.
>
> **2.6.2. Control**. You control the Supported Digital Assets held in your Digital Asset Wallet. . . .
>
> * * *
>
> **2.8.Coinbase Vault**. You may elect to hold Supported Digital Assets in Coinbase Vault. Coinbase Vault allows you to create conditions around transfer of your Supported Digital Assets, which may include adding third-parties to approve withdrawals ("Approvers"). ***For the avoidance of doubt, title to Supported Digital Assets in Coinbase Vault shall at all times remain with you, and Approvers shall have no ownership interest in such Supported Digital Assets.***

205. Coinbase's terms of service explicitly foreclose the possibility that, as an exchange facilitating the trading of ICP, Coinbase took possession of the title to the ICP Tokens that were passed to investors who purchased ICP Tokens on Coinbase. Instead, Coinbase has positioned itself as a mechanism for sellers like Dfinity to pass title of digital assets directly to buyers like Plaintiff and the class members.

206. Additionally, Defendant Williams' statements confirm that Dfinity could have, but purposefully chose not to, lock-up their portion of the ICP Token allocation. On May 26, 2021, Defendant Williams made a statement on Twitter regarding the vesting schedule for Dfinity's 23% allocation of all minted ICP Tokens. In particular, Williams revealed that Dfinity (*i.e.*, the Dfinity Wallet) "didn't vest itself." In other words, Williams revealed two weeks after the Dfinity Launch (and subsequent price collapse) that Dfinity refused to put any restrictions in place to stop itself from selling its portion of the Float on opening day. This decision was made by Dfinity and Williams for the purpose of allowing Dfinity to sell its ICP Token allocation on popular exchanges like Coinbase at an inflated premium on listing day of the Genesis Launch.

207. The Arkham Report corroborates these findings from the Internet Computer blockchain, stating that "[T]his overall pattern for listing day deposits suggest that they were ***for the purpose of providing initial liquidity on exchanges."***

CLASS ACTION ALLEGATIONS

208. This suit is brought as a class action pursuant to Section 382 of the California Code of Civil Procedure, on behalf of a Class of all persons or entities who purchased ICP from May 10, 2021 through the present. Excluded from the Class are Defendants and the officers and directors of the Company at all relevant times; members of their immediate families and their legal representatives, heirs, successors, or assigns; and any entity in which Defendants have or had a controlling interest.

209. Plaintiff reserves the right to amend the Class definition if further investigation and/or discovery indicate that the Class definition should be modified.

210. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the proposed Class.

The members of the proposed Class may be identified from records maintained by the Company and may be notified of the pendency of this action by mail, using customary forms of notice that are commonly used in securities class actions.

211. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct.

212. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

213. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether ICP are securities under the Securities Act;

(b) whether the sale of ICP violates the registration requirements of the Securities Act; and

(c) to what extent Plaintiff and members of the Class have sustained damages and the proper measure of damages.

214. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unregistered Offering and Sale of Securities in Violation of Sections 5 and 12(a)(1) of the Securities Act (Against All Defendants)

215. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this complaint, and further alleges as follows:

216. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interest commerce for the purpose of sale or for delivery after sale.

217. ICP are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

218. Plaintiff and members of the Class purchased ICP securities.

219. No registration statements have been filed with the SEC or have been in effect with respect to any of the offerings alleged herein. No exemption to the registration requirement applies.

220. SEC Rule 159A provides that, for purposes of Section 12(a)(2), an "issuer" in "a primary offering of securities" shall be considered a statutory seller. 17 C.F.R. §230.159A(a). The Securities Act in turn defines "issuer" to include every person who issues or proposes to issue any security. 15 U.S.C. §77b(a)(4). Dfinity is an issuer of ICP.

221. The U.S. Supreme Court has held that statutory sellers under §12(a)(1) also include "the buyer's immediate seller" and any person who actively solicited the sale of the securities to plaintiff and did so for financial gain. *See Pinter v. Dahl*, 486 U.S. 622, 644 n.21 & 647 (1988)*; accord, e.g., Steed Finance LDC v. Nomura Sec. Int'l, Inc*., No. 00 Civ. 8058, 2001 WL 1111508, at *7 (S.D.N.Y. Sept. 20, 2001). That is, §12(a)(1) liability extends to sellers who actively solicit the sale of securities with a motivation to serve their own financial interest or those of the securities owner. *Pinter v. Dahl*, 486 U.S. 622, 647 (1988); *Capri v. Murphy*, 856 F.2d 473, 478 (2d Cir. 1988). Dfinity and the Controlling Defendants are all statutory sellers.

222. By reason of the foregoing, each of the Defendants have violated Sections 5(a), 5(c), and 12(a) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c), and 771(a).

223. As a direct and proximate result of Defendants' unregistered sale of securities, Plaintiff and the Class have suffered damages in connection with their ICP purchases.

SECOND CAUSE OF ACTION

Violation of Section 15 of the Securities Act (Against Dfinity and the Controlling Defendants)

224. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference, each and every allegation contained in the preceding paragraphs of this Complaint, and further alleges as follows:

225. This Count is asserted against Defendants Dfinity and the Controlling Defendants (collectively, the "Control Person Defendants") under Section 15 of the Securities Act, 15 U.S.C. §77o.

226. The Control Person Defendants, by virtue of their offices, ownership, agency, agreements or understandings, and specific acts were, at the time of the wrongs alleged herein, and as set forth herein, controlling persons within the meaning of Section 15 of the Securities Act. The Control Person Defendants, and each of them, had the power and influence and exercised the same to cause the unlawful offer and sale of ICP securities as described herein.

227. The Control Person Defendants, separately or together, possess, directly or indirectly, the power to direct or cause the direction of the management and policies of Dfinity, through ownership of voting securities, by contract, subscription agreement, or otherwise.

228. The Control Person Defendants also have the power to direct or cause the direction of the management and policies of Dfinity.

229. The Control Person Defendants, separately or together, have sufficient influence to have caused ICP and/or Dfinity to submit a registration statement.

230. The Control Person Defendants, separately or together, jointly participated in Dfinity's and/or ICP's failure to register ICP.

231. By virtue of the conduct alleged herein, the Control Person Defendants are liable for the wrongful conduct complained of herein and are liable to Plaintiff and the Class for rescission and/or damages suffered.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. Declaring this action to be a proper class action and certifying Plaintiff as Class representative;

B. Declaring that Defendants offered and sold unregistered securities in violation of Sections 5(a), 12(a), and 15 of the Securities Act;

C. Awarding Plaintiff and the other members of the Class rescission of their ICP purchases;

D. Awarding Plaintiff and the other members of the Class compensatory damages;

E. Awarding Plaintiff and the other members of the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees, and other costs and disbursements;

F. Requiring an accounting of all remaining assets and funds raised by Defendants through the sale of ICP;

G. Imposing a constructive trust over the assets and funds raised by Defendants through the sale of ICP;

H. Enjoining and restraining Defendants from violating the securities laws through the continued unregistered sale of ICP; and

I. Awarding Plaintiff and the other members of the Class such other and further relief as the Court may deem just and proper.

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SCOTT+SCOTT ATTORNEYS AT LAW LLP

John T. Jasnoch (CA 281605)
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: 619-233-4565
Facsimile: 619-233-0508
jjasnoch@scott-scott.com

SCOTT+SCOTT ATTORNEYS AT LAW LLP
Sean T. Masson (*pro hac vice*)
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212-223-6444
Facsimile: 212-223-6334
smasson@scott-scott.com

Counsel for Plaintiff Daniel Ocampo