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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 7/15/2021
By /s/ Marcela Enriquez
Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN MATEO**

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

14 Plaintiff,

15 v.

16 DFINITY USA RESEARCH LLC, DFINITY
17 STIFTUNG, ANDREESSEN HOROWITZ,
18 POLYCHAIN CAPITAL, DOMINIC
19 WILLIAMS, and JOHN DOES 1-20,

20 Defendants.

Case No. 21-CIV-03843

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE SECURITIES ACT
OF 1933**

JURY TRIAL DEMANDED

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

10 **NATURE AND SUMMARY OF ACTION**

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

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

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

26
27
28 ¹ Dfinity, DF, and the Controlling Defendants are collectively referred to as “Defendants.”

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

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

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

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

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

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

17 **JURISDICTION AND VENUE**

18 10. The Court has subject matter jurisdiction over this action pursuant to the California
19 Constitution, Article VI, §10 and Section 22 of the Securities Act, 15 U.S.C. §77v. The claims alleged
20 herein arise under §§5, 12(a)(1), and 15 of the Securities Act. *See* 15 U.S.C. §§77e, 77l, and 77o. Section
21 22 of the Securities Act, 15 U.S.C. §77v(a), expressly states that “[e]xcept as provided in section 77p(c) of
22 this title, no case arising under this subchapter and brought in any State court of competent jurisdiction
23 shall be removed to any court of the United States.” Section 77p(c) refers to “covered class action[s]
24 brought in any State court involving a covered security, as set forth in subsection (b),” and subsection (b)
25 of §77p in turn includes within its scope only covered class actions “based upon the statutory or common
26 law of any State or subdivision thereof.” *See* 15 U.S.C. §77p. This is an action asserting only federal law
27 claims. Thus, this action is not removable to federal court.

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

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

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

8 **PARTIES**

9 14. Plaintiff Daniel Ocampo is an individual and a resident of the State of California. Plaintiff
10 made purchases of ICP between May 10, 2021 and June 25, 2021, and suffered losses on those investments
11 as a result of the scheme alleged herein.

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

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

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

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

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

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

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

4 **SUBSTANTIVE ALLEGATIONS**

5 **A. Background of Cryptocurrency**

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

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

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

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

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

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

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

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

4 29. Another popular cryptocurrency, Ethereum, was designed to enable “smart contract”
5 functionality unlike Bitcoin’s blockchain.

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

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

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

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

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

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

4 36. The whitepapers contained vastly less information than would have been included in an
5 SEC registration statement. For example, whitepapers (just like the ICP whitepaper²) typically did not
6 include a “plain English” description of the offering; a list of key risk factors; a description of important
7 information and incentives concerning management; warnings about relying on forward-looking
8 statements; an explanation of how the proceeds from the offering would be used; or a standardized format
9 that investors could readily follow.

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

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

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

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

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

⁵ *Id.*

1 39. Similarly, in 2018, Block.One’s held an ICO for the EOS blockchain. After a year-long
2 offering, Block.One raised a staggering \$4.1 billion for the company and insiders.⁶ Shortly after the ICO
3 was completed, on September 30, 2019, the Securities and Exchange Commission (“SEC”) completed an
4 investigation and found that one Issuer, Block.one, had violated the Securities Act by selling the digital
5 token EOS, an unregistered security, to the public. As a result of this SEC enforcement action, Block.one
6 was required to pay a \$24 million fine.⁷

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

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

13 42. Mr. Wang also candidly acknowledged that:

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

23 [Emphasis added.]

24 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>.

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

27 ⁸ Aries Wanlin Wang, *Crypto Economy: How Blockchain, Cryptocurrency, and Token-Economy*
Are Disrupting the Financial World (2018).

28 ⁹ *Id.*

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

3 **B. The Background of ICP**

4 44. Dfinity’s so-called “Internet Computer” project purports to be a decentralized version of the
5 internet itself. In essence, it is a smart contract platform designed to power blockchain versions of the
6 internet’s most popular applications – decentralized alternatives to WhatsApp, LinkedIn, eBay, TikTok,
7 etc. – which would displace the need to use centralized, gatekeeping hosting services like Amazon Web
8 Services.¹⁰

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

14 46. Unlike cryptocurrencies such as Bitcoin and Ethereum, which are mined by computer
15 hardware validating transactions on their networks, all 469,213,710 ICP tokens in existence were simply
16 created by Dfinity in May 2021 as a part of the Company’s functional equivalent of an ICO (the “Genesis
17 Launch”). As discussed more thoroughly below (see supra, Section B) a significant amount of the total
18 ICP supply was given to Controlling Defendants, with the remaining amount left retained by Dfinity.

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

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

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27 ¹⁰ Mike Butcher & Ingrid Lunden, *DFINITY raises \$102M from a16z and Polychain for a*
28 *decentralized ‘Internet Computer’ to rival AWS*, TECHCRUNCH (Aug. 29, 2018),
<https://techcrunch.com/2018/08/29/dfinity/>.

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

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

4 **C. Polychain and Andreessen Horowitz Are Significant Stakeholders of ICP**

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

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

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

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

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

19 56. Defendant Williams conceded that Dfinity needed to change the original model because the
20 Foundation’s initial promise would have capped the Seed Contributors’ returns with a “figure that we later
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24 ¹¹ Dominic Williams, *Announcing DFINITY Fundraising Plans, and a Massive Welcome to*
25 *Polychain Capital and Andreessen Horowitz* (Feb. 7, 2018), [https://medium.com/dfinity/announcing-](https://medium.com/dfinity/announcing-dfinity-fundraising-plans-and-a-massive-welcome-to-polychain-capital-and-andreessen-2ceb34769cd3)
26 [dfinity-fundraising-plans-and-a-massive-welcome-to-polychain-capital-and-andreessen-2ceb34769cd3](https://medium.com/dfinity/announcing-dfinity-fundraising-plans-and-a-massive-welcome-to-polychain-capital-and-andreessen-2ceb34769cd3)
(last visited May 20, 2021).

26 ¹² *See id.*

27 ¹³ Mira Christanto & Wilson Wthiam, *An Introduction to Dfinity and the Internet Computer* (May
28 10, 2021) <https://messari.io/article/an-introduction-to-dfinity-and-the-internet-computer> (emphasis
added).

1 realized was far too low – *this would hardly satisfy a single large player now*, and it’s clear our years in
2 the crypto trenches had left us completely unprepared for the explosion in scale of the crypto industry.”¹⁴

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

6 58. Sometime around January or February 2018, Dfinity ultimately held the “Strategic”
7 fundraising round.

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

10 60. The “Strategic Round” investors were entitled to receive 7% of the initial supply of ICP
11 tokens.¹⁷

12 61. As described in Defendant Williams’ February 7, 2018 blog post “Announcing DFINITY
13 Fundraising Plans, and a Massive Welcome to Polychain Capital and Andreessen Horowitz”:

14 [Dfinity] also decided that before going any further, we would raise a “Strategic”
15 fundraising round that would bring in key partners who could help accelerate progress of
16 our project. Polychain Capital – a successful and now famous crypto hedge fund backed by
17 Andreessen Horowitz, Sequoia, USV, Founders Fund and many other notable LPs –
18 contacted us during the summer of 2017, while we were still only an “aficionado’s” project
19 not many people knew about, and we found we worked extremely well with them. They are
20 distinguished by bullish optimism about what our industry can achieve balanced by realism
21 and operational smarts.

22 It was decided that Polychain would lead a relatively small round, and also help establish a
23 substantial “DFINITY Ecosystem Venture Fund” that will now fund projects building on

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

28 ¹⁵ *Id.*

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

1 the DFINITY Internet Computer or otherwise supporting it. Andreessen Horowitz, one of
2 Silicon Valley’s preeminent venture capital funds joined the round too, who are also well
3 known for their forward thinking and the support they provide to investee projects. Today
4 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.

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

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

12 64. Ryan Zurrer, venture partner of Polychain, described the investment in Dfinity as
13 Polychain’s “largest-ever capital deployment.”²⁰

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

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24 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>.

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

27 ²⁰ See Gertrude Chavez-Dreyfuss, *Blockchain project raises \$61 million from Andreessen Horowitz,*
28 *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>.

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%	

Date 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 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.

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>.

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

4 71. In particular, seed investors received the ICP token allotment at a price of \$0.03. Strategic
5 investors’ allotment price was \$0.62 per token. And Private Presale investors received ICP tokens for
6 \$4.16. Thus, at the \$731 peak of ICP’s token price on opening day of the Genesis launch – when massive
7 selling pressure caused the ICP price to drop exponentially – Polychain and Andreessen saw a staggering
8 return on investment of approximately 2,436,566%, 117,803%, and 17,472% on the seed, strategic, and
9 private presale investments, respectively.

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

12 **D. Defendants Solicit ICP Sales**

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

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

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

25
26
27 ²² Jeff John Roberts, *Exclusive: Dfinity Announces \$35M ‘Air Dro’ for Blockchain-Based Cloud*,
28 FORTUNE.COM (May 29, 2018), <https://fortune.com/2018/05/29/blockchain-dfinity-air-drop/>.

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

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

9 78. In a further effort to distance Dfinity from “unscrupulous projects . . . some whose primary
10 aim was in fact simply to collect monies from people seeking a quick buck or to launch a dubious token
11 that speculators would send to the moon so that the founders could cash out,” Defendant Williams explained
12 that:

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

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

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

25 ²⁴ *Id.*

26 ²⁵ *Id.*

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

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

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

11 82. On January 23, 2020, Defendant Williams continued touting ICP’s blockchain technology
12 at the Davos Summit hosted by the World Economic Forum, arguing that its prototype of an “open” social
13 network “LinkedUp” was superior to existing social networks like LinkedIn because it would give users a
14 “deeper understanding of how the proprietary algorithms work” and make them “more empowered to fight
15 against monopolistic trends in the existing internet infrastructure.”²⁹

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

19 84. On July 9, 2020, Dfinity published an article on Medium.com authored by Polychain
20 founder Olaf Carlson-Wee entitled “Investing in the Open Web: A New Thesis.” In this article, Carlson-
21 Wee, on behalf of Dfinity, promoted investment in the Internet Computer and highlighted investors’
22 expectations of profit. The article stated that “Financial backers see tremendous upside in the open web’s
23 ability to create financial opportunities for innovation that previously didn’t exist.” The article further
24

25 ²⁷ Mo Marshall, *Dfinity raises \$61 million for blockchain-based cloud*, VENTUREBEAT.COM (Feb. 7,
26 2018), <https://venturebeat.com/2018/02/07/dfinity-raises-61-million-for-blockchain-based-cloud/>.

26 ²⁸ *Id.*

27 ²⁹ Michael Nunez, *This Startup Thinks Blockchain Is The Only Thing That Can Save Social Media*,
28 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>.

1 stated that “venture capitalists with billions in assets under management are eyeing decentralized
2 infrastructure that will make it easier for developers to innovate and scale-out their internet services to
3 billions of users” and that “VCs are eager to deploy billions in capital to foster the decentralized web[.]”

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

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

12 87. Defendant Williams went on a press tour to solicit investment in the Internet Computer and
13 ICP tokens. For example, in a May 7, 2021 interview Defendant Williams ahead of the ICP launch,
14 Defendant Williams proclaimed ICP will be “humanity’s primary compute platform for building software”
15 in 20 years.³¹

16 88. On May 8, 2021, in an live streamed interview with Bloomberg, Defendants Williams
17 boasted how on ICP “you can build things on a blockchain now that [] never would have been possible.”³²
18
19
20
21

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

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

26 ³² *Internet Computer Works Differently Than Any Other Blockchain: Dominic Williams*,
27 *BLOOMBERG.COM* (May 8, 2021), [https://www.bloomberg.com/news/videos/2021-05-08/internet-](https://www.bloomberg.com/news/videos/2021-05-08/internet-computer-works-differently-than-any-other-blockchain-dominic-williams-video)
[computer-works-differently-than-any-other-blockchain-dominic-williams-video](https://www.bloomberg.com/news/videos/2021-05-08/internet-computer-works-differently-than-any-other-blockchain-dominic-williams-video); see also Nicolas
28 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-](https://finance.yahoo.com/news/internet-computer-icp-market-value-110516675.html?guccounter=1)
[110516675.html?guccounter=1](https://finance.yahoo.com/news/internet-computer-icp-market-value-110516675.html?guccounter=1).

1 Defendant Williams further suggested that ICP users could create disruptive social media networks that
2 could displace rivals like Facebook and innovate “tokenized social media.”³³

3 89. Williams likewise told Business Insider that mainstream venture capital firms are sitting on
4 “billions and billion of dollars” that they’re ready to invest in crypto and so-called “open internet”
5 startups.³⁴

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

10 91. Through Defendant Williams’ bombastic solicitations, and the out of nowhere top ten debut
11 that was enabled by the Controlling Defendants, ICP capitalized on investors’ “fear of missing out” on the
12 next big thing.

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

16 93. ICP debuted at a price of \$731 on its first day and its valuation rose to more than
17 \$45 billion.³⁶

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

20 _____
21 ³³ *Internet Computer Works Differently Than Any Other Blockchain: Dominic Williams*,
22 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>.

23 ³⁴ Shalini Nagarajan, *Internet Computer is already one of the top 10 cryptocurrencies with a market*
24 *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>

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

27 ³⁶ Matthew Leising and Olga Kharif, *Overnight Crypto Sensation Sets Out to Undo Internet’s*
28 *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>.

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

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

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

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

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

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

21 ³⁷ <https://www.coinspeaker.com/internet-computer-falls-price-endorphin/>.

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

24 ³⁹ *Id.*

25 ⁴⁰ Brenden Rearick, *Internet Computer (ICP) Crypto: 10 Things to Know as ICP Snags No. 8 Spot*,
26 *INVESTORPLACE.COM* (May 12, 2021), [https://investorplace.com/2021/05/internet-computer-icp-crypto-](https://investorplace.com/2021/05/internet-computer-icp-crypto-10-things-to-know-as-icp-snags-no-8-spot/)
27 [10-things-to-know-as-icp-snags-no-8-spot/](https://investorplace.com/2021/05/internet-computer-icp-crypto-10-things-to-know-as-icp-snags-no-8-spot/).

28 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-](https://www.bloomberg.com/news/articles/2021-05-12/crypto-s-overnight-sensation-is-taking-on-the-web-as-we-know-it)
[12/crypto-s-overnight-sensation-is-taking-on-the-web-as-we-know-it](https://www.bloomberg.com/news/articles/2021-05-12/crypto-s-overnight-sensation-is-taking-on-the-web-as-we-know-it).

⁴² *Id.*

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

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

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

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

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

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

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

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

21 108. Another example of Dfinity having leverage to gain a favorable listing price can be seen
22 between Dfinity and the cryptocurrency and derivatives exchange OKEx. On May 12, 2021, OKEx

23 _____

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

26 ⁴⁴ <https://investor.coinbase.com/governance/board-of-directors/default.aspx>.

27 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>.

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

1 announced the public listing of ICP on the exchange. That same announcement also disclosed that Dfinity
2 had previously agreed to help collaborate and fund OKEEx’s “Blockdream Ventures fund,” jointly providing
3 \$10 million in special funding.⁴⁷ OPEX Chief Executive Officer, Jay Hao, personally endorsed the ICP’s
4 public listing in the announcement:

5 We are pleased to support the launch of the Internet Computer as a Day 1 partner and be a
6 part of this global movement to reinvent the internet as we gradually move toward a
7 decentralized future. We hope that this will be the first big step in allowing entrepreneurs,
8 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

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

12 110. On May 14, 2021, Defendant Williams and Dfinity announced the Company’s plan for
13 Endorphin, a decentralized operating system for phones, laptops, and other user devices.⁴⁹ Defendant
14 Williams claimed that Dfinity was “looking for ways to accelerate the program, and I’m hopeful
15 announcement will be made shortly.” The message that some analysts in the cryptocurrency sector received
16 was that the launch of Endorphin would “create huge demand which will in response have an impact on
17 the price of ICP.”⁵⁰

18 111. This announcement, however, did not have the desired effect. As of May 16, 2021, ICP had
19 lost 60% of its debut price and was valued at only \$32 billion.⁵¹

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

24 ⁴⁸ *Id.*

25 ⁴⁹ 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>.

26 ⁵⁰ 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/>.

28 ⁵¹ *Id.*

1 112. On May 17, 2021, the Coinspeaker website reported that “[d]espite the coin’s price falling
2 from its debut price of \$731 to \$258 over the past weekend, the networks digital currency has continued to
3 nosedive. . . . At the time of writing, Internet Computer is trading at a price of \$209.15, down 16.43% in
4 the past 24 hours and by 70% from its all-time high (ATH) of \$737.20 according to CoinMarketCap.”⁵²

5 113. The report noted that ICP holders had “enjoyed a robust and well-acclaimed debut,” but that
6 they are now looking towards “disruptive use cases to bounce back to its winning ways.”⁵³

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

8 115. As noted in a May 22, 2021 video by the popular cryptocurrency YouTube channel, Coin
9 Bureau, the current drop in ICP’s price chart “looks more in line [a] downward price trend, which I believe
10 will continue for some time. This is because there seems to be much more sell pressure than buy pressure
11 for the ICP token.”⁵⁴

12 116. As Linda Kreitzman, Assistant Dean at University of California at Berkley’s Haas School
13 of Business who helps oversee the Berkeley Haas Blockchain Initiative noted, the “timing” of ICP’s listing
14 and its “cool” name “created the perfect situation for an explosive debut” for the Dfinity’s ownership
15 token.⁵⁵

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

22
23 ⁵² Benjamin Godfrey, *Dfinity’s Internet Computer (ICP) Continues on Its Price Decline amid*
24 *Ongoing Market Correction* (May 17, 2021), [https://www.coinspeaker.com/internet-computer-icp-](https://www.coinspeaker.com/internet-computer-icp-correction/)
[correction/](https://www.coinspeaker.com/internet-computer-icp-correction/).

25 ⁵³ *Id.*

26 ⁵⁴ *Internet Computer (ICP): BIGGEST Launch of 2021??*, [https://www.youtube.com/watch?](https://www.youtube.com/watch?v=YGrFj3pav_A)
[v=YGrFj3pav_A](https://www.youtube.com/watch?v=YGrFj3pav_A).

27 ⁵⁵ Danielle Abril, *What is Internet Computer? A guide to the latest buzzy cryptocurrency* (May 12,
28 2021), [https://fortune.com/2021/05/12/what-is-internet-computer-cryptocurrency-digital-](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)
[currency/#:~:text=Dfinity%20is%20backed%20by%20investors,Aspect%20Ventures%2C%20and%20Eterna%20Capital](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).

1 118. On June 14, 2021, Defendant Williams posted a thread on the Dfinity’s page on Reddit titled
2 “An ICP Tokenomics NNS Proposal is in the works – Dominic Williams,” which made the following
3 admission:

4 It is arguably the case that many ECT/Seed holders don’t care much about the fair price for
5 ICP because they have achieved extraordinary gains. Even at \$60, they are still 1800X up.
6 Of course, experience crypto holders want to maximize their gains ***[T]here has been***
7 ***a lot of sell volume so far, mainly from ECT/Seed and ex and early employees and***
8 ***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

9 I am working on a tokenomics proposal to address the situation, which I’m hoping will be
10 proposed to the NNS in about 2-3 weeks. The IC is fully adaptive, and that means that it
11 can constantly improve the protocol *and* the tokenomics. ***Advanced cryptoeconomics can***
be used to weaken the “prisoner’s dilemma” dynamic that has arisen.⁵⁶

12 119. On June 28, 2021, Arkham Intelligence released a report on the “Internet Computer Token”
13 (the “Arkham Report”).⁵⁷ Summing up the ICP story to that point, the Arkham Report stated:

14 As of this writing, the Internet Computer token (ICP) has lost 95% of its value from its
15 launch event in May, dropping from \$730 to \$30, and wiping out over \$300 billion dollars
16 of value based on ICP’s total supply. These are astounding numbers in the crypto world
17 and financial world overall, even with the current market’s volatile prices and soaring
18 valuations. At its peak, ICP was the third most valuable crypto-asset, behind Bitcoin and
19 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.

20 120. The Arkham Report found that the Dfinity Treasury and project insiders deposited billions
21 of dollars’ worth of ICP to exchanges at the time of the Genesis listing and the following weeks. By
22 analyzing the transactions made by various exchanges, the Arkham Report notes that deposits made by the
23 Dfinity Treasury provided initial liquidity on exchanges. In addition to the Dfinity Treasury itself, the
24 Arkham Report found that the Dfinity Treasury also sent 34.1 million ICP tokens to 34 suspected insider
25 addresses. These addresses have deposited 10.7 million ICP tokens to exchanges (very likely for sale)

26 ⁵⁶ See [https://www.reddit.com/r/dfinity/comments/nz715r/an_icp_tokenomics_nns_proposal_is_in_](https://www.reddit.com/r/dfinity/comments/nz715r/an_icp_tokenomics_nns_proposal_is_in_the_works/)
27 [the_works/](https://www.reddit.com/r/dfinity/comments/nz715r/an_icp_tokenomics_nns_proposal_is_in_the_works/) (emphasis added).

28 ⁵⁷ <https://arkhamintelligence.com/icp/report.pdf>

1 during the Genesis listing and intermittently in the weeks following the Genesis listing. The Arkham
2 Report identified a fundamental pattern of activity of many suspected insiders: a large transfer from the
3 Treasury before listing day, followed by intermittent exchange deposits post-listing. These transfers were
4 very likely for sale and the exceptional decrease in the price of ICP since its listing is indicative of massive
5 selling.

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

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

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

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

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

23 125. Additionally, Dfinity repeatedly asserted that ICP tokens were “utility tokens,” rather than
24 “security tokens” (which would be securities that would have to be registered with the SEC). For example,
25 in a May 6, 2021 blog post titled “Understanding the Internet Computer’s Network Nervous System,
26 Neurons, and ICP Utility Tokens” – as the names indicates – refers to ICP as “native utility tokens.”⁵⁸

27 ⁵⁸ [https://medium.com/dfinity/understanding-the-internet-computers-network-nervous-system-
28 neurons-and-icp-utility-tokens-730dab65cae8](https://medium.com/dfinity/understanding-the-internet-computers-network-nervous-system-neurons-and-icp-utility-tokens-730dab65cae8).

1 126. Similarly, another Dfinity blog post four days later echoes the statement that “ICP are
2 native utility tokens.”⁵⁹

3 127. That same day, May 10, 2021, Dfinity published a second blog post titled “How to Access
4 ‘Seed’ and ‘Airdrop’ ICP Tokens and Participate in the Internet Computer Network,” which again referred
5 to ICP as “utility tokens.”⁶⁰

6 128. Defendants also misleadingly compared ICP to Bitcoin and Ethereum, which are
7 commodities. Defendant Williams, for example, wrote in August 2020 that the Internet Computer “fits”
8 on a “continuum” that included Bitcoin and Ethereum.⁶¹ In particular, Williams stated the following:

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

14 129. In that same blog, Defendant Williams further stated that the Internet Computer’s software
15 canisters were “tamperproof just like Ethereum smart contracts.”⁶²

16 130. In an October 7, 2020 blog post “A Closer Look at Software Canisters, an Evolution of
17 Smart Contract,” the Foundation stated software canisters were a “key concept” for ICP, and noted how,
18 among other things, an Ethereum developer may associate these canisters with smart contracts.⁶³ Dfinity
19 went on to endorse this comparison as “correct.”
20

21 ⁵⁹ Dfinity, *Getting Started Using the ICP Wallet and Network Nervous System Dapp on the Internet*
22 *Computer* (May 10, 2021), <https://medium.com/dfinity/getting-started-on-the-internet-computers-network-nervous-system-app-wallet-61ecf111ea11>.

23 ⁶⁰ Dfinity, *How to Access ‘Seed’ and ‘Airdrop’ ICP Tokens and Participate in the Internet Computer*
24 *Network* (May 10, 2021), <https://medium.com/dfinity/how-to-access-seed-and-airdrop-icp-tokens-and-participate-in-the-internet-computer-network-e6cd663a0c3c>.

25 ⁶¹ <https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-network-afc513bf15e1>.

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

27 ⁶³ Dfinity, *A Closer Look at Software Canisters, an Evolution of Smart Contract* (October 7, 2020),
28 <https://medium.com/dfinity/software-canisters-an-evolution-of-smart-contracts-internet-computer-f1f92f1bfff>.

1 131. At the time of the Genesis launch, Dfinity took advantage of the market’s lack of
2 understanding and awareness concerning how this particular investment contract worked. In the face of
3 promises that ICP would be similar to Bitcoin and Ethereum, and considering the new technology at issue
4 and Dfinity’s other statements, many investors were understandably unaware that ICP tokens had
5 fundamentally different features than other cryptocurrencies, which the SEC has determined are not
6 securities.⁶⁴

7 132. Moreover, the Internet Computer project was advertised as being an improvement on
8 Bitcoin, Ethereum, and other cryptocurrencies. For example, on August 28, 2020, Defendant Williams
9 published an article on the Dfinity blog titled “How Ethereum Could Be Supercharged by the Internet
10 Computer Network” that made several statements proclaiming the benefits of ICP over “traditional
11 blockchains.”⁶⁵ In particular, Williams offered that:

12 The Internet Computer works differently than traditional blockchains, and this enables
13 Ethereum developers to incorporate its capabilities into their dapps with relative ease. For
14 example, whereas Ethereum requires users to submit some amount of ETH with every
15 transaction to pay for the gas that fuels the computation resulting from smart contract code
16 being invoked, on the Internet Computer canisters (a form of smart contracts) are pre-
17 charged with “cycles” (the equivalent of gas) and pay for computation themselves.⁶⁶

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

- 19 a) “Ethereum dapps can use [ICP’s] software canisters to expand their capabilities in a
20 multitude of exciting ways, including scaling data storage and processing, and
21 serving Web experiences.”
22 b) “To store 1GB of data inside a smart contract on the Ethereum network would cost
23 millions of dollars, which can make it prohibitively expensive to maintain anything
24 beyond fiduciary data. By contrast, the cost of storing 1GB of data inside a canister

25 ⁶⁴ Note – there is some statement of policy on the Ethereum which noted that the ICO was
26 problematic, but noted it was long after any SOL had run out.

27 ⁶⁵ 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>.

28 ⁶⁶ *Id.*

1 on the Internet Computer over some substantial period of time can cost as little as a
2 few cents, providing an incredible solution for Ethereum dapps that need to maintain
3 and process large data sets.”; and

4 c) “The Internet Computer’s protocols also apply far more advanced cryptography and
5 computer science [than Ethereum], making it more difficult for community
6 developers to drive R&D alone. . . .”⁶⁷

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

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

16 136. The creation of ICP tokens at the direction of Dfinity occurred through a centralized
17 process, in contrast to Bitcoin and Ethereum. This would not have been apparent at issuance, however, to
18 a reasonable investor. Rather, it was only after the passage of time and disclosure of additional
19 information about the issuer’s intent, process of management, and success in allowing decentralization to
20 arise that a reasonable purchaser could know that he or she had acquired a security. Purchasers were
21 thereby misled into believing that ICP was something other than a security, when it was a security.

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

24 **F. ICP Is a Security**

25 138. Under Section 2(a)(1) of the Securities Act, a “security” is defined to include an “investment
26 contract.” 15 U.S.C. § 77b(a)(1). An investment contract is “an investment of money in a common

27 _____

28 ⁶⁷ *Id.*

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

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

17 **i. ICP Investors Invested Money**

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

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

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

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

25 **ii. ICP Investors Were Intertwined in a Common Enterprise with**
26 **Defendants**

27 144. Additionally, investors were passive participants in the ICP tokens’ Genesis launch and the
28 profits of each Plaintiff and the Class were intertwined with those of Defendants and of other investors.

1 Dfinity concedes that it uses ICP to fund its operations and promote projects on the Internet
2 Computer, even criticizing other blockchain technology developers for not using their proceeds from
3 previous ICOs to hire more quantity and quality employees.⁶⁸

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

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

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

10 **iii. Investors Purchased the ICP Tokens with a Reasonable Expectation of**
11 **Profit from Owning Them**

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

17 **iv. Investors Expected Profits from the ICP Tokens to Be Derived from**
18 **the Managerial Efforts of Defendants**

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

24 150. Purchasers of pre-functional tokens necessarily rely on the managerial efforts of others to
25 realize value from their Investments. The success of these managerial efforts in developing the networks
26

27 ⁶⁸ Domenic Williams, *On Accelerating Blockchain Evolution Using Different Funding and Team*
28 *Models* (Aug. 25, 2017), <https://medium.com/dfinity/on-accelerating-blockchain-evolution-using-different-funding-and-team-models-1c04c3d0893a> (last visited May 20, 2021).

1 on which these tokens will operate is the primary factor in their price, that is, until such tokens transition
2 into being functional utility tokens.

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

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

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

12 154. For example, Defendant Williams boisterously touted the “superstars” that would “rock
13 the world” whom Dfinity was able to recruit to the “stellar team” working on the Internet Computer
14 project.⁶⁹ Dfinity praised that team as being integral to the success of Internet Computer project.

15 155. Defendant Williams also bragged that ICP is “backed by a large team of full time engineers
16 and cryptographers who are currently distributed across four dedicated international research centers, as
17 well as remote teams.”⁷⁰

18 156. Investors in ICP thus reasonably expected Dfinity, co-founder Defendant Williams,
19 and Dfintiy’s development team to provide significant managerial efforts after the Genesis launch.

20 157. This dependency, however, on the managerial efforts of Dfinity and Defendant Williams
21 was not apparent at issuance to a reasonable investor. Considering the limited available information about
22 how these ICP tokens were designed and intended to operate, if such an investor were even able to interpret
23 the relevant law at the time, a reasonable investor lacked sufficient bases to conclude whether the ICP
24 tokens were securities until the platform at issue, and its relevant “ecosystem,” had been given time to

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

28 ⁷⁰ [https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-](https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-network-afc513bf15e1)
[network-afc513bf15e1](https://medium.com/dfinity/how-ethereum-could-be-supercharged-by-the-internet-computer-network-afc513bf15e1).

1 develop. In the interim, the investor lacked the facts necessary to conclude – let alone formally allege in
2 court – that the tokens she had acquired were securities. It was only after certain revelations that provided
3 more information about Defendant’s intent, Dfinity’s token economics, and how the governance structure
4 of ICP tokens would resulting in the centralization in Dfinity, that an investor could reasonably determine
5 that a token that was advertised as something other than a security was a security all along.

6 **v. Guidance from the SEC**

7 **a. The SEC’s 2019 Framework**

8 158. On April 3, 2019, the SEC published its “Framework for ‘Investment Contract’ Analysis
9 of Digital Assets” (the “Framework”) in which it “provided a framework for analyzing whether a digital
10 asset is an investment contract and whether offers and sales of a digital asset are securities transactions.”

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

13 160. In particular, the Framework provides that the “inquiry into whether a purchaser is relying
14 on the efforts of others focuses on two key issues: Does the purchaser reasonably expect to rely on the
15 efforts of an [Active Participant or “AP”]? Are those efforts ‘the undeniably significant ones, those
16 essential managerial efforts which affect the failure or success of the enterprise,’ as opposed to efforts that
17 are more ministerial in nature?”

18 161. The Framework further notes that the “stronger the[] presence” of the following factors,
19 “the more likely it is that a purchaser of a digital asset is relying on the ‘efforts of others.’”

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

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

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

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

9 166. The Framework also looks to whether the AP “plays a lead or central role in deciding
10 governance issues . . . that occur with respect to the digital asset.”

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

14 168. The framework further states that “An AP has a continuing managerial role in making
15 decisions about or exercising judgment concerning the network or the characteristics or rights the digital
16 asset represents[.]”

17 169. Here, Dfinity and Defendant Williams have discussed the long-term prospects on decade-
18 long time frames, continually noting how the Internet Computer will “evolve” in the future.

19 170. For example, when discussing “WebAssembly specification” in Dfinity noted it would be
20 “adding support for new features as they become mature enough.” Similarly, Dfinity remarked that “Over
21 a longer time horizon, we expect to see end-to-end formally verified WebAssembly execution
22 environments, for additional security.”⁷¹

23 171. The ability to determine whether and where the digital asset will trade is another factor
24 discussed in the Framework. For example, “purchasers may reasonably rely on an AP for liquidity, such
25

26
27 ⁷¹ Dfinity, *A Closer Look at Software Canisters, an Evolution of Smart Contract* (Oct. 7, 2020),
28 <https://medium.com/dfinity/software-canisters-an-evolution-of-smart-contracts-internet-computer-f1f92f1bffff>.

1 as where the AP has arranged, or promised to arrange for, the trading of the digital asset on a secondary
2 market or platform.”

3 172. Here, Dfinity’s website admits that the control of the “flow of liquid ICP tokens around the
4 network” was “very important” to ICP’s success.⁷² Consequently, Dfinity scheduled the ICP tokens’
5 released “for the safety and security of ICP holders, the network, and its users while the underlying
6 technology is be[ing] fettled and its ecosystem is being established.”⁷³

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

11 174. Here, Dfinity, along with the Controlling Defendants, are the arbiters of funding for
12 Internet Computer project. For example, in September 2020, Dfinity and the Controlling Defendants
13 created the “Beacon Fund,” which provided \$14 million in funding to support those building software on
14 the Internet Computer.⁷⁴

15 175. Dfinity also announced that the Foundation has provided over \$225 million in “non-
16 dilutive financing in the form of developer grants to teams building on the Internet Computer” as a part
17 of Dfinity’s Developer Ecosystem Program.⁷⁵

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

20 177. The Framework also remarks that purchasers would reasonably expect the AP to
21 undertake efforts to promote its own interests and enhance the value of the network or digital asset,
22 including, but not limited to, the instances where the AP “has the ability to realize capital appreciation

23 ⁷² Dfinity, *How to Access ‘Seed’ and ‘Airdrop’ ICP Tokens and Participate in the Internet Computer*
24 *Network* (May 10, 2021), [https://medium.com/dfinity/how-to-access-seed-and-airdrop-icp-tokens-and-](https://medium.com/dfinity/how-to-access-seed-and-airdrop-icp-tokens-and-participate-in-the-internet-computer-network-e6cd663a0c3c)
25 [participate-in-the-internet-computer-network-e6cd663a0c3c](https://medium.com/dfinity/how-to-access-seed-and-airdrop-icp-tokens-and-participate-in-the-internet-computer-network-e6cd663a0c3c).

26 ⁷³ *Id.*

27 ⁷⁴ 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-](https://medium.com/dfinity/dfinity-announces-chf-200-million-program-to-support-the-internet-computer-developer-ecosystem-c65aa290548c)
28 [program-to-support-the-internet-computer-developer-ecosystem-c65aa290548c](https://medium.com/dfinity/dfinity-announces-chf-200-million-program-to-support-the-internet-computer-developer-ecosystem-c65aa290548c).

⁷⁵ *Id.*

1 from the value of the digital asset. This can be demonstrated, for example, if the AP retains a stake or
2 interest in the digital asset.” According to the SEC, in these instances, “purchasers would reasonably
3 expect the AP to undertake efforts to promote its own interests and enhance the value of the network or
4 digital asset.”

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

7 **b. SEC’s Previous Statements and Findings**

8 179. On May 7, 2021, on CNBC’s “Squawk Box” television program, chairman of the SEC
9 Gary Gensler stated that “a lot of crypto tokens – I won’t call them cryptocurrencies for this moment –
10 *are indeed securities*[.]”⁷⁶ In addition to being the Chairman of the SEC, Mr. Gensler is also a world
11 renowned expert on cryptocurrencies and blockchain technology, having taught the “Blockchain and
12 Money” course at the Sloan School of Management at the Massachusetts Institute of Technology
13 (“MIT”).⁷⁷ [Emphasis added.]

14 180. In a June 14, 2018 speech entitled “Digital Asset Transactions: When Howey Met Gary
15 (Plastic)” that is available on the SEC’s website,⁷⁸ the following observations were made on “when a
16 digital transaction may no longer represent a security offering”:

17 If the network on which the token or coin is to function is sufficiently decentralized – where
18 purchasers would no longer reasonably expect a person or group to carry out essential
19 managerial or entrepreneurial efforts – the assets may not represent an investment contract.
20 Moreover, when the efforts of the third party are no longer a key factor for determining the
21 enterprise’s success, material information asymmetries recede. As a network becomes
22 truly decentralized, the ability to identify an issuer or promoter to make the requisite
23 disclosures becomes difficult, and less meaningful.

24 ⁷⁶ Jesse Point, *SEC Chairman Gary Gensler says more investor protections are needed for bitcoin
25 and crypto markets* (May 7, 2021), [https://www.cnbc.com/2021/05/07/sec-chairman-gary-gensler-says-
26 more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html](https://www.cnbc.com/2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html).

27 ⁷⁷ Lectures and Materials from Chairman Gensler’s MIT course are available to the public for free
28 at: [https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-
2018/video-lectures/session-1-introduction/](https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/).

⁷⁸ 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](https://www.sec.gov/news/speech/speech-hinman-061418).

1 And so, when I look at Bitcoin today, I do not see a central third party whose efforts are a
2 key determining factor in the enterprise. The network on which Bitcoin functions is
3 operational and appears to have been decentralized for some time, perhaps from inception.

4 181. A key factor in determining whether a digital asset is a security or not is whether there
5 is a centralized entity behind the digital asset.⁷⁹

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

8 183. Finally, the SEC also already concluded that another virtual currency (*i.e.*, DAO tokens)
9 that substantially similar to ICP are "securities and therefore subject to the federal securities laws." As
10 stated by the SEC, "issuers of distributed ledger or blockchain technology-based securities must register
11 offers and sales of such securities unless a valid exemption applies."⁸⁰

12 **vi. Crypto Community Sentiment**

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

16 185. As discussed above, ICP token holders are given various governance and voting rights over
17 the Internet Computer Project. Put another way, ICP is a "governance token, meaning holders of ICP
18 having voting power on Internet Computer proposals."⁸¹

19 186. However, "Dfinity's grandiose vision for the ICP has been greeted with a mixed reaction
20 among many in the crypto community, with questions raised over how decentralized the project's
21
22
23

24 ⁷⁹ *Id.* (noting that the "decentralized structure" of Bitcoin and Ethereum placed these digital assets
25 outside the "disclosure regime of the federal securities laws").

26 ⁸⁰ 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>.

27 ⁸¹ Brenden Rearick, *Internet Computer (ICP) Crypto: 10 Things to Know as ICP Snags No. 8 Spot*,
28 INVESTORPLACE.COM (May 12, 2021), <https://investorplace.com/2021/05/internet-computer-icp-crypto-10-things-to-know-as-icp-snags-no-8-spot/>.

1 governance actually is.”⁸² As reported in CoinTelegraph.com’s May 26, 2021 article “\$223M fund for
2 Internet Computer builders – but community is wary”:

3 In an illustrative thread on the “r/dfinity” subreddit on May 25, user “u/Additional_Plant”
4 noted “I don’t doubt that it is a powerful, game changing project. But that doesn’t mean
5 it’s good for us common folks,” adding that: “There are too many red flags. For all intents
6 and purposes, Dfinity have total control through the NNS. Is it really a crypto? Not really.
7 Is it actually decentralized? Far from it.”⁸³

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

12 While the amount of ICP tokens allocated to the Dfinity Foundation and its affiliates is not
13 greater than 50%, they are likely the only entities who are willing to lock their tokens for
14 that eight-year [maturation] period. The longer you lock your ICP in NNS, the more voting
15 power and the more ICP rewards you have and the more ICP you earn from inflation.
16 These can then be compounded back into governance. ***What this means is the Dfinity
17 Foundation has total control over the internet computer. It can probably vote on
18 whatever proposals it wants and this voting power will only increase over time if its
19 tokens stay locked.***⁸⁴

20 188. As Coin Bureau observed in its ICP video: “That doesn’t sound at all like a cryptocurrency.
21 ...”⁸⁵

22 * * *

23 189. In sum, Defendant marketed and sold ICP as a security under the guise of it being a
24 cryptocurrency. And Dfinity promoted the Internet Computer as being decentralized when its token
25 governance and economics scheme would inevitably result in control over the Internet Computer
26 becoming centralized in Defendants. Due to Defendants’ conduct as alleged herein, investors have

27 ⁸² *Internet Computer (ICP): BIGGEST Launch of 2021??*, https://www.youtube.com/watch?v=YGrFj3pav_A.

28 ⁸³ *Id.*

⁸⁴ *Id.* (emphasis added).

⁸⁵ *Id.*

1 suffered massive damages as the price of ICP has fallen from highs of \$731 to a low of \$20.08 on June
2 14, 2021. As of the date of filing, the price of ICP is approximately \$36.

3 **CLASS ACTION ALLEGATIONS**

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

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

11 192. The members of the Class are so numerous that joinder of all members is impracticable.
12 While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained
13 through appropriate discovery, Plaintiff believes that there are thousands of members of the proposed
14 Class. The members of the proposed Class may be identified from records maintained by the Company
15 and may be notified of the pendency of this action by mail, using customary forms of notice that are
16 commonly used in securities class actions.

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

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

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

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

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

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

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

3 DATED: July 15, 2021

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