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San Francisco County Superior Court

OCT 25 2017
CLERK OF THE COURT
BY 
Deputy Clerk

9 ANDREW BAKER, individually and on behalf
10 of all others similarly situated

11 Plaintiff,

12 v.

13 DYNAMIC LEDGER SOLUTIONS, INC., a
14 Delaware corporation, THE TEZOS
15 FOUNDATION, a Swiss foundation,
16 KATHLEEN BREITMAN, an individual,
17 ARTHUR BREITMAN, an individual, JOHANN
18 GEVERS, an individual, STRANGE BREW
19 STRATEGIES, LLC, a California limited
liability company, and DOES 1 through 100,
inclusive,

20 Defendants.

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Case No. **CGC-17-562144**

CLASS ACTION

COMPLAINT FOR:

**(1) UNREGISTERED OFFER AND SALE
OF SECURITIES IN VIOLATION OF
SECTIONS 5(a) AND (c) OF THE
SECURITIES ACT**

**(2) FRAUD IN THE OFFER OR SALE OF
SECURITIES IN VIOLATION OF
SECTION 17(a)(1) OF THE SECURITIES
ACT**

**(3) FRAUD IN THE OFFER OR SALE OF
SECURITIES IN VIOLATION OF
SECTIONS 17(a)(2) AND (3) OF THE
SECURITIES ACT**

**(4) FALSE ADVERTISING (BUSINESS
AND PROFESSIONS CODE SECTIONS
17500, ET SEQ.)**

**(5) UNFAIR COMPETITION (BUSINESS
AND PROFESSIONS CODE SECTIONS
17200, ET SEQ.)**

(6) ALTER EGO LIABILITY

JURY TRIAL DEMANDED

DEMAND EXCEEDS \$25,000

1 Plaintiff Andrew Baker, individually and on behalf of all others similarly situated
2 (“Plaintiffs”) complains against defendants Dynamic Ledger Solutions, Inc. (“DLS”), the Tezos
3 Foundation (“Tezos Foundation”), Kathleen Breitman, Arthur Breitman, Johann Gevers
4 (collectively, “Tezos Defendants”), Strange Brew Strategies, LLC (“Strange Brew”) and Does 1-
5 100 (collectively, “Defendants”) as follows:

6 **SUMMARY OF ACTION**

7 1. This action involves a scheme by Defendants to raise hundreds of millions of dollars
8 through an “initial coin offering” (“ICO”) in violation of the registration and anti-fraud provisions
9 of the federal securities laws, as well as state false advertising, and unfair competition laws.

10 2. The last two years have seen the explosive growth of blockchain technology and the
11 value of cryptocurrencies. A blockchain is a decentralized digital ledger (such as bitcoin) on
12 which transactions (or other information) are recorded and added in chronological order. It
13 allows participants to keep track of digital currency transactions (or information exchanges)
14 without central record keeping.

15 3. There are now hundreds of different cryptocurrencies worth more than \$150
16 billion—up from just \$12.5 billion a year ago. These currencies use encryption techniques to
17 regulate the generation of units of currency and facilitate and verify the transfer of funds without
18 the need for an intermediary, like a bank.

19 4. Taking advantage of this rapid growth, many blockchain and cryptocurrency
20 startups have attempted to skirt fundraising regulations by raising funds though an ICO. In an
21 ICO, tokens are sold to consumers in exchange for legal tender or other cryptocurrencies (most
22 often Bitcoin and Ethereum). These tokens generally give the purchaser various rights on the
23 blockchain network and resemble the shares of a company sold to investors in an initial public
24 offering. Unfortunately, these ICOs have become a magnet for unscrupulous practices and fraud.

25 5. Against this backdrop, in July 2017, Defendants conducted an ICO in which they
26 sold 607,489,040.89 tokens (dubbed “Tezzies” or “XTZ”) in exchange for digital currency worth
27 approximately \$232 million at the time. This digital currency is now worth about twice that—

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1 approximately \$475 million. The Tezzies would purportedly allow their holders to facilitate
2 payments or execute smart contracts on the Tezos blockchain network, and to control the rules of
3 the Tezos network by voting on upgrades.

4 6. The Tezzies therefore derive their value from the usefulness and popularity of the
5 Tezos network. As the Tezos network was not yet working, investments in Tezzies were
6 investment in a common enterprise, with an expectation of profits, solely from the efforts of
7 others—namely, the Breitmans, DLS and the Tezos Foundation.

8 7. On or about July 25, 2017 the U.S. Securities and Exchange Commission (“SEC”)
9 issued a Report indicating that many ICOs, and particularly those with the above characteristics
10 are securities under the Securities Act. A true and correct copy of this report is attached as
11 **Exhibit A.**

12 8. However, Defendants did not register these Tezzies with the SEC, and many of the
13 representations Defendants made regarding the status of the Tezos project in the run up to the ICO
14 were either exaggerations or outright lies.

15 9. Despite claiming before the ICO that the Tezos network would likely be up and
16 running by September 2017, defendant Arthur Breitman now concedes that it will not be ready
17 until February 2017 at earliest. It has also become clear that the funds collected by the Tezos
18 Foundation in the ICO are not being allocated as ICO participants were told they would.

19 **PARTIES**

20 10. Lead Plaintiff Andrew Baker is an individual who at all times mentioned, was and is
21 a resident of San Diego, California. Baker purchased Tezzies from Defendants during the Tezos
22 ICO.

23 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant DLS is
24 a Delaware corporation with its principal place of business in San Francisco, California. It is
25 owned and controlled by defendants Kathleen and Arthur Breitman, and according to the Tezos
26 website, it owns all of the Tezos-related intellectual property.

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1 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant Tezos
2 Foundation is a Swiss foundation established in order to collect the ICO funds and skirt U.S.
3 regulations.

4 13. Plaintiff is informed and believes, and based thereon alleges, that Defendant
5 Kathleen Breitman is an individual who at all times mentioned was and is a California resident.
6 Kathleen Breitman is the CEO of DLS.

7 14. Plaintiff is informed and believes, and based thereon alleges, that Defendant Arthur
8 Breitman is an individual who at all times mentioned was and is a California resident. Arthur
9 Breitman was previously the CEO of DLS, and is currently its CTO.

10 15. Plaintiff is informed and believes, and based thereon alleges, that Defendant Johann
11 Gevers is an individual who is a Swiss national. Gevers is the president of the Tezos Foundation.

12 16. Plaintiff is informed and believes, and based thereon alleges, that Defendant Strange
13 Brew Strategies, LLC is a California limited liability company with its principal place of business
14 in San Francisco, California.

17. At all times mentioned herein, each of the defendants named herein, including
18. DOES 1 through 100 were the co-conspirators, agents, representatives, alter egos, employers,
19. and/or joint venturers of the other defendants, and, in doing the acts and things herein alleged,
were acting within the course, scope, and authority of said agency, service, or employment with
knowledge, permission, and consent of the other defendants and each of them.

20 18. Plaintiff alleges on information and belief that DOES 1-100, inclusive, were
21 individuals, corporations, companies, partnerships, or other business entities. DOES 1-100 were
22 co-conspirators with, or alter egos of, other Defendants in the violations alleged in this Complaint
23 and performed acts or made statements in furtherance thereof. Plaintiffs are presently unaware of
24 the true names and identities of DOES 1-100. Plaintiffs will amend this Complaint to allege the
25 true names of the DOE defendants when they are able to ascertain them.

CLASS ACTION ALLEGATIONS

1 19. This suit is brought as a class action pursuant to section 382 of the California Code
2 of Civil Procedure, on behalf of a class of:

3 **All natural persons who purchased Tezzies during the ICO conducted
4 by Defendants in July 2017. Excluded from the class are: retail employees;
5 corporate officers, members of the boards of directors, and senior executives
of Defendants; and any and all judges and justices, and chambers' staff,
assigned to hear or adjudicate any aspect of this litigation.**

6 20. Plaintiff does not, as of yet, know the exact size of the class. However, based on
7 records found on the Tezos website, Plaintiff believes that there are approximately thirty thousand
8 class members. The members of the class are thus so numerous that joinder of all members is
9 impracticable.

10 21. Questions of law and fact common to the class that predominate over any questions
11 that may affect only individual members of the class, including, but not limited to:

- 12 (a) Whether the Tezzies offered for sale during the Tezos ICO constitute securities
13 under the Securities Act;
- 14 (b) Whether the Tezos ICO violated the registration provisions of the Securities Act;
- 15 (c) Whether the Tezos ICO violated the anti-fraud provisions of the Securities Act;
- 16 (d) Whether the conduct of Defendants violated California False Advertising Law;
- 17 (e) Whether the conduct of Defendants violated the Unfair Competition Law;
- 18 (f) Whether statements made by Defendants before and during the Tezos ICO
19 misrepresented material facts about the Tezos network and the value of Tezzies; and
- 20 (g) The type and measure of damages suffered by Plaintiff and the Class.

21 22. Lead Plaintiff will fairly and adequately protect the interests of the class because
22 Plaintiff's claims are typical and representative of the claims of all members of the class. Lead
23 Plaintiff suffered injury in fact when he purchased 5,000 Tezzies for one Bitcoin (then valued at
24 approximately \$2,800).

25 23. Lead Plaintiff's claims are typical of the claims of all class members, as all members
26 of the class are similarly affected by Defendants' wrongful conduct in violation of federal
27 securities laws, and state false advertising and unfair competition laws.

1 24. There are no unique defenses that may be asserted against Lead Plaintiff
2 individually, as distinguished from the other members of the class, and the relief sought is
3 common to the class. Plaintiff is typical of other members of the class, does not have any interest
4 that is in conflict with or is antagonistic to the interests of the members of the class, and has no
5 conflict with any other members of the class. Plaintiff has retained competent counsel
6 experienced in securities, consumer protection, and class action litigation to represent himself and
7 the class.

8 25. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy since joinder of all class members is impracticable. Furthermore,
10 as the damages suffered by individual Class members may be relatively small, the expense and
11 burden of individual litigation make it impossible for class members to redress individually the
12 wrongs done to them. In the absence of a class action, Defendants will retain the benefits of their
13 wrongful conduct.

THE BEGINNINGS OF TEZOS

15 26. In the summer of 2014, Arthur Breitman, a self-described crypto-anarchist, released
16 two papers online that presented his concept for the Tezos blockchain network under the
17 pseudonym “L. M Goodman.”

18 27. In early 2015, Arthur Breitman told others that he wanted to start a business based
19 on Tezos, but did not want to be publicly associated with it at the time. He expressed concern that
20 his activities might conflict with his employment at Morgan Stanley.

21 28. Also in early 2015, Arthur Breitman wrote a “Tezos Business Plan” which projected
22 that if the company survived 15 years it would be worth between two billion and twenty billion
23 dollars. The budget called for paying Arthur Breitman \$212,180 in salary by year three.

24 29. In August 2015, Arthur Breitman established defendant DLS and listed himself as
25 CEO.

26 30. Although, the U.S. Financial Industry Regulatory Authority (FINRA) requires
27 registered securities professionals, such as Arthur Breitman, to provide prior written notice to their

1 employer to conduct outside business activities if there is "reasonable expectation of
2 compensation," Breitman did not report any "other business activities."

3 31. The 2015 business plan called for raising \$5 million to \$10 million over two to three
4 years. Breitman pitched "Tezos Inc." in 2015, but failed to attract backers at the time.

5 **THE LEAD UP TO THE TEZOS ICO**

6 32. In April 2016, Arthur Breitman left Morgan Stanley, and by that September, he and
7 his wife Kathleen Breitman started working on a new strategy for Tezos. Conducting an online
8 fundraiser to distribute digital tokens ("Tezos ICO"), whose holders would maintain the Tezos
9 blockchain.

10 33. According to the Tezos.com website, over the next six months, they received
11 \$612,000 from ten early backers, including several cryptocurrency hedge funds.

12 34. To conduct the ICO, the Breitmans helped to create the Tezos Foundation in Zug,
13 Switzerland. The Foundation is seeking not-for-profit status. According to documents on the
14 Tezos website, the plan was for the Foundation to raise money via the ICO, then acquire DLS, the
15 Breitman-controlled company that has been developing Tezos.

16 35. In June 2017, Kathleen Breitman told Reuters that she and Arthur Breitman opted to
17 use a foundation based in Zug because Switzerland has "a regulatory authority that had a sufficient
18 amount of oversight *but not like anything too crazy.*" (emphasis added)

19 36. Months after the conclusion of the ICO, Kathleen Breitman would describe Swiss
20 regulators as "accommodating," and when asked to compare them to the SEC would say: "I don't
21 know much about how to deal with the SEC, but in general I think its very easy for me to get an
22 opinion on what we ought to do in Switzerland, here in the US its less obvious how these digital
23 assets are registered and treated."

24 37. The Tezos website describes the relationship between DLS and the Tezos
25 Foundation. Characterizing DLS as "a US-based company currently controlled by its founders,
26 Kathleen & Arthur Breitman. It owns all of the Tezos-related intellectual property (IP) including
27 the source code of the Tezos cryptographic ledger, logos, and trademark applications associated
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1 with the name Tezos, domain names, and goodwill arising from a set of relationships with
2 several contractors and potential customers in the financial technology market.”

3 38. The website notes that “The Tezos Foundation (the Foundation) is a Swiss
4 foundation based in Zug. Its directors are Johann Gevers, Diego Ponz, and Guido Schmitz-
5 Krummacher. As a legal entity, it operates independently from DLS, though DLS advises the
6 Foundation closely on technology.”

7 39. It explains that the Foundation and DLS “have negotiated a contractual agreement in
8 which the Foundation will acquire DLS and release its IP under a free software license.” The
9 Foundation will “also acquire DLS’ existing business relationships with contractors and potential
10 customers, as well as its trademark applications and domain names. This transaction is structured
11 as an earnout, which means the price paid will depend on future performance metrics.”

12 40. The ICO was originally scheduled to be held in May, but was delayed, and the
13 project was running out of cash. So, Kathleen Breitman went to Tim Draper, the founding partner
14 of Silicon Valley venture capital firm Draper Associates. He invested \$1.5 million through his
15 firm, Draper Associates, which included taking a minority stake in DLS, the company that
16 controls the Tezos source code.

17 **FALSE REPRESENTATIONS REGARDING THE STATUS OF THE TEZOS**
18 **NETWORK**

19 41. In the months leading up to the Tezos ICO, Defendants made numerous statements
20 exaggerating the progress of the Tezos Network, misrepresenting the relationship between
21 Defendants (and particularly between DLS and the Tezos Foundation), and misrepresenting how
22 funds raised during the ICO would be spent.

23 42. The Breitmans hired defendant Strange Brew Strategies, a California public
24 relations firm, to help promote the ICO. Strange Brew pitched a story regarding Tezos to Reuters
25 and Reuters wrote a news story on May 5 about Tim Draper's involvement in the project.

26 43. In pitching the story to Reuters, John O'Brien, a principal of Strange Brew, made
27 false claims about Tezos' progress. He wrote: “The applications of Tezos, ranging from derivatives

1 settlement to micro-insurance, are real and recognized by industry giants. Ernst & Young,
2 Deloitte, LexiFi, etc. have adopted Tezos in their development environments and labs."

3 44. However, on October 3, 2017, a spokeswoman for the accounting firm Ernst &
4 Young told Reuters: "The statement is not correct. EY has not adopted Tezos."

5 45. A spokesman for Deloitte said Tezos' code is "one of many technologies we're
6 considering" with blockchain, but it's "still early stage and we haven't used the technology for a
7 client project."

8 46. Jean-Marc Eber, CEO of the French software company LexiFi, said: "The sentence,
9 as stated, isn't accurate and unfortunately exaggerated, to say the least." While there had been
10 "informal contacts," he said, "at this stage, LexiFi has not adopted Tezos' technology in its
11 development environment or labs."

12 47. The May 5 Reuters article was widely republished throughout California and the rest
13 of the United States.

14 48. The Tezos website also exaggerated the development of the Tezos project. For
15 example, one of the reasons given as the "rationale" for the Breitman's compensation, is that:

16 A large subset of the projects conducting fundraisers (sometimes called
17 "ICOs") today are based on little more than a white paper and will remain
18 in a development phase for years. Participants in those fundraisers have no
19 idea how much of their contributions will be spent bringing those projects
20 to fruition - if they ever reach that point. In contrast, Tezos established a
working testnet in February 2017 which can be accessed upon request to
assess the state of the completion of the Tezos project. Most of the
remaining development consists of performing security audits and
improving the test coverage of the project so it can confidently launch as a
public blockchain.

21 49. In a May 19, 2017 blog post, Arthur Breitman wrote that he believed the Tezos
22 team could reasonably launch the Tezos network "in a three to four months period . . ." Giving his
23 worst-case projection, Breitman continued, "[i]t's entirely within the realm of possibility that the
24 project takes up to 6 months to ship. Based on my assessment of the remaining development . . .
25 that does not seem *likely*, but it's not *impossible*."

26 50. In June of 2017, the Tezos website similarly proclaimed that "[t]he development
27 team estimates that the time to completion [of the Tezos network] is around 4 months."

1 51. Five months have now passed and there is no sign that the Tezos network is
2 anywhere near completion. In fact, according to Arthur Breitman, the network is now not
3 expected to be complete until February 2018 at earliest—a full four months after the worst-case
4 assessment he provided in the run up to the Tezos ICO. Defendants' statements regarding the
5 progress of the Tezos network were thus materially false and misleading.

6 52. The Tezos crowdfunding site also contained a PDF detailing what funds raised in
7 the ICO would be used for based on the amount raised. The section, titled "If the foundation is
8 endowed with ..." details what the Foundation will do if it raises \$6 million, \$12 million, \$20
9 million, "moonshot", or "mars-shot." Having raised well over 10 times \$20 million, the
10 foundation achieved its "mars-shot."

11 53. Under this "mars-shot" scenario, the document claimed the foundation would:

- 12 • "Deploy and silo several teams of engineers to build different candidates for
13 upgrades."
- 14 • "Sponsor a leading computer science department."
- 15 • "Acquire mainstream print and TV media outlets to promote and defend the use of
16 cryptographic ledger in society."
- 17 • "Fund efforts to digitize and map transaction logic from traditional legal prose to a
18 Tezos language."
- 19 • "Negotiate with a small nation-state the recognition of Tezos as one of their official
20 state currencies, which would immediately give Tezos favorable treatment in terms
21 of financial regulation. Attempt negotiations to purchase or lease sovereign land."

22 54. Even under the less optimistic fundraising scenarios, the Foundation promised to:

- 23 • Grow its team to at least 15 members.
- 24 • Conduct three annual developer conferences.
- 25 • "Retain our counsel to start exploring, as a failsafe, alternative legal structure or
26 advocacy for the Foundation beyond the swiss Cryptovalley."

1 • “Lobby municipalities and local government to use formally verified smart
2 contracts as a form of binding legal contract.”
3 • “Purchase a banking license and deploy the Tezos block as a backbone for business
4 operations. Experiment with automation using blockchain for basic processes.”

5 55. Plaintiff is informed and believes and based thereon alleges, that despite raising
6 nearly \$500 million, the Tezos Foundation has not undertaken any of these steps to promote the
7 Tezos network or the use thereof.

8 56. Plaintiff is informed and believes and based thereon alleges that the false and
9 misleading statements described above were made to artificially increase demand for Tezzies
10 during the Tezos ICO, thereby allowing the Tezos Foundation, DLS, and its shareholders to
11 maximize the amount of funds raised.

12 **THE TEZOS ICO**

13 57. Contributors to the Tezos ICO were informed they would be allocated 5,000 Tezzies
14 for each bitcoin contributed during the ICO. The Tezos ICO was uncapped, meaning that there
15 was “no limit on the amount of contributions that [were] accepted.” And to encourage rapid
16 contributions, the ICO provided for “time-dependent bonus[es].”

17 58. The Tezos website described these bonuses: “From 20% at the outset the bonuses
18 will decrease progressively to 0% over four additional periods (15%, 10%, 5%, and 0%) lasting
19 400 Bitcoin blocks [approximately two days and eighteen hours] each.” These bonuses had their
20 intended effect, with the vast majority of purchases occurring the first few days of the ICO.

21 59. The FAQ section of the Tezos website contained an entry instructing visitors on how
22 to acquire Tezzies through the Tezos ICO. It was titled: “How do I acquire and store Tezos tokens
23 during and after the fundraiser (sometimes called “ICO”)?” And stated:

24 During the fundraiser you will access <https://crowdfund.tezos.com> and
25 follow instructions to create a wallet and download a backup of that wallet
26 in the form of a pdf document. We recommend you print, or manually
27 copy this file and place the document in a safe place. Once the Tezos
28 network launches, you will be able to import this wallet into the Tezos
client to access your tezzies.

1 60. The Tezos ICO finally began on July 1, 2017. The Breitmans had wide-ranging
2 expectations about how much they might raise.. In June, Kathleen Breitman told Reuters that
3 about a year ago, when the price of bitcoin was lower, "we were like, 'Hey, we would be lucky if
4 we get 20 million.'"

5 61. When the ICO ended after 13 days, the project received about 65,703 bitcoins and
6 361,122 ether, worth approximately \$232 million at the time. This digital currency is now worth
7 about twice that—approximately \$475 million. Kathleen Breitman has since acknowledged that
8 this significantly exceeded DLS' expectations, and acknowledged the obvious, stating: "that is a
9 lot of money."

10 62. According to the Tezos website, once certain conditions (including release of the
11 Tezos main net) are met DLS shareholders will receive 8.5% of funds contributed during the
12 ICO—approximately \$40 million dollars. DLS shareholders will also receive 10% of all Tezzies
13 in the genesis block—presently valued at approximately \$100 million.

14 63. Despite the substantial sums the Breitmans stand to gain, Kathleen Breitman
15 described participating in the Tezos fundraiser as like contributing to a public television station
16 and receiving "a tote bag" in return. "That's kind of the same thing here," she said.

17 64. While the ICO's purported terms called the contributions "a non-refundable
18 donation" and not a "speculative investment," Lead Plaintiff was not shown these terms at any
19 stage during the ICO process, nor did he agree to them. Plaintiff is informed and believes and
20 based thereon alleges that the purported terms were not shown to other ICO participants.

21 65. Moreover, this characterization of ICO contributions as a donation is directly
22 contradicted by statements made by Defendants and the significant investments made by
23 cryptocurrency hedge funds.

24 66. DLS shareholder, Draper told Reuters that cryptocurrencies are commodities like
25 pork bellies, and characterized acquiring Tezzies as a purchase rather than a donation. Asked
26 earlier in October how much he donated during the Tezos fundraiser, he replied via email, "You
27 mean how much I bought? A lot."

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1 67. Kathleen Breitman similarly revealed the absurdity of characterizing purchases
2 made during the ICO as donations in a June 2017 interview, stating: “*We are selling* . . . rather the
3 Foundation is recommending an allocation of tokens to the genesis block based on donations to a
4 Swiss non-profit . . . *we are going to sell them* over the course, uh, rather have them up for
5 donation for the course of two weeks . . .” (emphasis added).

PLAINTIFF ANDREW BAKER'S CONTRIBUTION TO THE ICO

7 68. Plaintiff Baker began investing in cryptocurrencies in March 2017. Before buying
8 Tezos he had bought primarily Ethereum and Bitcoin—the two largest cryptocurrencies.

9 69. Baker saw some of the stories detailing Tezos' potential and read up on Tezos on its
10 own site and various cryptocurrency blogs and podcasts. In doing so he was exposed to many of
11 the false statements described above.

12 70. He determined that buying Tezzies was a worthwhile investment. This
13 determination was based in large part on the repeated representations that the Tezos network
14 would be operational by December 2017 at latest.

15 71. On July 12, 2017, Baker logged onto the Tezos contribution website from his home
16 network in San Diego, California and followed the contribution instructions (which are provided
17 in this YouTube video <https://www.youtube.com/watch?v=Uti8-1Y-Wkk>).

18 72. At no point in this process did Mr. Baker see or agree to the Tezos ICO's purported
19 terms and conditions.

73. The Tezos website provided Mr. Baker with a Bitcoin address to send funds to. Mr. Baker then sent one Bitcoin (worth approximately \$2,800 at the time) from an account on Coinbase, a cryptocurrency exchange based in San Francisco, California, to the address provided by the Tezos contribution website. In return he was provided with a private key that he was informed would allow him to access his wallet (containing 5,000 Tezzies) when the Tezos network was launched.

26 74. A signed certification from Mr. Baker is attached as **Exhibit B**.

INFIGHTING AND MISUSE OF FUNDS

75. Following the ICO, neither the Tezos Foundation nor DLS provided significant status updates to participants or the general public.

76. Then, on or about October 18, 2017, Arthur Breitman published a blog post titled “The Path Forward” conceding that progress since the ICO “had fallen short of our expectations.”

77. According to Breitman's blog post, in early September, the Brietmans "became aware that the president of the Tezos Foundation, Johann Gevers, engaged in an attempt at self-dealing, misrepresenting to the board the value of a bonus he attempted to grant himself."

78. The blog post concluded that “[o]ur current best estimate for shipping the [Tezos] main net is now February of 2018, through the firm date remains ‘when it’s ready.’”

79. Gevers responded to these accusations by stating that he would not step down and accusing Arthur Breitman of "attempted character assassination." He continued by describing the efforts to remove him by the Breitmans and the other board members as an "illegal coup."

80. Gevers stated that the Breitmans had been trying to control the Tezos Foundation as if it were their own private entity. He said that by bypassing the Tezos Foundations' legal structure and interfering in its operations the Breitmans caused costly delays in developing and launching the network and currency. He further accused them of "unnecessarily putting the project at risk."

81. The Breitmans and DLS have not transferred the company (or its intellectual property) to the Foundation as they said they would prior to the ICO.

82. Tezos futures tumbled following this news, losing nearly 50 percent of their value.

NO SAFE HARBOR

83. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the

1 extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein,
2 Defendants are liable for those false forward-looking statements because at the time each of those
3 forward-looking statements were made, the particular speaker knew that the particular forward-
4 looking statement was false, and/or that the forward-looking statement was authorized and/or
5 approved by an executive officer of DLS or the Tezos Foundation who knew that those statements
6 were false when made.

7 **FIRST CAUSE OF ACTION**

8 **(Unregistered Offer and Sale of Securities in Violation of Sections 5(a) and 5(c) of the
9 Securities Act - against the Tezos Defendants)**

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

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

18 86. No registration statements have been filed with the SEC or have been in effect with
19 respect to any of the offerings alleged herein.

20 87. By reason of the foregoing, each of the Tezos Defendants have violated Sections
21 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

22 88. As a direct and proximate result of the Tezos Defendants' unregistered sale of
23 securities, Plaintiff and members of the class have suffered damages in connection with their
24 respective purchases of Tezzies securities at the Tezos ICO.

25 **SECOND CAUSE OF ACTION**

26 **(Fraud in the Offer or Sale of Securities in Violation of Section 17(a)(1) of the Securities Act
27 - against the Tezos Defendants)**

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

4 90. The Tezos Defendants, in the offer and sale of Tezzies securities, by the use of the
5 means and instruments of transportation and communication interstate commerce by the use of the
6 mails, directly and indirectly, have employed devices, schemes and artifices to defraud.

7 91. In the offer and sale of the Tezzies securities and as part of the scheme to defraud,
8 the Tezos Defendants made false and misleading statements of material fact and omitted to state
9 material facts to investors and prospective investors as more fully described above.

10 92. The Tezos Defendants engaged in the conduct alleged herein knowingly or with
11 reckless disregard for the truth.

12 93. By reason of the foregoing, each of the Tezos Defendants have violated Sections
13 17(a)(1) of the Securities Act, 15 U.S.C. §§ 77q(a)(1).

14 94. As a direct and proximate result of the Tezos Defendants' conduct, Plaintiff and
15 members of the class have suffered damages in connection with their respective purchases of
16 Tezzies securities at the Tezos ICO.

THIRD CAUSE OF ACTION

18 **(Fraud in the Offer or Sale of Securities in Violation of Sections 17(a)(2) and 17(a)(3) of the**
19 **Securities Act - against the Tezos Defendants)**

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

23 96. As described above, the Tezos Defendants, in the offer or sale of securities, by use
24 of means or instruments of transportation or communication in interstate commerce or by use of
25 the mails, directly or indirectly: (a) obtained money or property by means of untrue statements of
26 a material fact or omitted to state material facts necessary in order to make the statements made, in
27 light of the circumstances under which they were made, not misleading; and/or (b) engaged in

1 transactions, practices, or courses of business that operated or would operate as a fraud or deceit
2 upon the purchaser.

3 97. The Tezos Defendants acted at least negligently with respect to the facts and
4 circumstances described above.

5 98. By reason of the foregoing, each of the Tezos Defendants have violated Sections
6 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and (3).

7 99. As a direct and proximate result of the Tezos Defendants' conduct, Plaintiff and
8 members of the class have suffered damages in connection with their respective purchases of
9 Tezzies securities at the Tezos ICO.

10

11 **FOURTH CAUSE OF ACTION**

12 **(False Advertising in Violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.* - against all
13 Defendants)**

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

17 101. Defendants operated an enterprise whereby they sought to raise funds through the
18 Tezos ICO.

19 102. Defendants publicly disseminated advertising which was untrue or misleading in
20 that statements made regarding the status of the Tezos network, the relationship between DLS and
21 the Tezos Foundation, and what the funds would be used for.

22 103. Defendants knew, or in the exercise of reasonable care should have known, that
23 these statements were untrue or misleading.

24 104. As a direct and proximate result of Defendants' false advertisements, Plaintiff and
25 members of the class have suffered injury to their property. The false statements created greater
26 demand for Tezzies among members of the class than would have otherwise been the case. As a
27 result, Plaintiff and the class have suffered damages in an amount according to proof at trial.

1

FIFTH CAUSE OF ACTION

2

(Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* - against all 3 Defendants)

4

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

8 106. Defendants have committed acts of unfair competition, as defined by Business and
9 Professions Code section 17200 by making material misrepresentations and omissions in the run
10 up to, and during, the Tezos ICO.

11 107. These acts and practices, as described above, violate Business and Professions Code
12 section 17200 in each of the following respects:

13 (a) Defendants' failure to register Tezzies as a security with the SEC prior to offering
14 them to the public in the Tezos ICO violates Sections 5(a) and 5(c) of the Securities Act
15 (15 U.S.C. §§ 77e(a) and 77e(c)), and consequently, constitutes an unlawful business act
16 of practice within the meaning of Business and Professions Code section 17200.

17 (b) Defendants' material misstatements and omissions violate Section 17(a) the
18 Securities Act (15 U.S.C. §§ 77q(a)) and California's False Advertising Law (Bus. & Prof.
19 Code §§ 17200, *et seq.*), and consequently, constitutes an unlawful business act of practice
20 within the meaning of Business and Professions Code section 17200.

21 (c) The harm to Plaintiff and members of the class outweighs the utility of Defendants'
22 policy/practice and, consequently, Defendants' practice constitutes an unfair business act
23 of practice within the meaning of Business and Professions Code section 17200.

24 (d) Defendants' conduct threatens an incipient violation of consumer protection and
25 securities laws, including but not limited to those laws referenced in subparagraph (a)
26 above or violates the policy or spirit of such law or otherwise significantly threatens or
27 harms competition.

(e) Defendants' misrepresentations and omissions regarding the Tezos project in the run up to, and during the Tezos ICO, were likely to mislead the general public, and consequently, constituted fraudulent business acts or practices within the meaning of Business and Professions Code section 17200.

(f) Defendants' acts of untrue and misleading advertising, as more fully set forth in paragraphs 100-104, above, are by definition violations of Business and Professions Code section 17200.

108. As a result of the aforementioned acts, Plaintiff and class members have lost money or property and suffered injury in fact. Defendants received and continue to hold money and property belonging to Plaintiff and class members.

109. Plaintiff and class members have no adequate remedy at law for the injuries which they have suffered and will continue to suffer in the future.

SIXTH CAUSE OF ACTION

(Alter Ego Liability - against the Tezos Defendants)

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

111. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant hereto each of the Tezos Defendants were principal, agent, affiliate, manager, alter-ego, co-venturer, partner, surety, guarantor, officer, director or employee of the remaining Tezos Defendants and were at all times acting within the scope of such agency, affiliation, management, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

112. Plaintiff is informed and believes, and based thereon alleges, that there exists and, at all times mentioned herein, existed a unity of interest and ownership between and among the

1 Tezos Defendants, such that any individuality and/or separateness between the Tezos Defendants
2 has ceased to exist.

3 113. Plaintiff is informed and believes, and based thereon alleges, that the Tezos
4 Defendants were mere shells, instrumentalities and conduits through which the Tezos Defendants
5 carried on their business for the Breitmans' primary, if not sole, benefit. DLS and the Tezos
6 Foundation were and are controlled, dominated and operated by the Breitmans as their individual
7 businesses and alter egos.

8 114. Plaintiff is informed and believes, and based thereon alleges, that the Tezos
9 Defendants intermingled their assets and obtained assets from other Tezos Defendants to suit their
10 convenience and to evade U.S. regulations, liability to defrauded investors, payment of taxes, and
11 other legitimate obligations. The Tezos Defendants used their own assets and those of other Tezos
12 Defendants for personal use, and obtained funds from other Tezos Defendants' business accounts
13 for their own personal use.

14 115. The facts of the case are such that an adherence to the fiction of separate entities
15 would, under the circumstances, sanction a fraud and/or promote injustice because Plaintiff and
16 the class, as victims of the Tezos Defendants' wrongdoing, would suffer injury.

17 116. Plaintiff is therefore entitled to a judgment against the Tezos Defendants, jointly and
18 severally, in a sum according to proof at trial, plus interest at the maximum rate allowed by law
19 and reimbursement of costs.

20 **PRAYER**

21 WHEREFORE, Plaintiff demands judgment on his behalf and that of the class as follows:

22 1. This action may be maintained as a class action under California Code of Civil
23 Procedure section 382 and California Rule of Court 3.670, *et seq.*, certifying Plaintiff as
24 representative of the class and designating his counsel as counsel for the class;

25 2. That the unlawful conduct alleged above be adjudged and decreed to violate Sections
26 5(a), 5(c), and 17(a) of the Securities Act.

3. The conduct of Defendants constitutes an unlawful, unfair, and/or fraudulent business practice within the meaning of California's Unfair Competition Law, California Business and Professions Code section 17200, *et seq.*;

4. That judgment be entered against Defendants and in favor of Plaintiff and each member of the class he represents, for restitution and disgorgement of ill-gotten gains as allowed by law and equity as determined to have been sustained by them;

5. For rescission of Plaintiff and each member of the classes' purchase of Tezzies;

6. For punitive damages;

7. For pre and post-judgment interest;

8. For equitable relief, including a judicial determination of the rights and responsibilities of the parties.

9. For attorneys' fees;

10. For costs of suit; and

11. For such other and further relief as may be deemed just and proper.

Dated: October 23, 2017

TAYLOR-COPELAND LAW

By:

James Q. Taylor-Copeland

Attorney for Lead Plaintiff Andrew Baker