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Superior Court of California, County of San Francisco  
Case No. CGC 12 522983

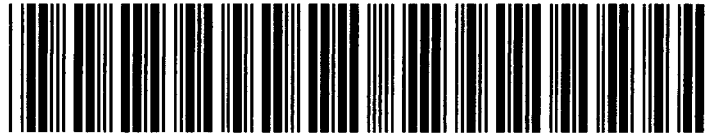
**Brian Cartmell Et Al v. Bitcoinica Lp, Also Known As  
Bitcoinica Et Al**  
Document 1



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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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Aug-06-2012 3:42 pm

Case Number: CGC-12-522983

Filing Date: Aug-06-2012 3:30

Filed by: ELIAS BUTT

Juke Box: 001 Image: 03714221

COMPLAINT

BRIAN CARTMELL et al VS. BITCOINICA LP, ALSO KNOWN AS BITCOINICA et al

001C03714221

**Instructions:**

Please place this sheet on top of the document to be scanned.

**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**  
SEE SUMMONS ATTACHMENT

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
BRIAN CARTMELL, JED MCCALED, JESSE POWELL and  
ROGER VER

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Superior Court of California, County of San Francisco  
400 McAllister St., 4th Floor  
San Francisco, CA 94102

CASE NUMBER: (Número del Caso):  
**CGC-12-522983**

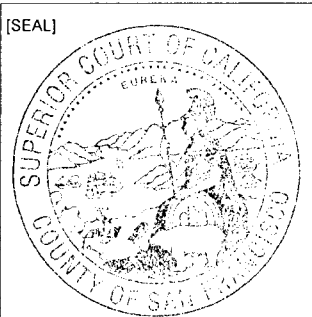
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
HENRY Y. CHIU 222927 Moss, Tucker, Chiu, Hebesha & Ward PC  
5260 N. Palm Ave., Suite 205 Fresno, CA 93704 559-472-9922

CLERK OF THE COURT

DATE:  
(Fecha) **AUG - 6 2012**

Clerk, by  
(Secretario) **ELIAS BUTI**, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

SHORT TITLE:

CASE NUMBER:

CARTMELL v. BITCOINICA

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

BITCOINICA LP, also known as BITCOINICA CONSULTANCY LTD; INTERSANGO LTD; DONALD NORMAN; PATRICK STRATEMAN; AMIR TAAKI; and DOES 1 through 100, inclusive

Page \_\_\_\_\_ of \_\_\_\_\_

Page 1 of 1



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address):

FOR COURT USE ONLY

HENRY Y. CHIU 222927  
Moss, Tucker, Chiu, Hebesha & Ward PC  
5260 N. Palm Ave., Suite 205  
Fresno, CA 93704  
TELEPHONE NO.: 559-472-9922 FAX NO.: 559-472-9892  
ATTORNEY FOR (Name): Plaintiffs

**FILED**  
Superior Court of California  
County of San Francisco

AUG - 6 2012

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco  
STREET ADDRESS: 400 McAllister St., 4th Floor  
MAILING ADDRESS:  
CITY AND ZIP CODE: San Francisco, CA 94102  
BRANCH NAME: Civil Division

CASE NAME: CARTMELL v. BITCOINICA

**CIVIL CASE COVER SHEET**  
 **Unlimited** (Amount demanded exceeds \$25,000)  
 **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CGC-12-522983**

JUDGE:  
DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

- Auto Tort**
  - Auto (22)
  - Uninsured motorist (46)
- Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**
  - Asbestos (04)
  - Product liability (24)
  - Medical malpractice (45)
  - Other PI/PD/WD (23)
- Non-PI/PD/WD (Other) Tort**
  - Business tort/unfair business practice (07)
  - Civil rights (08)
  - Defamation (13)
  - Fraud (16)
  - Intellectual property (19)
  - Professional negligence (25)
  - Other non-PI/PD/WD tort (35)
- Employment**
  - Wrongful termination (36)
  - Other employment (15)

- Contract**
  - Breach of contract/warranty (06)
  - Rule 3.740 collections (09)
  - Other collections (09)
  - Insurance coverage (18)
  - Other contract (37)
- Real Property**
  - Eminent domain/Inverse condemnation (14)
  - Wrongful eviction (33)
  - Other real property (26)
- Unlawful Detainer**
  - Commercial (31)
  - Residential (32)
  - Drugs (38)
- Judicial Review**
  - Asset forfeiture (05)
  - Petition re: arbitration award (11)
  - Writ of mandate (02)
  - Other judicial review (39)

- Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)**
  - Antitrust/Trade regulation (03)
  - Construction defect (10)
  - Mass tort (40)
  - Securities litigation (28)
  - Environmental/Toxic tort (30)
  - Insurance coverage claims arising from the above listed provisionally complex case types (41)
- Enforcement of Judgment**
  - Enforcement of judgment (20)
- Miscellaneous Civil Complaint**
  - RICO (27)
  - Other complaint (not specified above) (42)
- Miscellaneous Civil Petition**
  - Partnership and corporate governance (21)
  - Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a.  Large number of separately represented parties
  - b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
  - c.  Substantial amount of documentary evidence
  - d.  Large number of witnesses
  - e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
  - f.  Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): 5
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: AUGUST 2, 2012

HENRY Y. CHIU  
(TYPE OR PRINT NAME)

[Signature]  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUMMONS ISSUED

**FILED**

Superior Court of California  
County of San Francisco

AUG - 6 2012

CLERK OF THE COURT

BY: Elias RA  
Deputy Clerk

1 DOUGLAS TUCKER 172550  
HENRY Y. CHIU 222927  
2 MOSS, TUCKER, CHIU, HEBESHA & WARD  
A Professional Corporation  
3 5260 North Palm Avenue, Suite 205  
Fresno, California 93704  
4 Telephone: (559) 472-9922

5 Attorneys for Plaintiffs  
BRIAN CARTMELL, JED McCALEB,  
6 JESSE POWELL and ROGER VER

7 **SUPERIOUR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF SAN FRANCISCO**

9 \* \* \*

10 BRIAN CARTMELL, JED McCALEB,  
11 JESSE POWELL and ROGER VER,

12 Plaintiffs,

13 v.

14 BITCOINICA LP, also known as  
15 BITCOINICA; BITCOINICA  
CONSULTANCY LTD; INTERSANGO LTD;  
16 DONALD NORMAN; PATRICK  
STRATEMAN; AMIR TAAKI; and DOES 1  
17 through 100,  
inclusive,

18 Defendants.

Case No. **CGC-12-522983**

**COMPLAINT FOR:**

- (1) BREACH OF CONTRACT;
- (2) OPEN BOOK ACCOUNT;
- (3) ACCOUNT STATED;
- (4) NEGLIGENCE; and
- (5) CONVERSION

19 Plaintiffs Brian Cartmell, Jed McCaleb, Jesse Powell and Roger Ver (collectively,  
20 "Plaintiffs") allege the following against defendants Bitcoinica LP ("Bitcoinica"), Bitcoinica  
21 Consultancy Ltd. ("Bitcoinica Consultancy"), Intersango Ltd. ("Intersango"), Donald Norman  
22 ("Norman"), Patrick Strateman ("Strateman"), Amir Taaki ("Taaki") and DOES 1 through 60,  
23 inclusive (altogether, "Defendants"):

24 **Parties**

25 1. Plaintiffs are individuals who deposited certain monies with defendant Bitcoinica,  
26 or its predecessor(s) in interest, which Defendants have failed and refused to return to Plaintiffs,  
27 despite Plaintiffs' demands for the same.

28 ///

1           2.       Bitcoinica is an entity of unknown form and origin. Plaintiffs are informed and  
2 believe, and thereon allege, that: Bitcoinica is also known as Bitcoinica (without the “LP”  
3 suffix); and Bitcoinica, or its predecessor(s) in interest, is the operator of the Bitcoinica exchange  
4 described below, and the holder of the monies at issue herein.

5           3.       Bitcoinica Consultancy is an entity of unknown form and origin. Plaintiffs are  
6 informed and believe, and thereon allege, that Bitcoinica Consultancy is: an entity responsible  
7 for directing, managing and performing the day-to-day operations of Bitcoinica; and directly  
8 responsible for the decisions and actions alleged herein with respect to the monies at issue.

9           4.       Intersango is an entity of unknown form and origin. Plaintiffs are informed and  
10 believe, and thereon allege, that Intersango is: an entity responsible for directing, managing and  
11 performing the day-to-day operations of Bitcoinica; and directly responsible for the decisions  
12 and actions alleged herein with respect to the monies at issue.

13          5.       Plaintiffs are informed and believe, and thereon allege, that Norman is: an officer  
14 of Bitcoinica, Bitcoinica Consultancy or Intersango, or otherwise exercised direct authority and  
15 control with respect to the monies alleged herein.

16          6.       Plaintiffs are informed and believe, and thereon allege, that Strateman is: an  
17 officer of Bitcoinica, Bitcoinica Consultancy or Intersango, or otherwise exercised direct  
18 authority and control with respect to the monies alleged herein; and domiciled within the County  
19 of San Francisco.

20          7.       Plaintiffs are informed and believe, and thereon allege, that Taaki is an officer of  
21 Bitcoinica, Bitcoinica Consultancy or Intersango, or otherwise exercised direct authority and  
22 control with respect to the release of the Bitcoinica exchange source code and password, as  
23 alleged herein.

24          8.       Plaintiffs are ignorant of the true names and capacities of the defendants named in  
25 this complaint as DOES 1 through 60, and therefore sue said defendants by such fictitious  
26 names. Plaintiffs will amend this complaint to allege the true names and capacities of said  
27 defendants once their identities are ascertained. In the meantime, Plaintiffs are informed and  
28 believe, and thereon allege, that each of these fictitiously named defendants is responsible in

1 some manner for the occurrences alleged herein, and that the damages alleged herein were  
2 proximately caused by such defendants.

3 **Common Allegations**

4 9. Bitcoin is a form of virtual currency recognized by certain individuals and entities  
5 throughout the world. Said currency has a value, which may be exchanged by its owners for  
6 other forms of currency, including United States Dollars.

7 10. Bitcoinica is an exchange which permits its users to deposit United States Dollars  
8 and Bitcoins, and to engage in certain transactions, including, but not limited to, contract-for-  
9 difference transactions against a recognized and accepted Bitcoin-to-United States Dollar  
10 exchange rate. Said transactions are made pursuant to one or more written agreements  
11 concerning the deposit, retention, safekeeping and withdrawal of said monies.

12 11. In 2012, Bitcoinica allegedly suffered several security breaches, in which  
13 unknown persons allegedly compromised the Bitcoinica system to steal monies held by  
14 Bitcoinica. In a public announcement following said breaches, Bitcoinica assured its users,  
15 among other things, that: the overwhelming majority of its Bitcoin deposits were not stolen;  
16 monies were stolen from Bitcoinica, not from its users; and that all withdrawal requests would  
17 continue to be honored. Bitcoinica subsequently set up a claims system by which its users could  
18 withdraw their monies.

19 12. Bitcoinica subsequently stated that it would: (i) verify all claims submitted by its  
20 users; (ii) return fifty percent of the verified claims; and (iii) return the remainders on a pro rata  
21 basis, based upon the total amount of all verified claims and the remaining monies.

22 13. Plaintiffs are users of the Bitcoinica exchange who deposited Bitcoins and United  
23 States Dollars with Bitcoinica. Plaintiffs have submitted claims to Bitcoinica, and are informed  
24 and believe, and thereon allege, that Bitcoinica has verified said claims.

25 14. Bitcoinica and the other Defendants have returned a portion of the amounts of  
26 Plaintiffs' claims. Plaintiffs have demanded that Bitcoinica and the Defendants return the  
27 remaining amounts of their claims, but they have failed and refused to do so.

28 ///



1 15. None of the Plaintiffs have consented to Bitcoinica and the other Defendants  
2 withholding the remaining amounts of their claims for any period of time, nor have they  
3 consented to Bitcoinica and the other Defendants' proposed pro rata reduction of their rightful  
4 monies.

5 16. Plaintiffs are informed and believe, and thereon allege, that the value of the  
6 remaining amounts of their claims total approximately four hundred sixty thousand four hundred  
7 fifty-seven United States Dollars and seventy cents (US\$460,457.70) in principal, as of the date  
8 of this complaint.

9 **Conspiracy**

10 17. Plaintiffs are informed and believe, and thereon allege, that each of Defendants  
11 knowingly and willfully conspired and agreed upon themselves to hinder, delay and deprive  
12 Plaintiffs of their rights with respect to the monies at issue.

13 18. Plaintiffs are further informed and believe, and thereon allege, that said  
14 Defendants did the acts and things alleged herein pursuant to, and in furtherance of, the  
15 conspiracy and their own agreements with one another, and/or furthered the conspiracy  
16 cooperating with, lending aid to, encouraging, ratifying or adopting those acts.

17 19. Plaintiffs are informed and believe, and thereon allege, that there is not yet any  
18 last overt act in furtherance of said conspiracy, in that Defendants are continuing to hinder, delay  
19 and deprive Plaintiffs of their rights with respect to said monies.

20 20. Plaintiffs are informed and believe, and thereon allege, that Defendants acted  
21 willfully and with the intent to cause injury to Plaintiffs, and that Defendants are therefore guilty  
22 of malice, oppression and/or fraud in conscious disregard of Plaintiffs' rights, thereby warranting  
23 an assessment of punitive damages in an amount appropriate to punish said Defendants and deter  
24 others from engaging in similar misconduct.

25 **FIRST CAUSE OF ACTION**  
26 **(Breach of Contract)**  
**Against Bitcoinica and DOES 1 through 20**

27 21. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

28 ///

1           22.     Plaintiffs entered into one or more written agreements with Bitcoinica and DOES  
2 1 through 20, whereby Bitcoinica agreed, among other things, to do each of the following with  
3 respect to any monies deposited by Plaintiffs with Bitcoinica:

- 4           a.     to accept monies from Plaintiffs, in the form of Bitcoins or United States  
5                 Dollars, which Plaintiffs may deposit from time to time;
- 6           b.     to keep said monies in a safe and secure manner, consistent with fiduciary  
7                 obligations commonly imposed upon financial services providers;
- 8           c.     to comply with instructions that Plaintiffs may provide from time to time  
9                 concerning the transfer, investment and disposition of said monies; and
- 10          d.     to permit Plaintiffs to withdraw their monies at any time, without any  
11                 restrictions or limitations upon the manner or amount of said withdrawals.

12                 Plaintiffs currently do not have any copies of said agreements in their possession,  
13 custody or control. However, Plaintiffs are informed and believe, and thereon allege, that copies  
14 of said agreements are in the possession, custody or control of Defendants. Plaintiffs also allege  
15 that the legal effect of said agreements was to create legally binding obligations on the part of  
16 Bitcoinica and DOES 1 through 20 in the manner alleged above.

17           23.     Plaintiffs have performed all conditions, covenants and promises required of them  
18 by said agreements, and in accordance with the terms and conditions thereof, except for those  
19 acts that have been prevented, delayed or executed by the consent, acts or omissions of  
20 Defendants.

21           24.     Bitcoinica and DOES 1 through 20 breached the agreements by, among other  
22 things: refusing to comply with Plaintiffs' instructions for withdrawing the entirety of their  
23 monies; permitting the withdrawal of only fifty percent of their monies, notwithstanding the  
24 alleged verification of Plaintiffs' entire claims; and seeking to distribute the remainder in an  
25 alleged pro rata manner, notwithstanding Plaintiffs' refusal to consent to such distribution.

26           25.     Plaintiffs have suffered certain general, special, incidental and consequential  
27 damages as a direct and proximate result of said breaches, including, among other things: the  
28 loss of the monies themselves; the loss of use of said monies while the present action is pending;

1 changes in the value of said monies due to fluctuating exchange rates; etc., all in amounts to be  
2 proven at trial.

3 26. Furthermore, to the extent the applicable written agreements permit the prevailing  
4 party (-ies) to recover its/their reasonable costs and attorneys' fees from any non-prevailing  
5 party, Plaintiffs also hereby seek the recovery of said costs and fees from Bitcoinica and DOES 1  
6 through 20, which Plaintiffs had been forced to incur as a further direct and proximate result of  
7 said breaches.

8 **SECOND CAUSE OF ACTION**  
9 **(Open Book Account)**  
10 **Against Bitcoinica and DOES 1 through 20**

11 27. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

12 28. Bitcoinica and DOES 1 through 20 have become indebted to Plaintiffs on an open  
13 book account for the monies deposited by Plaintiffs with Bitcoinica. Said monies were deposited  
14 by Plaintiffs based upon representations and promises by Bitcoinica and said DOES that, among  
15 other things: the monies would be maintained and handled in a manner consistent with Plaintiffs'  
16 instructions; and the monies could be withdrawn at any time pursuant to Plaintiffs' instructions.

17 29. Although demand has been made, Bitcoinica and said DOES have failed to return  
18 all of the monies to Plaintiffs, notwithstanding Plaintiffs' instructions to do so. Plaintiffs hereby  
19 seek to recover the remainder of the monies deposited by them, along with the costs and  
20 attorneys' fees permitted under Civil Code section 1717.5, and prejudgment and post-judgment  
21 interest at the maximum legal rate.

22 30. Furthermore, or in the alternative, to the extent the applicable written agreements  
23 permit the prevailing party (-ies) to recover its/their reasonable costs and attorneys' fees from  
24 any non-prevailing party, Plaintiffs also hereby seek the recovery of said costs and fees from  
25 Bitcoinica and DOES 1 through 20, which Plaintiffs had been forced to incur as a further direct  
26 and proximate result of said breaches.

27 ///

28 ///

///

1 **THIRD CAUSE OF ACTION**  
2 **(Account Stated)**  
3 **Against Bitcoinica and DOES 1 through 20**

4 31. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

5 32. Within the past four years, accounts were stated in writing between each Plaintiff,  
6 on the one hand, and Bitcoinica and DOES 1 through 20, on the other hand. Although Bitcoinica  
7 has acknowledged and verified the total amounts of the accounts, it has only returned portions of  
8 said accounts to Plaintiffs. The remaining, unreturned portions of said accounts, according to the  
9 records of Bitcoinica and Plaintiffs, total approximately four hundred sixty thousand four  
10 hundred fifty-seven United States Dollars and seventy cents (US\$460,457.70) in principal, as of  
11 the date of this complaint, which is now due and owing, and which Bitcoinica and said DOES  
12 have previously agreed to pay.

13 33. Bitcoinica and said DOES have failed and refused, and continue to fail and refuse,  
14 to return the remainder of the monies, despite Plaintiffs' demands that they do so. Thus, there  
15 now remains due, owing and unpaid, the above principal sum, and prejudgment and post-  
16 judgment interest thereon at the maximum legal rate.

17 34. Furthermore, to the extent the applicable written agreements permit the prevailing  
18 party (-ies) to recover its/their reasonable costs and attorneys' fees from any non-prevailing  
19 party, Plaintiffs also hereby seek the recovery of said costs and fees from Bitcoinica and DOES 1  
20 through 20, which they had been forced to incur as a further direct and proximate result of said  
21 breaches.

22 **FOURTH CAUSE OF ACTION**  
23 **(Negligence)**  
24 **Against All Named Defendants and DOES 1 through 40**

25 35. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

26 36. At all relevant times, Defendants and DOES 1 through 40 had monies belonging  
27 to Plaintiffs in their possession, custody and/or control, and therefore owed Plaintiffs a duty of  
28 care with respect to safeguarding said monies. Plaintiffs are informed and believe, and thereon  
allege, that Defendants and said DOES served as fiduciaries with respect to said monies, and that  
said role imposed certain fiduciary obligations upon said defendants.

1 37. Plaintiffs are informed and believe, and thereon allege, that Defendants and said  
2 DOES breached their duties to Plaintiffs by negligently performing their obligations, including,  
3 but not limited to: failing to utilize all reasonable and practical safeguards to protect the monies  
4 of Plaintiffs and other customers; releasing the source code and other information concerning the  
5 exchange that directly and proximately resulted in the aforementioned security breaches; and  
6 failing to promptly and completely secure the exchange upon said breaches, thereby allowing  
7 subsequent breaches of the exchange and additional loss of monies.

8 38. Plaintiffs have suffered certain general, special, incidental and consequential  
9 damages as a direct and proximate result of said negligence, including, among other things: the  
10 loss of the monies themselves; the loss of use of said monies while the present action is pending;  
11 changes in the value of said monies due to fluctuating exchange rates; etc., all in amounts to be  
12 proven at trial.

13 **FIFTH CAUSE OF ACTION**  
14 **(Conversion)**

15 **Against All Named Defendants and DOES 1 through 60**

16 39. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

17 40. At all relevant times, Plaintiffs were, and are, the lawful owners of certain monies  
18 deposited with Bitcoinica and DOES 1 through 20, as alleged herein. As between Plaintiffs,  
19 Bitcoinica and DOES 1 through 20, Plaintiffs are entitled to possession of the monies once they  
20 provide instructions to Bitcoinica to return the same, which Plaintiffs have done.

21 41. Plaintiffs are informed and believe, and thereon allege, that: upon receiving  
22 Plaintiffs' instructions to return the monies, Defendants and DOES 1 through 60 converted, and  
23 took unlawful possession of, said monies for their own use and benefit by refusing to return all of  
24 the monies belonging to Plaintiffs, and instead retaining portions of said monies for the alleged  
25 pro rata distribution despite Plaintiffs' refusal to permit the same, or for some other unpermitted  
26 purpose. Plaintiffs are further informed and believe, and thereon allege, that Defendants and said  
27 DOES did so intentionally, willfully and in flagrant disregard for Plaintiffs' rights.

28 ///

///

