

individual; [REDACTED] an individual; [REDACTED] an individual; [REDACTED]
[REDACTED], an individual; [REDACTED] an individual; [REDACTED], an individual;
[REDACTED] an individual; [REDACTED] an individual; [REDACTED]
[REDACTED] an individual; [REDACTED], an individual; [REDACTED] an
individual; [REDACTED] [REDACTED] an individual; [REDACTED] [REDACTED] an individual; [REDACTED]
[REDACTED] an individual (collectively “The Margin Claimants”); [REDACTED] an individual
[REDACTED]”); and [REDACTED] an individual (“[REDACTED]”) (The Margin Claimants, [REDACTED] and
[REDACTED] collectively referred to as “Claimants”) bring this action against PAYWARD, INC. d/b/a
KRAKEN, a Delaware corporation (“Respondent” or “KRAKEN”). As grounds therefor, Claimants
allege the following:

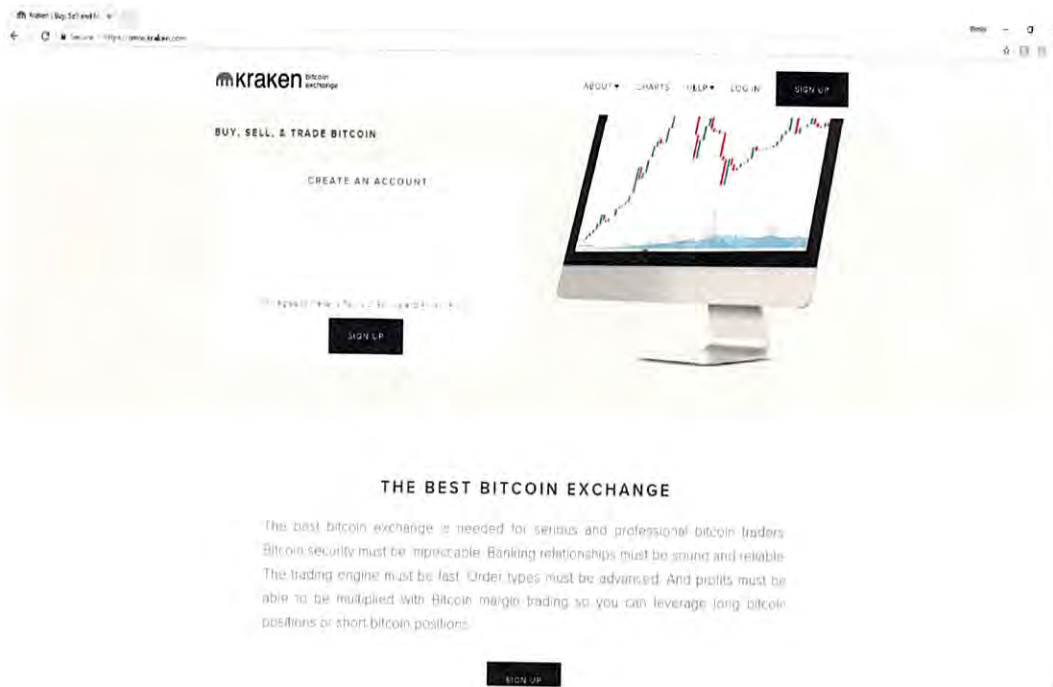
PRELIMINARY STATEMENT

1. KRAKEN is the self-touted “*largest Bitcoin exchange in euro volume and liquidity and also trading Canadian dollars, U.S. dollars, British pounds, and Japanese yen.*”¹ KRAKEN further promotes itself as “*consistently [being] rated the best and most secure Bitcoin exchange by independent news media.*”²

2. While Kraken proudly lauds itself on its website as being “*the best Bitcoin exchange,*” a closer look shows that Kraken’s words do not match its actions:

¹ <https://www.kraken.com/en-us/about>.

² *Id.*



3. Despite all of its self-promotion about how secure, reliable, flexible, and varied its services are, KRAKEN's promises of security and reliability to its customers fold like a house of cards as soon as something bad happens -- and KRAKEN peels back its security, its services, and blames its customers in the process.

4. Contrary to the promotional materials it loudly uses to lure in the accountholders that have made it "*the largest Bitcoin exchange*," the truth about KRAKEN is quietly revealed in the unconscionable Terms of Service posted on its site, where KRAKEN reveals the following:

- **"Payward shall not be responsible for any communication failures, disruptions, errors, distortions or delays you may experience when trading via the Services, howsoever caused."**
- **"We may, at any time and in our sole discretion, refuse any trade submitted via the Services, impose limits on the trade amount permitted via the Services[,] or impose any other conditions or restrictions upon your use of the Services without prior notice."**
- **"We may, in our sole discretion and without liability to you, with or without prior notice and at any time, modify or discontinue, temporarily or permanently, any portion of our Services."**

- “We can sell your assets without contacting you.”
- “Customers may mistakenly believe that we must contact them for a margin call to be valid, and that we cannot liquidate assets in their accounts to meet the call unless we have contacted them first. This is not the case. *** **[E]ven if we have contacted you and provided a specific date by which you can meet a margin call, we can still take necessary steps to protect our financial interests, including immediately selling assets without notice to you.**”
- “We can increase maintenance margin requirements at any time and are not required to provide you with advance written notice.”

(emphasis added).

5. KRAKEN’s relationship with its customers are not “*sound and reliable*”; they are actually fleeting, unpredictable, and can change in a moment at KRAKEN’s sole discretion without any notice to customers.

6. Moreover, KRAKEN quickly disavows any responsibility for anything that goes wrong on its site -- and puts that responsibility on customers -- “howsoever caused.” “Howsoever caused” is a stupefying phrase that boldly purports to negate, and ignores, KRAKEN’s own negligent or even criminal acts, putting responsibility for such acts and omissions on a customer base that has no ability whatsoever to affect or prevent that behavior by KRAKEN.

7. Indeed, KRAKEN’s acts, omissions, intentional and negligent deeds have caused substantial harm to many of its accountholders (including Claimants); and KRAKEN cannot be permitted to simply turn its back on those accountholders under the guise of self-serving Terms of Service that bear no connection to the representations made to induce those accountholders to trust KRAKEN with their valuable assets.

8. When KRAKEN failed to properly ward off a “flash crash” and simultaneous DDoS attack that robotically forced the liquidation of The Margin Claimants’ margin trading accounts and Claimant [REDACTED]’s non-margin account, KRAKEN essentially told Claimants that it was Claimants’

fault for having used KRAKEN's Services, not KRAKEN's fault for not properly upholding its promise of "impeccable security."

9. When KRAKEN failed to timely execute numerous transactions for Claimant [REDACTED] and thereby caused Claimant [REDACTED] significant loss through no actions of his own, KRAKEN told Claimant [REDACTED] that KRAKEN would not compensate him for his loss "howsoever caused," though the cause (KRAKEN's malfeasance) was clear.

10. If KRAKEN's advertising paralleled the manner in which KRAKEN actually treats its accountholders, KRAKEN would concede the following: "Our services are unreliable. We can alter or entirely stop providing services to you, and we don't have to tell you that the services on which you rely are unavailable or terminated. We are prone to slowdowns, shutdowns, and outside attacks. Orders are not always processed quickly enough to prevent significant market slippage. And if anything goes wrong, we will blame you for trusting us in the first place. After all, you know that's how we operate in the self-regulated world of cryptocurrency, right?"

11. An old Chinese proverb holds that "Character is revealed when pressure is applied." As demonstrated herein, it is apparent that KRAKEN's true character is not nearly that of the honorable, praiseworthy, and esteemed cryptocurrency exchange KRAKEN wishes for the cryptocurrency community to believe it is. Rather, KRAKEN gleefully takes all of its client-generated profits while simultaneously refusing to take responsibility for anything that goes wrong in its business operations.

PARTIES

THE MARGIN CLAIMANTS

12. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether

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17. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

18. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

19. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

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24. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

25. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

26. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

27. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

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34. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more margin trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

CLAIMANT [REDACTED]

35. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

CLAIMANT [REDACTED]

36. Claimant [REDACTED] is a natural person and is a resident of [REDACTED]. At all times material hereto, Claimant [REDACTED] maintained one or more trading accounts at KRAKEN in which he held cryptocurrency, including Ether.

RESPONDENT

37. Defendant KRAKEN is a Delaware corporation with its principal place of business in San Francisco, California.

JURISDICTION AND VENUE

38. Judicial Arbitration and Mediation Services, Inc. (JAMS) has jurisdiction over this matter and over Respondent pursuant to the Terms of Service to which Claimants were each required to agree in connection with opening and maintaining their accounts at KRAKEN. Specifically, one section of the Terms of Service (“Applicable Law; Arbitration”) provides, in pertinent part:

PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH US AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.

*You and Payward agree to arbitrate any dispute arising from these Terms or your use of the Services . . . * * * You and Payward further agree: (a) to attempt informal resolution prior to any demand for arbitration; (b) that any arbitration will occur in San Francisco, California; (c) that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and (d) that the state or federal courts in San Francisco, California have exclusive jurisdiction over any appeals or an arbitration award and over any suit between the parties not subject to arbitration.*

(the “Arbitration Clause”).

39. The parties agree that prior to commencing this action, they have attempted to informally resolve this dispute; but those efforts were unsuccessful.

GENERAL ALLEGATIONS

40. Ether (“ETH”) is a virtual currency that may be traded on online exchanges for conventional currencies, including the U.S. Dollar, Euros, and the Japanese Yen, or used to purchase goods and services online. Ether has no single administrator or central authority or repository.

41. Ether is one of the cryptocurrencies that KRAKEN encourages users to trade on its platform -- both in spot transactions and in leveraged margin trading.

42. At all times relevant hereto, Claimants maintained trading accounts at KRAKEN that held, among other digital currencies, Ether.

THE EVENTS OF MAY 7, 2017 EXPOSE KRAKEN’S “IT’S NOT ME, IT’S YOU” BLAMESTORMING TREATMENT OF ITS CUSTOMERS

43. On May 7, 2017, there was, upon information and belief, an attack and/or market manipulation which effectively caused a momentary perceived yet precipitous drop in the price of Ether on the KRAKEN exchange.

44. Upon further information and belief, KRAKEN’s actions and omissions compounded either an external attempt to disturb KRAKEN’s databases or an internal software malfunction (or both), which precipitated a heavy DDoS, slowing and effectively stopping KRAKEN’s systems from working as they should.

45. Regardless of the actual cause, KRAKEN’s actions and omissions in response to the events of that afternoon left most individual KRAKEN users unable to log into the website to manage their accounts.

46. Not all KRAKEN users were walled-off from trading, though. Some back-end users and bots took advantage of the precipitous Ether price drop by filling their accounts with low-priced Ether -- something Claimants and their fellow on-the-street traders were prevented from doing.

47. Additionally, while KRAKEN's DDoS was in effect and most users could not log in, KRAKEN users who held Ether in their accounts on margin had their positions forcibly liquidated at KRAKEN's discretion.

48. On the early-afternoon of May 7, 2017 -- at the moment before the Ether crash and DDoS went into effect -- The Margin Claimants held thousands of Ether in their KRAKEN margin accounts.

49. While the customer lockout was in effect, KRAKEN liquidated The Margin Claimants' margin accounts in the following amounts, and at the following valuations:

Name	Amount of Ether Forcibly Liquidated by Kraken on May 7, 2017	Estimated Damages ³ as of:	
		May 7, 2017 [Price of ETH: \$96.32]	October 30, 2017 [Price of ETH: \$310.00]
██████████	100	\$9,632.00	\$31,000.00
██████████	3,207.319	\$308,928.97	\$994,268.89
██████████	18	\$1,733.76	\$5,580.00
██████████	436	\$41,995.52	\$135,160.00
██████████	28.12	\$2,708.52	\$8,717.20
██████████	125.28	\$12,066.97	\$38,836.80
██████████	500	\$48,160.00	\$155,000.00
██████████	970	\$93,430.40	\$300,700.00
██████████	801.52	\$77,202.41	\$248,471.20
██████████	421.61541	\$40,610.00	\$130,700.78
██████████	60	\$5,779.20	\$18,600.00
██████████	300	\$28,896.00	\$93,000.00
██████████	1,420	\$136,774.40	\$440,200.00
██████████	42,985.74	\$4,140,386.48	\$13,325,579.40

³ These damages do not include the liquidation of other cryptocurrencies, cash holdings, margin liabilities, and is exclusive of fees and costs for account maintenance. These damages are an approximation and will be confirmed by KRAKEN's trading records for Claimants' accounts.

██████████	485.1	\$46,724.83	\$150,381.00
██████████	384.7	\$37,054.30	\$119,257.00
██████████	600	\$57,792.00	\$186,000.00
██████████	77.45	\$7,459.98	\$24,009.50
██████████	504	\$48,545.28	\$156,240.00
██████████	519.8	\$50,067.14	\$161,138.00
██████████	500	\$48,160.00	\$155,000.00
██████████	197.02	\$18,976.97	\$61,076.20
██████████	191	\$18,397.12	\$59,210.00
TOTAL	54,832.66441	\$5,281,482.24	\$16,998,125.97

50. One hour after it began, KRAKEN announced that the DDoS had been thwarted and reported that the functionality of its website and application program interface (API) were back to normal.

51. Additionally, following the removal of the DDoS, KRAKEN restored to their proper worldwide value all Ether holdings of its customers -- except for the customers, including The Margin Claimants (who had held Ether on margin) and Claimant ██████████ (who, as explained below, had held Ether in a non-margin KRAKEN account); their accounts remained liquidated.

52. At that time of crisis, KRAKEN failed to have its system functioning properly, failed to provide the “impeccable security” it advertised to customers, and told customers, including The Margin Claimants, that they had to bear the burden of KRAKEN’s failures.

53. Moreover, KRAKEN has admitted, in writing, that its malfunctioning software services and the liquidation they forced during the DDoS attack actually accelerated the May 7, 2017 “flash crash.”

**EVEN CUSTOMERS NOT TRADING ON MARGIN
WERE DEVASTATED BY KRAKEN'S MAY 7, 2017 SYSTEM FAILURES**

54. Along with the Margin Claimants, many other KRAKEN accountholders, including Claimant [REDACTED] suffered greatly on May 7, 2017 as a result of KRAKEN's porous security measures and inadequate software execution.

55. As the events of May 7, 2017 unfolded, Claimant [REDACTED] -- who held a large amount of Ether in his non-margin KRAKEN account -- saw 773.63869 Ether liquidated from his account without being able to halt that liquidation or otherwise protect himself from harm.

56. Much like the other front-end users, Claimant [REDACTED] attempted to, but was unable to, log on to his KRAKEN account to affect any of the activity that was devastating his account.

57. On May 7, 2017, the 773.63869 Ether that KRAKEN wrongfully liquidated from Claimant [REDACTED]'s account was valued at **\$74,516.88** (\$96.32 per coin). Those coins have a present-day valuation of **\$239,827.99** (\$310.00 per coin) -- a value of which Claimant [REDACTED] has been robbed due to KRAKEN's mismanagement of his affairs and its failure to provide the services that KRAKEN claims makes it the "*best Bitcoin exchange*."

LAGGARD TRADE EXECUTION CAUSES KRAKEN CLIENT(S) ADDITIONAL DAMAGE

58. Failing to protect its clients in the May 2017 "flash crash" and mishandling matters in the aftermath of that event are not the only ways in which KRAKEN has inflicted harm upon its clients.

59. On July 19, 2017, Claimant [REDACTED] placed an order with KRAKEN to sell 2,000 Ether that were being maintained in his KRAKEN account.

60. Instead of being executed immediately, as such a market order should be, the order took more than 31 minutes to be filled entirely.

61. Because of KRAKEN's laggard execution of Claimant [REDACTED]'s order, he suffered a loss of **\$18,515.64**, as the price at which he placed the order (\$207.10 per Ether) dropped all the way down to \$197.74218 per coin by the time KRAKEN executed his order.

62. Within days of the incident, Claimant [REDACTED] presented in writing to KRAKEN his grievance about the untimely execution of KRAKEN's actions and the harm it had caused him.

63. In response to Claimant [REDACTED]'s injury, KRAKEN's Customer Support team conceded KRAKEN's liability by writing the following in a series of e-mails exchanged with Claimant [REDACTED]

- *"It is true that you[r] execution was pretty terrible and way below where the market was when you submitted the market order."*
- *"[T]here is no excuse for the poor execution of your entry."*
- *"These type of things should not happen[,] and our development team is constantly working on readying our new trading engine."⁴*

64. Notwithstanding its admission of fault, KRAKEN then sought to placate Claimant [REDACTED] with a fee credit amounting to approximately five percent (5%) of his damage, which KRAKEN offered *"as a courtesy for being a loyal customer."*

65. Claimant [REDACTED] rejected the mere pittance KRAKEN had offered as compensation for his harm and asked that his grievance be escalated to a higher level of consideration at KRAKEN.

66. In response to his request, KRAKEN flatly said "no."

67. When Claimant [REDACTED] himself addressed the matter to KRAKEN's CEO (Jesse Powell), it was likewise ignored.

68. KRAKEN acknowledged the harm Claimant [REDACTED] had suffered, conceded that it was responsible for his harm, and then offered nothing more than a miniscule "courtesy" credit to remunerate Claimant [REDACTED] for his injury.

⁴ Attached hereto as **Exhibit "A"** is a true and correct copy of Claimant [REDACTED]'s e-mail exchange with KRAKEN Customer Support.

KRAKEN'S WRONGFUL, AVOIDABLE ACTS

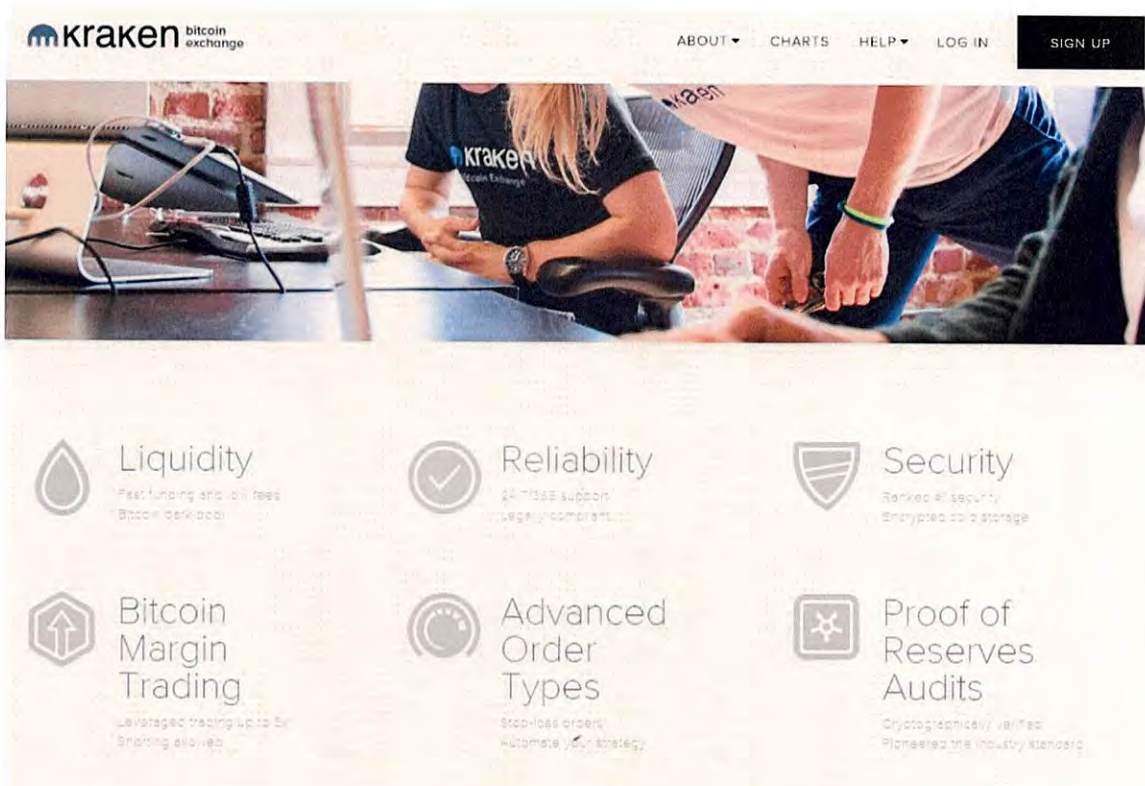
69. Had KRAKEN's exchange been functioning properly, the simultaneous "flash crash" and DDoS attack of May 2017 would not have affected the price of Ether in The Margin Claimants' margin accounts and Claimant [REDACTED]'s non-margin account; KRAKEN would not have implemented an automated liquidation of the user accounts holding Ether; and the price of Ether would have stabilized because of normal user activity (*i.e.*, open market orders being processed in real time).

70. In essence, the majority of KRAKEN customers trading ETH/USD on margin had their accounts forcibly liquidated; and their assets were sold off at an artificially suppressed price not tethered to the actual value of Ether.

71. Likewise, Claimant [REDACTED] -- who was not trading on margin -- had his account forcibly liquidated and saw his assets sold off at artificially suppressed prices.

72. Similarly, had KRAKEN's exchange been functioning properly, the order placed by Claimant [REDACTED] would have been timely executed and spared him the precipitous price drop that took place during KRAKEN's laborious and dilatory performance of its duties.

73. On multiple occasions, KRAKEN has failed Claimants with flawed services belying the high standards, "24/7/365 support," and top-rated security KRAKEN promoted in securing Claimants as customers:



and on each of those occasions, KRAKEN placed the onus of the consequential harm on Claimants under the blanket of an unconscionable and odious Terms of Service.

74. By all accounts, KRAKEN appears to only care about KRAKEN -- proclaiming that the company may employ any measures it wishes to protect its financial interests, without any notice to, or apparently any regard for, its accountholders.

75. KRAKEN has demonstrated a pattern and practice of treating Claimants with malice and oppression with little to no regard for Claimants' safety or the value of the very cryptocurrency that supports the self-regulated industry in which KRAKEN plies its trade.

76. KRAKEN's focus at all times was, and is, protection of its own financial interests, not the rights or interests of the customers who serve as the lifeblood of KRAKEN's business.

KRAKEN FAILS ITS ACCOUNTHOLDERS WHERE ITS COMPETITORS DO NOT

77. While KRAKEN wants its customers and the cryptocurrency community to believe that KRAKEN is a leader worthy of following, KRAKEN fails the simple advice offered by other leaders who faced crises of their own:

- “We’ve got to be judged by how we do in times of crisis.”
-- Johnnie Cochran
- “It is in times of crisis that good leaders emerge.”
-- Rudolph Giuliani

78. When a crisis arose, KRAKEN withdrew from its customers rather than emerging. Instead of working with its customers, KRAKEN treated its customers with derision and made the customers carry the weight of the flaws in KRAKEN’s software and API trading systems.

79. Meanwhile, competitors of KRAKEN’s who faced nearly identical crises did not turn their backs on their customers and shift the financial burden to their customers.

The May 7, 2017 Market Manipulation Present at Kraken Would Not Have Occurred At, and Was Not Recognized By, Either Coinbase or Gemini

80. As the ETH/USD market tumbled precipitously at KRAKEN on May 7, 2017, two of the most well-known U.S.-based cryptocurrency exchanges who allow their accountholders to engage in Ether trading -- Coinbase and Gemini -- recognized no such drop in the value of Ether that day.

81. According to historical records, while Coinbase and Gemini experienced typical market fluctuations that day, only KRAKEN experienced -- and inflicted upon its customers -- the plummet in value that forced liquidation of margin and non-margin accounts alike, *to wit*:

Name of Exchange	May 7, 2017 Market Valuations of ETH/USD		
	High	Low	Close
Coinbase	97.95	90.00	93.82
Gemini	98.79	88.85	92.67
Kraken	94.86	26.00	87.40

82. In the days following the event, KRAKEN disputed that any market manipulation had occurred, instead attributing the event to a large, “legitimate” ETH sell order that triggered a cascade of liquidations that could not be stopped once they had begun.

83. However, KRAKEN could have, and should have, prevented that downward cascade from beginning in the first place.

84. The large ETH trade itself -- which KRAKEN accepted as “legitimate” but which neither Coinbase nor Gemini recognized as having an impact on their ETH/USD markets -- was itself a manipulation of the KRAKEN ETH/USD market, which KRAKEN legitimized by altering its ETH/USD valuations in the shadow thereof.

85. Not only did that massive shift in the market happen and impact KRAKEN’s ETH holders because KRAKEN allowed it to happen, KRAKEN allowed it as KRAKEN’s computer systems were failing to ward off the DDoS attack.

86. If the Ether that Claimants lost that day had been held on another exchange like Coinbase or Gemini, they (Claimants) would not have seen their accounts liquidated; and they would not have suffered the harm inflicted upon them by KRAKEN’s disregard for their safety and failure to adequately maintain functioning and accessible software systems.

When Exposed to a Similar “Flash Crash,” Coinbase -- Unlike Kraken -- Took Responsibility for Its Failures and Compensated Its Customers

87. Additionally, on June 21, 2017, customers of Coinbase were also subjected to a “flash crash” in the Ether market.

88. Notwithstanding the brevity of the crash, Coinbase’s customers who held Ether in their margin accounts -- just like The Margin Claimants herein -- instantly had their positions forcibly liquidated based on Coinbase’s interpretation of their own Terms of Service.

89. However, Coinbase quickly acted to protect its customers from the flaw in Coinbase’s operations by restoring all of the forcibly liquidated customers to their *status quo ante*. Coinbase

replenished each liquidated customer's account with an appropriate number of Ether to spare the customers from having to bear the brunt of Coinbase's own internal shortcomings.⁵

90. Moreover, to prevent such an occurrence from taking place again without adequate protections for its customers, Coinbase discontinued its margin trading service.⁶

91. In fact, based on published reports, Coinbase is currently being investigated by the U.S. Commodity Futures Trading Commission related to the June 21, 2017 "flash crash" and the legality of cryptocurrency exchanges utilizing margin accounts.⁷

92. KRAKEN knows its operations have been flawed and knows its operations have been sub-standard. KRAKEN simply refuses to accept responsibility for those problems and, instead, continues to foist onto customers, including Claimants, the harm that flows from the very things that only KRAKEN itself can repair.

93. In a published interview with a media outlet, Jesse Powell (KRAKEN's CEO) was asked in 2015 what KRAKEN would do if the risks of volatile margin trading were beyond KRAKEN's ability to control. To that, Mr. Powell said: "*We want people to have a good experience[;] and if we feel that a particular feature is going to cause a lot of clients a bad experience, we'd remove it or restrict it to those who have shown that they are aware of and accept the extreme risks involved.*"

94. As this Statement of Claim shows, competently managing margin trading on its platform is indeed beyond KRAKEN's control; and The Margin Claimants have indeed had a bad experience with KRAKEN. Nevertheless, leveraged margin trading remains a feature of KRAKEN's advertised services; and no adequate restrictions appear to be employed by KRAKEN.

⁵ <http://fortune.com/2017/06/26/coinbase-flash-crash/>.

⁶ <https://www.coindesk.com/cftc-investigating-ether-crash-on-coinbase-exchange/>.

⁷ *Id.*

95. Moreover, even non-margin accountholders like Claimant [REDACTED] had a “bad experience” (to put it mildly) with KRAKEN’s inadequate service, and no remedy short of refusing to allow any trading whatsoever -- the very essence of KRAKEN’s business -- would appear to cure the ills that run through KRAKEN’s over-promised and under-performing operations.

96. Until KRAKEN improves its operations and heeds the words of its own CEO, KRAKEN will remain a danger to the very client base that supports it based on KRAKEN’s false marketing representations, which are inapposite to its Terms of Service.

97. Claimants have duly performed all of their duties and obligations, and any conditions precedent to Claimants bringing this action have occurred, have been performed, or else have been excused or waived.

COUNT I – NEGLIGENCE
[The Margin Claimants]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

98. KRAKEN owed its customers, including The Margin Claimants, the following duties, among others:

- (a) Reasonable care in acting as a depository of customer assets,
- (b) Reasonable and adequate security to protect its customers’ assets and ward off outside attacks, and
- (c) Reasonable, adequate, and unfettered access to KRAKEN’s software services so accountholders could manage their accounts as they saw fit to maximize their interests and forestall potential harm.

99. KRAKEN breached those duties by:

- (a) Failing to maintain adequate measures for margin, liquidation, data, and security of Claimants’ accounts and the assets therein.
- (b) Failing to reasonably act as a depository of customer assets,
- (c) Failing to provide reasonable and adequate security to protect its customers’ assets and ward off outside attacks, and

- (d) Failing to provide reasonable, adequate, and unfettered access to KRAKEN's software services so accountholders could manage their accounts as they saw fit to maximize their interests and forestall potential harm.

100. As a direct and proximate cause of KRAKEN's conduct, The Margin Claimants have been damaged.

COUNT II – NEGLIGENCE

[Claimant ██████████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

101. KRAKEN owed its customers, including Claimant ██████████ the following duties, among others:

- (a) Reasonable care in acting as a depository of customer assets,
- (b) Reasonable and adequate security to protect its customers' assets and ward off outside attacks, and
- (c) Reasonable, adequate, and unfettered access to KRAKEN's software services so accountholders could manage their accounts as they saw fit to maximize their interests and forestall potential harm.

102. KRAKEN breached those duties by:

- (a) Failing to maintain adequate measures for liquidation, data, and security of Claimant ██████████'s account and the assets therein,
- (b) Failing to reasonably act as a depository of customer assets,
- (c) Failing to provide reasonable and adequate security to protect its customers' assets and ward off outside attacks, and
- (d) Failing to provide reasonable, adequate, and unfettered access to KRAKEN's software services so accountholders could manage their accounts as they saw fit to maximize their interests and forestall potential harm.

103. As a direct and proximate cause of KRAKEN's conduct, Claimant ██████████ has been damaged.

COUNT III – NEGLIGENCE

[Claimant ██████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

104. KRAKEN owed its customers, including Claimant ██████ the following duties, among others:

- (a) Reasonable care in acting as a depository of customer assets,
- (b) Reasonable and adequate security to protect its customers' assets and ward off outside attacks, and
- (c) Reasonably timely execution of trade orders.

105. KRAKEN breached those duties by:

- (a) Failing to maintain adequate measures for data and security of Claimant ██████'s account and the assets therein,
- (b) Failing to reasonably act as a depository of customer assets, and
- (c) Failing to execute customer trade orders in a reasonably timely fashion.

106. As a direct and proximate cause of KRAKEN's conduct, Claimant ██████ has been damaged.

COUNT IV - BREACH OF CONTRACT

[The Margin Claimants]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

107. Claimants entered into written contracts with KRAKEN.

108. Claimants performed their contractual duties by paying KRAKEN for its services.

109. KRAKEN breached its contractual duties by failing to maintain adequate measures, rules, policies, and procedures for margin, liquidation, data, and security of Claimants' accounts and the assets therein and by improperly freezing and liquidating the Ether holdings of Claimants.

110. Moreover, the contractual terms KRAKEN imposes upon its customers, including Claimants, are unconscionable and illusory. KRAKEN's Terms of Service are not only subject to

unilateral modification or elimination at KRAKEN's sole discretion, that discretion can be exercised without any notice whatsoever to any of KRAKEN's customers. By silently removing the benefit for which its customers bargained, KRAKEN renders its Terms of Service unconscionable and illusory.

111. As a result of these breaches, Claimants suffered damages.

COUNT V - BREACH OF CONTRACT
[Claimant ██████████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

112. Claimant ██████████ entered into a written contract with KRAKEN.

113. Claimant ██████████ performed his contractual duties by paying KRAKEN for its services.

114. KRAKEN breached its contractual duties by failing to maintain adequate measures, rules, policies, and procedures for liquidation, data, and security of Claimant ██████████'s account and the assets therein and by improperly freezing and liquidating the Ether holdings of Claimant ██████████.

115. Moreover, the contractual terms KRAKEN imposes upon its customers, including Claimant ██████████ are unconscionable and illusory. KRAKEN's Terms of Service are not only subject to unilateral modification or elimination at KRAKEN's sole discretion, that discretion can be exercised without any notice whatsoever to any of KRAKEN's customers. By silently removing the benefit for which its customers bargained, KRAKEN renders its Terms of Service unconscionable and illusory.

116. As a result of these breaches, Claimant ██████████ suffered damages.

COUNT VI - BREACH OF CONTRACT
[Claimant ██████████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

117. Claimant ██████████ entered into a written contract with KRAKEN.

118. Claimant ██████████ performed his contractual duties by paying KRAKEN for its services.

119. KRAKEN breached its contractual duties by failing to maintain adequate measures, rules, policies, and procedures for data and security of Claimant [REDACTED]'s account and the assets therein and by failing to execute Claimant [REDACTED]'s trade orders in a reasonably timely fashion.

120. Moreover, the contractual terms KRAKEN imposes upon its customers, including Claimant [REDACTED] are unconscionable and illusory. KRAKEN's Terms of Service are not only subject to unilateral modification or elimination at KRAKEN's sole discretion, that discretion can be exercised without any notice whatsoever to any of KRAKEN's customers. By silently removing the benefit for which its customers bargained, KRAKEN renders its Terms of Service unconscionable and illusory.

121. As a result of these breaches, Claimant [REDACTED] suffered damages.

COUNT VII - UNJUST ENRICHMENT
[The Margin Claimants]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

122. Claimants conferred a direct benefit upon KRAKEN by compensating it for providing a purportedly secure and adequately functioning cryptocurrency trading platform on which Claimants could trade legal tender for digital assets and vice versa and to trade one type of digital asset for another type of digital asset.

123. KRAKEN had knowledge of the benefit Claimants conferred upon it and retained such benefit.

124. The circumstances under which Claimants conferred, and KRAKEN accepted, such benefit render KRAKEN's retention of the benefits inequitable.

125. Equity requires that KRAKEN return to Claimants the benefits conferred upon it by Claimants.

126. This Count for Unjust Enrichment is plead in the alternative to Claimants' Count for Breach of Contract.

COUNT VIII - UNJUST ENRICHMENT

[Claimant ██████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

127. Claimant ██████ conferred a direct benefit upon KRAKEN by compensating it for providing a purportedly secure and adequately functioning cryptocurrency trading platform on which Claimant ██████ could trade legal tender for digital assets and vice versa and to trade one type of digital asset for another type of digital asset.

128. KRAKEN had knowledge of the benefit Claimant ██████ conferred upon it and retained such benefit.

129. The circumstances under which Claimant ██████ conferred, and KRAKEN accepted, such benefit render KRAKEN's retention of the benefits inequitable.

130. Equity requires that KRAKEN return to Claimant ██████ the benefits he conferred upon KRAKEN.

131. This Count for Unjust Enrichment is plead in the alternative to Claimant ██████'s Count for Breach of Contract.

COUNT IX - UNJUST ENRICHMENT

[Claimant ██████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

132. Claimant ██████ conferred a direct benefit upon KRAKEN by compensating it for providing a purportedly secure and adequately functioning cryptocurrency trading platform on which Claimant ██████ could trade legal tender for digital assets and vice versa and to trade one type of digital asset for another type of digital asset.

133. KRAKEN had knowledge of the benefit Claimant ██████ conferred upon it and retained such benefit.

134. The circumstances under which Claimant [REDACTED] conferred, and KRAKEN accepted, such benefit render KRAKEN's retention of the benefits inequitable.

135. Equity requires that KRAKEN return to Claimant [REDACTED] the benefits he conferred upon KRAKEN.

136. This Count for Unjust Enrichment is plead in the alternative to Claimant [REDACTED] s Count for Breach of Contract.

COUNT X - FRAUDULENT INDUCEMENT
[The Margin Claimants]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

137. KRAKEN, by acts of both omission and commission, made to The Margin Claimants false statements of material facts about the services The Margin Claimants would receive from KRAKEN upon opening a KRAKEN account.

138. Specifically, KRAKEN's representations to The Margin Claimants that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks;
- (c) KRAKEN would timely execute trade orders with its fast trading engine; and
- (d) KRAKEN would provide its accountholders 24-hour, uninhibited access to a software platform allowing the accountholders to multiply their profits with margin trading by either leveraging long positions or short positions

were false; and KRAKEN knew at the time the statements were made that the statements were false.

139. KRAKEN intended that The Margin Claimants would be induced into action by relying upon the statements of fact made to them by and on behalf of KRAKEN.

140. In considering whether to open accounts at KRAKEN and entrust to KRAKEN their valuable assets, The Margin Claimants reasonably and justifiably relied on the statements of fact made to them by and on behalf of KRAKEN.

141. As a direct and proximate result of The Margin Claimants' reliance on the statements made to them by KRAKEN, The Margin Claimants have suffered damage.

COUNT XI - FRAUDULENT INDUCEMENT

[Claimant ██████████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

142. KRAKEN, by acts of both omission and commission, made to Claimant ██████████ false statements of material facts about the services Claimant ██████████ would receive from KRAKEN upon opening a KRAKEN account.

143. Specifically, KRAKEN's representations to Claimant ██████████ that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks; and
- (c) KRAKEN would provide reasonable, adequate, and unfettered access to KRAKEN's software services so accountholders could manage their accounts as they saw fit to maximize their interests and forestall potential harm

were false; and KRAKEN knew at the time the statements were made that the statements were false.

144. KRAKEN intended that Claimant ██████████ would be induced into action by relying upon the statements of fact made to him by and on behalf of KRAKEN.

145. In considering whether to open an account at KRAKEN and entrust to KRAKEN his valuable assets, Claimant ██████████ reasonably and justifiably relied on the statements of fact made to him by and on behalf of KRAKEN.

146. As a direct and proximate result of Claimant ██████████'s reliance on the statements made to him by KRAKEN, Claimant ██████████ has suffered damage.

COUNT XII - FRAUDULENT INDUCEMENT

[Claimant ██████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

147. KRAKEN, by acts of both omission and commission, made to Claimant ██████ false statements of material facts about the services Claimant ██████ would receive from KRAKEN upon opening a KRAKEN account.

148. Specifically, KRAKEN's representations to Claimant ██████ that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks; and
- (c) KRAKEN would timely execute trade orders with its fast trading engine

were false; and KRAKEN knew at the time the statements were made that the statements were false.

149. KRAKEN intended that Claimant ██████ would be induced into action by relying upon the statements of fact made to him by and on behalf of KRAKEN.

150. In considering whether to open an account at KRAKEN and entrust to KRAKEN his valuable assets, Claimant ██████ reasonably and justifiably relied on the statements of fact made to him by and on behalf of KRAKEN.

151. As a direct and proximate result of Claimant ██████'s reliance on the statements made to him by KRAKEN, Claimant ██████ has suffered damage.

COUNT XIII - FRAUDULENT MISREPRESENTATION

[The Margin Claimants]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

152. KRAKEN, by acts of both omission and commission, made to The Margin Claimants false statements of material facts about the services The Margin Claimants would receive from KRAKEN for the fees they were compelled to pay to maintain a KRAKEN account.

153. Specifically, KRAKEN's representations to The Margin Claimants that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks;
- (c) KRAKEN would timely execute trade orders with its fast trading engine; and
- (d) KRAKEN would provide its accountholders 24-hour, uninhibited access to software services allowing the accountholders to multiply their profits with margin trading by either leveraging long positions or short positions

were false; and KRAKEN knew at the time the statements were made that the statements were false.

154. KRAKEN's misrepresentations were made with reckless disregard for the truth.

155. KRAKEN intended that The Margin Claimants would be induced into action by relying upon the statements of fact made to them by and on behalf of KRAKEN.

156. In considering whether to maintain accounts at KRAKEN and entrust to KRAKEN their valuable assets, The Margin Claimants reasonably and justifiably relied on the statements of fact made to them by and on behalf of KRAKEN.

157. As a direct and proximate result of The Margin Claimants' reliance on the statements made to them by KRAKEN, The Margin Claimants have suffered damage.

COUNT XIV - FRAUDULENT MISREPRESENTATION

[Claimant ██████████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

158. KRAKEN, by acts of both omission and commission, made to Claimant ██████████ false statements of material facts about the services Claimant ██████████ would receive from KRAKEN for the fees he was compelled to pay to maintain a KRAKEN account.

159. Specifically, KRAKEN's representations to Claimant ██████████ that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks; and
- (c) KRAKEN would provide reasonable, adequate, and unfettered access to KRAKEN's software services so accountholders could manage their accounts as they saw fit to maximize their interests and forestall potential harm

were false; and KRAKEN knew at the time the statements were made that the statements were false.

160. KRAKEN's misrepresentations were made with reckless disregard for the truth.

161. KRAKEN intended that Claimant [REDACTED] would be induced into action by relying upon the statements of fact made to him by and on behalf of KRAKEN.

162. In considering whether to maintain an account at KRAKEN and entrust to KRAKEN his valuable assets, Claimant [REDACTED] reasonably and justifiably relied on the statements of fact made to him by and on behalf of KRAKEN.

163. As a direct and proximate result of Claimant [REDACTED]'s reliance on the statements made to him by KRAKEN, Claimant [REDACTED] has suffered damage.

COUNT XV - FRAUDULENT MISREPRESENTATION

[Claimant [REDACTED]]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

164. KRAKEN, by acts of both omission and commission, made to Claimant [REDACTED] false statements of material facts about the services Claimant [REDACTED] would receive from KRAKEN for the fees he was compelled to pay to maintain a KRAKEN account.

165. Specifically, KRAKEN's representations to Claimant [REDACTED] that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks; and
- (c) KRAKEN would timely execute trade orders with its fast trading engine

were false; and KRAKEN knew at the time the statements were made that the statements were false.

166. KRAKEN's misrepresentations were made with reckless disregard for the truth.

167. KRAKEN intended that Claimant [REDACTED] would be induced into action by relying upon the statements of fact made to him by and on behalf of KRAKEN.

168. In considering whether to maintain an account at KRAKEN and entrust to KRAKEN his valuable assets, Claimant [REDACTED] reasonably and justifiably relied on the statements of fact made to him by and on behalf of KRAKEN.

169. As a direct and proximate result of Claimant [REDACTED]'s reliance on the statements made to him by KRAKEN, Claimant [REDACTED] has suffered damage.

COUNT XVI - NEGLIGENT MISREPRESENTATION
[The Margin Claimants]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

170. KRAKEN, by acts of both omission and commission, made to The Margin Claimants false statements of material facts about the services The Margin Claimants would receive from KRAKEN upon opening KRAKEN accounts and about the services The Margin Claimants would receive from KRAKEN for the fees they were compelled to pay to maintain KRAKEN accounts.

171. Specifically, KRAKEN's representations to The Margin Claimants that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks; and
- (c) KRAKEN would provide its accountholders 24-hour, uninhibited access to software services allowing the accountholders to multiply their profits with margin trading by either leveraging long positions or short positions

were false; and KRAKEN knew, or should have known, at the time the statements were made that the statements were false.

172. KRAKEN had no reasonable grounds upon which to believe the statements were true when made to The Margin Claimants.

173. KRAKEN intended that The Margin Claimants would be induced into action by relying upon the statements of fact made to them by and on behalf of KRAKEN.

174. In considering whether to open and maintain accounts at KRAKEN and entrust to KRAKEN their valuable assets, The Margin Claimants reasonably and justifiably relied on the statements of fact made to them by and on behalf of KRAKEN.

175. As a direct and proximate result of The Margin Claimants' reliance on the statements made to them by KRAKEN, The Margin Claimants have suffered damage.

COUNT XVII - NEGLIGENT MISREPRESENTATION

[Claimant ██████████]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

176. KRAKEN, by acts of both omission and commission, made to Claimant ██████████ false statements of material facts about the services Claimant ██████████ would receive from KRAKEN upon opening a KRAKEN account and about the services Claimant ██████████ would receive from KRAKEN for the fees he was compelled to pay to maintain a KRAKEN account.

177. Specifically, KRAKEN's representations to Claimant ██████████ that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks; and
- (c) KRAKEN would provide reasonable, adequate, and unfettered access to KRAKEN's software services so accountholders could manage their accounts as they saw fit to maximize their interests and forestall potential harm

were false; and KRAKEN knew, or should have known, at the time the statements were made that the statements were false.

178. KRAKEN had no reasonable grounds upon which to believe the statements were true when made to Claimant [REDACTED]

179. KRAKEN intended that Claimant [REDACTED] would be induced into action by relying upon the statements of fact made to him by and on behalf of KRAKEN.

180. In considering whether to open and maintain an account at KRAKEN and entrust to KRAKEN his valuable assets, Claimant [REDACTED] reasonably and justifiably relied on the statements of fact made to him by and on behalf of KRAKEN.

181. As a direct and proximate result of Claimant [REDACTED]'s reliance on the statements made to him by KRAKEN, Claimant [REDACTED] has suffered damage.

COUNT XVIII - NEGLIGENT MISREPRESENTATION
[Claimant [REDACTED]]

Claimants re-allege, and adopt by reference herein, Paragraphs 1 - 97 above, and further allege:

182. KRAKEN, by acts of both omission and commission, made to Claimant [REDACTED] false statements of material facts about the services Claimant [REDACTED] would receive from KRAKEN upon opening a KRAKEN account and about the services Claimant [REDACTED] would receive from KRAKEN for the fees he was compelled to pay to maintain a KRAKEN account.

183. Specifically, KRAKEN's representations to Claimant [REDACTED] that, among other things:

- (a) KRAKEN would act as a sound and reliable depository of customer assets;
- (b) KRAKEN would provide adequate security to protect its customers' assets and ward off outside attacks; and
- (c) KRAKEN would timely execute trade orders with its fast trading engine

were false; and KRAKEN knew, or should have known, at the time the statements were made that the statements were false.

184. KRAKEN had no reasonable grounds upon which to believe the statements were true when made to Claimant [REDACTED].

185. KRAKEN intended that Claimant [REDACTED] would be induced into action by relying upon the statements of fact made to him by and on behalf of KRAKEN.

186. In considering whether to open and maintain an account at KRAKEN and entrust to KRAKEN his valuable assets, Claimant [REDACTED] reasonably and justifiably relied on the statements of fact made to him by and on behalf of KRAKEN.

187. As a direct and proximate result of Claimant [REDACTED]'s reliance on the statements made to him by KRAKEN, Claimant [REDACTED] has suffered damage.

PRAYER FOR RELIEF

WHEREFORE, Claimants on their own and behalf of all others similarly situated, pray for entry of an award providing relief as follows:

- (a) Entry of an award of monetary, punitive and actual damages and/or restitution, as appropriate;
- (b) Prejudgment interest to the extent allowed by the law;
- (c) Awarding all costs, expenses, experts' fees, and attorneys' fees incurred in prosecuting this action; and
- (d) Such other and further relief as the Court may deem just and proper.

Respectfully submitted,



SILVER MILLER
11780 W. Sample Road
Coral Springs, Florida 33065
Telephone: (954) 516-6000
DAVID C. SILVER
E-mail: DSilver@SilverMillerLaw.com
JASON S. MILLER
E-mail: JMiller@SilverMillerLaw.com

- and -

WITES LAW FIRM

4400 N. Federal Highway
Lighthouse Point, Florida 33064
Telephone: (954) 570-8989
Facsimile: (954) 354-0205
MARC A. WITES
E-mail: MWites@wklawyers.com

Counsel for Claimants

DATED: October 30, 2017

██████████
Jul 26, 16:17 PDT

Dear Sir/Madam:

On the 19th of July I placed a market order to sell 2000 ETH. The order was opened at 19:19:03 UTC and was closed for an average price of USD 197.74218 at 19:50:52 UTC, i.e. more than 31 minutes later.

During this order execution time I could not find any information on the trading platform whether my order had been executed or not. So I wondered whether something might be wrong. For that reason I opened a second market order to sell 0.01 ETC. I placed this second order merely to test how this one would execute, including what information about it would appear and when. This second order was opened at 19:34:26 UTC and was closed for an average price of USD 200 at 19:39:09 UTC, i.e. 4 minutes later.

I think that it is not acceptable that you delay the execution of market orders. If you cannot execute market orders properly then you should disable the option of market orders until you fix your trading platform accordingly. So why do still enable users to use market orders? And you do not notify users with clear warnings about the (possible) delay of market order execution when logging in. This would have been possible as you also notify users with messages like "New asset: EOS trading now live!".

Also, my aforesaid two trades show clearly that you are not able to process market orders chronologically.

So why did my first order took 31 minutes to execute and my second order only 4 minutes? And why was my second order closed earlier then my first order?

So are you planning to reimburse me for this?

1 Minute data for the ETH USD trading pair:
UTC Open (\$) High (\$) Low (\$) Volume (ETH)
19:19 207.1 207.1 207.1 723
19:20 207.1 207.49998 206.9 909
19:21 206.9 206.9 206.3 877
19:22 206.3 206.3 206.3 877
19:23 206.3 206.3 205.33 745

EXHIBIT "A"

Unfortunately, I am unable to escalate your request. Please let me know if you are interested in accepting our offer of fee credits at earliest convenience.

Warm Regards,

Charla
Client Engagement Team