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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Matthew Liston,

No. CGC-18-565915

PLAINTIFF,

v.

Jack Peterson, a.k.a. John Peterson, an individual; **Forecast Foundation OÜ**, an Estonian *osaiühing* business entity and/or an unincorporated association or general partnership; **Forecast Foundation**, a dissolved Oregon non-profit corporation and/or an unincorporated association or general partnership, and its successors in interest; **Dyffy Inc.**, an administratively dissolved Delaware corporation and/or an unincorporated association or general partnership, and its successors in interest; **Joseph Ball Costello**, a.k.a. Joe Costello, an individual; **Joseph Charles Krug**, a.k.a. Joey Krug, a.k.a. Joey C. Krug, an individual; **Jeremy Gardner**, an individual; and **DOES 1-30**.

AMENDED COMPLAINT FOR FRAUD (PROMISSORY FRAUD, INTENTIONAL MISREPRESENTATION, CONSTRUCTIVE FRAUD VIA CONCEALMENT, CONSTRUCTIVE FRAUD VIA COERCION), DECLARATORY JUDGMENT, CONSPIRACY TO COMMIT FRAUD, BREACH OF CONTRACT, AND BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

DEFENDANTS.

1 1. This amended complaint amends and restates the complaint Plaintiff filed in this court on
2 April 19, 2018.

3
4 THE PARTIES AND JURISDICTION

5
6 2. **Plaintiff** Matthew Liston complains and alleges causes of action as follows against **Defend-**
7 **ants** Jack Peterson, Forecast Foundation OÜ, Forecast Foundation, Dyffy Inc., Joseph Ball
8 Costello, Joseph Charles Krug, Jeremy Gardner, and DOES 1-30.

9
10 3. Plaintiff is a competent adult individual.

11
12 4. Each defendant named above is a natural person except Forecast Foundation OÜ, Forecast
13 Foundation, and Dyffy Inc.

14
15 a. **Defendant Forecast Foundation OÜ.** Upon information and belief, Defendant Forecast
16 Foundation OÜ is an Estonian *osaühing* (private limited company), with its principal place
17 of business in San Francisco, California, not properly registered with the California Secre-
18 tary of State and not otherwise qualified to do business in California. As such, or in the al-
19 ternative, upon information and belief, Defendant Forecast Foundation OÜ is or was, or
20 is or was acting as, at all times material to this action, either an unincorporated association
21 of the individual defendants Jack Peterson, Joseph Charles Krug, Jeremy Gardner, and
22 DOES 1-30, or a general partnership between individual defendants Jack Peterson, Jo-
23 seph Charles Krug, Jeremy Gardner, and DOES 1-30.

24
25 b. **Defendant Forecast Foundation.** Upon information and belief, Defendant Forecast
26 Foundation was an Oregon nonprofit corporation, now dissolved, with its principal place
27 of business in San Francisco, California, never properly registered with the California
28 Secretary of State and never otherwise qualified to do business in California. As such, or
29 in the alternative, upon information and belief, Defendant Forecast Foundation was, or
30 was acting as, at all times material to this action, either an unincorporated association of
31 the individual defendants Jack Peterson, Joseph Charles Krug, Jeremy Gardner, and
32 DOES 1-30, or a general partnership between individual defendants Jack Peterson, Jo-
33 seph Charles Krug, Jeremy Gardner, and DOES 1-30.

1 **c. Defendant Dyffy Inc.**

2
3 i. Defendant Dyffy Inc. was a Delaware corporation, registered with the Secretary of
4 State of California and qualified to do business in California as of September 8, 2014,
5 with its original principal place of business in Los Angeles, California.

6
7 ii. Plaintiff Matthew Liston was a founder, incorporator, shareholder and director of
8 Dyffy Inc. until certain Defendants terminated his employment on October 24, 2014
9 and then ousted him as a director in November or December of 2014.

10
11 iii. Defendant Jack Peterson filed a revised Statement of Information with the California
12 Secretary of State on April 29, 2015, and sometime thereafter, Defendant Dyffy Inc.'s
13 registration in California was administratively forfeited and its incorporation was re-
14 voked in Delaware.

15
16 d. **Successors in interest.** Upon information and belief, Forecast Foundation OÜ is the di-
17 rect successor in interest to Dyffy Inc. In the alternative, upon information and belief,
18 Forecast Foundation OÜ is the direct successor in interest to Forecast Foundation, which
19 itself was the direct successor in interest to Dyffy Inc.

20
21 e. **Common control.** Upon information and belief, at all times material to this action, De-
22 fendants Forecast Foundation OÜ, Forecast Foundation, and Dyffy Inc. were or are un-
23 der the common control of one another and/or Defendants Jack Peterson, Joseph Charles
24 Krug, Jeremy Gardner, and DOES 1-30.

25
26 **5. Defendant Jack Peterson.** Upon information and belief—

27
28 a. Peterson is the chief executive officer, a director, and a shareholder or owner of Forecast
29 Foundation OÜ.¹ In the alternative, Peterson is a member of the unincorporated associa-
30 tion known as Forecast Foundation OÜ or a general partner of the general partnership
31 known as Forecast Foundation OÜ.

32
33 ¹ Despite the use of the word “Foundation” in the name of “Forecast Foundation OÜ” and the fact that its prede-
34 cessor-in-interest Forecast Foundation was an Oregon nonprofit corporation, an *osaühing* appears to be an Estonian
35 type of for-profit entity with owners or shareholders, in contrast to the *mittetulundusühing* (abbreviated MTÜ), *i.e.*,
“nonprofit organization,” or *sihtasutus*, *i.e.* foundation.

1 **b.** Peterson is the registered agent and was a director, a member, and the secretary of the
2 dissolved Forecast Foundation (Oregon nonprofit). In the alternative, Peterson was a
3 member of the unincorporated association known as Forecast Foundation or a general
4 partner of the general partnership known as Forecast Foundation.

5
6 **c.** Peterson was the chief executive officer, a director, a shareholder, and the secretary of
7 Dyffy Inc. at all times material to this action.

8
9 **d.** Peterson is a resident of Los Gatos, in Santa Clara County.

10
11 **6. Defendant Joseph Charles Krug.** Upon information and belief—

12
13 **a.** Krug is a director and a shareholder or owner of Forecast Foundation OÜ. In the alterna-
14 tive, Krug is a member of the unincorporated association known as Forecast Foundation
15 OÜ or a general partner of the general partnership known as Forecast Foundation OÜ.

16
17 **b.** Krug was a director and member of the dissolved Forecast Foundation (Oregon nonprof-
18 it). In the alternative, Krug was a member of the unincorporated association known as
19 Forecast Foundation or a general partner of the general partnership known as Forecast
20 Foundation.

21
22 **c.** Krug is the registered agent and was a director, officer, and a shareholder of Dyffy Inc. at
23 all times material to this action.

24
25 **d.** Krug is a resident of San Francisco County.

26
27 **7. Defendant Jeremy Gardner.** Upon information and belief—

28
29 **a.** Gardner is a shareholder or owner of Forecast Foundation OÜ. In the alternative, Gard-
30 ner is or was a member of the unincorporated association known as Forecast Foundation
31 OÜ or a general partner of the general partnership known as Forecast Foundation OÜ.

32
33 **b.** Gardner was the president, a director and a member of the dissolved Forecast Foundation
34 (Oregon nonprofit). In the alternative, Gardner was a member of the unincorporated as-
35 sociation known as Forecast Foundation or a general partner of the general partnership
36

1 known as Forecast Foundation.

2
3 c. Gardner is a resident of San Francisco County.

4
5 **8. Defendant Joseph Ball Costello.** Upon information and belief—

6
7 a. Costello was a director and shareholder of Dyffy Inc. at all times material to this action.

8
9 b. Costello is a resident of the City of Woodside, in San Mateo County, and/or of either or
10 both the Cities of Danville and Concord, in Contra Costa County.

11
12 **9. Unknown Defendants.** The true names of defendants sued as Does are unknown to Plaintiff.
13 Doe defendants 1–30 are persons whose capacities are unknown to Plaintiff.

14
15 **10. Jurisdiction.** This court is the proper court because at least one defendant resides in the
16 county over which this court has jurisdiction.

17
18 **STATEMENT OF FACTS**

19
20 **11.** The following statements of facts in paragraphs 12–92 are common to all causes of action.

21
22 **12.** Plaintiff Matthew Liston co-founded Defendant Dyffy Inc. (“Dyffy”) with Defendant Jack
23 Peterson on June 17, 2014, to develop blockchain-related and -enabled intellectual property
24 and technology.

25
26 **13.** At this time, Plaintiff was a major common stock shareholder, chief executive officer, direc-
27 tor, and employee of Dyffy.

28
29 **14.** Defendant Peterson was a major common stock shareholder, chief technical officer, and di-
30 rector of Dyffy.

31
32 **15.** Matthew Liston had attempted to convince Defendant Peterson to work on the creation of a
33 prediction-market application of blockchain technology using decentralized betting markets
34 since the formation of Dyffy.

1 16. With this in mind, Plaintiff Liston’s original pitch to Defendant Costello to fund Dyffy Inc.
2 was based on the conception and plan to use blockchain technology to create a decentralized
3 prediction/betting market.

4
5 17. Defendant Costello provided early funding to Dyffy and in return became a shareholder and
6 director of Dyffy.

7
8 18. Through a series of conversations with a gentleman named Paul Sztorc and reading a white-
9 paper Sztorc wrote called *Truthcoin*, Matthew Liston became convinced that Sztorc’s Truth-
10 coin software model was the best design to emulate in the development of a blockchain-
11 enabled betting and prediction market.

12
13 19. After several months of conversations with Mr. Sztorc, eventually bringing in Defendants Pe-
14 terson and Costello into those conversations, Plaintiff Liston convinced Defendants Peterson
15 and Costello that Sztorc’s Truthcoin model was the best design for blockchain-enabled pre-
16 diction markets.

17
18 20. Thereafter, Dyffy hired Defendants Krug and Gardner to assist in the software development
19 of the new Truthcoin-based blockchain prediction market.

20
21 21. Independently of Dyffy, a gentleman named Zack Hess began developing a prototype imple-
22 mentation of Truthcoin. Plaintiff Liston hired Mr. Hess to continue building his prototype at
23 Dyffy.

24
25 22. At Defendant Gardner’s suggestion, the Dyffy team began calling the Truthcoin-based block-
26 chain prediction market **Augur** or the **Augur Project**.

27
28 23. As the fundamental basis for the Augur Project, the Dyffy team conceived of the creation and
29 release of new blockchain-enabled cryptographic tokens called *reputation tokens* (abbreviated
30 as “REP” or “REP tokens” or “REP coins”), distributed fungible transferable units of ab-
31 straction—tradable in a conceptual manner broadly similar to that of Bitcoin, but with a dif-
32 ferent feature set (based on the Truthcoin model).

33
34 24. While at Dyffy, Defendants Peterson and Krug began to undertake further critical develop-
35 ment of the Augur Project by encoding a method to clone Bitcoin balances at specific ad-
36

1 dresses on the Bitcoin blockchain onto the Augur Project blockchain and by jointly authoring
2 a whitepaper explaining the theoretical purpose for these developmental efforts.

3
4 **25.** By October 24, 2014, strong differences of opinion arose between Matthew Liston and
5 Dyffy's other principals, *i.e.*, Defendants Peterson and Costello, about the business and tech-
6 nological direction of Dyffy and the Augur Project.

7
8 **26.** Upon information and belief, Defendant Gardner, though not a principal of Dyffy, had insti-
9 gated and conspired with Defendants Peterson and Costello to effect Plaintiff Liston's termi-
10 nation and ouster.

11
12 **27.** Dyffy, through its principals, terminated Matthew Liston on that October 24, 2014. The oth-
13 er directors formally ousted him as a board member in November or December of 2014.

14
15 **28.** Dyffy appointed Defendant Krug to replace Mr. Liston as a director and to replace Defendant
16 Peterson as chief technical officer. Defendant Peterson replaced Mr. Liston as chief executive
17 officer.

18
19 **29.** From this point forward (the end of 2014), Plaintiff Liston no longer had access to the busi-
20 ness plans of Defendants Peterson, Krug, Costello, and Dyffy relating to Dyffy or the Augur
21 Project.

22
23 **30.** Upon information and belief, by this time, Defendants were writing a whitepaper to describe
24 the decentralized prediction market design actually implemented in Augur.

25
26 **31.** Thereafter, Defendants Peterson, Krug, Gardner, Costello, and DOES 1-30 formed Forecast
27 Foundation in Oregon on December 23, 2014.

28
29 **32.** Upon information and belief, Defendant Gardner (or a trustee, for a trust for which he is or
30 was a beneficiary, on his behalf) funded the formation of the Forecast Foundation.

31
32 **33.** Defendants Peterson, Krug, Gardner, Costello, and DOES 1-30 allowed Dyffy's registrations
33 to lapse in Delaware and California.

34
35 **34.** Then, in a series of insider transactions of questionable propriety, Defendants Peterson,
36

1 Krug, Gardner, Costello, and DOES 1–30 transferred the intellectual property and assets of
2 Dyffy to Forecast Foundation—or merged or attempted to merge Dyffy with Forecast Foun-
3 dation (or caused or attempted to cause Forecast Foundation to acquire Dyffy), apparently in
4 an abortive or incomplete manner contrary to law and not supported by the public records of
5 the various applicable secretaries of state.
6

7 **35.** In the alternative to paragraph 34, Defendants Peterson, Krug, Gardner, Costello, and DOES
8 1–30 simply misappropriated the intellectual property and assets of Dyffy for use under the
9 auspices of the Forecast Foundation.
10

11 **36.** In so doing (according to either paragraphs 34 or 35), the defendants conspired to abscond
12 with the valuable intellectual property and goodwill of Dyffy so as to leave Plaintiff Liston
13 with ownership in a defunct company without value.
14

15 **37.** This series of insider transactions or misappropriation led to, or in the alternative constituted,
16 the development of the reputation token platform using the Dyffy Augur Project intellectual
17 property, and a secret plan by Defendants Peterson, Krug, Gardner, Costello, and DOES 1–
18 30 to reserve 20% of the REP tokens to themselves for their own benefit in an unknown divi-
19 sion in concert with a public offering for sale of the remainder of the tokens.
20

21 **38.** Meanwhile, with a view to compromising their dispute arising from Plaintiff Matthew Lis-
22 ton’s termination and ouster, Liston and Dyffy (through Peterson, Krug, and Costello) en-
23 gaged in negotiations to settle.
24

25 **39.** At this time, because of Liston’s sudden termination and ouster at the end of 2014 leading to
26 a sustained period of unemployment, he was suffering from profound financial and economic
27 pressure.
28

29 **40.** Defendants Peterson, Krug, and Costello exacerbated this financial pressure by failing to di-
30 rect Dyffy to pay, and Defendant Dyffy did the same by directly failing to pay, Plaintiff Liston
31 back wages he was owed by Dyffy after Dyffy terminated his employment.
32

33 **41.** Unrelated to the dispute between the parties to this action, a contractor to Dyffy had previ-
34 ously sued Mr. Liston personally for contractual payments owed by Dyffy to the contractor.
35 Mistakenly believing that he would be shielded with limited liability through Dyffy Inc., Mr.
36

1 Liston failed to appear in that suit and a default judgment of approximately \$15,000 was
2 awarded against him.² (Since that time, Mr. Liston has fully satisfied that judgment against
3 him.)
4

5 42. Upon information and belief, Plaintiff Liston in his capacity as a director of Dyffy Inc. at all
6 pertinent times to that lawsuit, was entitled to indemnity from Defendant Dyffy for the re-
7 sulting judgment.
8

9 43. Defendant Dyffy Inc. failed to pay, and Defendants Peterson, Krug, and Costello failed to di-
10 rect Dyffy to pay, such indemnification to Plaintiff Liston.
11

12 44. Irrespective of Dyffy’s obligation *vel non* to indemnify Plaintiff Liston, Defendants Costello,
13 Peterson, Krug, Dyffy Inc., and DOES 1–30 were well aware that this judgment having to do
14 with Dyffy’s business was exacerbating Plaintiff Liston’s financial and economic pressure.
15

16 45. In general, Defendants Costello, Peterson, Krug, Dyffy Inc., Gardner, Forecast Foundation,
17 and DOES 1–30 were well aware of the financial and economic pressure Plaintiff Liston was
18 suffering.
19

20 46. During this same period Defendant Costello, in his capacity as a board member of Dyffy, ap-
21 proached Mr. Liston to broker the final deal between him and Dyffy. Dyffy, through Costello,
22 proposed a compromise by way of two separate but related written agreements, one contem-
23 plating a full release and waiver of Mr. Liston’s claims against Dyffy, and the second contem-
24 plating Dyffy’s repurchase of Mr. Liston’s stock in the company in exchange for a small cash
25 payment and a payment of *reputation tokens* (together, the “Agreements”).
26

27 47. Matthew Liston was a creator of the Augur Project, first, because he was the original catalyst
28 for the development of a decentralized prediction market blockchain; second, because he
29 pitched the idea to Defendant Costello and obtained a soft commitment for funding from De-
30 fendant Costello—even before inviting Defendant Jack Peterson onto the project; third, be-
31 cause he found and hired each original member of the Augur Project (including Jack Peter-
32 son) to Dyffy; and fourth, because he had the initial vision to later implement Sztorc’s Truth-
33 coin model, convincing Defendant Peterson to undertake new technical direction at Dyffy—
34

35 ² Plaintiff Liston is not attempting to improperly relitigate the final judgment of an unrelated lawsuit in this court but
36 merely providing context for his allegations. As stated above, Mr. Liston has satisfied this judgment.

1 all of which resulted in the construction of what the Dyffy team named the Augur Project.
2 Augur would not have existed without Matthew Liston’s catalyzing efforts.

3
4 48. Therefore, Plaintiff Liston repeatedly insisted and demanded that he be publicly declared as a
5 co-founder of the Augur Project in negotiations with Dyffy through Defendant Costello.
6

7 49. At this time, upon information and belief, the defendants were definitively planning to under-
8 take an *initial coin offering* (or *initial token offering*, “ICO,” *token generation event*) in 2015
9 whereby the public would be invited to purchase reputation tokens so as to participate in the
10 distributed blockchain-enabled system represented by the Augur Project.
11

12 50. The defendants represented to Plaintiff Liston that they “may do an ICO” of the *reputation*
13 *tokens* but did not give Mr. Liston any of the details necessary for him to evaluate the poten-
14 tial value of the REP token.
15

16 51. Meanwhile, the defendants set or anticipated a valuation for, planned the timing of, and set
17 the terms for the REP token initial coin offering as well as determined how much they were
18 going to reserve to themselves.
19

20 52. However, as he was no longer on the board of directors, Plaintiff Liston did not have specific
21 insight into or knowledge of the defendants’ plans regarding an undertaking of the initial coin
22 offering, and thus by extension did not have any knowledge of the anticipated or set valuation,
23 timing, or material terms of the REP token initial coin offering.
24

25 53. By further extension, Plaintiff Liston did not know how many REP tokens the defendants
26 were going to reserve (or already had reserved) to themselves for their own benefit.
27

28 54. Defendant Costello (on his and the other defendants’ behalf) offered Plaintiff Liston “5% of
29 the REP tokens” as consideration for his settlement with Dyffy but refused to disclose any
30 material information about their value and concealed that specific plans for the initial coin of-
31 fering were already underway.
32

33 55. Mr. Liston was unsure about how to interpret the terms and conditions of the proposed
34 Agreements from Dyffy and wanted to hire independent counsel to review and advise him.
35
36

1 56. Despite Mr. Liston’s express preferences that he be given time to seek counsel and to consid-
2 er the terms of the Agreements, Defendant Costello demanded that Plaintiff Liston sign the
3 Agreements through a series of highly coercive, unrelenting, manipulative communications.
4

5 57. Defendant Costello called Mr. Liston repeatedly and screamed indignities at him every time
6 they spoke on the phone.
7

8 58. While enduring Costello’s indignities, and suffering the prospect of looming financial ruin
9 (which Defendant Costello was well aware of and used to his abusive advantage), Mr. Liston
10 broke down in frustration.
11

12 59. When Defendant Costello’s abusive phone calls did not garner the response he wanted, he
13 bombarded Plaintiff Liston with text messages over successive days. To wit—
14

15 a. **Defendant Costello [4/13/2015, 7:19 p.m.³]:** “The alternative is having everybody an-
16 gry and you get no money no stock and no reputation Coin”
17

18 b. **Costello [4/13/2015, 7:19 p.m.]:** “Why would you do that?”
19

20 c. **Costello [4/13/2015, 7:19 p.m.]:** “You are screwing your self [*sic*]”
21

22 d. **Costello [4/13/2015, 7:21 p.m.]:** “It looks like the same bad pattern that lead [*sic*] to you
23 owing \$15,000 in that stupid lawsuit”
24

25 e. **Costello [4/13/2015, 7:30 p.m.]:** “So when are you going to talk to a lawyer?”
26

27 f. **Plaintiff Liston [4/13/2015, 7:30 p.m.]:** “When I can afford one.”
28

29 g. **Costello [4/13/2015, 7:31 p.m.]:** “By then there will be nothing to talk about because we
30 have to move on”
31

32 h. **Liston [4/13/2015, 7:35 p.m.]:** “How much reputation were you going to offer me. [?,
33 *sic*] I will think about it but I would rather do so calmly.”
34

35 _____
36 ³ All times are Pacific.

- 1 **i. Costello [4/13/2015, 7:35 p.m.]:** “Either we talk and reach an agreement in the next two
2 days or we will have to take more drastic action on the company.. [*sic*] We can’t continue
3 to be held hostage like this.”
4
- 5 **j. Costello [4/13/2015, 7:37 p.m.]:** “I have worked very hard to try to be extremely fair to
6 you matt [*sic*]. Maybe someday when you see other situations you will understand that.”
7
- 8 **k. Costello [4/14/2015, 4:55 p.m.]:** “Matt how about talking now!”
9
- 10 **l. Costello [4/14/2015, 4:57 p.m.]:** “If we don’t settle this today and tomorrow then you
11 will receive nothing”
12
- 13 **m. Costello [4/14/2015, 4:59 p.m.]:** “You may think it is a smart move to keep the option
14 open to sue everyone later but I can tell you from my experience that is a losing play”
15
- 16 **n. Costello [4/14/2015, 7:41 p.m.]:** “What time can we talk tomorrow morning? Because
17 we must make the decision to either go with our deal as proposed to you or completely re-
18 structure the company tomorrow afternoon.”
19
- 20 **o. Costello [4/14/2015, 7:41 p.m.]:** “There is no more time to be very clear”
21
- 22 **p. Costello [4/14/2015, 7:42 p.m.]:** “If I don’t hear from you in the morning the answer is
23 that you are not excepting [accepting, *sic*] the deal and we restructure”
24
- 25 **q. Costello [4/15/2015, 12:00 p.m.]:** “Thoughts?”
26
- 27 **r. Costello [4/15/2015, 12:14 p.m.]:** “Two hours left”
28
- 29 **s. Liston [4/15/2015, 12:34 p.m.]:** “Thoughts are that you’re wasting money, putting
30 yourself at legal risk, and shooting yourself in the foot.”
31

32 **60.** Thereafter, Plaintiff Liston discussed the Agreements again with Defendant Costello by
33 phone.
34

35 **61.** Because Defendant Costello and the other defendants concealed their specific plans for an
36

1 initial coin offering of the REP token, Plaintiff Liston reasonably thought the value of their offer of the REP tokens as consideration was illusory to avoid paying him anything of real value, particularly in light of the lack of trust he had in the defendants after their actions in late 2014.

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3
4
5 **62.** Given his incomplete knowledge of material facts about the REP token and his severe financial situation, Plaintiff Liston reasonably dismissed the offer of the REP tokens and asked for a cash payment instead.

6
7
8
9 **63.** While on the phone and discussing the matter further with Costello, Liston capitulated to Dyffy and Costello's demands under the duress of Defendant Costello's abusive tactics and to be rid of him permanently. Defendant Costello reaffirmed the new material terms of the settlement deal by text message the very next day on April 16, 2015:

10
11
12
13
14 **a. Costello [4/16/2015, 3:22 p.m.]:** "Getting new agreement written up."

15
16 **b. Costello [4/16/2015, 3:22 p.m.]:** "Are you set to sign on what we agreed to yesterday?"

17
18 **c. Costello [4/16/2015, 3:24 p.m.]:** "65k and you are shown as a founder of augur [*sic*] and you sell back all your dyffy [*sic*] stock and give a full release to dyffy and augur."
19
20 (Emphasis added.)

21
22 **64.** Dyffy revised the Agreements' language on April 16, 2015. Being given no reasonable time to contemplate the proposed settlement deal further or the Agreements (as revised) with or upon the advice of independent legal counsel, Matthew Liston entered into such modified Agreements with Dyffy, on April 19, 2015 (the "Revised Agreements").⁴

23
24
25
26
27 **65.** Plaintiff Liston entered into the Revised Agreements, signed by Defendant Peterson, (a) reasonably relying on Defendant Costello's material representation and confirmation of the fact that the defendants (in particularly Dyffy, Forecast Foundation, Peterson, Krug, and Costello) would publicly hold Mr. Liston out as a co-founder of Augur and (b) unwittingly tricked by Defendants' material concealment of the REP token initial coin offering public launch plans and its projected value and valuation.

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35 ⁴ These agreements are titled *Separation Agreement and Release* and *Dyffy Inc. Stock Repurchase Agreement*.

1 66. Thereafter, in anticipation of the public launch and sale of the reputation token (its initial
2 coin offering) and concomitant with their negotiations with Plaintiff, Defendants Forecast
3 Foundation, Peterson, Krug, Gardner, and DOES 1-30, in a further series of insider transac-
4 tions, transferred the intellectual property and assets of Forecast Foundation, including the
5 already commingled original intellectual property of the Augur Project (the intellectual prop-
6 erty taken from Dyffy) to Forecast Foundation OÜ.

7
8 67. In the alternative to paragraph 66, Defendants Peterson, Krug, Gardner, Costello, and DOES
9 1-30 once again simply misappropriated Dyffy Inc.'s intellectual property and assets for use
10 under the auspices of the Forecast Foundation OÜ.

11
12 68. Upon information and belief, the individual defendants' transfer or misappropriation of
13 Dyffy's intellectual property from Forecast Foundation to Forecast Foundation OÜ was both
14 calculated to make it difficult for Matthew Liston to execute judgment arising out of later
15 claims and to shield the assets of the defendants from U.S. and California regulators.

16
17 69. Forecast Foundation OÜ was the entity or trade name through which Defendants Peterson,
18 Krug, Gardner, Costello, and DOES 1-30 publicized the launch and sale of the Augur Project
19 reputation token.

20
21 70. Upon information and belief, Forecast Foundation OÜ is an alter ego of Forecast Foundation
22 and of Dyffy Inc. In the alternative, Forecast Foundation OÜ is liable for all the wrongdoing
23 of Forecast Foundation and Dyffy Inc. as their successor in interest.

24
25 71. After Forecast Foundation OÜ's initial coin offering of the REP token in autumn 2015, Plain-
26 tiff Liston realized that all the defendants had substantially undervalued the Augur project
27 reputation token when negotiating with him and had been duplicitous about how far along
28 their plans were to launch the REP token for public purchase.

29
30 72. The market capitalization of the REP token at one point since its initial coin offering reached
31 one billion dollars. Today, the market capitalization approximates \$500,280,000.⁵

32
33 73. By capitulating to the Revised Agreements, Plaintiff Liston lost the opportunity to receive

34
35 ⁵ There are 11,000,000 REP tokens (coins) in circulation. As of today, the value of one REP token on the open mar-
36 ket is approximately \$45.48. See <https://coinmarketcap.com/>.

1 REP tokens as a Dyffy shareholder.

2
3 **74.** If Defendant Costello’s offer (as alleged in paragraph 54) was 5% of all REP tokens, Matthew
4 Liston would have inured to approximately \$25,014,000 in value, measured today.

5
6 **75.** If Defendant Costello’s offer (as alleged in paragraph 54) meant 5% of the 20% that the de-
7 fendants reserved to themselves, Matthew Liston would have inured to approximately
8 \$5,002,800 in value, measured today.

9
10 **76.** Nevertheless, at the time of execution of the Revised Agreements, Plaintiff Liston owned
11 about 38% (plus or minus) of Dyffy Inc. At the time of his termination, he was fully vested to
12 25% of that 38% stake.

13
14 **77.** Although the particular division of the REP token reserve between the individual defendants
15 is unknown, upon information and belief, the defendants appear to have distributed REP to-
16kens to the former Dyffy shareholders on a *pro rata* or approximately *pro rata* basis.

17
18 **78.** If Plaintiff Liston had remained a shareholder of Dyffy Inc. when the defendants distributed
19 REP tokens to the Dyffy shareholders on a *pro rata* basis, Matthew Liston would have inured
20 to 25% of 38% of the 20% reserve, or approximately \$9,505,320 in value, measured today.

21
22 **79.** Furthermore, Dyffy’s termination of Mr. Liston’s employment on October 24, 2014, was a
23 calculation by Defendants Peterson, Costello, Dyffy Inc., and DOES 1–30 to cease further
24 vesting of Plaintiff Liston’s restricted stock in Dyffy and limit it to 25% of his whole equity
25 stake. This termination was conveniently timed, because if Mr. Liston had remained an em-
26 ployee of Dyffy through the transition to Forecast Foundation (and Forecast Foundation
27 OÜ) as masterminded by Defendants Peterson, Gardner, Krug, Costello, and DOES 1–30,
28 the double-trigger acceleration clause in Mr. Liston’s contract would have activated to cause
29 the entirety of his equity stake in Dyffy to vest immediately, leaving him with approximately
30 38% of the Dyffy stock, fully vested.

31
32 **80.** Thus, the number of REP tokens to which Plaintiff Liston would otherwise have been entitled
33 under the distribution to Dyffy shareholders would today be worth 38% of the 20% reserve, or
34 approximately \$38,021,280 in value, measured today.

1 81. Before August 2015, Plaintiff Liston learned about the then-upcoming REP token initial coin
2 offering through public media sources and realized that he had not been listed as a co-founder
3 of the Augur Project in any public materials set forth by the defendants.
4

5 82. The Augur Project REP token initial coin offering conducted by Defendants Peterson, Krug,
6 Gardner, Forecast Foundation OÜ, and DOES 1–30 from in August and September 2015 was
7 a success, raising the equivalent of \$5,318,331 in Bitcoin and Ethereum cryptocurrency.
8

9 83. Plaintiff Liston made the following request of Defendant Peterson by text message around
10 November 2015: “Also can you please recognize me as a co-founder on the [Augur] site and
11 in relevant media?”
12

13 84. On **November 17, 2015**, Mr. Peterson responded by text message flatly and shockingly
14 “**You’re not a co-founder, so no.**” (Emphasis added.)
15

16 85. Thus, Plaintiff Liston discovered (or had reason to discover) for the first time on November
17 17, 2015, that none of the defendants intended to honor the material term of the settlement
18 agreement that Liston would be publicly announced or shown to be a co-founder of the Augur
19 Project.
20

21 86. Plaintiff later in 2016 attempted to negotiate (again, through Defendant Costello with De-
22 fendants Dyffy Inc., Forecast Foundation, and/or Forecast Foundation OÜ) a public state-
23 ment declaring Mr. Liston’s status as a co-founder that these defendants would publicize on
24 the Augur Project website (www.augur.net) and/or elsewhere.
25

26 87. Defendant Jack Peterson blocked all potential press releases and rejected all public media
27 statements that mentioned or would have mentioned Matthew Liston as a co-founder.
28

29 88. Later, when Plaintiff Liston was already working for a new employer, Gnosis, Defendant Jack
30 Peterson proactively reached out to the CEO of Gnosis, Martin Köppelmann, to try to con-
31 vince him to lean on Plaintiff Liston to stop referring to himself as a co-founder of Augur.
32

33 89. Defendant Peterson has at least twice publicly rejected the notion that Plaintiff Liston was a
34 co-founder of the Augur Project via tweets on the Twitter platform.
35
36

1 90. Finally, upon Mr. Liston’s continuing free exercise of his right to assert himself as a co-
2 founder of the Augur Project, Defendant Forecast Foundation OÜ (at Defendant Peterson’s
3 behest), issued Plaintiff Liston a letter through legal counsel in January 2018 demanding that
4 he cease and desist all such public claims.

5
6 91. Thereafter, the CEO of a company Plaintiff Liston advises, R. John King of FOAM Inc., noti-
7 fied Liston that an “Augur” employee had twice emailed him using aggressive and disparag-
8 ing language demanding that FOAM remove the phrase “Augur cofounder” from Liston’s
9 description on FOAM’s website.

10
11 92. In light of the defendants’ refusal to acknowledge Plaintiff Liston as an Augur Project co-
12 founder, *i.e.*, as a visionary of the blockchain prediction market concept and of the commer-
13 cial viability of the cryptographic reputation (REP) token,⁶ he has not shared in the profes-
14 sional acclaim that has inured to the other defendants in this industry. Ironically, Matthew
15 Liston has suffered damage to his *reputation*.

16 17 CAUSES OF ACTION

18
19 93. Each cause of action set forth below adopts paragraphs 1–92 and the summary paragraphs
20 154–156. To the extent of any inconsistency, they are adopted and pled in the alternative.

21 22 **First Cause of Action for Promissory Fraud (False Promise / Fraudulent Inducement)** 23 **Against Defendants Costello, Dyffy Inc., Forecast Foundation, and Forecast Foundation OÜ**

24
25 94. Defendant Costello made a direct promise to Plaintiff Liston that he would be held out to the
26 public and recognized by the other defendants as a co-founder of the Augur Project.

27
28 95. Defendant Costello was an agent of Defendant Dyffy Inc., acting within the scope of his
29 agency. In the alternative, Costello was a principal of Dyffy Inc. Therefore, Defendant Dyffy
30 Inc. through its director Costello made the same promise to Plaintiff Liston.

31
32 96. Defendants Forecast Foundation OÜ and Forecast Foundation, as alter egos of Dyffy Inc.,
33 made the same promise to Plaintiff Liston.

34
35
36 ⁶ With due credit, of course, to Mr. Sztorc’s prior theoretical vision of the specific implementation.

1 97. None of these defendants intended to perform this promise when they made it.

2
3 98. Each of these defendants intended for Matthew Liston to rely on this promise.

4
5 99. Plaintiff Matthew Liston reasonably relied on this promise by entering into the Revised
6 Agreements with Dyffy.

7
8 100. None of these defendants performed the promised act.

9
10 101. Plaintiff Liston was harmed.

11
12 102. Plaintiff Liston's reliance on these defendants' promise was a substantial factor in causing
13 his harm.

14
15 **Second Cause of Action for Intentional Misrepresentation (Fraud and Deceit)**

16 Against Defendants Costello, Peterson, Krug, Dyffy Inc.,
17 Forecast Foundation, and Forecast Foundation OÜ

18
19 103. Defendant Costello represented to Plaintiff Liston that the other defendants would hold out
20 Mr. Liston publicly as a co-founder of the Augur Project.

21
22 104. Defendants Costello, Peterson, and Krug intentionally misrepresented their plans to launch
23 and their projections of value of the REP token when Defendant Costello was negotiating
24 with Mr. Liston.

25
26 105. Defendants Costello, Peterson, and Krug were agents of Defendant Dyffy Inc., acting with-
27 in the scope of their agency. In the alternative, Costello, Peterson, and Krug were principals
28 of Dyffy Inc.

29
30 106. Defendant Dyffy Inc. vicariously represented, through Defendant Costello, the fact that the
31 other defendants would hold out Mr. Liston publicly as a founder of the Augur Project.

32
33 107. Defendant Dyffy Inc. vicariously represented, through Defendants Costello, Peterson, and
34 Krug, the REP token's projected value to be substantially lower than they truly expected.

1 **108.** Defendants Forecast Foundation OÜ and Forecast Foundation, as alter egos of Dyffy Inc.,
2 vicariously made the same representations of fact to Plaintiff Liston.

3
4 **109.** Defendant Costello, Peterson, and Krug knew these representations were false when they
5 made them—or they made their respective representations recklessly and without regard
6 for their truth.

7
8 **110.** Defendants Dyffy, Forecast Foundation, and Forecast Foundation OÜ (through their prin-
9 cipals and agents) vicariously knew these representations were false when they were made.

10
11 **111.** These defendants intended that Matthew Liston rely on either or both representations.

12
13 **112.** Plaintiff Matthew Liston reasonably relied on both representations by entering into the Re-
14 vised Agreements with Dyffy.

15
16 **113.** Plaintiff Liston was harmed.

17
18 **114.** Plaintiff Liston’s reliance on these defendants’ representations was a substantial factor in
19 causing his harm.

20
21 **Third Cause of Action for Constructive Fraud (Concealment)**

22 Against Defendants Peterson, Krug, Gardner, Costello, Dyffy Inc.,
23 Forecast Foundation, Forecast Foundation OÜ, and DOES 1–30

24
25 **115.** Defendant Peterson and Plaintiff Liston were business partners and co-founders of Dyffy,
26 and therefore Defendant Peterson owed fiduciary duties to Plaintiff Liston.

27
28 **116.** In their capacities as directors of Dyffy Inc., Defendants Peterson, Krug, Costello, and
29 DOES 1–30 were fiduciaries to Plaintiff Liston in his capacity as a shareholder of Dyffy Inc.

30
31 **117.** By its very nature as a corporation, Dyffy Inc. owed fiduciary duties to Plaintiff Liston in his
32 capacity as a shareholder.

33
34 **118.** As alter egos of Dyffy Inc., Defendants Forecast Foundation and Forecast Foundation OÜ
35 owed the same fiduciary duties as Dyffy Inc. to Plaintiff Liston

- 1 **119.** As members of the unincorporated associations known as Forecast Foundation and Fore-
2 cast Foundation OÜ, or as general partners of the partnerships known as Forecast Founda-
3 tion and Forecast Foundation OÜ, Defendants Peterson, Krug, Gardner, Costello, and
4 DOES 1–30, owed the same fiduciary duties as Forecast Foundation and Forecast Founda-
5 tion OÜ to Plaintiff Liston.
6
- 7 **120.** Each and every one of the defendants concealed and failed to disclose that neither Defend-
8 ants Dyffy Inc, Forecast Foundation, and Forecast Foundation OÜ, nor Defendants Peter-
9 son, Krug, Gardner, and DOES 1–30 ever intended to uphold the direct promise Defendant
10 Costello made to Plaintiff Liston regarding holding him out as a co-founder of the Augur
11 Project.
12
- 13 **121.** Each and every one of the defendants concealed and failed to disclose to Matthew Liston
14 their specific plans to launch the REP token initial coin offering, their set or anticipated val-
15 uation of the REP token, and the token launch’s material terms during his negotiations with
16 Defendants Costello, Peterson, Krug, and Dyffy.
17
- 18 **122.** Matthew Liston did not know of any of these concealed facts.
19
- 20 **123.** Had any one of these defendants disclosed to Plaintiff Liston that they (in whole or in part)
21 did not intend to publicly hold him out as an Augur Project co-founder, Mr. Liston abso-
22 lutely would have behaved differently in negotiating the Revised Agreements with Dyffy.
23
- 24 **124.** Had any one of these defendants disclosed to Plaintiff Liston their plans (in whole or in ma-
25 terial part) to definitively launch an initial coin offering of the REP token to the public or to
26 reserve up to 20% of the tokens to previous Dyffy shareholders, or disclosed the set or antic-
27 ipated value or valuation of the REP token, Mr. Liston unquestionably would have behaved
28 differently in negotiating the Revised Agreements with Dyffy.
29
- 30 **125.** Plaintiff Liston was harmed.
31
- 32 **126.** These defendants’ concealment of these material facts was a substantial factor in causing
33 Mr. Liston’s harm.
34
35
36

1 **Fourth Cause of Action for Constructive Fraud (Coercion in the Execution of Agreements)**

2 Against Defendants Peterson, Krug, Costello, Dyffy Inc.,
3 Forecast Foundation, Forecast Foundation OÜ, and DOES 1-30
4

5 **127.** Plaintiff specifically recapitulates and readopts paragraphs 115-119.
6

7 **128.** Defendant Costello directly coerced Plaintiff Liston into entering the Revised Agreements
8 by making a series of badgering, unrelenting, manipulative, and abusive statements and de-
9 mands at the behest of the board of directors of Dyffy Inc. Thus, the board of directors of
10 Dyffy Inc. (including Defendants Peterson, Costello, Krug, and DOES 1-30) indirectly co-
11 erced Plaintiff Liston into the same.
12

13 **129.** Defendants Costello, Peterson, Krug, and DOES 1-30's coercion and duress prevailed up-
14 on Mr. Liston not to seek the advice of independent legal counsel before entering into the
15 Revised Agreements.
16

17 **130.** Mr. Liston was harmed in entering into these Revised Agreements.
18

19 **131.** These defendants' coercion in prevailing upon Mr. Liston not to seek independent counsel
20 was a substantial factor in causing this harm.
21

22 **Fifth Cause of Action for Declaratory Judgment**

23 Against Defendants Dyffy Inc, Forecast Foundation, and Forecast Foundation OÜ
24

25 **132.** Defendant Costello's badgering, unrelenting, manipulative text messages and phone call
26 conversations in the days immediately preceding Mr. Liston's entry into the Revised
27 Agreements were wrongful acts because (a) he ignored Mr. Liston's desire to seek inde-
28 pendent legal counsel, (b) he owed a fiduciary duty as a board member to Mr. Liston as a
29 shareholder, and (c) he was already engaged in a series of secret transactions that would un-
30 evenly benefit some shareholders of Dyffy Inc. over others by assuming and pushing for Mr.
31 Liston's divestiture of his equity in Dyffy Inc.
32

33 **133.** Defendant Costello used these wrongful acts and wrongful threats to pressure Plaintiff Lis-
34 ton into consenting to the Revised Agreements to compromise with Dyffy Inc.
35
36

1 134. Defendant Costello was an agent of and was acting within the scope of his agency to Dyffy
2 Inc. when he made these wrongful threats.

3
4 135. Therefore, Dyffy Inc. vicariously made these same wrongful threats.

5
6 136. A reasonable person Matthew Liston's position would have believed that he had no reason-
7 able alternative except to consent to the Revised Agreements.

8
9 137. Matthew Liston would not have consented to the Revised Agreements without Defendant
10 Costello and Defendant Dyffy Inc.'s wrongful threats.

11
12 138. Therefore, no lawful contract was actually created between Mr. Liston and Dyffy Inc., and
13 no such contract inured to the benefit of its successors in interest, Forecast Foundation
14 and/or Forecast Foundation OÜ.

15
16 **Sixth Cause of Action for Conspiracy to Commit Fraud**

17 Against Defendants Peterson, Krug, Gardner, Costello, Dyffy Inc.,
18 Forecast Foundation, Forecast Foundation OÜ, and DOES 1-30

19
20 139. Each and every named and unknown Doe defendant was aware that each and every other
21 applicable defendant as pled above planned to commit promissory fraud (fraudulent in-
22 ducement), actual fraud, constructive fraud by concealment, and constructive fraud in the
23 execution via coercion against Mr. Liston.

24
25 140. Each and every named and unknown Doe defendant agreed with each other defendant and
26 intended that these wrongs be committed.

27
28 141. Therefore, each defendant engaged in a conspiracy to commit fraud upon Matthew Liston.

29
30 **Seventh Cause of Action for Breach of Contract**

31 Against Defendants Jack Peterson, Dyffy Inc., Forecast Foundation, Forecast Foundation OÜ

32
33 142. In the alternative to paragraphs 93-141, there was a contract between Plaintiff Liston, Jack
34 Peterson, and Dyffy Inc.

1 143. Dyffy Inc. offered, as did Jack Peterson, through their agent Defendant Costello, as part of
2 the material terms of the Revised Agreements that Dyffy Inc. and Peterson would hold
3 Matthew Liston out to be a co-founder of the Augur Project.

4
5 144. Plaintiff Liston accepted this offer.

6
7 145. There was a mutual exchange of consideration between Plaintiff Liston on one side and De-
8 fendants Jack Peterson and Dyffy Inc. on the other.

9
10 146. Dyffy Inc., and its successors in interest Forecast Foundation and Forecast Foundation
11 OÜ, as well as Jack Peterson, failed to perform the material term of the Revised Agree-
12 ments requiring them to hold Plaintiff Liston out as a co-founder of Augur.

13
14 147. Therefore, these defendants are in material breach of the Revised Agreements.

15
16 148. Plaintiff Liston has suffered harm as a result of these defendants' material breach.

17
18 **Eighth Cause of Action for Breach of Implied Duty of Good Faith and Fair Dealing**
19 **Against Defendants Jack Peterson, Dyffy Inc., Forecast Foundation, Forecast Foundation OÜ**

20
21 149. Plaintiff specifically recaptulates and readopts paragraphs 142–145.

22
23 150. Plaintiff Matthew Liston did all, or substantially all of the significant things the Revised
24 Agreements required him to do.

25
26 151. All conditions for these defendants' performance had occurred.

27
28 152. Defendant Jack Peterson, Defendant Dyffy Inc. and its successors-in interest Defendants
29 Forecast Foundation and Forecast Foundation OÜ, unfairly interfered with Plaintiff Lis-
30 ton's right to receive the benefits of the contract.

31
32 153. Plaintiff Liston has been harmed by these defendants' conduct.

DAMAGES AND PRAYER FOR RELIEF

1
2
3 **154.** As a proximate result of all defendants’ fraud and deceit and the facts alleged in this com-
4 plaint, Plaintiff has been damaged in the sum of \$38,021,280.

5
6 **155.** Each of the defendants acted with oppression, fraud, and malice.

7
8 **156.** As a result of the defendants’ oppression, fraud, and malice, Plaintiff is entitled to punitive
9 damages in the sum of no less than \$114,063,840.

10
11 **WHEREFORE,** Plaintiff Matthew Liston prays for judgment against the defendants jointly and
12 severally and other relief as follows:

13
14 **A.** For a declaration in favor of Plaintiff Liston of complete rescission of the Revised Agreements
15 between Plaintiff Liston and Defendant Dyffy Inc. (and its successors in interest, including
16 Defendants Forecast Foundation and/or Forecast Foundation OÜ) and any other third-party
17 beneficiaries that may exist;

18
19 **B.** For a judicial determination that there was no contract created between Plaintiff Liston and
20 Dyffy Inc. on or about April 19, 2015;

21
22 **C.** For general damages of a sum of \$38,021,280;

23
24 **D.** For punitive damages of a sum of \$114,063,840;

25
26 **E.** For costs of suit incurred herein;

27
28 **F.** For interest thereon according to proof;

29
30 **G.** For attorneys’ fees according to proof; and

31
32 **H.** For such other and further relief as the court may deem proper.

1 **DATED: May 10, 2018**

2
3
4
5 /s/ O. SHANE BALLOUN

6 O. Shane Balloun

7 California Bar #281175

8 Attorney for the Plaintiff, Matthew Liston