

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

TIMOTHY SHAW, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

VIRCUREX, ANDREAS ECKERT AKA
KUMALA, and JANE OR JOHN DOE,

Defendants.

C.A. No. 1:18-cv-00067

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Timothy Shaw (“Plaintiff”), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, alleges in this complaint for breach of contract, conversion, constructive fraud, and unjust enrichment the following based upon knowledge with respect to his own acts, and upon facts obtained through an investigation conducted by his counsel, which included, *inter alia*: documents and solicitation materials released by Defendants, as defined below, in connection with Defendants’ online digital currency exchange hosted on www.vircurex.com (the “Exchange”), public statements made by Defendants concerning the Exchange and related services, and media publications concerning the Exchange. Plaintiff believes that further substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery. Many of the facts supporting the allegations contained herein are known only to the Defendants or are exclusively within their control.

NATURE AND SUMMARY OF THE ACTION

1. Plaintiff brings this action on behalf of himself and all other persons similarly situated against Vircorex, Andreas Eckert (“Eckert” or “Kumala”),¹ and Jane or John Doe (“Doe, together with Eckert, the “Individual Defendants” and collectively with Vircorex, “Defendants”) for breach of contract, conversion, constructive fraud, and unjust enrichment. Specifically, on March 24, 2014, Defendants unlawfully froze the Exchange users’ accounts by disabling the ability to withdraw Bitcoin (“BTC”) Litecoin (“LTC”), Terracoin (“TRC”), and Feathercoin (“FTC”). According to the last update provided by Defendants in January 2016 (the “Final Update”), 1,666 BTC, 124,763 LTC, and 78,782 TRC remain frozen (the “Frozen Funds”).² Since March 2014, Defendants have denied Plaintiff and the Class, as defined below, their right to access the Frozen Funds rightfully belonging to them.

2. In approximately October 2011, the Individual Defendants launched Defendant Vircorex. Defendant Vircorex is a business that operates the Exchange – an online exchange where accountholders could deposit USD and EUR to buy, sell, and exchange digital currencies. While the Exchange is still operating, it has very little trade activity in comparison to its activity from 2011 through 2014.³

3. On March 24, 2014, Defendants announced that due to two purported hacks the Exchange experienced in mid-2013, Defendant Vircorex was nearing insolvency.

4. As such, Defendants claimed that they no longer had enough in their digital currency wallets to cover all of the accountholder’s BTC, LTC, TRC and FTC.

5. Defendants also announced that effective immediately, accounts holding these digital currencies would be frozen. Defendants simultaneously pledged to repay the Frozen Funds

¹ Defendant Eckert used the online alias “Kumala” at all relevant times herein.

² The Frozen Funds are presently valued at approximately \$50 million.

³ The Exchange is still operating on www.vircurex.com.

from their reserve funds and future profits from operating the Exchange. Despite this pledge, Defendants have not repaid Plaintiff's and the Class' BTC, LTC, and TRC.

6. As detailed herein, rather than repay the Frozen Funds, Defendants took steps to string along Plaintiff and the Class with deceptive statements and false promises, and made efforts to cover their tracks and create impediments designed to deter accountholders from bringing suit to recover the Frozen Funds, and efforts to ultimately attempt to vanish without a trace.

7. Defendants have unjustly and unlawfully deprived the Exchange's accountholders of their significant financial interests and operated – and continue to operate – an illegal digital currency exchange with impunity. Such actions have caused, and are continuing to cause, significant financial harm to Plaintiff and the Class, as defined below. Absent judicial intervention, Plaintiff and the Class are unlikely to ever recover the Frozen Funds. Accordingly, judicial intervention is required and requested to rectify the existing and future harm facing Plaintiff and the Class – harm that is likely to be irreparable. For these reasons, Plaintiff on behalf of himself, and all similarly situated accountholders with Frozen Funds, seeks compensatory, exemplary, punitive, injunctive, and specific performance relief, providing repayment of all of the Frozen Funds, and securing and conserving such funds until repayment.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d) (diversity jurisdiction) because the amount in controversy exceeds \$5,000,000 and because Plaintiff is a citizen of Colorado, members of the proposed class are citizens of different states, and Defendants are subjects and citizens of foreign states.

9. The Court has personal jurisdiction over each of the Defendants because each has sufficient minimum contacts with this District as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

10. Venue is proper in this District under 28 U.S.C. § 1391, because: (a) the conduct at issue took place and had an effect in this District; (b) a substantial portion of the corporate transactions and wrongs complained of herein occurred here; and (c) Defendants have received substantial compensation and other transfers of money here by doing business here and engaging in activities having an effect in this District.

PARTIES AND RELEVANT NON-PARTIES

11. Plaintiff is domiciled in this District. Plaintiff created an account on the Exchange in December 2013. On March 24, 2014, Defendants were offering extremely favorable rates for accountholders who exchanged their Dogecoin (“DOGE”) – another digital currency – for BTC. In response to this offer, Plaintiff converted his DOGE into 12.85 BTC and instantly attempted to withdraw his BTC. Unbeknownst to Plaintiff, Defendants had converted the DOGE to BTC, but then immediately froze his account holding the 12.85 BTC. Since March 24, 2014, Plaintiff has attempted countless times to withdraw his BTC and has contacted Defendant Vircorex and Defendant Eckert dozens of times, only to be completely disregarded.

12. Defendant Vircorex’s current website claims that it is incorporated in Belize, however, an extensive investigation has yielded no discernable records evidencing this purported incorporation. Further, other than the current terms listed on Defendant Vircorex’s website (the “Terms”), there is no indication that Vircorex is incorporated in any jurisdiction, or has any operations in Belize. Notably, as discussed *infra*, such Terms were not added to Defendant Vircorex’s website until after Defendants had disabled withdrawals of Plaintiff’s and the Class’ ,

as defined below, funds. Defendants have also claimed to operate out of Beijing, China. Similarly, an extensive investigation has yielded no physical addresses for such operation. As detailed below, there are indications that Defendant Vircorex was actually owned and operated out of Germany.⁴ Defendant Vircorex was created by the Individual Defendants to run the Exchange in approximately October 2011. On February 2, 2013, Defendants announced that Defendant Vircorex was “going public” and issuing 45,000 “shares.”⁵ Defendant Vircorex conducted its public offering on a different exchange operating on cryptostocks.com. Cryptostocks.com was also owned and operated by Defendant Eckert.

13. Defendant Eckert is one of the two founders of Defendant Vircorex. Defendant Eckert uses the online alias “Kumala.” Defendant Eckert has gone to great lengths to obscure the fact that he is indeed “Kumala.” However, substantial evidence reveals that “Kumala” is Defendant Eckert’s online alias. For example, on January 26, 2009, Defendant Eckert posted a question on a Google forum regarding coding methodologies.⁶ The first question was from “Kumala <AEck . . .@gmail.com>” and the follow up response thanking the person who answered his question was from “Andreas Eckert <aeck...@gmail.com>.”⁷ Similarly, on February 2, 2009, Defendant Eckert posted another question on Google forums concerning writing computer code.⁸ This question was from “Kumala” and was signed, “Regards, Andreas.”⁹ Additionally, on August 21, 2012, a different exchange operated by Defendants, cryptostocks.com,

⁴ See, e.g., <http://www.bitcoinx.com/crypto-exchange-ircurex-freezes-withdrawals/> (describing Defendant Vircorex as a “German-owned exchange”).

⁵ See <https://bitcointalk.to/index.php?topic=140700.0>

⁶ See <https://groups.google.com/forum/#!msg/activescaffold/Ldf-KbaSnKg/Vih7tIBNTQEJ>.

⁷ *Id.*

⁸ See <https://groups.google.com/forum/#!msg/activescaffold/FPhZEz9Aof0/Y79DdBNzok4J>.

⁹ *Id.*

released a plugin to retrieve information listed on cryptostocks.com on github.com.¹⁰ This plugin was named the “Redmine 4 Cryptostocks” and its author was listed as “A Eckert.”¹¹ Further, Defendant Vircorex’s “Q1 Report - May 2013” – available for download on its website – contains metadata stating that the author of the document was “Andreas Eckert.”¹² Additionally, in an online review of the Exchange’s services published on January 18, 2012 – shortly after the Exchange had officially launched – the reviewer included a transcript of the conversation they had with Vircorex’s representative who represented himself as “Andreas.”¹³ During this conversation “Andreas” stated, “Vircorex is a team of two, I take care of the software development, the English and German (almost done) translation. My partner is doing the Chinese translation . . .” Further, there is sufficient reason to believe that Defendant Eckert is a German citizen or resident. Specifically, a significant number of Kumala’s posts are in German and Defendant Kumala has explicitly stated:

As for the question, who is behind Vircorex: this is a German owned family business . . . We had the intention to incorporate in Germany. Now with the legal battles going on in France (between MT Gox and the French Authorities) about the treatment of Bitcoin and related bank transactions, we are rethinking the location; Hong Kong is surely one of them, China or other offshore locations are being evaluated.¹⁴

14. Defendant Eckert was the spokesperson for Defendant Vircorex and its related services on forums such as bitcointalk.org – which operates forums dedicated to the discussion of cryptocurrencies. Defendant Eckert created at least five online companies, including Defendant Vircorex, that were related to cryptocurrency services (four of which have entirely vanished).

¹⁰ See <http://www.redmine.org/plugins/redmine4cs>.

¹¹ *Id.*

¹² See <https://vircorex.com/Reports/2013-05.pdf>.

¹³ See <http://pginvest.com/?p=154>.

¹⁴ See <https://bitcointalk.org/index.php?topic=49382.msg595298#msg595298>.

Specifically, Eckert created Defendant Vircorex, Cryptostocks.com,¹⁵ Virexa.com,¹⁶ btc-lotto.com, and dvc-lotto.com.¹⁷

14. Defendant Doe is believed to be a Chinese citizen or resident. There is little information known regarding the identity of Defendant Doe. However, as mentioned, Defendant Eckert stated that Vircorex was run by two individuals.¹⁸ Defendant Eckert described Defendant Doe as his partner and discussed the partner's role: "My partner is doing the Chinese translation . . . and future support requests requiring Chinese language skills, as well as the China banking integration (Alipay, bank transfers, etc)."

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action individually and as a class action on behalf of all accountholders on the Exchange with Frozen Funds who are being, and will be, harmed by Defendants' actions described herein (the "Class"), absent judicial intervention. Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to, controlled by, or affiliated with, any Defendant, including the immediate family members of the Individual Defendants.

¹⁵ Cryptostocks.com was an online exchange where users could invest in any cryptocurrency or blockchain project wishing to raise capital. It was completely unregulated, also experienced a "hack" in which it lost user funds, and officially shut down in April 2017. *See, e.g.,* https://www.reddit.com/r/Bitcoin/comments/60iupq/oldtimers_notice_cryptostocks_is_closing_dump_and/.

¹⁶ Virexa.com was owned and operated by Defendant Vircorex and was a trading platform for "coins that are to [sic] risky to put on any larger exchange yet" *See* <https://bitcointalk.org/index.php?topic=191747.0>.

¹⁷ Btc-lotto.com and dvc-lotto.com were online lottery websites based on the German 6/49 lottery drawings. Specifically, users would buy into the BTC or DVC lottery with BTC or DVC (a different digital currency) and the winning numbers were based on the public winning numbers announced every Saturday for the official German 6/49 lottery. Defendant Kumala attempted to sell these business in 2013, but does not appear to have been successful. The websites are no longer operating. *See* <https://bitcointalk.to/index.php?topic=133403.0>.

¹⁸ *See supra* note 13.

16. This action is properly maintainable as a class action under the Federal Rule of Civil Procedure 23.

17. While the exact number of Class members is presently unknown to Plaintiff and can only be ascertained through discovery, Plaintiff believes that there are thousands of members in this Class. All members of the Class may be identified by records maintained by Defendants and may be notified of the pendency of this action by electronic mail, using forms of notice similar to that customarily used in class actions.

18. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following: (i) whether Defendants breached their contracts with Class members, unlawfully converted the Class' financial holdings by withholding the Frozen Funds, engaged in fraudulent activity, and have been unjustly enriched; (ii) whether Plaintiff and other Class members will suffer irreparable harm if such unlawful activities are not remedied; and (iii) whether the Class is entitled to compensatory, exemplary, punitive, injunctive, and/or specific performance relief as a result of Defendants' wrongful conduct as alleged herein, and the measure of such damages.

19. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class. Plaintiff and the other members of the Class have all sustained harm in a substantially identical manner as a result of Defendants' wrongful conduct as alleged herein.

20. Plaintiff will fairly and adequately protect the interests of the Class and has retained competent counsel experienced in litigation of this nature.

21. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which could establish incompatible standards of conduct for Defendants.

22. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

23. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

24. Accordingly, Plaintiff seeks compensatory, exemplary, punitive, injunctive, and other equitable relief on behalf of himself and the Class to prevent the irreparable injury they will continue to suffer absent judicial intervention.

SUBSTANTIVE ALLEGATIONS

Background on the Exchange

25. Defendants officially launched the Exchange in October 2011. Defendant Vircorex was not incorporated at this time, and there are indications that it may never have been incorporated.

26. For example, on September 25, 2012, Defendant Kumala responded to a question on the Bitcointalk forums regarding the corporate status of Defendant Vircorex and Cryptostocks.com with, “[n]either of them is incorporated at this point in time, its [sic] of rather low priority at the moment”¹⁹

¹⁹ See <https://bitcointalk.org/index.php?topic=88036.40>.

27. Similarly, when Defendants raised capital by taking Defendant Vircorex “public,” in February 2013, they announced that while the business was not incorporated yet, they had plans to incorporate.²⁰

28. Further, for the benefit of investors who participated in Defendant Vircorex’s “public offering,” Defendants released five quarterly reports – covering the periods of March 2013 through June 2014.²¹ None of the five reports have any mention of Defendant Vircorex being incorporated, nor any mention of Belize. Rather, each report is signed, “The Vircorex Management [Date], Beijing.”

29. The Exchange allowed accountholders to trade USD, EUR, and various digital cryptocurrencies.

The Frozen Funds

30. On March 24, 2014, Defendants announced that due to two hacks the Exchange experienced in mid-2013, the Exchange was nearing insolvency and had to freeze accounts holding BTC, FTC, LTC and TRC.²² The announcement provided as follows:

In preparation of the following, we have with immediate effect stopped the possibilities to withdraw BTC, LTC, FTC and TRC. All incoming deposits will also not be credited to the users accounts for the time being.

On 24th March 2014 we will be freezing the current BTC, LTC, TRC and FTC accounts, then perform the below distribution of the available coins and reenable [sic] deposits and withdrawals. This action will also require us to delete all open sell orders for BTC, LTC, FTC and TRC.

As you may very well be aware, we had two incidents last year that lead [sic] to a loss of a significant number of BTC, LTC, FTC, TRC. We had communicated at that time that we will be covering those losses from our income, which we have

²⁰ See <https://bitcointalk.to/index.php?topic=140700.0>.

²¹ All five quarterly reports can be accessed at the following link: <https://vircorex.com/welcome/investors?locale=en>.

²² See https://vircorex.com/welcome/ann_reserved.html.

done so far. We had enough coin balances in our cold wallet to upkeep our platform and the positive cashflow enabled us to gradually refill the wallets.

Unfortunately [sic] we had large fund withdrawals in the last weeks which have lead [sic] to a complete depletion of our cold wallet balance and we are now facing the option of either closing the site with significant unrecoverable losses for all or to work out a solution that allows the exchange to continue to operate and gradually pay back the losses.

We have obviously chosen the later [sic] and hence are going to do the following:

- 1. We will introduce an additional balance type called “Frozen Funds”. Funds in this balance type cannot be used to trade or withdraw. Those are the balances that the exchange will gradually pay back and hence transfer back to the available balance over time.
- 2. We will move all current balances for BTC, LTC, TRC and FTC to the “Frozen Balance”, i.e. your balance will be set to 0.
- 3. We’ll take the current available cold storage balance and distribute it based on the below described distribution logic.
- 4. Monthly we will take the net profit of the exchange and credit back that amount distributed to the users based on the described distribution logic.

The freezing of the balances is a one-time action, it does not affect future deposits in any ways.

Distribution logic

50% of the amount will be distributed top down and the other 50% will be distributed bottom up.

Top down means: credit the amount from the largest account balance down to the smaller accounts Bottom up: credit the amount from the smallest account balance to the larger accounts.

Example

User 1: 5 BTC
User 2: 4 BTC
User 3: 3 BTC
User 4: 3 BTC
User 5: 3 BTC
User 6: 3 BTC
User 7: 1 BTC

Amount to distribute: 12 BTC

Step 1: Top down distribute 6 BTC:

- User 1: Credit 5 BTC
- User 2: Credit 1 BTC, remaining frozen balance = 3 BTC
Step 2: Bottom up distribute 6 BTC
- User 7: Credit 1 BTC
- User 6: Credit 3 BTC
- User 5: Credit 2 BTC, remaining frozen balance = 1 BTC

This approach has the advantages that

- all users will eventually receive their funds, though the timeframe depends on the monthly volume available
- new deposits and users are not penalized, thus supporting the ongoing operations of the platform
- fund withdrawals from the available funds are guaranteed, no surprises or unnecessary delays

We believe that this is the best way forward and hope for your support and understanding.

31. As exhibited, Defendants provided ample assurances that they would be returning the Frozen Funds.

False Assurances

32. On May 5, 2014, June 8, 2014, July 15, 2014, August 20, 2014, and January 3, 2016, Defendants provided updates on the repayments that had been made to the accounts with Frozen Funds. These updates provided as follows:

Update 5th May 2014

Payout to frozen accounts this month:

14.34 BTC

67.74 LTC

89.6 TRC

30.9 FTC

Total balances after the amounts have been distributed

BTC: 346 accounts with frozen amounts, total 1720 BTC

FTC: 42 accounts with frozen amounts, total 152,075 FTC

LTC: 2432 accounts with frozen amounts, total 124,917 LTC

TRC: 77 accounts with frozen amounts, total 127,746 TRC

Update 8th June 2014

Payout to frozen accounts this month:

24.82 BTC

20.30 LTC

6.51 TRC

65.30 FTC

Total balances after the amounts have been distributed

BTC: 346 accounts with frozen amounts, total 1696 BTC

FTC: 42 accounts with frozen amounts, total 152,010 FTC

LTC: 2380 accounts with frozen amounts, total 124,897 LTC

TRC: 77 accounts with frozen amounts, total 127,739 TRC

Update 15th July 2014

Payout to frozen accounts this month:

13.87 BTC

17.34 LTC

26.75 FTC

10.61 TRC

Total balances after the amounts have been distributed

BTC: 335 accounts with frozen amounts, total 1682 BTC

FTC: 42 accounts with frozen amounts, total 151,983 FTC

LTC: 2330 accounts with frozen amounts, total 124,880 LTC

TRC: 77 accounts with frozen amounts, total 127,729 TRC

Update 20th August 2014

Payout to frozen accounts this month:

10.515 BTC

15.24 LTC

29.44 FTC

9.61 TRC

Total balances after the amounts have been distributed

BTC: 329 accounts with frozen amounts, total 1,671 BTC

FTC: 42 accounts with frozen amounts, total 151,953 FTC

LTC: 2299 accounts with frozen amounts, total 124,864 LTC

TRC: 77 accounts with frozen amounts, total 127,719 TRC

Update 3rd January 2016

Payout to frozen accounts this month:

3.45 BTC

101.6 LTC

151,953.9 FTC

48,937 TRC

Total balances after the amounts have been distributed

BTC: 328 accounts with frozen amounts, total 1,666 BTC

FTC: 0 accounts with frozen amounts, total 0 FTC

LTC: 2162 accounts with frozen amounts, total 124,763 LTC

TRC: 39 accounts with frozen amounts, total 78,782 TRC

33. There have been no further updates since the Final Update on January 3, 2016. As of the Final Update, 1,666 BTC, 124,763 LTC, and 78,782 TRC remained frozen.

34. As seen, Defendants made efforts to convince the Exchange's accountholders that they would be paying back the Frozen Funds. Indeed, Defendants slowly repaid some of the funds over time, leading Plaintiff and the Class to believe that it was only a matter of time before they received access to their Frozen Funds.

35. However, Defendants have ceased repayment of the Frozen Funds and have failed to respond to numerous inquiries on this matter. Plaintiff has personally attempted to contact Defendants on dozens of occasions to no avail. Similarly, numerous accountholders have reported failed attempts to contact Defendants regarding the status of the Frozen Funds.²³ There are also numerous accountholders who have tried pleading with Defendants to return their Frozen Funds, hopeful that Defendants would exhibit remorse for how their actions have negatively affected the lives of accountholders with Frozen Funds. For example, a user on bitcointalk.org, stated in April 2014,

²³ See, e.g., https://www.reddit.com/r/Vircurex/comments/7j7xi7/any_luck_getting_frozen_ltc/ (a forum thread from December 2017 containing seven different users discussing the status of the Frozen Funds and Defendants' failure to respond to their inquiries).

I don't need sympathy and I certainly don't need people telling me it's my own fault for trading on Vircorex. I just want people to know (especially Kumala) that what he did had real consequences for people. Does Kumala realize when he steals people's coins it could effect [sic] their lives?

I'm beyond upset now. I'm heartbroken that he could be so callous as to steal people's wealth with no regard to how he is hurting them.²⁴

36. Accountholders have had no recourse or help in this matter, which has at this point devolved into desperation among depositors. For example, in August 2017, a user on Bitcointalk.org, exclaimed: "I have over 2000 litecoins in there!!! never seen a cent back!!! please anyone!!! help!!!"²⁵ This one user's 2,000 LTC are currently worth approximately \$484,000.

37. Accountholders and forum users similarly have voiced their astonishment that Defendants have not been held accountable for their actions. For example, in February 2015 a user on reddit.com stated as follows:

Among all the BTC frauds, scams, and failed exchanges out there, Vircorex's situation has remained remarkably unchallenged. By anyone. It kind of blows me away that they've been allowed to fly under the radar without so much as a peep from barely anyone . . .

Is there anything that can be done? Its [sic] like if you run an exchange in the Bitcoin world, you can do whatever you want with no consequences. I thought that world was over? How about we have law enforcement knock on Vircorex's doors, seize their assets, and distribute it to the public?

38. Certain accountholders have even resorted to offering rewards to anyone who could help recover their Frozen Funds.²⁶

Discouraging Legal Action

²⁴ See <https://bitcointalk.org/index.php?topic=527770.msg6356208#msg6356208>.

²⁵ See <https://bitcointalk.org/index.php?topic=528752.msg21258660#msg21258660>.

²⁶ See, e.g.,

https://www.reddit.com/r/Jobs4Bitcoins/comments/6as70u/hiring_i_offer_for_recover_my_litecoin_from/ (a user named "ramadeda" offering 30% of their Frozen Funds "to the person that could help [them] legally to recover [their Frozen Funds].").

39. Defendants took calculated, effective, steps that were obviously designed to dissuade Plaintiff and the Class from potential legal actions.

40. First, as noted, Defendants claimed that the Frozen Funds would be returned in due course, and indeed, Defendants returned minor amounts of such funds for a period of time. Such actions led Plaintiff and the Class to believe that the Frozen Funds would be returned eventually and that Defendants were making their best efforts to remedy the situation. However, since the Final Update in January 2016, Defendants have provided no additional information concerning the repayment of the Frozen Funds. Such actions served to quell Plaintiff's and the Class' concerns regarding the Frozen Funds for a significant period of time and dispel notions that legal action may be required to recover their significant financial interests.

41. Second, and even more reprehensibly, Defendants added the Terms to Defendant Vircorex's website *after* they froze Plaintiff's and the Class' funds. The Terms were clearly designed to limit Defendants' liability and create hurdles for any accountholders that might consider pursuing legal action against Defendants. Importantly, the Terms were not added to Defendant Vircorex's website until one month after Plaintiff's and the Class' funds were frozen, making the Terms unenforceable in their entirety. Specifically, an archived snapshot of the Vircorex website obtained from archive.org – a website that indexes archived snapshots of other websites – of Vircorex.com from March 28, 2014,²⁷ contains the following links at the footer of the webpage:

[Help Fees API Privacy Investors Changelog Contact us](#)

²⁷ The March 28, 2014 archived page is available at the following link: <https://web.archive.org/web/20140328233422/https://vircorex.com/>.

42. Noticeably absent from snapshot is the link to the “Terms” that was added in April 2014. In contrast, the “Terms” link is present in the following snapshot obtained from archive.org of Vircurex.com from April 26, 2014:²⁸

[Help](#) [Terms](#) [Fees](#) [API](#) [Privacy](#) [Investors](#) [Changelog](#) [Contact us](#)

43. The Terms had various provisions designed to limit Defendants’ liability, as well as the ability of accountholders to pursue legal action against the Exchange.²⁹

44. First, the Terms include a broad indemnity clause:

Indemnity You agree to defend, indemnify, and hold Vircurex, its officers, directors, employees, agents, licensors and suppliers, harmless from and against any claims, actions or demands, liabilities and settlements including without limitation, reasonable legal and accounting fees, resulting from, or alleged to result from, your violation of these Terms and Conditions.

45. Such provision was clearly designed to convince Plaintiff and the Class that if they tried to pursue legal action against Defendants, they would have to pay Defendants legal fees “without limitation.”

46. Second, the Terms stated that accountholders “consented” to personal jurisdiction in Belize and that any action brought against Vircurex would have to occur in Belize.

Jurisdiction You expressly agree that the jurisdiction for any dispute with Vircurex, or in any way relating to your use of the Vircurex Site, resides in the courts of Belize and you further agree and expressly consent to the exercise of personal jurisdiction in the courts of Belize in connection with any such dispute including any claim involving Vircurex or its affiliates, subsidiaries, employees, contractors, officers, directors, telecommunication providers, and content providers.

²⁸ The April 26, 2014 archived page is available at the following link: <https://web.archive.org/web/20140426042152/https://vircurex.com/>.

²⁹ The full text of the Terms is available at the following link: <https://vircurex.com/welcome/terms?locale=en>.

47. Third, the Terms included a shamefully transparent liability waiver with respect to the Exchange's user's funds:

LIMITED liability on users funds

Vircurex takes no liabilities on users funds stored with Vircurex

48. The foregoing terms clearly served to deter accountholders from bringing actions as they were led to believe they would have to travel to Belize in order to do so, that they would have to pay for Defendants legal fees and associated costs, and that such efforts would ultimately prove futile given the fact that "Vircurex takes no liabilities on users [sic] funds stored with Vircurex." The Terms have not gone unnoticed by Plaintiff and the Class and have unfortunately discouraged them from bringing a legal action against Defendants at an earlier date. For example, in September 2017, the topic of potential legal action against Vircurex was raised on a forum on reddit.com.³⁰ A user responded to a post by an accountholder considering legal action by stating:

Not sure about the current situation. But I'm sure you agreed to the TOS when you signed up on Vircurex. Here it is:

<https://vircurex.com/welcome/terms?locale=en>

Limited liability of user funds

Vircurex takes no liabilities on users funds stored with Vircurex.

Vircurex is incorporated in Belize so you may have to take a vacation there to file in court.

*These Terms and Conditions are governed by the laws of Belize, without respect to its conflict of law principles.*³¹

49. Similarly, in a post on bitcoin.org made on December 26, 2017, a user responded to a discussion on potential legal action against Defendants by stating, "even if you could track

³⁰ https://www.reddit.com/r/litecoin/comments/6y7p9d/vircurex_frozen_funds_retrieval/.

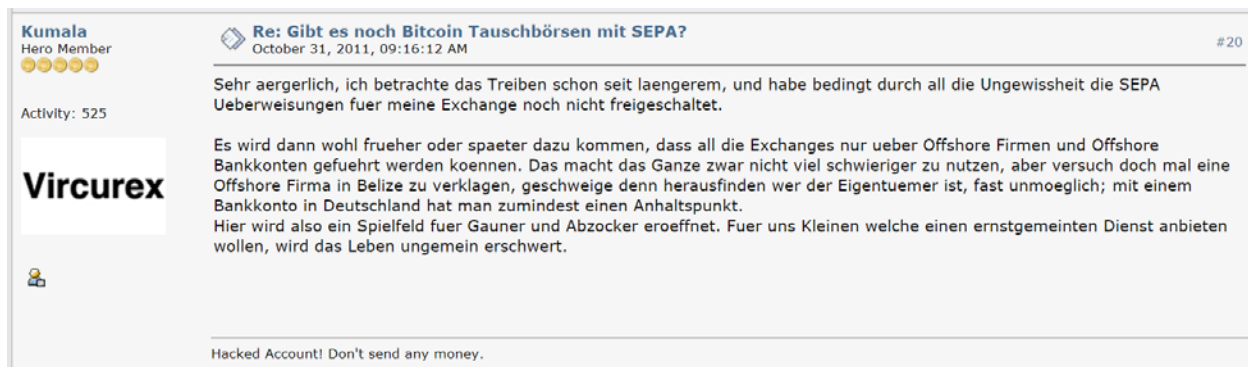
³¹ *Id.*

down the owners, the money is long gone. [T]he fact that you can't seem to find a legal address for service doesn't bode well either. [M]y humble opinion: discovery and legal costs don't justify doing anything at this point."³²

50. Clearly, Defendants have been highly successful in discouraging Plaintiff and the Class from pursuing legal action against Defendants.

51. Not only have Defendants been somewhat successful in obfuscating their true identities, but they also quelled concerns for a significant period of time by repaying small amounts of the Frozen Funds, and prevented potential legal actions by deceptively adding the Terms *after* they had already frozen Plaintiff's and the Class' funds.

52. Moreover, as relates to Defendants' claim that Vircorex is incorporated in Belize, there is no evidence supporting this contention. Indeed, the origin of the plan to represent that Defendant Vircorex is incorporated in Belize can be traced back to a post Defendant Eckert made on bitcoin.org on October 31, 2011.³³ Defendant Eckert made the following post under his "Kumala" alias:



53. A Google translation of the foregoing text reads as follows:

Very annoying, I look at the bustle for a long time, and have due to all the uncertainty, the SEPA transfers for my Exchange not yet unlocked.

³² See <https://bitcointalk.org/index.php?topic=528752.msg27011056#msg27011056>.

³³ See <https://bitcointalk.org/index.php?topic=49536.msg600904#msg600904>.

It will probably come sooner or later, that all the Exchanges can only be led by offshore companies and offshore bank accounts. That does not make it much harder to use, but try to sue an offshore company in Belize, let alone find out who the owner is, almost impossible; With a bank account in Germany you have at least one clue. So here is a playing field for rogue and rip-off opened. For us little ones who want to offer a serious service, life is extremely difficult.

54. Evidently, Defendant Eckert was criticizing “rogue” parties who would pursue an offshore incorporation route to effectuate so-called “rip-off” businesses. Moreover, Defendant Eckert explicitly stated his belief that suing “an offshore company in Belize, let alone find[ing] out who the owner is, [would be] almost impossible . . .”

55. As mentioned, Defendants explicitly stated in September 2012 and February 2013 that Defendant Vircorex had not been incorporated, and none of the “quarterly reports” Defendant Vircorex issued ever addressed the topic.

56. Accordingly, the most likely scenario is that Defendants chose to insert the Terms stating that Defendant Vircorex was incorporated in Belize because Defendants knew they would not be returning the Frozen Funds and hoped to convince Plaintiff and the Class that it would be nearly impossible to take legal action against Defendants, or find out who was responsible for Defendant Vircorex’s unlawful activities.

57. Due to the foregoing, the equities require that the statute of limitations be tolled and the Court should ensure that Defendants are held accountable for their unlawful breach of contract, conversion, constructive fraud, and unjust enrichment stemming from their unlawful taking of Plaintiff’s and the Class’ BTC, LTC and FTC.

CLAIMS FOR RELIEF

COUNT I

Breach of Contract
Against All Defendants

58. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

59. Defendant Vircurex’s website contained no terms and conditions prior to Defendants freezing Plaintiff’s and the Class’ funds. However, it did contain an express representation that accountholders could immediately withdraw their funds. Specifically, the website stated:

Deposit/Withdraw

Deposit or withdraw your coins anytime. Withdrawals will be executed immediately to any address you wish to. Do take note that all withdrawals are final, there is no possibility to cancel or undo a withdrawal. Deposits will require confirmations before the funds are freely available for trading activities. See the fees section on this page for details on the current number of confirmations required. Fees apply for withdrawals. See the fees section for the current valid fees.³⁴

60. Despite Defendants’ express representation that accountholders could withdraw their deposits “anytime” and that such withdrawals would be “executed immediately,” Defendants have disabled the ability to withdraw the Frozen Funds since March 2014.

61. Due to Defendants control over Plaintiff’s and the Class’ funds and restraining access to the Frozen Funds, Defendants have breached an express or implied contract with accountholders.

62. By virtue of the foregoing, the Court should order Defendants to perform as represented and direct Defendants to return the Frozen Funds to Plaintiff and the Class.

³⁴ See <https://vircurex.com/welcome/help?locale=en>.

COUNT II

**Conversion
Against All Defendants**

63. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

64. Defendants exercised complete control over Plaintiff's and the Class' funds on Defendant Vircorex's online digital currency exchange.

65. Defendants disabled Plaintiff's and the Class' ability to withdraw their funds on March 24, 2014.

66. Defendants have unlawfully and unjustly restrained Plaintiff's and the Class' ability to access the Frozen Funds.

67. Due to Defendants' unlawful restraint and retention of the Frozen Funds, Plaintiff's and the Class' rights to their funds have been interfered with, and are presumed to have been stolen.

68. Defendants have caused significant economic damage to Plaintiff and the Class as a result of their unlawful conversion of the Frozen Funds.

69. By virtue of the foregoing, Defendants are liable to Plaintiff and the Class.

COUNT III

**Constructive Fraud
Against All Defendants**

70. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

71. Constructive fraud is a breach of a duty that is fraudulent because of its tendency to deceive. Constructive fraud arises if a special or fiduciary relationship exists that empowers one party with the means to take undue advantage of the other.

72. Defendants hold custody over Plaintiff's and the Class' BTC, LTC, and FTC, and, thus, such a relationship exists.

73. Defendants have deceptively and unjustly withheld the funds rightfully belonging to Plaintiff and the Class.

74. Defendants engaged in deceptive activity, including Defendants' addition of liability waivers and indemnity clauses to Defendant Vircorex's website, which had not existed prior to Defendants' unlawful and unjust freezing of Plaintiff's and the Class' accounts.

75. Defendants have caused significant economic damage to Plaintiff and the Class as a result of their fraudulently withholding the Frozen Funds.

76. By virtue of the foregoing, Defendants are liable to Plaintiff and the Class.

COUNT IV

Unjust Enrichment Against All Defendants

77. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

78. Defendants have reaped the benefits of operating an illegal digital currency exchange and causing the loss, or conversion, of the funds rightfully belonging to Plaintiff and the Class.

79. It would be unconscionable and against the fundamental principles of justice, equity, and good conscience for Defendants to retain the substantial monetary benefits they have received as a result of their misconduct.

80. To remedy Defendants' unjust enrichment, the Court should order Defendants to immediately return the Frozen Funds and disgorge any amounts received by Defendants as a result of their misconduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

- A. Declaring that this action is properly maintainable as a class action and certifying Plaintiff as the Class representative and his counsel as Class counsel;
- B. Declaring that Defendants unlawfully converted Plaintiff and the Class' funds held in their accounts on Defendant Vircorex's online digital currency exchange;
- C. Declaring Defendants are liable to Plaintiff due to their breach of contract, conversion, constructive fraud, and/or unjust enrichment;
- D. Enjoining Defendants from making further transfers or dissipations of Plaintiff's and the Class' funds;
- E. Requiring an accounting of the remaining funds rightfully belonging to Plaintiff and the Class;
- F. Imposing a constructive trust over the funds and assets rightfully belonging to Plaintiff and the Class;
- G. Ordering Defendants to return the funds rightfully belonging to Plaintiff and the Class;
- H. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and
- I. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

[Continued on Next Page]

Respectfully submitted,

Dated: January 10, 2018

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