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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

IN RE ETHEREUMMAX INVESTOR
LITIGATION

This Document Relates To:

ALL ACTIONS

Lead Case No. 2:22-cv-00163-MWF-
(SKx)

**SECOND AMENDED CLASS
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Ryan Huegerich, Jonathan Semerjian, Nabil Nahlah, Till Freeman,
2 Marko Ciklic, Tunisia Brignol, Milan Puda, Neil Shah, Michael Buckley, and
3 Christopher DeLuca (“Plaintiffs”), individually and on behalf of all others similarly
4 situated, bring this Class Action Complaint (“Complaint”) against Defendant EMAX
5 Holdings, LLC (“EMAX Holdings” or the “Company”), Giovanni Perone, Mike
6 Speer, Justin Maher, and Jona Rechnitz (the “Executive Defendants”), Kimberly
7 Kardashian, Floyd Mayweather, Jr., Paul Pierce, Russell Davis, and Antonio Brown
8 (the “Promoter Defendants” and, together with the Executive Defendants, the
9 “Defendants”). The following allegations are based upon personal knowledge as to
10 Plaintiffs’ own facts, upon investigation by Plaintiffs’ counsel, and upon information
11 and belief where facts are solely in possession of Defendants.

12 **NATURE OF THE CASE**

13 1. Plaintiffs bring this action on behalf of all investors who purchased
14 EthereumMax tokens (“EMAX Tokens”) between May 14, 2021 and June 27, 2021,
15 (the “Relevant Period”) and were damaged thereby.

16 2. This case arises from a scheme among various individuals in the
17 cryptocurrency sector to misleadingly promote and sell the digital asset associated
18 with EthereumMax (the EMAX Tokens) to unsuspecting investors. The Company’s
19 executives, collaborating with several celebrity promoters, (a) made false or
20 misleading statements to investors about EthereumMax through social media
21 advertisements and other promotional activities, and (b) disguised their control over
22 EthereumMax and a significant percent of the EMAX Tokens that were available for
23 public trading during the Relevant Period (the “Float”).

24 3. In furtherance of this scheme, Defendants touted the prospects of the
25 Company and the ability of investors to make significant returns due to the favorable
26 “tokenomics” of the EMAX Tokens. In truth, Defendants marketed the EMAX
27 Tokens to investors so that they could sell their portions of the Float for a profit.

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1 EMAX, Plaintiff Freeman purchased EMAX Tokens, paid fees, and suffered
2 investment losses as a result of Defendants' conduct.

3 10. Plaintiff Marko Ciklic ("Ciklic") is a resident and citizen of New York,
4 living in Brooklyn, New York. After viewing numerous celebrity endorsements of
5 EMAX, Plaintiff Ciklic purchased EMAX Tokens, paid fees, and suffered investment
6 losses as a result of Defendants' conduct.

7 11. Plaintiff Tunisia Brignol ("Brignol") is a resident and citizen of Florida,
8 living in Miami, Florida. After viewing numerous celebrity endorsements of EMAX,
9 Plaintiff Brignol purchased EMAX Tokens, paid fees, and suffered investment losses
10 as a result of Defendants' conduct.

11 12. Plaintiff Milan Puda ("Puda") is a resident and citizen of Florida, living
12 in Miami, Florida. After viewing numerous celebrity endorsements of EMAX,
13 Plaintiff Puda purchased EMAX Tokens, paid fees, and suffered investment losses as
14 a result of Defendants' conduct.

15 13. Plaintiff Neil Shah ("Shah") is a resident and citizen of California, living
16 in San Jose, California. After viewing numerous celebrity endorsements of EMAX,
17 Plaintiff Shah purchased EMAX Tokens, paid fees, and suffered investment losses as
18 a result of Defendants' conduct.

19 14. Plaintiff Michael Buckley ("Buckley") is a resident and citizen of
20 California, living in Sherman Oaks, California. After viewing numerous celebrity
21 endorsements of EMAX, Plaintiff Buckley purchased EMAX Tokens, paid fees, and
22 suffered investment losses as a result of Defendants' conduct.

23 15. Plaintiff Christopher DeLuca ("DeLuca") is a resident and citizen of
24 New Jersey, living in Cranford, New Jersey. After viewing numerous celebrity
25 endorsements of EMAX, Plaintiff DeLuca purchased EMAX Tokens, paid fees, and
26 suffered investment losses as a result of Defendants' conduct.

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1 ***Defendants***

2 16. Defendant Justin Maher (“Maher”) is a resident and citizen of
3 Connecticut, living in Milford, Connecticut. Maher is the co-founder/creator of
4 EthereumMax and exercised control over EthereumMax and directed and/or
5 authorized, directly or indirectly, the sale and/or solicitations of EMAX Tokens to
6 the public.

7 17. Defendant Giovanni Perone (“Perone”) is a resident and citizen of
8 Florida, living in Miami, Florida. Perone is the co-founder/creator of EthereumMax
9 and served as the sole director of EMAX Holdings, LLC. Perone exercised control
10 over EthereumMax and directed and/or authorized, directly or indirectly, the sale
11 and/or solicitations of EMAX Tokens to the public.

12 18. Defendant Mike Speer (“Speer”) is a resident and citizen of Texas,
13 living in Georgetown, Texas. Speer is the co-founder/creator of EthereumMax and
14 exercised control over EthereumMax and directed and/or authorized, directly or
15 indirectly, the sale and/or solicitations of EMAX Tokens to the public.

16 19. Defendant Jona Rechnitz (“Rechnitz”) is a resident and citizen of
17 California, living in Los Angeles, California. Rechnitz served as a consultant,
18 recruiter, and spokesman for EthereumMax, and he exercised control over
19 EthereumMax and directed and/or authorized, directly or indirectly, the sale and/or
20 solicitations of EMAX Tokens to the public.

21 20. Defendant Kimberly Kardashian (“Kardashian”) is a resident and citizen
22 of California, living in Hidden Hills, California. Kardashian acted as a promotor for
23 EthereumMax and the EMAX Tokens.

24 21. Defendant Floyd Mayweather, Jr. (“Mayweather, Jr.”) is a resident and
25 citizen of Nevada, living in Las Vegas, Nevada. Mayweather, Jr. acted as a promotor
26 for EthereumMax and the EMAX Tokens.

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1 22. Defendant Paul Pierce (“Pierce”) is a resident and citizen of California,
2 living in Inglewood, California. Pierce acted as a promotor for EthereumMax and
3 the EMAX Tokens.

4 23. Defendant Russell Davis (“Davis”) is a resident and citizen of
5 Connecticut, living in Woodmont, Connecticut. Davis acted as a consultant,
6 developer, promoter, and spokesman for EthereumMax, and he exercised control
7 over EthereumMax and directed and/or authorized, directly or indirectly, the sale
8 and/or solicitations of EMAX Tokens to the public.

9 24. Defendant Antonio Brown (“Brown”) is a resident and citizen of
10 Florida, living in Miami, Florida. Brown acted as a promotor for EthereumMax and
11 the EMAX Tokens.

12 25. Defendant EMAX Holdings, LLC is a Florida limited liability company
13 with its principal place of business located at 851 Northeast 1st Avenue, Miami,
14 Florida 33132. EMAX Holdings is the corporate entity created by Perone after the
15 launch of the EMAX Tokens to hold the EthereumMax intellectual property, and it
16 was incorporated on June 6, 2021. On December 22, 2021, the Company filed
17 trademark applications for various software for “financial exchange of virtual
18 currency, utility tokens and digital tokens.” EMAX Holdings was dissolved on
19 September 23, 2022.

20 26. Defendants John Does 1-7 are persons who participated in the
21 wrongdoing alleged herein but whose identities are currently unknown to Plaintiffs.
22 Plaintiffs will identify the John Doe Defendants through discovery.¹

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¹ While the identities of John Does 1-7 cannot yet be confirmed, there are clues. For example, as a now-deleted telegram post from the EMAX official account admitted: “Kim Kardashian is a family member of someone on the team.” In addition, one of Kardashian’s EthereumMax promotions is made in conjunction with a nightclub, LIV, and Groot Hospitality, both of which are partially owned by David Grutman. Since at least 2017, Grutman has been friends with Scott Disick, who also happens to be the father of Kardashian’s niece and nephews.

1 **JURISDICTION AND VENUE**

2 27. This Court has subject matter jurisdiction over this action pursuant to 28
3 U.S.C. §1332 because: (1) there are 100 or more (named or unnamed) class members;
4 (2) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of
5 interest or costs; and (3) there is minimal diversity because at least one Plaintiff and
6 Defendant are citizens of different states. This Court has supplemental jurisdiction
7 over the state law claims pursuant to 28 U.S.C. §1367.

8 28. This Court may exercise jurisdiction over Defendants because they have
9 continuous and systematic contacts with this District, do substantial business in this
10 State and within this District, and engage in unlawful practices in this District as
11 described in this Complaint, so as to subject themselves to personal jurisdiction in
12 this District, thus rendering the exercise of jurisdiction by this Court proper and
13 necessary.

14 29. Venue is proper in this judicial District pursuant to 28 U.S.C. §1391(b)
15 because certain Defendants live and/or conduct business in this District, therefore, a
16 substantial part of the events or omissions giving rise to the claims alleged herein
17 occurred in this District.

18 30. For example, one of the Company’s marketing executives, Steve
19 Gentile’s September 13, 2021 post congratulating the winners of EthereumMax’s
20 “exclusive in-person LA influencer event with CRE8LUCK” is still pinned (Pinned
21 Message # 93) as a top post on the Ethereum Max official Telegram account.² See
22 also Pinned Messages 86-87. Similarly, Gentile’s September 17, 2021 post bragging
23 that the “influencer event with CRE8LUCK in Los Angeles at the Petersen
24 Automotive Museum was a success. Lots of exciting EMAX content coming soon”
25 is also still pinned on the official EthereumMax Telegram account (Pinned Message
26 # 99) for investors to see in particular. In addition, the EthereumMax Telegram page
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28 ² EthereumMax (@EthereumMax), TELEGRAM, <https://t.me/EthereumMax> (last visited Dec. 21, 2022).

1 promotes as part of its “Business of the Week” and “Vender of the Week”
2 promotions, businesses like aerial photography business Diablo Drone Services
3 located “in the California bay area” and cannabis delivery service CVALT located in
4 Alameda, Tulare, Fresno, and Kern Counties, which have started “accepting
5 payments” in EMAX Tokens.

6 FACTUAL ALLEGATIONS

7 **EthereumMax Background**

8 31. EthereumMax is a cryptocurrency-related project founded by Justin
9 Maher, Steve Gentile, Giovanni Perone, and at least seven other undisclosed
10 individuals.³ Maher and others funded the development and creation of the EMAX
11 Token.

12 32. The EMAX Tokens are blockchain-based digital assets known as “ERC-
13 20 tokens” that are created using the Ethereum blockchain. After an ERC-20 token
14 is created, it can be traded, spent, or otherwise transacted with.

15 33. EMAX Tokens were not sold on popular centralized exchanges like
16 Coinbase or Gemini, which generally require that the tokens be compliant with local
17 laws and regulations. Instead, the EMAX Tokens traded exclusively on decentralized
18 exchanges, like Uniswap, that allow anyone to list and sell their tokens.

19 34. Uniswap and other decentralized exchanges are known as “automated
20 market makers” which use liquidity pools and smart contracts to allow investors to
21 exchange one asset for another without a direct counterparty. Users called liquidity
22 providers add an equal value of two tokens into a smart contract pool to create a
23 market. When executing a trade on a decentralized exchange, an investor does not
24 have a counterparty and is instead executing the trade against the liquidity in the
25 liquidity pool. In order to execute trades on a decentralized exchange, users must pay
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27 ³ See DeFi Angels, *Defi Angels Illumination Series: EMAX Cofounder, Justin*
28 *Maher dishes the real story behind EMAX*, YOUTUBE/TELEGRAM (Sept. 28, 2021),
<https://www.youtube.com/watch?v=EkBOICK3cuU>.

1 “gas fees” in order to process the transaction on the Ethereum blockchain. The gas
2 fee can be significant, as it takes into account the amount of computing power needed
3 to process the transaction, as well as the amount of traffic on the network.

4 35. The EMAX Tokens were primarily traded against Ether, the native
5 currency of the Ethereum blockchain network.⁴

6 36. At inception, Maher was ranked seventh out of the ten original founders
7 in terms of ownership interest in EthereumMax, with a 5.9% stake in the project.

8 37. The developer held the number one rank with 23% ownership interest.

9 38. After an initial failed attempt to launch the EMAX Tokens, Maher
10 tapped into a network of 20 traders of collectibles he knew prior to creating
11 EthereumMax to assist in the operation and promotion of the EthereumMax project.
12 These individuals previously served as the moderators for the social media accounts
13 for the cryptocurrency, Shiba Inu coin. Between them, this group had upward of
14 400,000 followers across their various social media accounts.

15 39. Maher tasked this group to work as the moderators for the various
16 EthereumMax social media accounts, including those on Facebook, Instagram,
17 Twitter, Telegram, Reddit, and Discord. In particular, the group was meant to “shill”
18 the EMAX Tokens to their followers, enticing potential investors with claims that the
19 EMAX Tokens were up “8000%” (after the EMAX Token price had been artificially
20 inflated) and would continue to rise. Maher himself served as the administrator/
21 moderator of the EthereumMax Facebook page.

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24 ⁴ EthereumMax has no connection to the second largest cryptocurrency,
25 Ethereum. This name association appears to be an effort by the Company and the
26 Executive Defendants to mislead investors into believing that the EMAX Tokens
27 were a part of the Ethereum network (when they are not). It would be akin to
28 marketing a restaurant as “McDonald’sMax” when it had no affiliation with
McDonald’s other than the name similarity and the fact that both companies sell
food products. In fact, the founder of Ethereum, Vitalik Buterin, called for
Kardashian to be “cancelled” for her shilling of EMAX Tokens. *See Grand Amphi
Théâtre, Vitalik Buterin: Things that matter outside of defi*, YOUTUBE (July 21,
2021), <https://www.youtube.com/watch?v=oLsb7clrXMQ&t=793s>.

1 40. According to Defendant Davis, he created the “roadmap” for
2 EthereumMax following the failed launch. Davis also admitted that about half of the
3 EthereumMax founders were “literally in there to pump and dump. They said the
4 wallets were locked, they were not. It was all just like handshake deals, . . . but you
5 need to respect that.”⁵ Davis further described this undisclosed half of the
6 EthereumMax development team as “scumbags, absolute scumbags.” Davis did,
7 however, reveal that the name of one of the individuals he was referring to “rhymes
8 with Gio Perone.”⁶

9 41. Upon information and belief, one of the other individuals that Davis
10 was referring to was Defendant Jona Rechnitz.

11 42. Rechnitz is a convicted felon whose brazen criminality played an
12 instrumental role in effectuating two aspects of the EthereumMax scam. First,
13 Rechnitz secured the Promoter Defendants’ agreements to shill EthereumMax
14 without disclosing their connection to him or the payments they each received for the
15 solicitations. Second, Rechnitz, along with co-conspirators Mayweather, Pierce,
16 Maher, and Davis, personally traded EMAX Tokens based on insider knowledge of
17 the timing of the celebrity promotions. Rechnitz has close personal and business
18 connections to Promotor Defendants Pierce, Mayweather, Kardashian, Brown, and
19 was the key player in securing their assistance in this scheme.

20 43. In 2016, Defendant Rechnitz pled guilty to honest services fraud in
21 connection with a wire fraud conspiracy and bribery scheme involving the New York
22 City mayor’s office and the New York Police Department’s Correction Officer’s
23 Benevolent Association.⁷ Following his guilty plea, Rechnitz began to cooperate
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26 ⁵ Emax Holder, *RussPodcastsCompilation*, YOUTUBE (Nov. 11, 2022),
27 <https://www.youtube.com/watch?v=gwrmpNHHVfw>.

28 ⁶ *Id.*

⁷ *See generally USA v. Rechnitz*, 1:16-cr-00389 (S.D.N.Y.).

1 with authorities in connection with their ongoing investigation and later testified at
2 trial of his co-conspirators.

3 44. At the trial of his co-conspirator Norman Seabrook, government
4 prosecutors elicited testimony from Defendant Rechnitz describing instances in
5 which he had lied to law enforcement officials, failed to report certain income,
6 fostered illegal relationships with members of the New York City Police Department,
7 bribed New York police officers in exchange for various illegal privileges, bribed
8 New York politicians in order to secure access and the promise of future benefits
9 from said politicians and their staffs, violated election laws by fundraising by way of
10 “straw donors,” procured a police chaplaincy despite not having religious credentials,
11 and solely for purposes of obtaining the prestige and privileges associated with that
12 title, and lied about owning certain properties in order to impress others.⁸

13 45. Similarly defense attorneys elicited testimony from Rechnitz at trial
14 detailing instances in which Rechnitz reported a \$59,000 watch lost, received
15 proceeds from his insurance to cover the loss, found the watch, and did not notify his
16 insurance company, fraudulently obtained an insurance policy for his family,
17 submitted false documents in a firearm application, pretended to hold no interest in a
18 real estate property (when in fact he did hold an interest) to deceive the property’s
19 tenant in a purchase negotiation, gave Christmas presents and jewelry to the family
20 of a police officer in exchange for a private police escort to the airport and a dedicated
21 private lane in a crowded tunnel, and had even invoked the fact that his grandparents
22 were Holocaust survivors to mislead FBI investigators in their investigation of his
23 illegal relationships with police officers.⁹

24 46. The Court observed that Jona Rechnitz is “somebody who looked out
25 for himself above all costs, that Jona Rechnitz was always in it for Jona. That Jona
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27 ⁸ See, Order Denying Motion for a New Trial, *USA v. Seabrook*, No. 16-cr-467
(S.D.N.Y.) ECF No. 325.

28 ⁹ *Id.*

1 Rechnitz[, in] other words, was a creature of incentive.”¹⁰ In its sentencing
2 memorandum, the government noted that “Rechnitz was in a position to cooperate
3 regarding a broad range of subject matters in part because, for several years beginning
4 when he was 26 years old in 2008, Rechnitz rode a wave of unbridled ambition and
5 a seemingly limitless sense of entitlement through a series of misdeeds. Rechnitz had
6 been a brazen criminal, and the seriousness of his crimes of conviction cannot, and
7 should not, be minimized.”¹¹

8 47. In summarizing Rechnitz’s involvement in the scheme, Judge
9 Hellerstein of the Southern District of New York wrote that “The record evidence
10 establishes that Rechnitz was the arranger and prime mover of the bribery conspiracy
11 and sought to extract as much money as possible” from the victim.¹² With respect to
12 Rechnitz’s financial discrepancies, Judge Hellerstein wrote that “Rechnitz claimed
13 that a Bugatti sports car belonged to Floyd Mayweather and that the diamonds were
14 stolen from him, failing to explain how he could put up in collateral a Bugatti that he
15 claims not to own, or non-existing diamonds that he says were stolen from him.”
16 Judge Hellerstein concluded that Rechnitz “continues to refuse to disclose his
17 finances fully, and he continues to engage in substantial transactions requiring large
18 amounts of assets which are inconsistent with the poverty he asserts. The financial
19 information he provided to the probation officer and to this court is totally
20 unreliable.”¹³

21 48. Rechnitz was ultimately sentenced to five months incarceration, three
22 years supervised release, and was ordered to pay \$12 million in restitution.¹⁴
23 Rechnitz is currently out on bond pending his appeal of the restitution.

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¹⁰ *Id.*

25 ¹¹ *See USA v. Rechnitz*, No. 1:16-cr-00389 (S.D.N.Y.) (ECF No. 70).

26 ¹² *See Opinion and Order Granting Motion for Restitution, USA v. Rechnitz*, No.
1:16-cr-00389 (S.D.N.Y.) (ECF No. 156).

27 ¹³ *Id.*

28 ¹⁴ *Id.*

1 49. Following his conviction, Defendant Rechnitz’s father Robert Rechnitz,
2 a businessman with political connections, funded a bond with the court to release his
3 son from prison and made significant efforts to help his son resume business
4 relationships in California.

5 50. Prior to that, Rechnitz first went to Florida in order to explore becoming
6 involved with digital assets and cryptocurrencies. Upon information and belief, while
7 there, Rechnitz first met with Defendant Perone.

8 51. After making that connection, Rechnitz and his wife moved to
9 California and started a jewelry business through two similarly named entities,
10 Jadelle Inc. and Jadelle Jewelry and Diamonds, LLC, whose purported marquee client
11 was the Kardashian family.

12 52. Through their jewelry business, Defendant Rechnitz and his wife
13 promoted and advertised political and powerful celebrity connections to create a false
14 sense of credibility about themselves and their business, posting photos on their social
15 media of Defendant Kardashian and other members of her family wearing their
16 jewelry. For example, Defendant Kardashian wrote on instagram that “New jeweler
17 alert 📍 Follow @jadellebh for the 📍”¹⁵ and has made numerous posts promoting
18 Jadelle.¹⁶ Jadelle posted on its Facebook a picture of Defendant Kardashian wearing
19 Jadelle jewelry stating “The gorgeous @kimkardashian glowing in her custom
20 @jadellebh necklaces.” Defendant Kardashian’s sisters Kourtney Kardashian¹⁷ and
21 Kylie Jenner¹⁸ have posted advertisements for Jadelle. Defendant Kardashian’s
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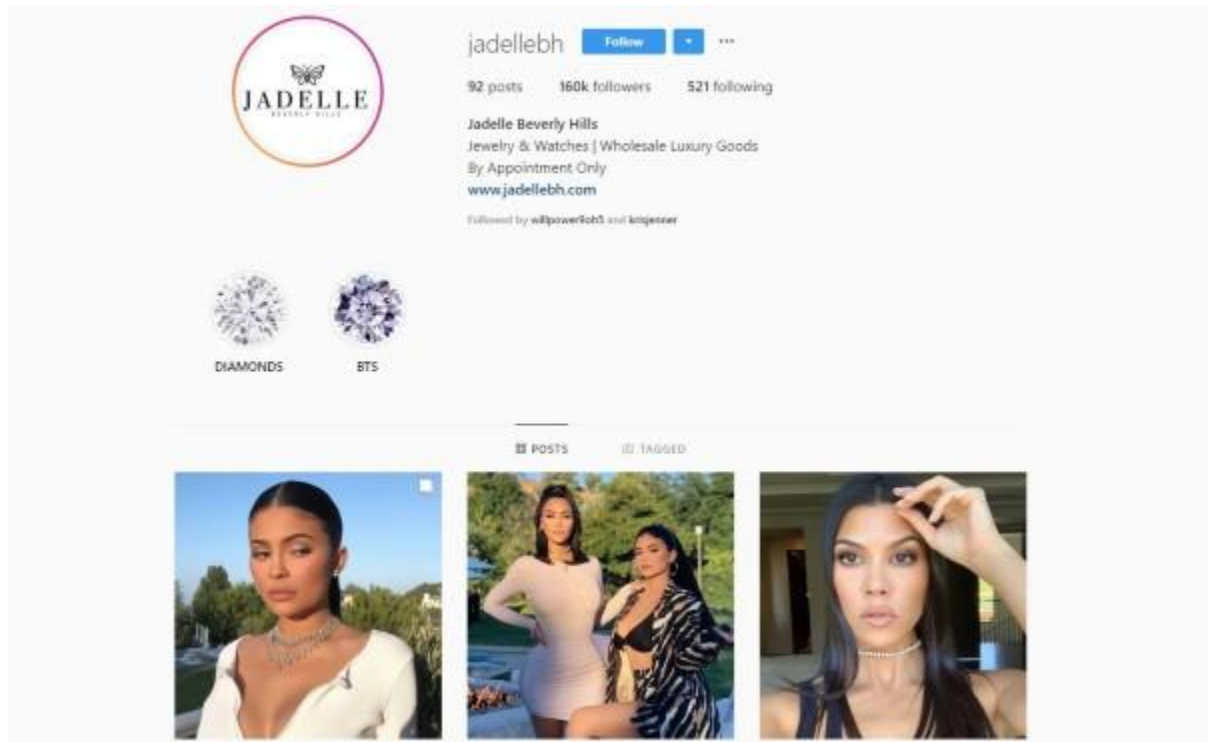
23 ¹⁵ Pinterest, <https://www.pinterest.com/pin/600597300287966070/>.

24 ¹⁶ Kellie Chudzinski, *Kim Kardashian flaunts her curves and toned abs in crop*
25 *top and skintight skirt as she stops by Ulta to see her new KKW Beauty displays*,
26 *DAILY MAIL* (Oct. 23, 2019 9:46 AM) [https://www.dailymail.co.uk/tvshowbiz/](https://www.dailymail.co.uk/tvshowbiz/article-7603407/Kim-Kardashian-reveals-curves-toned-abs-tight-two-piece-outfit-Ulta-visit.html)
27 [article-7603407/Kim-Kardashian-reveals-curves-toned-abs-tight-two-piece-outfit-](https://www.dailymail.co.uk/tvshowbiz/article-7603407/Kim-Kardashian-reveals-curves-toned-abs-tight-two-piece-outfit-Ulta-visit.html)
28 [Ulta-visit.html](https://www.dailymail.co.uk/tvshowbiz/article-7603407/Kim-Kardashian-reveals-curves-toned-abs-tight-two-piece-outfit-Ulta-visit.html).

¹⁷ Alina Torres, *Kourtney Kardashian explota contra sus hermanas*, ENPAREJA
(Dec. 17, 2019 5:32 PM), [https://www.enpareja.com/break/Kourtney-Kardashian-](https://www.enpareja.com/break/Kourtney-Kardashian-explota-contra-sus-hermanas-20191217-0041.html)
[explota-contra-sus-hermanas-20191217-0041.html](https://www.enpareja.com/break/Kourtney-Kardashian-explota-contra-sus-hermanas-20191217-0041.html).

¹⁸ Pinterest, <https://www.pinterest.com/pin/430586414376243338/>.

1 mother, Kris Jenner, has also made social media posts promoting “@jadellebh”
2 bracelets.



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16 53. In August 2021, MJS Diamond alleged in a complaint for fraud and civil
17 theft that Defendant Rechnitz portrayed himself as a successful jeweler and salesman
18 to several celebrities and athletes like Kim Kardashian and Floyd Mayweather.¹⁹
19 Likewise, Oved Anter & First International Diamond alleged in June 2020 that
20 Defendant Rechnitz used ties to the Kardashian family to create a false sense of
21 credibility about themselves and their business, posting photos on their social media
22 of Defendant Kardashian and her sister Kylie Jenner.²⁰ In connection with his guilty
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26 ¹⁹ See *MJS., Inc., v. XL Specialty Company and Jona Rechnitz*; Case No. 20STDV08082 (Cal. Sup. Ct. Los Angeles Cty.).
27

28 ²⁰ See *Oved Anter & First International Diamond Inc. v. Jona Rechnitz*, Case No. 20STCV23877 (Cal. Sup. Ct. Los Angeles Cty.).

1 plea sentencing, Rechnitz proudly told his sentencing judge about partying with
2 Defendant Kardashian, claiming that it showed he was a hardworking jeweler.²¹

3 54. Bankruptcy proceedings in this District for these Jadelle Jewelry entities
4 demonstrate numerous examples of Defendant Rechnitz’s misrepresentation and bad
5 faith. *See In re Jadelle Jewelry & Diamonds, LLC*, No. 2:20-bk-13530-BR (Bankr.
6 C.D. Cal. June 23, 2020), ECF No. 83 at 9 (noting, among other things, that “the
7 assets may have been dissipated by the Rechnitzs and that there may be millions of
8 dollars in missing jewelry, which the Court considers to be in dire need of
9 investigation by the chapter 7 trustee”).

10 55. Defendant Rechnitz is also a close personal friend, business partner, and
11 member of the “inner circle” of Defendant Mayweather. Rechnitz is a member of
12 “The Money Team” and is listed as a collaborator in Defendant Mayweather’s GOAT
13 (greatest of all time) documentary series.²² Rechnitz has control over ticket sales and
14 resulting proceeds for Defendant Mayweather’s recent exhibit boxing matches.
15 Rechnitz has been photographed sitting next to Defendant Mayweather courtside at
16 Los Angeles Lakers games.²³ The NBA connection is particularly notable as
17 Rechnitz previously used pricey NBA tickets to create fraudulent invoices to launder
18 his bribe money.²⁴ Rechnitz recently partied “the night away” at Art Basel in 2022
19
20

21 ²¹ Emily Saul, *DeBlasio donor-turned-informant Jona Rechnitz sentenced to 10*
22 *months*, NEW YORK POST (Dec. 19, 2019), <https://nypost.com/2019/12/19/de-blasio-donor-turned-informant-jona-rechnitz-sentenced-to-10-months/>.

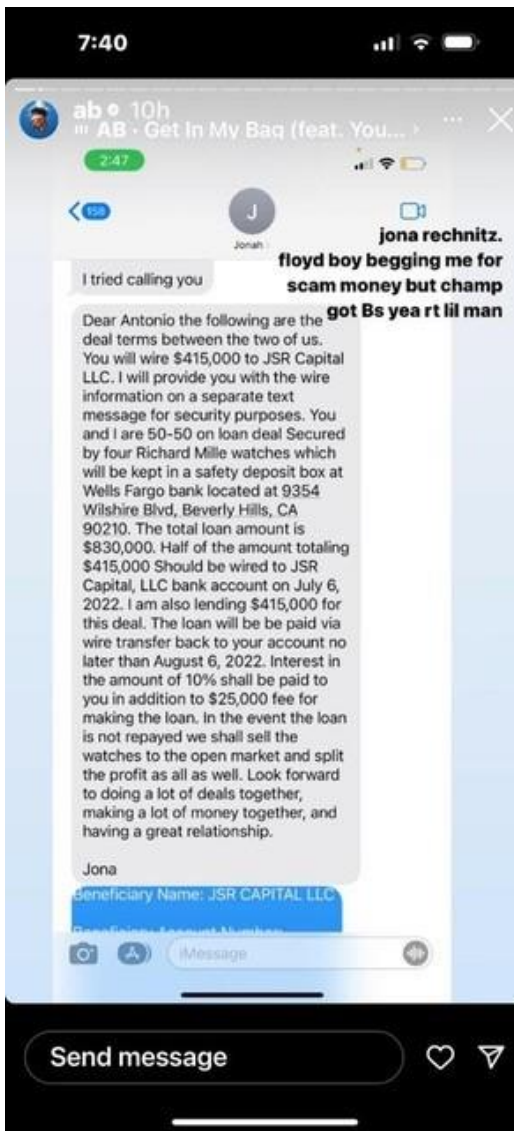
23 ²² *Floyd Mayweather Making ‘Last Dance’ Style Docuseries . . . ‘The GOAT’*,
24 TMZ (Oct. 6, 2022, 10:00 AM), <https://www.tz.com/2022/10/06/floyd-mayweather-signs-deal-docuseries-show-last-dance-the-goat-boxing-tbe/>.

25 ²³ *Floyd Mayweather Makes Good on Promise . . . Sends Kids to Clips Game*,
26 TMZ (Oct. 31, 2022, 9:04 AM), <https://www.tz.com/2022/10/31/floyd-mayweather-gifts-young-fans-tickets-clippers-game-lakers/>.

27 ²⁴ *Hedge Fund Founder Pleads Guilty To Fraud In Connection With Bribery Of*
28 *Former Correction Officers Union Leader*, U.S. Dep’t Of Just., U.S. Att’y Off.,
S.D.N.Y. (May 25, 2018), <https://www.justice.gov/usao-sdny/pr/hedge-fund-founder-pleads-guilty-fraud-connection-bribery-former-correction-officers>.

1 with Defendants Mayweather and Kardashian.²⁵ TMZ recently reported that
2 Defendant Mayweather gifted Defendant Rechnitz a custom jacket.

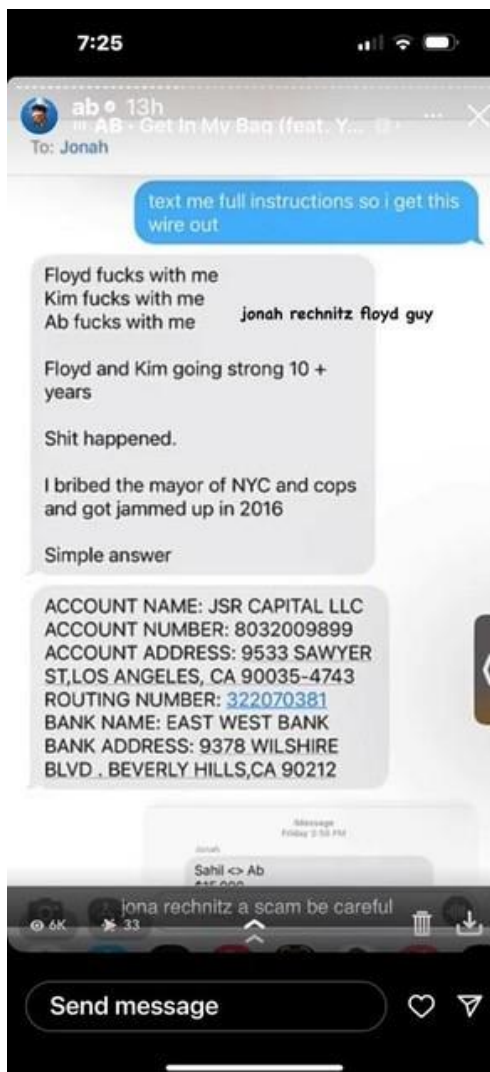
3 56. Until recently, Defendant Rechnitz was also close personal friends with
4 Defendant Antonio Brown. After a falling out, Defendant Brown has “aired the dirty
5 laundry” between the two on Instagram, publishing text messages regarding a
6 \$415,000 payment for fake high end Richard Millie watches.



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27 ²⁵ Jeroslyn JoVonn, *Floyd Mayweather drops over \$4M on Art Basel Pieces by*
28 *Warhol, Rober Indiana, and Alexander Calder*, BLACK ENTERPRISE (Dec. 2, 2022),
<https://www.blackenterprise.com/floyd-mayweather-drops-over-4m-on-art-basel-pieces-by-warhol-robert-indiana-and-alexander-calder/>.

1 57. In another text message authored by Rechnitz, he bragged about his
2 associations with Promoter Defendants Mayweather, Kardashian, and Brown and
3 cavalierly refers to how he “bribed the mayor of NYC”:

4 Floyd fucks with me
5 Kim fucks with me
6 Ab fucks with me
7 Floyd and Kim going strong 10 + years
8 Shit happened.
9 I bribed the mayor of NYC and cops and got jammed up in 2016
10 Simple Answer



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1 58. On May 14, 2021, the Executive Defendants launched the EMAX
2 Tokens with a transaction volume of \$16.11 million and a price of \$0.00000005875,
3 according to data from CoinMarketCap.²⁶

4 59. Liquidity pools were created on Uniswap to allow users to purchase
5 EMAX Tokens with Ether. Wallets associated with Defendants continually provided
6 EMAX Tokens to the pool as retail investors provided Ether to purchase EMAX
7 Tokens.

8 60. At the time of launch, and throughout the Relevant Period, the EMAX
9 Tokens were not sold pursuant to a “whitepaper.” Whitepapers in cryptocurrency are
10 documents released by the founders of the project that gives investors technical
11 information about its concept, and a roadmap for how it plans to grow and succeed.

12 61. Subsequently, however, the Company did release a whitepaper in
13 October 2021 entitled: “EthereumMax – Disrupt History,” which explained the
14 business model for EthereumMax and described its activities during the Relevant
15 Period.

16 62. According to the Company, “[w]e launched EMAX with a vision to
17 bridge the gap between the emergence of community-driven tokens and the well-
18 known foundational coins of crypto, creating a unique token that provides lifestyle
19 perks with financial rewards and incentives to its holders with a pathway for practical
20 long-term use in everyday life.”²⁷ The founders’ “approach to bridging this gap was
21 to simplify the complex and instill confidence through a trusted circle that can
22 provide guidance and instill trust.”²⁸

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25 ²⁶ *Historical Data for EthereumMax*, COINMARKETCAP, <https://coinmarketcap.com/currencies/ethereummax/historical-data/> (last visited Dec. 19, 2022).

26 ²⁷ *See* Whitepaper, *EthereumMax – Disrupt History*, ETHEREUMMAX, 5 (Oct.
27 2021), [https://ethereummax.org/wp-content/uploads/EthereumMax-White paper-
v1-Final.pdf](https://ethereummax.org/wp-content/uploads/EthereumMax-White%20paper-v1-Final.pdf).

28 ²⁸ *Id.* at 7.

1 63. In plain terms, EthereumMax’s entire business model relies on using
2 constant marketing and promotional activities, often from “trusted” celebrities, to
3 dupe potential investors into trusting the financial opportunities available with
4 EMAX Tokens. The whitepaper was reviewed by ICOLAW P.C., a law firm located
5 in Los Angeles, California.

6 64. The Company later even bragged in its whitepaper that its “expertise in
7 marketing strategy and managing relationships” was a “key area” for EthereumMax’s
8 successful promotional efforts in the preceding six months (*i.e.*, the Relevant Period):

9 Each week we track and analyze our marketing efforts,
10 continuing to make strategic modifications to optimize engagement for
11 week-over-week improvements and impact. If we can do all of this in
less than 6 months, imagine what the future holds? The best is yet to
come.²⁹

12 65. This so-called expertise in “marketing strategy and managing
13 relationships” came primarily from three individuals: Defendants Perone, Maher,
14 and Rechnitz. Upon information and belief, Rechnitz was either (1) one of the
15 undisclosed founders of EthereumMax, or (2) brought in by Perone and/or Maher
16 prior to the launch of the EMAX Token to help the Executive Defendants recruit the
17 Promotor Defendants.

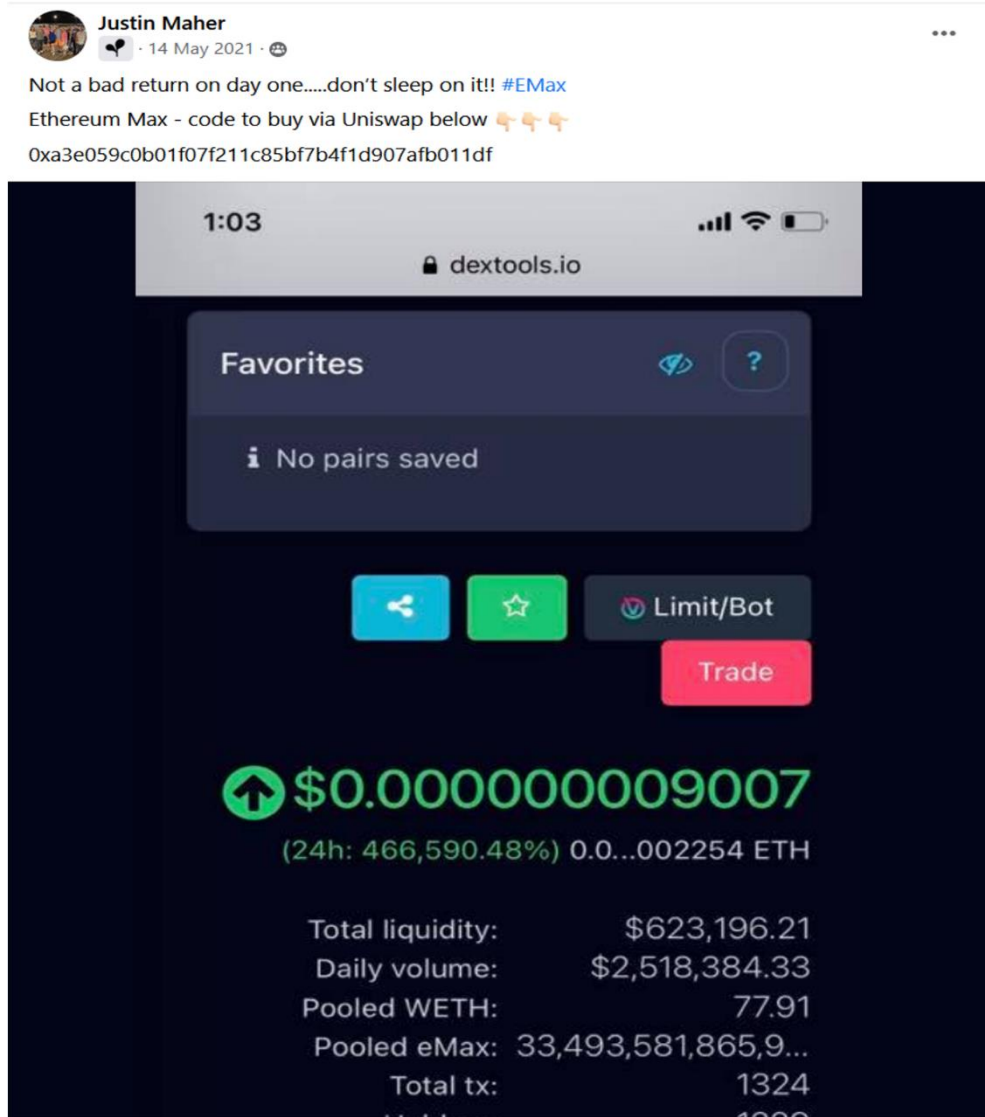
18 66. Rechnitz provided the Executive Defendants with access to several
19 high-profile celebrities that were willing to tout EMAX Tokens in exchange for
20 under-the-table payments and the ability to frontrun EMAX Tokens investors. For
21 example, as Davis subsequently disclosed, Davis and the Executive Defendants were
22 able to recruit Mayweather as an EMAX Token promoter due to them having “two
23 degrees of separation” from Mayweather (*i.e.*, via Rechnitz).

24 **The Pump – Shilling EthereumMax**

25 67. On May 14, 2021, the day of the EMAX Token launch, Defendant
26 Maher posted a promotion and solicitation for EMAX Tokens on the
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28 ²⁹ *Id.* at 48.

1 “InRussWeTrust” Facebook page (which was owned and operated by Defendant
2 Russell Davis). Specifically, the following post showed a screenshot of the financial
3 metrics for the EMAX Tokens and displayed a “466,590.48%” increase in the
4 EMAX Tokens price over a 24-hour period:



24 68. The next day, after the price of EMAX Tokens sharply decreased,
25 Maher made the following post on Facebook to ease concerns from EMAX Token
26 investors and encourage further purchasing and/or holding of the tokens:

1 I've been getting a lot of questions about this being a rug pull or a dump
2 and dump. It's easy to be pessimistic when you see a 50-75% drop in
3 a day much less a half hour. After further look though the massive sell
4 off came from one single account, that bought 35 ETH worth of coins
5 and sold off his entire position after a sharp bump. This cause a cascade
6 of panic selling wiping out all the gains from the day. You can view
7 his account, he does this regularly to new alt coins at our stage of the
8 game.

9 The good news, neither of the two largest accounts sold a single penny.
10 These are held by the coin developers and their marketing team. After
11 speaking with the development team they've assured us that aside from
12 marketing expenses they will not sell off any of their position for at
13 least six months.

14 If you've invested in new coins before (Shiba, Kishu, etc.), you'll have
15 been through this ride already. The lessons we've learned from those
16 coins, is that in turbulent times, it's actually best to do nothing. That's
17 naturally hard to do when you see a dramatic movement, so have a plan
18 in place for what your goal is and stick to it. Don't feel bad about taking
19 small profits to the sideline as the coin appreciates. This will help you
20 let the rest ride without letting your emotions get in the way.

21 There's going to be a lot of bumps along the way. Stay strong, and hold
22 tight. #EthereumMax

23 69. On May 16, 2021, the EthereumMax Instagram account posted the
24 following promotion titled the "EthereumMax Pre-launch Kickoff" (the "Pre-launch
25 Kickoff post"), which touted, among other things, how (1) the EMAX Tokens grew
26 "500,000+% in the first 24 hours"; (2) the Executive Defendants had "locked in
27 partnership with global digital marketing agency" and "lined up a knockout
28 influencer" for a "nationwide campaign"; and (3) "We are 3 days in with ~\$100M
market cap and the train is just getting rolling":³⁰

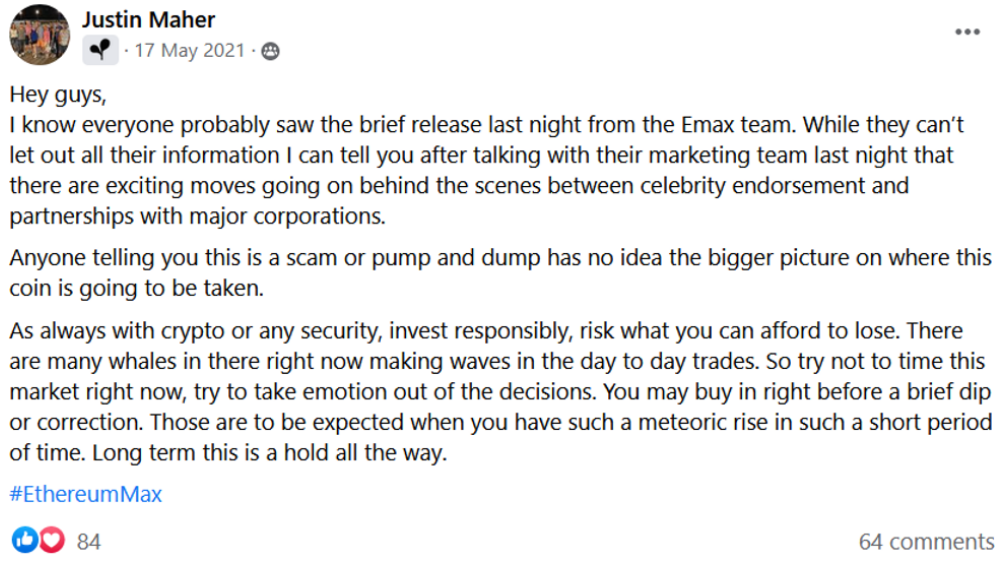
³⁰ EthereumMax (@ethereummax), INSTAGRAM (May 16, 2021),
<https://www.instagram.com/p/CO87bQ0srEF/>.

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70. On May 17, 2021, Maher issued the following statement regarding the Prelaunch Kickoff Post from the EMAX team:

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71. On May 18, 2021, Defendant Davis posted to his followers that it was “Not too late for Emax and Bezoge! Just the start!”

72. As the subsequently released whitepaper acknowledged, the Executive Defendants actively recruited and retained the Promoter Defendants to serve as the promoters for the launch of the EMAX Tokens in May 2021.

73. The Promoter Defendants are sophisticated public figures with familiarity and experience with endorsement contracts.

74. Upon information and belief, the Promoter Defendants received EMAX Tokens and/or other forms of consideration as part or all of their compensation for promoting EthereumMax.

75. For example, a combined search of the Ethereum Blockchain Explorer (“Etherscan”) and the non-fungible token marketplace OpenSea shows that a wallet owned/controlled by Pierce received and sold millions of dollars’ worth of EMAX Tokens while Pierce simultaneously promoted EMAX Tokens to investors.

1 76. As a starting point, on May 28, 2021, Pierce posted a screenshot of his
 2 trading account with 15,858,700,526,204.817 EMAX Tokens valued at
 3 “\$2,520,087.34,” which had increased “83.34% (\$1,145,469.23)” on the one-day
 4 chart.³¹ The caption to the image posted by Pierce contained the following string of
 5 emojis:



17 77. Notably, while Pierce covered up his wallet’s actual address, he left the
 18 unique image displayed as the wallet’s profile picture unredacted. This image is a
 19 direct match to an image associated with wallet address
 20 0x70f5a6ebc69087996ce5eb94b799e15994beae10 on the OpenSea exchange. An
 21 examination on Etherscan of some of the other digital assets within Wallet 0x70f5A6
 22 shows additional connections to Pierce, further confirming that Wallet 0x70f5A6 ³²
 23 For example, Wallet 0x70f5A6 trades in Ethernity tokens. Pierce has direct
 24 connections to Ethernity via his participation in a celebrity charity poker tournament

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26 ³¹ Paul Pierce (@paulpierce34), TWITTER (May 28, 2021, 8:07 AM),
 27 https://twitter.com/paulpierce34/status/1398294745806299139?s=20&t=V-OgyFf-y6rqaCh_CgzpGg.

28 ³² <https://etherscan.io/address/0x70f5a6ebc69087996ce5eb94b799e15994beae10>.

1 sponsored and/or promoted by Ethernity³³. Pierce even played at the same table
2 with Ethernity’s CEO, Nick Rose, on September 26, 2021.

3 78. An examination of Pierce’s wallet’s trading activity in conjunction with
4 Pierce’s social media activity shows that Pierce made millions of dollars trading (and
5 selling) EMAX Tokens while simultaneously promoting the tokens to investors as
6 sound long-term investments.

7 79. Initially, on May 24, 2021, after making a small transfer of
8 approximately \$13,350 (seemingly as a test to confirm that the transfer between
9 wallets could be done successfully), Pierce’s wallet received an “airdrop” of
10 approximately 15 trillion now-defunct EMAX Tokens from the beta version of the
11 EthereumMax deployer wallet.³⁴

12 80. On May 25, 2021, Pierce received an approximate equivalent of 15.4
13 trillion new EMAX Tokens via the EthereumMax deployer wallet, valued at around
14 \$1,350,000 in cash at the time. That same day, Pierce also additionally purchased
15 around 110 billion EMAX Tokens for about \$10,000.³⁵

16 81. On May 26, 2021, Pierce received approximately 247 billion additional
17 EMAX Tokens from a second EthereumMax deployer wallet “airdrop.”³⁶

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22 ³³ blockchainnews, *Paul Pierce, Phil Ivey, Mr. Beast and Joe Lubin Tonight In*
23 *Virtue Poker’s Awaited Celebrity Charity Poker Tournament*, THE CRYPTO BASIC
24 (Sept. 26, 2021), <https://thecryptobasic.com/2021/09/26/paul-pierce-phil-ivey-mr-beast-and-joe-lubin-tonight-in-virtue-pokers-awaited-celebrity-charity-poker-tournament/>.

25 ³⁴ A “deployer wallet” refers to the original wallet or central interaction point
26 for a token’s liquidity.

27 ³⁵ <https://etherscan.io/token/0x15874d65e649880c2614e7a480cb7c9a55787ff6?a=0x70f5a6ebc69087996ce5eb94b799e15994beae10>.

28 ³⁶ <https://etherscan.io/address/0x7e3c20044ac242acc6340d73ab56f7a7b305411d#tokentxns>.

1 82. That same day, Pierce promoted EthereumMax in a widely discussed
 2 post on the social media platform Twitter during an online dispute between Pierce
 3 and the television broadcasting network ESPN.³⁷ Prior to the May 26 post, Pierce
 4 had worked for ESPN as a popular sports analyst and commentator until he was fired
 5 for an unrelated video he had previously posted to his social media account. After
 6 his firing, Pierce publicly slammed ESPN while conversely praising EthereumMax's
 7 ability to make money for him at the same time:



20 83. The trading volume for the EMAX Token exploded as a result of
 21 Pierce's post and the Company's announcement that it was partnering with Defendant
 22 Mayweather, Jr. (discussed further below). On May 26, 2021, the volume reached
 23 \$44.43 million – *almost five times higher than the previous day*.³⁸ Then, on May
 24

25 ³⁷ See, e.g., Jenna Lemoncelli, *Paul Pierce's ESPN revenge after firing over*
 26 *stripper video*, N.Y. POST (May 26, 2021), <https://nypost.com/2021/05/26/paul-pierce-slams-espn-with-cryptocurrency-claim/>.

27 ³⁸ *EMAX – EthereumMax 3 Historical Price Data*, NOMICS,
 28 <https://nomics.com/assets/emax3-ethereummax-3/history/3> (last visited Dec. 20, 2022).

1 27, the volume more than doubled, reaching \$107.7 million.³⁹ That same day, Pierce
2 purchased an additional 120 billion EMAX Tokens.⁴⁰

3 84. Then on May 28, 2021, as noted above, Pierce again promoted EMAX
4 Tokens' price growth to his followers on Twitter, boasting about the one-day increase
5 in the EMAX Token price of over 83%.⁴¹

6 85. On May 29, 2021, the very next day, Pierce enacted 118 sells, totaling
7 approximately 8.4 trillion EMAX Tokens that were valued at around \$5,500,000 at
8 the time. Pierce then capitalized further on his successful pump of the EMAX Tokens
9 trading volume. Pierce made 12 buys totaling 1.214 trillion EMAX Tokens, then
10 immediately turned around and sold those 1.214 trillion EMAX Tokens plus an
11 additional 680 billion EMAX Tokens (*i.e.*, 1.89 trillion EMAX Tokens in total).⁴²

12 86. From May 30, 2021 to June 2, 2021, Pierce amassed another 2.5 Trillion
13 EMAX Tokens through numerous buys and sells.⁴³

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24 ³⁹ *Id.*

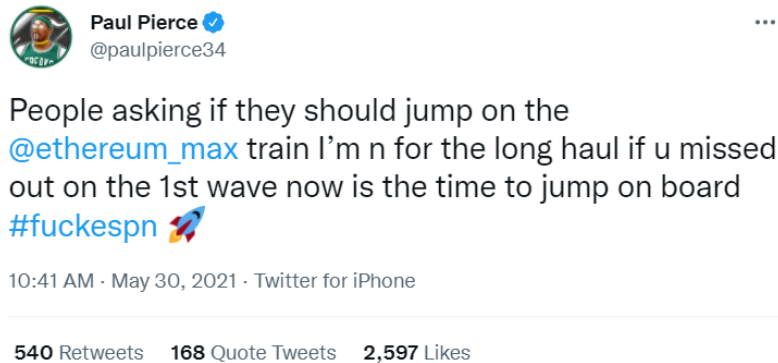
25 ⁴⁰ <https://etherscan.io/token/0x15874d65e649880c2614e7a480cb7c9a55787ff6?a=0x70f5a6ebc69087996ce5eb94b799e15994beae10>.

26 ⁴¹ *See n.31, supra.*

27 ⁴² <https://etherscan.io/token/0x15874d65e649880c2614e7a480cb7c9a55787ff6?a=0x70f5a6ebc69087996ce5eb94b799e15994beae10>.

28 ⁴³ <https://etherscan.io/token/0x15874d65e649880c2614e7a480cb7c9a55787ff6?a=0x70f5a6ebc69087996ce5eb94b799e15994beae10>.

1 87. On May 30, 2021, Pierce posted the following tweet⁴⁴, promoting
2 Ethereum Max:



11 88. Three days after falsely telling investors he was in it “for the long haul”
12 with EthereumMax, Pierce sold approximately 9.7 trillion EMAX Tokens worth
13 approximately \$1,300,000.⁴⁵

14 89. On June 6, 2021 (i.e. the day of the Mayweather-Logan fight), around
15 97.4 billion EMAX Tokens were transferred to Pierce’s wallet. That same day, Pierce
16 promoted EthereumMax to investors, falsely stating that he was going to “double
17 down” on Ethereum Max.⁴⁶ Two days later, Pierce sold over 98% of those 97.4
18 billion EMAX Tokens.

19 90. On July 13, 2021 (i.e., the day that Kardashian promoted EMAX Tokens
20 to her 250 million followers on Instagram), Pierce traded EMAX Tokens, selling off
21 approximately 1.17 trillion EMAX Tokens.⁴⁷ Similarly, around that same time
22 frame, Pierce received over 462 billion EMAX Tokens from wallet address

23 ⁴⁴ Paul Pierce (@paulpierce34), TWITTER (May 30, 2021, 7:41 AM),
<https://twitter.com/paulpierce34/status/1399013195151417345?s=20&t=qpVEL-yI0O2jszrSlxCfcA>.

24 ⁴⁵ <https://etherscan.io/token/0x15874d65e649880c2614e7a480cb7c9a55787ff6?a=0x70f5a6ebc69087996ce5eb94b799e15994beae10>.

25 ⁴⁶ Paul Pierce (@paulpierce34), TWITTER (June 5, 2021, 10:40 PM),
26 <https://twitter.com/paulpierce34/status/1401413650691280899?s=20&t=SrB147wN07nQ8YSjpC6-PA>.

27 ⁴⁷ <https://etherscan.io/token/0x15874d65e649880c2614e7a480cb7c9a55787ff6?a=0x70f5a6ebc69087996ce5eb94b799e15994beae10>.

1 0x2671663ff57fdb0ee8a8613286802ae4d1c72428, which, upon information and
2 belief, is controlled and/or operated by the Executive Defendants.⁴⁸

3 91. Pierce had access to material, non-public information about the timing
4 of various celebrity promotions of the EMAX Tokens (including his own), and
5 improperly used that information to perfectly time his trades of EMAX Tokens to
6 maximize his ill-gotten profits.

7 92. These complicated transactions demonstrate a pattern by which Pierce
8 and other promoters, including the Promoter Defendants, are given tokens as a
9 payment for promotions, they go out and post about the tokens on social media, then
10 turn around and sell the tokens for profit as retail investors buy in. The entire purpose
11 of this paid promotion is for pumping and dumping the tokens based on the value
12 created by the Promoter Defendants' direct action. Furthermore, the complexity of
13 these financial transactions and movements between wallet address demonstrates that
14 the Promoter Defendants understand how to both time and execute their selling
15 strategy.

16 93. Pierce was not alone with his insider trading. His friend and business
17 associate Rechnitz was another prime culprit for this portion of the scheme. Upon
18 information and belief, Rechnitz engaged in various forms of frontrunning his
19 transactions with EMAX Tokens based on material, non-public information in his
20 possession. Given Rechnitz's intimate connection to Mayweather and his being
21 authorized by Mayweather to conduct business on Mayweather's behalf, Mayweather
22 had actual knowledge Rechnitz's insider trading scheme. Upon information and
23 belief, Mayweather received a cut of the money that Rechnitz generated from
24 improperly frontrunning the celebrity promotions of EMAX Tokens.

25 94. Confidential Witness #1 (CW1) is a former social acquaintance of
26 Defendants Rechnitz and Mayweather, having first met Rechnitz in 2017 and
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28 ⁴⁸ <https://etherscan.io/tx/0x0c4825fcb332f9d791980b9b95903f94331c0113a516c9b95c91e0cf18dffa0d>.

1 Mayweather in 2019. CW1 lived near Rechnitz and frequently socialized with him
2 and those in the Rechnitz orbit. Over the years, CW1 also had conducted or explored
3 business dealings with Defendants Kardashian and Mayweather.

4 95. Beginning in May 2021, Defendant Rechnitz proposed that CW1 “get in
5 on” the EthereumMax scam. Defendant Rechnitz told CW1 at least ten times that he
6 had a connection to a “garbage crypto” that would pay Defendant Mayweather to
7 advertise on his boxing shorts during the June 6 exhibition match. In addition to
8 Mayweather, Rechnitz told CW1 that he and the Company were going to have
9 Defendants Pierce and Kardashian to solicit EthereumMax sales.

10 96. Defendant Rechnitz confirmed to CW1 that EthereumMax was a scam
11 and that his celebrity promoter cohorts were aware that they were shilling the dubious
12 EMAX Tokens for his (and their collective) benefit. CW1 inquired as to why the
13 celebrity promoters would engage with these solicitations, Rechnitz revealed that the
14 Executive Defendants give the Promotor Defendants millions of tokens. Rechnitz
15 further disclosed that he knew exactly when these promotions would occur and used
16 this knowledge to front run the posts and sell tokens into the market in the aftermath.
17 According to CW1, Defendant Rechnitz was constantly in touch with the Promotor
18 Defendants, including Defendant Kardashian, who Rechnitz would speak with at
19 least every few days.

20 97. On one occasion taking place on or around the same time as Pierce’s
21 promotions, Rechnitz again tried to convince CW1 to get in on the scheme to front
22 run investors. Because CW1 was not crypto-savvy, Rechnitz once pulled out his
23 phone and demonstrated how he made trades on his trading app immediately
24 following a celebrity promotion. As Rechnitz was demonstrating his illicit trading
25 strategy, CW1 observed Rechnitz jump out of his seat, point his fingers in the air and
26 proclaim that it was “so easy.” CW1 then saw Rechnitz dancing in a circle and
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1 chanting “pump and dump . . . pump and dump” in an apparent victory dance for a
2 successfully capitalizing on his inside information regarding Pierce’s promotions.

3 98. According to transactions from the Ethereum blockchain, starting on
4 May 19, 2021, the wallet address 0x1439caa755c82c300b9fc2cd86c9a9b2565606fd
5 (which was identified by Defendant Maher as being owned by Rechnitz) (the
6 “Rechnitz Wallet”) began receiving trillions of EMAX tokens for free and then
7 transferring them to various pass-through wallets. On May 26, 2021, Rechnitz
8 received 25 billion tokens from the Deployer wallet. The Rechnitz Wallet also made
9 several purchases of EMAX to accumulate tokens in order to better front run the
10 celebrity endorsements.

11 99. After the Pierce promotions began on May 26, the Rechnitz Wallet
12 undertook a series of transactions swapping EMAX tokens into the much more liquid
13 token Eth (Ethereum). On May 27, 2021, for example, in a series of five transactions,
14 the Rechnitz wallet swapped over 1.4 trillion EMAX tokens into over 81 Eth.
15 Rechnitz then swapped this eth into tether, a stablecoin pegged to the United States
16 Dollar. On May 28, 2021 the Rechnitz Wallets transferred billions of EMAX tokens
17 to a “dgroot.eth” wallet address, likely in exchange for the promotional efforts of
18 Groot Hospitality and/or Dave Grutman. Also on May 28th, the Rechnitz Wallet
19 makes several swaps of EMAX tokens into hundreds of thousands of dollars' worth
20 of eth and tether. The various wallets that received token transfers directly from the
21 Rechnitz wallet display the similar behavior of swapping EMAX tokens into eth and
22 tether in conjunction with the celebrity endorsements.

23 100. These EMAX Token transactions in the Rechnitz Wallet line up within
24 the same timeframe that Rechnitz engaged in a live “pump and dump” after the price
25 of EMAX Tokens increased due to Pierce’s promotions in order to convince CW1 to
26 join in the conspiracy to engaging in unlawful insider trading.

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1 101. According to CW1, besides Mayweather, Rechnitz is also a close
2 personal friend of Defendant Pierce. Defendant Rechnitz would even bring Pierce to
3 CW1's house to sign basketballs and shoot hoops with members of CW1's family.

4 102. Defendant Pierce, in turn, is also close friends with Defendant
5 Mayweather. Pierce attended the EthereumMax-connected June 6 Mayweather bout
6 and sat with Mayweather in the locker room prior to the fight.⁴⁹ Pierce also attended
7 the pre-fight media scrum leading up to the fight.⁵⁰

8 103. According to CW1, Rechnitz was also in the locker room with
9 Mayweather and Pierce before the EthereumMax-promoted June 6 exhibition.
10 Notably, Defendant Russell Davis also bragged of meeting with Mayweather prior to
11 the match.

12 104. Pierce and Mayweather are also tied to Rechnitz through celebrity
13 Jeweler Peter Marco. Marco is a jeweler connected to Pierce and who counted
14 Mayweather as his biggest client.⁵¹ Marco alleged in a lawsuit that Rechnitz
15 scammed him through jewelry company Jadelle, after he was impressed with
16 Rechnitz's celebrity connections like Defendant Kardashian. Rechnitz even
17 introduced Marco to Defendant Mayweather. *Id.*

18 105. Defendant Rechnitz is currently under investigation by federal
19 authorities in this District. In connection with his New York case, the Government
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21 ⁴⁹ Viral Star Videos, *Floyd Mayweather a& Paul Pierce in the Locker Room
Before the Fight*, YOUTUBE (June 7, 2021), [https://www.youtube.com/shorts/
qHK6B8E8x-0](https://www.youtube.com/shorts/qHK6B8E8x-0).

22 ⁵⁰ Sipa USA, *Former NBA player Paul Pierce attends media availability ahead
23 of the June 6th exhibition boxing match between Floyd Mayweather and Logan Paul
on June 03, 2021 at Villa Casa Casuarina at the former Versace Mansion in Miami
24 Beach, Florida*, (June 3, 2021), [https://www.alamy.com/former-nba-player-paul-
25 pierce-attends-media-availability-ahead-of-the-june-6th-exhibition-boxing-match-
between-floyd-mayweather-and-logan-paul-on-june-03-2021-at-villa-casa-
casuarina-at-the-former-versace-mansion-in-miami-beach-florida-photo-by-jlsipa-
26 usa-image430892482.html](https://www.alamy.com/former-nba-player-paul-pierce-attends-media-availability-ahead-of-the-june-6th-exhibition-boxing-match-between-floyd-mayweather-and-logan-paul-on-june-03-2021-at-villa-casa-casuarina-at-the-former-versace-mansion-in-miami-beach-florida-photo-by-jlsipa-usa-image430892482.html).

27 ⁵¹ Sha Be Allah, *Floyd Mayweather is 'Smart and on Top of His Brand' Says
His Jeweler Peter Marco*, THE SOURCE (Sept. 18, 2018), [https://thesource.com/
28 2018/09/18/floyd-mayweather-is-smart-and-on-top-of-his-brand-says-his-jeweler-
peter-marco/](https://thesource.com/2018/09/18/floyd-mayweather-is-smart-and-on-top-of-his-brand-says-his-jeweler-peter-marco/).

1 submitted *ex parte* and sealed correspondence concerning an ongoing investigation
2 by the Federal Bureau of Investigation in Los Angeles and the U.S. Attorney’s Office
3 for the Central District of California for conduct unrelated to Rechnitz’s prosecution
4 or cooperation in the Southern District of New York.⁵²

5 106. Upon information and belief, all of the Promoter Defendants received
6 similar payments funneled by Defendant Rechnitz, including disbursements of tokens
7 from the EthereumMax deployer wallet and/or marketing wallet or for other
8 consideration, and cashed out shortly after engaging in their respective promotional
9 activities in a similar manner to Pierce. At the same time, Rechnitz, Mayweather,
10 and Perone separately entered into a conspiracy to engage in insider trading of EMAX
11 Tokens that was correlated with the dates and times of the celebrity promotional
12 activities alleged herein.

13 107. This is also why Defendants Rechnitz and Maher were a vital part of the
14 Executive Defendants’ plan for marketing the EMAX Tokens. Rechnitz has direct,
15 longstanding personal and business relationships with Promoter Defendants
16 Mayweather, Kardashian, and Pierce.

17 108. Maher has direct, familial ties to Promotor Defendant Davis. For
18 example, Maher has a personal relationship with Russ Davis, who is his brother-in-
19 law and business associate. According to Maher, he brought the EthereumMax
20 project to Davis specifically to leverage Davis’ cryptocurrency-investing followers
21 on social media.

22 109. On or around May 16, 2021, Maher removed \$10,000 from the EMAX
23 Token liquidity pool to pay cryptocurrency influencer and promotor Russ Davis and
24 professional football player Antonio Brown to promote EthereumMax.

25
26
27
28 ⁵² *USA v. Rechnitz*, 1:16-cr-00389 (S.D.N.Y.) (ECF No. 151).

1 110. Davis reposted the following promotion from the EthereumMax official
2 Twitter account to his own personal “InRussWeTrustCrypto” account:⁵³



11 111. Notably, according to Maher, the development team had “messed up”
12 both the initial launch and the liquidity pool, leaving Maher and other insiders with a
13 huge percentage of the available Float. Moreover, the liquidity pool was
14 underfunded. Thus, small amounts of trading volume had a disproportionately large
15 impact on the EMAX Tokens’ price.

16 112. That same day, Speer promoted the EMAX Tokens in a video he posted
17 to his personal YouTube channel, wherein Speer advised retail investors “[h]ow to
18 buy EthereumMax.”⁵⁴ Notably, Speer told retail investors about “a coin that just
19 launched about 48 hours ago and it is taking off.” Speer added that the EMAX
20 Tokens price has “tons of room to go” and that the EthereumMax leadership team
21 and insiders consisted of “lots of same hype and people behind it as Shiba.” Speer
22 further compared EMAX Tokens’ potential to the massive surge in price that
23 occurred with the Shiba Inu coin, claiming that the EMAX Token price was “only
24 going up long term.”⁵⁵

25 _____
26 ⁵³ EthereumMax (@ethereum_max). TWITTER (May 16, 2021, 10:41 AM),
https://twitter.com/ethereum_max/status/1393984963616419842.

27 ⁵⁴ Mike Speer, *How to buy EthereumMax*, YOUTUBE (May 16, 2021),
<https://www.youtube.com/watch?v=bi6ZeRzC-QQ>.

28 ⁵⁵ *Id.*

1 113. Throughout the video, Speer attempted to disclaim inside knowledge of
2 the EMAX Token by stating he was not a “crypto expert” in an effort to mislead retail
3 investors into believing that Speer simply stumbled onto the EMAX Token
4 accidentally instead of him being an EthereumMax founder and/or insider. For
5 example, Speer states that the EthereumMax website is “vague” and that “they” did
6 not yet have a whitepaper in a misleading attempt to distance himself from the
7 EthereumMax leadership team.

8 114. In the caption to Speer’s video, he explains the following 18 steps that
9 retail investors need to take to purchase the EMAX Tokens:⁵⁶

10 Step 1: Purchase your ETH on whatever exchange you use.

11 Step 2: Transfer to Coinbase Wallet.

12 Step 3: Go to <https://app.uniswap.org/#/swap>

13 Step 4: Click add token to transfer to from ETH. **Paste in this address:**
14 **0x15874d65e649880c2614e7a480cb7c9A55787FF6.**

15 Step 5: Think long and hard, can you risk this money and still pay your
16 bills? It’s a serious question. It’s ok if the answer is no. Please do not
17 proceed.

18 Step 6: **Can you leave this money in eMax for a couple of months?**
19 **If yes, proceed below. If the answer is no, the reason why you**
20 **shouldn’t buy is because you will be part of the reason for a price**
21 **drop if you sell. This coin is only a couple of days old as of May**
22 **16th. Holders help the price stabilize. Paper hands drive price**
23 **down**

24 Step 7: Click connect to wallet and click Coinbase

25 Step 8: Select ETH to eMax – Select the amount you want to transfer
26
27

28 ⁵⁶ *Id.*

1 Step 9: Click the gear in the top right, change slippage to 10%, close
2 gear

3 Step 10: Make sure you have extra ETH outside of the amount you are
4 using to purchase for the fees.

5 Step 11: Press swap + confirm / accept etc.

6 Step 12: There won't be any dollar value in your CB Wallet because
7 it's new

8 Step 13: Go to the App Store and download Zerion

9 Step 14: Go to your CB Wallet click receive and get your ETH address

10 Step 15: Go back to Zerion and click import wallet

11 Step 16: Paste your ETH address

12 Step 17: Wait a few minutes and it will populate the dollar amount.

13 Step 18: Enjoy and HODL

14 115. As the above instructions indicate, Speer's instructions to retail investors
15 state that EMAX Token holders should be prepared to "leave this money in eMax for
16 a couple of months," suggesting that the EMAX Tokens were a long-term investment
17 because "[h]olders help the price stabilize. Paper hands⁵⁷ drive price down."

18 116. The promotion from Davis and Speer kick-started the interest in and
19 buying of EMAX Tokens. In fact, Maher used the large spikes in price chart (actually
20 caused by the low liquidity pool funding) to promote EMAX Tokens' potential for
21 significant returns to investors (*see supra* 67-69).

22 117. Shortly after his promotion, Davis began selling off his EMAX Tokens,
23 causing the price of the tokens to plummet until Maher was able to reach a deal with
24 Davis to lock up some of the massive EMAX Token holdings.

25

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28 ⁵⁷ Having "paper hands" is a term used in cryptocurrency trading that refers to
someone that sells at the first sign of a price drop.

1 118. Upon information and belief, the following wallet addresses are
2 owned/controlled by Davis and were used to conceal his transactions (*i.e.*, timing of
3 sales) with EMAX Tokens:

- 4 • 0xe3FA73f404EA11C9Ce3DCA4B474cD99D6283134C
- 5 • 0xd0AEE2df438Ccea32194dACFf330083B04277D71
- 6 • 0x74dEc05E5b894b0EfEc69Cdf6316971802A2F9a1
- 7 • 0x663f4bf1816d771415fffa86aabc1ee273b92055
- 8 • 0xfEd37836fE065496c608E32073D0E759F96989b3
- 9 • 0xfb34b53aa6a5840ae740b9818db34b854818de85
- 10 • 0x9b1fbe51576d00d1f3a484d9c3c5c52a09866f78
- 11 • 0xacd3f3835a3dd7865560953eb745d5f8dba6ce33
- 12 • 0x037a7c7c8bAAbBd64aC735F505deF3423528dbA5
- 13 • 0x5e47AAE49eAA9D176E3c09b6bc0844BdfBBa27e0
- 14 • 0x027A16926de9f38523a71d19d6998923085Dc093
- 15 • 0xeB3E690C8ee0299B18Fa40B9B21F54c690b00a7b
- 16 • 0x05e45ebBFD62b5E448e0073ABFB4a956FE13f4d1
- 17 • 0xE7494f0D06142c70eF1382bb4F5629bA3B377FCd
- 18 • 0x35278BF7f391285818F9092c860D698010802f7D
- 19 • 0xbcac50256345775e4bbff526b247b3d68a0f10ca
- 20 • 0xe277f115a3758e802e40869545646f8142be00ca
- 21 • 0x0eb5101719662a00bf4c22e03374a7ffd11f4092
- 22 • 0x45f433ae7553900d7ae7af8a1b0d35c3eb7ece46
- 23 • 0xce3e48caeb5d0e9124b2b1dcab8b47818fcedc7
- 24 • 0x47bA7f557a361A12BB1b28DA1Fb3323dc7C942f4
- 25 • 0xd7292AA5924D4f536B9E996cB7FC4bE21b6c3357
- 26 • 0xDF6300635c490408C393c1DAdbE7Ba8e88cdBb8B
- 27 • 0xBa299a1FE0Da7B443Bf444FDCd0C2a5F2506D2B1
- 28

- 1 • 0x77Dc423692480979DFdC904278D3d0ec0474782d
- 2 • 0xfF773b585638D599C64d8ac02e73D12bd9807C30
- 3 • 0x97758D2C5533663042D72d5389Ef4Bb5c89EAe60
- 4 • 0xe3254c36fEedF4211D405718702a0389f5871c85
- 5 • 0x1C58CE90Fa5A610649Ab172000F41b909A9Efc83
- 6 • 0x761493a52595F7016493b4a7515180d504CdF28f
- 7 • 0x1711bc52bf7e0494325799717fe640F1924617B7
- 8 • 0x53061173fbf4CD5886b01d1c68DA266A9B479E1b
- 9 • 0x4e28ab721c1C3180A82B6a758C081f9Cc4CDd702
- 10 • 0x233834E733EFf003598e8B6eD1082C984a1E8D53
- 11 • 0x967f1dC29158486eBE771942e094C41B0AD7F57d
- 12 • 0x1C473aFE50E060AD872Fb1a209C6b2F257Bdbd5B
- 13 • 0x4a302Af80dc286714fE22db4855B5024317449eB
- 14 • 0x7fFA930D3F4774a0ba1d1fBB5b26000BBb90cA70
- 15 • 0x2930662Fa96cA799C9913264B83E227C7f828105
- 16 • 0xbe3167f8687d0f6b81a053f938ae335333eeb549
- 17 • 0x1e7a2e2bbea1362d49c06951f3265d9d6bc90386
- 18 • 0x64fba1c5e31d8f7ee0194f67ed9c5fed1a17b241
- 19 • 0xe477aE0b50f2985592BDc1e5aC91f59c93111955
- 20 • 0xacD3f3835A3dd7865560953eb745d5F8dbA6CE33
- 21 • 0x74dEc05E5b894b0EfEc69Cdf6316971802A2F9a1
- 22 • 0x69c97ceb87f0b121d92a3aa57bf7845d2dda4e3e

23 119. On May 19, 2021, the Executive Defendants posted a message to
24 investors on the EthereumMax Instagram account, with a caption that stated:
25 “Accepted at top global exchanges ✓ Roadmap and White Paper coming ✓ Hired
26 marketing agency ✓ Influencer campaign initiated ✓ Real-world applications . . .
27 ☹️ #disrupthistory \$eMax #TellYourGrandma.” The message itself stated:
28

1 To the eMax community,

2 As we quickly approach our first full week of being live, we as a
3 team could not be prouder to see the rapid growth and expansion of not
4 only the token itself, but the strong community that eMax has built.
5 We've just weathered one of the biggest crypto drops in history, better
6 than any other token. Consumers are now looking beyond products and
7 services. They want benefits, and \$eMax holders have seen the impact
8 of a 2% benefit. We've broken down barriers, soared past goals, and
9 have achieved more than expected from any other new crypto currency
10 out there.⁵⁸

11 120. On May 21, 2021, Speer uploaded another video to his YouTube
12 channel promoting EthereumMax generally and specifically providing investors with
13 instructions on how to purchase EMAX Tokens.⁵⁹ Again, Speer did not reveal to
14 investors that he was a part of the EthereumMax leadership team.

15 121. Two days later, on May 23, 2021, Speer uploaded an audio recording
16 from Perone to Speer's YouTube channel,⁶⁰ wherein Perone states that
17 EthereumMax's use of "high level" brand ambassadors and promoters "legitimized"
18 the project. Perone also touted the "technological upgrades" that were on the way for
19 the EthereumMax project. Perone repeatedly proclaimed that he will be meeting
20 retail investors "on the moon" when the price of EMAX Tokens rises after the
21 marketing campaign created by the Executive Defendants and executed by the
22 Promotor Defendants was successful.

23 122. According to Maher, the Executive Defendants were "wildly connected"
24 and understood the impact that celebrity promotion and marketing could have on the
25 price and trading volume of the EMAX Tokens. Upon information and belief, the
26 Executive Defendants leveraged their respective contacts to recruit additional
27 celebrities to promote the EMAX Tokens in exchange for a portion of the Float.

28 ⁵⁸ EthereumMax (@ethereummax), INSTAGRAM (May 19, 2021), <https://www.instagram.com/p/CPE3yvtsQNo/>.

⁵⁹ Mike Speer, *Buying Ethereum Max? Gas Fees? Buying The Dip? WTF*, YOUTUBE (May 21, 2021), <https://www.youtube.com/watch?v=3CZv0FFn7S8>.

⁶⁰ Mike Speer, *EthereumMax – MAYWEATHER v. PAUL – "Culture Coin" Announcement*, YOUTUBE (May 23, 2021), <https://www.youtube.com/watch?v=HMbWVXUWB5I>.

1 123. For example, early on Defendants Maher, Perone, and Davis worked
 2 with Rechnitz to recruit world champion boxer, Floyd Mayweather, Jr. as
 3 EthereumMax’s “marquee” promotor for a fee of \$1,000,000 as his “first down
 4 payment” and then \$1,500,000 as a second payment. Notably, “everything that was
 5 sent to Mayweather was in Ethereum and cashed out immediately.”⁶¹ According to
 6 Maher, Mayweather’s representatives refused payment in EMAX Tokens and instead
 7 received payment in Ethereum, which has significantly more price stability. In order
 8 to raise the Ethereum needed for Mayweather’s payment, Maher and Davis sought
 9 out large holders of Ethereum and offered them a “sweetheart” deal relative to the
 10 amount of Ethereum needed for celebrity promotion payments. For example, in
 11 exchange for providing \$500,000 worth of Ethereum, they would give the Ethereum
 12 provider \$2,000,000 of EMAX Tokens. As Maher observed, however, most often,
 13 the Ethereum provider would then immediately sell the \$2,000,000 in EMAX Tokens
 14 on the open market. This tremendous downward selling pressure caused the price of
 15 the EMAX Tokens to drop. Defendant Davis later clarified during his
 16 InRussWeTrust podcast on April 30, 2022, that Mayweather was not paid in
 17 Ethereum or cash, but rather he was actually paid in EMAX Tokens for promoting
 18 EthereumMax. Davis in particular stated that Mayweather “should have sold [his
 19 EMAX Token promotional fee] and that’s exactly what he did.” Davis claimed to
 20 have warned Perone and others that paying celebrity promoters in the EMAX Token
 21 would cause downward selling pressure.⁶²

22 124. On May 26, 2021, at the same time Pierce was promoting EMAX
 23 Tokens as paying him more than ESPN, EthereumMax issued a press release
 24

25 ⁶¹ NeverHedge – Crypto, NFTs, Sports Betting, Stocks, *Emax Talk with Justin*
 26 *Ep. 02: Hard Fork Rundown: Mayweather Fight Updates: Hodler (sic) Questions*
 27 *Answered*, YOUTUBE (May 26, 2021), [https://www.youtube.com/watch?](https://www.youtube.com/watch?app=desktop&v=bPT0Tnmt63A&feature=youtu.be&fbclid=IwAR2w8sHjsGnrXL6G9N8Nc0hWYajn2w3mmSOOTnoWZCnYyERZrSM_k9Q9En8)
 28 https://www.youtube.com/watch?app=desktop&v=bPT0Tnmt63A&feature=youtu.be&fbclid=IwAR2w8sHjsGnrXL6G9N8Nc0hWYajn2w3mmSOOTnoWZCnYyERZrSM_k9Q9En8

28 ⁶² Emax Holder, *RussPodcastsCompilation*, YOUTUBE (Nov. 11, 2022),
<https://www.youtube.com/watch?v=gwrmpNHHVfw>.

1 announcing that it was “now the exclusive CryptoCurrency accepted for online ticket
2 purchasing for the highly anticipated Floyd Mayweather vs. Logan Paul Pay-Per-
3 View event, June 6, 2021 in Miami Gardens, Florida.”⁶³ The press release directed
4 investors seeking “more information” to visit the Company’s social media accounts
5 and the “Fight Website” with the following hyperlink: [https://mayweatherpaultickets.
6 com/](https://mayweatherpaultickets.com/).

7 125. The Fight Website featured Mayweather and offered various incentives
8 for those purchasing online tickets with EMAX Tokens, including: “Orders over
9 \$5000 will receive authentic, signed Floyd Mayweather boxing gloves”; “2 front row
10 ringside tickets available exclusively for EthereumMax purchase”; “All
11 EthereumMax purchases receive 10% discount at checkout”; and “Tickets purchased
12 with EthereumMax automatically entered into a lottery drawing to attend the official
13 Mayweather after-party at a private table at LIV.”⁶⁴

14 126. On May 28, 2021, EthereumMax released a press release out of Los
15 Angeles entitled: “EthereumMax (\$eMax) Disrupts Miami Ahead of Mayweather vs.
16 Paul Fight as the First Crypto Currency of Major Nightclubs LIV and Story” (the
17 “5/28/21 Press Release”). The 5/28/21 Press Release stated: “The upcoming boxing
18 match is the single largest sporting event in history to accept cryptocurrency as
19 payment, making it a huge move for the practical use of \$eMax.” The 5/28/21 Press
20 Release touted the EMAX Token as the “fastest-growing Altcoin on the market,”
21 bragging that the EMAX Token price “is up over 21,000% with over 32,000 holders
22 since its launch on May 14, 2021.” The 5/28/21 Press Release further claimed that
23 the EMAX Token “has been gaining massive moment [sic] and popularity,” and
24 quoting Defendant Pierce’s tweet verbatim as an example of this popularity. Finally,
25

26 ⁶³ Press Release, PR NEWswire, *Huge Milestone for Practical Use of \$eMax*
27 (May 26, 2021), [https://www.prnewswire.com/news-releases/huge-milestone-for-
practical-use-of-emax-301300421.html](https://www.prnewswire.com/news-releases/huge-milestone-for-practical-use-of-emax-301300421.html).

28 ⁶⁴ Fight Website, <https://mayweatherpaultickets.com/>.

1 the 5/28/21 Press Release announced that the partnership with Groot Hospitality
2 would “bring eMAX and Cryptocurrency to Miami Nightlife & Entertainment. This
3 is the first of many opportunities where we see EthereumMax as a reliable payment
4 method for real-life usage.”⁶⁵

5 127. On or about May 29, 2021, Defendant Antonio Brown promoted
6 EthereumMax in the following now-deleted “story” post on his personal Instagram
7 account:



18 128. On May 30, 2021, Defendant Kimberly Kardashian and nightclub
19 promotor and hotelier David Grutman promoted EthereumMax on their respective
20 social media accounts. For example, Kardashian’s promotion of the EMAX Tokens
21 to her hundreds of millions of followers also did double duty of promoting the
22 nightclub “Club LIV” which is partly owned by Grutman (also a longtime friend and
23 associate of Kardashian):

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26 ⁶⁵ Press Release, PR NEWswire, *EthereumMax (\$eMax) Disrupts Miami Ahead*
27 *of Mayweather vs. Paul Fight as the First Crypto Currency of Major Nightclubs LIV*
28 *and Story* (May 28, 2021), <https://www.prnewswire.com/news-releases/ethereummax-emax-disrupts-miami-ahead-of-mayweather-vs-paul-fight-as-the-first-crypto-currency-of-major-nightclubs-liv-and-story-301301958.html>.

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129. Following the aforementioned promotions from Brown and Kardashian, and the announcement of the partnership with Mayweather, the trading volume for EMAX Tokens spiked. In particular, the volume went from \$25 million on May 27, 2021 to \$80.9 million on May 28 after the Mayweather announcement. Then it jumped to \$112.5 million following Brown’s post. Kardashian’s promotion generated another \$75.5 million in EMAX Token trading volume on May 30, 2021 before dropping precipitously.⁶⁶

130. On June 1, 2021, Mather left the EthereumMax project with about \$4.1 million worth of EMAX Tokens, of which he subsequently sold off approximately 98%. No later than July 22, 2021, Maher was confronted about his selling activities with EMAX Tokens. In particular, in the comments section of one of Davis’s Facebook posts, an investor posted a wallet address speculated to belong to Maher, which showed suspicious selling activity. Maher bragged about his ability to conceal

⁶⁶ See n.26, *supra*.

1 his financial movements and mocked the investor who tried to identify Maher’s
2 wallet address: “haha yeah unfortunately that’s not one of my secret wallets. Good
3 try though sleuth. *I cleaned all the money I shifted through exchanges first. You’d*
4 *never be able to track it to what wallets I sent it to.* Good try though.”⁶⁷

5 131. On June 3, 2021, the Executive Defendants posted the following
6 statement on the EthereumMax Instagram account,⁶⁸ which, upon information and
7 belief, was released in response to Defendant Maher’s selling activities:

8 eMax Community,

9 We are fully aware of the drastic price fluctuation that took place
10 with eMax on June 3rd, 2021 and wanted to address this matter with
11 the community head-on. First and foremost, we are here for the long
12 haul, we are committed to our community, committed to our growth
13 plans, and that is not changing. This is not a short-term project and
14 there is no single moment, dip, or increase that will derail
15 EthereumMax from fulfilling our vision and strategic efforts to create
16 a powerful movement and fill a void for a new/improved category that
17 is long overdue within the cryptocurrency space.

18 Last night we released our multi-phase roadmap with excitement
19 and passion, sharing our future plans to expand our community and
20 significantly enhance the benefits of the eMax token. Today, we had a
21 very upfront and honest conversation with David Grutman, and
22 unfortunately, due to time constraints and the technical complexity
23 behind being able to seamlessly process crypto payments, the venues
24 have determined they do not have the immediate ability to accept
25 \$eMax as a payment option this weekend. Therefore, we collectively
26 decided that it made sense for Groot Hospitality, EthereumMax, and
27 the eMax community, to not force the roll-out process of accepting
28 eMax for payment and run the risk of a bigger dilemma this week in
Miami, potentially making for an unpleasant user experience for eMax
holders. We want to stress that this decision did not result in
EthereumMax ending a business relationship with David Grutman or
the Groot Hospitality team, but rather we’re aligned about being smart
about future partnerships. We’re looking forward to continuing this
conversation and confident a collaboration is in our near future. It’s
true that in nightlife grand openings are everything, and with that truth,
we have one change to make a good first impression and that’s what
we’ll do.

26 ⁶⁷ See JusticeForCrypto, *InRussWeTrust Fully Exposed within the Crypto Space*,
27 YOUTUBE, at 7:17-24 (July 25, 2021), <https://www.youtube.com/watch?v=iyDeOfZnOaY>.

28 ⁶⁸ EthereumMax (@ethereummax), INSTAGRAM (June 3, 2021), <https://www.instagram.com/p/CPrUCO5szYi/?igshid=YzdkMWQ2MWU>.

1 As some people have noticed, of late, there are a handful of larger
2 wallets that have been selling and taking a profit. When that news from
3 David Grutman was released, several of these large wallets, who were
4 early investors and not part of the development team, began to sell in
5 panic. As with almost anything, people started to copy their actions and
6 the price of eMax continued to drop (about 60%). Since the time of this
7 release, eMax has recovered amazingly well and has continued to
8 regain value.

9 To be fully transparent with our community, we've almost been
10 living in our own world these past few weeks and going at Mach 5
11 speed. In just twenty days, eMax has taken over our lives and has been
12 such a huge part of so many others. As a community, we could not
13 have dreamed of this speed of growth. The truth is – eMax is still very
14 young and very small, but with these young beginnings, we have only
15 scratched the surface of our true potential. Even though we've been the
16 fastest growing cryptocurrency, with over 75,000 holders in less than 3
17 weeks, people speak about eMax as if the token has been around for
18 months or even years, and that in and of itself is exciting.

19 Right now, EthereumMax is ecstatic to be heading to Miami this
20 weekend to take part in the largest sporting event to ever accept
21 cryptocurrency as payment and they're exclusively accepting \$eMax
22 (the flow of that payment process is already finalized and active). In
23 just 3 weeks we've accomplished milestones that no other crypto has
24 every done, to this scale or at this speed – and we will continue to set
25 the bar higher for ourselves.

26 This is Chapter 1. Chapter 1 of a story, written in real-time, that
27 has us on a path to shatter records and bring cryptocurrency into walks
28 of life we have yet seen or even imagined.

75,000 holders know eMax today. On Sunday, June 6th, millions
and millions of people from across the world find out who eMax is.
Then, the next chapter begins and the story only continues to grow.

This journey has just begun and our future has never been
brighter.

132. The price of EMAX Tokens dropped sharply on the news that EMAX
Tokens would not be available for payment at Club LIV as promised. In response,
the Executive Defendants sent Maher and Davis out to do some damage control.
Maher posted the following message to the InRussWeTrust Facebook group: "Trust
me I know it's tough to watch your account plummet in a matter of minutes. Here's
my wallet. I was down to \$400k at one point today. I didn't sell a penny. In fact I
dumped \$25k at the bottom. You can't let one bad news piece trash your long term
goals." Maher counseled investors: "Put your emotions aside. So what, they don't

1 have Emax being used to LIV Bottle service. Who gives a fuck. Name a single crypto
2 that you can pay your bar tab with? The Emax team is trying to make radical moves.
3 If you can't stomach that then don't play the game. #EthereumMax.” Similarly,
4 Defendant Davis also attempted to ease investor concerns and solicit new purchases
5 on June 3, 2021. He posted the following message on the “InRussWeTrust”
6 Facebook group: “Well I'm sure everyone sees Emax plummeting. The reason
7 behind it is because the credit card processor did not know how to program to accept
8 a cryptocurrency on a credit card machine for Liv nightclub after party. This has
9 nothing to do with the coin. I think it is a rock bottom right now which is why I'm
10 posting. If anybody wants emax for 90% off. Now is the time!! This is a Solid
11 BUYING OPPORTUNITY in my mind!!”

12 133. On June 4, 2021, former world champion boxer, Mayweather, Jr.,
13 attended the “Bitcoin 2021” conference in Miami. While there, instead of discussing
14 the cryptocurrency that was the focus of the conference (*i.e.*, Bitcoin), Mayweather
15 promoted EthereumMax. In particular, Mayweather and his entourage wore t-shirts
16 with EthereumMax emblazoned across the chest. The following are images of
17 Mayweather being interviewed by Fox Business at the Bitcoin 2021 event, which
18 described it as the “largest cryptocurrencies event ever to be held on the planet”:⁶⁹

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28 ⁶⁹ *Floyd Mayweather raves about crypto: 'It's the new wave,' FOX BUSINESS* (June 4, 2021), <https://video.foxbusiness.com/v/6257455680001#sp=show-clips>.

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134. The same day, Defendant Maher posted this interview on the EthereumMax Facebook page and Instagram social media accounts.⁷⁰ Maher also posted this interview on the InRussWeTrust Facebook group. In the introduction to the video, the reporter observed that the attendees at the Bitcoin 2021 event “were attracted here because of a lot of prime-time stars and that does include Floyd Mayweather.” During the interview itself, Mayweather, with the EthereumMax name and logo prominently displayed on the front of his shirt, stated that cryptocurrency investing is “the new wave.” Mayweather then described how he first made his money through boxing and then with real estate. After recounting his previous success at making money, Mayweather reemphasized that investing in cryptocurrency was the next big thing.

1 135. Mayweather later proclaimed during a panel discussion at the Bitcoin
2 2021 event: “I believe there’s gonna be another cryptocurrency just as large as
3 Bitcoin some day.”⁷¹

4 136. Later in the day, the EthereumMax Instagram account posted a video
5 promoting a shopping event at a jewelry store in Miami. The caption stated in
6 relevant part: “#Ethereummax will be accepted for the premier event 50 Karats by
7 @floydmayweather.”⁷²

8 137. The combination of Mayweather’s statements on investing and
9 promotion of EthereumMax falsely gave investors the impression that Mayweather
10 was more than a celebrity endorser but rather that he was an actual backer/investor in
11 EMAX Tokens, and that he was making this particular cryptocurrency a part of his
12 multimillion dollar investment strategy.

13 138. Two days later, on June 6, 2021, Mayweather similarly promoted
14 EthereumMax during his highly viewed exhibition boxing match with internet
15 celebrity-turned-boxer, Logan Paul.⁷³ For example, during the highly-publicized
16 weigh-in before the fight, Mayweather again wore a shirt with EthereumMax and its
17 logo on the front:

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20 ⁷⁰ EthereumMax, *Cryptocurrency week is here in Miami and Floyd Mayweather*
21 *shared his thoughts on crypto with FOXBusiness*, FACEBOOK (June 4, 2021),
22 <https://www.facebook.com/EthereumMax/videos/173981531399668/>;
23 EthereumMax (@ethereummax), INSTAGRAM (June 4, 2021), <https://www.instagram.com/p/CPt34eUA7d9/?igshid=YzdkMWQ2MWU>; *see also* Ethereum
Max (@ethereummax), INSTAGRAM (June 4, 2021), <https://www.instagram.com/p/CPtEZ8MeFV/?igshid=YzdkMWQ2MWU>.

24 ⁷¹ Jeff Benson, *Floyd Mayweather, Sponsored by Ethereum Token, Gets Boomed*
25 *at Bitcoin Conference*, DECRYPT (June 4, 2021), [https://decrypt.co/72807/floyd-](https://decrypt.co/72807/floyd-mayweather-sponsored-ethereum-token-gets-boomed-bitcoin-conference)
mayweather-sponsored-ethereum-token-gets-boomed-bitcoin-conference.

26 ⁷² EthereumMax (@ethereummax), INSTAGRAM (June 4, 2021), https://www.instagram.com/p/CPsiR_PAZXr/?igshid=YzdkMWQ2MWU.

27 ⁷³ Brendan Rearick, *EthereumMax (EMAX) Price Predictions: Can Floyd*
28 *Mayweather Help EMAX Win the Fight?* MSN (June 7, 2021), [https://www.msn.com/en-us/money/markets/ethereummax-emax-price-predictions-can-floyd-](https://www.msn.com/en-us/money/markets/ethereummax-emax-price-predictions-can-floyd-mayweather-help-emax-win-the-fight/ar-AAKNxNi)
mayweather-help-emax-win-the-fight/ar-AAKNxNi.

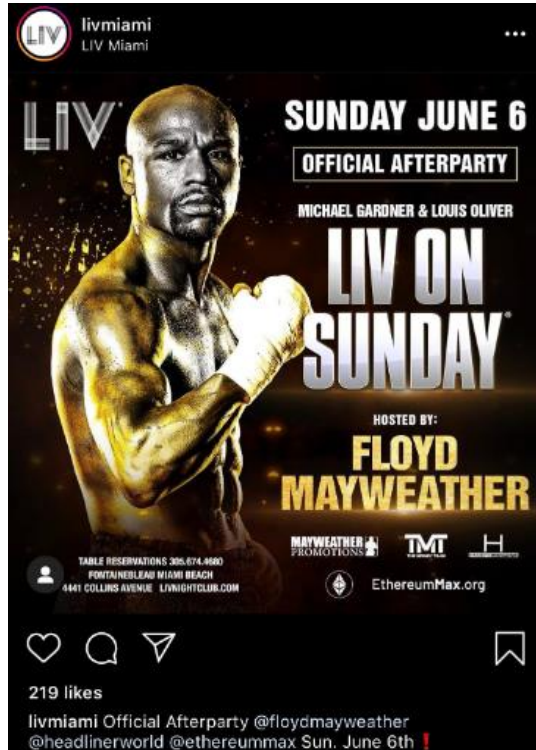
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139. During the fight itself, Mayweather’s trunks adorned the EthereumMax brand on the front waist of his boxing trunks:



1 140. Mayweather also promoted EthereumMax in connection with the
2 “Official Afterparty” for his fight held at Club LIV. The following is a promotion
3 from Club LIV, which tags the EthereumMax Instagram page and features the
4 EthereumMax logo and website:



17 141. That same day, Defendant Davis posted the following picture in the
18 InRussWeTrust group on Facebook of himself and Mayweather together in Las
19 Vegas earlier in the day, announcing a “long term deal” between Emax,
20 Mayweather, and Davis’ InRussWeTrust cryptocurrency consulting business.⁷⁴

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27 ⁷⁴ John Hyatt, *The Untold Story Behind Emax, The Cryptocurrency Kim*
28 *Kardashian Got Busted For Hyping*, FORBES (Nov. 11, 2022), <https://www.forbes.com/sites/johnhyatt/2022/11/11/the-untold-story-behind-emax-the-cryptocurrency-kim-kardashian-got-busted-for-hyping/?sh=18c82ea940d7>.

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 **Russ Davis**
Admin · 6 June 2021 · 🌐
Emax & Mayweather & InRussWeTrustCrypto may or may not have just struck a longterm deal..... ok Yeah we Fucking Did. #inked #Shipt #floydmoneymayweather #emax #inrussetrust



142. Between June 4, 2021 and June 6, 2021, the trading volume for EMAX Tokens spiked from \$15.7 million to \$24.5 million.⁷⁵

143. On June 8, 2021, Executive Defendant Perone, along with Steve Gentile and Josh James (the lead developer at EthereumMax), uploaded a video of themselves on Executive Defendant Speer’s YouTube channel entitled: “Addressing the \$eMax Community – EthereumMax.”⁷⁶ Gentile and Perone identified themselves as the

⁷⁵ See n.38, *supra*.

⁷⁶ Mike Speer, *Addressing the \$eMax Community – EthereumMax*, YOUTUBE (June 7, 2021), <https://www.youtube.com/watch?v=CkR8QJrNubI>.

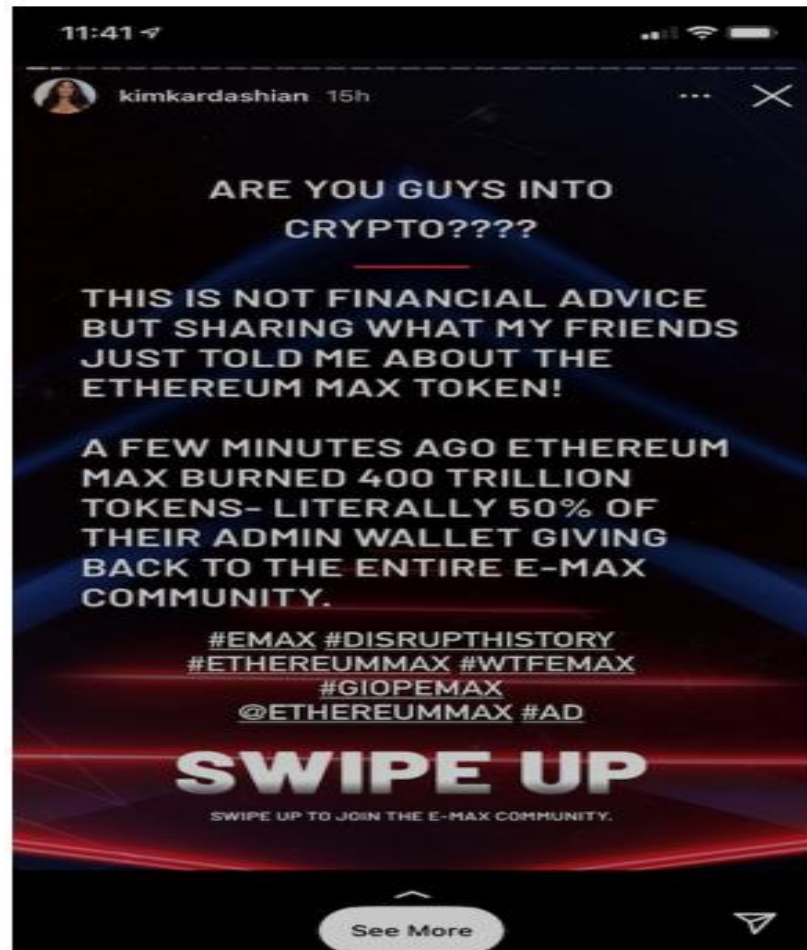
1 “creators” of EthereumMax, and explained that Mr. James had recently joined
2 EthereumMax as its new lead developer.

3 144. Perone described his prior experience in “the hedge fund space” and had
4 “significant experience structuring nuanced securitizations and financing
5 arrangements,” and he touted EthereumMax as something “special” with “real
6 sustainability.” Perone also stated that they were able to forge a “landmark agreement
7 with the Mayweather team” and reassured investors regarding the “volatility” in the
8 EMAX Token price. Gentile further stated that EthereumMax’s work with
9 “launching ambassadorships and working with influencers” was not solely in
10 preparation for the Mayweather fight, but rather “the launch point” with “great
11 prospects moving forward.”

12 145. Gentile also noted that his background involved specialties revolving
13 around marketing and brand development and he exclaimed that EthereumMax was
14 a “super exciting project” and that he was “excited for the updates” that would be
15 “rolling out in the near future.” Gentile claimed that it was “going to be beneficial
16 not only to the token, but more importantly the community.”

17 146. During a pseudo question and answer portion of the video, Gentile
18 brought up investors’ questions about a “rug pull” of the EMAX Token and asked
19 Perone to “nip it in the bud.” Perone stressed that the EthereumMax team was in for
20 the long term, stating, among other things, that the Executive Defendants were
21 “looking to lock the wallets” to show investors that they “were here to stay.”
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1 147. On June 14, 2021, Kardashian posted the following solicitation for
2 EthereumMax on her Instagram account, which has over 250 million followers:



19 148. As noted in a scathing op-ed piece called “Celebrity Crypto Shilling Is
20 a Moral Disaster,” Kardashian’s “post was an immediate sensation, and a touch
21 controversial.” The EMAX Token was “only a month old, few had heard of it, and
22 it wasn’t even obvious how the ‘token’ was supposed to work. More than that,
23 Kardashian was urging her 251 million Instagram followers to get involved in a
24 highly volatile, speculative market that’s little different than gambling in the world’s
25 most fraudulent casino.”⁷⁷

26
27 ⁷⁷ Ben McKenzie & Jacob Silverman, *Celebrity Crypto Shilling Is a Moral*
28 *Disaster*, SLATE (Oct. 7, 2021), <https://slate.com/technology/2021/10/ben-mckenzie-crypto-celebrities-kardashian-brady-lohan.html>.

1 149. Kardashian’s promotion had tremendous reach. The financial services
 2 company, Morning Consult, analyzed “the impact of celebrities on crypto investor
 3 decisions,” and, in particular, the impact of Kardashian’s EthereumMax post. The
 4 survey found that up to 21% of all American adults and nearly half of all
 5 cryptocurrency owners had seen this ad for a risky financial instrument. Furthermore,
 6 Kardashian’s “conversion was also impressive: *A striking 19% of respondents who*
 7 *said they heard about the post invested in EthereumMax as a result.*”⁷⁸

8 150. The chair of the Financial Conduct Authority (“FCA”) in the United
 9 Kingdom, Charles Randell, in a September 6, 2021 speech given to the Cambridge
 10 International Symposium on Economic Crime, remarked that Kardashian’s
 11 EthereumMax post was “the financial promotion with the single biggest audience
 12 reach in history.”⁷⁹

13 151. Notably, Kardashian’s post did include a promotional disclosure in the
 14 post itself. However, this disclosure is tucked in the far bottom right of the post and
 15 is just three characters long: “#AD.” The promotion was false and misleading in that
 16 Kardashian was purportedly just “sharing what my friends just told me about the
 17 Ethereum Max Token!” Moreover, by stating that “Ethereum Max Burned 400
 18 trillion tokens – Literally 50% of their Admin Wallet” the promotion created a false
 19 impression that the EMAX Tokens were scarce. Because two quadrillion tokens had
 20 been originally created, the burning of 400 trillion tokens did not meaningfully
 21 impact the availability of EMAX Tokens.

22 152. According to the SEC Order, “EthereumMax, through an intermediary,
 23 paid Kardashian \$250,000 for this promotion.” Upon information and belief, this
 24

25 ⁷⁸ Charlotte Principato, *Kim Kardashian, Cryptocurrency and Celebrity Clout*,
 26 MORNING CONSULT (Sept. 21, 2021), <https://morningconsult.com/2021/09/21/kim-kardashian-crypto-celebrity/> (Emphasis added).

27 ⁷⁹ Charles Randell, Chair, Fin. Conduct Auth., *The risks of token regulation*,
 28 Speech at Cambridge International Symposium on Economic Crime (Sept. 6, 2021)
<https://www.fca.org.uk/news/speeches/risks-token-regulation>.

1 intermediary was Defendant Rechnitz. Kardashian and Rechnitz have a long history
2 together.

3 153. Upon information and belief, Kardashian received a similar payment
4 from Rechnitz and Perone for her May 30, 2021 promotion.

5 154. Kardashian also has experience and familiarity with making misleading
6 claims in similar promotional endorsements on her Instagram and Twitter accounts.
7 For example, in 2015, the United States Food and Drug Administration ordered
8 Kardashian to remove a promotional post she had made with a strikingly similar
9 beginning to the EthereumMax Post at issue in this action⁸⁰:



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17 155. Pierce, Brown, and Davis did not include any promotional disclosures
18 when they promoted EthereumMax throughout May and June of 2021.

19 156. It does not appear that Mayweather has disclosed any payments either
20 for his promotion of EthereumMax on June 4 and 6, 2021. Mayweather does have
21 experience with being fined previously over improper cryptocurrency promotion,⁸¹
22 and, as a result, he knew that his conduct alleged herein was improper.
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25 ⁸⁰ Mark Sweney, *Kim Kardashian forced to delete selfie endorsing morning*
26 *sickness drug*, THE GUARDIAN (Aug. 12, 2015), <https://www.theguardian.com/media/2015/aug/12/kim-kardashian-selfie-morning-sickness-drug-instagram>.

27 ⁸¹ Press Release, U.S. SEC. & EXCH. COMM'N, *Two Celebrities Charged with*
28 *Unlawfully Touting Coin Offerings* (Nov. 29, 2018), <https://www.sec.gov/news/press-release/2018-268>.

1 157. In November 2018, Mayweather and another celebrity promotor settled
 2 charges with the United States Securities and Exchange Commission (“SEC”) for
 3 failing to disclose payments they received for promoting fraudulent cryptocurrency
 4 investments. One of the posts at issue there was one that Mayweather made on
 5 Twitter, stating: “You can call me Floyd Crypto Mayweather from now on” and a
 6 promotion with the message to his Twitter followers that a company’s fraudulent
 7 initial coin offering “starts in a few hours. Get yours before they sell out, I got mine.”
 8 As part of the settlement, Mayweather agreed to pay “\$300,000 in disgorgement, a
 9 \$300,000 penalty, and \$14,775 in prejudgment interest.” In addition, Mayweather
 10 agreed not to promote any securities – digital or otherwise – for three years.⁸² The
 11 settlement was dated November 29, 2018, meaning that this agreement was blatantly
 12 violated in connection with Mayweather’s EthereumMax promotion. Mayweather,
 13 therefore, had an understanding that his own conduct, as well as the conduct of the
 14 Executive Defendants, was improper and fraudulent.

15 158. Maher has experience with financial regulations from his position as a
 16 financial advisor at Northwestern Mutual Investment Services, LLC from 2011 to
 17 October 13, 2021. Maher knew that his conduct alleged herein was improper.
 18 Notably, Maher was “permitted to resign” from his financial advisor position in 2021
 19 “while under internal review for allegations that [Maher] was involved in a
 20 cryptocurrency shilling scam.”⁸³

21 159. Similarly, when discussing the Promoter Defendants’ EMAX Token
 22 promotions, Davis acknowledged that “when you are a celebrity and you don’t know
 23 the law and say . . . invest in this . . . that’s financial advice. You can’t say that.”⁸⁴

24 _____
 25 ⁸² *Id.*

26 ⁸³ *Investment Adviser Public Disclosure: Justin Thomas Maher*, U.S. SEC. &
 EXCH. COMM’N, <https://adviserinfo.sec.gov/individual/summary/5504995> (last
 visited Dec. 19, 2022).

27 ⁸⁴ NeverHedge – Crypto, NFTs, Sports Betting, Stocks, Emax Talk with Justin
 28 Ep. 02: Hard Fork Rundown: Mayweather Fight Updates: Hodler (sic) Questions

1 **The Dump – EMAX Token Price Plummetts**

2 160. Following the EMAX Tokens’ launch and Defendants’ promotional
3 activities in May 2021, the trading volume and price of EthereumMax surged. By
4 May 30, EMAX already had a transaction volume of over \$100 million, up 632% in
5 just two weeks. The day before, it reached its maximum price of \$0.000000863,
6 which represents a rise of 1,370% more than its initial price of \$0.0000005875.⁸⁵

7 161. However, this meteoric rise did not last long, and EthereumMax began
8 to deflate immediately after Kardashian’s post. On July 15, 2021, the price of the
9 EMAX Token hit its all-time low: \$0.000000017 per unit, a 98% drop from which it
10 has not been able to recover. Investors were left holding worthless tokens, with the
11 cost in transaction fees and gas fees to swap back into Ether far exceeding what
12 investors would actually receive in Ether. On August 1, 2021, its transaction volume
13 plummeted to \$157,423, which is less than a hundredth of its initial capital. On April
14 1, 2022, transaction volume was less than \$13,000.⁸⁶

15 162. The Promoter Defendants’ improper promotional activities generated
16 the trading volume needed for all the Defendants to offload their EMAX Tokens onto
17 unsuspecting investors. While Plaintiffs and Class members were buying the
18 inappropriately-promoted EMAX Tokens, Defendants were able to, and did, sell their
19 EMAX Tokens during the Relevant Period for substantial profits. According to
20 Perone, the Executive Defendants did not “lock” their EMAX Token wallet addresses
21 until after the Relevant Period.

22 163. The EMAX Token price still has not recovered and trading volume
23 remains down significantly. As bluntly noted in actor Benjamin McKenzie’s op-ed:
24

25 Answered, YOUTUBE (May 26, 2021),
26 https://www.youtube.com/watch?app=desktop&v=bPT0Tnmt63A&feature=youtu.be&fbclid=IwAR2w8sHjsGnrXL6G9N8Nc0hWYajjn2w3mmSOOTnoWZCnYyERZrSM_k9Q9En8.

27 ⁸⁵ See n.38, *supra*.

28 ⁸⁶ *Id.*

1 “If you bought EthereumMax after Kardashian pushed it and didn’t sell fast enough,
2 all you were left with was a practically worthless digital asset.”⁸⁷

3 164. In the wake of the dramatic decline in the EMAX Token price, the cabal
4 became fractured with some of the Defendants even pointing fingers at one another.
5 For example, the relationship between Davis and Brown on one side and Mayweather
6 and Rechnitz on the other was soured after an incident between Rechnitz and Brown.
7 Upon information and belief, Brown was displeased with Rechnitz after the two of
8 them arranged a deal to flip four expensive watches for a quick profit, but Rechnitz
9 ended up providing counterfeits instead of the real watches (*see supra* 56). In an
10 effort to gain leverage over Brown and prevent him from exposing Rechnitz’s fraud,
11 Rechnitz filmed Brown exposing himself to another guest while they were all
12 partying at a hotel pool in Dubai during a trip for Mayweather’s exhibition boxing
13 match against Don Moore.⁸⁸

14 165. Upon information and belief, Rechnitz threatened to release the footage
15 unless Brown agreed not to reveal Rechnitz’s misconduct. Ultimately, both Brown
16 and Rechnitz exposed each other. Rechnitz released the video, which shows “Brown
17 jumping up and down and breaking the water plane with his naked rear end close to
18 the face of a woman in the Armani Hotel Dubai swimming pool.”⁸⁹

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⁸⁷ See n.77, *supra*.

25 ⁸⁸ Rhett Butler, *Antonio Brown Fractures Relationship with Floyd Mayweather,*
26 *Alleging He Was Involved in Leaking the Dubai Pool Incident*, THE SHADOW LEAGUE
27 (Oct. 9, 2022), <https://theshadowleague.com/antonio-brown-fractures-relationship-with-floyd-mayweather-alleging-he-was-involved-in-leaking-the-dubai-pool-incident/>.

28 ⁸⁹ *Id.*

1 166. On October 1, 2022, Defendant Brown made the following statement on
2 his Twitter account about Defendants Rechnitz and Mayweather:⁹⁰



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9 167. In a now-deleted post from October 9, 2022 on his official Twitter
10 account, Brown further declared: “Defamation of Character Jona Rechnitz recorded
11 sold falsified this video in something disgusting per source Floyd Mayweather
12 business partner.”

13 168. On October 10, 2022, the SEC issued an Order Instituting Cease-and-
14 Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making
15 Findings, and Imposing a Cease-and-Desist Order (“the SEC Order”) against
16 Defendant Kardashian in relation to her June 13, 2021 promotion of EMAX Tokens.
17 The SEC Order contained several factual findings that, while not binding outside of
18 SEC’s proceeding against Kardashian, still formed the basis of the SEC Order and
19 the related settlement and tracked closely to the misconduct alleged herein.

20 169. The SEC Order stated the following:

- 21
- 22 • Kardashian did not disclose that she had been paid by EthereumMax or the amount of compensation she received from EthereumMax for making [the June 13, 2021] post.
 - 23 • Kardashian’s crypto asset security promotion occurred after the Commission warned in its July 25, 2017, DAO Report of Investigation that digital tokens or coins offered and sold may be securities, and those who offer and sell securities in the United States must comply with the federal securities laws. The promotion also occurred nearly four years after the Commission’s Division of Enforcement and Office of Compliance Inspections and Examinations issued a statement
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28 ⁹⁰ AB (Antonio Brown) (@AB84), TWITTER (Oct. 1, 2022, 6:54 AM), <https://twitter.com/AB84/status/1576208814227193857>.

1 reminding market participants that any celebrity or other
 2 individual who promotes a virtual token or coin that is a security
 3 must disclose the nature, scope, and amount of compensation
 4 received in exchange for the promotion. A failure to disclose this
 5 information is a violation of the anti-touting provisions of the
 6 federal securities laws.

- Kardashian violated Section 17(b) of the Securities Act by touting the EMAX token sale on her social media account without disclosing that she received compensation from the issuer for doing so, and the amount of the consideration.⁹¹

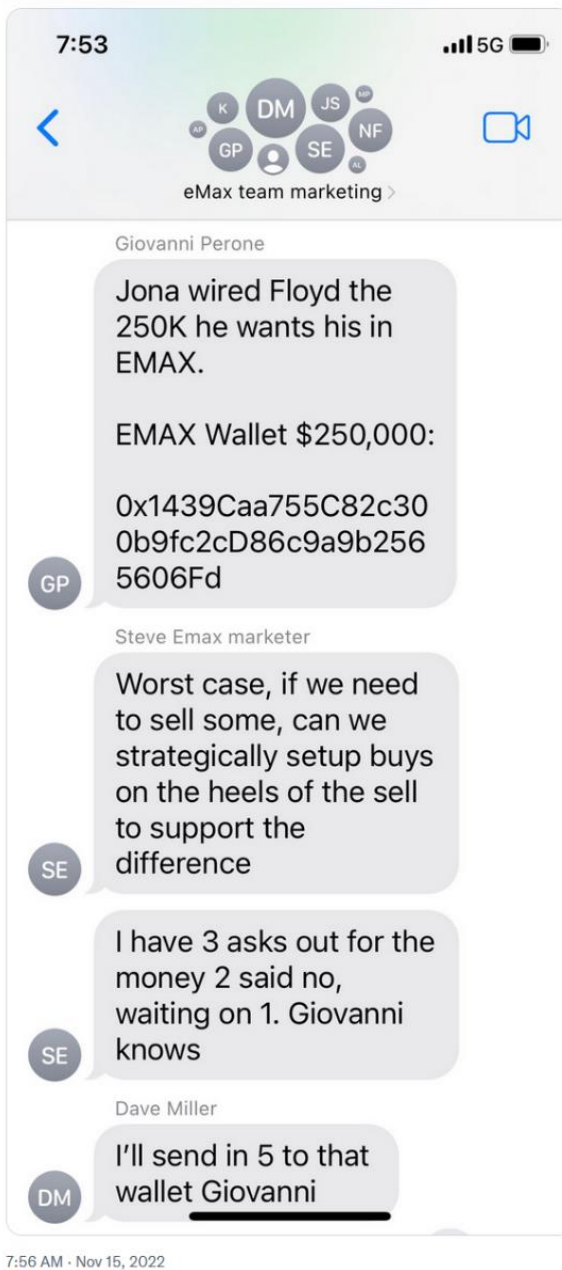
7 170. Pursuant to the SEC Order and related settlement, Kardashian was
 8 ordered to pay disgorgement of \$250,000, prejudgment interest of \$10,415.35, and a
 9 civil money penalty in the amount of \$1,000,000 to the SEC. The SEC Order also
 10 barred Kardashian from receiving any payments or compensation for promoting any
 11 digital assets for three years. Kardashian was also ordered to cease and desist from
 12 committing or causing any violations and any future violations of Section 17(b) of
 13 the Securities Act.

14 171. On November 15, 2022, Maher made several statements in response to
 15 the October 3, 2022 announcement from SEC Chairman Gensler regarding the SEC's
 16 investigation into Kardashian's promotional activities with the EMAX Tokens. In
 17 particular, Maher stated: "I mean I wish Gio had been paying me like he did with
 18 everyone else. Then I'd at least have made these millions they claimed I did."⁹²
 19 Maher then gave "one freebie" to investigators, saying that "Blockchain doesn't lie
 20 right? Have fun going down the rabbit hole with this one... #JonaRechnitz." Maher
 21 attached the following screenshot of a text conversation between the "eMax team
 22 marketing," which included Steve Gentile, and Defendants Perone and Speer, which
 23 confirmed that Rechnitz negotiated and facilitating the payments to Mayweather for
 24 promoting EMAX Tokens.

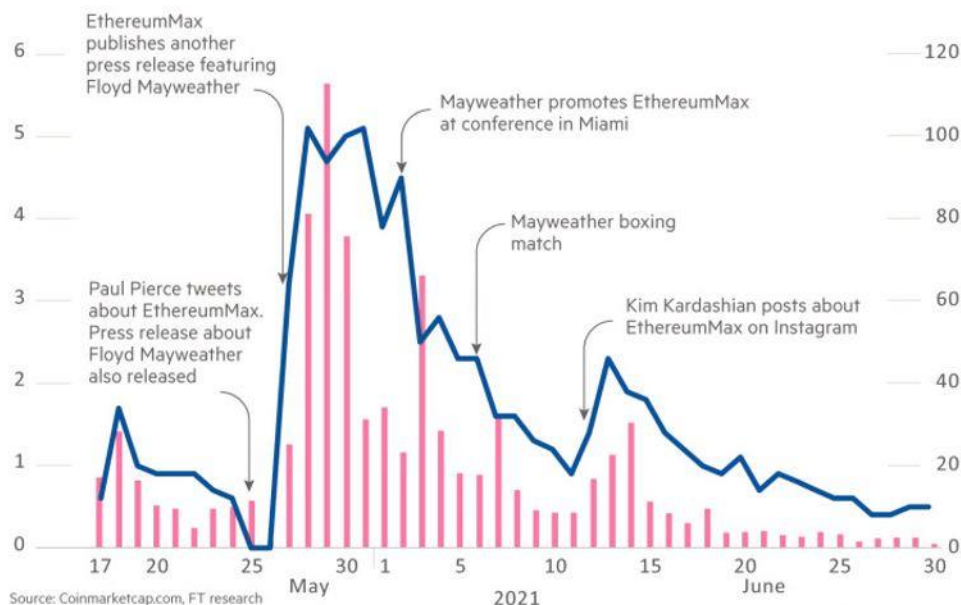
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 27 ⁹¹ SEC Order, ¶¶10-12.

28 ⁹² Justin Maher (@TrustInJustin83), Twitter (Nov. 22, 2022),
<https://twitter.com/TrustInJustin83/status/1592501917804302337/photo/1>.

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1 172. The following chart from *The Financial Times*⁹³ shows the rise and fall
 2 of the EMAX Tokens’ price in conjunction with the Promoter Defendants’
 3 promotional activities:



14 **Regulators Raise Concerns that EthereumMax Is a “Pump and Dump”**
 15 **Scam**

16 173. Following the precipitous drop of the EMAX Token price in the wake
 17 of Kardashian’s EthereumMax post, the United Kingdom’s FCA chair issued a
 18 statement noting that Kardashian’s promotion of the EMAX Token could be
 19 “fraudulent.” Specifically, Charles Randell, director of the FCA, gave a speech about
 20 the need for a “permanent and consistent solution to the problem of online fraud from
 21 paid-for advertising.”⁹⁴

22 174. Cryptocurrency “scams” were one of the topics that Randell specifically
 23 addressed, and during that portion of the speech, Randell specifically took issue with
 24 Kardashian’s EthereumMax post. Randell noted that “social media influencers [like
 25

26 ⁹³ Joshua Oliver & Madison Darbyshire, *Kim Kardashian, Floyd Mayweather*
 27 *and a crypto token’s wild ride*, THE FIN. TIMES (Jan. 14, 2022), <https://www.ft.com/content/a6dd4d6f-6a86-48cc-992c-f8a32c64fdd7>.

28 ⁹⁴ See n.79, *supra*.

1 the Promoter Defendants] are routinely paid by scammers to help them pump and
2 dump new tokens on the back of pure speculation.”⁹⁵

3 175. Randell further observed that the hype around speculative digital assets
4 like the EMAX Token “generates a powerful fear of missing out from some
5 consumers who may have little understanding of their risks. There is no shortage of
6 stories of people who have lost savings by being lured into the crypto bubble with
7 delusions of quick riches, sometimes after listening to their favourite influencers,
8 ready to betray their fans’ trust for a fee.”⁹⁶

9 176. This is precisely what occurred with the Executive Defendants’ stated
10 marketing strategy to use celebrities like the Promoter Defendants to “instill trust”
11 from investors in EthereumMax in exchange for fees and/or EMAX Tokens – that
12 the Promoter Defendants could sell for profits.

13 **CLASS ALLEGATIONS**

14 177. Plaintiffs bring this action, individually, and on behalf of a nationwide
15 class, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3),
16 defined as follows:

17 All persons who, during the Class Period, purchased EthereumMax’s
18 EMAX Tokens and were subsequently damaged thereby.

19 178. The Class Period is defined as the period between May 14, 2021 and
20 June 27, 2021.⁹⁷

21 179. Excluded from the Class are: (a) Defendants; (b) Defendants’ affiliates,
22 agents, employees, officers and directors; (c) Plaintiffs’ counsel and Defendants’
23 counsel; and (d) the judge assigned to this matter, the judge’s staff, and any member
24 of the judge’s immediate family. Plaintiffs reserve the right to modify, change, or
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26 ⁹⁵ *Id.*

27 ⁹⁶ *Id.*

28 ⁹⁷ Plaintiffs reserve the right to expand or amend the Class Period based on
discovery produced in this matter.

1 expand the various class definitions set forth above based on discovery and further
2 investigation.

3 180. **Numerosity**: Upon information and belief, the Class is so numerous that
4 joinder of all members is impracticable. While the exact number and identity of
5 individual members of the Class is unknown currently, such information being in the
6 sole possession of EthereumMax and/or third parties and obtainable by Plaintiffs only
7 through the discovery process, Plaintiffs believe, and on that basis allege, that the
8 Class consists of at least hundreds of people. The number of Class members can be
9 determined based on EthereumMax's and other third parties' records.

10 181. **Commonality**: Common questions of law and fact exist as to all
11 members of each Class. These questions predominate over questions affecting
12 individual Class members. These common legal and factual questions include, but
13 are not limited to:

14 a. whether Defendants improperly and misleadingly marketed EMAX
15 Tokens;

16 b. whether Defendants' conduct violates the state consumer protection
17 statutes asserted herein;

18 c. whether Promoter Defendants aided and abetted violations of the state
19 consumer protection statutes asserted herein;

20 d. whether Executive Defendants conspired to artificially inflate the price
21 of the EMAX Tokens and then sell their EMAX Tokens to unsuspecting investors;

22 e. whether Defendants have been unjustly and wrongfully enriched as a
23 result of their conduct;

24 f. whether the proceeds that the Defendants obtained as a result of the sale
25 of EMAX Tokens rightfully belongs to Plaintiffs and Class members;

26 g. whether Defendants should be required to return money they received
27 as a result of the sale of EMAX Tokens to Plaintiffs and Class members;

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1 h. whether Executive Defendants breached the implied covenant of good
2 faith and fair dealing; and

3 i. whether Plaintiffs and Class members have suffered damages, and, if so,
4 the nature and extent of those damages.

5 182. **Typicality**: Plaintiffs have the same interest in this matter as all Class
6 members, and Plaintiffs' claims arise out of the same set of facts and conduct as the
7 claims of all Class members. Plaintiffs' and Class members' claims all arise out of
8 EthereumMax's uniform misrepresentations, omissions, and unlawful, unfair, and
9 deceptive acts and practices related to the sale of EMAX Tokens.

10 183. **Adequacy**: Plaintiffs have no interests that conflicts with the interests
11 of the Class and are committed to pursuing this action vigorously. Plaintiffs have
12 retained counsel competent and experienced in complex consumer class action
13 litigation. Accordingly, Plaintiffs and their counsel will fairly and adequately protect
14 the interests of the Class.

15 184. **Superiority**: A class action is superior to all other available means of
16 fair and efficient adjudication of the claims of Plaintiffs and members of the Class.
17 The injury suffered by each individual Class member is relatively small compared to
18 the burden and expense of individual prosecution of the complex and extensive
19 litigation necessitated by EthereumMax's conduct. It would be virtually impossible
20 for individual Class members to effectively redress the wrongs done to them. Even
21 if Class members could afford individualized litigation, the court system could not.
22 Individualized litigation would increase delay and expense to all parties and to the
23 court system because of the complex legal and factual issues of this case.
24 Individualized rulings and judgments could result in inconsistent relief for similarly
25 situated individuals. By contrast, the class action device presents far fewer
26 management difficulties, and provides the benefits of single adjudication, economy
27 of scale, and comprehensive supervision by a single court.

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1 185. Defendants have acted or refused to act on grounds generally applicable
2 to the Class, thereby making appropriate final injunctive relief and corresponding
3 declaratory relief with respect to the Class as a whole.

4 **FIRST CAUSE OF ACTION**

5 **Violation of the California Unfair Competition Law**
6 **Cal. Bus. & Prof. Code §17200**
7 **(Based on Unlawful Acts and Practices)**
8 **(Against all Defendants)**

9 186. Plaintiffs restate and reallege all preceding allegations in paragraphs 1
10 to 185 above as if fully set forth herein, and further allege the following:

11 187. Plaintiffs Semerjian, Buckley, and Shah are residents of the State of
12 California.

13 188. Plaintiffs Semerjian, Buckley, and Shah paid for or purchased EMAX
14 Tokens in California and thus the deceptive transactions alleged herein occurred in
15 California.

16 189. At all relevant times there was in full force and effect the California
17 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, *et seq.*, which
18 prohibits, *inter alia*, “any unlawful, unfair, or fraudulent business act or practice” and
19 “unfair, deceptive, untrue, or misleading advertising.”

20 190. “[A]n act can be alleged to violate any or all three of the three prongs
21 of the UCL — unlawful, unfair, or fraudulent.” *Stearns v. Select Comfort Retail*
22 *Corp.*, 763 F. Supp. 2d 1128, 1149 (N.D. Cal. 2010) (quoting *Berryman v. Merit*
23 *Prop. Mgmt., Inc.*, 152 Cal. App. 4th 1544, 1554 (2007)).

24 191. The “unlawful” prong of the UCL prohibits “anything that can properly
25 be called a business practice and that at the same time is forbidden by law.” *Cel-*
26 *Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). By
27 proscribing “any unlawful” business practice, the UCL permits injured consumers to
28 “borrow” violations of other laws and treat them as unlawful competition that is

1 independently actionable. In other words, an “unlawful” business practice under the
2 UCL is a practice that violates any other law.

3 192. Any violation of the California false advertising laws (*e.g.*, Cal. Bus. &
4 Prof. Code §17500) necessarily violates the “unlawful” prong of the UCL. Likewise,
5 any violations of other state consumer protection laws, such as New York G.B.L.
6 §349(a); NJSA §§56:81-156; and Fla. Stat. Ann Ch. 501, §211(1) also constitutes a
7 violation of the unlawful prong of the UCL.

8 193. To meet the heightened pleading standard of Federal Rule of Civil
9 Procedure (“Rule”) 9(b) for claims that sound in fraud, plaintiffs must plead ““the
10 who, what, when, where, and how”” of the alleged fraud. *Vess v. Ciba-Geigy Corp.*
11 *USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

12 194. In order to have standing for a UCL claim, a plaintiff must meet the
13 injury-in-fact requirement. This requirement is met where a plaintiff can “show that,
14 by relying on a misrepresentation on a product label, they ‘paid more for a product
15 than they otherwise would have paid, or bought it when they otherwise would not
16 have done so.”” *Reid v. Johnson & Johnson*, 780 F.3d 952, 958 (9th Cir. 2015). A
17 plaintiff’s claims under this California statute are governed by the “reasonable
18 consumer” test. *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995) (“[T]he
19 false or misleading advertising and unfair business practices claim must be evaluated
20 from the vantage of a reasonable consumer.”). Under the reasonable consumer
21 standard, a plaintiff must “show that ‘members of the public are likely to be
22 deceived.’” *Id.* (quoting *Bank of the West v. Super. Ct.*, 2 Cal. 4th 1254, 1267 (1992)).

23 195. Plaintiff Semerjian is lifelong fan of professional sports, particularly
24 basketball and boxing. Semerjian regularly watched Defendant Pierce when the latter
25 played basketball professionally and then as a commentator on ESPN. Semerjian
26 saw the promotions by Pierce on May 26, 2021, May 28, 2021, and May 30, 2021,
27 respectively. These promotions regarding the growth potential and price increases
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1 for EMAX Tokens induced Semerjian to make his first and second purchases of
2 EMAX Tokens on May 31, 2021 and June 1, 2021. Semerjian has also been aware
3 of Defendant Mayweather from his many years of being a world champion boxer.
4 Semerjian regularly sees posts from and about Mayweather on various social media
5 platforms via the trending or discovery features of the platform. Semerjian
6 specifically saw Mayweather's promotions of EthereumMax during the Bitcoin
7 Miami conference (which were also promoted on social media accounts for
8 EthereumMax, Maher, and Davis), as well as the promotions of EMAX Tokens on
9 the lead up to and during the pay-per-view fight with Logan Paul, including the
10 5/28/21 Press Release. Mayweather's statements and promotions of EthereumMax
11 gave Semerjian the false impression that Mayweather was more than a celebrity
12 endorser but rather that he was an actual backer/investor in EMAX Tokens, and that
13 he was making this particular cryptocurrency a part of his multimillion-dollar
14 investment strategy. Each of these promotions induced Semerjian to make another
15 purchase of EMAX Tokens on June 4, 2021. Semerjian is also aware of Defendant
16 Kardashian's reputation as a celebrity influencer, and in particular, her renowned
17 business savvy. Semerjian also saw Defendant Kardashian's June 14, 2021
18 promotion of the EMAX Tokens. Semerjian believed Kardashian's promotion and
19 statements about the number of tokens being burned as indicating that the decrease
20 in supply would cause his current investments in EMAX Tokens to correspondingly
21 increase in value. Kardashian's promotion induced Semerjian to continue to hold on
22 to his investment in EMAX Tokens when he otherwise would not have done so.

23 196. Semerjian also followed the EthereumMax Instagram page during the
24 Relevant Period and saw the promotions from the Executive Defendants that were
25 posted on that platform. Semerjian specifically saw the June 3, 2021 post regarding
26 the EMAX Token price volatility that came from insider selling. Semerjian
27 reasonably believed that the price drop on EMAX Tokens only came from "a handful
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1 of larger wallets” of “early investors” who were “not part of the development team.”
2 Similarly, Semerjian believed the statements that EthereumMax would still be
3 accepted as a payment at David Grutman’s venues at a future date, despite the issues
4 that caused the delay of the rollout. The misleading statements and omissions within
5 the June 3, 2021 Instagram post from the Executive Defendants, in conjunction with
6 the above-mentioned promotions from Defendants Pierce, Mayweather, and
7 Kardashian, induced Semerjian to make his June 4, 2021 purchase of EMAX Tokens.
8 Similarly, this post, in conjunction with Defendant Kardashian’s posts regarding the
9 ability to use EMAX Tokens as an accepted payment and the increase in value his
10 investments in EMAX Tokens would receive if he continued to hold, caused
11 Semerjian to retain his EMAX Token investment when he otherwise would not have
12 done so.

13 197. Plaintiff Buckley is a lifelong fan of professional sports, particularly
14 basketball and boxing. Buckley regularly watched Defendant Pierce when the latter
15 played professionally and then as a commentator on ESPN. Buckley saw the
16 promotions by Pierce on May 26, 2021, and May 28, 2021, respectively. These
17 promotions regarding the growth potential and price increases for EMAX Tokens
18 induced Buckley to make his first two purchases of EMAX Tokens on May 28, 2021.
19 In addition to Pierce, Buckley is aware of Defendant Brown’s football career and
20 off-field conduct, and he specifically saw Brown’s May 29, 2021 promotion wherein
21 Brown indicated that he wanted his next football contract to be paid in EMAX
22 Tokens. Buckley also saw Pierce’s May 30, 2021 promotion of EthereumMax.
23 Buckley has also been aware of Defendant Mayweather from his many years of
24 being a world champion boxer. Buckley regularly sees posts from and about
25 Mayweather on various social media platforms via the trending or discovery features
26 of the platform. Buckley specifically saw Mayweather’s promotions of
27 EthereumMax during the Bitcoin Miami conference (which were also promoted on
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1 the social media accounts for EthereumMax, Maher, and Davis), as well as the
2 promotions of EMAX Tokens on the lead up to and during the pay-per-view fight
3 with Logan Paul, including the 5/28/21 Press Release. Mayweather’s statements and
4 promotions of EthereumMax gave Buckley the false impression that Mayweather
5 was more than a celebrity endorser but rather that he was an actual backer/investor
6 in EMAX Tokens, and that he was making this particular cryptocurrency a part of
7 his multimillion-dollar investment strategy. Buckley also saw Defendant
8 Kardashian’s June 14, 2021 promotion of the EMAX Tokens. Buckley believed
9 Kardashian’s promotion and statements about the number of tokens being burned as
10 indicating that the decrease in supply would cause his current investments in EMAX
11 Tokens to correspondingly increase in value. Each of these promotions induced
12 Buckley to make his third and final purchase of EMAX Tokens on June 18, 2021.
13 These promotions also induced Buckley to continue to hold on to his investment in
14 EMAX Tokens when he otherwise would not have done so.

15 198. Buckley also followed the EthereumMax Instagram page during the
16 Relevant Period and saw the promotions from the Executive Defendants that were
17 posted on that platform. Buckley specifically saw the June 3, 2021 post regarding
18 the EMAX Token price volatility that came from insider selling. Buckley
19 reasonably believed that the price drop on EMAX Tokens only came from “a handful
20 of larger wallets” of “early investors” who were “not part of the development team.”
21 Similarly, Buckley believed the statements that EthereumMax would still be
22 accepted as a payment at David Grutman’s venues at a future date, despite the issues
23 that caused the delay of the rollout. The misleading statements and omissions within
24 the June 3, 2021 Instagram post from the Executive Defendants, in conjunction with
25 the above-mentioned promotions from Defendants Pierce, Mayweather, and
26 Kardashian, induced Buckley to make his June 18, 2021 purchase of EMAX Tokens.
27 Similarly, this post, in conjunction with Defendant Kardashian’s posts regarding the
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1 ability to use EMAX Tokens as an accepted payment and the increase in value his
2 investments in EMAX Tokens would receive if he continued to hold, caused
3 Buckley to retain his EMAX Token investment when he otherwise would not have
4 done so.

5 199. Buckley also saw the statements and promotions from Defendants
6 Maher and Davis that were posted and/or reposted on various social media platforms.
7 Buckley specifically saw the May 14, 2021 promotion from Maher touting the
8 approximately 500,000% increase in the EMAX Token Price. Buckley reasonably
9 believed that this price increase was the result of genuine investor interest. Buckley
10 also saw Maher’s May 15, 2021 statement dismissing concerns about price volatility
11 because the Executive Defendants “assured” Maher that “aside from marketing
12 expenses they will not sell off any of their position[s] for at least six months.”
13 Buckley believed the statement that EthereumMax insiders would not be selling their
14 portion of the Float and driving the price of EMAX Tokens down. Similarly, Buckley
15 saw and believed Maher’s solicitations in his May 17, 2021 social media post
16 dismissing claims that EthereumMax was a “scam or pump and dump” and touting
17 EMAX Tokens were a “[l]ong term” investment that investors like Plaintiffs and the
18 class should “hold all the way.” Buckley also saw and relied on Davis’ May 18, 2021
19 solicitation that it was “not too late” to purchase EMAX Tokens given their growth
20 potential. These misleading statements and omissions by Davis and Maher induced
21 Buckley to make his May 28, 2021 purchase of EMAX Tokens.

22 200. Plaintiff Shah is lifelong fan of professional sports, particularly
23 basketball and boxing. Shah regularly watched Defendant Pierce when the latter
24 played basketball professionally and then as a commentator on ESPN. Shah follows
25 Pierce on Twitter and saw the promotions by Pierce on May 26, 2021, May 28, 2021,
26 and May 30, 2021, respectively. These promotions regarding the growth potential
27 and price increases for EMAX Tokens induced Shah to make his first and second
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1 purchases of EMAX Tokens on May 29, 2021 and June 1, 2021. Shah has also been
2 aware of Defendant Mayweather from his many years of being a world champion
3 boxer. Shah follows Mayweather on social media. Shah specifically saw
4 Mayweather's promotions of EthereumMax during the Bitcoin Miami conference
5 (which were also promoted on the social media accounts for EthereumMax, Maher,
6 and Davis), as well as the promotions of EMAX Tokens on the lead up to and during
7 the pay-per-view fight with Logan Paul, including the 5/28/21 Press Release.
8 Mayweather's statements and promotions of EthereumMax gave Shah the false
9 impression that Mayweather was more than a celebrity endorser but rather that he
10 was an actual backer/investor in EMAX Tokens, and that he was making this
11 particular cryptocurrency a part of his multimillion-dollar investment strategy. Each
12 of these promotions induced Shah to make another purchase of EMAX Tokens on
13 June 3, 2021 and June 11, 2021. Shah is also aware of Defendant Kardashian's
14 reputation as a celebrity influencer, and in particular, her renowned business savvy.
15 Shah also saw Defendant Kardashian's May 30, 2021 and June 14, 2021 promotion
16 of the EMAX Tokens. Shah believed Kardashian's promotion and statements about
17 the number of tokens being burned as indicating that the decrease in supply would
18 cause his current investments in EMAX Tokens to correspondingly increase in value.
19 Kardashian's promotion induced Shah to continue to hold on to his investment in
20 EMAX Tokens when he otherwise would not have done so.

21 201. Shah also followed the EthereumMax Instagram page and other social
22 media platforms like Telegram, Reddit, and Twitter during the Relevant Period and
23 saw the promotions from the Executive Defendants that were posted. Shah
24 specifically saw the June 3, 2021 post regarding the EMAX Token price volatility
25 that came from insider selling. Shah reasonably believed that the price drop on
26 EMAX Tokens only came from "a handful of larger wallets" of "early investors" who
27 were "not part of the development team." Similarly, Shah believed the statements
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1 that EthereumMax would still be accepted as a payment at David Grutman’s venues
2 at a future date, despite the issues that caused the delay of the rollout. The misleading
3 statements and omissions within the June 3, 2021 Instagram post from the Executive
4 Defendants, in conjunction with the above-mentioned promotions from Defendants
5 Pierce, Mayweather, and Kardashian, induced Shah to make his June 3, 2021 and
6 June 11, 2021 purchases of EMAX Tokens. Similarly, this post, in conjunction with
7 Defendant Kardashian’s posts regarding the ability to use EMAX Tokens as an
8 accepted payment and the increase in value his investments in EMAX Tokens would
9 receive if he continued to hold, caused Shah to retain his EMAX Token investment
10 when he otherwise would not have done so.

11 202. Defendants engaged in deceptive acts and practices under California law
12 by taking advantage of the lack of knowledge, ability, experience, or capacity of
13 Plaintiffs to a grossly unfair degree, including but not limited to, in the following
14 ways:

15 (a) knowingly and intentionally concealing the Executive
16 Defendants’ specific roles and ownership interests in EthereumMax;

17 (b) failing to disclose that the huge increase in price of the EMAX
18 Tokens during the first days following launch were caused by manipulation by the
19 Executive Defendants instead of being due to an organic increase in interest from
20 investors;

21 (c) failing to disclose that EMAX Tokens were not being accepted as
22 a payment and would not be at any point in the foreseeable future; and

23 (d) knowingly and intentionally using and/or failing to disclose the
24 use of the Promotor Defendants to “instill trust” in uninformed investors to promote
25 the financial benefits of a highly speculative and risky investment in EMAX Tokens,
26 in an effort to manipulate and artificially inflate the price and trading volume of the
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1 EMAX Tokens and allow Defendants to sell their EMAX Tokens at those inflated
2 prices.

3 203. The Executive Defendants did not disclose that the EMAX Token
4 developer held the number one rank with 23% ownership interest. Nor did they
5 disclose until much later that the Executive Defendants had purposefully chosen not
6 to lock the wallets of the EthereumMax insiders. Semerjian, Buckley, and Shah
7 would have found it material to their decisions to purchase EMAX Tokens to know
8 whether or not insiders had significant percentages of the available Float of EMAX
9 Tokens with the ability to freely sell those EMAX Tokens and create massive
10 downward pressure. Likewise, had Semerjian, Buckley, and Shah been made aware
11 of that information at the times of their respective purchases, as well as the later-
12 revealed admission from Steve Gentile that the Executive Defendants had chosen not
13 to “lock the wallets” (which gives the ten original founding members, including
14 Defendant Maher who held 5%, the ability to sell off their portions of EMAX Tokens
15 without restriction), it would have altered their decision to both purchase the EMAX
16 Tokens for the price they paid as well and hold on to those EMAX Tokens when they
17 otherwise would not have done so.

18 204. The facts that the Executive Defendants and Promoter Defendants
19 Pierce, Mayweather, and Kardashian misrepresented and concealed were material to
20 the decisions of Plaintiffs Semerjian, Buckley, and Shah and the members of the class
21 about whether to pay for or purchase EMAX Tokens (at all or for the price they paid),
22 in that they would not have proceeded with their transactions but for the deceptive,
23 fraudulent, and false acts and practices.

24 205. The Executive Defendants and Promoter Defendants Pierce,
25 Mayweather, and Kardashian intended for Plaintiffs Semerjian, Buckley, and Shah
26 and the members of the class to pay for EMAX Tokens in reliance upon their
27 deceptive and fraudulent acts and practices.

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1 206. Had the Promoter Defendants disclosed the omitted information,
2 Semerjian, Buckley, and Shah would have been aware of it because (a) they saw the
3 actual promotions by Promoter Defendants Pierce, Mayweather, and Kardashian and
4 would have concurrently seen any disclosure on the promotions themselves had it
5 been included, and (b) they follow, directly or indirectly, the social media accounts
6 of, and news reports on, Promoter Defendants Pierce, Mayweather, and Kardashian.

7 207. As a direct and proximate result of Defendants’ unlawful, unfair, and
8 deceptive practices, Plaintiffs and Class members suffered damages. The Executive
9 Defendants’ activities with the Promoter Defendants caused Plaintiffs and the Class
10 members to purchase and/or hold the EMAX Tokens when they otherwise would not
11 have done so.

12 208. The statements from Executive Defendants and Promoter Defendants
13 Pierce, Mayweather, and Kardashian are actionable and not puffery. ““The
14 distinguishing characteristics of puffery are vague, highly subjective claims as
15 opposed to specific, detailed factual assertions.”” *Orlick v. Rawlings Sporting Goods*
16 *Co.*, No. CV 12-6787-GHK (RZX), 2013 WL 12139142, at *5 (C.D. Cal. Feb. 20,
17 2013). Under California law, there is no requirement that for a statement to be
18 actionable it must also be false — the UCL also prohibits ““advertising which,
19 although true, is either actually misleading or which has a capacity, likelihood or
20 tendency to deceive or confuse the public.”” *Williams v. Gerber Prods. Co.*, 552 F.3d
21 934, 938 (9th Cir. 2008). Significantly, even if certain statements would be non-
22 actionable on their own, where there are multiple statements at issue, courts must
23 consider “as a whole.” *Id.* at 939 n.3; *Lima v. Gateway, Inc.*, 710 F. Supp. 2d 1000,
24 1007-08 (C.D. Cal. 2010) (denying motion to dismiss where some specific
25 representations could be considered puffery, but all of defendants’ statements “taken
26 as a whole” might be actionable); *In re NJOY, Inc. Consumer Class Action Litig.*, No.
27 CV 14-00428 MMM (JEMx), 2015 WL 12732461, at *10 (C.D. Cal. May 27, 2015)

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1 212. Plaintiffs restate and reallege all preceding allegations in paragraphs 1 -
2 185 above as if fully set forth herein, and further allege the following:

3 213. Plaintiffs Semerjian, Buckley, and Shah are residents of the State of
4 California.

5 214. Plaintiffs Semerjian, Buckley, and Shah paid for or purchased EMAX
6 Tokens in California and thus the deceptive transactions alleged herein occurred in
7 California.

8 215. At all relevant times there was in full force and effect the California
9 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, *et seq.*, which
10 prohibits, *inter alia*, “any unlawful, unfair, or fraudulent business act or practice” and
11 “unfair, deceptive, untrue, or misleading advertising.”

12 216. “[A]n act can be alleged to violate any or all three of the three prongs
13 of the UCL — unlawful, unfair, or fraudulent.” *Stearns*, 763 F. Supp. 2d at 1149
14 (quoting *Berryman*, 152 Cal. App. 4th at 1554).

15 217. The Executive Defendants and Promoter Defendants Pierce,
16 Mayweather, and Kardashian engaged in business acts and practices deemed “unfair”
17 under the UCL, because of the conduct, statements, and omissions described above.
18 Unfair acts under the UCL have been interpreted using different tests, including:
19 (1) whether the public policy which is a predicate to a consumer unfair competition
20 action under the unfair prong of the UCL is tethered to specific constitutional,
21 statutory, or regulatory provisions; (2) whether the gravity of the harm to the
22 consumer caused by the challenged business practice outweighs the utility of the
23 defendant’s conduct; and (3) whether the consumer injury is substantial, not
24 outweighed by any countervailing benefits to consumers or competition, and is an
25 injury that consumers themselves could not reasonably have avoided.

26 218. The Executive Defendants and Promoter Defendants Pierce,
27 Mayweather, and Kardashian have engaged in, and continue to engage in, conduct
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1 that violates the legislatively declared policies of: (1) California Civil Code
2 §§1572,1573, 1709, 1710, 1711 against committing fraud and deceit; (2) California
3 Civil Code §1770 against committing acts and practices intended to deceive
4 consumers regarding the representation of goods in certain particulars; and (3) the
5 Federal Tort Claims Act (“FTCA”), 15 U.S.C. §45(a)(1), against unfair or deceptive
6 practices. The Executive Defendants and Promoter Defendants Pierce, Mayweather,
7 and Kardashian gain an unfair advantage over their competitors, whose practices
8 relating to other similar products must comply with these laws.

9 219. Defendants’ affirmative acts in soliciting sales of EMAX Tokens are
10 unfair within the meaning of the UCL, because they constituted immoral, unethical,
11 oppressive, and unscrupulous activity, caused substantial injury to consumers, and
12 provided no benefit to consumers or competition.

13 220. The gravity of the harm to consumers caused by actions of Executive
14 Defendants and Promoter Defendants Pierce, Mayweather, and Kardashian far
15 outweighs the utility of their conduct. According to a “Data Spotlight” from the
16 Federal Trade Commission from June 3, 2022 (the “FTC Data Spotlight”), entitled:
17 “Reports show scammers cashing in on crypto craze,” “[s]ince the start of 2021, more
18 than 46,000 people have reported losing over \$1 billion in crypto to scams – that’s
19 about one out of every four dollars reported lost, more than any other payment
20 method. The median individual reported loss? A whopping \$2,600.”⁹⁸

21 221. The FTC Data Spotlight further stated that “[r]eports point to social
22 media and crypto as a combustible combination for fraud. Nearly half the people
23 who reported losing crypto to a scam since 2021 said it started with an ad, post, or
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27 ⁹⁸ Emma Fletcher, *Data Spotlight: Reports show scammers cashing in on crypto*
28 *craze*, FED. TRADE COMM’N (June 3, 2022), <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze>.

1 message on a social media platform.”⁹⁹ Furthermore, “[d]uring this period, nearly
 2 four out of every ten dollars reported lost to a fraud originating on social media was
 3 lost in crypto, far more than any other payment method.”¹⁰⁰ Of the reported crypto
 4 fraud losses that began on social media, most are investment scams.¹⁰¹ Indeed, since
 5 2021, \$575 million of all crypto fraud losses reported to the FTC were about bogus
 6 investment opportunities, far more than any other fraud type. Executive Defendants
 7 and Promoter Defendants Pierce, Mayweather, and Kardashian engaged in the exact
 8 kind of bogus crypto “investment opportunity” scam that the FTC Data Spotlight
 9 reported on as causing hundreds of millions (and rising) of dollars of damage to
 10 investors.

11 222. The conduct of the Executive Defendants and Promoter Defendants
 12 Pierce, Mayweather, and Kardashian – including, but not limited to, failing to
 13 disclose that (1) insiders held a significant portion of the Float at the time of the
 14 EMAX Token launch; and (2) the promotions by Promoter Defendants Pierce,
 15 Mayweather, and Kardashian were the result of them being paid to promote the
 16 EMAX Tokens instead of an organic interest/support of EthereumMax – was and is
 17 substantially injurious to consumers. Such conduct has caused, and continues to
 18 cause, substantial injury to consumers because consumers would not have continued
 19 with the transaction but for the deceptive, fraudulent, false, and unfair acts and
 20 practices alleged herein. Consumers have thus overpaid for EMAX Tokens. Such
 21 injury is not outweighed by any countervailing benefits to consumers or competition.
 22 Indeed, no benefit to consumers or competition results from the alleged conduct of

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 24 ⁹⁹ *Id.* (“From January 1, 2021 through March 31, 2022, 49% of fraud reports to
 the FTC indicating cryptocurrency as the payment method specified that the scam
 started on social media, compared to 37% in 2020, 18% in 2019, and 11% in 2018.”).

25 ¹⁰⁰ *Id.* (“From January 1, 2021 through March 31, 2022, \$1.1 billion was reported
 26 to the FTC as lost to fraud originating on social media.”).

27 ¹⁰¹ *Id.* (“From January 1, 2021 through March 31, 2022, people reported to the
 28 FTC that \$417 million in cryptocurrency was lost to fraud originating on social
 media. \$273 million of these losses were to fraud categorized as investment related,
 followed by romance scams (\$69 million), and business imposters (\$35 million).”).

1 the Executive Defendants and Promoter Defendants Pierce, Mayweather, and
2 Kardashian. Since consumers reasonably rely on the representations, and could not
3 have known about the omitted disclosures, and the injury results from ordinary use
4 of their product, consumers could not have reasonably avoided such injury.

5 223. The Executive Defendants and Promoter Defendants Pierce,
6 Mayweather, and Kardashian willfully and knowingly engaged in the deceptive and
7 unfair acts and practices described above and knew or should have known that those
8 acts and practices were unlawful and thus in violation of Cal. Bus. & Prof. Code
9 §17200, *et seq.*

10 224. These facts that the Executive Defendants and Promoter Defendants
11 Pierce, Mayweather, and Kardashian omitted and concealed were material to the
12 decisions of Plaintiffs Semerjian, Buckley, and Shah and the members of the class
13 about whether to pay for EMAX Tokens, in that they would not have proceeded with
14 the transaction but for the deceptive and unfair acts and practices.

15 225. Defendants' conduct harmed competition. While the Executive
16 Defendants and Promoter Defendants Pierce, Mayweather, and Kardashian cut
17 corners and minimized costs, their competitors spent the time and money necessary
18 to promote financial products and/or digital assets that complied with the applicable
19 state and federal laws. Further, the injuries suffered by Plaintiffs are not outweighed
20 by any countervailing benefits to consumers or competition. And because the
21 Executive Defendants and Promoter Defendants Pierce, Mayweather, and
22 Kardashian are solely responsible for their respective promotional activities and
23 related disclosures (or lack thereof), there is no way Plaintiffs Semerjian or Shah, or
24 the members of the class could have known about the payments that Promoter
25 Defendants Pierce, Mayweather, and Kardashian received for pretending that they
26 were interested in EthereumMax. There were reasonably available alternatives to
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1 further EthereumMax’s legitimate business interests, such as including disclaimers,
2 other than the conduct alleged herein.

3 226. In order to have standing for a UCL claim, a plaintiff must meet the
4 injury-in-fact requirement. This requirement is met where a plaintiff can “show that,
5 by relying on a misrepresentation on a product label, they ‘paid more for a product
6 than they otherwise would have paid, or bought it when they otherwise would not
7 have done so.’” *Reid*, 780 F.3d at 958. A plaintiff’s claims under this California
8 statute are governed by the “reasonable consumer” test. *Freeman*, 68 F.3d at 289
9 (“[T]he false or misleading advertising and unfair business practices claim must be
10 evaluated from the vantage of a reasonable consumer.”). Under the reasonable
11 consumer standard, a plaintiff must “show that ‘members of the public are likely to
12 be deceived.’” *Id.* (quoting *Bank of the West*, 2 Cal. 4th at 1267).

13 227. To meet the heightened pleading standard of Rule 9(b) for claims that
14 sound in fraud, plaintiffs must plead “‘the who, what, when, where, and how’” of the
15 alleged fraud. *Vess*, 317 F.3d at 1106.

16 228. Plaintiff Semerjian is lifelong fan of professional sports, particularly
17 basketball and boxing. Semerjian regularly watched Defendant Pierce when the latter
18 played basketball professionally and then as a commentator on ESPN. Semerjian
19 saw the promotions by Pierce on May 26, 2021, May 28, 2021, and May 30, 2021,
20 respectively. These promotions regarding the growth potential and price increases
21 for EMAX Tokens induced Semerjian to make his first and second purchases of
22 EMAX Tokens on May 31, 2021 and June 1, 2021. Semerjian has also been aware
23 of Defendant Mayweather from his many years of being a world champion boxer.
24 Semerjian regularly sees posts from and about Mayweather on various social media
25 platforms via the trending or discovery features of the platform. Semerjian
26 specifically saw Mayweather’s promotions of EthereumMax during the Bitcoin
27 Miami conference (which were also promoted on the social media accounts for
28

1 EthereumMax, Maher, and Davis), as well as the promotions of EMAX Tokens on
2 the lead up to and during the pay-per-view fight with Logan Paul, including the
3 5/28/21 Press Release. Mayweather’s statements and promotions of EthereumMax
4 gave Semerjian the false impression that Mayweather was more than a celebrity
5 endorser but rather that he was an actual backer/investor in EMAX Tokens, and that
6 he was making this particular cryptocurrency a part of his multimillion-dollar
7 investment strategy. Each of these promotions induced Semerjian to make another
8 purchase of EMAX Tokens on June 4, 2021. Semerjian is also aware of Defendant
9 Kardashian’s reputation as celebrity influencer, and in particular, her renowned
10 business savvy. Semerjian also saw Defendant Kardashian’s June 14, 2021
11 promotion of the EMAX Tokens. Semerjian believed Kardashian’s promotion and
12 statements about the number of tokens being burned as indicating that the decrease
13 in supply would cause his current investments in EMAX Tokens to correspondingly
14 increase in value. Kardashian’s promotion induced Semerjian to continue to hold on
15 to his investment in EMAX Tokens when he otherwise would not have done so.

16 229. Semerjian also followed the EthereumMax Instagram page during the
17 Relevant Period and saw the promotions from the Executive Defendants that were
18 posted on that platform. Semerjian specifically saw the June 3, 2021 post regarding
19 the EMAX Token price volatility that came from insider selling. Semerjian
20 reasonably believed that the price drop on EMAX Tokens only came from “a handful
21 of larger wallets” of “early investors” who were “not part of the development team.”
22 Similarly, Semerjian believed the statements that EthereumMax would still be
23 accepted as a payment at David Grutman’s venues at a future date, despite the issues
24 that caused the delay of the rollout. The misleading statements and omissions within
25 the June 3, 2021 Instagram post from the Executive Defendants, in conjunction with
26 the above-mentioned promotions from Defendants Pierce, Mayweather, and
27 Kardashian, induced Semerjian to make his June 4, 2021 purchase of EMAX Tokens.

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1 Similarly, this post, in conjunction with Defendant Kardashian’s posts regarding the
2 ability to use EMAX Tokens as an accepted payment and the increase in value his
3 investments in EMAX Tokens would receive if he continued to hold, caused
4 Semerjian to retain his EMAX Token investment when he otherwise would not have
5 done so.

6 230. Plaintiff Buckley is a lifelong fan of professional sports, particularly
7 basketball and boxing. Buckley regularly watched Defendant Pierce when the latter
8 played professionally and then as a commentator on ESPN. Buckley saw the
9 promotions by Pierce on May 26, 2021, and May 28, 2021, respectively. These
10 promotions regarding the growth potential and price increases for EMAX Tokens
11 induced Buckley to make his first two purchases of EMAX Tokens on May 28, 2021.
12 In addition to Pierce, Buckley is aware of Defendant Brown’s football career and
13 off-field conduct, and he specifically saw Brown’s May 29, 2021 promotion wherein
14 Brown indicated that he wanted his next football contract to be paid in EMAX
15 Tokens. Buckley also saw Pierce’s May 30, 2021 promotion of EthereumMax.
16 Buckley has also been aware of Defendant Mayweather from his many years of
17 being a world champion boxer. Buckley regularly sees posts from and about
18 Mayweather on various social media platforms via the trending or discovery features
19 of the platform. Buckley specifically saw Mayweather’s promotions of
20 EthereumMax during the Bitcoin Miami conference (which were also promoted on
21 the social media accounts for EthereumMax, Maher, and Davis), as well as the
22 promotions of EMAX Tokens on the lead up to and during the pay-per-view fight
23 with Logan Paul, including the 5/28/21 Press Release. Mayweather’s statements and
24 promotions of EthereumMax gave Buckley the false impression that Mayweather
25 was more than a celebrity endorser but rather that he was an actual backer/investor
26 in EMAX Tokens, and that he was making this particular cryptocurrency a part of
27 his multimillion-dollar investment strategy. Buckley also saw Defendant
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1 Kardashian’s June 14, 2021 promotion of the EMAX Tokens. Buckley believed
2 Kardashian’s promotion and statements about the number of tokens being burned as
3 indicating that the decrease in supply would cause his current investments in EMAX
4 Tokens to correspondingly increase in value. Each of these promotions induced
5 Buckley to make his third and final purchase of EMAX Tokens on June 18, 2021.
6 These promotions also induced Buckley to continue to hold on to his investment in
7 EMAX Tokens when he otherwise would not have done so.

8 231. Buckley also followed the EthereumMax Instagram page during the
9 Relevant Period and saw the promotions from the Executive Defendants that were
10 posted on that platform. Buckley specifically saw the June 3, 2021 post regarding
11 the EMAX Token price volatility that came from insider selling. Buckley
12 reasonably believed that the price drop on EMAX Tokens only came from “a handful
13 of larger wallets” of “early investors” who were “not part of the development team.”
14 Similarly, Buckley believed the statements that EthereumMax would still be
15 accepted as a payment at David Grutman’s venues at a future date, despite the issues
16 that caused the delay of the rollout. The misleading statements and omissions within
17 the June 3, 2021 Instagram post from the Executive Defendants, in conjunction with
18 the above-mentioned promotions from Defendants Pierce, Mayweather, and
19 Kardashian, induced Buckley to make his June 18, 2021 purchase of EMAX Tokens.
20 Similarly, this post, in conjunction with Defendant Kardashian’s posts regarding the
21 ability to use EMAX Tokens as an accepted payment and the increase in value his
22 investments in EMAX Tokens would receive if he continued to hold, caused
23 Buckley to retain his EMAX Token investment when he otherwise would not have
24 done so.

25 232. Buckley also saw the statements and promotions from Defendants
26 Maher and Davis that were posted and/or reposted on various social media platforms.
27 Buckley specifically saw the May 14, 2021 promotion from Maher touting the
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1 approximately 500,000% increase the EMAX Token Price. Buckley reasonably
2 believed that this price increase was the result of genuine investor interest. Buckley
3 also saw Maher’s May 15, 2021 statement dismissing concerns about price volatility
4 because the Executive Defendants “assured” Maher that “aside from marketing
5 expenses they will not sell off any of their position[s] for at least six months.”
6 Buckley believed the statement that EthereumMax insiders would not be selling their
7 portion of the Float and driving the price of EMAX Tokens down. Similarly, Buckley
8 saw and believed Maher’s solicitations in his May 17, 2021 social media post
9 dismissing claims that EthereumMax was a “scam or pump and dump” and touting
10 EMAX Tokens was a “[l]ong term” investment that investors like Plaintiffs and the
11 class should “hold all the way.” Buckley also saw and relied on Davis’ May 18, 2021
12 solicitation that is was “not too late” to purchase EMAX Tokens given their growth
13 potential. These misleading statements and omissions by Davis and Maher induced
14 Buckley to make his May 28, 2021 purchase of EMAX Tokens.

15 233. Plaintiff Shah is lifelong fan of professional sports, particularly
16 basketball and boxing. Shah regularly watched Defendant Pierce when the latter
17 played basketball professionally and then as a commentator on ESPN. Shah follows
18 Pierce on Twitter and saw the promotions by Pierce on May 26, 2021, May 28, 2021,
19 and May 30, 2021, respectively. These promotions regarding the growth potential
20 and price increases for EMAX Tokens induced Shah to make his first and second
21 purchases of EMAX Tokens on May 29, 2021 and June 1, 2021. Shah has also been
22 aware of Defendant Mayweather from his many years of being a world champion
23 boxer. Shah follows Mayweather on social media. Shah specifically saw
24 Mayweather’s promotions of EthereumMax during the Bitcoin Miami conference
25 (which were also promoted on the social media accounts for EthereumMax, Maher,
26 and Davis), as well as the promotions of EMAX Tokens on the lead up to and during
27 the pay-per-view fight with Logan Paul, including the 5/28/21 Press Release.

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1 Mayweather’s statements and promotions of EthereumMax gave Shah the false
2 impression that Mayweather was more than a celebrity endorser but rather that he
3 was an actual backer/investor in EMAX Tokens, and that he was making this
4 particular cryptocurrency a part of his multimillion-dollar investment strategy. Each
5 of these promotions induced Shah to make another purchase of EMAX Tokens on
6 June 3, 2021 and June 11, 2021. Shah is also aware of Defendant Kardashian’s
7 reputation as a celebrity influencer, and in particular, her renowned business savvy.
8 Shah also saw Defendant Kardashian’s May 30, 2021 and June 14, 2021 promotion
9 of the EMAX Tokens. Shah believed Kardashian’s promotion and statements about
10 the number of tokens being burned as indicating that the decrease in supply would
11 cause his current investments in EMAX tokens to correspondingly increase in value.
12 Kardashian’s promotion induced Shah to continue to hold on to his investment in
13 EMAX Tokens when he otherwise would not have done so.

14 234. Shah also followed the EthereumMax Instagram page and other social
15 media platforms like Telegram, Reddit, and Twitter during the Relevant Period and
16 saw the promotions from the Executive Defendants that were posted. Shah
17 specifically saw the June 3, 2021 post regarding the EMAX Token price volatility
18 that came from insider selling. Shah reasonably believed that the price drop on
19 EMAX Tokens only came from “a handful of larger wallets” of “early investors” who
20 were “not part of the development team.” Similarly, Shah believed the statements
21 that EthereumMax would still be accepted as a payment at David Grutman’s venues
22 at a future date, despite the issues that caused the delay of the rollout. The misleading
23 statements and omissions within the June 3, 2021 Instagram post from the Executive
24 Defendants, in conjunction with the above-mentioned promotions from Defendants
25 Pierce, Mayweather, and Kardashian, induced Shah to make his June 3, 2021 and
26 June 11, 2021 purchases of EMAX Tokens. Similarly, this post, in conjunction with
27 Defendant Kardashian’s posts regarding the ability to use EMAX Tokens as an
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1 accepted payment and the increase in value his investments in EMAX Tokens would
2 receive if he continued to hold, caused Shah to retain his EMAX Token investment
3 when he otherwise would not have done so.

4 235. Defendants engaged in deceptive acts and practices under California law
5 by taking advantage of the lack of knowledge, ability, experience, or capacity of
6 Plaintiffs to a grossly unfair degree, including but not limited to, in the following
7 ways:

8 (a) knowingly and intentionally concealing the Executive Defendants'
9 specific roles and ownership interests in EthereumMax;

10 (b) failing to disclose that the huge increase in price of the EMAX Tokens
11 during the first days following launch were caused by manipulation by the Executive
12 Defendants instead of being due to an organic increase in interest from investors;

13 (c) failing to disclose that EMAX Tokens were not being accepted as a
14 payment and would not be at any point in the foreseeable future; and

15 (d) knowingly and intentionally using and/or failing to disclose the use of
16 the Promotor Defendants to "instill trust" in uninformed investors to promote the
17 financial benefits of a highly speculative and risky investment in EMAX Tokens, in
18 an effort to manipulate and artificially inflate the price and trading volume of the
19 EMAX Tokens and allow Defendants to sell their EMAX Tokens at those inflated
20 prices.

21 236. The Executive Defendants did not disclose that the EMAX Token
22 developer held the number one rank with 23% ownership interest. Nor did they
23 disclose until much later that the Executive Defendants had purposefully chosen not
24 to lock the wallets of the EthereumMax insiders. Plaintiffs Semerjian, Buckley, and
25 Shah would have found it material to their decision to purchase EMAX Tokens to
26 know whether or not insiders had significant percentages of the available Float of
27 EMAX Tokens with the ability to sell freely those EMAX Tokens and create massive
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1 downward pressure. Likewise, had Semerjian, Buckley, and Shah been made aware
2 of that information at the times of their purchases, as well as the later-revealed
3 admission from Gentile that the Executive Defendants had chosen not to “lock the
4 wallets” (which gives the ten original founding members, including Defendant Maher
5 who held 5%, the ability to sell off their portions of EMAX Tokens without
6 restriction), it would have altered their respective decisions to both purchase the
7 EMAX Tokens for the price they paid as well and hold on to those EMAX Tokens
8 when they otherwise would not have done so.

9 237. The facts that the Executive Defendants and Promoter Defendants
10 Pierce, Mayweather, and Kardashian misrepresented and concealed were material to
11 the decisions of Plaintiffs Semerjian, Buckley, and Shah and the members of the class
12 about whether to pay for or purchase EMAX Tokens (at all or for the price they paid),
13 in that they would not have proceeded with their transactions but for the deceptive,
14 fraudulent and false acts and practices.

15 238. The Executive Defendants and Promoter Defendants Pierce,
16 Mayweather, and Kardashian intended for Plaintiffs Semerjian, Buckley, and Shah
17 and the members of the class to pay for EMAX Tokens in reliance upon their
18 deceptive and fraudulent acts and practices.

19 239. Had the Promoter Defendants disclosed the omitted information,
20 Semerjian would have been aware of it because (a) he saw the actual promotions by
21 Promoter Defendants Pierce, Mayweather, and Kardashian and would have
22 concurrently seen any disclosure on the promotions themselves had it been included,
23 and (b) because he follows, directly or indirectly, the social media accounts of, and
24 news reports on, Promoter Defendants Pierce, Mayweather, and Kardashian.

25 240. As a direct and proximate result of Defendants’ unlawful, unfair, and
26 deceptive practices, Plaintiffs and Class members suffered damages. The Executive
27 Defendants’ activities with the Promoter Defendants caused Plaintiffs and the Class
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1 members to purchase and/or hold the EMAX Tokens when they otherwise would
2 not have done so.

3 241. The statements from Executive Defendants and Promoter Defendants
4 Pierce, Mayweather, and Kardashian are actionable and not puffery. ““The
5 distinguishing characteristics of puffery are vague, highly subjective claims as
6 opposed to specific, detailed factual assertions.”” *Orlick*, 2013 WL 12139142, at *5.
7 Under California law, there is no requirement that for a statement to be actionable it
8 must also be false — the UCL also prohibits ““advertising which, although true, is
9 either actually misleading or which has a capacity, likelihood or tendency to deceive
10 or confuse the public.”” *Williams.*, 552 F.3d at 938. Significantly, even if certain
11 statements would be non-actionable on their own, where there are multiple statements
12 at issue, courts must consider “as a whole.” *Id.* at 939 n.3; *Lima*, 710 F. Supp. 2d at
13 1007–08 (denying motion to dismiss where some specific representations could be
14 considered puffery, but all of defendants’ statements “taken as a whole” might be
15 actionable); *NJOY*, 2015 WL 12732461, at *10 (““Even assuming . . . that some of
16 the statements would themselves be non-actionable, they “cannot be considered in
17 isolation because they contribute to the [potentially] deceptive context” of the
18 packaging and marketing “as a whole.”””) (alteration in original).

19 242. As alleged further above, the Executive Defendants’ May 16, 2021 Pre-
20 launch Kickoff post stated, among other things, that (1) EMAX Tokens were up
21 “500,000+% in the first 24 hours”; (2) the Executive Defendants had “locked in
22 partnership with global digital marketing agency” and “lined up a knockout
23 influencer” for a “nationwide campaign”; and (3) “We are 3 days in with ~\$100M
24 market cap and the train is just getting rolling.” These statements from Executive
25 Defendants are specific, detailed factual assertions the Executive Defendants were
26 using to encourage purchases and increase the price of the EMAX Tokens. At the
27 same time, the Executive Defendants Maher and Speer, with Promoter Defendant
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1 Davis, each failed to disclose that these metrics were the result of the failed launch
2 that allowed insiders, including but not limited to Maher, to disproportionately
3 increase the price of the EMAX Tokens with their early trades.

4 243. Taken together, the misleading statements and omissions of the
5 Executive Defendants and Promoter Defendants Davis, Pierce, Mayweather, and
6 Kardashian contributed to the deceptive marketing tactics as a whole, which were
7 used to solicit sales of EMAX Tokens.

8 244. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
9 or practices by EthereumMax, to obtain restitution and disgorgement of all monies
10 generated as a result of such practices, and for all other relief allowed under California
11 Business & Professions Code §17200.

12 **THIRD CAUSE OF ACTION**

13 **Violation of the California Unfair Competition Law**
14 **Cal. Bus. & Prof. Code §17200**
15 **(Based on Fraudulent Acts and Practices)**
16 **(Against All Defendants)**

17 245. Plaintiffs restate and reallege all preceding allegations above as if fully
18 set forth herein, and further alleges as follows.

19 246. Plaintiffs Semerjian, Buckley, and Shah are residents of the State of
20 California.

21 247. Plaintiffs Semerjian, Buckley, and Shah paid for or purchased EMAX
22 Tokens in California and thus the deceptive transactions alleged herein occurred in
23 California.

24 248. At all relevant times there was in full force and effect the California
25 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, *et seq.*, which
26 prohibits, *inter alia*, “any unlawful, unfair, or fraudulent business act or practice” and
27 “unfair, deceptive, untrue, or misleading advertising.”
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1 249. “[A]n act can be alleged to violate any or all three of the three prongs
2 of the UCL — unlawful, unfair, or fraudulent.” *Stearns*, 763 F. Supp. 2d at 1149
3 (quoting *Berryman*, 152 Cal. App. 4th at 1554).

4 250. Any violation of the California false advertising laws (*e.g.*, §17500)
5 necessarily violates the “fraudulent” prong of the UCL.

6 251. To meet the heightened pleading standard of Rule 9(b) for claims that
7 sound in fraud, plaintiffs must plead “‘the who, what, when, where, and how’” of the
8 alleged fraud. *Vess*, 317 F.3d at 1106.

9 252. In order to have standing under California law for a UCL claim, a
10 plaintiff must meet the injury-in-fact requirement. This requirement is met where a
11 plaintiff can “show that, by relying on a misrepresentation on a product label, they
12 ‘paid more for a product than they otherwise would have paid, or bought it when they
13 otherwise would not have done so.’” *Reid*, 780 F.3d at 958.

14 253. A plaintiff’s claims under this California statute are governed by the
15 “reasonable consumer” test. *Freeman*, 68 F.3d at 289 (“[T]he false or misleading
16 advertising and unfair business practices claim must be evaluated from the vantage
17 of a reasonable consumer.”). Under the reasonable consumer standard, a plaintiff
18 must “show that ‘members of the public are likely to be deceived.’” *Id.* at 289
19 (quoting *Bank of the West*, 2 Cal. 4th at 1267).

20 254. Plaintiff Semerjian is a lifelong fan of professional sports, particularly
21 basketball and boxing. Semerjian regularly watched Defendant Pierce when the latter
22 played professionally and then as a commentator on ESPN. Semerjian saw the
23 promotions by Pierce on May 26, 2021, May 28, 2021, and May 30, 2021,
24 respectively. These promotions regarding the growth potential and price increases
25 for EMAX Tokens induced Semerjian to make his first and second purchases of
26 EMAX Tokens on May 31, 2021 and June 1, 2021. Semerjian has also been aware
27 of Defendant Mayweather from his many years of being a world champion boxer.
28

1 Semerjian regularly sees posts from and about Mayweather on various social media
2 platforms via the trending or discovery features of the platform. Semerjian
3 specifically saw Mayweather’s promotions of EthereumMax during the Bitcoin
4 Miami conference (which were also promoted on the social media accounts for
5 EthereumMax, Maher, and Davis), as well as the promotions of EMAX Tokens on
6 the lead up to and during the pay-per-view fight with Logan Paul, including the
7 5/28/21 Press Release. Mayweather’s statements and promotions of EthereumMax
8 gave Semerjian the false impression that Mayweather was more than a celebrity
9 endorser but rather that he was an actual backer/investor in EMAX Tokens, and that
10 he was making this particular cryptocurrency a part of his multimillion-dollar
11 investment strategy. Each of these promotions induced Semerjian to make another
12 purchase of EMAX Tokens on June 4, 2021. Semerjian also saw Defendant
13 Kardashian’s June 14, 2021 promotion of the EMAX Tokens. Semerjian believed
14 Kardashian’s promotion and statements about the number of tokens being burned as
15 indicating that the decrease in supply would cause his current investments in EMAX
16 Tokens to correspondingly increase in value. Kardashian’s promotion induced
17 Semerjian to continue to hold on to his investment in EMAX Tokens when he
18 otherwise would not have done so.

19 255. Semerjian also followed the EthereumMax Instagram page during the
20 Relevant Period and saw the promotions from the Executive Defendants that were
21 posted on that platform. Semerjian specifically saw the June 3, 2021 post regarding
22 the EMAX Token price volatility that came from insider selling. Semerjian
23 reasonably believed that the price drop on EMAX Tokens only came from “a handful
24 of larger wallets” of “early investors” who were “not part of the development team.”
25 Similarly, Semerjian believed the statements that EthereumMax would still be
26 accepted as a payment at David Grutman’s venues at a future date, despite the issues
27 that caused the delay of the rollout. The misleading statements and omissions within
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1 the June 3, 2021 Instagram post from the Executive Defendants, in conjunction with
2 the above-mentioned promotions from Defendants Pierce, Mayweather, and
3 Kardashian, induced Semerjian to make his June 4, 2021 purchase of EMAX Tokens.
4 Similarly, this post, in conjunction with Defendant Kardashian's posts regarding the
5 ability to use EMAX Tokens as an accepted payment and the increase in value his
6 investments in EMAX Tokens would receive if he continued to hold, caused
7 Semerjian to retain his EMAX Token investment when he otherwise would not have
8 done so.

9 256. Plaintiff Buckley is a lifelong fan of professional sports, particularly
10 basketball and boxing. Buckley regularly watched Defendant Pierce when the latter
11 played professionally and then as a commentator on ESPN. Buckley saw the
12 promotions by Pierce on May 26, 2021, and May 28, 2021, respectively. These
13 promotions regarding the growth potential and price increases for EMAX Tokens
14 induced Buckley to make his first two purchases of EMAX Tokens on May 28, 2021.
15 In addition to Pierce, Buckley is aware of Defendant Brown's football career and
16 off-field conduct, and he specifically saw Brown's May 29, 2021 promotion wherein
17 Brown indicated that he wanted his next football contract to be paid in EMAX
18 Tokens. Buckley also saw Pierce's May 30, 2021 promotion of EthereumMax.
19 Buckley has also been aware of Defendant Mayweather from his many years of
20 being a world champion boxer. Buckley regularly sees posts from and about
21 Mayweather on various social media platforms via the trending or discovery features
22 of the platform. Buckley specifically saw Mayweather's promotions of
23 EthereumMax during the Bitcoin Miami conference (which were also promoted on
24 the social media accounts for EthereumMax, Maher, and Davis), as well as the
25 promotions of EMAX Tokens on the lead up to and during the pay-per-view fight
26 with Logan Paul, including the 5/28/21 Press Release. Mayweather's statements and
27 promotions of EthereumMax gave Buckley the false impression that Mayweather
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1 was more than a celebrity endorser but rather that he was an actual backer/investor
2 in EMAX Tokens, and that he was making this particular cryptocurrency a part of
3 his multimillion-dollar investment strategy. Buckley also saw Defendant
4 Kardashian’s June 14, 2021 promotion of the EMAX Tokens. Buckley believed
5 Kardashian’s promotion and statements about the number of tokens being burned as
6 indicating that the decrease in supply would cause his current investments in EMAX
7 Tokens to correspondingly increase in value. Each of these promotions induced
8 Buckley to make his third and final purchase of EMAX Tokens on June 18, 2021.
9 These promotions also induced Buckley to continue to hold on to his investment in
10 EMAX Tokens when he otherwise would not have done so.

11 257. Buckley also followed the EthereumMax Instagram page during the
12 Relevant Period and saw the promotions from the Executive Defendants that were
13 posted on that platform. Buckley specifically saw the June 3, 2021 post regarding
14 the EMAX Token price volatility that came from insider selling. Buckley
15 reasonably believed that the price drop on EMAX Tokens only came from “a handful
16 of larger wallets” of “early investors” who were “not part of the development team.”
17 Similarly, Buckley believed the statements that EthereumMax would still be
18 accepted as a payment at David Grutman’s venues at a future date, despite the issues
19 that caused the delay of the rollout. The misleading statements and omissions within
20 the June 3, 2021 Instagram post from the Executive Defendants, in conjunction with
21 the above-mentioned promotions from Defendants Pierce, Mayweather, and
22 Kardashian, induced Buckley to make his June 18, 2021 purchase of EMAX Tokens.
23 Similarly, this post, in conjunction with Defendant Kardashian’s posts regarding the
24 ability to use EMAX Tokens as an accepted payment and the increase in value his
25 investments in EMAX Tokens would receive if he continued to hold, caused
26 Buckley to retain his EMAX Token investment when he otherwise would not have
27 done so.

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1 258. Buckley also saw the statements and promotions from Defendants
2 Maher and Davis that were posted and/or reposted on various social media platforms.
3 Buckley specifically saw the May 14, 2021 promotion from Maher touting the
4 approximately 500,000% increase in the EMAX Token Price. Buckley reasonably
5 believed that this price increase was the result of genuine investor interest. Buckley
6 also saw Maher’s May 15, 2021 statement dismissing concerns about price volatility
7 because the Executive Defendants “assured” Maher that “aside from marketing
8 expenses they will not sell off any of their position[s] for at least six months.”
9 Buckley believed the statement that EthereumMax insiders would not be selling their
10 portion of the Float and driving the price of EMAX Tokens down. Similarly, Buckley
11 saw and believed Maher’s solicitations in his May 17, 2021 social media post
12 dismissing claims that EthereumMax was a “scam or pump and dump” and touting
13 EMAX Tokens were a “[l]ong term” investment that investors like Plaintiffs and the
14 class should “hold all the way.” Buckley also saw and relied on Davis’ May 18, 2021
15 solicitation that is was “not too late” to purchase EMAX Tokens given their growth
16 potential. These misleading statements and omissions by Davis and Maher induced
17 Buckley to make his May 28, 2021 purchase of EMAX Tokens.

18 259. Plaintiff Shah is a lifelong fan of professional sports, particularly
19 basketball and boxing. Shah regularly watched Defendant Pierce when the latter
20 played basketball professionally and then as a commentator on ESPN. Shah follows
21 Pierce on Twitter and saw the promotions by Pierce on May 26, 2021, May 28, 2021,
22 and May 30, 2021, respectively. These promotions regarding the growth potential
23 and price increases for EMAX Tokens induced Shah to make his first and second
24 purchases of EMAX Tokens on May 29, 2021 and June 1, 2021. Shah has also been
25 aware of Defendant Mayweather from his many years of being a world champion
26 boxer. Shah follows Mayweather on social media. Shah specifically saw
27 Mayweather’s promotions of EthereumMax during the Bitcoin Miami conference
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1 (which were also promoted on the social media accounts for EthereumMax, Maher,
2 and Davis), as well as the promotions of EMAX Tokens on the lead up to and during
3 the pay-per-view fight with Logan Paul, including the 5/28/21 Press Release.
4 Mayweather’s statements and promotions of EthereumMax gave Shah the false
5 impression that Mayweather was more than a celebrity endorser but rather that he
6 was an actual backer/investor in EMAX Tokens, and that he was making this
7 particular cryptocurrency a part of his multimillion-dollar investment strategy. Each
8 of these promotions induced Shah to make another purchase of EMAX Tokens on
9 June 3, 2021 and June 11, 2021. Shah is also aware of Defendant Kardashian’s
10 reputation as celebrity influencer, and in particular, her renowned business savvy.
11 Shah also saw Defendant Kardashian’s May 30, 2021 and June 14, 2021 promotion
12 of the EMAX Tokens. Shah believed Kardashian’s promotion and statements about
13 the number of tokens being burned as indicating that the decrease in supply would
14 cause his current investments in EMAX Tokens to correspondingly increase in value.
15 Kardashian’s promotion induced Shah to continue to hold on to his investment in
16 EMAX Tokens when he otherwise would not have done so.

17 260. Shah also followed the EthereumMax Instagram page and other social
18 media platforms like Telegram, Reddit, and Twitter during the Relevant Period and
19 saw the promotions from the Executive Defendants that were posted. Shah
20 specifically saw the June 3, 2021 post regarding the EMAX Token price volatility
21 that came from insider selling. Shah reasonably believed that the price drop on
22 EMAX Tokens only came from “a handful of larger wallets” of “early investors” who
23 were “not part of the development team.” Similarly, Shah believed the statements
24 that EthereumMax would still be accepted as a payment at David Grutman’s venues
25 at a future date, despite the issues that caused the delay of the rollout. The misleading
26 statements and omissions within the June 3, 2021 Instagram post from the Executive
27 Defendants, in conjunction with the above-mentioned promotions from Defendants
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1 Pierce, Mayweather, and Kardashian, induced Shah to make his June 3, 2021 and
2 June 11, 2021 purchases of EMAX Tokens. Similarly, this post, in conjunction with
3 Defendant Kardashian's posts regarding the ability to use EMAX Tokens as an
4 accepted payment and the increase in value his investments in EMAX Tokens would
5 receive if he continued to hold, caused Shah to retain his EMAX Token investment
6 when he otherwise would not have done so.

7 261. The facts that the Executive Defendants and Promoter Defendants
8 Davis, Pierce, Mayweather, and Kardashian misrepresented and concealed were
9 material to the decisions of Plaintiffs Semerjian, Buckley, and Shah and the members
10 of the class about whether to pay for or purchase EMAX Tokens (at all or for the
11 price they paid), in that they would not have proceeded with their transactions but for
12 the deceptive, fraudulent, and false acts and practices.

13 262. The Executive Defendants and Promoter Defendants Davis, Pierce,
14 Mayweather, and Kardashian intended for Plaintiffs Semerjian, Buckley, and Shah
15 and the members of the class to pay for EMAX Tokens in reliance upon their
16 deceptive and fraudulent acts and practices.

17 263. Defendants engaged in deceptive acts and practices under California law
18 by taking advantage of the lack of knowledge, ability, experience, or capacity of
19 Plaintiffs to a grossly unfair degree, including but not limited to, in the following
20 ways:

21 (a) knowingly and intentionally concealing the Executive
22 Defendants' specific roles and ownership interests in EthereumMax;

23 (b) failing to disclose that the huge increase in price of the EMAX
24 Tokens during first days following launch were caused by manipulation by the
25 Executive Defendants instead of being due to an organic increase in interest from
26 investors;

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1 (c) leading investors to believe that the EMAX Token would be
2 available for use as a payment at select locations when there was no such capability;
3 and

4 (d) knowingly and intentionally using and/or failing to disclose the
5 use of the Promoter Defendants to “instill trust” in uninformed investors to promote
6 the financial benefits of a highly speculative and risky investment in EMAX Tokens,
7 in an effort to manipulate and artificially inflate the price and trading volume of the
8 EMAX Tokens and allow Defendants to sell their EMAX Tokens at those inflated
9 prices.

10 264. The Executive Defendants did not disclose that the EMAX Token
11 developer held the number one rank with 23% ownership interest. Nor did they
12 disclose until much later that the Executive Defendants had purposefully chosen not
13 to lock the wallets of the EthereumMax insiders. Semerjian, Buckley, and Shah
14 would have found it material to their decision to purchase EMAX Tokens to know
15 whether or not insiders had significant percentages of the available Float of EMAX
16 Tokens with the ability to sell freely those EMAX Tokens and create massive
17 downward pressure. Likewise, had Semerjian, Buckley, and Shah been made aware
18 of that information at the times of their purchases, as well as the later-revealed
19 admission from Gentile that the Executive Defendants had chosen not to “lock the
20 wallets” (which gives the ten original founding members, including Defendant Maher
21 who held 5%, the ability to sell off their portions of EMAX Tokens without
22 restriction), it would have altered their decisions to both purchase the EMAX Tokens
23 for the price they paid as well and hold on to those EMAX Tokens when they
24 otherwise would not have done so.

25 265. Had the Promoter Defendants disclosed the omitted information,
26 Semerjian, Buckley, and Shah would have been aware of it because (a) they saw the
27 actual promotions by the Executive Defendants and Promoter Defendants Pierce,
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1 Mayweather, and Kardashian and would have concurrently seen any disclosure on
2 the promotions themselves had it been included, and (b) because they follow, directly
3 or indirectly, the social media accounts of, and news reports on, Promoter Defendants
4 Pierce, Mayweather, and Kardashian.

5 266. As a direct and proximate result of Defendants’ unlawful, unfair, and
6 deceptive practices, Plaintiffs and Class members suffered damages. The Executive
7 Defendants’ activities with the Promoter Defendants caused Plaintiffs and the Class
8 members to purchase and/or hold the EMAX Tokens when they otherwise would not
9 have done so.

10 267. The statements from Executive Defendants and Promoter Defendants
11 Pierce, Mayweather, and Kardashian are actionable and not puffery. ““The
12 distinguishing characteristics of puffery are vague, highly subjective claims as
13 opposed to specific, detailed factual assertions.” *Orlick*, 2013 WL 12139142, at *5.
14 Under California law, there is no requirement that for a statement to be actionable it
15 must also be false — the UCL also prohibits ““advertising which, although true, is
16 either actually misleading or which has a capacity, likelihood or tendency to deceive
17 or confuse the public.” *Williams.*, 552 F.3d at 938. Significantly, even if certain
18 statements would be non-actionable on their own, where there are multiple statements
19 at issue, courts must consider “as a whole.” *Id.* at 939 n.3; *Lima*, 710 F. Supp. 2d at
20 1007-08 (denying motion to dismiss where some specific representations could be
21 considered puffery, but all of defendants’ statements “taken as a whole” might be
22 actionable); *NJOY*, 2015 WL 12732461, at *10 (““Even assuming . . . that some of
23 the statements would themselves be non-actionable, they “cannot be considered in
24 isolation because they contribute to the [potentially] deceptive context” of the
25 packaging and marketing “as a whole.”””) (alteration in original).

26 268. As alleged further above, the Executive Defendants’ May 16, 2021 Pre-
27 launch Kickoff post stated, among other things, that (1) EMAX Tokens were up
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1 “500,000+% in the first 24 hours”; (2) the Executive Defendants had “locked in
2 partnership with global digital marketing agency” and “lined up a knockout
3 influencer” for a “nationwide campaign”; and (3) “We are 3 days in with ~\$100M
4 market cap and the train is just getting rolling.” These statements from Executive
5 Defendants are specific, detailed factual assertions the Executive Defendants were
6 using to encourage purchases and increase the price of the EMAX Tokens. At the
7 same time, the Executive Defendants Maher and Speer, with Promoter Defendant
8 Davis, each failed to disclose that these metrics were the result of the failed launch
9 that allowed insiders, including but not limited to Maher, to disproportionately
10 increase the price of the EMAX Tokens with their early trades.

11 269. Taken together, the misleading statements and omissions of the
12 Executive Defendants and Promoter Defendants Davis, Pierce, Mayweather, and
13 Kardashian contributed to the deceptive marketing tactics as a whole, which were
14 used to solicit sales of EMAX Tokens.

15 270. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
16 or practices by EthereumMax, to obtain restitution and disgorgement of all monies
17 generated as a result of such practices, and for all other relief allowed under California
18 Business & Professions Code §17200.

19 **FOURTH CAUSE OF ACTION**

20 **Violation of the California False Advertising Law**
21 **Cal. Bus. & Prof. Code §17500, *et seq.***
(Against Defendant Kardashian)

22 271. Plaintiffs restate and reallege all preceding allegations above as if fully
23 set forth herein.

24 272. Plaintiffs Semerjian, Buckley, and Shah are residents of the State of
25 California.

1 273. Plaintiffs Semerjian, Buckley, and Shah paid for or purchased EMAX
2 Tokens in California and thus the deceptive transactions alleged herein occurred in
3 California.

4 274. The ““primary evidence”” is the ““advertising itself.”” *Brockey v.*
5 *Moore*, 107 Cal. App. 4th 86, 100 (2003). The Ninth Circuit has recognized that the
6 question of whether advertising materials are deceptive to a reasonable consumer
7 “will usually be a question of fact not appropriate for decision” at the pleading stage.
8 *Williams*, 552 F.3d at 938.

9 275. In order to have standing under California law for a False Advertising
10 Law (“FAL”) claim, a plaintiff must meet the injury-in-fact requirement. This
11 requirement is met where a plaintiff can “show that, by relying on a misrepresentation
12 on a product label, they ‘paid more for a product than they otherwise would have
13 paid, or bought it when they otherwise would not have done so.’” *Reid*, 780 F.3d at
14 958.

15 276. Plaintiffs Semerjian, Buckley, and Shah saw Defendant Kardashian’s
16 May 30, 2021 and June 14, 2021 promotions of the EMAX Tokens. Semerjian,
17 Buckley, and Shah believed Kardashian’s promotion and statements about the ability
18 to use EMAX Tokens as an accepted payment at Club LIV and the number of tokens
19 being burned as indicating that the decrease in supply would cause their current
20 investments in EMAX Tokens to correspondingly increase in value. Kardashian’s
21 promotions induced Semerjian, Buckley, and Shah to continue to hold on to their
22 respective investments in EMAX Tokens when they each otherwise would not have
23 done so.

24 277. At all relevant times there was in full force and effect the California
25 False Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq.*, which prohibits, *inter*
26 *alia*, any public statement made “to induce the public to enter into any obligation
27 relating” to the disposal of real or personal property “which is untrue or misleading,
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1 and which is known, or which by the exercise of reasonable care should be known,
2 to be untrue and misleading.”

3 278. Kardashian used online and social media advertising to sell the EMAX
4 Tokens. Kardashian disseminated (and could continue to do so in the future)
5 advertising concerning the EMAX Token which by its very nature is deceptive,
6 untrue, or misleading within the meaning of Cal. Bus. & Prof. Code §17500 because
7 those advertising statements are misleading and likely to deceive, and continue to
8 deceive, members of the Class and the general public.

9 279. In making and disseminating the statements alleged herein, Kardashian
10 knew that the statements were untrue or misleading, and acted in violation of Cal.
11 Bus. & Prof. Code §17500.

12 280. The misrepresentations and non-disclosures by Kardashian of the
13 material facts detailed above constitute false and misleading advertising and therefore
14 constitute a violation of Cal. Bus. & Prof. Code §17500.

15 281. Through her deceptive acts and practices, Kardashian has improperly
16 and illegally obtained money from Plaintiffs and the members of the Class. As such,
17 Plaintiffs request that this Court cause Defendant Kardashian to restore this money
18 to Plaintiffs and the members of the Class, and to enjoin Defendant from continuing
19 to violate Cal. Bus. & Prof. Code §17500, as discussed above. Otherwise, Plaintiffs
20 and those similarly situated will continue to be harmed by Kardashian’s false and/or
21 misleading advertising regarding EMAX Tokens.

22 282. “Any violation of [Cal. Bus. & Prof. Code §17500] is a misdemeanor
23 punishable by imprisonment in county jail not exceeding six months, or by a fine not
24 exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment
25 and fine.” Cal. Bus. & Prof. Code §17500.

26 283. “Punishment is partly an expression of a society’s desire to inflict pain
27 on those who break the law. But giving wealthy offenders a mere slap on the wrist
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1 makes a mockery of that objective. And while punishment is supposed to prevent
2 undesirable conduct from happening in the first place, flat fines deter the wealthy less
3 than everyone else.”¹⁰²

4 284. Given Kardashian’s status as one of the country’s most influential and
5 wealth celebrity promoters – someone who regularly makes millions of dollars from
6 similarly promoting products to her massive following on social media – the
7 maximum fine of only \$2,500 for a violation of Cal. Bus. & Prof. Code §17500 will
8 do little, if anything, to deter Kardashian from making false and misleading
9 advertisements in the future.

10 285. In addition, pursuant to Cal. Bus. & Prof. Code §17535, Plaintiffs seek
11 an Order of this Court ordering Defendants to fully disclose the true nature of their
12 misrepresentations. Plaintiffs additionally request an Order requiring Kardashian to
13 disgorge her ill-gotten gains and/or award full restitution of all monies wrongfully
14 acquired by Kardashian by means of such acts of false advertising, plus interest and
15 attorneys’ fees so as to restore any and all monies which were acquired and obtained
16 by means of such untrue and misleading advertising, misrepresentations and
17 omissions, and which ill-gotten gains are still retained by Kardashian. Plaintiffs and
18 those similarly situated may be irreparably harmed and/or denied an effective and
19 complete remedy if such an Order is not granted.

20 286. Kardashian’s conduct is ongoing and continues to this date. Plaintiffs
21 and the Classes are therefore entitled to the relief sought.

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27 ¹⁰² Alec Schierenbeck, *A Billionaire and a Nurse Shouldn’t Pay the Same Fine*
28 *for Speeding*, N.Y. TIMES (Mar. 15, 2018), <https://www.nytimes.com/2018/03/15/opinion/flat-fines-wealthy-poor.html>.

FIFTH CAUSE OF ACTION

**Violation of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”)
Ch. 501, §211(1), Fla. Stat. Ann.
(Against All Defendants)**

287. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein, and further alleges as follows:

288. Plaintiffs Nahlah, Freeman, Brignol, and Puda are residents of the State of Florida.

289. Plaintiffs Nahlah, Freeman, Puda, and Brignol paid for or purchased EMAX Tokens in Florida and thus the deceptive transactions alleged herein occurred in Florida.

290. Chapter 501, Fla. Stat., FDUTPA is to be liberally construed to protect the consuming public, such as Plaintiffs in this case, from those who engage in unfair methods of competition, or unconscionable, deceptive or unfair acts or practices in the conduct of any trade or commerce.

291. Plaintiffs are “consumers” within the meaning of Fla. Stat. §501.203(7).

292. By soliciting investor funds in the manner in which they did, Defendants engaged in “trade and commerce” within the meaning of Fla. Stat. §501.203(8).

293. The elements comprising a consumer claim for damages under FDUTPA are: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages. *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983 (11th Cir. 2016) (citing *City First Mortg. Corp. v. Barton*, 988 So. 2d 82, 86 (Fla. Dist. Ct. App. 2008)).

294. Under FDUTPA, “deception occurs if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.” *Zlotnick v. Premier Sales Grp., Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007) (quoting *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003)). “Under Florida law, an objective test is employed in determining whether the practice was likely to deceive a consumer

1 acting reasonably. That is, “[a] party asserting a deceptive trade practice claim need
2 not show actual reliance on the representation or omission at issue.” *Carriuolo*, 823
3 F.3d at 984 (quoting *Davis v. Powertel, Inc.*, 776 So. 2d 971, 973 (Fla. Dist. Ct. App.
4 2000).

5 295. Here, Plaintiffs Nahlah, Freeman, Puda and Brignol nevertheless did, in
6 fact, reasonably rely on the alleged misleading statements and omissions when
7 making their respective decisions to purchase the EMAX Tokens.

8 296. A plaintiff’s claims under FDUPTA are governed by the “reasonable
9 consumer” test. *Piescik v. CVS Pharmacy, Inc.*, 576 F. Supp. 3d 1125, 1132 n.2 (S.D.
10 Fla. 2021) (“This case was brought under California’s consumer protection laws,
11 which apply the same ‘reasonable consumer’ test for deception as applied in
12 interpreting FDUTPA.”).

13 297. Plaintiff Nahlah is a lifelong fan of professional sports, particularly
14 basketball and boxing. Nahlah regularly watched Defendant Pierce when the latter
15 played professionally and then as a commentator on ESPN. Nahlah saw Defendant
16 Pierce’s May 26, 2021 and May 28, 2021, respectively. These promotions induced
17 Nahlah to make his first purchase of EMAX Tokens on May 28, 2021. Nahlah also
18 follows Defendant Mayweather’s career and social media accounts. Nahlah
19 specifically saw Mayweather’s promotion of EthereumMax during the Bitcoin Miami
20 conference (which were also promoted on the social media accounts for
21 EthereumMax, Maher, and Davis), as well as the promotions of EMAX Tokens
22 during the pay-per-view fight with Logan Paul, including the 5/28/21 Press Release.
23 Mayweather’s statements and promotions of EthereumMax gave Nahlah the false
24 impression that Mayweather was more than a celebrity endorser but rather that he
25 was an actual backer/investor in EMAX Tokens, and that he was making this
26 particular cryptocurrency a part of his multimillion-dollar investment strategy. These
27 promotions induced Nahlah to make six more purchases of EMAX Tokens on June
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1 4, 2021, June 5, 2021, June 6, 2021, June 7, 2021, June 8, 2021, and June 10, 2021.
2 Nahlah also saw Defendant Kardashian’s May 30, 2021 and June 14, 2021
3 promotions of the EMAX Tokens. Nahlah often visited Club LIV during the
4 Relevant Period and was particularly enticed by Kardashian’s promotion to use
5 EMAX Tokens there. Furthermore, Nahlah believed Kardashian’s promotion and
6 statements about the number of tokens being burned as indicating that the decrease
7 in supply would cause his current investments in EMAX Tokens to correspondingly
8 increase in value. Kardashian’s promotions induced Nahlah to make additional
9 purchases of EMAX Tokens as well as continuing to hold on to his investment in
10 EMAX Tokens when he otherwise would not have done so.

11 298. Nahlah also followed the EthereumMax Instagram page during the
12 Relevant Period and saw the promotions from the Executive Defendants that were
13 posted on that platform. Nahlah specifically saw the May 16, 2021 post related to
14 the “EthereumMax Pre-launch Kickoff,” which promoted the growth of the EMAX
15 Tokens and alluded to a relationship with Defendant Mayweather as a “knockout
16 influencer.” Nahlah also saw the June 3, 2021 post regarding the EMAX Token price
17 volatility that came from insider selling. Nahlah reasonably believed that the price
18 drop on EMAX Tokens only came from “a handful of larger wallets” of “early
19 investors” who were “not part of the development team,” as opposed to those insiders
20 like Defendant Maher. Similarly, Nahlah believed the statements that EthereumMax
21 would still be accepted as a payment at David Grutman’s venues at a future date,
22 despite the issues that caused the delay of the rollout. The misleading statements and
23 omissions within the June 3, 2022 Instagram post from the Executive Defendants, in
24 conjunction with the above-mentioned promotions from Defendants Pierce,
25 Mayweather, and Kardashian, caused Nahlah to make his June 4, 2021, June 5, 2021,
26 June 6, 2021, June 7, 2021, June 8, 2021, and June 10, 2021 purchases of EMAX
27 Tokens. Similarly, this post, in conjunction with Defendant Kardashian’s posts
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1 regarding the ability to use EMAX Tokens as an accepted payment and the increase
2 in value his investments in EMAX Tokens would receive if he continued to hold,
3 caused Nahlah to retain his EMAX Token investment when he otherwise would not
4 have done so.

5 299. Nahlah also saw the statements and promotions from Defendants Maher
6 and Davis that were posted and/or reposted on various social media platforms. Nahlah
7 specifically saw the May 14, 2021 promotion from Maher touting the approximately
8 500,000% increase the EMAX Token Price. Nahlah reasonably believed that this
9 price increase was the result of genuine investor interest. Nahlah also saw Maher’s
10 May 15, 2021 statement dismissing concerns about price volatility because the
11 Executive Defendants “assured” Maher that “aside from marketing expenses they
12 will not sell off any of their position for at least six months.” Nahlah believed the
13 statement that EthereumMax insiders would not be selling their portion of the Float
14 and driving the price of EMAX Tokens down. Similarly, Nahlah saw and believed
15 Maher’s solicitations in his May 17, 2021 social media post dismissing claims that
16 EthereumMax was a “scam or pump and dump” and touting EMAX Tokens was a
17 “[l]ong term” investment that investors like Plaintiffs and the class should “hold all
18 the way.” Nahlah also saw and relied on Davis’ May 18, 2021 solicitation that is was
19 “not too late” to purchase EMAX Tokens given their growth potential. These
20 misleading statements and omissions by Davis and Maher further induced Nahlah to
21 make his May 28, 2021 purchase of EMAX Tokens.

22 300. Plaintiff Puda followed the EthereumMax Instagram page during the
23 Relevant Period and saw the promotions from the Executive Defendants that were
24 posted on that platform. Puda specifically saw the May 16, 2021 post related to the
25 “EthereumMax Pre-launch Kickoff,” which promoted the growth of the EMAX
26 Tokens and alluded to a relationship with Defendant Mayweather as a “knockout
27 influencer.” Each of the promotions, separately and taken together, induced Puda to
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1 purchase EMAX Tokens on May 29, 2021. Puda also saw Defendant Kardashian’s
2 May 30, 2021 promotion of the EMAX Tokens being accepted as payments at venues
3 like Club LIV. Puda often visited Club LIV during the Relevant Period and was
4 particularly enticed by Kardashian’s promotion to use EMAX Tokens there. Puda
5 is also a lifelong fan of professional sports, particularly boxing. Puda is aware of
6 Defendant Mayweather from his career as a world champion boxer. Puda also
7 follows Defendant Mayweather’s career and social media accounts. Puda
8 specifically saw Mayweather’s promotion of EthereumMax during the Bitcoin Miami
9 conference (which were also promoted on the social media accounts for
10 EthereumMax, Maher, and Davis), as well as the promotions of EMAX Tokens
11 during the pay-per-view fight with Logan Paul. Mayweather’s statements and
12 promotions of EthereumMax, including the “EthereumMax Pre-launch Kickoff” post
13 alluding to Mayweather, gave Puda the false impression that Mayweather was more
14 than a celebrity endorser but rather that he was an actual backer/investor in EMAX
15 Tokens, and that he was making this particular cryptocurrency a part of his
16 multimillion-dollar investment strategy. Furthermore, Puda both saw and believed
17 Kardashian’s June 14, 2021 promotion and statements about the number of tokens
18 being burned as indicating that the decrease in supply would cause his current
19 investments in EMAX Tokens to correspondingly increase in value. The promotions
20 from Defendants Mayweather and Kardashian induced Puda to continue holding on
21 to his investment in EMAX Tokens when he otherwise would not have done so.

22 301. Puda also saw the June 3, 2021 post regarding the EMAX Token price
23 volatility that came from insider selling. Puda reasonably believed that the price drop
24 on EMAX Tokens only came from “a handful of larger wallets” of “early investors”
25 who were “not part of the development team,” as opposed to those like Defendant
26 Maher and the other Executive Defendants. Similarly, Puda believed the statements
27 that EthereumMax would still be accepted as a payment at David Grutman’s venues
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1 at a future date, despite the issues that caused the delay of the rollout. The misleading
2 statements and omissions within the June 3, 2021 Instagram post from the Executive
3 Defendants, in conjunction with the above-mentioned promotions from Defendants
4 Mayweather and Kardashian, induced Puda to hold onto his investment in EMAX
5 Tokens. Similarly, this post, in conjunction with Defendant Kardashian's posts
6 regarding the ability to use EMAX Tokens as an accepted payment and the increase
7 in value his investments in EMAX Tokens would receive if he continued to hold,
8 caused Puda to retain his EMAX Token investment when he otherwise would not
9 have done so.

10 302. Plaintiff Freeman is a lifelong fan of professional sports, particularly
11 basketball, football, and boxing. Freeman regularly watched Defendant Pierce when
12 the latter played professionally and then as a commentator on ESPN. Freeman saw
13 Defendant Pierce's May 26, 2021 and May 28, 2021 promotions, respectively. Each
14 of these promotions, separately and taken together, induced Freeman to make his first
15 and second purchases of EMAX Tokens on June 2, 2021. Freeman is also aware of
16 Defendant Brown's football career and off-field conduct, and he follows Brown's
17 social media. Freeman specifically saw Brown's May 29, 2021 promotion wherein
18 Brown indicated that he wanted his next football contract to be paid in EMAX
19 Tokens. This promotion also caused Freeman to make his two separate purchases of
20 EMAX Tokens on June 2, 2021. Freeman is aware of Defendant Mayweather
21 through several means and found Mayweather's promotions particularly influential
22 on his decision to purchase EMAX Tokens. First, Freeman regularly saw
23 Mayweather at various events around Miami (*e.g.*, charity basketball games and night
24 clubs). Second, Freeman followed Mayweather's career throughout the years as a
25 world champion boxer. Freeman specifically saw Mayweather's promotion of
26 EthereumMax during the Bitcoin Miami conference (which were also promoted on
27 the social media accounts for EthereumMax, Maher, and Davis), as well as the
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1 promotions of EMAX Tokens during the pay-per-view fight with Logan Paul,
2 including the 5/28/21 Press Release. Mayweather’s statements and promotions of
3 EthereumMax gave Freeman the false impression that Mayweather was more than a
4 celebrity endorser but rather that he was an actual backer/investor in EMAX Tokens,
5 and that he was making this particular cryptocurrency a part of his multimillion dollar
6 investment strategy. These promotions from Defendant Mayweather and the
7 Executive Defendants induced Freeman to make his third purchase of EMAX Tokens
8 on June 6, 2021. Freeman also saw Defendant Kardashian’s May 30, 2021 and June
9 14, 2021 promotions of the EMAX Tokens. Freeman often visited Club LIV during
10 the Relevant Period and was particularly enticed by Kardashian’s promotion to use
11 EMAX Tokens there. Furthermore, Freeman believed Kardashian’s promotion and
12 statements about the number of tokens being burned as indicating that the decrease
13 in supply would cause his current investments in EMAX Tokens to correspondingly
14 increase in value. Kardashian’s promotions induced Freeman to continue to hold on
15 to his investment in EMAX Tokens when he otherwise would not have done so.

16 303. Freeman also followed the EthereumMax Instagram page during the
17 Relevant Period and saw the promotions from the Executive Defendants that were
18 posted on that platform. Freeman specifically saw the May 16, 2021 post related to
19 the “EthereumMax Pre-launch Kickoff,” which promoted the growth of the EMAX
20 Tokens and alluded to a relationship with Defendant Mayweather as a “knockout
21 influencer.” Freeman also saw the June 3, 2021 post regarding the EMAX Token
22 price volatility that came from insider selling. Freeman reasonably believed that the
23 price drop on EMAX Tokens only came from “a handful of larger wallets” of “early
24 investors” who were “not part of the development team,” as opposed to those insiders
25 like Defendant Maher. Similarly, Freeman believed the statements that
26 EthereumMax would still be accepted as a payment at David Grutman’s venues at a
27 future date, despite the issues that caused the delay of the rollout. The misleading
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1 statements and omissions within the June 3, 2021 Instagram post from the Executive
2 Defendants, in conjunction with the above-mentioned promotions from Defendants
3 Pierce, Mayweather, and Kardashian, caused Freeman to make his June 4, 2021
4 purchase of EMAX Tokens. Similarly, this post, in conjunction with Defendant
5 Kardashian’s posts regarding the ability to use EMAX Tokens as an accepted
6 payment and the increase in value his investments in EMAX Tokens would receive
7 if he continued to hold while EMAX Tokens were being “burned” by the Executive
8 Defendants, caused Freeman to retain his EMAX Token investment when he
9 otherwise would not have done so.

10 304. Plaintiff Brignol follows professional sports, in particular boxing and
11 basketball. Brignol regularly watched Defendant Pierce when the latter played
12 professionally and then as a commentator on ESPN. Brignol also followed Pierce’s
13 social media accounts and saw Defendant Pierce’s May 26, 2021 and May 28, 2021
14 promotions, respectively. These promotions induced Brignol to make her first
15 purchases of EMAX Tokens on May 29, 2021 and May 31, 2021 (made in four
16 separate transactions). Brignol also follows Defendant Mayweather’s career and
17 social media accounts. Brignol specifically saw Mayweather’s promotions of
18 EthereumMax on the lead up and during the pay-per-view fight with Logan Paul,
19 including the 5/28/21 Press Release. Mayweather’s statements and promotions of
20 EthereumMax gave Brignol the false impression that Mayweather was more than a
21 celebrity endorser but rather that he was an actual backer/investor in EMAX Tokens,
22 and that he was making this particular cryptocurrency a part of his multimillion-dollar
23 investment strategy. These promotions induced Brignol to make her fifth and final
24 purchase of EMAX Tokens on June 8, 2021. Brignol also followed Defendant
25 Kardashian’s social media accounts and saw Kardashian’s May 30, 2021 and June
26 14, 2021 promotions of the EMAX Tokens. Brignol often visited Club LIV during
27 the Relevant Period and was particularly enticed by Kardashian’s promotion to use
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1 EMAX Tokens there. Furthermore, Brignol believed Kardashian’s promotion and
2 statements about the number of tokens being burned as indicating that the decrease
3 in supply would cause her current investments in EMAX Tokens to correspondingly
4 increase in value. Kardashian’s promotions induced Brignol to continue to hold on
5 to his investment in EMAX Tokens when she otherwise would not have done so.

6 305. Brignol also followed the EthereumMax Instagram page during the
7 Relevant Period and saw the promotions from the Executive Defendants that were
8 posted on that platform. Brignol specifically saw the May 16, 2021 post related to
9 the “EthereumMax Pre-launch Kickoff,” which promoted the growth of the EMAX
10 Tokens and alluded to a relationship with Defendant Mayweather as a “knockout
11 influencer.” Brignol also saw the June 3, 2021 post regarding the EMAX Token price
12 volatility that came from insider selling. Freeman reasonably believed that the price
13 drop on EMAX Tokens only came from “a handful of larger wallets” of “early
14 investors” who were “not part of the development team,” as opposed to those insiders
15 like Defendant Maher. Similarly, Brignol believed the statements that EthereumMax
16 would still be accepted as a payment at David Grutman’s venues at a future date,
17 despite the issues that caused the delay of the rollout. The misleading statements and
18 omissions within the June 3, 2021 Instagram post from the Executive Defendants, in
19 conjunction with the above-mentioned promotions from Defendants Pierce,
20 Mayweather, and Kardashian, caused Freeman to make her May 29, 2021 and May
21 31, 2021, and June 8, 2021 purchases of EMAX Tokens. Similarly, this post, in
22 conjunction with Defendant Kardashian’s posts regarding the ability to use EMAX
23 Tokens as an accepted payment and the increase in value her investments in EMAX
24 Tokens would receive if she continued to hold while EMAX Tokens were being
25 “burned” by the Executive Defendants, caused Brignol to retain her EMAX Token
26 investment when she otherwise would not have done so.

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1 306. To establish an unfair practice, the plaintiff must show that it is “one that
2 ‘offends established public policy’ and one that is ‘immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to consumers.’” *Marrache v. Bacardi U.S.A.,*
4 *Inc.*, 17 F.4th 1084, 1098 (11th Cir. 2021) (quoting *PNR*, 842 So. 2d at 777); *see also*
5 *CMR Constr. & Roofing, LLC v. UCMS, LLC*, No. 21-11183, 2022 WL 3012298, at
6 *4 (11th Cir. July 29, 2022).

7 307. Defendants engaged in business acts and practices deemed “deceptive”
8 because of the conduct, statements, and omissions described above, including, but
9 not limited to, the following:

10 (a) knowingly and intentionally concealing the Executive
11 Defendants’ specific roles and ownership interests in EthereumMax;

12 (b) failing to disclose that the huge increase in price of the EMAX
13 Tokens during first days following launch were caused by manipulation by the
14 Executive Defendants instead of being due to an organic increase in interest from
15 investors;

16 (c) leading investors to believe that the EMAX Token would be
17 available for use as a payment at select locations when there was no such capability;
18 and

19 (d) knowingly and intentionally using and/or failing to disclose the
20 use of the Promotor Defendants to “instill trust” in uninformed investors to promote
21 the financial benefits of a highly speculative and risky investment in EMAX Tokens,
22 in an effort to manipulate and artificially inflate the price and trading volume of the
23 EMAX Tokens and allow Defendants to sell their EMAX Tokens at those inflated
24 prices.

25 308. The Executive Defendants did not disclose that the EMAX Token
26 developer held the number one rank with 23% ownership interest. Nor did they
27 disclose until much later that the Executive Defendants had purposefully chosen not
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1 to lock the wallets of the EthereumMax insiders. Nahlah, Freeman, Puda, and
2 Brignol each would have found it material to their decision to purchase EMAX
3 Tokens to know whether or not insiders had significant percentages of the available
4 Float of EMAX Tokens with the ability to sell freely those EMAX Tokens and create
5 massive downward pressure. Likewise, had Nahlah, Freeman, Puda, and Brignol
6 each been made aware of that information at the times of their respective purchases,
7 as well as the later-revealed admission from Gentile that the Executive Defendants
8 had chosen not to “lock the wallets” (which gives the ten original founding members,
9 including Defendant Maher who held 5%, the ability to sell off their portions of
10 EMAX Tokens without restriction) it would have altered each of their decisions to
11 both purchase the EMAX Tokens for the price they paid as well and hold on to those
12 EMAX Tokens when they otherwise would not have done so.

13 309. These acts and omissions constitute both deceptive and unfair trade
14 practices because the false representations and omissions made by Defendants have
15 a tendency or capacity to deceive consumers, such as Plaintiffs, into investing in the
16 EMAX Tokens to their collective financial detriment. Such conduct is immoral,
17 unethical, oppressive, unscrupulous, or substantially injurious to consumers.

18 310. Had the Promoter Defendants disclosed the omitted information,
19 Nahlah, Freeman, Puda, and Brignol would have been aware of it because (a) they
20 saw the actual promotions by the Executive Defendants and Promoter Defendants
21 Pierce, Brown, Mayweather, and Kardashian and would have concurrently seen any
22 disclosure on the promotions themselves had it been included, and (b) because they
23 each follow, directly or indirectly, the social media accounts of, and news reports on,
24 Promoter Defendants Pierce, Mayweather, and Kardashian.

25 311. As a direct and proximate result of Defendants’ deceptive trade
26 practices, Plaintiffs Nahlah, Freeman, Puda, and Brignol, and the members of the
27 class, suffered damages. The activities of the Executive Defendants and Promoter
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1 Defendants Pierce, Brown, Mayweather, and Kardashian caused Plaintiffs Nahlah,
2 Freeman, Puda, and Brignol, and the members of the Class to purchase and/or hold
3 the EMAX Tokens when they otherwise would not have done so.

4 312. The materially false statements and omissions as described above, and
5 the fact that this was a misleading investment, were unfair, unconscionable, and
6 deceptive practices perpetrated on Plaintiffs which would have likely deceived a
7 reasonable person under the circumstances.

8 313. Defendants were on notice at all relevant times that the false
9 representations of material facts described above were being communicated to
10 prospective investors (such as Plaintiffs) by their authorized agents.

11 314. As a result of the false representations and violations of the laws
12 described above, Plaintiffs have been damaged by, among other things, overpaying
13 for the EMAX Tokens that were artificially inflated by Defendants.

14 315. Plaintiffs have also been damaged in other and further ways subject to
15 proof at trial. For example, an injury under FDUPTA is found when “the [defendant]
16 made an allegedly misleading advertisement by making an offer or promise which
17 the [defendant] did not intend to keep.” *Stires v. Carnival Corp.*, No. 6:02-CV-542-
18 ORL31JGG, 2003 WL 21356781, at *2 (M.D. Fla. Jan. 2, 2003). As alleged herein,
19 the Executive Defendants and Promoter Defendant Kardashian promoted the ability
20 to use the EMAX Tokens as an accepted payment method at Club LIV, which was
21 later disclosed to not have been possible due to supposed technical complexity that
22 apparently had not been addressed prior to promising investors that they could use
23 EMAX Tokens to purchase goods and services at Club LIV. As noted above,
24 Plaintiffs Nahlah, Freeman, Puda, and Brignol all patronized Club LIV in Miami and
25 were induced to purchase EMAX Tokens because of these particular promotions.

26 316. The statements from Executive Defendants and Promoter Defendants
27 Pierce, Mayweather, and Kardashian are actionable and not puffery. Under Florida
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1 law, “‘specific and measurable claims’ are not puffery ‘and may be the subject of
2 deceptive advertising claims.’” *Wyndham Vacation Ownership v. Reed Hein &
3 Assocs., LLC*, No. 618CV02171GAPDCI, 2019 WL 3934468, at *6 (M.D. Fla. Aug.
4 20, 2019) (citing *Fed. Trade Comm’n v. World Patent Mktg., Inc.*, No. 17-CV-20848,
5 2017 WL 3508639, at *12 (S.D. Fla. Aug. 16, 2017)); *Luczak v. Nat’l Beverage
6 Corp.*, 812 F. App’x 915, 925 (11th Cir. 2020) (finding that certain statements were
7 actionable because, while National Beverage’s statements expressed optimism, they
8 did so by citing to specific strategies and metrics the company said it was using).
9 And while statements of opinion and puffery (*i.e.*, exaggerated advertising,
10 blustering, and boasting upon which no reasonable buyer would rely) are not
11 actionable, a statement of opinion may be actionable if it “‘fairly implies a [factual]
12 basis.’” *Duty Free Americas, Inc. v. Estee Lauder Cos., Inc.*, 797 F.3d 1248, 1277
13 (11th Cir. 2015) (quoting *Osmose, Inc. v. Viance, LLC*, 612 F.3d 1298, 1311 (11th
14 Cir. 2010) (alteration in original). As the Eleventh Court observed: “A conclusion
15 that a statement constitutes puffery doesn’t absolve the reviewing court of the duty
16 to consider the possibility — however remote — that in context and in light of the
17 ‘total mix’ of available information, a reasonable investor might nonetheless attach
18 importance to the statement.” *Carvelli v. Ocwen Fin. Corp.*, 934 F.3d 1307, 1320–
19 21 (11th Cir. 2019).

20 317. As alleged further above, the Executive Defendants’ May 16, 2021 Pre-
21 launch Kickoff post stated, among other things, that (1) EMAX Tokens were up
22 “500,000+% in the first 24 hours”; (2) the Executive Defendants had “locked in
23 partnership with global digital marketing agency” and “lined up a knockout
24 influencer” for a “nationwide campaign”; and (3) “We are 3 days in with ~\$100M
25 market cap and the train is just getting rolling.” These statements from Executive
26 Defendants are specific and measurable, and they relate to specific strategies and
27 metrics the Company said it was using to encourage purchases and increase the price
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1 of the EMAX Tokens. At the same time, the Executive Defendants Maher and Speer,
2 with Promoter Defendant Davis, each failed to disclose that these metrics were the
3 result of the failed launch that allowed insiders, including but not limited to Maher,
4 to disproportionately increase the price of the EMAX Tokens with their early trades.

5 318. Taken together the misleading statements and omissions of the
6 Executive Defendants and Promoter Defendants Davis, Pierce, Brown, Mayweather,
7 and Kardashian contributed to the deceptive marketing tactics as a whole, which were
8 used to solicit sales of EMAX Tokens.

9 319. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
10 or practices by Defendants, to obtain restitution and disgorgement of all monies
11 generated as a result of such practices, and for all other relief allowed under Florida
12 law.

13 320. Pursuant to Fla. Stat. §§501.211(1) and 501.2105, Plaintiffs are entitled
14 to recover from Defendants the reasonable amount of attorneys' fees Plaintiffs have
15 had to incur in representing their interests in this matter.

16 **SIXTH CAUSE OF ACTION**

17 **Violation of New York's General Business Law**
18 **Art. 22-A, §349, et seq.**

19 **(Against the Executive Defendants and Promoter Defendants Pierce, Brown,
20 Mayweather, and Kardashian)**

21 321. Plaintiffs restate and reallege all preceding allegations above as if fully
22 set forth herein, and further allege as follows:

23 322. Plaintiffs Huegerich and Ciklic are residents of the State of New York.

24 323. Plaintiffs Huegerich and Ciklic paid for or purchased EMAX Tokens in
25 New York and thus the deceptive transactions alleged herein occurred in New York.

26 324. At all relevant and material times as described herein, the Executive
27 Defendants and Promoter Defendants Brown, Mayweather, and Kardashian were
28 engaged in "the conduct of any business, trade or commerce" in New York within

1 the meaning of New York General Business Law (“GBL”) §349 with respect to the
2 act alleged herein.

3 325. Section 349 proscribes “[d]eceptive acts or practices in the conduct of
4 any business, trade or commerce or in the furnishing of any service in [New York],”
5 N.Y. Gen. Bus. Law §349(a), and, further, provides a private right of action to “any
6 person who has been injured by reason of any violation of th[e] section.” *Id.*, §349(h).
7 Although “[j]ustifiable reliance by the plaintiff is not an element of [a §349] claim”
8 (*Koch v. Acker, Merrall & Condit Co.*, 967 N.E.2d 675, 676 (N.Y. 2012)), a plaintiff
9 under that statute must ultimately “prove three elements: first, that the challenged act
10 or practice was consumer-oriented; second, that it was misleading in a material way;
11 and third, that the plaintiff suffered injury as a result of the deceptive act.” *Stutman*
12 *v. Chem. Bank*, 95 N.Y.2d 24, 29 (2000); *see also Crawford v. Franklin Credit Mgmt.*
13 *Corp.*, 758 F.3d 473, 490 (2d Cir. 2014) (same). Nevertheless, “an action under §349
14 is not subject to the pleading-with-particularity requirements of Rule 9(b) . . . but
15 need only meet the bare-bones notice-pleading requirements of Rule 8(a).” *Pelman*
16 *ex rel. Pelman v. McDonald's Corp.*, 396 F.3d 508, 511 (2d Cir. 2005).

17 326. In assessing whether an act is materially misleading, the inquiry is
18 whether, objectively, the act is “‘likely to mislead a reasonable consumer acting
19 reasonably under the circumstances.’” *Cohen v. JP Morgan Chase & Co.*, 498 F.3d
20 111, 126 (2d Cir. 2007) (quoting *Oswego Laborers' Local 214 Pension Fund v.*
21 *Marine Midland Bank*, 85 N.Y.2d 20 (1995)).

22 327. At the threshold, a plaintiff must demonstrate that the §349 claim
23 implicates “‘consumer oriented’” conduct by the defendant. *Gaidon v. Guardian Life*
24 *Ins. Co.*, 94 N.Y.2d 330 (1999). Under New York law, a deceptive act or practice
25 “‘that ha[s] ‘a broader impact on consumers at large’” meets this threshold test.
26 *Shapiro v. Berkshire Life Ins. Co.*, 212 F.3d 121, 126 (2d Cir. 2000) (“A ‘deceptive
27 act or practice’ has been defined as a representation or omission ‘likely to mislead a
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1 reasonable consumer acting reasonably under the circumstances.”) (citing *Oswego*
2 *Laborers*, 85 N.Y.2d at 26).

3 328. Plaintiff Huegerich is a lifelong fan of professional sports, particularly
4 football and boxing. Huegerich is aware of Defendant Brown’s football career and
5 off-field conduct, and he specifically saw Brown’s May 29, 2021 promotion wherein
6 Brown indicated that he wanted his next football contract to be paid in EMAX
7 Tokens. Additionally, Huegerich follows Defendant Mayweather’s career and social
8 media accounts. Huegerich specifically saw Mayweather’s promotion of
9 EthereumMax during the Bitcoin Miami conference, as well as the promotions of
10 EMAX Tokens on the lead up to and during the pay-per-view fight with Logan Paul,
11 including the 5/28/21 Press Release. Each of these promotions induced Huegerich to
12 make purchase EMAX tokens on June 6, 2021. Huegerich also follows Defendant
13 Kardashian on Instagram and saw her June 14, 2021 promotion of the EMAX Tokens.
14 Huegerich believed Kardashian’s promotion and statements about the number of
15 tokens being burned as indicating that the decrease in supply would cause his current
16 investments in EMAX Tokens to correspondingly increase in value. Kardashian’s
17 promotion induced Huegerich to continue to hold on to his investment in EMAX
18 Tokens when he otherwise would not have done so.

19 329. Huegerich also followed the EthereumMax Instagram page during the
20 Relevant Period and saw the promotions from the Executive Defendants that were
21 posted on that platform. Huegerich specifically saw the June 3, 2021 post regarding
22 the EMAX Token price volatility that came from insider selling. Huegerich
23 reasonably believed that the price drop on EMAX Tokens only came from “a handful
24 of larger wallets” of “early investors” who were “not part of the development team.”
25 Similarly, Huegerich believed the statements that EthereumMax would still be
26 accepted as a payment at David Grutman’s venues at a future date, despite the issues
27 that caused the delay of the rollout. The misleading statements and omissions within
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1 the June 3, 2021 Instagram post from the Executive Defendants, in conjunction with
2 the above-mentioned promotions from Defendants Brown, Mayweather, and
3 Kardashian, induced Huegerich to make his June 6, 2021 purchase of EMAX Tokens.
4 Similarly, this post, in conjunction with Defendant Kardashian's posts regarding the
5 ability to use EMAX Tokens as an accepted payment and the increase in value his
6 investments in EMAX Tokens would receive if he continued to hold, caused
7 Huegerich to retain his EMAX Token investment when he otherwise would not have
8 done so.

9 330. Plaintiff Ciklic is a lifelong fan of professional sports, particularly
10 football and boxing. Ciklic regularly watched Defendant Pierce when the latter
11 played professionally and then as a commentator on ESPN. Ciklic also followed
12 Pierce's social media accounts and saw Defendant Pierce's May 26, 2021, and May
13 28, 2021 promotions, respectively. Ciklic is aware of Defendant Brown's football
14 career and off-field conduct, and he saw Brown's May 29, 2021 promotion wherein
15 Brown indicated that he wanted his next football contract to be paid in EMAX
16 Tokens. Additionally, Ciklic follows Defendant Mayweather's career and social
17 media accounts. Ciklic specifically saw Mayweather's promotion of EthereumMax
18 during the Bitcoin Miami conference, as well as the promotions of EMAX Tokens
19 on the lead up to and during the pay-per-view fight with Logan Paul, including the
20 5/28/21 Press Release. These promotions by Pierce, Brown, and Mayweather induced
21 Ciklic to make two purchases of EMAX Tokens on May 28, 2021 and May 29, 2021
22 as a result. Ciklic is also aware of Defendant Kardashian from her reality television
23 show and renowned business savvy, and Ciklic saw Kardashian's May 30, 2021
24 promotion of the EMAX Tokens being accepted as payment at Club LIV. Ciklic
25 knew about the high-end status of Club LIV during the Relevant Period and was
26 particularly enticed by Kardashian's promotion to use EMAX Tokens there. Ciklic
27 also saw Kardashian's June 14, 2021 promotion of the EMAX Tokens. Ciklic
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1 believed Kardashian’s promotion and statements about the number of tokens being
2 burned as indicating that the decrease in supply would cause his current investments
3 in EMAX Tokens to correspondingly increase in value. Kardashian’s These
4 promotions from Kardashian and Mayweather induced Ciklic to continue to hold on
5 to his investment in EMAX Tokens when he otherwise would not have done so.

6 331. Ciklic also followed the EthereumMax Instagram page during the
7 Relevant Period and saw the promotions from the Executive Defendants that were
8 posted on that platform. Ciklic specifically saw the June 3, 2021 post regarding the
9 EMAX Token price volatility that came from insider selling. Ciklic reasonably
10 believed that the price drop on EMAX Tokens only came from “a handful of larger
11 wallets” of “early investors” who were “not part of the development team.”
12 Similarly, Ciklic believed the statements that EthereumMax would still be accepted
13 as a payment at David Grutman’s venues at a future date, despite the issues that
14 caused the delay of the rollout. The misleading statements and omissions within the
15 June 3, 2021 Instagram post from the Executive Defendants, in conjunction with the
16 above-mentioned promotions from Defendants Brown, Mayweather, and
17 Kardashian, induced Ciklic to make his June 6, 2021 purchase of EMAX Tokens.
18 Similarly, this post, in conjunction with Defendant Kardashian’s posts regarding the
19 ability to use EMAX Tokens as an accepted payment and the increase in value his
20 investments in EMAX Tokens would receive if he continued to hold, caused Ciklic
21 to retain his EMAX Token investment when he otherwise would not have done so.

22 332. For the reasons discussed herein, Defendants violated and continued to
23 violate Section 349(a) of the New York General Business Law by engaging in the
24 herein described unfair or deceptive acts or practices. Defendants’ acts and practices,
25 including the material omissions, described herein, were likely to, and did in fact,
26 deceive and mislead members of the public, including consumers acting reasonably
27 under the circumstances, to their detriment.

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1 333. Defendants engaged in deceptive acts and practices under New York law
2 by taking advantage of the lack of knowledge, ability, experience, or capacity of
3 Plaintiffs to a grossly unfair degree, including but not limited to, in the following
4 ways:

5 (a) knowingly and intentionally concealing the Executive Defendants’
6 specific roles and ownership interests in EthereumMax;

7 (b) failing to disclose that the huge increase in price of the EMAX Tokens
8 during the first days following launch were caused by manipulation by the Executive
9 Defendants instead of being due to an organic increase in interest from investors;

10 (c) failing to disclose that EMAX Tokens were not being accepted as a
11 payment and would not be at any point in the foreseeable future; and

12 (d) knowingly and intentionally using and/or failing to disclose the use of
13 the Promotor Defendants to “instill trust” in uninformed investors to promote the
14 financial benefits of a highly speculative and risky investment in EMAX Tokens, in
15 an effort to manipulate and artificially inflate the price and trading volume of the
16 EMAX Tokens and allow Defendants to sell their EMAX Tokens at those inflated
17 prices.

18 334. The Executive Defendants did not disclose that the EMAX Token
19 developer held the number one rank with 23% ownership interest. Nor did they
20 disclose until much later that the Executive Defendants had purposefully chosen not
21 to lock the wallets of the EthereumMax insiders. Huegerich would have found it
22 material to his decision to purchase EMAX Tokens to know whether or not insiders
23 had significant percentages of the available Float of EMAX Tokens with the ability
24 to sell freely those EMAX Tokens and create massive downward pressure. Likewise,
25 had Huegerich and Ciklic been made aware of that information at the times of their
26 purchases, as well as the later-revealed admission from Gentile that the Executive
27 Defendants had chosen not to “lock the wallets” (which gives the ten original
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1 founding members, including Defendant Maher who held 5%, the ability to sell off
2 their portions of EMAX Tokens without restriction), it would have altered their
3 respective decisions to both purchase the EMAX Tokens for the price they each paid
4 as well and hold on to those EMAX Tokens when they otherwise would not have
5 done so.

6 335. The facts that the Executive Defendants and Promoter Defendants
7 Brown, Mayweather, and Kardashian misrepresented and concealed were material to
8 the decisions of Plaintiff Huegerich and Ciklic and the members of the New York
9 Class about whether to pay for or purchase EMAX Tokens (at all or for the price he
10 paid), in that he would not have proceeded with his transactions but for the deceptive,
11 fraudulent, and false acts and practices.

12 336. The Executive Defendants and Promoter Defendants Brown,
13 Mayweather, and Kardashian intended for Plaintiff Huegerich and the members of
14 the New York Class to pay for EMAX Tokens in reliance upon their deceptive and
15 fraudulent acts and practices.

16 337. Had the Promoter Defendants disclosed the omitted information,
17 Huegerich and Ciklic would have been aware of it because (a) they saw the actual
18 promotions by Promoter Defendants Brown, Mayweather, and Kardashian and would
19 have concurrently seen any disclosure on the promotions themselves had it been
20 included, and (b) because they follow, directly or indirectly, the social media
21 accounts of, and news reports on, Promoter Defendants Pierce, Brown, Mayweather,
22 and Kardashian.

23 338. As a direct and proximate result of Defendants' unlawful, unfair, and
24 deceptive practices, Plaintiffs and Class members suffered damages. The Executive
25 Defendants' activities with the Promoter Defendants caused Plaintiffs and the Class
26 members to purchase and/or hold the EMAX Tokens when they otherwise would not
27 have done so.

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1 339. The statements from Executive Defendants and Promoter Defendants
2 Pierce, Mayweather, and Kardashian are actionable and not puffery. Puffery in the
3 Second Circuit includes ““generalized or exaggerated statements which a reasonable
4 consumer would not interpret as a factual claim upon which he could rely.”” *Lugones*
5 *v. Pete & Gerry’s Organic, LLC*, 440 F. Supp. 3d 226, 241 (S.D.N.Y. 2020)
6 (discussing puffery in context of GBL §349 claim). It can also include ““an
7 exaggeration or overstatement expressed in broad, vague, and commendatory
8 language, as distinguished from misdescriptions or false representations of specific
9 characteristics of a product.”” *Id.* Significantly, even if certain statements would be
10 non-actionable on their own, where there are multiple statements at issue, courts must
11 consider ““as a whole.”” *Id.* (““The entire mosaic is viewed rather than each tile
12 separately.””) (quoting *Belfiore v. Procter & Gamble Co.*, 311 F.R.D. 29, 53
13 (E.D.N.Y. 2015)); *see also In re Gen. Motors LLC Ignition Switch Litig.*, 257 F. Supp.
14 3d 372, 457 (S.D.N.Y. 2017) (holding that, when ““viewed in isolation”” some
15 statements may constitute puffery, but ““when viewed in conjunction with other
16 allegations in the [complaint] . . . many of these statements cross the line from mere
17 puffery to active misrepresentations”).

18 340. As alleged further above, the Executive Defendants’ May 16, 2021 Pre-
19 launch Kickoff post stated, among other things, that (1) EMAX Tokens were up
20 “500,000+% in the first 24 hours”; (2) the Executive Defendants had “locked in
21 partnership with global digital marketing agency” and “lined up a knockout
22 influencer” for a “nationwide campaign”; and (3) “We are 3 days in with ~\$100M
23 market cap and the train is just getting rolling.” These statements from Executive
24 Defendants are specific, detailed factual assertions the Executive Defendants were
25 using to encourage purchases and increase the price of the EMAX Tokens. At the
26 same time, the Executive Defendants Maher and Speer, with Promoter Defendant
27 Davis each knowingly failed to disclose that these metrics were the result of the failed
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1 launch that allowed insiders, including but not limited to Maher, to disproportionately
2 increase the price of the EMAX Tokens with their early trades.

3 341. Taken together the misleading statements and omissions of the
4 Executive Defendants and Promoter Defendants Pierce, Brown, Mayweather, and
5 Kardashian contributed to the deceptive marketing tactics as a whole, which were
6 used to solicit sales of EMAX Tokens.

7 342. Pursuant to GBL §349(h), Plaintiffs seek to enjoin further unlawful,
8 unfair, and/or fraudulent acts or practices by Defendants, to obtain restitution and
9 disgorgement of all monies generated as a result of such practices, and for all other
10 relief allowed under New York law.

11 343. In addition, Plaintiffs are entitled to reasonable attorney’s fees and
12 exemplary damages not exceeding three times the value of the consideration given
13 by the consumer, and any other relief this Court determined is appropriate. *See* GBL
14 §349(h).

15 **SEVENTH CAUSE OF ACTION**

16 **Violation of New Jersey Consumer Fraud Act (“NJCFA”)**
17 **NJSA §§56:8-1 to 156**
18 **(Against the Executive Defendants and Promoter Defendants**
Mayweather and Kardashian)

19 344. Plaintiffs restate and reallege all preceding allegations above as if fully
20 set forth herein and further alleges as follows:

21 345. Plaintiff DeLuca is a resident of the State of New Jersey.

22 346. Plaintiff DeLuca paid for or purchased EMAX Tokens in New Jersey
23 and thus the deceptive transactions alleged herein occurred in New Jersey.

24 347. Defendants sell “merchandise,” as defined by N.J. Stat. Ann. §§56:8-
25 1(c) & (e).

26 348. The NJCFA authorizes “[a]ny person who suffers any ascertainable loss
27 of moneys or property, real or personal, as a result of the use or employment by
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1 another person of any method, act, or practice declared unlawful under this act” to
2 bring a private action. N.J. Stat. Ann. §56:8-19.

3 349. The NJCFA prohibits unconscionable commercial practices, deception,
4 fraud, false pretense, false promise, misrepresentation, as well as the knowing
5 concealment, suppression, or omission of any material fact with the intent that others
6 rely on the concealment, omission, or fact, in connection with the sale or
7 advertisement of any merchandise.

8 350. Under New Jersey law, NJCFA claims should be construed liberally in
9 favor of consumers. *See Cox v. Sears Roebuck & Co.*, 647 A.2d 454, 461 (N.J. 1994);
10 *Barry v. Arrow Pontiac, Inc.*, 494 A.2d 804, 810-11 (N.J. 1985).

11 351. There are three elements a plaintiff must show to state a prima facie case
12 under the NJCFA: (1) unlawful conduct by the defendant; (2) an ascertainable loss
13 by the plaintiff; and (3) a causal connection between the defendant’s unlawful
14 conduct and the plaintiff’s ascertainable loss. *See Frederico v. Home Depot*, 507
15 F.3d 188, 202 (3d Cir. 2007) (citing *Cox*, 647 A.2d at 462-65). There are three
16 general types of “[u]nlawful practices”: “affirmative acts, knowing omissions, and
17 regulation violations.” *Id.* (quoting *Cox*, 647 A.2d at 462). A plaintiff asserting a
18 claim based on an omission must demonstrate that the defendant “(1) knowingly
19 concealed (2) a material fact (3) with the intention that plaintiff rely upon the
20 concealment.” *Judge v. Blackfin Yacht Corp.*, 815 A.2d 537, 541 (N.J. Super. Ct.
21 App. Div. 2003); *see also* N.J. Stat. Ann. §56:8-2.

22 352. To establish that information withheld was “material,” a plaintiff needs
23 to show that “a reasonable [person] would attach importance to its existence in
24 determining his [or her] choice of action.” *Coba v. Ford Motor Co.*, 932 F.3d 114,
25 125-26 (3d Cir. 2019) (quoting *Suarez v. E. Int’l Coll.*, 50 A.3d 75, 89 (N.J. Super.
26 Ct. App. Div. 2012). An “unconscionable commercial practice” is “an amorphous
27 concept obviously designed to establish a broad business ethic.” The standard of
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1 conduct that the term “unconscionable” implies is lack of “good faith, honesty in
2 fact and observance of fair dealing.” *Cox*, 647 A.2d at 462 (quoting *Kugler v.*
3 *Romain*, 279 A.2d 640, 652 (N.J. 1971).

4 353. Plaintiff DeLuca is a lifelong fan of professional sports, particularly
5 boxing. DeLuca is aware of Defendant Mayweather’s career as a world champion
6 boxer. DeLuca specifically saw Mayweather’s promotion of EthereumMax and the
7 EMAX Tokens on the lead up to and during the pay-per-view fight with Logan Paul,
8 including the 5/28/21 Press Release. Mayweather’s statements and promotions of
9 EthereumMax gave DeLuca the false impression that Mayweather was more than a
10 celebrity endorser but rather that he was an actual backer/investor in EMAX Tokens,
11 and that he was making this particular cryptocurrency a part of his multimillion-dollar
12 investment strategy. DeLuca is also familiar with Defendant Kardashian’s reality
13 television show and her renowned business savvy. DeLuca saw Kardashian’s May
14 30, 2021 promotion of the EMAX Tokens being accepted as payment at Club LIV.
15 DeLuca knew about the high-end status of Club LIV during the Relevant Period and
16 was particularly enticed by Kardashian’s promotion to use EMAX Tokens there.
17 These promotions by Mayweather and Kardashian induced DeLuca to purchase
18 EMAX Tokens on June 2, 2021 and June 5, 2021 as a result.

19 354. DeLuca also followed the news and updates on EthereumMax, which he
20 accesses through various social media platforms like Telegram, Reddit, and Twitter
21 during the Relevant Period and saw the promotions from the Executive Defendants
22 that were posted. DeLuca specifically saw the June 3, 2021 post regarding the EMAX
23 Token price volatility that came from insider selling. DeLuca reasonably believed
24 that the price drop on EMAX Tokens only came from “a handful of larger wallets”
25 of “early investors” who were “not part of the development team.” Similarly, DeLuca
26 believed the statements that EthereumMax would still be accepted as a payment at
27 David Grutman’s venues at a future date, despite the issues that caused the delay of
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1 the rollout. The misleading statements and omissions within the June 3, 2021
2 Instagram post from the Executive Defendants, in conjunction with the above-
3 mentioned promotions from Defendants Mayweather and Kardashian, induced
4 DeLuca to make his June 2, 2021 and June 5, 2021 purchases of EMAX Tokens.
5 Similarly, this post, in conjunction with Defendant Kardashian’s posts regarding the
6 ability to use EMAX Tokens as an accepted payment and the increase in value his
7 investments in EMAX Tokens would receive if he continued to hold, caused DeLuca
8 to retain his EMAX Token investment when he otherwise would not have done so.

9 355. Defendants engaged in deceptive acts and practices under New Jersey
10 law by taking advantage of the lack of knowledge, ability, experience, or capacity of
11 Plaintiffs to a grossly unfair degree, including but not limited to, in the following
12 ways:

13 (a) knowingly and intentionally concealing the Executive
14 Defendants’ specific roles and ownership interests in EthereumMax;

15 (b) failing to disclose that the huge increase in price of the EMAX
16 Tokens during the first days following launch were caused by manipulation by the
17 Executive Defendants instead of being due to an organic increase in interest from
18 investors;

19 (c) failing to disclose that EMAX Tokens were not being accepted as
20 a payment and would not be at any point in the foreseeable future; and

21 (d) knowingly and intentionally using and/or failing to disclose the
22 use of the Promotor Defendants to “instill trust” in uninformed investors to promote
23 the financial benefits of a highly speculative and risky investment in EMAX Tokens,
24 in an effort to manipulate and artificially inflate the price and trading volume of the
25 EMAX Tokens and allow Defendants to sell their EMAX Tokens at those inflated
26 prices.

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1 356. The Executive Defendants did not disclose that the EMAX Token
2 developer held the number one rank with 23% ownership interest. Nor did they
3 disclose until much later that the Executive Defendants had purposefully chosen not
4 to lock the wallets of the EthereumMax insiders. DeLuca would have found it
5 material to his decisions to purchase EMAX Tokens to know whether or not insiders
6 had significant percentages of the available Float of EMAX Tokens with the ability
7 to sell freely those EMAX Tokens and create massive downward pressure. Likewise,
8 had DeLuca been made aware of that information at the times of his purchases, as
9 well as the later-revealed admission from Gentile that the Executive Defendants had
10 chosen not to “lock the wallets” (which gives the ten original founding members,
11 including Defendant Maher who held 5%, the ability to sell off their portions of
12 EMAX Tokens without restriction) it would have altered DeLuca’s decision to both
13 purchase the EMAX Tokens for the price he paid as well and hold on to those EMAX
14 Tokens when he otherwise would not have done so.

15 357. The facts that the Executive Defendants and Promoter Defendants
16 Mayweather and Kardashian misrepresented and concealed were material to the
17 decisions of Plaintiff DeLuca and the members of the New Jersey Class about
18 whether to pay for or purchase EMAX Tokens (at all or for the price they paid), in
19 that they would not have proceeded with their transactions but for the deceptive,
20 fraudulent and false acts and practices.

21 358. The Executive Defendants and Promoter Defendants Mayweather and
22 Kardashian intended for Plaintiff DeLuca and the members of the New Jersey Class
23 to pay for EMAX Tokens in reliance upon their deceptive and fraudulent acts and
24 practices.

25 359. Had the Promoter Defendants disclosed the omitted information,
26 DeLuca would have been aware of it because (a) he saw the actual promotions by
27 Promoter Defendants Mayweather and Kardashian and would have concurrently seen
28

1 any disclosure on the promotions themselves had it been included, and (b) he follows,
2 directly or indirectly, the social media accounts of, and news reports on, Promoter
3 Defendants Mayweather and Kardashian.

4 360. As a direct and proximate result of Defendants’ unlawful, unfair, and
5 deceptive practices, Plaintiffs and Class members suffered damages. The Executive
6 Defendants’ activities with the Promoter Defendants caused Plaintiff DeLuca and the
7 Class members to purchase (at all or at the premium price he paid) and/or hold the
8 EMAX Tokens when they otherwise would not have done so. An ascertainable loss
9 must be “quantifiable or measurable,” but a plaintiff need not demonstrate an out-of-
10 pocket loss where a diminution in the value of a product can be “calculated within a
11 reasonable degree of certainty.” *Thiedemann v. Mercedes-Benz USA, LLC*, 872 A.2d
12 783, 793 (N.J. 2005) (citation omitted).

13 361. The statements from Executive Defendants and Promoter Defendants
14 Mayweather and Kardashian are actionable and not puffery. “The distinguishing
15 characteristics of puffery are vague, highly subjective claims as opposed to specific,
16 detailed factual assertions.” *Hammer v. Vital Pharm., Inc.*, Civ. No. 11-4124, 2012
17 WL 1018842, at *6-*8 (D.N.J. Mar. 26, 2012) (citation omitted). New Jersey courts
18 have held that “[e]ven if an advertisement is literally true, it may be actionable if “the
19 overall impression [it] create[s] . . . is misleading and deceptive to an ordinary
20 reader.”” *Conner v. Perdue Farms, Inc.*, No. CIV.A. 11-888, 2013 WL 5977361, at
21 *6 (D.N.J. Nov. 7, 2013) (quoting *Union Ink Co., Inc. v. AT&T Corp.*, 801 A.2d 361,
22 379 (N.J. Super. Ct. App. Div. 2002). Indeed, “a claim of literal truth will not
23 constitute a defense to a charge that the overall impression created by an
24 advertisement is misleading and deceptive to an ordinary reader.” *Id.* (quoting
25 *Miller v. Am. Fam. Publishers*, 663 A.2d 643, 653-54 (N.J. Super. Ct. Ch. Div. 1995).
26 Thus, even a finding of literal accuracy will not bar a conclusion that a misleading or
27
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1 deceptive statement violates the Consumer Fraud Act. *See id.* at 85. As the *Miller*
2 court explained:

3 “To determine whether an advertisement or solicitation makes a
4 false or misleading representation, the court must consider the effect
5 that the advertisement, taken as a whole, would produce on one with an
6 ordinary and unsuspecting mind. A court must consider the
7 implications of an advertisement because, if it is designed to deceive
8 the reader, an advertisement ‘may be completely misleading’ even if
9 ‘every sentence separately considered is literally true.’ Taking an
10 advertisement or solicitation as a whole means considering not only
11 what it states literally, but also what it reasonably implies.”

12 *Miller*, 663A.2d at 653(citation omitted).

13 362. As alleged further above, the Executive Defendants’ May 16, 2021 Pre-
14 launch Kickoff post stated, among other things, that (1) EMAX Tokens were up
15 “500,000+% in the first 24 hours”; (2) the Executive Defendants had “locked in
16 partnership with global digital marketing agency” and “lined up a knockout
17 influencer” for a “nationwide campaign”; and (3) “We are 3 days in with ~\$100M
18 market cap and the train is just getting rolling.” These statements from Executive
19 Defendants are specific, detailed factual assertions the Executive Defendants were
20 using to encourage purchases and increase the price of the EMAX Tokens. At the
21 same time, the Executive Defendants Maher and Speer, with Promoter Defendant
22 Davis each failed to disclose that these metrics were the result of the failed launch
23 that allowed insiders, including but not limited to Maher, to disproportionately
24 increase the price of the EMAX Tokens with their early trades.

25 363. Taken together the misleading statements and omissions of the
26 Executive Defendants and Promoter Defendants Mayweather and Kardashian
27 contributed to the deceptive marketing tactics as a whole, which were used to solicit
28 sales of EMAX Tokens.

 364. As a direct and proximate result of Defendants’ unfair and deceptive
practices, Plaintiffs and Class members suffered damages. Defendants’ activities

1 caused Plaintiffs and the Class members to purchase and/or retain the EMAX Tokens
2 when they otherwise would not have done so.

3 365. Pursuant to NJSA §§56:8-1 to 156, Plaintiffs seek to enjoin further
4 unlawful, unfair, and/or fraudulent acts or practices by Defendants, to obtain
5 restitution and disgorgement of all monies generated as a result of such practices, and
6 for all other relief allowed under New Jersey law.

7 366. In addition, Plaintiffs are entitled to reasonable attorney's fees and an
8 exemplary damages award of threefold the damages suffered by Plaintiffs and the
9 Class Members. *See* N.J. Stat. Ann. §56:8-19.

10 **EIGHTH CAUSE OF ACTION**

11 **Common Law Conspiracy to Violate Cal. Corp. Code §25402**
12 **(Against Executive Defendants Perone and Rechnitz and Promoter**
13 **Defendants Mayweather and Pierce)**

14 367. Plaintiffs restate and reallege all preceding allegations above as if fully
15 set forth herein.

16 368. Beginning in May 2021, and continuously thereafter up to and including
17 the date of the filing of the Complaint, the Executive Defendants Perone, Maher,
18 Rechnitz, and Does 1-7 did engage in the formation and operation of a conspiracy
19 with the Promoter Defendants to misleadingly promote the EMAX Tokens to retail
20 investors in order to artificially inflate the price and trading volume so that
21 Defendants could sell their respective EMAX Tokens for substantial profits.

22 369. As alleged above, each Defendants Perone, Rechnitz, Mayweather, and
23 Pierce acted in furtherance of the conspiracy by, among other things, sharing inside
24 information with each other about the timing of various celebrity promotions of
25 EthereumMax and the EMAX Tokens and then profiting from subsequent trades they
26 made based on that insider knowledge. These Defendants further conspired to falsely
27 promote the EMAX Tokens as sound investments with significant growth potential
28 and make misleading statements about the Defendants holding their EMAX Tokens

1 along with the retail investors who bought, while, in truth, Defendants Rechnitz,
2 Pierce, and Mayweather (with the aid of Perone) were selling their EMAX Tokens
3 for substantial profits.

4 370. “Under California law, the existence of a conspiracy may sometimes be
5 inferred from the nature of the acts done, the relations of the parties, the interests of
6 the alleged conspirators, and other circumstances.” *In re Sunset Bay Assocs.*, 944
7 F.2d 1503, 1517 (9th Cir. 1991).

8 371. As alleged herein, Defendants Rechnitz, Mayweather, and Pierce are
9 close friends and business partners in multiple endeavors. Each of them had actual
10 knowledge of each other’s insider trading activities and agreed to both improperly
11 promote EthereumMax and then time their trading of EMAX Tokens accordingly.

12 372. For example, Rechnitz literally chanted “pump and dump” while
13 showing off his success at frontrunning Pierce’s promotions to try to recruit CW1
14 into the conspiracy. This fact clearly establishes a deceitful purpose for the enterprise
15 and “tend[s] to exclude the possibility that any alternative explanation is true.” *See*
16 *Shaw v. Nissan N. Am., Inc.*, 220 F. Supp. 3d 1046, 1056 (C.D. Cal. 2016).

17 373. This frontrunning conspiracy between Rechnitz, Mayweather, and
18 Pierce (and aided by Perone) was not any of these three individuals’ primary business
19 activity. Indeed, Rechnitz is a jeweler, Pierce is a sports personality, and Mayweather
20 is a semi-retired professional boxer. None of them are licensed securities traders or
21 brokers. Their conspiratorial enterprise was also distinct from Perone’s and
22 EthereumMax’s business of using EMAX Tokens as a method of digital payment for
23 goods and services.

24 374. Rechnitz, Pierce, and Mayweather each shared the common purpose of
25 using the inside information Rechnitz obtained from the Executive Defendant Perone
26 (and then shared with Pierce and Mayweather) to time their trades to coincide with
27 the “pump” of the EMAX Token price created by the particular promotion. Rechnitz,
28

1 Pierce and Mayweather then would “dump” their EMAX Tokens as misled investors
2 poured in to buy.

3 375. As a proximate result of said conspiracy, as described in the foregoing
4 paragraphs, Plaintiffs suffered, continue to suffer, and will suffer in the future, the
5 damages alleged herein.

6 376. For the conduct of Defendants Perone, Rechnitz, Pierce, and
7 Mayweather in the alleged conspiracy, Plaintiffs seek compensatory damages against
8 each of these Defendants, jointly and severely, in an as-yet undetermined amount;
9 punitive damages, injunctive relief enjoining these Defendants from continuing to
10 falsely and misleadingly promote the EMAX Tokens and then trading off of their
11 material, non-public information; and divestiture of all money wrongfully obtained,
12 whether directly or indirectly, as part of the alleged conspiracy

13 **NINTH CAUSE OF ACTION**

14 **Aiding and Abetting**
15 **California Common Law**
16 **(Against the Executive Defendant Maher and the Promoter Defendants)**

17 377. Plaintiffs restate and reallege all preceding allegations above as if fully
18 set forth herein.

19 378. Under California law, aiding and abetting requires not agreement, but
20 simply assistance. The elements of aiding and abetting liability have cited the
21 elements of the tort as they are set forth in the RESTATEMENT (SECOND) OF TORTS
22 §876, and have omitted any reference to an independent duty on the part of the aider
23 and abettor.

24 379. Under California law, “[l]iability may . . . be imposed on one who aids
25 and abets the commission of an intentional tort if the person (a) knows the other’s
26 conduct constitutes a breach of duty and gives substantial assistance or
27 encouragement to the other to so act or (b) gives substantial assistance to the other in
28 accomplishing a tortious result and the person’s own conduct, separately considered,

1 constitutes a breach of duty to the third person.” *Neilson v. Union Bank of Cal.,*
2 *N.A.*, 290 F. Supp. 2d 1101, 1118 (C.D. Cal. 2003) (citation omitted).

3 380. “Unlike a conspirator, an aider and abettor does not ‘adopt as his or her
4 own’ the tort of the primary violator. Rather, the act of aiding and abetting is distinct
5 from the primary violation; liability attaches because the aider and abettor behaves in
6 a manner that enables the primary violator to commit the underlying tort.” *Id.*

7 381. The Promoter Defendants have previous knowledge and experience with
8 making misleading promotional statements (with Mayweather having nearly an
9 identical experience with a previous fraudulent cryptocurrency promotion), and, as
10 such, knew that the marketing strategy employed by the Executive Defendants for
11 the EMAX Tokens was unlawful, deceitful, fraudulent, and/or violated the terms of
12 the California, Florida, New York, and New Jersey state statutes described in this
13 Complaint.

14 382. By promoting the EMAX Tokens on their social media platforms and
15 through their reported conduct, the Promoter Defendants provided assistance that was
16 a substantial factor causing the EMAX Token price to both surge and do so long
17 enough to allow all Defendants to sell their EMAX Tokens for huge profits at the
18 expense of their followers and investors. Without the help of the Promoter
19 Defendants’ activities, the Executive Defendants would have been unable to use the
20 misleading marketing strategy devised by Gentile, and Defendants would not have
21 been able to commit the violations of California state consumer protection statutes
22 alleged herein.

23 383. As a direct and proximate result of the Promoter Defendants’ unlawful,
24 unfair, and deceptive practices, Plaintiffs and Class members suffered damages. The
25 Executive Defendants’ activities with the Promoter Defendants caused Plaintiffs and
26 the Class members to purchase and/or hold the EMAX Tokens when they otherwise
27 would not have done so.

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1 384. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
2 or practices by EthereumMax, to obtain monetary damages, restitution and
3 disgorgement of all monies generated as a result of such practices, and for all other
4 relief allowed under California law.

5 **TENTH CAUSE OF ACTION**

6 **Violations of California Corporate Securities Law of 1968**
7 **Cal. Corp. Code §§25110, 25401, 25403, & 25404**
8 **(Sale of Unregistered Securities)**
9 **(Against the Company and Executive Defendants)**

10 385. Plaintiffs restate and reallege all preceding allegations above in
11 paragraphs 1 – 185 as if fully set forth herein, and further allege as follows:

12 386. Plaintiffs Semerjian, Buckley, and Shah are residents of the State of
13 California.

14 387. Plaintiffs Semerjian, Buckley, and Shah paid for or purchased EMAX
15 Tokens in California and thus the deceptive transactions alleged herein occurred in
16 California.

17 388. The EMAX Token is a “security” within the meaning of the term as
18 defined by Cal. Corp. Code §25019. Additionally, the SEC has concurrently
19 determined that the EMAX Tokens “were offered and sold as investment contracts
20 and therefore securities pursuant to Section 2(a)(1) of the Securities Act.” SEC
21 Order, ¶4.

22 389. Defendants, and each of them, by engaging in the conduct described
23 above within California, directly or indirectly, sold and offered to sell securities.

24 390. Plaintiffs Semerjian, Buckley, and Shah, and the members of the Class
25 purchased EMAX Tokens from Defendants.

26 391. Section 25110 of California’s Corporate Securities Law of 1968
27 provides that it is unlawful and a violation for any person to sell or offer to sell a
28 security within the State of California unless the security is exempt under Chapter 1
of the California statute.

1 392. Section 25400 further provides that it is unlawful for any person within
2 California to, directly or indirectly, “effect, alone or with one or more other persons,
3 a series of transactions in any security creating actual or apparent active trading in
4 such security or raising or depressing the price of such security, for the purpose of
5 inducing the purchase or sale of such security by others.” Cal. Corp. Code §25400(b).
6 Concurrently, under Cal. Corp. Code §25401, it is unlawful for any person to offer
7 or sell a security within California, or to buy or offer to buy a security in this state,
8 “by means of any written or oral communication that includes an untrue statement of
9 a material fact or omits to state a material fact necessary to make the statements made,
10 in the light of the circumstances under which the statements were made, not
11 misleading.” Cal. Corp. Code §25401.

12 393. California law also contains a provision making it illegal to knowingly
13 provide substantial assistance to another in violation of this law. *See* Cal. Corp. Code
14 §25504. Any person that directly or indirectly induces a violation or provides
15 substantial assistance in violating California’s Corporate Securities Law of 1968 shall
16 be deemed to be in violation of that provision to the “same extent” as the primary
17 violator. Cal. Corp. Code §25403(b)-(c).

18 394. Section 25504 also extends liability to “[e]very person who directly or
19 indirectly controls a person liable under Section 25501 or 25503, . . . every principal
20 executive officer or director of a corporation so liable, every person occupying a
21 similar status or performing similar functions, every employee of a person so liable
22 who materially aids in the act or transaction constituting the violation . . . are also
23 liable jointly and severally with and to the same extent as such person.” Cal. Corp.
24 Code §25504.

25 395. Under §2(a)(1) of the Securities Act of 1933, a “security” is defined to
26 include an “investment contract.” 15 U.S.C. §77b(a)(1). The Supreme Court in the
27 case *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946), established the prevailing
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1 test for determining whether something is an investment contract, which is defined
2 as is “an investment of money in a common enterprise with profits to come solely
3 from the efforts of others.” *Id.* Specifically, a transaction qualifies as an investment
4 contract and, thus, a security if it is: (1) an investment; (2) in a common enterprise;
5 (3) with a reasonable expectation of profits; and (4) to be derived from the
6 entrepreneurial or managerial efforts of others. *See United Hou. Found., Inc. v.*
7 *Forman*, 421 U.S. 837, 852-53 (1975). This definition embodies a “flexible rather
8 than a static principle, one that is capable of adaptation to meet the countless and
9 variable schemes devised by those who seek the use of the money of others on the
10 promise of profits,” and thereby “permits the fulfillment of the statutory purpose of
11 compelling full and fair disclosure relative to the issuance of ‘the many types of
12 instruments that in our commercial world fall within the ordinary concept of a
13 security.’” *Howey*, 328 U.S. at 299 (citation omitted). Accordingly, in analyzing
14 whether something is a security, “‘form should be disregarded for substance,’” and
15 the emphasis should be “on the economic realities underlying a transaction, and not
16 on the name appended thereto.” *Forman*, 421 U.S. at 848-49.

17 396. The EMAX Tokens sold and offered for sale to Plaintiffs and Class
18 members were not:

- 19 (a) exempt from registration under the California Corporate
20 Securities Law of 1968;
- 21 (b) a covered security;
- 22 (c) registered with the Office of Financial Regulations; or
- 23 (d) sold in a transaction exempt under California or federal law.

24 397. The Company and Executive Defendants sold and offered to sell the
25 unregistered EMAX Tokens to Plaintiffs Semerjian, Buckley, and Shah, and the
26 members of the Class.

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1 398. Investors who bought EMAX Tokens invested money or other valuable
2 consideration in a common enterprise. Investors had a reasonable expectation of
3 profit based upon the efforts of the Defendants, including, among other things,
4 Defendants’ promotional efforts and business operations. As stated in the SEC
5 Order:

6 Based on EthereumMax’s marketing materials, as well as public
7 statements by EthereumMax affiliates, the EthereumMax website, and
8 EthereumMax social media handles, purchasers of EMAX tokens
9 would have had a reasonable expectation of profits from their
investment in the tokens. EthereumMax frequently touted the token’s
rise in price on its social media pages as it offered and sold EMAX
tokens.

10 Based on EthereumMax’s public statements, purchasers of the EMAX
11 tokens would have had a reasonable expectation that EthereumMax and
12 its agents would expend significant efforts to develop the
13 EthereumMax platform, which would increase the value of their
14 EMAX tokens, resulting in investor profit. EthereumMax’s marketing
materials highlighted that the Company and its agents would ensure a
secondary trading market for EMAX tokens by creating a trading
market for EMAX tokens. EthereumMax’s marketing materials also
emphasized the purported expertise of the Company’s management.

15 EthereumMax’s marketing materials, moreover, contained numerous
16 direct statements that the EMAX tokens would rise in value as a result
17 of the efforts of the Company and its agents, including by touting future
18 deals and relationships that would “drive value.” EthereumMax also
19 promised to develop certain “token enhancements,” including
“additional tokenomics to enhance economic value,” future rewards
and staking programs, national sporting and event partnerships, and a
general expansion of the EMAX token ecosystem.

20 399. Plaintiffs Semerjian, Buckley, and Shah and Class members invested
21 fiat, including U.S. dollars, and digital currencies, such as Bitcoin and Ethereum, to
22 purchase EMAX Tokens.

23 400. Defendants sold EMAX Tokens to the general public on various
24 cryptocurrency exchanges.

25 401. Every purchase of EMAX Tokens by a member of the public is an
26 investment contract.

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1 402. Additionally, investors were passive participants in the EMAX Tokens
2 launch and the profits of each Plaintiff and the Class were intertwined with those of
3 Defendants.

4 403. The Executive Defendants also were responsible for supporting the
5 EMAX Token products and its code. Additionally, the Executive Defendants also
6 were responsible for supporting EMAX Tokens, pooled investors' assets, and
7 controlled those assets.

8 404. Plaintiffs Semerjian, Buckley, and Shah and Class members in the
9 EMAX Tokens made their investment with a reasonable expectation of profits.

10 405. Investors' profits in the EMAX Tokens were to be derived from the
11 managerial efforts of others – specifically the Company, the Executive Defendants
12 or any EthereumMax personnel responsible for developing the networks on which
13 these tokens will operate and managing the proprietary trading codes. EMAX Token
14 investors relied on the managerial and entrepreneurial efforts of the Company and the
15 Executive Defendants to manage, oversee, and/or develop the EthereumMax business
16 and sales of EMAX Tokens.

17 406. This dependency, however, on the managerial efforts of the Company
18 and Executive Defendants was not apparent at issuance to a reasonable investor.
19 Considering the limited available information about how these EMAX Tokens were
20 designed and intended to operate, if such an investor were even able to interpret the
21 relevant law at the time, a reasonable investor lacked sufficient bases to conclude
22 whether the EMAX Tokens were securities until the platform at issue, and its relevant
23 “ecosystem,” had been given time to develop. In the interim, the investor lacked the
24 facts necessary to conclude - let alone formally allege in court - that the EMAX
25 Tokens they had acquired were securities.

26 407. The SEC has also provided guidance for determining claims alleging the
27 improper sale of unregistered securities. On April 3, 2019, the SEC published its
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1 “Framework for ‘Investment Contract’ Analysis of Digital Assets” (the
2 “Framework”) in which it “provide[d] a framework for analyzing whether a digital
3 asset is an investment contract and whether offers and sales of a digital asset are
4 securities transactions.”¹⁰³

5 408. The Framework described how to analyze the various facts surrounding
6 an initial coin offering (“ICO”) in making the determination of whether a given
7 digital asset is a security.

8 409. In particular, the Framework provides that the “inquiry into whether a
9 purchaser is relying on the efforts of others focuses on two key issues: Does the
10 purchaser reasonably expect to rely on the efforts of an [Active Participant or “AP”]?
11 Are those efforts ‘the undeniably significant ones, those essential managerial efforts
12 which affect the failure or success of the enterprise,’ as opposed to efforts that are
13 more ministerial in nature?”¹⁰⁴

14 410. The Framework further notes that the “stronger the[] presence” of the
15 following factors, “the more likely it is that a purchaser of a digital asset is relying
16 on the ‘efforts of others.’”¹⁰⁵

17 411. The first factor the SEC looked at was whether an AP is responsible for
18 the development, improvement (or enhancement), operation, or promotion of the
19 network, particularly if purchasers of the digital asset expect an AP to be performing
20 or overseeing tasks that are necessary for the network or digital asset to achieve or
21 retain its intended purpose or functionality.

22 412. At the time of the EthereumMax launch, Defendants actively marketed
23 the EMAX Token launch and the tokens’ growth and utilization prospects, thereby
24 necessitating the continued managerial efforts of the Company and Executive
25

26 ¹⁰³ *Framework for “Investment Contract” Analysis of Digital Assets*, U.S. SEC.
& EXCH. COMM’N (Apr. 3, 2019), [https://www.sec.gov/corpfin/framework-](https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets)
27 [investment-contract-analysis-digital-assets](https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets).

28 ¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

1 Defendants. Where the network or the digital asset is still in development and the
2 network or digital asset is not fully functional at the time of the offer or sale,
3 purchasers would reasonably expect an AP to further develop the functionality of the
4 network or digital asset (directly or indirectly).

5 413. Another factor the Framework considers is whether the AP creates or
6 supports a market for, or the price of, the digital asset. This includes, *inter alia*,
7 whether the AP “(1) controls the creation and issuance of the digital asset; or (2) takes
8 other actions to support a market price of the digital asset, such as by limiting supply
9 or ensuring scarcity, through, for example, buybacks, “burning,” or other
10 activities.”¹⁰⁶

11 414. As noted above, all of the EMAX Tokens in circulation were created at
12 the direction of the Executive Defendants. Additionally, the Executive Defendants
13 also created the protocols by which the EMAX Tokens are burned.

14 415. The framework further states that “[a]n AP has a continuing managerial
15 role in making decisions about or exercising judgment concerning the network or the
16 characteristics or rights the digital asset represents.”¹⁰⁷

17 416. Here, the Company and Executive Defendants have discussed the long-
18 term prospects on extended frames, continually noting how the utilization of EMAX
19 Tokens as a method of payment will grow in the future.

20 417. The ability to determine whether and where the digital asset will trade
21 is another factor discussed in the Framework. For example, “purchasers may
22 reasonably rely on an AP for liquidity, such as where the AP has arranged, or
23 promised to arrange for, the trading of the digital asset on a secondary market or
24 platform.”¹⁰⁸

25
26 _____
106 *Id.*

27 107 *Id.*

28 108 *Id.*

1 418. Here, the Executive Defendants, in particular Defendant Maher,
2 admitted that the Executive Defendants had access to and did manipulate the sales of
3 EMAX Tokens in the first days, which had a dramatic impact on the EMAX Token
4 price and effected the EMAX Token liquidity pool.

5 419. Another factor the Framework notes is whether the AP has the ability to
6 determine who will receive additional digital assets and under what conditions. This
7 could be, for example, “[m]aking or contributing to managerial level business
8 decisions, such as how to deploy funds raised from sales of the digital asset.”¹⁰⁹

9 420. Here, the Company and Executive Defendants are the arbiters of funding
10 for EthereumMax.

11 421. Making other managerial judgements or decisions that will directly or
12 indirectly impact the success of the network or the value of the digital asset generally.

13 422. The Framework also remarks that purchasers would reasonably expect
14 the AP to undertake efforts to promote its own interests and enhance the value of the
15 network or digital asset, including, but not limited to, the instances where the AP “has
16 the ability to realize capital appreciation from the value of the digital asset. This can
17 be demonstrated, for example, if the AP retains a stake or interest in the digital asset.”
18 According to the SEC, in these instances, “purchasers would reasonably expect the
19 AP to undertake efforts to promote its own interests and enhance the value of the
20 network or digital asset.”¹¹⁰

21 423. Here, the Executive Defendants retain a significant interest in the
22 EthereumMax project even after selling off many EMAX Tokens at the height of the
23 initial launch.

24 424. On May 7, 2021, on CNBC's “Squawk Box” television program,
25 chairman of the SEC Gary Gensler stated that “a lot of crypto tokens – I won't call
26

27 ¹⁰⁹ *Id.*

28 ¹¹⁰ *Id.*

1 them cryptocurrencies for this moment – are indeed securities.”¹¹¹ In addition to
2 being the Chairman of the SEC, Mr. Gensler is also a world renowned expert on
3 cryptocurrencies and blockchain technology, having taught the “Blockchain and
4 Money” course at the Sloan School of Management at the Massachusetts Institute of
5 Technology (“MIT”).¹¹²

6 425. In a June 14, 2018 speech entitled “Digital Asset Transactions: When
7 Howey Met Gary (Plastic)” that is available on the SEC’s website,¹¹³ the following
8 observations were made on “when a digital transaction may no longer represent a
9 security offering”:

10 If the network on which the token or coin is to function is sufficiently
11 decentralized – where purchasers would no longer reasonably expect a
12 person or group to carry out essential managerial or entrepreneurial
13 efforts – the assets may not represent an investment contract. Moreover, when the efforts of the third party are no longer a key factor
14 for determining the enterprise's success, material information
asymmetries recede. As a network becomes truly decentralized, the
ability to identify an issuer or promoter to make the requisite dis-
closures becomes difficult, and less meaningful.

15 And so, when I look at Bitcoin today, I do not see a central third
16 party whose efforts are a key determining factor in the enterprise. The
17 network on which Bitcoin functions is operational and appears to have
been decentralized for some time, perhaps from inception.

18 426. A key factor in determining whether a digital asset is a security or not is
19 whether there is a centralized entity behind the digital asset.¹¹⁴ EMAX Holdings,
20 LLC operated as the de facto corporate entity and Defendant Perone is the sole

21 ¹¹¹ Jesse Point, SEC Chairman Gary Gensler says more investor protections are
22 needed for bitcoin and crypto markets, CNBC (May 7, 2021), <https://www.cnbc.com/2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html>.

23 ¹¹² Lectures and Materials from Chairman Gensler's MIT course are available to
24 the public for free at: <https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/>.

25 ¹¹³ William Hinman, Director, Division of Corporation Finance, Remarks at the
26 Yahoo Finance All Markets Summit, *Digital Asset Transactions: When Howey Met
27 Gary (Plastic)*, (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

28 ¹¹⁴ *Id.* (noting that the “decentralized structure” of Bitcoin and Ethereum placed
these digital assets outside the “disclosure regime of the federal securities laws”).

1 executive and director of this holding company. Thus, there is a centralized entity
2 behind the EMAX Tokens.

3 427. Finally, the SEC also already concluded that other virtual currencies
4 (e.g., DAO tokens) that are substantially similar to EMAX Tokens are “securities and
5 therefore subject to the federal securities laws.” As stated by the SEC, “issuers of
6 distributed ledger or blockchain technology-based securities must register offers and
7 sales of such securities unless a valid exemption applies.”¹¹⁵ More recently, on
8 November 7, 2022, the SEC was granted summary judgment on the issue of whether
9 or not the token at issue constituted a security, stating that “no reasonable trier of fact
10 could reject the SEC’s contention that LBRY offered LBC [tokens] as a security, and
11 LBRY does not have a triable defense that it lacked fair notice [that it needed to
12 register its offerings].” *S.E.C. v. LBRY, Inc.*, _ F. Supp. 3d __, No. 21-cv-260, 2022
13 WL 16744741, at *8 (D.N.H. Nov. 7, 2022).

14 428. This analysis of whether the DAO and LBC tokens are securities should
15 be applied here.

16 429. Additionally, each of the Executives Defendants (especially Defendant
17 Maher) are liable under §§25400(b)-(e), and 25401 through 25404 of the California
18 Corporate Code for: (1) effecting transactions of the EMAX Token security that
19 created the appearance of active trading in the EMAX Tokens and/or raised the price
20 of the EMAX Tokens for the purpose of inducing the purchase or sale of EMAX
21 Tokens by others; (2) inducing the purchase or sale of EMAX Tokens by
22 disseminating information to the effect that the EMAX Token’s price will or is likely
23 to rise because of market operations of any one or more persons conducted for the
24 purpose of raising or depressing the price of EMAX Tokens; (3) making, for the
25 purpose of inducing the purchase or sale of EMAX Tokens by others, any statement
26

27 ¹¹⁵ Press Release, U.S. SEC & EXCH. COMM’N, *SEC Issues Investigative Report*
28 *Concluding DAO Tokens, a Digital Asset, Were Securities* (July 25, 2017),
<https://www.sec.gov/news/press-release/2017-131>.

1 which was, at the time and in the light of the circumstances under which it was made,
2 false or misleading with respect to any material fact, or which omitted to state any
3 material fact necessary in order to make the statements made, in the light of the
4 circumstances under which they were made, not misleading, and which he knew or
5 had reasonable ground to believe was so false or misleading; and (4) receiving
6 consideration, directly or indirectly from any person selling or offering for sale or
7 purchasing or offering to purchase EMAX Tokens, to induce the purchase or sale of
8 EMAX Tokens.

9 430. As noted above, Defendant Maher, in conjunction with the other
10 Executive Defendants, manipulated the price of EMAX Tokens by effectively
11 engaging in wash trading in the early days of the EthereumMax launch in order to
12 artificially increase the price of the EMAX Tokens and then sell those unregistered
13 securities to Plaintiffs and the Class. Maher, Davis, and Speer each made misleading
14 statements regarding the exponential increase in the price of EMAX Tokens in the
15 early days of the launch. Defendants purposefully did not disclose to investors that
16 the percentage increases that they were collectively touting was the result of price
17 manipulation as opposed to organic interest in the project.

18 431. Cal. Corp. Code 25503 provides, in relevant part, that any person who
19 violates Section 25110 “shall be liable to any person acquiring from them the
20 security sold in violation of that section, who may sue to recover the consideration
21 they paid for that security with interest thereon at the legal rate, and reasonable
22 attorney's fees, less the amount of any income received therefrom.” Damages, if the
23 plaintiff no longer owns the security, shall be equal to the difference between (a) the
24 purchase price plus interest at the legal rate from the date of purchase, plus
25 reasonable attorney's fees, and (b) the value of the security at the time it was disposed
26 of by the plaintiff plus the amount of any income received therefrom by the plaintiff.

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1 435. Plaintiffs Semerjian, Buckley, and Shah are residents of the State of
2 California.

3 436. Plaintiffs Semerjian, Buckley, and Shah paid for or purchased EMAX
4 Tokens in California and thus the deceptive transactions alleged herein occurred in
5 California.

6 437. The EMAX Token is a “security” within the meaning of the term as
7 defined by Cal. Corp. Code §25019.

8 438. Defendants, and each of them, by engaging in the conduct described
9 above within California, directly or indirectly, sold and offered to sell securities.

10 439. Plaintiffs Semerjian, Buckley, and Shah, and the members of the Class
11 purchased EMAX Tokens from Defendants.

12 440. California Corporations Code §25402 prohibits insider trading.
13 Specifically, it provides:

14 It is unlawful for an issuer or any person who is an officer, director or
15 controlling person of an issuer or any other person whose relationship
16 to the issuer gives him access, directly or indirectly, to material
17 information about the issuer not generally available to the public, to
18 purchase or sell any security of the issuer in this state at a time when he
19 knows material information about the issuer gained from such
20 relationship which would significantly affect the market price of that
21 security and which is not generally available to the public, and which
22 he knows is not intended to be so available, unless he has reason to
23 believe that the person selling to or buying from him is also in
24 possession of the information.

25 441. Rechnitz, Maher, Pierce, and Mayweather had relationships with the
26 issuer (Executive Defendant Perone) that gave them direct access to material
27 information about the timing of the marketing activities of the celebrity promoters
28 (which were not generally available to Plaintiffs Semerjian, Buckley, or Shah, or the
members of the class. Rechnitz, Maher, Pierce, and Mayweather are also considered
controlling persons under Cal. Corp. Code §25402.

 442. As alleged above, Rechnitz, Maher, Pierce, and Mayweather (with
assistance from Perone) used this information to purchase and sell EMAX Tokens at

1 a time when the value of the EMAX Tokens was artificially inflated from the
2 Promoter Defendants' promotional activities.

3 443. Given the amounts of EMAX Tokens that Defendants Rechnitz, Maher,
4 Pierce, and Mayweather had received from Perone, their trades of the same would
5 significantly impact the market price of the EMAX Tokens. Indeed, upon information
6 and belief, the price decrease occurring on or around June 2, 2021 (which the
7 Executive Defendants claimed was caused by the news that Groot Hospitality would
8 not be able to accept EMAX Tokens as a payment as promised) was actually caused
9 when, as Defendants Davis revealed, Mayweather immediately sold off all of the
10 EMAX Tokens that he was given as his fee for promoting EthereumMax.

11 444. None of the Plaintiffs or members of the class were in possession of the
12 information regarding the time of the celebrity promotions of EMAX Tokens.

13 445. Cal. Corp. Code 25502 states:

14 Any person who violates Section 25402 shall be liable to the person
15 who purchases a security from him or sells a security to him, for
16 damages equal to the difference between the price at which such
17 security was purchased or sold and the market value which such
18 security would have had at the time of the purchase or sale if the
19 information known to the defendant had been publicly disseminated
20 prior to that time and a reasonable time had elapsed for the market to
21 absorb the information, plus interest at the legal rate.

19 **TWELFTH CAUSE OF ACTION**

20 **Violation of the Florida Securities and Investor Protection Act** 21 **Fl. Stat. Section 517.07** 22 **(Sale of Unregistered Securities)** 23 **(Against the Company and Executive Defendants)**

24 446. Plaintiffs restate and reallege all preceding allegations above in
25 paragraphs 1 – 185 as if fully set forth herein, and further allege as follows:

26 447. Plaintiffs Nahlah, Freeman, Puda, and Brignol are residents of the State
27 of Florida.
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1 448. Plaintiffs Nahlah, Freeman, Puda, and Brignol paid for or purchased
2 EMAX Tokens in Florida and thus the deceptive transactions alleged herein
3 occurred in Florida.

4 449. The EMAX Token is a “security” within the meaning of the term as
5 defined by Section 517.021(22), Fla. Stat. Additionally, the SEC has concurrently
6 determined that the EMAX Tokens “were offered and sold as investment contracts
7 and therefore securities pursuant to Section 2(a)(1) of the Securities Act.” SEC
8 Order, ¶4.

9 450. Defendants, and each of them, by engaging in the conduct described
10 above within California, directly or indirectly, sold and offered to sell securities.

11 451. Plaintiffs Nahlah, Freeman, Puda, and Brignol, and the members of the
12 Class purchased EMAX Tokens from Defendants.

13 452. Section 517.07(1) of the Florida Statute provides that it is unlawful and
14 a violation for any person to sell or offer to sell a security within the State of Florida
15 unless the security is exempt under Florida Statute §517.051, is sold in a transaction
16 exempt under Florida Statute §517.061, is a federally covered security, or is
17 registered pursuant to Chapter 517 of the Florida Statute.

18 453. Section 517.211 extends liability to any “director, officer, partner, or
19 agent of or for the seller, if the director, officer, partner, or agent has personally
20 participated or aided in making the sale, is jointly and severally liable to the purchaser
21 in an action for rescission, if the purchaser still owns the security, or for damages, if
22 the purchaser has sold the security.” Fla. Stat. §517.211(1).

23 454. Under §2(a)(1) of the Securities Act of 1933, a “security” is defined to
24 include an “investment contract.” 15 U.S.C. §77b(a)(1). The Supreme Court in
25 *Howey* established the prevailing test for determining whether something is an
26 investment contract, which is defined as “an investment of money in a common
27 enterprise with profits to come solely from the efforts of others.” *Id.* at 301.

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1 Specifically, a transaction qualifies as an investment contract and, thus, a security if
2 it is: (1) an investment; (2) in a common enterprise; (3) with a reasonable expectation
3 of profits; and (4) to be derived from the entrepreneurial or managerial efforts of
4 others. *See Forman*, 421 U.S. at 852-53. This definition embodies a “flexible rather
5 than a static principle, one that is capable of adaptation to meet the countless and
6 variable schemes devised by those who seek the use of the money of others on the
7 promise of profits,” and thereby “permits the fulfillment of the statutory purpose of
8 compelling full and fair disclosure relative to the issuance of ‘the many types of
9 instruments that in our commercial world fall within the ordinary concept of a
10 security.’” *Howey*, 328 U.S. at 299 (citation omitted). Accordingly, in analyzing
11 whether something is a security, “‘form should be disregarded for substance,’” and
12 the emphasis should be “on the economic realities underlying a transaction, and not
13 on the name appended thereto.” *Forman*, 421 U.S. at 848-49.

14 455. The EMAX Token is a security pursuant to Fla. Stat. §517.021(22)(a).

15 456. The EMAX Tokens sold and offered for sale to Plaintiffs and Class
16 members were not:

- 17 a. exempt from registration under Fla. Stat. §517.051;
- 18 b. a federal covered security;
- 19 c. registered with the Office of Financial Regulations (OFR); or
- 20 d. sold in a transaction exempt under Fla. Stat. §517.061.

21 457. The Company and Executive Defendants sold and offered to sell the
22 unregistered EMAX Tokens to Plaintiff Nahlah, Freeman, Puda, and Brignol, and the
23 members of the Class.

24 458. Defendants are directors, officers, partners and/or agents of the
25 Company pursuant to Fla. Stat. §517.211.

26 459. Investors who bought EMAX Tokens invested money or other valuable
27 consideration in a common enterprise. Investors had a reasonable expectation of
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1 profit based upon the efforts of the Defendants, including, among other things,
2 Defendants' promotional efforts and business operations. As stated in the SEC
3 Order:

4 Based on EthereumMax's marketing materials, as well as public
5 statements by EthereumMax affiliates, the EthereumMax website, and
6 EthereumMax social media handles, purchasers of EMAX tokens
7 would have had a reasonable expectation of profits from their
8 investment in the tokens. EthereumMax frequently touted the token's
9 rise in price on its social media pages as it offered and sold EMAX
10 tokens.

11 Based on EthereumMax's public statements, purchasers of the EMAX
12 tokens would have had a reasonable expectation that EthereumMax and
13 its agents would expend significant efforts to develop the
14 EthereumMax platform, which would increase the value of their
15 EMAX tokens, resulting in investor profit. EthereumMax's marketing
16 materials highlighted that the Company and its agents would ensure a
17 secondary trading market for EMAX tokens by creating a trading
18 market for EMAX tokens. EthereumMax's marketing materials also
19 emphasized the purported expertise of the Company's management.

20 EthereumMax's marketing materials, moreover, contained numerous
21 direct statements that the EMAX tokens would rise in value as a result
22 of the efforts of the Company and its agents, including by touting future
23 deals and relationships that would "drive value." EthereumMax also
24 promised to develop certain "token enhancements," including
25 "additional tokenomics to enhance economic value," future rewards
26 and staking programs, national sporting and event partnerships, and a
27 general expansion of the EMAX token ecosystem.

28 460. Plaintiffs Nahlah, Freeman, Puda, and Brignol and Class members
invested fiat, including U.S. dollars, and digital currencies, such as Bitcoin and
Ethereum, to purchase EMAX Tokens.

461. Defendants sold EMAX Tokens to the general public on various
cryptocurrency exchanges.

462. Every purchase of EMAX Tokens by a member of the public is an
investment contract.

463. Additionally, investors were passive participants in the EMAX Tokens
launch and the profits of each Plaintiff and the Class were intertwined with those of
Defendants.

1 464. The Executive Defendants also were responsible for supporting the
2 EMAX Token products and its code. Additionally, the Executive Defendants also
3 were responsible for supporting EMAX Tokens, pooled investors’ assets, and
4 controlled those assets.

5 465. Plaintiffs Nahlah, Freeman, Puda, and Brignol and Class members in the
6 EMAX Tokens made their investment with a reasonable expectation of profits.

7 466. Investors’ profits in the EMAX Tokens were to be derived from the
8 managerial efforts of others – specifically the Company, the Executive Defendants
9 or any EthereumMax personnel responsible for developing the networks on which
10 these tokens will operate and managing the proprietary trading codes. EMAX Token
11 investors relied on the managerial and entrepreneurial efforts of the Company and the
12 Executive Defendants to manage, oversee, and/or develop the EthereumMax business
13 and sales of EMAX Tokens.

14 467. This dependency, however, on the managerial efforts of the Company
15 and Executive Defendants was not apparent at issuance to a reasonable investor.
16 Considering the limited available information about how these EMAX Tokens were
17 designed and intended to operate, if such an investor were even able to interpret the
18 relevant law at the time, a reasonable investor lacked sufficient bases to conclude
19 whether the EMAX Tokens were securities until the platform at issue, and its relevant
20 “ecosystem,” had been given time to develop. In the interim, the investor lacked the
21 facts necessary to conclude – let alone formally allege in court – that the EMAX
22 Tokens they had acquired were securities.

23 468. The SEC has also provided guidance for determining claims alleging the
24 improper sale of unregistered securities. On April 3, 2019, the SEC published its
25 “Framework for ‘Investment Contract’ Analysis of Digital Assets” (the
26 “Framework”) in which it “provided a framework for analyzing whether a digital
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1 asset is an investment contract and whether offers and sales of a digital asset are
2 securities transactions.”¹¹⁶

3 469. The Framework described how to analyze the various facts surrounding
4 an ICO in making the determination of whether a given digital asset is a security.

5 470. In particular, the Framework provides that the “inquiry into whether a
6 purchaser is relying on the efforts of others focuses on two key issues: Does the
7 purchaser reasonably expect to rely on the efforts of an [Active Participant or “AP”]?
8 Are those efforts ‘the undeniably significant ones, those essential managerial efforts
9 which affect the failure or success of the enterprise,’ as opposed to efforts that are
10 more ministerial in nature?”¹¹⁷

11 471. The Framework further notes that the “stronger the[] presence” of the
12 following factors, “the more likely it is that a purchaser of a digital asset is relying
13 on the ‘efforts of others.’”¹¹⁸

14 472. The first factor the SEC looked at was whether an AP is responsible for
15 the development, improvement (or enhancement), operation, or promotion of the
16 network, particularly if purchasers of the digital asset expect an AP to be performing
17 or overseeing tasks that are necessary for the network or digital asset to achieve or
18 retain its intended purpose or functionality.

19 473. At the time of the EthereumMax launch, Defendants actively marketed
20 the EMAX Token launch and the tokens’ growth and utilization prospects, thereby
21 necessitating the continued managerial efforts of the Company and Executive
22 Defendants. Where the network or the digital asset is still in development and the
23 network or digital asset is not fully functional at the time of the offer or sale,
24 purchasers would reasonably expect an AP to further develop the functionality of the
25 network or digital asset (directly or indirectly).

26 ¹¹⁶ See n.103, *supra*.

27 ¹¹⁷ *Id.*

28 ¹¹⁸ *Id.*

1 474. Another factor the Framework considers is whether the AP creates or
2 supports a market for, or the price of, the digital asset. This includes, inter alia,
3 whether the AP “(1) controls the creation and issuance of the digital asset; or (2) takes
4 other actions to support a market price of the digital asset, such as by limiting supply
5 or ensuring scarcity, through, for example, buybacks, “burning,” or other
6 activities.”¹¹⁹

7 475. As noted above, all of the EMAX Tokens in circulation were created at
8 the direction of the Executive Defendants. Additionally, the Executive Defendants
9 also created the protocols by which the EMAX Tokens are burned.

10 476. The framework further states that “[a]n AP has a continuing managerial
11 role in making decisions about or exercising judgment concerning the network or the
12 characteristics or rights the digital asset represents.”¹²⁰

13 477. Here, the Company and Executive Defendants have discussed the long-
14 term prospects on extended frames, continually noting how the utilization of EMAX
15 Tokens as a method of payment will grow in the future.

16 478. The ability to determine whether and where the digital asset will trade
17 is another factor discussed in the Framework. For example, “purchasers may
18 reasonably rely on an AP for liquidity, such as where the AP has arranged, or
19 promised to arrange for, the trading of the digital asset on a secondary market or
20 platform.”¹²¹

21 479. Here, the Executive Defendants, in particular Defendant Maher,
22 admitted that the Executive Defendants had access to and did manipulate the sales of
23 EMAX Tokens in the first days, which had a dramatic impact on the EMAX Tokens
24 price and effected the EMAX Token liquidity pool.

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26 _____
119 *Id.*

27 120 *Id.*

28 121 *Id.*

1 480. Another factor the Framework notes is whether the AP has the ability to
2 determine who will receive additional digital assets and under what conditions. This
3 could be, for example, “[m]aking or contributing to managerial level business
4 decisions, such as how to deploy funds raised from sales of the digital asset.”¹²²

5 481. Here, the Company and Executive Defendants are the arbiters of funding
6 for EthereumMax.

7 482. Making other managerial judgements or decisions that will directly or
8 indirectly impact the success of the network or the value of the digital asset generally.

9 483. The Framework also remarks that purchasers would reasonably expect
10 the AP to undertake efforts to promote its own interests and enhance the value of the
11 network or digital asset, including, but not limited to, the instances where the AP “has
12 the ability to realize capital appreciation from the value of the digital asset. This can
13 be demonstrated, for example, if the AP retains a stake or interest in the digital asset.”
14 According to the SEC, in these instances, “purchasers would reasonably expect the
15 AP to undertake efforts to promote its own interests and enhance the value of the
16 network or digital asset.”¹²³

17 484. Here, the Executive Defendants retain a significant interest in the
18 Ethereum Max project even after selling off many EMAX Tokens at the height of the
19 initial launch.

20 485. On May 7, 2021, on CNBC’s “Squawk Box” television program,
21 chairman of the SEC Gary Gensler stated that “a lot of crypto tokens – I won’t call
22 them cryptocurrencies for this moment – are indeed securities.”¹²⁴ In addition to
23 being the Chairman of the SEC, Mr. Gensler is also a world renowned expert on
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25 ¹²² *Id.*

26 ¹²³ *Id.*

27 ¹²⁴ Jesse Point, *SEC Chairman Gary Gensler says more investor protections are*
28 *needed for bitcoin and crypto markets*, CNBC (May 7, 2021), <https://www.cnbc.com/2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html>.

1 cryptocurrencies and blockchain technology, having taught the “Blockchain and
2 Money” course at the Sloan School of Management at the Massachusetts Institute of
3 Technology (“MIT”).¹²⁵

4 486. In a June 14, 2018 speech entitled “Digital Asset Transactions: When
5 Howey Met Gary (Plastic)” that is available on the SEC’s website,¹²⁶ the following
6 observations were made on “when a digital transaction may no longer represent a
7 security offering”:

8 If the network on which the token or coin is to function is sufficiently
9 decentralized – where purchasers would no longer reasonably expect a
10 person or group to carry out essential managerial or entrepreneurial
11 efforts – the assets may not represent an investment contract.
12 Moreover, when the efforts of the third party are no longer a key factor
for determining the enterprise's success, material information
asymmetries recede. As a network becomes truly decentralized, the
ability to identify an issuer or promoter to make the requisite dis-
closures becomes difficult, and less meaningful.

13 And so, when I look at Bitcoin today, I do not see a central third
14 party whose efforts are a key determining factor in the enterprise. The
15 network on which Bitcoin functions is operational and appears to have
been decentralized for some time, perhaps from inception.

16 487. A key factor in determining whether a digital asset is a security or not
17 is whether there is a centralized entity behind the digital asset.¹²⁷ EMAX
18 Holdings, LLC operated as the de facto corporate entity and Defendant Perone is the
19 sole executive and director of this holding company. Thus, there is a centralized
20 entity behind the EMAX Tokens.

21 488. Finally, the SEC also already concluded that another virtual currency
22 (*i.e.*, DAO tokens) that are substantially similar to EMAX Tokens are “securities and
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24 ¹²⁵ Lectures and Materials from Chairman Gensler’s MIT course are available to
the public for free at: [https://ocw.mit.edu/courses/sloan-school-of-management/15-
s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/](https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/).

25 ¹²⁶ William Hinman, Director, Division of Corporation Finance, Remarks at the
26 Yahoo Finance All Markets Summit, *Digital Asset Transactions: When Howey Met
Gary (Plastic)* (June 14, 2018), [https://www.sec.gov/news/speech/speech-hinman-
061418](https://www.sec.gov/news/speech/speech-hinman-061418).

27 ¹²⁷ *Id.* (noting that the “decentralized structure” of Bitcoin and Ethereum placed
28 these digital assets outside the “disclosure regime of the federal securities laws”).

1 therefore subject to the federal securities laws.” As stated by the SEC, “issuers of
2 distributed ledger or blockchain technology-based securities must register offers and
3 sales of such securities unless a valid exemption applies.”¹²⁸ More recently, on
4 November 7, 2022, the SEC was granted summary judgment on the issue of whether
5 or not the token at issue constituted a security, stating that “no reasonable trier of fact
6 could reject the SEC’s contention that LBRY offered LBC [tokens] as a security, and
7 LBRY does not have a triable defense that it lacked fair notice [that it needed to
8 register its offerings.]” *LBRY*, 2022 WL 16744741, at *8.

9 489. This analysis of whether the DAO and LBC tokens are securities should
10 be applied here.

11 **THIRTEENTH CAUSE OF ACTION**

12 **Unjust Enrichment/Restitution**
13 **(California Common Law, in the Alternative)**
14 **(Against All Defendants)**

15 490. Plaintiffs restate and reallege all preceding allegations above in
16 paragraphs 1 – 185 as if fully set forth herein, and further allege as follows:

17 491. Plaintiffs and members of the Class conferred a monetary benefit on
18 Defendants by raising the price and trading volume of the EMAX Tokens, which
19 allowed Defendants to sell their EMAX Tokens to Plaintiffs and Class members at
20 inappropriately and artificially inflated prices.

21 492. Defendants received a financial benefit from the sale of their EMAX
22 Tokens at inflated prices and are in possession of this monetary value that was
23 intended to be used for the benefit of, and rightfully belongs to, Plaintiffs and
24 members of the Class.

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27 ¹²⁸ Press Release, U.S. SEC. & EXCH. COMM’N, *SEC Issues Investigative Report*
28 *Concluding DAO Tokens, a Digital Asset, Were Securities* (July 25, 2017),
<https://www.sec.gov/news/press-release/2017-131>.

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JURY DEMAND

Plaintiffs, individually and on behalf of the putative Class, demand a trial by jury on all issues so triable.

DATED: December 22, 2022 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

s/ John T. Jasnoch
John T. Jasnoch