



Court File No. **VLC-S-S-199464**

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

ANDREW BECK AND CRAIG PETERSEN

PLAINTIFFS

and

VANBEX GROUP, INC., VANBEX LABS INC. fka ETHERPARTY SMART CONTRACTS INC., VANBEX VENTURES INC., ETHERPARTY INC., KEVIN HOBBS, LISA CHENG, JEFFERY WALSH, BRIAN ONN AND TORONTO-DOMINION BANK dba TD CANADA TRUST

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

## **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **THE PLAINTIFFS' CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. This action concerns the sale of digital tokens (coins) known as “FUEL” by the Defendants Vanbex (defined below), Hobbs, Cheng, Walsh and Onn, during a so-called “initial coin offering” in 2017. More than \$30-million worth of FUEL tokens were sold by these Defendants in breach of the *Securities Act* and by deception upon the public market, resulting in loss to the Plaintiffs and others like them who acquired FUEL tokens. Despite being on notice regarding the activities of the Defendants Vanbex and Hobbs, the defendant TD Bank (defined below) failed to investigate and permitted its facilities to be used to perpetrate the wrongdoing. Through this suit, investors seek to hold the Defendants accountable for their unlawful conduct and to obtain compensation.

#### ***The Parties***

2. The plaintiff Andrew Beck is a resident of British Columbia. He purchased FUEL tokens in the FUEL ICO (defined below).

3. The plaintiff Craig Petersen is a resident of British Columbia. He purchased FUEL tokens in the FUEL ICO (defined below).

4. The defendant Vanbex Group, Inc. is incorporated under the laws of Canada and extra-provincially registered in British Columbia, with an address for service at 2900 – 550 Burrard Street, Vancouver BC V6C 0A3.

5. The defendant Vanbex Labs Inc., formerly known as Etherparty Smart Contracts Inc., is incorporated under the laws of British Columbia, with an address for service at 2900 – 550 Burrard Street, Vancouver BC V6C 0A3. Vanbex Labs Inc. is a wholly-owned subsidiary of Vanbex Group, Inc. or otherwise under its control.

6. The defendant Vanbex Ventures Inc. is incorporated under the laws of British Columbia, with an address for service at 2900 – 550 Burrard Street, Vancouver BC V6C 0A3. Vanbex Ventures Inc. is a wholly-owned subsidiary of Vanbex Group, Inc. or otherwise under its control.

7. The defendant Etherparty Inc. is incorporated under the laws of Delaware, with an address for service at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St, Wilmington DE 19801 USA. Etherparty Inc. carries on business and is based in British Columbia.

8. The defendant Kevin Hobbs is a resident of British Columbia, with an address for service at 789 West 50<sup>th</sup> Avenue, Vancouver BC V6P 1A4, 300-717 West Pender Street, Vancouver BC V6C 2X6, and 1207 West Hastings Street, Vancouver BC V6E 4S8. Hobbs is a director and officer of each of Vanbex Group Inc., Vanbex Labs Inc. fka Etherparty Smart Contracts Inc., Vanbex Ventures Inc. and Etherparty Inc. Hobbs is the CEO of Etherparty.

9. Hobbs is a convicted criminal:

- a. Hobbs was convicted in the United States for possession of marihuana in 2005;
- b. Hobbs was convicted in Nova Scotia of possession of property obtained by crime over \$5,000 and laundering the proceeds of crime in 2008;
- c. Hobbs was convicted in Nova Scotia of possession for the purpose of trafficking and unlawfully producing marihuana in 2009. This conviction was quashed on appeal due to an irregularity in jury selection.

10. The defendant Lisa Cheng is a resident of British Columbia with an address for service at 789 West 50<sup>th</sup> Avenue, Vancouver BC V6P 1A4, 300-717 West Pender Street, Vancouver BC V6C 2X6, and 1207 West Hastings Street, Vancouver BC V6E 4S8. Cheng is a director and officer of each of Vanbex Group Inc., Vanbex Labs Inc. fka Etherparty Smart Contracts Inc., Vanbex Ventures Inc. and Etherparty Inc. Cheng is the Founder of Etherparty.

11. Together, Hobbs and Cheng control the Defendants Vanbex Group Inc., Vanbex Labs Inc. fka Etherparty Smart Contracts Inc., Vanbex Ventures Inc. and Etherparty Inc.
12. The businesses of each of Vanbex Group Inc., Vanbex Labs Inc. fka Etherparty Smart Contracts Inc., Vanbex Ventures Inc. and Etherparty Inc. (hereafter and together, “**Vanbex**”) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the operation of the Vanbex business, the FUEL tokens, and the FUEL ICO.
13. The defendant Jeffery Walsh is a resident of British Columbia, with an address for service at 300-717 West Pender Street, Vancouver BC V6C 2X6. He is the “Solidity and Full Stack Developer” for Vanbex and the FUEL ICO.
14. The defendant Brian Onn is a resident of British Columbia, with an address for service at 300-717 West Pender Street, Vancouver BC V6C 2X6. He is the “Chief Architect” for Vanbex and the FUEL ICO.
15. The defendant The Toronto-Dominion Bank is a Schedule I bank under the *Bank Act*, RSC 1991, c 46 doing business as TD Canada Trust (“**TD Bank**”). It carries on business across Canada, including in British Columbia. At material times, Vanbex and Hobbs maintained accounts with TD Bank, the particulars of which are well known to the Defendants.
16. The Plaintiffs bring this claim on his own behalf and on behalf of all persons wherever they may reside or be domiciled (other than Excluded Persons”) (“**Class Members**”) who purchased FUEL tokens from Vanbex during the ICO and held some or all of those securities until the end of the Class Period (the “**Class**”), and on behalf of a subclass of persons whose investments in the FUEL ICO were made by deposit or transfer through Vanbex’s accounts at TD Bank.
17. Excluded Persons means the Defendants, their past and present subsidiaries, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the families of the individual named Defendants.

## *Cryptocurrency, Blockchain, Coins, and Initial Coin Offerings*

18. A cryptocurrency is a digital asset designed to work as a medium of exchange that uses strong cryptography to secure financial transactions, control the creation of additional units, and verify the transfer of assets. Cryptocurrencies are a kind of digital currency, virtual currency or alternative currency. Cryptocurrencies use decentralised control as opposed to centralised electronic money and central banking systems. The decentralised control of each cryptocurrency works through distributed ledger technology, typically a blockchain, that serves as a public financial transaction database. Bitcoin is generally considered the first decentralized cryptocurrency.

19. Since the release of Bitcoin (XBT) in 2009, over 4,000 altcoins (alternative variants of Bitcoin, or other cryptocurrencies) have been created. Popular alternatives include Ethereum or ether (ΞTH), Bitcash (BCC) and Litecoin (LTC). Cryptocurrencies can be traded for one another or for “real”, fiat currencies such as the Canadian or US dollar, on a variety of online exchanges.

20. Businesses have begun issuing units of a new cryptocurrency or token in exchange for other cryptocurrencies or legal tender, in order to raise capital or make money. The tokens are commonly promoted as future functional units of currency if or when the issuer’s underlying project launches. That is, the tokens can be used within a new platform developed by the issuer/developer, by users to pay for that service.

21. The initial coin offering or ICO is functionally equivalent to an initial public offering of shares. An ICO may sometimes be referred to as an ITO or initial token offering.

22. An ICO/ITO is typically open for a set period, during which investors can visit a website to purchase coins/tokens in exchange for fiat currency or a cryptocurrency such as bitcoin or ether. The structures of ICOs/ITOs will vary, and they may be used to raise capital for a variety of projects, including the development of a new cryptocurrency, distributed ledger technology, service or platform. Anyone with internet access can create or invest in an ICO/ITO.

23. The ultimate value of the tokens depends on the success of the underlying platform or project: if it is not successful, the tokens will usually be worthless; if it is successful, the value of

the tokens should increase. The number of tokens issued is ordinarily restricted, so that their value goes up if demand for them increases.

24. Tokens are not ordinarily purchased in expectation that the investor will use them to obtain services from the issuer/developer. Instead, tokens are purchased with the expectation that the issuer/developer's project will create additional third-party demand for the tokens.

25. Purchasers of tokens invest their money in a common, speculative enterprise with the issuer/developer and expect profits from the efforts of the issuer/developer.

26. In many if not most cases, tokens are securities and the ICOs involve the sale of securities and must meet the requirements of the applicable securities legislation, including the *Securities Act*.

27. In many if not all cases, ICOs have gone ahead without authorization from the responsible securities regulators, including the British Columbia Securities Commission and the United Securities and Exchange Commission.

### ***Etherparty***

28. Etherparty is the business of the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn. Etherparty purports to be a "user-friendly smart contract compiler". Its stated object is to provide non-computer professionals with the ability to employ smart contracts in their operations, using Etherparty's technology or "software as a service".

29. A smart contract is a computerised transaction protocol that executes the terms of a contract upon the occurrence of common contractual conditions (such as payment).

30. According to Vanbex's business plan, smart contracts on its Etherparty platform will require "FUEL", the platform's native validation token (or coin).

31. FUEL is a transferable token deployed on the Ethereum network. The FUEL token is intended to serve as a method of validating the user's interactions with Etherparty and will allow users to buy, execute, or barter for other smart contracts on the Etherparty platform.

32. Vanbex has represented that it has set the total supply of FUEL tokens at one billion, and that the total will never be increased beyond this cap.

33. People wishing to use Etherparty's services will need to purchase FUEL tokens from Etherparty or from people who have already obtained FUEL tokens through an ICO or other means.

34. The ultimate value of the FUEL tokens depends on the success of the underlying Etherparty smart contract project. Purchasers of FUEL tokens invest their money in a common, speculative enterprise with the issuer/developer (Etherparty) and expect profits from its efforts.

### ***The FUEL ICO***

35. Sometime beginning in about 2016 or at the latest 2017, Hobbs and Cheng began representing to the public that they operated a Vancouver-based cryptocurrency firm. The firm was interchangeably called Vanbex or Etherparty.

36. The Defendants Vanbex, Hobbs, Cheng, Walsh and Onn promoted the Etherparty business. In actual fact, Vanbex was a shell and it never developed any useable products.

37. Between themselves, Hobbs and Cheng, using Vanbex, orchestrated a scheme to promote the Etherparty business to the investing public and to hold an ICO for Vanbex's FUEL token ("**FUEL ICO**"). The ultimate object of the FUEL ICO and the promotion of the Etherparty business by the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn was to personally enrich themselves at the expense of investors by selling FUEL tokens to third parties. There was never a bona fide intention to develop the Etherparty business or to bring the project to such a state that the FUEL tokens would have any independent value (the "**Scheme**").

38. In furtherance of the Scheme, in August 2017, Vanbex publicly released a so-called whitepaper regarding its proposed smart contract services and the FUEL ICO ("**Whitepaper**"). The object of the Whitepaper was to promote the FUEL ICO, the Etherparty business, and to induce the public to invest.

39. In furtherance of the Scheme, in between approximately August 2017 and September 15, 2017, Vanbex conducted a "pre-sale" of FUEL tokens. During the pre-sale phase, Vanbex publicly

stated that 40 percent of the total FUEL token supply was set aside and sold to contributors across more than 100 countries.

40. On September 15, 2019, Vanbex announced that it had received approximately \$25-million USD from investors in the form of cash, Bitcoin and Ether from the pre-sale of FUEL tokens.

41. In furtherance of the Scheme, Vanbex conduct a “public” sale of FUEL tokens from about October 1, 2017 to October 31, 2017.

42. On October 31, 2017, Vanbex announced that it had received over \$30 million from investors from over 4,610 backers.

43. At all material times, the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn, and Hobbs and Cheng in particular, actively promoted the Etherparty business, the FUEL ICO and the Whitepaper to the public to induce them to invest and purchase FUEL tokens, including through public presentations, postings on internet forums and Vanbex-affiliated websites, and through Twitter.

### ***Wrongdoing by the Defendants***

44. Vanbex operates in British Columbia and is subject to the *Securities Act* and the oversight of the BC Securities Commission.

45. FUEL tokens are securities and Vanbex is an issuer within the meaning of the *Securities Act*.

46. At the time of the FUEL ICO, and in breach of the *Securities Act*, Vanbex had not:

- a. registered with the BC Securities Commission;
- b. obtained a prospectus exemption; and
- c. filed a prospectus and obtained a prospectus receipt.

47. The Whitepaper contains numerous material misrepresentations including *inter alia* that Vanbex had a viable business model of its own or was capable of creating the Etherparty network.

48. The Defendants Hobbs, Cheng, Walsh and Onn each participated in the drafting, dissemination and promotion of the Whitepaper as part of the Scheme, and signed and approved the Whitepaper, knowing that it contained false and materially misleading misrepresentations. The Defendants Hobbs, Cheng, Walsh and Onn participated in the Scheme to enrich themselves at the expense of the Plaintiffs and Class Members, through the sale of FUEL tokens in the FUEL ICO.

49. In addition, Vanbex did not disclose in connection with the FUEL ICO that the Whitepaper and related materials were obtained unlawfully from a company in the United States called Elev3n, LLC (“**Elev3n**”). Vanbex had been contracted by Elev3n to assist it with preparations for its own ICO. Instead, Vanbex used Elev3n’s content to prepare the Whitepaper and to facilitate the FUEL ICO.

50. In addition, Hobbs was a director of Vanbex in breach of the *Business Corporations Act*, s. 124(d) by reason of his convictions for drug-related wrongs, and his convictions were not disclosed to investors.

51. Upon receipt of investors’ funds from the sale of FUEL tokens during the FUEL ICO, the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn, and in particular Hobbs and Cheng, converted those funds to their own use to fund their lavish lifestyles, including purchases of luxury real estate and vehicles.

### ***The post-ICO market for FUEL***

52. FUEL tokens have traded below the level of the ICO at all material times since approximately July 2018.

53. At the time this action is filed, FUEL tokens are trading at approximately 1/10<sup>th</sup> of its value at the ICO.

54. In breach of its representations in the Whitepaper, Vanbex took no meaningful steps to develop its smart contract product or platform.

### ***Investors' losses and Defendants' gains***

55. The Plaintiffs each purchased approximately \$30,000 USD worth of FUEL tokens during the FUEL ICO. The Plaintiffs still hold the tokens.

56. The Plaintiffs and Class Members have suffered the loss of their full investments in FUEL tokens purchased from Vanbex. FUEL tokens cannot legally be sold, without approval from the regulator and compliance with the *Securities Act*. In addition, Vanbex is not a viable business and has not met its milestones. The FUEL tokens have no real, legal value.

57. In the alternative, and at a minimum, the Plaintiffs and Class Members have suffered loss to the extent that FUEL tokens are worth less than the value of their initial investment.

58. In addition, the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn have benefitted, including personally for the Defendants Hobbs, Cheng, Walsh and Onn, from the FUEL ICO, through their use of funds from the FUEL ICO to fund their own lifestyles and investments.

59. In addition, the Defendants Hobbs, Cheng, Walsh and Onn engaged in insider trading by issuing FUEL tokens to themselves personally and selling them to investors, without disclosing the same in any prospectus and without complying with the requirements of the *Securities Act*.

### ***Subsequent Events***

60. Vanbex never developed the smart contracts platform (the Etherparty network) described in the Whitepaper.

61. On March 14, 2019, the Director of Civil Forfeiture commenced an action *inter alia* against Hobbs and Cheng seeking forfeiture of real property, vehicles and bank funds as proceeds and instruments of unlawful activities relating to the FUEL ICO, namely possession of the proceeds of crime, committing fraud over \$5,000 affecting the public market price of stocks, shares and merchandise, lauding the proceeds of crime, and failure to declare taxable income.

62. The British Columbia Securities Commission, the Royal Canadian Mounted Police, and the Canada Revenue Agency are investigating the Defendants Vanbex, Hobbs, Cheng, Walsh and

Onn in relation to the FUEL ICO. The BC Securities Commission has publicly stated that FUEL tokens are a security and subject to securities regulations.

***The role of TD Bank***

63. At material times before, during and after the FUEL ICO, the Defendants Vanbex and Hobbs maintained accounts at TD Bank. Those accounts were used for the business of Vanbex. In particular, those accounts were used for the purpose of receiving and disposing of proceeds relating to the FUEL ICO, including the Plaintiffs' purchases of FUEL tokens during the FUEL ICO. The Plaintiffs each transferred \$30,000 USD to Vanbex at its account at TD Canada Trust in respect of the FUEL ICO on about August 28, 2017.

64. Not later than April 2017, TD Bank was put on notice that Vanbex and Hobbs were engaged in suspicious and potentially criminal activity using TD Bank's facilities. The matter was escalated to TD Bank's global security team. The particulars of TD Bank's internal investigations are well known to TD Bank.

65. In addition, in connection with the FUEL ICO in August through October 2017, Vanbex was receiving cumulative deposits through its accounts at TD Bank in the millions of dollars and was making cumulative withdrawals in similar amounts. Most of the deposits in Vanbex's accounts at TD Bank were large amounts in round numbers, and most of the withdrawals were likewise in round number amounts. These kinds of transactions are hallmarks of fraudulent activity. Many of the withdrawals or transfers out of the account were made to Hobbs' account at TD Bank. Numerous FINTRAC reports were made in respect of the Defendants Vanbex and Hobbs. The particulars of these transactions are well known to these Defendants.

66. Despite being put on notice of that Vanbex represented a serious risk to TD Bank and persons dealing with Vanbex, and that it was engaged at minimum in potentially criminal activity, at no time did TD Bank freeze Vanbex or Hobbs' accounts. At no time did TD Bank take any steps to notify the proper authorities, or to warn other financial institutions whose funds being transferred to Vanbex's accounts at TD Bank, or third-party depositors, about the circumstances surrounding Vanbex's use of its accounts at TD Bank.

## **Part 2: RELIEF SOUGHT**

### **Against Vanbex, Hobbs, Cheng, Walsh and Onn**

67. A declaration that Vanbex has breached the *Securities Act* in the conduct of the FUEL ICO;
68. Statutory damages for breaches of the *Securities Act*;
69. General damages;
70. Restitution or, alternatively, disgorgement of all benefits received by these Defendants attributable to the sale of FUEL tokens through the FUEL ICO;
71. Punitive damages;

### **Against TD Bank**

72. Damages for negligence in failing to investigate or warn about the use by Vanbex and Hobbs of its facilities for fraudulent and criminal purposes;

### **Against All Defendants**

73. An order certifying this action as a class proceeding;
74. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;
75. Such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

#### ***Breaches of the Securities Act***

76. Under the *Securities Act* and regulations:
- a. a person must not trade in a security unless the person is registered (s 34);
  - b. a person must not distribute a security unless a preliminary prospectus and a prospectus have been filed with the executive director of the Securities Commission (s 61), unless the person obtains an exemption order (s 76);
  - c. if an offeror has failed to comply with the requirement to deliver documents, including a prospectus, a purchaser of a security has a right of action for damages (s 135);
  - d. a prospectus must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be issued (s 62);
  - e. if a prospectus, or any record incorporated into the prospectus, contains a misrepresentation, a purchaser is deemed to have relied on the misrepresentation, and has a right of action for damages against the issuer, every underwriter, every director of the issuer, and every person who signed the prospectus (s 131);
  - f. a person must not directly or indirectly engage in or participate in conduct relating to securities if the person knows or reasonably should know that the conduct perpetrates a fraud on any person (s 57); and
  - g. a person must not engage in insider trading, tipping or recommending (s 57.2) and if an issuer or related person contravenes s 57.2, a person has a right of action (s 136) and an entitlement to account for benefits (s 136.1).
77. As set out above, the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn have breached the *Securities Act*:

- a. FUEL tokens are “securities” within the meaning of s 1 of the *Securities Act* and are publicly traded within the meaning of the statute;
- b. Vanbex is an “issuer” within the meaning of s 1 of the *Securities Act*;
- c. Vanbex was not registered at the time of the FUEL ICO in breach of s 34 of the *Securities Act*;
- d. The Whitepaper is a prospectus and was not filed in accordance with the *Securities Act*, s 61;
- e. Vanbex did not obtain a prospectus exemption for the FUEL ICO in breach of ss 61 ad 76 of the *Securities Act*;
- f. in the alternative, if the Whitepaper is not a prospectus, then Vanbex failed to deliver a prospectus in breach of s 135 of the *Securities Act*;
- g. The Whitepaper does not provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued in breach of ss 57 and 131 of the *Securities Act*.
- h. The Defendants Hobbs, Cheng, Walsh and Onn signed the Whitepaper knowing that it did not provide full, true and plain disclosure of all material facts relating to the FUEL tokens;
- i. By their entire course of conduct out above, and through the Unlawful Conspiracy detailed below, the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn breached the *Securities Act*, s 57; and
- j. By personally selling FUEL tokens during and after the FUEL ICO on the basis of undisclosed information, while being in a special relationship with Vanbex, the Defendants Hobbs, Cheng, Walsh and Onn breached the *Securities Act*, s 57.2.

78. On the basis of the conduct set out above, the Plaintiffs and Class Members are entitled to damages under the *Securities Act* ss 135, 131, 136 and an accounting under s 136.1 because of these breaches of the *Securities Act* by the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn.

### ***Unjust Enrichment***

79. By its conduct set out above, the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn have been enriched by receipt of the proceeds of the FUEL ICO from the Plaintiffs and Class Members. These Defendants have profited from the ICO at the expense of the Plaintiffs and Class Members.

80. As set out above, the Plaintiffs and Class Members have been deprived through the loss of their investments in FUEL tokens during the ICO.

81. There is no juristic reason why these Defendants should have received or should retain this benefit. The FUEL ICO was conducted in violation of the *Securities Act*, and the *Criminal Code*, RSC 1985, c C46, ss 380(1) and (2).

82. These wrongs render void or unenforceable any alleged reason for these Defendants' enrichment, including contract, and thereby negate any juristic reason why these Defendants should have received or should retain the benefit of their wrongdoing.

83. As a result, these Defendants have been unjustly enriched by the benefits they received from the Plaintiffs and the Class Members.

84. In the alternative, justice and good conscience require that these Defendants disgorge to the Plaintiffs and Class Members an amount attributable to the value they received on account of the FUEL ICO.

### ***Conspiracy***

85. The Fuel ICO and the Whitepaper were dishonest, deceitful and deceptive, and constituted a fraud on the market affecting the public market price of the FUEL tokens, contrary to ss 380(1) and (2) of the *Criminal Code*, and perpetrated a fraud on investors and the market, contrary to s 57 of the *Securities Act*.

86. As set out above, the Scheme was conceived and agreed by the Defendants Hobbs, Cheng, Walsh and Onn and implemented by them with and through Vanbex. In doing so, each of Hobbs, Cheng, Walsh and Onn became parties to an agreement to commit fraud contrary to s 380(1)(a) and s 380(2) of the *Criminal Code* and to engage in a fraud on investors contrary to s 57(b) of the *Securities Act* (“**Unlawful Conspiracy**”).

87. The predominant purpose of the Scheme and the Unlawful Conspiracy was to profit from the deception to sell FUEL tokens during the FUEL ICO, which securities would not have been purchased by the Plaintiffs and Class Members, or would have been purchased by them for significantly lesser prices, had the conspiracy and the Scheme never been carried out or had the true circumstances been disclosed.

88. In furtherance of the Scheme and the Unlawful Conspiracy, the Defendants Hobbs, Cheng, Walsh and Onn committed the following unlawful and overt acts:

- a. Obtaining material portions of the Whitepaper from Elev3n by unlawful means;
- b. Publishing the Whitepaper;
- c. Promoting the FUEL ICO to the Plaintiffs and Class Members;
- d. Accepting payments from the Plaintiffs and Class Members for FUEL tokens as part of the FUEL ICO; and
- e. Converting payments from the Plaintiffs and Class Members on account of the FUEL ICO for their own use.

89. The Scheme and the Unlawful Conspiracy were directed at the Plaintiffs and Class members, as purchasers of the FUEL tokens which were carried out as part of the Unlawful Conspiracy, in that each of the FUEL tokens purchased by the Plaintiffs and Class members would either never would have been purchased, or would have been purchased at substantially lower prices, had Unlawful Conspiracy never been carried out or had the true nature of the Scheme been disclosed to the market.

90. Each of the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn are jointly and severally liable to the Plaintiffs and each Class member for the losses suffered by the Plaintiffs and each Class member as a result of the Unlawful Conspiracy.

91. The Scheme and the Unlawful Conspiracy have caused loss and damage to the Plaintiffs and Class Members through:

- a. the purchase of FUEL tokens by them, which either never would have been purchased or would have been purchased by them at a lower price; and
- b. the erosion of the trading value of the FUEL tokens acquired by the Plaintiffs and Class Members as a result of the failure of Vanbex to ever produce a product or create a legitimate market for FUEL tokens.

#### ***Waiver of Tort and Conversion***

92. In the alternative, the Plaintiffs and Class Members elect to waive the tort of Unlawful Conspiracy against the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn and seek to recover the benefits accrued to those Defendants as a result of their tortious conduct.

93. In addition, for those investors who purchased FUEL tokens during the FUEL ICO using Bitcoin or Ether, the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn, by their wrongful acts set out above, have converted those goods to their own use and benefit thereby interfering with the Class Members' rights to those goods.

#### ***Punitive Damages***

94. The Defendants Vanbex, Hobbs, Cheng, Walsh and Onn's misconduct, as described above, was malicious, oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. These Defendants' actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made.

### ***Joint and Several Liability and Vicarious Liability***

95. The businesses of each of the Vanbex corporate Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the FUEL ICO, and the Vanbex corporate Defendants are jointly and severally liable for the actions of and damages allocable to each and any of them.

96. In addition, or in the alternative, the Vanbex corporate Defendants were puppets for Hobbs and Cheng. Justice demands that the corporate veil be pierced to allow the Plaintiffs and Class Members to recover against all wrongdoers for their illegal misconduct.

97. Hobbs and Cheng are jointly and severally liable for the acts of the Vanbex corporate Defendants in contravention of the *Securities Act* and the *Criminal Code*, as those acts were committed by the Vanbex corporate Defendants at the direction and under the control of Hobbs and Cheng, and each of them knew, or were willfully blind to whether, the FUEL ICO was conducted contrary to the *Securities Act* and *Criminal Code*.

### ***Discoverability and Postponement***

98. The Plaintiffs and Class Members could not reasonably have known that

- a. they sustained injury, loss or damage as a consequence of the Defendants Vanbex, Hobbs, Cheng, Walsh and Onn's actions; or
- b. having regard to the nature of their injuries, losses or damages, a court proceeding would be an appropriate means to seek to remedy the injuries, losses or damages

until July 2018 when the price of FUEL tokens collapsed.

99. The Plaintiffs and Class Members plead and rely on postponement under the *Limitation Act*, SBC 2012, c 13 and the *Securities Act*, s 140.

### ***TD's failure to investigate and warn***

100. TD Bank's knowledge that Vanbex and Hobbs' accounts were being used for fraudulent or criminal purposes, or at minimum TD Bank's knowledge that it was reasonably likely that the accounts were being used for such purposes, imposed a duty on TD Bank, to persons whose funds were the subject of transactions in Vanbex's accounts at TD Bank, to take further steps to

investigate the fraud, to advise the appropriate authorities of the fraudulent activity in Vanbex's accounts at TD Bank, and to warn financial institutions whose customers' funds were the subject of the fraudulent activity in Vanbex and Hobbs' accounts at TD Bank.

101. TD Bank breached its duty to investigate and warn, as described above. Had TD Bank properly discharged its duty to investigate and warn, the Plaintiffs and all other Class Members who transferred funds to Vanbex at its TD accounts on or after April 2017, would not have suffered any loss in respect of investments made in the FUEL ICO.

***Service on Etherparty Inc.***

102. The Plaintiffs and Class Members have the right to serve this Notice of Civil Claim on Etherparty Inc. pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

103. The Plaintiffs and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiff's address for service:

c/o Bennett Mounter LLP  
400 - 856 Homer Street  
Vancouver, BC V6B 2W5

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC

V6Z 2E1

Date: August 26, 2019

**Mathew**  
**Patrick**  
**Good**

Digitally signed  
by Mathew  
Patrick Good  
Date: 2019.08.26  
14:36:23 -07'00'

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Signature of lawyer for plaintiffs

**Paul R. Bennett**

**Mark W. Munteer**

**Mathew P. Good**

Co-Counsel for the Plaintiffs

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

## Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising out of the Defendants' breaches of the *Securities Act* and the *Criminal Code* in an initial coin offering of a cryptocurrency.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Court Order Interest Act*, RSBC 1996, c 79

*Criminal Code of Canada*, RSC 1985, c C46

*Securities Act*, RSBC 1996, c 418

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiffs claim the right to serve this pleading on the Etherparty Inc. outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiffs and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).