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County of San Diego
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Clerk of the Superior Court
By Marc David, Deputy Clerk

5 *Attorney for Individual and*
Representative Plaintiffs Shaun Roberts,
6 *Nicholas Colley, and Allan Henry*

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO
9

10 SHAUN ROBERTS, NICHOLAS COLLEY, and
ALLAN HENRY, individually and on behalf of
11 all others similarly situated

Case No. 37-2018-00058465-CU-BT-CTL

CLASS ACTION

12 Plaintiffs,

COMPLAINT FOR:

13 v.

- (1) UNFAIR AND DECEPTIVE BUSINESS PRACTICES IN VIOLATION OF MASS. GEN LAWS CHAPTER 93A, § 2
- (2) UNREGISTERED OFFER AND SALE OF SECURITIES IN VIOLATION OF MASS. GEN LAWS CHAPTER 110A, § 410
- (3) CONTROL PERSON LIABILITY FOR UNREGISTERED OFFER AND SALE OF SECURITIES IN VIOLATION OF MASS. GEN LAWS CHAPTER 110A, § 410
- (4) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200
- (5) UNREGISTERED OFFER AND SALE OF SECURITIES IN VIOLATION OF SECTION 25503 OF THE CALIFORNIA CORPORATION CODE
- (6) CONTROL PERSON LIABILITY FOR UNREGISTERED OFFER AND SALE OF SECURITIES IN VIOLATION OF SECTION 25504 OF THE CALIFORNIA CORPORATION CODE

14 OBELISK, INC., a Delaware corporation,
NEBULOUS, INC, a Delaware corporation,
15 DAVID J. VORICK, an individual, ZACH
HERBERT, an individual, and DOES 1 through
16 10, inclusive,

17 Defendants.
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JURY TRIAL DEMANDED

DEMAND EXCEEDS \$25,000

1 Plaintiffs SHAUN ROBERTS, NICHOLAS COLLEY, and ALLAN HENRY individually
2 and on behalf of all others similarly situated (“Plaintiffs”) complain against defendants
3 NEBULOUS, INC (“Nebulous”), its wholly owned subsidiary OBELISK, INC. (“Obelisk”), and
4 their executive officers DAVID J. VORICK (“Vorick”), ZACH HERBERT (“Herbert”), and Does
5 1-10 (collectively, “Defendants”) as follows:

6 **I. SUMMARY OF ACTION**

7 1. This is a class action on behalf of all investors who purchased cryptocurrency mining
8 appliance (“Mining Appliance”) preorders issued and sold by Defendants from June 1, 2017 through
9 the present (“Preorders”). It arises out of a scheme by Defendants to raise millions of dollars through
10 the unregistered sale of Mining Appliance Preorders to retail investors in violation of consumer
11 protection laws and the registration provisions of state securities laws.

12 2. Like the better known Bitcoin, the Siacoin and Decred cryptocurrencies can only be
13 generated through a process called mining. The mining process involves competing with other
14 miners to solve complicated mathematical problems with cryptographic hash functions. The first
15 miner to crack the code is rewarded with Siacoin or Decred. The use of specialized hardware is
16 necessary to compete with other miners. As the value of cryptocurrencies increased in 2017 the
17 market for advanced mining hardware grew similarly.

18 3. Against this backdrop, Defendants sold Preorders for Mining Appliances that were to
19 be specially tailored to mine Siacoin and Decred. To market and sell those Preorders, Defendants
20 advertised that their Mining Appliances would meet certain specifications thereby allowing
21 purchasers to reap significant profits once the Mining Appliances were delivered. Defendants also
22 promised to deliver those Mining Appliances by a date certain and informed Plaintiffs and other
23 purchasers that they would be able to receive a full refund if the Mining Appliances were not
24 delivered on time or did not meet the advertised specifications.

25 4. Despite their repeated promises, Defendants failed to ship any Mining Appliances on
26 time, and when they finally did ship some Mining Appliances those Mining Appliances did not meet
27 the specifications Defendants had promised during the presale. Most importantly, the actual hash
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1 rates of the Mining Appliances were far below those that Defendants had promised. As a result, the
2 Mining Appliances would not allow purchasers to come close to recouping the cost of their
3 investment. Defendants also refused to provide refunds to Plaintiffs and other purchasers despite
4 their earlier assurances.

5 5. In short, Defendants promised Plaintiffs and members of the Class the moon,
6 delivered them overpriced paperweights, and then reneged on their promise to provide refunds if
7 they were unable to provide Mining Appliances on time or up to their advertised specifications.

8 6. Both Massachusetts and California securities laws require any security that is offered
9 or sold to be registered. These laws are designed to protect the public by requiring various
10 disclosures so that investors can better understand the security that is being offered or sold, and risks
11 associated with investment in that security.

12 7. Here the Preorders offered and sold by Defendants have all the traditional hallmarks
13 of a security. Preorder purchasers, including Plaintiffs, provided consideration (in the form of U.S.
14 dollars or Bitcoin) in exchange for their Preorders. Preorder purchasers reasonably expected to
15 derive profits from their Preorders of the Mining Appliances, and Defendants themselves have
16 frequently highlighted this profit motive. Finally, the development of the Mining Appliances, and
17 the profits that investors expected to derive therefrom, were, and are, based entirely on the technical,
18 managerial, and entrepreneurial efforts of Defendants and other third parties employed by
19 Defendants.

20 8. However, Defendants did not register the Preorders with the SEC or any state
21 regulatory agency, and many of the representations Defendants made regarding the Mining
22 Appliances were designed to drive demand of Mining Appliance Preorders, allowing Defendants to
23 obtain greater returns on their Preorder sales.

24 II. PARTIES

25 9. Plaintiff Shaun Roberts is an individual who at all times mentioned, was and is a
26 resident of Campbell, California. Plaintiff Roberts purchased two Preorders of DCR1 Miners on or
27 about November 23, 2017 for approximately \$5,000.

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1 10. Plaintiff Nicholas Colley is an individual who resides in Portland Oregon. While a
2 resident of San Marcos, Texas, Plaintiff Colley purchased one Preorder of a SC1 Miner on or about
3 September 5, 2017 for approximately \$2,534. While a resident of San Francisco, California,
4 Plaintiff Colley purchased two Preorders of DCR1 Miners on or about January 31, 2018 for 0.22901
5 Bitcoin.

6 11. Plaintiff Allan Henry is an individual who at all times mentioned, was and is a resident
7 of Bridgeport, Connecticut. Plaintiff Henry purchased 16 Preorders of DCR1 Miners and 8
8 Preorders of SC1 Miners on or about November 23, 2017 for 8.019 Bitcoin, then valued at
9 approximately \$60,000. Plaintiff Henry also purchased 17 Preorders of SC1 Miners and 9 Preorders
10 of DCR1 Miners on or about January 31, 2018 for 1.709 Bitcoin, then valued at approximately
11 \$35,000.

12 12. Plaintiffs are informed and believe, and based thereon allege, that Defendant
13 Nebulous, Inc. is a Delaware corporation with its principal place of business in Boston,
14 Massachusetts.

15 13. Plaintiffs are informed and believe, and based thereon allege, that Defendant Obelisk,
16 Inc. is a Delaware corporation with its principal place of business in Boston, Massachusetts. Obelisk
17 is Defendant Nebulous' wholly owned subsidiary.

18 14. Plaintiffs are informed and believes, and based thereon allege, that Defendant David
19 Vorick, is an individual who resides in Boston, Massachusetts. Vorick is the CEO and Cofounder
20 of Nebulous and the CEO of Obelisk.

21 15. Plaintiffs are informed and believes, and based thereon allege, that Defendant Zach
22 Herbert, is an individual who resides in Boston, Massachusetts. Herbert is the Vice-President of
23 Operations of both Nebulous and Obelisk.

24 16. At all times mentioned herein, each of the defendants named herein, including DOES
25 1 through 10 were the co-conspirators, agents, representatives, alter egos, employers, and/or joint
26 venturers of the other defendants, and, in doing the acts and things herein alleged, were acting within
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1 the course, scope, and authority of said agency, service, or employment with knowledge,
2 permission, and consent of the other defendants and each of them.

3 17. Plaintiffs allege on information and belief that DOES 1-10, inclusive, were
4 individuals, corporations, companies, partnerships, or other business entities. DOES 1-10 were co-
5 conspirators with, or alter egos of, other Defendants in the violations alleged in this Complaint and
6 performed acts or made statements in furtherance thereof. Plaintiffs are presently unaware of the
7 true names and identities of DOES 1-10. Plaintiffs will amend this Complaint to allege the true
8 names of the DOE defendants when they are able to ascertain them.

9 **III. JURISDICTION AND VENUE**

10 18. This Complaint is filed, and these proceedings are instituted, to recover damages and
11 to obtain other relief that Plaintiffs have sustained due to Defendants' unfair and deceptive business
12 practices and unregistered offer and sale of securities in violation of both the Massachusetts Uniform
13 Securities Act and the California Corporations Code.

14 19. Venue is proper in this jurisdiction pursuant to the provisions of California Code of
15 Civil Procedure section 395(a) because none of Defendants reside in the state of California nor have
16 the foreign corporation Defendants qualified to do business in California.

17 20. This Court has personal jurisdiction over Defendants as a result of acts of Defendants
18 occurring in and/or aimed at the state of California in connection with Defendants' unfair
19 competition, unregistered offer and sale of securities in violation of the Massachusetts Uniform
20 Securities Act and the California Corporations Code. In particular, Defendants marketed and sold
21 Mining Appliance Preorders to California residents, including Plaintiff Roberts and made the
22 misrepresentations complained of below to those California residents to induce them to purchase
23 Mining Appliances Preorders.

24 **IV. SUBSTANTIVE ALLEGATIONS**

25 **A. DEFENDANTS' BUSINESS OPERATIONS**

26 21. Defendants developed Sia, technology that purportedly "connects users who need file
27 storage with hosts worldwide offering underutilized hard drive capacity" (the "Sia Platform").
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1 According to Defendants, the Sia Platform allows the marketplace for that underutilized hard drive
2 capacity “to run without an intermediary,” because “Sia secures storage transactions with smart
3 contracts, creating a more reliable and affordable offering when compared to traditional cloud
4 providers.”

5 22. Defendants also developed Siacoin, a cryptocurrency that is intended to be used for
6 renting and hosting cloud storage on the Sia Platform. Users who wish to store their files on the Sia
7 Platform must pay for those services with Siacoins and hosts are paid in Siacoins for renting out
8 their hard drives.

9 23. Like Bitcoins, Siacoins can only be generated through mining. The mining process
10 involves competing with other miners to solve complicated mathematical problems with
11 cryptographic hash functions. The first Siacoin miner to crack the code is rewarded with Siacoin.
12 In order to be competitive with other miners a miner needs specialized hardware. As the value of
13 cryptocurrencies increased in 2017 the market for advanced mining hardware grew similarly.

14 B. DEFENDANTS’ PRESALE OF MINING APPLIANCES

15 1. DEFENDANTS’ PRESALE OF THE SC1

16 24. Against this backdrop, in June 2017 Defendant Vorick, using the screenname Taek42
17 on Reddit.com, announced that Defendants were developing an Application-Specific Integrated
18 Circuit (“ASIC”) customized for Siacoin mining dubbed the “SC1.”¹ Vorick announced that
19 Defendants would have a presale and that they had “set a conservative shipping date of June 2018.”

20 25. Vorick initially stated that the estimated hash rate of the SC1s would be “100 GH/s,”
21 stating that “we have confidence that 100 GH/s is a low bar to hit.” The hash rate of a Mining
22 Appliance is critical to potential purchasers because it is the speed at which the Mining Appliance
23 is completing an operation in the Siacoin code. A higher hash rate increases a miner’s opportunity
24 to solve the mathematical problem and thereby be rewarded with Siacoin. Thus, with all else being
25 equal, a higher hash rate increases expected profitability. Defendant Herbert acknowledged as much

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28 ¹ Obelisk’s Sia ASICs – Full Details,
https://www.reddit.com/r/siacoin/comments/6j1gyg/obelisks_sia_asics_full_details/ (last visited October 24, 2018)

1 stating “[i]ncreased hashrate means we stay more competitive if competition swoops in, or as we
2 sell future batches.”

3 26. Vorick stated that the presale would be open for seven days. He added that Defendants
4 “may pre-sell additional batches before the first batch ships,” but promised that “[t]he first batch
5 will have priority when we begin shipping, and if the later batches will be shipping shortly after,
6 those later batches will be sold at a higher price. People who buy in on the first batch *will receive*
7 *both price preference and shipping date preference as a reward for taking on the most risk.*”
8 (emphasis added).

9 27. Defendants also promised that units sold in the first presale (“Batch 1”) would come
10 with a six week exclusivity period—meaning that only those Batch 1 Mining Appliances would be
11 able to mine for at least six weeks. This is important because a period of exclusivity would allow
12 the Batch 1 Mining Appliances to generate a higher proportion of the network’s total hash rate and
13 therefore generate more profit for their operators.

14 28. Vorick later reiterated that “[I]nstead delivery [of the SC1s] would be in June 2018.
15 The target is to ship several months earlier than that.” When asked what would happen in the event
16 the SC1s “do not ship by [J]une 2018?” Vorick responded “[y]ou will be eligible for *a full refund.*”
17 (emphasis added).

18 ^ OP: Taek42 Sia Team Developer (5) 9 points 1 year ago

19 v Latest delivery would be in June 2018. The target is to ship several months earlier than that.

20 permalink embed save parent give gold

21 H ^ sebuhooin 6 points 1 year ago

22 v what happens in the event they do not ship by june 2018?

23 permalink embed save parent give gold

24 H ^ OP: Taek42 Sia Team Developer (5) 7 points 1 year ago

25 v You will be eligible for a full refund.

26 permalink embed save parent give gold

1 29. Vorick also told prospective purchasers, “[t]he US has very strict consumer
2 protection laws, if we are late in delivering the units, customers have the right to request a full
3 refund, and the law will enforce their ability to receive that refund.” (emphasis added).

4 30. Defendant Herbert similarly promised that presale purchasers would receive refunds
5 if Defendants were unable to deliver the SC1s by June 2018. When specifically asked, “[i]f
6 something happens along the way and you’re unable to ship the unit will a refund be issued?”
7 Defendant Herbert responded “[i]f we do not ship by June 30, 2018, *under US law we are legally
8 required to provide a refund* (if you request it).” (emphasis added).

9 **Re: Refunds for unfulfilled Orders**

1 message

10 **Obelisk Support** <hello@obelisk.tech>
Reply-To: Obelisk Support <hello@obelisk.tech>
11 To: [REDACTED]

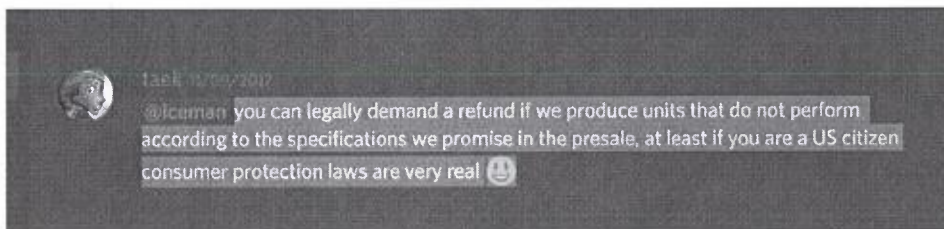
Wed, Jun 28, 2017 at 4:08 PM

12 If we do not ship by June 30, 2018, under US law we are legally required to provide a refund (if you request it)
- Zach Herbert, VP of Operations

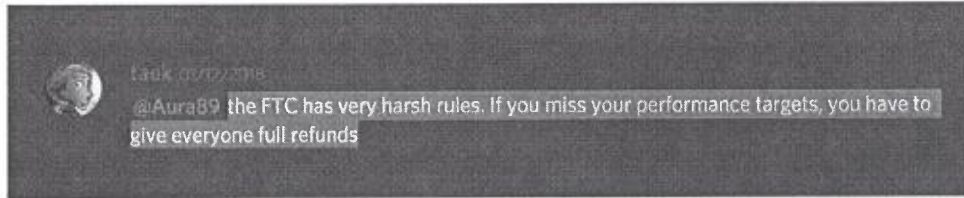
13 [REDACTED] on June 28, 2017 at 5:01pm wrote:

14 If something happens along the way and you’re unable to ship the unit will a refund be issued?

15 31. Defendants doubled down on this promise on several occasions. For example, on or
16 about November 9, 2017 Defendant Vorick stated “you can legally demand a refund if we produce
17 units that do not perform according to specifications we promise in the presale, at least if you are
18 US citizen consumer protection laws are very real 😊.”



1 32. Similarly, on or about January 1, 2018 Defendant Vorick stated “the FTC has very
2 harsh rules. If you miss performance targets, you have to give everyone full refunds.”



7 **2. DEFENDANTS’ PRESALE OF THE DCR1**

8 33. On or about November 3, 2017, while the SC1 presale was ongoing, Defendants
9 announced that they would also be preselling ASICs customized for Decred mining dubbed the
10 “DCR1.” Like Siacion, Decred is a cryptocurrency that is generated by mining.

11 34. Defendants once again promised to deliver the DCR1 miners by June 2018, stating on
12 their website that “Obelisk will produce powerful, profitable ASIC mining hardware for Decred and
13 Siacoin. We look forward to delivering Obelisk SC1 and DCR1 miners by June of 2018!”

14 35. On or about November 14, 2017, Defendants posted on Twitter stating “[w]e
15 increased our Obelisk minimum specs based on the results of recent simulations! 1500+ GH/s for
16 the DCR1 and 800+ GH/s for the SC1.” On that same day, Defendant Vorick told all users in
17 Defendants’ Discord chat that “You may have noticed that yesterday we posted an update to our
18 projected capabilities. The SC1 is now projected to hit 800 GH/s, and the DCR1 is now projected
19 to hit 1500 GH/s.”

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1 36. Defendants emphasized these specifications in advertisements on their website and
2 posted through numerous social media channels.



15 37. Also on or about November 14, 2017, Defendants answered questions regarding
16 their DCR1 presale during a Reddit Ask Me Anything titled “Obelisk AMA, Ask the Obelisk
17 Team Anything About Their Upcoming Decred ASIC!”² Defendant Vorick, using the
18 screenname Taek42 answered the question “What have we done to make sure Obelisk will
19 succeed?” by stating in part:

20 A big company killer in the ASIC space is deadlines. It's extremely rare that an
21 ASIC company ships miners on-time, to the point that if you can get away without
22 doing a presale, *you really shouldn't do a presale. Consumer protections in the
23 US are very strict, and missing deadlines is a big deal to the FTC.* When we
24 announced our presale, we said that the shipping date would be June 30th, 2018 or
25 earlier. This was a heavily buffered number. Our internal timeline said we could
26 get chips out as early as February. We've since hit a few delays, and unfortunately
there's no way we could make a February deadline at this point. However, we're
still well ahead of our June 30th deadline. I do not want to disappoint anyone in
case we hit more delays, so I will not be revealing what our current internal deadline
is, other than to say that we're still confident in the June 30th deadline.

27 ² Obelisk AMA, Ask the Obelisk Team Anything About Their Upcoming Decred ASIC!,
28 https://www.reddit.com/r/decred/comments/7cuo48/obelisk_ama_ask_the_obelisk_team_anything_about/ (last visited
November 5, 2018).

1 38. Defendant Vorick continued to discuss the importance of not, “over-promising
2 specifications. It can be really tempting to make big promises, because you get these chip
3 simulations back and they are super optimistic.”

4 39. However, Defendant Vorick would do just that in the same post, stating “[i]n the name
5 of caution, we’ve decided to announce our unit specs at 800 GH/s for the SC1 miners, and 1500
6 GH/s for the DCR1 miners. They will potentially be much faster, but the reality is that we don’t
7 really know until we are putting all the pieces together for the first time.” Neither the SC1 nor the
8 DCR1 would achieve hash rates close to the minimum standards promised by Defendant Vorick.

9 40. When asked further about these specifications, Defendant Vorick stated “[w]e *are*
10 *legally required to deliver units that meet specifications, or otherwise offer full refunds* to our
11 customers. It puts us in a really bad position to advertise specs we can’t follow through with, and
12 we wouldn’t give hashrate estimates that we didn’t have high confidence we could achieve.”
13 (emphasis added).

14  Taek42 • 11 points 11 months ago

15 We are legally required to deliver units that meet specifications, or otherwise offer full refunds to our customers. It
16 puts us in a really bad position to advertise specs we can't follow through with, and we wouldn't give hashrate
17 estimates that we didn't have high confidence we could achieve.


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19 41. A Reddit user going by the screenname “cryptostuffs” responded to this by asking,
20 “[y]es you’re legally required, but what happens if you run out of money? E.g. you spent all the
21 money of your presale customers and then figure out you can only deliver half the promised speed.
22 What happens then?” Defendant Vorick responded to this by stating “[w]e are confident that we
23 have the financial means to produce the units, including accounting for mistakes.” He continued,
24 stating he did “not feel that [bankruptcy] is a risk for us.”


25 42. Obelisk’s Vice President of Sales, Ken Carpenter, also discussed the importance of
26 the DCR1’s specifications. Using the screenname “SiaBillionaire” he stated “we know many were
27 waiting to see the competition’s specs. Now that you can see that the DCR1’s performance numbers
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1 and price per GH are much better than the competition, I believe that we will sell quite a few more
 2 DCR1 units before Nov. 24th.”

3 43. On or about November 17, 2018, Defendants also posted an advertisement on their
 4 website and Twitter that stated that the DCR1’s price per GH/s would be 33% lower than the
 5 competition’s price.

6  **Obelisk** @ObeliskTechHQ · 17 Nov 2017
 7 Obelisk's DCR1 is the best option on the market for @decredproject ASIC
 mining. Sale ends in 1 week!

Specs	Obelisk DCR1	dcrASIC Material- Turbo
Hashrate	1.5 TH/s	3.0 TH/s
Power	500 W	2,100 W
Price per miner	\$2,499	\$7,500
Price per GH/s	✓ \$1.67	\$2.50
Power efficiency	✓ 3 TH/kWs	1.43 TH/kWs
Full-custom chip	✓ Yes	No
Power Supply included	✓ Yes	No
Colocation options	✓ Yes	Not yet

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16 **LET'S ANALYZE IT**
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 18 With a price per GH/s that's 33% lower and a chip that is
 twice as power efficient, the DCR1 is the best, most
 cost-efficient option on the market for Decred ASIC mining.
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21 44. On or about November 21, 2017, a user in Defendants’ Discord chat channel asked
 22 “so lets say [DCR1] doesn’t get over a 1000 units then we are looking at 3.57 DCR a day; which
 23 is like \$107.1; crazy.” Defendant Vorick replied stating “yes, full ROI [return on investment] in
 24 under a month.”

25 45. Defendants first presale closed on November 24, 2017 and Defendants announced
 26 that they sold 3,516 SC1s and 2,888 DCR1s for \$2,499 each, raising over \$16 million.
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1 **3. DEFENDANTS' SUBSEQUENT MINING APPLIANCE PRESALES**

2 46. After conducting the first SC1 and DCR1 presale, Defendants conducted a second
3 presale between December 31, 2017 and January 31, 2018 ("Batch 2"). During the Batch 2 presale,
4 Defendants sold 3,648 SC1 miners and 3,693 DCR1 miners for \$1,599 each, raising over \$11.7
5 million.

6 47. When asked when Defendants intended to ship the Batch 2 Mining Appliances,
7 Defendant Herbert indicated that they would ship "our batch 2 of units approximately 6 weeks
8 following our batch 1 units."

9 48. Defendant Obelisk proudly proclaimed on Twitter that the Batch 2 Mining Appliances
10 were "Shipping by August 31, 2018."

11 49. Even today, Defendant Obelisk's own site states that "[o]ur target ship date is August
12 31, 2018. We will do our very best to ship before this date."

13 50. As of the date of this filing, Defendants have not delivered any of the Batch 2 Mining
14 Appliances to presale purchasers.

15 **C. DEFENDANTS FAIL TO FULFILL ANY OF THEIR PROMISES**

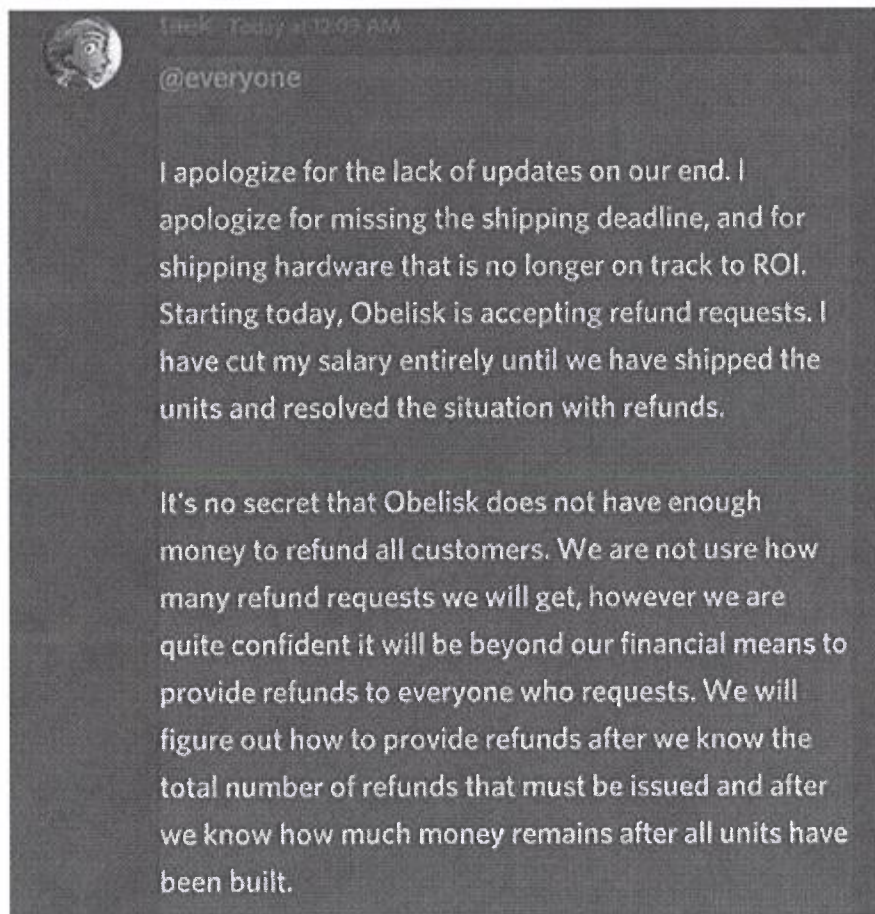
16 51. Despite their repeated promises, Defendants failed to ship any Batch One Mining
17 Appliances by June 30, 2018, and when they finally did ship some Mining Appliances in late August
18 those miners did not meet the specifications Defendants had promised during the presale. Most
19 importantly, the actual hash rates of the Mining Appliances were far below those that Defendants
20 had promised. As a result, the Mining Appliances would not allow purchasers to come close to
21 recouping their investment.

22 52. In May 2018 it became clear that Defendants would be unable to deliver Mining
23 Appliances with the promised specifications. Defendant Herbert posted a Medium update that
24 stated that the SC1's hash rate would be only 550 GH/s—250 GH/s below the promised
25 specifications. That same update stated that the DCR1's hash rate would be only 1200 GH/s—300
26 GH/s below the promised specifications. When the Mining Appliances were finally delivered their
27 actual hash rates were even lower. The SC1's actual hash rate was only 400 GH/s—half the
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1 promised specifications—and the DCR1’s actual hash rate was only 900 GH/s—600 GH/s below
2 the promised specifications.

3 53. Following this update, when asked why Defendants would ship miners that they were
4 not happy with, Defendant Vorick stated “because we are in a lot of legal trouble if we don’t send
5 miners out by June 30th and every day that we delay increases our legal exposure.”

6 54. On August 3, 2018 Defendant Vorick admitted that Defendants had failed to ship
7 Mining Appliances on time and failed to deliver upon the specifications Defendants promised,
8 stating “I apologize for the lack of updates on our end, I apologize for missing the shipping deadline,
9 and for shipping hardware that is no longer on track to ROI [return on investment]. Starting today,
10 Obelisk is accepting refund requests.” He also acknowledged that the SC1’s “hashrates are currently
11 below the target of 800 GH/s.”



1 55. Defendant Vorick continued, stating “[i]t’s no secret that Obelisk does not have
2 enough money to refund all customers. We are not [sure] how many refund requests we will get,
3 however we are quite confident it will be beyond our financial means to provide refunds to everyone
4 who requests. We will figure out how to provide refunds after we know the total number of refunds
5 that must be issued and after we know how much money remains after all units have been built.”

6 56. Defendant Vorick then directed customers to submit their refund requests by email
7 and Plaintiffs did in fact submit refund requests. However, Defendants failed to issue any refunds
8 to Plaintiffs or members of the class. Defendant Vorick later acknowledged this failure to honor
9 Defendants’ earlier promises stating, “we do not have the money to be able to honor refunds.”

10 57. Defendant Herbert also acknowledged Defendants’ failure to deliver miners with the
11 promised specifications. When asked if 800 GH/s was a good hash rate, he replied “for SC1 []?
12 that’s the original promised spec.” He later followed up saying “eek lawyers would ask me to say
13 ‘estimated’ spec.”

14 58. Defendants themselves acknowledge that they did not complete shipping Batch 1
15 Mining Appliances until October 18, 2018—nearly four months after they promised they would be
16 delivered.

17 59. In short, Defendants promised Plaintiffs and members of the class the moon, delivered
18 them an overpriced paperweight months late, and then reneged on their promise to provide refunds
19 if they were unable to provide Miners on time or up to their specifications.

20 **D. PLAINTIFFS DEMAND A REFUND**

21 60. Following Defendants’ refusal to provide refunds to Plaintiffs they engaged counsel
22 to send a demand letter to Defendants. This letter was sent to Defendants on August 23, 2018 and
23 laid out Plaintiffs’ claims and once again requested that Defendants refund Plaintiffs’ Preorder
24 purchases of the Mining Appliances. Defendants, through their counsel, once again refused to
25 provide a refund to Plaintiffs.

26 **E. THE PRESALE OF MINING APPLIANCES CONSTITUTED AN**
27 **UNREGISTERED OFFER AND SALE OF SECURITIES**

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1. Mining Appliance Presale Purchasers Made an Investment of Money in A Common Enterprise

61. Plaintiffs and the Class invested U.S dollars and Bitcoin to purchase Mining Appliance Preorders. Investment of both fiat and digital currency meets the first prong of *Howey*.

62. Defendants sold Mining Appliance Preorders to the general public through their website obelisk.tech.

63. The profits of each investor in the Mining Appliance Preorders are inextricably intertwined with those of all other purchasers because the hash rate of each SC1 and DCR1 are the same as all other SC1s and DCR1s.

64. The profits of Plaintiffs and the Class are also interwoven with and dependent upon the efforts and success of Defendants. Plaintiffs and the Class had an entirely passive role vis-à-vis Defendants and relied entirely on Defendants to design and deliver profitable Mining Appliances as promised.

65. Defendant Obelisk acknowledged that it was offering the “Mining Appliance based on pre-orders to help finance the development and manufacturing of the [] Mining Appliance.” Similarly, in a May 8, 2018 Medium Post titled “Obelisk Update: January-May 2018” Defendant Herbert described Obelisk as “a community funded hardware company.”

2. Mining Appliance Presale Investors Had a Reasonable Expectation of Profits

66. Investors in the Mining Appliance Presale, including Plaintiffs and the Class, made their investment with a reasonable expectation of profits. In fact, the sole purpose of Mining Appliances was to mine the Siacoin or Decred cryptocurrencies and thereby allow purchasers to generate a profit.

1 67. Defendants themselves have highlighted investors' reasonable expectation of profits.
 2 Defendant Obelisk's website even contained a "Profits Calculator" which purported to allow
 3 potential purchasers to calculate the profits they could generate by inputting the number of Mining
 4 Appliance Preorders they purchased along with their electricity costs.



17 68. Defendant Vorick similarly touted the profits that presale purchasers could generate
 18 with the Mining Appliances, telling prospective purchasers that if 1,000 SC1s sell then each one
 19 would generate 20,000 Siacoins (approximately \$300) per day and that if 10,000 SC1s sell then
 20 each would generate approximately 2,000 Siacoins (approximately \$30) per day. Defendant Vorick
 21 continues stating that "if 10,000 units sell, it'll take about 80 days for you to end up with more
 22 siacoins (starting from when the miners arrive) to have more than you would have gotten if you just
 23 bough Siacoin today."

24 69. The reality, however, is that the Mining Appliances did not generate close to the
 25 profits advertised by Defendants.

1 **3. The Success of the Mining Appliances Was Entirely Dependent on the**
2 **Efforts of Defendants**

3 70. Plaintiffs and the Class have entirely passive roles vis-à-vis the successful
4 development and delivery of profitable Mining Appliances. Rather, as Defendants' own marketing
5 makes clear, the successful development of the Mining Appliances, and the profits the Class
6 reasonably expected to derive from investing in the Mining Appliance Presale are dependent solely
7 on the technical, entrepreneurial, and managerial efforts of Defendants and their agents and
8 employees.

9 71. Plaintiffs and the Class reasonably expected Defendants to provide significant
10 managerial efforts, to develop and manufacture the Mining Appliances. Defendants themselves
11 repeatedly represented that they would provide significant managerial efforts to achieve these
12 objectives and deliver profitable Mining Appliances.

13 72. The Mining Appliances derive their value entirely from their specifications, and
14 particularly their hash rates, which were dependent entirely on the technical, entrepreneurial, and
15 managerial efforts of Defendants. The Preorders of Mining Appliances were thus an investment in
16 a common enterprise, with an expectation of profits, solely from the efforts of Defendants.

17 **V. CLASS ACTION ALLEGATIONS**

18 73. This suit is brought as a Class action pursuant to section 382 of the California Code
19 of Civil Procedure, on behalf of a Class of:

20 **All persons or entities who purchased SC1 or DCR1 miners from**
21 **Defendants from June 1, 2017 through the present. Excluded from the Class**
22 **are: retail employees; corporate officers, members of the boards of directors,**
23 **and senior executives of Defendants; and any and all judges and justices, and**
24 **chambers' staff, assigned to hear or adjudicate any aspect of this litigation. The**
25 **Class asserts claims for Unfair and Deceptive Practices in Violation of Mass.**
26 **Gen Laws Chapter 93A, Section 2, and Unregistered Offer and Sale of**
27 **Securities in violation of Mass. Gen Laws Chapter 110A, §§ 301, 410(a) and**
28 **410(b) (See Counts I – III)**

74. This suit is also brought on behalf of a California Subclass of:

All California residents who purchased SC1 or DCR1 miners from
Defendants from June 1, 2017 through the present. Excluded from the Class
are: retail employees; corporate officers, members of the boards of directors,
and senior executives of Defendants; and any and all judges and justices, and
chambers' staff, assigned to hear or adjudicate any aspect of this litigation. The

1 **California Subclass asserts claims for Unfair Competition in Violation of Cal.**
2 **Bus. & Prof. Code §§ 17200, *et seq.*, and Unregistered Offer and Sale of**
3 **Securities in Violation of Sections 25110, 25503, and 25504 the California**
4 **Corporations Code.**

5 75. Plaintiff reserve the right to amend the Class definition if further investigation and/or
6 discovery indicate that the Class definition should be narrowed, expanded, or otherwise modified.

7 76. Plaintiff does not, as of yet, know the exact size of the Class. However, Plaintiff is
8 informed and believes that there are thousands of Class members. The members of the Class are
9 thus so numerous that joinder of all members is impracticable.

10 77. The Class is readily ascertainable and identifiable. It can be identified by reference
11 to Defendants' own records of Mining Appliance Preorders

12 78. Questions of law and fact common to the Class that predominate over any questions
13 that may affect only individual members of the Class, including, but not limited to:

- 14 (a) Whether the representations made by Defendants regarding the Mining Appliances'
15 delivery date, specifications, or profitability were false and/or misleading;
- 16 (b) Whether Defendants' representation that Mining Appliance presale purchasers would
17 receive a full refund if the Appliances were not delivered on time or did not meet the
18 advertised specifications was false and/or misleading.
- 19 (c) Whether Defendants' sale of Mining Appliance Preorders was a securities offering
20 under the Massachusetts Uniform Securities Act;
- 21 (d) Whether Defendants' sale of Mining Appliance Preorders was a securities offering
22 under the California Corporations Code;
- 23 (e) Whether Defendants' sale of Mining Appliance Preorders violated the registration
24 provisions of the Massachusetts Uniform Securities Act;
- 25 (f) Whether Defendants' sale of Mining Appliance Preorders violated the registration
26 provisions of the California Corporations Code; and
- 27 (g) Whether Defendants Nebulous, Vorick, and Herbert ("Control Person Defendants")
28 were control persons under the Massachusetts Uniform Securities Act;

1 (h) Whether the Control Person Defendants were control persons under the California
2 Corporations Code;

3 (i) The type and measure of damages suffered by Plaintiff and the Class.

4 79. Lead Plaintiffs will fairly and adequately protect the interests of the Class because
5 Plaintiffs' claims are typical and representative of the claims of all members of the Class. Lead
6 Plaintiffs suffered injury in fact when they preordered Mining Appliances.

7 80. Lead Plaintiffs' claims are typical of the claims of all Class members, as all members
8 of the Class are similarly affected by Defendants' wrongful conduct.

9 81. There are no unique defenses that may be asserted against Lead Plaintiffs
10 individually, as distinguished from the other members of the Class, and the relief sought is common
11 to the Class. Plaintiffs are typical of other members of the Class, do not have any interests that are
12 in conflict with or are antagonistic to the interests of the members of the Class, and have no conflict
13 with any other members of the Class. Plaintiffs have retained competent counsel experienced in
14 securities, consumer protection, and class action litigation to represent themselves and the Class.

15 82. A class action is superior to other available methods for the fair and efficient
16 adjudication of this controversy since joinder of all Class members is impracticable. Furthermore,
17 as the damages suffered by individual Class members may be relatively small, the expense and
18 burden of individual litigation make it impossible for Class members to redress individually the
19 wrongs done to them. In the absence of a class action, Defendants will retain the benefits of their
20 wrongful conduct.

21 **VI. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **Unfair and Deceptive Practices in Violation of Mass. Gen Laws Chapter 93A, Section 2**

24 **(Against All Defendants)**

25 83. Plaintiffs, on behalf of themselves and all others similarly situated, reallege and
26 incorporate herein by reference each and every allegation contained in the preceding paragraphs of
27 this Complaint, and further alleges as follows:

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1 84. Defendants, and each of them, by engaging in the conduct described above, have
2 engaged in unfair and deceptive acts or practices in violation of Mass. Gen Laws Chapter 93A, § 2.

3 Such unfair or deceptive acts or practices include without limitation the following:

4 a. Defendants made false and/or misleading representations to Plaintiffs and the
5 Class regarding the delivery date of the Mining Appliances.

6 b. Defendants made false and/or misleading representations to Plaintiffs and the
7 Class regarding the specifications of the Mining Appliances.

8 c. Defendants made false and/or misleading representations to Plaintiffs and the
9 Class regarding the profitability of the Mining Appliances.

10 d. Defendants made false and/or misleading representations to Plaintiffs and the
11 Class regarding the availability of a full refund if the Mining Appliances were delivered late or did
12 not meet advertised specifications.

13 e. Defendants made false and/or misleading representations to Plaintiffs and the
14 Class regarding their expertise in designing ASIC Mining Appliances.

15 f. Defendants violated the Federal Trade Commission's Mail, Internet, or
16 Telephone Order Merchandise Rule, 16 C.F.R. § 435, by failing to provide refunds to Plaintiffs and
17 the Class for Mining Appliances that were delivered late and did not meet the advertised
18 specifications.

19 85. Defendants' false and/or misleading representations to consumers, prospective
20 purchasers, and others were material and deceived or had the tendency or capacity to deceive or
21 mislead potential customers including Plaintiffs.

22 86. Defendants knew or should have known that the representations made to consumers,
23 prospective purchasers, and others were false and/or misleading. Defendants knew or should have
24 known that its acts or practices were unfair and deceptive acts in violation of Mass. Gen. Laws
25 Chapter 93A, § 2.

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g. The harm to Plaintiff Roberts and members of the California Subclass outweighs the utility of Defendants' policy/practice and, consequently, Defendants practice constitutes an unfair business act or practice within the meaning of Business and Professions Code section 17200.

h. Defendants' conduct threatens an incipient violation of consumer protection and securities laws, including but not limited to those laws referenced above or violates the policy or spirit of such law or otherwise significantly threatens or harms competition.

3. Defendants' false and/or misleading representations to consumers, prospective purchasers, and others were material and deceived or had the tendency or capacity to deceive or mislead potential customers including Plaintiffs.

4. Defendants knew or should have known that the representations made to consumers, prospective purchasers, and others were false and/or misleading. Defendants knew or should have known that its acts or practices were unfair and deceptive acts in violation of Business and Professions Code section 17200.

5. Defendants acquired millions of dollars from purchasers by reasons of their unfair or deceptive acts or practices, causing purchasers to suffer an ascertainable loss by paying for Preorders of the Mining Appliances.

6. Defendants unfair or deceptive acts and practices resulted in harm to consumers.

FIFTH CAUSE OF ACTION
Unregistered Offer and Sale of Securities in Violation of California Corporations Code
Section 25110 and 25503 (Against All Defendants)

7. Plaintiff Roberts, on behalf of himself and the California Subclass, realleges and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint, and further alleges as follows:

8. The sale of SC1 and DCR1 Mining Appliance Preorders were securities within the meaning of the California Corporations Code.

1 18. The Control Person Defendants, separately or together, possess, directly or indirectly,
2 the power to direct or cause the direction of the management and policies of Defendant Obelisk,
3 through ownership of voting securities, by contract, subscription agreement, or otherwise.

4 19. The Control Person Defendants, separately or together, have sufficient influence to
5 have caused Obelisk to submit a registration statement.

6 20. The Control Person Defendants, separately or together, jointly participated in, and/or
7 aided and abetted, Obelisk's failure to register the Preorder Securities.

8 21. By virtue of the conduct alleged herein, the Control Person Defendants are liable for
9 the wrongful conduct complained of herein and are liable to Plaintiff Roberts and the Class for
10 recession and/or damages suffered.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff demands judgment on his behalf and that of the Class as follows:

13 1. Declaring that this action may be maintained as a Class action under California Code
14 of Civil Procedure section 382 and California Rule of Court 3.670, *et seq.*, certifying Plaintiffs as
15 representatives of the Class and designating his counsel as counsel for the Class;

16 2. Declaring that Defendants offered and sold unregistered securities in violation of
17 Sections 301 and 401 of the Massachusetts Uniform Securities Act.

18 3. Declaring that Defendants offered and sold unregistered securities in violation of
19 Section 25110, 25503, and 25504 of the California Corporations Code;

20 4. That judgment be entered against Defendants and in favor of Plaintiffs and each
21 member of the Class they represent, granting the remedy of recession, and/or awarding
22 compensatory damages in favor of Plaintiff and the Class against all Defendants, jointly and
23 severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be
24 proven at trial;

25 5. Requiring an accounting of all remaining assets and funds raised by Defendants
26 through the sale of SC1 and DCR1 preorders;


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- 1 6. Imposing a constructive trust over the assets and funds raised by Defendants through
2 the sale of SC1 and DCR1 preorders;
- 3 7. For punitive damages;
- 4 8. For pre and post-judgment interest;
- 5 9. For equitable relief, including a judicial determination of the rights and
6 responsibilities of the parties;
- 7 10. For attorneys' fees;
- 8 11. For costs of suit; and
- 9 12. For such other and further relief as may be deemed just and proper.

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Dated: November 19, 2018

TAYLOR-COPELAND LAW

By: 

James Q. Taylor-Copeland
Attorney for Plaintiffs Shaun Roberts, Nicholas Colley,
and Allan Henry