



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Aug-06-2012 3:42 pm

Case Number: CGC-12-522983

Filing Date: Aug-06-2012 3:30

Filed by: ELIAS BUTT

Juke Box: 001 Image: 03714221

COMPLAINT

BRIAN CARTMELL et al VS. BITCOINICA LP, ALSO KNOWN AS BITCOINICA et al

001C03714221

Instructions:

Please place this sheet on top of the document to be scanned.

SUM-100

SUMMONS
(CITACIÓN JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
SEE SUMMONS ATTACHMENT

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRIAN CARTMELL, JED MCCALED, JESSE POWELL and
ROGER VER

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister St., 4th Floor
San Francisco, CA 94102

CASE NUMBER: (Número del Caso):

CGC-12-522983

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

HENRY Y. CHIU 222927

5260 N. Palm Ave., Suite 205

Fresno, CA 93704

Moss, Tucker, Chiu, Hebesha & Ward PC

559-472-9922

CLERK OF THE COURT

DATE:

(Fecha) AUG - 6 2012

Clerk, by

(Secretario)

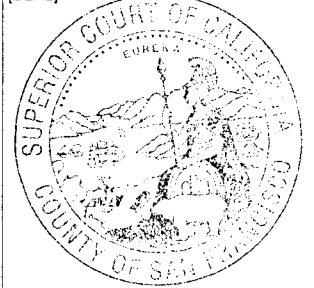
Deputy

ELIAS BUTI (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



SHORT TITLE:

CARTMELL v. BITCOINICA

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

BITCOINICA LP, also known as BITCOINICA CONSULTANCY LTD; INTERSANGO LTD; DONALD NORMAN; PATRICK STRATEMAN; AMIR TAAKI; and DOES 1 through 100, inclusive

Page _____ of _____

Page 1 of 1



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): HENRY Y. CHIU 222927 Moss, Tucker, Chiu, Hebesha & Ward PC 5260 N. Palm Ave., Suite 205 Fresno, CA 93704 TELEPHONE NO.: 559-472-9922 FAX NO.: 559-472-9892 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> Superior Court of California County of San Francisco <div style="font-size: 1.2em;">AUG - 6 2012</div> CLERK OF THE COURT BY: <u><i>[Signature]</i></u> Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister St., 4th Floor MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civil Division		CASE NAME: CARTMELL v. BITCOINICA	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: CGC-12-522983 JUDGE: DEPT.:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 5
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: AUGUST 2, 2012

HENRY Y. CHIU *[Signature]*

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUMMONS ISSUED

FILED

Superior Court of California
County of San Francisco

AUG - 6 2012

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

DOUGLAS TUCKER 172550
HENRY Y. CHIU 222927
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5260 North Palm Avenue, Suite 205
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Telephone: (559) 472-9922

Attorneys for Plaintiffs
BRIAN CARTMELL, JED McCALEB,
JESSE POWELL and ROGER VER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

* * *

BRIAN CARTMELL, JED McCALEB,
JESSE POWELL and ROGER VER,

Plaintiffs,

v.

BITCOINICA LP, also known as
BITCOINICA; BITCOINICA
CONSULTANCY LTD; INTERSANGO LTD;
DONALD NORMAN; PATRICK
STRATEMAN; AMIR TAAKI; and DOES 1
through 100,
inclusive,

Defendants.

Case No. **CGC-12-522983**

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) OPEN BOOK ACCOUNT;
- (3) ACCOUNT STATED;
- (4) NEGLIGENCE; and
- (5) CONVERSION

Plaintiffs Brian Cartmell, Jed McCaleb, Jesse Powell and Roger Ver (collectively, "Plaintiffs") allege the following against defendants Bitcoinica LP ("Bitcoinica"), Bitcoinica Consultancy Ltd. ("Bitcoinica Consultancy"), Intersango Ltd. ("Intersango"), Donald Norman ("Norman"), Patrick Strateman ("Strateman"), Amir Taaki ("Taaki") and DOES 1 through 60, inclusive (altogether, "Defendants"):

Parties

1. Plaintiffs are individuals who deposited certain monies with defendant Bitcoinica, or its predecessor(s) in interest, which Defendants have failed and refused to return to Plaintiffs, despite Plaintiffs' demands for the same.

///

1 2. Bitcoinica is an entity of unknown form and origin. Plaintiffs are informed and
2 believe, and thereon allege, that: Bitcoinica is also known as Bitcoinica (without the "LP"
3 suffix); and Bitcoinica, or its predecessor(s) in interest, is the operator of the Bitcoinica exchange
4 described below, and the holder of the monies at issue herein.

5 3. Bitcoinica Consultancy is an entity of unknown form and origin. Plaintiffs are
6 informed and believe, and thereon allege, that Bitcoinica Consultancy is: an entity responsible
7 for directing, managing and performing the day-to-day operations of Bitcoinica; and directly
8 responsible for the decisions and actions alleged herein with respect to the monies at issue.

9 4. Intersango is an entity of unknown form and origin. Plaintiffs are informed and
10 believe, and thereon allege, that Intersango is: an entity responsible for directing, managing and
11 performing the day-to-day operations of Bitcoinica; and directly responsible for the decisions
12 and actions alleged herein with respect to the monies at issue.

13 5. Plaintiffs are informed and believe, and thereon allege, that Norman is: an officer
14 of Bitcoinica, Bitcoinica Consultancy or Intersango, or otherwise exercised direct authority and
15 control with respect to the monies alleged herein.

16 6. Plaintiffs are informed and believe, and thereon allege, that Strateman is: an
17 officer of Bitcoinica, Bitcoinica Consultancy or Intersango, or otherwise exercised direct
18 authority and control with respect to the monies alleged herein; and domiciled within the County
19 of San Francisco.

20 7. Plaintiffs are informed and believe, and thereon allege, that Taaki is an officer of
21 Bitcoinica, Bitcoinica Consultancy or Intersango, or otherwise exercised direct authority and
22 control with respect to the release of the Bitcoinica exchange source code and password, as
23 alleged herein.

24 8. Plaintiffs are ignorant of the true names and capacities of the defendants named in
25 this complaint as DOES 1 through 60, and therefore sue said defendants by such fictitious
26 names. Plaintiffs will amend this complaint to allege the true names and capacities of said
27 defendants once their identities are ascertained. In the meantime, Plaintiffs are informed and
28 believe, and thereon allege, that each of these fictitiously named defendants is responsible in

1 some manner for the occurrences alleged herein, and that the damages alleged herein were
2 proximately caused by such defendants.

3 **Common Allegations**

4 9. Bitcoin is a form of virtual currency recognized by certain individuals and entities
5 throughout the world. Said currency has a value, which may be exchanged by its owners for
6 other forms of currency, including United States Dollars.

7 10. Bitcoinica is an exchange which permits its users to deposit United States Dollars
8 and Bitcoins, and to engage in certain transactions, including, but not limited to, contract-for-
9 difference transactions against a recognized and accepted Bitcoin-to-United States Dollar
10 exchange rate. Said transactions are made pursuant to one or more written agreements
11 concerning the deposit, retention, safekeeping and withdrawal of said monies.

12 11. In 2012, Bitcoinica allegedly suffered several security breaches, in which
13 unknown persons allegedly compromised the Bitcoinica system to steal monies held by
14 Bitcoinica. In a public announcement following said breaches, Bitcoinica assured its users,
15 among other things, that: the overwhelming majority of its Bitcoin deposits were not stolen;
16 monies were stolen from Bitcoinica, not from its users; and that all withdrawal requests would
17 continue to be honored. Bitcoinica subsequently set up a claims system by which its users could
18 withdraw their monies.

19 12. Bitcoinica subsequently stated that it would: (i) verify all claims submitted by its
20 users; (ii) return fifty percent of the verified claims; and (iii) return the remainders on a pro rata
21 basis, based upon the total amount of all verified claims and the remaining monies.

22 13. Plaintiffs are users of the Bitcoinica exchange who deposited Bitcoins and United
23 States Dollars with Bitcoinica. Plaintiffs have submitted claims to Bitcoinica, and are informed
24 and believe, and thereon allege, that Bitcoinica has verified said claims.

25 14. Bitcoinica and the other Defendants have returned a portion of the amounts of
26 Plaintiffs' claims. Plaintiffs have demanded that Bitcoinica and the Defendants return the
27 remaining amounts of their claims, but they have failed and refused to do so.

28 ///

1 22. Plaintiffs entered into one or more written agreements with Bitcoinica and DOES
2 1 through 20, whereby Bitcoinica agreed, among other things, to do each of the following with
3 respect to any monies deposited by Plaintiffs with Bitcoinica:

- 4 a. to accept monies from Plaintiffs, in the form of Bitcoins or United States
5 Dollars, which Plaintiffs may deposit from time to time;
6 b. to keep said monies in a safe and secure manner, consistent with fiduciary
7 obligations commonly imposed upon financial services providers;
8 c. to comply with instructions that Plaintiffs may provide from time to time
9 concerning the transfer, investment and disposition of said monies; and
10 d. to permit Plaintiffs to withdraw their monies at any time, without any
11 restrictions or limitations upon the manner or amount of said withdrawals.

12 Plaintiffs currently do not have any copies of said agreements in their possession,
13 custody or control. However, Plaintiffs are informed and believe, and thereon allege, that copies
14 of said agreements are in the possession, custody or control of Defendants. Plaintiffs also allege
15 that the legal effect of said agreements was to create legally binding obligations on the part of
16 Bitcoinica and DOES 1 through 20 in the manner alleged above.

17 23. Plaintiffs have performed all conditions, covenants and promises required of them
18 by said agreements, and in accordance with the terms and conditions thereof, except for those
19 acts that have been prevented, delayed or executed by the consent, acts or omissions of
20 Defendants.

21 24. Bitcoinica and DOES 1 through 20 breached the agreements by, among other
22 things: refusing to comply with Plaintiffs' instructions for withdrawing the entirety of their
23 monies; permitting the withdrawal of only fifty percent of their monies, notwithstanding the
24 alleged verification of Plaintiffs' entire claims; and seeking to distribute the remainder in an
25 alleged pro rata manner, notwithstanding Plaintiffs' refusal to consent to such distribution.

26 25. Plaintiffs have suffered certain general, special, incidental and consequential
27 damages as a direct and proximate result of said breaches, including, among other things: the
28 loss of the monies themselves; the loss of use of said monies while the present action is pending;

1 changes in the value of said monies due to fluctuating exchange rates; etc., all in amounts to be
2 proven at trial.

3 26. Furthermore, to the extent the applicable written agreements permit the prevailing
4 party (-ies) to recover its/their reasonable costs and attorneys' fees from any non-prevailing
5 party, Plaintiffs also hereby seek the recovery of said costs and fees from Bitcoinica and DOES 1
6 through 20, which Plaintiffs had been forced to incur as a further direct and proximate result of
7 said breaches.

8 **SECOND CAUSE OF ACTION**
9 **(Open Book Account)**
10 **Against Bitcoinica and DOES 1 through 20**

11 27. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

12 28. Bitcoinica and DOES 1 through 20 have become indebted to Plaintiffs on an open
13 book account for the monies deposited by Plaintiffs with Bitcoinica. Said monies were deposited
14 by Plaintiffs based upon representations and promises by Bitcoinica and said DOES that, among
15 other things: the monies would be maintained and handled in a manner consistent with Plaintiffs'
16 instructions; and the monies could be withdrawn at any time pursuant to Plaintiffs' instructions.

17 29. Although demand has been made, Bitcoinica and said DOES have failed to return
18 all of the monies to Plaintiffs, notwithstanding Plaintiffs' instructions to do so. Plaintiffs hereby
19 seek to recover the remainder of the monies deposited by them, along with the costs and
20 attorneys' fees permitted under Civil Code section 1717.5, and prejudgment and post-judgment
21 interest at the maximum legal rate.

22 30. Furthermore, or in the alternative, to the extent the applicable written agreements
23 permit the prevailing party (-ies) to recover its/their reasonable costs and attorneys' fees from
24 any non-prevailing party, Plaintiffs also hereby seek the recovery of said costs and fees from
25 Bitcoinica and DOES 1 through 20, which Plaintiffs had been forced to incur as a further direct
26 and proximate result of said breaches.

27 ///

28 ///

29 ///

THIRD CAUSE OF ACTION
(Account Stated)
Against Bitcoinica and DOES 1 through 20

31. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

32. Within the past four years, accounts were stated in writing between each Plaintiff, on the one hand, and Bitcoinica and DOES 1 through 20, on the other hand. Although Bitcoinica has acknowledged and verified the total amounts of the accounts, it has only returned portions of said accounts to Plaintiffs. The remaining, unreturned portions of said accounts, according to the records of Bitcoinica and Plaintiffs, total approximately four hundred sixty thousand four hundred fifty-seven United States Dollars and seventy cents (US\$460,457.70) in principal, as of the date of this complaint, which is now due and owing, and which Bitcoinica and said DOES have previously agreed to pay.

33. Bitcoinica and said DOES have failed and refused, and continue to fail and refuse, to return the remainder of the monies, despite Plaintiffs' demands that they do so. Thus, there now remains due, owing and unpaid, the above principal sum, and prejudgment and post-judgment interest thereon at the maximum legal rate.

34. Furthermore, to the extent the applicable written agreements permit the prevailing party (-ies) to recover its/their reasonable costs and attorneys' fees from any non-prevailing party, Plaintiffs also hereby seek the recovery of said costs and fees from Bitcoinica and DOES 1 through 20, which they had been forced to incur as a further direct and proximate result of said breaches.

FOURTH CAUSE OF ACTION
(Negligence)
Against All Named Defendants and DOES 1 through 40

35. Plaintiffs incorporate by reference paragraphs 1 through 20 of this complaint.

36. At all relevant times, Defendants and DOES 1 through 40 had monies belonging to Plaintiffs in their possession, custody and/or control, and therefore owed Plaintiffs a duty of care with respect to safeguarding said monies. Plaintiffs are informed and believe, and thereon allege, that Defendants and said DOES served as fiduciaries with respect to said monies, and that said role imposed certain fiduciary obligations upon said defendants.

