

1 8:50 a.m.

2 THE COURT: A couple of things, Mr. Rennie, would you
3 get the door for me? Thank you.

4 First of all, I received this morning a -- what I
5 think is the index that counsel prepared. It is seven pages.
6 The first exhibit listed is PX 1 and the last exhibit listed is
7 DX 741. Am I right that this is the index that counsel have
8 prepared and agreed to?

9 MS. CHEN: Yes, Your Honor,.

10 MS. HASSAN: Yes, Your Honor.

11 THE COURT: Very well. I appreciate that. And make
12 sure Ms. Johnson -- I'll make sure Ms. Johnson has a copy.

13 Second, I did check the metrics. I have good news for
14 you. I just checked the metrics, in fact, I just got off the
15 call, still going on, with our science advisor and as long as
16 counsel stay at the podium you may remove your masks at the
17 closing. You have to put them back on and otherwise but you
18 may remove just for the closing and explain that to the jury,
19 what that's based on and all that.

20 Okay, let's see. And counsel have checked the
21 exhibits, I take it? And I know you were here yesterday
22 afternoon and are prepared to stipulate that Ms. Johnson has
23 the correct set of the exhibits; is that right?

24 MS. CHEN: Yes, Your Honor.

25 THE COURT: So you'll so stipulate right now?

1 MS. CHEN: Yes.

2 MS. HASSAN: Same here, Your Honor.

3 THE COURT: Very well. Thank you. All right. I
4 appreciate that.

5 And I believe we're ready. And I understand counsel
6 have exchanged the demonstratives and there are no objections
7 to demonstratives.

8 MR. BUCHDAHL: Correct, Your Honor.

9 MR. WEINER: That's correct.

10 THE COURT: So she's going to have you -- give you her
11 own list which will reflect your list, and you folks should
12 sign that.

13 MR. WEINSTEIN: Your Honor, we also have the exhibits
14 that are just for identification, which are the deposition.

15 THE COURT: Right. So the way that works is -- so for
16 purposes of the record, all exhibits, original exhibits counsel
17 actually retain. So that's why I had you list them yesterday
18 so it's certainly in the transcript of the case, what the
19 exhibits are. That's why I say full every time and you've now
20 identified the ID exhibits. But in terms of physical custody,
21 counsel retain the original exhibits. And then when, you know,
22 in time for appeal you do your joint appendix you submit your
23 original exhibits you have them.

24 MR. WEINSTEIN: So the Court doesn't need.

25 THE COURT: We don't need them, no.

1 MR. BUCHDAHL: Your Honor?

2 THE COURT: Yes.

3 MR. BUCHDAHL: I would like to retain 15 minutes for
4 rebuttal, please.

5 THE COURT: Fine. That would be fine. And then the
6 only other thing is counsel needs to stay at the podium during
7 the closing. I think we're ready.

8 THE COURT: Do you want to check your audio? Sure.
9 Thumbs up, okay.

10 (The jury entered the courtroom at 8:55 a.m.)

11 THE COURT: Welcome back. We're now going to have the
12 closing arguments of counsel. Each side has been allocated 50
13 minutes. Because the Plaintiffs have the burden of proof as to
14 their claims, they have the right to rebuttal, and they can
15 save time, reserve part of their time for rebuttal. Mr.
16 Buchdahl has chosen to reserve 15 minutes for rebuttal. So
17 he'll go 35 and then 15, I expect. In between I believe Mr.
18 Weiner will be delivering the closing for the -- for the
19 Defendant.

20 So at this time I'll ask Mr. Buchdahl to give his
21 closing argument.

22 MR. WEINER: Your Honor? The mask thing.

23 THE COURT: Yes, sorry. One thing. So throughout the
24 case, I've been checking the metrics concerning COVID in our
25 community. I also every Friday morning have a call with the

1 Court science advisor, in fact, just got off the call. Because
2 Connecticut's doing so well and I just confirmed with our
3 science advisor, I am going to allow both lawyers to remove
4 their masks just for the closing arguments alone. I've been
5 blessed by our science advisor Dr. Bromage. We're actually
6 below 10 cases per 100,000 in Connecticut for the first time.
7 That's a good thing. Just for the closing argument, I'm going
8 to allow them to remove their mask.

9 MR. BUCHDAHL: Thank you, Your Honor, may it please
10 the Court.

11 Good morning, Ladies and Gentlemen. On behalf of our
12 whole team, Mr. Audet, Mr. Shinnars, and Mr. Pfeiffer and all
13 of the other class members who could not be here (Mr. Buchdahl)
14 I want to thank you for your service in this case. We know
15 that our justice system asks a lot of jurors, and we appreciate
16 your care, your attention, and your diligence.

17 As Mr. Ard told you right at the beginning, this is a
18 case about power and fraud. The power of a senior Wall Street
19 executive and the fraudulent business that he promoted and
20 enabled. And there's no real dispute here that GAW Miners was
21 a massive fraud. As you've seen, the SEC charged it with
22 securities fraud and the Department of Justice sent Josh Garza
23 to jail for a fraud built on the very lies at the center of
24 this case the false promise that GAW Miners Hashlets were
25 backed by real mining power. The false promise that GAW Miners

1 Paycoin would be backed by a hundred million dollars, and the
2 false promise of a \$20 floor for Paycoin.

3 Now, all three of the class Plaintiffs took this
4 witness stand and testified about how they relied on those
5 false promises when they spent tens of thousands of dollars of
6 their hard-earned savings on GAW Miners' securities.

7 And as the Judge explained, they brought this case on
8 behalf of a class, and their stories are representative of all
9 of the other victims of GAW Miners' fraud.

10 So the Defendant doesn't dispute that GAW Miners was a
11 fraud. Instead, he claims that he was powerless to stop it.
12 But the evidence that you saw here in this courtroom tells a
13 different story. It proved exactly what Mr. Ard told you that
14 it would. The Defendant did have the influence and the power
15 to change what GAW Miners was doing. And instead of doing the
16 right thing, he went along for the ride hoping that he could
17 get some of his money back.

18 So I'm now going to go through some of the evidence
19 that proves the power that the Defendant had over GAW Miners
20 and over Josh Garza.

21 But before I do that, I want to say what this case is
22 not about. Over the course of this trial, you heard the
23 Defense ask repeatedly whether this Defendant could be the
24 mastermind of this fraud. But as you now know, there is
25 nothing in the Court's instructions about being a mastermind.

1 Instead, as the Court instructed, what you have to decide is
2 whether this Defendant was a control person. And as the judge
3 instructed you yesterday, a company may have more than one
4 control person. You don't have to choose between the Defendant
5 and Josh Garza. When you hear the Defense say that we have the
6 wrong man, remind yourself, that's not what the law is.

7 So how do you know that the Defendant was a control
8 person at GAW Miners? Well, first, look at the business
9 relationship between this Defendant and Josh Garza, because the
10 evidence demonstrated beyond any question that these two men
11 were 50/50 partners. They both saw it this way. Josh Garza
12 said it. He said they became business partners. But, again,
13 as Mr. Ard told you at the beginning, we're not going to ask
14 you to take Josh Garza's word for anything because the
15 Defendant said it also. He described himself as being lucky to
16 be Josh Garza's partner. This is May 18th of 2014.

17 And I asked him on the stand, you considered yourself
18 a partner at GAW Miners? And he acknowledged under oath, yes,
19 he was a partner in the business of GAW Miners.

20 And Defendant's partnership with GAW Miners followed
21 the pattern that they had been following for years. They had
22 the same 50/50 partner relationship from the very start from
23 their very first business, Great Auk Wireless. Look at what
24 the Defendant told you about that relationship. Josh brought
25 the expertise. The defendant brought the money. That's how

1 their partnership worked. That's how they became 50/50
2 partners. And they agreed that this was how their relationship
3 would continue to work.

4 In July of 2013, Josh Garza proposed that they
5 continue to act as 50/50 partners, splitting every company in
6 half. And the Defendant's response? He agreed. He told the
7 SEC he would split every company in half with Josh Garza. GAW
8 Miners was no different.

9 And so when they started GAW Miners in 2014 there was
10 no question that the Defendant owned half the business. He was
11 a 50/50 partner. He admitted it to the SEC. In the March of
12 2014 time frame, you still owned half of that business?

13 Yes.

14 And look at how excited the Defendant was to tell his
15 friends about his new business; right? March 18, 2014, look at
16 this company that we just started.

17 Now, during the trial, the Defense team pretended that
18 this was a business that only Josh Garza was interested in.
19 But the historical documents, the evidence shows you the truth.
20 This was every bit as much the Defendant's business as Josh
21 Garza's.

22 Now, every time we put a slide up here, we're going to
23 have the exhibit number at the top in case you're interested at
24 where you can look at that later.

25 Now, in the summer of 2014, Josh Garza proposed they

1 both reduce their interest to 41 percent so they'd have some
2 equity to share with others. But the evidence showed that they
3 never gave that 18 percent away. So in practice, the Defendant
4 remained a 50/50 partner with Josh. Why do I say that?
5 Because they still had an equal share.

6 Now, another way that you know the Defendant was a
7 control person is because both GAW Miners and Josh Garza were
8 financially dependent on this Defendant. Not only was the
9 Defendant the single biggest investor in GAW Miners and one of
10 only two co-owners, he was also the company's biggest lender.
11 He loaned hundreds of thousands of dollars to the company in
12 2014. That's the only way it was able to get off the ground.
13 There was even evidence that he had one of his sons loan the
14 company money.

15 And in addition to investing money and giving direct
16 loans, the entire business was run on this Defendant's credit
17 cards. He extended hundreds of thousands of dollars of credit
18 to GAW Miners through the credit cards. And as he admitted
19 under oath, without the defendant, the company wouldn't even
20 have a credit card. And without a credit card, the company
21 couldn't even function. Look at his words, I mean a company
22 needs a credit card -- that, Ladies and Gentlemen, is control.

23 Now, in addition to his financial control of the
24 company, the Defendant had direct financial control over Josh
25 Garza personally. You heard Mr. Garza tell you this, that he

1 was fully financially reliant on the Defendant and that the
2 Defendant could make decisions that would affect him
3 personally. But, again, we're not asking you to take Josh
4 Garza's word for anything. What did the evidence show? The
5 evidence showed that the Defendant was paying him \$10,000 a
6 month, deposits directly from the Defendant's personal bank
7 account into Josh Garza's personal bank account.

8 The Defendant -- and I asked him -- couldn't identify
9 any other source of money that Josh Garza had. But even more
10 dramatically, the Defendant owned the mortgage on Josh's house.
11 Take a moment and think about how vulnerable, how obligated,
12 how dependent you would feel if your boss owned the mortgage on
13 your home. What the evidence proved is that everything Josh
14 Garza had in his life, his job, his financial security, even
15 his house, was provided by the Defendant. That is control.

16 But their relationship wasn't just financial. The
17 Defendant also exercised control over GAW Miners through his
18 personal relationship with Josh. They were close, personal
19 friends. You can see the way they spoke to one another. But,
20 again, you don't have to take Josh's word for it. Listen to
21 what Amber Capuano said about it. She said that he looked to
22 him as kind of a father figure. She talked about how Josh
23 spoke about him, how he looked up to him since the time Josh
24 Garza was 18 years old, the Defendant had the sort of influence
25 over Josh Garza that every parent has over a child.

1 And in addition to that, in addition to the financial
2 dependence, in addition to the personal relationship, the
3 Defendant exercised his control over GAW Miners through the
4 power of the access and network that he built over the course
5 of 20 years on Wall Street. Because the corporate credit card
6 wasn't the only thing that the Defendant provided to GAW
7 Miners. He also controlled the company lawyer, the general
8 counsel of GAW Miners, David McLain, that was the Defendant's
9 personal lawyer. When the Defendant said jump, Mr. McLain
10 said, how high?

11 Now, lawyers can't do everything. We all know that.
12 But one thing lawyers are good at, if they want to do it, is to
13 make sure a company is following the rules. And the general
14 counsel of this company answered only to the Defendant.

15 Now, the Defendant also wasn't afraid to take
16 advantage of his position at Cantor Fitzgerald either. When he
17 wrote this e-mail on behalf of the company, GAW Miners in May
18 of 2014, look how he signs his name, vice chairman, cantor.com.
19 And he admitted under oath that he knew that he was doing this
20 because it would make GAW Miners look good to other companies.
21 And it was also the Defendant's reputation and his introduction
22 that opened the door for GAW Miners to advisors at Cantor
23 Fitzgerald.

24 Look at the e-mail he sends in bringing Josh into
25 Cantor Fitzgerald. We are one of the largest sellers of mining

1 power. We've started this business.

2 Remember, he had told you he had no idea whether this
3 was true. But it was the Defendant's credibility that allowed
4 GAW Miners to get the benefit and publicity of a feature story
5 in *The Wall Street Journal*. Josh Garza could never have been
6 on the phone with the Wall Street reporter without the
7 Defendant's assistance. That's control.

8 And why did the Defendant's assistance matter? Well,
9 you heard from the victims of the fraud about how influential
10 that article was in making GAW Miners seem legitimate.

11 So those are some of the different ways that the
12 Defendant exercised control, both over the company GAW Miners
13 and over Josh Garza himself, through financial support and
14 ownership, through his personal relationship, and with the web
15 of access that he provided to GAW Miners that never would have
16 been available without his help.

17 Now, I'd like to go through some of the timeline of
18 the case with you, starting just a few months before GAW Miners
19 started selling its first fraudulent security, the Hashlet.
20 And what you'll see is a series of red flags that revealed,
21 without any doubt to the Defendant, that this company was a
22 fraud.

23 I'm going to move quickly because I don't have that
24 much time.

25 Let's start at the end of May with this phony press

1 release. This was the phony news article with a phony
2 transaction, including a phony employee, the Defendant's own
3 son.

4 The Defendant admitted under oath that he knew this
5 article was full of lies, and the Defendant told a lie of his
6 own. Remember when the SEC was investigating this fraud the
7 Defendant said that when he saw this phony story he was pissed
8 off.

9 But in reality what was the Defendant's reaction? Wow.
10 Awesome. Love the name. Great idea.

11 And this is a perfect example of how the Defendant at
12 every opportunity did the wrong thing. He didn't make a single
13 effort to correct these lies that his company was making in
14 public. What did he do Ned? He sent him \$200,000 more.
15 Instead of turning off the spigot, he turned it on hard.

16 What was the next obvious sign? Plaintiffs' Exhibit
17 29 is the June 10th e-mail from the then chief financial
18 officer, Shiraz Moosajee. Shiraz is trying to prepare
19 financial statements. He can't do it. Things are Migs.
20 Things are wrong. He sent a report to two people, the two
21 owners, Stuart Fraser and Josh Garza. What were the biggest
22 problems? No operational system for inventory accounting, no
23 financial controls. And with the Defendant's background in
24 finance, he knew exactly what that e-mail meant. He knew no
25 later than June that the company had no financial controls.

1 Again, what did he do about it? What did this GAW Miners'
2 owner, investor, lender do? Nothing.

3 MR. BUCHDAHL: Show the next slide, please.

4 He didn't take any steps to figure out if this
5 inventory system had ever been addressed. And once again, he
6 immediately had the chance to do the right thing. Just a few
7 days later, he finds out there's \$400,000 run up on his credit
8 card. The credit card he provided. What does he do? Does he
9 take advantage of this opportunity to exert some influence and
10 say, if you don't get this company in shape, I'm not going to
11 give you any more credit? No. Instead, he simply sends them a
12 new card.

13 What was the next warning that the Defendant had that
14 his business partner and close friend couldn't be trusted?
15 Look at this July 22 e-mail. The Defendant finds out that
16 almost \$200,000 has been withdrawn from his checking account
17 over the last 18 months. He admitted under oath that he
18 believed in the summer of 2014 that someone was literally
19 stealing from him at GAW Miners. So what's his reaction? Did
20 this give him the slightest pause? Of course not. And that
21 brings us to what might be the Defendant's most revealing
22 confession of all. Because he was asked why didn't you walk
23 away right then and there? Let's see what he said.

24 (Plays video of Fraser deposition testimony.)

25 MR. BUCHDAHL: You heard him loud and clear. He tried

1 to play nice, tried to get his money back. Where would that
2 money come from? The victims of GAW Miners security fraud.
3 The warning signals didn't stop there. On August 5th he gets
4 another e-mail. This one literally has the words red flag in
5 it. And it's exact same problem that had been identified in
6 that e-mail back in June. Two months later, still no
7 financials, no inventory systems in plait. And just a few
8 hours later he finds out that the chief financial officer is
9 quitting because of this issue and that he will not participate
10 in trying to help the company raise money.

11 But it didn't stop there. Plaintiffs' Exhibit 43.
12 Now, here in the middle of August, GAW Miners goes back to the
13 well and issues another false press release about a phony
14 acquisition of ZenMiner.

15 The Defendant tried to downplay this as just
16 irresponsibility. But this is a real whopper. Josh Garza went
17 to jail for telling this lie, among others.

18 And in his interview, under oath, during the SEC's
19 securities fraud investigation of GAW Miners, the Defendant
20 admitted he knew this press announcement was false. But then
21 he told the SEC one of his most consequential lies. He told
22 the SEC that he tried to distance himself, that he tried to
23 bring in a lawyer to fix things.

24 But you all know what happened in real life. He
25 didn't try to distance himself at all. Instead, he's telling

1 jokes with his son about it. And we know his lawyer didn't do
2 anything at all.

3 Once again he has a choice. He could blow the
4 whistle. He could come clean. He could tell people what was
5 really going on. Or he can keep playing nice.

6 Now, it wasn't a coincidence that GAW Miners picked
7 August 13th for this phony press release. They wanted to gin
8 up publicity and enthusiasm because they were about to launch
9 their first fraudulent security, the Hashlet.

10 And remember, the Hashlet all started with the
11 Defendant's own idea to sell percentages of hosted machines.
12 He admitted on the stand that this was the idea that turned
13 into Hashlets. And you can see how excited he is about this
14 new Hashlet idea because he goes right on Facebook and brags
15 about how gawminers.com is his new baby. This is just four
16 days after that text.

17 And he says, it's real.

18 And by the way, has anyone ever said it's real about a
19 company that's actually real? And has anybody ever said, my
20 new baby about something they didn't really care a lot about?

21 Now, this Hashlet idea would take GAW Miners in a
22 fundamentally different direction away from just selling
23 hardware and into the banking and brokerage business, the
24 business that this Defendant had been making his living in for
25 decades. Because, remember, at this time, the Defendant was a

1 licensed securities broker. And he knew that brokerage
2 business inside and out.

3 And on August 16th of 2014, GAW Miners officially
4 entered the securities business, starting to sell securities
5 called Hashlets.

6 And you heard from victims who explained that they
7 thought these Hashlets were backed by real mining power. They
8 thought they were buying a slice of the computing power, just
9 as Professor Narayanan explained. But as you heard from the
10 GAW Miners' employees, that was all a fiction. The Hashlets
11 were just a phony interface. There was no real computing power
12 behind them at all.

13 But what does the Defendant do? Well, he just starts
14 bragging to his friends about how amazing it is they're selling
15 so many Hashlets. This is the first day, the day of the
16 release. Crazy opening. Look at this crazy demand. Ask
17 yourself, does this sound like someone who was trying to
18 distance himself from the company or someone who is proud of
19 the company that he founded, he funded, and owned? He says,
20 this is what I'm doing. And he was. And you can see that he
21 and Josh kept in close contact about the sales and the profits.
22 But while he's excited about the sales, the Defendant knew
23 exactly what danger the company was in. He admitted on the
24 stand that he knew that if you didn't track how much Hashlet
25 power was sold compared to how much computing power you had,

1 you were in danger of overselling.

2 What else did the Defendant know? He knew by October
3 that the company didn't have sufficient hardware. He knew also
4 that credit cards and PayPal were holding back funds so the
5 company couldn't pay for any new hardware.

6 Well, what did GAW Miners do next? They were already
7 in too deep. They had sold so many Hashlets they couldn't
8 possibly pay out on them. So instead of continuing to give
9 people Bitcoin, the evidence showed they convinced their
10 Hashlet victims to start taking a new security called
11 Hashpoints, basically a certificate that would allow them to
12 get in line for the next fraudulent GAW Miners security,
13 Paycoin. And once again, the Defendant is out there leading
14 the cheers, bragging about the new world coming with this
15 initial coin offering.

16 But this scheme was only going to save GAW Miners if
17 they had a ton of buyers for Paycoin. So the company decides
18 what they need is publicity. And what better source of
19 publicity than *The Wall Street Journal*, the most significant
20 financial newspaper in the world.

21 And what the evidence showed you, Ladies and
22 Gentlemen, is that Michael Casey, *The Wall Street Journal*
23 writer wanted to talk to the Defendant. He wasn't willing to
24 do the story if he had to rely just on Josh Garza, a nobody, a
25 no name. But if the Defendant spoke to him, that would be a

1 different story.

2 So now I asked the Defendant if he understood that Mr.
3 Casey wanted to talk to him to get his confirmation about what
4 was going on at the company. And he denied it. But the
5 problem for this Defendant is that he can't remember when he
6 lied to the SEC and when he told the truth. Because this
7 Defendant will say whatever he thinks is most helpful to him at
8 the moment he's answering the question.

9 Now, at the same time that GAW Miners is preparing for
10 *The Wall Street Journal* story, GAW is also fearously working on
11 a press release. And the Defendant, who remember, again, told
12 the SEC he was trying to distance himself from the company
13 says, maybe I should be identified as a founding investor?

14 It wasn't enough for him to be quoted as just the vice
15 chairman of Cantor Fitzgerald. He wanted to take public credit
16 for his role in getting GAW Miners into the public realm.

17 And if you look at the press release, that's exactly
18 what it did. It describes him exactly as he insisted on being
19 described co-founder and early investor. Look at the title of
20 the press release it says they're announcing their ICO with
21 significant investor backing and I asked him who are these
22 investors? He said, I don't have any idea.

23 Now, remember, the Defendant has known for months that
24 GAW Miners regularly, routinely generates false publicity. It
25 happened in May. It happened in August. And it's happening

1 here again with the Defendant right in the middle of it.

2 And what steps did he take to make sure that it
3 wouldn't happen? None. But, again, the Defendant confessed
4 what he was up to. We asked him, why did you agree to be in
5 this press release? He said it was in his best interests. So
6 we asked him why?

7 (Plays video of Fraser deposition testimony.)

8 MR. BUCHDAHL: Here's *The Wall Street Journal* story
9 itself which announced that GAW Miners was being backed by the
10 Defendant and GAW Miners took full advantage of this
11 opportunity to publicize its key false promise about Paycoin,
12 the \$100 million reserve, again, another lie that sent Josh
13 Garza to prison.

14 And this lie was a huge part of the attractiveness of
15 Paycoin because it was supposed to help guarantee that these
16 securities would go up in value and not down.

17 And the Defendant admitted that it was true. He was
18 backing Mr. Garza even in late November. That's a very
19 different story than he told the SEC. He claimed he wasn't
20 trying to influence people, but he had to know exactly what
21 would happen. Millions of people would read this article, they
22 would see his name, and they would, therefore, have trust in
23 GAW Miners, the company he knew could not be trusted. And I
24 asked him about this hundred million dollar reserve. What's
25 his answer? He said, well, I knew he had a plan to want it.

1 I don't know exactly what that means, but I'll tell
2 you what it doesn't mean. It certainly doesn't mean that the
3 Defendant thought they had it. He knew they didn't have it.
4 He knew they didn't have any other investors.

5 Ladies and Gentlemen, he knew that \$1 hundred million
6 reserve story was a complete lie.

7 Now, the only problem for GAW Miners is that with a
8 lot of publicity comes a lot of scrutiny. And in this November
9 26 e-mail from *The Wall Street Journal* reporter, he writes
10 directly to the Defendant and others and says, I've got to
11 address these charges that GAW is a fraud. Is it a Ponzi
12 scheme? Is it regulated by the SEC? And once again the
13 Defendant has an opportunity to do the right thing. He knows
14 Josh Garza is untrustworthy. All he has to do, all he has to
15 do right now to save the victims is say the truth to Mr. Casey,
16 which is I don't trust Mr. Garza. He lies to me; he lies to
17 reporters; he lies to the public.

18 But what did the Defendant do? Again, nothing. And
19 you even heard the Defendant talk about a second article where
20 Josh Garza even more explicitly tied the Defendant's
21 credibility to GAW Miners. Once again, the Defendant did
22 absolutely nothing -- well, actually that's not entirely true
23 that he did nothing. He actually kept promoting GAW Miners'
24 fraudulent securities.

25 Take a look at the Defendant's Twitter feed. From

1 November 19th all the way to January 12th he's out there on
2 Twitter where investors like Allen Shinnners can follow his
3 every word, and he simply repeats all of the key GAW Miners'
4 lies. Even as late as January 12th. This \$20 Paycoin lie
5 remember is one of the lies that sent Josh Garza to jail. And
6 it wasn't just limited to Twitter. He was promoting Paycoin to
7 his friends. And maybe this next one sums it up even better.
8 He's discussing a potential transaction for GAW Miners. He's
9 talking to his personal lawyer and Josh. What does he say? I
10 will do whatever we need.

11 We all know what happened next. The SEC swooped in,
12 shut everything down, and the people who lost their hard-earned
13 savings put together this lawsuit. And now this case is going
14 to be in your hands. So what would the Plaintiffs ask you to
15 find here? I'd like to go through the jury verdict form with
16 you and respectfully ask that you fill it out in the following
17 manner.

18 THE COURT: Mr. Buchdahl you have six minutes on your
19 original.

20 MR. BUCHDAHL: Now, we'll move quickly. Question No.
21 1 did Plaintiffs prove any of the following are investment
22 contracts? Absolutely the Plaintiffs did because as the judge
23 will tell you, the touchstone of a security is that the
24 investors would have an expectation of profits to be derived
25 from the efforts of others. That's what they did here. They

1 gave GAW Miners their money and hoped that GAW Miners' mining
2 efforts would lead to their money or, in the case of Paycoin,
3 that their promotional efforts would make money for people.

4 What's the next question? Next question is: With
5 respect to the plaintiffs' claim alleging unregistered
6 securities, did we prove that Defendant Stuart Fraser was
7 liable as a controlling person? Answer: Yes. That's all the
8 evidence we looked at earlier that he was a control person.

9 And you can see that -- all right. And look at the
10 factors that the Judge will tell you to look at for control,
11 the ability to exert influence, did he own any interest, did he
12 have financial leverage? Did he have personal relationships?
13 Across the board every single example the Defendant checks
14 every box.

15 Next question. The third way -- oh, sorry, for each
16 product you found to be an investment contract, did Mr. Fraser
17 prove that he could not have known that these hash products
18 were being sold? Now, it says that he had to not be able to
19 know even with the exercise of reasonable care. And it's plain
20 as day that if this Defendant had exercised reasonable care, he
21 could have known exactly what was going on. So we ask you to
22 mark this question for the affirmative defense we ask you to
23 mark this question no, question 1A. Now, Question No. 2, did
24 Plaintiffs prove that Stuart Fraser is liable as a controlling
25 person of GAW Miners? Yes. That's the same controlling person

1 issue that we talked about earlier.

2 Next question did Mr. Fraser prove that he could not
3 possibly have known that they were committing this fraud?

4 Answer: No. Mr. Fraser did not prove that next question, with
5 respect to the Plaintiffs' claims for fraud in the offer of
6 security, did the Plaintiffs prove that Stuart Fraser aided and
7 abetted GAW Miners in committing securities fraud? Absolutely
8 yes and you saw how he did it. He did it with access, with
9 financial assistance, and by promoting the products himself
10 next question: Again, did Mr. Fraser prove that he couldn't
11 possibly have known that the company was doing this? No. Look
12 at that language about the exercise of reasonable care.

13 There's one thing we know: The Defendant did not do that.

14 Next question. This is a question about whether
15 Paycoin is a currency. And while it sounds like a coin, the
16 answer here is no. And why? The judge will tell you that a
17 currency is something generally accepted as payment and
18 recognized as a standard of value.

19 Ladies and Gentlemen, if you walk down the street with
20 a handful of Paycoins, no one would accept that as payment, and
21 no one would recognize that as value. That's why Paycoin is
22 not a currency.

23 Next question? This is another control person
24 question. Did we prove that under the federal exchange act?
25 Respectfully, yes, the Plaintiffs did.

1 And you can see here that the Court will instruct you
2 on the issue of recklessness. You can see here that it's
3 enough if a person acts in reckless disregard of a risk of
4 whether there was a truthful basis to what the company was
5 saying. This is a terrific description of how the Defendant
6 behaved.

7 Next question. Did Mr. Fraser prove that he acted in
8 good faith? No. Good faith would have required him coming
9 clean and telling people what was going on.

10 Next question. Did the Plaintiffs prove that Mr.
11 Fraser knowingly violated the Exchange Act? That's the
12 question of did he know what was going on? The Judge will
13 instruct you or did instruct you about knowingly means. But
14 the answer is yes. And so if you answer this question yes,
15 when you get to the next question, you don't actually have to
16 answer it. But if you disagree with us, if you don't think he
17 did this knowingly, then it will ask you for a percentage and
18 we respectfully ask that if you do answer this that you give
19 Mr. Fraser the same responsibility that he took all along,
20 50/50.

21 Next question, this is the common law fraud claim.
22 Did Plaintiffs prove that Stuart Fraser aided and abetted a
23 fraud? Answer, absolutely yes.

24 And we saw how he did that. He did that by opening
25 doors when he should have been closing them. He did that by

1 extending money when he should have been refusing it.

2 And, again, you'll hear this instruction about
3 reckless indifference to the possibility that the fraud was
4 happening. That describes this Defendant to a T.

5 Now, you'll be asked to say the date, the first date
6 on which the Hashlet fraud was committed. Ladies and
7 Gentlemen, this is an easy one. This began the day they
8 started selling them. The evidence shows that is August 16,
9 2014,.

10 Now, finally, the Defendant has asserted what the
11 judge described to you as an in pari delicto defense.

12 THE COURT: Mr. Buchdahl sorry to interrupt. You are
13 at the 35 minutes of course you can continue but it will eat
14 into your time.

15 MR. BUCHDAHL: One more minute did the defendant prove
16 his in pari delicto defense with respect to Mr. Shinnners? The
17 answer to this is obviously no and here's why. This requires
18 that you find Mr. Shinnners bears substantially equal
19 responsibility for this violation. There is no planet on which
20 Mr. Shinnners, a victim of this fraud, bears substantially equal
21 responsibility to the Defendant. That's why we ask you to
22 answer no to that question. I believe that's the last question
23 in the verdict form? So I'm going to reserve the balance of my
24 time for rebuttal. Thank you for your attention.

25 THE COURT: All right. Mr. Weiner, before we begin,

1 we're going to just take ten minutes. I want to clear the
2 courtroom. I want to let the -- I'm watching the CO 2 monitor.
3 I want it to come down a little. It's fine but I want it to
4 come down a little more. You can feel it's warmer in here
5 today, well, it's warmer because we're sharing more air, just
6 about reached 800 which is sort of a red line but it didn't now
7 it's coming down because I've been mailing frantically with the
8 GSA I want to give it ten minutes let it come down a bit we'll
9 all come back. Please go to the jury room at this time I'm
10 going to clear the corm after you leave, give it about ten
11 minutes it will be fine. Don't discuss the case I know you're
12 starting to hear the arguments. Don't discuss the case. Keep
13 don't let anyone discuss it with you. Keep an open mind.

14 (The jury left the courtroom at 9:34 a.m.)

15 THE COURT: All right. I apologize for that. I've
16 just been watching it frantically. It's about at 812 right
17 now. It dropped it below but now it's back up. We're going to
18 take about ten minutes. I want everybody to clear the
19 courtroom for about ten minutes and we'll be back. Thank you.

20 (Recess from 9:34 a.m. to 9:56 a.m.)

21 THE COURT: We can bring the jurors back. Is.

22 .

23 (The jury entered the courtroom at 9:58 a.m.)

24 THE COURT: Thank you for your patience the CO level's
25 now good now. I thank you for your patience now it's Mr.

1 Weiner's turn everyone can be seated.

2 MR. WEINER: Your Honor, may I unmask?

3 THE COURT: You may.

4 MR. WEINER: Ladies and Gentlemen, Mr. Buchdahl saw
5 this one coming because he's absolutely right. The Plaintiffs
6 have the wrong man in this case. They should be suing Josh
7 Garza, the person they sued originally. This is a movie that
8 came out a couple years before I was born but it's one of my
9 favorites. I commend it do you when you have a chance.

10 The wrong man, they know they have the wrong man, and
11 Mr. Buchdahl said the key is -- and we agree with it -- the key
12 is control. Who controlled GAW Miners and ZenMiner?

13 Plaintiffs know they have the wrong man. You saw how
14 their story line changed completely from the original Complaint
15 to their Amended Complaint.

16 Mr. Shinnners started work on the Complaint in April of
17 2015. He worked for 14 months looking at documents, looking at
18 e-mails, looking at all sorts of evidence and talking to --
19 even talking to former GAW Miners' employees, Ms. Eden, Mr.
20 Mordica, Mr. Dorman. He interviewed them. After those 14
21 months of a review and analysis, this is what Plaintiffs told
22 the Court: The lead defendant is Josh Garza.

23 And this is what they said about him. This is the
24 Plaintiffs' own case. This is not some offhand bar Room remark
25 where they were speaking loosely. This is a Complaint which

1 under the rules they have to believe to be true in good faith
2 before they file it. And they said Mr. Garza, during all of
3 2014, he was the founder and CEO of GAW Miners, and he owned
4 and controlled ZenMiner. In those positions, which he held
5 since those companies were founded -- so both companies, GAW
6 Miners and ZenMiner, he directed their strategy, their
7 financial decisions, and had ultimate control over their
8 day-to-day operations.

9 That's right out of the Plaintiffs' own mouths. Then
10 you saw what happened. Plaintiffs realized that they'd never
11 get any money from Josh Garza. He spent it on that Lamborghini
12 and that BMW and that Tesla and that Ferrari and the three
13 cars -- he couldn't even remember. So they hatched a secret
14 plan with Mr. Garza, Josh, as Mr. Buchdahl called him during
15 the trial. The secret plan they hatched was they would let him
16 out of the case, they would drop him as the lead defendant and
17 they would make Stuart Fraser the new control person, the
18 person who was behind the scenes controlling everything.

19 You don't have to guess about the Plaintiffs' secret
20 deal with the devil, the deal with Mr. Garza.

21 Take a look at the cooperation agreement and you'll
22 see the exhibit numbers are in the lower left-hand of the
23 slide. They made a deal with the devil in October of 2016.
24 They would dismiss without prejudice -- that means they could
25 always bring it back. And you heard Mr. Garza testify at his

1 deposition that he understood that he could be brought back
2 into the case.

3 They would dismiss without prejudice all claims
4 asserted against him in this action if they gave him
5 cooperation.

6 Cooperation agreement -- this deal with the
7 definitely, it speaks for itself. Only two weeks later
8 Plaintiffs changed their story. Here's their Amended Complaint
9 and remember I said like magic Mr. Garza disappears. He's not
10 the lead defendant anymore. He's not the one that controls it.
11 They changed their story. Look what happened to that
12 paragraph. Remember they said that he was the one who
13 controlled it? Like magic. They took it out of their
14 Complaint as if it never existed, as if people like you
15 wouldn't remember what they said at the beginning, after all
16 their investigation, after all their work, it was Josh Garza
17 who controlled GAW Miners and ZenMiner.

18 Now, why did the Plaintiffs do that? These easy.
19 They're in it for the money. And Stuart Fraser is a deep
20 pocket. He's a man who over the years has built a comfortable
21 life for himself and his family. He has money.

22 Why did Mr. Garza do it? Why did he decide to flip
23 and point the finger at his former mentor, his former father
24 figure? That's an easy one too. Mr. Garza did it to get out
25 of this lawsuit and the enormous expense of defending against

1 Plaintiffs' team of lawyers. He avoided the possibility, or
2 probablility in this case, of getting whacked with millions of
3 damages for the money that he stole from the victims.

4 And here's the killer: Mr. Garza's restitution order
5 gives him another motive to lie (Lawsuit). It requires him to
6 pay over \$3.4 million to the victims, but if he can get a jury
7 to award money against Mr. Fraser, then his restitution amount
8 is reduced dollar for dollar. He is there lying to save
9 himself and his money, the only things he ever cared about.

10 So when the plaintiffs tell you and Mr. Buchdahl
11 said -- showed a picture of Mr. Garza at his deposition. They
12 said believe what Mr. Garza said at his deposition in 2018.
13 Remember that Mr. Garza is a convicted felon and a proven liar,
14 a fraudster and a cheat.

15 You saw him on tape pausing and squirming and looking
16 at the ceiling and thinking how can I give the Plaintiffs what
17 they want so they won't pull me back into the case? Every time
18 Mr. Garza said Stuart Fraser controlled me, he satisfied his
19 part of the deal with the devil that he struck with the
20 Plaintiffs.

21 Mr. Garza would have said that Stu Fraser controlled
22 the NASA space program if the Plaintiffs had asked him. He was
23 in there singing for his supper.

24 And the sad truth is even if the Plaintiffs don't
25 believe Mr. Garza.

1 Look at what Mr. Shinnars said. You see the reference
2 to the trial testimony in this case. I asked Mr. Shinnars what
3 he thought of Mr. Garza. Absolutely not trustworthy. That's
4 the Plaintiffs' view of their key witness, the only witness you
5 saw who blamed Stu Fraser who said Stu Fraser controlled them.
6 Their own witness says absolutely not trustworthy and Mr.
7 Shinnars was not the only one. Look at what Mr. Counsel said,
8 Mr. Ard said in his opening, don't take what Josh Garza says at
9 face value. That's the understatement of the year.

10 Now, who else besides Plaintiffs told you that they
11 had the wrong man, that Plaintiffs have the wrong man, that it
12 should be Josh Garza, not Stuart Fraser? Well, Josh Garza
13 himself told you that before he struck his deal with the
14 Plaintiffs to save himself. You remember the evidence of what
15 Mr. Garza actually said at the time of the events in issue?
16 Here he is in July 2014 talking to Mr. Fraser. Ou're right,
17 this is my company. I am the only one that knows how to really
18 run it.

19 That's DX 521. You'll have that back in the jury room
20 with you.

21 August 1st the first day of the period that you've
22 been asked to focus on Mr. Garza says, I run the marketing, the
23 promoting. That's DX 523.

24 Mr. Garza in August of 2014 -- he's the one on the
25 right. Joe Mordica's the one on the left. Mr. Garza says,

1 this is my house. Not this is Stuart Fraser's house, this is
2 our shared house. This is my house. This was his company. He
3 was the CEO.

4 And he told Mr. Gallagher, who was thinking about
5 working with him in September of 2014, there is no senior
6 management. I am, literally, doing all this on my own.

7 And when Mr. Gallagher said is Stuart Fraser involved?
8 Mr. Garza said, no, Stuart. Is not involved. I think that was
9 one of the keys.

10 Mr. Garza said in October, talking about Stuart Fraser
11 he adds no value as an investor. His emotions keep him from
12 being a valuable partner to the company.

13 Mr. Garza said later in October, the only actual offer
14 in the company is me, Josh Garza. And if you look at DX 555,
15 you'll remember there's a whole list of executives employees at
16 GAW Miners and guess whose name isn't on it. You know: Stuart
17 Fraser.

18 Mr. Garza ran this show from top to bottom.

19 And there he is at the top. GAW Corporation. Josh
20 Garza, chief executive officer you see Amber Messer who became
21 Amber Capuano was his personal assistant there under the
22 operating companies under the heading GAW Corporation there's
23 GAW Miners with Jonah Dorman who you heard from as the vice
24 president and cryptocurrency arm of the company.

25 Now, they tell you in opening or Mr. Garza told you if

1 you look on that sheet maybe up above there's another CEO above
2 the CEO. That's ba bony. Mr. Garza you saw the evidence and
3 you heard from the people that worked there, that Mr. Garza ran
4 the company.

5 In December of 2014 Mr. Garza said Stuart is a silent
6 partner. He provides no financial support. So the idea that
7 Mr. Buchdahl told you today that it was Mr. Fraser pulling the
8 financial strings, listen to Mr. Garza at the time before he
9 struck his secret deal. All the loans that Stuart Fraser made
10 to the company were paid back in July of 2014 before the period
11 started that you're asked to focus on.

12 From August 1, 2014, through January 19, 2015, GAW
13 Miners and ZenMiner were Mr. Garza's cryptocurrency show, and
14 he ran them.

15 And here's one perfect example. Mr. Garza said, I'm
16 thinking of buying the domain name btc.com. Do you see that in
17 the upper right? It's actually not bad Mr. Garza says. I
18 might buy this. Stuart Fraser says, I want to throw up. It
19 seems like a huge waste of money to me.

20 If he had been in control, guess what would have
21 happened. There would have been no BTC deal. In fact, you
22 know what happened. Six date later Mr. Garza bought btc.com,
23 the domain, for a million dollars. There was no vote. Mr.
24 Fraser had no veto power. He had no ability to control Mr.
25 Garza and GAW Miners. This is the evidence. This is just

1 another example. You can't point, and they can't find, a
2 single -- excuse me -- where Mr. Fraser said, I want something
3 done and it got done. What happened is things like this. Mr.
4 Fraser said it's a huge waste of money. Don't do it. Mr.
5 Garza's in control. He runs the show. He says I don't care.
6 I'm going to spend a million dollars on this.

7 Until he struck his secret deal with the Plaintiffs,
8 Mr. Garza said the same thing time after time after time, I,
9 Josh Garza, I'm in charge.

10 Now, who besides Plaintiffs themselves and Mr. Garza's
11 own statements at the time tell you that the Plaintiffs have
12 the wrong man? United States securities and exchange mission,
13 the SEC. You heard that in 2015 the SEC issued subpoenas and
14 took testimony. You heard that Mr. Garza was so worried that
15 in early 2015 he fled to Dubai. The SEC performed a thorough
16 investigation with all the resources of the United States
17 Government. And you know the result. The SEC in December of
18 2015 charged Josh Garza and the two companies. They did not
19 charge Stuart Fraser. And this is what the SEC, the United
20 States Government, concluded after conducting its stem to stern
21 investigation. Look at paragraph 14. SEC, Josh Garza during
22 all of 2014 he was the founder and CEO of GAW Miners. He owned
23 and controlled ZenMiner. In those positions which he held
24 since those companies were founded, he directed their strategy,
25 their financial decisions and had ultimate control over their

1 day-to-day operations.

2 That language should look familiar to you because
3 that's the language that Plaintiffs used six months later when
4 they filed their Complaint. They believed the SEC at the time
5 because they knew that was true. The SEC went on to say about
6 GAW Miners, Mr. Garza is the managing member and majority owner
7 of GAW Miners. During all relevant times Garza has controlled
8 GAW Miners and directed its day-to-day activities. The same
9 with ZenMiner. The SEC charged that Garza is the managing
10 member and majority owner of ZenMiner. During all relevant
11 times, Garza controlled ZenMiner and directed its day-to-day
12 activities.

13 The Plaintiffs Garza's statements at the time and the
14 United States securities exchange commission tells you that
15 Garza was the one who controlled these companies.

16 Now, who else beside the Plaintiff and Garza's
17 statements and the SEC told you that Mr. Garza, not Stuart
18 Fraser, was in control of GAW Miners and ZenMiner? The FBI and
19 the Department of Justice.

20 You heard that the Department of Justice charged Mr.
21 Garza not Stuart Fraser. They charged him with criminal fraud,
22 that he pled guilty and took full responsibility for his
23 actions. You have PX 119. It's plaintiffs' exhibit but I
24 suggest that you look at it closely. That's the Plea Agreement
25 where Mr. Garza pleaded guilty to fraud and said over and over

1 and over again, I did it. I did it. I did it. And didn't
2 mention Stuart Fraser in the slightest.

3 You heard Mr. Garza tell you -- or you saw his
4 statement in open court, in this court. He said I made a
5 number of statements that were not true at the time that I made
6 them -- no story about Stuart Fraser controlled me like a
7 puppeteer, that Stuart Fraser was on top. He was the CEO above
8 the CEO. That story didn't come out until this trial, until
9 his deposition where he sang for his supper.

10 Mr. Garza was sentenced to 21 months in prison,
11 ordered to pay \$3.4 million in restitution to his victims and
12 you heard what Mr. Garza said at his sentencing. He took full
13 responsibility for his actions. What he said in his
14 sentencing -- and you heard him say on tape, he said no matter
15 what happened, I was in charge, not Stu Fraser was in charge, I
16 was in charge because that was the truth. And he had to say
17 that at his criminal sentencing.

18 Now, who else besides Plaintiffs and Mr. Garza's
19 statements at the time and the SEC and the FBI and the
20 Department of Justice? Who else tells you that Mr. Garza, not
21 Mr. Fraser, controlled the companies? The employees of those
22 companies themselves. The Plaintiffs didn't call a single
23 employee of GAW Miners or ZenMiner because they knew you would
24 find out what actually happened at those companies. They
25 relied totally on Mr. Garza a man the lead Plaintiff said was

1 entirely untrustworthy that's the man they're relying on to
2 have you come back with a verdict against Mr. Fraser. Those
3 six employees that you saw, Mr. Capuano and his wife, Mr.
4 Dorman, Mr. Pease, Ms. Eden and Mr. Mordica, we called them.
5 None of these people testified that they ever saw Mr. Fraser at
6 the GAW Miner or ZenMiner offices or plants. They never heard
7 Mr. Fraser on the phone. They never got any direction or
8 orders from him. They never got a single e-mail or a memo or a
9 letter or a note from Mr. Fraser telling them what to do.

10 My personal favorite is Joe Mordica, the fellow who
11 testified. He was the one down in Mississippi running the
12 computer plants and where all the machines were. He was asked,
13 did you ever meet or speak with Stuart Fraser? His answer you
14 remember his answer, he said, I didn't even know he existed
15 until recently, you know, in 2018. He thought Josh made him
16 up. Is he real? Is he a real person? That's the guy --
17 they're telling you to believe that Stu Fraser was behind the
18 scenes telling everyone what to do, you just can't see him.
19 He's invisible.

20 Now, the idea -- and if you want to hear testimony
21 back, I suggest you hear Mr. Mordica's testimony -- the idea
22 that Stuart Fraser conceived of and developed Hashlets is
23 ridiculous.

24 Listen to Mr. Mordica walk you through each step from
25 the hardware-hosted mining to the cloud-hosted mining, the

1 Hashlets. He tells you each time this was Josh Garza's idea to
2 put money in Josh Garza's pocket. But when they tell you that
3 Mr. Fraser was the evil genius behind Hashlets, don't believe
4 them. Listen to Mr. Mordica. He tells you what actually
5 happened.

6 Even Plaintiffs have to concede that Mr. Fraser wasn't
7 involved in the operations of the business. This is Mr. Ard in
8 the opening saying that Stuart Fraser wasn't involved in the
9 day-to-day operations. That was Josh Garza's job. Of course,
10 it was Josh Garza, the chief executive officer who ran the show,
11 who made every single strategic decision at GAW Miner and
12 ZenMiner. And you heard from the employees that Mr. Garza
13 thought there was no one higher or more important than him.

14 Eric Capuano said that Garza's the self-proclaimed
15 hash king. He described him as the Donald Trump of CEOs. Now,
16 you may not like Donald Trump or you may like him, but nobody
17 thinks there's someone above Donald Trump secretly controlling
18 him.

19 Amber Capuano sums up Garza as a superhero and the
20 lead plaintiff of Mr. Shinnery used that long word megalomaniac
21 which is a person obsessed with his own power to describe Mr.
22 Shinnery (Which means) .

23 Now, Mr. Buchdahl told you, well, you don't have to
24 have just one -- you can control -- there can be a bunch of
25 control people. I mean don't be fooled by that. When you

1 drove to the courthouse today, how many people were controlling
2 your car? How many people were at the wheel driving your car?
3 Mr. Garza drove the companies, he drove their every decision.

4 That's what the GAW Miners, the six people we called
5 by video that told you that Mr. Garza kept each person in their
6 own little silo so they wouldn't know the big picture what was
7 going on. Each person, I think Mr. Mordica said that each
8 person was contained. Mr. Capuano said they were in a silo.
9 And Mr. Garza was the only one who knew everything that was
10 going on with the business.

11 Stuart Fraser's silo, his silo was Mr. Garza, give me
12 money, give me give me money. And when in June of 2014 when
13 Mr. Fraser said, that's it. The loans are over, there will be
14 no more money, Mr. Garza had no more use for him other than to
15 hijack his name and reputation.

16 Now, who besides the Plaintiffs, Mr. Garza's own
17 statements? The SEC, the FBI, the Department of Justice and
18 the GAW Miners' employees, who else told you that Garza
19 controlled GAW Miners? Well, Mr. Fraser told you that himself.
20 You heard him testify over two days. You got an opportunity to
21 hear what actually happened. And we all heard how Mr. Garza
22 played Stuart Fraser, played him for his name, his reputation,
23 and most of all his money.

24 Remember that on the first day of trial Mr. Ard told
25 you in his opening he said that Stuart Fraser poured millions

1 of dollars into the business over the years and provided
2 hundreds of thousands of dollars of loans to GAW Miners.
3 That's absolutely true. But what Mr. Ard didn't tell you was
4 that in June 2014 Mr. Fraser stopped loaning any more money to
5 the company and that Mr. Garza repaid the last loan in July of
6 2014, July 24th. It's on Exhibit 501 the list of transactions.
7 And Mr. Fraser's losses. The last payment was before the
8 period that you've been asked to focus on, which begins on
9 August 1st. Any supposed control that Mr. Fraser would have
10 had because of those loans was gone when the last loan was
11 repaid.

12 Done and dusted. If you ever had any financial
13 control, he didn't have it (He) when the loans were repaid.

14 Plaintiffs' counsel also didn't tell you that Mr.
15 Garza's biggest victim was Stuart Fraser, that Stuart Fraser
16 lost nearly \$12 million, including his entire investment in GAW
17 Miners. And that's Exhibit 501.

18 If you need hard evidence that Mr. Garza played Stuart
19 Fraser, this is it, that he used him, this is it, \$12 million
20 in losses Plaintiffs can't even argue with. They're the ones
21 who put this document together.

22 Now, plaintiffs' counsel will tell you what about that
23 credit card? And Mr. Buchdahl mentioned it. He said, what
24 about that credit card? The credit card isn't evidence that
25 Stuart Fraser controlled Mr. Garza or those companies or that

1 he knew Mr. Garza was committing fraud. It's the exact
2 opposite Mr. Garza used that card running up hundreds of
3 thousands of dollars without consulting Stuart Fraser. And
4 when Mr. Fraser found out, because his own cards got canceled,
5 Mr. Garza said, don't worry. I've got this covered. I'll pay
6 you back. That's more evidence Garza used Stuart Fraser.

7 And you saw e-mail where Mr. . Fraser was asking for
8 the figures, the data and the numbers. If Mr. Fraser had been
9 in on the fraud as part of the fraud he wouldn't be asking for
10 the data and numbers because Mr. Garza would write back, Stu,
11 you know these numbers are all fake and phony. Why are you
12 asking me that for? There's no e-mails like that.

13 Mr. Fraser wanted to know what was going on, and like
14 he did to everyone else in his company, Mr. Garza just put him
15 off and said, don't worry about it. I got this covered.

16 Mr. Fraser was fooled by Mr. Garza, a man he
17 considered almost another son, a man who he mentored and who he
18 trusted.

19 Ladies and Gentlemen there's plenty of evidence that
20 Stuart Fraser was too loyal to his friend. There's no evidence
21 that Mr. Fraser was the unseen, unheard puppet master behind
22 the scenes.

23 You heard Mr. Buchdahl ask him, well, why didn't you
24 just walk away? And Mr. Fraser's answer came from the heart.
25 I don't walk away from my friends, someone I knew for more than

1 ten years, someone I thought of as a surrogate son someone I
2 trusted someone who had run legitimate businesses for me, no, I
3 don't walk away from my friends.

4 Now let's talk about plaintiffs' argument to you that
5 in 2014 Mr. Fraser knew Mr. Garza was a criminal fraudster,
6 that he materially assisted in the fraud all the while knowing
7 that it was a fraud. Ladies and Gentlemen, that defies common
8 sense. To think that Mr. Fraser would have knowingly involved
9 in a fraud his family members, the best friend he had in his
10 life, Howard Lutnick, and the company Cantor Fitzgerald, the
11 only company he ever worked with, his family company that he
12 loved, that doesn't make any sense. Those are the people he's
13 going to pull into a fraud?

14 Use your common sense. As Mr. Ard told you, that's a
15 weapon you bring you into the jury room.

16 Now, someone once famously said that-hand sightly is
17 20/20. Looking back on it (Sight) of course Mr. Fraser
18 realized he trusted Mr. Garza too long and believed too many of
19 the lies that Mr. Garza told him (Hindsight) but that's the
20 thing about betrayal by someone really close to you. Until you
21 finally realize what's happening, you miss the signs.

22 And how dare Plaintiffs claim that from August 1,
23 2014, on Mr. Fraser knew it was a fraud. You heard from the
24 half dozen GAW Miners' employees and executives. These are
25 people with technical knowledge, including knowledge of

1 cryptocurrency who worked at GAW Miners or ZenMiner every
2 single day. And, of course, you heard from Mr. Capuano that
3 when the business started, they actually had mining capacity.
4 They actually had equipment that they shipped to people. They
5 actually had computers down in Florida in two places in
6 Hattiesburg and I can't remember what the other one was. But
7 they had the equipment and they had the hardware-hosted mining
8 and the cloud-hosted mining and that was real, lots of mining
9 equipment from the picture. There it is in Mississippi. And
10 Mr. Capuano said back then we wouldn't oversell capacity. At
11 the outset all the GAW Miners employees were excited by the
12 prospect they left their job Mr. Mordica sold his business for
13 nothing. They were all excited about this business, and so was
14 Mr. Fraser.

15 So when he writes in March or May or April that I'm
16 excited and this is my new baby, yeah, they were all excited.
17 This was a real business until Mr. Garza took it in a different
18 direction later in the year.

19 You heard Mr. Capuano say later much later in 2014 he
20 raised questions about the adequacy of GAW Miners' equipment
21 and Mr. Garza told him don't worry about it. I've got it
22 covered. That's the very same kind of assurance that Mr. Garza
23 gave Mr. Fraser and everyone else.

24 Look at Mr. Shinnars, the lead Plaintiff. He was
25 deeply involved in GAW Miners from late October and November

1 and December, into early January of 2015, he communicated, you
2 heard, he communicated with Mr. Garza directly by phone, by
3 text, by private messaging, by e-mail.

4 He sent 675 e-mails back and forth to Mr. Garza and
5 the people at GAW Miners. And, you know, Mr. Shinnors couldn't
6 remember that. You know, like Mr. Fraser, like probably most
7 of us, people's memories are imperfect; right? You saw Mr.
8 Shinnors struggle to remember what he said in his deposition.
9 It gives you some understanding that sometimes when you
10 testify, you forget what you said. It's not that you're evil
11 and I'm not saying Mr. Shinnors is evil or Mr. Fraser
12 deliberately forget forgot things sometimes people fretting you
13 saw that with Mr. Shinnors and some of the other witnesses as
14 well.

15 Mr. Shinnors, he was on the inside of GAW Miners. He
16 helped create the detailed white paper for Paycoin. He was
17 part of the inside gang. He even signed a nondisclosure
18 agreement, an NDA, that he wouldn't reveal the confidential
19 information that he had.

20 You heard that he was such an insider that Mr.
21 Shinnors was such an insider from Mr. Mordica, Mr. Mordica
22 said, Shinnors got invited to these internal meetings at GAW
23 Miners. You never heard any evidence that Stu Fraser was
24 invited to any internal meeting at GAW Miners.

25 Mr. Shinnors told you he was and considered himself an

1 auditor's auditor; right? He told you that in 2014 no one had
2 more expertise than him about cryptocurrency, but even Mr.
3 Shinnors got conned by Mr. Garza. All the way through early
4 2015. It makes perfectly sense that Mr. Garza could have also
5 conned Mr. Fraser, who didn't know jack about cryptocurrency.

6 There's the white paper that Mr. Shinnors wrote or
7 helped write. Look at the other Plaintiff. Look, the
8 Plaintiffs you saw them from the stand. These are smart,
9 intelligent, educated, sophisticated business people. And Mr.
10 Garza conned all of them.

11 Mr. Pfeiffer, Mr. Pfeiffer even thought Mr. Garza was
12 legitimate into April and May 2015, three months after the SEC
13 investigation was announced when he was still trying to do
14 business with Mr. Garza.

15 Now, Mr. Ard told you in his opening -- Mr. Ard said,
16 Stuart Fraser had expertise from his years at Cantor
17 Fitzgerald. But Mr. Buchdahl proved the exact opposite.
18 Here's Mr. Buchdahl. He asked Mr. Fraser, that's not me asking
19 that's Mr. Buchdahl saying, you didn't have any expertise or
20 experience whatsoever in mining before this company; correct?

21 Answer: Yes.

22 Now, the Plaintiffs brought in an \$800 an hour
23 professor from Princeton to show how simple cryptocurrency is.
24 He spoke to you about digital assets and digital currency and
25 virtual currency and pool mining. I got lost -- I got lost

1 about halfway through when he was talking about the difference
2 between proof of stake and proof of work. These are
3 complicated, confusing terms. It's no wonder that Mr. Fraser
4 didn't know the ins and outs of cryptocurrency, especially when
5 it was back in its infancy in 2014.

6 Now, the Princeton professor did tell you
7 cryptocurrency is very different than the T bills that Mr.
8 Fraser traded at Cantor Fitzgerald and that there was no such
9 thing as cryptocurrency during the entire time that Mr. Fraser
10 worked at Cantor Fitzgerald.

11 So when you hear them claim that Mr. Fraser had the
12 expertise to spot Mr. Garza's high-tech fraud, a fraud that no
13 one else spotted inside or outside the company, when Mr. Audet,
14 who has a Ph.D. and Mr. Shinnars, who is on the inside and has
15 an MBA and was a cryptocurrency expert, and Mr. Pfeiffer, who
16 wrote a white paper on cryptocurrency, when they were fooled,
17 it's just baloney to think that Mr. Fraser wasn't also fooled.

18 Now let's talk about a few things that Plaintiffs
19 claim show that Mr. Fraser actually controlled GAW Miners.
20 None of them actually does. In fact, they proved the opposite.
21 As the SEC concluded and as the Plaintiffs said in their
22 original Complaint it was Josh Garza who controlled both of
23 those companies throughout the period in question.

24 Now, the first item that they talk about, Plaintiffs
25 talk about this combination between GAW Miners and ZenMiner

1 announced in May of 2014. That's two and a half months before
2 the period you've been asked to look at. Listen, there's no
3 question it was a deal dreamed up by GAW Garza who roped in Mr.
4 Fraser's son Tommy. But even Mr. Garza told you that this deal
5 wasn't Stuart Fraser's idea. Mr. Watterson, one of the
6 Plaintiffs lawyers asked him, Mr. Fraser came up with the
7 concept of GAW Miners' parent company purchasing a stake in
8 ZenMiner?

9 Mr. Garza said: No.

10 There's no evidence whatsoever that Mr. Fraser thought
11 it up, this idea of this deal and directed that it happened.
12 There is no evidence that he knew about it beforehand, before
13 the announcement. If you actually look at the May article
14 below the headline they like to show you, the article talks all
15 about the ZenMiner product, which was a user-friendly interface
16 for these kind of clunky, hard-to-use mining machines. And
17 plaintiffs' counsel criticized, Mr. Buchdahl showed an e-mail
18 that said Stu Fraser thought it was a great idea. Well, Stu
19 Fraser wasn't the only one who thought it was a good idea you
20 heard Eric Capuano the first one to testify, he knows a lot
21 about cryptocurrency mining and he said I thought it was a
22 fantastic idea, the ZenMiner concept. And Joe Mordica called
23 it a really cool idea that excited him. So they shouldn't make
24 fun of Mr. Fraser for thinking the exact same thing.

25 Now, why did Mr. Garza want on top of this great idea

1 the notion that GAW Miner and ZenMiner started up as separate
2 companies (Add) who knows what he's thinking. First he used
3 Thomas Fraser then when it came out again in August he used
4 Eric Capuano his childhood friend this guy will use anybody to
5 get what he wanted.

6 Mr. Fraser explained to you that he didn't know why
7 Garza wanted it that way, but he was focused on the fantastic
8 idea of this product, which would make it easier for regular
9 people to mine cryptocurrency.

10 There's also absolutely no evidence that any of the
11 Plaintiffs, Mr. Audet, Mr. Pfeiffer, or Mr. Shinnners relied on
12 this deal announcing in May 2014. None of them mentioned it
13 from the stand when they talked about what they relied on.
14 They mentioned one thing: *The Wall Street Journal* article.
15 You didn't hear a word of this ZenMiner deal.

16 If that weren't enough, you'll hear in the
17 instructions that Judge Shea gave you -- and this is the jury
18 instructions. Judge Shea says, remember, I also instruct you
19 that the statements made in relation to the acquisition of
20 ZenMiner by GAW Miners are not the false statements the
21 Plaintiffs allege they relied on when purchasing the products
22 at issue.

23 So don't get fooled, don't get distracted by that
24 sideshow about the ZenMiner deal.

25 You heard Mr. Buchdahl ask Mr. Fraser, why didn't you

1 walk away from Mr. Garza when you discovered this phony deal?
2 Now, in May of 2014 Stuart Fraser had known Josh Garza for more
3 than a decade. He mentored him he worked with him on several
4 companies including the high-speed internet business in Vermont
5 should Stuart Fraser have said after those ten years in that
6 relationship, should he have said well, one mistake of judgment
7 and you're dead to me? That's not the kind of person Stuart
8 Fraser is.

9 Sometimes people make mistakes and judgment and you
10 caution them and you warn them and you move on. As the Bible
11 tells us let he who is without sin cast the first stone.

12 Now, the second item the Plaintiffs like to talk about
13 is *The Wall Street Journal* article in late November of 2014.
14 And you heard Mr. Buchdahl talk about it quite a bit. But
15 there's no evidence, ladies and gentlemen, whatsoever that Mr.
16 Fraser directed or controlled or even suggested that Mr. Garza
17 speak to *The Wall Street Journal*. All the evidence shows that
18 it was Mr. Garza's idea, that Mr. Garza's request that Stuart
19 Fraser speak to the reporter and even Mr. Ard conceded in his
20 opening that when Mr. Fraser spoke to *The Wall Street Journal*,
21 it was supposed to be all off the record. You saw Mr. Buchdahl
22 put up that screen. And he didn't highlight that part. The
23 understanding was entirely off the record that Stuart Fraser's
24 name wouldn't be mentioned.

25 He didn't want to be quoted. He didn't want to be

1 mentioned and the one sentence in the article that mention him
2 take a look at it. It's all completely true. He was a backer
3 of Mr. Garza in these Great Auk Wireless businesses. That's
4 true. And he did work at Cantor Fitzgerald, that's true.
5 There's nothing false in Mr. Fraser's statement as quoted or
6 mentioned in that article.

7 Now, Plaintiffs claim that they rely on the \$20 price
8 floor and the hundred million dollar reserve described in that
9 article.

10 You saw the proof -- talk about a \$20 pay floor,
11 Paycoin never once in its entire existence -- and it's still
12 traded to this day it's never traded higher than \$9.22. So to
13 say they believed there was a \$20 price floor is like when Mr.
14 Shinnars told you I believed it was always going to be
15 profitable; right? That's baloney. That's his investment, he
16 believes it's always going to be profitable? These are
17 high-risk, high exposure currencies; right? People don't get
18 into cryptocurrency because instead of like a really safe
19 investment. So when they say they relied on a \$20 price floor,
20 there never was one even during the period in question.

21 You can't reasonably rely on a promise that never
22 existed, that was never true. It's just nonsense.

23 Now, you also have to look at plaintiffs' buying
24 behavior and selling behavior. They told you, well, we relied
25 on this *Wall Street Journal* article. We still have Mr.

1 Fraser's name in it and that made all the difference in the
2 world.

3 Well, you know what? Facts don't lie. And look at
4 the plaintiffs' certifications DX 687 they'll tell you Mr.
5 Shinnors bought three times as much GAW Miners' products before
6 *The Wall Street Journal* article than he did after it; that Mr.
7 Audet's buying pattern remained completely unchanged; and that
8 for months before the article, Mr. Pfeiffer had been buying
9 tons and tons of GAW Miners' products. How could he rely on
10 something that hadn't happened yet?

11 And after it happened, look at Mr. Pfeiffer's pattern
12 of behavior. He sold bunches and bunches and bunches of assets
13 right after the article came out. These people didn't rely on
14 that article. There's no reason to believe the Plaintiffs
15 would have acted any differently if *The Wall Street Journal* had
16 never come out or if it had never mentioned Stuart Fraser.

17 Mr. Buchdahl also mentioned that November 2014 press
18 release. Don't be fooled by that either. None of the
19 Plaintiffs said they relied on that press release; right? They
20 didn't mention it because they didn't know about it, hear about
21 it see it or rely on it.

22 Now, the third items that Mr. Buchdahl likes to talk
23 about is the meeting between Cantor Fitzgerald between
24 mid-November 2014 when Mr. Fraser brought in Mr. Garza. It
25 said, come in. I want you to meet the tax compliance guy and

1 the back office guy. And now, Mr. Garza said, no, no, we were
2 really there for investment even though it's no in any of the
3 e-mails. What the e-mails actually say, Mr. Garza -- I mean
4 sorry -- Mr. Fraser telling his friend Jim Ficarro, his
5 long-time friend, GAW Miners was totally above board, which he
6 believed. He wouldn't involve his friends in a company
7 something that was a fake.

8 We only want to do it right. We want to make sure
9 we're set up right.

10 The people they met with, you heard from Mr. Fraser,
11 those weren't investment decion makers at Cantor Fitzgerald.
12 Those were people who gave advice on how to comply with the
13 law. He gave advice, and Mr. Garza ignored it.

14 Mr. Fraser even suggested that Mr. Garza meet with
15 Sullivan & Cromwell, one of the country's top law firms.
16 That's not materially assisting a fraud. That's trying to
17 prevent one. He was telling Josh Garza, do it right. Talk to
18 the one of the best lawyers in the country, and Mr. Garza
19 ignored him.

20 Now, the fourth item you heard Mr. Buchdahl like to
21 throw around the word partner. Now, the truth is Stuart Fraser
22 was a silent partner with no financial support to the
23 companies, and it's also true that these companies weren't
24 partnerships -- right? -- that they're not real -- you can't be
25 partner in a corporation, that Mr. Fraser used the term

1 "partner" like you talk about your, you know, when you're back
2 in ninth grade and you have a lab partner in science. He
3 wasn't saying that he's my partner because these aren't
4 partnerships. These are corporations.

5 Mr. Buchdahl likes to talk about the Twitter account.
6 And Mr. Fraser's Retweet of a few of GAW Miners' statements.
7 Here's where your common sense comes in.

8 Plaintiffs' argument doesn't make any sense. Mr.
9 Fraser had about 75 followers, his friends and his family.
10 Now, Mr. Shinnors says I was also a follower? You got to take
11 that with a grain of salt. You know, Mr. Shinnors, if he had
12 really been a follower of the Twitter account and really relied
13 on what was in that Twitter account, you can be darn sure that
14 Plaintiffs' lawyers would have brought that out when they
15 examined him they didn't touch it with a ten-foot pole. He
16 made that up as he sat there.

17 The people who were on Mr. Fraser's Twitter account
18 the friends and family are those the people he wants to suck
19 into something he knows is a fraud? That doesn't make any
20 common sense. And certainly the evidence is undisputed no one
21 no one responded to Mr. Fraser's few Tweets and Mr. Fraser
22 didn't bring a single investor into the company.

23 Now, Mr. Fraser spent -- sorry. Judge Shea spent a
24 lot of time talking about the law and I'm not going to go over
25 that at all. You're going to be asked about Hashpoints and

1 HashStakers look it's easy. These are not securities. You
2 look at the definition of securities, Hashpoint was an in-store
3 credit. HashStaker was an electronic wallet. Paycoin's also
4 not a security. It's a coin. It's a currency. And you can
5 see the Judge's jury instructions at page 30 even said
6 currency, it's not a security. And you can have the Department
7 of Justice Plea Agreement with Mr. Garza where they describe
8 Paycoin as a currency and even the Princeton professor said it
9 was a type of digital asset. It's used as a medium of
10 exchange. Look at the definition in the instructions. You can
11 see Paycoin is a currency and, therefore, not a security.

12 Hashlets also were not securities. The judge's
13 instructions tell you look at three things. Two of them
14 Hashlets fail the test. You had to have a common enterprise.
15 And that isn't true with Hashlets. Hashlets each customer's
16 fortunes were not tied to the fortunes of other customers
17 because each different customer could choose to be in a
18 different mining pool. One could make money one day -- that's
19 the happy fellow -- and one could lose money mining Hashlets
20 the same day that's the unhappy fellow and each person's
21 fortunes are not tied to the fortunes of GAW Miners because Mr.
22 Audet and Mr. Pfeiffer told you that GAW Miners made a fixed
23 fee on every customer regardless whether the customer's pool
24 made money that day or not. The customer could make zero
25 dollars or make five dollars or lose money. GAW Miners made

1 the same fee.

2 And the other factor the Judge instructed you on,
3 again these are on page 21 of the instructions, where the
4 profits are not derived solely from the efforts of others, it's
5 not going to be an investment contract and therefore not a
6 security. You heard Mr. Audet say, we had control. I could go
7 and I could boost a particular mining pool. I could change the
8 direction. I could go in and decide to mine in a different
9 pool. Choosing and choice and direction remained with the
10 customer.

11 THE COURT: Mr. Weiner, you have five minutes.

12 MR. WEINER: Thank you, Judge.

13 You heard the term control person liability and some
14 of these other terms are in the instructions. Remember,
15 control is a word that we can all recognize, control person
16 liability, it's not friend liability. It's not mentor
17 liability. It's not occasional advice liability. It's not
18 even minority investor liability. Mr. Buchdahl told you well,
19 there were equal owners you didn't hear a word from Mr.
20 Buchdahl about how Mr. Garza controlled the other 18 percent.
21 He was giving it out when he offered Mr. Eden, then Mr. Eden
22 and Mr. Dorman employment you didn't hear a work from Mr.
23 Buchdahl about how during 2014, Mr. Fraser said well, Mr. Garza
24 said I want you to drop down from 41 percent to 15 percent.
25 Mr. Fraser said, okay, I'll do it. It's your company. Never

1 got signed. But that was indicative of the control that Mr.
2 Garza had. He wanted Mr. Fraser to be a 15-percent owner and
3 he would own the rest and some of the employees might own a
4 little stock too.

5 Materially assist in a fraud you'll see in the
6 instructions requires that they have to prove that Mr. Fraser
7 assisted in committing securities fraud and that culpable
8 participation means that he had to act with intentional
9 misconduct or conduct that was highly unreasonable. Mr. Fraser
10 didn't do that. The proof doesn't show that.

11 Ladies and Gentlemen, the testimony and the evidence
12 show that Mr. Fraser was a good hearted and overly trusting
13 person, a man who spent his life helping those in need who
14 doesn't walk away from his friends. And he couldn't believe
15 that his business colleague of over a decade would play him.
16 This is a man who helped Mr. Garza buy his house, helped him
17 buy an engagement ring. He mentored him, he cared about him.
18 That's what he got in return.

19 Plaintiffs haven't proven that Mr. Fraser was the
20 unseen puppet master, the CEO above the CEO, as Mr. Garza
21 claimed, who directed and dictated and controlled Mr. Garza at
22 GAW Miners and ZenMiner. Instead, all the evidence is that Mr.
23 Garza, the CEO, played Mr. Fraser, used him, manipulated him
24 like he did to every other person who testified in this case,
25 including his childhood friend Eric Capuano and poor Mr.

1 Mordica, who lost his business.

2 Did Mr. Fraser ask questions? Sure. Did he
3 occasionally offer advice? Absolutely. Did he excitedly
4 follow his minority investment? Without a doubt.

5 Did Mr. Fraser take pride in what had been a
6 legitimate, hard wire mining company back in May of 2014 when
7 he called it his new baby and when he and everyone else at GAW
8 Miners thought it continued to be a legitimate company? No
9 question.

10 Ladies and Gentlemen, it's a heck of a thing to bring
11 down, crashing down Mr. Fraser's hard-earned reputation,
12 something that he spent a whole lifetime building, but that's
13 what the Plaintiffs urge you to do based on the lying king Josh
14 Garza's claim that Mr. Fraser had full control over him. Mr.
15 Garza conned his customers. He conned his business colleagues.
16 He conned his banks, and he conned Mr. Fraser. Don't let him
17 con you.

18 There's no question that people lost money as a result
19 of Mr. Garza's lies. That group includes Stuart Fraser. He
20 should not be made to pay any further for Mr. Garza's crimes.
21 At the end of the day, Ladies and Gentlemen, Plaintiffs simply
22 have the wrong man. We ask that you find Mr. Fraser not liable
23 for the fraud that Mr. Garza committed, a fraud for which Mr.
24 Garza stood up in this very court and took full responsibility
25 for.

1 Thank you, Ladies and Gentlemen.

2 THE COURT: Thank you, Mr. Weiner. Now we're going to
3 hear rebuttal from Mr. Buchdahl. He will have 14 minutes.

4 Plaintiffs rebuttal closing argument.

5 MR. BUCHDAHL: Defense counsel just stood up here and
6 told you that the Defendant spoke from his heart when he said,
7 I don't walk away from my friends. But that's the opposite of
8 what he told the SEC. What he told the SEC is that he did walk
9 away. And what he told you under oath at his deposition was
10 that he stayed in and tried to play nice to try to get some of
11 his money back.

12 See, the Defendant can't get his story straight. Was
13 he being loyal? Was he walking away? On whatever day, he
14 picks whatever story he thinks is going to sound best, and
15 you've now seen three different versions of that.

16 Now, for some reason the defense keeps saying that the
17 Plaintiffs changed their story. I'd like to put up DX 682D.
18 Remember Defense counsel showed you paragraph 17 from the
19 original Complaint. Ladies and Gentlemen, this is paragraph 18
20 from the original Complaint, the very next paragraph. Defense
21 counsel described that careful investigation that Mr. Shinnars
22 led and how they spent time really looking at the evidence to
23 figure out what had happened. And what was the conclusion at
24 the very beginning of this lawsuit? The original Complaint,
25 the very next paragraph.

1 Through Fraser's ownership of GAW Miners and his
2 long-standing personal and business relationship with Garza,
3 Fraser had the power to direct or cause the direction of the
4 management and policies of GAW Miners.

5 Fraser was a culpable participant in Garza and GAW
6 Miners' violations of federal and state securities laws.

7 I ask you, Ladies and Gentlemen, is there a single
8 thing that the Plaintiffs have said at this trial that is
9 inconsistent with what they said at the very outset, or have
10 they been making the same exact case against Mr. Fraser this
11 entire time?

12 Now, the Defense agrees the key question is one of
13 control. And you'll see on your verdict form that there are a
14 lot of questions asking you whether the Defendant is liable as
15 a control person. And in each one of those instances the
16 Plaintiffs submit that the answer is yes.

17 As the Court told you, there can be more than one
18 control person. The Defense asked you not to be fooled by that
19 instruction. There's nothing to be fooled by. It's very
20 straightforward. It's not like driving a car. When you have a
21 business, there can be more than one person in control.

22 And if you look at the Court's instructions, it
23 specifically says that if the person occupied a similar status
24 to that of a partner, a business partner, you can conclude that
25 person was a control person.

1 MR. WEINER: Your Honor, I'm going to object to that
2 last statement as going beyond the instruction it don't say
3 business disclosure.

4 THE COURT: It's overruled you can continue.

5 Q (By Mr. Buchdahl) And it asked Mr. Fraser under oath: You
6 considered yourself a partner in GAW Miners; correct? Answer:
7 Yes.

8 And, again, he told -- you can take this one out.

9 All right. So you heard Defense counsel also talk
10 about securities.

11 Now, we submit the evidence shows that each one of
12 those products were securities. Hashlets were securities. And
13 Hashpoints and HashStakers and Paycoin were really all the same
14 currency. That's really -- sorry -- really all the same
15 security. That's really all just Paycoin.

16 So if you look now at what the definition of an
17 investment contract, which is the definition of a security, oh,
18 sorry, start here. This is what the United States Government
19 concluded about Hashlets. This is a quote from the SEC's
20 Complaint in this very case against GAW Miners. And what the
21 United States Government concluded, and the Defense is happy
22 for you to follow their lead, is United States Government
23 concluded that Hashlets constitute investment contracts, and
24 thus are securities.

25 And the reason for that is because of the expectation

1 of profits to be derived from the efforts of others.

2 If you think about how that works, the efforts of
3 others was all the efforts that GAW Miners was making, or was
4 supposed to be making, mining. We know that wasn't really how
5 it ended up. But what people thought is that they were going
6 to receive a share of the mining profits that were happening in
7 the data center. So that's exactly what Hashlets were.

8 You can see that even Mr. Fraser understood that the
9 Hashlet customers were relying on GAW Miners' expertise.

10 And for each one of those individual buyers' fortunes
11 they were tied to the fortunes of other buyers. Now, the
12 Defense points out that you could be in different pools and
13 that some would have a different result from another. But
14 those are just different kinds of Hashlets. They were all
15 securities all tied to the other people in the same pool.

16 And you can see how the Government described it.
17 People were buying the rights to profit from a slice of the
18 computer power owned by GAW Miners. That was Plaintiffs'
19 Exhibit 119.

20 Now, as for Paycoin, right, we've already gone over
21 why that's not a currency, because you can't use it to buy
22 anything.

23 The Defense said that the Government -- that it was
24 described as a currency. It's actually described as a virtual
25 currency. That's really different; right? You don't have an

1 initial offering for dollars and cents. You don't have
2 investors kind of lining up, hey, we're going to bring out a
3 new quarter. Does everybody want to get involved and buy this?

4 The whole point about Paycoin was that GAW Miners
5 controlled it and they allowed people to buy it at a lower
6 price, all of whom were hoping to get to \$20, because that's
7 the promise that was being made.

8 And GAW Miners exercised centralized control over
9 Paycoin. That's one of the things Professor Narayanan
10 described. That's one of the thing that made it a security.

11 Now, again, Hashpoints, that's really just another way
12 of getting the security that was Paycoin.

13 HashStakers, the same thing. HashStakers was just a
14 certificate that would get you more Paycoin, and that's why all
15 of these things are securities.

16 All right. Now, the Defendant attacked the Plaintiffs
17 for somehow making a secret deal with Josh Garza. Now, I don't
18 understand what was supposed to be a secret about it. They
19 filed a new Complaint. They were all questioned about it at
20 their depositions, nothing about this deal was a secret.

21 But as to why they did it, remember what the evidence
22 tells you. The Department of Justice convicted Josh Garza of a
23 crime and entered a restitution order against him and required
24 him to pay back what little money he had to the victims.

25 Given that restitution order, what's the point in

1 suing Josh Garza? He can't give the same money up twice. So
2 it made perfect sense to focus the Plaintiffs' attention on the
3 other control person at the company, Stuart Fraser. The
4 agreement that Josh Garza signed didn't require him to rat on
5 the Defendant. Read it yourself and remember what the Judge
6 told you. The only way he could come back into the case is if
7 this judge thought that Josh Garza had breached the agreement.

8 And they made it sound like Josh Garza would say
9 whatever the Plaintiffs wanted. But then they showed you
10 testimony. They said, well, did Stuart Fraser come up with the
11 idea about the ZenMiner transaction? If Josh Garza was just
12 there to get Stuart Fraser in trouble, he would have said, of
13 course he did. That was all his idea.

14 But, no, Josh Garza told you when it was his idea and
15 when it wasn't. And that's what we told you at the outset.
16 Don't take Josh Garza's testimony for granted. See if it's
17 supported by the rest of the evidence.

18 Now, as for Josh Garza's character, certainly the
19 class of victims in this case certainly wish that all of their
20 witnesses could have been perfect choir boys. But the reality
21 is that this case is a securities fraud. And if you're going
22 to have to find out what happened in a securities fraud, you
23 need to speak to the people involved in the fraud. And,
24 remember, the Plaintiffs didn't choose Josh Garza. This
25 Defendant chose him. This Defendant took an 18-year-old boy,

1 who looked at him as a mentor and father figure, and he gave
2 him way too much money and he gave him way too much
3 responsibility. He put Josh Garza in charge of every single
4 business they ran together in the same pattern. Defendant gave
5 him the money, and Josh Garza ran the business.

6 And even after this Defendant knew, absolutely knew
7 beyond any question that Josh Garza could not be trusted, he
8 still allowed him to keep running this business that they had
9 started together.

10 Everything Josh Garza did in his life, including the
11 massive fraud at GAW Miners, he was only able to do because
12 this Defendant enabled him to do it.

13 And the reason that the securities laws of the United
14 States and Connecticut have control person liability is so the
15 people with responsibility can't just walk away.

16 The Defendant had every opportunity to choose a
17 different path. But unlike Eric Capuano, unlike Shiraz
18 Moosajee, unlike all the other employees who saw something was
19 wrong and walked away, this Defendant chose to stick with GAW
20 Miners right to the very end. He chose not to walk away then,
21 and he can't just walk away now because the law says he can't.
22 And you, Ladies and Gentlemen, should not let him.

23 Thank you.

24 THE COURT: Thank you, Mr. Buchdahl. Ladies and
25 Gentlemen, you've now heard my instructions on the law and the

1 parties' closing arguments. I remind you that the parties'
2 arguments are not evidence. I will now give you some final
3 instructions before you begin your deliberations, and I'm on
4 page 42 of the instructions if you'd like to follow along.

5 You were permitted to take notes during the course of
6 the trial. Any notes you have taken should be used only as
7 memory aids; do not give your notes more importance than your
8 independent recollection of the evidence. If you did not take
9 notes, you should rely on your own memory of the proceedings
10 and should not be unduly influenced by the notes of other
11 jurors. Your notes are not evidence and should not be shared.

12 Your verdict must be unanimous and represent the
13 considered judgment of each juror. Each of you must make your
14 own decision, but you must consider impartially all of the
15 evidence and the views of your fellow jurors. It is your duty
16 to consult with one another and to deliberate with a view
17 toward reaching an agreement, if you can do so consistent with
18 the individual judgment of each juror. Until the verdict is
19 agreed to by each juror, it is not a unanimous verdict.

20 In the course of your discussion, do not hesitate to
21 re-examine your own individual views, or to change your
22 opinions, if the deliberations and the views of your fellow
23 jurors convince you to do so. However, you should not
24 surrender your honest convictions about the facts or about the
25 weight or effect of the evidence solely because of the opinion

1 of your fellow jurors or merely to bring an end to
2 deliberations.

3 Remember at all times that you are not a partisan.
4 Rather, you are the judges of the facts and your sole interest
5 is to seek the truth from the evidence in this case.

6 Before you begin your deliberations, you will be
7 required to give your cell phones, tablets, and any other forms
8 of electronic communication to the courtroom deputy. The
9 courtroom deputy will ensure that these items are stored in a
10 safe place and we will return them to you after you finish your
11 deliberations for the day, or if necessary, at a break if you'd
12 like to take a break.

13 When you return to the jury room, you should first
14 elect one person to act as your foreperson. The foreperson
15 does not have any more power or authority than any other juror,
16 and his or her opinion does not count for any more than any
17 other juror's vote or opinion. The foreperson merely presides
18 over your deliberations and is your spokesperson to the Court.
19 She or he will send out any notes, and when the jury has
20 reached its verdict, she or he will notify the marshal that the
21 jury has reached its verdict and you will come out into open
22 court and give the verdict.

23 After you have retired to begin your deliberations,
24 you are not to leave your jury room without first notifying the
25 marshal, who will escort you. No deliberations may take place

1 without all jurors being present. If at any time a juror is in
2 the bathroom facilities, the other jurors must cease
3 deliberations and not resume deliberations until all jurors are
4 present.

5 Finally, you are prohibited from conducting any
6 outside research on the case.

7 A verdict Form has been prepared for your convenience.
8 Focusing on the questions set forth in the verdict Form will
9 assist you in your deliberations. I want to caution you --
10 sorry. I want to caution you now to take your time when
11 completing the verdict Form. Let me ask you to look at the
12 verdict form now, and I will walk through it briefly with you.
13 As you can see, the form consists of a series of questions that
14 are grouped into a total of six sections. And I'll just take a
15 moment just to identify the sections for you just so you have
16 it.

17 Section 1, whether the products are investment
18 contracts; Section 2 is the Connecticut uniform securities Act
19 claims;. Section 3 is the federal Exchange Act claim; Section
20 4 is the common law fraud claim; Section 5 is date concerning
21 Hashlets. There's a question about that; and Section 6 is the
22 affirmative defense applicable to named Plaintiff Shinnars only
23 followed by the signature block.

24 Each question calls on you either to check yes or no
25 or to write in a percentage. Answer each question as it

1 appears and only those questions on the form. As you review
2 the form, you will see that there are instructions in
3 bold-faced type. Please read these instructions and follow
4 them carefully. Depending on your answer to a particular
5 question, it may not be necessary to answer a later question.
6 Finally, be consistent in your responses.

7 You must complete and return the verdict form in court
8 when you have reached a unanimous agreement as to your verdict.
9 You will have the original verdict Form in the deliberation
10 room, and I will ask the courtroom deputy now to collect your
11 copies. So please -- just for the verdict Form. Keep your
12 copies of the instructions. Just the verdict Form. If you
13 please hand your verdict Forms to Ms. Johnson so she'll make
14 sure you only have one, the original, in the jury room. Keep
15 your copies of the instructions themselves.

16 Thank you.

17 You will be asked to answer the questions in the order
18 in which they appear on the form and each answer must be
19 unanimous. When you have reached unanimous agreement as to
20 your verdict, you will have your foreperson fill in your
21 answers, date and sign the verdict Form. If the foreperson
22 makes any error in completing the verdict Form, please do not
23 strike out the error and add a correct response. Instead,
24 please request a new Verdict Form, so that the Verdict Form
25 that is submitted is error-free. Then inform the court marshal

1 or clerk that you have reached your verdict. The verdict Form
2 must be used only in connection with the charge I have just
3 given to. The terms used in the Verdict Form are discussed in
4 my instructions, and these instructions must govern your
5 deliberations.

6 Shortly after you go into the jury room, the courtroom
7 deputy will bring you the exhibits in this case. We will also
8 have for you an index to the exhibits that the lawyers have
9 agreed on and that I have approved. Do not begin your
10 deliberations until she has brought you the exhibits. Do not
11 even elect a foreperson until she has brought you the exhibits,
12 as it is very important that your deliberations remain entirely
13 private and without interruption.

14 In the jury room, you will have exhibits with you but
15 you will not have a transcript of the testimony. If you need
16 to have testimony read back to you, we will do so. And that
17 includes deposition testimony. And the way we'll do that is
18 we'll have you come back into the courtroom to hear the
19 testimony read back. However, please understand that it is
20 difficult and time-consuming to locate and read back testimony.
21 If you, nevertheless, require a read-back, please be as
22 specific as possible about the portions of the testimony you
23 want to hear.

24 Your requests for a read-back of testimony and, in
25 fact, any communication with the Court, must be made to me in

1 writing, signed by your foreperson, and given to the marshal or
2 clerk. So if you're going to send me a note, make sure the
3 foreperson signs it. I will respond to your request as
4 promptly as possible either in writing or by having you return
5 to the courtroom so that I can address you orally.

6 I also must caution you that in your communications
7 with the Court, you should never reveal your numerical division
8 at any time. If you are divided, do not report how the vote
9 stands, and if you have reached your verdict, do not report
10 what it is until you are asked in open court.

11 It is proper to add a final caution. Nothing that I
12 have said in these instructions -- and nothing that I have said
13 or done during the trial -- has been said or done to suggest to
14 you what I think your verdict should be. What the verdict
15 shall be is your exclusive duty and responsibility.

16 Members of the Jury, that concludes my instructions to
17 you. Thank you for your patience and attention. You may now
18 retire, meaning you may follow Ms. Johnson to the jury room.
19 Take your instructions and your notes with you. And she's
20 going to arrange for the marshal to make sure you have what you
21 need to.

22 Great. If you could follow Ms. Johnson.

23 (The jury left the courtroom at 11:09 a.m. (.)

24 THE COURT: You folks can be seated.

25 So I have the exhibit list here the way that she

1 printed it, so I would like the one lawyer for each side to
2 sign under Plaintiff and Defendant.

3 Okay, a couple things. So, first of all, you're
4 welcome to stay in the courtroom. The CO 2 level's good. It
5 has been throughout. They clearly made an adjustment. We're
6 in the 550s so we're in good shape and it was in the 560s
7 throughout the final two arguments so we're in good shape on
8 that. You're welcome to stay in the courtroom.

9 If you leave the courtroom, that's fine. Just make
10 sure Ms. Johnson or my law clerk has your cell phone numbers,
11 just one cell phone number for each side would suffice. And
12 don't go to such a place that you'd be more than 20 minutes
13 away in case we need to summon you back for the note or the
14 verdict. That's about all I can think of.

15 I think that's all I have. Any questions about any of
16 that?

17 MR. BUCHDAHL: Your Honor, so it sounded like you
18 don't have a rule we have to stay in the courthouse. 20
19 minutes.

20 THE COURT: Yeah. You know, if you go across the
21 street for lunch or whatever, fine. Just make sure we can
22 reach you.

23 MR. BUCHDAHL: The only thing that -- and I apologize.
24 It only occurred to me now. You said -- I don't think it's big
25 deal. You said every question is yes or no or a percentage.

1 There was that additional question about a date.

2 THE COURT: And I forgot that. I added that
3 beforehand. I'm not going to correct that.

4 MR. BUCHDAHL: I think it's clear.

5 THE COURT: You're right. I forgot to change the
6 instructions on it. Thank you for pointing that out. All
7 right. Okay, anything else before we go?

8 MR. WEINER: Not from the Defense side.

9 THE CLERK: They're taking a break now.

10 THE COURT: So we get recess. So we get lunch for
11 them on deliberations day. I have no idea what would happen
12 but it would be unusual for them to come back before lunch for
13 anything. I think you're safe to go to lunch.

14 MR. BUCHDAHL: Your Honor, did you give them any
15 instructions about the end of today?

16 THE COURT: No, I didn't and I probably should have.
17 What I'll do is probably what I'll do is at 2:30, unless
18 counsel disagrees -- Devorah just give me one second. At 2:30
19 I think I will send in a note and the note will say the
20 following: Ladies and Gentlemen, we've been recessing every
21 day at 3:30. If you all want to go home -- if you want to go
22 home at 3:30 we'll have you recess at 3:30. If all of you --
23 and I'd like it to be unanimous -- wish to stay past 3:30
24 you're welcome to do that just please indicate that to us in a
25 note. Is there any problem if I do that?

1 MR. BUCHDAHL: No.

2 MR. WEINER: We're fine with it.

3 THE COURT: Okay. So I'll send in such a note. We'll
4 make it a court exhibit so you can see it. Very good. All
5 right. Thank you.

6 (Recess from 11:13 a.m. to 2:08 p.m.)

7 THE COURT: All right, we've received a note from the
8 jury. This is what it says: Dear, Your Honor, as regards
9 Question No. 1 and further questions, is it necessary for each
10 juror to agree unanimously to each subset question before
11 continuing to the next question, or is one lone adverse opinion
12 sufficient for a no answer from the jury to that question?

13 It's not signed by the foreperson, which it should
14 have been. But we've marked it as Court Exhibit No. 1.

15 I think I know what the answer to this question is,
16 and so I'm doing to write it out and read it to you and get
17 your comments on it.

18 Okay. So I'll say: We've received your note. In the
19 future please have the foreperson sign the note.

20 The answer to your question is that it is necessary
21 for each juror to agree, that is, for the decision to be
22 unanimous.

23 As to each answer to each question on the verdict
24 form.

25 As for the order in which you answer the questions,

1 the instructions on the form provide guidance about the proper
2 sequence and when it is okay to skip a question. But each
3 answer to each question must be unanimous.

4 I then also intend to tell them, instead of sending in
5 a note, that while we've been ending our trial day at 3:30,
6 that's not a constraint on their deliberations. If they all
7 wish to continue deliberating after 3:30, that's fine, we will
8 be here. But I'd like that decision to be unanimous.

9 If they wish to go home at 3:00 30 and return Monday,
10 that's fine too. I would just ask them to let us know either
11 way by around 3:15 because I will need to address them in the
12 courtroom before they leave.

13 Any objections to any of that?

14 MR. BUCHDAHL: Your Honor, no objection. I do think
15 it might make sense to remind them they're not supposed to tell
16 us about numerical --

17 THE COURT: Yes, good point.

18 MR. WEINER: Your Honor, our only comment is it
19 shouldn't be 3:30 or bust. You could say that they could
20 decided know to go to 5:00 or 4:30 or 3:15. If they decide
21 unanimously they could go. But it shouldn't be if you all
22 decide you don't want to go beyond it has to be 3:30.

23 THE COURT: I'm sorry?

24 MR. WEINER: I'm saying they have the alternative
25 right they can say well, we all want to go to five o'clock.

1 THE COURT: I thought -- well, I'll make that clear.
2 In other words, they can go for however long as they want as
3 far as I'm concerned. As you see, they turn off the lights at
4 6:00.

5 MR. WEINER: After 6:00 I don't think it works.

6 THE COURT: Very good. Let's get the jury.

7 (The jury entered the courtroom at 2:16 p.m.)

8 THE COURT: So, Ladies and Gentlemen, we have received
9 your note, and I've discussed it with the lawyers. I'm going
10 to read the note first.

11 It says dear, Your Honor, as regards Question No. 1
12 and further questions, is it necessary for each juror to agree
13 unanimously to each subset question before continuing to the
14 next question, or is it one lone adverse opinion sufficient for
15 a no answer from the jury to that question?

16 So the answer -- oh, two things before I give you the
17 answer.

18 First in the future please have the foreperson sign
19 the note; and second in the future if you're going to send
20 notes -- and you did it properly. You're welcome to send us
21 notes. But don't say anything that might reveal your neuromar-
22 cal division if the vote stands divided.

23 The answer to your question is that it is necessary
24 for each juror to agree, that is, for the decision to be
25 unanimous as to each answer to each question on the Verdict

1 Form.

2 As for the order in which you answer the questions,
3 the instructions on the form provide guidance about the proper
4 sequence and when it is okay to skip a question. But each
5 answer to each question must be unanimous one way or the other.

6 Now, one last instruction. Every day we've been
7 delib -- excuse me. We've been having trial until 3:30. But
8 that's not a constraint on your deliberations if you don't want
9 it to be. Here's what I'm getting at: If all of you decide --
10 and I do request that this decision be unanimous as well -- if
11 all of you decide that you would like to continue deliberating
12 today after 3:30, that's fine. We will be here. We would need
13 to clear the building by six o'clock, but apart from that, that
14 would be the only constraint.

15 On the other hand, if you all decide that, no, no or
16 even if -- I tell you what even if one of you decides simply
17 because I made a promise about 3:30 that, look, I'd really like
18 to go and do what the Judge said we could do, which is leave
19 the building by 3:30, then I would say that's fine too. You
20 can come back an Monday and continue.

21 We're actually ahead of schedule in this trial. We
22 originally intended to go through Tuesday, so that's no
23 problem. Either way, we will be here. It's up to you to
24 decide how long you want to deliberate on a particular day if
25 up to 3:30 or past 3:30. We'll be here either way.

1 We make one request, if you could simply send us a
2 note by 3:15 or so letting us know. If you say, Judge, we're
3 going to continue past 3:30, that's fine. We're not going to
4 bring you into the courtroom for that. If you say, Judge, we
5 want to go home at 3:30, I will bring you into the courtroom
6 because I do need to speak to you before I dismiss you for the
7 day one way or the other.

8 So thank you very much for your attention to my
9 instructions. I will ask you to return to the jury room at
10 this time.

11 (The jury left the courtroom at 2:19 p.m.)

12 THE COURT: All right, so we'll mark that note as
13 Court Exhibit 1. I'm going to leave it on Ms. Johnson's desk,
14 and we'll be in recess.

15 (Recess from 2:20 p.m. to 3:18 p.m.)

16 THE COURT: So we have a note. The jurors want to go
17 home for the weekend. It says, dear, Your Honor, the jury has
18 decided to adjourn at 3:30 today. It's signed by the
19 foreperson. We've marked it as Court's Exhibit 2. So
20 candidly, no surprise to me. It's a long Verdict Form. I'm
21 not at all surprised. I think it shows they're taking their
22 job seriously, which is a good thing.

23 So why don't we get the jurors and bring them in.

24 MR. BUCHDAHL: Your Honor, do we have a name for the
25 foreperson?

1 THE COURT: Allen something. I couldn't read the last
2 name.

3 (The jury entered the courtroom at 3:21 p.m.)

4 THE COURT: Folks, we received your note that you're
5 going to adjourn for the day and return on Monday. That's
6 perfectly fine also per felt normal, no problem. So I know
7 that you've been working hard and discussing the case and it's
8 probably very much on your mind. But I do need to tell you
9 that a modified version of my previous instruction applies.
10 The only place and time that you may discuss the case is when
11 you are all together with each other in the jury room. You may
12 not discuss the case at any other time with anyone. You may
13 not let anyone discuss it with you. No outside research even
14 though you might be tempted. Don't do any outside research on
15 the case whatsoever, no internet searches, no anything like
16 that. It's very important that your deliberations be together,
17 that your consideration of the evidence be together in the jury
18 room. So enjoy the weekend. Don't think about the case it
19 looks like we're going to have one nice day this weekend chilly
20 but nice we'll see you back in room 14 the room you've been in
21 8:45 on Monday. What we'll do is as soon as all nine of you
22 are there, just begin your deliberations. Don't begin until
23 all nine of you are there. Just begin your deliberations. I
24 won't have you back in the courtroom to get further
25 instructions until we hear from you. Have a good weekend.

1 Thank you very much for your hard work today.

2 (The jury left the courtroom at 3:22 p.m.)

3 THE COURT: And same to you all, have a nice weekend.
4 We'll see -- obviously open the courtroom. We'll see you all
5 at quarter of nine or thereabouts on Monday. Thank you.

6 (Proceedings concluded at 3:23 p.m.)

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