

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK SHIN,
Plaintiff,
v.
ICON FOUNDATION,
Defendant.

Case No. [20-cv-07363-WHO](#)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS SECOND AMENDED
COMPLAINT; RE-SETTING DATE
FOR CASE MANAGEMENT
CONFERENCE**

Re: Dkt. No. 59

Plaintiff Mark Shin alleges that defendant ICON Foundation (“ICON”) improperly interfered with his ownership and possession of ICX tokens, a crypto-asset native to the ICON blockchain network (“ICON Network”), which he created while taking advantage of an unintended error in ICON’s protocols. He appears to raise issues of first impression: both parties attempt to apply common law principles to the unique rules of the ICON Network to accuse the other of, among other things, interference with property rights. This area of law, and the rights of the parties, will benefit from a more complete factual record before decisions on the merits are made. At this stage, I find that Shin has stated a plausible claim. For the reasons set forth below, ICON’s motion to dismiss the Second Amended Complaint is DENIED with respect to the conversion and trespass to chattel claims and GRANTED with respect to the punitive damages claim.

BACKGROUND

The allegations in the First Amended Complaint are detailed in my previous order, which I incorporate by reference here. *See* Order Granting Motion to Dismiss with Leave to Amend and Denying Motion to Strike Without Prejudice (“May 2021 Order”) [Dkt. No. 57]. In the Second

1 Amended Complaint, Shin drops his claims for declaratory relief and defamation and now only
2 asserts three property-based claims: (i) conversion based on the frozen ICX tokens in his ICON
3 wallet; (ii) trespass to chattel based on the frozen ICX tokens in his ICON wallet; and (iii) trespass
4 to chattel based on the frozen crypto-assets in his accounts on exchange platforms Binance and
5 Kraken. *See* Second Amended Complaint (“SAC”) [Dkt. No. 58]. His allegations are largely the
6 same, with some additions noted below.

7 The ICON Network hosts a “delegated proof of stake” blockchain, which allows for the
8 creation of a cryptocurrency called ICX. SAC ¶ 32. ICON “essentially aims for decentralized
9 governance,” where transactions “are verified by a ledger shared within the community network
10 itself, *not controlled by a centralized authority*.” *Id.* ¶ 54 (emphasis in original). To achieve such
11 decentralization, ICON “incentivized its users to run full nodes that themselves were comprised of
12 community Public Representatives (‘P-Reps’).” *Id.* ¶ 55. The ICON Network is controlled by 22 P-
13 Reps. *Id.* ¶ 68. P-Reps are able to “change the policies of the various nodes or communities of which
14 they are part” on the ICON Network, and, through their voting power can “determine when to update
15 the code underlying the ICON Network and help contribute to the overall ICON ecosystem by
16 developing new apps and new features for the code.” *Id.* ¶ 55.

17 Sometime in early August 2020, ICON published a software proposal, the “Revision 9
18 Proposal,” which included a series of updates and was adopted on August 13, 2020. *Id.* ¶¶ 67, 69. On
19 August 22, 2020, Shin “attempted to direct some of his staked ICX tokens from being delegated to one
20 P-Rep to being delegated to another through the ICONex wallet.” *Id.* ¶ 69. After initiating the
21 redelegation process, “a process he had performed many times before,” Shin “noticed that 25,000 new
22 ICX tokens had appeared in his wallet.” *Id.* ¶ 70. He “thought that there was a visual bug” and when
23 he tried redelegating his tokens again, he saw that another 25,000 ICX tokens had appeared in his
24 wallet. *Id.* ¶ 71. “Considering that the protocol was awarding him ICX tokens every time he initiated
25 the redelegation process, Shin continued to repeat the process,” and “[b]y the end of the day, he had
26 received approximately 14 million ICX tokens from the ICX protocol.” *Id.* ¶ 78. Shin acknowledges
27 that “[t]he authors and developers of the Revision 9 Proposal may not have intended for the network

1 did adopt into the network.” *Id.* ¶ 80. He claims he is the “lawful owner of the ~14 million ICX
2 tokens rewarded to him on August 22, 2020.” *Id.* ¶ 81.

3 Shin transferred “a significant portion of” the approximately 14 million ICX tokens to crypto-
4 asset exchange platforms Kraken and Binance. *Id.* ¶ 82. “A few hours later, he learned that he could
5 no longer transfer *any* of his crypto-assets—including the ICX tokens—out of his Binance and Kraken
6 accounts.” *Id.* (emphasis in original). He alleges that this was because ICON contacted Kraken and
7 Binance and “directed them to freeze his accounts on those exchanges, which they did.” *Id.* ¶ 83.
8 Binance and Kraken froze his accounts based on allegedly false statements by ICON that “Shin was a
9 ‘malicious attacker’ who acquired ‘stolen’ funds.” *Id.* ¶ 85. Shin adds that Binance and Kraken were
10 able to identify his specific accounts because “he had previously provided the exchanges with his
11 personal information—including his driver’s license and home address—when setting up and
12 maintaining his accounts” and because ICON provided both exchanges with “the public key
13 information related to Shin’s ICX transactions.” *Id.* ¶¶ 87–88.

14 On August 24, 2020, ICON announced on the Medium website (the “Medium Post”) that
15 another software proposal, the “Revision 10 Proposal,” sought to correct the bug that Shin discovered,
16 explaining that on August 22, 2020, an account had “attack[ed] the ICON Network.” *Id.* ¶ 91.¹ Shin
17 claims that the Medium Post “contains multiple misrepresentations” and that he did not “attack” the
18 ICON Network as he “merely initiated a series of transactions directly facilitated by the ICON
19 blockchain and expressly permitted by ICON and P-Reps.” *Id.* ¶ 94. He adds that it is also false that
20 “the tokens were created by a single account” because he only created 14 million tokens whereas
21 ICON admitted “that nearly 20 million ICX tokens were created through the bug,” and thus other users
22 created 6 million tokens. *Id.* ¶ 95.

23 Shin also adds new allegations that “numerous affiliates of ICON *benefited* from the Revision
24 9 minting bug, dating back to at least August 14, 2020—eight days prior to Shin discovering its
25 existence.” *Id.* (emphasis in original). ICON publicly targeted him as a “scapegoat to distract
26 from its culpability in introducing the Revision 9 minting bug” and “at the same time sought to
27
28

cover up the fact that many of its close affiliates received ICX tokens from the same mechanism as Shin.” *Id.* ¶ 108. Since filing this action, he claims that his counsel has investigated the ICON blockchain to determine the identity of the other ICX wallets that benefited from the bug and has so far identified at least four other entities: “Velic, StakingTeam, ICX Station, and Hyperconnect.” *Id.* ¶ 109. The SAC lists the number of tokens each of the entities minted and the date the minting occurred, including one on August 17, 2020, two on August 21, 2020, and one on August 22, 2020, the same day as Shin. *Id.* ¶ 110. Shin alleges that the Revision 10 software update only limited his access to the ICX tokens in his wallet, not the other alleged beneficiaries of the Revision 9 bug. *Id.* ¶¶ 96–107.

Though ICON claims it has a decentralized system, Shin contends that it had de facto control over the ICON Network, particularly the network proposal approval process, including the Revision 10 update that deprived him of his property. *Id.* ¶¶ 117–32. He claims that ICON “punitively changed its code to target Shin, and in doing so interfered with and precluded him from exercising his rights of ownership over his property.” *Id.* ¶ 98.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). There must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* While courts do not require “heightened fact pleading of specifics,” a plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.” *See Twombly*, 550 U.S. at 555, 570.

In deciding whether the plaintiff has stated a claim upon which relief can be granted, the Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the

is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *See In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

DISCUSSION

I. CONVERSION

“Conversion is the wrongful exercise of dominion over the property of another.” *Oakdale Village Group v. Fong*, 43 Cal. App. 4th 539, 543–544, (1996). The elements of a conversion are (1) the plaintiff’s ownership or right to possession of the property at the time of the conversion; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages. *Id.*; *Burlesci v. Petersen*, 68 Cal. App. 4th 1062, 1066 (1998).

In its previous motion to dismiss, ICON argued that it is not the “responsible actor” for the Revision 10 release because only P-Reps can vote to determine when to update the code and thus Shin failed to allege that ICON “substantially interfered with [his] property by knowingly or intentionally taking possession of that property.” May 2021 Order at 16–17. I found that Shin had plausibly alleged ICON’s de facto control over the ICON Network, particularly over the network update approval process that included the approval of the Revision 10 Proposal. *Id.* at 18. However, it was not clear “how the implementation of the Revision 10 Network Proposal impacted Shin’s access to his ICX tokens” given conflicting allegations that he either still had access to the ICX tokens or that his access was restricted by ICON. *Id.* I gave him leave to amend “to fix this deficiency and plausibly explain what implementation of the Revision 10 Proposal did to his access to the ICX tokens, whether the access to all or specifically the 14 million generated ICX tokens were impacted and how the restriction at issue in this case qualifies as an ‘assumption of control.’” *Id.*

ICON now moves to dismiss the conversion claim on the grounds that Shin fails to allege that: (i) the ICX tokens generated on August 22, 2020 belong to him; (ii) ICON was the one responsible for dispossessing Shin of that property, (iii) ICON engaged in any wrongful conduct; (iv) and Shin suffered damages because of ICON’s conduct. The second argument fails because I

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