

## SUMMARY OF MUNCHEE SEC ORDER

1. **Facts:** - Munchee is a California business that created an app which is only available in US, (the “Munchee App”) for use with iPhones where users can post photographs and reviews of meals that they eat in restaurants. Munchee and its agents control the “Munchee Web Pages” which includes a Twitter account, a Facebook page, posts on various message boards and the “Munchee Website, where it posts the “MUN White Paper”.
2. **Munchee Offers To Sell MUN To The General Public:** - Munchee had developed a plan to raise capital through the creation of the MUN token issued on the Ethereum blockchain and incorporating the token into the Munchee App. Munchee created 500 million MUN tokens and stated that no additional tokens could be created. On or about October 1, 2017, Munchee announced it would be launching an “initial coin offering” to offer MUN tokens to the general public by posting the MUN White Paper which stated the way in which MUN tokens would increase in value and the ability for MUN token holders to trade MUN tokens on secondary markets. Munchee sought to raise about \$15 million in Ether by selling 225 million MUN tokens and offered 15% and 10% discount to purchasers at earlier stage of offering. It kept the remaining 275 million MUN tokens to support its business. Munchee described a timeline that provided for various development milestones in 2018 and 2019, and development of a smart contract on the Ethereum blockchain to integrate “in-app” use of the MUN token and setting up in-app wallets for end-users. The MUN White Paper stated that Munchee had done a “Howey analysis” and that the sale of MUN utility tokens does not pose a significant risk of implicating federal securities laws.
3. **Munchee’s Plan To Create An “Ecosystem” And Take Other Steps To Increase The Value Of MUN:-** Munchee said that it would use the offering proceeds to run its business, hire people, promote the Munchee App, and ensure “the smooth operation of the MUN token ecosystem.” No one was able to buy any good or service with MUN throughout the relevant period. MUN Whitepaper stated it would pay the users in MUN tokens for writing food reviews and would sell both advertising to restaurants and “in-app” purchases to app users in exchange for MUN tokens and diners could buy food with MUN tokens from restaurants. This would increase the value of MUN token. Munchee described a “tier” plan in which the holder having more tokens would be paid more for a review than a holder having less tokens. Also, Munchee said it could or would “burn” MUN tokens in the future when restaurants pay for advertising with MUN tokens, thereby taking MUN tokens out of circulation. This would increase the appreciation of the remaining MUN tokens as the total supply in circulation reduces and as users would prefer holding their MUN tokens. Munchee intended for MUN tokens to trade on a secondary market and stated it will ensure that MUN token is available on a number of exchanges in varying jurisdictions to ensure that this is an option for all token-holders.” Munchee represented that MUN tokens would be available for trading on at least one U.S.-based exchange within 30 days of the conclusion of the offering.
4. **Munchee Promoted MUN Tokens And Purchasers Had A Reasonable Expectation Of Obtaining A Future Profit:** - Purchasers expected profit from buying MUN tokens if Munchee succeeded in its entrepreneurial and managerial efforts to develop its business. Munchee posted blogs stating why one should buy MUN tokens, describing the entire ecosystem along with its opportunity to profit. This allured the users to create more quality content to attract more restaurants onto the platform resulting in the more quality content and increase in the value of the MUN token. Munchee targeted people with an interest in tokens or other digital assets that have in recent years created profits for early investors in ICOs for marketing MUN tokens and promoted it on forums like BitcoinTalk.org. Munchee offered to provide MUN tokens to people who promote MUN token offering on such forums. More than 300 people promoted the MUN token offering through social media and by translating MUN token offering documents into multiple languages so that Munchee could reach potential investors.
5. **MUN Token Purchasers Reasonably Expected They Would Profit From The Efforts Of Munchee And Its Agents:** - Purchasers expected Munchee to increase the value of the MUN tokens in the way stated by it

time and again. Munchee highlighted the credentials, abilities and management skills of its agents and employees. The MUN White Paper said that the value of MUN tokens would depend on the company's ability to change the Munchee App and create a valuable "ecosystem" which would inspire the users to create new reviews, buy meals and obtain MUN tokens to attain higher status. Munchee said that it and its agents would undertake that work during 2018 and 2019.

6. **Munchee Starts To Sell MUN On October 31, 2017:-** On or about October 31, 2017, Munchee started selling MUN tokens. Purchasers could pay one (1) Ether or one-twentieth (1/20) of a Bitcoin to buy 4,500 MUN. On or about November 1, 2017, Ether was trading on virtual currency exchanges for about \$300 USD and Bitcoin was trading for about \$6,500 USD.
7. **Munchee Stopped Selling MUN When It Was Contacted By Commission Staff:-** On November 1, 2017, Munchee stopped selling MUN tokens hours after being contacted by Commission staff. Munchee had not delivered any tokens to purchasers, and the company promptly returned to purchasers the proceeds that it had received. About 40 people purchased MUN tokens from Munchee which amounted 200 Ether (or about \$60,000 in USD at the time of the offering).
8. **Legal Analysis:** - Section 2(a) (1) of the Securities Act defines security as "an investment contract."<sup>1</sup> An investment contract is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.<sup>2</sup> In analyzing whether something is a security, "form should be disregarded for substance,"<sup>3</sup> "and the emphasis should be on economic realities underlying a transaction, and not on the name appended thereto."<sup>4</sup>

**The MUN Tokens Were Securities:** - The MUN tokens were securities as defined by Section 2(a) (1) of the Securities Act because they were investment contracts. Munchee offered and sold MUN tokens to potential investors in the United States, who paid Ether or Bitcoin in return. The proceeds of the MUN token offering was used to build an "ecosystem" that would create demand for MUN tokens and make MUN tokens more valuable. In addition, Munchee highlighted that it would ensure a secondary trading market for MUN tokens would be available shortly after the completion of the offering and prior to the creation of the ecosystem. The investors expected to get profit from the appreciation of value of MUN tokens resulting from Munchee's efforts however the Munchee did not promise investors any dividend or other periodic payment. Investors had little choice but to rely on Munchee and its expertise like no other person could make changes to the Munchee App or was working to create an "ecosystem" to create demand for MUN tokens. Munchee promoted MUN token offering at various forums (Munchee Webpages) to describe how they would revise Munchee App to develop a new ecosystem to create a demand for MUN tokens. Investors had reasonable belief that Munchee and its agents could be relied on to provide the significant entrepreneurial and managerial efforts required to make MUN tokens a success. Determining whether a transaction involves a security, requires an assessment of "the economic realities underlying a transaction"<sup>5</sup> i.e. all of the relevant facts and circumstances are considered in making that determination.<sup>6</sup>

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1 See 15 U.S.C. § 77b.

2 See SEC v. Edwards, 540 U.S. 389, 393 (2004); SEC v. W.J. Howey Co., 328 U.S. 293, 301 (1946); see also United Housing Found., Inc. v. Forman, 421 U.S. 837, 852-53 (1975) (The "touchstone" of an investment contract "is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.").

3 Tcherepnin v. Knight, 389 U.S. 332, 336 (1967).

4 Forman, 421 U.S. at 849.

5 Forman, 421 U.S. at 849.

6 See Forman, 421 U.S. at 849 (purchases of "stock" solely for purpose of obtaining housing not purchase of "investment contract"); see also SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 352-53 (1943) (indicating the "test . . . is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect").

