

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANDREW CHAIT, on behalf of himself
and all others similarly situated,

Plaintiff,

-v-

WENDY LEE, EILEEN BURBRIDGE, MARY
SCOTT, VERNA, ETTIE LEE, KEIKO FUJIWARA
and JOHN DOE NOS. 1-25,

Defendants.

Index No. _____

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

This case concerns the theft of cryptocurrency using a scheme known as “pig butchering.” Using fake identities, offshore bank accounts, and legitimate and illegitimate cryptocurrency exchanges, Defendants perpetrated a scheme to convert and fraudulently obtain large sums from Plaintiff and similarly situated individuals. Defendants did so by promising and pretending to deliver substantial returns on investments, including investments in cryptocurrency. The returns are fake and only once victims have been convinced to transfer large amounts of money with fabricated by convincing reports of false profits – the “fattening” – do the perpetrators and the victims’ assets disappear – the “butchering.” Defendants then transfer the stolen crypto through a complicated series of crypto transaction to hide the victim’s assets.

Through the *substantial* effort of Plaintiff’s counsel and experts, Plaintiff has identified specific cryptocurrency “wallets” in which the ill-gotten gains of Defendants’ scheme are *presently* held. Time is of the essence. Defendants are able to transfer the stolen cryptocurrency on a moment’s notice, likely beyond the reach of Plaintiff or the Court, and the ability of counsel to trace. Plaintiff thus seeks immediate injunctive relief, without notice to Defendants, freezing the cryptocurrency wallets in which the proceeds of the “pig butchering” scheme are presently held. Anything short of such emergency relief will leave Plaintiff and his similarly situated class members chasing ghosts, and without an adequate remedy at law.

As explained below, Plaintiff, individually and on behalf of those similarly situated, is likely to prevail on the merits of his claims that Defendants converted his funds and cryptocurrency. The harm that Plaintiff and the putative class members will suffer absent injunctive relief is immediate and irreparable, as the aim of Defendants’ scheme is to quickly and irreversibly place assets out of the reach of Plaintiff and this Court – which they will successfully

accomplish without this Court’s intervention. Absent an injunction, Plaintiff will be left with no remedy, let alone an adequate one, as the Defendants are believed to be fictitious persons of unknown origin. Finally, the balancing of equities tilts heavily toward intervening to stop an ongoing criminal scheme and freezing assets pending a full and final disposition of the merits of this case. Simply put, absent immediate injunctive relief, Plaintiff and similarly situated class members will have no remedy or recourse for millions of dollars’ worth of cryptocurrency stolen through Defendants’ “pig butchering” scheme.

New York courts have considered similar threats of cryptocurrency theft and have immediately enjoined defendants from transferring stolen property. See, e.g., Pouyafar v. John Doe Nos. 1-25, Index No. 654820/2023, [NYSCEF Doc. No. 8](#) (N.Y. Sup. Ct. Sept. 29, 2023) (Silvera, J.) (issuing temporary restraining order freezing stolen crypto assets); id. at [NYSCEF Doc. No. 17](#) (N.Y. Sup. Ct. Oct. 19, 2023) (Latin, J.) (issuing preliminary injunction order freezing crypto wallet); id. at [NYSCEF Doc. No. 37](#) (N.Y. Sup. Ct. Dec. 18, 2023) (Latin, J.) (issuing temporary restraining order freezing an additional 24 wallets); id. at [NYSCEF Doc. No. 47](#) (N.Y. Sup. Ct. Feb. 15, 2024) (Latin, J.) (issuing preliminary injunction order freezing same wallets); LCX AG v. John Doe Nos. 1-25, Index No. 154644/2022, [NYSCEF Doc. No 15](#) (N.Y. Sup. Ct. June 2, 2022) (Masley, J.) (issuing temporary restraining order freezing stolen crypto assets). As in those cases, Plaintiff is entitled to a temporary restraining order and preliminary injunction to prevent Defendants from transferring assets in the Deposit Wallets (the crypto wallets listed in Appendix A of the Complaint) and thereby forever depriving Plaintiff and putative class members of the assets that have been stolen from them.

FACTUAL BACKGROUND

The following facts are set forth in the Affirmation of Andrew Chait, executed October 22, 2024 (“CA”); the Affirmation of Charles Zach, executed October 23, 2024 (“ZA”); and the Affirmation of Rishi Bhandari, executed October 23, 2024 (the “BA”).

A. “Pig Butchering” Briefly Explained

“Pig butchering” is a scheme in which scammers promise victims returns on crypto investments and then fabricate evidence of positive performance of those investments on fake websites made to look like functioning cryptocurrency trading venues or investment companies. The “butcherers” do so to entice victims to “invest” more money. When the victims have been sufficiently “fattened” with false profits, scammers steal the victims’ cryptocurrency, and cover their tracks by moving the stolen property through a maze of subsequent transactions. “Pig butchering” victims in the United States have lost billions of dollars and “pig butchering” schemes have been the subject of state and federal government investigation and prosecution.¹

B. Chait is “Pig Butchered” by Defendants

Plaintiff Andrew Chait is the Vice President and CFO of Ralph M. Chait Galleries, the oldest specialist gallery in the United States in the field of fine antique Chinese porcelain and works of art, based in Manhattan. (CA ¶ 3.) Chait was unfortunately the victim of five interrelated pig butchering schemes perpetrated by Defendants in rapid succession, all of which used apparently fictitious identities: 1) Wendy Lee and Eileen Burbridge; 2) Mary Scott; 3) Verna; 4) Ettie Lee; and 5) Keiko Fujiwara. Defendants used these fictitious personas to gain

¹ See FinCEN Alert of Prevalent Virtual Currency Investment Scam Commonly Known as “Pig Butchering,” U.S. Treasury Financial Crimes Enforcement Network Sep. 8, 2023, https://www.fincen.gov/sites/default/files/shared/FinCEN_Alert_Pig_Butchering_FINAL_508c.pdf

Plaintiff's trust and perpetrate the interrelated schemes. While these schemes used different fake identities and separate phony websites, Plaintiff's counsel and experts have been able to determine that the ill-gotten gains from these schemes were funneled through the same interconnected maze of cryptocurrency "wallets." In other words, the same person or persons were behind all of the fictitious identities that Defendants used and are all part of the same overarching criminal enterprise.

a. Wendy Lee and Eileen Burbridge (CA ¶¶ 4–14)

On or about October 2023, Mr. Chait was contacted by an individual identifying herself as Wendy Lee through Facebook Messenger. Mr. Chait's communications with Wendy soon transitioned to WhatsApp and Telegram. Wendy introduced Mr. Chait to a "blockchain certified project," which she claimed was a high-return investment opportunity. Wendy told Mr. Chait that her aunt, Eileen Burbridge, a venture capitalist, had introduced her to the project, and that Mr. Chait should participate to maximize returns. Wendy provided Mr. Chait with a link to download a "SafePal" wallet, which Mr. Chait believed to be related to a legitimate platform. On November 16, 2023, Mr. Chait made his first transfer of \$5,225, following Wendy's detailed instructions. She guided him through depositing the funds and showed him supposed profits. Wendy presented Mr. Chait with what looked like a consistent track record of her own profits from the investment, further convincing Mr. Chait of its legitimacy.

Mr. Chait continued to make additional transfers to what he believed to be his SafePal wallet, which she described as secure, totaling \$55,275 by December 2023. Ms. Burbridge also convinced Mr. Chait to set up an account with what she said was the crypto trading platform "CoinJar," which Mr. Chait did, and to which he sent over \$100,000. Wendy and Ms. Burbridge both reported profits from Mr. Chait's investments, which reinforced Mr. Chait's belief that the

platforms were legitimate. When Mr. Chait later attempted to withdraw funds from “CoinJar” and “SafePal,” Mr. Chait was informed that additional fees were required to process the withdrawal. Despite Mr. Chait’s efforts, Mr. Chait was unable to access any funds.

b. Mary Scott (CA ¶¶ 15–27)

On December 9, 2023, Mr. Chait was contacted by Mary Scott through Facebook, and they began communicating on WhatsApp. Mary presented herself as an experienced cryptocurrency trader and suggested that Mr. Chait invest through CoinExchange, a platform she described as “regulated and safe.” Mr. Chait followed Mary’s detailed instructions to access CoinExchange through a specific link she provided. Mary emphasized that this platform was highly secure and had provided her with significant returns. Following her advice, Mr. Chait made several deposits between January 11, 2024, and February 8, 2024, totaling \$150,090.

Throughout this period, Mary guided Mr. Chait step-by-step, and Mr. Chait received reports of profits from the platform, which looked legitimate to Mr. Chait at the time. These reports showed substantial returns, which further encouraged Mr. Chait to continue investing. But when Mr. Chait attempted to withdraw funds in February 2024, Mr. Chait was informed, purportedly by CoinExchange’s Customer Service, that he needed to pay a “commission” of \$71,306.13 before the funds could be released. When Mr. Chait was unable to pay the fee by the deadline, it appeared that \$270,000 was deducted from Mr. Chait’s account as a “penalty.” Mr. Chait was never able to withdraw any funds.

c. Verna (CA ¶¶ 28–37)

On December 27, 2023, an individual named Verna contacted Mr. Chait through a text message. They began communicating on Telegram, where Verna represented herself as a gold options trader and introduced Mr. Chait to “Vbitex,” a trading platform she claimed was highly

profitable. Verna provided screenshots showing large profits from her own trades, which made the platform seem credible. On her advice, Mr. Chait made three deposits to Vbitex between March 4, 2024, and April 4, 2024, totaling \$1,491.64. Verna provided detailed guidance on how to set up Mr. Chait's account and make trades, and Mr. Chait was shown profits from these trades on the platform. However, when Mr. Chait attempted to withdraw funds from Vbitex, Mr. Chait was told that additional payments were necessary to cover withdrawal fees. Mr. Chait was ultimately unable to withdraw any of my funds.

d. Ettie Lee (CA ¶¶ 38–44)

On April 25, 2024, Mr. Chait received a message from Ettie Lee on Facebook Messenger. Ettie presented herself as a cryptocurrency trader who had made substantial profits through a platform called Alpha Homora. She instructed Mr. Chait to use the Coinbase Wallet application to access Alpha Homora, and between May 23, 2024, and May 29, 2024, Mr. Chait, following Ettie's instructions and believing himself to be transferring funds to Alpha Homora, transferred approximately \$12,500 in cryptocurrency to wallets controlled by Defendants. Ettie provided screenshots and detailed instructions throughout the process, which appeared credible at the time. Despite seeing apparent profits on the platform, when Mr. Chait attempted to withdraw funds in July 2024, Mr. Chait was informed that an additional \$12,000 was required to cover fees. Mr. Chait was unable to pay the amount and ultimately lost access to the funds.

e. Keiko Fujiwara (CA ¶¶ 45–53)

On April 30, 2024, Mr. Chait was contacted by Keiko Fujiwara through Facebook Messenger. She introduced Mr. Chait to a trading platform called "ICMarket," which she described as a lucrative opportunity for cryptocurrency trading. Ms. Fujiwara provided Mr. Chait with a link to access the platform, and Mr. Chait made two deposits there between June and July

2024, totaling \$2,295.25. Mr. Chait followed her instructions, and the platform showed Mr. Chait apparent profits, which reinforced Mr. Chait's belief in its legitimacy. When Mr. Chait attempted to withdraw funds in August 2024, Mr. Chait was informed by "ICMarket's" customer service that Mr. Chait needed to pay additional fees totaling \$4,741.43. Despite Mr. Chait's efforts, Mr. Chait was unable to access the funds or recover Mr. Chait's investments.

C. Inca Capital Confirms the Scheme and Traces the Stolen Assets

After Mr. Chait was unable to recover his funds, he contacted Inca Digital ("Inca"), a digital market investigation firm. Inca's investigation revealed that Defendants orchestrated a common scheme to steal money from Mr. Chait and similarly situated Class Members. (ZA at ¶ 6.) The investigation further determined that these stolen funds were transferred to cryptocurrency wallets under Defendants' control, which are listed in Appendix A of the Complaint. (ZA at ¶ 7.)

Inca's investigation revealed that Defendants used fake platforms to move and convert Class Members' assets, transferring the funds through a series of transactions designed to obscure their origins. Inca's investigation was conducted in two precise, reliable, and replicable phases.

In Phase One, Inca's "forward tracing" began tracking the flow of funds by examining transfers from Mr. Chait to the addresses he was given by Defendants, and then tracking subsequent transfers. (ZA at ¶ 11.) This process involved three steps: (1) identifying the addresses of wallets that initially received Mr. Chait's assets; (2) tracking the subsequent transfer of those assets to intermediary addresses; and (3) determining that the Mr. Chait's assets were ultimately deposited into the wallets listed in Appendix A, which include wallets on the cryptocurrency exchanges Binance, OKX, and KuCoin. (Id.)

In phase two, Inca conducted a “reverse trace,” which involved tracing funds flowing into the wallets identified during phase one. Through this analysis, Inca uncovered further wallet addresses involved in the same transaction patterns as Mr. Chait’s funds, thus revealing a broader network of wallets involved in the scam. (ZA at ¶ 12.) This tracing methodology confirmed the involvement of exchange-controlled and privately held wallets in the misappropriation of Class Members’ funds.

Through its forward tracing and reverse tracing analysis, Inca’s investigation uncovered a network of cryptocurrency wallets through which Class Member funds were funneled. (ZA at ¶ 13.) At least 82 of these wallets are associated with suspicious activity, including known scams, darknet-related activity, or are listed by the U.S. Office of Foreign Assets Control. (Id.) The number of these wallets present in the network shows that the whole network is controlled by the perpetrators of a fraudulent crypto scheme. (Id.)

Further, the interactions between the wallets in the network is highly indicative of fraudulent activity. Specifically, the network contains wallets engaging in behavior that is associated with cryptocurrency fraud schemes and is rarely if ever associated with legitimate cryptocurrency transactions. (ZA at ¶ 14.) Two types of wallets are present in scam networks: “Transport Addresses” and “Pivot Addresses.” (Id.) “Transport Addresses” are designed to simply forward everything they receive, moving funds as far and as quickly as possible from the victim to frustrate tracing. (Id.) “Pivot Addresses” mix funds and serve as hubs for numerous transport channels. (ZA at ¶ 15.) Additionally, sources of funds for these addresses often include wallets already flagged for scam activity, gambling, darknet involvement, or inclusion in sanction lists. (Id.) Overall, the interactions between the different wallets in the network gave

Mr. Chait’s counsel and investigators a high degree of confidence that the entire network exists as part of the scam and is controlled by Defendants. (Id.)

Based on its analysis, Inca concluded that the Class Members include around 2,000 victims. (ZA at ¶ 6.)

A detailed analysis of the methodology and support for Inca’s conclusions concerning tracing the location of Mr. Chait’s and the putative Class Members’ assets is set forth in the Zach Affirmation. The bottom line is that Mr. Chait’s and the Class Members’ funds converted by Defendants were sent to the cryptocurrency wallets listed in Appendix A of the Complaint. (See also ZA at ¶ 7, Appendix A.)

D. Chait Files His Complaint in This Action

On October 23, 2024, Chait filed his Complaint here on behalf of himself and other similarly situated victims of Defendants’ “pig butchering” scheme. (NYSCEF Doc. No. 1 (Summons and Complaint).) In it, Chait asserts claims on behalf of himself and other putative Class Members for conversion (Count I), money had and received (Count II), and Unjust Enrichment (Count III). (Id.)

LEGAL STANDARD

The Court may grant a preliminary injunction (“PI”) where:

The defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

CPLR § 6301.

The Court may grant a temporary restraining order (“TRO”) pending a hearing for a preliminary injunction “where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” Id.

“A party seeking a preliminary injunction must demonstrate, by clear and convincing evidence (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant’s favor.” Gilliland v. Acquafredda Enterprises, LLC, 92 A.D.3d 19, 24 (1st Dep’t 2011).² “New York courts do not apply the three-prong test uniformly and mechanically. The analysis is one designed to be flexible and remedies are often tailored to the facts of a specific case.” Destiny USA Holdings, LLC v. Citigroup Glob. Markets Realty Corp., 24 Misc. 3d 1222(A), at *8 (Sup. Ct. Onondaga Cnty. 2009). Ultimately, “[t]he decision to grant or deny a preliminary injunction lies within the sound discretion of the trial court.” Gilliland, 92 A.D.3d at 24.

ARGUMENT

Mr. Chait meets the above requirements for a preliminary injunction and temporary restraining order because (1) he is likely to succeed on the merits of its claims, (2) Mr. Chait and putative class members will almost certainly suffer the irretrievable loss of their crypto assets if a TRO and preliminary injunction are not granted because Defendants can easily transfer the crypto assets beyond the reach of Mr. Chait or the Court on a moment’s notice, and (3) the balance of equities weighs in Mr. Chait’s favor due to the enormous harm Mr. Chait will suffer absent an injunction and TRO, the fact that Defendants are engaged in a criminal enterprise to

² Unless noted otherwise, internal citations, quotation marks, alterations, and footnotes have been omitted.

steal cryptocurrency from innocent victims, and the minimal harm Defendants will suffer from the temporary freezing of their crypto assets in the unlikely event that any legitimately acquired crypto assets are inadvertently frozen, which could, in any event, be quickly unfrozen by the Court.

I. THIS COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER WITHOUT NOTICE AND ORDER DEFENDANTS TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

A. Mr. Chait and Other Class Members Have a High Probability of Success on the Merits.

1. Conversion

Mr. Chait has demonstrated a high probability of success on the merits on his claim for conversion. According to the Court of Appeals, “[a] conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person’s right of possession.” Colavito v. New York Organ Donor Network, Inc., 8 N.Y.3d 43, 49–50 (2006). To succeed on a claim for conversion, a plaintiff must prove “(1) plaintiff’s possessory right or interest in the property and (2) defendant’s dominion over the property or interference with it, in derogation of plaintiff’s rights.” Core Dev. Grp. LLC v. Spaho, 199 A.D.3d 447, 448 (1st Dep’t 2021). Defendants’ theft of Cryptocurrency belonging to Mr. Chait and putative class members (ZA at ¶¶ 5–7; CA at ¶¶ 4–53) and use of a complicated series of transactions to move that cryptocurrency beyond the reach of its rightful owners (ZA at ¶¶ 18–90) clearly establishes a conversion. Other courts addressing stolen cryptocurrency in similar circumstances have likewise found that plaintiffs met their burden of demonstrating a likelihood of success on their conversion claim. See, e.g., Chow v. Defendant 1, No. 24-CV-480, 2024 WL 1639029, at *2 (E.D. La. Apr. 16, 2024) (finding plaintiff demonstrated likelihood of success of New York law conversion claim on the merits and

granting TRO freezing stolen crypto assets); Astrove v. Doe, No. 22-CV-80614-RAR, 2022 WL 2805315, at *3 (S.D. Fla. Apr. 22, 2022) (Granting ex parte temporary restraining order in a cryptocurrency scheme, finding that the “[p]laintiff has shown a strong likelihood of success on the merits of his claims,” including a claim for conversion); Blum v. Defendant 1, No. 3:23-cv-24734-MCR-HTC, ECF No. 6 at 5 (N.D. Fla. Dec. 13, 2023) (Ex. 1)³ (Granting an ex parte temporary restraining order holding that, “Blum’s cryptocurrency assets are specific, identifiable property that can be traced to Defendants’ Destination Addresses.”); Yogarathnam v. Dubois, No. CV 24-393, 2024 WL 758387, at *3 (E.D. La. Feb. 23, 2024) (plaintiff likely to succeed on merits of conversion claim because “[i]t appears from the record that Defendants have no right to claim either possession or ownership of the stolen assets, and Defendants’ taking of the funds is clearly inconsistent with Plaintiff’s rights of ownership”).

2. Money Had and Received

Mr. Chait has demonstrated a high probability of success on the merits of his claim for money had and received. “Although the action is recognized as an action in implied contract, . . . it is an obligation which the law creates in the absence of agreement when one party possesses money that in equity and good conscience he ought not to retain and that belongs to another.” Parsa v. State, 64 N.Y.2d 143, 148 (1984). “The elements of money had and received are (1) the defendant received money belonging to the plaintiff, (2) the defendant benefitted from receipt of the money, and (3) under principles of equity and good conscience, the defendant should not be permitted to keep the money.” Cordaro v. AdvantageCare Physicians, P.C., 208 A.D.3d 1090, 1094 (1st Dep’t 2022). For more than a century, the cause of action for “money had and

³ Ex. __ refers to Exhibits to the Affirmation of Rishi Bhandari, dated October 23, 2024.

received” has entitled a plaintiff who is the equitable owner of assets to recover from a defendant who possesses those assets. See Roberts v. Ely, 113 N.Y. 128, 131-32 (1889).

Here, Defendants received money that belonged to Mr. Chait and putative class members (ZA at ¶¶ 20–21, 32–33, 41, 51, 53–54, 58, 60, 67–68, 75; CA at ¶¶ 4–53), and Defendants benefitted from receipt of the cryptocurrency by misappropriating it. (Id.) In light of Defendants’ criminal scheme, Mr. Chait has demonstrated that principles of equity and good conscience demand that the cryptocurrency be returned to its rightful owners.

B. Mr. Chait and Similarly Situated Class Members are Likely to Suffer Irreparable Harm Absent a TRO and Preliminary Injunction.

New York courts routinely find the risk that defendants will dispose of assets, thereby rendering judgment ineffective, constitutes irreparable harm. See, e.g., H.I.G. Cap. Mgmt., Inc. v. Ligator, 233 A.D.2d 270, 271 (1st Dep’t 1996) (“The uncontrolled disposal of respondents’ assets, which might render an award ineffectual, presents the risk of irreparable harm.”); Zonghetti v. Jeromack, 150 A.D.2d 561, 562 (2d Dep’t 1989) (“the uncontrolled sale and disposition by the defendants of their assets would threaten to render ineffectual any judgment which the plaintiffs might obtain”). This is especially true where the subject of the preliminary injunction is funds or property that defendant has allegedly converted from plaintiff. See Punwaney v. Punwaney, 148 A.D.3d 489, 489–90 (1st Dep’t 2017) (preliminary injunction against transfer of funds in subject accounts); Republic of Haiti v. Duvalier, 211 A.D.2d 379, 386–87 (1st Dep’t 1995) (same); see also Walkill Med. Dev., LLC v. Catskill Orange Orthopaedics, P.C., 131 A.D.3d 601, 602–03 (2nd Dep’t 2015) (granting preliminary injunctions against defendants to prevent defendants from disposing of assets).

Courts in other jurisdictions have repeatedly held that cryptocurrency theft schemes threaten imminent and irreparable loss absent injunctive relief. As the court in Jacobo v. Doe

noted, “district courts have found that the risk of irreparable harm to be likely in matters concerning fraudulent transfers of cryptocurrency due to the risk of anonymous and speedy asset dissipation.” No. 1:22-cv-00672-DAD-BAK (BAM), 2022 WL 2052637, at *5 (E.D. Cal. June 7, 2022). This is in part because “it would be a simple matter for [defendant] to transfer” cryptocurrency “to unidentified recipients outside the traditional banking system . . . and effectively place the assets at issue in this matter beyond the reach of this court.” Id.; see also Gaponyuk v. Alferov, No. 2:23-cv-01317-KJM-JDP, 2023 WL 4670043, at *3 (E.D. Cal. July 20, 2023) (same); Blum v. Defendant 1, No. 3:23-cv-24734-MCR-HTC, 2023 WL 8880351, at *3 (N.D. Fla. Dec. 23, 2023) (“Given the speed with which cryptocurrency transactions are made as well as the anonymous nature of those transactions, the Defendants could abscond with or dissipate the cryptocurrency assets they fraudulently obtained before [plaintiff] can otherwise obtain the equitable relief he seeks in the Complaint.”); Bullock v. Doe, No. 23-CV-3041 CJW-KEM, 2023 WL 9503380, at *5 (N.D. Iowa Nov. 3, 2023) (“[O]nce defendants are served, it is near certain that they will convert the stolen cryptocurrency into an untraceable currency, send it to other addresses, or transfer it beyond the reach of any forensic methods for recovery.”) Hikmatullaev v. Villa, No. 23-cv-22338-ALTMAN/Reid, 2023 WL 4373225, at *3 (S.D. Fla. June 28, 2023), report and recommendation adopted, No. 23-CV-22338, 2023 WL 4363566 (S.D. Fla. July 6, 2023) (finding irreparable harm because of the “likely danger that if Defendants’ assets are not frozen, the cryptocurrency assets Defendants fraudulently obtained and still retain may be absconded with or otherwise dissipated before Plaintiffs can obtain the relief sought in the Complaint”); Astrove v. Doe, No. 22-CV-80614-RAR, 2022 WL 2805315, at *3 (S.D. Fla. Apr. 22, 2022) (granting TRO and finding “it is imperative to freeze [defendants’ crypto wallets] to maintain the status quo to avoid dissipation of the money illegally taken from

Plaintiff’); Astrove v. Doe, No. 22-CV-80614-RAR, 2022 WL 2805345, at *5 (S.D. Fla. June 17, 2022) (granting PI and finding that if “Defendant JOHN DOE is allowed to transfer or encumber the Property, . . . Defendant JOHN DOE will have successfully put Plaintiff’s stolen funds beyond Plaintiff’s reach.”); Heissenberg v. Doe, No. 21-CIV-80716-ALTMAN/Brannon, 2021 WL 8154531, at *2 (S.D. Fla. Apr. 23, 2021) (“Plaintiff has good reason to believe the Defendant will hide or transfer his ill-gotten gains beyond the jurisdiction of this Court unless those assets are restrained.”); Fitzgerald v. Defendant 1, No. 24-21925-CV, 2024 WL 3537916, at *2 (S.D. Fla. June 12, 2024) (“the verified complaint establishes that the stolen assets could be transferred from the Destination Addresses at any time, making time of the essence”); Chow v. Defendant 1, No. 24-CV-480, 2024 WL 1639029, at *2 (E.D. La. Apr. 16, 2024) (“because of the anonymity and speed at which cryptocurrency transactions have the potential to be made, a TRO is necessary to prevent Defendant 1 from transferring Plaintiff’s allegedly stolen assets into unreachable or unidentifiable digital wallets”) Yogarathnam v. Dubois, No. CV 24-393, 2024 WL 758387, at *4 (E.D. La. Feb. 23, 2024) (“Plaintiff’s potential recovery of assets will disappear if Defendants transfer the allegedly stolen assets into inaccessible digital wallets, which could occur at any moment.”).

Courts have similarly held that a money judgment is an *inadequate* legal remedy based both on the anonymity of the defendants and the difficulty of tracing the transfer of cryptocurrency. See, e.g., Bullock v. Doe, No. 23-CV-3041 CJW-KEM, 2023 WL 9503380, at *5 (N.D. Iowa Nov. 3, 2023). As that court reasoned, “defendants will likely convert the crypto to a place where plaintiff can no longer find it or find defendants themselves.” Id. Thus, “plaintiff in fact likely does not have an adequate legal remedy, because a money damages

judgment would be essentially meaningless.” Id. The court noted that this was particularly the case where “plaintiff has been unable to identify the people behind the alleged scheme.” Id.

The same is true here. Defendants’ identities are either unknown or fake. As in Bullock, a money judgment against them is meaningless. Absent an injunction, Defendants can be expected to continue to transfer Mr. Chait’s and the other Class Members’ cryptocurrency beyond the reach of discovery and this Court. Absent a TRO and preliminary injunction, Mr. Chait and the other Class Members will be left with no adequate legal remedy.

C. The Balance of Equities Favors Mr. Chait.

The balance of equities favors Mr. Chait and putative class members. First, Mr. Chait and putative class members will suffer extraordinary harm from the failure to preserve the status quo because Defendants will almost certainly move the stolen cryptocurrency beyond the reach of the Court absent a TRO and preliminary injunction. On the other hand, Defendants will suffer only the inconvenience of having the cryptocurrency temporarily frozen—which can be addressed if any Defendant appears and presents evidence of ownership—pending the final disposition of this matter. New York courts have found the equities to tilt in favor of a preliminary injunction where the relative harm weighs so clearly in Plaintiff’s favor. See Kurtz v. Zion, 61 A.D.2d 778, 778 (1st Dep’t 1978) (“damage to plaintiffs from denial of the preliminary injunction and delivery of the stock out of escrow to defendants . . . would cause substantially greater harm to plaintiffs if they are ultimately proved right in this action, than the harm that would be caused to said defendants by the granting of the preliminary injunction if the defendants are ultimately proved right.”); Clarion Assocs., Inc. v. D.J. Colby Co., 276 A.D.2d 461, 463 (2d Dep’t 2000) (granting preliminary injunction where “failure to grant preliminary injunctive relief would cause greater injury to it than the imposition of the injunction would cause to the defendant”).

Second, Mr. Chait and putative class members are victims of Defendants’ criminal scheme to steal cryptocurrency. New York courts routinely find the balance of equities tip in plaintiff’s favor when the defendant is allegedly engaged in illegal conduct. See, e.g., Williams v. Hertzwig, 251 A.D.2d 655, 656 (2d Dep’t 1998) (balance of equities tipped in favor of plaintiff where defendant was operating illegal dog kennel); City of New York v. Smart Apartments LLC, 39 Misc. 3d 221, 233 (Sup. Ct. N.Y. Cnty. 2013) (“the equities lie in favor of shutting down an illegal, unsafe, deceptive business practice, rather than allowing said business to continue to operate (to defendants’ presumed financial advantage)”); Banana Kelly Cmty. Imp. Ass’n v. Schur Mgmt. Co., 34 Misc. 3d 1207(A) (Sup. Ct. Bronx Cnty. 2012) (granting preliminary injunction where plaintiff argued that “the balance of the equities favor them in that without a preliminary injunction, [defendant] will continue its illegal conversion of rents due to [plaintiff] during the crucial early month rent collection period”); City of New York v. The Land, 81 Misc. 3d 1224(A) (N.Y. Sup. Ct. Kings Cnty. 2023) (“the equities favor the City, especially since this case involves the alleged illegal sale of marijuana to minors”).

Courts in other jurisdictions that have directly addressed cryptocurrency theft have weighed the respective harms to plaintiff and defendants and found in favor of a preliminary injunction. As the Court in Jacobo held, balancing of these harms favors Plaintiff: “A delay in defendant’s ability to transfer the assets only minimally prejudices defendant, whereas withholding injunctive relief would severely prejudice plaintiff by providing defendant time to transfer the allegedly purloined assets into other accounts beyond the reach of this court.” No. 1:22-cv-00672-DAD-BAK (BAM), 2022 WL 2052637, at *6; see also Blum v. Defendant 1, No. 3:23-cv-24734-MCR-HTC, 2023 WL 8880351, at *3 (N.D. Fla. Dec. 23, 2023) (“It is perhaps [plaintiff’s] only realistic chance at a future recovery in this case, and Defendants will suffer at

worst a temporary inability to move assets that it appears they have no right to possess.”); Fitzgerald v. Defendant 1, No. 24-21925-CV, 2024 WL 3537916, at *3 (S.D. Fla. June 12, 2024) (“Maintaining the assets at the Destination Addresses may be Plaintiff’s only chance at a future recovery in this case, and Defendants will suffer no more than a temporary inability to move assets that it appears they do not have a right to possess.”); Gaponyuk v. Alferov, No. 2:23-cv-01317-KJM-JDP, 2023 WL 4670043, at *3 (E.D. Cal. July 20, 2023) (“[A] short-term freeze is unlikely to present any great harms. The court can lift this order if the defendants appear and show a continuing injunction would cause them prejudice.”) Heissenberg v. Doe, No. 21-CIV-80716-ALTMAN/Brannon, 2021 WL 8154531, at *1 (S.D. Fla. Apr. 23, 2021) (balance of hardships favors granting TRO); Hikmatullaev v. Villa, No. 23-cv-22338-ALTMAN/Reid, 2023 WL 4373225, at *3 (S.D. Fla. June 28, 2023), report and recommendation adopted, No. 23-CV-22338, 2023 WL 4363566 (S.D. Fla. July 6, 2023) (same); Astrove v. Doe, No. 22-CV-80614-RAR, 2022 WL 2805315, at *3 (S.D. Fla. Apr. 22, 2022) (same); Bullock v. Doe, No. 23-CV-3041 CJW-KEM, 2023 WL 9503380, at *7 (N.D. Iowa Nov. 3, 2023) (same); Chow v. Defendant 1, No. 24-CV-480, 2024 WL 1639029, at *2 (E.D. La. Apr. 16, 2024) (same); Yogarathnam v. Dubois, No. CV 24-393, 2024 WL 758387, at *4 (E.D. La. Feb. 23, 2024) (same); Astrove v. Doe, No. 22-CV-80614-RAR, 2022 WL 2805345, at *5 (S.D. Fla. June 17, 2022) (balance of hardships favors PI).

Because the relative harm Mr. Chait and putative class members would suffer is so much greater and because Defendants are engaged in a criminal scheme to steal cryptocurrency, the balancing of equities tilts in favor of Plaintiff and granting a preliminary injunction.

D. A Temporary Restraining Order Without Notice is Necessary to Preserve the Status Quo.

The Court should grant Plaintiff's motion for a temporary restraining order without notice because any notice to Defendants would almost certainly cause Defendants to move the stolen cryptocurrency out of the wallets identified by Plaintiff, making it extraordinarily unlikely that the cryptocurrency would ever be recovered and returned to its rightful owners. (ZA at ¶ 92.) Recognizing that absent a temporary restraining order any further relief granted by the court would likely be meaningless in these circumstances, New York courts considering similar threats of cryptocurrency theft have previously responded immediately to freeze the offending crypto wallets without notice to defendants. *See, e.g., Pouyafar v. John Doe Nos. 1-25*, Index No. 654820/2023, [NYSCEF Doc. No. 8](#) (N.Y. Sup. Ct. Sept. 29, 2023) (Silvera, J.) (issuing temporary restraining order freezing stolen crypto assets); *id.* at [NYSCEF Doc. No. 47](#) (N.Y. Sup. Ct. Feb. 15, 2024) (Latin, J.) (issuing preliminary injunction order freezing an additional 24 crypto wallets); *LCX AG v. John Doe Nos. 1-25*, Index No. 154644/2022, [NYSCEF Doc. No. 15](#) (N.Y. Sup. Ct. June 2, 2022) (Masley, J.) (issuing temporary restraining order freezing stolen crypto assets). Courts in other jurisdictions have followed suit. *See, e.g., Shaya v. Nofs*, 24-cv-10670-MAG-EAS, EFC Doc. No. 4 (E.D. Mich. March 18, 2024) (Ex. 2); *Jacobo v. Doe*, No. 1:22-cv-00672-DAD-BAK (BAM), 2022 WL 2052637, at *6 (E.D. Cal. June 7, 2022); *Fitzgerald v. Defendant 1*, No. 24-21925-CV, 2024 WL 3537916, at *3 (S.D. Fla. June 12, 2024); *Heissenberg v. Doe*, No. 21-CIV-80716-ALTMAN/Brannon, 2021 WL 8154531, at *1 (S.D. Fla. Apr. 23, 2021); *Gaponyuk v. Alferov*, No. 2:23-cv-01317-KJM-JDP, 2023 WL 4670043, at *1 (E.D. Cal. July 20, 2023); *Blum v. Defendant 1*, No. 3:23-cv-24734-MCR-HTC, ECF No. 6 at 5 (N.D. Fla. Dec. 13, 2023) (Ex. 1); *Hikmatullaev v. Villa*, No. 23-cv-22338-ALTMAN/Reid, 2023 WL 4373225, at *4-5 (S.D. Fla. June 28, 2023), report and

recommendation adopted, No. 23-CV-22338, 2023 WL 4363566 (S.D. Fla. July 6, 2023); Astrove v. Doe, No. 22-CV-80614-RAR, 2022 WL 2805315, at *3 (S.D. Fla. Apr. 22, 2022); Bullock v. Doe, No. 23-CV-3041 CJW-KEM, 2023 WL 9503380, at *7 (N.D. Iowa Nov. 3, 2023); Chow v. Defendant 1, No. 24-CV-480, 2024 WL 1639029, at *3 (E.D. La. Apr. 16, 2024); Yogaratham v. Dubois, No. CV 24-393, 2024 WL 758387, at *4 (E.D. La. Feb. 23, 2024).

As in those cases, Plaintiff is entitled to a temporary restraining order to prevent Defendants from transferring assets in the Deposit Wallets and thereby forever depriving Plaintiff and putative class members of the assets that have been stolen from them.

II. THE UNDERTAKING, IF ANY, SHOULD BE MINIMAL

The purpose of an undertaking upon granting a preliminary injunction is to cover the “damages and costs which may be sustained by reason of the injunction” if it is later determined the movant is not entitled to the injunction. CPLR § 6312(b). In this case, the risk of harm to Defendants from a TRO is minimal, as the wallets will be frozen only for a short time before Defendants have an opportunity to be heard. As the risk of harm to Defendants is so low and the equities so clearly favor Plaintiff, the Court should not require an undertaking at this point.

New York Courts have granted TROs restraining movement of crypto assets in similar situations without requiring any undertaking. See Pouyafar v. John Doe Nos. 1-25, Index No. 654820/2023, [NYSCEF Doc. No. 8](#) (N.Y. Sup. Ct. Sept. 29, 2023) (Silvera, J.); LCX AG v. John Doe Nos. 1-25, Index No. 154644/2022, [NYSCEF Doc. No. 15](#) (N.Y. Sup. Ct. June 2, 2022) (Masley, J.). The Court in Pouyafar set a \$5,000 undertaking in connection with the preliminary injunction freezing a single crypto wallet and increased that undertaking to \$10,000 when freezing an additional 24 wallets. Pouyafar v. John Doe Nos. 1-25, Index No. 654820/2023, [NYSCEF Doc. No. 17](#) (N.Y. Sup. Ct. Oct. 19, 2023) (Latin, J.); id. at [NYSCEF Doc. No. 37](#) (N.Y. Sup. Ct. Dec. 18, 2023) (Latin, J.). Courts in other jurisdictions have granted TROs and

preliminary injunctions in similar cases involving stolen cryptocurrency with minimal or no undertaking. See Shaya v. Nofs, 24-cv-10670-MAG-EAS, EFC Doc. No. 4, ¶ 11 (E.D. Mich. March 18, 2024) (Ex. 2) (granting TRO with no bond); Jacobo v. Doe, No. 1:22-cv-00672-DAD-BAK (BAM), 2022 WL 2052637, at *6 (E.D. Cal. June 7, 2022) (granting TRO with no bond); Hikmatullaev v. Villa, No. 23-cv-22338-ALTMAN/Reid, 2023 WL 4373225, at *4 (S.D. Fla. June 28, 2023), report and recommendation adopted, No. 23-CV-22338, 2023 WL 4363566 (S.D. Fla. July 6, 2023) (granting TRO with no bond); Gaponyuk v. Alferov, No. 2:23-cv-01317-KJM-JDP, 2023 WL 4670043, at *3 (E.D. Cal. July 20, 2023) (granting TRO with no bond); Blum v. Defendant 1, No. 3:23-cv-24734-MCR-HTC, ECF No. 6 (N.D. Fla. Dec. 13, 2023) (Ex. 1) (granting TRO with \$100 bond); Chow v. Defendant 1, No. 24-CV-480, 2024 WL 1639029, at *2 (E.D. La. Apr. 16, 2024) (same); Yogarathnam v. Dubois, No. CV 24-393, 2024 WL 758387, at *4 (E.D. La. Feb. 23, 2024) (same); Astrove v. Doe, No. 22-CV-80614-RAR, 2022 WL 2805345, at *5 (S.D. Fla. June 17, 2022) (granting PI with no bond); Bullock v. Doe, No. 23-CV-3041-CJW-KEM, 2023 WL 9503377, at *1 (N.D. Iowa Dec. 18, 2023) (granting PI with \$100 bond); Blum v. Defendant 1, No. 3:23-cv-24734-MCR-HTC, 2023 WL 8880351, at *1 (N.D. Fla. Dec. 23, 2023) (granting PI with \$100 bond).

III. PLAINTIFF SHOULD BE PERMITTED TO SERVE DEFENDANTS USING APPROPRIATE ELECTRONIC MEANS

Attorneys and investigators for Mr. Chait have identified the details of Defendants' transactions, and the current location of Mr. Chait's and putative class members' property. However, John Doe Nos. 1-25 remain unidentified and therefore cannot be served by traditional means. (See ZA at ¶ 93.) In similar cases dealing with stolen cryptocurrency, New York courts have approved of service via the crypto wallets holding plaintiffs' stolen cryptocurrency. See e.g., Pouyafar v. John Doe Nos. 1-25, Index No. 654820/2023, [NYSCEF Doc. No. 8](#) (N.Y. Sup.

Ct. Sept. 29, 2023) (Silvera, J.) (service of temporary restraining order freezing stolen crypto assets); id. at [NYSCEF Doc. No. 17](#) (N.Y. Sup. Ct. Oct. 19, 2023) (Latin, J.) (service of preliminary injunction order freezing crypto wallet); id. at [NYSCEF Doc. No. 47](#) (N.Y. Sup. Ct. Feb. 15, 2024) (Latin, J.) (service of preliminary injunction order freezing an additional 24 crypto wallets); LCX AG v. John Doe Nos. 1-25, Index No. 154644/2022, [NYSCEF Doc. No. 15](#) (N.Y. Sup. Ct. June 2, 2022) (Masley, J.) (service of temporary restraining order freezing stolen crypto assets); id. at [NYSCEF Doc. No. 112](#) (service via a special-purpose Ethereum-based token delivered into crypto wallets satisfies CPLR 308(5)). This form of service has been approved in cases involving disputes with unknown defendants about cryptocurrency in other jurisdictions as well. E.g., Shaya v. Nofs, 24-cv-10670-MAG-EAS, EFC Doc. No. 4, ¶ 3 (E.D. Mich. March 18, 2024) (Ex. 2); Fitzgerald v. Defendant 1, No. 24-21925-CIV, 2024 WL 3538245, at *3 (S.D. Fla. June 28, 2024); Stil Well v. Defendant “1,” No. 23-21920-CIV, 2023 WL 5670722, at *3 (S.D. Fla. Sept. 1, 2023); Bowen v. Li, No. 23-CV-20399, 2023 WL 2346292, at *3 (S.D. Fla. Mar. 3, 2023); Bandyopadhyay v. Defendant 1, No. 22-CV-22907, 2022 WL 17176849, at *3 (S.D. Fla. Nov. 23, 2022); Chow v. Defendant 1, No. 24-CV-480, 2024 WL 3225917, at *1 (E.D. La. Apr. 19, 2024); Blum v. Defendant 1, No. 3:23-cv-24734-MCR-HTC, 2023 WL 8880351, at *2-3 (N.D. Fla. Dec. 23, 2023) (approving service via nonfungible token).

Mr. Chait asks that the Court allow notice by similar electronic means here.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Court enter a temporary restraining order and freeze the cryptocurrency wallets listed in Appendix A of the Complaint, pending a hearing on a preliminary injunction.

Plaintiff further respectfully requests that this Court permit Plaintiff to serve Defendants via the Input Data Message process, whereby a message with a link to a website containing documents is sent to a crypto wallet using the Input Data field on a transaction on the Ethereum blockchain, and that such service shall constitute good and sufficient service for purposes of jurisdiction under New York law on the person or persons controlling the Deposit Wallets.

Plaintiff further requests that the Court set no or minimal undertaking pursuant to CPLR § 6312(b).

Plaintiff further requests that the Court grant a preliminary injunction freezing the Deposit Wallets pending final disposition of this matter.

Plaintiff further requests the Court grant all other relief that is just and proper.

Dated: New York, NY
October 23, 2024

Respectfully submitted,

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himself and all others similarly situated.*

Certification Pursuant to 22 NYCRR § 202.8-b

I, Rishi Bhandari, at attorney duly admitted to practice law before the courts of the State of New York, hereby certifies that this Memorandum of Law contains 6,905 words, excluding the parts exempted by § 202.8-b(b), and therefore complies with the word count limit set forth in 22 NYCRR § 202.8-b(a).

Dated: New York, New York
October 23, 2024

By: /s/ Rishi Bhandari

Rishi Bhandari, Esq.