

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

LCX AG,

Plaintiff,

-against-

JOHN DOE NOS. 1–25,

Defendants,

~1.274M U.S. DOLLAR COIN,

Defendant *in rem*,

-and-

CIRCLE INTERNET FINANCIAL, LLC, and  
CENTRE CONSORTIUM, LLC,

Garnishees and Relief Parties.

Index No. 154644/2022

Justice Andrea Masley  
IAS Part 48

Motion Sequence No. 1

**AFFIRMATION OF ELLIOT A.  
MAGRUDER PURSUANT TO  
CPLR 2217(b) AND UNIFORM  
RULES 130-1.1 AND 202.7(f)**

ELLIOT A. MAGRUDER, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms under penalty of perjury, and in fulfillment of the requirements of CPLR 2217(b):

1. I am a member of the law firm of Holland & Knight LLP, the attorneys for Plaintiff LCX AG (“**LCX**”) in the above-captioned action against Defendants John Doe Nos. 1–25 (collectively, “**Doe Defendant(s)**”), Defendant *In Rem* ~1.274M U.S. Dollar Coin, and Garnishees and Relief Parties Circle Internet Financial, LLC and Centre Consortium, LLC.

2. LCX has moved, by order to show cause (the “**Motion**”), seeking an order, pursuant to Civil Practice Law and Rules §§ 6301, 6312 and 6313: (i) requiring Doe Defendant(s) to show cause before the Court why an order should not be issued preliminarily enjoining Doe Defendant(s) during the pendency of this action from disposing of, processing, routing, facilitating, selling,

transferring, encumbering, removing, paying over, conveying or otherwise interfering with the assets property, debts, accounts, receivables, rights of payment, or tangible or intangible assets of any kind of Doe Defendant(s), whether such property is located inside or outside of the United States, including, but not limited to, the virtual asset known as USD Coin (“USDC”) deposited on June 30, 2022 to an account which is held by, or in the possession, custody, or control of, Genesis Trading Global, Inc., (the “Genesis Account”); (ii) expanding the Temporary Restraining Order, issued on June 2, 2022 (the “TRO”; NYSCEF No. 15), to prohibit Genesis Trading Global, Inc. (“Genesis”) from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Doe Defendant(s)’ property, debts, accounts, receivables, rights of payment, or tangible or intangible assets of any kind, whether such property is located inside or outside of the United States, including, but not limited to, the USDC transferred to the Genesis Account; and (iii) imposing a constructive trust over the Genesis Account, with the assets in the Genesis Account to be held in trust by Genesis for the benefit of LCX, including, but not limited to, the 5 million USDC deposited into the Genesis Account on June 30, 2022.

3. Pursuant to CPLR 2217(b), LCX has not previously moved for the relief sought by this Motion, brought by order to show cause.

4. There has been a prior motion in this matter requesting injunctive relief. On June 1, 2022, LCX, by order to show cause, filed an application for a preliminary injunction, pursuant to CPLR §§ 6301, 6312 and 6313 (*see* NYSCEF Nos. 1-14): (i) enjoining Doe Defendant(s) from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Doe Defendant(s)’ property, debts, accounts, receivables, rights of payment, or tangible or intangible assets of any kind, whether such property

is located inside or outside of the United States, including, but not limited to, the USDC stored at the Address; and (ii) enjoining the Address from transacting in USDC by directing Centre Consortium, LLC to invoke its Centre Consortium USDC Network Access Denial Policy.

5. Additionally, I make the following Affirmation: (i) pursuant to Uniform Rule 202.7(f) (22 N.Y.C.R.R. § 202-7(f)), to demonstrate that giving notice to Doe Defendant(s) of the present application for a preliminary injunction, temporary restraining order and for a constructive trust would result in significant prejudice to LCX; and (ii) pursuant to Uniform Rule of the Chief Administrator 130-1.1-a (22 N.Y.C.R.R. § 130-1.1 and 130-1.1a), to certify that the papers listed below and the contentions therein are not frivolous as defined in this Uniform Rule.

6. As more fully set out in the First Amended Complaint (NYSCEF No. 22), dated June 22, 2022, the Affidavit of Jonelle Still, and the exhibits thereto (including multiple tracing reports), sworn to on July 15, 2022, and the memorandum of law in support of the Motion, which are entirely incorporated by referenced into this Affirmation, the Doe Defendant(s) have repeatedly violated the TRO since its entry on June 3, 2022 (NYSCEF No. 15) by further transferring assets out of the Address, which assets are directly attributable, with a high level of confidence, to the January 2022 hack of LCX.

7. Specifically, on or about June 25, 2022, Doe Defendant(s) removed 600 ether from the Address (which is subject to the TRO), which cryptocurrency they transferred and swapped for other virtual assets, before comingling the proceeds with USDC from as-yet unidentified sources into one sum of 5 million USDC. At a minimum, a portion of this USDC can be traced with a high level of certainty to the January 2022 hack of LCX.

8. On June 30, 2022, Doe Defendant(s)' sent the 5 million USDC to the Genesis Account.

9. Since learning of the June 30, 2022 transfer, LCX has repeatedly contacted Genesis to notify it of the TRO and to request that it block access to the Genesis Account, on grounds that the transfer violates Genesis's Terms of Service for myriad reasons (the "**Terms of Service**").

10. Genesis has not substantively responded to LCX's communications, much less confirmed that it has invoked the Terms of Service or any other policy to block access to the Genesis Account.

11. Accordingly, LCX understands that the Genesis Account is freely accessible, including by Doe Defendant(s), and as a result, the 5 million USDC can be sold or otherwise transferred nearly instantly with no notice.

12. Absent the expansion of the TRO, Doe Defendant(s) face no impediment to yet again transfer or dissipate their assets in violation of the TRO. This could cause irreparable harm to LCX because it could render Doe Defendant(s) judgment proof in the event that LCX prevails in this litigation.

13. Doe Defendant(s) have appeared by counsel in this matter, Sharova Law Firm ("**Sharova**"). Through an investigation conducted by Holland & Knight LLP, the undersigned's law firm, LCX understands that filing this Motion under a restricted designation in the NYSCEF system would notify Sharova, who may inform Doe Defendant(s)' that LCX seeks additional injunctive relief.

14. With this knowledge, Doe Defendant(s) may transfer the 5 million USDC held in the Genesis Account, which diminish, or foreclose entirely, LCX's efforts to remedy the January 2022 hack.

15. For these reasons, LCX may suffer irreparable harm in the event that it notifies Doe Defendant(s), Sharova, Genesis, or any other relevant party of the relief requested in the Motion.

16. I hereby certify that, pursuant to 22 N.Y.C.R.R. § 130-1.1 and 130-1.1 that, to the best of my knowledge, information and belief, formed after a reasonable inquiry under the circumstances, the following papers listed below or the contentions therein are not frivolous as defined in 22 N.Y.C.R.R. § 130-1.1(c):

- a. Amended Complaint (NYSCEF No. 22);
- b. Proposed Order to Show Cause and Expanded Temporary Restraining Order and for Additional Relief;
- c. Affidavit of Jonelle Still, and the exhibits thereto; and
- d. Memorandum of Law in Support of LCX's Motion for a Preliminary Injunction, Expanded Temporary Restraining Order, and Imposition of a Constructive Trust.

Dated: New York, New York  
July 18, 2022

/s/ Elliot A. Magruder

**CERTIFICATION PURSUANT TO 22 NYCRR § 202.70(17)**

I, Elliot A. Magruder, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Affirmation complies with the word count limit set forth in 22 NYCRR § 202.70(17) and contains 1,165 words, excluding the parts exempted by the Rule.

Dated: New York, New York  
July 18, 2022

/s/ Elliot A. Magruder