

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

<p>LCX AG,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>JOHN DOE NOS. 1-25,</p> <p style="text-align: center;">Defendants.</p>

Index No. _____

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

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Plaintiff LCX AG (“**LCX**”), by and through its undersigned counsel, respectfully submits this memorandum of law in support of its application for a preliminary injunction, pursuant to Civil Practice Law and Rules (“**CPLR**”) §§ 6301, 6312 and 6313: (i) enjoining Defendants John Doe Nos. 1-25 (collectively, “**Defendants**”) and garnishees subject to jurisdiction in New York, including, but not limited to, Centre Consortium, LLC (“**CCL**,” and collectively, “**Garnishees**”), from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants’ 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 cryptocurrency known as USD Coin (“**USDC**”) stored at address numbered 0x29875bd49350aC3f2Ca5ceEB1c1701708c795FF3 (the “**Address**”); and (ii) enjoining the Address from transacting in USDC by directing CCL to invoke its Centre Consortium USDC Network Blacklisting Policy (the “**Policy**”).

Additionally, pending that preliminary injunction, LCX seeks temporary injunctive relief (i) prohibiting Defendants and Garnishees, from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants’ 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 held at the Address; and (ii) directing CCL to invoke the Policy to prevent the Address from transacting in USDC.

PRELIMINARY STATEMENT

This is an action for the unauthorized access to and theft of nearly \$8 million worth of various virtual assets held by LCX, a virtual asset service provider in Liechtenstein. All of the virtual assets were based on the Ethereum blockchain.

The theft was perpetrated by Defendants, who are unknown persons who took numerous measures to obscure the resulting transaction trail left behind on the Ethereum blockchain, including exchanging the stolen assets for other forms of virtual assets and the use of virtual asset services tailor-made to foil virtual asset tracing investigations.

LCX's investigation has led it to initiate recovery actions in Liechtenstein, Ireland, and now in the United States—wherever recovery of the stolen assets may be effected.

As set forth below, LCX respectfully requests that the Court grant the requested relief because LCX satisfies the requirements in the applicable provisions of CPLR Article 63.

First, LCX shows that it is likely to prevail on its claim for conversion because LCX has the right to possess the USDC remaining in the Address, Defendants are clearly in possession of this property, and by selling the assets stolen from the LCX Address—including as recently as May 31, 2022—Defendants are acting in derogation of Plaintiff's rights, including with respect to its possessory interest in the assets held in the Address.

Second, LCX shows that it is likely to prevail on its claim for money had and received because the property in the Address first results from the theft of the assets from the LCX Address (as defined below), and then the subsequent clandestine transactions that Defendants' deployed to hide their ill-gotten proceeds. Accordingly, equity and good conscience cannot permit Defendants to continue to reap the rewards from their brazen theft of LCX's assets from the LCX Address.

LCX satisfies the remaining elements for the requested relief because: (i) it will suffer irreparable harm in the event the remaining USDC is siphoned out of the Address, as this may represent the only portion of the stolen assets that LCX will be able to recover at this juncture; and (ii) the balance of the equities entirely favors LCX given that Defendants engaged in a brazen hack and then theft of LCX's property, including the USDC held in the Address.

Finally, LCX submits that a very low undertaking is warranted here, if any, given that the equities so forcefully favor LCX and it satisfies the additional elements for the requested relief.

STATEMENT OF FACTS

The following facts are set forth in detail the accompanying documents: (1) the Affidavit of Monty Metzger, sworn to on June 1, 2022 (the “**Metzger Aff.**”), with exhibits; and (2) the Affirmation of Andrew W. Balthazor, executed on June 1, 2022 (the “**Balthazor Aff.**”), with exhibits.

I. The Parties

LCX is a company based in Liechtenstein, located at Herrengasse 6, 9490 Vaduz, Principality of Liechtenstein. Metzger Aff. ¶ 1. LCX is the operator of the internet platform LCX.com. *Id.* ¶ 2. LCX.com enables trading in cryptocurrencies on the LCX Exchange (exchange.LCX.com). *Id.* The LCX Exchanges holds crypto assets in a number of wallets. *Id.* ¶ 3.

Defendants are unknown hackers who, as set forth below, broke into the LCX Exchange and stole approximately \$8 million in cryptocurrency assets from an LCX Exchange wallet at a blockchain address (the “**LCX Address**”) associated with a cryptocurrency known as Ethereum (“**ETH**”). *See id.* ¶¶ 4–5.

CCL governs the protocol on which USDC operates. Balthazor Aff. ¶ 29. LCX understands that CCL maintains a place of business at 120 E. 71st, New York, New York 10021.

II. Defendants Hack the LCX Exchange and Steal Nearly \$8 Million in Cryptocurrency

On or about January 8, 2022, Defendants gained unauthorized access to the LCX Address and used the illegitimate access to transfer approximately \$8 million worth of cryptocurrency assets from the LCX Address to an address under their sole control. *See Metzger Aff.* ¶¶ 4–5.

Upon learning of the hack, LCX suspended activity on the LCX Exchange and investigated the incident. *See id.* ¶ 6. LCX alerted the National Police of the Principality of Liechtenstein as to

the hack and the measures already taken by LCX to prevent further losses and mitigate against the attack.¹ *Id.* ¶ 7. LCX also collaborated with an analytics company to further trace the stolen assets and attempt to ascertain the Defendants' identities. *Id.* ¶ 8. The culmination of this collaboration was a Funds Tracing Report presented by LCX on January 17, 2022 (the "Tracing Report"). *See id. & id.* Ex. 2.

III. The Tracing Report and the Further Investigation Identify the Address

The Tracing Report documents LCX's investigation of the theft of approximately \$8 million from the LCX Address. *See generally* Tracing Report. The Tracing Report also shows how Defendants sent the currencies stolen from the LCX Address to Tornado Cash, which is known as a "mixer." *See id.* at 4. Defendants used Tornado Cash as a "mixer" in order to obfuscate the flow of virtual currencies and impede efforts to trace the path of the assets that Defendants stole from the LCX Address. *See* Balthazor Aff. ¶¶ 13–15.

Within an hour of the theft from the LCX Address, defendants liquidated the proceeds into ETH. *Id.* ¶ 18. Ultimately, that ETH was funneled through Tornado Cash in nearly 50 transactions and much of it ended up in the Address which still holds USD Coin. *See id.* ¶¶ 20–27.

IV. Defendants Use the Address to Purchase and Sell the USD Coin

Starting in late March 2022, Defendants purchased and sold USDC in several transactions using the ETH held in the Address. *Id.* ¶¶ 24–26. CCL is the entity governing the protocol—controlling the software rules—on which USDC operates. *Id.* ¶ 29. Pursuant to the Policy, CCL is able to prevent the Address (or any other ETH blockchain address) from transacting in USDC:

[CCL] has the ability to block individual [ETH] Blockchain addresses from sending and receiving [USDC]. . . . [T]his ability is referred to as 'blacklisting.' When an

¹ LCX has filed a criminal complaint with the applicable public prosecutors against the unknown Defendant in Liechtenstein, Germany, and Ireland. *See* Metzger Aff. ¶¶ 7, 8–9.

address is blacklisted, it can no longer receive USDC and all of the USDC controlled by that address is blocked and cannot be transferred on-chain.

Pursuant to the Policy, CCL will blacklist the Address “[t]o comply with a ... legal order from a [U.S.] court of competent jurisdiction.” *Id.* ¶¶ 31–32 (citing *id.* Ex. 1 (CCL’s Blacklisting Policy)).

In total, via the Address, Defendants purchased \$4.1 million in USDC in two large transactions on March 27, 2022 and May 9, 2022. *Id.* ¶ 25. Defendants then sold \$2.827 million USDC in two large transactions on May 7, 2022 and another on May 31, 2022. *Id.* ¶ 26.

As of May 31, 2022, the Address still holds \$ 1.274 million in USDC. *Id.* ¶ 27. Defendants could sell this remainder of USDC with no notice. *Id.* ¶ 28.

ARGUMENT

It is well-settled that a party seeking a preliminary injunction “must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor.” *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 (2005); CPLR § 6301. Further, “[a] temporary restraining order may be granted 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.” CPLR § 6301. As shown below, LCX meets these requirements.

I. LCX HAS SHOWN A PROBABILITY OF SUCCESS ON THE MERITS

A. LCX is Likely to Prevail on its Claim for Conversion

LCX brings a claim for conversion against Defendants and has shown a likelihood of success on this claim.

The tort of conversion is established where “one who owns and has the right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner.” *Dragons 516 Ltd. v. GDC 38 E 50 LLC*, 201 A.D.3d

463, 464 (1st Dep't 2022) (citation omitted). Two key elements of conversion are “(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.” *Colavito v. N.Y. Organ Donor Network, Inc.*, 8 N.Y.3d 43, 50 (2006) (citations omitted).

LCX clearly satisfies these elements. First, LCX has the right to possess the USDC remaining in the Address, because the Tracing Report and additional investigation shows that this asset is derived from the hack of the LCX Address in January 2022. Second, Defendants are clearly in possession of the USDC remaining in the Address, as evidenced by the transactions consummated since the initial hack in January 2022 that illustrate the Defendants' current possession of USDC in the Address. Finally, it is obvious that, by selling the assets stolen from the LCX Address, Defendants are acting in derogation of Plaintiff's rights, including with respect to its possessory interest in the assets held in the Address.

For these reasons, LCX is likely to prevail on its claim for conversion, which supports issuing Plaintiff's requested relief.

B. LCX is Likely to Prevail on its Claim for Monies Had and Received

LCX is also likely to prevail on its claim for monies had and monies received. An “action for moneys had and received is quasi contractual in nature and is not founded upon any contract, either express or implied.” *Bd. of Educ. of the Cold Spring Harbor Centr. Sch. Dist. v. Rettaliata*, 164 A.D.2d 900, 900-01 (2d Dep't 1990).

Furthermore, the cause of monies had and received “is an obligation which the law creates in the absence of an agreement when one party possesses money that in equity and good conscience should not be retained and which belongs to another.” *Id.* The maintenance of the claim “rests upon the broad consideration of right, justice and morality.” *Id.* at 901. There is no requirement

that plaintiff prove the existence of privity between the parties, other than which “results from the circumstances.” *Salisbury v. Salisbury*, 175 A.D.2d 462, 463 (3d Dep’t 1991) (citation omitted).

LCX clearly satisfies these elements. The property in the Address results from the theft of the assets from the LCX Address, and the subsequent clandestine transactions that Defendants’ deployed to hide their ill-gotten proceeds. Accordingly, equity and good conscience cannot permit Defendants to continue to reap the rewards from their brazen theft of Plaintiff’s assets from the LCX Address.

II. LCX WILL SUFFER IRREPARABLE HARM IF IT DOES NOT RECEIVE INJUNCTIVE RELIEF

It is also clear that LCX will suffer immediate and irreparable harm in the event that the Court does not grant the requested relief. If the court does not grant the relief, the entirety of the assets in the Address may be dissipated, leaving LCX without a realistic path for recovery.

III. THE BALANCE OF THE EQUITIES FAVORS LCX

The balance of equities overwhelmingly favors LCX. Indeed, it would be patently inequitable to permit Defendants to continue to access the assets in the Address, given that Plaintiffs only possess the assets by virtue of their theft from the LCX Account in January 2022.

IV. 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).² The Court has the power to set a very low undertaking in view of the equities, and it should do so here. *See, e.g., In re Total MRI Mgmt., LLC*, 11 Misc. 3d 1062(A) (Sup. Ct. Nassau Cnty. Feb. 24, 2006) (setting undertaking at \$2,500).

² CPLR 6213(c) incorporates by reference the undertaking requirement in this section.

CONCLUSION

For the foregoing reasons, LCX respectfully requests that the Court issue an order, pursuant to CPLR §§ 6301, 6312 and 6313: (1) (i) enjoining Defendants and Garnishees, from disposing of, processing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants' 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 in the Address; and (ii) enjoining the Address from transacting in USDC by directing CCL to invoke the Policy; (2) pending that preliminary injunction hearing, issuing temporary injunctive relief: (i) prohibiting Defendants and Garnishees, from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants' 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 held at the Address; and (ii) directing CCL to invoke the Policy to prevent the Address from transacting in USDC; and (3) issue any other relief that the Court finds just and proper.

Dated: New York, New York
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