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

LCX AG,

Plaintiff,

-against-

JOHN DOES 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. __

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S *EX PARTE* MOTION FOR PRELIMINARY INJUNCTIVE RELIEF, A TEMPORARY RESTRAINING ORDER AND IMPOSITION OF A CONSTRUCTIVE TRUST

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DIGITAL CURRENCY LENDING, TRADING, AND CUSTODY—GENESIS GLOBAL TRADING, INC., https://genesistrading.com/ (last visited July 17, 2022) 3

Plaintiff LCX AG ("LCX"), by and through its undersigned counsel, respectfully submits this memorandum of law in support of its application, pursuant to Civil Practice Law and Rules ("CPLR") §§ 6301, 6312 and 6313: (i) ordering Defendants John Doe Nos. 1–25 (collectively, "Doe Defendants") 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.

PRELIMINARY STATEMENT

This is an action for the unauthorized access to and theft of nearly $8 million worth of various virtual assets (the "Stolen Assets") held by LCX, a virtual asset service provider. The theft

was perpetrated by Doe Defendant(s), who are unknown persons who took numerous measures to obscure the resulting transaction trail left behind on the Ethereum ("ETH") 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 traced the proceeds of the Stolen Assets, including ETH and USDC (collectively, "Proceeds"), to the Ethereum blockchain Address 0x29875bd49350aC3f2Ca5ceEB1c1701708c795FF3 (the "Address").

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

First, LCX shows it is likely to prevail on its claims because it provides evidence it is the owner of the Stolen Assets and that the Proceeds are directly traceable, with high confidence, to the LCX hack. Second, LCX shows that Doe Defendant(s)' conduct of attempting to defeat tracing countermeasures by using mixing services, token swaps, and protocol bridging—combined with the ease in which virtual assets may be moved effortlessly across jurisdictional boundaries—poses a clear risk of irreparable harm to LCX absent injunctive relief. Third, the balance of equities and the public interest favors LCX; indeed, fairness dictates that what was wrongfully taken should be prevented from further dissipation while the Court adjudicates this action.

LCX also satisfies the requirements to obtain a constructive trust over the Genesis Account, which would require Genesis to serve as trustee for the proceeds in the Genesis Account on behalf of LCX. LCX shows that 600 ETH directly traceable to the hack was converted by Doe Defendant(s) and then deposited into the Genesis Account. It would be unjust for the owner of the Genesis Account to retain these assets.

This application is brought *ex parte* for the same reasons as set forth above: LCX would suffer irreparable harm in the event the assets in the Genesis Account are looted by Doe Defendant(s). Given that they are thieves and their propensity for violating the TRO, LCX cannot provide notice to Doe Defendant(s), lest the worst case scenario occur and LCX is left entirely empty-handed. Finally, in the event that the preliminary injunction is granted, LCX submits that a very low undertaking is warranted here, if any, given that the equities so forcefully favor LCX and LCX's sufficient showing of the other elements for the requested relief.

STATEMENT OF FACTS

I. The Parties and Custodian of Certain of the Stolen Assets

LCX is a company based in Liechtenstein. Affidavit of Monty Metzger, sworn to on June 1, 2022, NYSCEF No. 6 ¶ 1 (the "Metzger Aff"). LCX is the operator of the internet platform LCX.com. *Id.* ¶ 2. LCX.com enables trading in cryptocurrencies on the LCX cryptocurrency exchange (the "LCX Exchange") and holds crypto assets in a number of wallets. *Id.* ¶¶ 2-3.

Doe Defendant(s) are unknown hackers who, as set forth below, broke into the LCX Exchange and stole approximately $8 million in virtual assets from an LCX Exchange wallet on the Ethereum blockchain. *See* Metzger Aff. ¶¶ 4–5, 8.

"Genesis is a full-service digital currency prime broker" providing "investors with a secure marketplace to trade, borrow, lend and custody digital currencies." DIGITAL CURRENCY LENDING, TRADING, AND CUSTODY—GENESIS GLOBAL TRADING, INC., https://genesistrading.com/ (last visited July 17, 2022). Genesis is a Delaware corporation registered with the New York Department of State and maintains its office at 636 6th Avenue, 3rd Floor, New York, New York 10011.

II. Doe Defendant(s) Hack LCX and Steal Nearly $8 Million in Cryptocurrency

On or about January 8, 2022, Doe Defendant(s) gained unauthorized access to the Address and used the illegitimate access to transfer the Stolen Assets from the Address to an address under their sole control. *See* Metzger Aff., NYSCEF No. 6 ¶¶ 4-5. Upon learning of the hack, LCX suspended activity on the LCX Exchange, investigated the incident, and took measures to prevent further losses and mitigate against the attack. *See id.* ¶¶ 6–8. LCX employed CipherTrace to trace the virtual assets and their proceeds by analyzing the relevant blockchains. *See* Affidavit of Jonelle Still, sworn to on July 15, 2022, ¶ 12 & Ex. 1, (the "Still Aff.").[1] CipherTrace provided LCX with an initial tracing report dated June 21, 2022 (the "Initial Report"), and a supplemental tracing report dated July 11, 2022 (the "Supplemental Report," and together with the Initial Report, the "Tracing Reports"). *See* Still Aff. ¶¶ 1, 12-13 & Exs. 2-3.

III. The Tracing Reports Identify the Address and the Onward Dissipation of Assets

The Tracing Reports detail the circuitous route and other measures Doe Defendant(s)' employed to launder the Stolen Virtual Assets. *See* Still Aff., Tracing Reports, Ex. 2 at pp. 4-6; Ex. 3 at pp. 4-8. Specifically, Doe Defendant(s), on several occasions: exchanged one virtual asset for another using different exchange service providers; bridged ETH to the bitcoin protocol (a separate blockchain)—and back again; and sent ETH to Tornado.Cash, a mixer.[2] *See generally id.*, Exs. 2 & 3, Tracing Reports. Nevertheless, CipherTrace concluded with a "high likelihood" that the Address was the primary recipient of 1500 ETH which were the proceeds of the LCX hack and withdrawn by Doe Defendant(s) from Tornado.Cash. *See* Still Aff., Ex. 2, Initial Report at 4,

[1] Jonelle Still is the Director of Investigations for CipherTrace. *See* Still Aff. ¶ 1 & Ex. 1.
[2] Mixers obfuscate the tracing of virtual currencies. *See* Affirmation of Andrew W. Balthazor, dated NYSCEF No. 9 at 14.

9. Starting in late March 2022, Doe Defendant(s) purchased and sold USDC in several transactions using the ETH held in the Address. *See id.* at 9.

IV. The Court Issues a TRO, but Doe Defendant(s) Make Subsequent Asset Transfers

On June 2, 2022, the Court issued the TRO enjoining Doe Defendant(s) from, *inter alia*, transferring, selling, removing or conveying its assets of any kind, wherever they may be located, including the USDC held in the Address. *See* NYSCEF No. 15 at 2. The Court also directed Garnishee and Relief Defendant Centre Consortium, LLC ("CCL") to deny the Address access to transacting USDC until further order of the Court. *See id.*[3]

CipherTrace identified Doe Defendant(s) attempted to violate and did violate the TRO in the following ways:

- On June 6, 2022, Doe Defendant(s) attempted to swap 635 ETH allocated in the Address for USDC, but the transaction failed because the Address had been subject to CCL's access denial policy. *See* Still Aff., Ex. 2, Initial Report at 9.
- On June 15, 2022, Doe Defendant(s) sent 34.35 ETH from the Address to a smart contract administered by Gemini Trust Company, LLC. *See id.*
- On June 25, 2022, Doe Defendant(s) sent 600.38 ETH from the Address to Tornado.Cash and then to the bitcoin protocol. *See* Still Aff., Ex. 3, Supplemental Report at 4.
- On June 27, 2022, Doe Defendant(s) bridged the proceeds of the transactions back to the Ethereum blockchain in the form of ETH, swapped the ETH for USDC (using an address not subject to CCL's access denial policy), and

[3] As of the entry of the TRO, CCL was not a named party to the case. *See* NYSCEF No. 15 at 1. In the interim, LCX filed its First Amended Complaint, which named Circle as a Garnishee and Relief Party (the "**Amended Complaint**"). *See* Amended Complaint, NYSCEF No. 22 at 1.

combined that USDC with USDC from other sources for an aggregate deposit on June 30, 2022 of 5 million USDC into the Genesis Account. *See id.* at 4–5.

As such, and notwithstanding the TRO, Doe Defendant(s) have transferred from the Address virtually all of the assets allocated to it, with the exception of the ~1.274M USDC that Doe Defendant(s) were unable to transfer owing to the Court's intervention via the TRO and CCL's invocation of its access denial policy. *Compare* Still Aff., Ex. 2, Initial Report at 9 (stating the current balance of the Address to be 600.98 ETH and 1.274M USDC), *with* Still Aff., Ex. 3, Supplemental Report at 1 (stating that 600.38 ETH has been transferred from the Address).

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. "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.

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

LCX's Amended Complaint brings four causes of action: (2) declaratory judgment; (2) conversion; (3) money had and received; and (4) constructive trust. *See* Amended Complaint, NYSCEF No. 22 ¶¶ 54–73.

A. LCX is Likely to Succeed on its Claim for a Declaratory Judgment

Under CPLR § 3001, this Court may "render a declaratory judgment having the effect of a final judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." A declaratory judgment is "intended to serve some practical end in quieting or stabilizing an

uncertain or disputed jural relation either as to present or prospective obligations." *Touro Coll. v. Novus Univ. Corp.*, 146 A.D.3d 679, 679 (1st Dep't 2017) (citation omitted). A declaratory judgment "should only be granted when it will have a direct and immediate effect upon the rights of the parties[.]" *Enlarged City Sch. Dist. of Middletown v. City of Middletown*, 96 A.D.3d 840, 841 (2d Dep't 2012) (citations omitted). For declaratory relief to issue, "[t]he dispute must be real, definite, substantial, and sufficiently matured so as to be ripe for judicial determination." *Id.* (citations omitted); *see also Am. Ins. Ass'n v. Chu*, 64 N.Y.2d 379, 383 (2017) (noting that the plaintiff "must have an interest sufficient to constitute standing to maintain the action").

LCX satisfies these elements with regard to its request for a declaratory judgment regarding the rights of redemption represented by the USDC held in the Address. LCX asserts it is entitled to those rights because that USDC is the proceeds of the Stolen Assets. Amended Complaint, NYSCEF No. 22 ¶ 55. Moreover, LCX has shown it has standing to bring its claim, providing evidence of its ownership of the Stolen Assets and that the USDC are derived from the same. *See* Metzger Aff., NYSCEF No. 6 ¶¶ 4–5; Still Aff., Ex. 2, Initial Report at 4-5, 8-9. Adjudicating whether LCX should be assigned the rights of redemption represented by the USDC held in the Address would impact the rights of Doe Defendant(s) presently holding those rights. And, if LCX prevails—as it should—the judgment will serve to provide practical relief to LCX by facilitating the assignment of those rights to LCX. *See* Amended Complaint, NYSCEF No. 22 ¶¶ 31–36 (citing *USDC Terms*, CIRCLE, Art. 1, 13, and 27 (June 10, 2022), https://www.circle.com/en/legal/usdc-terms). This dispute, involving the rights to redemption to nearly $1.3 million in U.S. denominated assets, is definite, substantial, and ripe for adjudication.

For these reasons, LCX is likely to prevail on its claim for a declaratory judgment.

B. LCX is Likely to Succeed on its Claim for Conversion

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). As a general matter, "[c]ryptocurrency is considered personal property and courts have found that it may be subject of a conversion suit." *Shi v. Le*, No. 21 CV 1361, 2022 WL 1085420, at *7, 2022 U.S. Dist. LEXIS 37146, at *18 (E.D.N.Y. Mar. 2, 2022) (collecting cases); *see also Lagemann v. Spence*, 18 Civ. 12218, 2020 WL 5754800, at *10 n.11, 2020 U.S. Dist. LEXIS 88066, at *28 n.11 (S.D.N.Y. May 18, 2020) (explaining that a cause of action for conversion with cryptocurrency is permissible as the underlying asset is consistent with other conversion cases).

In the present action, the virtual assets held in the Address—or which were transferred from the Address—are traceable with a high degree of confidence to the January 2022 LCX hack. *See* Still Aff., Ex 2., Initial Report 4-5, 8-9. LCX thus has a right to possess the virtual assets allocated to or sent from the Address. Moreover, Doe Defendant(s) have acted to exclude LCX's ownership rights of the Stolen Assets: first, by the initial theft which took the Stolen Assets from LCX in the first instance, *see* Metzger Aff., NYSCEF No. 6 ¶¶ 4-5; and second, by employing numerous countermeasures to obfuscate the tracing of the Proceeds and swapping the virtual assets for different assets, including, more than once, shifting the Proceeds between two different blockchains. *See generally* Still Aff., Exs. 2 and 3, Tracing Reports. Finally, LCX has been

damaged by the derogation of its rights to the Stolen Assets and Proceeds, to the tune of approximately $8 million in cryptocurrency. *See* Metzger Aff., NYSCEF No. 6 ¶¶ 4-5.

This plainly sufficient showing of a likelihood of success on the conversion claim supports LCX's requested relief. *See, e.g.*, *Heissenberg v. Doe*, No. 21-CIV-80716, 2021 WL 8154531, at *1-2 (S.D. Fla. Apr. 23, 2021) (plaintiff showed likelihood of success on conversion claim after John Doe defendant "accessed the [p]laintiff's account" on a cryptocurrency exchange and "without her knowledge or authorization, withdrew her holdings"); *Jacobo v. Doe*, No. 22-cv-00672, 2022 WL 2052637, at *5, 2022 U.S. Dist. LEXIS 101504, at *13–14 (E.D. Cal. June 7, 2022) (finding likelihood of success on conversion claim because plaintiff's damages included $1.4 million worth of cryptocurrency lost in defendant's "scheme"); *see also Ficus Invs., Inc. v. Private Cap. Mgmt., LLC*, No. 600926/2007, 2008 WL 7394227 (Sup. Ct. N.Y. Cnty. Mar. 6, 2008) (nonpaginated opinion) (likelihood of success found on conversion claim concerning intangible mortgage interests that had gone "missing").

C. LCX is Likely to Succeed on its Claim for Monies Had and 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 the 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).

The approximately $8 million in virtual assets stolen during the LCX hack is unquestionably the property of LCX. *See* Metzger Aff., NYSCEF No. 6 ¶¶ 4-5. Doe Defendant(s) presently possess $1.274 million in USDC in the Address, which is directly traceable to the LCX hack. *See* Still Aff., Ex. 2, Initial Report 4-5, 8-9. Moreover, any of the Proceeds—other virtual assets derived from the sale of the Stolen Assets—also belong to LCX, as LCX has shown they too are directly traceable to the LCX hack. *See id.* Good conscience and equity cannot countenance the Doe Defendants reaping any reward from their thievery.

LCX thus shows a likelihood of success on the merits on its monies had and received claim.

D. LCX is Likely to Succeed on its Claim for a Constructive Trust

A constructive trust is an equitable remedy and its purpose is to prevent unjust enrichment. *See Homapour v. Harounian*, 182 A.D.3d 426, 427 (1st Dep't 2020) (citations omitted). A constructive trust applies to property already acquired by a defendant. *See Simonds v. Simonds*, 45 N.Y.2d 233, 241 (1978). A constructive trust will be imposed on a finding of "(1) confidential or fiduciary relation; (2) a promise, express or implied; (3) transfer made in reliance on that promise; and (4) unjust enrichment." *Bankers Sec. Life Ins. Soc'y v. Shakerdge*, 49 N.Y.2d 939, 940 (1980). However, "these elements serve only as a guideline[;] a constructive trust may still be imposed even if all of the elements are not established." *Marini v. Lombardo*, 79 A.D.3d 932, 933 (2d Dep't 2010) (citing *Simonds*, 45 N.Y.2d at 241).

LCX requests a constructive trust be imposed on Circle Internet Financial, LLC ("Circle") regarding the rights of redemption represented by the 1.274 million USDC held in the Address. *See* Amended Complaint, NYSCEF No. 22 ¶ 73. In support, LCX has shown Doe Defendant(s) were unjustly enriched by their theft of the Stolen Assets, which rightfully belong to LCX and were taken without authorization. *See* Metzger Aff., NYSCEF No. 6 ¶¶ 4-5. LCX has further

shown that the 1.274 million USDC—and the rights of redemption represented by that USDC—are directly traceable as proceeds of the Stolen Assets, and thus do not belong to Doe Defendants but instead to LCX. *See* Still Aff., Ex. 2, Initial Report 4-5, 8-9.

With this showing, it is likely that LCX will prevail on its constructive trust claim, as principles of equity and good conscience demand that the rights of redemption of the subject USDC, which rightfully belong to LCX, be held in trust by Circle and assigned to LCX. *See, e.g.*, *Heissenberg*, 2021 WL 8154531, at *2-3 (issuing a temporary restraining order because the plaintiff "was victimized by the theft of her cryptocurrency assets, and it appears from the record that [the anonymous defendant] has no right to claim possession or ownership of the [p]laintiff's stolen assets" and thus showed a substantial likelihood of success on her constructive trust claim).

LCX's showing of a likelihood of success on the merits of its claims supports granting its requested injunctive relief.

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

As a general matter, "[w]hat constitutes an imminent threat of irreparable injury . . . will depend not only on the facts of the individual case but upon the discretion of the court." *Samuelsen v. Yassky*, 911 N.Y.S.2d 570, 578 (Sup. Ct. N.Y. Cnty. 2010) (quoting 7A Weinstein-Korn-Miller, N.Y. Civ. Prac., ¶ 6301.15, at 63-45 to 63-46); *see also Nobu Next Door*, 4 N.Y.3d at 840 ("The decision to grant or deny provisional relief, which requires the court to weigh a variety of factors, is a matter ordinarily committed to the sound discretion of the lower courts."); *Jones v. State Farm Fire & Cas. Co.*, 189 A.D.3d 1565, 1565 (1st Dep't 2020) (noting that a court may exercise its discretion to grant a preliminary injunction even when questions of fact exist) (citations omitted).

LCX will suffer irreparable harm absent a preliminary injunction. First, virtual assets constitute *sui generis* assets that are more easily dissipated due to the speed and pseudonymity of

blockchain transactions, which permit transfers of limitless value that ignore jurisdictional boundaries. *See* Andrew W. Balthazor, *The Challenges of Cryptocurrency Asset Recovery*, 13 FIU L. REV. 1207, 1209 (2019). The risk of irreparable harm is heightened and more acute due to the structure and operation of blockchain-based virtual assets, given that bad actors such as Doe Defendant(s), can, with the click of a button, spirit away all assets pilfered in the LCX hack. *See id.* Second, considering Doe Defendant(s)' measures to obfuscate and dissipate the Proceeds, *see generally* Tracing Reports, and Doe Defendant(s)' cloak of anonymity, which may never be unfurled, there is a heightened possibility that any judgment LCX obtains in this action will be lack any real teeth—absent injunctive relief which would preserve the status quo and prevent Doe Defendant(s) from completely disappearing with their ill-gotten gains.

The Court should thus exercise its discretion and find that LCX's showing and the present circumstances warrant injunctive relief to prevent the almost certain irreparable harm that will befall LCX absent such relief. *See, e.g.*, *Jacobo*, 2022 WL 2052637, at *5, 2022 U.S. Dist. LEXIS 101504, at *15–16 (finding irreparable harm given the possibility that stolen cryptocurrency, which had been traced through blockchain analytics to unauthorized transfers, could be transferred into untraceable accounts or to entities organized in unknown locations); *Heissenberg*, 2021 WL 8154531, at *2 (concluding that irreparable harm would be likely if a temporary restraining order did not issue "due to the speed and potential anonymity of cryptocurrency transactions"); *Martinangeli v. Akerman, LLP*, No. 18-cv-23607, 2018 WL 6308705, at *1–2, 2018 U.S. Dist. LEXIS 237582, at *4, 6–7 (S.D. Fla. Sept. 14, 2018) (reaching similar conclusion and restraining access to "any cryptocurrency wallet or cryptocurrency account" maintained or controlled by defendant); *FTC v. Dluca*, No. 18-0379-CIV, 2018 WL 1830800, at *2 (S.D. Fla. Feb. 28, 2018) (finding irreparable harm because "it would be a simple matter for [defendant] to transfer . . .

[Tether] cryptocurrency to unidentified recipients outside the traditional banking system," and thus beyond the reach of the court).

III. THE BALANCE OF THE EQUITIES FAVORS LCX

The balance of equities overwhelmingly favors LCX. Indeed, it would be patently inequitable to permit Doe Defendant(s) to continue to access the Proceeds in the Genesis Account, which assets Doe Defendant(s) possess merely by virtue of their theft from LCX. Moreover, it is in the public's interest for the Court to preserve the status quo in the present action and provide confidence that the judiciary offers avenues of relief for victims of virtual asset theft who are able to identify the specific locations of the theft's proceeds—even if the identity of the thieves themselves may be difficult to pin down.

The Court should thus determine the balance of equities favors LCX and grant the requested relief. *See, e.g.*, *Jacobo*, 2022 WL 2052637, at *6, 2022 U.S. Dist. LEXIS 101504, at *17–18 (holding that the balance of the equities and the public interest favors injunctive relief given that "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" and the public interest is served by "promoting the objectives" of regulatory bodies and "providing assurance to the public that courts will take action to promote protection of assets and recovery of stolen assets"); *Heissenberg*, 2021 WL 8154531, at *2 (finding the balance of the equities favors movant on analogous facts and that the public interest would be served by facilitating the "recovery of stolen assets when they can be readily located and traced to specific locations"); *Martinangeli*, 2018 WL 6308705, at *2, 2018 U.S. Dist. LEXIS 237582, at *5–6 (same).

IV. FILING THE MOTION *EX PARTE* IS NECESSARY TO AVOID FURTHER DISSIPATION OF ASSETS BY DOE DEFENDANT(S)

As set forth above, Doe Defendant(s) removed 600 ETH from the Address before comingling the proceeds with USDC from as-yet unidentified sources into one sum of 5 million USDC. *See also* Affirmation of Elliot A. Magruder Pursuant to CPLR 2217(b) and Uniform Rules 130-1.1 and 202.7(f) ¶¶ 5-7 (the "Magruder Aff"). On June 30, 2022, Doe Defendant(s)' sent the 5 million USDC to the Genesis Account. *Id.* ¶ 8.

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. *See* Magruder Aff. ¶ 9. Genesis has not substantively responded to LCX's messages, much less confirmed that it has invoked the Terms of Service or any other policy to block access to the Genesis Account. *Id.* ¶ 10.

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. Magruder Aff. ¶ 11. Absent the expansion of the TRO to include the Genesis Account, Doe Defendant(s) face no impediment to yet again transfer or dissipate their assets in violation of the TRO. *Id.* ¶ 12. This could cause irreparable harm to LCX because it could render Doe Defendant(s) judgment proof if LCX prevails in this litigation. *Id.*

Doe Defendant(s) have appeared by counsel in this matter, Sharova Law Firm ("Sharova"). *See* Notices of Appearance, NYSCEF Nos. 16-17. 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. *See* Magruder Aff. ¶ 13.

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. Magruder Aff. ¶ 14. 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. *Id.* ¶ 15.

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

CONCLUSION

For the foregoing reasons, LCX respectfully requests that the Court issue an order, pursuant to CPLR §§ 6301, 6312 and 6313: (i) ordering 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 USDC deposited on June 30, 2022 to the Genesis Account; (ii) expanding the TRO (NYSCEF No. 15) to prohibit 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, 202

Dated: New York, New York
July 18, 2022

By: /s/ Elliot A. Magruder

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CERTIFICATION PURSUANT TO 22 NYCRR § 202.8-b

I, Elliot A. Magruder, an attorney duly admitted to practice law before the courts of the State of New York, hereby certifies that this Memorandum complies with the word count limit set forth in 22 NYCRR § 202.8-b(c) and contains 4,916 words, excluding the parts exempted by § 202.8-b(b).

Dated: New York, New York
July 18, 2022

/s/ Elliot A. Magruder