IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JURATBTC BLOCKCHAIN, an unincorporated association, Plaintiff, v. ANTON ANDREYEV, et al., Defendants.	21-cv-779

MEMORANDUM IN SUPPORT OF PLAINTIFF'S *EX PARTE* MOTION FOR ENTRY OF A TEMPORARY RESTRAINING ORDER

Plaintiff JuratBTC Blockchain, by counsel, respectfully submits this Memorandum in support of its *Ex Parte* Motion for Entry of a Temporary Restraining Order ("TRO"). The Motion should be granted for the following reasons.

BACKGROUND

Plaintiff's lawsuit raises some esoteric issues about blockchain technology and involves decisions made at the highest levels of government, but at base it is a simple case: Plaintiff has a contractual right in its user agreement ("Terms & Conditions") to remove users from its blockchain if they come under sanctions by the Office of Foreign Assets Control (OFAC) and Defendants have been sanctioned.

Reserving this contractual right makes perfect sense because sanctioned individuals are prohibited by law from using cryptocurrency assets and it would cause harm to the blockchain's user and operators if Defendant tried to drag them into illegal transactions. Many web-based services include similar terms in their

user agreements. The contract provisions are valid and there is no dispute that Defendants have been sanctioned pursuant to law. Plaintiff is going to win its case.

The problem that occasions this Motion is a practical one. Blockchain accounts are controlled by private key passwords which can be used over the internet from anywhere in the world. Defendants currently possess the keys meaning they can transact the cryptocurrency in their OFAC-sanctioned accounts without permission on a moment's notice.

The Court's judgment on Plaintiff's contract claim will disable the Defendants' keys on the JuratBTC blockchain because the blockchain nodes will follow the Court's order. But Defendants can act faster than the Court. As soon as they learn that this suit has been filed, they can – and almost certainly will – move the coins out of their accounts. Doing so would drag the miners into the very prohibited transactions from which the contract right protects them and could end up thwarting the Court's ability to grant the effective relief. Thus Plaintiff cannot get to judgment fast enough to protect its legitimate contract rights.

The Temporary Restraining Order (TRO) procedure under Fed. R. Civ. P. 65(b) exists to address circumstances such as this one. Because JuratBTC nodes will obey the court's order, a TRO issued *ex parte* will temporarily disable the private keys before Defendants learn of the suit, *i.e.*, prior to service. Defendants can seek to dissolve the TRO as soon as they choose to appear. Although the Court should absolutely deny such a motion, if it chose to grant it, the nodes would once again honor Defendants' private keys.

Accordingly, Defendants' rights (if any) are amply protected even if the TRO issues *ex parte*. Moreover, every prerequisite for awarding an injuction is also satisfied. The Motion should be granted.

Plaintiff will submit a draft order to the Court's chambers once this case is assigned.

FACTS

The facts relevant to this Motion are contained in the Verified Complaint ("Complaint") which is being filed contemporaneously with this motion.

Sanctions against the Defendants

In summary, the President of the United States, acting pursuant to authority granted by Congress, has imposed economic sanctions on each of the sixteen Defendants for committing serious crimes such as money laundering for terrorist organizations, using ransomware to extort cryptocurrency payments to benefit North Korea's weapons programs, and proliferating of weapons of mass destruction. Verified Complaint ("Complaint") ¶¶ 2, 28-44. Pursuant to the presidential findings, each of the Defendants have been added to the Specially Designated Nationals And Blocked Persons List ("SDN") together with the blockchain account addresses ("wallets") which Plaintiff seeks to freeze. Id. See also SDN List available at https://www.treasury.gov/ofac/downloads/sdnlist.pdf (last checked 2/7/23). As a result, Defendants are prohibited by law from transacting the cryptocurrency in the listed wallets. Id.

Defendants' accounts on JuratBTC

Like all public blockchains, JuratBTC is made up of computer operators called "miners" who network their computers (called "nodes") together over the internet. Complaint ¶¶ 4-6, 16-17, There is no single person or entity in charge of a blockchain. Id. Rather, the network is "decentralized." The nodes process cryptocurrency transactions by passing messages between themselves and, in doing so, maintain a ledger of the cryptocurrency balance in each account. Id. No one is in charge of opening the accounts either. Rather, anyone can open a blockchain account by using an algorithm to create a cryptographic key pair: consisting of a public key, which is like an account number, and a private key, which is like a password. Id. The person holding the private key has the sole and unfettered power to transact the cryptocurrency in the account. Id. ¶¶ 4-6, 10-12, 16-17, 64-68.

Because blockchains are decentralized, they are highly resistant to any form of outside control, which includes legitimate law enforcement. Id. This leads to widespread lawlessness which victimizes private users and society at large, including through the use of cryptocurrency in violation of U.S. sanctions. Id. For example, Defendant HYDRA MARKET used Bitcoin several months ago to transfer $1.5 million in violation of the sanctions. Id. ¶7.

Most blockchains accept this lawlessness, and some embrace it. Plaintiff JuratBTC, by contrast, is dedicated to eradicating criminal misuse of cryptocurrency on its blockchain network and protecting its users. Id. ¶¶6-9, 23-25, 64-70. To that end, JuratBTC updated the Bitcoin core software to add a new

capability for blockchain nodes to access court electronic dockets. Id. This innovation, allows the blockchain to enforce the law even though it is decentralized, because the nodes will accept the court order in lieu of the defendant's private key. Id. Thus, a court order can freeze the JuratBTC blockchain cryptocurrency (called "JTC") or transfer it between accounts. Id.

When JuratBTC added this legal enforcement capability to the Bitcoin core software it caused what is known as a "fork." Id. ¶¶ 23-25. A fork is the result of an incompatibility between the software versions being run by different nodes and causes the blockchain to break into two blockchains. Id. Each blockchain contains the same transaction ledger history up to the moment of the fork, and then the ledgers diverge with different transaction taking place on each chain going forward. Id. As a result, the cryptocurrency accounts that Defendants maintained on the Bitcoin blockchain also exist on the JuratBTC blockchain and contain equal numbers of BTC and JTC coins. Id. The same private keys that control Defendants' BTC also control their JTC. Id.

Plaintiff has invested heavily in developing goodwill for its dedication to effective law enforcement and to protecting its users from crime. Id. ¶¶ 23-27. This is Plaintiff's competitive differentiator as most other blockchains have not made such efforts and some are notably opposed to law enforcement and the involvement of courts in enforcing users legal rights on the blockchain ledger ("on-chain enforcement"). Id. ¶¶ 23-27.

The need for declaratory relief and injunctive relief

Defendants still possess the private keys to the sanctioned wallets. Id. ¶¶ 10, 12, 64-66, 68. Accordingly, they can use the keys to sign JTC transaction from anywhere in the world and send them over the internet to the blockchain for execution. Id. Once the transaction is received, the blockchain nodes will process it if it is signed by a valid private key. Id. Concomitantly, the nodes will reject the transaction if it is not signed by a valid private key. Id. Accordingly, Plaintiff brought this action to enjoin Defendants from using the private keys to transact JTC and to declare the private keys invalid. Id.[1] Once entered, the nodes will follow the Court's order and reject the Defendants' private keys. Id.

The JuratBTC Terms and Conditions prohibit persons on the SDN list from using their private keys to transact JTC and provide for the entry of declaratory and injunctive relief by consent to enforce the prohibition. Id. ¶¶ 11, 49, 67, 78-82.

The Jurat ID

The Jurat ID is a statement of the blockchain account(s) subject of a court order and the transaction that is being ordered or prohibited. Id. ¶¶ 69-73. The

[1] As of the date of this filing, Defendants have not transacted the JTC in their OFAC-sanctions accounts. It is possible that they have not yet learned that they possess JTC because the fork happened only one year ago. But JTC is gaining notoriety with a growing community of almost ten thousand users and was just discussed in the annual journal of the Official Monetary and Financial Institutions (OMFIF) Forum Digital Monetary Institute, a leading organization of government agency and central bank regulators. See DMI Annual 2023 available at www.omfif.org/dmi-annual-2023/ (last checked 2/8/23). OMFIF began posts about JuratBTC today (https://twitter.com/OMFIFDMI/status/1623279640558149633). It is necessary for Plaintiff to act in advance of Defendants in order to keep them from using JTC to violate sanctions.

statement is expressed as a hash which a blockchain node can recognize and understand. Id. All JTC users consent to the inclusion of the hash in court orders. Id. ¶ 73.

Exhibit B to the Verified Complaint is a list of the Jurat IDs denoting the Defendants' sanctioned wallets and the prohibition on transacting the JTC in them. Id. ¶ 73. Accordingly, Plaintiff is requesting that the Court include the Jurat IDs in its order granting a TRO or as an attachment thereto.

ARGUMENT

Though *ex parte* TROs are an exceptional form of relief, this is clearly the exceptional case.

Defendants are international criminals who use cryptocurrency accounts to keep their assets outside of the lawful finance system. They currently possess private keys that give them unfettered ability to transact the cryptocurrency in the sanctioned accounts. There is every reason to believe that they will use the private keys as soon as they receive service in this case so as to beat the Court to the punch. Doing so will violate Plaintiff's contract rights, violate U.S. sanctions, and cause Plaintiff irreparable harm. Accordingly, it is necessary for the Court to preserve the *status quo* by issuing a TRO prior to service of process on Defendants so that the serious issues in this case can be resolved in an orderly manner.

A. The United States has already prohibited these particular Defendants from transacting these particular accounts, thereby justifying injunctive relief

At the outset, the Court need not and should not make its own determination of whether to enjoin Defendants from transacting the JTC in their sanctioned accounts. The decision has already been made by the entities Congress empowered to make them (the President of the United States and the Secretary of the Treasury).

The sanctions at issue here were imposed pursuant to the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701 et seq. In the IEEPA, Congress authorized the President to impose sanctions based on an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." Id. § 1701. The powers Congress extended include the power to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States." Id. § 1702.

The President (acting through the Secretary of the Treasury) exercised these granted powers by making findings about the Defendants and then specifically

designating them and their wallets on the SDN list. Accordingly, there is no occasion for the Court to re-decide the question of whether Defendants' accounts should or should not be frozen. Once the facts have been found, as the President did pursuant to the powers Congress granted, the Congressional statute prohibits Defendants from transacting the wallets. These prohibitions are self-executing. E.g. E.O. 13694 § 1(a) ("All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the [sanctioned individual] are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.. . .").

Given that Congress has determined to freeze Defendants' accounts as a matter of public policy, and the President has found the facts Congress required, there is no discretion for a court to decide otherwise. For example, when Congress passes a statute that authorizes injunctive relief upon the finding of certain facts, the courts only role is in determining the factual predicates. It may not balance the equities nor require a showing of irreparable harm. See Burlington N. R.R. Co. v. Bair, 957 F.2d 599, 601 (8th Cir.1992) ("[I]t is not the role of the courts to balance the equities between the parties [where] Congress has already balanced the equities and has determined that, as a matter of public policy, an injunction should issue where the defendant is engaged in ... any activity which the statute prohibits."); United States v. Diapulse Corp. of America, 457 F.2d 25, 27 (2d Cir.1972). ("[P]assage of the statute is, in a sense, an implied finding that violations will harm

the public and ought, if necessary, be restrained."). See also First W. Cap. Mgmt. Co. v. Malamed, 874 F.3d 1136, 1140 (10th Cir. 2017) ("Courts may presume irreparable harm . . . when a party is seeking an injunction under a statute that mandates injunctive relief as a remedy for a violation of the statute. When Congress passes such a statute, it effectively withdraws the courts' traditional discretion to determine whether such relief is warranted.").

Here, the IEEPA clearly prohibits Defendants from transacting the JTC in their accounts as a matter of public policy. Id. § 1702. Accordingly, there is no equitable decision process for the Court to undertake. The Temporary Restraining Order should be granted.

B. An *ex parte* TRO is proper under FRCP 65(b)

Should the Court undertake an equitable review of the requested relief, the result still comes out the same: the TRO should be granted.

Federal Rule of Civil Procedure 65(b) governs the equitable considerations for granting a Temporary Restraining Order.[2] Under the Rule, a court may issue a temporary restraining order without notice to the adverse party if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition."

[2] The standard for granting a TRO and the standard for granting a preliminary injunction are identical. See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc., No. 1:01-cv-00905, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (citation omitted).

Plaintiff must show "(1) some likelihood of succeeding on the merits, and (2) that it has 'no adequate remedy at law' and will suffer 'irreparable harm' if preliminary relief is denied. . . . [T]he court must then consider: (3) the irreparable harm the non-moving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied; and (4) the public interest, meaning the consequences of granting or denying the injunction to non-parties." Abbott Lab's v. Mead Johnson & Co., 971 F.2d 6, 11–12 (7th Cir. 1992). Factual findings about irreparable harm are reviewed for clear error and the weighting of harms is reviewed for abuse of discretion. H-D Michigan, LLC v. Hellenic Duty Free Shops S.A., 694 F.3d 827, 841 (7th Cir. 2012).

1. Likelihood of success on the merits

For the first prong, Plaintiff need only demonstrate "some" likelihood of success on the merits. Plaintiff easily surpasses this threshold.

There is no disputing that Defendants have been sanctioned and that the specific addresses for which Plaintiff seeks relief are currently identified in the SDN list (https://www.treasury.gov/ofac/downloads/sdnlist.pdf). Therefore Defendants are prohibited from transacting the JTC in their accounts by operation of federal statutes, the executive orders, and Plaintiff's Terms & Conditions. Relatedly, once the sanctions are published via the SDN, the Defendants have no legal right to demand access to the JTC in their sanctioned accounts.

Given that there are no factual or legal questions regarding Defendants' rights to access the JTC funds under the terms of the applicable statutes, the E.O.s, or the Terms and Condition, Plaintiff is certain to prevail.[3]

2. Irreparable harm

The irreparable harm at issue here is palpable and far greater than in most cases. Plaintiff is threatened with destruction of its hard-won goodwill and its community is threatened with being dragged into illegal transactions. Either and both will result in irreparable harm.

Plaintiff has developed goodwill as a civic-minded blockchain that prohibits criminals from using JTC and protects is legitimate users from the lawlessness prevalent on other blockchains. This goodwill is a differentiator and a competitive advantage over other blockchains, many of which actively oppose law enforce involvement in the blockchain.

To protect its goodwill, the JuratBTC blockchain precludes by contract any SDN-listed individual from using JTC. The JuratBTC Terms & Conditions is the source of Defendants' rights in JTC and the Terms prohibit any use of their SDN-listed accounts on the JuratBTC blockchain. Jurat has invested hundreds of thousands of dollars and great efforts over the course of several years to build up this goodwill and to augment it in the future. By one measure, the customer acquisition costs to obtain the 9,000 accounts that have signed up for JuratBTC is over $1.8 million. Complaint ¶ 27.

[3] This is not to say that Defendants cannot bring their own suit to challenge the government's decision to place them on the SDN list. But unless and until they do so, the designation is binding and dispositive of their legal rights.

In recognition of these facts, all users – including the Defendants -- stipulate that JuratBTC will suffer irreparable harm should they attempt to use JTC after being placed on the SDN-list, and thus agree to entry of an immediate injunction:

> For any Account that is officially identified . . . on the U.S. Treasury Department's Specially Designated Nationals List . . . you understand and further agree that an enforcement action may be brought pursuant to subsection (C) to include the entry by consent of an immediate restraining order, preliminary injunction, and final judgment for declaratory and/or injunctive relief freezing the Account and any Digital Assets associated with it as well as voiding all associated private keys, without prior notice. You acknowledge that JuratBTC, its Users, Miners and the Company, would suffer irreparable harm should you violate any trade restriction or sanction regarding your Account.

Complaint ¶ 67. The purpose of provisions like this in user agreements it to protect the service's good will and to ensure that it is not misused for illegal transactions.

The parties' mutual understanding about the circumstances leading to irreparable harm to Plaintiff's goodwill is an important consideration in the Court's determination and is entitled to substantial deference. Courts analyzing irreparable harm in this district have considered such contractual agreements as a factor weighing toward a finding of irreparable harm. See Life Spine, Inc. v. Aegis Spine, Inc., No. 19 CV 7092, 2021 WL 963811, at *21 (N.D. Ill. Mar. 15, 2021) ("Courts analyzing irreparable harm in this district have considered such contractual agreements as a factor weighing toward a finding of irreparable harm."), aff'd, 8 F.4th 531 (7th Cir. 2021); HCAFranchise Corp. v. Alisch, No. 3:16-CV-476, 2016 WL 10706285, at *5 (N.D. Ind. Aug. 12, 2016) ("Courts give great deference to the agreement of defendants to stipulate to injunctive relief.").

The stipulation about irreparable harm is also supported by the applicable case law regarding injury to goodwill. See Prematek Indus., Ltd. v. Equitrac Corp., 300 F.3d 808, 813 (7th Cir. 2002) (injury to consumer goodwill constitutes irreparable harm); Gateway E. Ry. Co. v. Terminal R.R. Ass'n of St. Louis, 35 F.3d 1134, 1140 (7th Cir. 1994) ("We have stated that showing injury to goodwill can constitute irreparable harm that is not compensable by an award of money damages."); Am. Food & Vending Corp. v. United Parcel Serv. Oasis Supply Corp., No. 02 C 9439, 2003 WL 256865, at *2 (N.D. Ill. Jan. 31, 2003) (same); Walgreens Co. v. Peters, 2021 WL 3187726, at *5 (N.D. Ill. July 28, 2021) ("[A]n injury that is not easily measurable in monetary terms, such as an injury to reputation or goodwill, is often viewed as irreparable.").

The threat to Plaintiffs' goodwill and the Defendants stipulations in the Terms suffice to grant the motion. Plaintiff's primary differentiator versus its competitors is its dedication to effective law enforcement on blockchains. It has invested hundreds of thousands of dollars and great efforts building that goodwill. The misuse of its blockchain by documented international criminals to evade sanctions would impair that goodwill, and justifies preliminary injunctive relief.

Plaintiff need not demonstrate that it would be impossible to compensate Plaintiff in any other way. Life Spine, Inc. v. Aegis Spine, Inc., 8 F.4th 531, 545 (7th Cir. 2021) ("Harm is irreparable if legal remedies are inadequate to cure it. Inadequate does not mean wholly ineffectual; rather, the remedy must be seriously deficient as compared to the harm suffered.") (citation and internal quotations

omitted). Rather, "[a] potential injury is irreparable when 'the threatened harm would impair the court's ability to grant an effective remedy.'" EnVerne, Inc. v. Unger Meat Co., 779 F. Supp. 2d 840, 844 (N.D. Ill. 2011) (internal citations omitted).

Relatedly, even if money could be a sufficient remedy for damage to Plaintiff's goodwill, it is not so here. For money damages to suffice there must be a realistic hope of collecting them. See Roland Mach. Co. v. Dresser Indus., Inc., 749 F.2d 380, 386 (7th Cir. 1984) (damages are inadequate when "[d]amages may be unobtainable from the defendant because he may become insolvent before a final judgment can be entered and collected"); Chemical Bank v. Haseotes, 13 F.3d 569, 573 (2d Cir. 1994) ("[A]n injunction may issue to stop a defendant from dissipating assets in an effort to frustrate a judgment."); Peng v. Partnerships & Unincorporated Associations Identified on Schedule A, No. 21-CV-1344, 2021 WL 4169564, at *3 (N.D. Ill. Sept. 14, 2021) ("Plaintiff also points out that 'because Defendants are individuals and businesses who, upon information and belief, reside in the People's Republic of China, any monetary judgment is likely uncollectable.' This factor also weighs in favor of injunctive relief."). Cf. L. Offs. of Beryl A. Birndorf v. Joffe, 930 F.2d 25 (7th Cir. 1991) ("In general, interim fee awards in cases like this do not cause irreparable harm unless the appellant shows there is a danger the fee cannot be retrieved at the end of the litigation if it be determined that it was erroneously awarded.").

Here, Defendants are international criminals, who have chosen to use cryptocurrency in order to hide assets and avoid the policed financial system. They are also all foreign nationals in countries hostile to the United States. They are unlikely to reveal their whereabouts and enforcement in their countries will be impracticable if not impossible. Under these circumstances, the hypothetical availability of money damages to compensate Plaintiff for damage is illusory, and therefore does not alter the analysis on the presence of irreparable harm.

3. The balance of harms between the parties and the public weigh very heavily in favor of an injunction

The balance of harms here clearly favors an injunction. On Defendants' side of the scale, there is essentially no harm. The funds in Defendants' accounts will be frozen, but those funds will not be taken. In the highly unlikely event that Defendants prevail in the case their coins will be right where they left them, and access can be returned immediately. The only possible injury therefore is the loss of use as measured in interest from the time when the TRO is granted until the time when Defendants might demonstrate error. Moreover, the Court should also consider the fact that the likelihood of any erroneous deprivation is exceedingly small given that the Defendants' names and accounts are on the SDN list. Finally, Plaintiff is willing to post a JTC bond in an amount that will compensate Defendants from any lost interest proved.[4]

[4] It would not take Defendants more than a few weeks to be heard on a motion to set aside any injunction. The current federal judgments interest rate in 4.69%. One month of interest on 331 JTC is calculated as 4.69/12 * 331 = 1.3 JTC. Plaintiff is prepared to deposit this sum into court.

On the Plaintiff's side there is great harm. If the injunction does not issue, Plaintiff is threatened with irreparable harm. Even if it had an adequate remedy at law, which it does not, the chance of collecting damages from Defendants are close to nil; they are international criminals who live in distant countries mostly hostile to the United States, and who could dissipate the JTC in their JuratBTC accounts if permitted to do so.

Similarly, the public interest weighs very heavily in favor of an injunction. The United States has designated the Defendants for the SDN list out of a belief that they will use their assets to the detriment of our national interests. The seriousness of this finding cannot be overstated. The public interest favoring an injunction is profound.

CONCLUSION

For the foregoing reasons, the Court should grant an ex parte Temporary Restraining Order, freezing the JTC in Defendants JuratBTC accounts for 14 days, by which time Plaintiff anticipates filing a motion for a temporary injunction. The Court should include the corresponding Jurat IDs attached as Exhibit B to the Complaint.

Plaintiff will tender a proposed order to chambers once this case is assigned.

RESPECTFULLY SUBMITTED,

s/Jonathan Loevy

Jonathan Loevy
LOEVY & LOEVY
311 N. Aberdeen, 3rd FL
Chicago, IL 60607
(312) 243-5900
jon@loevy.com