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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 OMAR HURLOCK, on behalf of
4 himself and all others
5 similarly situated,

6 Plaintiff,

7 v.

25 Civ. 3891 (JLR)

8 KELSIER VENTURES, et al.,

9 Defendants.

Conference

10 -----x

11 New York, N.Y.
12 August 19, 2025
13 1:25 p.m.

14 Before:

15 HON. JENNIFER L. ROCHON,

District Judge

16 APPEARANCES

17 BURWICK LAW
Attorneys for Plaintiff
BY: MAX BURWICK, ESQ.

18 SBAITI & COMPANY, PLLC
Attorneys for Defendant Davis
19 BY: MAZIN AHMAD SBAITI

-AND-

20 M. CRIS ARMENTA PC
Attorneys for Defendant Davis
21 BY: CRIS ARMENTA

22 CAHILL GORDON & REINDEL, LLP
Attorneys for Defendant Chow
23 BY: SAMSON AARON ENZER
24 MILES C. WILEY
25

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1 THE COURT: Please be seated.

2 (Case called)

3 MR. BURWICK: Max Burwick, Burwick Law, for
4 plaintiffs.

5 THE COURT: Thank you.

6 MR. SBAITI: Your Honor, Mazin Sbaiti on behalf of
7 Hayden Davis, defendant, and with me is Cris Armenta.

8 THE COURT: Thank you.

9 MR. ENZER: Good afternoon, your Honor. Samson Enzer
10 from Cahill Gordon for Benjamin Chow, and with me is my
11 partner, Miles Wiley, and our colleague Greg Mortenson.

12 THE COURT: Good afternoon. Thank you very much for
13 your patience in starting this hearing a little bit later. As
14 you probably saw, I was concluding with a criminal matter, and
15 those require as much attention as I need to give to them. So
16 I appreciate your patience as we pushed this just a bit.

17 Let me just place on the record a little bit of the
18 history here just so that I can set the stage and then we'll
19 proceed with this hearing. I'm not going to go through all the
20 procedural history extensively, but to summarize, plaintiff
21 Omar Hurlock originally brought this putative class action in
22 state court against defendants Kelsier Ventures, KIP Protocol,
23 Hayden Davis, Gideon Davis, Meteora, Thomas Davis, Julian Peh,
24 and Benjamin Chow asserting state law claims arising from an
25 allegedly fraudulent cryptocurrency scheme around the public

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1 launch of a \$LIBRA token.

2 The case was moved to federal court. The complaint
3 has since been amended, which I can describe later, and at the
4 outset of -- well, not at the outset. On May 21, 2025, I
5 received an *ex parte* application for a TRO under Rule 65 from
6 plaintiff Hurlock, and on May 26, 2025, I held an *ex parte*
7 hearing by Microsoft Teams and I granted the application for a
8 TRO, placing my reasons on the record. I did emphasize that my
9 findings were being made in the context of an expedited *ex*
10 *parte* TRO application and that the Court may revisit its
11 holdings at a later time upon the receipt of more fulsome
12 briefing from the parties, but I was going to preserve the
13 status quo at that time.

14 I did set an expedited briefing schedule, which was
15 subsequently extended, along with the TRO at the request of
16 defendant Chow. That is docket 21. After defendant Hayden
17 Davis appeared and moved to resolve the TRO at docket 42, the
18 Court held a remote conference on July 1, 2025, to discuss
19 whether a more expedited briefing schedule and hearing date was
20 necessary. And with the consent of all appearing parties at
21 that conference, the Court further extended the briefing
22 schedule and effective date of the TRO, and adjourned the TRO
23 and PI hearing to today. That's at docket 62, and the parties
24 then subsequently filed briefs. Defendant Chow opposed the
25 motion for a preliminary injunction to extend the terms of the

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1 TRO. Defendant Davis also filed an opposition and plaintiff
2 filed their reply.

3 So we are here today for the parties to provide any
4 argument or presentation that they have with respect to the
5 preliminary injunction request. I know there's also a
6 Rule 12(b)(2) motion to dismiss for lack of personal
7 jurisdiction. It was filed by Mr. Davis and there's some
8 interaction between that and the amended complaint, which we
9 can address as well, but we're here primarily for that
10 preliminary injunction motion.

11 And so what I intend to do is to allow Mr. Burwick to
12 present whatever you wish to present in support of your motion
13 for the preliminary injunction, and then I will hear from
14 counsel for Mr. Davis and Mr. Chow, in whatever order you wish
15 to present, whatever you wish to present. And then because it
16 is Mr. Burwick's motion for a PI, you can have whatever brief
17 reply you need to present to me. I'm not a stickler for timing
18 or for things like that, so please be reasonable in your
19 presentations, but take whatever time you think you need to
20 take. If somebody thinks they need to add something, again,
21 I'm happy to hear it so that I have all the information that I
22 need.

23 Does that sound like an OK approach, Mr. Burwick?

24 MR. BURWICK: Yes, your Honor.

25 THE COURT: Thank you.

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1 Mr. Enzer?

2 MR. ENZER: Yes, your Honor.

3 THE COURT: And Mr. Sbaiti?

4 MR. SBAITI: Yes, your Honor.

5 THE COURT: Mr. Burwick, I have all the papers, but
6 the floor is yours on anything you wish to present.

7 MR. BURWICK: I'll take the podium, your Honor.

8 THE COURT: Please.

9 MR. BURWICK: Your Honor, I am genuinely surprised
10 that we're here today and that the defense has put across such
11 a strong opposition to this preliminary injunction largely for
12 two reasons. One, the defense is stating that the company that
13 one of the defendants works for doesn't exist, and the second
14 is that the property here is not their property. A couple
15 things I wanted to just get out before I get to my main points.
16 Currently Burwick Law represents over 370 clients in this
17 matter with over \$10 million in damages, and that in the *ex*
18 *parte* hearing, we discussed different buckets of assets.

19 There was one bucket that was readily traced to the
20 USDC. There was a second bucket and a third bucket. I wanted
21 to clarify right out of the gate that there's really only two
22 different types of assets at issue here, or we could say what
23 is the property and then the remainder. And in that, there is
24 \$111 million, \$111,921,035, across several different wallets
25 that are traced in the same form that were supplied in the TRO,

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1 but it is, again, in subsequent documents that were in the
2 amended complaint. And I brought the different wallet
3 addresses that currently have those assets in them if defense
4 counsel would like them.

5 There was something stated at the TRO that stuck with
6 me, and I've read it several times since. Temporary asset
7 freeze will serve the public's interest in stopping,
8 investigating, and remedying frauds. It would also provide
9 assurance that courts could protect investors, assets from
10 theft, and will aid investors in their recovery of stolen
11 assets when they can readily be located and traced to specific
12 locations like the purloined assets in this action.

13 Also of note, something, I think, worth identifying,
14 is that all of these accounts that we're referencing where
15 these assets are currently located, these accounts are not the
16 defendants' property. They are not associated with any of the
17 defendants' other assets. As a matter of fact, they were
18 created either immediately preceding this fraud, as in minutes
19 before, or shortly thereafter. And for pointing this out is
20 that none of these wallets have been KYC'd, or what is
21 traditionally known as know your customer. There's only an
22 alphanumeric set of identifiers. No one has come forth and
23 said that they are the actual controller of these wallets, that
24 they have the ability to transfer funds from these wallets. We
25 have \$111 million that were conveyed through fraud sitting in

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1 these assets -- sitting in these wallets currently. I know
2 defendants will make a big to do about the distinction between
3 the assets and property, but we'll get back to that.

4 These assets, like I've stated, they've been traced.
5 They're narrowly tailored. They have not been commingled. And
6 there's been significant discussion around *Grupo*, but the
7 reality here is that this case falls into a very similar line,
8 like that of *Deckert*. I'm aware that that was not briefed. I
9 brought those cases for defense counsel, which includes:
10 *Deckert v. Independent Shares, Great-West Life & Annuity*
11 *Insurance v. Knudson, Grupo, Montaneil v. Board of National*
12 *Elevators, US Ex Rel. Rahman v. Oncology Associates, and De*
13 *Beers Mines Limited v. United States*. These should be familiar
14 in the line and related to the *Grupo*.

15 *Grupo* stands for a very specific proposition, which is
16 this: It's that the courts should not reach towards a
17 defendant's general assets in the possibility of insolvency
18 when creditors are in play. I think this is an excellent
19 business proposition in that the creditors shouldn't be allowed
20 to ask the courts to step in when it looks as though the
21 company is about to go under and ask the courts to freeze those
22 assets such that this creditor could reach forward; whereas, we
23 compare this to *Deckert* where assets were obtained via
24 fraudulent misrepresentation. In that instance, a preliminary
25 injunction was acceptable when it was narrowly tailored. The

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1 assets were traceable, and they were not commingled with the
2 defendants' general assets.

3 There's been a lot of discussion about *Casa*. *Casa*
4 just simply isn't applicable here. In that *Casa* is raising
5 issues in regards to the separation of powers, which is
6 obviously a critical issue, and raising issues around executive
7 orders that in some instances are going to be questioned as far
8 as the constitutionality of those orders, and the question of
9 judicial activism as far as injunctive relief. But here we're
10 not dealing with that type of an issue. We're not dealing with
11 a universal injunction.

12 We're dealing with a narrowly tailored injunction. It
13 serves the public's interest. The defendants here are not
14 prejudiced, in that the defendants, other than a YouTube video
15 where one of the defendants is stating that he is the
16 custodian. I'm not quite sure what a custodian means in this
17 instance, but he is the custodian over these assets. And most
18 importantly is that these assets here, as I've stated
19 previously several times, is that they are directly traced to
20 this fraud, as in these tokens were created. They were placed
21 into the dynamic liquidity market maker. They were swapped for
22 the assets that are currently frozen, and then these assets now
23 sit in these wallets and have now the quality of property.

24 Just a couple of statements from one of the
25 defendants, Mr. Davis, on a YouTube video in regards to his

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1 perspective on these funds. And if I'm being extremely
2 transparent, that's also my leverage with certain groups and
3 parties, right? I'm not sure who he is referencing. The fact
4 that I have control is also what's making me a target and also
5 protecting me because this is an international incident. This
6 isn't some random f'ing scam.

7 As far as what to do with the funds, there's no
8 refund, and just you know -- and give all the money to
9 Argentine nonprofits. I don't know if we've yet to see
10 anything with regard to any Argentine nonprofits, and moreover,
11 they're not parties to this case. A refund is going to be
12 based on, again, a bunch of different metrics, and people are
13 still going to be pissed and people are still going to come for
14 me.

15 When looking at the general attitude towards these
16 funds, it's not reflective of somebody that really is concerned
17 about the degree of fraud that they've just been involved in or
18 the care involved for taking care of those who have been
19 defrauded. And if defense counsel would like those cases or
20 those wallets, I'm happy to provide those.

21 Thank you, your Honor.

22 THE COURT: Thank you, Mr. Burwick. Anything further
23 before I move to defense counsel?

24 MR. BURWICK: No, your Honor.

25 THE COURT: Thank you.

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1 Mr. Sbaiti, you'll go first?

2 MR. SBAITI: Yes, your Honor.

3 THE COURT: Thank you.

4 MR. SBAITI: Your Honor, this is a preliminary
5 injunction hearing, and counsel didn't say any of the magic
6 words or at least explain how they apply. You didn't hear the
7 words "irreparable harm." You didn't hear the words "likely
8 success on the merits." You didn't hear anything to support
9 sort of the key prongs that should apply.

10 I think the big picture here is that the lead
11 plaintiff lost \$60, and now they want you to tie up
12 \$111 million worth of assets not for the plaintiff but for an
13 unidentified, not certified, non-ascertainable damages class
14 that spans across the world. That's what he has asked you to
15 do, and there's no precedent for that. There's no legal
16 justification for that. There's no factual justification for
17 that.

18 Even though your Honor allowed them to put some
19 evidence in and the reply, when you go through it, it doesn't
20 answer any of those questions. Nothing in the evidence they've
21 submitted shows how they are ever going to prove liability.
22 Nothing in the allegations suggests liability. You don't even
23 have an affidavit from the lead plaintiff. You only have
24 allegations sworn up by somebody else. There's no verified
25 complaint. There's no affidavit. There's no declaration. You

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1 don't even have evidence in front of you that the lead
2 plaintiff lost a dime. He didn't identify his own wallets
3 under oath, and they're not identified anywhere. Yet they keep
4 making this tracing argument and putting it in front of the
5 Court that somehow the losses are traceable to the monies that
6 are being held.

7 What is really going on is this is a very complex,
8 stochastic, unregulated, worldwide system. What they're doing
9 is throwing a bunch of words out at you and telling you because
10 you can't see it, take our word for it, it's bad. And then
11 they're taking clips out from the Twitter-verse and trying to
12 make that the main issue. But the real issue here is under
13 *Casa*, you've got a Supreme Court that says you can't have
14 class-wide relief without a certified class, without even
15 attempting to certify the class.

16 There are 15 cases since that case came out. That
17 case came out bright that July 1 hearing, your Honor. There
18 are 15 cases since then citing *Casa*, not a-one of them goes the
19 plaintiffs' way — not a-one of them. The one that comes the
20 closest is the *AARP* case out of Texas where the injunction was
21 denied, and they were allowed to move for class cert to see if
22 they could actually make it. But that was another one of these
23 global injunctions.

24 In their papers, the plaintiffs make the statement
25 that, well, *Casa* isn't new law because it's always been the law

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1 in the Second Circuit that you can't have an injunction for
2 class-wide relief without a certified class, and they are
3 actually right. The *De Blasio* case that we cite does say that.
4 There's a little bit of a different thought, so it gives the
5 Court two angles. The *De Blasio* case predicated its decision
6 on the fact that one of the jobs of the court issuing an
7 injunction is to narrowly tailor the injunction as much as
8 possible for the parties in front. And so when there was no
9 certified class, those parties are in front of it. The absent
10 class members can't get relief.

11 Where *Casa* took it, same rules, same general outcome:
12 Can't have injunctive relief from an uncertified class actually
13 came from the Supreme Court's reading of the Judiciary Act,
14 saying the court just flat out doesn't have the equitable
15 jurisdiction to do it in the first place. That may not matter
16 today. Where that will matter theoretically is on appeal
17 because the *de Blasio* case sets up an abuse of discretion
18 standard, whereas *Casa* sets up a *de novo* standard of review.

19 Getting to *Grupo*, my friend on the other side gets the
20 holding in *Grupo* completely wrong. *Grupo* stands for the
21 premise, again, under the Judiciary Act, that the Court lacks
22 the equitable authority to seize funds to satisfy a judgment.
23 The cases that have seemingly gotten around *Grupo* — *Deckert*
24 being one of them and other cases — look at the risk of
25 dissipation of assets. But if you look at all that case law,

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1 you don't even get there if there isn't a property interest to
2 begin with.

3 All of those cases have in common that the defendant
4 held something that the plaintiff had a property right interest
5 in. It could be money that was taken directly. And here you
6 have no tracing that a dollar that you've seized directly came
7 from the plaintiff or directly came from any of the class
8 members, specifically that could be involved in this case,
9 noting no extraterritorial application of the RICO statute or
10 any of the other statutes that they cite.

11 One of the cases they cite, I believe, was the Lanham
12 Act case. And there the Second Circuit said there's a
13 disgorgement remedy that is equitable, but a disgorgement
14 remedy implies a property interest. When you are a Lanham Act
15 plaintiff and you sue a defendant, what you are saying is: You
16 have my profits that I would have gotten but for your bad acts,
17 so I have a property interest in that. Those aren't damages.
18 The Second Circuit ruled that's restitutive disgorgement. So
19 we won't ever get to the question of dissipation until there's
20 a property interest, which they haven't established.

21 Even if we were to get there, there is not a scintilla
22 of evidence before the Court right now that my client or any of
23 the defendants are at risk of dissipating the assets. Every
24 dollar, according to their expert, has been sitting there for
25 four months by the time you entered the TRO. I think you noted

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1 how late the TRO came, and every dollar is accounted for. That
2 is not the sign of someone trying to abscond with money, and
3 that is not the sign of anybody at risk of dissipating the
4 money where it can't be traced.

5 I think they have to pick which way they want to go
6 because they are sitting here saying everything can be traced.
7 If so, then there's absolutely no reason why dissipating these
8 assets is any different than the dissipation of any asset.
9 Every plaintiff wants to make sure that if they get a judgment,
10 there's going to be money to pay it. Under their standard, if
11 there's any theoretical way that someone could dissipate the
12 assets, now we have an injunction. That's not the standard,
13 your Honor. That's not the standard, and that's another thing
14 *Grupo* really got to.

15 Ironically, *Grupo* dealt with the same New York seizure
16 statute that we discussed in the motion to dissolve. And under
17 that seizure statute, there's a very high burden for seizing
18 assets, and what *Grupo* held is you count use Rule 65 to get
19 around Rule 64. Rule 64 is there to borrow state law asset
20 seizures or prejudgment remedies. You have to go through those
21 steps. They didn't do that, and they should have. And we
22 would be in a completely different universe, I think, if they
23 had tried to because those standards are even higher than in
24 Rule 65.

25 So they haven't shown any kind of irreparable harm.

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1 The fact that you may not get all your damages back is not
2 irreparable harm. They haven't shown a likelihood of success
3 on the merits because -- they didn't even try. They don't even
4 have a verified complaint. Everything they're saying right now
5 is allegation. And the allegations are right now there was a
6 crypto coin launched, and people lost money. People lost money
7 because the launch was somehow suspicious.

8 They don't tell you why it's suspicious. They say,
9 well, there's these ideas, these notions. What notions? This
10 is a brand new economy. Every study on crypto, on these meme
11 coins — not stable coins but meme coins like this, which are
12 affinity coins — says that 97-something percent of these crash
13 and fail right away. Everyone who walks in to buy one of these
14 things is a speculator, and as a speculator, it's caveat
15 emptor. They don't have any expectation of making money.

16 In this case, if Mr. Hurlock says, well, my goal was
17 to benefit the businesses of Argentina like what was promised.
18 That's a laudable goal, and that is what my client completely
19 intended to do. That's why the money hasn't gone anywhere. He
20 still intends to use that if he can. Ironically, this
21 injunction is bringing about the very non-event that they claim
22 is the evidence of their fraud. You can't do that. You can't
23 have a circular causal standard.

24 The last thing, your Honor, I think we should be
25 discussing, because I think the injunction should be squashed,

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1 is the -- really is the fact that it is a complex -- I think of
2 this -- I think of crypto with the blockchain. Did you ever
3 see the movie "The Matrix" with all the numbers flying, and
4 everyone thinks they can read it. There's only one guy that
5 can, but I don't think he's in the courtroom today. I
6 certainly can't.

7 But that's basically what they are asking you to do.
8 Trust us. This stuff is nefarious. It's not just a
9 coincidence of a bunch of negative events that resulted in
10 people losing money as they would lose in any potential market,
11 especially a speculative market, your Honor. When people
12 speculate, they take the risk that they are going to lose. You
13 don't have any evidence otherwise. There's not any evidence
14 that this somehow promised to be more robust than any other
15 meme coin.

16 There is no guarantee that my client, at least, said.
17 In fact, there's not a statement from my client anywhere that
18 the lead plaintiff relied on — not a single one. Everything
19 they say my client said came after the crash, and most of it
20 after the lawsuit was filed. So they don't have a single
21 statement attributable to my client that they relied on where
22 they say, well, that was a promise or that was only a partial
23 truth, and you didn't tell me the whole truth. They didn't
24 identify a single, solitary statement attributable to my
25 client.

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1 What he pled in his first amended complaint, there was
2 no pleading about Mr. Hurlock relied on the original complaint.
3 So setting aside the fact that I don't think the first amended
4 complaint should apply, to the extent it does, what Hurlock
5 pleads about his own reliance is that he read a post about this
6 launch, and it mentioned something about Milei. And he was
7 relying on Milei supporting -- President Javier Milei, the
8 President of Argentina, he was relying on him to support it.
9 Well, President Milei did tweet, and President Milei did
10 actually support it.

11 Now, later on in the day — and when this thing goes
12 to more evidence, you'll find out why — President Milei
13 deleted his tweet.

14 Can we put up just a demonstrative of a timeline?

15 THE COURT: Sure.

16 MR. SBAITI: Cris is going to -- Ms.Armenta is going
17 to publish.

18 MS. ARMENTA: I'm not sure that I can.

19 THE COURT: My deputy can assist.

20 MR. SBAITI: Sorry, your Honor. I should have asked
21 that before we started.

22 THE COURT: Not a problem.

23 MS. ARMENTA: Let me just hand it to Mr. Sbaiti, and
24 he can go through it.

25 MR. SBAITI: I don't know if anybody can see it.

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1 MS. ARMENTA: I don't think we have it connected.

2 THE COURT: Do you have a hard copy?

3 MR. SBAITI: No. Do you?

4 MS. ARMENTA: It's on a USB.

5 MR. SBAITI: We can email it if you want. I'll just
6 read off of it, if that's OK.

7 THE COURT: Why don't you read off of it. Go ahead.

8 MR. SBAITI: I want this to make it into the record.

9 THE COURT: Sure.

10 MR. SBAITI: \$LIBRA launches at about 5:01 p.m.
11 President Milei tweets his support, 5:24. Mr. Hurlock — this
12 is from the first amended complaint, paragraph 38 — he buys
13 around 5:31.

14 THE COURT: Just speak slowly so that the court
15 reporter can take it down.

16 MR. SBAITI: I'm so sorry. I speed up when I read.

17 At 6:00 p.m., Mr. Hurlock sells his first bit of
18 \$LIBRA, and at 9:16 p.m., Mr. Hurlock sells the rest of his
19 \$LIBRA. And then an hour and 22 minutes later, Javier Milei
20 deletes his tweet. So Mr. Hurlock sold before the —
21 quote/unquote — corrective disclosure actually came in that
22 Milei had deleted his tweet. And then that led to some other
23 things that I think can be explained away later on. But the
24 point is, given the allegations themselves, you don't even have
25 your typical market purchase based on false information, then I

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1 learned the truth, and then I buy at a loss. You don't even
2 have that.

3 He sells for some other reason, which casts into doubt
4 the whole thing. And I combined this with the point I was
5 making about "The Matrix" to say there's no way, with this
6 complex of a system and the dearth of evidence, for the Court
7 to find a likelihood of success on the merits because they
8 haven't addressed any of the complexity in this system.

9 They've done a great job of trying to plead it, but that's not
10 enough for an injunction, especially not one of this size. The
11 other fact is that they've pled for damages, and classic no
12 irreparable harm is if damages are sufficient, which they
13 clearly are — he lost \$60. Everyone else presumably lost
14 money — that's going to get rid of the injunction as well.

15 The final thing, your Honor — and I hope this won't
16 matter — is the bond. \$111 million being sequestered should
17 require a bond at a minimum to compensate for what is the loss
18 of use, traditional damages for money being sequestered. The
19 State of New York has a statutory interest rate. I believe
20 it's 9 percent. And if this is going to be held for another
21 year or two, I think that would be the appropriate bond.

22 Finally, your Honor, I would like to address our
23 12(b)(2) motion. The personal jurisdiction argument we made
24 was: My client had no interaction with New York. There is no
25 evidence -- my client put in his affidavit he did not think --

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1 he had no reason to believe he had traded directly with
2 Mr. Hurlock. There is no evidence that Mr. Hurlock was in New
3 York when he made his purchases. They have put no evidence of
4 any nexus my client had with New York. There are blank --
5 blanket conclusory allegations of an agreement between my
6 client and Mr. Chow, but none of those say that Mr. Chow was
7 operating from New York at the time. None of those say what
8 the agreement was, how it actually was to come about.

9 A lot of those allegations relate to the \$M3M3 coin,
10 the other coin that they've just thrown in. None of them
11 relate to \$LIBRA. There is no basis even under the slightly
12 broader personal jurisdiction scheme of RICO. There's no basis
13 for personal jurisdiction over Hayden Davis. He doesn't live
14 in New York. What their allegations suggest is that they
15 tweaked a lot of the programs of the Meteora platform. The
16 only evidence in the record right now is that Meteora is based
17 out of Singapore. That rests on Solana. That's based out of
18 Switzerland. There is no personal jurisdiction here, your
19 Honor. Without personal jurisdiction, there should be no
20 preliminary injunction for that reason as well, your Honor.

21 THE COURT: Let me ask a question about that.

22 MR. SBAITI: Yes.

23 THE COURT: I understand and appreciate receiving
24 argument on the personal jurisdiction point primarily for
25 purposes of likelihood of success, etc., but that actual

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1 motion, the 12(b)(2) motion, hasn't been fully briefed yet,
2 right? Because we have this amended complaint coming in, and
3 we don't have an opposition from plaintiffs to your 12(b)(2)
4 motion. Is that correct?

5 MR. SBAITI: That's correct, your Honor, but I would
6 love to throw a caveat in that because this went a little bit
7 different than your normal flow. In this case, on July 1, I
8 specifically piped up and said if they are going to amend, they
9 should just go ahead and amend. Let's not do everything twice.
10 And I don't think you got a direct representation there
11 wouldn't be an amended, but nobody said, OK. And then your
12 conclusion was we're just going to deal with the complaint that
13 is there.

14 Then you set a briefing schedule, which, I think,
15 falls under Rule 16. They missed that deadline. So I think
16 there is an argument that, well, yeah, maybe under Rule 15,
17 they had 21 days to amend. I'm not sure that mooted their
18 obligation to respond to at least the parts of the motion that
19 were still in play. They still have the two claims from the
20 original complaint in the new complaint. Those are the two New
21 York claims; one of which, I guess, is an inequitable claim,
22 but that part doesn't really matter. So I think there is at
23 least an argument that there's no jurisdiction there. But I
24 think the fact that they missed their own briefing deadline,
25 and frankly a lot of the stuff would have been the same. I

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1 think they waived the argument.

2 THE COURT: I appreciate it. Thank you.

3 Mr. Enzer or Mr. Wiley?

4 MR. ENZER: Thank you, your Honor. If it will please
5 the Court, I'm going to address part of the argument and let my
6 colleague, Mr. Wiley, address the other part.

7 THE COURT: That's fine.

8 MR. ENZER: Your Honor, we won't be long here. We'll
9 be brief. We join in the arguments that Mr. Davis's counsel
10 has made. I just want to highlight a few points and respond to
11 a few things that the plaintiff said.

12 First, I think it's quite clear that the motion for
13 preliminary injunction here to freeze over \$100 million in
14 assets is inappropriate and should be denied. Now, with
15 respect to Mr. Chow, I want to focus the Court on the specific
16 assets that relate to Mr. Chow. Plaintiffs' counsel, in his
17 presentation and in their briefing, has a habit of referring to
18 the defendants as a group. That's not appropriate. They have
19 to make a showing on each of the elements for an injunction
20 against our client. They have not done so. And it's important
21 to focus on the Court on our client, what are the allegations
22 in evidence against him.

23 Now, in the Court's original temporary restraining
24 order, there were three buckets of assets restrained. Only the
25 first bucket is arguably relevant to Mr. Chow, which is mainly

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1 any \$LIBRA cryptocurrency or the proceeds obtained through the
2 trading of cryptocurrency. That is because Mr. Chow is a
3 software developer. He helped develop the Meteora platform.
4 When people traded through the centralized liquidity pools on
5 Meteora, the trading fees were automatically sent to a program
6 account. And he has a claim on a part of the revenues of the
7 company that owns this -- that has the rights to the software,
8 and thus, an indirect property interest in those -- in the fees
9 that are in that account. That is what we're talking about
10 when we talk about Mr. Chow.

11 Now, with respect to one of the first problems, which
12 Mr. Davis's counsel has already touched on, is the *Casa*
13 problem. The injunction sought here is way overbroad. The
14 plaintiff deposited Wrapped Solana to purchase \$LIBRA that is
15 worth \$60 and now is seeking to restrain millions and millions
16 of dollars on behalf of an uncertified class. That's not
17 allowed under the Supreme Court's decision in *Casa*, which is
18 dispositive. We briefed it. It's set forth in our letter to
19 the Court, our opposition, and our surreply.

20 In addition -- that's not a new development by the
21 way. That is long-standing law. We also cite in our brief
22 *Kane v. de Blasio*, which plaintiffs' counsel did not address
23 today, but it sets forth the same principle; that when we're
24 talking about an uncertified class, it is not appropriate to
25 restrain assets for damages for an uncertified class. Now,

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1 today, plaintiffs' counsel, he tried to distinguish *Casa*. He
2 said that was a separation of powers case.

3 I respectfully submit, your Honor, I've read the case
4 many times in preparation for today. It is exactly on point.
5 The issue in the case was: What is the power of a federal
6 court under the Judiciary Act to issue universal injunctions,
7 exactly the type of injunction the plaintiffs are seeking here;
8 an injunction that would benefit folks who not here; restrain
9 assets for the potential damages of the putative uncertified
10 class.

11 THE COURT: Mr. Enzer, what about the Supreme Court's
12 statement in *AARP v. Trump* where they say, "Courts may issue
13 temporarily relief to a putative class, and we need not decide
14 whether a class should be certified as to the detainee's due
15 process claims in order to temporarily enjoin the government
16 while the question of what notice is due is adjudicated."
17 That's a 2025 case.

18 MR. ENZER: Yes, your Honor, a few things we addressed
19 in our surreply. First, it's important to note that the *Casa*
20 case came after *AARP*. And the Newberg treatise, which is what
21 plaintiffs relied on and what the *AARP* decision relied on, it
22 updated its treatment of this topic in light of *Casa*, and notes
23 that *AARP* may not be good law, first of all.

24 Second, I think if you read *AARP* very carefully, it is
25 dealing with a very narrow, specific situation. What was

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1 happening in that case is that there were folks who believed
2 they were going to be imminently deported under the Alien
3 Enemies Act. They had not yet received notice. So they were
4 in a situation where if they waited to receive notice, they may
5 not have had the time to come to court, file an application,
6 and give the court the ability to even review the adequacy of
7 the notice under the Constitution. And so in this very unique,
8 specific circumstance, the court said it was appropriate to
9 give temporary relief to an uncertified class for the limited
10 purpose of preserving the court's appellate jurisdiction. That
11 is a very narrow and specific circumstance. It does not apply
12 here. *And Casa* is the controlling decision, and it disposes of
13 this notion. I think we can sit down there.

14 But there are other problems: The *Grupo* problem. I
15 will just say, your Honor, I just want to note, we said this in
16 our opposition. We said it in our surreply, but I'll just add
17 it. There are serious questions about whether plaintiffs will
18 ever be able to certify a class in this case. First of all,
19 there's no indication in the papers, either the complaint or
20 the new amended complaint if the Court considers it, that
21 Mr. Hurlock is an adequate representative on behalf of this
22 worldwide putative class of buyers of tokens. For example, he
23 purports to assert claims under the New York General Business
24 Law, and yet, there are people who they purport to be in the
25 class in other states, other countries, that would have no

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1 standing to sue under that. Can he adequately represent them?
2 Huge problem under Rule 23.

3 Second, we have the sophistication problem. We have
4 no idea from the pleadings how sophisticated Mr. Hurlock was.
5 The plaintiffs try in their briefs to say that the buyers are
6 "retail." But I respectfully submit, your Honor, if I try to
7 go to the Meteora website, the world of decentralized finance,
8 Solana, we're not talking about what you would ordinarily
9 conceive of as a retail buyer. These are people with great
10 sophistication inherently to even be able to find this thing,
11 know what it is, want to trade on it. And the question of how
12 much sophistication this plaintiff has is relevant for the New
13 York General Business Law claims and may be relevant for
14 reliance or transaction causation. That means that individual
15 issues will predominate defeating class certification.

16 In addition, plaintiffs told us for the first time in
17 their amended complaint that the way that Mr. Hurlock got into
18 the decentralized software to trade was through his own wallets
19 and a user interface, Phantom or BullX, I believe is what he
20 said. Well, each of those may have their own terms of use.
21 Those terms of use may have class action waivers, arbitration
22 clauses, disclaimers, and so you are going to have to look at
23 the way -- the fund flow for every single one of these
24 plaintiffs. Again, huge problem for class certification.

25 In addition, as we pointed out in our briefs, there

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1 are state conflicts. New York law may require the Court to
2 look at each respective state law where the buyer was, for
3 example, for the negligent misrepresentation claim. There may
4 be conflicts among those states. Again, the common issues
5 don't predominate, and not all the buyers lost money. There
6 will be some people who bought and sold at a profit, who bought
7 and sold quickly. Another class problem.

8 I could go on and on and on, but the point is: It is
9 far from clear that this will be a case where the class will be
10 certified. The plaintiff that they represent in this case has
11 a claim for \$60. That is not enough to justify seizing,
12 freezing, and holding for the term of this lawsuit tens, if not
13 hundreds of millions, of dollars in assets. Plaintiff made a
14 point of saying, when he was at the podium, that he has over
15 300 clients, and they have \$10 million in losses. That's news
16 to us, but he doesn't represent them in this case. They are
17 not in the case. They are not named plaintiffs. There is no
18 indication that those -- we have no information about them, and
19 I would respectfully submit, your Honor, that does nothing to
20 move the needle on whether this relief is justified.

21 Now the *Grupo* problem, and this is really under the
22 heading of the lack of irreparable harm. Plaintiff has the
23 burden of showing, the most important showing, that absent an
24 asset freeze, they will be irreparably harmed. They have not.
25 They cannot make that showing here. Now first, which plaintiff

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1 did not address today at all, it is undisputed that for them to
2 prevail in this case, based on the nature of the theory on
3 which they're trying to seize assets, they have to show a risk
4 of asset dissipation.

5 There is zero evidence of that with respect to
6 Mr. Chow. It's their burden. They have not met it. There is
7 no evidence that Mr. Chow has moved assets or concealed them.
8 There is no evidence that Mr. Chow tried to move or conceal
9 assets. There is no evidence that Mr. Chow intends to try to
10 frustrate a judgment. There is no evidence that he is
11 insolvent. There's no evidence that he is in danger of being
12 insolvent. Even though we have no burden, we have put in
13 facts, that they failed to rebut, that show the exact opposite.
14 There's zero risk of dissipation here.

15 First and critically, we pointed out in our opposition
16 papers the trading fees at issue, the ones that apply to
17 Mr. Chow, they went into a program account. They are still
18 there. They have not moved. They did not move after this
19 event in February, which led to a lot of media. It led to
20 Mr. Chow resigning. It led to all kinds of negative attention.
21 Did not move the assets. He did not move any assets, and
22 importantly, Dynamic Labs Limited, the company that made
23 Meteora, did not move the assets either even though they had
24 been sued.

25 March 17, the plaintiffs filed this case in state

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1 court. The assets are not moved from the program account.
2 They are not moved by my client. They are not moved by Dynamic
3 Labs. In May, we removed the case. Not moved. May 29,
4 plaintiffs -- we learn of the temporary restraining order the
5 plaintiffs got on an *ex parte* basis. Still, no assets are
6 moved, and critically the Dynamic Labs folks are not subject to
7 that order, OK. They are clearly aware of it. We know that
8 from the record. They could have moved it. They were not
9 subject to the order. They did not move it. And the assets, I
10 can represent to the Court, are still there today.

11 A second fact that the plaintiffs do not and cannot
12 refute: My client cannot move any of the funds in the program
13 account. He has no control over it. He swore to that under
14 penalty of perjury in the declaration. Plaintiffs did not
15 rebut it, so he literally couldn't move the assets even if he
16 wanted to.

17 In addition, as we pointed out in our papers, there
18 was significant delay by the plaintiffs rebutting their claim
19 of a risk of a dissipation. The cases they relied on that
20 purport to authorize seizures of crypto, are cases where --
21 almost all of them are cases where the defendant is
22 unidentified. You have a John Doe defendant. So, of course,
23 when a court sees there's an injured plaintiff we don't know
24 who the defendant is. There's an allegation of fraud. We have
25 assets. In that circumstance, a court could freeze the assets

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1 so we can figure out the rest. That's not this situation.

2 Here, Mr. Chow decided to retain counsel, had us
3 appear in court, cooperated with the plaintiff in removing the
4 case in stipulating to a stay of discovery — another fact that
5 rebuts their showing that there's a risk of dissipation or any
6 urgency here — and has engaged in this matter. He wants to
7 defend this case, and he wants to be exonerated because he
8 didn't do anything wrong.

9 And to say that there is no hardship to him is utterly
10 false. There is a huge reputational harm in a plaintiff coming
11 into court, accusing someone of fraud with no evidence, and
12 then asking a court to freeze their assets before anything has
13 been proven and them posting press releases about it. That is
14 a huge harm to our client, and it's a huge harm to non-parties
15 that operate on the Meteora platform. We're hopeful that the
16 Court will deny this motion to set the record straight on that.

17 One other point that I don't want to forget before I
18 turn it over to Mr. Wiley. Another huge issue with their
19 failure to show irreparable injury is the *Grupo* problem, OK.
20 Now, Mr. Davis's counsel discussed this, but there are a few
21 points that are specific to Mr. Chow that I want to make. When
22 you look at the *Grupo* decision and the line of case and also
23 your Honor's treatment of issue in the *Rappaport* case, I think
24 it's clear that, at bottom, this issue boils down to is the
25 plaintiff an unsecured general creditor seeking damages with

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1 respect to the property they're suing, or are they someone with
2 a specific claim to specific property they have traced to the
3 defendant; is that what they're seeking to enjoin?

4 And here with respect to Mr. Chow, they have not put
5 in any evidence tracing any funds from Mr. Hurlock to the
6 program account that I have talked about. And I can represent
7 to the Court if you read the amended complaint, the amended
8 complaint says, Mr. Hurlock uses an asset called Wrapped Solana
9 to make the purchases of \$LIBRA tokens. I can represent to the
10 Court, I have conferred with counsel for Dynamic Labs, and they
11 have informed me that the program account has two types of
12 tokens in it, \$LIBRA tokens and USDC stablecoins. It does not
13 have Wrapped Solana from the transaction fees from the pool
14 that was set up allegedly by Mr. Davis.

15 In other words, the funds in the program account could
16 not possibly be Mr. Hurlock's according to his allegations.
17 That defeats any possible equitable claim he could have. This
18 is not a case where he has the Hope diamond, uses the Hope
19 diamond to buy some stock, and then it turns out the stock was
20 a fraud and he says, give me my diamond back. This is a case
21 where we are talking about fungible property, fungible assets
22 that can be traded into or out of dollars. It is not
23 Mr. Hurlock's specific property, and as I said under the *Casa*
24 line of cases, it is not appropriate to speculate about whether
25 any of those USDC or \$LIBRA program accounts can be traced to

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1 uncertified absent class members because they can't seek relief
2 for them.

3 With that, your Honor, I'll turn it over to my
4 colleague, Mr. Wiley, to address the remaining points.

5 THE COURT: Thank you. Sure.

6 MR. WILEY: Thank you, your Honor. And with thanks to
7 my partner, Mr. Enzer, I'm going to pick up the discussion here
8 to discuss how plaintiff has failed to make his merits showing
9 as to Mr. Chow. And you know, before we dive into the specific
10 allegations here, I want to go back to something that
11 Mr. Davis's counsel highlighted, which is the standard of
12 review here. The standard --

13 THE COURT: Mr. Wiley, speak a little bit more slowly,
14 if you would, just for the court reporter's sake. I can hear
15 you quickly, but --

16 MR. WILEY: No, my apologies. You might have to
17 remind me two or three more times, but I'll do my best.

18 As I was saying, the preliminary injunction, freezing
19 assets, is a truly extraordinary remedy that should only be
20 granted in rare circumstances. I'm going to walk through why
21 plaintiff has alleged a claim under the New York General
22 Business Law 349, 350, or a claim for unjust enrichment, but a
23 key thing to remember is it's not Mr. Chow's burden to show
24 that plaintiff doesn't state a claim here.

25 When we file our motion to dismiss shortly, that will

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1 be our burden, but today it's plaintiffs' burden. And it's not
2 just enough for him to show he plausibly alleges a claim. He
3 has to show a likelihood of success on the merits. That's a
4 serious showing, or serious questions going to the merits, plus
5 the balance of the hardships tipping decidedly in his favor.

6 You know, I want to highlight that the serious
7 question standard isn't a walk in the park, as the Second
8 Circuit explained in the *Citigroup Global Markets v. VCG*
9 *Special Opportunities Master Fund* case, that I believe
10 plaintiff cited. This standard is for when the plaintiff has
11 made a significant showing in support of its claims, but the
12 Court "cannot determine with certainty that the plaintiff is
13 more likely than not to prevail." And in that same case, the
14 Second Circuit explained that because of the heavier burden on
15 the equities balancing, the plaintiffs' "overall burden is no
16 lighter than the one it bears under the likelihood of success
17 standard."

18 So this heavy burden that plaintiff carries is going
19 to inform our analysis today even though I'm going to tell you
20 why he fails to state a claim. You know, the first reason that
21 Mr. Hurlock can't show a likelihood of success, or serious
22 questions with respect to his claims against Mr. Chow, is that
23 there are simply no allegations against Mr. Chow that show he
24 engaged in any misconduct with respect to the alleged \$LIBRA
25 fraud.

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1 Now, we pointed this out in the opposition and
2 reiterated it in our surrepley, there are some really key facts
3 here. These are undisputed facts. These came in in the
4 declarations of Mr. Chow, actual evidence that you can look at.
5 Mr. Chow is not a member or promoter of the Viva La Libertad
6 project. He didn't own, control, or set up the smart contract
7 that minted the \$LIBRA tokens. He didn't recruit President
8 Javier Milei or other alleged touters of \$LIBRA. He didn't
9 configure the one-sided Meteora liquidity pool used to sell
10 \$LIBRA tokens or decided that it would be one-sided. He didn't
11 transfer any \$LIBRA tokens into or out of the pool. He didn't
12 buy or sell any Libra tokens. He didn't extract from the pool
13 or receive any payments made from \$LIBRA tokens. He didn't
14 draft, approve, or disseminate any allegedly false statements
15 inducing \$LIBRA token purchases, and he didn't engage in any
16 insider trading, sniping, or other illicit activities of \$LIBRA
17 tokens that plaintiff challenges manipulation here.

18 In short, you know, he didn't do the things that
19 plaintiff says were manipulation here. And as I mentioned, all
20 these facts are in dispute, and that's fatal to plaintiffs'
21 claims at issue today. And we highlighted in their brief, but
22 in reality, this is just an improper attempt to hold
23 Mr. Chow --

24 THE COURT: Slow down.

25 MR. WILEY: An improper attempt to hold Mr. Chow

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1 liable for helping to develop the Meteora software, which the
2 Davis defendants allegedly used for a token launch that
3 plaintiff says was fraudulent. This is like trying to hold the
4 New York Stock Exchange liable for misstatements in General
5 Electric's registration statements or insider manipulation of
6 the price of General Electric. It doesn't make sense, and
7 honestly, here it's one step more removed than that because
8 Mr. Chow is a consultant to Dynamic Labs Limited and cofounder
9 of Meteora. In our stock exchange example, he's not even the
10 stock exchange. He is a consultant to the stock exchange.

11 Similar attempts in the cryptocurrency space were
12 recently rejected by the Second Circuit. In *Risley*, we had a
13 group of purchasers of scam tokens who brought claims against
14 the developers of the automated computer code that allowed
15 peer-to-peer trading of these assets on the Uniswap exchange.
16 And affirming the district court's dismissal of the securities
17 act and exchange act claims, the Second Circuit explained that
18 extending liability to smart contract developers would be akin
19 to holding the NASDAQ or the New York Stock Exchange liable as
20 facilitators of any fraudulent stock purchase on their
21 exchanges. The Second Circuit agreed with the district court
22 that it defies logic that a drafter of a smart contract
23 computer code could be held liable under the exchange act for a
24 third party's misuse of the platform. So that's what they're
25 trying to do here, and it's not appropriate, as the Second

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1 Circuit has held in *Risley*.

2 You know, plaintiffs argue that, well, Mr. Chow
3 admitted that he provided technical support on the project, so
4 we're likely to succeed on our claims. That's not quite right.
5 Mr. Chow has been very upfront about this. He consulted for
6 Dynamic Labs, and at their instruction, he sometimes helped
7 teams across the Meteora software. This doesn't change the
8 calculus at all, in part because he didn't decide that this
9 would be a one-sided liquidity pool. Everything in his
10 declaration about not being involved in the Viva La Libertad
11 project and the launch of \$LIBRA is still accurate.

12 Plaintiff also argues, you know, that the so-called
13 sophistication of the \$LIBRA launch strongly suggests that Chow
14 helped design the \$LIBRA scam. Your Honor, I'll just briefly
15 note that I'm not sure this alleged scam seems so
16 sophisticated. What they say that the — sorry, "they" being
17 plaintiff — the Davis defendants allegedly misrepresented what
18 \$LIBRA was, and that there was liquidity to trade \$LIBRA and
19 allegedly the Davis defendants removed it. It's relatively
20 simple fraud, and in any event, this is nothing more than pure
21 speculation. And it's pure speculation that the Court doesn't
22 have to credit, and the reason that you don't have to credit it
23 is again turning back to Mr. Chow's declaration, where he says,
24 you know, I'm not a member of the Viva La Libertad project, and
25 led by Davis that created \$LIBRA, didn't design or launch the

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1 program website, didn't trade in these coins.

2 There's another set of allegations that I wanted to
3 address which is, you know, plaintiff says that because he
4 purports to allege that Mr. Chow worked with Mr. Davis on a
5 different coin, a coin called -- it's \$M3M3 phrased as "meme
6 33."

7 THE COURT: Slow down.

8 MR. WILEY: That because they worked on this \$M3M3,
9 Mr. Chow must have worked on \$LIBRA. And once again, as I've
10 repeated a couple times, this runs headlong to Mr. Chow's
11 declaration. He wasn't involved in the \$LIBRA project, and
12 also allegations about activities with respect to a completely
13 different coin don't mean that Mr. Chow was involved in \$LIBRA.

14 We didn't cite this case in our papers, but when I was
15 thinking about these issues in the last couple days, it
16 reminded me of an antitrust case that I ran across a couple
17 years ago. It's called *In Re Elevator Antitrust Litigation*.
18 The cite is 502 F.3d., 47, Second Circuit 2007. And in this
19 case what you had is you had plaintiffs alleging an antitrust
20 conspiracy of elevator manufacturers, sellers, things like
21 that. And they said, you know, there's this conspiracy that in
22 Europe we have evidence of that from government investigations
23 that are going on into the elevator industry in Europe, and
24 that is evidence that also there was a conspiracy in the United
25 States. And what the Second Circuit said was, you know,

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1 allegations of anti-competitive wrongdoing in Europe, absent
2 any evidence linking such foreign conduct to the conduct here,
3 is merely to suggest, in the defendant's words, that if it
4 happened there, it could have happened here. That's the same
5 type of thing that we have here. If it happened here in memo
6 33, it could have happened in \$LIBRA, and that's not an
7 appropriate allegation that the Court has to credit. And then
8 on top of that, as I've said a couple times, the Court further
9 doesn't have actual evidence that Mr. Chow was involved in this
10 fraud here.

11 My colleague, Mr. Davis's counsel, mentioned, you
12 know, there are some fairly conclusory allegations about a
13 partnership between Chow and the Davis defendants. I have a
14 couple of things to say about this.

15 First, again, this relates to the so-called \$M3M3
16 coin. Not relevant here. And second, there are no really
17 factual allegations about what this alleged partnership was. A
18 partnership, an agreement, those are just legal conclusions
19 that the Court does not have to credit. There are no facts
20 alleged here. Even if there were facts alleged here, it would
21 not lead to Mr. Chow's personal participation in the \$LIBRA
22 fraud.

23 So I'm going to turn now just to the specific claims
24 that plaintiff brings here. So turning to his New York General
25 Business Law claim, the 349 and 350 claims, he has to allege

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1 that Mr. Chow engaged in an act or practice that was consumer
2 oriented, that the act or practice was misleading in a material
3 respect, and that he was injured as a result of that act or
4 practice.

5 As I've said a couple times, plaintiff simply does
6 allege that Chow engaged in any misleading acts or practices.
7 You know, he has got a couple of different ideas of acts that
8 are misleading. For example, he says marketing a product is an
9 opportunity to invest in Argentinian small businesses when
10 there's no real plan to do is misleading, but Mr. Chow wasn't
11 involved in these marketing opportunities. There's no
12 statements attributable to Mr. Chow with respect to that.

13 Second, you know, plaintiff says manipulating the
14 token price upwards to extract the money before the scam is
15 detected is deceptive. And again, Mr. Chow did not trade any
16 \$LIBRA tokens, so therefore he couldn't have been participating
17 in this upward price manipulation.

18 Third, plaintiff purports to allege a couple of
19 omissions that he says defendants failed to disclose. One was
20 the existence of one-sided \$M3M3 coin launch pools and the
21 technically sophisticated manner of their potential abuse, i.e.
22 that the one-sided liquidity pool was unfair because it
23 artificially inflated token values without stable backing. And
24 then second, that the Meteora defendants were secretly
25 collaborating with the Kelsier defendants.

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1 So, you know, the one thing that I think is in key in
2 response to this is that the existence of one-sided liquidity
3 pools was disclosed. This comes in the declaration of Mr. Zhen
4 Hoe Yong who, in paragraph 5, explains the Meteora website
5 publicly disclosed that the Meteora liquidity pools could be
6 set up with one-sided liquidity prior to the launch. So this
7 information is out there. It's known.

8 Plaintiff responds to that and says, you know,
9 plaintiffs, the traders, didn't really have a reason to visit
10 the Meteora website. This doesn't save his claim here. As the
11 case has recognized, the key inquiry is really has the
12 plaintiff failed to provide information that the defendant
13 alone possessed.

14 Because this information was available out there,
15 there can be no finding that he failed to provide that
16 information. Just because plaintiff might not have known the
17 information, which, by the way, is not alleged in the
18 complaint, it doesn't mean that the information was not out
19 there. The public disclosure about how the Meteora pools
20 operated doom plaintiffs' GBL omission claim about the
21 capabilities of the Meteora pools.

22 And, you know, one more thing. I want to turn back to
23 what I was talking about at the beginning. This is sort of
24 where the standard of view becomes relevant again. You can't
25 show a likelihood of success or serious questions on the face

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1 of these -- in response to these disclosures. Even if perhaps
2 he states a claim here, there's no chance of success in light
3 of these disclosures here. And with respect to the alleged
4 coordination to launch \$LIBRA coin, once again, unrebutted
5 testimony from Mr. Chow shows that he was not involved in the
6 \$LIBRA launch.

7 I'll wrap up in just a minute here, your Honor, but I
8 have just two more things here. One, the unjust enrichment
9 claim. Plaintiff can't show a likelihood of success on this or
10 significant questions. Unjust enrichment is a
11 quasi-contractual claim. It's for when I have something of
12 yours that I've obtained somehow in the course of our dealings
13 and that I should be compelled to return to. As Mr. Enzer
14 pointed out, plaintiff provided Wrapped Sol. There's no
15 allegation that Mr. Chow holds any Wrapped Sol here.

16 You know, there's sort of a disconnect here as well.
17 There needs to be a direct relationship between the plaintiff
18 who is claiming unjust enrichment and the defendant. Mr. Chow
19 has to have received the specific and direct benefit of the
20 property that Mr. Hurlock seeks to recover. He can't do this
21 for a few reasons.

22 One, there's no direct dealings. As, I think, has
23 been previewed a couple times up here, Mr. Hurlock alleges that
24 he placed his trades through user interfaces provided by
25 Phantom or BullX, and then a portion of these trades were then

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1 routed through the Meteora DLMM. And then any trading fees
2 went to the Meteora program account, which are not held by
3 Mr. Chow, as we've talked about. This sort of chain that I've
4 outlined here is just too attenuated. You've got the software
5 that Mr. Hurlock uses to interact with Meteora. Then you've
6 got Meteora. Then you've got Meteora sending a portion of the
7 trading fees to a program account that DLL has control over,
8 and then Mr. Chow is entitled to a portion of those fees. This
9 is just far too attenuated for this type of unjust enrichment
10 claim here.

11 Your Honor, I'll just touch on this very briefly.
12 This claim fails as duplicative as well. In response to this,
13 plaintiff says, well, the elements are different. That's true
14 literally of every case where there's -- I'm sorry -- where the
15 elements are different and courts still dismiss it as
16 duplicative.

17 Finally, so I've talked about the claims and why they
18 must fail and sort of the importance of the standard of review
19 here. Last, I want to turn to the balance of the equities
20 which Mr. Enzer touched on briefly here. You know, it's
21 important that this needs to be considered in the context of
22 Mr. Chow specifically and not defendants as a group. There's
23 no hardship to plaintiff here, as we've mentioned, because the
24 assets have not been moved, and there's no specter of
25 dissipation.

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1 Mr. Chow has not made any statements suggesting that
2 he will move the funds. There's nothing suggesting that
3 Mr. Chow won't be able to satisfy a judgment, and there's
4 significant burden to Mr. Chow from the reputational risk that
5 Mr. Enzer mentioned. Also, he hasn't yet had an opportunity to
6 file a motion to dismiss to defend his name. Furthermore, a
7 restraint on Mr. Chow signals to the general public that in
8 crypto cases, unlike any other industry, legitimately earned
9 funds can be frozen simply by filing a complaint. As more of
10 our economy moves to digital assets, I think this would be a
11 mistake here to send that type of message.

12 And here, it's even more concerning if you consider
13 the breadth of what plaintiff is asking you to freeze. There
14 are trading fees on every transaction. As Mr. Enzer talked
15 about, some putative class members are going to be winners
16 here. They bought low. They sold high. They absolutely don't
17 have any claims against Mr. Chow. But their trading fees would
18 be frozen as well. They weren't injured, and yet those fees
19 were frozen. I think that's wrong.

20 Also, these are legitimately earned fees. Meteora
21 provided trading services. That the product that the plaintiff
22 bought wasn't what they expected doesn't mean that these are
23 fraudulent fees.

24 Lastly, there's a burden here because the account that
25 the \$LIBRA related trading fees is a general account that

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1 contains fees from multiple pools. Plaintiff mentioned that
2 there is no commingling here, and I think that's not quite
3 right. Multiple pools of liquidity send fees into that
4 account, and therefore there is mingling here.

5 Your Honor, that's all I have.

6 THE COURT: Thank you very much, Mr. Wiley.

7 Mr. Burwick, is there anything that you would like to
8 add or respond to?

9 MR. BURWICK: Yes, your Honor. I'll take the podium
10 again.

11 Mr. Sbaiti said that I didn't mention the magic words,
12 and one of them being "irreparable harm." And in discussing
13 the distinction between *Casa* and *AARP*, the concept is what is
14 irreparable harm here and who was not a class member at that
15 time but would have been a class member moving forward. And
16 the Court not providing equitable relief in that instance would
17 have been irreparable harm because those members were going to
18 be harmed had the Court not acted. And here in the same way,
19 again, one of the things for the life of me I can't understand
20 is that I'm not quite sure -- it seems that defense counsel is
21 saying that one of the defendants has -- I guess has access to
22 these accounts or can move money from these accounts. I have
23 yet to anybody that is the actual person that can move funds
24 from these accounts. No one has come forth on that and that
25 they are not commingled.

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1 I think viewing what is going on here is very simple.
2 These \$LIBRA assets were made out of thin air. There was a
3 button that was pressed that created a billion of these tokens.
4 These tokens were then sent through an IPO on Meteora. Meteora
5 took the funds that had been earned and placed them in the
6 wallets where they are currently sitting right now. They
7 haven't been intermingled with anybody else's funds. They've
8 sat there, and the fact that they've sat there for more than
9 100 days. It's evidence of more of: A bank robber walks out
10 of a bank holding a bag of money. The cops are outside. They
11 hold the light. Drops the bag. It wasn't me, right. That's
12 what we're dealing with in this instance.

13 Lastly, I'm not sure what reputational harm has to do
14 with an injunctive relief. And as regards to their reliance on
15 Mr. Chow's statements, you know, we have documents that we're
16 going to put forward at trial that both come from confidential
17 informants, that we've developed, that put both Mr. Davis and
18 Mr. Chow operating together on the \$M3M3 asset and evidence of
19 a longer standing conspiracy where they've been operating
20 together.

21 I think defense has stated a lot of things, but most
22 of them are not relevant necessarily to the questions at hand
23 in regards to this injunction. That's all I have, your Honor.

24 THE COURT: Thank you very much, Mr. Burwick.

25 Anything further Mr. Sbaiti? Yes.

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1 MR. SBAITI: Yes, your Honor. May I address two
2 points, and I also want to address your AARP question?

3 THE COURT: You may. Go ahead.

4 MR. SBAITI: Thank you, your Honor.

5 Your Honor asked about the Supreme Court's AARP
6 decision. Your Honor, we took a hard look at that, and I agree
7 with counsel's assessment of it. I think what you quoted was
8 rightly considered dicta because they're talking about what
9 they weren't deciding, not what they were deciding. I don't
10 think that that means anything other than them saying, here is
11 what we're not necessarily saying.

12 They did use the word "temporary relief," and given
13 the facts here, temporary, I think, becomes a term of art. A
14 temporary restraining order for a putative class, a class
15 litigation, is very different than a preliminary injunction,
16 which is where we're at. So I think that would be the key
17 distinction, especially given the facts they had in front of
18 them. You could use a TRO to extend the administrative
19 process.

20 Finally, I'd like to address the point that counsel
21 just brought up, which is, you know, that the funds remaining
22 in plain sight is somehow evidence of a fraud because a bank
23 robber gets caught right away. The bank robber wasn't caught
24 right away. It sat for four months, and nobody moved it
25 because it was being there -- at least for my client, it was

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1 being planned to be used to benefit Argentinian businesses.
2 That kind of a thing doesn't happen overnight, and the
3 injunction came before the culmination of that and now stands
4 in the way of that ever happening.

5 So I think the arguments that were made before would
6 still stand. I finally remind the Court -- point out one last
7 fact because of what he was talking about, you know, the \$M3M3
8 coordination between my client and Mr. Chow. That's irrelevant
9 to the \$LIBRA coin, which is all that's it in front of you,
10 number one.

11 Number two, what they're really saying is that some
12 kind of parallel action that is consistent with a conspiracy is
13 the conspiracy that was rejected by *Twombly* at the pleading
14 stage. It definitely should not carry at the Rule 65,
15 preliminary injunction stage.

16 Thank you, your Honor.

17 THE COURT: Thank you.

18 Anything further, Mr. Enzer?

19 MR. ENZER: Very briefly, your Honor. Plaintiffs'
20 counsel alluded to new evidence that has not been put before
21 the Court. Confidential informants and documents that they're
22 going to present at trial, that is not competent evidence to
23 meet their burden of showing a likelihood of success on the
24 merits. They put in a complaint, which is a series of
25 allegations that no one swore to. They have no weight.

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1 Then, when we showed in our opposition papers that
2 that complaint was so weak, it probably should be dismissed and
3 certainly is not enough to carry their burden on a preliminary
4 injunction. They amended their complaint, and now they're
5 abandoning their amended complaint and talking about evidence
6 that is not before the Court. Confidential informants or
7 documents, I don't know if that exists.

8 I don't know that we're ever going to get to a trial
9 in this case because, frankly, I think this case is going to be
10 dismissed on a motion to dismiss. But regardless, they have
11 not met their burden of showing a likelihood of success on the
12 merits or any of the other elements and the motion for
13 preliminary injunction should be denied.

14 THE COURT: Thank you.

15 Mr. Wiley anything further? Is that a no?

16 MR. WILEY: No, your Honor.

17 THE COURT: Thank you.

18 Mr. Burwick, last word since it's your motion.
19 Anything further?

20 MR. BURWICK: No, your Honor.

21 THE COURT: Thank you. If you wouldn't mind, I want
22 to take a brief break. I want to take a brief break. I want
23 to look through my things to see if I have any further
24 questions and give the court reporter a few moments. So if we
25 could just adjourn for ten minutes, we'll be back at five

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1 minutes to 3:00. Thank you.

2 (Recess)

3 THE COURT: Please be seated. I do not have any
4 further questions for the parties, but with your indulgence, I
5 would like to give you my opinion and decision now on the
6 record. I ask for your patience because I'll be reading some
7 case law and other things into the record. I know that is
8 sometimes a tedious process but an important one to make sure
9 that my reasoning is clear.

10 As I stated at the outset here, the Court assumes the
11 parties' familiarity with the underlying allegations and
12 procedural history, so I'm not going to provide an extensive
13 factual recitation. To summarize briefly, Plaintiff Hurlock
14 brought this putative class action in state court, as I
15 mentioned earlier, against various defendants, asserting state
16 law claims arising from an allegedly fraudulent cryptocurrency
17 scheme around the public launch of the \$LIBRA token.

18 The case was removed to federal court by Defendant
19 Chow on May 9, 2025. That's at Dkt. 1.

20 The state court complaint set forth three causes of
21 action against all defendants:

22 (1) violation of the New York General Business Law,
23 Sections 349 and 350;

24 (2) negligent misrepresentation; and

25 (3) unjust enrichment.

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1 The complaint was then amended on July 30, 2025,
2 adding Anuj Mehta as a plaintiff, removing Julian Peh and KIP
3 Protocol as defendants, and adding Charles Davis as a
4 defendant. That's at Dkt. 115, the first amended complaint.

5 The first amended complaint incorporated new
6 allegations regarding the \$M3M3 token launch that underlay the
7 related *Clarke v. Chow* case, which has since been voluntarily
8 dismissed and asserts causes of actions for fraud, violations
9 of the federal RICO statute, violations of GBL, Sections 349
10 and 350, and unjust enrichment.

11 In light of the first amended complaint, unless
12 otherwise noted, I will be using "plaintiffs" to refer to Mehta
13 and Hurlock, and "defendants" to refer to Kelsier, Hayden
14 Davis, Gideon Davis, Charles Davis, Meteora, and Chow. And I
15 will assess this preliminary injunction motion in the context
16 of the first amended complaint.

17 As I stated earlier, the Court received an *ex parte*
18 application for a TRO, under Rule 65, on May 21, 2025. On May
19 26, 2025, the Court held an *ex parte* hearing and granted the
20 application for a TRO.

21 As I stated earlier, the Court emphasized that its
22 findings were being made in the context of an expedited, *ex*
23 *parte* TRO application and that the Court may revisit its
24 holdings at a later time upon receipt of more fulsome briefing
25 from the parties. That's at Dkt. 43-3, which was a transcript

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1 of that proceeding, at 22 and 28.

2 The Court was interested in preserving the status quo
3 until it could hold the incident hearing. That's at pages 28
4 through 30 of the TRO hearing. I did set down an expedited
5 briefing schedule, which was extended at the consent of the
6 defendants, and as stated earlier, this hearing was set at the
7 earliest date that all defendants requested.

8 The motion before me now is for a preliminary
9 injunction to extend the terms of the TRO through the pendency
10 of the litigation, and it has now been fully briefed. As I
11 said, Defendant Chow filed an opposition to the motion on
12 June 27, 2025, at Dkt. 53. Defendant Davis filed an opposition
13 on July 16, 2025, at Dkt. 102, and plaintiff filed a
14 consolidated reply brief on July 28, 2025, at Dkt. 110. That's
15 the reply. Further information was also provided by the
16 parties.

17 In addition, the plaintiff and all the parties were
18 given the opportunity here to provide any argument or
19 presentation on the preliminary injunction that they saw fit,
20 and to present whatever evidence or record plaintiff wished to
21 present in support of a preliminary injunction motion. I heard
22 argument today, and plaintiffs had a full and fair opportunity
23 to present whatever they chose to present.

24 In addition, as discussed today, Defendant Davis filed
25 a 12(b)(2) motion to dismiss for lack of personal jurisdiction

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1 on July 9, 2025. That's at Dkt. 86. Plaintiffs did not file
2 an opposition to this motion due to the filing of an amended
3 complaint, which they argue moots Mr. Davis's motion to
4 dismiss, at Dkt. 105. I'll address the 12(b)(2) motion after I
5 give you my ruling on the preliminary injunction.

6 Having considered the parties' briefing and the
7 presentation here today, for the following reasons, the Court
8 will deny plaintiffs' motion for a preliminary injunction and
9 will enter an order today dissolving the TRO. I'll first
10 address plaintiffs' filing of a first amended complaint, as it
11 relates to the pending preliminary injunction motion. As I
12 said, I will be considering it here today.

13 After plaintiffs filed their first amended complaint
14 as of right on July 30, 2025, Defendant Davis submitted an
15 emergency pre-motion letter on July 31, 2025, requesting that
16 the Court vacate the TRO and consider the pending motion for a
17 preliminary injunction as withdrawn and moot. See Dkt. 118. I
18 denied the request and explained that I would address the
19 effect of the first amended complaint at today's hearing. See
20 Dkt. 123.

21 As a threshold matter, "[i]t is true that 'an amended
22 pleading ordinarily supersedes the original and renders it of
23 no legal effect.'" *Pettaway v. National Recovery Solutions,*
24 *LLC*, 955 F.3d 299, 303 (2d Cir. 2020) But it does not follow
25 that motions based on allegations contained in a superseded

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1 complaint are automatically rendered moot or withdrawn. In the
2 context of a motion to dismiss, for example, "the district
3 court has the option of either denying the pending motion as
4 moot or evaluating the motion in light of the facts alleged in
5 the amended Complaint." *Id.*

6 Similarly, the Second Circuit recently held that it
7 had jurisdiction over an appeal of a district court's issuance
8 of a preliminary injunction that was based on a
9 since-superseded complaint. See *State Farm Mutual Auto.*
10 *Insurance Co. v. Tri-Borough NY Medical Practice P.C.*, 120
11 F.4th 59, 78-79 (2d Cir. 2024). The district court in that
12 case had declined to modify a preliminary injunction after an
13 amended complaint was filed because the preliminary injunction
14 was based on conduct at issue in both the superseded complaint
15 and the amended complaint. See *State Farm Mut. Automobile Ins.*
16 *Co. v. Metro Pain Specialists*, 2023 WL 7181653, at *4 (EDNY
17 Sept. 13, 2023).

18 Although the amended complaint added new defendants
19 and "further details about the alleged fraudulent scheme", the
20 propriety of the injunction [did] not turn on any [of those]
21 change[s]." *State Farm*, 120 F.4th at 78. I also considered
22 *Bonie v. Annucci*, 2020 WL 2489063, at *4 (SDNY May 14, 2020),
23 where the court is deciding a TRO application based on
24 allegations underlying both the application and the operative
25 complaint.

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1 The same logic applies here. While plaintiffs added
2 new claims and detail regarding defendants' conduct in their
3 first amended complaint, the TRO that is already in place is
4 based on the same underlying scheme alleged in both the
5 superseded and the amended complaint. Nor does the first
6 amended complaint alter this Court's analysis of the
7 preliminary-injunction factors such as irreparable harm, which
8 does not hinge on any of the new allegations contained in the
9 first amended complaint, as I will explain in more detail
10 shortly.

11 In sum, the Court's analysis remains the same with
12 respect to a preliminary injunction request. Whether the Court
13 is looking at the superseded complaint or the first amended
14 complaint, the result is the same.

15 With this in mind, I'll now turn to the
16 preliminary-injunction motion and set forth the appropriate
17 legal standard for the record.

18 "'A preliminary injunction is an extraordinary and
19 drastic remedy' and 'should not be granted unless the movant,
20 by a clear showing, carries the burden of persuasion.'" *St. Joseph's Hospital Health Center v. American Anesthesiology*
21 of Syracuse, 131 F.4th 102, 106 (2d Cir. 2025)

22 To obtain a preliminary injunction, the moving party
23 must demonstrate "(1) irreparable harm; (2) either a likelihood
24 of success on the merits or both serious questions on the
25

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1 merits and a balance of hardships decidedly favoring the moving
2 party; and (3) that a preliminary injunction is in the public
3 interest." *North American Soccer League v. U.S. Soccer*
4 *Federation*, 883 F.3d 32, 37 (2d Cir. 2018).

5 "In deciding a motion for preliminary injunction, a
6 court may consider the entire record including affidavits and
7 other hearsay evidence." *Park Irmat Drug Corp. v. OptumRx,*
8 *Inc.*, 152 F. Supp. 3d 127, 132 (SDNY 2016). Again, as I've
9 stated, plaintiff has chosen what evidence he decided to
10 present to the Court, and the Court will deal with the present
11 record that has been presented.

12 The Court need not get into an extensive discussion of
13 or a resolution regarding *Trump v. Casa* or *Grupo Mexicana*
14 because I'm going to deny the preliminary injunction on the
15 traditional preliminary injunction factors. The Court starts
16 with the irreparable harm requirement, which is the single most
17 important prerequisite for the issuance of a preliminary
18 injunction and must be satisfied before the other requirements
19 for an injunction can even be considered." *St. Joseph's* 131,
20 *F.4th* at 106.

21 "To make this showing, the moving party 'must
22 demonstrate that absent a preliminary injunction [it] will
23 suffer an injury that is neither remote nor speculative, but
24 actual and imminent, and one that cannot be remedied if a court
25 waits until the end of trial to resolve the harm.' Thus,

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1 irreparable harm exists 'where, but for the grant of equitable
2 relief, there is a substantial chance that upon final
3 resolution of the action the parties cannot be returned to the
4 positions they previously occupied.'" *State Farm*, 120 F.4th at
5 80.

6 Courts may not "simply presume irreparable harm;
7 rather, plaintiffs must demonstrate that, on the facts of the
8 case, the failure to issue an injunction would actually
9 cause irreparable harm." *WPIX, Inc. v. ivi, Inc.*, 691 F.3d,
10 275, 285 (2d Cir. 2012). Courts must also "pay particular
11 attention to whether the remedies available at law, such as
12 monetary damages, are inadequate to compensate for [the]
13 injury.'" *Id.* That is because "the moving party must show that
14 'there is a continuing harm which cannot be adequately
15 redressed by final relief on the merits and for which money
16 damages cannot provide adequate compensation.'" *State Farm*, 120
17 F.4th at 80.

18 Here, both Defendants Chow and Davis vigorously
19 dispute that plaintiffs have made the requisite showing of
20 irreparable harm. Specifically, they argue that:

21 (1) money damages are adequate to compensate for the
22 alleged injury; and

23 (2) that the risk of asset dissipation is minimal or
24 unduly speculative.

25 That's in the Chow opposition at 8-16 and the Davis

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1 opposition at 19-20.

2 The Court first addresses defendants' contention that
3 there exists an adequate remedy at law available to plaintiffs
4 that would preclude preliminary injunctive relief in this case.
5 Although plaintiffs do not appear to contest this point, see
6 reply at 8-12, the Court agrees with defendants.

7 Plaintiffs ultimately pursue a number of equitable
8 remedies, but the gravamen of the first amended complaint is
9 that defendants perpetrated a fraudulent scheme to extract
10 hundreds of millions of dollars worth of assets from
11 cryptocurrency investors. See, for example, FAC at paragraphs
12 368, 417, 428, 433-34, 439-40.

13 Given that the investor's purported losses are easily
14 quantifiable in terms of dollars, it is plain that money
15 damages would be available to compensate the putative class for
16 defendants' alleged conduct should plaintiffs prevail in this
17 litigation. See, for example, *JustM2J LLC v. Brewer*, 2025 WL
18 435827, at *8 (E.D. Cal. Feb. 7, 2025) And in that case the
19 court collected cases where courts have found no irreparable
20 harm in "cases involving the alleged theft of cryptocurrency
21 where monetary damages were available and would suffice."

22 While it is certainly true that the availability of
23 money damages to redress an injury does not serve as a per se
24 bar on injunctive relief, the party seeking a preliminary
25 injunction must still "provide evidence that it is likely to

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1 suffer damage that cannot be rectified by financial
2 compensation before a district court may providently exercise
3 its equitable power to grant injunctive relief." *CRP/Extell*
4 *Parcel I, L.P. v. Cuomo*, 394 F. App'x 779 (2d Cir. 2010). In
5 other words, plaintiffs must provide evidence that warrants a
6 departure from the general rule "that when a dispute is
7 primarily about money, it is difficult to establish irreparable
8 harm." *Meisels v. Meisels*, 630 F.Supp.3d 400, 413 (EDNY 2022)

9 For example, courts have found reason to "diverge from
10 the general rule about money" in cases involving real property,
11 where disputes over the management of the property would cause
12 market confusion and harm the property's value. *Id.* Here,
13 however, the putative class's injuries can be measured in terms
14 of a fixed dollar amount, and plaintiffs have provided no
15 evidence that continued deprivation of the disputed funds would
16 lead to the sort of intangible or unquantifiable harms that
17 could not be redressed by money damages. See, for example, *Tom*
18 *Doherty Associates, Inc. v. Saban Entertainment, Inc.*, 60 F.3d
19 27, 38 (2d Cir. 1995). In that case, the Second Circuit
20 observed that as a general rule, "irreparable harm exists only
21 where there is a threatened imminent loss that will be very
22 difficult to quantify at trial."

23 Litigation involving publicly-traded stock offers a
24 helpful analogy here. In those cases, the value of a company's
25 shares can be readily measured as of specified dates, which

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1 allows for the straightforward calculation of monetary damages
2 resulting from lost stock value. "[U]nder circumstances like
3 these, courts in the district are generally loath to award
4 injunctive relief." *Alpha Capital Anstalt v. Shiftpixy, Inc.*,
5 432 F.Supp.3d 326, 339 (SDNY 2020) Here, too, the monetary
6 value of the cryptocurrency tokens at issue can be calculated
7 at various points in time with specificity, even down to the
8 minute. See, for example, first amended complaint at paragraph
9 226.

10 Other district courts have employed similar reasoning
11 to find that cryptocurrency losses can be reasonably measured
12 in terms of dollars and are thus compensable by money damages
13 precluding a finding of irreparable harm. See, for example,
14 *Schiermeyer ex rel. Blockchain Game Partners, Inc. v. Thurston*,
15 2023 WL 9183940, at *3 (D. Utah Dec. 8, 2023). In that case,
16 the court reasoned that the cryptocurrency tokens at issue were
17 "just an analogue for currency, with conversion rates to the
18 dollar posted daily" and that "[a]n award of damages...would
19 adequately remedy" any injuries based on lost token value. See
20 also *Anderson Bey v. Roc Nation*, 2025 WL 560751, at *1, 5 (SDNY
21 Feb. 20, 2025).

22 And in that case, the court found that injury based in
23 part on lost cryptocurrency assets could be compensated with
24 monetary damages). Similarly, *MacDonald v. Dynamic Ledger*
25 *Solutions, Inc.*, 2017 WL 6513439, at *3 (N.D. Cal. Dec. 20,

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1 2017), the court noted that plaintiffs could likely recover the
2 "equivalent economic value" of the cryptocurrency he
3 contributed to a token launch.

4 This does not end the inquiry, however, because when
5 there is an adequate remedy at law, preliminary injunctions may
6 still be available in "extraordinary circumstances." See *State*
7 *Farm*, 120 F.4th at 80. And one such extraordinary circumstance
8 is where the moving party makes "a showing of [the opposing
9 party's] intent to frustrate any judgment on the merits." *GE*
10 *Transportation (Shenyang) Co., Ltd. v. A-Power Energy*
11 *Generation Systems Ltd.*, 2015 WL 7444625, at *2 (SDNY Nov. 23,
12 2015). See also *PamLab, L.L.C. v. Macoven Pharmaceuticals,*
13 *L.L.C.*, 881 F. Supp. 2d 470, 476 (SDNY 2012).

14 In that case, the court stated, "[E]ven if a money
15 judgment would normally suffice, an injury may be considered
16 irreparable if it is shown that such a judgment would likely be
17 uncollectible, by virtue, for example, of the defendant's
18 insolvency." See also, *Bullock v. Doe*, 2023 WL 9503380, at *5
19 (N.D. Iowa Nov. 3, 2023), where the court observed in a
20 cryptocurrency case that monetary damages appeared to be an
21 adequate remedy, but still found irreparable harm due to
22 circumstances indicating that a money judgment would be
23 essentially meaningless in those circumstances.

24 Relying on this exception to the general rule,
25 plaintiffs argue that there is a risk of dissipation of the

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1 frozen assets and emphasize "the intangible, fast-moving, and
2 opaque nature of cryptocurrencies." Reply at 8-9. Defendants
3 Chow and Davis, however, dispute that there is any
4 non-speculative risk of asset dissipation in this case. See
5 Chow opposition at 11-16; Davis opposition at 12-14. The Court
6 agrees with defendants and finds that plaintiffs have not made
7 a sufficient showing of irreparable harm on this basis.

8 Plaintiffs highlight a handful of cases for the
9 proposition that the unique nature of cryptocurrency supports a
10 finding of irreparable harm. And the Court found some of these
11 cases persuasive on the TRO context but now on further briefing
12 does not.

13 Most of these cases, unlike the instant case involved
14 unidentified John Doe defendants, which suggested a heightened
15 risk of asset dissipation when combined with the untraceable
16 and anonymous nature of cryptocurrency. See, for example,
17 *Mirashi v. Doe*, 2025 WL 893003, at *5 (D.N.J. Mar. 21, 2025).
18 Because the court -- one moment.

19 OK. Moving on. Indeed, Defendant Davis, whose
20 conduct the Court previously found posed a particularly
21 heightened risk of dissipation in the TRO context, has since
22 accepted service through counsel, appeared in this case,
23 participated in conferences and briefing through counsel, and
24 fully complied with the Court's orders. These new
25 circumstances cut against evidence submitted with plaintiff's

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1 ex parte application for a TRO that indicated that Davis
2 appeared to be evading service and potentially relocating
3 himself and his company internationally. That's at TRO
4 transcript, 23-25.

5 While a party's good-faith participation in litigation
6 may not be dispositive on the question of asset dissipation —
7 Indeed, at least a limited appearance by Davis was necessary to
8 challenge the TRO at all — it adds additional context to prior
9 indications that Davis may have been intentionally evading the
10 Court's reach to frustrate the collection of an eventual
11 judgment does not seem to be the case here. See, for example,
12 *Brewer*, 2025 WL 435827, at *8. And in that case, again, which
13 is different than this case, the court analyzed irreparable
14 harm in a cryptocurrency fraud case by looking to factors such
15 as "whether the defendants' identities are known, whether the
16 fraudulent scheme is ongoing, and the defendants' conduct in
17 the litigation."

18 I also looked to *Bilalov v. Gref*, 2022 WL 19560947, at
19 *3 (SDNY Mar. 18, 2022), where the court found that risk of
20 asset dissipation or transfer of assets to defendants' foreign
21 contacts was speculative and unlikely based in part on
22 defendants' appearance in the action and active litigation in
23 the case. Put more simply, the recent briefing and expanded
24 record in this case indicates that the defendants are not the
25 sort of untraceable, evasive actors that other courts have

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1 found to pose a heightened risk of asset dissipation in the
2 cryptocurrency context, information that the Court did not have
3 before it in the TRO setting.

4 Plaintiffs further argue that there exists an actual
5 and imminent risk of asset dissipation in light of evidence of
6 defendants' alleged "concerted efforts to conceal the
7 cryptocurrency assets and their threats to use these assets for
8 their own benefit." Reply at 9. While it is true that evidence
9 of a defendants' concealment or secretion of assets can support
10 a finding of irreparable harm, a plaintiff must still show that
11 the target assets are "likely to disappear" in the future
12 absent a preliminary injunction. *Westchester Fire Insurance*
13 *Co. v. DeNovo Constructors, Inc.*, 177 F. Supp. 3d 810, 814
14 (SDNY 2016).

15 In this respect, courts typically require evidence of
16 ongoing or active efforts of concealment or other fraud to
17 support a finding of irreparable harm. See, for example, *Levy*
18 *v. Young Adult Institute, Inc.*, 2015 WL 170442, at *9 (SDNY
19 Jan. 13, 2015). Here, however, the evidence plaintiffs
20 provide — and it is sparse at that — relates to conduct
21 occurring in February 2025, at or around the time of the
22 alleged fraud underlying the first amended complaint, which
23 does not establish a likelihood that defendants will continue
24 to secrete or obscure the targeted cryptocurrency assets in the
25 future.

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1 If this evidence alone were sufficient to establish
2 the requisite likelihood of dissipation, a preliminary
3 injunction would be warranted in every case of fraud involving
4 some sort of asset concealment. See, for example, *Schiermeyer*
5 *ex rel. Blockchain Game Partners, Inc. v. Thurston*, 697
6 F.Supp.3d. 1265 (D. Utah 2023), where the court distinguished
7 other cryptocurrency cases and noting that "just because it
8 is easy for a defendant to dissipate assets does not make
9 it likely that he will do so."

10 Indeed, plaintiffs' own expert acknowledges that there
11 were no transactions coming in or out of the target
12 cryptocurrency wallets since February 2025, including after the
13 lawsuit was filed in state court. To be sure, the lack of
14 activity in these wallets did not preclude the Court's
15 preliminary finding of irreparable harm in the context of a TRO
16 in May. But this was based on plaintiffs' argument that was
17 un rebutted at the time because he was proceeding *ex parte* "that
18 the ongoing service attempts, combined with the recent removal
19 of this case to federal court, could 'trigger movement of
20 funds,'" TRO transcript at 23.

21 This was also combined with the concern that the
22 cryptocurrency assets could be easily and anonymously
23 transferred out of the Court's jurisdiction. As explained
24 above, though, the Court finds that there is significantly
25 lessened risk of asset dissipation based on the augmented

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1 record, and finds that the unique nature of cryptocurrency is
2 not alone sufficient to support a finding of irreparable harm.
3 Plaintiffs have not offered evidence, for example, that any of
4 the cryptocurrency assets at issue have been liquidated, or
5 that the defendants might be insolvent at the conclusion of
6 this litigation, both of which courts have considered when
7 analyzing irreparable harm in the cryptocurrency context. See
8 *Brewer*, 2025 WL 435827, at *9.

9 The Court recognizes that cryptocurrency poses a host
10 of unique concerns that are not ordinarily present in cases
11 involving the traditional banking systems. Although perhaps
12 that will become less so in the future. That said, plaintiffs
13 have acknowledged that their expert is able to track the
14 movement of the cryptocurrency at issue here, even if those
15 transactions may be facilitated through anonymous accounts.

16 Defendants will also continue to be subject to the
17 Court's jurisdiction and scrutiny throughout discovery, as
18 would any other defendant. See, for example, *JSC v. Int'l*
19 *Development & Trade Services*, 295 F.Supp.2d. 366, 390 (SDNY
20 2003). And in that case, the court found no irreparable harm
21 where the record indicated that the defendants would be subject
22 to continuing scrutiny in the course of discovery, and there
23 was no suggestion that they would flee or not be subject to the
24 continuing orders of the Court.

25 In sum, the Court finds that plaintiff has not

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1 sufficiently shown the risk of irreparable harm in the absence
2 of a preliminary injunction. Because of this, the Court need
3 not address the merits of plaintiffs' claims that are asserted
4 in the first amended complaint or the public interest factor,
5 although I will say that I am extremely skeptical about whether
6 plaintiff would have established a likelihood of success on the
7 merits or serious questions as to the merits, given the record
8 that has been presented at this time in the context of a
9 preliminary injunction. The Court therefore denies plaintiffs'
10 motion for a preliminary injunction and will issue an order
11 dissolving the TRO later today.

12 In addition, the Court will deny Defendant Davis's
13 12(b)(2) motion as moot in light of complaint and because
14 personal jurisdiction does not factor into the Court's analysis
15 today. Davis may renew his motion by the extended deadline in
16 which responses to the first amended complaint are due, which
17 is September 29, 2025.

18 I will note, though, that plaintiffs are wrong as a
19 matter of law that their filing of a first amended complaint
20 automatically mooted Davis's pending motion to dismiss. See
21 *Pettaway*, 955 F.3d at 303. Whether to moot a pending 12(b)
22 motion in light of an amended complaint is within the Court's
23 discretion, not a plaintiff's discretion, and plaintiffs thus
24 should not have unilaterally decided, without seeking leave
25 from this Court, that they were not going to file any

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1 opposition.

2 With this in mind, Defendant Davis's motion to dismiss
3 is technically unopposed in the absence of a court order
4 mooted it. That said, granting the motion as unopposed would
5 be an unduly draconian sanction, and in the absence of any
6 undue prejudice to Defendant Davis, this admonishment should
7 suffice for plaintiff.

8 Therefore, that is my ruling on the preliminary
9 injunction, and let's talk about next steps in this case.
10 First of all, as I said, I will put out an order that dissolves
11 the TRO and denies the preliminary injunction.

12 Secondly, I understand that any responses to the first
13 amended complaint are due on September 29, 2025. I think I
14 will set down an initial pretrial conference for October 16,
15 2025, at noon. That will give the Court and the parties enough
16 time to evaluate whether there will be a motion, for example,
17 to stay discovery pending the resolution of the motions to
18 dismiss. I will have had those motions to dismiss filed and
19 brought before me, if there are any, and the parties can
20 determine whether there is such a motion, unless you know now
21 that you're going to agree to stay discovery during pending
22 motions to dismiss.

23 Mr. Enzer, you have something to add?

24 MR. ENZER: Your Honor, there is already a so-ordered
25 stipulation staying discovery.

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1 THE COURT: There is, OK. If that's the case, I am
2 not going to set down an ITPC for October 16, and I won't have
3 to deal with any motion to stay discovery because it's already
4 been stipulated to, so thank you for that.

5 I will receive any responses to the first amended
6 complaint on September 29. I also have before me a motion for
7 alternative service on Meteora, but that's not been fully
8 briefed yet. I think that's everything that is outstanding in
9 this case right now.

10 Mr. Burwick, anything else I need to discuss here
11 today?

12 MR. BURWICK: No, your Honor.

13 THE COURT: Thank you.

14 Mr. Enzer, is there anything further to discuss here
15 today?

16 MR. ENZER: No, your Honor. Thank you.

17 THE COURT: Mr. Wiley, for good measure?

18 MR. WILEY: No, your Honor.

19 THE COURT: OK.

20 Mr. Sbaiti?

21 MR. SBAITI: Your Honor, one last thing. I don't know
22 if you need to address it right now. I just wanted to bring it
23 to the Court's attention. There's still a pending motion to
24 unseal. There's some evidence we have never seen we would like
25 to unseal.

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1 THE COURT: Understood. Yes, I do have that motion
2 pending. Because that information was not relevant to today's
3 proceeding, I did not get to it before today's proceeding, but
4 I will get to it, especially since it may become relevant in
5 terms of lead counsel requests or applications thereof.

6 Ms.Armenta, anything else?

7 MS. ARMENTA: No, your Honor. Thank you.

8 THE COURT: Thank you for your patience as I put out
9 that opinion, and court is adjourned.

10 (Adjourned)

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