IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

BRIAN HOOP, Plaintiff, v. EMMA DOE and JOHN DOES 1-20, Defendants, 177.7621 ETHER, Defendant *in rem* and MEXC GLOBAL, LLC, Relief Party and Garnishee.	)	Case No. 4:23-cv-00185-SMR-HCA ORDER ON MOTIONS

Plaintiff Brian Hoop alleges that he was the victim of an online scam where he was induced to deposit a significant amount of money into what he believed was an online cryptocurrency trading platform where he could earn substantial profits. After several "trades" which he believed were profitable, he attempted to withdraw his money but was told that he needed to pre-pay taxes to the trading platform before he could withdraw the funds. Plaintiff refused to pay. The alleged scammer then threatened to blackmail Plaintiff and has ceased all communications with him. He filed this lawsuit alleging a variety of federal and state law violations including conversion and racketeering.

Before the Court are two motions: (1) a motion for alternative service of process and (2) a motion for a temporary restraining order prohibiting Defendants from absconding with the disputed digital assets held in an online cryptocurrency exchange. [ECF Nos. 4, 8].

I. BACKGROUND

A. Factual Background[1]

Plaintiff is an Iowa resident. In September 2022, he received a text message from an unknown phone number purportedly attempting to contact a different recipient. The sender apologized for the erroneous message and identified herself as "Emma." Plaintiff and Emma engaged in a casual exchange of text messages before Emma suggested that they move their conversation to a different messaging service, WhatsApp.

The conversation between Plaintiff and Emma continued for several months on a daily basis. The nature of their communications included emotional and intimate messages and photographs. Plaintiff eventually believed that Emma was his girlfriend. One topic of conversation was their individual financial goals. Around December 2022, about three months after Plaintiff began communicating with Emma, she told him that she earned a substantial income through executing carefully-timed trades in cryptocurrencies. Plaintiff said he did not have any experience with trading cryptocurrency, so Emma volunteered to help him do so on an online cryptocurrency trading platform called "Energise Trade."[2]

[1] These facts are drawn from Plaintiff's First Amended Complaint and the exhibits attached to the pleading. *See* [ECF No. 3].

[2] The Amended Complaint includes a screenshot of the interface of the exchange as seen on Plaintiff's mobile device. Energise Trade is not and has never been a genuine cryptocurrency exchange. [ECF No. 3 at 5].

Emma sent Plaintiff step-by-step instructions on how to use Energise Trade along with screenshots taken from her phone featuring circles indicating which buttons Plaintiff should click. Plaintiff funded his cryptocurrency account by drawing on his retirement and savings accounts, borrowing money from a financial institution, and borrowing money from a family member. Emma again used step-by-step instructions to help Plaintiff transfer his funds to the cryptocurrency exchange, and eventually into Ether ("ETH"), a cryptocurrency native to the Ethereum blockchain.

After Plaintiff deposited funds and exchanged them into cryptocurrency, Emma encouraged him to engage in evening trading sessions on Energise Trade. She told him it would be profitable and help him achieve his financial goals. Emma sent Plaintiff step-by-step instructions via screenshot to help him execute each trade. For each transaction, Plaintiff sent a specified amount of ETH to an "address" on the Ethereum blockchain. These addresses, which are a unique string of letters and numbers, were provided by Emma. She represented to Plaintiff that the addresses were owned by Energise Trade. Emma also told Plaintiff that she deposited ETH worth $100,000.00 into an Energise Trade account for his use, which could be repaid after he earned money trading with the funds. In total, Emma facilitated nine separate transfers by Plaintiff into addresses which she told him were associated with Energise Trade. After each transaction, Emma provided Plaintiff with a display purportedly from Energise Trade which appeared to reflect a profit earned by the trade. The total U.S. Dollar value of the ETH sent by Plaintiff totaled $232,792.66.

By February 2023, Plaintiff was under the impression that his funds on Energise Trade had grown to more than $1,100,000.00. Around this time, Emma provided Plaintiff with contact information for individuals who she said worked for Energise Trade for the purpose of returning his ETH to his account on Crypto.com. Plaintiff spoke to an individual via the website's chat

function, who told him that Energise Trade could not release his funds until he paid $100,000.00 as an early payment on his taxes.[3] At this point, Plaintiff refused to provide the additional funds requested. Emma then became very angry with Plaintiff, threatening to publicly expose his intimate conversations and photographs. She threatened to harm him, his family, and his ex-wife. Emma said she would have individuals kidnap and torture him.

Plaintiff later learned that he had been the victim of a "pig-butchering" scam where cybercriminals target a victim, build a trust relationship with them over an extended period of time, induce them to engage in cryptocurrency trading, and then exploit their lack of technological sophistication to steal money from the victim. The fraud is facilitated by use of a false interface which appears to the victim as a legitimate trading website. In fact, the victim of the scam is sending cryptocurrency to addresses controlled by the cybercriminals, rather than controlled by the non-existent trading platform. After a large amount of funds are received from the victim, one last payment is sought. All the funds that were previously transferred to the perpetrators are retained regardless of whether the victim sends the final payment.

B. Procedural Background

Plaintiff brought this action asserting ten claims and seeking to recover the deposited funds. The Amended Complaint avers that Emma's residence is unknown, but pleads on information and belief that she is a resident of China. John Does 1-20 are alleged to have assisted Emma in perpetrating the scheme and are also believed to reside in China. The *in rem* Defendant is 177.7621 of Ether. MEXC Global, LLC ("MEXC") is the exchange account host where Plaintiff alleges his assets are held and is named as a garnishee and relief party.

[3] The Amended Complaint alleges that the website's chat has a domain suffix controlled by the People's Republic of China. [ECF No. 3 ¶ 44].

After filing the Amended Complaint, Plaintiff moved for leave to provide alternative service of process. [ECF No. 4]. He argues that the Court should authorize alternative service because Defendants are foreign residents whose contact with Plaintiff occurred almost entirely through WhatsApp. Because they have so comprehensively concealed their identity and location, personal service is unrealistic if not impossible, according to Plaintiff. He proposes that he be permitted to serve Defendants on the Ethereum blockchain. He writes that his counsel has developed a "functional smart contract" which creates a non-fungible token ("NFT") containing a digital image of a QR code and the text of a URL address which would permit Defendants to view the pleadings and filings via web browser. [ECF No. 4 at 3].

Plaintiff also seeks a temporary restraining order ("TRO") and an Order to Show Cause for a preliminary injunction to preclude Defendants from accessing his cryptocurrency prior to resolution of this case. [ECF No. 8].

II. DISCUSSION

A. Motion for Alternative Service

1. NFTs and Digital Wallets

An NFT is a unique encrypted data unit stored on a blockchain, representing a distinct asset. NFTs are non-interchangeable tokens, each pointing to a specific asset, with ownership verifiable through blockchain transactions. Minting an NFT involves creating a blockchain certificate which cannot be duplicated. *See* Kimberly A. Houser & John T. Holden, *Navigating the Non-Fungible Token*, 2022 Utah L. Rev. 891, 895–96 (2022).

A digital wallet facilitates the storage of NFTs and cryptocurrencies. Essentially, a digital wallet allows a user to access their cryptocurrency address. It must align with the specific platform for the NFT, similar to how a cryptocurrency wallet must match its respective blockchain. While

numerous digital wallet types exist, those designed for blockchain interaction usually provide a private key for unlocking NFT access. Houser & Holden, 2022 Utah L. Rev. at 896–97. The blockchain allegedly used by Defendants is known as Ethereum. The cryptocurrency native to Ethereum is ETH. Its value fluctuates according to a public market. As of August 14, 2023, one ETH is worth $1,852.78.[4]

Over one million transactions are conducted on the Ethereum blockchain every day. [ECF No. 5-2 at 8]. Users conduct transactions in a variety of ways including through third-party services. Most users interact with Ethereum through services offered by cryptocurrency exchanges such as Coinbase or Crypto.com. When a user wishes to purchase ETH, they connect their bank account to the third-party exchange and transfer U.S. Dollars into their exchange account. They can then "trade" U.S. Dollars for a digital currency such as ETH.

After receiving ETH, users can "send" this ETH from their exchange account (on Coinbase or Crypto.com) to a third party, whether or not the third party uses the same exchange. Each Ethereum user has an "address," which is a unique public identifier consisting of a string of numbers and letters to which cryptocurrency can be sent (e.g., 12345DSM6789SDIA), similar to the unique string of letters and numbers that make up an email address. To perform a transaction, the sender selects the amount of ETH to send, manually inputs the recipient's Ethereum address, and pays a fee.

The transaction then occurs via "smart contract" which is a self-executing computer program stored on the Ethereum blockchain which irreversibly executes the requested transaction.

[4] The current market price of Ether in United States Dollars is tracked in real-time much the same way as stocks traded on the public markets. *Ethereum USD (ETH-USD),* Yahoo Finance, https://finance.yahoo.com/quote/ETH-USD/ ((last visited August 14, 2023).

The transaction is verified in seconds, arrives in the recipient's address, and the transaction is memorialized on the blockchain, which is publicly viewable.

The user can view their ETH or other digital token by opening their digital wallet. The wallet is an application designed to function on a smartphone to display the token contained in the Ethereum address. According to Plaintiff's expert J. Mason Bump, the ETH purchased by Plaintiff was sent to four Ethereum addresses which are utilized by Defendants. [ECF No. 12 ¶ 12] (Bump Decl.). They have since been "shuffled through six other addresses" under Defendants' control before sending the stolen Ether to Defendants' accounts at MEXC Global, a legitimate cryptocurrency exchange. *Id*.

Although an NFT has a lot of similarities with cryptocurrencies, an NFT has a unique digital identifier whereas cryptocurrency is fundamentally indistinct and completely interchangeable. Once an address "owns" an NFT, a user can view the token and associated information by: (1) reading the smart contract associated with the token (allowing the user to confirm the origin and nature of the token as well as its sender); (2) using a wallet which can be operated through publicly available web browser applications; or (3) connecting the wallet to a decentralized marketplace which can also facilitate the viewing of NFTs containing images and text.

2. Plaintiff's Proposed Method of Service

Plaintiff has provided an affidavit documenting the investigation and forensic tracking of the allegedly stolen cryptocurrency to specific blockchain addresses, cryptocurrency wallets, and cryptocurrency exchange accounts. He does not know the true identities of Defendants but Plaintiff asserts that they operate online and use crypto and blockchain technology as a reliable form of contact.

Plaintiff's counsel has developed a functional smart contract designed to create an NFT which contains a digital image of a QR code and the text of a URL which, when received at the Defendants' Ethereum (or the equivalent Polygon) blockchain addresses, will permit Defendants to view via web browser the summonses, Complaint, and all filings and orders which Plaintiff's counsel will store on a publicly accessible online file system such as Google Drive. Plaintiff also proposes concurrent service by publication by posting a hyperlink to the same file system on his firm's website. The smart contract can be deployed on Ethereum (or related network Polygon) and will be irreversibly sent to the addresses in which Plaintiff suspects Defendants use. It will then be publicly viewable, which will also constitute proof of service.

The service token, according to Plaintiff, has two components: a name or description; and an image. The token's image will contain: (1) a statement that Defendants have been served as authorized by court order; (2) the case caption; (3) a QR code which Defendants can use to access the pleadings; and (4) a URL link to allow Defendants to access the pleadings. This image will be viewable in the Defendants' addresses. Plaintiff has included a sample of the service token in his motion. The QR code and link will redirect Defendants to a Google Drive containing the pleadings and all other documents in the case.

Plaintiff contends that non-electronic service is virtually impossible due to his belief that Defendants are foreign. He submits he has conducted due diligence in attempting to effectuate service but their blockchain/crypto addresses has been the only successful way of tracking Defendants. Plaintiff's expert has been unable to secure any contact information for Defendants other than their cryptocurrency addresses. Therefore, Plaintiff contends that this alternate method of service is necessary for the case to proceed.

3. Legal Standard

"Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). Service of process is intended to give notice to a Defendant of the pendency of a legal action which "affords the defendant a fair opportunity to answer the complaint and present defenses and objections." *Henderson v. United States*, 517 U.S. 654, 672 (1996) (footnote omitted). Service is "an elementary and fundamental requirement of due process in any proceeding[.]" *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Rule 4(f) of the Federal Rules of Civil Procedure governs service of process on individuals located in a foreign country, it provides:

> Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:
>
> > (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
> >
> > (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
> >
> > > (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
> > >
> > > (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
> > >
> > > (C) unless prohibited by the foreign country's law, by: . . .

> (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
>
> (3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f).

Rule 4(f)(3) permits a district court to authorize an alternate method of service on foreign parties, so long as it is reasonably calculated to give notice to defendants, and is not prohibited by international agreement. *Bandyopadhyay v. Defendant 1*, Case No. 22-cv-22907-BLOOM/Otazo-Reyes, 2022 WL 17176849 (S.D. Fla. Nov. 23, 2022) (citing *Brookshire Bros v. Chiquita Brands Int'l, Inc*., No. 05-CIV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007); *see also Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002). Furthermore, "the method of service selected must also comport with constitutional notions of due process." *Soc. Enter. LLC v. Sociedad Agricola Cato S.A.*, 15-CV-4158 (RJD), 2015 WL 13743436, at *3 (E.D.N.Y. Oct. 6, 2015) (citation omitted). The United States Constitution does not require any particular method of service "only that the method selected be reasonably calculated to provide notice and an opportunity to respond." *Rio Props*. 284 F.3d at 1017.

The plain language of Rule 4(f)(3) reflects that the decision to issue an order allowing alternate means of service lies within the discretion of the district court. Fed. R. Civ. P. 4(f)(3) (permitting service "by other means not prohibited by international agreement, as the court orders"). It was "adopted in order to provide flexibility and discretion to the federal courts in dealing with questions of alternative methods of service of process in foreign countries." *Bandyopadhyay*, 2022 WL 17176849, at *2 (quoting *In re Int'l Telemedia Assocs., Inc*., 245 B.R. 713, 719 (Bankr. N.D. Ga. 2000)). Whether a method of service is appropriate depends on the

circumstances of each case. *Philip Morris USA, Inc. v. Veles Ltd*., No. 06 CV 2988 (GBD), 2007 WL 725412 at *2 (S.D.N.Y. Mar. 12, 2007).

4. Analysis

Plaintiff asks the Court for authorization to serve Defendants via NFT to specified blockchain addresses. The service by NFT would occur by posting a hyperlink on a specific website. Service by transfer of NFT and via posting on a designated site is not prohibited under international agreement. Although the United States and China are signatories to the Hague Convention on the Service Abroad of Extra-Judicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361 ("Hague Convention"), the Hague Convention does not expressly preclude service of process via NFT or by posting on a designated website.

"Where a signatory nation has objected to the alternative means of service provided by the Hague Convention, that objection is expressly limited to those means and does not represent an objection to other forms of service." *Bowen v. Li*, Case No. 23-cv-20399-BLOOM/Otazo-Reyes, 2023 WL 2346292, at *2 (S.D. Fla. Mar. 3, 2023) (citing *Stat Med. Devices, Inc. v. HTL-Strefa, Inc.*, No. 15-20590-CIV, 2015 WL 5320947, at *3 (S.D. Fla. Sept. 14, 2015)). Acting pursuant to Rule 4(f)(3), a court may authorize alternate methods of service if a signatory nation has not expressly objected to those means. *See Richmond Techs., Inc. v. Aumtech Bus. Solutions*, No. 11-CV-02460-LHK, 2011 WL 2607158, at *12–13 (N.D. Cal. July 1, 2011) (noting "[i]t is clear that a federal court cannot order service under Rule 4(f)(3) 'in contravention of' the Hague Convention," but concluding that a method of service not expressly prohibited can be permissible).

China has not specifically objected to service by NFT or posting on a website. *Bowen*, 2023 WL 2346292, at *2. Furthermore, the Court concludes that method of service proposed by

Plaintiff is reasonably calculated to give notice to Defendants. Courts have repeatedly permitted service by e-mail and website posting. *See, e.g., Chanel, Inc. v. Zhixian*, No. 10-CV-60585, 2010 WL 1740695, at *3 (S.D. Fla. Apr. 29, 2010) (authorizing service by email and collecting cases).

Other courts have authorized service via cryptocurrency tokens. In *LCX AG v. 1.274M U.S. Dollar Coin*, No. 154644/2022, 2022 WL 3585277 (N.Y. Sup. Ct. Aug. 21, 2022), a New York state court affirmed its previous determination that service of process on a defendant using a cryptocurrency token was valid service. The *LCX AG* court explained that the method of service used by the plaintiffs in that case was appropriate because the defendants' physical location was unknown and the method was reasonably calculated to apprise them of the pending action. *Id*. at *4. The plaintiff in *LCX AG* also demonstrated that the blockchain address at which the defendants were served had been used recently and, because it contained over $1 million in digital assets, the defendants were likely to return to the account and discover the service token. *Id*.

The United States District Court for the Southern District of Florida has thrice authorized service by this method. *See Bandyopadhyay* 2022 WL 17176849, at *2–3; *Bowen*, 2023 WL 2346292, at *3; *Ohlin v. Defendant 1*, Case No. 3:23cv88565-TKW-HTC, 2023 WL 4084523, at *1 (S.D. Fla. June 8, 2023).

Here, Defendants conducted their alleged scheme through cryptocurrency and blockchain technology. Plaintiff has established to the Court's satisfaction that service by NFT and website posting is reasonably calculated to reach Defendants. *See Rio Props, Inc.*, 284 F.3d at 1017–18. The Motion for Alternative Service is GRANTED. [ECF No. 4].

B. Temporary Restraining Order

Plaintiff also seeks a TRO prohibiting Defendants from removing the cryptocurrency from the specified addresses before a preliminary injunction hearing is held. He contends there is

imminent danger of irreparable loss due to the likelihood that upon service, Defendants will convert the stolen cryptocurrency into fiat currency, at which point it will be lost in foreign financial institutions and become effectively unrecoverable.

1. Legal Standard

Injunctive relief is an extraordinary remedy, particularly in light of the *ex parte* nature of the TRO sought here. *See Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) ("A preliminary injunction is an extraordinary remedy never awarded as of right.") (citation omitted). Plaintiff bears the burden of establishing: (1) his likelihood of success on the merits, (2) the threat of irreparable harm; (3) the balance of harms from the issuance of the injunction weighs in favor of him; and (4) the public interest weighs in favor of injunctive relief. *See Dataphase Sys., Inc. v. C L Systems, Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc). Courts may exercise their discretion to "flexibly weigh the case's particular circumstances to determine 'whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined.'" *Calvin Klein Cosmetics Corp. v. Lenox Labs, Inc.*, 815 F.2d 500, 503 (8th Cir. 1987) (quoting *Dataphase*, 640 F.2d at 113)). No single factor is dispositive. *Baker Elec. Co-op., Inc. v. Chaske*, 28 F.3d 1466, 1572 (8th Cir. 1994). That being said, "failure to show irreparable harm is, by itself, a sufficient ground upon which to deny [injunctive relief.]" *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987).

2. *Ex parte* Relief

To obtain the *ex parte* injunctive relief requested, Plaintiff must demonstrate "specific facts in an affidavit or a verified complaint clearly show[ing] that immediate and irreparable injury, loss, or damage will result to the [movant] before the adverse party can be heard in opposition" and

certify "any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1). The Court finds both prerequisites are satisfied.

Unless a party can establish extenuating circumstances, "*ex parte* practice in seeking substantive interim relief is contrary to the Due Process Clauses of the Fifth and Fourteenth Amendments." *Little Tor Auto Ctr. v. Exxon Co., USA*, 822 F. Supp. 141, 143 (S.D.N.Y. 1993); *see also Granny Goose Foods, Inc. v. Int'l Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 438–39 (1974) (finding "[t]he stringent restrictions imposed [by Rule 65] . . . reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute." (cleaned up)). Courts have "recognized very few circumstances justifying the issuance of an ex parte TRO." *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). However, *ex parte* TROs "are most familiar to courts where notice to the adversary party is impossible either because the identity of the adverse party is unknown or because a known party cannot be located in time for a hearing." *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984). The Court concludes that in light of the unknown identity of Defendants, the compelling purposes for which the *ex parte* injunctive relief is sought, and its short duration to preserve the status quo until both parties can be heard, pre-injunction notice is not required.

First, the relief requested by Plaintiff can accomplish its aims only if issued *ex parte*. Defendants are allegedly foreign nationals residing in China who control Plaintiff's property in the form of cryptocurrency located on an online exchange. This property can be accessed at a moment's notice and moved. Once given notice of Plaintiff's lawsuit and request for injunctive relief, Defendants could convert the cryptocurrency into fiat currency and effectively disappear. *See Microsoft Corp. v. John Does 1-82*, Civil Action No. 3:13-cv-319, 2013 WL 2632612, at *3–

4 (W.D.N.C. June 10, 2013); *Dell, Inc. v. Belgiumdomains, LLC*, No. Civ. 07-22674, 2007 WL 6862341, at *2 (S.D. Fla. Nov. 21, 2007). The issuance of pre-injunction notice of this lawsuit would likely "serve only to render fruitless further prosecution of the action." *In re Vuitton et Fils S.A.*, 606 F.2d 1, 5 (2d Cir. 1979).

It is also an important consideration that Defendants' identity is unknown and the specified cryptocurrency addresses are the only means of retrieving the cryptocurrency. *See Am. Can Co.*, 742 F.2d at 322. This demonstrates immediate and irreparable injury sufficient for *ex parte* relief.

3. Personal Jurisdiction

Injunctive relief "binds only [those] who receive actual notice of it by personal service or otherwise." Fed. R. Civ. P. 65(b)(2); *see also* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2956 (3d ed.) ("A court ordinarily does not have power to issue an order against a person . . . over whom it has not acquired in personam jurisdiction."). Before the Court can reach the *Dataphase* factors, Plaintiff must establish the Court has personal jurisdiction over Defendants.

A court may exercise general personal jurisdiction if a defendant's "affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State." *Creative Calling Sols., Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 979 (8th Cir. 2015) (citation omitted). There is no general personal jurisdiction over Defendants because they are alleged foreign nationals of China. Thus, the Court must determine whether it has specific personal jurisdiction over them.

"A district court may exercise specific jurisdiction over an out-of-state defendant only to the extent permitted by the state's long-arm statute and the Constitution's due process clause." *Federated Mut. Ins. Co. v. FedNat Holding Co.*, 928 F.3d 718, 720 (8th Cir. 2019) (citation

omitted). This is a single-step inquiry here "[b]ecause Iowa's long-arm statute 'expands Iowa's jurisdictional reach to the widest due process parameters allowed by the United States Constitution,' [the Court's] inquiry is limited to whether the exercise of personal jurisdiction comports with due process." *Wells Dairy, Inc. v. Food Movers Int'l, Inc.*, 607 F.3d 515, 518 (8th Cir. 2010) (quoting *Hammond v. Fla. Asset Fin. Corp.*, 695 N.W.2d 1, 5 (Iowa 2005)); *see* Iowa Code § 617.3(2). "Due process requires that a defendant have certain 'minimum contacts' with the forum State for the State to exercise specific jurisdiction." *Creative Calling Sols., Inc.*, 799 F.3d at 980. Sufficient minimum contacts means "that the maintenance of the lawsuit does not offend traditional notions of fair play and substantial justice." *Fastpath, Inc. v. Arbela Techs., Corp.*, 760 F.3d 816, 820 (8th Cir. 2014) (citing *World–Wide Volkswagen v. Woodson*, 444 U.S. 286, 291–92 (1980)). Specific personal jurisdiction exists when a defendant "purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* (quoting *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880–81 (2011)).

Courts within the Eighth Circuit conduct a five-factor inquiry when considering whether a non-resident's conduct establishes sufficient minimum contacts with the forum state to comport with due process: (1) the nature and quality of the defendant's contacts with the forum state; (2) the quantity of the contacts; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) convenience of the parties. *Id.* at 821. Significant weight is afforded to the first three. *Id.* When a defendant's contacts with the forum consist of an intentional tort, the due process "sufficient minimum contacts" standard is met under the "*Calder* effects test" when a defendant's tortious acts are intentional, aimed at the forum state,

and cause harm the defendant knew would be experienced in the forum. *Johnson v. Arden*, 614 F.3d 785, 796 (8th Cir. 2010). The Court finds all these to be satisfied here.

The nature of Defendants' activity in Iowa revolves around their intentional tortious scheme to convert Plaintiff's property. This conduct was directed toward an Iowa resident and involved use of his accounts at financial institutions within the state. Additionally, Defendants represented to Plaintiff, as part of their scheme that "Emma" was herself an Iowa resident.

This alleged racketeering scheme and conversion of Plaintiff's property was "a course of conduct directed at the society or economy existing within the jurisdiction of [Iowa]" and the United States. *Nicastro,* 564 U.S. at 884. Defendants had actual knowledge they were engaged in a scheme which caused harmful acts to a resident of Iowa, with whom they initiated and continued regular communications.

Furthermore, Iowa has a strong interest in protecting its residents from tortious schemes to defraud them of property. Subjecting Defendants to personal jurisdiction in Iowa does not "offend traditional notions of fair play and substantial justice" here. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

4. Likelihood of Success

Turning back to the *Dataphase* factors, the Court considers whether Plaintiff presents a likelihood of success on the merits. "Likelihood of success on the merits requires that the movant find support for its position in governing law." *Prudential Ins. Co. of Am. v. Inlay*, 728 F. Supp. 2d 1022, 1029 (N.D. Iowa 2010). A "fair chance of prevailing," means a party must establish that "its claims provide 'fair ground for litigation,' but it need not show that it has a 'greater than fifty per cent likelihood' of success." *Sleep No. Corp. v. Young*, 33 F.4th 1012, 1016–17 (8th Cir. 2022) (quoting *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003)). "The plaintiff need only

establish a likelihood of succeeding on the merits of any one of the claims." *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs*, 826 F.3d 1030, 1040 (8th Cir. 2016) (citation omitted).

The Court concludes that Plaintiff has a fair chance of succeeding. District courts have previously entered TROs precluding the sale of cryptocurrency assets when it was alleged that the defendants held the assets unlawfully. *See* [ECF No. 5-10] (citing *LCX AG*, No. 154644/2022 (N.Y. Sup. Ct. June 2, 2022); *see also EZ Blockchain LLC v. Blaise Energy Power, Inc.*, 589 F. Supp. 3d 1102, 1106–08 (D. N.D. 2022) (granting a motion for preliminary injunction and noting that "[p]rior to the hearing, the Court granted a Temporary Restraining Order which prohibit[ed] the Defendants from selling the cryptocurrency miners at issue in this case."). Plaintiff has already identified and produced publicly accessible blockchain records that demonstrate a chain of custody from Plaintiff's account through a variety of transactions to MEXC's Ethereum address. [ECF No. 12 ¶ 12].

5. Threat of Irreparable Harm

The irreparable harm element of the *Dataphase* factors is satisfied "when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." *Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319 (8th Cir. 2009). Irreparable harm will result to Plaintiff if a TRO is not issued along with service of process. It is a near certainty that once Defendants are served, they would convert the ETH into untraceable currency and transfer it beyond the reach of forensic methods to recover it. Plaintiff would stand to lose assets worth approximately $232,000.00. The Court is convinced that no other alternative would adequately protect Plaintiff. This factor supports a TRO.

6. Balance of Equities

Under a balance of equities analysis, the Court must examine the harm of granting or denying the injunction on the parties to the dispute and other interested parties including the public. *Prudential Ins. Co.*, 728 F. Supp. 2d at 1031. Plaintiff represents that, to the best of his knowledge, the disputed ETH has remained at the MEXC address since early 2023. [ECF No. 3 ¶¶ 120–21]. At this juncture, he only requests the Court order the asset frozen. Accordingly, Plaintiff's request for "injunctive relief is no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022) (citations omitted). The Court agrees this factor weighs in favor of Plaintiff's position.

7. Public Interest

The last factor requires a court to consider whether "an injunction is in the public interest." *Scott v. Benson*, 863 F. Supp. 2d 836, 844 (N.D. Iowa 2012) (citation omitted). This analysis entails balancing the specific public interests that might be harmed and what public interests might be served. *Sierra Club v. U.S. Army Corps of Eng'rs*, 645 F.3d 978, 997 (8th Cir. 2011). Courts will not grant a preliminary injunction "unless those public interests outweigh other public interests that cut in favor of not issuing the injunction." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) (cleaned up).

Here, the Court agrees that the public interest weighs strongly in favor of granting the TRO pending a hearing. "[T]he determination of where the public interest lies also is dependent on the determination of the likelihood of success on the merits[.]" *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012). Similarly, courts recognize that there is "a preference for enjoining inequitable conduct." *Prudential Ins. Co. of Am.*, 728 F. Supp. 2d at 1032.

As already discussed, Plaintiff has demonstrated through publicly available blockchain records that digital assets have flown from his account to Defendants' alleged Ethereum address at MEXC. The public has a much greater interest in enjoining the further transfer from the address than allowing Defendants transfer the cryptocurrency before a hearing. The public interest element of the *Dataphase* factors weighs in support of issuing the TRO.

8. Security

The Federal Rules of Civil Procedure require the moving party to post bond to obtain emergency injunctive relief: "[t]he court may issue a . . . temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65. Plaintiff does not address a bond amount in his motion for a TRO. The Court acknowledges that—based on the evidence before it—Defendants likely have no legitimate rights to possess cryptocurrency assets which have been pilfered from Plaintiff and there is no likelihood of harm presented by Plaintiff's requested relief.

However, Rule 65(c) is unambiguous and unequivocal that expedited injunctive relief is available "only if" security is posted. That is why "[c]ourts in this circuit have almost always required a bond before issuing a preliminary injunction[.]" *Richland/Wilkin Joint Powers Auth.*, 826 F.3d at 1043 (citation omitted). It is true that certain informal exceptions have been recognized such as "where the defendant has not objected to the failure to require a bond or where the damages resulting from a wrongful issuance of an injunction have not been shown." *Id.* (citing *Fantasysrus 2, LLC v. City of East Grand Forks*, 881 F. Supp. 2d 1024, 1033 (D. Minn. 2012)). "There are very sound policy reasons for the bond requirement" in preliminary proceedings because the defendant who has been wrongfully enjoined has no recourse for damages in the absence of a

bond." *Interbake Foods, L.L.C. v. Tomasiello*, 461 F. Supp. 2d 943, 979 (N.D. Iowa 2006) (citations omitted). And "because a preliminary injunction proceeding is both expedited, resulting in only provisional findings of fact, and interlocutory, there is a higher chance that the district court will err in granting the preliminary injunction." *Id.* (citations omitted). This is especially true in cases of emergency requests for *ex parte* TROs, where the affected party has no opportunity to object and no opportunity to show damages resulting from the wrongful issuance of relief.

The amount of security required by Rule 65(c) is within the broad discretion of the district court. *Stockslager v. Carroll Elec. Cooperative Corp.*, 528 F.2d 949, 951 (8th Cir. 1976); *see also Hill v. Xyquad, Inc.*, 939 F.2d 627, 632 (8th Cir. 1991). The nature of the provisional facts presented to the Court at this stage show a low likelihood of harm from wrongful restraint. Additionally, Plaintiff represents that the digital cryptocurrency has not moved from the MEXC account since January 26023. Therefore, the Court finds that a cash bond of $500.00 will suffice for issuance of the temporary restraining order but will revisit the matter if Plaintiff requests. The bond may be deposited with the Clerk of Court for the Southern District of Iowa in a non-interest-bearing account.

III. CONCLUSION

Based on the foregoing reasons, the Motion for Alternate Service is GRANTED. [ECF No. 5]. The Motion for Order to Show Cause and a Temporary Restraining Order is also GRANTED. [ECF No. 8]

IT IS ORDERED that Defendants, or their attorneys, show cause before this Court in Room 145, United States Courthouse for the Southern District of Iowa, 123 E. Walnut St., Des Moines, Iowa 50309 on August 25, 2023 at 9:00 a.m., or as soon thereafter as counsel may be heard, why an order should not be issued:

(1) preliminarily enjoining during the pendency of this action Defendants from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Plaintiff's property, including but not limited to, the cryptocurrency (177.7621 Ether) on the Ethereum blockchain at Relief Party and Garnishee MEXC Global, LLC's Ethereum address, 0x75e89d5979e4f6fba9f97c104c2f0afb3f1dcb88 (the Address) from which the Address received cryptocurrency the following cryptocurrency addresses associated with the Defendants as set forth in Figure 1 of this Order; and

(2) directing Relief Party and Garnishee MEXC Global, LLC to deny access to —and control of—the Address by Defendants.

ADDRESS SHORTHAND TITLE	**ETHEREUM/POLYGON ADDRESS**
Scam Address A	0xEE1036fBDaC352b302Bafce53D9AD3b0c4B52E5e
Scam Address B	0xb2ae32155b114427963330d67eb24b9fd1cb186d
Scam Address C	0x29579A5068cDC08532716B56aF7520f93DC353B1
Scam Address D	0xF581f461A77c073e5A8114b64FbEF76550af289b
Scam Sub-Address A	0xaa7491f2d97597b8821fb207fba9c4a5cd0fa984
Scam Sub-Address B	0x4b4da38323ce0042dc90143a44b59cf853b293b8
Scam Sub-Address C	0x4b50c6ac95ee9b9e4410a0046ff7a7f5fdb65212
Scam Sub-Address D	0x7c6ce4b36e5770e30e28b8c0403d92af711e2434
Scam Sub-Address E	0x5dcc8de46b86de5a191a16adaf5db862326e5925

IT IS FURTHER ORDERED that Plaintiff serve a copy of this Order to Show Cause, together with a copy of the papers upon which it is based, on or before August 21, 2023, upon the person or persons controlling the Defendants' known blockchain addresses via Service Token, as explained in this Order. Such service shall constitute good and sufficient service for the purpose of jurisdiction under Federal and Iowa law on the person or persons controlling the Address.

IT IS FURTHER ORDERED that Plaintiff shall serve a copy of this Order to Show Cause, together with a copy of the papers upon which it is based, on or before August 20, 2023 upon Defendant MEXC Global, LLC by personal service through their registered agent. Such service

shall constitute good and sufficient service for the purpose of jurisdiction under Federal and Iowa law.

IT IS FURTHER ORDERED that, pending a hearing on the motion for preliminary injunction, a Temporary Restraining Order, pursuant to Fed. R. Civ. P. 65 shall be entered:

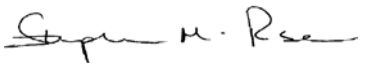
(1) prohibiting Defendants from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants' property, including but not limited to, the cryptocurrency (177.7621 Ether) on the Ethereum blockchain at Relief Party and Garnishee MEXC Global, LLC's Ethereum address, 0x75e89d5979e4f6fba9f97c104c2f0afb3fldcb88 (the Address); and

(2) directing Relief Party and Garnishee MEXC Global, LLC to deny access to the Address to Defendants, until further order of the court.

IT IS FURTHER ORDERED, that opposing papers, if any, to this motion shall be filed via CM/ECF and served via email to joe@iowalegal.com, so as to be received on or before August 23, 2023 and reply papers, if any, shall be filed in CM/ECF and served by email if an email is provided on or before August 24, 2023.

IT IS SO ORDERED.

Dated this 15th day of August, 2023, at 3:15pm.



STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT