

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : CIVIL TERM: PART 3

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3 In the Matter of the Inquiry of LETITIA
4 JAMES, Attorney General of the State of
5 New York,

5 Petitioner,

6 Pursuant to Article 23-A of the New York
7 General Business Law in regard to the
8 acts and practices of

8 iFINEX INC., BFXNA inc., BFXWW INC.,
9 TETHER HOLDINGS LIMITED, TETHER
10 OPERATIONS LIMITED, TETHER LIMITED,
11 TETHER INTERNATIONAL LIMITED,

11 Respondents,

12 *in promoting the issuance, distribution, exchange,*
13 *advertisement, negotiation, purchase, investment advice*
14 *or sale of securities or commodities in or from*
15 *New York State.*

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15 Index No. 450545/2019 (Preliminary Injunction)

16 May 6, 2019
17 60 Centre Street
18 New York, New York 10007

19 B E F O R E: HON. JOEL M. COHEN, Justice

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1 A P P E A R A N C E S:

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1 A F T E R N O O N S E S S I O N

2 THE COURT: Good afternoon, everyone.

3 So here's the way I'd like to go forward. I have
4 a couple of questions after I take appearances for the
5 Attorney General's side. Then I'm going to give you based
6 on the briefs, which were excellent, my provisional ruling.
7 But rather than doing that and then have everybody move to
8 reargue, I'll let you argue because the ruling isn't set in
9 stone until it is.

10 So, counsel, can you state your appearances,
11 please.

12 MR. CASTIGLIONE: John Castiglione, Senior
13 Enforcement Counsel for the Office of the Attorney General.

14 I apologize for not being able to attend Tuesday,
15 but I'll be speaking today.

16 MR. WHITEHURST: Brian Whitehurst, Assistant
17 Attorney General for the State of New York.

18 MS. SKRZYPCZYK: Good afternoon, your Honor.
19 Johanna Skrzypczyk with the New York Attorney
20 General's Office.

21 THE COURT: Good afternoon.

22 MR. MILLER: Good afternoon, your Honor.

23 David Miller of Morgan, Lewis & Bockius, counsel
24 for respondents.

25 MR. MICHAEL: Good afternoon, your Honor.

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1 Charles Michael from Steptoe & Johnson on behalf
2 of respondents.

3 MR. WEINSTEIN: Good afternoon, your Honor.

4 Jason Weinstein from Steptoe & Johnson for
5 respondents.

6 MS. PHILLIPS: Good afternoon. Zoe Phillips from
7 Morgan, Lewis & Bockius for the respondents.

8 THE COURT: Good afternoon, everyone.

9 Let me start with a couple of questions for, I
10 guess, you, Mr. Castiglione.

11 A couple of things. I recognize the Attorney
12 General has the authority to proceed *ex parte*, but it's
13 obviously not a requirement. Was any consideration given
14 to notifying the respondents and giving them an opportunity
15 to be heard so that Judge James would have had both sides
16 in front of her?

17 MR. CASTIGLIONE: Certainly.

18 Your Honor, yes is the answer to your question
19 with respect to our internal deliberations, but I think
20 what's important to understand is -- and this comes out in
21 the papers -- we had had extensive conversations with the
22 other side regarding the issues that were the core of our
23 injunctive request and, based on that experience, which
24 I'll tell you about in detail, we decided to proceed *ex*
25 *parte*. And the first and I think the most important part

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1 of that decision was we had a meeting on February 21st
2 where, for the first time, we had heard details of the
3 events that really form the core of this, the loss of
4 \$851 million of client and corporate funds and this
5 imminent line of credit transaction.

6 What we heard --

7 THE COURT: You don't need to go into the merits
8 yet. I just wanted to know whether, you know, you've been
9 dealing with these folks for months and have known about
10 the proposed transaction for a while. Maybe it's just --
11 so you considered it but decided against. Is that because
12 you thought that perhaps the transaction, if you told them
13 would have happened quickly?

14 MR. CASTIGLIONE: That's fair to say, your Honor.
15 And I think what's important is when we asked them what the
16 transaction was going to be, we heard one thing. We
17 immediately followed up in writing with specific requests
18 not only for information but for documents, and when we
19 finally learned about the transaction -- and this was an
20 issue we previewed for the other side -- we were concerned
21 that the transaction was going to close before we got the
22 information that we requested and, in fact, that's exactly
23 what happened.

24 THE COURT: Okay. Well, I'll get to it in a
25 second, but I think, although you have the right to do it,

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1 and I think, especially in a case like this, which, you
2 know, it would be a little -- it would be preferable for
3 the *ex-parte* judge to hear both sides. I'm not saying it
4 would have come out differently. It's just procedurally
5 there is a reason why all the cases that you see are
6 motions to stay *ex-parte* rules, because I think it
7 certainly would not surprise me if most judges would grant
8 an *ex-parte* ruling because the Attorney General is coming
9 in with a sense of urgency and it's not -- you don't get
10 all the facts until both sides appear.

11 So in any event, let me move to one that troubled
12 me a little bit as well.

13 MR. CASTIGLIONE: Certainly.

14 THE COURT: And I don't mean this to be too
15 picky, but there's a sentence in the statute that is
16 probably the key sentence and it's quoted twice to me, at
17 least once to Judge James, and it's not complete in the
18 quote. The sentence as it's in the briefs says: "The
19 Order" -- and in context that means the Order for
20 examination of witnesses -- "shall be granted by the
21 Justice of the Supreme Court to whom the application has
22 been made or such preliminary injunction or stay as may
23 appear to such Justice to be proper and expedient." And,
24 at least as I look at it, there are a few more words at the
25 end of that sentence, specifically, "And shall specify the

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1 time when and the place where the witnesses are required to
2 appear."

3 Now, I don't think that's academic. I'll get to
4 it in a bit, but I think it puts the preliminary injunction
5 portion of the statute in some context, and I'm not quite
6 sure how it ended up being quoted that way, without an
7 ellipsis to show that certain words had been left out, but
8 it was only after I read the statute that I saw the whole
9 thing.

10 So, as I said, I'm going to tell you where I am.
11 The briefs were extraordinarily good.

12 MR. CASTIGLIONE: Your Honor, if I could have
13 just one moment and to the --

14 THE COURT: Yes.

15 MR. CASTIGLIONE: -- extent --

16 THE COURT: I'm sure it wasn't intentional.

17 MR. CASTIGLIONE: I think it's important, your
18 Honor, is that with respect to that particular sentence
19 which appears in the middle of a very long paragraph, when
20 the Court said it reviewed this exact question -- I'm
21 thinking primarily Justice James in *15 Broad* and then
22 Justice Rakower -- they read that provision with respect to
23 the injunction provision only. They read the "proper and
24 expedient" language to apply to an injunction separate and
25 apart from the examination of witnesses.

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1 THE COURT: I understand that. It doesn't change
2 that the sentence has more to it.

3 MR. CASTIGLIONE: I understand that, your Honor.
4 But I think what's important to understand is that the
5 second clause is talking about shall specify the time and
6 place of the Order, we didn't ask for witness examinations
7 and so forth.

8 THE COURT: I have a different reason why I think
9 those words are important and I'll get to that.

10 MR. CASTIGLIONE: Okay.

11 THE COURT: So, as I said, the briefs were
12 extraordinarily good and I know that you all didn't have
13 all that much time to prepare them, so I appreciate it.
14 And so I'll tell you where I am and then have the argument
15 after that. I, at least in my practice, always found it
16 helpful to know where the judge was coming from.

17 So my view, as I see it now, is that the motion
18 to vacate or stay is denied in part and granted in part.
19 So I want to go through the analysis, I guess, to how I get
20 there. I might as well give you specifics.

21 It's denied with respect to vacating or staying
22 the Order with respect to discovery. The specifics of the
23 discovery can be handled between the parties and the
24 referee. It's denied with respect to the request to vacate
25 or stay the preliminary injunction in its entirety. It is

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1 granted with respect to the request to modify the
2 substantive and temporal scope of the preliminary
3 injunction and I'll get into the specifics as we go.

4 At the outset, this is the academic point I
5 started with, I do have discretion to review and revise the
6 existing injunction, particularly because it was granted
7 *ex parte*, and let me say this. To the extent that
8 statements have been made in the briefs or elsewhere by
9 either party to suggest that Judge James decided the case
10 against the respondents on the merits, that's not accurate.

11 What she did was sign an *ex-parte* order after
12 consideration, that was drafted by the Attorney General's
13 Office and based solely on the Attorney General's
14 presentation. There's nothing wrong with that, of course.
15 And most of us, as I said before, we would do the same
16 faced with serious allegations by the Attorney General, but
17 it's not the same as an opinion and order drafted by the
18 Court after hearing both sides. And, by the way, that's
19 true of the respondents as well.

20 I noted that when they discuss Judge James'
21 opinion in *15 Broad*, each time they thought it was useful
22 to add that she was the judge who granted the order in this
23 case, which I took, to some extent, as an invitation to
24 assume that she was operating under an incorrect standard.
25 But, in any event, let's wipe that slate clean.

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1 MR. MILLER: That wasn't our intention, your
2 Honor.

3 THE COURT: I'm sure it wasn't.

4 As I said, it's not coincidence that the cases
5 that the parties rely on are in this context. If an
6 *ex-parte* order has been granted and the respondents are
7 seeking to vacate it, I think, as we all know, the issues
8 tend to come into sharper focus when both sides can put
9 their cases in front of the court. So all of which is to
10 say that the respondents have a chance to speak their piece
11 and this Court has an obligation to listen.

12 All right. Now, the merits. Whatever else may
13 be ambiguous, the core of Section 354 is to facilitate the
14 gathering of information. The Attorney General obviously
15 has broad authority to investigate potential Martin Act
16 violations and the Court is not really permitted but
17 directed in some ways to grant an order in aid of that
18 function and it is clear that the application can be made
19 *ex parte* and it can be made on information and belief.

20 So the branch, as I said, of the Order to Show
21 Cause that directs the respondents to promptly provide
22 information and to appear before a referee is
23 straightforward, clearly within the statutory authority and
24 will not be vacated. The referee is empowered to work with
25 the parties on schedule and scope, but that is not a

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1 portion of the order that I feel necessary or appropriate
2 to disturb.

3 The authority of the Attorney General to obtain a
4 preliminary injunction is more complicated, nuanced and
5 circumscribed, I think. The reference to the preliminary
6 injunctive relief, as I indicated before, is part of a
7 sentence focused on discovery and that is the overarching
8 focus of the paragraph. I think that the preliminary
9 injunction section is a few words and I think it has to be
10 read in that context. I think a fair reading is that the
11 preliminary injunction generally should relate in some way
12 to the fact gathering function rather than a sort of roving
13 mandate to restrain commercial activity during the course
14 of an investigation.

15 Now, that's not to say the Attorney General is
16 prohibited from seeking a broader injunction going beyond
17 the discovery phase, but I think the Court needs to
18 consider carefully its breadth in the context of an
19 investigation that is not yet complete and that the
20 Attorney General's Office has to make a showing, a
21 persuasive showing as to why injunctive relief is
22 appropriate and what its scope should be.

23 The parties spent a lot of time in their briefs
24 on defining the correct standard for granting a preliminary
25 injunction under the statute. While that's very

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1 interesting, and I'm going to get to it, in the end that's
2 not determinative, because I think everyone agrees it's in
3 the Court's discretion, and there are different ways of
4 describing that, but that's been true of preliminary
5 injunctions in New York and everywhere else for more than a
6 century. So we might quibble about the specifics of it,
7 but it's a discretionary decision. But having said that, I
8 should address the standard because it's both relevant and
9 kind of interesting, depending on your definition of
10 "interesting," I guess.

11 Now, the words of the statute say that I should
12 and can grant a preliminary injunction if I conclude it is
13 "proper and expedient" to do so. So the question is
14 whether that phrase incorporates general preliminary
15 injunction standards or is somewhat more amorphous, with
16 some undefined level of discretion without having to
17 satisfy what I think most of us would consider the normal
18 standards, irreparable harm, likelihood of success, public
19 interest and the like.

20 I'll say that I think the most natural reading of
21 that sentence is that the reference to "preliminary
22 injunction" incorporates the normal definition of that
23 term, including the reasons for granting it that has
24 existed since well before the Martin Act was passed in
25 1921. The fact that it goes on to say that the injunction

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1 should be granted if I conclude it is proper and expedient,
2 yes, it's there. I think what it basically means is I
3 should grant a preliminary injunction based on the normal
4 test if I think that's the right thing to do. I don't
5 think that "proper and expedient" really adds all that
6 much, and even if one does take it as setting some sort of
7 standard, I really don't think it is meaningful different.

8 If I were deciding it under a standard of proper
9 and expedient, frankly I would apply the basic tests that
10 have been applied for than a century and I think that is
11 what is intended. I think that's the plain language and so
12 there it is.

13 I want to address also the back and forth as to
14 whether there should be a different standard for granting a
15 preliminary injunction at the investigatory phase under
16 Section 354 versus after an action is brought as to which I
17 think all the parties agree the CPLR applies. Again, I
18 don't think it makes much of a difference. I would note
19 that the CPLR does not contain the multipart test that we
20 all use. It just has some language about generally what
21 kinds of cases you can seek an injunction under.

22 That's § 6301 and § 6311 makes clear that you have to give
23 notice and the like. That part is clearly superseded by
24 354.

25 But in terms of the basic standard for granting

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1 one, that's all created by judges. That's not a creature
2 of the CPLR and that's why I think the phrase "preliminary
3 injunction" when added to the statute was against the
4 backdrop of many cases prior to 1921, setting forth in
5 general terms what you should consider in deciding whether
6 to grant one.

7 For what it's worth, having said all that, it
8 seems odd to me to argue, as petitioner seems to, that it
9 should be easier to obtain a preliminary injunction under
10 Section 354, that is during the investigation than it is
11 after an action is actually brought. It seems to me that
12 has it backwards. At this early stage, when even the AG
13 hasn't decided whether there's a violation, that should
14 require more of a showing, not less.

15 In other words, you first started looking into
16 this, and I know you've been looking at it for a while, but
17 the notion of substantially changing or restricting the
18 business of a target, you can seek it, and the statute
19 envisions it, but it's hard for me to see why that should
20 be a lower standard than after you've actually decided
21 there is a violation and you're going to court to try to
22 restrain it.

23 So to that extent, I disagree with the *Eichner*
24 decision. I don't think it really impacts the result here.
25 I just would note that I don't think that the structure of

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1 the statute or any other equitable reasons would provide a
2 specific rationale for applying a more lenient standard
3 when there hasn't even been a decision to bring an action
4 yet.

5 Moving on to what does this all mean, I think
6 that the *State v. Fine* case provides the most practical
7 guidance. I recognize it is not a § 354 case, but it's
8 essentially a modified form of the preliminary injunction
9 standard, tailored to the context of the Martin Act. And
10 what does that mean? Generally speaking, preliminary
11 injunction standards are largely limited or most often used
12 when private parties are involved. I think you have to
13 give some deference to the Attorney General's Office and
14 their law enforcement authority and views and the broad
15 purposes of the Martin Act, while at the same time
16 requiring a showing of the traditional urgency and
17 irreparable harm.

18 And in connection with irreparable harm, for
19 example, that doesn't mean that the Attorney General has to
20 show that individual investors would not have an action for
21 damages. I think it just means here that the respondents
22 are about to take action that, as a practical matter, is
23 not reversible and in this case that would be if funds
24 leave the entity and it goes somewhere else, it may not be
25 retrievable. That's the kind of thing that is irreparable

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1 harm to mean in this setting, but I do think that some
2 showing on the merits is required. Otherwise, you do have
3 this roving mandate. You start an investigation. It's
4 unclear whether there's anything to it and then you can go
5 ahead and just keep everything, stop the respondents in
6 their tracks or at least stop them, to some extent, to
7 figure out what's going on. I think that's too broad.

8 Now, apply it here. I don't think this is a case
9 where the Attorney General has the sort of randomly made
10 some decisions about the business. It's preliminary early
11 days, but I think the Attorney General has provided some
12 evidence, with deference to her law enforcement mandate, to
13 indicate that unless the respondents are restrained from,
14 as they would put it, dissipating cash by transferring it
15 to another entity, partially owned by the same entities,
16 that investors will be at some risk, that the tether
17 currency, for lack of a better word, will not be fact
18 backed by dollars in case they want to make an exchange.

19 I'm not saying that that would be proven, but it
20 is at least sensible enough or consistent with law
21 enforcement and the Martin Act's goals to entitle them to
22 some ability to maintain the status quo. Yes, there were
23 disclosures, many disclosures, but I don't think at this
24 early stage I'm in the position to say that the tweaking of
25 the language from suggesting that the tether is backed

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1 dollar for dollar by dollars, as opposed to dollars and
2 other types of instruments, that may prevail; it may not.
3 But I think that, from my perspective, this is not a random
4 ask by the Attorney General's Office. They have set forth
5 an enforcement plan that I think is rational. Again,
6 whether it will be proven out, I don't know. And that
7 included the question of whether the securities, which I
8 know is a threshold question that the respondents make
9 justifiably a lot of, these things are traded. Whether
10 that makes them securities or not I think is something that
11 will be resolved at some later point, but I don't think in
12 terms of the Martin Act, I can preclude the Attorney
13 General from maintaining the status quo just because there
14 is some question as to whether it's beyond jurisdictional
15 reach.

16 So in view of the imminent concern, which I
17 understand, that the line of credit may continue to draw
18 down cash or dollars and that that drawing down could
19 conceivably lead to some harm and that there may be some
20 misleading of investors who, either prior to or after the
21 tweaking of the disclosure, may have thought otherwise, may
22 have thought that it was dollar for dollar. I recognize
23 the point that banks don't have all of the dollars
24 available at a moment's notice. I also note that they're
25 not banks who are heavily regulated and have certain

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1 requirements in terms of their capital being sufficient,
2 but, again, that goes more to the merits that I'm
3 comfortable getting today.

4 So I think the Attorney General has made a
5 sufficient showing of entitlement to some kind of
6 preliminary relief while it completes the investigation,
7 but I think the preliminary injunction that we have right
8 now is vague, open-ended and not sufficiently tailored to
9 precisely what the AG has shown will cause imminent harm.
10 I think it's both amorphous and endless.

11 With respect to clarifying, I think it needs to
12 be tailored to what the challenge is. Now, in the AG's
13 papers to Judge James and to me, you say you're not
14 intending to impact the ordinary course of respondents'
15 business, and I don't doubt that, but I think the language
16 that is actually in the Order might be read to do that,
17 probably not intentionally, but I think it needs to be
18 worked on because it has a couple of elements where,
19 frankly, if I were in their shoes I wouldn't understand
20 what I'm supposed to do or not do, and there's a general
21 reference to enjoining them from doing anything -- let me
22 just get it in front of me.

23 Is that the existing Order?

24 MR. CASTIGLIONE: May I?

25 (Document handed up to the Court.)

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1 THE COURT: So the working order provides that
2 the respondents and a whole host of related entities are
3 enjoined from taking further action -- I'm sorry. Can I
4 have a copy of that? I have it right here. Okay.

5 The opening section says that the respondents are
6 preliminarily restrained from violating the statute,
7 basically, and from engaging in fraudulent, deceptive or
8 illegal acts, and are further enjoined, restrained and
9 enjoined from employing any device, scheme, or artifice to
10 defraud or to obtain money or property by means of false
11 pretense, representation, or promise, but including and not
12 limited to a number of specific things.

13 Now, typically when you read a paragraph that
14 ends with "including but not limited to," you should be
15 able to comply with it without anything that comes next
16 because you're enjoining the entirety of that paragraph and
17 then providing examples. So it seems to me that simply
18 telling a series of companies that they can't engage in
19 anything fraudulent, deceptive or whatever doesn't really
20 tell them what they can do or not do in any practical way.

21 And then it goes on to the list of things and the
22 main battle ground is the first one, which provides that
23 further action by Bitfinex or Tether to access, loan,
24 extend credit, encumber, pledge, or make any other claim,
25 of any variety or description, on the U.S. dollar reserves

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1 held by Tether.

2 Now, that's a lot. I think something needs to be
3 done there to make it clear that, for example, I'm taking
4 this language from your briefs, in part, something like at
5 the end of it that it says, "Other than in the ordinary
6 course of business such as to process orders by legitimate
7 traders on the Bitfinex platform to redeem tethers for
8 dollars."

9 Now, I suspect the parties will come up with
10 something better than that, but my point is, at least
11 directionally, the injunction that remains after we're done
12 here needs to specify what they can't do and I think it
13 would be helpful, given the nature of this market, to
14 specify in some way what they can do, because I think as
15 written, I agree with the respondents that there's a way to
16 read this that would cripple them and I don't think that's
17 intended, but, to me, that's the way it reads.

18 The other thing I think we need to deal with is
19 time. As written now, there is no end date and that's
20 particularly difficult in an injunction during the course
21 of an investigation. Strictly speaking, it goes on
22 forever. If you investigate forever, it goes on forever.
23 So it seems to me we need to put some parameters around
24 that and, in the typical case, a preliminary injunction
25 would last until trial and we don't have that here because

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1 there may never be a trial. I suppose it could be that it
2 will last until an action is brought and then when an
3 action is brought it will last until that's resolved. So
4 we're talking about this preliminary injunction potentially
5 being in place for a very long time, but at least in the
6 immediate time period it's indeterminate and I don't think
7 we need -- I'm not comfortable saying that that's proper
8 and expedient. I've tossed and turned a bit about how to
9 do this.

10 One idea has been that the injunction would be
11 granted for 60 days, let's say, and then to be renewed
12 thereafter. Another way to do it is to say it lasts for 60
13 days for the respondents to seek to vacate it, or something
14 like that, but I think, to some extent, choosing that time
15 period depends a bit on the Attorney General's schedule for
16 the investigation, which it may not know.

17 So, as we've discussed this now and I'll stop in
18 a moment, I'd like you to think about both of those things
19 in terms of, assuming I don't change my mind, on the point
20 that there should be some injunction, but that it should be
21 tailored and time limited, to give thought to how we would
22 do both of those things.

23 Okay. So with that, let me start with the
24 respondents who brought the motion and ask you very
25 unfairly to respond to what I just said.

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1 MR. MILLER: Not unfairly at all, your Honor. A
2 number of points that if your Honor will bear with me, I'd
3 like to make. And I understand your Honor's ruling with
4 respect to documents. If I may, though, however, it loops
5 into the broader question of jurisdiction, and I understand
6 what your Honor said with respect to jurisdiction, but I'd
7 like to still make a couple of points in the hopes of
8 hopefully persuading your Honor otherwise.

9 First, your Honor, as we note in our opening
10 brief and in our reply brief that we filed, the Attorney
11 General has failed to show that the Martin Act's
12 jurisdictional requirements have been satisfied, whether
13 that be tether not being a security, not being a commodity
14 under the Martin Act, and, indeed, their fallback that
15 Bitfinex trades somehow in securities and commodities, but
16 nevertheless there's zero evidence to support that claim.
17 There's zero evidence that New York residents are platform
18 customers. There's zero evidence that the Attorney General
19 satisfies the Martin Act statutory definition.

20 And, indeed, there are not investors, to be
21 clear, your Honor, because I know your Honor had mentioned
22 investors, there are not investors at issue here. With
23 respect to Tether in particular, we're talking about
24 customers and so ultimately --

25 THE COURT: Well, you know, that's like people

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1 who buy and sell shares on the exchange, they're investors.
2 People who buy and sell tether, aren't they either
3 customers or, you know, they are buying and selling
4 whatever it is your clients are offering, right?

5 MR. MILLER: As customers, yes, your Honor.

6 THE COURT: Okay. And so, you know, I think
7 we're dealing with an asset that is evolving in terms of
8 its legal status and so the question I have right now is
9 has it been held anywhere whether tether or similar items
10 are securities?

11 MR. MILLER: I don't believe it has, your Honor.
12 I don't believe it is a security.

13 THE COURT: I haven't seen it either. That's a
14 reason for me to be careful after four days making a
15 judgment that the AG cannot investigate this with the
16 possibility of concluding that it's a security and then
17 determining that it has grounds to believe that the conduct
18 violates the Martin Act. You may be right, you may
19 prevail, but I don't think I'm -- it's certainly not
20 crystal clear, let's put it that way.

21 MR. MILLER: Understood, your Honor, although, to
22 be fair, and obviously we did mention in our briefs, in our
23 opening brief, including that tether doesn't even come
24 close to meeting the Howey Test.

25 But more importantly in terms of the duration,

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1 your Honor, perhaps the Attorney General's Office should
2 have thought more about this before they filed an
3 application asserting, without any proof whatsoever, that
4 these are securities or commodities under the Martin Act
5 and then basically putting the burden on respondents, who
6 do not do business in New York, from having to do undergo
7 significant, onerous document requests and obviously have
8 to go through motions seeking to vacate this preliminary
9 injunction. The burden shouldn't be on a respondent that
10 doesn't do business in New York, doesn't come under the
11 statutory definition to prove that. The burden should be
12 respectfully on the petitioners.

13 THE COURT: It is. The burden is on the Attorney
14 General to prove a case once it brings one. § 354 is
15 clearly designed to give them a fairly long leash to
16 investigate and so it seems like front loading the question
17 of jurisdiction without a very clear path to find that it
18 doesn't exist. I recognize that they will ultimately have
19 the burden of showing that. The question is that you say
20 it's very, very clear and I'm not there yet. I don't know
21 if it will even be me if they bring an action.

22 But, you know, at least let me just ask you.
23 These are traded on exchanges?

24 MR. MILLER: Tether is traded on the Bitfinex
25 exchange and other exchanges, your Honor.

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1 THE COURT: So the notion of whether it's a
2 commodity or a financial instrument, which this seems
3 certainly more like a financial instrument that's traded on
4 the exchange, it doesn't strike me as an enormous reach
5 that that might give you standing as a security.

6 MR. MILLER: Understood, your Honor, except for
7 the fact that there's no commonality of enterprise or
8 expectation of profits and a third party to try to
9 administer and gain the profits. So it fails under the
10 Supreme Court's Howey Test.

11 But, moreover, your Honor, I mean the problem
12 here is you have, with all due respect, a regulator that
13 seems to want to be in the business of regulating a
14 business that they're not responsible for regulating, and
15 that is Bitfinex and Tether.

16 THE COURT: Who is responsible for regulating
17 them?

18 MR. MILLER: Well, since Bitfinex and Tether do
19 not do business in the United States, technically, your
20 Honor, there is no regulator. We note that we are
21 registered with the Department of Treasury for FinCEN
22 purposes and AML purposes. But, nevertheless, Bitfinex and
23 Tether are good corporate citizens that have cooperated
24 with federal regulators for a while. We were
25 cooperating -- and this is contrary to petitioner counsel's

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1 statements at the beginning -- we were cooperating with
2 this investigation from the beginning and all the way
3 through, and I don't want to belabor the points we made on
4 the record last Tuesday, many of which are set out in depth
5 in the Weinstein Affirmation, but we voluntarily disclosed
6 this transaction on February 21st to the Office of the
7 Attorney General. On February 25th, we changed the terms
8 of service and then notably we produced, once the documents
9 were ready, which were negotiated by independent counsel,
10 you can't produce drafts, there's obviously privilege
11 concerns, plus the fact, frankly, they're not the
12 Department of Justice Antitrust Division in which we're
13 trying to get a merger done in the United States. They
14 don't have the purview to tell us yes or no.

15 THE COURT: I just asked, you know, they're law
16 enforcement personnel, and the question arises, is this
17 entirely unregulated? I mean, certainly whether New
18 Yorkers or not are involved in something they can look at,
19 but certainly people in the United States are, so as a law
20 enforcement agency, it doesn't seem really out of bounds to
21 probe whether an otherwise unregulated business involves
22 securities that are subject to the Martin Act, which are
23 otherwise going unregulated.

24 So the short answer to the question is the
25 business is not regulated either at the state level or at

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1 the federal level and that your cooperation with state, or
2 compliance with, as you said, good corporate citizenship,
3 is voluntary.

4 MR. MILLER: It is voluntary, your Honor. And so
5 ultimately -- and I understand your Honor's point in terms
6 of the timing of this, but there, frankly, is something
7 fundamentally unjust with a regulator that has no purview
8 over our business for which we voluntarily disclosed
9 information, and they have not even asserted, other than
10 conclusory fashion, they have reason to believe that New
11 York customers are involved here, that, all of a sudden
12 now, they put that magic language, that Talismanic language
13 in their final briefs and then, all of a sudden now, these
14 companies that were cooperating voluntarily have to not
15 only be enjoined in doing what they do, but don't have to
16 be in New York.

17 THE COURT: Does your client have records that
18 would show the nationality or domicile of individuals or
19 entities that trade in tether?

20 MR. MILLER: So we have had questions as part of
21 document demands from the New York Attorney General's
22 Office and from federal regulators regarding where people
23 are. There are verified customers on the Bitfinex platform
24 and there are unverified customers on the platform. The
25 verified customers have KYC, Know Your Customer, AML

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1 controls. They're performed on them if they and the
2 verified customers are ones that can deposit and withdraw
3 fiat, traditional currency, from the platform versus
4 unverified customers. Unverified customers cannot deposit
5 or withdraw traditional fiat currency from the platform.

6 As to the former category, there's information
7 regarding that and I believe we've been in the process or
8 will be in the process of producing. On the latter, that's
9 a much more difficult question, but, again, as part of our
10 terms of service for the platform, U.S. customers are not
11 permitted to operate. The exception in terms of how this
12 might come into play that I'm sure the Attorney General is
13 going to argue is that there's something called Eligible
14 Contract Participants, or ECP's and that's a definition
15 under the Commodity Exchange Act, which means that you have
16 a non-U.S. corporate entity that indirectly has some
17 ownership from U.S. customers.

18 Regardless of that fact, your Honor -- and that,
19 by the way, is an extremely small, less than 1 percent of
20 what we're talking about in terms of what's on the
21 platform. But the terms of service themselves articulate
22 clean and clearly that U.S. customers, whether they be from
23 the great State of New York or otherwise, are not permitted
24 on the platform. If somebody goes onto the platform
25 otherwise in violation of the terms and our clients find

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1 out about them, they boot them off. They're not permitted
2 to be on.

3 So from a jurisdictional standpoint, you know,
4 and I don't want to belabor the point, your Honor, but we
5 note this in our briefs.

6 THE COURT: Excuse me. The question I asked, the
7 answer is some version of maybe.

8 MR. MILLER: We have yes and we have for
9 unverified customers, I believe that that's a harder
10 question. For those who come through ISP routers that we
11 can't necessarily -- IP routers we can't necessarily
12 determine, maybe.

13 THE COURT: So you started by essentially
14 criticizing or making the point that the Attorney General
15 can't identify New York residents. That's a little hollow
16 when you can't either. And presumably in the investigation
17 to the extent that they will ultimately have the burden,
18 but at this stage, since you don't know, perhaps they don't
19 know and that's why they're investigating and § 354 gives
20 them a fair amount of rope to try to find out.

21 MR. MILLER: Understood, your Honor, although I
22 would say that when people are operating in violation of
23 the conditions for using the platform and breaking the
24 rules, it should not be incumbent upon our clients now to
25 be beholden to people who shouldn't be on the platform in

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1 the first place.

2 THE COURT: Let me make sure I understand. So no
3 U.S. entities or no New York entities are permitted to
4 trade on the platform?

5 MR. MILLER: That is correct.

6 THE COURT: Who is permitted to trade on the
7 platform?

8 MR. MILLER: The tens of thousands of customers
9 outside the United States that trade on the platform every
10 day. I will note, however, that it is not from the
11 beginning of time that U.S. customers or even New York
12 customers couldn't trade on the platform. That did change.
13 That did change. But certainly since --

14 THE COURT: What if they already hold the
15 currency?

16 MR. MILLER: My understanding is if there were
17 customers that were on the platform prior to the change in
18 terms of service, I think counsel, my co-counsel can
19 correct me if I'm wrong, that they were told they had to
20 leave the platform; they were no longer permitted.

21 THE COURT: I hate to portray ignorance, except
22 when I absolutely have to. Do you hold this currency in
23 any form, electronically or otherwise? In other words, if
24 I have traded in it, do I have ownership interest in some
25 form of tether that I would have some interest in knowing

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1 whether that which I currently own may not be what it seems
2 to be in terms of being backed by dollars?

3 MR. MILLER: And I think I understand your
4 Honor's question. I just want to make sure that I do.
5 That with respect to folks who are not on the Bitfinex
6 platform, you're saying who otherwise hold tether, is
7 that --

8 THE COURT: Well, historically, other people in
9 the U.S. have been allowed to trade, and if they traded and
10 they're in some sort of a long position, whether they, you
11 know, are exposed to tether's value, do we know whether --
12 they would be part of the class that the AG might be
13 wanting to protect.

14 I'm going to ask your colleague who they're
15 protecting, but I'm just trying to make sure I understand
16 your point. They're not currently trading on the platform
17 acquiring or selling new currency, but what if they already
18 have some?

19 MR. MILLER: Your Honor, again, in terms of their
20 operation either on the Bitfinex platform, which, if
21 they're in the United States, they are not permitted to be
22 doing business on the platform. And with respect to the
23 tether itself, I'll just note, and this goes more to the
24 disclosure point that we've discussed also quite a bit,
25 that in terms of this entire action ultimately, beside the

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1 fact that the terms of service themselves were adjusted on
2 February 25th to allow affiliate entities to loan each
3 other, like the line of credit, the Attorney General's
4 Office not only knew about this and they got the documents
5 at the end of March and they waited until the end of April
6 to make this application, but through the press of this
7 event, including the AG's press release, everybody knows
8 now about this issue and yet we're still here, meaning if
9 customers know --

10 THE COURT: It's kind of a non-defense, that
11 during the course of the investigation or the investigation
12 caused me to disclose things and therefore there's no
13 investigation left.

14 MR. MILLER: That's not our point, your Honor.
15 Our point is that from the beginning, as we articulate in
16 our papers, we have no fiduciary duty or otherwise with
17 respect to Tether customers, particularly on the platform,
18 and we disclosed to the AG's office, we disclosed through
19 our modifications of the terms of service, and then
20 ultimately through this action, if there was any ambiguity,
21 there is not anymore, so where is the irreparable harm?

22 THE COURT: I want to make sure. On the
23 jurisdictional question, I'd like to hear from the state
24 first and then go back to you on the next question on the
25 merits.

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1 What about this point that U.S. and New York
2 citizens are not permitted to trade on the platform?

3 MR. CASTIGLIONE: So the first and maybe the most
4 important point is that tether is traded on at least one
5 New York, I believe, located in and certainly licensed
6 trading platform. There's a platform called Poloniex.

7 THE COURT: Polonius?

8 MR. CASTIGLIONE: Poloniex. That's the name,
9 meaning I can go on that venue.

10 MS. SKRZYPCZYK: Poloniex.

11 THE COURT: Poloniex, like Polonius, you know,
12 "Borrow and not a lender be," that kind of thing. Okay.

13 MR. CASTIGLIONE: Tether trades on this venue, so
14 New Yorkers can sign on and transact in tether from New
15 York. They also used to be able to do that on another
16 platform called Bittrex until a couple of weeks ago when
17 Bittrex was required to leave the State of New York.

18 Number two, as we say in our submissions, they do
19 business with New York entities and I think you heard that
20 some from respondents, that they have accounts with
21 significant traders that operate from New York trading on
22 the Bitfinex platform.

23 THE COURT: But not for their own account?

24 MR. CASTIGLIONE: Yes, for their own account, as
25 far as I know, yes.

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1 THE COURT: Okay.

2 MR. CASTIGLIONE: We have gotten some bank
3 records in the course of our investigation that would
4 indicate that those companies continue to do business on
5 the platform. We also, as we say in our papers, they,
6 meaning respondents, the companies held accounts with two
7 New York banks as recently as last year. So I think
8 there's plenty -- and there are other reasons why we're
9 confident that Bitfinex is accessible in the State of New
10 York and that tether can and is held by New Yorkers.

11 MR. MILLER: If I might, your Honor?

12 THE COURT: Yes.

13 MR. MILLER: Clarification, I know it's getting
14 long on the time.

15 THE COURT: What's that?

16 MR. MILLER: I know it's getting long on time
17 here, but there are a couple of points --

18 THE COURT: I work here, so I get to stay.

19 MR. MILLER: In terms of this other platform, to
20 be clear, if somebody goes on that platform, they cannot
21 buy tether from us. So this is not an issue with respect
22 to the respondents --

23 THE COURT: Oh, I see.

24 MR. MILLER: -- that are going on the platform,
25 whatever platform it is in New York. And, in fact --

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1 THE COURT: So it's a secondary market.

2 MR. MILLER: It's a secondary market and they're
3 the competition, your Honor.

4 THE COURT: Right. So then even a secondary
5 buyer would have some interest in what is backing the
6 currency or whatever you want to call it. They have some
7 interest even as a secondary buyer, don't they?

8 MR. MILLER: Well, I don't think the normal rules
9 of securities law applies here. I mean, we're talking now
10 about sort of secondary buyers in the context of duties
11 under the '33 and '34 Acts and that's not what we're
12 talking about here, respectfully, your Honor.

13 THE COURT: Okay.

14 MR. MILLER: But, additionally, just to clarify,
15 the tether is not used as an investment. It's not -- you
16 don't go long on tether. It's a stablecoin, it's a
17 currency, and that's one point.

18 The second point is --

19 THE COURT: Well, those are not mutually
20 exclusive. You can go long on dollars, I believe.

21 MR. MILLER: I understand, your Honor. That's
22 not this situation, your Honor. This is -- and we're
23 talking about the people who are buying tether, they're
24 buying the stablecoin one-to-one and then they hold and
25 then redeem or on the Bitfinex platform they use the tether

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1 to exchange it for other cryptocurrencies.

2 But we know that no one is from -- just to
3 clarify -- we know that no one is from the United States,
4 even unverified. We don't do full KYC. We don't do full
5 KYC and AML procedures on them and if there's somebody who
6 gets in from the United States, as I noted earlier, we
7 quick them off the Bitfinex platform because that's
8 violating the terms of service.

9 THE COURT: Again, if they're secondary buyers,
10 you can't do that.

11 MR. MILLER: Well, if they're in the market and
12 they're on a competitor's platform, but they're not buying
13 from us, again --

14 THE COURT: You have two sets of defendants here
15 or respondents. You have exchanges, but you also have --
16 again, I don't know if "issuers" is the right word for it,
17 but they're not all -- it's not a homogeneous group you're
18 sitting there with.

19 MR. MILLER: Well, I mean, obviously we're
20 talking about two affiliated entities; one that actually
21 issued the tether and redeems the tether now, and then
22 Bitfinex on which currency, cryptocurrency trading occurs,
23 including the stablecoin tether.

24 THE COURT: Right. So the exchange is what
25 you're getting at now. They don't use your exchanges, but

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1 they can still be entities that hold tether.

2 MR. MILLER: If they bought it on a competitor's
3 platform --

4 THE COURT: Right.

5 MR. MILLER: -- like the one that counsel just
6 mentioned. And I should note this. Thank you. My
7 co-counsel reminded me that on the Poloniex platform, it's
8 actually not promised to be one-to-one backed. I'll just
9 note that. And I don't want to belabor the point on
10 jurisdiction.

11 THE COURT: We can move off that. I got the
12 jurisdiction argument. Okay.

13 MR. MILLER: So let me move now -- and I
14 understand your Honor's ruling with respect to -- before I
15 move on, I should say that when we met with the Special
16 Referee on Friday, and just to clarify, your Honor, when
17 we, the respondents, took issue with the category, any
18 particular category in the Order itself, as opposed to when
19 we're going to produce stuff or what format it might come
20 into, the Special Referee's instruction, it's our
21 understanding is that if we're going to challenge a
22 category, we come to your Honor and which is one of the
23 reasons why in our reply brief last night we noted this
24 because we're sort of renewing our application with respect
25 to the documents since we do challenge the categories.

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1 THE COURT: Well, there's two things. One is
2 should you be sent to a referee to deal with the document
3 requests, that doesn't mean there can't be disputes as to
4 individual requests. I'm not exactly sure how we work out
5 calling the balls and strikes on that. But I think in
6 terms of what we're here for today, Judge James' Order, I'm
7 not going to vacate it in its entirety. I kind of leave
8 open the question of whether individual objections, whether
9 they're decided by me or the referee and whether we bat the
10 ball back and forth over the net, but somebody's got to
11 decide. I agree with you.

12 MR. MILLER: Agree. And to give you a concrete
13 example, there's a request in here -- I'm just picking
14 one -- for respondents' tax files. Well, when the referee
15 heard that the respondents don't file tax returns in the
16 United States, the referee was naturally a little perplexed
17 and we had a discussion about -- and our view, of course,
18 is that it's completely out of bounds and irrelevant, and
19 obviously the Attorney General's would take a different
20 position, but our understanding of that challenge, namely a
21 categorical challenge to Item 12 in the document demand
22 list, would need come before your Honor and we're happy to
23 brief such examples.

24 THE COURT: Yeah. I mean, look, I haven't really
25 thought through how the logistics of discovery disputes are

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1 going to be dealt with. I can delegate them to the referee
2 and he or she can kick them back up to. Me, I think that's
3 something we can work out. Today we're talking about
4 whether we need to -- I don't think today is about calling
5 balls and strikes.

6 MR. MILLER: Understood.

7 THE COURT: I recognize that's a big ball and
8 strike that you're talking about.

9 MR. MILLER: That's why I brought it up as an
10 example, your Honor.

11 But moving on, your Honor, in terms of your
12 Honor's holding on the injunction, if I may, just a couple
13 of points as to why we still respectfully request that your
14 Honor vacate the entire injunction. And I sort of alluded
15 to this on the merits a little bit earlier and, of course,
16 we've had this discussion on the record last Tuesday, is
17 the fact that under whatever standard ultimately is being
18 applied here, there clearly is no irreparable harm for
19 which this injunction is necessary given the following.

20 First, this has, as I mentioned earlier, been
21 entirely disclosed now. We believe it was disclosed
22 through the amended terms of service because there's no
23 question it's been disclosed through the press activity and
24 people still have made the choice to continue to operate as
25 customers. They are fully informed, even though, to my

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1 second point, there's no duty of disclosure here for the
2 reasons we've briefed.

3 Everybody knows now, this is fully public, and
4 that point is not a small one, your Honor, because, again,
5 whether we're talking about a three-part test or we're
6 talking about some aspect of irreparable harm or a
7 combination of factors, the burden is on the Office of
8 Attorney General, and it has always been, to show that this
9 injunction is necessary, to show that customers would
10 somehow be irreparably harmed without this injunction, and
11 that is just not the case and we're not talking about a
12 situation, again going back to my Antitrust Division
13 example or the Federal Reserve, where you have regulated
14 entities that are required to appear before the regulator
15 *ab initio* before they engage in a transaction. They don't
16 have that authority here.

17 THE COURT: Well, let me ask you this. Let's
18 assume that there's another hundred million or something,
19 you are about to enter into a transaction to basically
20 dissipate every last dollar you have, everything, it's
21 backed by absolutely nothing from now on. Would that be
22 irreparable?

23 MR. MILLER: When you're saying "dissipate,"
24 that's also a word I frankly -- but there's a point, your
25 Honor.

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1 THE COURT: Send it into -- to anyone else so
2 that it's not controlled by Tether anymore.

3 MR. MILLER: If it was going to be sent to the
4 pockets of the owners of Tether or Bitfinex for them to go
5 buy houses and cars, of course. But when we're talking
6 about in this case, your Honor, no dissipation, we're
7 talking about a sophisticated transaction involving White &
8 Case and Herbert Smith Freehills --

9 THE COURT: I'm just saying is there an interest
10 that somebody might have? You know, obviously the question
11 is whether doing this swap where somebody else is exposed
12 to crypto, whatever that entity is, cryptocurrency, my
13 question is, is if the amount at issue was much greater, I
14 think you mentioned somewhere in your papers that you still
15 have 70-something percent dollars to tether or something,
16 but what if you went down to zero? Does there come a point
17 where the disposition of dollars is high enough that people
18 would be at real risk if they think whatever is backing
19 tether doesn't exist?

20 MR. MILLER: Understood your Honor's question and
21 I'm not trying to be evasive, your Honor, but, of course,
22 that hypothetical assumes that customers would -- that
23 would impact the ability of customers to be able to redeem.
24 And in this circumstance, however, where it is a loan,
25 under commercial and reasonable terms, it's not --

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1 THE COURT: I'm asking the question for a
2 different reason. But just theoretically or just
3 directionally, the actions by Tether, which make redemption
4 somewhere between difficult and impossible, that's
5 something that would be irreversible, wouldn't it? I mean,
6 I guess you could call the loan back, but the risk that
7 they're looking at here, is what if you can't do that?
8 What if you really now exposed yourself to some offshore
9 entity that you will never get your money back from?

10 MR. MILLER: I understand your Honor's
11 hypothetical, although it sounds to me, with all due
12 respect, that the facts are, quite candidly, honestly
13 different.

14 THE COURT: Most hypotheticals are.

15 MR. MILLER: Not just from a sort of an
16 irrelevant perspective, but a substantive one, where here
17 we have tether trading as of today basically at par.
18 Customers are aware of this issue. Customers are aware of
19 what the New York Attorney General has done. I mean, it's
20 all over the Internet. And, ultimately, again, there is
21 \$2.1 billion in cash, cash equivalents that are on hand
22 with Tether, 74 percent.

23 THE COURT: Right.

24 MR. MILLER: And, ultimately, you're talking
25 about the reserves here are based on, as the customers

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1 know, cash, cash equivalents and this affiliated loan,
2 which was negotiated under commercial and reasonable terms.
3 People know what this is.

4 THE COURT: You're saying it's not irreparable
5 because there's enough and the Attorney General Office is
6 saying that they want to investigate whether that's true or
7 not, that maybe this next hundred million is a tipping
8 point. I don't know. But I'm not sure -- I am sure I'm
9 not in a position to make fact finding that the next
10 hundred million is not some significant amount, that's what
11 the investigation is to accomplish.

12 MR. MILLER: Understood your Honor's point.
13 Respectfully, if tether holders, the customers, believe
14 differently, they would have redeemed now. I understand
15 your point.

16 THE COURT: I'm not sure you want to go there
17 because that's what the securities investigation is about,
18 that they may not know what they should or shouldn't do
19 what they're suggesting and your argument that the
20 disclosures are okay now, that's what regulators look at.

21 MR. MILLER: I understand your Honor's point.

22 Our point, your Honor, is -- and we understand
23 conceptually that the regulator has the right to
24 investigate, putting aside our jurisdictional and other
25 points here and that's not -- we're not quibbling with that

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1 aspect, that concept.

2 The problem is, your Honor, is that they have
3 taken and sought this drastic action, which I'm glad to
4 hear that your Honor wants to put a temporal limit on,
5 without actually demonstrating the relevant nexus, without
6 demonstrating that there are customers who are being
7 misrepresented to and have no idea, that's not this
8 situation.

9 If they're so eager to apply the regular
10 securities laws, the federal securities laws or the Martin
11 Act to this concept, they should step back and worry about
12 that, because everything, besides not being a duty,
13 everything's been disclosed and people are making their own
14 sophisticated choices here and, instead, we have a
15 regulator getting into a business that they're not supposed
16 to be regulating.

17 THE COURT: Well, let me hear from the Attorney
18 General's Office about irreparable harm.

19 MR. CASTIGLIONE: Certainly. And I'll say at the
20 outset, we're not regulators. We don't make the rules on
21 our own. We enforce the Martin Act.

22 THE COURT: I noted it.

23 MR. CASTIGLIONE: I think it's important.

24 THE COURT: If I slipped into the language, I
25 didn't mean that.

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1 MR. CASTIGLIONE: I'll hear about it from my boss
2 if I don't make the point. But it's important because when
3 we took the action we took, when we asked the Court to
4 grant us the documents and information that we asked for
5 and to stop the transfers, that was the setting in which we
6 did it.

7 I don't think it's at all unreasonable for your
8 Honor to have us go back and take a look to say is there
9 something that we need to be more explicit about about
10 their ongoing business, because you're right. If someone
11 wants to redeem tethers for cash, as they were promised for
12 many years, they should be able to do that. I hesitate on
13 a temporal limit and I'll tell you why. I think this goes
14 to not only what the Order says. I think your Honor tends
15 to think it should not be disturbed, but also the process
16 of our investigation, it also gets to the standard of the
17 timeline.

18 We sought information about the aspects of their
19 business that we've all been talking about now here today.
20 We also, when we learned about it, asked about this
21 line-of-credit deal, which we see as one part of a larger
22 story over the course of fraudulent activity. When we
23 didn't get information until the deal had closed and, in
24 fact, the first time we heard about it, they left out a
25 significant part, that it wasn't just that they were

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1 planning on entering into a \$700 million deal to access the
2 tether reserves, that they had already transferred \$625
3 million out of the company, with no legal documentation
4 that we're aware of, and that the line-of-credit deal was
5 \$200 million more than we were told. That brought up the
6 exigency, frankly along with the notion that further
7 conversations on this subject could potentially put that
8 last remaining 180, 150 to \$200 million at risk.

9 THE COURT: How did we get to the temporal limit
10 part? I'm just saying you can't have them hung up forever.

11 MR. CASTIGLIONE: Well, I think what I just heard
12 was we're not hung up, we can fulfill every withdrawal
13 request that we're faced with and the Bitfinex platform is
14 completely fine. I don't know that to be true.

15 MR. MILLER: That's not what I said.

16 THE COURT: I think we're talking apples and
17 oranges.

18 MR. CASTIGLIONE: I understand.

19 THE COURT: I'm asking whether if they comply
20 with the injunction -- I don't know whether they even know
21 how to do it -- there were some things that they're
22 supposed to be able to do with respect to -- I think the
23 list of words you have here, access, loan, extend credit,
24 encumber, pledge or other things, I think it needs to be
25 more precise.

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1 MR. CASTIGLIONE: Fair enough. But I think the
2 lodestar, I think, for how it's going to get altered, if it
3 is, in a temporal sense should be production of the
4 documents that we called for that would get to this. In
5 some sense, it's in their hands. If they get us the
6 information we need and we can conclude our investigation,
7 then we're at a different place.

8 THE COURT: That's what I had in mind when I was
9 struggling to find a temporal limit. I don't know how long
10 it's going to take you to investigate it, nor do I expect
11 you to be able to tell me today how long that is, but
12 unless we set some sort of a limit, you can investigate
13 until the end of time, or even something where at some
14 point the investigation is over, but nobody ever tells you,
15 and, you know, in this situation that leads to an
16 injunction with no end.

17 So there's got to be some way to have it be --
18 have the substantive breadth that makes sense but not go on
19 forever. And I don't think the notion that, well, in two,
20 three years we may bring an action that, to me, is not
21 proper and expedient.

22 MR. CASTIGLIONE: Understood.

23 THE COURT: Certainly not expedient.

24 MR. CASTIGLIONE: Understood. And I think,
25 again, the place where we start getting the materials that

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1 we called for in the Order, at the very least, getting the
2 materials that we've called for in our original subpoenas
3 or in our follow-up letter, I think that's the starting
4 point, and I'd honestly like to think a little more how to
5 make that happen.

6 THE COURT: What I'm thinking is there has to be
7 some checking point where -- look, I'm not interested in
8 being an on-the-ground regulator of this either, but I
9 don't feel comfortable issuing an order without an end to
10 it. So you have to find a way either to have a status
11 conference or something at some point in time that makes
12 sense to revisit the question of the scope and time of the
13 injunction.

14 MR. CASTIGLIONE: Understood, your Honor.

15 THE COURT: You may need to talk about it
16 afterward and make a proposal together, or separate
17 proposals, but one way or the other, I need some sort of a
18 temporal limit.

19 MR. CASTIGLIONE: Understood, your Honor.

20 If I may, there's a number of points I wanted to
21 discuss with regards to the standard.

22 THE COURT: Okay.

23 MR. CASTIGLIONE: And I think they're important.
24 And the first -- and it's a little hard to get to know
25 where to start, but he said, you know, the AG has not

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1 decided on a violation. And we're very careful because,
2 again, these aren't -- we haven't completed our
3 investigation, but the AG, as we are required to do under
4 the statute, has to determine whether to file an action
5 under the Martin Act and what we're attempting to do is to
6 get at the information that we need to complete our
7 investigation and that plays into --

8 THE COURT: How do you determine to commence an
9 action if you don't have information?

10 MR. CASTIGLIONE: We have enough information to
11 know, that we have every reason to believe that the Martin
12 Act has been violated by the conduct of the respondents.
13 What we haven't completed is gotten all the information,
14 it's at the pre-action investigatory phase, but what's
15 important here is, I think, what's hard to say --

16 THE COURT: You're saying it's a pre-action
17 investigatory phase, but you've already decided to bring an
18 action.

19 MR. CASTIGLIONE: For instance, there are other
20 New York laws that may have been violated by the
21 respondents. There may be other actions that were taken
22 that might also violate the Martin Act.

23 THE COURT: It has to be an action under this
24 article --

25 MR. CASTIGLIONE: That's correct.

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1 THE COURT: -- of the Martin Act.

2 MR. CASTIGLIONE: That's correct.

3 THE COURT: So what you're saying is you're
4 looking for whether there's violations of other things. I
5 thought we were just talking about what you're looking for
6 to see if there's any New York nexus.

7 MR. CASTIGLIONE: Absolutely.

8 THE COURT: How do you bring an action without
9 knowing that there's a New York nexus?

10 MR. CASTIGLIONE: We have facts that demonstrate
11 the New York nexus and I think we talked about some of
12 these before and we can talk about them again. There may
13 be more such facts and I suspect that there are. There may
14 be other actions by the respondents that we're not aware of
15 that would go into this. I think -- I know that there are
16 others.

17 THE COURT: Well, in the end on this point, the
18 standard has a real impact. I think you do have the
19 ability to have an injunction. It's just a question of how
20 broad and how long. It wasn't just an academic discussion
21 about it, but I don't think you can say that the scope and
22 the standard for getting an injunction now, whether it's
23 pre-investigation or you've already determined, is
24 different or certainly less stringent than if you were in
25 the middle of an action, which is kind of what your brief

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1 said.

2 MR. CASTIGLIONE: I disagree, your Honor, and
3 here's why, and I start with the Court of Appeals decisions
4 going on a hundred years old that empower us to intervene
5 in, they say, the first instance of fraudulent conduct.
6 That's what we have here. I think it is not at all odd
7 when you think of the broad scope of law enforcement for
8 there to be lower standards for certain activity prior to a
9 case being brought.

10 THE COURT: I thought it should be the same
11 standard at least, but why would it be a lower standard? I
12 don't understand the logic on that.

13 MR. CASTIGLIONE: Partially because we don't in
14 fact have all the facts.

15 THE COURT: All the more reason for it to require
16 a real showing before you stop a business from doing
17 something.

18 MR. CASTIGLIONE: Which we did.

19 THE COURT: I'm not saying you didn't. I agreed
20 with you.

21 MR. CASTIGLIONE: Understood. I just want to
22 make sure. So what 354 requires us to do is to make a
23 showing in writing, as it were, to the Court and what we
24 did was we laid out the evidence that was by and large
25 provided by respondents that showed that they have violated

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1 the Martin Act, more precisely that they have defrauded
2 their clients and the investing public through certain
3 activities that were revealed in the course of our
4 investigation. I think the purpose of the law is to allow
5 us to stop frauds as they are occurring in a timely way and
6 that's what we did here.

7 There's no question that if and when we file a
8 complaint in this action, there will be more facts alleged.
9 There will be a higher standard, partially because our
10 investigation will have continued, of what we claim to be
11 the wrongs at issue and how it impacts investors, but
12 we'll be quite candid. We don't have all the information;
13 for instance, because we ask for a bunch of information in
14 the Order. We have some, and I submit we have enough, to
15 tie the business activities in the company to New York, but
16 we don't have all of it. Part of that is because certain
17 materials have been redacted; some of it is because certain
18 materials have not been produced. So I very much expect
19 that we will have more information when it comes time to
20 file a complaint.

21 So I think following the case law -- and it
22 sounds like you're understanding what I'm saying -- is that
23 there's every reason to expect someone in our position to
24 be able to stop imminent action on a lower standard than it
25 would mean that you violated the Martin Act at the end of a

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1 trial.

2 THE COURT: Oh, yeah, that's not quite what I
3 meant. You know, if you get an injunction, a preliminary
4 injunction is something you get at the beginning of an
5 action, right? The permanent injunction is at the end. So
6 if you would have filed a complaint last week, instead of
7 354, to get a preliminary injunction, you would have to
8 show X, Y and Z. But at that point you would have
9 completed -- your investigation would be over and you have
10 all of your evidence marshaled and so --

11 MR. CASTIGLIONE: If I might. You had a
12 conversation with respondents regarding irreparable injury
13 and there's a conversation of what would happen, for
14 instance, with tether, those who were trying to redeem
15 tether in trading on the Bitfinex platform, and what we
16 have been told by respondents is that the Bitfinex platform
17 had liquidity issues and that's why we needed to take
18 hundreds of millions of dollars from the other side. And
19 on that basis alone we thought it was proper and expedient
20 for the Court to the say enough, leave the last 150 million
21 where it is until such time as the Attorney General had a
22 chance to complete its investigation.

23 We're still waiting for evidence that will show
24 what those liquidity issues were, where the first \$700
25 million or \$750 million actually went, and so I think it

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1 was entirely prudent for the Court to say based on what the
2 Attorney General knows now, stop. Let the Attorney General
3 complete its investigation, without knowing, for instance,
4 that, at the end of the day, who was irreparably harmed.
5 Is there some action or some set of facts under which this
6 money will never come back? That's what we're still
7 investigating.

8 THE COURT: I understand. So at this stage you
9 should have a bit of leeway to say we are looking to see
10 whether we can find this, but in terms of likelihood of
11 success on the merits, you still have enough to show that
12 based on what you have already, or expect to find, or what
13 you're investigating, I have to conclude that that's
14 enough.

15 I guess your point is it still has to be a little
16 bit premature, by definition the facts you have are not
17 complete. So I think that's right. I think that all goes
18 into the analysis. And that's always true in preliminary
19 injunctions. At the beginning of cases or whatever, by
20 definition you haven't done the whole trial yet.

21 So my bottom line is I think it's the same
22 analysis at different points in time and the quest to find
23 some structural difference between what "proper and
24 expedient" means in a regular preliminary injunction. I
25 just don't think it's very profitable to think about it

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1 that way. In exercising discretion, this is, I think, your
2 point, you have to take into account where we are in the
3 process and maybe the Attorney General gets a little extra
4 leeway because they're still trying figure it out in terms
5 of proving likelihood of success. That's how I think you
6 harmonize the things you're talking about, which is that
7 you still have to show likelihood of success, but your
8 burden of showing it is a little different because you're
9 in the middle of investigating.

10 MR. CASTIGLIONE: I think that's generally
11 correct, your Honor. I think some of the cases we cite
12 talk about we have reasonable cause to believe that the
13 Martin Act is violated, and I understand what you're saying
14 with respect to the practical application of all these
15 words, but what's important in this case is that we show
16 that there's every reason to believe that we will be able
17 to establish a violation of the Martin Act ultimately.

18 THE COURT: I mean, you have enough likelihood of
19 success combined with all the other factors that could
20 persuade me that there's enough basis for the status quo,
21 at least for the time being, what you're asking for
22 tailored makes sense. So I think we're pushing on the same
23 door here. But I just don't think it's necessary in
24 defining the standard. I do believe that the way the act
25 reads, it's a preliminary injunction, as people understood

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1 that to be, from into the 1800's. We've had a competition
2 among my court attorneys and myself to find the impossible
3 case to show the standard, so we're back to the 1850's at
4 this point. So when they use "preliminary injunction" in
5 the statute, I think one might assume that people knew what
6 that meant and the reference to "proper and expedient," to
7 me, is just another way of saying if you think it makes
8 sense.

9 MR. CASTIGLIONE: I think that's what the court
10 ultimately said in *First Energy*. I want to read just a
11 portion, "Implementation of this Requirement § 354: It
12 must be left to the court to determine in its discretion
13 considering in each instance what is fair and appropriate
14 under the circumstances."

15 THE COURT: And in doing that, I would, and I
16 think probably most people would, look at what people have
17 looked at for preliminary injunctions just generally, does
18 it makes sense. Part of why it might make sense is do you
19 have a case at all? Part of the reason it may make sense
20 if I don't do it, something really bad will happen
21 imminently and I can't wait until the final trial. So all
22 those same principles apply no matter what word you sort of
23 put around it.

24 So, you know, I don't know about you, but "proper
25 and expedient" has no meaning to me, that's obvious. There

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1 are no cases I'm aware of that describe what an action
2 means, and so I'll just tell you that if I were -- if it
3 came back to me on a remand and it said all right, "proper
4 and expedient," I don't think it changes the result.

5 MR. CASTIGLIONE: Understood.

6 THE COURT: Okay. So back to you.

7 MR. MILLER: Thank you.

8 THE COURT: Where are we now?

9 MR. MILLER: So I want to get to your Honor's
10 suggestion with respect to the injunction language and I'll
11 talk about that in a moment, but I do want to make a
12 broader point in response to counsel's points that he just
13 made to your Honor.

14 There is a tension, as I think we can all
15 recognize here, between what the Attorney General Office is
16 saying here in this case, and that is we are determined to
17 file an action so we come under within Section 354, but at
18 the same time we don't have all the facts and we're still
19 investigating, but we're determined to file an action. And
20 an example, I think, that was just provided is we don't
21 know what the liquidity issues are with respect to
22 Bitfinex, which is securities --

23 THE COURT: That's not quite what they said.
24 They said we have enough information to start an action, to
25 use your premerger transaction or premerger filing

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1 requirement, then you can make a decision with the federal
2 government to seek a preliminary injunction, but you still
3 need discovery to prove your case. So those are not
4 mutually exclusive.

5 MR. MILLER: Understood, your Honor. But in this
6 case, the Attorney General's application to Judge James,
7 which was, you know, obviously publicly disclosed, talks
8 about at length about the Crypto Capital transaction --
9 which I know I've said this a hundred thousand times, I'll
10 say it a hundred thousand and one times -- we told them
11 about it on February 21st and, indeed, was fully disclosed.
12 And so there really -- it's strains some credulity to argue
13 that we don't know what the liquidity issues are, but then
14 to say here are the liquidity issues and our application
15 and to basically disclose this publicly.

16 So, you know, look, your Honor, I don't want to
17 belabor all of our other points with respect to the
18 irreparable harm here. But, again, we submit, as we
19 described in our opening brief and as we described in our
20 reply brief, that regardless of whether we're talking about
21 a three-prong test or some combination that involved
22 discretion that looks at irreparable harm and some aspect
23 of likelihood of success or public interest, that for the
24 reasons we've articulated today or Tuesday in our briefs,
25 that they haven't met any of those tests or any of those

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1 factors, particularly with respect to irreparable harm
2 given the disclosure and that people are still able, should
3 they choose, to redeem and they have not done so to the
4 lengths that I think the parade of horrors that the
5 Attorney General's office is allegedly concerned about that
6 prompted them to file this 354 action.

7 I don't want to also go through, because we
8 already have at length, the harm that's being caused to
9 respondents by this injunction, even though it is not our
10 burden to show irreparable harm by the injunction, it's
11 their burden to show that there's irreparable harm without
12 the injunction, but we've made our points to, your Honor,
13 and I'll note this.

14 THE COURT: Balance of harms is one of the
15 factors, so I think the harm to your clients is relevant.
16 So go ahead.

17 MR. MILLER: Yes, your Honor.

18 So for all those reasons, we still respectfully
19 submit to your Honor that the injunction should be vacated
20 in its entirety. But if your Honor ultimately decides
21 here -- and it sounds like that was the way your Honor was
22 going to go at the beginning of this session -- that there
23 needs to be some injunction with some temporal limit here,
24 certainly, as a substantive matter, we would contend that
25 this injunction should be limited to the line of credit, to

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1 the letter of credit only. That is the transaction that
2 they have zeroed in on for purposes of this 354
3 application, for which they say is conflicted, which
4 obviously we dispute and so substantively if there is an
5 injunction, it needs to be tailored to that.

6 THE COURT: I'll speak for them for a second
7 here, but one of the things that -- you can't define it so
8 narrowly that you can just do a transaction a slightly
9 different way, so I think it has to be in substance. I
10 agree generally with what you're saying, that the
11 injunction should deal with some sort of
12 outside-the-ordinary-course significant transaction or
13 something like that, whether it's in the form of a line of
14 credit or some other form. I don't think you can slice it
15 that thinly to say a transaction in the following form is
16 enjoined, but feel free to call it something else.

17 MR. MILLER: So, for example, your Honor -- and
18 we're about to get to it -- in the terms of service, it
19 discusses -- that were amended on February 25th -- that
20 affiliated loans, related loan transactions are acceptable.
21 So if the injunction says this line of credit is no good
22 right now, you cannot draw on it, but says you can make
23 loans pursuant to the terms of service that everybody knows
24 about, that everybody understands, that's commercial and
25 reasonable, that customers have decided "I get it, but I'm

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1 continuing to do business," well, that's something that we
2 could potentially work with.

3 THE COURT: Here's what I would suggest, because
4 I can try to do this and I will come up with some line that
5 probably won't make sense to anyone because I don't have
6 the background in this. What I would suggest you both do
7 is meet and talk about it -- you seem like a reasonable
8 group -- and let's say a week come back, either with a
9 single proposed set of revision that accomplishes what
10 we're trying to accomplish here, and if you can't, then
11 individual proposals.

12 I think that would probably be the best way.
13 Both, by the way, would be without prejudice; in other
14 words, by agreeing to an injunction with narrow terms,
15 neither side is agreeing that that's what you should be
16 forced to do, but it will help me come up with a more
17 rational order if I can have input from the two side.

18 MR. MILLER: And if I could, I want to make one
19 small point about the timing aspect of this. Before I do,
20 in terms of the way, the logistics of doing so, assuming
21 for the moment that the parties cannot agree on the
22 language, how would you want that submitted to your Honor?
23 Would you prefer by letter?

24 THE COURT: Yes, either way. You can say we
25 jointly proposed the following without prejudice or

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1 whatever; or we haven't been able to agree. The Attorney
2 General proposes this language; the respondents propose
3 that language, and that at least will give me better
4 guidance. Because at this point now you didn't know what I
5 was going to say, so you haven't had a chance in realtime
6 to figure out language that would work.

7 I think it should be doable, but I think you all
8 are better able to do and a similar thing on the timing.
9 It's probably less likely that you'll reach agreement, but
10 the principle I'm putting out there is that I'm not
11 comfortable with an open-ended endless thing, nor would I
12 want you to come back every two weeks for another such
13 session, but enough to give it some room for the
14 investigation to evolve, but we are holding up private
15 enterprises from doing transactions and that's no small
16 thing for either me or the Attorney General's Office to do,
17 and so I think we need to be reasonable on how long, but at
18 the same time not have you in here so often that it's just
19 pointless.

20 MR. MILLER: Agreed, your Honor.

21 I will say with respect to one proposal that
22 counsel made, which essentially would limit the time of any
23 injunction, conditioned upon their satisfaction of the
24 document demands, I can tell you right now that's not going
25 to be agreed to by the respondents because, quite candidly,

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1 with all due respect for the team, I consider them to be
2 professional, good lawyers, I don't think we're going to
3 get to a place with the list here in which we agree that
4 things have been satisfied.

5 THE COURT: There's a sort of self-regulatory
6 function here, right? If we have a date for the injunction
7 to expire -- let's put it this way -- you won't be in a
8 tremendously good position when they come back and they
9 say, well, you haven't given us anything. That's a fairly
10 good argument for extending the injunction. I recognize
11 that if it's unreasonable or not terribly relevant, I'm
12 sure the Special Referee will enjoy seeing you frequently
13 to talk about that, but I'm hopeful that once we set the
14 basic time parameters around the injunction, if it turns
15 out that the Attorney General's Office can show me it's
16 unreasonable, and by doing that I do not invite any of you
17 to do that, I don't know how else to do it. I can't, as I
18 sit here right now, say, all right, instead of 30 days, you
19 can have 45 days to respond, or that it's too broad, or
20 whatever the reason for sending it to a Special Referee to
21 work out the details.

22 MR. MILLER: But since, as your Honor aptly
23 noted, the injunction is not -- the nexus between the
24 injunction and the document demands is lacking. And so,
25 from our perspective, it should not be tied, the timeframe

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1 for the injunction should not be tied in any way to whether
2 or not the Attorney General's Office use us to have
3 satisfied all of their document demands.

4 THE COURT: Look, the temporal restriction is not
5 going to be "we'll let you know." We're going to have a
6 date in here and at which time either the Attorney
7 General's Office comes in to extend the injunction or
8 whatever. It's not going to be -- if I'm going to sign the
9 order, it has to be a certain date that's movable, I
10 suppose, if the parties want to, but it's not going to be
11 "come back whenever the document production is complete."
12 That doesn't make any sense.

13 MR. MILLER: That was my point, your Honor.
14 Thank you.

15 THE COURT: Now, in picking that date, though,
16 what I was trying to convey is that if you pick next
17 Friday, it wouldn't make any sense because you have a lot
18 of discovery to do still. So you have to find a date for
19 me that is rational. And hopefully, again, we have good
20 lawyers on both sides. You're not going to want me to set
21 dates, I don't think. I don't think that will make anybody
22 happy, so try to figure it out.

23 MR. MILLER: Okay.

24 THE COURT: Anything else?

25 MR. CASTIGLIONE: No, your Honor. I'm happy to

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1 defend --

2 THE COURT: Happy to defend what?

3 MR. CASTIGLIONE: I'm happy to defend the
4 propriety of these requests. It doesn't seem like that's
5 what you want right now.

6 THE COURT: I don't think it's efficient. It
7 sounds like there's at least one legal issue that the
8 Special Referee is concerned about. I guess what I would
9 suggest as a practical matter is do everything you can that
10 does not require a decision on jurisdiction. And I just
11 will say -- and maybe I can put a Special Referee on it to
12 gather, you know -- if discovery requests are tailored and
13 designed in phases maybe, then maybe some of those larger
14 questions, you know, you can have discovery about who is on
15 the network or on the exchange and who owns whatever
16 without making a decision on jurisdiction. I think part of
17 it is you need some discovery to figure out the nature of
18 jurisdiction.

19 So anyway, I'm not sure how to do this exactly.
20 It may be that the parties and me and the Special Referee
21 can get together at some point. And if it wasn't being
22 taken down, I would deny it later that I even offered that,
23 but I can't strike myself from the record.

24 MR. MILLER: Judge, just to think about a path
25 forward on the documents. Would it make sense, then, that

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1 should we have, putting aside reserving our rights on
2 jurisdiction here, of course, should we wind up going down
3 the list and items -- throwing out numbers here, two, three
4 and seven or whatever -- we view to be beyond the pale and
5 that should not be responded to, given that --

6 THE COURT: Don't do that in this order. I think
7 right now I want a crisp order that says the motion is
8 granted in part and denied in part and the injunction is
9 revised as follows (indicating).

10 MR. MILLER: Gotcha.

11 THE COURT: And then a separate part of this
12 process is, you know, maybe the order will say that the
13 details of discovery are to be worked out with the Special
14 Referee, that will be the way to sort that into a separate
15 process.

16 MR. MILLER: And it sounds like, if I understand
17 your Honor, putting aside the injunction process for a
18 moment, just talking about the process before the Special
19 Referee, it sounds like your Honor saying the most
20 productive course would be that we do what we can first,
21 and to the extent that we have objections to particular
22 requests, at that point it sounds like then either we all
23 sit down together or we make some kind of application.
24 We'll just need some guidance from your Honor on how to do
25 that.

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1 THE COURT: I am not going to set a specific test
2 for how you proceed yet.

3 MR. MILLER: Understood.

4 MR. CASTIGLIONE: If I could. I think the law is
5 clear that upon the order, we are entitled to the documents
6 that we have requested and have been ordered. To the
7 extent that there is a timing issue, we can't get stuff off
8 of computers, we're not sure what you mean, we already
9 started those conversations. What I would hope this
10 process does not turn into is line-by-line parsing of these
11 documents which are quite -- these document requests are
12 quite clear about trying to get at the core issues in the
13 case.

14 THE COURT: I will tell you -- I'm trying to
15 recall which case I read that says this -- but I don't read
16 the statute to mean that we're sort of potting plants here
17 in responding to. If you have a request that's completely
18 unreasonable, I think the statute says we have to enforce
19 that. But, again, I think those are specific decisions
20 about specific things. I have not read the requests enough
21 to know nor do I know how the respondents keep their
22 records, but I do take your point.

23 It shall be the duty of the justice to enter some
24 sort of order. Right now I've just entered the order or
25 declined to vacate the order which gives you the relief you

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1 wanted. I'm just saying that as a practical matter, this
2 is how we sort it out case by case.

3 MR. MILLER: Understood, your Honor. And just to
4 be clear for the record, your Honor's caveat is exactly
5 what I was pointing to, and notwithstanding counsel's
6 characterization, some of these requests in fact are
7 ambiguous and so we'll work that out with the Special
8 Referee, but I just wanted to note that.

9 Thank you.

10 THE COURT: All right. So just to summarize
11 then, so the record is clear, the respondents' motion to
12 vacate or modify the April 24, 2019 *ex-parte* order and for
13 an immediate stay of the order is granted in part and
14 denied in part as follows.

15 The motion is denied with respect to vacating,
16 modifying or staying the order with respect to discovery.
17 As discussed here, individual issues will be addressed with
18 the -- discovery issues will be addressed with the Referee
19 in the first instance.

20 The motion is denied with respect to the request
21 to vacate or stay the preliminary injunction portion of the
22 order in its entirety.

23 Finally, it is granted the request to modify the
24 substantive and temporal scope of the preliminary
25 injunction.

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1 The parties are directed to file a letter with
2 the Court within seven days setting forth, if possible, an
3 agreed-upon proposal for such modifications. If they
4 cannot agree to set forth each party's position, it should
5 be specific language, not directional best wishes and we'll
6 decide next steps after that.

7 So unless there are any questions, thank you very
8 much.

9 MR. MILLER: Thank you.

10 MR. CASTIGLIONE: Thank you.

11 (Proceedings concluded.)

12 * * *

13 C E R T I F I C A T E

14 I, Debra Lynn Salzman, RMR, an Official
15 Court Reporter of the State of New York, do hereby
16 certify that the foregoing is a true and accurate
17 transcript of my stenographic notes.

18 *Debra Salzman, RMR*

19 _____
20 Debra Lynn Salzman, RMR
21 Official Court Reporter

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