



1 Restraining Order. ECF No. 79 ("Mot."). Plaintiffs have opposed  
2 the motion, but Movants have declined to file a reply. ECF No. 88  
3 ("Opp'n"). This matter is suitable for determination without oral  
4 argument per Civil Local Rule 7-1(b). For the reasons set forth  
5 below, the Motion is GRANTED.

6 On April 24, 2013, after Plaintiffs presented evidence  
7 indicating that Defendants violated a temporary restraining order  
8 by continuing to sell counterfeit DeWalt batteries, the Court  
9 issued the Asset Restraining Order. The Order states, in relevant  
10 part:

11 [I]n accordance with Rule 64 of the Federal Rules of  
12 Civil Procedure [and] 15 U.S.C. § 1116(a) . . .  
13 Defendants and their officers, servants, employees,  
14 and agents and any person in active concert or  
15 participation with them . . . who receive actual  
16 notice of this Order, shall immediately locate all  
17 accounts connected to Defendants and that such  
18 accounts be temporarily restrained and enjoined from  
19 transferring or disposing of any money or other of  
20 Defendants' assets . . . .

21 ARO at 4. In the same Order, the Court authorized the United  
22 States Marshall to seize the allegedly counterfeit batteries and  
23 ordered Defendants to show cause why contempt sanctions should not  
24 issue. The Court later sanctioned Defendants in the amount of  
25 \$43,759. ECF No. 78.

26 Sometime after April 24, 2013, Plaintiffs froze Movants' bank  
27 accounts at Citibank without any notice. Movants then contacted  
28 Plaintiffs' counsel, requesting a release of the frozen accounts.  
Plaintiffs' counsel refused, leading the Movants to file the  
instant motion.

Movants argue that the Asset Restraining Order does not apply

1 to them because they are not defendants in this action and their  
2 accounts are not connected to Defendants. Mot. at 5. Movants  
3 further argue that Plaintiffs have refused to produce any evidence  
4 that Tang or Fung are acting in concert with the Defendants. Id.  
5 Plaintiffs respond that a third-party production from PayPal ties  
6 Tang's name, address, and bank account to the sale of a large  
7 number of counterfeit DeWalt batteries on eBay. Opp'n at 2 (citing  
8 ECF No. 89 ("McArthur Decl.") Exs. 1-3). Plaintiffs argue that  
9 PayPal records also show that Tang is selling counterfeit DeWalt  
10 batteries from the same address as Defendant Billy Deng.

11 The Court finds Plaintiffs' arguments unavailing. Their  
12 papers do not make any attempt to link Fung to Defendants' alleged  
13 counterfeiting scheme. Further, while Plaintiffs' evidence may  
14 suggest that Tang worked in concert with Defendants in the sale of  
15 counterfeit batteries, Tang is not a defendant in this matter. The  
16 Court issued the Asset Restraining Order pursuant to Rule 64, which  
17 provides: "At the commencement of and throughout an action, every  
18 remedy is available that, under the law of the state where the  
19 court is located, provides for seizing a person or property to  
20 secure satisfaction of the potential judgment." Fed R. Civ. P  
21 64(a). Since Tang is not a defendant, it is entirely unclear how  
22 restraining his assets will serve Rule 64's purpose of securing  
23 satisfaction of a potential judgment.

24 Moreover, Plaintiffs' reading of the Asset Restraining Order  
25 is overbroad. The Order relates to "accounts connected to  
26 Defendants," not "any account held by persons connected to  
27 Defendants." As Plaintiffs point out, the Order also refers to  
28 "any person in active concert or participation with [Defendants]."

1 However, those persons are merely required to locate accounts  
2 connected to Defendants. The notion advanced by Plaintiffs, that  
3 the Court may restrain the financial accounts of a third party  
4 without prior notice, raises serious due process concerns. C.f.  
5 Connecticut v. Doebr, 501 U.S. 1, 4 (1991) (finding state statute  
6 violated due process because it permitted ex parte attachment  
7 absent bond and a showing of extraordinary circumstances). To the  
8 extent that Plaintiffs are concerned about the continued sale of  
9 counterfeit DeWalt batteries, they can pursue other options. The  
10 Court has already issued an order providing for the seizure of the  
11 alleged counterfeit batteries. Moreover, Plaintiffs can move for  
12 leave to amend their complaint to add Movants as defendants in this  
13 matter.

14 For these reasons, Brian Shinbaw Tang and Jenny Fung's motion  
15 for relief from the Asset Restraining Order is GRANTED. The Court  
16 hereby ORDERS that Tang and Fung's bank accounts frozen by the  
17 Plaintiffs shall be released upon entry of this Order. Plaintiffs  
18 shall not restrain any property belonging to Tang and/or Fung. The  
19 Court further ORDERS Plaintiffs to file with the Court a report  
20 describing all accounts that have been restrained pursuant to the  
21 Asset Restraining Order and explaining why those accounts were  
22 restrained. The report shall be filed within ten (10) days of the  
23 signature date of this Order.

24  
25 IT IS SO ORDERED.

26  
27 Dated: August 13, 2013

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UNITED STATES DISTRICT JUDGE