SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 3

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IN THE MATTER OF THE INQUIRY BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioner,

- v -

IFINEX INC., BFXNA INC., BFXWW INC., TETHER HOLDINGS LIMITED, TETHER OPERATIONS LIMITED, TETHER LIMITED, TETHER INTERNATIONAL LIMITED

Respondents.

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INDEX NO. 450545/2019

MOTION DATE 05/22/2019

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113

were read on this motion to DISMISS.

Respondents seek to terminate this Martin Act action on the ground that the Court lacks personal and subject matter jurisdiction.[1] Specifically, they contend that their businesses (mainly, an off-shore cryptocurrency exchange and a "stablecoin" currency called "tether" purportedly backed by U.S. dollar reserves) do not have a connection to New York sufficient to trigger personal jurisdiction. They also contend that Petitioner's "extraterritorial" investigation into their business activities (which they claim does not involve "securities" or "commodities") is beyond the scope of her enforcement authority under the Act, and thus this Court does not have subject matter jurisdiction to facilitate that investigation.

[1] Respondents iFinex, Inc., BFXNA Inc., and BFXWW Inc. are together referred to herein as "Bitfinex," while Respondents Tether Holdings Limited, Tether Operations Limited, Tether Limited, and Tether International Limited are together referred to herein as "Tether." Collectively, these entities are referred to herein as the "Respondents."

In response, Petitioner (the Attorney General of the State of New York) asserts that it is premature for the Court to address jurisdictional questions during an ongoing investigation. She also points to evidence of Respondents' past and current activities in and affecting New York; this Court's broad statutory mandate under N.Y. Gen. Bus. Law §354 to enforce her investigatory information requests; and her own broad authority to investigate allegedly fraudulent activities that impact New York commerce.

The Court disagrees with Petitioner that it is (or can be) premature for the Court to determine whether it has jurisdiction to issue orders impacting the rights of Respondents in this proceeding. That said, the Court finds based on the evidence and applicable law that it has jurisdiction – and a clear statutory mandate – to adjudicate this matter. Accordingly, Respondents' motion is denied, and the temporary stay of the investigation is dissolved.[2]

BACKGROUND

In an *ex parte* order dated April 24, 2019, pursuant to §354 of the Martin Act, the Court (James, J.) required Respondents to comply with Petitioner's document and information demands and preliminarily enjoined Respondents from undertaking several broad categories of activities and transactions. (NYSCEF Dkt. No. 35) ("April 24 Order").

In a subsequent Decision and Order dated May 16, 2019, this Court granted in part and denied in part Respondents' motion to vacate or modify the April 24 Order (the "May 16 Order"). (NYSCEF Dkt. No. 76). The Court denied the motion to the extent it sought to vacate or modify the Petitioner's document and information demands. In doing so, the Court rejected Respondents' argument that "the investigation is outside the broad scope of the Martin Act

[2] The question presented by this motion is whether the Court has jurisdiction to adjudicate *this* proceeding. The Court's decision does not foreclose Respondents from asserting substantive or jurisdictional defenses if and when Petitioner files a plenary Martin Act action against them.

because 'tether' does not constitute a 'security,'" reasoning that "it [was] premature and inconsistent with section 354 for the Court to interpose itself to truncate Petitioner's investigation." (*Id.* at 8). But the Court granted in part Respondents' motion by modifying the terms of the preliminary injunction. (*See id.* at 13 ("[T]he Court finds that the preliminary injunction should be tailored to address OAG's legitimate law enforcement concerns while not unnecessarily interfering with Respondents' legitimate business activities")).

Five days later, Respondents moved by order to show cause to dismiss this proceeding for lack of personal and subject matter jurisdiction. In addition, Respondents sought to stay the April 24 Order's discovery requirements pending this Court's decision on the instant motion or, alternatively, pending an emergency appeal. The Court granted that request in part, ordering that "pending the hearing on Respondents' motion to dismiss, the production demands to Respondents pursuant to the April 24 Order shall proceed solely with respect to topics deemed by the Special Referee to be relevant to whether Respondents are subject to personal jurisdiction in this Court for purposes of this special proceeding, and are otherwise stayed." (NYSCEF Dkt. No. 80) (the "May 22 Order").

The basic facts regarding the scope of the investigation and Respondents' businesses are set forth in the May 16 Order (NYSCEF Dkt. No. 76) and are incorporated herein by reference. The following additional facts are relevant to resolution of the present motion.

A. Tethers as "Securities or Commodities"

The Martin Act prohibits, among other things, fraudulent practices "relating to the purchase, exchange, investment advice or sale of securities or commodities." N.Y. Gen. Bus. Law §352. The question of whether tethers count as "securities or commodities" is one of the primary disputes in this case.

According to Respondents: "Tethers are a form of 'stablecoins,' which means their value is pegged to traditional currency like U.S. Dollars and Euros. With certain restrictions, tethers can be redeemed on a one-to-one basis for the traditional currency in which they are denominated. Tether tokens do not constitute an ownership interest in Tether. Stablecoins are generally not bought for investment purposes; their main function is to facilitate other virtual currency transactions." (Respt's' Mem. of Law at 4) (NYSCEF Dkt. No. 79) (internal citations omitted). For these and other reasons, Respondents insist that tethers cannot be considered a security or a commodity as those terms are defined under the Martin Act and relevant case law.

Petitioner opposes such categorical determinations at this stage as premature, stating that "there is reason to believe that some of the instruments are or could be found ultimately in a plenary Martin Act action to be securities or a commodity." (July 29, 2019 Oral Arg. Tr. ("Oral Arg. Tr.") at 19). Put simply, Petitioner wants to gather more facts before a determination is made. Petitioner points to, among other evidence, the dealing of tethers on online exchanges, as well as Respondents' recent "initial exchange offering," which Petitioner alleges "has every indicia of a securities issuance subject to the Martin Act." (Pet'r's Mem. of Law at 16) (NSYCEF Dkt. No. 110); *see* Affirmation of Brian M. Whitehurst ("Whitehurst Aff.") ¶¶54-64 (NYSCEF Dkt. No. 81).

B. Respondents' Presence in New York

In support of their motion to dismiss, Respondents also insist that they have, for the last couple of years, purposefully avoided contact with New York. They acknowledge candidly that they have done so to "avoid the type of regulation [Petitioner] is trying to foist upon Respondents here." (NYSCEF Dkt. No. 112 at 13.)

In January 2017, Bitfinex's Terms of Service were revised to ban New York customers from using its trading platform. (Affirmation of Stuart Hoegner ("Hoegner Aff.") ¶8) (NYSCEF Dkt. No. 78). Those Terms now prohibit "any Person that resides, is located, has a place of business or conducts business in the State of New York" from transacting on Bitfinex. (*Id.* ¶10). By August 2018, Bitfinex had extended this ban to cover all "U.S. Persons." (*Id.* ¶9). Tether, meanwhile, says it ceased servicing U.S. Persons, including United States individual and corporate customers, as of November 2017. (*Id.* ¶12). Tether's Terms of Service, like Bitfinex's, prohibit any person who "resides, is located, has a business, or conducts business in the State of New York" from using Tether. (*Id.* ¶13). Both companies, moreover, state that they conduct screening to prevent U.S. customers from opening accounts on their sites and terminate accounts that are later discovered to belong to U.S. customers. (*Id.* ¶14). Respondents also assert that neither Bitfinex nor Tether advertise or market to individuals or entities in New York or the United States. (*Id.* ¶16).

In response, Petitioner notes, first, that her investigation concerns Respondents' activities dating back to at least January 2015, well before the changes in Respondents' formal Terms of Service. (Whitehurst Aff. ¶¶8, 17). Moreover, OAG asserts that notwithstanding the changes in Respondents' Terms of Service, Respondents have continued to maintain "substantial ties" to New York. OAG represents that its ongoing investigation has found, among other things, evidence that Respondents:

- Allowed some customers located in New York to transact on the Bitfinex trading platform after January 30, 2017 *(id.* ¶9);
- Knowingly permitted New York-based traders to use Bitfinex (*id.* ¶13);
- Agreed to loan tethers to a New York-based virtual currency trading firm as late as 2019 (*id.* ¶22);

- Opened accounts and utilized services at New York-based banks (*id.* ¶¶23-27); and
- Had a physical presence in New York until at least 2018, through an executive who resided in and conducted work from the state (*id.* ¶38).

Against that factual and procedural backdrop, the Court now turns to the substance of Respondents' motion to dismiss.

LEGAL ANALYSIS

A. Personal Jurisdiction

1. Respondents May Challenge Personal Jurisdiction

Nothing in the Martin Act or the CPLR prohibits or limits Respondents from challenging the Court's exercise of personal jurisdiction in the context of a pending investigation.

"[P]ersonal jurisdiction involves the power, or reach, of a court over a party, so as to enforce judicial decrees." *Keane v. Kamin*, 94 N.Y.2d 263, 265 (1999). While the Martin Act gives the Attorney General "powerful tools to obtain information in aid of her investigation and instructs this Court to facilitate [her] exercise of her statutory authority," (May 16 Order at 7), personal jurisdiction remains a prerequisite to obtaining any judicial relief. Indeed, §354 orders have been "closely analog[ized] to both a subpoena and a temporary restraining order." *Abrams v. Lurie*, 176 A.D.2d 474, 476 (1st Dep't 1991). And both of those instruments require, as a basis for enforcement, some showing of personal jurisdiction. *See Amelius v. Grand Imperial LLC*, 57 Misc. 3d 835, 853 (Sup. Ct. N.Y. Cty. 2017) ("This court lacks personal jurisdiction over [corporation] and is powerless to enforce the City's subpoena against it."); *Visual Scis., Inc. v. Integrated Commc'ns Inc.*, 660 F.2d 56, 59 (2d Cir. 1981) ("A court must have in personam jurisdiction over a party before it can validly enter even an interlocutory injunction against him.").

Petitioner points to no authority foreclosing Respondents from challenging the Court's personal jurisdiction to render orders that purport to be binding upon them. Rather, Petitioner largely cites to cases involving challenges to *the Attorney General's* investigative authority. *See In re Edge Ho Holding Corp.*, 256 N.Y. 374, 381-82 (1931) (arguing "that the documents subpoenaed were not desired in good faith . . . and were not pertinent" to the government's investigation); *Lewis v. Lefkowitz*, 32 Misc.2d 434, 436 (Sup. Ct. N.Y. Cty. 1961) ("seek[ing] an order to direct the [OAG] to institute appropriate proceedings" against Port Authority under a statute allowing OAG to do so "in his discretion"); *Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 330 (1988) (noting that "[t]he central issue" on appeal is whether "the focus of the investigation is . . . beyond the scope of the Attorney-General's investigative powers"); *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679 (S.D.N.Y. 2018) (involving allegations that OAG's "investigations are being conducted to retaliate against Exxon"); *Nicholson v. State Comm'n on Judicial Conduct*, 50 N.Y.2d 597, 610 (1980) ("rais[ing] only the issues of the authority of the investigating body and whether the inquiry falls within the scope of that authority").

La Belle Creole Intl., S.A. v. Attorney General, 10 N.Y.2d 192 (1961), upon which Petitioner relies, is not to the contrary. That case involved a proceeding brought by a Panamanian company to vacate a subpoena served upon its president in New York City by the Attorney General. The company asserted, among other things, that it "was not amenable to process since it is a foreign corporation not doing business in this State." The Court gave wide jurisdictional berth to the Attorney General in issuing subpoenas for law enforcement purposes, but it nevertheless analyzed the foreign corporation's contacts with New York to gauge whether those contacts subjected the corporation to service of process in the State. *Id.* at 199 ("Through

its New York 'representative' . . . it advertised in New York newspapers, soliciting orders from New York residents for liquor to be purchased abroad and delivered by mail to their homes. These acts within New York State were sufficient to render the petitioner subject to the service of the subpoena here under consideration."). Moreover, the question of the *court's* jurisdiction to hear the dispute was not at issue because the proceeding to vacate the subpoena was *initiated* by the foreign company.[3] *La Belle* does not support Petitioner's broad contention that this Court can avoid making a threshold determination of its jurisdiction to issue orders binding upon Respondents simply because Petitioner's investigation is ongoing.

However, as discussed below, the procedural posture of the investigation and the statutory mandate of the Court to facilitate that investigation do bear upon the question whether the Court has jurisdiction to adjudicate this matter and issue orders as appropriate to the task. The Court therefore will address the substance of Respondents' motion with due consideration of the relative roles of the Court and the Attorney General in an investigation under the Martin Act.[4]

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[3] The First Department, which had vacated the subpoena in *La Belle* on other grounds, suggested that the foreign company had waived its jurisdictional objection to the Attorney General's service of process by initiating the court proceeding without filing a special appearance. *La Belle Creole Int'l, S.A. v. Attorney Gen.,* 12 A.D.2d 583, 583 (1st Dep't 1960) ("[B]ut for the fact that petitioner did not interpose a special appearance, the subpoena must have been vacated for absence in the record of any evidence to establish that petitioner, a foreign corporation, is doing business or is present within the State of New York."), *rev'd* 10 N.Y.2d 192 (1961). The Court of Appeals did not address the waiver issue in its opinion.

[4] The Court agrees with Respondents that they did not waive their arguments concerning personal jurisdiction by "failing" to argue them in detail when they moved to vacate the Court's original April 24 Order granting Petitioner a broad preliminary injunction. The argument was expressly preserved in Respondents' papers, which focused on vacating the Order promptly on other, non-jurisdictional grounds. (*See* NYSCEF Dkt. No. 52) ("Bitfinex and Tether dispute that this Court has jurisdiction over them for any Martin Act claims . . . . The present application is focused on ameliorating the immediate harm wrought by the Attorney General's *ex parte* order, but should not be understood as a concession as to jurisdiction.")).

2. The Court Has Personal Jurisdiction Over Respondents Sufficient to Fulfill Its Statutory Role to Facilitate Petitioner's Investigation

The Court's exercise of specific personal jurisdiction in this proceeding must be analyzed through the lens of §354.[5] The statute envisions a limited role for the judiciary as facilitator of the Attorney General's investigation. Once the Attorney General presents an application for an order for an investigational demand under the Martin Act, §354 provides that "it shall be the duty of the justice of the supreme court to whom such application for the order is made to grant such application." N.Y. Gen. Bus. L. §354. "The power of the Attorney-General under the Martin Act is exceedingly broad." *In re Attorney-Gen.*, 10 N.Y.2d 108, 111 (1961).

Although *La Belle*, discussed above, does not pretermit an assessment of jurisdiction, it does provide guidance for making that assessment in the current context. In *La Belle*, the Attorney General was permitted by statute to issue subpoenas in aid of his investigation. In that context, the Court of Appeals found that "even if the [foreign company's] contacts with this State were deemed to be less than necessary to justify the maintenance of a civil suit, it is our view that it would still be amenable to the subpoena served upon its president by the Attorney-General in connection with the investigation the latter seeks to initiate." 10 N.Y. 2d at 193. As the court explained:

> A foreign corporation's immunity from civil suit in New York, on the ground that it is not doing business there, does not mean that it is immune from investigation by the Attorney-General in an inquiry to determine whether it is violating the laws of this State. As long as that official has reasonable basis for believing that the corporation violated a New York statute, he is not prevented by the due process clause of the Federal Constitution from exercising his power of subpoena and initiating an investigation designed to

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[5] Respondents are not subject to general personal jurisdiction in New York. They are not incorporated in New York; they do not have their principal places of business in New York; and they do not otherwise have operations that would warrant a finding that they are "at home" in New York. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014). Petitioner does not contend otherwise.

ascertain the facts.

Id. at 198.

This Court's Orders under §354 are analogous in substance to the subpoena challenged in *La Belle*. The primary difference is procedural: the Attorney General issued the subpoena in *La Belle* directly, while here the Martin Act required the Attorney General to apply to the Court for an order implementing the request for information. Thus, the *La Belle* court's rationale would support the exercise of jurisdiction in this case to facilitate Petitioner's gathering of information, even if Respondents' contacts fell short of what would be required to bring a civil action under the Martin Act. *Cf. In re Attorney-Gen.*, 10 N.Y.2d at 113 ("[T]he courts below have applied to the merely inquisitorial order the measure of proof that would be required at a trial. We should not so narrow the scope of the Attorney-General's power under article 23-A of the General Business Law."); *Abrams v. Am. Disposal Servs., Inc.*, No. 16987/88, 1989 WL 265220, at *1 (Sup. Ct. Westchester Cty. Jan. 17, 1989) (applying *La Belle* in the context of enforcing a subpoena issued by the Attorney General to a Connecticut company under the Donnelly Act). As set forth in the May 16 Order, Petitioner has set forth a reasonable basis for proceeding with her investigation and is entitled to gather information from Respondents to determine whether they have violated the Martin Act.[6] In addition, as in *La Belle*, Respondents' contacts with New

[6] Respondents make much of the fact that §354 presupposes that the Attorney General has "determined" to commence an action against Respondents. The Court does not believe that language, by itself, transforms this case for jurisdictional purposes into a civil action seeking a remedy for violating the Martin Act. *See Gonkjur Assocs. v. Abrams*, 88 A.D.2d 854, 856 (1st Dep't 1982), *aff'd*, 58 N.Y.2d 878 (1983) ("[T]he Attorney General is not required to make a final decision 'to commence an action' before seeking judicially ordered examinations and subpoenas pursuant to G.B.L. §354."). The statute also presupposes that the Attorney General requires additional information and does not suggest that the scope of any such action has been determined. For jurisdictional purposes, therefore, the Court considers the proper jurisdictional analysis is that applied to an investigation rather than a civil action.

York are sufficient to tie them to the jurisdiction at least for purposes of requiring them to provide information in connection with Petitioner's investigation.

La Belle cannot be as easily applied to the branch of the May 16 Order preliminarily enjoining Respondents from undertaking certain transactions and conduct. This Court's involvement in granting a preliminary injunction plainly is more substantive than simply facilitating the gathering of documents and information. Although a sound argument can be made that the law enforcement rationale of *La Belle* should be extended to a preliminary injunction to maintain the status quo during an investigation, the Court is hesitant to do so without the required showing of "minimum contacts" sufficient to trigger personal jurisdiction in a civil action seeking similar relief.

More broadly, given the various ways in which *La Belle* might be distinguished from the present case, including that *La Belle* did not involve a challenge to a court's jurisdiction, and the absence of authority applying that case in light of developments in due process assessments of jurisdiction in intervening years, the Court will proceed to assess the traditional statutory and constitutional bases for personal jurisdiction *as an alternative ground* for evaluating jurisdiction with respect to Petitioner's information requests as well.

Applying that analysis, the Court finds that it has personal jurisdiction over Respondents with respect to all aspects of the April 24 and May 16 Orders.

a. CPLR 302(a)(1)

First, the Court's exercise of personal jurisdiction is authorized under CPLR 302(a)(1), which allows "personal jurisdiction over a non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state." The provision requires that: (i) the non-domiciliary transacted some

business in New York, and (ii) "some articulable nexus" exists between the business transacted and the cause of action. *McGowan v. Smith*, 52 N.Y.2d 268, 272 (1981).

Petitioner bears the burden of demonstrating personal jurisdiction, but on a motion to dismiss for lack of personal jurisdiction, "[a] prima facie showing of jurisdiction . . . simply is not required," particularly when "seeking to confer jurisdiction under the 'long arm' statute." *Peterson v. Spartan Indus., Inc.*, 33 N.Y.2d 463, 467 (1974) (citing CPLR 302). Rather, at the pre-discovery stage, the party opposing dismissal need only show "that facts 'may exist' whereby to defeat the motion"; "[i]t need not be demonstrated that they do exist." *Id.* at 466 (citing CPLR 3211(d)); *see Fed. Ins. Co. v. Specialty Paper Box Co.*, 222 A.D.2d 254, 254 (1st Dep't 1995) ("The court properly denied that aspect of the motion to dismiss for lack of personal and subject-matter jurisdiction" where, "[a]t the very least, plaintiff demonstrated that jurisdiction 'may exist.'"); *Jain v. Gulati*, No. 601514/06, 2006 WL 3898353 (Sup. Ct. N.Y. Cty. Sep. 22, 2006) ("[T]he plaintiff] need only demonstrate that facts 'may exist' to exercise personal jurisdiction over the defendant[s]."); *see also Bunkoff Gen. Contractors Inc. v. State Auto. Mut. Ins. Co.*, 296 A.D.2d 699, 700 (3d Dep't 2002) ("As the party seeking to assert personal jurisdiction, plaintiff bore the burden of proof on this issue. . . . Such burden, however, does not entail making a prima facie showing of personal jurisdiction[.]").[7]

[7] Respondents argue that "the petitioner bears the 'burden of proof by a preponderance of evidence that personal jurisdiction was obtained over respondent[s].'" (Resp't's Mem. of Law at 7) (citing *In re Pickman Brokerage*, 184 A.D.2d 226, 226-27 (1st Dep't 1992)). The preponderance standard, however, applies to a different context. *Pickman* involved a challenge to service under CPLR 308, which requires "where there is a sworn denial of service by the defendant . . . [that] the plaintiff must establish jurisdiction by a preponderance of the evidence at a hearing." *Lexington Ins. Co. v. Schuyler Bumpers*, 125 A.D. 2d 554, 555 (2d Dep't 1986) (cited by *Pickman*, 184 A.D.2d at 226-227).

The practice under the CPLR comports with "the dominant purpose of [§]354," which is to "facilitate Petitioner's gathering of facts." (May 16 Order at 8); *see Schneiderman v Eichner*, No. 451536/2014, 2016 WL 3057994, at *7 (Sup. Ct. N.Y. Cty. May 26, 2016) ("Because the purpose of the inquiry is to preserve the status quo while determining whether a case can be made out[,] the Attorney-General need not establish a *prima facie* case to obtain a section 354 order.") (internal citations omitted). Petitioner states that "OAG is still in the process of completing its review of the documents recently produced by Respondents pursuant to the Court's direction." (Whitehurst Aff. ¶49). *See Peterson*, 33 N.Y.2d at 467 ("The practice under CPLR 3211[d] . . . protects the party to whom essential jurisdictional facts are not presently known, especially where those facts are within the exclusive control of the moving party."); *Leili v. Romanello*, 173 A.D.3d 463 (1st Dep't 2019) ("granting jurisdictional discovery, as plaintiff made a 'sufficient start' in demonstrating personal jurisdiction over appellants").

Even assuming Petitioner has the burden of establishing personal jurisdiction at this stage by some higher standard, such as preponderance of the evidence, the same result obtains, given the evidence presented and the fact-finding purpose of the April 24 and May 16 Orders. Petitioner has offered facts sufficient to warrant the exercise of personal jurisdiction under CPLR 302(a)(1). As noted above, Petitioner has represented to the Court that Respondents have, *inter alia*:

- Allowed customers located in New York to transact on the Bitfinex trading platform after January 30, 2017 (Whitehurst Aff. ¶9);
- Knowingly permitted New York-based traders to use Bitfinex (*id.* ¶13);
- Agreed to loan tethers to a New York-based virtual currency trading firm as late as 2019 (*id.* ¶22);
- Opened accounts and utilized services at New York-based banks (*id.* ¶¶23-27); and

- Had a physical presence in New York until at least 2018, through an executive who resided in and conducted work from the state (*id.* ¶38).

The sum total of these contacts, along with Respondents' pre-2017 connections to New York, is enough at this point to justify the Court's continued enforcement and oversight of Petitioner's §354 demands. *See Avilon Auto. Grp. v. Leontiev*, 168 A.D.3d 78, 89 (1st Dep't Jan. 3, 2019) ("Where a defendant moves to dismiss for lack of jurisdiction under CPLR 3211(a)(8), a plaintiff need not present definitive proof of personal jurisdiction, but only make a 'sufficient start' in demonstrating such jurisdiction by reference to pleadings, affidavits, and other suitable documentation."); *High St. Capital Partners, LLC v. ICC Holdings, LLC*, 2019 NY Slip Op 31361[U] (Sup. Ct. N.Y. Cty. 2019) ("New York courts have recognized CPLR 302(a)(1) long-arm jurisdiction over commercial actors and investors using electronic and telephonic means to project themselves into New York to conduct business transactions.") (internal quotation omitted).

Respondents argue that its connections to New York prior to the change in Bitfinex's Terms of Service are "irrelevant" because "the only possible claim at issue, based on the allegedly 'undisclosed' line of credit between Bitfinex and Tether, arose only in recent months, long after U.S. Persons were banned." (Resp't's Mem. of Law at 12). But that is a reductive reading of the April 24 and May 16 Orders. The orders contained two parts: (1) an order "to produce documents and communications addressing a number of different subjects, including information about Tether and Bitfinex's business operations, relationships, customers, tax filings, and more"; and (2) a "preliminary injunction" which restrained Respondents from, *inter alia*, tapping into Tether's U.S. dollar reserves. (May 16 Order at 5-6). While the line of credit transaction animates the preliminary injunction, it is not "the only possible claim at issue." The

document demands, served under the first portion of the April 24 Order, "sought documents and information relevant to [Petitioner's] investigation dating from January 1, 2015 to the present date. (Whitehurst Aff. ¶5). Petitioner's eventual civil suit likely will draw on, at least in part, the information gleaned as a result of those demands.

Moreover, the preliminary injunction sought by Petitioner and ordered (with revision) by this Court is integral to the investigation itself. (*See* May 16 Order at 9 ("The reference [in §354] to preliminary injunctive relief is a portion of a sentence focused on fact-gathering, which in turn is part of a paragraph that is almost entirely about fact-gathering.")). One of the principal arguments advanced by Petitioner is that Respondents have for a number of years – before and after 2017 – made misrepresentations as to whether tethers are fully backed by reserves of U.S. dollars. The line-of-credit transaction that was the subject of Petitioner's request for a preliminary injunction is intimately connected with whether, and to what extent, Respondents' representations impacting New Yorkers were and are accurate, and whether New York customers or investors who may have relied on those representations are being exposed to *expanding* risks by virtue of transactions such as those covered by the preliminary injunction. While Respondents took steps in 2017 to separate themselves from ongoing activities in New York to minimize regulatory oversight, that does not insulate Respondents from investigation based on the continuing impact of prior misrepresentations (if proven), or on post-2017 conduct separately impacting New York investors and customers.

b. Due Process

Second, the Court's exercise of personal jurisdiction "comport[s] with federal constitutional due process requirements." *Al Rushaid v. Pictet & Cie*, 28 N.Y.3d 316, 330 (2016). To satisfy due process in a civil suit, the non-domiciliary must have "certain minimum

contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Daimler*, 134 S. Ct. at 754 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

This test "has come to rest on whether a defendant's conduct and connection with the forum State are such that it should reasonably anticipate being haled into court there." *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 216 (2000). Applying that standard, the Court of Appeals has consistently held that "self-initiated contact with New York raise[s] the prospect of defending [a] suit" here. *Id.* at 217 (finding minimum contacts where defendant "itself forged the ties with New York" despite "not direct[ing] activities at New York residents" and "perform[ing] manufacturing in Virginia for customers who paid, received title and accepted delivery in Virginia"). Such contacts can consist of "commercial actors and investors using electronic and telephonic means to project themselves into New York to conduct business transactions." *Deutsche Bank Sec., Inc. v. Montana Bd. of Investments*, 7 N.Y.3d 65, 71 (2006); *see Al Rushaid*, 28 N.Y.3d at 331 ("[D]efendants' maintenance and repeated use of a New York correspondent bank account to achieve the wrong complained of in this suit satisfies the minimum contacts component of the due process inquiry.").

Here, Petitioner's ongoing investigation has yielded evidence that, while not conclusive at this point, suggests that Respondents knowingly conducted business in the State. Notwithstanding the changes in Respondents' Terms of Service, Petitioner alleges that it has reasons to believe Respondents have serviced New York-based customers, utilized New York-based financial institutions, and partnered with New York-based entities. (*See* Whitehurst Aff. ¶¶13, 23, 33). If and when Petitioner brings an action under the Martin Act, Respondents may seek to challenge personal jurisdiction based on the contours of the specific claims in such an

action. At this stage, however, the question is whether Respondents are subject to personal jurisdiction for the purpose of this Court fulfilling its statutory obligation to facilitate Petitioner's investigation. The Court concludes that they are.

* * * *

Accordingly, the branch of Respondents' motion seeking to dismiss this proceeding for lack of personal jurisdiction is denied.[8]

B. Subject Matter Jurisdiction

"Subject matter jurisdiction has been defined as the power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case, arising, or which is claimed to have arisen, under that general question." *Thrasher v. U. S. Liab. Ins. Co.*, 19 N.Y.2d 159, 166 (1967). "In other words, 'subject matter'

[8] Respondents' contention that this proceeding should be dismissed because Petitioner failed to properly serve the April 24 Order is meritless. Putting aside the fact that Respondents had *actual* notice of the Order and promptly sought to vacate it, Petitioner's service of the Order upon Respondents' counsel – rather than upon Respondents themselves – was acceptable and reasonable under the circumstances, including the fact that OAG had been working extensively with Respondents' counsel prior to the April 24 Order, and provided Respondents "with notice reasonably calculated, under all the circumstances, to apprise [it] of the pendency of the action and afford [it] an opportunity to present their objections." *Invar Intl., Inc. v. Zorlu Enerji Elektrik Uretim Anonim Sirketi*, 934 N.Y.S.2d 34 (Sup. Ct. N.Y. Cty. 2010), *aff'd* 927 N.Y.S.2d 330 (1st Dep't 2011) (upholding service of subpoena on counsel). *Abrams v. Lurie*, 176 A.D.2d 474 (1st Dep't 1991), is not to the contrary. In *Abrams*, the court vacated an *ex parte* §354 order for failing to comply with CPLR 308. The First Department held that the Attorney General's office had violated 308(5) by not first attempting service of the targeted individual under CPLR 308(1), (2) or (4). 176 A.D.2d at 474-75. The holding in *Abrams*, however, was based on the requirements of CPLR 308, which does not apply to service on corporations. *Abrams* did not formulate a new, standalone definition for "delivering" and "leaving" papers under §355. Instead, *Abrams* underscored that "the provisions of the CPLR shall apply to 'all actions' brought under the Martin Act except as otherwise provided." 176 A.D.2d at 475-76 (citing N.Y. Gen. Bus. Law §357). Here, service on Respondents' counsel – using three different methods of service – satisfies CPLR 311, which was not at issue in *Abrams*. *See also Invar*, 934 N.Y.S.2d at 34. In any event, there is no question that service did in fact provide Respondents with notice of this proceeding and an opportunity to be heard. Dismissing the proceeding at this stage based on a question of service of process would be a dramatic waste of resources.

does not mean 'this case' but 'this kind of case.'" *In re Rougeron's Estate*, 17 N.Y.2d 264, 271 (1966). The Court is clearly empowered to hear "this kind of case."

The Supreme Court "is a court of original, unlimited and unqualified jurisdiction and competent to entertain all causes of action unless its jurisdiction has been specifically proscribed." *Lacks v. Lacks*, 41 N.Y.2d 71, 75; *see* N.Y. Const., art. VI, §7. Indisputably, the reach of that jurisdiction includes claims brought under the Martin Act, which expressly authorizes this Court to grant orders in aid of a Martin Act investigation. NY Gen. Bus Law §354.

Respondents' challenge to "subject matter jurisdiction" in fact challenges *Petitioner's* authority, not the Court's. The gravamen of Respondents' argument is that Petitioner lacks a statutory basis to obtain a §354 order in connection with tethers, because tethers do not constitute "commodities" or "securities" under the Martin Act. This is not a new argument.

In their motion to vacate or modify the April 24 Order, Respondents argued that OAG's "contemplated Martin Act action is unlikely to succeed based on a threshold fact that the tethers that were allegedly sold via fraud . . . fall entirely outside the statute's reach." (NYSCEF Dkt. No. 52). Respondents advanced that argument as a reason for why Petitioner would not ultimately prevail on the merits of their case, one of the traditional factors used to analyze the propriety of a preliminary injunction. (*See id.*). The Court rejected Respondents' argument as premature. (May 16 Order at 8) ("While Respondents may ultimately prevail on their argument, at this point it is premature and inconsistent with section 354 for the Court to interpose itself to truncate Petitioner's investigation."). The Court's prior holding remains the law of the case. Petitioner's investigation is ongoing, and the Court again declines to truncate that investigation at this stage.

Fundamentally, Respondents misperceive the respective roles of the Attorney General and the Court. Under the Martin Act, the Attorney General has the authority to initiate and conduct investigations and to determine – in her prosecutorial discretion – what cases to bring. The Court, in turn, has the authority – indeed, the obligation – to facilitate such investigations under §354. The legislature has declared that "[w]henever the attorney-general has determined to commence an action under this article, [she] may present to any justice of the supreme court" an application for an order directing a "person or persons" to produce information. N.Y. Gen. Bus. L. §354. When the Attorney General has taken that step, "*it shall be the duty of the justice of the supreme court to whom such order is made to grant such application*." *Id.* (emphasis added); *see Ottinger v. Civil Serv. Comm'n*, 240 N.Y. 435, 439 (1925) ("In support of such an action, and almost upon mere request, [the Attorney General] may have an examination before trial of parties or of witnesses.") (citing §354).

To be sure, the Court does not read the Martin Act as consigning it to the role of rubber-stamping Petitioner's investigation simply because it has issued an order permitting Petitioner to gather information. At a minimum, the Court (via the Special Referee) retains authority to oversee implementation of its Order. *See First Energy Leasing Corp. v. Attorney-Gen.*, 68 N.Y.2d 59, 64 (1986) ("It is apparent that the Legislature, in granting to the Attorney-General the extraordinary enforcement powers under section 354, found it appropriate to give the subjects of those proceedings the added protection of judicial supervision.").

More broadly, there may be extreme cases in which the Attorney General's investigation is so far afield from the scope of the Martin Act that it is not in reality "an action under this article" within the ambit of §354. At oral argument, Petitioner's counsel agreed that "[t]here is absolutely an outer bound of where a subpoena issued by our office could be so far afield a

connection to the [definition of] security or commodity" that it would be proper for the Court to quash it. *See* Oral Arg. Tr. at 19. The Attorney General does not have "arbitrary and unbridled discretion as to the scope of [her] investigation but, unless the [order] calls for documents which are utterly irrelevant to any proper inquiry or its futility . . . to uncover anything legitimate is inevitable or obvious, the courts will be slow to strike it down." *La Belle*, 10 N.Y.2d at 196 (internal quotations and citations omitted); *see also Gen. Elec. Co. v. Rabin*, 184 A.D.2d 391, 392 (1st Dep't 1992) ("A subpoena will be quashed, inter alia, where the material requested is utterly irrelevant to any proper inquiry") (citing *La Belle*). "[T]he basic question" at this stage of the litigation is simply "whether or not there exists any reasonable relationship between the jurisdiction of the [Petitioner] and the activities of either [Respondent]." *Gardner v. Lefkowitz*, 97 Misc. 2d 806, 811 (Sup. Ct. N.Y. Cty. 1978)).[9]

The Court of Appeals' holding in *Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327 (1988), is instructive. There, certain brewing companies were challenging the Attorney General's authority to issue subpoenas and interrogatories under the Donnelly Act, arguing that the Attorney General "lack[ed] authority to conduct an investigation designed to facilitate a rule of reason analysis" to practices that were allegedly *per se* legal under New York law. *Id.* at 331.

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[9] *Gardner* does not, as Respondents contend, stand for the proposition that the Court must always make a definitive finding that the matters being investigated are within the scope of the Martin Act. The case takes a more nuanced approach. First, it rejects the idea, floated by Petitioner here, that Respondents' challenge to subject matter jurisdiction must be dismissed out of hand. 97 Misc.2d at 809-10 ("[I]t is still the general rule that, as a precondition for the issuance of an office subpoena by the Attorney-General, under the investigative authority granted to him by statute, there must exist a subject matter jurisdiction on which the issuance can rest."). But second, in analyzing whether that jurisdiction exists, *Gardner* recognized the Attorney General's "wide discretion." *Id.* at 811-12 ("However . . . the power of the Attorney General under [the Martin Act] is exceedingly broad and grants a wide discretion to [her] in determining whether an inquiry is warranted into the sale of securities within New York state."). The Court follows the same approach here.

The Court of Appeal rejected the brewers' challenge, and reiterated the deference afforded the Attorney General in policing the bounds of her or his statutory authority:

> [W]hether the Attorney-General has authority under the Donnelly Act to issue the subpoenas and interrogatories challenged here . . . [is] a question which must be answered in the affirmative unless the legality of the brewers' marketing practice is so well established, either by the plain language of the statute or by existing judicial interpretation, as to be free from doubt. If the legality of the brewing industry's vertical restraints is arguable, then the subpoenas issued pursuant to the Attorney-General's broad powers to investigate possible violations of the Donnelly Act must be sustained.

Id. at 332 (emphasis added).

Similarly, as Justice Kornreich aptly stated in the context of a Martin Act civil suit, "to the extent the applicability of the Martin Act . . . can be considered a close call – and, for what it's worth, [Respondents'] arguments are not entirely unreasonable – this court views the Court of Appeals' guidance on the Martin Act to be that doubts in favor of the Martin Act's applicability should be resolved in the NYAG's favor. In other words, if it is a close call, the Martin Act should be held to apply." *People ex rel. Schneiderman v. Barclays Capital Inc.*, 47 Misc. 3d 862, 871 (Sup. Ct. N.Y. Cty. 2015).

Respondents here have not shown that Petitioner's investigation is "utterly irrelevant to any proper inquiry," or that the legality of its alleged conduct (or the inapplicability of the Martin Act) is "free from doubt," or that Petitioner does not have an "arguable" position that its investigation is within the legitimate scope of the Martin Act.

To the contrary, Respondents have not cited to any authority holding or suggesting that tethers (or products substantially similar to tethers) are excluded from the ambit of the Martin Act as a matter of law. Instead, parsing the statutory language, Respondents infer that tethers cannot constitute commodities under N.Y. Gen. Bus. Law §359-e(14)(a)(i) because a "foreign currency" implies "a currency issued by a foreign sovereign government," and a "good, article,

or material" really means a *tangible* "good, article, or material." (Resp't's' Mem. of Law at 14-15). However, "foreign currency," as used in the Martin Act, *could* be read to include, for example, any currency not issued by the U.S. government, whether it be a traditional "fiat" currency or a virtual cryptocurrency. And tether's role as a medium of exchange *could* place it within the meaning of a "good," albeit an intangible one. At a minimum, Petitioner has a reasonable basis for her position at this stage.

Respondent also argues that tethers are not securities because they are not held or traded for investment, but instead are merely means of effecting transactions in currencies, such as bitcoin, that *are* traded and/or held for investment. While Respondents may ultimately prevail on that argument, the investigation is ongoing, and the Court cannot and should not reach a definitive conclusion. One function of Petitioner's investigation will be "to adequately develop a factual basis for a determination by the Attorney-General as to whether or not the subject being investigated comes within the scope of [her] authority within the Martin Act." *Gardner*, 97 Misc. 2d at 812.

Petitioner's interest in building a more complete factual record deserves particular solicitude here. The traditional tests used to divine the nature of financial instruments – to place them somewhere in the taxonomy of securities and commodities – are inherently fact-driven enterprises. The Supreme Court stated as much in devising the three-pong test for classifying certain products as securities in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946), counseling that the test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."

Understanding the "economic realities underlying a transaction," and not just the "name appended thereto," is especially important in the context of evolving businesses like cryptocurrency. *Balestra v. ATBCOIN LLC*, 380 F. Supp. 3d 340, 352–53 (S.D.N.Y. March 31, 2019) ("Whether a transaction or instrument qualifies as an investment contract is a highly fact-specific inquiry.") (analyzing cryptocurrency under *Howey* test) (internal citations omitted); *see also* Neil Tiwari, *The Commodification of Cryptocurrency*, 117 Mich. L. Rev. 611, 624 (2018) ("The line between securities and commodities, or security-tokens and nonsecurity-tokens, is now an intensely fact-specific inquiry. . . . Some cryptocurrencies are commodities, while some are securities, and determining where that line is drawn is burdensome."). Basic factual questions still remain about how the tether currency functions. Petitioner states that she has reason to believe, for example, that tether "goes up and down in value," "fluctuat[ing] in price seemingly several cents here and there," a potentially significant variance in "dealing with an asset that is supposed to be, quote-unquote, worth a dollar." (*See* Oral Arg. Tr. at 21-22). That behavior might suggest that tether actually functions as a security, despite its billing as a "stablecoin." Or tether might behave more like a commodity, as Petitioner's investigation has also found that it "is traded around the world back and forth with Bitcoin, Ether and other virtual currenc[ies]." (*Id.* at 21). The point is, Petitioner has demonstrated that additional facts are needed before a final determination can be made about whether tether-related activities are covered by the Martin Act.

In addition, Petitioner advises that it "continues to uncover evidence of securities activity" in connection with Bitfinex and Tether, citing Respondents' recent "initial exchange offering" which, in Petitioner's view, "has every indicia of a securities issuance subject to the Martin Act." (Pet'r's Mem. of Law at 16). At a bare minimum, the issue of Petitioner's subject

matter jurisdiction presents "a close call," which should be resolved in Petitioner's favor. *Barclays*, 47 Misc. 3d at 871.

Finally, rendering a verdict on tether at this stage is not only premature, it may also be superfluous. Ultimately, the claims Petitioner pursues in a plenary Martin Act suit may not rely on tethers' classification as a security *or* a commodity. OAG maintains that its investigation concerns the operation of the Bitfinex trading venue as a whole, not just tethers. *See Barclays*, 47 Misc. 3d at 871 (denying defendant's motion to dismiss OAG's Martin Act claim in connection with a private securities trading platform known as a "dark pool"). And according to OAG, the Bitfinex platform facilitates the trading of, and dealing in, virtual currencies that have consistently been treated as commodities (such as bitcoin and ether), as well as other assets (tether among them) that may be securities. (*See* Pet'r's Mem. of Law at 16). Petitioner is also examining the "LEO tokens" which were issued as part of a recent "initial exchange offering"; the issuance of these tokens, Petitioner suggests, raises new questions about Respondents' risk assumptions and relationships with third parties. (*See* Whitehurst Aff. ¶¶54-61). To the extent Petitioner's investigation shifts to focus on these other activities, the question of Petitioner's subject-matter jurisdiction could take on different dimensions. Adjudicating the characteristics of tether now could needlessly circumscribe Petitioner's fluid, wide-ranging investigation.

In sum, while Respondents may prevail if and when Petitioner brings an action against them, the Court cannot conclude that the investigation is so far afield from the ambit of the Martin Act that it should abdicate its statutory responsibility to facilitate Petitioner's investigation. Accordingly, the Court rejects Respondents' assertion that the proceeding should be dismissed based on an absence of subject matter jurisdiction.

C. Extraterritorial Application of §354

Next, Petitioner's demands on Respondents "to produce documents located outside the United States" do not constitute an improper extraterritorial application of the Martin Act.

The Martin Act "authorizes the Attorney General to investigate and enjoin fraudulent practices in the marketing of stocks, bonds and other securities within or from New York State." *Kerusa Co. LLC v. W10Z/515 Real Estate Ltd. P'ship*, 12 N.Y.3d 236, 243 (2009) (citing N.Y. Gen. Bus. Law §§352, 353); *see also Horvath v. Banco Comercial Portugues, S.A.*, No. 10 CIV. 4697 GBD, 2011 WL 666410, at *8 (S.D.N.Y. Feb. 15, 2011), *aff'd*, 461 F. App'x 61 (2d Cir. 2012) ("The Martin Act applies if the underlying transactions that give rise to the claims occur 'within or from' New York. . . . where Plaintiff alleges that 'a substantial portion of the events' giving rise to the claim occurred in New York.").

Because Petitioner's ongoing investigation concerns purportedly fraudulent conduct that has taken place "within or from New York," the April 24 and May 16 Orders do not contemplate extraterritorial application of the Martin Act. Petitioner is investigating whether Respondents made material misrepresentations to New York customers and assert that Respondents used banks, financial institutions, and trading partners in New York to facilitate the activities of Bitfinex and Tether. (*See, e.g.*, Whitehurst Aff. ¶53 ("[T]he OAG's initial review of the jurisdictional documents recently produced by Respondents suggested that Respondents have on several occasions contracted with vendors and other entities operating from New York, during the relevant time period.")). Arguments about extraterritorial reach are unavailing where, as here, the statute is being utilized to investigate domestic conduct. *See SEC v. Gruss*, 859 F.Supp 2d 653, 660 (S.D.N.Y. 2012) (rejecting applicability of extraterritoriality doctrine where SEC sought enforcement of federal law "for deceptive acts committed in the U.S"); *compare with*

Global Reins. Corp., 18 N.Y.3d at 734 (involving a "London conspiracy" "imposed by participants in a British marketplace, that only incidentally affected commerce in this country"); *Rodriguez v. KGA Inc.*, 155 A.D.3d 452, 453 (1st Dep't 2017) (barring New York Labor Law claims on extraterritoriality grounds because "plaintiffs' claims under these provisions [were] based on labor performed exclusively outside New York").

Further, Respondents' cabined view of the Martin Act would frustrate the aims of the statute. The Martin Act "should be liberally construed to give effect to its remedial purpose of protecting the public from fraudulent exploitation in the offer and sale of securities." *All Seasons Resorts, Inc. v. Abrams*, 68 N.Y.2d 81, 86–87 (1986). Nothing in the plain text of the statute suggests that Petitioner cannot compel production of Respondents' documents located outside New York. To the contrary, §354 suggests that the Martin Act displaces traditional restrictions governing discovery in civil cases. *See* N.Y. Gen. Bus. Law §354 ("The provisions of the civil practice law and rules, relating to an application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination, shall not apply except as herein prescribed.").

To the extent Respondents claim that compliance with Petitioner's information requests would pose a conflict with privacy or information-secrecy laws of foreign jurisdictions, they can assert those objections to particular requests. In the absence of such countervailing considerations, however, the Court cannot read §354 to preclude Petitioner from demanding documents located outside New York to aid in its investigation of fraud that has allegedly taken place "within or from" New York.

D. The Application for a Stay Pending Appeal is Denied

Finally, Respondents request that the Court stay the implementation of this Order and the April 24 and May 16 Orders, pending their appeal of this decision. (NYSCEF Dkt. No. 113). The Court does not find that a further stay is warranted.

While Respondents cite the substantial costs it expects to incur in continuing to comply with the April 24 Order's discovery demands, "[t]he prospect of burdensome or expensive discovery alone is not sufficient to demonstrate 'irreparable injury'" warranting a stay. *New York v. United States Dep't of Commerce*, 339 F. Supp. 3d 144, 149 (S.D.N.Y. 2018).

And lastly, although this case presents complex legal questions, the Court does not believe that is enough to warrant staying this case and further delaying or otherwise interfering with Petitioner's investigation.

Therefore, it is:

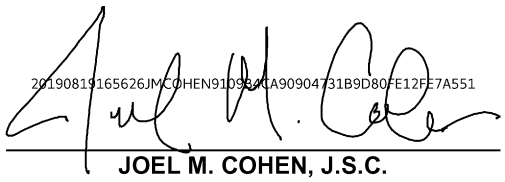
ORDERED that Respondents' motion to dismiss this proceeding is DENIED; it is further

ORDERED that the Court's May 22 Order (NYSCEF Dkt. No. 80) staying in part Respondents' obligation to comply with the Court's April 24 Order is hereby modified to eliminate the stay; it is further

ORDERED that Respondents' application to stay this proceeding pending an appeal is DENIED; and it is further

ORDERED that the expiration date of the preliminary injunction as set forth in this Court's May 16, 2019 Decision and Order is extended to October 14, 2019, but that the May 16 Order is otherwise unchanged.

This constitutes the Decision and Order of the Court.



8/19/2019
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE