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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES  
11 CENTRAL DISTRICT

12  
13 MICHAEL TERPIN,  
14 Plaintiff,  
15  
16 v.  
17 NICHOLAS TRUGLIA,  
18 Defendant.

Case No. 18STCV09875

Honorable Barbara M. Scheper  
Dept. 30

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S EX PARTE APPLICATION  
FOR ISSUANCE OF A RIGHT TO  
ATTACH ORDER AND A WRIT OF  
ATTACHMENT AND A TEMPORARY  
PROTECTIVE ORDER; DECLARATION  
OF TIMOTHY J. TOOHEY**

Date: December 31, 2018

Time: 8:30 a.m.

Department \_\_

Action Filing Date: December 28, 2018

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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

DEC 31 2018

Sherri R. Carter, Executive Officer/Clerk  
By N. DiGiambattista, Deputy

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff is moving *ex parte* to obtain a right to attach order and writ of attachment of property in the possession of Defendant Nicholas Truglia (“Truglia” or “Defendant”) under C.C.P. § 485.010(a) because great or irreparable injury would result to Plaintiff the order was delayed until the matter could be heard on notice.<sup>1</sup> Because of the nature of the property held by Truglia—particularly cryptocurrency and the wallets and devices that allow access to cryptocurrency—there is a significant danger that the assets to be attached would be concealed, substantially impaired in value, or otherwise made unavailable to levy if the order were delayed until the matter could be heard on notice. This application is supported by the Declarations of Plaintiff Michael Terpin (“Terpin Decl.”) and that of Chris David (“David”), who is aware of Defendant’s cryptocurrency and other assets, his conversion of assets belonging to Plaintiff, his spending habits, and the likelihood that Defendant will dissipate attachable assets.<sup>2</sup>

The evidence presented in this case satisfies the requirement of CCP § 485.210(c) in that (1) plaintiff would be entitled on the facts presented to a judgment on the claim upon which the attachment is based; (2) the plaintiff would suffer great or irreparable harm if issuance of the order were delayed until the matter could be heard on notice because the assets would be concealed, substantially impaired in value, or otherwise made unavailable to levy if the order were delayed; and (3) the property to be attached is not exempt from attachment. As further set forth herein, Plaintiff therefore requests issuance of a right to attach order and writ of attachment in the form set forth in Form AT-130. Plaintiff further seeks a temporary protective order as set forth in Form AT-140.

II. SUMMARY OF FACTS

Plaintiff Michael Terpin is well-known for involvement in cryptocurrency. Terpin Decl.

<sup>1</sup> Notice was provided to Defendant Nicholas Truglia on 9:07 a.m. on December 28, 2018. See Declaration of Timothy J. Toohey (“Toohey Decl.”) ¶ 2.  
<sup>2</sup> The Declarations of Plaintiff Michael Terpin and Chris David are filed separately herewith and also will be cited in support of Plaintiff’s concurrently filed *ex parte* applications for a Temporary Restraining Order and Expedited Discovery.

1 ¶¶ 2-3. Cryptocurrency is digital or virtual currency which can be used as a medium of exchange  
2 in which encryption techniques verify the transfer of funds through an encrypted and  
3 decentralized ledger called a “blockchain.” *Id.* ¶ 4. The blockchain records transactions and  
4 manages any issuance of new units of currency within the consensus algorithm. *Id.*  
5 Cryptocurrency is typically decentralized, operates independently of a central bank or other  
6 regulatory authority, and is often traded by parties through centralized businesses called  
7 “exchanges” (similar to an online stock brokerage, but with cryptocurrency). *Id.* Once a transfer  
8 of cryptocurrency has occurred outside of an exchange, it is difficult to trace and impossible to  
9 reverse the transaction without possession of certain “private key” numbers held only by the  
10 transferor. *Id.*

11 A Trezor is a small, hand-held computer-type device on which the owner holds  
12 cryptocurrency and can be used to transfer and sell those cryptos through the internet. *Id.* ¶ 14. A  
13 Trezor can be likened to a banking or brokerage account held at a financial institution. *Id.*  
14 Defendant Nicholas Truglia is known to have possessed Trezors. David Declaration ¶¶ 4-5.  
15 When Truglia was arrested, the police seized one of his Trezors containing a substantial amount  
16 of cryptos worth millions of dollars. Terpin Decl. ¶ 14; Toohey Decl. ¶ 4, Exh. A.

17 On January 7, 2018, Mr. Terpin’s phone with his AT&T wireless number went dead. *Id.* ¶  
18 10. As Mr. Terpin’s subsequent discussions with AT&T revealed, an AT&T employee on that  
19 date had ported over Mr. Terpin’s wireless number to an imposter. *Id.* Through the hack, the  
20 thief or thieves gained control over Mr. Terpin’s accounts and stole nearly \$23.8 million worth of  
21 cryptocurrency from him on January 7 and 8, 2018. *Id.* ¶ 12.

22 Mr. Terpin’s cryptocurrency was stolen as a result of a practice called “SIM swap.” *Id.* ¶  
23 5. SIM<sup>3</sup> swap is a practice whereby a hacker gains access to a victim’s telephone account to  
24 intercept communications, including text messages, to the mobile telephone, effectively putting  
25

26 <sup>3</sup> A “SIM” or “Subscriber Identity Module” (also known as a “SIM card”) is a small card inserted into a mobile  
27 device that enables the device to communicate with the service provider. A SIM contains data necessary to make a  
28 successful connection between the mobile phone and the telecommunications provider. SIM cards store files that are  
used to uniquely identify them.

1 them in control of the target’s digital life. *Id.* A perpetrator of a SIM swap typically arranges  
2 through bribery of someone (such as an employee or contractor with a telephone carrier) with  
3 access to customer information to change the SIM card assigned to a user to a telephone under the  
4 control of the hacker or the hacker’s accomplices. *Id.* Once the SIM transfer has occurred, the  
5 hackers uses the hacker’s phone number, now under their control, to impersonate the victim with  
6 service providers, such as e-mail providers and cryptocurrency exchanges, and uses the victim’s  
7 phone number to request changes to account settings and to reset passwords to take control of the  
8 victim’s accounts. *Id.*

9 Perpetrators of SIM swaps frequently intercept “2-Factor Authentication” (or “2FA”)  
10 messages sent to the victim’s telephone number (where the second factor is a text message sent to  
11 the user’s telephone number listed on the account). *Id.* ¶ 6. 2FA is frequently used as a security  
12 mechanism for authentication purposes. *Id.* Perpetrators of SIM swaps intercept the messages to  
13 gain access to the accounts owned by the victim, including cryptocurrency accounts or other  
14 accounts that provide access to such accounts. *Id.* Once the perpetrator gains access to the  
15 account, the perpetrator transfers the funds in such accounts to an account controlled by the  
16 perpetrator. *Id.* Perpetrators of SIM swaps specifically target victims, like Mr. Terpin, owning  
17 cryptocurrency because transactions involving cryptocurrency cannot readily be reversed. *Id.* ¶ 7.

18 Defendant Truglia is currently incarcerated in Santa Clara County, California, but is  
19 scheduled to have a hearing on January 2, 2019 to examine the source of his bail because it is  
20 suspected it may be sourced from illegally obtained funds. Toohey Decl. ¶ 4, Exh. A. On  
21 November 13, 2018, Truglia was charged with 21 counts of grand larceny, identity theft, and  
22 unlawful access to a computer under California Penal Code § 502(c). Toohey Decl. ¶ 3. In the  
23 police report accompanying the Criminal Complaint, the investigators specifically identified  
24 Truglia as perpetrating SIM swaps and of stealing funds belonging to his victims. *Id.* A Santa  
25 Clara detective also identified him as having a cryptocurrency hardware wallet containing in  
26 excess of \$300,000, which was subsequently seized. *Id.* ¶ 4, Exh. A.

27 Truglia has confessed to having stolen cryptocurrency from Mr. Terpin. *See* David Decl.  
28 ¶¶ 12-13. In a conversation with Chris David, Truglia openly stated that he and a confederate—



1        **Redacted** —hacked Plaintiff Michael Terpin to steal almost \$24 million worth of crypto. *Id.* ¶  
2 12. He further freely admitted how he went about engaging in SIM swaps to steal money from  
3 victims and bragged that the Terpin heist was his “biggest” SIM swap. *Id.* ¶ 16. Moreover,  
4 Truglia admitted six times on Twitter that he had “Stole 24 million.” *Id.* ¶ 12. Indeed, Mr. David  
5 states in his sworn declaration that he witnessed Truglia attempting to SIM swap victims and that  
6 Truglia had even SIM swapped his own father. *Id.* ¶ 11.

7        Mr. David further testified to Truglia’s having numerous conventional and cryptocurrency  
8 accounts, including accounts located at JP Morgan, Gemini (a cryptocurrency exchange),  
9 Coinbase (also a cryptocurrency exchange), Cashapp (an application that allows users to send  
10 money), Toronto-Dominion Bank, TD Ameritrade (an online stock brokerage), and XAPO (a  
11 digital cryptocurrency wallet and trading platform). *Id.* ¶¶ 4-5; ¶¶ 21-22.

12        Truglia further showed Mr. David [in approximately June 2018] his cryptocurrency  
13 accounts on his computer and mobile phone totaling tens of millions of dollars. *Id.* ¶ 4. He  
14 showed Mr. David a JP Morgan account with over \$7 million in cash and a Gemini account with  
15 over \$12 million. *Id.* He also showed Mr. David two Trezors. *Id.* One had a value of over \$40  
16 million in various cryptos and the other one over \$20 million. *Id.* ¶¶ 4-5. Truglia also boasted  
17 that as of September 2018 he had \$60 million of Bitcoin and that one of his confederates, <sup>Redact</sup>  
18 **Redacted** had stolen between \$70 and \$80 million through hacking. *Id.* ¶¶ 16-17. When Truglia  
19 had over \$70 million, he hacked his own father and stole \$15,000. *Id.* ¶ 10.

20        Truglia also has led a shockingly extravagant lifestyle and has freely spent his ill-gotten  
21 gains, bragging that like Robin Hood he steals from the rich, but unlike Robin Hood he gives  
22 nothing back to the poor. *Id.* ¶ Truglia openly displayed his Trezors and a bundle of cash which  
23 he said was over \$100,000 to Chris David. *Id.* ¶¶ 4-5. He also said that he wanted to hire a  
24 private jet from Mr. David to fly to Miami at a cost of \$38,000. *Id.* ¶ 4. Mr. Truglia lived in a  
25 luxury apartment in Manhattan with a \$6000 a month rent, wore a Rolex watch which he said cost  
26 \$100,000, told Mr. David he was going to purchase a McLaren sports car costing over \$250,000.  
27 *Id.* ¶ 9. He also claimed that he was going to purchase a private jet costing several million dollars  
28 and a Manhattan condominium which also cost several million dollars. *Id.*

1 On December 28, 2018, Mr. Terpin filed a complaint against Truglia that was served on  
2 him that date in the Santa Clara correctional facility. Toohey Decl. ¶ 5. The Complaint alleges  
3 causes of action for (1) Conversion; (2) Money Had and Received; (3) Unlawful Access to  
4 Computer (California Penal Code § 502 *et seq.*); (4) Violations of Section 1962(c) of the  
5 Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(c); (5) Imposition  
6 of a Constructive Trust. *Id.*

7 **III. THE REQUESTED RIGHT TO ATTACH ORDER AND WRIT OF**  
8 **ATTACHMENT SHOULD ISSUE**

9 With few exceptions, CCP § 485.220 requires that the Court issue a right to attach order  
10 and order a writ of attachment where a plaintiff has complied with CCP § 485.210.

11 A. The Claim Upon Which the Attachment Here is Based is One Upon Which An  
12 Attachment Issue.

13 In this case, Plaintiff alleges claims for Conversion and Money Had and Received in the  
14 readily ascertainable amount of \$23,780,200.00.<sup>4</sup> CCP § 483.010(a). These claims, which are  
15 based on misappropriation of funds and wrongful conversion of personal property, are a proper  
16 basis for an attachment because they are quasi-contract or “implied contract” claims. *See, e.g.,*  
17 *Hill v. Superior Court*, 16 Cal.2d 527, 530-31 (1940) (misappropriation of funds claims are  
18 attachable); *Bank of America NT&SA v. Hill*, 9 Cal. 2d 495, 499-500 (1937) (conversion claims  
19 are attachable); *Klein v. Benaron*, 247 Cal. App. 607, 609 (1967) (restitutionary obligations are  
20 attachable). Accordingly, this is an action based upon contract—express or implied—where the  
21 claim is in excess of \$500 and unsecured.

22 B. Plaintiff Has Established the Probable Validity of His Claim

23 As set forth above, Plaintiff has established the probable validity of a claim entitling him  
24 to a judgment on his claims against Defendant. Indeed, Defendant Truglia has admitted and  
25

26 <sup>4</sup> Although Plaintiff claims that he is entitled to recover cryptocurrency at its highest value, for the purposes of this  
27 Motion he is seeking the slightly smaller amount of \$23,780,200.00, which was the value of the cryptocurrency on  
28 the day of the conversion. Terpin Decl. ¶ 12. Moreover, Plaintiff has not added attorney fees or costs to the amount  
the attachment. Plaintiff expressly reserves his right to seek damages for the higher amount of cryptocurrency,  
attorney fees, costs, punitive damages, and treble damages, as alleged in his Complaint.

1 confessed that he perpetrated the SIM swap on Mr. Terpin and thereby gained access to Mr.  
2 Terpin's cryptocurrency holdings. *See* David Declaration ¶¶ 13, 16. Mr. Truglia's admission,  
3 combined with the evidence showing a pattern and practice of SIM swapping activity, a lavish  
4 lifestyle accompanied by no means of legitimate income, and a shocking arrogance and belief that  
5 he can never be caught, go far beyond any requisite standard to satisfy Plaintiff's burden in  
6 connection with the requested relief.

7 C. Defendant Was Engaged in a Trade, Business or Profession

8 Plaintiff's conversion and money had and received causes of action proceed against  
9 Truglia, a natural person, who conducted a trade, business or profession. CCP § 483.010(c). One  
10 test for assessing what constitutes a "trade, business or profession," is whether the activity  
11 engaged in by the defendant "is part and parcel of an activity which occupies the time, attention  
12 and effort of the guarantor for the purpose of livelihood or profit on a continuing basis." *Advance*  
13 *Transformer Co. v. Superior Court*, 44 Cal. App. 3d 127, 144 (1974). In this instance, Truglia  
14 occupied his entire time in obtaining cryptocurrency and engaging in SIM swaps and had no other  
15 "visible means of support." David Decl. ¶ 8. Indeed, Plaintiff alleges that Truglia was part of a  
16 continuing criminal enterprise that amassed millions of dollars of profits. Although Truglia's  
17 business was unconventional and illegal, his SIM swap of Terpin was not an isolated or  
18 occasional incident. *See* David Decl. ¶ 11 (describing a different instance of attempted SIM card  
19 swapping).

20 D. The Property Sought is Attachable.

21 Subject to the \$1,000 exemption referenced for money in § 487.010(c)(7), the property  
22 sought here to be attached is cryptocurrency, stocks, and/or "fiat" currency in the form of US  
23 dollars or other foreign currencies. Collectively, such assets are "money" or "securities" subject  
24 to attachment pursuant to § 487.010(c)(7) and § 487.010(c)(10). Cryptocurrencies are a digital  
25 asset designed to work as a medium of exchange that have financial value. *See Securities and*  
26 *Exchange Commission v. Plexcorps*, 2018 WL 3038500 at \*1 (E.D.N.Y. June 19, 2018) ("Plex  
27 Coin Tokens' . . . are electronically stored assets dubbed as 'cryptocurrency' or 'digital currency.'  
28 Although they are not legal tender and lack the backing of any government, PlexCoin Tokens



1 consist of secure computer data stored on an online network, and they represent financial value.”  
2 This is the standard definition of “money.” Alternatively, and potentially much more disputed  
3 and in its legal infancy, the SEC is debating whether some cryptocurrencies are securities. *See,*  
4 *e.g., Statement on Cryptocurrencies and Initial Coin Offerings* by SEC Chairman Jay Clayton,  
5 available at <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>; *see also*  
6 <https://www.sec.gov/litigation/investreport/34-81207.pdf> (July 25, 2017 SEC Report of  
7 Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO,  
8 concluding that The DAO Tokens are securities). Without going through the *Howey* test to make  
9 a determination as to whether each given cryptocurrency that may be held by Truglia is or is not a  
10 security, there can be no legitimate dispute that each cryptocurrency is either money or security.  
11 *Securities and Exchange Commission v. Plexcorps*, 2018 WL 3038500 at \*1. Specific accounts  
12 where Truglia may potentially be holding attachable assets include the Gemini, Coinbase,  
13 Cashapp, JP Morgan, Toronto-Dominion Bank, TD Ameritrade and XAPO. David Decl. ¶ 22.

14 Truglia’s Trezor devices, which store private keys for cryptocurrency accounts, allow the  
15 holder of the device to transfer cryptocurrency and thus dissipate assets. As such, they are the  
16 functional equivalent of such electronically store assets and are also attachable. Terpin Decl. ¶  
17 14.

18 E. Great and Irreparable Injury Will Follow If the Order is Delayed Until the Matter  
19 Is Heard on Notice.

20 Plaintiff would suffer great or irreparable injury if issuance of the order were delayed.  
21 Plaintiff is already faced with a situation where his cryptocurrency has been taken from him and  
22 transferred to other persons. Terpin Decl. ¶ 14. Defendant, although incarcerated, is scheduled to  
23 have a hearing on January 2, 2019 and may post bail at any time. Toohey Decl. ¶ 4. In addition,  
24 because of its nature, cryptocurrency can readily be transferred or spent without recourse to the  
25 rightful owner. Terpin Decl. ¶ 9. This makes it urgent to protect the *status quo* by granting a  
26 right to attach order. *See Federal Trade Commission v. Dluca*, 2018 WL 1830800 \*2-\*5  
27 (S.D.Fla. February 28, 2018) (court grants TRO maintaining *status quo* over defendants’ assets,  
28 finding that “[t]he use of cryptocurrency in the programs promoted by Defendants poses a



1 heightened risk of asset dissipation. Bitcoin and other cryptocurrencies are circulated through a  
2 decentralized computer network, without relying on traditional banking institutions or other  
3 clearinghouses. This independence from traditional custodians makes it difficult for law  
4 enforcement to trace or freeze cryptocurrencies in the event of fraud or theft.”)

5 Defendant has already spent lavishly, as evidenced by the Declaration of Chris David. ¶  
6 9. Defendant has spent—and, if released—may continue to spend Plaintiff’s money in ways that  
7 cannot be recovered, particularly if he gains access to his cryptocurrency accounts. The assets  
8 that have been located should, at this point, be preserved. Accordingly, a right to attach order and  
9 an order for a writ of attachment should issue for the property described in the Application. *See*  
10 Forms AT-130 (Ex Parte Right to Attach Order).

11 **IV. THE REQUESTED TEMPORARY PROTECTIVE ORDER SHOULD ISSUE.**

12 CCP Section 486.20 provides that a temporary protective order shall issue a temporary  
13 protective order if it finds:

- 14 (a) the claim is one upon which attachment may issue;
- 15 (b) the plaintiff has established the probable validity of the claim;
- 16 (c) the temporary protective order is not sought for a purpose other than the recovery  
17 upon the claim; and
- 18 (d) the plaintiff will suffer great or irreparable injury.

19 Based on the preceding points and authorities, Plaintiff has established each of these  
20 elements. By way of this temporary protective order, Plaintiff seeks the added protections that  
21 (i) the institutions holding funds in the name of Defendant Truglia be restrained from transferring,  
22 directly or indirectly, any interest in those accounts to anyone other than the levying officer,  
23 (ii) Defendant refrain from taking any actions that may impede the prompt attachment of  
24 attachable assets that have already been identified, and (iii) a directive to Defendant that he  
25 refrain from any further transfer of attachable assets that have not yet been identified. *Cf. See*  
26 *Federal Trade Commission v. Dluca, supra* (court grants TRO maintaining *status quo* over  
27 defendants’ assets, finding that “[t]he use of cryptocurrency in the programs promoted by  
28 Defendants poses a heightened risk of asset dissipation.”) *See also* Terpin Decl. ¶¶ 7-9.

1           Accordingly, Plaintiff requests the imposition of the temporary protective order submitted  
2 herewith on Form AT-140 until such time as a writ of attachment issues, either pursuant to this *ex*  
3 *parte* procedure or noticed motion.

4  
5       **V.     CONCLUSION**

6           For the foregoing reasons, Plaintiff respectfully requests that the Court issue the right to  
7 attach order and a writ of attachment. Plaintiff further requests that this Court issue a temporary  
8 protective order in the form attached hereto.

9  
10       DATED: December 30, 2018

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP

11  
12  
13       By:   
14           TIMOTHY J. TOOHEY (SBN 140117)  
15           Attorneys for Plaintiff MICHAEL TERPIN

1 **DECLARATION OF TIMOTHY J. TOOHEY**

2  
3 I, TIMOTHY J. TOOHEY, hereby declare and state as follows:

4 1. I am an attorney admitted practice before all the Courts of the State of California  
5 and am a Partner at the law firm of Greenberg Glusker Fields Claman & Machtinger LLP,  
6 attorneys of record for Plaintiff Michael Terpin ("Plaintiff").

7 2. On December 28, 2018, notice was provided to Defendant Nicholas Truglia  
8 ("Defendant") of this ex parte application at 9:07 a.m. A true and correct copy of the Proof of  
9 Service of that notice is attached hereto as Exhibit "A."

10 3. On November 13, 2018, Defendant was charged with twenty-one (21) counts of  
11 grand larceny, identity theft, and unlawful access to a computer under California Penal Code §  
12 502(c). In the police report accompanying the Criminal Complaint, the investigators specifically  
13 identified Truglia as perpetrating SIM swaps and of stealing funds belonging to his victims. A  
14 true and correct copy of the Criminal Complaint and police report is attached hereto as Exhibit  
15 "B."

16 4. Although Defendant is currently being held in the Santa Clara correctional facility  
17 without bail, he is may be released at any time. He is due to have a hearing on January 2, 2019 to  
18 examine the sources of bail pursuant to Penal Code § 1275.1 because it was believed by Santa  
19 Clara authorities that he had access to cash or cash equivalents from illicit sources. A true and  
20 correct copy of an Affidavit in Support of Request to Examine Source of Bail from Detective  
21 Caleb Tuttle is attached hereto as Exhibit C. Detective Tuttle's affidavit stated that at the time of  
22 the arrest he was possession of a cryptocurrency "hardware wallet" containing in excess of  
23 \$300,000 that was subsequently seized.

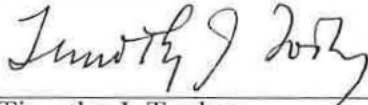
24 5. On December 28, 2018, Plaintiff filed a Complaint against Defendant in this  
25 Court. Later that day the Complaint was served on Defendant in the Santa Clara correctional  
26 facility in which he incarcerated. The Complaint alleges causes of action for (1) Conversion; (2)  
27 Money Had and Received; (3) Unlawful Access to Computer (California Penal Code § 502 *et*

28

1 *seq.*); (4) Violations of Section 1962(c) of the Racketeer Influenced and Corrupt Organizations  
2 Act (RICO), 18 U.S.C. § 1962(c); (5) Imposition of a Constructive Trust.

3 I swear under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

5 Executed on December 30, 2018, at Los Angeles, California.

6   
7 \_\_\_\_\_  
8 Timothy J. Toohey  
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