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Inc., BFXWW Inc., and Tether Limited*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IFINEX INC., BFXNA INC., BFXWW INC., and )  
TETHER LIMITED, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
WELLS FARGO & COMPANY, WELLS )  
FARGO BANK, N.A. )  
 )  
Defendants. )  
 )  
 )

No. 17 Civ. 1882

**DECLARATION OF MICHAEL  
BARATZ IN SUPPORT OF  
PLAINTIFFS' EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER  
TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE**

**DECLARATION OF MICHAEL BARATZ**

I, Michael J. Baratz, declare as follows:

1. I am a partner in the Washington, D.C., office of Steptoe & Johnson LLP. I have personal knowledge of the matters stated in this Declaration by virtue of my representation of plaintiffs iFinex Inc. (“iFinex”), BFXNA Inc. (“BFXNA”), BFXWW Inc. (“BFXWW”), and Tether Limited (“Tether”) (collectively, “plaintiffs”), in the above-captioned matter. I could and would competently testify to the following matters if called as a witness in this action.

2. Plaintiffs iFinex, BFXNA, and BFXWW (collectively, “Bitfinex”) own and operate a global trading platform for Virtual Currency, an emerging form of digital currency.<sup>1</sup> Tether owns and operates a digital platform that allows customers to store, send, and make purchases using tethers, which are backed by U.S. dollars on deposit from customers. Plaintiffs deposit their customers’ money at Taiwan-Based Banks. Currently, Bitfinex and Tether can receive or remit only U.S. dollars for customers’ purchases on their platforms. It is my understanding that Wells Fargo & Company and Wells Fargo Bank, N.A. (collectively, “Wells Fargo”) has been the correspondent bank for these Taiwan-Based Banks and has processed U.S. dollar wires from these Taiwan-Based Banks that allow plaintiffs to remit back to their customers the U.S. dollars the customers have deposited with plaintiffs.

3. Last week, plaintiffs informed Steptoe & Johnson LLP that Wells Fargo had stopped performing correspondent bank services and suspended the processing of wire transfers from the Taiwan-Based Banks on which plaintiffs rely to transfer funds between plaintiffs and their customers. Plaintiffs asked Steptoe to help them work with Wells Fargo to address any concerns it had about providing those services so that Wells Fargo would resume processing the wire transfers as it had in the past.

4. Since that time, plaintiffs, through their attorneys at Steptoe, have worked diligently to communicate with Wells Fargo regarding its decision to suspend the processing of wire transfers from plaintiffs’ Taiwan-Based Banks.

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<sup>1</sup> All capitalized terms have the same meaning as set forth in the Complaint.

1           5.       On March 31, 2017, Steptoe Chairman Phillip West sent an email to Jimmie  
2 Paschall, an Executive Vice President of Wells Fargo, seeking an introduction to Wells Fargo's  
3 Chief Compliance Officer so that he could discuss with her Wells Fargo's decision to suspend  
4 the processing of these wire transfers. A true and correct copy of Mr. West's email is attached  
5 hereto as Exhibit 1.

6           6.       On the same day, Steptoe partner Jason Weinstein had a telephone conversation  
7 with Jonathan Rusch, Senior Vice President, Head of Anti-Bribery & Corruption Governance at  
8 Wells Fargo, to seek further clarification about Wells Fargo's decision. A true and correct copy  
9 of an email exchange between Mr. Weinstein and Mr. Rusch is attached hereto as Exhibit 2.

10          7.       The next day, April 1, 2017, Ms. Paschall connected Mr. West with Wells Fargo's  
11 Chief Compliance Officer, Yvette Hollingsworth Clark. A true and correct copy of Ms.  
12 Paschall's email is attached hereto as Exhibit 3.

13          8.       The same day, Mr. West wrote to Ms. Hollingsworth Clark to seek further  
14 clarification about Wells Fargo's decision. Mr. West explained that Wells Fargo's decision  
15 "could significantly affect our client's ability to operate in USD by next Tuesday," April 4. Mr.  
16 West offered to "submit information directly to Wells Fargo about the situation" and to meet  
17 with Wells Fargo to "explain Bitfinex's case and address any questions Wells Fargo may have."  
18 A true and correct copy of Mr. West's email is attached hereto as Exhibit 4.

19          9.       Ms. Hollingsworth Clark responded on April 2 that she could "only engage in  
20 discussions with the client regarding their activities with Wells Fargo." A true and correct copy  
21 of Mrs. Hollingsworth Clark's email is attached hereto as Exhibit 5.

22          10.       On the same day, Steptoe attorney Jack Hayes followed up with Ms.  
23 Hollingsworth Clark, stating that plaintiffs would provide the contact information for Wells  
24 Fargo's correspondent banks in Taiwan, but noted that these banks would be closed for holidays  
25 in Taiwan on Monday, April 3 and Tuesday, April 4. Mr. Hayes also informed Ms.  
26 Hollingsworth Clark that the matter was "urgent" because if Wells Fargo continued to suspend  
27 the processing of the wires on Wednesday morning (Taiwanese time), plaintiffs and their  
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1 affiliates would be “significantly affected.” A true and correct copy of Mr. Hayes’ email is  
2 attached hereto as Exhibit 6.

3 11. On April 3, 2017, Mr. Hayes and Mr. Weinstein again sought to engage Wells  
4 Fargo by reaching out to Mr. Rusch and Ms. Ms. Hollingsworth Clark. True and correct copies  
5 of Mr. Hayes’ and Mr. Weinstein’s emails are attached hereto as Exhibit 7 and Exhibit 8.

6 12. Mr. Rusch and Ms. Hollingsworth Clark both responded later that day, stating that  
7 Wells Fargo would communicate only directly with its customers, presumably the Taiwan-Based  
8 Banks that Steptoe had informed Wells Fargo were closed for local holidays. True and correct  
9 copies of Ms. Hollingsworth Clark’s and Mr. Rusch’s emails are attached hereto as Exhibit 9 and  
10 Exhibit 10.

11 13. Mr. Hayes sent another e-mail to Ms. Hollingsworth Clark at 6:25 p.m. Eastern  
12 Time on April 3, 2017 asking for a clarification that Wells Fargo’s position that it would only  
13 communicate with its customers meant that it would only communicate with the Taiwan-based  
14 banks. Mr. Hayes explained Steptoe’s understanding that Wells Fargo had due diligence  
15 concerns not about the Taiwan-Based Banks but about their customer Bitfinex, Steptoe’s client.  
16 Mr. Hayes again explained the “serious threat this situation presents to the continuation of our  
17 client’s business” and offered to “work with Wells Fargo to provide all necessary information  
18 and address any due diligence concerns.” Mr. Hayes added that while Bitfinex’s “strong  
19 preference is to work collaboratively with Wells Fargo to resolve this matter so that our client  
20 can continue operating its business,” Bitfinex would need to consider “all available remedies”  
21 given the “grave threat to our client’s business.” A true and correct copy of Mr. Hayes’ email is  
22 attached hereto as Exhibit 11.

23 14. When Steptoe did not receive a response to Mr. Hayes’ April 3 email, given the  
24 threat to plaintiffs’ business, on April 4, 2017 at 12:00 p.m. Eastern Time, Mr. Hayes sent  
25 another e-mail to Ms. Hollingsworth Clark, informing her that if Wells Fargo did not respond,  
26 plaintiffs would pursue relief in court. Mr. Hayes offered to continue communicating with Ms.  
27 Hollingsworth Clark or to work with any in-house or outside counsel for Wells Fargo. Mr. Clark  
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1 reiterated that “we would be grateful for an opportunity to present information about Bitfinex  
2 and undertake immediately a short term arrangement to resume in and out USD wire transfer  
3 activity at the relevant banks in Taiwan.” A true and correct copy of Mr. Hayes’ email is  
4 attached hereto as Exhibit 12.

5 15. On April 4, 2017, Robert McGahan, Wells Fargo’s Assistant General Counsel –  
6 General Litigation and Enforcement, e-mailed Mr. Hayes to schedule a meeting. A true and  
7 correct copy of Mr. McGahan’s email is attached hereto as Exhibit 13.

8 16. Mr. McGahan’s email did not arrive in Mr. Hayes’ inbox until 4:23 a.m. Eastern  
9 Time on April 5, 2017. A true and correct copy of a screenshot of Mr. Hayes’ e-mail inbox is  
10 attached hereto as Exhibit 14. The email chain reflects it may have been sent in the afternoon of  
11 April 4, but it was not received until early morning on April 5.

12 17. On April 5, 2017, plaintiffs’ attorneys e-mailed Mr. McGahan at 6:12 a.m.  
13 Eastern Time, seeking to schedule their meeting by 12:00 p.m. Eastern Time and informed Mr.  
14 McGahan that plaintiffs were preparing to file the instant action in the morning Pacific Time if  
15 the parties could not reach an interim resolution. A true and correct copy of Mr. Hayes’ email is  
16 attached hereto as Exhibit 15.

17 18. Mr. McGahan responded that he was on a flight until the early part of the  
18 afternoon on April 5, 2017 and referred plaintiffs’ attorneys to Wells Fargo’s outside counsel,  
19 McGuire Woods LLP. A true and correct copy of Mr. McGahan’s email is attached hereto as  
20 Exhibit 16.

21 19. Plaintiffs’ attorneys e-mailed Wells Fargo’s attorneys at McGuire Woods LLP at  
22 7:13 a.m. Eastern Time on April 5, 2017. A true and correct copy of Mr. Hayes’ email is  
23 attached hereto as Exhibit 17.

24 20. Plaintiffs’ attorneys and Wells Fargo’s attorneys had a teleconference at 7:00 a.m.  
25 Pacific Time to discuss the matter. The telephone conversation ended with Wells Fargo’s  
26 attorneys’ representation that they would communicate with Wells Fargo and provide a response  
27 this morning Pacific Time. Plaintiffs’ attorneys reiterated plaintiffs’ preference to work out a  
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1 short-term arrangement to allow wire transfers to continue being processed without Court  
2 intervention, but indicated they remained ready and willing to seek the instant temporary  
3 restraining order if necessary. Wells Fargo's attorney expressed an interest in appearing with  
4 plaintiffs' attorneys in Court.

5 21. Plaintiffs' attorneys spoke again with Wells Fargo's counsel at 11:53 a.m. Pacific  
6 Time. Wells Fargo's counsel confirmed that Wells Fargo had instructed the Taiwan-Based  
7 Banks that Wells Fargo would not accept any more outgoing wire transfers from plaintiffs'  
8 accounts. He explained that Wells Fargo will not service wires that relate to Virtual Currency.  
9 Wells Fargo's counsel also informed plaintiffs that Wells Fargo is not interested in meeting with  
10 plaintiffs or exploring any additional due diligence.

11 22. Due to the imminent threat of harm to plaintiffs and Wells Fargo's failure to  
12 resolve this issue with plaintiffs without court intervention, plaintiffs are moving the United  
13 States District Court for the Northern District of California for immediate injunctive relief.  
14 Plaintiffs have taken all reasonable steps to inform Wells Fargo of their concerns and of the  
15 threat of harm they face based on Wells Fargo's decision. That threat of harm is detailed more  
16 fully in plaintiffs' Complaint, plaintiffs' *Ex Parte* Application for Temporary Restraining Order  
17 and Order to Show Cause Why a Preliminary Injunction Should Not Issue, and supporting  
18 papers, which are being filed concurrently herewith.

19 23. Plaintiffs will email a copy of plaintiffs' Complaint and their *Ex Parte*  
20 Application for a Temporary Restraining Order and Order to Show Cause Why a Preliminary  
21 Injunction Should Not Issue to Wells Fargo's outside counsel, McGuire Woods LLP, after  
22 plaintiffs filing them with the Court.  
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct. Executed on April 5, 2017 at San Francisco, California.

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4 Dated: April 5, 2017



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