



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Tel. No. (212) 416-8500

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

September 24, 2014  
DIVISION OF STATE COUNSEL  
CLAIMS BUREAU

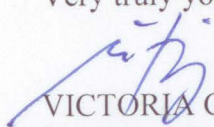
Re: Chino v. Department of Financial Services  
Claim No. 124835

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THEO CHINO  
640 Riverside Drive, 10B  
New York, NY 10031

Dear Mr. Chino:

Enclosed herewith for service upon you, pursuant to Section 130-1.1a of the Rules of the Chief Administrator (22NYCRR), is a copy of the defendant's Notice of Motion and Affirmation in the above-entitled matter.

Very truly yours,

  
VICTORIA C. INTING  
Law Dept. Document Specialist  
Trainee 1, Claims - NYC

Enclosures  
cc: Joseph Paterno, AAG

STATE OF NEW YORK  
COURT OF CLAIMS

-----X  
THEO CHINO,

Claimant,

-against-

NOTICE OF MOTION

Claim No. 124835  
Weinstein, J.

The Department of Financial  
Services; and Benjamin Lawsky  
in his official capacity as  
Superintendent of the New York  
State Department of Financial  
Services,

Defendant.  
-----X

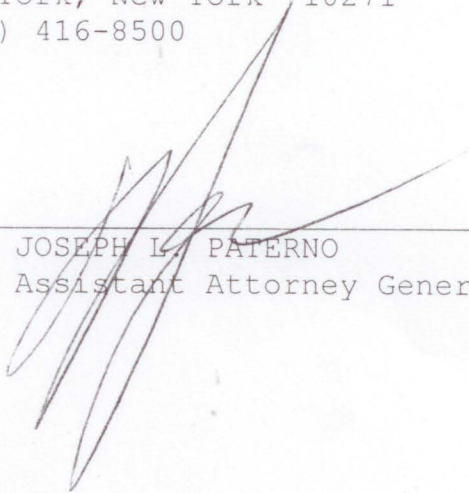
PLEASE TAKE NOTICE that upon the claim, and the attached affirmation and exhibits thereto of JOSEPH L. PATERNO, Assistant Attorney General, dated September 19, 2014 in support of the State of New York's motion, and upon all of the proceedings heretofore had herein, the State will move this Court at a Motion Term thereof, to be held at the Court of Claims, on the 15<sup>th</sup> day of October, 2014 or as soon thereafter as counsel may be heard for an order pursuant to Rule 3211 and/or 3212 of the Civil Practice Law and Rules and the Court of Claims Act §11, dismissing the claim and for other and further relief as the Court may deem just and proper.

This is ostensibly a claim for negligent interference with business practices.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR Rule 2214,  
answering papers are demanded seven (7) days before the return date  
of this motion.

Dated: New York, New York  
September 19, 2014

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for Defendant  
120 Broadway  
New York, New York 10271  
(212) 416-8500

By:   
JOSEPH L. PATERNO  
Assistant Attorney General

TO: Theo Chino, Pro Se  
640 Riverside Drive, 10B  
New York, NY 10031



STATE OF NEW YORK  
COURT OF CLAIMS

-----X  
THEO CHINO,

Claimant(s),

AFFIRMATION IN SUPPORT

Claim No. 124835

-against-

The Department of Financial  
Services; and Benjamin Lawskey  
in his official capacity as  
Superintendent of the New York  
State Department of Financial  
Services,

Defendant(s).

-----X

JOSEPH L. PATERNO, an attorney at law, admitted to  
practice in the State of New York, duly affirms the following under  
the penalties of perjury:

1. I am an Assistant Attorney General of the State of  
New York, assigned to the defense of the above-captioned claim and  
am fully familiar with the facts and circumstances relating thereto  
based on the file maintained by this office. This affirmation is  
submitted in support of the defendant's motion for an order  
dismissing the claim herein on the grounds that claimant's alleged  
damages are prospective and therefore this Court lacks jurisdiction  
over the claim.

2. At the outset it should be noted that, to the extent  
that claimant has named the Department of Financial Services and

Benjamin Lawsky in his official capacity as Superintendent of the New York State Department of Financial Services as defendants, the only proper party in the Court of Claims is the State of New York. Court of Claims Act §9. The jurisdiction of this Court extends only to the State and certain other entities specifically provided for by statute. No such statute vests this Court with jurisdiction over Benjamin Lawsky.

3. The claim alleges that a proposed regulation by the New York State Department of Financial Services has forced claimant to reduce his workforce and "maybe" close his small business. Claimant is seeking \$1 billion in monetary damages. A copy of the claim is annexed hereto at Exhibit "A".

4. The claim was filed with the Clerk of the Court of Claims on August 13, 2014 and was personally served upon the Attorney General's Office on August 22, 2014; and also served by certified mail, return receipt requested on August 20, 2014.

5. This pre-answer motion is being made prior to the expiration of the State's time to answer the claim.

6. Paragraph 2 of the Claim states that the Department of Financial Services' proposed regulation relating to virtual currency (sometimes referred to as BitCoin) "... has forced me to reduce my workforce and maybe close my small business." (Emphasis added) It is clear that this claim fails to state actual damages, and thereby fails to state a cause of action. *Parola, Gross & Marino v. Suskind,*



43 A.D. 3d 1020, 841 N.Y.S.2d 463 (2d Dep't 2007). Inasmuch as the regulation has not yet gone into effect (the public comment period closes on October 21, 2014), any damages are potential and wholly unrealized as claimant has not suffered any actual damages.

7. A claim accrues pursuant to the Court of Claims Act when damages become ascertainable (*Richard A. Hutchens CC, L.L.C. v. State of New York*, 59 A.D.3d 766, 872 N.Y.S.2d 734, [3d Dep't 2009], *lv denied* 12 N.Y.3d 712 [2009]; *Waters of Saratoga Springs, Inc. v. State of New York*, 116 A.D.2d 875, 498 N.Y.S.2d 196 [3d Dep't 1986], *affd* 68 N.Y.2d 777 [1986]). Here, as stated above, Claimant has not yet sustained any damages. Thus, the Claim is premature.

8. Furthermore, this "potential" was not proven or otherwise substantiated by the Claimant. The claim simply states, at paragraph 5, which should contain the identity of the items of damages or injuries claimed to have been sustained, "closure and lost of investment" (sic). Claimant alleges he sustained damages in the amount of \$1 billion. There was no documentary evidence annexed to the claim or a rational basis expressed to support this contention.

9. Based on the foregoing, this claim has not yet accrued, is not ripe for adjudication and is premature.

**WHEREFORE**, the State of New York respectfully requests that the State's motion be granted and the claim dismissed in its entirety.

Dated: New York, New York  
September 19, 2014



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JOSEPH L. PATERNO  
Assistant Attorney General





5. Identify the items of damage or injuries claimed to have been sustained:

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0-123331.21

6. (Check appropriate box):



This Claim is served and filed within 90 days of accrual.

OR



A Notice of Intention to File a Claim was served on \_\_\_\_\_, which was within 90 days of accrual.

OR



This is a claim by a correctional facility inmate to recover damages for injury to or loss of personal property and it is served and filed within 120 days of the exhaustion of claimant's administrative remedies.

By reason of the foregoing, Claimant was damaged in the amount of \$ 1,000,000.000, and Claimant demands judgment against the Defendant(s) for said amount.

Claimant

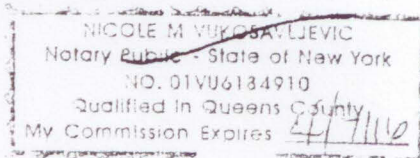
VERIFICATION

STATE OF NEW YORK ) ss:  
COUNTY OF New York

THEO CHINO, being duly sworn, deposes and says that deponent is the Claimant in the within action; that deponent has read the foregoing Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.

Sworn to before me this 13 day  
of August, 2014

Nicole M. Vukobratjevic  
Notary Public, State of New York



## SERVICE AND FILING INSTRUCTIONS

You must serve a copy of the claim in accordance with Court of Claims Act section 11(a) and you must file the original and two copies, with proof of service, and the filing fee of \$50.00 or an application for waiver or reduction of the filing fee, with the Clerk of the Court of Claims.

FAILURE TO EFFECT PROPER AND TIMELY SERVICE AND FILING MAY RESULT IN DISMISSAL OF YOUR CLAIM

New York State Court of Claims  
Justice Building, P.O. Box 7344  
Albany, New York 12224  
(518) 432-3411





**Court of Claims**  
**State of New York**

ROBERT ABRAMS BUILDING  
FOR LAW AND JUSTICE  
BOX 7344, CAPITOL STATION  
ALBANY, NEW YORK 12224

(518) 432-3478

**Richard E. Sise**  
Acting Presiding Judge

**Robert T. DeCataldo**  
Chief Clerk

**Fax No. (866) 413-1069**

To: Theo Chino, Pro Se  
Date: August 13, 2014  
Claimant's Name: Theo Chino  
Number of pages received: 3

This will acknowledge **RECEIPT ONLY (not actual filing)** of the following documents. If said document(s) meet the necessary filing requirements, said document(s) will be filed as of the received date.

Document(s) received on August 13, 2014:

- ☒ CLAIM      Note: An acknowledgment letter containing claim number and place of accrual will be forwarded shortly after review of your submission.
- ☐ NOTICE OF MOTION
- ☐ PLEADING:
- ☐ OTHER:
- ☐ DOCUMENT RECEIVED NOT LEGIBLE, PLEASE **FAX AGAIN.**
- ☐ DOCUMENT RECEIVED MISSING PAGES:  
PLEASE FAX MISSING PAGES IMMEDIATELY.

New York State Court of Claims - Filing by Fax Cover Sheet  
(complete, print form, and fax with paper to be filed)

Date: 8/13/2014  
Claimant(s): THEO CHINO  
Claim Number (if any):  
Paper Being Filed: NOTICE OF CLAIM  
Name and Address of Filing Party ~~as Attorney~~ Pro Se  
THEO CHINO  
340 RIVERSIDE DRIVE - 10B  
NEW YORK, NY 10021  
Telephone Number of Filing Party or Attorney: (212) 694-9968  
Fax Number of Filing Party or Attorney: 646-405-1230  
Total Number of Pages of this Transmission, including Cover Page: 3

\*\*\*\*\* FOR CLAIM FILINGS ONLY \*\*\*\*\*

If you are filing a claim, you must either pay the \$50.00 filing fee by completing the credit card authorization, or make an application for a waiver or reduction of the filing fee by submitting the appropriate affidavit.

CREDIT CARD AUTHORIZATION

I, THEO CHINO, authorize the New York State Court of Claims to charge my credit card for the \$50.00 filing fee required for filing the above claim.

☐ Master Card

☐ Discover Card

☒ Visa

THEO CHINO

Cardholder Name

[Signature]

Cardholder Signature

[Redacted]

Credit Card Number

[Redacted]

Expiration Date

FAX to: 866-413-1069 (toll-free)

7/30/09

**RECEIVED**

AUG 13 2014

State Court of Claims  
Office of the Chief Clerk  
Albany, N.Y.



Claim No. 124835

Sir:

Please take notice that the within is a true copy of duly filed and entered in the office of the Clerk of \_\_\_\_\_ County, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014

Yours, etc.,  
**ERIC T. SCHNEIDERMAN**  
Attorney

General,  
Attorney For

Office and Post Office Address  
120 Broadway, New York, New York

10271

To  
, Esq,

Attorney For

STATE OF NEW YORK : COURT OF CLAIMS

THEO CHINO

Claimant,

-against-

THE DEPARTMENT OF FINANCIAL SERVICES;  
AND BENJAMIN LAWSKY IN HIS OFFICIAL  
CAPACITY AS SUPERINTENDENT OF THE  
NEW YORK STATE DEPARTMENT OF FINANCIAL  
SERVICES,

Defendant.

NOTICE OF MOTION AND AFFIRMATION IN SUPPORT

Sir:

Please take notice that the within

will be presented for settlement and signature herein to the Hon.  
one of the Judges of the within named Court, at

in the Borough of \_\_\_\_\_  
City of New York, on the \_\_\_\_\_ day of \_\_\_\_\_  
2014, at \_\_\_\_\_

M.

Dated, N.Y.,  
.2014

**ERIC T. SCHNEIDERMAN**  
Attorney General,

Attorney for

Office and Post Office Address  
120 Broadway, New York, New York 10271

To  
Attorney for

**ERIC T. SCHNEIDERMAN**  
Attorney General of the  
State of New York  
**ATTORNEY FOR DEFENDANT**  
Office and Post Office Address  
120 Broadway, 12th Floor  
New York, New York 10271  
Tel. No. (212)-416-8641

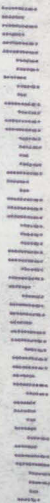
Personal service of a copy of the within  
\_\_\_\_\_ is admitted this  
\_\_\_\_\_ day of \_\_\_\_\_ 2014





FIRST CLASS

THEO CHINO  
640 Riverside Drive, 10B  
New York, NY 10031



NEW YORK  
THE  
MAY  
NY 10271-0332