

SUPREME COURT OF THE STATE OF NEW YORK
COUNTRY OF NEW YORK

THEO CHINO and CHINO LTD,

Plaintiffs-Petitioners,

-against-

THE NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES and MARIA T. VULLO,
in her official capacity as Superintendent of the
New York State Department of Financial Services.

Defendants-Respondents.

**AFFIDAVIT OF THEO CHINO
IN SUPPORT OF PLAINTIFFS’-
PETITIONERS’ OPPOSITION
TO DEFENDANTS’-
RESPONDENTS’ CROSS-
MOTION TO DISMISS**

Index No. 101880/2015
Hon. Lucy Billings

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

I, Theo Chino, being duly sworn, deposes and states:

1. I am a Plaintiff-Petitioner in the above listed case. The information given in this affidavit is true and correct to the best of my knowledge.

2. On November 19, 2013, I incorporated Chino LTD in Delaware. A copy of the Delaware filing is attached as Exhibit I.

3. On February 24, 2014, I submitted an application for authority to conduct business in the state of New York under § 1304 of the Business Corporation Law as a foreign business corporation. The original purpose of Chino LTD was to install Bitcoin processing services in the State of New York. A copy of the New York filing receipt is attached as Exhibit II.

4. On December 31, 2014, Theo Chino co-founded Conglomerate Business Consultants, Inc. (“CBC”). A copy of the New York Certificate of incorporation is attached as

Exhibit III.

5. Between December 2014 and May 2015, CBC entered into formal contracts with seven bodegas in New York to offer Bitcoin-processing services. The service would allow customers to pay for things like a gallon of milk in Bitcoin instead of with fiat money or a credit card. A copy of one of the contracts between CBC and a bodega is attached as Exhibit IV.

6. The bodegas were given signage to display that they accepted Bitcoins. A photo of the signage is attached as Exhibit V.

7. Every day, Chino LTD would provide the bodegas the daily exchange rate that would be used for the Bitcoin processing services.

8. While CBC was a distributor of the Bitcoin processing service (and other services) directly to bodegas, Chino LTD provided the actual Bitcoin processing.

9. Chino LTD provided all the research and development for Bitcoin processing, bought all of the computers to run the backend of processing Bitcoin, rented all of the hosting equipment to run the front end of processing Bitcoin, and developed custom operating systems to run the Bitcoin processing.

10. On August 16, 2015, I submitted an application under the New York State Minority Owned/Women Owned Business Enterprise Program for Chino LTD, which is still pending with New York State. A copy of the application and of its status information is attached as Exhibit VI.

11. Following the promulgation of the “Virtual Currency” regulation by the New York State Department of Finance at Part 200 of Chapter 1 of Title 23 of the New York Codes, Rules and Regulations (cited as “NYCRR”) (the “Regulation”), and as required under NYCRR § 200.21, I submitted an application on behalf of Chino LTD for a license on August 7, 2015 to

engage in Virtual Currency Business Activity, as defined in 23 NYCRR § 200.2(q), because I was storing, holding, and maintaining custody and control of bitcoins on behalf of third-parties, the bodegas. My business accepted the bitcoins on behalf of the bodegas and then processed the transactions back to dollars for the bodegas. A copy of the application is attached as Exhibit VII.

12. On October 16, 2015, I commenced this action realizing the Regulation would require significant costs to run my business and the deadline to file such action was within two weeks.

13. In January 2016, one consumer at Rehana's Wholesale made a purchase using Bitcoin which was processed by Chino LTD. A copy of the bill indicating the purchase is attached as Exhibit VIII.

14. On January 4, 2016, the New York State Department of Financial Services (the "Department") returned my application without further processing after they performed an initial review. The stated reason for returning my application was that the New York State Department of Financial Services was unable to evaluate whether Chino LTD's current or planned business activity would be considered Virtual Currency Business Activity that requires licensing under the New York Financial Services Law and regulations. A copy of the January 4, 2016 letter is attached as Exhibit IX.

15. Following the response from the Department, I was forced to abandon my Bitcoin processing business because my application was not approved.

16. I did not challenge the Department's January 04, 2016 response because I had already commenced this action in October 2015 and I knew this action could invalidate the Regulation. Therefore, I concluded that it was futile for me and for my business to continue the application process at this stage.

17. In 2013, the year Chino LTD was incorporated, it suffered losses of only \$4,367. The losses were due to the cost of purchasing computer equipment to test how to protect Bitcoin and figure out how to monetize it. A copy of Chino LTD's 2013 U.S. Income Tax Return, filing as an "S Corporation," is attached as Exhibit X.

18. In 2014, Chino LTD suffered losses of \$59,667. The losses were mainly due to the cost of computer hardware required to run the Bitcoin warehousing, the cost of renting computer time on the cloud, and marketing the service to bodegas. A copy of Chino LTD's 2014 U.S. Income Tax Return, filing as an "S Corporation," is attached as Exhibit XI.

19. In 2015, the year Chino LTD submitted an application for a license to engage in Virtual Currency Business Activity, Chino LTD suffered losses of \$30,588. The losses were due to the cost of the utilities to process Bitcoin (computer time on the internet cloud), the interest on the borrowed capital required to purchase the equipment the previous year, the cost associated with supporting CBC (who entered into the agreements with bodegas), and the cost of litigation. A copy of Chino LTD's 2015 U.S. Income Tax Return, filing as an "S Corporation," is attached as Exhibit XII.

20. In 2016, even though Chino LTD could no longer offer Bitcoin services because it did not receive a license, Chino LTD remained an active "S Corporation" and suffered losses of \$53,053. The losses were due to the utilities for keeping the equipment to process Bitcoin in the event of a successful litigation, the interest on the borrowed capital from the previous three years, and the cost of the litigation. A copy of Chino LTD's 2016 U.S. Income Tax Return, filing as an "S Corporation," is attached as Exhibit XIII.

21. The 2016 tax returns for Chino LTD, together with the 2013 to 2015 tax returns for Chino LTD, confirm that I expended finances to run my business. But for the Regulation, I

would have been able to continue my business and generate income to reimburse my expenses. However the Regulation prevented me from generating business activity and income to pay down my investments and Chino LTD's losses have continued since 2015. Therefore, the business losses of Chino LTD for 2015 and 2016 are a direct consequence of the impact of the Regulation.

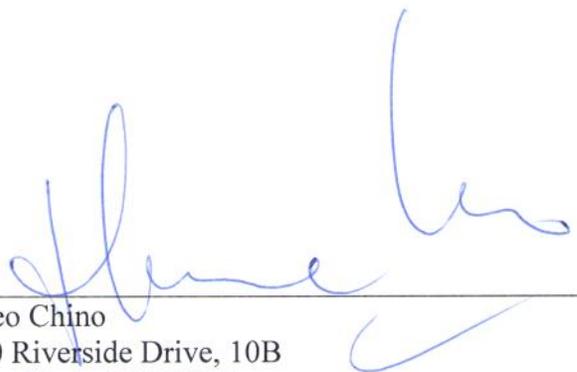
22. I am qualified to make the above statements as to Bitcoin and to the related technologies such as blockchain because I have been a member of the Bitcoin Foundation since 2014 and because I am a Bitcoin protocol programmer. Additionally, I have worked in Silicon Valley technology firms such as credit card payment fraud systems (CyberSource) and television/Internet/phone service providers (Time Warner Cable). Furthermore, I have been a technical expert and advisor to several French Senators and Legislators who were members of relevant technology-related Committees of the French Senate and the French National Assembly, as well as to the French Minister of Digital Affairs between 2014 and 2017.

23. I was also the president of the Student Chapter of the Alaskan Data Processing Management Association (DPMA, Association of Information Technology Professionals) in 1996 and I also have been a C/C++ programmer since 1993.

24. Based on this expertise, I fully agree with the conclusion expressed by Daniel Cawrey in his article, *Credit Cards Have Not Evolved With the Internet. Enter Bitcoin.*, COINDESK (Jan. 5, 2014) (available at <http://www.coindesk.com/credit-cards-not-evolved-enter-bitcoin/>), a copy of which is attached as Exhibit XIV), according to which the Bitcoin technology is a safer system than credit card systems. Therefore, it is my technical opinion that the required disclosures imposed by the Regulation in 23 NYCRR § 200.19(a)(8) are inaccurate and false. Furthermore, it is my technical opinion that, because the required disclosures imposed by the Regulation in 23 NYCRR § 200.19(a)(9), 23 NYCRR § 200.19(b)(1), 23 NYCRR §

200.19(b)(2), 23 NYCRR § 200.19(c)(3), 23 NYCRR § 200.19(c)(4) and 23 NYCRR § 200.19(g) rely on the false assumption that using virtual currencies puts the user at greater risk of fraud or cyber-attack than using a credit card or online shopping, those required disclosures imposed by the Regulation in 23 NYCRR § 200.19(a)(9), 23 NYCRR § 200.19(b)(1), 23 NYCRR § 200.19(b)(2), 23 NYCRR § 200.19(c)(3), 23 NYCRR § 200.19(c)(4) and 23 NYCRR § 200.19(g) are also inaccurate, false or overly broad, therefore representing a significant and undue burden on a small business such as Chino, LTD.

Dated: July 14, 2017
New York, NY



Theo Chino
640 Riverside Drive, 10B
New York, NY 10031

PIERRE CIRIC
NOTARY PUBLIC-STATE OF NEW YORK
No. 02C16233718
Qualified in New York County
My Commission Expires January 03, 2018

SWORN to before me, this 14th day July, 2017

NOTARY PUBLIC