IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

LEANNE TAN Plaintiff, v. CONVERGING RESOURCES CORPORATION; KONNEKTIVE LLC; ECHO 51, LLC; CHECKOUT CHAMP, LLC; MATTHEW MARTORANO; and KATHRYN MARTORANO Defendants.	Civil Action No. 24CV002451

EMERGENCY MOTION TO APPOINT RECEIVER AND FOR INJUNCTION AGAINST FUTHER ASSET TRANSFERS

I. SUMMARY OF THE MOTION

Mr. and Mrs. Martorano and two of the companies they own are defendants in a federal RICO class action lawsuit in California. The Martoranos and their companies are known as the Konnektive Defendants in that lawsuit. Earlier this year, on January 12, 2024, the federal Court issued an opinion in that case certifying the class. As part of the decision the court stated, "**The Court finds Plaintiff has shown by a preponderance of the evidence that Konnektive Defendants deceived banks and credit card companies.**" Mr. and Mrs. Martorano have known for years that they face a federal RICO trial in which they could be held liable for damages in excess of $30 million. Therefore, in the past months they have been systematically

making a series of asset transfers in a blatant attempt to avoid paying the likely judgment in that case. This emergency motion seeks to enjoin the Defendants from making additional transfers and asks the Court to appoint a receiver immediately to ensure no additional assets transfers are made and to preserve the *status quo* with respect to the Defendant companies' goodwill, employees, and assets. This is an emergency motion because the Defendants have shown they can and will make transfers rapidly to avoid paying a looming judgment in the California RICO case and they will undoubtedly attempt to make additional transfers once they receive notice of this motion.

II. FACTUAL BACKGROUND

A. Overview of the Federal RICO Case

LeAnne Tan is a class representative in a class action against several of the above-named Defendants, styled *Tan v. Quick Box, LLC et al*, No. 3:20-cv-01082 filed in federal court in the Southern District of California. That class action includes nationwide federal claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). The Defendants in that action include Converging Resources Corporation, Konnektive LLC, Matthew Martorano, and Kathryn Martorano. These defendants are known as the "Konnektive Defendants" in the California case.

The federal RICO claims involve the Konnektive Defendants use of "load balancing" software to assist in the commission of online fraud. The federal Court reviewed sworn testimony at depositions of three former Konnektive employees. Those witnesses testified that Konnektive's load balancer functionality was designed to rotate numerous merchant accounts from shell companies on websites selling online products, allowing fraudsters to hide their activities from VISA and Mastercard. In simplified terms, it helps balance the load of chargebacks (reports of fraudulent activity) across numerous merchant accounts so that these indicators of fraud cannot be discovered by banks or credit card companies which are processing the transactions. Notably VISA has issued warnings that it will refer those found to be engaging in load balancing to law enforcement.[1]

One of Konnektive's former employees testified that Konnektive's clients were playing "a cat and mouse game with the banks."[2] Another former employee testified that Konnektive's software was being used to "trick people out of money."[3] That witness testified that he felt like Oppenheimer developing the atomic bomb, in that he had helped develop the Konnektive software without realizing that there was

[1] Exhibit A p. 2.
[2] Exhibit B (Deposition of Aaron Turgeman) p. 5-6 (Transcript p. 9 l. 6 – p. 10. l. 7); p. 12-13 (Transcript p. 25 l. 12 – p. 26 l. 21).
[3] Exhibit C (Deposition of Justin Reviea) p. 3 (Transcript p. 14 l. 3-7); p. 39-40 (Transcript p. 161 l. 9 – p. 162 l. 4).

a human face behind the people it was injuring.[4] A third witness described subscription sales for boxes full of worthless products such as fidget spinners which he said were being targeted towards the elderly, using load balancing to hide the fraud.[5] The California court also reviewed video evidence of Tyler Martorano, an employee of Converging Resources Corporation, demonstrating this functionality through a hidden access webpage to the Konnektive software and saying: "load balancing and cascading isn't really approved by the banks and stuff, so this isn't really 'our product,' you know?"[6]

On January 12, 2024, the federal court certified a nationwide class against the defendants for a combination of California state law claims and federal RICO claims. The court stated in its order certifying the class: "**The Court finds Plaintiff has shown by a preponderance of the evidence that Konnektive Defendants deceived banks and credit card companies.**"[7] Later in the order, the court reiterated this finding: "As discussed earlier, the Court finds Plaintiff has shown by a preponderance of the evidence that Konnektive Defendants deceived the credit card brands and payment processors."[8] Because of the judge's finding, made as part

[4] Exhibit C (Deposition of Justin Reviea) p. 38-39 (Transcript p. 160 l. 17 – 161 l. 8), p. 40 (Transcript p. 162 l. 5 – l. 18).
[5] Exhibit D (Deposition of Jeremy Sistrunk) p. 38-39 (Transcript p. 85 l. 23 – p. 86 l. 22).
[6] Exhibit E (Recorded call lodged with Court) (video timestamp 2:15 – 2:50).
[7] Exhibit F (federal court's Class Certification Decision) p. 14 l. 18-19.
[8] Exhibit F (federal court's Class Certification Decision) p. 24 l. 5-7.

of an initial examination into the merits required by federal law on class certification, it is highly likely that Ms. Tan and the Class of injured consumers will prevail on the merits and will obtain a favorable verdict, which could easily exceed $30 million.

B. Timing and Background of the Federal RICO Case

The Plaintiffs originally served their RICO complaint on the Konnektive Defendants on July 9, 2020.[9] The Defendants moved to dismiss. On December 8, 2020, the Honorable Judge Marilyn Huff issued an opinion which denied large portions of motions to dismiss filed by Converging Resources Corporation, Konnektive LLC, Matthew Martorano, and Katherine Martorano. As to three of Plaintiff's state law causes of action under the state's consumer protection laws, the denials were outright, and it was a certainty that the lawsuit would proceed in some form.[10] As to theories of indirect liability and a claim under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), Judge Huff granted the motions to dismiss, but with leave to amend certain pleading deficiencies.[11]

On January 7, 2021, the Plaintiff filed a First Amended Complaint against both Converging Resources Corporation and Konnektive LLC which corrected the pleading issues that Judge Huff had granted leave to amend. Upon the filing of this

[9] Exhibit G.
[10] *Tan v. Quick Box, LLC*, No. 3:20-cv-01082-H-DEB, 2020 U.S. Dist. LEXIS 230427 at *100-101 (S.D. Cal. Dec. 8, 2020).
[11] *Id.*

First Amended Complaint, it was obvious from that pleading that Plaintiff had corrected the deficiencies at issue and that it was highly likely that the RICO claim—which includes mandatory trebling of damages—would proceed along with the state law claims and would risk wiping out the entire net worth of Mr. and Mrs. Martorano and their companies.

On February 11, 2021, Converging Resources Corporation, Konnektive LLC, Matthew Martorano, and Kathryn Martorano filed a second motion to dismiss the California lawsuit. On April 7, 2021, the Honorable Judge Marilyn Huff issued an order denying the second motion to dismiss and permitting the RICO claim to proceed.[12] It was now a certainty that the Defendants would face an action that could wipe out all of their assets forever. So they decided implement their plan to transfer their business's assets, customers, and employees to a new company in an effort to prevent the victims of their conduct from obtaining their rightful recovery.

C. Defendants' Personal Asset Transfers

During the court of the case Magistrate Judge Leshner, the judge supervising discovery in the California case, made comments at a hearing that he would permit discovery into the past two years of the Konnektive Defendants' financial condition. After the Magistrate made these comments and shortly before Mr. and Mrs.

[12] *Tan v. Quick Box, LLC*, No. 3:20-cv-01082-H-DEB, 2021 U.S. Dist. LEXIS 67791 (S.D. Cal. Apr. 7, 2021).

Martorano's depositions, counsel for Mr. and Mrs. Martorano demanded (and conducted) a meet and confer on a protective order they claimed to be filing to preclude such questioning about the assets and liabilities of Mr. and Mrs. Martorano. But the motion for protective order was never filed. On November 14, 2023, Kathryn Martorano was deposed in the RICO lawsuit and two days later, her husband, Matthew Martorano, was deposed in the RICO lawsuit.

On November 9, 2023—**five days before Mrs. Martorano's deposition**—Mr. Martorano transferred ownership of 420 Rose Garden Lane, Alpharetta, GA 30009 from himself personally to Echo 51, LLC.[13] The purchase price for the transfer was $0.[14] The Martoranos purchased the house for $625,000 in 2021.[15] Zillow estimates that it is worth $848,500.[16] The property is located in Fulton County, Georgia.[17]

That same day, on November 14, 2023, Mr. Martorano transferred a property in Fannin County, Georgia at 466 Sally Lane, Blue Ridge, Georgia from themselves to Echo 51, LLC for $0.[18] The property consists of 105 acres.[19] The Martoranos

[13] Exhibit H p. 2.
[14] Exhibit H p. 1.
[15] Exhibit I (Fulton County Board of Assessor's Property Records Website).
[16] Exhibit J.
[17] Exhibit H p. 1.
[18] Exhibit K p. 1-2.
[19] Exhibit L p. 1 (Fannin County Board of Assessor's Property Records Website).

purchased it for $750,000 in January 2020.[20] The property was assessed as being worth $2,452,134 as of 2023.[21] That same day Mr. and Mrs. Martorano transferred another property in Fannin County, Georgia at 606 Sally Lane, Blue Ridge, Georgia from themselves to Echo 51, LLC for $0.[22] The property consists of 30 acres.[23] The Martoranos purchased it for $1,050,000 in 2021.[24] The property is currently assessed as being worth $827,615 as of 2023.[25]

Notably when questioned about the house (or houses) Mrs. Martorano owned during her November 14, 2023 deposition, her counsel objected. He first attempted to rephrase a question from Plaintiff's counsel from "Do you have a house in Georgia right now?" to whether she "owns" a house in Georgia—a rephrasing that would give her an excuse not to disclose the house which she had transferred ownership of that day.[26] He then instructed her not to answer any questions about homes she owned in Georgia.[27] Mrs. Martorano refused to give any testimony about property she owned in Georgia.

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[20] Exhibit L p. 2 (Fannin County Board of Assessor's Property Records Website).
[21] Exhibit L p. 2 (Fannin County Board of Assessor's Property Records Website).
[22] Exhibit M p. 1-2.
[23] Exhibit N p. 1 (Fannin County Board of Assessor's Property Records Website).
[24] Exhibit N p. 2 (Fannin County Board of Assessor's Property Records Website).
[25] Exhibit N p. 2 (Fannin County Board of Assessor's Property Records Website).
[26] Exhibit O (Deposition of Kathryn Martorano) p. 1 (Transcript p. 163 l. 21-24).
[27] Exhibit O p. 1-6 (Transcript p. 163 l. 25 p. 168 l. 14).

D. The Creation of Checkout Champ LLC and Company Asset Transfers

As of early January 2021, the company that is now called "Checkout Champ" was a dormant Puerto Rico entity whose name was then "RevLytics, LLC."[28] The company was (and is) controlled by the Martoranos,[29] and was originally created to market a specific type of functionality that would analyze data from Konnektive CRM and other sources of data used by businesses.[30] On May 6, 2021 Mr. and Mrs. Martorano changed the name of Revlytics to Checkout Champ, LLC.[31] And on January 28, 2021—a few weeks after the First Amended Complaint was filed—Konnektive LLC applied for a federal trademark on the name "Checkout Champ."[32]

Checkout Champ's software is a carbon copy of the Konnektive CRM software, which is (or was) owned by the Konnektive entities being sued in the Southern District of California: "Then we took the Konnektive 'engine' and built a new product for the even bigger opportunities we saw in the ecommerce business. That product is Checkout Champ, the performance platform bringing the best of funnel marketing into the ecommerce space."[33] The Checkout Champ website states

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[28] Exhibit P.
[29] Exhibit EE p. 1 (Matthew Martorano current registered agent); p. 3 (Kathryn Martorano filed most recent annual registration).
[30] Exhibit Q p. 2 (https://konnektive.com).
[31] Exhibit DD (Certificate of Amendment – Name Change).
[32] Exhibit R.
[33] Exhibit S p. 2 (https://checkoutchamp.com/about-us).

that "Checkout Champ is built on top of Konnektive – the top-rated online business and e-commerce CRM on the market."[34] A third-party company, LTV Numbers, created documentation to assist users of the software. That documentation states: "Konnektive and Checkout Champ are the same underlying service with two different names and skins."[35] The software and service are the same, except that Checkout Champ is (1) marketed using a different name, (2) has a different "skin" or visual appearance, and (3) is owned by a separate company which is not a party to the class action lawsuit and thus will not be named in any judgment.

Notably Konnektive, LLC has further stopped posting on its own Facebook page. Its most recent substantive post is a March 16, 2023 post by Matthew Martorano. Incredibly, that post does not seek to gain customers for Konnektive but instead urged customers to visit **Checkout Champ**'s website to set up a demo with Checkout Champ, LLC. The post states "Click this link to fill out a short application form and book a Checkout Champ demo this week."[36] This is just one example demonstrating that Konnektive, led by Matthew Martorano, had little interest in preserving the value in his companies that were also defendants in the California action.

[34] Exhibit T p. 1 (https://checkoutchamp.com/features/crm).
[35] Exhibit U p. 1 (https://docs.ltvnumbers.com/data/konnektive).
[36] Exhibit V p. 1-3 (https://www.facebook.com/Konnektive).

Another example of the transfer of customers and goodwill from Konnektive to Checkout Champ occurred after the federal Court denied the Konnektive Defendants' second motion to dismiss. On June 3, 2021, an attorney from the law firm of Gordon Rees Scully Mansukhani, LLP—**the same law firm representing the Defendants in the RICO action**—filed a document with the federal Patent and Trademark Office assigning the rights to the name "Checkout Champ" from Konnektive LLC to the newly-renamed Checkout Champ, LLC. That assignment stated that Konnektive LLC had conveyed "ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL" in the trademark to Checkout Champ, LLC.[37]

In addition to transferring the trademark and goodwill, the Defendants also began a process to reassign employees (and the use of those employees' time, expertise, and knowledge of their trade secrets and proprietary information) from the defendant companies in the federal case to the newly cloned company, Checkout Champ LLC.

The following chart represents a list of employees who currently work **simultaneously** for Converging Resources Corporation (performing labor under a contract with Konnektive LLC) and for Checkout Champ LLC:

Employee Name	Role at CRC / Konnektive	Role at Checkout Champ
Matthew Martorano	CEO of Konnektive, LLC	CEO
Todd Davis	V.P. Client Services	V.P. Client Services

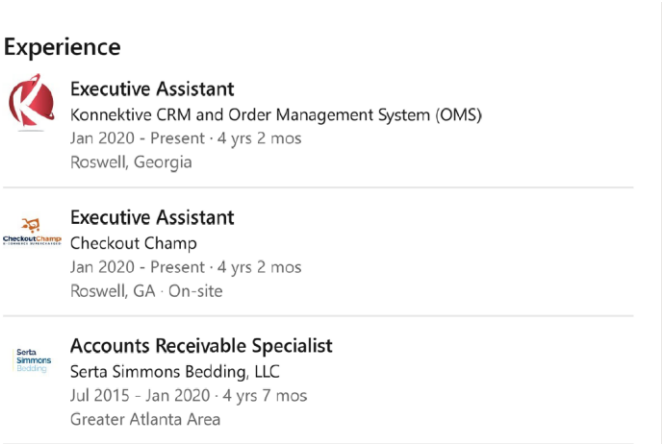
[37] Exhibit W.

Reggie Barnes	Software Developer	Software Developer
Layne Phillips	Executive Assistant	Executive Assistant
James Koonts	Linux System Administrator	Linux System Administrator
Josh Elrod	Web Designer	Web Designer
Cameron Wilson	Software Developer	Software Developer
Jeremy Simpson	Product Support Specialist	Product Support Specialist
Nathan Hayman (former employee)	Front End Developer	Front End Developer

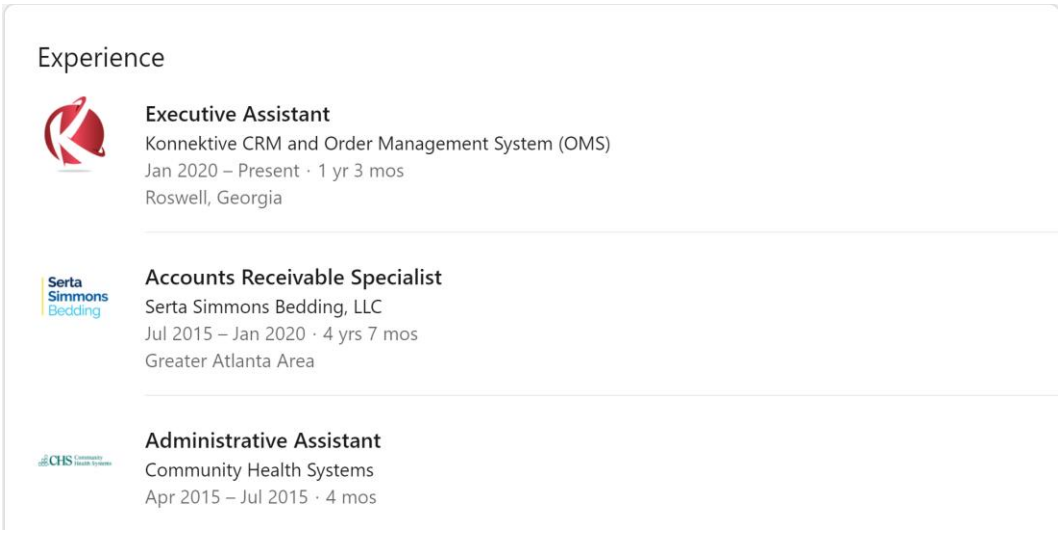
Three of the employees of Konnektive Corporation who also work at Checkout Champ currently claim on their LinkedIn profiles that they first began working for Checkout Champ in January 2020. But these claims are fraudulent, and it appears at least two of them were instructed by Konnektive Corporation and Checkout Champ to publicly lie about their start date in order to make it appear that they had begun working at this clone company before the California lawsuit was filed against Konnektive on June 12, 2020.

For example, Layne Phillips, an Executive Assistant at both Konnektive Corporation and Checkout Champ, currently has the following work history displayed on her LinkedIn profile:[38]

[38] Exhibit X p 1.

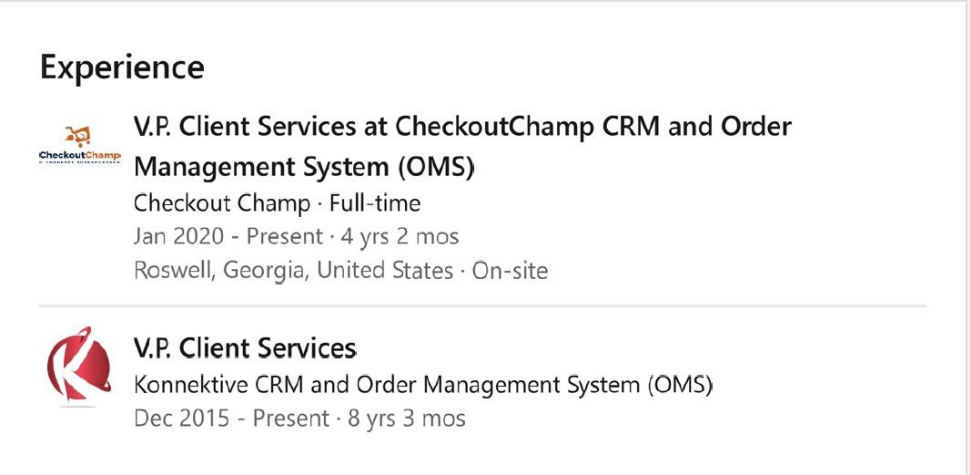


But a copy of her LinkedIn profile saved on March 21, 2021 makes no reference to Checkout Champ at all:[39]

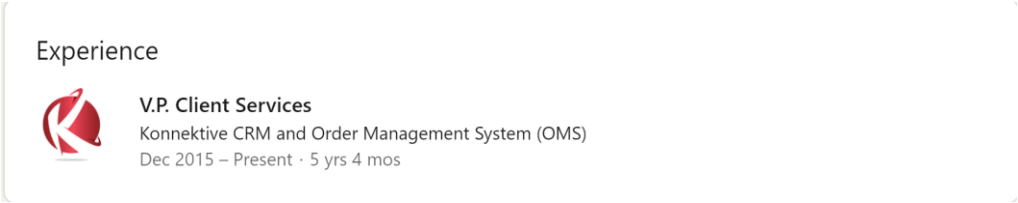


Todd Davis, the Vice President of Client Services, also currently claims that he first began working at Checkout Champ in January 2020:[40]

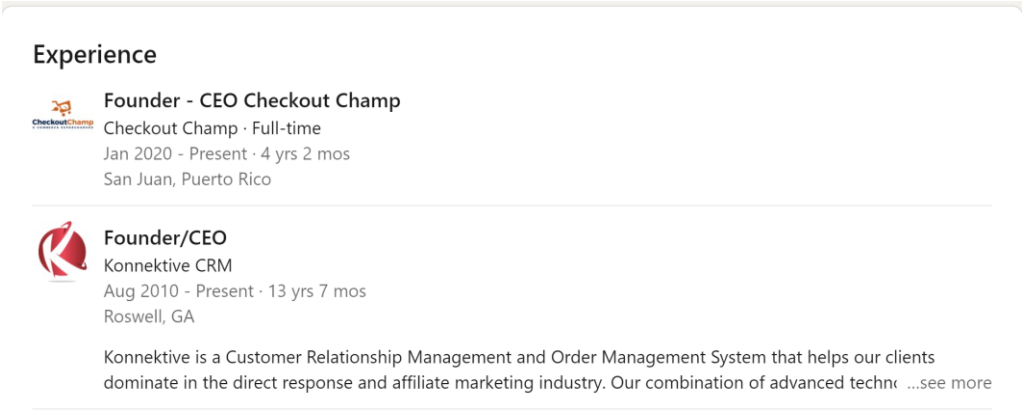
[39] Exhibit X p. 5.
[40] Exhibit Y p. 1.



But again, his LinkedIn profile as saved on March 21, 2021 does not list him as working at the company:[41]

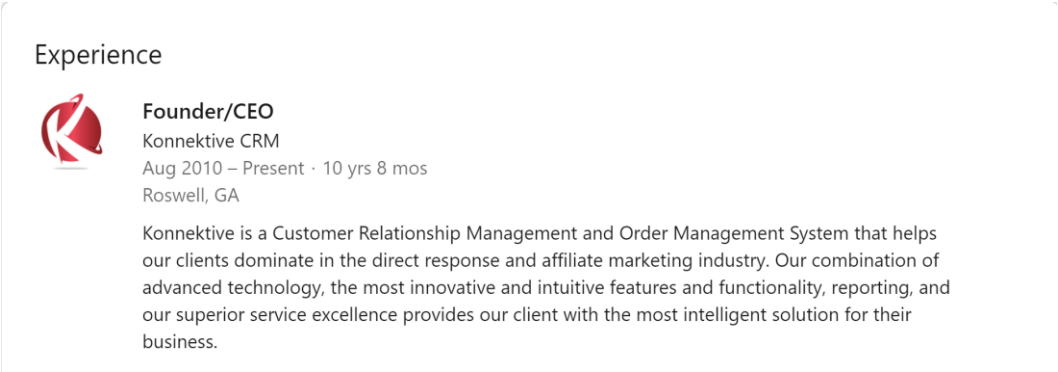


And Defendant Matthew Martorano currently claims on his LinkedIn profile that he has been the CEO at Checkout Champ since January 2020:[42]



[41] Exhibit Y p. 4.
[42] Exhibit Z p. 1.

But again, on March 21, 2021, Mr. Martorano's LinkedIn did not list him working at Checkout Champ at all (despite having supposedly been employed there for more than a year):[43]


Experience

Founder/CEO
Konnektive CRM
Aug 2010 – Present · 10 yrs 8 mos
Roswell, GA

Konnektive is a Customer Relationship Management and Order Management System that helps our clients dominate in the direct response and affiliate marketing industry. Our combination of advanced technology, the most innovative and intuitive features and functionality, reporting, and our superior service excellence provides our client with the most intelligent solution for their business.

These LinkedIn discrepancies exist because Checkout Champ was not a real business in January 2020. Instead, sometime after March 21, 2021, all three of these individuals—Mr. Martorano, his executive assistant, and a Vice President at Converging Resources Corporation—altered their LinkedIn profiles to falsely claim that they had started there on the same date. All of these employees, and potentially more, are currently being used to siphon goodwill and other assets away from the companies which are being sued in California, and into Checkout Champ LLC. These employees are being paid by the defendants to the RICO lawsuit to re-create the business being sued under a different legal entity with no right to their time, labor, knowledge, trade secrets, or customer lists—and the sole purpose of doing so is to cash out with the proceeds of a fraud.

[43] Exhibit Z p. 5.

D. Political Donations to Rudolph Giuliani and Others

Defendant Matthew Martorano has also recently begun making high-dollar political donations. He has donated $100,000 to the legal defense fund of Rudy Giuliani to assist Mr. Giuliani in his defense of a defamation lawsuit in Georgia filed by Fulton County poll workers.[44] Mr. Martorano's donation was so large—almost 13% of the fund—that he received news coverage on CNBC questioning who he was and why he was making this donation.[45] The legal defense fund is designed to help Mr. Giuliani in fighting a Georgia-based defamation lawsuit by Fulton County poll workers he accused of stealing the 2020 election from Donald Trump.

The impetus for this donation makes sense when one considers that VISA has previously issued a warning stating that it will refer anyone found to engage in "load balancing"—the conduct Mr. Martorano is accused of in the RICO class action—to law enforcement authorities.[46] Given the scrutiny brought on by the RICO class action it would certainly not surprise Mr. and Mrs. Martorano if they begin to receive scrutiny from federal investigators. It appears the Martoranos believe that a six-figure donation to Mr. Giuliani may protect them from a federal criminal indictment.

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[44] Exhibit AA.
[45] Exhibit BB (https://www.cnbc.com/2024/01/25/trump-lawyer-rudy-giuliani-raises-less-than-1-million-in-legal-defense-fund.html).
[46] Exhibit A p. 2.

Mr. Giuliani's role in accepting money to lobby his contacts to prevent federal prosecutions is well known in media portrayals. For example, Mr. Giuliani has recently been prominently featured in various television shows and documentaries about his work assisting the Sackler family in avoiding prosecution for their role in the opioid crisis. The series *Dopesick* portrays Mr. Giuliani as being paid to use his connections at the Justice Department to prevent the Sackler family from facing criminal penalties.

In addition to the money given to Mr. Giuliani, in April 2023 Mr. Martorano gave $3,300 to the Donald J. Trump for President 2024 Corporation, $1,700 to the Save America PAC, and $5,000 to the Trump Save America Joint Fundraising Committee.[47]

III. ARGUMENT

A. Georgia Law Protects the Nationwide Class from Defendants' Fraudulent Transfers

i. The Class and Their Representative Have Standing to Bring This Motion

Georgia law does not permit a defendant in an action to make fraudulent transfers simply because they have not been found liable via a final judgment. O.C.G.A. § 18-2-71(4) defines a "Creditor" as "a person who has a claim, regardless of when the person acquired the claim." O.C.G.A. § 18-2-71(3) defines a "claim" as

[47] Exhibit CC.

"a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." These expansive definitions mean that Ms. Tan and the entire class of plaintiffs in the federal RICO action are "Creditors." This is because the class has a claim to "a right to payment" and that right exists "whether or not the right is reduced to judgment … disputed, undisputed, legal, [or] equitable…." And such a law makes sense. If creditors were required to obtain a final judgment in court prior to having rights to void transfers then, as in this case, Defendants would have months or years to transfer all of their assets because they would know they potentially will lose a case long before they are held liable in civil court.

ii. The Defendants' Asset Transfers Were Made to With Intent to Hinder, Delay, and Defraud the Nationwide Class

O.C.G.A. § 18-2-74(a)(1) provides that a transfer by a debtor is voidable as to a creditor if the transfer was made "[w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." O.C.G.A. § 18-2-74(b) provides a nonexclusive list of factors that the Court may consider to determine whether the debtor had "actual intent." A review of these factors makes it abundantly clear that the Defendants are trying to avoid satisfying the future judgment of the Class.

The first factor, "[t]he transfer … was to an insider"[48] strongly weighs in Plaintiff's favor because every transfer at issue in the Complaint and this Motion was made to an insider. All of the real property transfers were made by Mr. Martorano to Echo 51 LLC, which is an LLC Mr. Martorano exclusively controls. All of the goodwill and company asset transfers from both Converging Resources Corporation and Konnektive LLC were made to Checkout Champ LLC, another company Mr. Martorano owns.

The second factor, "[t]he debtor retained possession or control of the property transferred after the transfer"[49] also strongly weighs in Plaintiff's favor because Mr. Mr. and Mrs. Martorano still live in the Alpharetta home transferred to Echo 51 LLC and, by all indications, still enjoy the exclusive right to occupy the Blue Ridge properties. Mr. Martorano still controls all of the property transferred to Checkout Champ as Mr. Martorano is the owner of Checkout Champ and its CEO.

The third factor, "[t]he transfer or obligation was disclosed or concealed"[50] again weighs in Plaintiff's favor. The Defendants transferred millions of dollars in real property to a Delaware corporation that they had recently formed (Echo 51 LLC) that, at the time, was unknown to Plaintiffs' counsel. These transfers occurred in the week before Mrs. Martorano's deposition. And then at her deposition Mrs.

[48] O.C.G.A. § 18-2-74(b)(1).
[49] O.C.G.A. § 18-2-74(b)(2).
[50] O.C.G.A. § 18-2-74(b)(3).

Martorano repeatedly refused to answer proper deposition questions about her ownership of homes in Georgia. Her counsel refused to allow her to answer any questions on that topic even though these questions were posed as part of the California lawsuit. He even attempted to rephrase a question posed by Plaintiff so that she would be able to answer that she did not "own" property in Georgia. Under California law, when a Plaintiff seeks punitive damages, evidence of a defendant's financial condition is a legal precondition to receiving punitive damages, and is thus discoverable. This must include evidence of both assets and liabilities.[51] Questions about Mr. and Mrs. Martorano's assets and liabilities were thus fair game at these depositions. Yet Mrs. Martorano concealed these transactions that had occurred five days prior despite her clear obligation to provide that information when asked about them under oath. Further, in a further attempt to conceal the transfer, the Martoranos attempted to recast RevLytics, which was a pre-existing moribund LLC, as Checkout Champ LLC. He did this to make it appear that Checkout Champ's existence predated the lawsuit. He went further by causing his Konnektive and Converging Resources employees to modify their LinkedIn profiles to make it appear as if these employees had been working at Checkout Champ since 2020 when this was not the case.

[51] *Farmers & Merchs. Tr. Co. v. Vanetik*, 33 Cal. App. 5th 638, 245 Cal. Rptr. 3d 608 (2019).

The fourth factor, "[b]efore the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit"[52] again proves Plaintiff's position. All of the transfers recited above occurred **after** the Plaintiff filed her RICO class action and after it became apparent that the lawsuit would not be summarily dismissed.

The fifth factor, "[t]he transfer was of substantially all the debtor's assets"[53] weighs in Plaintiff's favor. Mr. Martorano transferred all of the goodwill, intellectual property, and employee knowhow from the companies that are defendants in the federal lawsuit to Checkout Champ. And as explained above he effectively stopped marketing his software under the Konnektive brand and even used the Facebook page of Konnektive LLC to tout his new company, Checkout Champ. It also appears that Mr. Martorano transferred all of his real property that he and his wife personally owned to Echo 51 LLC.

The eighth factor, whether "[t]he value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred"[54] is another glaring factor in Plaintiff's favor. Every single transfer was for no consideration. The real property transfer records show the transfers were for $0, and there is no indication that Checkout Champ made any

[52] O.C.G.A. § 18-2-74(b)(4).
[53] O.C.G.A. § 18-2-74(b)(5).
[54] O.C.G.A. § 18-2-74(b)(8).

payments to the other companies for the goodwill, intellectual property, employee knowhow, and other assets that Checkout Champ received.

The tenth factor, "[t]he transfer occurred shortly before or shortly after a substantial debt was incurred"[55] occurred here. As explained above, the Defendants began transferring their company assets to Checkout Champ soon after their motions to dismiss were denied in the California action. And the Martoranos transferred their personal real property to Echo 51 LLC mere days before their depositions were scheduled.

Taken together the Defendants' actions fit the criteria of O.C.G.A. § 18-2-74(b) so perfectly one must wonder whether the Martoranos used that code section as their playbook on how to transfer assets to avoid liability in the California lawsuit. Clearly given how closely the Martoranos' actions track the factors set forth in O.C.G.A. § 18-2-74(b) it is clear that they made significant transfers "[w]ith actual intent to hinder, delay, or defraud" the California class, making these transfers voidable under O.C.G.A. § 18-2-74(a)(1).

In addition to O.C.G.A. § 18-2-74(a)(1), subsection (2) of the same statute provides an independent basis for voiding the Defendants' asset transfers. That subsection provides that a transaction can be voided "if the debtor made the transfer or incurred the obligation … Without receiving a reasonably equivalent value in

[55] O.C.G.A. § 18-2-74(b)(10).

exchange for the transfer or obligation, and the debtor … (B) believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due."[56] This subsection applies because the Martoranos and their companies incurred an obligation when it because clear they would bear responsibility in the federal lawsuit. Their asset transfers were designed to move all significant assets out of the hands of the defendants in the lawsuit to entities that are not part of the suit. As a result of these transfers the judgment debtors would be unable to satisfy an obligation in the tens of millions of dollars, meaning that they "would incur, debts beyond [their] ability to pay as they became due."

B. Appointment of a Receiver and an Injunction Against Further Asset Transfers is Necessary

O.C.G.A. § 18-2-77(a)(3) provides equitable remedies that the Plaintiff may obtain when the defendants have made voidable transfers. The law allows both an injunction against further assets transfers,[57] and "[a]ppointment of a receiver to take charge of the asset transferred or of other property of the transferee."[58] Here both remedies are proper and necessary. As the Georgia Supreme Court has noted in *SRB*

[56] O.C.G.A. § 18-2-74(a)(2).
[57] O.C.G.A. § 18-2-77(a)(3)(A).
[58] O.C.G.A. § 18-2-77(a)(3)(B).

Inv. Servs., LLLP v. Branch Banking & Tr. Co., "[f]raudulent transfer cases are especially amenable to interlocutory injunctive relief."[59]

The *SRB* case clearly outlines why interlocutory relief is necessary in fraudulent transfer cases. In that case, the Court noted that there were at least seven statutory "badges of fraud" under O.C.G.A. § 18-2-74(b) "from which the finder of fact may draw an inference of actual intent to defraud."[60] The parties accused of fraud argued that, although there was significant evidence of fraud because the creditor could simply sue for damages and the status quo did not need a court order for preservation.[61] The Court disagreed noting, "[a]lthough … the power to grant [an interlocutory injunction] must be 'prudently and cautiously exercised,' the trial court is vested with broad discretion in making that decision. We will not reverse the trial court's decision to grant or deny an interlocutory injunction 'unless the trial court made an error of law that contributed to the decision, there was no evidence on an element essential to relief, or the court manifestly abused its discretion.'"[62] The Court went on to explain that "the ultimate availability of a judgment for money damages has never precluded an interlocutory injunction when fraudulent transfers

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[59] *SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 4, 709 S.E.2d 267, 271 (2011).
[60] *Id.*
[61] *Id*. at 5, 709 S.E.2d 267, 271.
[62] *Id.*

are at issue."[63] The Court also noted that when the defendants are engaging in fraud by a series of recent transfers an interlocutory injunction is proper to prevent the defendants from putting assets beyond the Court's reach.[64]

Like the defendants in *SRB*, the Martoranos and their companies have made transfers that carry many of the "badges of fraud" under the law to demonstrate actual intent to defraud. In addition to moving assets to other companies the Martoranos have contributed $100,000 to Rudy Giuliani's legal defense fund and at least $5,000 to the Trump Save America Joint Fundraising Committee last year—transfers that may benefit them through obtaining influence, but are wastage as to the Class as creditors. It is because of the possibility of additional transfers like these that an immediate injunction is proper.

Likewise a receiver should be appointed immediately to take control over the assets. The companies are particularly vulnerable because of the intangible assets owned, including intellectual property, goodwill, and employee knowhow. Goodwill "is a term used to describe the value that inheres in an ongoing business typically as a result of a constant or habitual customer base."[65] Goodwill can be the subject of a fraudulent transfer action if it has value.[66] The goodwill at issue here—trade secrets

[63] *Id*. at 5-6, 709 S.E.2d 267, 272 (2011).
[64] *Id.* at 8, 709 S.E.2d 267, 273 (2011).
[65] *Jones v. Tauber & Balser*, P.C., 503 B.R. 162, 182 (N.D. Ga. 2013).
[66] *Id.*

and other intellectual property, client lists and client accounts, employee time and expertise; advertising opportunities; software; and other intangible which make up a company—has substantial value. The millions of dollars in real estate were purchased using the proceeds of Konnektive LLC and Converging Resources Corporation's business, which is indicative of the value of the goodwill in those companies. Additionally, those two companies employ dozens of employees, many of whom are currently being paid by them to undermine their own interests by supporting another company that offers the same product to the detriment of their actual employer. It is not difficult to see how the Martoranos, who have clearly engaged in fraud, could easily take additional actions within their companies to swiftly eliminate any value that those companies have today, leaving the California class with little recourse.

C. Suggested Receiver - Robbins Alloy Belinfante Littlefield LLC

Robbins Alloy Belinfante Littlefield LLC ("Robbins") is a firm well equipped to act as a receiver in this matter. Mr. Jason Alloy, a Robbins partner, previously served as a receiver for Detroit Memorial Partners, LLC ("DMP") in a Ponzi-scheme related action brought by the U.S. Securities and Exchange Commission in federal court. In DMP, Robbins performed a complete accounting in a short period under Court order, advised and handled complex legal and tax matters, handled proof of claims, and was able to sell DMP's most valuable asset, an illiquid 49% interest in

another company that owned 28 cemeteries in Michigan. The sale of that interest was highly complex because it involved multiple parties and required convincing the majority owner in the company that owned the cemeteries to sell its interest to make the deal work. Mr. Alloy's and the Robbins firm's efforts resulted in the victims of the DMP Ponzi-scheme receiving a return of approximately 70% of their investment in DMP, and the receivership distributed nearly $13,000,000 total to claimants. Mr. Alloy has an extensive accounting background, which includes two accounting degrees, teaching accounting, and passing the CPA exam. This experience would prove invaluable in this case. In addition to Mr. Alloy, Joshua Mayes at the Robbins firm has substantial receivership experience.[67] Mr. Mayes was previously trial counsel for the SEC.

D. Circumstances Justify Filing This Motion as an Emergency Motion

Uniform Superior Court Rule 6.7 permits the Court setting an expedited procedure for "good cause shown." Good cause exists here. The Defendants have shown they are willing to take any action that will benefit themselves at the expense of the California class. If the Defendants are permitted the normal 30 days allotted

[67] *Kiser v. Dentcorp*, 2021CV355806 (Fulton Superior) (obtained and managed receiver over multi-office dental practice in a civil fraud action); *Medical Collection Systems, Inc. v. Burn and Reconstructive Centers of America*, 2022RCCV00263 (Richmond Superior – Augusta, GA) (obtained and managed receiver over largest burn care practice in the country following the death of its founder); *SEC v. Alleca*, 1:12-cv-3261 (N.D. Ga.); *SEC v. Torchia*, 1:15-cv-3904 (N.D. Ga.); *SEC v. Meyer*, 1:18-cv-5868 (N.D. Ga.); *SEC v. Woods*, 1:21-cv-3413 (N.D. Ga.).

under the rules they are very likely to attempt further transactions that may be more difficult to discover and unwind. For example, additional sizable political donations would be difficult to claw back. Similarly transferring assets into items such as Bitcoin or other cryptocurrencies can be done quickly, and those transactions are very difficult to track and recover. The Court must therefore act on this motion as soon as possible before the Defendants hatch additional schemes to hide their assets.

IV. CONCLUSION

Ms. Tan requests that the Court find that this motion should be heard on an expedited basis and order a hearing on whether it should issue an interlocutory injunction under O.C.G.A. 9-11-65 and appoint a receiver to hold and control the assets of Matthew Martorano, Kathryn Martorano, Konnektive LLC, and Converging Resources Corporation, and to identify and reverse the fraudulent transfers they have made. The undersigned respectfully requests that the Court refrain from scheduling a hearing on April 29th or April 30th as he will be in San Diego those days for the underlying California matter related to this action.

This 12th day of April 2024.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I certify that on this day I served on Defendants' counsel the foregoing EMERGENCY MOTION TO APPOINT RECEIVER AND FOR INJUNCTION AGAINST FUTHER ASSET TRANSFERS via STATUTORY ELECTONIC SERVICE by utilizing the Court's e-file system and via email to Defendants' counsel as follows:

C. Celeste Creswell
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Holly A. Pierson
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This 12th day of April, 2024