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September 8, 2023

**MEMO ENDORSED****VIA ECF AND ELECTRONIC MAIL**

The Honorable Katherine Polk Failla  
United States District Court for the Southern District of New York  
40 Foley Square  
New York, New York 10007

**Re: *In re Tether and Bitfinex Crypto Asset Litigation*, 19-CV-09236 (KPF)**

Dear Judge Failla,

Plaintiffs respond to B/T Defendants motion to postpone the Rule 30(b)(6) and individual depositions of Paolo Ardoio. Dkt. 440. The parties have met and conferred and remain at impasse. Plaintiffs proposed proceeding with Ardoio's individual deposition on the previously-agreed date of September 13, 2023 and taking his Rule 30(b)(6) deposition on previously-agreed topics on September 14 or 15, 2023. B/T Defendants refused, asserting that Ardoio is now available only on October 10 and 11, 2023.

*First*, Plaintiffs oppose B/T Defendants' motion to postpone Ardoio's individual deposition, currently scheduled for September 13, 2023. Plaintiffs noticed this deposition on May 19, 2023 (Dkt. 434-2); on August 15, 2023, B/T Defendants agreed to produce him on that date. Dkt. 434-1. They give no reason why he could not testify on that date. He is indisputably available. He does not need to be prepared to testify outside of his personal knowledge, unlike for a Rule 30(b)(6) deposition.

*Second*, Plaintiffs oppose B/T Defendants' motion to postpone Ardoio's Rule 30(b)(6) deposition on the previously-agreed Topics 5-8, 10-14, 19-20, and 24 by more than a few days. B/T Defendants received Plaintiffs' revised Notice on July 18, 2023. Dkt. 434-4. B/T Defendants agreed on August 15, 2023 to produce Ardoio for corporate testimony on September 12, 2023, and agreed on August 30, 2023 on the topics that he would cover. Dkts. 434-1, 434-7. B/T Defendants should have begun preparing Ardoio for his corporate testimony long ago; their suggestion that they could not start preparing him on any topic until all topics had been resolved is meritless. Contrary to their assertions, beginning to prepare Rule 30(b)(6) witnesses (and individual witnesses) well in advance of their scheduled depositions is not only common, it is a best practice.

B/T Defendants should begin preparing Ardoio immediately. Scheduling Ardoio's Rule 30(b)(6) testimony on the previously-agreed topics on September 14 or 15 would give them a week to do the work that they should have started long ago. B/T Defendants assert that he is now not available on any days until mid-October, but the Court should not allow them to bootstrap their own inexcusable delays in preparing Ardoio and his own purported schedule into a month-long delay in his testimony. B/T Defendants also assert that Ardoio might later provide corporate testimony for Tether and that the parties might need to negotiate the scope of that testimony, but that would not prevent him from testifying on behalf of Bitfinex now.



*Third*, contrary to B/T Defendants' assertions, delaying Ardoino's depositions until October 10 and 11, 2023 would prejudice Plaintiffs. Discovery is scheduled to end on October 23, 2023, Dkt. 387, the Court has said that it does not intend to further extend the schedule, and B/T Defendants have said that they will oppose any further extension. Should issues arise at Ardoino's depositions—if he should refuse to answer questions, should he not be prepared to answer questions in his corporate capacity, should B/T Defendants produce new documents—Plaintiffs will need time to resolve those issues before the end of the discovery period. These risks are real: Just last night, B/T Defendants produced more transaction records responsive to Revised RFP Nos. 23-25, which the Court had ordered produced no later than May 22, 2023. Dkt. 347. B/T Defendants should not be allowed to use their own discovery delays to squeeze Plaintiffs, delaying depositions with limited time to address such issues.

*Finally*, B/T Defendants' attempt to blame this situation on Plaintiffs is baseless. They received Plaintiffs' revised notice on July 18, 2023, Dkt. 434-4, but did not meet and confer with Plaintiffs about the disputed topics for nearly a month—until August 11, 2023—despite multiple requests from Plaintiffs to speak earlier—Ex. 1, and did not provide a proposal for revising the noticed topics until August 18, 2023. (While B/T Defendants note that they will finish deposing Plaintiffs in the next few weeks, that is because Plaintiffs counsel are producing their clients in a timely way—in stark contrast to B/T Defendants.)

Plaintiffs request that B/T Defendants be denied, that they be compelled to produce Ardoino for his individual deposition on September 13, 2023, and that they be compelled to produce him for his Rule 30(b)(6) testimony on Topics 5-8, 10-14, 19-20, and 24 on September 14 or 15, 2023.

Respectfully submitted,

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*Interim Lead Counsel and Attorneys for Plaintiffs and the Proposed Class*

The Court is in receipt of Plaintiffs' above submission, which is to be shortly docketed, as well as B/T Defendants' submission of earlier today (Dkt. #440). The Court has reviewed both submissions, and construes B/T Defendants' to be a request for reconsideration of the Court's September 7, 2023 Order directing the parties to "presume that Ardoino's Rule 30(b)(6) deposition and individual deposition shall proceed as originally scheduled, as to the topics already agreed upon by the parties." (Dkt. #436). Having considered the parties' submissions, B/T Defendants' application is DENIED.

The Court reminds the parties of its concerns regarding the timelines within which discovery disputes have been handled by the parties. These concerns have already been expressed by the Court during the hearings on February 8, 2022 (Dkt. #295), and on June 6, 2023 (Dkt. #384). Moreover, the parties have been on notice that applications to resolve discovery disputes that have been simmering amongst the parties for extended periods of time are ill-received by this Court. The Court's review of the materials submitted by the parties regarding the scheduling of the Ardoino depositions and the topics to be covered in the Ardoino Rule 30(b)(6) deposition suggests that both parties share fault in this situation. While Plaintiffs' delay in responding to B/T Defendants' correspondence regarding the Rule 30(b)(6) topics does not go unnoticed by the Court, it is B/T Defendants' approach to preparation for the upcoming depositions that is of more immediate concern.

On an expedited basis, the Court advised the parties that preparation for the Ardoino depositions should proceed as scheduled for the *undisputed* topics. (Dkt. #436). This Order did nothing but maintain the *status quo* as to the undisputed topics, for which topics the Court presumed that B/T Defendants would have begun preparation sufficiently in advance of the deposition. Any burden on B/T Defendants brought by electing to wait to until the week prior to the deposition to prepare the deponent on topics that were not in dispute is largely of their own doing. The same is true for Ardoino's individual deposition, the topics for which were also not in dispute.

As to the *disputed* topics, the Court found largely in favor of B/T Defendants, adding only one topic to the otherwise undisputed list of topics for the deposition. The Court is skeptical that preparation for this one additional topic materially increases the burden on B/T Defendants in preparing for this deposition.

Accordingly, the Court will not depart from its September 7, 2023 Order, and the parties shall continue as scheduled with Ardoino's individual and Rule 30(b)(6) depositions.

The Clerk of Court is directed to terminate the pending motion at docket number 433.

SO ORDERED.

Dated: September 8, 2023  
New York, New York



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE