UNITED STATES DISTRICT COURT IN AND FOR
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION

UNITED STATES OF AMERICA *Plaintiff*	)	
	)	Case No. 19-cv-00377
	)	Hon. William F. Kuntz
vs.	)	
DELTORA ENTERPRISES GROUP CO. LTD, GONZALO EDUARDO MONTEVERDE BUSSALLEU MARIA ISABEL CARMONA BERNASCONI *Claimants*	)	
All Assets Held in the Raymond James & Associates account number 29394539 in the name of beneficial account holder Deltora Enterprises Group Co. Ltd. Defendant *in rem*	)	

CLAIMANTS' REPLY IN RESPONSE TO GOVERNMENT OPPOSITION TO CLAIMANTS' MOTION TO LIFT THE STAY

CLAIMANTS, through undersigned counsel, file this Reply.

INTRODUCTION

A lifting of the stay or a partial lifting of the stay to engage in pre-trial motion litigation is wholly appropriate.

In its Response, the Government has failed to articulate, with any degree of specificity, the reasons why the stay should not be lifted after a year-long delay and 34 months after the initial seizure. Instead the Government believes that trampling on Claimants' due process rights for almost 3 years is permissible without providing any details, other than broad conclusions riddled with ambiguities, about the status of their supposedly related criminal investigation. What the government is doing in this case is categorically wrong. The government should not be permitted to use a supposedly related criminal investigation (which now appears to relate to persons other than Claimants as the "targets") as a justification for indefinitely staying a proceeding that the government is and never was ready to prosecute. As detailed in the Declaration, Dkt. 30 (filed *ex parte*),[1] the government lacks evidence to establish that Claimants are "targets." This is the critical phase of this case where the Government should move forward with the complaint they filed or voluntarily dismiss this action and release Claimants' funds immediately.

[1] Footnote 2 on page 7 of the Government's Opposition, Dkt. 32 at 7, n.2, incorrectly speculates about Claimants filing and your Honor's Individual Rules. Claimants moved for leave to file an *ex parte* Declaration. Dkt. 30 (*ex parte*). Your Honor's Individual Rules (II G) apply on to *sealed* filings.

A. The Motion to Lift the Stay is Not a Motion for Reconsideration

Claimants' Motion is not a motion to reconsider the stay order, nonetheless, any motion to lift a stay, in one way or another, is a request to reconsider the stay and calls for a re-evaluation of the need for a stay. At this stage in the proceeding, 15 months after the filing of the complaint, and a year after the stay order such a motion is warranted. As set forth in the Declaration, there are new facts and changed circumstances which weigh in favor of lifting the stay. Dkt. 30.

B. The Government Admits that Claimants are Not Targets of the Supposed *Related* Criminal Investigation Which Supports Lifting the Stay

The government has repeatedly represented that Claimants are not targets of the related criminal investigation and has now conceded this point in their Opposition. Despite this, now, the Government urges the court to find that the investigation can still be a "related" investigation deserving the broad protection of the current stay even if Claimants are not the targets because there are similar parties, witnesses, facts, and circumstances involved in the two proceedings. [2]

[2] In urging the continuation of the stay, the Government and its experienced forfeiture prosecutors, also misleadingly misquote the standard for granting a stay:

> of the stay. Section 981(g)(1) applies whenever proceeding with a civil forfeiture action would adversely affect a "related criminal investigation or the prosecution of a related criminal case." 18 U.S.C. § 981(g)(1). As set forth in Section 981(g)(4), for purposes of Section 981(g)(1):

See Dkt. 32 at 18.

In support of this premise, the Government provides absolutely no details of how the investigation could possibly be related to this action and ***not*** include Claimants as targets. In addition, the Government also cites several cases in which family members were targets and which are distinguishable and do not support continuation of the stay. *See* Dkt. 32 at 14-15. None of these cases compel the conclusion that the stay in this case can be proper if Claimants are not targets of the criminal investigation and each case depends on their specific facts as set forth below.

In *Cadillac Deville,* assets of a drug conspiracy were found in the claimants' home in relation to a drug conspiracy involving their two children. The court denied the motion to lift the stay and further reasoned that "until the criminal action against the [drug conspirators] is completed, civil discovery in this action would adversely affect the prosecution of this criminal action." Nothing even remotely like this is at issue in this case. There is no pending criminal action against any person and this is not a drug conspiracy involving the children of Claimants.

It is inexplicable how the Government could argue that this is the applicable standard given the breadth of its experience in these matters and given that, by its terms., Section 981(g)(1) is directly connected to how civil discovery might adversely affect a related criminal investigation or prosecution. *See* Section 981(g)(1) ("Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.").

In *Funds Seized from Suntrust*, the court considered Claimants motion to dismiss at the same time as it considered the Claimants motion to lift the stay, and therefore, this case supports a partial lifting of the stay. There, the claimant's state case was dropped, but a federal investigation was percolating against him of which he was a target. Again, this case is distinguishable because *movant was a target* of a criminal investigation.

In $*129,852 in U.S. Currency*, although a DEA agent affirmed that the claimant was not a target of a criminal investigation, the court found that the civil forfeiture proceeding was "clearly related to the pending criminal proceeding set for trial" before another judge and that the prospect of allowing civil discovery could compromise the active criminal investigation. $*129, 852 in U.S. Currency*, at *2-3.

$69,577 in U.S. Currency is wholly distinguishable too. Much like *Cadillac Deville,* the claimants were the parents of the targets of a criminal investigation involving drug trafficking (methamphetamine). Rolexes and cash were found at the home of claimants which was then subject to the civil forfeiture action. The claimants also indicated that they wanted "to proceed with some discovery in the case; specifically, interrogatories and requests for production that will request evidence and information linking the seized funds to the criminal conspiracy." Again, this case is distinct from the instant case as there was an ongoing prosecution

involving the claimants' children for drug trafficking and claimants unequivocally indicated they were seeking civil discovery.

Accordingly, the relatedness of the proceedings in the above cases is distinguishable from the instant case. Moreover, a common theme throughout each of these cases was that *civil discovery* would compromise an actual criminal proceeding or an active criminal investigation. Lastly, even though claimants were not the direct targets (except in *Funds Seized from Suntrust*, where claimant was a target), they were family members (parents of the target) and engaging in civil discovery would enable them to compromise a proceeding or active investigation. No such facts exist here and thus the stay should be lifted.

C. The other persons referenced in the complaint are already subject to or targets of ongoing prosecutions in foreign countries and/or are publicly cooperating and therefore Claimants' status as non-targets casts serious doubt on the need for more time to conduct an ongoing criminal investigation into persons other than Claimants

In the Stay Motion, the Government represented:

> The conduct alleged in the Civil Action stems from substantially the same conduct which forms the bases for a pending, related criminal investigation (the "Investigation").
>
> Here, the Investigation focuses on all of the events described in the Verified Complaint (the "Complaint"), including the alleged bribery and money laundering transactions to which the Defendant Account is alleged to be involved in and/or traceable to. Several of the same individuals and entities referenced in the Complaint are also subjects of the Investigation. Accordingly, the Civil Action and the Investigation are "related" within the meaning of § 981(g).

Dkt. 18 at 2.

Yet, the persons, other than Claimants, who participated in any aspect of "the events described in the Verified Complaint (the "Complaint"), including the alleged bribery and money laundering transactions to which the Defendant Account is alleged to be involved in and/or traceable to" (Dkt. 18 at 2) *are already subject to prosecutions or investigations in foreign countries and/or are cooperating in foreign countries.* In fact, there is no "egregious speculation"[3] about the identities of these persons or the Government's witnesses. The indisputable facts are[4]:

- **Monica Moura** is "***foreign publicist 1***" from Brazil referenced in the Complaint. Dkt. 1 at ¶18k; Dkt 1.at ¶¶31, 32, and 35. Dkt. 20-2; Dkt 20-1; Dkt. 30.[5]

- Moura's husband, **Joao Santana**, is "***foreign publicist 2***." Dkt. 1 at ¶18l; Dkt 1.at ¶¶31, 32, and 35; Dkt. 20-2; Dkt 20-1; Dkt. 30.

- **Ricardo Martinelli** is "***foreign official 1"*** and the former president of Panama. Dkt. 1 at ¶18i; Dkt. 20-2; Dkt. 1 at ¶30-35; Ex A.

[3] *See* Dkt. 32 at 15, n.9 (claiming that "in the March 2020 Motion, Claimants attempted to undermine the need to protect the Investigation by *gratuitously speculating as to the identity of witnesses,* as they did in their prior proposed motions and challenges to the Stay Order.").

[4] This is also publicly available information. Attached as **Exhibit A is** a news article from www.panamanewsroom.com which perfectly spells out the nature of the allegations in this complaint and the cast of characters. Moura has also testified pursuant to a Petition submitted to the Odebrecht Anti-Corruption team (Dkt 20-2) and, as underscored before, it is indisputable that the Government's Complaint, Dkt 1 at ¶35, is essentially a cut and paste of Moura's statement.

[5] *See also* https://www.bnamericas.com/en/news/brazils-odebrecht-probe-reveals-illegal-campaign-financing-in-panama

- **Jose Domingo Arias** is the presidential candidate associated with the 2014 Panamanian presidential election. Dkt. 1 at ¶30-35; Dkt. 20-2; Ex. A. Arias' running mate was former president Martinelli's wife.

- **Andre Campos Rabello** is the "***country manager 1"*** and was the former key executive for Odebrecht in Panama. Dkt. 1 at ¶18j; Dkt. 20-2; Ex. A.

- An Odebrecht executive, ***Luiz Antonio Mameri***, is referenced as a person that purportedly did not sign the Pozo Santo contract with Claimants. Dkt. 1 at ¶44.[6]

- **Kleinfeld** is **"*offshore entity 1*"** which transferred money to the St Georges Cayman Island Deltora account. Dkt. 1 at ¶18b; Dkt. 1 at ¶¶ 26c and 32.

Other facts include:

- Arias has an order against him forbidding him from leaving Panama and has publicly denied receiving any funds from Odebrecht.[7]

- Rabello's accounts were frozen by a judge in Panama and he has been cooperating with Brazillian and Panamanian prosecutors for several years.[8]

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[6] Mr Mameri is a cooperator and has already testified in at least one trial in Colombia in the prosecution of Jose Elias Melo, the former president of CorfiColombiana. *See* https://thebogotapost.com/corruption-prosecution-jose-elias-melo-sentenced-to-nearly-12-years/37490/.

As part of this deal, Colombia agreed to drop charges against him and against Luis Da Rocha Soares discussed herein. *See* https://colombiareports.com/brazilian-odebrecht-executives-turn-government-witnesses-in-colombia/ ("The Prosecutor General's Office announced Friday that three former executives, Luiz Bueno, Luiz Mameri and Luiz Eduardo Da Rocha, will not be subject to criminal investigations in exchange for their cooperation with justice. ")

[7] https://www.panamatoday.com/panama/mimito-arias-we-did-not-received-odebrechts-funds-4486

[8] https://www.telemetro.com/nacionales/2018/10/12/tribunal-panama-confiscar-exrepresentante-odebrecht/1100136.html

- Moura and Santana are on house arrest and have been actively cooperating with Brazilian and Peruvian prosecutors.[9] Moura can be seen on You Tube discussing her involvement.

- Martinelli is imprisoned in Panama after his extradition from the United States. [10]

- Mameri is cooperating with foreign governments in Brazil and Colombia and has testified in at least 1 trial.[11]

Why the Government continues to try to hide these facts or pretend that these persons' identities should be anonymized (especially Odebrecht) when they are publicly cooperating with foreign governments is a mystery that only the Government can solve

Similarly, given these facts, there are several questions that the Government's position regarding the stay leaves unanswered: How would lifting the current stay compromise the investigation of these persons? To where are any of these persons fleeing? How would lifting the stay entirely or partially, to engage in pre-trial

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In fact, Rabello has a cooperation agreement immunizing him from any prosecution and he appeared for a hearing in November of 2017 as part of his cooperation to provide details about his own criminal conduct as part of his role in Odebtecht's Panama operations.

https://www.prensa.com/judiciales/Rabello-indebidos-Ricardo-Martinelli-exministros_0_4891010868.html

[9] https://dominicantoday.com/dr/local/2017/06/26/medinas-ex-chief-campaign-strategist-gets-4-years-in-prison/

[10] https://www.bbc.com/news/world-latin-america-44446238

[11] *See* note 6 at *supra.*

litigation, cause "current and future subjects who are not yet indicted or arrested to avoid prosecution and/or dissipate evidence" when almost all of the persons involved in the supposed conduct named above were indicted, arrested, imprisoned, or are publicly known to be cooperating subject to immunity agreements in foreign countries? How are persons that are either incarcerated or under house arrest capable of tampering with evidence?

D. This Case is Straightforward and the Government is Stalling

In addition, despite the gratuitous charts in the complaint, this case is also straightforward. The facts alleged in the complaint relate to assets in a single brokerage account, the Deltora Raymond James Account (RJA). There were two large wire transfers into the Deltora RJA from Inversiones El Santuario (a Peruvian company controlled by Claimants)[12] and Deltora's Cayman Islands account at St. Georges (a bank account controlled by Deltora) in January and June of 2016 respectively.

The Government claims this money (or at least a portion of this money) that was transferred to RJA is dirty money derived from bribes from Odebrecht that were

[12] Notably there is not a single allegation in the Complaint that the monies transferred from Inversiones El Santuario to RJA were derived from an illegal source or specified unlawful activity.

intended for, but were never transferred, to Moura and Santana for working on Jose Domingo Arias' campaign to run for president of Panama in 2014. [13]

That is the basis for the seizure and the basis for the *in rem* warrant. Now, the Government must prove that there was a predicate crime, that the Deltora RJA funds originated from a predicate crime, and that the Claimants knew about the predicate crime or were not innocent owners of the Deltora RJA funds assuming there was a predicate crime.

To prove this up, the Government needs witnesses from Odebrecht,[14] like Mr. Mameri whom they allegedly already interviewed and whom they reference in the Complaint and whom presumably is cooperating with U.S. law enforcement, Dkt. 1 at ¶44:

[13] There is no allegation in the Complaint that any foreign official received any money or anything of value directly or indirectly from Claimants.

[14] Other Odebrecht informants include **Luis Eduardo Da Rocha Soares,** the former treasurer for the Structured Operations Department. Mr. Soares also testified in the prosecution of Jose Elias Melo, the former president of CorfiColombiana. *See* https://thebogotapost.com/corruption-prosecution-jose-elias-melo-sentenced-to-nearly-12-years/37490/

Mr. Soares also provided testimony in Brazil in February of last year days implicating Claimants days before a Peruvian court issued a preventative detention order against Claimants which remains pending on appeal. Soares' testimony was riddled with confusing inconsistencies and lies.

> 44. The Pozo Santo Contract is purportedly signed by Monteverde as the owner of both Deltora and Inversiones Pozo Santo, S.A., and by a Company 1 executive on behalf of Company 1. However, when interviewed by U.S. law enforcement, the Company 1 executive denied ever having signed this contract, and also stated that he had not authorized anyone to sign on his behalf.

The Government also needs Monica Moura or her husband, Joao Santana, to come forward and explain what happened since the Government has highlighted their statements as a dominant feature of the complaint. Dkt. 1, at ¶35. They also need the bank statements (which they have). They may also need additional Odebrecht witnesses, Martinelli, Rabello, or Arias. They also need a witness from Raymond James to authenticate bank records and to confirm certain deposits and wire transfers.

Given the multiple prosecutors' offices and the incredible resources of the federal government, this should not have taken 3 years. Nor are any of these supposed witnesses at risk of tampering with or destroying evidence. Nor are any of these witnesses at risk of fleeing from their respective countries. Accordingly, it appears that the Government simply cannot secure these witnesses. How long should the Claimants have to wait to see if the Government can secure these witnesses or their cooperation before the stay may be lifted? Another year? 6 months? Until the statute of limitations for all criminal offenses expires in or around June of 2022?

E. The Government Vastly Understates the Significance of *Hoskins* and how it Applies in this Action and any Supposed Related Criminal Case Involving the FCPA

In its Opposition, the Government claims there are other charges, beyond the FCPA, that they might consider filing against Claimants such as money laundering and that the FCPA is not the only charge under consideration. Despite this, the Complaint *alleges* a violation of the FCPA as a predicate act (See Claim One and Dkt. 1 at ¶60.)

For the reasons set forth in our Motion, an FCPA prosecution is not viable under *Hoskins* and is barred by the applicable statute of limitations. *United States v. Hoskins*, 902 F. 3d 59, 80, 83-84, 95-98 (2d. Cir. 2018).

The Government misunderstands the holding in *Hoskins* as follows: "The Investigation may encompass broader conduct, including money laundering allegations that do not require proof that Claimants themselves are liable for any of the underlying specified unlawful activities, as well as the investigation of the conduct of others which would be negatively impacted if the stay were lifted." *See* Dkt. 32 at 20.

Hoskins holds that only certain categories of persons could be prosecuted for violations of the FCPA and that, unless you fall into one of those discrete categories, you cannot be prosecuted for conspiracy to violate the FCPA. *Hoskins*, 902 F. 3d 59, 80, 83-84, 95-98. So, if there is no predicate FCPA crime under *Hoskins*, there can

be no money laundering based on a violation of the FCPA. *Id*. Accordingly, *Hoskins'* holding is equally applicable to the civil forfeiture context and to Count 1 of the Forfeiture action since the predicate crime is a violation of the FCPA in violation of 15 U.S.C. 78dd-3. Dkt. 1 at ¶60.

Footnote 10 of the Opposition further reveals the Government's misunderstanding of the decision in *Hoskins*. *See* Dkt. 32 at 16, n.10. There, Government claims that the presumption against extraterritoriality would not apply simply because "the Defendant Assets were deposited into, and invested through, a U.S. financial institution." *Id.* at 16, n.10. This is incorrect. The doctrine bars an FCPA prosecution against Claimants because "the FCPA does not impose liability on a foreign national who is not an agent, employee, officer, director, or shareholder of an American issuer or domestic concern—unless that person commits a crime within the territory of the United States. "*Hoskins*, at 96. (emphasis ours). In fact, there is not a single district court decision that the undersigned has unearthed which would trigger application of 15 U.S.C. Section 78dd-3 territory requirement based on the Government's assertion regarding the opening of a U.S. brokerage account.

Contrary to the Government's assertion, a money laundering prosecution where the FCPA operates as the specified unlawful activity is also not a viable charge under *Hoskins* because, in that scenario, there is no money laundering without a predicate FCPA violation. *Hoskins*, 902 F. 3d at 80, 83-84, 95-98. In addition, the

Government has not provided any reliable legal basis for the Panamanian money laundering theory which deserves no preferential treatment and should be the subject of a motion to dismiss to which the government should be required to respond like every other plaintiff, including the SEC, *see* Dkt. 28 at 17-19, filing a complaint in federal court. Again, these are serious concerns and militate against any further delay in this case and a lifting of the stay.

F. Special Interrogatories are not a Basis for Delaying Resolution of Pre-Trial Motions If Your Honor were to Lift the Stay or Impose a Partial Lift of the Stay

The Government claims that deciding the pre-trial motions or scheduling a pre-motion conference would be premature because there are pending special interrogatories. As the Government and its experienced forfeiture prosecutors are aware, special interrogatories are reserved for a very *limited purpose* which is to ferret out false claims of ownership. It is indisputable at this juncture that the Government has conceded, in its complaint, that Claimants own the Deltora assets.

Paragraphs 18(f)-(h) more than amply demonstrate how the Government admitted standing in the Complaint:

> Deltora, the holder of the RJA Account in which the Defendant Assets are currently restrained, is a British Virgin Islands-registered shell company incorporated and beneficially owned by Peruvian nationals Gonzalo Eduardo Monteverde Bussalleu ("Monteverde") and Maria Isabel Carmona Bernasconi ("Carmona"). Monteverde and Carmona maintained accounts, including the RJA Account, in the name Deltora at several banks.

> As set forth herein, Monteverde and Carmona used these accounts to launder the funds described in the Complaint.
>
> Gonzalo Eduardo Monteverde Bussalleu. Monteverde is a Peruvian citizen who worked as a financial operator for Company 1 by receiving and distributing illicit funds through accounts held in the names of offshore companies under his and Carmona's control, including Deltora, Isagon SAC ("Isagon"), Constructora Area SAC ("Constructora Area"), Construmaq SAC ("Construmaq"), and Inversiones El Santuario SAC ("Inversiones El Santuario").
>
> Maria Isabel Carmona Bernasconi. Carmona is a Peruvian citizen who worked as a financial operator for Company 1 by receiving and distributing illicit funds through accounts held in the names of offshore companies under her and Monteverde' s control, including Deltora, Isagon, Constructora Area, Construmaq, and Inversiones El Santuario.

See Dkt 1. at ¶18(f)-(h) (emphasis ours).

There are other telling admissions throughout the Complaint. *See* Dkt. 1 at ¶25 (Monteverde and Carmona directed others to make transfers from accounts controlled by Company 1 through accounts held in the names of specific entities under their control, including …..Deltora "); ¶49 (Monteverde and Carmona opened the RJA Account on May 1, 2014); ¶51 (Beginning in August of 2015, Monteverde and Carmona made five additional transfers to the RJA account totaling more than $4 Million); ¶51 ("As set forth in paragraphs 52 through 57 below, each of the

transfers listed in Table 5[15] was made from a Monteverde/Carmona Entity that was involved in the scheme to launder Company 1 funds, including those funds described in paragraphs 28 through 48 above").

United States v. All Funds of Perusa, Inc., 935 F. Supp. 208, 212 (E.D.N.Y. 1996) (denying government's motion to strike claim and emphasizing that "[o]wnership can be evidenced in a variety of ways including by the government's assertion in its complaint that the claimant exercised some form of dominion over the currency."); *see also United States v. $38,750 in U.S. Currency*, 950 F.2d 1108, 1113 (5th Cir. 1992) ("[claimant] need not have supplemented his claim with additional evidence, because the government had admitted [claimants'] relationship to the currency in its complaint."). There are no other possible owners. No other person has claimed ownership. No other person has been served with the complaint in this case or the seizure warrant in June of 2017 in the Middle District of Florida, or the arrest *in rem* warrant. Moreover, the doctrine of judicial estoppel prevents the Government from claiming that anyone else owns the assets when the Government has alleged that Deltora owns the assets in its Complaint and when the Government has entered into an agreement executed by the Claimants which your Honor endorsed which concedes that Deltora owns the assets. *See New Hampshire v.*

[15] Table 5 in the Complaint lists all the transfers into the subject Deltora RJA account. Dkt. 1 at 19.

Maine, 532 U.S. 742, 750 (2001) (under this doctrine, a party is precluded from "asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding. Judicial estoppel is an equitable concept intended to prevent the perversion of the judicial process.")

Beyond this, other facts – outside the Complaint --- that the Government is aware of easily establish Claimants' possession, ownership, and dominion or control over the Deltora account assets:

- Claimants were the only persons on the earth that the Government served with notice after they seized the Deltora account in June of 2017.
- Claimants have filed declarations under oath attesting to their ownership of the Deltora account and the account assets. *See* Dkt. 7, 8, and 9.
- The Government has received subpoena responses from Raymond James demonstrating that Claimants are the account owners and control the account funds and have directed their broker to execute trades in the account since its opening in 2014.
- The Government has questioned the former broker at Raymond James, L.C., and elicited statements from him regarding the Deltora account and Claimants.
- Claimants' prior representative, a Peruvian attorney, produced documents to the Government related to the Deltora account and the history of Claimants investments into that account.
- The Government possesses documents (which are referenced in the Complaint) showing the opening of the RJA Deltora account and Claimants possession and control over the funds in that account.

- Over a year ago, an attorney for Raymond James, confirmed that the RJA brokerage account is a "brokerage account, not an advisory account" which means that its owners, Claimants, control the investments in the account, not the broker. *See* Email from RJA attorney, Re: RJA Deltora Account-3.25.19, March 27, 2019.

Therefore, the special interrogatories are a device designed to delay the resolution of any dispositive motions or any forward progress in this case, should have no impact on the court's decision to grant a partial lifting of the stay, and should be withdrawn immediately.

G. At a Minimum a Partial Stay is Warranted Because There is no Carve Out Exception for the Federal Government Which Exempts Them from Pre-Trial Legal Challenges to Defective Complaints

The Government has never articulated the reasons why it is at all permissible to extend preferential treatment to the Government and essentially immunize their Complaint from any motions to dismiss or any legal challenges whatsoever.

The numerous SEC cases which involve parallel criminal and civil cases more than amply demonstrate that a partial stay is appropriate to address, at a minimum, pre-trial challenges to the adequacy of civil complaints. *See* Dkt. 28 at 17-19 (citing cases lifting or denying stays in parallel civil criminal scenarios). There is no special carve out or Government that should or would insulate the Government's allegations from legal challenges.

The Government responds, at it first did in its Motion for a Stay, Dkt. 18, and its letter Response to our request for a pre-motion conference, Dkt. 12, that the Government would be required to divulge the identities of its informants and to lay out the factual framework of the Complaint. But that is what a complainant must do. A plaintiff must allege facts, especially in the civil forfeiture context, that plead fraud or criminal offenses with particularity. *United States v. Daccarett*, 6 F.3d 37, 47 (2d Cir. 1993) (citing Supp. R. E(2)(a) and G(2)(f) emphasizing that these standards are regarded as "more stringent than the general pleading requirements set forth in the Federal Rules of Civil Procedure, . . . an implicit accommodation to the drastic nature of the civil forfeiture remedy."). The Government wants special treatment. There is no special treatment exemption in the Rules though.

Section 981(g), by its plain terms, applies to obstacles the government might face related to *civil discovery*, not obstacles they might face if they had to stand up in federal court and actually defend the adequacy of the complaint or how the Government should be required to respond to the allegations that they have held the Claimants' funds hostage for 3 years in violation of the Due Process clause without showing any willingness whatsoever to permit any type of proceeding to move forward.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed this day via CM/ECF and served on all counsel of record appearing on CM/ECF.

s/Andrew S.Feldman