SLR:LDM
2019V00053

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
– X

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ALL ASSETS HELD IN RAYMOND JAMES & ASSOCIATES, INC. ACCOUNT NUMBER XXXX4539, IN THE NAME OF DELTORA ENTERPRISES GROUP CO. LTD., AND ALL FUNDS TRACEABLE THERETO,

Defendant *in rem*.

– X

Civil Action No.
19-CV-377

(Kuntz, J.)
(Orenstein, M.J.)

UNITED STATES' MEMORANDUM OF LAW IN OPPOSITION TO CLAIMANTS' MOTION TO LIFT STAY

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
United States Attorney
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, New York 11201

LAURA D. MANTELL
Assistant U.S. Attorney

BARBARA Y. LEVY
Trial Attorney, Money Laundering and Asset Recovery Section
(Of Counsel)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Rules

PRELIMINARY STATEMENT

The United States respectfully submits this memorandum of law in opposition to the Motion to Lift Stay (the "March 2020 Motion") filed by Claimants Deltora Enterprises Group Co. Ltd., Gonzalo Eduardo Monteverde Bussalleu, and Maria Isabel Carmona Bernasconi (collectively "Claimants"). In their motion, Claimants challenge the stay the Court entered, pursuant to the mandatory stay provision set forth in 18 U.S.C. § 981(g), based upon the Court's finding that prosecution of this civil forfeiture action (the "Forfeiture Action") would adversely affect a related criminal investigation.

Claimants' attacks on the stay are primarily premised upon meritless arguments that they have already raised in prior motions to reconsider or clarify, and which the Court has already rejected. As such, the March 2020 Motion should be denied as an untimely third attempt to seek reconsideration of the stay that is barred under Local Rule 6.3 and case law governing motions to reconsider. Further, Claimants' repetitive arguments about whether a stay is appropriate rely on inapposite cases and otherwise fail to apprehend Section 981(g)'s mandatory language and provisions concerning the breadth of its application to any "related" criminal investigations.

In addition to the legal errors in their arguments, Claimants' factual contentions concerning the scope and progress of the related investigation are based upon speculation and conjecture as to the contents of the government's declaration submitted *ex parte* in support of the stay and the current status of the investigation. Also unavailing is their argument that the current COVID-19 pandemic somehow entitles them to the immediate lifting of the stay once normal court operations resume. To the contrary, the current pandemic directly impacts the government's ability to proceed with its investigation.

Moreover, Claimants misleadingly insist that the government has failed to comply with the stay order issued by the Court, and the Second Circuit's order dismissing Claimants' appeal of the stay. At no point has the government failed to provide any requested report as to the status of the investigation, or otherwise failed to comply with any court order. As set forth in greater detail below, because Claimants' arguments lack merit and the need for the stay remains ongoing, the March 2020 Motion should be denied.

PROCEDURAL HISTORY

1. The Complaint and Related Ongoing Criminal Investigation.

The United States commenced this Forfeiture Action on January 18, 2019, when it filed the Verified Complaint *in rem* (the "Complaint"). As set forth in the Complaint, the United States seeks to forfeit the defendant securities and cash (the "Defendant Assets") held in an account (the "RJA Account") at Raymond James & Associates, Inc. pursuant to: (a) 18 U.S.C. § 981(a)(1)(C), as property constituting or derived from proceeds traceable to bribery of a foreign official, or conspiracy to commit such offense; and (b) 18 U.S.C. § 981(a)(1)(A), as property involved in one or more money laundering transactions or attempted transactions in violation of 18 U.S.C. §§ 1956 and/or 1957. (Dkt. No. 1) The 24-page Complaint sets forth in detail how the Defendant Assets are involved in and/or traceable to violations of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et. seq*. ("FCPA"), foreign bribery, and money laundering offenses that are the subject of a far-reaching, active criminal investigation (the "Investigation"). Given the ongoing nature of the Investigation and the need to protect it, the United States anonymized many of the persons and entities discussed in the Complaint.

As alleged in the Complaint and supported by the government's *ex parte* declaration submitted in support of the stay, the Defendant Assets are involved in a broader criminal scheme

that occurred over the course of nearly a decade and in numerous countries. While the Complaint focuses on the conduct relative to the Defendant Assets, the Investigation extends beyond that conduct to include the payment and laundering of other bribes and related unlawful activity conducted by various individuals and entities. It also involves numerous informants, witnesses, and other sources of evidence, the disclosure of which would greatly adversely affect the ongoing Investigation.

2. Claimants' Prior Requests to Dismiss the Complaint.

On March 1, 2019, Claimants filed a letter requesting a pre-motion conference in anticipation of a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) ("Claimants' First Dismissal Request"). (Dkt. No. 10). Claimants argued, among other things, that (i) the Complaint does not sufficiently allege Claimants violated the FCPA or Panama law; (ii) the Panamanian law violations could not be specified unlawful activities for the money laundering allegations on account of extraterritoriality and vagueness reasons; and (iii) the Complaint's Panamanian law violations were improperly alleged. (*Id.* at 2-3.) This First Dismissal Request also demanded greater detail as to the "how, when, where, or from whom" bribes were paid." (*Id.* at 3.) Claimants also gratuitously speculated as to the identity of persons and entities whom the United States anonymized in the Complaint in an effort to protect their identities in the context of the ongoing investigation.

Less than two weeks later, Claimants filed a fully briefed motion to dismiss the Complaint on due process grounds. ("Claimants' Second Dismissal Request"). (Dkt. No. 14). This second motion sought dismissal on grounds that were different from, and not raised in, their first request. For instance, Claimants questioned whether the United States "through the filing of judicial assistance request[s] in U.S. district court, has made any formal requests via 28 U.S.C. §

1789, 28 U.S.C. §§ 1781 and 1782 to request the production of documents or testimony of witnesses" or made any "MLAT requests, or informal requests, or requests via an executive agreement." (Dkt. 14-1, at 19.) Claimants also insisted that the government describe any requests it made to foreign governments to obtain evidence overseas and "articulate the precise efforts and steps the Government has taken which are causing" a delay in proceedings. (*Id.*, p. 19-20).

On March 15, 2019, the Court issued and Order noting that Claimants had failed to comply with the Court's pre-motion conference requirement when they filed Claimants' Second Dismissal Request, but stated that Claimants' proposed motions would be addressed at a future conference.

3. <u>The Court Stayed This Action in April 2019 and Denied Claimants' Subsequent Motions for Reconsideration and Clarification.</u>

On March 29, 2019, the United States moved for a stay of the Forfeiture Action pursuant to 18 U.S.C. § 981(g)(1). (*See* Dkt. Nos. 18,19). With the permission of the Court and in accordance with 18 U.S.C. § 981(g)(5)[1], the United States filed, *ex parte* and under seal, a declaration providing details as to how the government's Investigation would be adversely affected if the Forfeiture Action, including Claimants' proposed motions to dismiss, were allowed to proceed. (*See* Dkt. No. 19-1). As explained in the United States' motion, revealing information about the Investigation, whether in discovery or by revealing anonymized individuals in response to Claimants' proposed motions, could cause current and future subjects to avoid prosecution, tamper with witnesses, destroy or move evidence, and jeopardize the

[1] Section 981(g)(5) provides that "[i]n requesting a stay under [18 U.S.C. § 981(g)(1)], the [g]overnment may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial."

availability or willingness of witnesses and informants to cooperate with the government. The United States assured the Court that it could continue to "reassess the need for the stay under any timetable deemed appropriate, and [that] the government can provide periodic status reports upon request." (Dkt. No. 18 at 3).

On April 3, 2019, the Court issued an order (the "Stay Order") staying the Forfeiture Action. *See* Unnumbered Dkt. Entry dated April 3, 2019. The Stay Order explained that:

> Based on the government's presentation, the Court is satisfied that the continuing prosecution of this civil forfeiture case would adversely affect the prosecution of the related criminal investigation. The government has stated early discovery in this case could cause current and future subjects to avoid prosecution, raise the potential for the destruction or moving of evidence, and jeopardize the availability or willingness of witnesses and informants to cooperate. Consequently, the Court hereby GRANTS the Government's Motion to Stay this civil action, except for the filing of timely claims and answers, pursuant to 18 U.S.C. § 981(g)(1) . . . ."

Claimants sought to challenge the Stay Order by filing both motions to reconsider and to clarify the Stay Order as well as by filing an improper interlocutory appeal with the United States Court of Appeals for the Second Circuit ("Second Circuit"). Specifically, Claimants first moved for reconsideration of the Stay Order (the "First Reconsideration Motion"), arguing that the Court applied "an incorrect standard of law." (Dkt. No. 20-1, p. 5-6)(emphasis in original). Claimants also raised a host of other baseless and specious arguments, including that:

(i) This Court failed to make an "actual finding" that discovery would adversely affect the Investigation and instead relied "entirely on speculation," (*Id.* at 6 and 9);

(ii) "The Government failed to allege any facts about how civil discovery might adversely impact a related criminal investigation," (*Id.*, p. 10-11);

(iii) Claimants' proposed motions to dismiss should be allowed to proceed, (*Id.*, p. 13);

(iv) Staying this action violates the Constitution's Due Process Clause, (*Id.*, p. 15); and

(v) The government's Special Interrogatories propounded pursuant to Rule G(6) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (the "Supplemental Rules") were improper, (*Id.*, p. 16).

On April 4, 2019, the Court denied Claimants' First Reconsideration Motion. (*See* Unnumbered Dkt. Entry dated April 4, 2019).

The next day, Claimants filed a motion for clarification (the "Clarification Motion"). (Dkt. No. 22). Claimants requested that the Court clarify the duration of the Stay Order and provide more details as to the government's obligations under the Stay Order. Claimants also asked (without providing any legal basis for the request) that they be relieved of any obligation to respond to the Complaint as well as the government's Special Interrogatories. The Court denied this motion on April 8, 2019. (*See* Unnumbered Dkt. Entry dated April 8, 2019).

On May 3, 2019, Claimants appealed the Stay Order, as well as the associated orders denying their requests to reconsider and clarify, to the Second Circuit. (Dkt. No. 23). On October 2, 2019, the Second Circuit issued an order (the "Circuit Order") dismissing Claimants' appeal for lack of appellate jurisdiction. The Second Circuit explained that:

> The district court's order granting a stay of proceedings is read by this Court in the context of the motion that was granted by that order. Consistent with that motion, both the district court and the [C]laimants may request periodic status reports from the Appellee stating the status of the related criminal investigation and an estimate of when the present action can proceed.

On the same day the Second Circuit dismissed Claimants' appeal, and—again—in November 2019 and January 2020, Claimants requested that the government provide them with status reports on the Investigation. The United States responded diligently to all three requests—each time confirming the Investigation was ongoing and that there was a continued need for a stay.

In January 2020, Claimants' counsel requested a meeting in April 2020 to discuss the status of what Claimants' counsel represented was a related investigation in Peru involving Claimants. The government suggested that Claimants' counsel propose potential meeting dates. To date, Claimants have not responded.

4. <u>The Parties' Stipulation Concerning Management of the Defendant Assets</u>.

In or around May 2019, at Claimants' request, the parties began negotiating an agreement relating to the management of the Defendant Assets. Specifically, Claimants urged that the assets remain in the RJA Account, as opposed to being seized pursuant to the Warrant *in rem* issued by the Court. (*See* Dkt. No. 4). In January 2020, the parties entered into a stipulation (Dkt. No. 27), which provides that, among other things, certain of the Defendant Assets, which were invested in non-investment grade bonds, be reinvested in U.S. Treasury securities. The parties also agreed that the Defendant Assets would remain in the RJA Account.

On March 24, 2020, despite the fact that they had not responded to the government's request for proposed meeting dates and despite the fact that they had not requested any further updates on the status of the Investigation, Claimants filed the instant March 2020 Motion, raising many of the same arguments that the Court already considered and rejected in its prior rulings. (Dkt. No. 28).[2]

[2] Claimants refer to their filing of a declaration, *ex parte*, in support of the March 2020 Motion, and it appears from the docket sheet that at least two documents not accessible on Pacer (Dkt Nos. 29-30) were filed with the Court. Yet, Section 981(g)(5) permits the *ex parte* filing of documents by the government only to demonstrate the need for a stay, and there is no indication that Claimants sought leave to file any documents under seal pursuant to the Court's Individual Rules, II(G).

ARGUMENT

1. The March 2020 Motion Constitutes an Improper Motion for Reconsideration.

Although styled as a "motion to lift stay," Claimants' March 2020 Motion amounts to nothing more than an impermissible third attempt to move to reconsider or clarify the Stay Order. The Court, however, has already considered and expressly rejected many of the same arguments that Claimants re-argue in the instant motion, including their argument that their motion to dismiss be allowed to proceed during the pendency of the stay.

As the Second Circuit explained, motions for reconsideration "will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Trans. Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).[3] Likewise, Rule 6.3 of the Local Rules for the Southern and Eastern Districts of New York, which governs motions for reconsideration in this district, requires movants to provide a "memorandum setting forth concisely the matters or controlling decisions which counsel believes the Court has overlooked."[4] This rule is to be "narrowly construed" and "strictly applied" so as to avoid repetitive arguments on issues that have been considered fully by the court. *Cartier v. Geneve Collections, Inc.*, No. CV 2007-0201(DLI)(MDG), 2008 WL 1924921, at *1 (E.D.N.Y. Apr. 29, 2008) (citing *In re Nasdaq Market Makers Antitrust Litig.*, 184 F.R.D. 506, 510 (S.D.N.Y. 1999).

---

[3] Claimants previously acknowledged this precise standard in their first motion for reconsideration (*see* Dkt. No. 20-1 at 7-8.)

[4] Local Rule 6.3 also requires movants to file such motions within 14 days of the issuance of the underlying order. Accordingly, the motion is also untimely.

Putting aside the piecemeal, as well as repetitive, manner in which Claimants have challenged the Stay Order, Claimants identify no controlling decisions or facts that the Court overlooked in issuing its Stay Order, let alone, one that "might reasonably be expected to alter the conclusion reached by the court." *See Shrader*, 70 F.3d at 257. On this basis alone, Claimants' March 2020 Motion fails and should be denied.

Nor do Claimants point to any changed factual circumstances,[5] new developments in the law,[6] or a showing of clear error or manifest injustice that would require the Court to modify the Stay Order. *See Vornado Realty Trust v. Castlton Envtl. Contractors, LLC*, No. 08-CV-4823 (WFK) (JO), 2013 WL 5719000, at *1 (E.D.N.Y. Oct. 18, 2013) (articulating standard for reconsidering, reversing, or modifying interlocutory orders under Fed. R. Civ. P. 54(b) and the "law of the case" doctrine); *United States v. One Etched Ivory Tusk of African Elephant*, No. 10-CV-308 (NGG) (SMG), 2012 WL 4076160, at *1 (E.D.N.Y. Aug. 27, 2012) (identifying bases for granting a motion for reconsideration under Local Rule 6.3).

---

[5] While Claimants make a brief reference to the current global health crisis, nowhere in their motion do they explain how they are prejudiced by any delay that it may cause. Conversely, as discussed herein, it is the government's ability to proceed with the Investigation that primarily is affected by the pandemic.

[6] The fact that none of the cases cited in the March 2020 Motion post-date the Stay Order demonstrates that Claimants cannot point to any new developments in the law. For example, the extraterritoriality and FCPA liability arguments raised in the March 2020 Motion pertaining to the Second Circuit's ruling in *United States v. Hoskins*, 902 F.3d 69 (2d Cir. 2018) were previously raised in Claimants' First Dismissal Request (Dkt. No. 10 at 2). Claimants chose not to cite *Hoskins* in the First Dismissal Request, despite the fact that it was decided over six months before Claimants filed the First Dismissal Request. In any event, *Hoskins* does not support Claimants' motion, given that the government is not required to demonstrate that Claimants personally violated the FCPA in seeking forfeiture of the Defendant Assets. Claimants' extraterritoriality arguments also ignore the fact that they personally opened the RJA Account in the United States and caused the Defendant Assets to be transferred into the account, conferring jurisdiction over the assets regardless of the criminal liability of any particular claimant. *See* 28 U.S.C. §§ 1345 and 1355.

Even after a failed attempt to appeal both the Stay Order and the Court's denials of their First Reconsideration and Clarification Motions, Claimants continue to make unsupported, speculative arguments regarding the scope of the ongoing Investigation. They also fundamentally misconstrue the statutory authority under which the stay was granted.

A. The Stay Order Is Consistent with Section 981(g)'s Mandatory Stay Provision.

Claimants fail to acknowledge that the Stay Order was issued pursuant to Section 981(g), which provides that, "[u]pon 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" (emphasis added). Even if the Court were to reconsider (again) the arguments in Claimants' motion, all of the reasons previously submitted to the Court in the government's stay motion and sealed *ex parte* declaration (*see* Dkt. Nos.18-19, 21) justified—and continue to justify—a stay of this Forfeiture Action while the Investigation is ongoing. Although the government has made progress in the Investigation since the Court issued the Stay Order[7], the complexity and nature of the Investigation, compounded by difficulties associated with the current COVID-19 public health emergency, require additional time for completion.

As previously established, a stay of the entire proceeding is required to protect the government's ongoing Investigation involving all of the events described in the Complaint. *See id.* Lifting the stay at this stage would jeopardize the Investigation by, among other harms, causing current and future subjects who are not yet indicted or arrested to avoid prosecution and/or dissipate evidence when critical court functions have been placed on hold by the global

[7] As stated in the Stay Motion, and consistent with the Circuit Order (Dkt. No. 24), the government remains prepared to provide the Court, if requested, with an update as to the Investigation through an *ex parte* declaration.

health crisis. For instance, the current public health emergency directly impacts the ability to empanel and present to the grand jury, and thus affects the government's ability to seek evidence and criminal charges. This district's Administrative Order 2020-11, issued by the Honorable Roslynn R. Mauskopf on or about March 18, 2020 states, in part, that "no regular grand jury in this district has had a quorum since March 13, 2020." Administrative Order 2020-11 also incorporates by reference Administrative Order 2020-06, issued on or about March 16, 2020, which continued all civil and criminal trials in this district scheduled to begin before April 27, 2020, until further court order. Further, the global nature of the pandemic hinders the government's ability to pursue evidence, travel to witness interviews, and conduct the Investigation overseas. Thus, granting Claimants' request to lift the stay "once normal civil trial procedures resume in the Eastern District of New York" (Dkt. No. 28-1 at 3) offers no meaningful benchmark, and fails to recognize the extraordinary operational challenges faced by all sectors of society, including law enforcement and the judicial system, at this time. For the reasons stated above, Claimants also fail to articulate any relevant legal or factual basis as to why the stay should be lifted at this time.

Nor would a partial stay be appropriate under the circumstances. In moving for a stay of the entire proceeding, the government specifically explained the need to stay litigation of both of Claimants' pending motions to dismiss. (*See* Dkt. No. 18 at 2-3). After determining that the government had sufficiently established the need to stay the action under Section 981(g)(1), the Court then adjourned the scheduled pre-motion conference for both motions *sine die*. (*See* Stay Order at 1). Claimants make no compelling argument as to why this ruling should be revisited.

Claimants' reliance on cases outside the civil forfeiture context, where Section 981(g) does not apply, is similarly misplaced. Claimants cite several inapposite non-civil forfeiture

cases that have no bearing, much less any controlling effect, on the propriety of the Court's Stay Order. For example, in *SEC v. Cohen*, 1:17-cv-00430-NGG-LB (E.D.N.Y. Jan. 26, 2017) (Dkt. No. 67), one of the cases cited by Claimants, the court granted a partial stay of a civil proceeding during the pendency of a related criminal proceeding based on that court's inherent authority to control its own docket. Absent any applicable statute, the court applied a six-factor test and found that the basis for a stay did not extend to the defendants' motions to dismiss because ruling on such motions would not, among other concerns, "risk compromising the limits on discovery in criminal cases." *See id.* at 4-7. In contrast, for reasons already explained by the government herein and in its prior submissions, requiring the government to respond to Claimants' motions to dismiss would adversely impact the Investigation and defeat the very purpose of the stay.

As a procedural matter, Claimants' motion is also premature. Under controlling Second Circuit precedent, even if the Court were to grant Claimants' request to lift the stay with respect to the pending due process motion, Claimants' motion cannot be decided before Claimants first fully respond to the Special Interrogatories that the government served on March 23, 2019. (*See* Dkt. No. 12 at 2-3). *See also* Supplemental Rule G(6)(c) (providing that the government need not respond to a claimant's motion to dismiss until after a claimant answers special interrogatories); *United States v. Vazquez-Alvarez*, 760 F.3d 193, 197 (2d Cir. 2014) (ruling claimant must first respond to interrogatories and establish standing before court will consider the merits of any motion to dismiss a civil forfeiture action). Furthermore, as the government has previously explained, Claimants' due process motion is more akin to a summary judgment motion than a motion to dismiss. As such, any litigation of Claimants' motion would require additional discovery and the submission of extrinsic evidence, as demonstrated by Claimants' persistent efforts to identify purported witnesses and sources of evidence. (*See* Dkt. No. 17 at 2).

Similarly, Claimants' latest, belated attack on the translated provisions of Panamanian criminal law attached to the Complaint (*see* Dkt. No. 28-1 at 19-22), is both meritless and, as Claimants themselves acknowledge, not properly raised in a motion to lift the stay. (*See id.* at 20, n. 10) ("Claimants recognize that this Motion is not the proper vehicle for deciding a motion to dismiss concerning these issues . . . .").

B. Claimants Misconstrue the "Relatedness" Requirement of Section 981(g).

According to Claimants, Section 981(g)'s mandatory stay provision does not apply because they are not "targets" of the Investigation and any potential FCPA charges against them are time-barred. These arguments lack merit for several reasons.

First, Claimants' contention that they are not "targets" of the Investigation and that the Investigation focuses solely on FCPA violations is conjecture. As Claimants are well aware, the Complaint alleges multiple offenses in addition to FCPA violations, including conspiracy, foreign bribery in violation of Panamanian law and money laundering. (*See* Complaint at ¶¶ 59-74.) Likewise, the government's motion to stay made clear that the Investigation "focuses on all of the events described in the [Complaint], including the alleged bribery and money laundering transactions to which the [RJA Account] is alleged to be involved in and/or traceable to." (Dkt. No. 18 at 2.) Nothing in these pleadings, or anywhere else in the record, supports Claimants' presumption that the Investigation is limited to FCPA violations by Claimants. Indeed, it is Claimants, not the government, who have "hypothesized" or made "overbroad generalizations" (Dkt. No. 20-1, at 11) about the scope of the Investigation, even though they are in no position to do so.[8]

[8] During the pendency of the Forfeiture Action, Claimants have also impermissibly sought to view the government's basis for the seizure of the RJA Account in a separate civil action filed in the U.S. District Court for the Middle District of Florida. *See Deltora Enterprises Group Co.*

Furthermore, even if Claimants' presumptions regarding their FCPA liability – which the government declines to confirm or deny – are accurate, such arguments do not support a lifting 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):

> In determining whether a criminal case or investigation is 'related' to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

In other words, there is no requirement that a claimant in the civil forfeiture action be the actual "target" of the underlying investigation. Rather, the only showing that the government is required to make under the statute is a "similarity between the parties, witnesses, facts and circumstances." Accordingly, numerous courts have granted stays based upon a finding that a criminal investigation and a civil forfeiture action are "related" for purposes of Section 981(g)(1) even if the claimants themselves are not subjects or targets of the investigation. *See United States v. 2004 Cadillac DeVille*, No. 3:05-CV-233, 2008 WL 619358, at *1 (S.D. Ohio Mar. 3, 2008) (stay was granted because civil discovery could adversely affect criminal investigation of claimants' sons and other third parties); *United States v. $144,210.77 in Funds Seized from Suntrust Bank*, 63 F. Supp. 3d 1387, 1390-91 (N.D.Ga. 2014)(denying motion to lift stay filed by claimant, who was not charged in a related state prosecution, but who was still being

---

Ltd., et al. v. United States, Case No. 8:18-cv-2713-T-36SPF (M.D. Fla. Sept. 11, 2019) (Dkt. No. 37) (granting the government's motion to dismiss Claimants' amended complaint, dismissing Claimants' amended petition for injunctive and equitable relief, and denying Claimants' request for an expedited evidentiary hearing as moot). In seeking such relief, Claimants also acknowledged that approximately seven months before the government seized the RJA Account, Claimants were the subjects or targets of another investigation by Peruvian authorities relating to bribery payments. *See id.* at 2.

investigated, alongside others, in a related federal investigation); *United States v. Approx. $69,577 in U.S. Currency*, No. C 09–0674 PJH, 2009 WL 1404690, *3 (N.D. Cal. May 19, 2009) (stay granted even though claimants in the civil case were merely family members of the criminal defendant); *United States v. $129,852 in U.S. Currency*, No. CIV.A. 08-CV-1493, 2008 WL 5381863, at *2 (W.D.La. Dec. 17, 2008) (granting motion to stay where the claimants, mother and father of the accused, were not themselves defendants or targets of a criminal investigation, but where there was a high degree of relatedness and similarity between the civil and criminal matters). As the Court has already determined in its Stay Order, the government's *ex parte* declaration sets forth ample facts detailing how the Forfeiture Action and the Investigation are related for purposes of Section 981(g), regardless of the Claimants' status.[9]

Claimants also contend that they cannot be liable for money laundering because they cannot be charged with FCPA violations. This is both incorrect and irrelevant. The government need not prove that a defendant personally committed the underlying specified unlawful activity in order to be convicted of the related money laundering offense. *See United States v. Awada*, 425 F.3d 522, 525 (8th Cir. 2005) (bartender who cashes checks for a bookie may be guilty of money laundering even though he was not guilty of the gambling offense); *United States v. Cherry*, 330 F.3d 658, 667 (4th Cir. 2003) (a defendant may be convicted of money laundering even if she is not a party to the specified unlawful activity); *United States v. Richard*, 234 F.3d 763, 769-70 (1st Cir. 2000) (defendant's acquittal on money laundering predicate does not negate knowledge for money laundering violation). Thus, even if Claimants are correct that the

[9] To reiterate those similarities here would compromise the Investigation, and defeat the very purpose of the Stay Order. Notably, 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.

Second Circuit's ruling in *United States v. Hoskins*, 902 F.3d 69 (2d Cir. 2018) bars FCPA charges against Claimants – which the government, again, does not concede – the preclusion of such charges still do not support Claimants' motion. 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.

C. <u>The Issue of Claimants' Criminal Liability Is Not Properly Before The Court.</u>

Just as Claimants' argument that any stay must be predicated on their status as "targets" in a related criminal investigation is misplaced, so too is their argument that any criminal charges against them are time-barred and/or otherwise inapplicable. The applicability or timeliness of *any* criminal charges that the government may bring against Claimants in the future are immaterial for purposes of assessing the propriety of a stay under Section 981(g).[10] By the same token, the legal merits of any hypothetical criminal charges that may be brought against Claimants in the future is not ripe for adjudication at this time. Claimants' insistence that the Court opine and provide them with an advisory opinion as to the merits of a hypothetical criminal case that has not been indicted is wholly inappropriate. Claimants' rights in the Forfeiture Action are limited to a determination of their claimed innocent ownership of the Defendant Assets. *See Von Hofe v. United States*, 492 F.3d 175, 190 (2d Cir. 2007) (criminal conviction of a claimant is neither a necessary nor sufficient precondition to a civil forfeiture

[10] Claimants' timeliness arguments are misleading insofar as they fail to acknowledge that the Complaint does in fact allege conduct occurring within the last five years. (Dkt. 1, ¶¶ 51, 56-58). Claimants also fail to acknowledge any legal basis which could extend the applicable statute of limitations. Similarly, Claimants' extraterritoriality arguments overlook the important fact that the Defendant Assets were deposited into, and invested through, a U.S. financial institution. (*Id.* at ¶¶ 1, 49-58).

action); *United States v. All Funds in Acct. Nos. 747.034/278 (Banco Espanol de Credito)*, 295 F.3d 23, 25 (D.C. Cir. 2002) ("Civil forfeiture actions are brought against property, not people. The owner of the property may intervene to protect his interest.").

Even if the Court were to address Claimants' assertions regarding their FCPA or money laundering liability, the outcome of any such analysis would not undermine the government's previously-articulated showing that its Investigation would be adversely affected if the Forfeiture Action were to proceed. The law of the case doctrine precludes re-litigation of these issues. *See* Stay Order at 1; *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir.1992) ("where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again") (citation omitted); *Vornado Realty Tr.*, 2013 WL 5719000, at *2-3 (courts in the Second Circuit strictly adhere to the law of the case doctrine); *United States v. 3039.375 Pounds of Copper Coins*, 2008 WL 4681779, at *2 (W.D.N.C. Oct. 21, 2008) (rejecting claimant's motion to lift stay, as prior finding that government met the conditions of Section 981(g) constituted law of the case).

2. <u>The Government Has Fully Complied With Both the Stay Order and the Circuit Order.</u>

Finally, Claimants assert, without any basis, that the government has "defied the mandate" of the Second Circuit and the Court. To be clear, the government has fully complied with the Circuit Order (Dkt. No. 24) by informing Claimants in good faith, each time they have asked, that the Investigation remains ongoing, and the stay cannot yet be lifted. Although Claimants may be disappointed by the lack of a month or date certain upon which the stay might be lifted, the government has also made clear that it would provide an estimate as to when the stay might be lifted as soon as such a meaningful estimate can be given. The COVID-19 pandemic has made it far more difficult to provide such an estimate.

Noticeably absent from Claimants' motion is any mention of the fact that the government agreed to accommodate Claimants' request to keep the Defendant Assets in the U.S.-based RJA Account, and transferred them to less volatile securities, pending resolution of the Forfeiture Action and any related appeals. To that end, the parties engaged in negotiations over the course of at least seven months, from approximately May to December 2019, before reaching the agreement set forth in the Stipulation that the Court approved earlier this year. (*See* Dkt. Nos. 26-27.) Accordingly, the Stipulation, and the government's participation therein, undermine Claimants' arguments that they have been prejudiced, and/or suffered any "manifest injustice," in terms of their control as to how the Defendant Assets are invested during the pendency of the stay. Because there is no demonstrable prejudice caused by the stay, and the government's Investigation would be severely affected if the stay were lifted at this time, Claimants' motion should be denied in its entirety.

CONCLUSION

For all the foregoing reasons, the government respectfully requests that the Court deny Claimants' March 2020 Motion and grant the government any such other and further relief as the Court may deem proper and just.

Dated: Brooklyn, New York
April 20, 2020

RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, New York 11201

By: */s/ Laura D. Mantell*
Laura D. Mantell
Assistant United States Attorney
(718) 254-6253

DEBORAH L. CONNOR
CHIEF, MONEY LAUNDERING AND
ASSET RECOVERY SECTION
(MLARS)

By: */s/ Barbara Y. Levy*
Barbara Y. Levy
Trial Attorney, MLARS
(202) 353-9759