

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff.

v.

CASE NO. 8:19-cv-886-VMC-SPF

OASIS INTERNATIONAL GROUP,
LIMITED; OASIS MANAGEMENT, LLC;
SATELLITE HOLDINGS COMPANY;
MICHAEL J. DACORTA; JOSEPH S.
ANILE, II; RAYMOND P. MONTIE, III;
FRANCISCO "FRANK" DURAN; and
JOHN J. HAAS;

Defendants;

and

MAINSTREAM FUND SERVICES, INC.;
BOWLING GREEN CAPITAL
MANAGEMENT, LLC; LAGOON
INVESTMENTS, INC.; ROAR OF THE
LION FITNESS, LLC; 444 GULF OF
MEXICO DRIVE, LLC; 4064 FOUNDERS
CLUB DRIVE, LLC; 6922 LACANTERA
CIRCLE, LLC; 13318 LOST KEY PLACE,
LLC; AND 4OAKS, LLC;

Relief Defendants.

**INTERVENOR UNITED STATES' MOTION FOR TEMPORARY STAY
OF ALL PROCEEDINGS, INCLUDING STAYING ENTRY OF A CASE
MANAGEMENT AND SCHEDULING ORDER, TO PREVENT HARM TO
FEDERAL CRIMINAL INVESTIGATION**

The United States of America, by Maria Chapa Lopez, United States Attorney for the Middle District of Florida, through the undersigned Assistant United States Attorney, hereby respectfully moves the Court to stay all civil proceedings, including, but not limited to, staying imminently occurring discovery as well as the entry of a *Case Management and Scheduling Order*¹, for a period of one-hundred eighty (180) days, or provide other relief to the government as required in the interests of justice. The government is filing this motion to prevent inevitable harm to the government's criminal investigation by the proceedings in this case. Notwithstanding this motion, the government has no objection at this time to the Receiver continuing to gather assets and perform other functions tailored to gathering assets with which to compensate victims, as set forth in Doc. 7 and Doc. 44. In addition, the government has no objection at this time to the Commodity Futures Trading Commission ("CFTC") moving forward with the upcoming Preliminary Injunction hearing as to defendants Raymond P. Montie, III, John J. Haas, and Satellite Holdings Company (now set

¹ On June 17, 2019, the parties filed a Joint Motion Requesting A Track Three Case Designation (Doc. 121). The parties' Case Management Report is appended to the motion as Exhibit 1. The joint motion is set for hearing before the Court on July 2, 2019 at 9:00 a.m. (Doc. 128).

for July 1, 2019 before the Honorable Magistrate Judge Sean P. Flynn) and the relief requested therein.

SUMMARY OF APPLICATION

The allegations raised by the Amended Complaint in this civil action overlap with a primary aspect of an ongoing federal criminal investigation. As explained in detail below, plaintiff and the other parties will shortly make their Rule 26 Initial Disclosures of witnesses and categories of documents and electronically stored information. These actions, as well as any other discovery in this case, will prematurely reveal the identities of certain prospective government witnesses and will permit any potential government witnesses reviewing the available discovery material to alter testimony or information provided to the government's criminal investigation during a grand jury (or proffer) session, in a misguided attempt to avoid personal prosecution or the prosecution of others. Further, certain civil discovery mechanisms, such as depositions, occurring during the government's ongoing criminal investigation, work to materially degrade and obstruct the integrity of the criminal investigation. Finally, in the absence of the requested stay, the individual defendants DaCorta, Anile, Montie, Duran, and Haas will be afforded the opportunity to obtain documents and other information to which they are not otherwise entitled for use in any future criminal case, and to conduct asymmetrical discovery, that is, using

discovery in this civil case to discover the government's ongoing criminal investigation and future criminal case-in-chief, while precluding any later reciprocal discovery to the government. For these reasons, the government is requesting that this Court enter an Order that (1) provides temporary relief to the government, so that it can expeditiously conclude the ongoing criminal investigation prior to any harmful civil discovery by the parties; and (2) ameliorates any potential harms to the parties herein.

RELEVANT BACKGROUND

Since 2018, the Federal Bureau of Investigation and the Internal Revenue Service-Criminal Investigation have been investigating the alleged investment fraud scheme perpetrated by Oasis International Group, Ltd., Oasis Management, LLC, and the principals of same. On April 18, 2019, as a result of the information and evidence gathered as of that date, law enforcement agents executed search and seizure warrants at five physical locations, including the Oasis office, DaCorta's residence, Anile's residence, and Duran's residence.

In addition to electronic and other documentary evidence, agents seized the following items based on probable cause to believe that the assets constituted proceeds of mail and wire fraud, or property involved in money laundering violations:

- a. 2017 Maserati Ghibli S Q4, Vehicle Identification Number: ZAM57RTS8H1217171, seized from Michael DaCorta;

- b. Land Rover Range Rover Evoque, Vehicle Identification Number: SALVR2BG5FH025349, seized from Michael DaCorta;
- c. 2018 Land Rover Range Rover Velar, Vehicle Identification Number: SALYL2RV3JA717260, seized from Michael DaCorta;
- d. 2018 Porsche 911 Targa, Vehicle Identification Number: WP0BB2A99JS134720, seized from Francisco Luis Duran;
- e. 2015 Mercedes-Benz SLK350, Vehicle Identification Number: WDDPK5HA8FF099097, seized from Joseph S. Anile, II;
- f. 2016 Mercedes-Benz GLE400, Vehicle Identification Number: 4JGDA5GB5GA622371, seized from Joseph S. Anile, II;
- g. 2015 Ferrari California T, Vehicle Identification Number: ZFF77XJA3F0208054, seized from Joseph S. Anile, II;
- h. Miscellaneous Precious Metals, seized from Michael DaCorta including the following:
 - i. approximately 63 one-hundred-ounce silver bars;
 - ii. approximately 1,620 one-ounce silver coins;
 - iii. approximately 47 one-ounce gold coins;
 - iv. approximately 3 Credit Suisse one-ounce gold ingots;
 - v. approximately 5 one-ounce silver colorized coins;
- i. Approximately \$160,000.00 in U. S. Currency, seized from Michael DaCorta;
- j. Miscellaneous Precious Metals, seized from Joseph S. Anile, II including the following:
 - i. approximately 100 one-hundred-ounce silver bars and
 - ii. approximately 200 one-ounce gold coins; and
- k. Approximately \$62,750.00 U. S. Currency, seized from Joseph S. Anile, II,

(collectively, the “Defendant Assets”). The Federal Bureau of Investigation has commenced an administrative forfeiture proceeding against these Defendant Assets.

In order to be able record *lis pendens* on real properties that were involved in the fraud and money laundering activities before the searches and seizures took place, one day prior to the execution of the search and seizure warrants, the United States also filed a Complaint for Forfeiture *in Rem*, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 981(a)(1)(A), seeking the civil forfeiture of the following real properties that the United States alleges were purchased with proceeds of fraud and involved in money laundering violations:

- a. The real property, attachments thereto, and appurtenances thereon, located at: 13318 Lost Key Place, Lakewood Ranch, Florida;
- b. The real property, attachments thereto, and appurtenances thereon, located at: 6922 Lacantera Circle, Lakewood Ranch, Florida;
- c. The real property, attachments thereto, and appurtenances thereon, located at: 4064 Founders Club Drive, Sarasota, Florida;
- d. The real property, attachments thereto, and appurtenances thereon, located at: 4058 Founders Club Drive, Sarasota, Florida;
- e. The real property, attachments thereto, and appurtenances thereon, located at: 7312 Desert Ridge Glen, Lakewood Ranch, Florida;
- f. The real property, attachments thereto, and appurtenances thereon, located at: 444 Gulf of Mexico Drive, Longboat Key, Florida;
- g. The real property, attachments thereto, and appurtenances thereon, located at: 17006 Vardon Terrace, #105, Lakewood Ranch, Florida;

- h. The real property, attachments thereto, and appurtenances thereon, located at: 16804 Vardon Terrace, #108, Lakewood Ranch, Florida; and
 - i. The real property, attachments thereto, and appurtenances thereon, located at: 16904 Vardon Terrace, #106, Lakewood Ranch, Florida,
- (collectively, the “Defendant Properties”).

At the time the United States was preparing to file its civil forfeiture action and to execute seizure warrants in connection with the criminal investigation, it was unaware that orders in this receivership would encompass much, if not all, of the same property the United States intended to forfeit and preserve for victims related to the criminal investigation. When the United States became aware that its goals overlapped with those of the Receiver in this case, the parties entered into a Memorandum of Understanding in which they agreed to a streamlined process for the liquidation and sale of any forfeited property (Docs. 105 and 112).

To date, none of the subjects of the criminal investigation have filed claims or have opposed either the administrative forfeiture of the Defendant Assets or the civil judicial forfeiture of the Defendant Properties. If any of the subjects file a claim in either of these proceedings, however, it is the United States’ intent to seek a stay of the civil forfeiture proceedings pursuant to 18 U.S.C. § 981(g)(1). Section 981(g)(1) provides for a mandatory stay of a civil forfeiture proceeding if

civil discovery “will adversely affect the ability of the Government to conduct a related criminal investigation or prosecution of a related criminal case.”

The investigating agencies are in the process of reviewing all of the evidence gathered during the execution of the search warrants as well as performing other investigative activities. The federal criminal investigation, therefore, is ongoing.

APPLICABLE LEGAL PRINCIPLES AND ARGUMENT

I. Legal Principles

This Court has the inherent power to stay the proceedings in this case in the interests of justice. *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936); *Securities and Exchange Com'n v. Dresser Indus.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980) (court may stay civil discovery proceedings or impose protective orders when interests of justice require, sometimes at request of prosecution and sometimes at request of defense); *S.E.C. v. Healthsouth Corp.*, 261 F.Supp.2d 1298, 1326 (N.D. Ala. 2003) (no question that district court has power to stay civil proceeding due to active, parallel criminal investigation); *S.E.C. v. Incendy*, 936 F.Supp. 952, 955 (S.D. Fla. 1996) (district court has broad discretion in granting or denying stay).

Courts routinely stay parallel civil proceedings in order to protect a pending criminal investigation or prosecution. *See, e.g., Campbell v. Eastland*, 307

F.2d 478, 487-490 (5th Cir. 1962) (Wisdom, J.);² *Eastwood Enterprises, LLC, et al. v. Farha, et al.*, Case No. 8:07-cv-1940-T-33EAJ, at Doc. 259; *S.E.C. v. Downe*, 1993 WL 22126, *14 (S.D.N.Y.) (granting stay of SEC enforcement action pending federal grand jury investigation); *Board of Governors of Fed. Reserve Sys. v. Pharaon*, 140 F.R.D. 634, 641 (S.D.N.Y. 1991) (granting stay of Federal Reserve enforcement action pending state grand jury investigation); *United States v. Hugo Key and Son, Inc.*, 672 F. Supp. 656, 658-59 (D.R.I. 1987) (hereinafter "*Hugo Key*") (granting stay of civil action while Department of Justice considered bringing criminal proceeding based on certain allegations that were the subject matter of the civil action); *Founding Church of Scientology of Washington, D.C. v. Kelley*, 77 F.R.D. 378, 380-81 (D.D.C. 1977) (hereinafter "*Kelley*") (refusing to compel federal officials to answer interrogatories during pendency of federal grand jury investigation as "government's interest in preserving the secrecy of the ongoing criminal investigation outweighs the plaintiff/movants' need for this information").³

² In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

³ For other cases where the Court has stayed civil proceedings pending a criminal investigation, see *Application of Eisenberg*, 654 F.2d 1107, 1113-14 (5th Cir. Unit B Sept. 1981) (in balancing interests of potential litigant with that of significant government interests in grand jury secrecy and other confidences, court determined that – regardless of motives of potential litigant – trial judge did not abuse discretion in denying permission to take deposition); *Cisco v. National Insur. Co.*, 2006 WL 2789035, at *1 (M.D. Fla., 2006); *S.E.C. v. Offill*, 2008 WL 958072 (N.D. Tex., 2008); *Grubbs v. Irely*, 2008 WL 906246 (E.D. Cal., 2008); *Walsh Securities, Inc. v. Cristo Property Management, Ltd.*, 7 F.Supp.2d 523 (D.N.J. 1998); *S.E.C. v.*

The need for a stay of parallel civil proceedings arises from the fundamental differences between civil and criminal proceedings and the compelling public interest in facilitating enforcement of the criminal laws. As explained in *Campbell*, 307 F.2d at 487:

The very fact that there is a clear distinction between civil and criminal actions requires a government policy determination of priority: which case should be tried first. Administrative policy gives priority to the public interest in law enforcement. This seems so necessary and wise that a trial judge should give substantial weight to it in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims or liabilities.

See also In re Ivan F. Boesky Securities Litig., 128 F.R.D. 47, 49 (S.D.N.Y. 1989)

("the *public interest* in the criminal case is entitled to precedence over the civil litigant") (emphasis in original).

In evaluating applications by the government to stay civil proceedings, courts often balance the competing interests implicated on a case-by-case basis in attempt to prevent one action from doing harm to the other. *See, e.g., Campbell*, 307 F.2d at 487-90 (judicial discretion and procedural flexibility should be utilized to harmonize conflicting rules and prevent one suit from doing violence to the

Mersky, 1994 WL 22305 (E.D. Pa., 1994); *Cf. In re Grand Jury Proceedings*, 995 F.2d 1013, 1018 n.11 (11th Cir. 1993) (civil trial court may stay discovery until grand jury investigation completed); *but see, e.g., S.E.C. v. Fraser*, 2009 WL 1531854 (D.Ariz. 2009) ("[a]lthough courts have been receptive to Government stay requests in civil cases brought by parties other than the Government, results in recent years have been markedly different when the Government itself brings a civil lawsuit simultaneous with a criminal proceeding." (citation omitted)).

other); *Healthsouth Corp.*, 261 F.Supp.2d at 1326; *Downe*, 1993 WL 22126, *12; *Volmar Dist., Inc. v. New York Post Co., Inc.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993) (hereinafter "*Volmar*"); *First Merchants Enterprise, Inc., v. Shannon*, 1989 WL 25214, *2 (S.D.N.Y. 1989). In *U.S. v. Lot 5, Fox Grove, Alachua County, Fla.*, 23 F.3d 359, 364 (11th Cir. 1994) (hereinafter "*Lot 5*"), the Eleventh Circuit, while not addressing the *Campbell* considerations, determined that a district court "must stay a civil proceeding pending resolution of a related criminal prosecution only when 'special circumstances' so require in the 'interests of justice.'" Regardless of whether the analysis is conducted under *Campbell* or *Lot 5*, or both, the premature disclosures to the individual defendants DaCorta, Anile, Montie, Duran, and Haas and to others of potential government witnesses and information, the impact of the civil discovery on the integrity of the criminal investigation, the use of civil discovery to combat the criminal investigation and future prosecution, the use of civil discovery to investigate the criminal investigation, and the resulting inequities to the government caused by asymmetrical discovery, create special circumstances requiring, in the interests of justice, the relief requested by the government.

Courts have recognized that when the government is seeking a stay of civil proceedings, the justification for doing so is often strongest during the *investigative stages* before an indictment is presented:

Where district courts have stayed discovery most frequently in civil proceedings at the request of the Government, the stay questions have arisen in situations where the Government seeks to protect ongoing criminal *investigations* and pending *grand jury hearings* based on the notion that ... a stay of the *entire civil proceeding* was necessary to protect ongoing grand jury investigation or that a stay of *all* discovery by defendants in the civil action is necessary because the government is presently conducting a widespread criminal investigation and defendant's discovery requests relate to the principal focus of the investigation.

Ofill, 2008 WL 958072 *3 (emphasis in original) (quotation marks and citation omitted). Thus, the fact that the government is currently in the investigative stage does not militate against the government's request herein, but rather weighs in favor of it.

The key threshold issue in deciding whether a court should stay a civil proceeding is the degree to which the issues in the civil and criminal proceedings overlap. *See Healthsouth Corp.*, 261 F.Supp.2d at 1326; *Walsh Securities*, 7 F.Supp.2d 523, 527 (D.N.J. 1998). Other factors that have been identified as relevant to the case-by-case balancing include: (1) prejudice to the government's interest in connection with ongoing criminal investigations or prosecutions; (2) whether the attempted civil discovery was for the purpose of obtaining information or reports that were unobtainable under the Federal Rules of Criminal Discovery; (3) prejudice to the interests of the civil parties in prompt

resolution of their disputes; (4) the interests of parties not represented in the civil proceedings; (5) the courts' interests in judicial economy and the efficient use of resources; and (6) the public interests involved in both criminal and civil proceedings. See, e.g., *Campbell*, 307 F.2d at 490; *Healthsouth Corp.*, 261 F.Supp.2d at 1326; *Trustees of Plumbers and Pipefitters National Pension Fund v. Transworld Mechanical, Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995) (hereinafter "*Plumbers Fund*"); *Volmar*, 152 F.R.D. at 39 (same).

With respect to the factor addressing prejudice to the government's criminal investigation or proceeding, the principal concern articulated by the courts is the danger that criminal defendants, or potential defendants, may abuse the mechanisms of civil discovery to circumvent the limitations on discovery in criminal prosecutions. Courts have repeatedly emphasized that such abuse of the civil discovery process should not be permitted. For example, as explained in *Campbell*,

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit.

Campbell, 307 F.2d at 487; see also *Kelley*, 77 F.R.D. at 380.⁴

⁴ Conversely, criminal defendants often seek to stay parallel civil proceedings, arguing that they face the "dilemma either of having to testify in a pre-trial deposition or, by invoking the privilege against self-incrimination, subjecting [themselves] to a permissible adverse inference in the civil case." *SEC v.*

The Federal Rules of Civil Procedure authorize broad discovery of both parties and non-parties. *See, e.g.*, Rule 26(b), FED. R. CIV. P. ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."). In contrast, discovery under the Federal Rules of Criminal Procedure is circumscribed. Rule 16, FED. R. CRIM. P., generally limits discovery to certain statements of the defendant, the defendant's prior criminal record, and other information that is material to preparation of the defense or is intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant. (Rule 16(a)(1)).

Moreover, Rule 16(a)(2), FED. R. CRIM. P., expressly precludes discovery of reports, memoranda or other internal government documents and statements made by government witnesses or prospective government witnesses, except as provided in 18 U.S.C. § 3500. (Rule 16(a)(2)). In turn, Section 3500 (the Jencks Act) provides that in criminal cases, the statements of government witnesses shall not be "the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case." (18 U.S.C. § 3500(a)). Absent "exceptional circumstances" – not present here – and a court order, a criminal defendant may not conduct depositions in a criminal case.

Oakford Corp., 181 F.R.D. 269, 270 (S.D.N.Y. 1998).

Rule 15(a), FED. R. CRIM. P. The defendant's obligation to provide discovery to the government is similarly limited, *see* Rule 16(b), FED. R. CRIM. P., and in practice is rarely complied with or enforced.

The narrow scope of federal criminal discovery is based on concerns that broad disclosure of the details of the prosecution's case will result, *inter alia*, in perjury and manufactured evidence; that revelation of the identity of prospective government witnesses will create opportunities for harassment or intimidation of those witnesses and subornation of perjury; and the harm inherent in asymmetrical discovery, that is, that criminal defendants will unfairly surprise the prosecution at trial with information gained through discovery, while relying on the privilege against self-incrimination to shield against any attempt by the government to obtain relevant evidence from the defendants themselves. *See Campbell*, 307 F.2d at 487 n.12; *Nakash v. U.S. Department of Justice*, 708 F. Supp. 1354, 1365-66 (S.D.N.Y. 1988); *Kelley*, 77 F.R.D. at 381.⁵ As clearly explained in *Hugo Key*, 672 F.Supp. at 658:

. . . the liberal discovery policies of the Federal Rules of Civil Procedure, while permitting defendant broad scope would not be available to the government should

⁵ Such concerns have been recognized frequently in the analogous context of a criminal defendant's demand for identification of government witnesses prior to trial. Such demands are routinely denied. *See, e.g., United States v. Cannone*, 528 F.2d 296, 301-02 (2d Cir. 1975) (reversing district court's order for government to identify witnesses before trial); *United States v. Percevault*, 490 F.2d 126, 131 (2d Cir. 1974) ("[f]ear of intimidation of witnesses and concern over efforts to suborn perjury were not flights of fantasy by those who drafted Rule 16").

defendant be charged and the corporate veil pierced because defendant could then assert his privilege against self-incrimination. This procedural asymmetry would offer the defendant the opportunity to surprise the prosecution at trial while withholding that same opportunity from the prosecution.

In addition to the foregoing concerns, considerations of judicial economy and the efficient resolution of civil disputes typically support applications by the government for a stay of parallel civil proceedings. Often, common issues of law and fact are resolved in the criminal proceeding, narrowing the issues in dispute in the civil action. See *United States v. Mellon Bank, N.A.*, 545 F.2d 869, 873 (3d Cir. 1976) ("resolution of the criminal case would moot, clarify, or otherwise affect various contentions in the civil case"). Moreover, "due to the overlapping issues in the criminal and civil trials, the criminal justice system will [often] help safeguard the evidence, and any resulting incarceration could only serve to insure the availability of all the parties." *Volmar*, 152 F.R.D. at 40. "[R]esolution of the criminal case may [also] increase the possibility of settlement of the civil case due to the high standard of proof required in a criminal prosecution." *Plumbers Fund*, 886 F. Supp. at 1140. Thus, the public interest in effective law enforcement and the efficient use of judicial resources often all weigh in favor of staying parallel civil proceedings. As one district court has observed:

There is an unnamed party in every lawsuit -- the public. Public resources are squandered if judicial proceedings are allowed to proliferate beyond

reasonable bounds. The public's right to a 'just, speedy, inexpensive determination of every action' is infringed, if a court allows a case, civil or criminal, to preempt more than its reasonable share of the court's time.

United States v. Reaves, 636 F. Supp. 1575, 1578 (E.D. Ky. 1986) (footnote omitted).

As the United States is seeking this relief before the Court has entered a *Case Management and Scheduling Order* in this action, the United States submits that should the Court exercise its inherent authority to temporarily stay the civil proceedings as requested for efficiency's sake the Court should forbear from entering such an Order until expiration of the stay, at which time material considerations underlying such an Order may well have changed. Alternatively, should the Court determine to enter such an Order now but then immediately stay it, Rule 16(b)(4), FED. R. CIV. P.,⁶ would allow for modification of that Order after the stay expires so that any remaining deadlines could be adjusted to ameliorate any potential harm to the parties in this case. *See, e.g., Smith v. Psychiatric Solutions, Inc.*, 358 Fed.Appx. 76 (2009).

⁶ Rule 16(b)(4) allows for an adjustment to a *Case Management and Scheduling Order* "for good cause and with the [Court's] consent."

B. Argument

The prejudice to the government's federal criminal investigation and any resulting federal criminal prosecution, the public interest in effective enforcement of the federal criminal laws, the use of civil discovery in this case by the individual defendants DaCorta, Anile, Montie, Duran, and Haas to defend the government's criminal investigation, the interests of parties who are not represented in the civil action (including the victims of the conduct at issue – the more than 700 victim-investors), and the interests of judicial economy all weigh heavily in favor of a stay. Although a stay may temporarily delay the ultimate resolution of the civil claims against the civil defendants, the parties will not be substantially prejudiced by the limited stay the government seeks. Indeed, it is likely that the parties will benefit from a prior resolution of the ongoing criminal investigation (and any resulting criminal case), through the development and preservation of evidence and the narrowing of factual and legal issues.

1. Prejudice to the Government

Requiring potential government witnesses to comply with deposition notices, interrogatories, or requests for admission in the civil action during the active criminal investigation will seriously impede the government's criminal investigation and any resulting criminal prosecution. Disclosure of the substance of potential testimony at this stage will facilitate any efforts by any

targets or subjects of the investigation to manufacture evidence and/or tailor their defenses to the government's proof. For example, targets -- and eventually charged defendants -- armed with deposition testimony, witness statements, and other civil discovery material will be able to coordinate their respective defenses in an attempt to explain away the government's proof. Likewise, an individual making use of the civil discovery material may alter his or her testimony during a grand jury (or proffer) session, in a misguided attempt to evade personal prosecution, to thwart the prosecution of an acquaintance, or to simply avoid personal involvement in the looming criminal action(s). Further, any target or subject in the investigation may attempt to conceal or destroy documentary or other physical evidence corroborating such known deposition statements.

In addition, civil discovery of witnesses who have provided information in the criminal investigation will permit a target to improperly compel the disclosure of the substance of that information, and to circumvent the rules limiting the discovery available to a defendant in a criminal case. Such target would thereby gain an unfair and asymmetrical tactical advantage by obtaining early discovery of key government proof without being required to disclose the substance of his or her own potential testimony to the government, the grand jury, or any petite jury in a criminal case.

Here, the potential harm to the government's criminal investigation is magnified by the significant overlap of the primary issue in this civil action – the orchestration of a fraudulent scheme by individual defendants DaCorta, Anile, Montie, Duran, Haas and others to defraud victim-investors of millions of dollars in purported investment funds – with a key aspect of the government's criminal investigation. Such an overlap heightens the potential harm to the investigation and weighs heavily in favor of granting this motion. *See, e.g., Healthsouth Corp.*, 261 F.Supp.2d at 1326; *Walsh Securities*, 7 F.Supp.2d 523, 527 (D.N.J. 1998) (civil and criminal cases involve “essentially the same allegation,” which factor weighs in favor of a stay).

Further, the requested temporary stay would preclude DaCorta, Anile, Montie, Duran, and Haas from using their status as defendants in this civil case to engage in asymmetrical discovery and thereby gain a tactical procedural advantage in any future criminal proceeding. As explained above, such a procedural advantage is one of the harms specifically delineated in the *Campbell* and *Hugo Key* decisions. Moreover, any argument by the individual defendants that the decisions are somehow inapposite because they did not initiate this civil action should be summarily rejected. While the individual defendants may not have initiated this action, requiring the CFTC to make its preliminary disclosures and produce discovery and otherwise allowing the proceedings to continue in the

normal course will afford them the opportunity to improperly leverage their status as defendants to engage in the prohibited conduct. And it is the conduct, not one's status as a plaintiff or defendant, that causes the harm and inequity to the government.

Finally, setting the interests and motives of the individual defendants aside, the civil discovery (and deposition process) is in itself so corrosive to the government's ongoing criminal investigation as to merit the limited stay requested herein. One of the primary goals of the government in the criminal investigation is to determine what various witnesses *independently recollect* regarding certain events and issues – *absent external information or education* – and to preserve that information via special agent reports or sworn testimony before the grand jury, as appropriate under the circumstances. In conducting an interview of a potential witness in a criminal investigation, the government typically phrases any questions to the witness in a manner that allows the government to determine the extent of the individual's candor and knowledge concerning a particular event or issue. The very nature of the civil discovery process will pollute the criminal investigation by providing previously unknown information to potential government witnesses.

Here, the government is not requesting that this Court curtail or prevent any appropriate civil discovery in this case; rather, the government's intention is

only to secure complete and truthful sworn testimony and information from core witnesses concerning the conduct at issue in the criminal investigation *prior to* the witnesses participating in the civil discovery process. The issue is therefore one of integrity, priority, and timing, and should be resolved in favor of preserving the integrity of the government's criminal investigation. *See, e.g., Campbell*, 307 F.2d at 487 (distinction between civil and criminal actions requires determination of priority: "which case should be tried first. Administrative policy gives priority to the public interest in law enforcement."); *and Application of Eisenberg*, 654 F.2d at 1113 (circuit's policy that criminal prosecutions take priority over civil actions).

2. Lack of Prejudice to Civil Parties

As courts have repeatedly determined, any prejudice resulting from a limited stay of parallel civil proceedings is minimized by the fact that the parties "will have appropriate opportunity for discovery at the conclusion of [any] criminal trial" of the targets of the criminal investigation. *SEC v. Princeton Econ. Int'l Ltd.*, 2000 WL 193131, *2 (citing *SEC v. Chestman*, 861 F.2d at 49). Thus, a temporary stay of all proceedings herein should not significantly prejudice any of the civil litigants.

3. Other Interests

As to any impact the government's request may have on any others including, but not limited to, any unrepresented parties, this Court, and the

public, the government submits that said other interests also weigh in favor of granting the government's request. Notably, the government does not seek to stay the Receiver's efforts to gather assets and perform other functions tailored to gathering assets with which to compensate victims. Moreover, the government has no objection at this time to the CFTC moving forward with the upcoming Preliminary Injunction hearing as to defendants Montie, Haas, and Satellite Holdings Company, which is set for July 1, 2019, before the Honorable Magistrate Judge Flynn.

THE REQUESTED STAY

The limited stay of all proceedings in this civil action for one-hundred eighty (180) days, including a stay of entry of the *Case Management and Scheduling Order*, will prevent any prejudice or harm to the government's criminal investigation and any resulting prosecution, while minimizing any potential harms to the parties in this civil action. The government submits that the one-hundred eighty (180) day period should allow the government to conclude the primary aspects of its criminal investigation, handle any necessary related matters, make any appropriate charging decisions, and secure any required approvals to proceed.⁷

⁷ The government hereby notifies the Court that, because the government is not a party to this action, the government takes no position should the Court deem it appropriate to administratively close this case during any stay period.

CONCLUSION

In light of the foregoing extraordinary and special circumstances, and in the interests of justice, the government respectfully requests that the Court grant this motion. Moreover, because Rule 26 Initial Disclosures are about to be made and civil discovery is set to commence, the government further requests that this Court consider the issues raised herein in an expedited manner.

Respectfully submitted,

MARIA CHAPA LOPEZ
United States Attorney

By: /s/ Rachelle DesVaux Bedke
Rachelle DesVaux Bedke
Assistant United States Attorney
Florida Bar No. 0099953
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
E-mail: Rachelle.Bedke@usdoj.gov

RULE 3.01(g) CERTIFICATION

Per Rule 3.01(g), Rules of the U.S. District Court for the Middle District of Florida, the government has discussed the substance of this motion with the Jo E. Mettenburg, Jennifer J. Chapin, and J. Alison Auxter, counsel for plaintiff Commodity Futures Trading Commission (“CFTC”), as well as with Burton W. Wiand, the Receiver appointed by the Court. They do not object to the relief requested by the government, so long as such relief does not impede the Receiver’s ability to gather assets and perform other functions tailored to gathering assets with which to compensate victims, as set forth in the Court’s Orders at Doc. 7 and Doc. 44. In addition, the CFTC does not object so long as the government’s requested relief does not impact the upcoming Preliminary Injunction hearing (now set for July 1, 2019, before the Honorable Magistrate Judge Sean P. Flynn) and the relief requested therein.

The government communicated with presently-unrepresented defendant Michael J. DaCorta, via electronic mail copied to his former counsel, about the substance of this motion. Mr. DaCorta indicated that he has no objection to the relief requested by the government.

The government communicated with Gerard Marrone, counsel for defendant Joseph S. Anile, II, about the substance of this motion. Per Mr.

Marrone, defendant Anile has no objection to the relief requested by the government.

The government communicated with Vincent Citro, counsel for defendant Raymond P. Montie, III, about the substance of this motion. Per Mr. Citro, defendant Montie objects to the relief requested by the government, due primarily to the asset freeze now in place.

The government communicated with Allan M. Lerner, counsel for defendant Francisco “Frank” Duran, about the substance of this motion. Per Mr. Lerner, defendant Duran has no objection to a stay of discovery in this action, but he does object to the extent any stay would preclude the possibility of challenging the asset freeze as overbroad and/or reaching a settlement.

The government communicated with Brian Phillips, counsel for defendant John J. Haas, about the substance of this motion. Per Mr. Phillips, defendant Haas objects to the relief requested by the government, due primarily to the asset freeze now in place.

The government communicated with Scott S. Allen, Jr., counsel for Mainstream Fund Services, Inc., about the substance of this motion. Per Mr. Allen, defendant Mainstream Fund Services objects to the relief requested by the

government because it submits that it should not be burdened by the CFTC's civil action while the criminal investigation continues.

Respectfully submitted,

MARIA CHAPA LOPEZ
United States Attorney

By: /s/ Rachelle DesVaux Bedke
Rachelle DesVaux Bedke
Assistant United States Attorney
Florida Bar No. 0099953
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
E-mail: Rachelle.Bedke@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Jo E. Mettenburg, Esquire
Jennifer J. Chapin, Esquire
J. Alison Auxter, Esquire
Mark Horwitz, Esquire
Vincent Citro, Esquire
Christopher A. Walker, Esquire
Dennis Vacco, Esquire
Scott S. Allen, Jr., Esquire
Brian Phillips, Esquire
Andrew Searle, Esquire
Allan M. Lerner, Esquire

I hereby certify that on June 26, 2019, a true and correct copy of the foregoing document and the notice of electronic filing were sent electronic mail to the following non-CM/ECF participant(s):

Gerard Marrone, Esquire
gmarrownelaw@gmail.com
Counsel for Joseph S. Anile, II

Michael J. DaCorta
Mdacorta@oasisig.com

Burton W. Wiand, Receiver
BWand@Wiandlaw.com

/s/ Rachelle DesVaux Bedke
Rachelle DesVaux Bedke
Assistant United States Attorney
Florida Bar No. 0099953
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
Rachelle.Bedke@usdoj.gov