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August 17, 2017

Via ECF

Honorable Katherine B. Forrest  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Courtroom 15A  
New York, New York 10007

Re: SEC v. Anthony J. Thompson, et al., Civil Case No. 14-cv-09126-KBF

Dear Judge Forrest,

We represent the Defendant, Anthony Thompson, and write in response to the August 10, 2017 letter submitted by the New York County District Attorney's Office ("the "DAO") (ECF No. 68), to oppose the further extension of the stay that has been in place for almost three years. In that letter, the DAO requests that this Court stay discovery in the above captioned case until the resolution of the criminal proceedings brought by the DAO against Mr. Thompson, or for a period of six months, whichever is later. We disagree with the DAO that a further stay is warranted, and instead request that the Court permit the parties to engage in much overdue discovery and pretrial practice, so that this case – which pertains to transactions occurring in 2009 and 2010 – can finally be resolved.

As an initial matter, the DAO's letter unfairly characterizes the proceedings in Mr. Thompson's criminal case over the past year, accusing Mr. Thompson of "obvious attempt[s] to delay the start of trial" in that case. The DAO fails to inform the Court that the reason for the delay of the trial is: (i) the DAO's insistence on prosecuting Mr. Thompson based on inapplicable larceny theories, which led to motions and ultimately resulted in the dismissal of 25 counts; (ii) the DAO's mishandling of seized evidence, necessitating a motion that resulted in the suppression of 90% of the seized material; and (iii) its employment of an utterly unprecedented theory of geographic jurisdiction. With respect to the geographic jurisdiction issue, the DAO failed to present to the Grand Jury, as required under New York law, evidence showing that an element of the crimes occurred in New York County. The theory the DAO proceeded on – the presence of the Depository Trust Co. and the offices of "OTC Markets" in New York County – would permit it to prosecute OTC stock trades that occurred *anywhere* in the United States, regardless of the defendant's location, and would eviscerate the constitutional and statutory requirements that a defendant be prosecuted in the venue where an element of the crime occurred. The Trial Court further compounded the situation when it declined to dismiss the indictment, and upheld the DAO's geographic jurisdiction theory on the grounds that New York was an appropriate venue

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for stock fraud cases because it is the “financial capital of the world.” Perhaps the most significant omission from the DAO’s letter is that Mr. Thompson *must* continue to pursue all available appeals from the Trial Court’s decision on geographic jurisdiction because New York law prohibits Mr. Thompson from raising that challenge to the indictment following the commencement of the criminal trial. Had this case been properly charged, none of these motions would have been necessary, and the case would have moved more expeditiously.

As to whether a further stay is warranted, the DAO’s letter provides no justification for continuing a stay three years after the filing of the action. The DAO relies on its previous analysis of the *Louis Vuitton* factors. However, the calculus has changed with respect to several of the factors that the DAO appeared to have relied on most heavily in its original submission seeking the stay. Specifically, the following factors no longer weigh in favor of a stay: “(4) the private interests of and burden on the defendant[]; (5) the interest of the courts; and (6) the public interest.” *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 99 (2d Cir. 2012). Certainly it is not in Mr. Thompson’s interest for the this litigation to continue to loom over him without any ability to engage with the SEC or to defend himself otherwise against the allegations. Nor is it in anyone’s interest to wait to litigate a case until almost a decade has passed since the conduct. A further extension of the stay will only exacerbate the increasing difficulties of locating witnesses and preserving their memories, both for the SEC and for Mr. Thompson. And it is hardly in the public interest for the SEC, a government agency, to file a complaint against a private individual – with all the attendant collateral consequences to that individual’s livelihood – and then permit it to do nothing to resolve that matter for years, while the allegations in that complaint continue to wreak havoc on that person’s life. Nor will the criminal case, given the dramatically reduced charges that remain,<sup>1</sup> serve to resolve the issues here. In reality, this case will have to proceed, either now or later. Tellingly, the DAO addresses none of these factors in its most recent application to extend the stay – likely because the DAO knows that when the *Louis Vuitton* factors are reanalyzed at this juncture, it becomes clear that a stay is no longer warranted or proper.

Moreover, there is no guarantee that the criminal case will proceed to trial on September 27, 2017. If Mr. Thompson’s pending application for leave to appeal and for a stay is granted by the Court of Appeals, the trial will be postponed and the appeal would extend through 2018. Further, in recent months, the DAO was able to have the criminal case reassigned to a new judge, but that new judge has not yet even been selected. None of the parties can predict how long that judge, once selected, would need to familiarize him or herself with the case, or what schedule that judge would impose. Thus, were the Court to extend the stay as requested by the DAO –

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<sup>1</sup> Only 7 “E” felonies of the original 85 counts remain.

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i.e., the latter of the resolution of the DAO's criminal prosecution or six months – there is a very real possibility that this case may be stayed through next year and into 2019.

For these reasons, Mr. Thompson opposes any extension of a stay of these proceedings, and instead requests that the Court terminate the existing stay so that Mr. Thompson can defend this litigation. The DAO filed its initial application for the stay on December 29, 2014, and the Court granted the requested stay – over Mr. Thompson's objections – on January 23, 2015, meaning that this matter has already been stayed for over two-and-a-half years.<sup>2</sup> A stay of such length, for a case based on alleged conduct that occurred in 2009 and 2010, is not supported by the *Louis Vuitton* factors, and should not be extended.

Very truly yours,

/s/Maranda E. Fritz

Maranda E. Fritz

cc: All Counsel of Record (via ECF)

Ordered  
we are close to the trial date of 9/28/17 for the criminal matter. If the case proceeds to trial then, we can await the conclusion of the trial. If the case is again adjourned, we may have a limited life of the stay for any initial motion practice. Bottom line: this case remains stayed until 9/28/17. The parties shall report to the court on or before that date as to whether the criminal trial is proceeding then.

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<sup>2</sup> The Court's original order concluded that a one-year stay was "reasonable under the circumstances" and was "in the interests of justice." See ECF No. 22.

K.S. Fox  
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