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By Electronic Filing

The Honorable Chad F. Kenney
United States District Court for the
Eastern District of Pennsylvania
601 Market Street, Room 11613
Philadelphia, PA 19106

Re: *United States v. Cammarata*, 21-cr-427
SEC v. Cammarata, 21-cv-4845

Dear Judge Kenney:

We write to petition the Court to release \$500,000 to allow Mr. Cammarata to retain our firm, Ballard Spahr LLP, to represent him in the two above-referenced cases.

With respect to the civil case, neither we nor Mr. Cammarata claims there is a right to counsel in the civil case. But, the specific facts present here support unfreezing funds to allow Mr. Cammarata to retain counsel.

On November 3, 2021, the same day that Mr. Cammarata was arrested/indicted, the SEC sought a temporary restraining order freezing all of Mr. Cammarata's assets. (21-4845, Dkt. No. 2). While Mr. Cammarata was detained in Miami, the Court extended the freeze. Then without ever appearing before the Court for a hearing on such a significant issue, Mr. Cammarata's then counsel consented to the asset freeze. (21-4845, Dkt. No. 66). Mr. Cammarata did not know then that this meant, despite being wealthy, he would have to forever seek the Court's approval for access to his own funds, whether allegedly tainted or untainted, to defend himself from cases brought by two separate government agencies.

Despite Mr. Cammarata's then-counsel's consent, there is no basis for the SEC's asset freeze or its entire lawsuit against Mr. Cammarata. The SEC alleged that Mr. Cammarata and others violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder. Regardless of whether Mr. Cammarata engaged in the alleged fraud, for the SEC to state a valid claim it must prove that the fraud occurred "in connection with the purchase and sale of securities" 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

The SEC cannot and will not be able to prevail on its claim because it cannot prove this necessary “in connection” element. Indeed, the SEC’s complaint is threadbare and illogical on this point, stating only:

The Individual Defendants acted knowingly and/or recklessly. Among other things, the Individual Defendants knew or were reckless in not knowing that they were engaging in deceptive conduct and making material misrepresentations and omitting material facts in connection with selling or offering of securities.

(Compl. ¶ 159; *see also id.* ¶ 163 (“The conduct described herein was in connection with the purchase or sale of securities.”)). The SEC does not even attempt to explain how Mr. Cammarata’s alleged conduct is knowingly connected to the purchase and sale of securities.¹

In response to Mr. Cammarata’s *pro se* and inartful motion to dismiss on these grounds, the SEC was clearly caught off-guard responding that:

The novelty of any given scheme does not exempt it from the statutory language. . . . In this case, the Commission’s allegations that the Defendants’ scheme foreseeably and necessarily led to the sale of securities is alone sufficient to state a claim under these standards.

(21-4845, Dkt. 156).

Then, in response to Mr. Cammarata’s motion for summary judgment, the SEC changed its entire argument, asserting that the fraud was “in connection” to the sale of securities because the proceeds for the securities class action settlements were “often” kept in money market accounts. (21-4845, Dkt. 191 at 20, 21). First, the SEC can point to no law that would embrace the concept that a tangential – at best – securities transaction is sufficient to convert any run-of-the-mill fraud into a securities fraud. Second, the SEC must prove Mr. Cammarata’s scienter. The SEC simply has no evidence that Mr. Cammarata knew class action settlement funds were kept in a money market versus a savings account. The fact that some of the funds may have been kept in a money market is completely incidental to the alleged scheme. And, the SEC has cited no precedent, besides language generally discussing statutory interpretation that endorses the SEC’s position here. This is hardly the sort of precedent that would support the onerous and broad asset freeze the SEC sought and obtained by consent (while Mr. Cammarata was detained).

¹ The publicly available docket for *SEC v. Cammarata* does not list a docket entry #2, which is presumably the SEC’s motion for the asset freeze, so we do not know what the SEC even said to justify why it could show a violation of Section 10(b). However, the Declaration submitted in support of that motion says nothing to this end. (21-4845, Dkt. No. 3).

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The SEC's back-up "in connection" argument is even weaker. The SEC's contends that because Mr. Cammarata role with "various broker-dealers was critical to the scheme" this was a securities fraud. There is no support in the law for this. A fraudster who lies and holds himself out as investment adviser but engages in identity theft does not violate the securities laws.

There is no doubt that the SEC filed this case on a perilous legal theory and then secured a freeze of all of Mr. Cammarata's money while he was locked up and unable to fight it. Due process requires that Mr. Cammarata have the means to fight the SEC case, and the securities laws are far too complex and the stakes are simply too high to mandate that Mr. Cammarata fight this civil action on a *pro se* basis.

The SEC's baseless asset freeze has and continues to severely limit Mr. Cammarata's ability to defend himself in his criminal case. When Mr. Cammarata was arrested, he was a wealthy man, regardless of whether he engaged in the alleged fraud. But, because of the asset freeze, which again was obtained on the basis of a tenuous legal theory, he was and is forced to submit petitions to the court seeking access to his own funds. Had Mr. Cammarata had free access to his money, he could have hired: (a) consultants who would have used the paper trail to show the jury the legitimacy of Alpha Plus's claims; (b) experts to testify before the jury about the claims process and the legitimacy of assigning claims; and (c) accountants to demonstrate to the jury and to this court at sentencing that the government cannot prove any money was stolen, much less tens of millions of dollars.

Though Mr. Cammarata has been convicted, that does not mean he no longer has Constitutional rights. Undoubtedly, the government will seek a sentence of many years. Mr. Cammarata's relationship with his current attorneys is beyond repair. But, because of the baseless asset freeze, Mr. Cammarata is faced with the unfair choice: rely on attorneys that he does not trust or fight the full power of the government in a complicated case by himself.

No criminal defendant, much less one with significant resources legitimately earned should be forced to face that decision. For that reason, I ask you to unfreeze \$500,000 so Mr. Cammarata may exercise his Constitutional right and not be trampled by the power of the federal government. Given that the government has conceded that there are untainted funds, its objection to Mr. Cammarata's request to access the funds to provide for his own defense – both in his criminal proceedings and the civil action – is without basis. Indeed, given that

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Mr. Cammarata's access to his funds were limited without his ability to truly contribute to discussions regarding strategy and defense, ensuring that he has access to these funds now is imperative to prevent any further due process violations.

Respectfully submitted,

/s/ David L. Axelrod

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