



United States Attorney
Southern District of New York

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September 8, 2014

By ECF & Hand

Hon. Paul G. Gardephe
United States District Judge
United States District Court
40 Centre Street
New York, NY 10007

Re: United States v. Martoma, 12 Cr. 973 (PGG)

Dear Judge Gardephe:

The Government makes this submission in response to the Court's Order of September 5, 2014, directing the Government to address the arguments raised by the defendant that only the amount of compensation the defendant received *after income taxes were withheld* should be subject to forfeiture.

In insider trading cases, the Government may seek the forfeiture of the defendant's net proceeds, after subtracting certain allowable direct costs if they are proved by the defendant. *United States v. Contorinis*, 692 F.3d 136, 145 n.3 (2d Cir. 2012) (applying Section 981(a)(2)(B)). However, as the defendant admits in his September 5, 2014 sentencing submission, he is explicitly prohibited from deducting "any part of the income taxes paid by the entity" as a direct cost, pursuant to Section 981(a)(2)(B). Here, the defendant's employer, SAC Capital, withheld income taxes owed by the defendant on his ill-gotten gains. Under the plain wording of the statute, the \$2.9 million that was withheld from the defendant's \$9.38 million bonus does not qualify as a direct cost that may be deducted from the defendant's forfeiture amount. Any other interpretation would render this provision meaningless. Indeed, the defendant does not even attempt to give an alternative statutory construction to this very clear prohibition.

Grasping at straws, the defendant then argues that he never "acquired" or "controlled" the \$2.9 million that was withheld by his employer and paid to the tax authorities on his behalf, and therefore should not be liable for the forfeiture of that portion of his bonus. The defendant cites not a single case in which a court has agreed with this position, and indeed, the Government is not aware of any such precedent. The only case cited by the defendant to support his argument is *Contorinis*, but such reliance is misguided. In *Contorinis*, which involved a defendant convicted of securities fraud, the Second Circuit vacated the district court's order requiring the defendant to forfeit \$12.65 million in profits that his fraudulent trading earned for his employer, an investment fund that was not implicated in the fraud. 692 F.3d at 148. As further explained in a later

