

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
c/o United States Attorney's Office
555 Fourth St., N.W.,
Washington, D.C. 20530,

Plaintiff,

v.

8 GILCREASE LANE, QUINCY
FLORIDA 32351,

and,

ONE CONDO LOCATED ON
NORTH OCEAN BOULEVARD IN
MYRTLE BEACH, SOUTH
CAROLINA,

and,

ALL FUNDS, INCLUDING
APPROXIMATELY \$53 MILLION,
HELD ON DEPOSIT AT BANK OF
AMERICA ACCOUNTS IN THE NAMES
(1) THOMAS A. BOWDOIN, JR.,
SOLE PROPRIETOR, DBA
ADSURFDAILY, (2) CLARENCE
BUSBY JR. AND DAWN STOWERS,
DBA GOLDEN PANDA AD BUILDER,
AND (3) GOLDEN PANDA
AD BUILDER,

Defendants, and

GOLDEN PANDA AD BUILDER, AND
CLARENCE BUSBY, JR.

Claimants.

**MEMORANDUM IN SUPPORT OF
CLAIMANTS' MOTION FOR
SEVERANCE AND TRANSFER**

Civil Action No: 1:08-cv-01345
Hon. Rosemary M. Collyer

**MEMORANDUM IN SUPPORT OF CLAIMANTS' MOTION FOR SEVERANCE
AND TRANSFER**

SUMMARY

On August 5, 2008, the Government filed its complaint seeking civil forfeiture of property belonging to two companies, Ad Surf Daily Cash Generator (“ASD”) and Golden Panda Ad Builder (“Golden Panda”). The Government subsequently seized fifteen bank accounts with Bank of America, five of which are independently owned by Golden Panda. As support for this seizure, the Government presents this Court with a 44-page complaint alleging that ASD had made misrepresentations to customers and that ASD might abscond with the funds. The Government limits its discussion of Golden Panda, however, to just over two pages of text. But contrary to the Government’s assumption, Golden Panda is not affiliated with ASD, has not received any funding from ASD or its principals, and is independently owned, operated, and controlled.

Because ASD and Golden Panda are not affiliated but are separately owned, operated, and controlled, it is unjust to prosecute them as co-defendants. The union of the two yields an inevitable tendency, evinced by the complaint itself, to ascribe wrong-doing alleged against ASD to Golden Panda, thereby unjustly prejudicing Golden Panda. Accordingly, Golden Panda requests that this Court sever the forfeiture proceedings into two. The Government’s allegations against Golden Panda’s assets do not stem from the same transaction of facts giving rise to the Government’s allegations against ASD. Because Golden Panda is unrelated to ASD; severance will preserve a clean record before this court and prevent false associations and prejudice otherwise inevitable and will avoid unnecessary conflict between the litigating parties.

Golden Panda further requests that this Court simultaneous with its severance order transfer forfeiture proceedings against Golden Panda’s property to a more appropriate venue, thereby alleviating prejudice to Golden Panda’s defense. Golden Panda seeks transfer to the

United States District Court for the Northern District of Georgia where Golden Panda, its principals, and its assets are resident and where venue is proper.

I. FACTS

Clarence Busby Jr. is the President and CEO of Golden Panda Ad Builder Inc. *See* Exhibit 1 at ¶ 1 (Affidavit of Clarence Busby). He oversees the daily operation of the company. His daughter, Dawn Stowers, is the Chief Operating Officer. *Id.* The company has eleven employees. *Id.* at ¶ 3.

Golden Panda Ad Builder Inc. was incorporated in Georgia on May 15, 2008. *Id.* at ¶ 3. It is a company in good standing. *Id.*

Golden Panda commenced operations on July 24, 2008. *Id.* at ¶ 16. From that date until the present suit was filed on August 1, 2008, is a period of 8 days. On August 1, 2008, the following Golden Panda bank accounts were seized by the Department of Justice: Bank of America Account #'s 334011130192; 33401130200; 334015765704; 91000113401039; and 91000113404188.

The other defendant in this action, Ad Surf Daily Cash Generator (“ASD”) is not affiliated with Golden Panda. *Id.* at ¶¶ 6-8, 18-20, 23-24. Contrary to an allegation in the government’s complaint, none of the accounts owned by Golden Panda contains any money from ASD, Andy Bowdoin, or any of ASD’s officers, directors, or shareholders. *See id.* at ¶¶ 20, 24; Exhibit 1, Attachment 3 (Affidavit of Robert J. Skinner, CPA, and attachments). Neither ASD nor any of its officers, directors, or shareholders is an officer, director, or shareholder in Golden Panda. *Id.* at ¶ 24. None has ever exercised any influence or control over Golden Panda’s operations. *Id.* at ¶ 20-24. Golden Panda has never received any funding for its operation from ASD. *Id.*

Busby was never involved in ASD ownership, operation, or control. He has never been an ASD officer, director, or shareholder. He is not privy to how Bowdoin runs ASD's business and was not privy to any decision Bowdoin made concerning how to allocate funds raised by ASD. *See* Exhibit 1 at ¶ 12. He has had no involvement in any sales presentations Bowdoin has made and never knew, prior to his receipt of the complaint in this proceeding, that Bowdoin had prior run ins with the law. *Id.* at ¶ 9.

On the recommendation of an ASD member, Busby bought an ASD ad package in November of 2007. *Id.* at ¶ 11. Before buying the package, he asked that member if he could meet the person she identified as the head of ASD, Andy Bowdoin. He met Bowdoin, heard about Bowdoin's ASD program, talked it over with his wife, and then bought an ad package. *Id.* at ¶ 10-11. He knew little about the business other than what Bowdoin told him and has little knowledge of computers and the web. *Id.* at ¶ 15.

As a social courtesy to Bowdoin, he asked a pastor friend of his, Rev. Charles Green, if Green might bring his boat and join Busby in inviting Bowdoin on a relaxing fishing trip. *Id.* at ¶ 13. Bowdoin accepted the invitation and on April 11, 2008, he spent the day fishing with Busby and Green. During that fishing trip, Bowdoin recommended that Busby start a Chinese version of ASD. *Id.* at ¶ 14. He told Busby to organize the business without him. He said, "I can't handle the business I already have," stating that Busby should be the one to create, own, and operate this Chinese version of ASD. *Id.*

Busby did not believe he knew enough about computers and the web to run the business and, so, told Bowdoin that Bowdoin should run it. Bowdoin explained that he did not want to run it. *Id.* at ¶ 14-15. Busby then proceeded solo in choosing the name for the company and incorporating it on May 15, 2008. At the time of incorporation, Busby still thought Bowdoin

would need to run the business, so he placed Bowdoin's name as President of the company, although Bowdon never actually filled that office and never actually took any step to run the company. *Id.* at ¶ 15-16.

Two and one-half weeks before Golden Panda commenced operations (July 24, 2008), Bowdoin called Busby and reiterated that he did not have time for Golden Panda, had done nothing to help create it, and thought Busby should be the one to own, operate, and control the business. *Id.* at ¶ 16. Busby decided with the help of his kids that he really could run a web based advertising business on his own. *Id.* at ¶ 17. On July 2, 2008, he amended the Golden Panda papers with the state, naming himself the President and removing Bowdoin's name. *Id.*

On July 12, 2008, in an ASD rally in Miami, Florida, Bowdoin announced that he had no affiliation with Golden Panda. He reiterated that he had no affiliation with Golden Panda at an ASD rally in Chicago on July 19, 2008. *Id.* at ¶ 18. He also posted a notice on his web site stating that he withdrew himself from Golden Panda. *See id.* at ¶ 19; Exhibit 1 at Attachment 1 (Bowdoin Letter Regarding Disassociation); Exhibit 1 at Attachment 2 (Bowdoin Resignation from Golden Panda). Those notices were posted approximately one week before the July 24 date when Golden Panda became operational. *See Exhibit 1 at ¶ 19.*

Bowdoin never performed any function for Golden Panda while his name was on the state papers as President of the company. He was President in name only for the period of May 15 to July 2, 2008. *Id.* at ¶ 20. On July 2, Busby amended the papers, removing Bowdoin's name and naming himself as President. *See id.* at ¶ 17.

Busby created a web based advertising business that aims to provide advertising value to businesses. The focus of the business is advertising, not cash distribution. The names of the two

defendants are telling in that regard. The name of ASD is Ad Surf Daily *Cash Generator*. The name of Golden Panda is Golden Panda *Ad Builder*. *Id.* at ¶ 21.

At the very start of Golden Panda's business (which lasted only 8 days before it was shut down through the government's fund seizure), Busby wanted to secure the legal representation of an expert in direct selling and network marketing law to ensure lawful operation. He found D. Jack Smith of Memphis, Tennessee, an internationally known marketing attorney. *Id.* at ¶ 22. He first contacted Smith on or about the week of July 22, 2008. He retained Smith on July 29, 2008. He invited Smith to the Golden Panda offices in Atlanta, Georgia and hired Smith to evaluate the company's records and business model and advise the company on all steps necessary to ensure that the company was lawful. *Id.* Smith traveled to Atlanta and met with Golden Panda on July 31, 2008. On August 1, 2008, the day after Smith had met with the company, Golden Panda received word from its bank that all of the Golden Panda accounts had been frozen. It was not until one week later that Golden Panda received the government's complaint that its principals became aware of the government's reason for freezing the funds. *Id.*

The allegations in the complaint associating Golden Panda and Busby with ASD and Bowdoin are false. *Id.* at ¶ 23. Neither Bowdoin nor ASD provided any capital or expended any effort in establishing or operating Golden Panda. *Id.* at ¶¶ 23-24. Golden Panda received no funding, direction, or control from ASD and is a business completely independent from and not in any way beholden to ASD. *Id.* at ¶¶ 6, 23-24.

Golden Panda's funding came from Busby who, in turn, retrieved it from proceeds stemming from his successful real estate practice and from 34 founders named in the Busby affidavit. *Id.* at ¶ 23. None of those founders is an officer, director, or shareholder in ASD. *Id.* at ¶ 24.

Busby created Golden Panda to sell advertising. *Id.* at ¶ 26. The company screens each ad to ensure that it is “clean” (free of content that would offend, particularly content that is pornographic). Approved ads are placed on a web rotator and each advertiser is asked to view 12 other randomly selected ads for 15 seconds each every day (“ad views”). *Id.* at ¶ 28. That builds an immediate audience for the ads, something hard to come by in typical web advertising. *See id.* at ¶¶ 26-29. Since its inception, the company has been developing a system that will allow its advertisers to geographically target ads to reach specific audiences, to post classified ads, and to take steps to increase the visibility of company ads on search engines. Those services come at an additional fee beyond the cost of the rotator ads. *See id.* at ¶ 26-30.

From every rotator advertising dollar paid to the company, 50 cents is retained as profit and 50 cents is contributed to a cash out fund. The cash out fund is designed to create an incentive for ad views. *Id.* at ¶ 28. Those who daily perform ad views are eligible to receive a pro rata share of the ad sales proceeds contributed to the cash out fund. *Id.* at ¶¶ 28-29.

Advertisers can request that their pro rata share be paid out to them or can apply it to future advertising. When they ask for the pro rata share in cash or apply it, their request is honored but Golden Panda reduces the amount of their prior ad package purchase by the amount taken out until that amount reaches zero, whereupon in order to keep their advertisement in the rotator, they must buy additional advertising. *Id.* at ¶ 30.

Golden Panda explains the program to its advertisers honestly and does not make any claims, like those alleged to have been made by ASD, that advertisers will be guaranteed a 125% return on an ad purchase. *Id.* at ¶ 31-32. They are told, instead, that if money is present in the cash out fund, it will be distributed pro rata. If not, there will be no distribution. *Id.* at ¶ 31.

Golden Panda is not responsible for, had no foreknowledge of, and never was involved in the making of the claims alleged in the complaint that give rise to wire fraud. *See id.* at ¶ 9.

Golden Panda is not presently in operation as a direct result of the seizure order. Golden Panda is losing customers, has been forced to terminate employees, is paying the remainder reduced salaries for a time out of Busby's pocket, and cannot remain a viable company unless it promptly has access to its funds and resumes business. *Id.* at ¶ 35-36.

Golden Panda has no connections with the District of Columbia. *See* Exhibit 2 at ¶¶ 8-15 (Busby Affidavit in Support of Motion to Sever); Exhibit 3 at ¶¶ 6-12 (Stowers Affidavit in Support of Motion to Sever). All five of the Golden Panda accounts seized by the Government were opened locally in Georgia. *See* Exhibit 2 at ¶ 10. The address attributed to each account was 4900 Ivey Rd., N.W., Suite 820, Acworth, GA 30101-4001. *Id.* at ¶ 11. Of Golden Panda's 34 founders, none live or has lived in the District of Columbia. *Id.* at ¶ 8. Golden Panda has received no funds of any kind from the District of Columbia. *Id.* at ¶¶ 12-15. It has paid no cashout payments into the District of Columbia. *Id.* at ¶ 12. No Golden Panda officer, director, or shareholder has entered the District of Columbia for the purpose of conducting business or otherwise. *Id.* at ¶ 14; Exhibit 3 at ¶ 8. Golden Panda had 19,804 customers at the time the Government seized its business on August 1, 2008. *See* Exhibit 2 at ¶ 12. None of those customers resided in the District of Columbia. *Id.*

Meanwhile, Golden Panda has a strong connection to the general Acworth, Georgia area. In fact, four generations of Busby's have resided in Acworth, Georgia. *Id.* at ¶ 6. Clarence Busby Jr. has lived in Georgia all but two years of his life. *Id.* at ¶ 2. He has spent 7 of the past 12 years in Acworth, Georgia, and he has resided within a 20 mile radius of Acworth for the past 20 years. *Id.* Busby has cultivated several successful local businesses. He has a combined 31

years of business experience in the local economy. *See* Exhibit 2 at ¶ 4. He continues to own numerous properties in the area. *Id.* at ¶ 3. Golden Panda Chief Operating Officer Dawn Stowers has lived her entire life in Georgia. *See* Exhibit 3 at ¶ 2. She owns several properties in the Acworth area. *Id.* All of Golden Panda’s employees reside in Cobb County (in which Acworth is located) or the immediate surrounding counties. *Id.* at ¶ 7.

Therefore, the events giving rise to the Government’s allegations against Golden Panda’s assets all arose in the Northern District of Georgia.

II. SEVERANCE IS APPROPRIATE IN THIS CASE BECAUSE THE ALLEGATIONS AGAINST GOLDEN PANDA DO NOT ARISE OUT OF THE SAME TRANSACTION, OCCURRENCE, OR SERIES OF TRANSACTIONS

The Government seized two sets of properties unrelated to one another, but seeks to proceed under one forfeiture proceeding. Under Federal Rule of Civil Procedure 20, parties may be joined in one action if “they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences. . .” *See M.K. v. Tenet*, 216 F.R.D. 133, 137-38 (D.D.C. 2002); Fed. R. Civ. Pro 20(a). This Court has stated that “[i]n ascertaining whether a particular factual situation constitutes a single transaction or occurrence for purposes of Rule 20, a case by case approach is generally pursued.” *Id.* at 138. In addition, even if the claims do arise under the same transaction or occurrence, this Court may separate the proceedings “to avoid prejudice.” *See* Fed. R. Civ. Pro 42(b); *M.K. v. Tenet*, 216 F.R.D. at 138 (same); *see also In re Vitamins Antitrust Litig.*, 2000 U.S. Dist. LEXIS 7397 (D.D.C. May 9, 2000) (court may sever “if the Court determines in its discretion that the interests of justice would be served by doing so”).

Whether facts derive from the same transaction or occurrence is a flexible analysis tending to encompass a broad scope of action. *See Montgomery v. STG Intern., Inc.* 532 F.Supp.

2d 29, 35 (D.D.C. 2008). But the relationship between events depends “not so much upon the immediateness of [the] connection as upon [the] logical relationship.” *Id.* (citing *Mosely v. Gen. Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974).

The Government presumes that ASD controls Golden Panda and that ASD funds entered Golden Panda bank accounts. Both presumptions are false, unsupported by facts in the Government’s complaint and disproven by Golden Panda. *See* Exhibit 1 at ¶¶ 6-7, 23-24 (affidavit of Clarence Busby); Exhibit 1, Attachment 3 (affidavit of Robert J. Skinner, CPA). No ASD funds transferred into Golden Panda accounts. Golden Panda obtained its seed money from Busby and thirty-four individual founders, none of whom is an officer, director, or shareholder in ASD.

ASD’s Any Bowdoin contributed no money to Golden Panda. Bowdoin has never exercised ownership, operation, or control of Golden Panda. Neither ASD nor Bowdoin ever opened, placed funds into, or controlled any Golden Panda bank accounts or any of Golden Panda’s officers, directors, or shareholders’ bank accounts.

The Government is not empowered to join claims based only on similar accusations. *See Lucas v. Barreto*, 2005 U.S. Dist. LEXIS 4248, *5 (D.D.C. 2005) (shared experiences of employees were insufficient to permit joinder because allowance would enable joinder in an overly broad range of cases); *see also Cohen v. District of Columbia Nat’l Bank*, 59 F.R.D. 84, 88 (D.D.C. 1972) (citing complications that exist when parties are lumped together).

This Court should sever this matter to avoid undue prejudice to Golden Panda. Federal Rule of Civil Procedure 42(b) provides for severance as a mechanism to prevent prejudice to any party. Civil forfeitures generally assume elements of criminal law because of their punitive nature. The Fourth Amendment’s protections against unreasonable government behavior apply,

as well as the Eighth Amendment's guard against excessive forfeitures.¹ In the criminal context, the Court of Appeals for the D.C. Circuit recognizes two instances when severance is appropriate: (1) when the evidence is "far more damaging" against one defendant; and (2) when the parties present conflicting defense theories. *See U.S. v. Tarantino*, 846 F.2d 1384, 1398-1399 (D.C. Cir. 1988).

While criminal joinder rules are not directly binding, they are persuasive authority. The Government does not allege facts to support what would be a false charge that Golden Panda's principals committed wire fraud or otherwise committed illegalities. *See* Govt Complaint at 28-30 (discussing Golden Panda in context of ASD "Additional Misrepresentations to Promote Expansion"). The evidence while damaging against ASD, is not so against Golden Panda. Because Golden Panda's defense hinges upon its innocence and lack of affiliation, its defense theory differs markedly from ASD, which will endeavor to define the representations made by Bowdoin not to constitute wire fraud and will endeavor to define its different marketing system which depended upon membership fees (not ad revenues) and guaranteed a 125% return on investment (not a pro-rata share of an advertising sale funded account). The risk is too great that Golden Panda's defense will be consumed by the enormity of litigation between ASD and the Government. In *Cohen*, the Court confronted multiple claims against several banks. The Court explained the need to differentiate matters when plaintiffs seek to consolidate parties without specific need. This Court explained in *Cohen* that:

It has already been shown that there are significant differences in the practices and policies of the defendant banks in making the loans here in issue. Each bank is entitled to defend against the complaints of its own borrowers and to have its defense determined on the facts that are specifically relevant to its own activities.

¹ Indeed, in a separate motion before this Court in these proceedings, the Government invoked elements of the criminal law in support of its argument. *See* Govt Opposition to Claimants' Motion to Dismiss, Dkt. #13, at 8 n.5.

. . . This Court seeks to avoid the difficulties and complications that would inevitably arise in an omnibus trial in which several counsel representing numerous parties would attempt to define and preserve the distinctions between evidence and issues relating to some defendant banks and not to others. A separate trial for each bank, for wholly pragmatic reasons, will be a more orderly and efficient way of handling this litigation.

Cohen, 59 F.R.D. at 88; *see also Manufacturers Bank & Trust Co. v. Transamerica Ins. Co.*, 568 F.Supp. 790 (E.D. Mo. 1983) (considerations of clarity and avoidance of confusion may favor separate trials of claims and outweigh economies which might be achieved by single trial).

As in *Cohen*, Golden Panda will constantly be forced to distinguish itself from ASD, taxing time better spent presenting its central arguments against the Government's allegations specifically germane to Golden Panda. So while the Government bears the burden of persuasion against Golden Panda, the Government's success against ASD could shift the burden to Golden Panda to distinguish itself from ASD as opposed to defending itself on the merits. This Court has held that "where any party will be prejudiced by a joint trial, consolidation rather than separate trials, is improper." *In re Ampicillin Antitrust Litigation*, 88 F.R.D. 174, 177 (D.D.C. 1980).

III. GOLDEN PANDA REQUESTS TRANSFER OF THIS ACTION TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA BECAUSE LITIGATION IN THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA CAUSES UNDUE PREJUDICE

The Government argues venue is proper in the District of Columbia under 28 U.S.C. § 1395(b) because the property will be "found" in this jurisdiction pending forfeiture. *See Govt Complaint at 2*. While venue may be proper by statute, Golden Panda's lack of contacts with the District of Columbia makes venue here inequitable, burdensome, and prejudicial. Venue is also proper in the Northern District of Georgia, because Golden Panda maintains its principal place of business in Acworth, Georgia.

Golden Panda is a family run business. After the Government's seizure, Golden Panda has been unable to conduct business, but maintains a skeletal staff of seven employees paid in part from Clarence Busby Jr.'s part-time real estate company. *See* Exhibit 1 at ¶ 35 (affidavit of Busby). Battling the Government on its home turf in Washington, D.C. is immensely burdensome and costly for Busby. Litigation in the District of Columbia will force Golden Panda's small team to expend fees on travel and lodging while subject to regular cost of civil litigation. In addition, Golden Panda will have to finance the travel and lodging of witnesses brought to the District of Columbia, while all are resident in Georgia. Were the case in the Northern District of Georgia, all witnesses would be within driving distance of the court.

The Government seeks to inflict this hardship under the wording of 28 U.S.C. § 1395(b). In reality, the Government essentially traveled to Georgia, retrieved Golden Panda's assets, and returned them to the District of Columbia where litigation is more costly and challenging for Golden Panda. In addressing the broad use of 28 U.S.C. § 1395(b), one district court has already identified the injustice in this practice:

It is unreasonable to assume that there was any intent on the part of Congress to confer upon the Attorney General the ability to bring his action for forfeiture in the district of his choice merely by transferring the property to that district. It follows that, where the Attorney General may take whatever necessary steps to insure the security of the property involved, he may not create or defeat jurisdiction of the district court by his actions.

United States v. One 1974 Cessna Model 310R Aircraft, 432 F.Supp. 364 (D. S.C. 1977).

In addition, the Government alleges no significant contacts by Golden Panda or its officers, directors, or shareholders with the District of Columbia. In its complaint and underlying affidavit, the Government presents no evidence that Golden Panda had minimum contacts with the District of Columbia. Federal agents located within the District of Columbia contracted with ASD for services. But unlike ASD, no federal agent contracted with Golden

Panda from the District of Columbia. Given the Government's lack of proof that either Golden Panda or its principals have had any meaningful contact with the District of Columbia, it is especially inequitable to force the company to litigate far from home.

Golden Panda has no connection to the District of Columbia. No Golden Panda employee, director, or shareholder, has traveled to the District of Columbia for business or otherwise. *See* Exhibit 2 at ¶¶ 14-15 (affidavit of Busby in Support of Motion for Severance); Exhibit 3 at ¶¶ 8-12 (affidavit of Dawn Stowers in Support of Motion for Severance). Golden Panda has received no funding from sources within the District of Columbia. *See* Exhibit 2 at ¶¶ 8-15; Exhibit 3 at ¶¶ 6-12. The company has not transacted business with any individual or business from the District of Columbia. Exhibit 2 at ¶¶ 12-15. When the Government seized Golden Panda's business, the company had 19,804 customers, and none of those customers were from the District of Columbia. *Id.* at ¶ 12.

By contrast, Golden Panda and its officers, directors, and shareholders all have substantial connections to northern Georgia. Golden Panda is a family-run business that originated in Acworth, Georgia. All of its employees are residents of northern Georgia. *See* Exhibit 2 at ¶ 7. Golden Panda is a Georgia corporation with 2 directors: Clarence Busby Jr. and his daughter, Dawn Stowers. Four Busby generations have resided in the Acworth area. *See* Exhibit 2 at ¶ 1. Clarence Busby has lived within a 20 mile radius of Acworth for the past 20 years. *Id.* at ¶ 2. Dawn Stowers has resided in the State of Georgia her entire life. *See* Exhibit 3 at ¶¶ 2-3. All of Golden Panda's seized bank accounts were opened in local institutions, all within the State of Georgia. *See* Exhibit 2 at ¶ 10. The listed address on Golden Panda's accounts is Acworth, Georgia. *Id.* at ¶ 11.

This Court may transfer “any civil action to any other division where it might have been brought.” 28 U.S.C. § 1404(a). Courts should allow a transfer “[f]or the convenience of the parties and witnesses, in the interest of justice.” *Id.* Venue is proper in the Northern District of Georgia. 28 U.S.C. § 1355(b) provides for jurisdiction in forfeiture cases in “the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred . . .” *Id.* Jurisdiction is thus proper in the Northern District of Georgia because Golden Panda maintains its principal place of business in Acworth, Georgia. Part of Cobb county, Acworth is within the jurisdiction of the United States District Court for the Northern District of Georgia.

The decision whether to transfer requires a “factually analytical, case-by-case determination of convenience and fairness.” *SEC v. Savoy Industries, Inc.*, 587 F.2d 1149 (D.C. Cir. 1978). Golden Panda must demonstrate that the “balance of convenience of the parties and witnesses and the interest of justice are in its favor.” *Consol. Metal Products v. Am. Petroleum Inst.*, 569 F.Supp. 773, 774 (D.D.C. 1983). And while the plaintiff’s choice of venue is given deference, that deference is “lessened when the plaintiff’s forum choice ‘lacks meaningful ties to the controversy and [has] no particular interest in the parties or subject matter.’” *Wada v. United States Secret Serv.*, 525 F.Supp. 2d 1, 10 (D.D.C. 2007) (citing *S. Utah Wilderness Alliance v. Norton*, 315 F.Supp. 2d 82, 86 (D.D.C. 2004)). Because the Government has failed to allege any contact between Golden Panda and the District of Columbia, other than an illusory relationship with ASD, the balance of convenience of the parties weighs in favor of transfer to the Northern District of Georgia.

CONCLUSION

For the foregoing reasons, Golden Panda respectfully requests that this Honorable Court sever the Government’s action against Golden Panda’s accounts and simultaneously transfer the

cause of action against Golden Panda's assets to the United States District Court for the District of Georgia.

Respectfully submitted,

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