

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

Civil Action No. 1:21-cv-01314-RBJ-NRN

GARY SCHWARTZ,
Court-Appointed Receiver for Mark Ray,
Custom Consulting & Product Services, LLC,
MR Cattle Production Services, LLC,
Universal Herbs, LLC,
DBC Limited, LLC,
RM Farm & Livestock, LLC,
Sunshine Enterprises,
and real property/equipment/inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032,

Plaintiff,

v.

RONALD THROGMARTIN,

Defendant.

**DEFENDANT'S MOTION FOR STAY OF PROCEEDINGS AND REQUEST FOR
EXTENSION OF TIME TO FILE A RESPONSIVE PLEADING**

Pursuant to the Court's inherent discretionary authority, Defendant Ronald Throgmartin moves the Court for an Order to stay these proceedings based upon the rights, protections, and privileges available to him under the Fifth Amendment of the United States Constitution. Defendant also requests an extension of time to file a responsive pleading within 14 days after the case resumes if the Motion to Stay is granted or within 14 days should the Motion to Stay be denied. In support of this Motion, Defendant states:

Satisfaction of Duty to Confer

1. Prior to filing this Motion, in accordance with D.C.Colo.LCivR 7.1, counsel for Defendant conferred in good faith with counsel for Plaintiff about agreeing to a stay of these proceedings as requested in this Motion. Plaintiff opposes a stay, and thus the filing of this Motion was necessary.

2. The parties also conferred in good faith about extending the responsive pleading deadline until an Order on the Motion to Stay is entered. Pursuant to D.C. Colo.LCivR 6.1, the parties stipulated that Defendant shall file a responsive pleading by June 10, 2021 (Filing No. 10). As part of this Motion, Defendant seeks a further extension until 14 days after the case resumes if a stay is granted or within 14 days after the request for a stay is denied. Counsel for Plaintiff informed Defendant's counsel that Plaintiff is not agreeable to an indefinite extension pending resolution of this Motion.

Background

3. On April 6, 2021, Plaintiff, as a court-appointed receiver, filed this action in the District Court, Denver County, State of Colorado. The Complaint alleges that from 2014 through 2019, Defendant received \$2,343,932 in Ponzi-scheme related funds through numerous transactions, nearly all of which allegedly came from Reva Stachniw or entities allegedly associated with Ms. Stachniw. (Complaint ¶¶ 6,19, and Ex. 6). Plaintiff's Complaint asserts theories of recovery under the Colorado Uniform Fraudulent Transfer Act, unjust enrichment, and civil theft.

4. On April 22, 2021, a seven-count indictment was returned against Defendant, with the pending counts alleging conspiracy to commit wire fraud, wire fraud and aiding and abetting, and conspiracy to engage in monetary transactions in proceeds of specified unlawful activity. This

criminal matter is pending in this Court, Case No. 1:21-cr-00148-PAB, and is assigned to Chief Judge Philip A. Brimmer and Magistrate N. Reid Neureiter. The Indictment also charges Reva Stachniw with the same offenses. A true and correct copy of the Indictment is attached hereto as

Exhibit 1.

5. The allegations in this civil matter and the aforementioned criminal matter are similar in nature, relate to the same alleged scheme, and involve the same persons and time period.

6. On May 13, 2021, Defendant removed this civil case to this Court. By stipulation, Defendant's current deadline to file a responsive pleading is June 10, 2021.

7. On May 14, 2021, a Discovery Conference Memorandum and Order was entered in the criminal case. A true and correct copy of this Order is attached hereto as **Exhibit 2.**

8. On May 18, an Order Granting Ends of Justice Continuance was entered in the criminal case. Pursuant to this Order, Defendant's criminal trial is set to commence October 4, 2021, and is scheduled for 12 days. A true and correct copy of this Order is attached hereto as

Exhibit 3.

Argument and Authority

9. The Fifth Amendment to the United States Constitution protects a person from having to testify in any way which might tend to subject himself to criminal liability. U.S. Const. Amend. V; *Hoffman v. U.S.*, 341 U.S. 479, 486 (1951). The Fifth Amendment privilege applies not only at trial, but at the pleading and discovery stages of litigation. *National Acceptance Co. of America v. Bathalter*, 705 F.2d 924, 927 (7th Cir. 1983).

10. Courts have authority to stay a civil proceeding during the pendency of a concurrent criminal action prior to placing a defendant in a position of invoking Fifth Amendment rights and privileges. *Trustees of Plumbers and Pipefitters National Pension Fund v. Transworld*

Mechanical, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995). Courts may also stay a civil proceeding in deference to a parallel criminal proceeding to prevent either party from taking advantage of broader civil discovery rights or to prevent the exposure of the criminal defense strategy to the prosecution. *Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070, 1080 (10th Cir. 2009).

11. The United States District Court for the District of Colorado has utilized its authority and stayed civil proceedings pending parallel criminal proceedings. *Berreth v. Frazee*, 2019 WL 10250759, (D.C. Colo. April 1, 2019); *Hilda M. v. Brown*, 2010 WL 5313755, (D.C. Colo. Dec. 20, 2010).

12. Courts, including this Court, consider the following factors when considering whether to stay a case in light of pending criminal matters:

- 1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the criminal case, including whether the defendant has been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs in the delay; 4) the private interests of and burden on the defendant; 5) the interests of the courts; and 6) the public interest. *Berreth*, 2019 WL 10250759 at *1.

As shown below, all six factors favor a stay of this civil matter pending the outcome of the parallel criminal proceeding against Defendant.

13. Overlap of Issues. The extent of overlap is the most important factor in ruling on a motion to stay. *Hilda M. v. Brown*, 2010 WL 5313755 at *3. In the present situation, there is clearly an overlap of interrelated allegations, individuals, issues, and claims related to Defendant's alleged role and involvement in an alleged Ponzi-style scheme. Further, the criminal

case includes a Notice of Forfeiture for any proceeds that Defendant obtained as a result of the alleged violations, which could possibly include any funds related to the transactions in the civil case. (Indictment at ¶¶ 45-48). This factor weighs heavily in favor of a stay of this matter.

14. Status of Case. Defendant has been indicted and the criminal case is pending in this Court. A stay is most appropriate where the party has already been indicted because the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and the prejudice to the plaintiffs is reduced because the criminal case will likely be quickly resolved due to Speedy Trial Act requirements. *Hilda M. v. Brown*, 2010 WL 5313755 at *4. As mentioned above, a recent Order in the criminal case set that matter for trial commencing October 4, 2021. Thus, this factor also weighs heavily in favor of a stay.

15. Plaintiff's Interests. Plaintiff in this case is a court-appointed receiver. Unlike a “typical” plaintiff, Plaintiff in this instance has less personal interest to swiftly move the case toward resolution because there is no imminent personal or business motivation to recover civil monetary damages. With the criminal case set for trial beginning in October, Plaintiff will not suffer any prejudice in the interim because this civil case has yet to get beyond the pleading stage and a Progression Schedule has not even been entered in these proceedings. Further, the receiver is charged with marshalling and attempting to recover the same property that is at issue in the criminal case, which includes a Notice of Forfeiture. Plaintiff, and the interests he represents, may benefit from a stay of this matter by avoiding the fees and costs associated with civil litigation until the criminal case is resolved. Again, this factor weighs in favor of a stay.

16. Defendant's Interests. Obviously, the reason Defendant filed this Motion is because he has a significant interest in avoiding the decision to waive his Fifth Amendment rights or essentially forfeit the civil case. A stay is warranted under this factor.

17. Court's Interests. A stay of this civil matter would result in judicial economy such that only the criminal matter before this Court would proceed at this time. Further, resolution of the criminal matter could increase the eventual likelihood of settlement or dismissal of the civil case before the need for additional judicial resources and time, and the criminal case could reduce the scope of discovery in the civil case. *See Hilda M. v. Brown*, 2010 WL 5313755 at *6. A stay of this civil matter would advance the Court's interests.

18. Public's Interests. There is no compelling public interest at stake. To the extent the public has an interest, it is wholly protected by the prosecution of the criminal case. As with all other factors, this one weighs in favor of a stay.

19. Although a Motion to Stay is not one of the enumerated motions under Fed. R. Civ. P. 12, Defendant respectfully requests an extension of time of 14 to days to file a responsive pleading, either after this case resumes if a stay is granted or after the Court takes other action on the Motion to Stay, as would be allowed under Fed. R. Civ. P. 12.

WHEREFORE, Defendant Ronald Throgmartin respectfully requests:

1) An immediate stay of this matter, before he has to plead or otherwise respond to the Complaint and before discovery commences, until the related criminal matter that is pending before this Court concludes;

2) For an extension of time of 14 days to file a responsive pleading after this case resumes after a stay is granted or within 14 days if a stay is denied; and

3) For such other relief as this Court deems just and proper.

RONALD THROGMARTIN, Defendant.

By: s/ Michael J. Mullen
Michael J. Mullen
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Omaha, NE 68114

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Attorney for Defendant Ronald Throgmartin

Certificate of Service

Michael J. Mullen certifies that on May 26, 2021, the foregoing Motion for Stay of Proceedings was filed using the CM/ECF system, which sent notice to Plaintiff's attorneys who have entered an appearance in this matter. Under D.C.Colo.LCivR5.1, notice of such electronic filing constitutes a certificate of service.

s/ Michael J. Mullen

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

Criminal Action No.: 21-CR-0148-PAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. REVA J. STACHNIW and

2. RON THROGMARTIN,

Defendants.

INDICTMENT

The Grand Jury Charges that:

Background

At all times relevant to this Indictment:

The Co-Conspirators and Entities

1. Defendant **REVA JOYCE STACHNIW** ("STACHNIW") was a citizen of the United States and resident of Galesburg, Illinois.
2. Defendant **RON THROGMARTIN** ("THROGMARTIN") was a citizen of the United States and resident of Buford, Georgia.
3. Mark David Ray ("Ray") was a citizen of the United States and resident of Denver, Colorado.



4. Custom Consulting & Product Services LLC, MR Cattle Production Services LLC, and DBC Limited LLC were businesses located in Colorado, principally owned and controlled by Ray.

5. RM Farm & Livestock LLC (“RM Farm”) and Sunshine Enterprises LLC (“Sunshine”) were businesses located in Illinois, principally owned and controlled by **STACHNIW**.

6. Universal Herbs LLC was a licensed marijuana business located in Colorado, owned and controlled by **STACHNIW**, **THROMARTIN**, and Ray.

7. Bank 1 was a federally insured financial institution based in Illinois.

8. Bank 2 was a federally insured financial institution based in New York.

9. **STACHNIW’s** businesses, RM Farm and Sunshine, maintained accounts at Bank 1. **STACHNIW** had access to and was an authorized signatory on these accounts. **THROGMARTIN** also had access to the accounts.

10. Victim 1 was a victim-investor who lived in Illinois.

11. Victim 2 was a victim-investor who lived in Colorado.

12. Victim 3 was a victim-investor who lived in Nebraska.

The Conspiracy and the Scheme to Defraud

13. Beginning in or around late 2017 and continuing through in or around early 2019, in the District of Colorado and elsewhere, defendants **STACHNIW** and **THROGMARTIN**, together with Ray and others known and unknown to the Grand Jury, perpetrated an investment fraud scheme in which they misrepresented and concealed material facts about how investors’ money would be used.

Purpose of the Conspiracy and Scheme to Defraud

14. The purpose of the conspiracy and scheme to defraud was for the co-conspirators to unlawfully enrich themselves by (a) fraudulently selling and marketing investments in, among other things, cattle and marijuana; (b) concealing from victim-investors the true manner in which they were using the investors' money; (c) keeping a Ponzi-style investment scheme afloat by using new investor money to repay old investors; and (d) concealing the conspiracy.

Manner and Means of the Conspiracy and the Scheme to Defraud

It was part of the conspiracy and the scheme to defraud that:

15. The co-conspirators solicited hundreds of millions of dollars from victim-investors throughout the United States, including at least one victim-investor who lived in the District of Colorado. There were different means by which Ray, **STACHNIW**, and **THROGMARTIN** solicited money. Most often, the co-conspirators would fraudulently represent to victim-investors that their investments were backed by short-term investments in cattle. They also used false and fraudulent pretenses to solicit money from victim-investors for the co-conspirators' marijuana business, Universal Herbs LLC, which was based in the District of Colorado. Other victim-investors gave the co-conspirators money based on the co-conspirators' false promises that investment money would be used for legitimate business activity related to cattle or marijuana, without having the investment money linked to specific investment opportunities.

16. In all three variations of the co-conspirators' investment scheme, victim-investors were promised returns of approximately 10-20% over periods as short as several weeks. At no point did Ray, **STACHNIW**, **THROGMARTIN**, or their co-

conspirators tell victim-investors that the co-conspirators were primarily using their money to repay other investors in a Ponzi-style investment scheme, or to enrich themselves.

17. The co-conspirators would generally direct victim-investors to wire investment money to bank accounts controlled by the co-conspirators, primarily the RM Farm checking account at Bank 1. The co-conspirators also directed victim-investors to make payments directly to individuals who the victim investors were falsely led to believe were the co-conspirators' business associates, but were in fact other victim-investors.

18. **STACHNIW** was personally responsible for tracking the tens of millions of dollars in investments from, and payments to, victim-investors that flowed through the RM Farm account. As the sole signatory on the account, **STACHNIW** personally made payments to the victim-investors by mailing investors packages of blank checks bearing **STACHNIW**'s signature. The co-conspirators instructed the victim-investors how to fill out the checks and when to deposit them.

19. To perpetuate the Ponzi-style scheme, **STACHNIW** advised Ray and **THROGMARTIN**, generally via text message, telephone call, or email, on a near-daily basis, how much money the co-conspirators needed to raise from victim-investors to avoid overdrawing the various bank accounts the co-conspirators used, and exposing the scheme. At times, **STACHNIW** expressed surprise that Ray was able to find victim-investors willing to continue to invest, for example, writing to Ray on or about August 7, 2018, "I can't believe you are able to find people with money."

20. The co-conspirators routinely timed victim-investor deposits and payments to take advantage of Bank 1's and other financial institutions' clearing times (i.e., the delay between when a check was deposited and when the funds were credited to the depositing

account, or debited from the account on the check) in order to further the scheme. This practice was also known as check-kiting, and had the effect of defrauding the banks that the co-conspirators used in furtherance of their conspiracy and scheme to defraud, including Bank 1.

21. In or around 2018, Bank 1 expressed concerns about the funds flowing through **STACHNIW**'s accounts at Bank 1, particularly the RM Farm account, and indicated a desire to close the accounts. To induce Bank 1 to keep the accounts open, **THROGMARTIN** falsely represented that the suspicious transactions were in fact proceeds of cattle trades involving the co-conspirators' "well established cattle partners," who were, in reality, victims of the co-conspirators' fraud scheme.

22. The co-conspirators supplied their victim-investors with promissory notes purporting to pay returns of approximately ten to twenty percent. **THROGMARTIN** personally prepared and emailed many of these promissory notes to victim-investors, including Victim 2 in the District of Colorado. **THROGMARTIN** also prepared and sent false and fraudulent invoices purporting to document cattle transactions that never occurred to victim-investors, including Victim 2 in the District of Colorado.

23. From late 2017 and continuing through in or around early 2019, **STACHNIW**, **THROGMARTIN**, Ray, and their co-conspirators raised approximately \$650 million from victim-investors.

24. Despite putting little to none of their own money into the scheme, the co-conspirators transferred substantial amounts of the proceeds of their conspiracy and scheme to themselves for their personal benefit. For example, between in or around 2017 and in or around 2018 alone, **STACHNIW** transferred approximately \$9,000,000

traceable to victim-investors to her personal investment accounts, including approximately \$1,000,000 in or around August 2018. **THROGMARTIN** received more than approximately \$3,000,000 over the course of the conspiracy, including at least approximately \$800,000 from **STACHNIW** in or around August 2018.

25. As a result of the conspiracy and scheme, **THROGMARTIN**, **STACHNIW**, and Ray caused victim-investors to lose tens of millions of dollars.

26. For the purposes of executing the scheme, the co-conspirators used, and caused to be used, a number of interstate wires, signals, and writings, including money transfers, emails, text messages, and phone calls, including, but not limited to, the following:

27. On or about March 2, 2018, **STACHNIW** deposited a check for \$35,000 into the RM Farm checking account at Bank 1, causing an electronic wire transfer of funds from a bank account in Colorado to the RM Farm checking account at Bank 1.

28. On or about April 4, 2018, **STACHNIW** sent a text message to Ray, writing, "I will run to deposit [Victim 1's] Check."

29. On or about April 4, 2018, **STACHNIW** deposited a check made out to RM Farm for approximately \$89,662 into the RM Farm account ending in 9430 at Bank 1.

30. On or about April 12, 2018, **THORGMARTIN** sent a text message to Ray, writing, "[Victim 2] has not called me back, and when I just called her, she didn't answer? I'm going to write up the note, sign & email to her, maybe that will help?"

31. On or about April 12, 2018, **THROGMARTIN** sent an email to Victim 3, copying Ray, stating, "[Victim 2], Please see attached \$220 note. Please call me if you have any questions."

32. On or about May 25, 2018, Ray sent a text message to **THROGMARTIN**, writing, "Can u get [Victim 3] invoices [he/she] emailed u yesterday."

33. On or about May 25, 2018, **THROGMARTIN** responded to Ray's text message, writing, "Yes, do I just make it up on cattle?"

34. On or about May 25, 2018, **THROGMARTIN** sent an email to [Victim 3], copying Ray, stating, "Sorry for the delay, please see attached," and attaching approximately 17 invoices.

35. On or about September 13, 2018, **THROGMARTIN** sent a text message to Ray, writing, "They ([Bank 2]) doesn't know its [Bank 1], until deposited."

COUNT ONE
Conspiracy to Commit Wire Fraud
18 U.S.C. § 1349

36. The allegations set forth in Paragraphs 1 through 35 of this Indictment are realleged and incorporated by reference as though fully stated herein.

37. Beginning in or around 2017 and continuing through in or around 2019, in the District of Colorado and elsewhere, defendants **REVA JOYCE STACHNIW** and **RON THROGMARTIN** did knowingly and intentionally, that is, with the intent to further the objects of the conspiracy, combine, conspire, confederate, and agree with each other and Ray, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, namely:

a. wire fraud, that is, knowingly, willfully, and with the intent to defraud, having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, to transmit and to cause to be transmitted, by means of wire communications

in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343; and

b. bank fraud, that is, knowingly and willfully, and with the intent to defraud, to execute a scheme and artifice to defraud a financial institution, to wit: Bank 1, the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain money, funds, credits, and assets owned by and under the custody and control of the aforementioned financial institution by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

Purpose of the Conspiracy

38. The allegations set forth in Paragraph 14 of this Indictment are realleged and incorporated by reference as a description of the purpose of the conspiracy.

Manner and Means of the Conspiracy

39. The allegations set forth in Paragraphs 15 through 34 of this Indictment are realleged and incorporated by reference as a description of the manner and means of the conspiracy.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO TO SIX
Wire Fraud
18 U.S.C. §§ 1343 and 2

Scheme and Artifice to Defraud

40. The allegations set forth in Paragraphs 1 through 35 of this Indictment are realleged and incorporated by reference.

41. Beginning in or around 2017 and continuing through in or around 2019, in the District of Colorado and elsewhere, defendants **REVA JOYCE STACHNIW** and **RON THROGMARTIN**, having knowingly devised and intended to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice.

Use of Wires

42. On or about the below dates, in the District of Colorado and elsewhere, defendants **REVA JOYCE STACHNIW** and **RON THROGMARTIN**, aided and abetted by each other and others, for the purpose of executing the scheme and artifice described above, and in furtherance thereof, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce the writings, signs, signals, pictures, and sounds, as described below for each count, with each transmission constituting a separate count:

COUNT	APPROXIMATE DATE	DESCRIPTION OF WIRE
2	March 2, 2018	Electronic wire transfer of \$35,000 from the Custom Consulting & Product Services LLC checking account in the District of Colorado to a checking account at Bank 1 in Illinois.

COUNT	APPROXIMATE DATE	DESCRIPTION OF WIRE
3	April 4, 2018	Text message sent via interstate wire communication from STACHNIW to Ray in the District of Colorado, stating, "I will run to deposit [Victim 1's] Check."
4	April 12, 2018	Email message sent via interstate wire communication from THROGMARTIN to Victim 2 in the District of Colorado, stating, "[Victim 2], Please see attached \$220k note. Please call me if you have any questions."
5	May 25, 2018	Text message sent via interstate wire communication from THROGMARTIN to Ray in the District of Colorado, stating, "Yes, do I just make it up on cattle?"
6	September 13, 2018	Text message sent via interstate wire communication from THROGMARTIN to Ray in the District of Colorado, stating, "They ([Bank 2]) doesn't know its [Bank 1], until deposited."

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT SEVEN
Conspiracy to Engage in Monetary Transactions in Proceeds of Specified Unlawful Activity
18 U.S.C. § 1956(h)

43. The allegations set forth in Paragraphs 1 through 35 of this Indictment are realleged and incorporated by reference.

44. Beginning in or around 2018 and continuing through in or around 2019, in the District of Colorado and elsewhere, defendants **REVA JOYCE STACHNIW** and **RON THROGMARTIN**, did knowingly and intentionally, that is, with the intent to further the object of the conspiracy, combine, conspire, confederate, and agree with each other and Ray, and others known and unknown to the Grand Jury, to knowingly engage and attempt to engage in monetary transactions by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is, Wire Fraud, in violation of Title 18, United States Code, Section 1957.

All in violation of Title 18, United States Codes, Section 1956(h).

NOTICE OF FORFEITURE

45. The allegations set forth in Paragraphs 1 through 35 of this Indictment are realleged and incorporated by reference.

46. Upon conviction of the offenses in Counts One through Six of this Indictment, the defendants **REVA JOYCE STACHNIW** and **RON THROGMARTIN** shall forfeit to the United States any property, real or personal, which constitutes or is derived from any proceeds he obtained, directly or indirectly, as the result of such violation, and any property traceable to such property pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

47. Upon conviction of the offense in Count Seven of this Indictment, the defendants **REVA JOYCE STACHNIW** and **RON THROGMARTIN** shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 982(a)(1), any property, real or personal, involved in such offense, or any property traceable to such property.

48. If, as a result of any act or omission of a defendant, any property subject to forfeiture,

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

the United States intends, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of the Defendants up to the value of the forfeitable property.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), and Title 18 United States Code, Section 982(a)(1).

A TRUE BILL

Ink signature on file in Clerk's Office
FOREPERSON

DANIEL S. KAHN
Acting Chief, Fraud Section
Criminal Division
United States Department of Justice

By: s/Michael P. McCarthy
Michael P. McCarthy
Trial Attorney
Criminal Division, Fraud Section
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. <u>21-cr-148</u>)	
UNITED STATES OF AMERICA,)	JUDGE ASSIGNED: <u>Phillip A. Brimmer</u>
Plaintiff,)	ESTIMATED TRIAL
)	TIME: <u>Three Weeks</u>
v.)	NUMBER OF
<u>Ron Throgmartin</u>)	DEFENDANTS: <u>Two</u>
Defendant.)	DOCUMENT DISCLOSURE EXTENSIVE
)	<input checked="" type="radio"/> Yes <input type="radio"/> No
)	(Please select one)

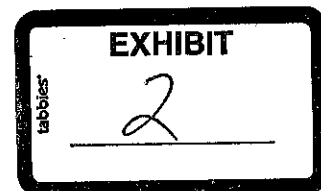
DISCOVERY CONFERENCE
MEMORANDUM AND ORDER

INTRODUCTION

Rule 16, Federal Rules of Criminal Procedure, is entitled Discovery and Inspection and provides for discovery by both defendant and the government. D.C.COLO.LCrR 17.1.1 requires a discovery conference memorandum and order be entered by a magistrate judge.

A defendant may discover certain material as a matter of right without any obligation to permit discovery by the government. However, if the defendant requests certain materials by discovery, namely, documents and tangible objects, as well as reports of examinations and tests, then the defendant is obligated to permit similar discovery by the government.

In addition to discovery we will take up the matter of notice, as required by Rules 12.1 and 12.2, Fed.R.Crim.P. if the defense of alibi or mental capacity is contemplated. Further, a date will be set for the filing of all motions.



At the conclusion of this hearing the report will be signed by defendant and/or his counsel, and government counsel, as well as the magistrate judge. The discovery hearing proceedings will be recorded.

I. DEFENDANT'S REQUEST FOR DISCOVERY AND NOTICE

(A) Request for Rule 16 Material

1. The defendant requests disclosure of the substance of any relevant oral statements made by the defendant, before or after arrest, in response to interrogation by any person the defendant knew to be a government agent if the government intends to use that statement at trial. Rule 16(a)(1)(A). The government states that it will disclose to the defendant and make available for inspection, copying, or photographing such statements in accordance with Rule 16(a)(1)(A).
2. The defendant requests disclosure of any relevant written or recorded statement made by the defendant within the government's possession, custody, or control, which the attorney for the government knows – or through due diligence could know – that the statement exists; the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by any person the defendant knew to be a government agent. Rule 16(a)(1)(B)(i) and (ii).
3. The defendant requests disclosure of any recorded testimony of the defendant before a grand jury which relates to the offense charged pursuant to Rule 16(a)(1)(B)(iii). The government states it will permit the defendant to inspect and copy such statements.
4. If government counsel knows of such statements he will so indicate by initialing here.

N/A

5. The defendant requests, if the defendant is an organization, the government's disclosure to the defendant of any statement described in Rule 16(a)(1)(A) and (B), if the government contends that the person making the statement; (i) was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or (ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person's position as the defendant's director, officer, employee or agent. Rule 16(a)(1)(C).
6. The defendant requests a copy of his prior criminal record. The government states it will furnish to the defendant a copy of his prior criminal record, if any, in accordance with Rule 16(a)(1)(D).
7. The defendant, understanding his burden of reciprocal discovery as set forth in Rule 16(b)(1)(A), requests does not request disclosure of books, papers, documents, data, photographs, tangible objects, buildings or places, and copies or portions thereof, which are within the possession, custody, or control of the government, and which are material to the preparation of his defense, or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.
8. The defendant, understanding his burden of reciprocal discovery as set forth in Rule 16(b)(1)(B), requests does not request disclosure of any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to

the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

9. The defendant, understanding his burden of reciprocal discovery as set forth in Rule 16(b)(1)(C), requests does not request disclosure of a written summary of testimony the government intends to use under Rule 702, 703, or 705 of the Federal Rules of Evidence, relating to expert testimony and opinions of experts, during its case in chief at trial, as set forth in Rule 16(a)(1)(G).

10. The government acknowledges its continuing duty to disclose under Rule 16(c).

(B) Request for Exculpatory Evidence

The defendant requests disclosure of evidence favorable to the defendant on the issue of guilt and/or sentencing. The government states it will disclose material evidence which is favorable to the defendant as required by Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); and United States v. Bagley, 473 U.S. 667 (1985). The government acknowledges its continuing duty to make these disclosures. This request does not foreclose the defendant from filing a more specific motion requesting exculpatory evidence.

(C) Notice of Evidence of Other Crimes, Wrongs, or Acts

Rule 404(b)(3) of the Federal Rules of Evidence requires the government to provide reasonable notice of any evidence of other crimes, wrongs, or acts committed by the defendant that it intends to offer at trial. That notice must articulate in writing the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose. The government states that if it intends to introduce such evidence at trial it will provide such written notice to the defendant no later than 21 days before trial unless, for good cause shown, the court permits less, or on motion of the defendant the court requires notice be provided sooner.

(D) Request for Disclosure of the Identity of Confidential Informants

1. The government states there was was not a confidential informant who was a participant in or a witness to the crime charged and that the informant may will will not be called as a witness at trial. The government further states it has supplied will claim privilege of non-disclosure of the identity of the confidential informant. Rovario v. United States, 353 U.S. 53 (1957).

(E) The Government States There Have Been in this Case: (Check those which are applicable)

1. Telephone tape recordings;
2. Electronic surveillance of the defendant or his premises;
3. Leads obtained by electronic surveillance of defendant's person or premises; and
4. Photographic surveillance.

The government may will will not permit discovery of the foregoing items.

II. GOVERNMENT'S REQUEST FOR DISCLOSURE AND NOTICE

(A) Request for Rule 16 Material

1. The government requests disclosure of books, papers, documents, data, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial. If the defendant made a similar request under Rule 16(a)(1)(E), the defendant states that upon compliance by the government with the defendant's request he will permit the government to inspect and copy or photograph such items in accordance with Rule 16(b)(1)(A).

2. The government requests disclosure of any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant as described in Rule 16(b)(1)(B). If the defendant made a similar request under Rule 16(a)(1)(F), the defendant states that upon compliance by the government with the defendant's request he will permit the government to inspect and copy or photograph such items in accordance with Rule 16(b)(1)(B).
3. The government requests disclosure of a written summary of testimony the defendant intends to use under Rules 702, 703 and 705, F.R.E. as evidence at trial. If the defendant made a similar request under Rule 16(a)(1)(G), the defendant states that upon compliance by the government with the defendant's request he will disclose such summaries in accordance with Rule 16(b)(1)(C).
4. The defendant acknowledges his continuing duty to disclose under Rule 16(c).

(B) Request for Notice of Alibi

1. The government hereby requests notice of the defendant's intent to rely on an alibi defense pursuant to Rule 12.1(a) of the Federal Rules of Criminal Procedure. The parties agree that the indictment/information and the discovery provided by the government give the defendant sufficient notice of the time, date, and place at which the alleged offense was committed and triggers the defendant's obligation under Rule 12(a) to serve upon the attorney for the government a written notice of alibi within 20 days from the date of this request, or at such different time as the court may direct. Should the defendant require additional information concerning the time, date, or place at which the alleged offense was committed, it is the defendant's obligation to file a request for additional information in the time provided for filing motions.

2. The government states that if the defendant files a notice of intent to rely upon alibi, the attorney for the government shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut the testimony of any of the defendant's alibi witnesses. The government's written notice shall be filed within 10 days of its receipt of the defendant's Rule 12.1(a) notice, but in no event less than 10 days before trial, unless the court otherwise directs.
3. The parties acknowledge their continuing duty to disclose under Rule 12.1(c).

(C) Request for Notice of Insanity Defense and Expert Testimony Regarding Defendant's Mental Condition

The government hereby requests notice of the defendant's intent to rely on a defense based on insanity or to introduce expert testimony relating to mental condition. If the defendant intends to rely on the defense of insanity or introduce expert testimony relating to mental disease or defect or any other mental condition bearing on the issue of guilt, he agrees to file a written notice and disclosure of the same within 20 days from the date of this request, or at such different time as the court may direct.

III. LIKELIHOOD OF DISPOSITION OR TRIAL

- (A) There is a good fair poor chance of a Rule 11 disposition of this case.
- (B) The parties understand that the court must be given notice of any proposed disposition no less than 10 days before the scheduled trial date. Unless otherwise ordered, notice of disposition shall be filed no later than 14 days before the date set forth for trial. (D.C.COLO LCrR 11.1A)

(C) The defendant will receive a jury trial in accordance with F.R.Crim.P. 23(a). Waiver of jury can only be accomplished by filing a motion with the trial court.

IV. SPEEDY TRIAL

(A) The speedy trial time limits of 18 U.S.C. § 3161 are as follows:

PNT period; 30 days ~~June 10, 2021~~ 6/11/2021
Trial clock; 70 days ~~July 20, 2021~~ 7/23/2021
Custody clock; 90 days N/A

5/13/2021

Date Signed

5/13/2021

Date Signed

5/13/2021

Date Signed

s/ Ron Throgmartin

Defendant

s/ Steve Sadow

Attorney for Defendant

s/ Michael P. McCarthy

Assistant United States Attorney

V. DISCOVERY ORDER

(A) Effect of Report

The responses by the parties set forth in this Report shall have the effect of a binding discovery order. All requests for discovery will be considered continuing requests, and any discoverable information and/or material coming into the possession or knowledge of either party prior to or during the trial shall be made available to the opposing party promptly, consistent with the law and on an ongoing basis.

(B) U.S. Probation Office

Unless otherwise specified in this Discovery Order, at the time of the detention hearing or by _____[date], the U.S. Probation Office will disclose any criminal history information compiled on the defendant to both parties.

(C) Disclosure by the Government

Unless otherwise specified in this Discovery Order, the government on or before _____, shall disclose those materials that are on that date within the possession of the attorney for the government and are subject to disclosure under the provisions of Rule 16. If additional material subject to the disclosure obligations of Rule 16 come into the possession of the attorney for the government, the attorney for the government shall promptly disclose the material to the defendant. The attorney for the government shall exercise due diligence as expressly required by provisions of Rule 16 to fulfill his or her discovery obligations under the provisions of Rule 16.

Written summaries of any testimony that the government intends to use under Rules 702, 703, or 705, Fed. R.Crim P. 16(a)(1)(G) shall be provided on such schedule as the District Court shall determine upon motion by either party.

(D) Disclosure by the Defendant

Unless otherwise specified in this Discovery Hearing Report, the defendant shall disclose its Rule

16 discovery material to counsel for the government on or before_____.

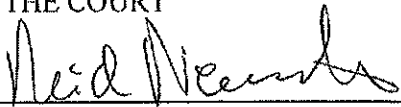
Written summaries of any testimony that the defendant intends to use under Rules 702, 703, or 705, Fed.R.Crim P. 16(b)(1)(C) shall be provided on such schedule as the District Court shall determine upon motion by either party.

- (E) Any motion alleging a failure to comply with the time limits set forth in this report and order must be filed promptly.
- (F) Counsel is directed to obtain pretrial motion deadlines and a trial date from the presiding judge assigned to the case.

Pursuant to Rule 5(f) of the Federal Rules of Criminal Procedure, the Court confirms the United States' continuing duty to disclose material evidence which is favorable to the defendant as required by Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, and orders it to do so. Failing to do so in a timely manner may result in consequences, including, but not limited to, exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, or sanctions by the Court.

IT IS SO ORDERED.

BY THE COURT



U.S. Magistrate Judge

5/14/2021

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Philip A. Brimmer

Criminal Case No. 21-cr-00148-PAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. REVA J. STACHNIW, and
2. RON THROGMARTIN,

Defendants.

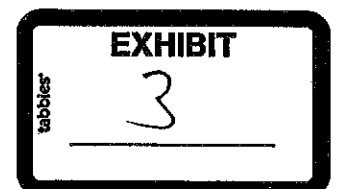
ORDER GRANTING ENDS OF JUSTICE CONTINUANCE

The matter is before me on the government's Unopposed Motion to Declare Case Complex and Exclude Time [Docket No. 15], wherein the government requests that I declare this case "complex" within the meaning of § 3161(h)(7)(B)(ii) of the Speedy Trial Act and exclude 90 days from the Speedy Trial period. *Id.* at 1. The defendants do not oppose the requested relief. *Id.*

Based on the initial appearances of defendants on May 11, 2021 and the filing of the motion to exclude on May 12, 2021, I find that 69 days remain in the Speedy Trial period.

The government's motion implicates the Speedy Trial Act of 1974, codified at 18 U.S.C. §§ 3161-3174. Specifically, the motion implicates 18 U.S.C. § 3161(h), which provides in relevant part:

The following periods of delay shall be excluded . . . in computing the time within which the trial of any such offense must commence:



....
(7)(A) Any period of delay resulting from a continuance granted by any judge . . . at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

18 U.S.C. § 3161(h)(7)(A).

The Speedy Trial Act serves two distinct interests: first, to protect a defendant's right to a speedy indictment and trial, and second, to serve the public interest in ensuring prompt criminal prosecutions. *United States v. Williams*, 511 F.3d 1044, 1047 (10th Cir. 2007). The Act requires that a defendant's trial commence within 70 days after his indictment or initial appearance, whichever is later. See 18 U.S.C. § 3161(c)(1); *Zedner v. United States*, 547 U.S. 489, 497 (2006). Certain periods of delay are excluded and do not count toward the 70-day limit. See 18 U.S.C. § 3161(h)(1)-(8). Specifically, "the Act excludes any period of delay 'resulting from a continuance granted by any judge . . . on the basis of its findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.'" *United States v. Hill*, 197 F.3d 436, 440-41 (10th Cir. 1999) (quoting former 18 U.S.C. § 3161(h)(8)(A)).

In order for a continuance to qualify as an excludable "ends-of-justice" continuance under § 3161(h)(7)(A), certain prerequisites must be satisfied. *Id.* at 441. First, I must consider the following factors listed in § 3161(h)(7)(B):

- (i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice;

- (ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by [the Act];
- (iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex;
- (iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel; would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

18 U.S.C. § 3161(h)(7)(B)(i)-(iv). After considering these factors, I must then set forth, “in the record of the case, either orally or in writing, [my] reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*, § 3161(h)(7)(A). Although my findings “may be entered on the record after the fact, they may not be made after the fact.” *Hill*, 197 F.3d at 441 (quoting *United States v. Doran*, 882 F.2d 1511, 1516 (10th Cir.1989)). “Instead, [t]he balancing must occur contemporaneously with the granting of the continuance because Congress intended that the decision to grant an ends-of-justice continuance be prospective, not retroactive.” *Id.* (quoting *Doran*, 882 F.2d at 1516).

The indictment charges one count of conspiracy to commit wire fraud, five counts of wire fraud, and one count of conspiracy to commit money laundering. Docket No. 1 at 7-11. The indictment alleges that money was solicited from victim-investors throughout the United States in a Ponzi-style scheme involving investments in cattle and marijuana. *Id.* at 2.

On May 6, 2021, the government produced initial discovery consisting of 119,777 pages. *Id.* The government expects to make another production of discovery within the coming weeks. *Id.* The government indicates that the discovery in this case is sufficiently complex and voluminous that it would be unreasonable to expect the parties to adequately review discovery, file pretrial motions, and prepare for trial within the speedy trial deadline. *Id.*

In light of the relatively large amount of discovery and the nature of the documents, I find that the case is complex within the meaning of the Speedy Trial Act. Given that I will need to hold hearings to resolve any motions filed, given the amount of discovery, and the likely complexity of the trial (thus necessitating more lengthy trial preparation), I find that the exclusion of 90 days is justified and necessary to allow defense counsel adequate time to file and litigate motions and to prepare for trial.

Thus, I find that this case is so complex due to the nature of the crimes charged and the amount and nature of discovery that it would be unreasonable to expect adequate preparation by defendants, despite due diligence, for pretrial or trial proceedings within the time initially allowed under 18 U.S.C. § 3161(c). I have considered the factors which I must under 18 U.S.C. § 3161(h)(7)(B)(i)-(iv). As required

by 18 U.S.C. § 3161(h)(7)(C), I have not predicated my ruling on congestion of the court's calendar or lack of diligent preparation by counsel.

Accordingly, I conclude as follows:

(1) That failure to grant a continuance of trial beyond the time prescribed by 18 U.S.C. § 3161(c) would likely result in a miscarriage of justice within the meaning of 18 U.S.C. § 3161(h)(7)(B)(i);

(2) That this case is complex within the meaning of 18 U.S.C. § 3161(h)(7)(B)(ii);

(3) That, even considering due diligence of defense counsel, failure to grant the motion would deny counsel for defendants the reasonable time necessary for effective pretrial and trial preparation within the meaning of 18 U.S.C. § 3161(h)(7)(B)(iv);

(4) That 90 days from the date of this order should be excluded from the computation of speedy trial; and

(5) That, therefore, the ends of justice served by granting the motion outweigh the best interests of the public and defendants in a speedy trial within the meaning of 18 U.S.C. § 3161(h)(7)(A).

THEREFORE, it is:

1. **ORDERED** that the government's Unopposed Motion to Declare Case Complex and Exclude Time [Docket No. 15] is **GRANTED**. It is further

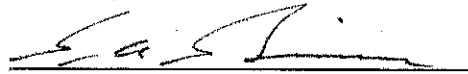
2. **ORDERED** that all pretrial motions shall be filed by **September 3, 2021** and responses to these motions shall be filed by **September 10, 2021**. It is further

3. **ORDERED** that a Trial Preparation Conference will be set for **October 1, 2021** at **2:30 p.m.** and the trial set for **October 4, 2021** at 8:00 a.m. for 12 days. It is further

4. **ORDERED** that 90 days from the date of this order shall be excluded from the computation of the speedy trial deadlines under the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161 - 3174.

DATED May 18, 2021.

BY THE COURT:



PHILIP A. BRIMMER
Chief United States District Judge