

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

14-M-69

ERIC CUSIMANO,
JAMIE BOYE, and
JESSICA CUSIMANO,

Defendants.

**GOVERNMENT'S NOTICE OF SECOND MOTION FOR AN
ADJOURNMENT OF THE RULE 48(b) DISMISSAL ORDER**

PLEASE TAKE NOTICE that the United States moves the Court for an adjournment of the date for the Order pursuant to Fed. R. Crim. P. 48(b) dismissing the criminal complaint in this case from October 31, 2014, to December 19, 2014. The motion is based upon an accompanying Affidavit of Assistant United States Attorney Aaron J. Mango. Counsel for the defendants, Larry S. Gondelman, Fonda Dawn Kubiak, and Brian Melber, consent to and join in the relief sought herein.

DATED: Buffalo, New York, October 24, 2014.

Respectfully submitted,

WILLIAM J. HOCHUL, JR.
United States Attorney

BY: **S/AARON J. MANGO**

AARON J. MANGO
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TO: Larry S. Gondelman, Esq.
Fonda Dawn Kubiak, Esq.
Brian Melber, Esq.

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AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

AARON J. MANGO, being duly sworn, deposes and states:

1. I am an Assistant U.S. Attorney for the Western District of New York and am assigned to prosecute the above-captioned case. This affidavit is made in support of the government's motion to extend the date for dismissal pursuant to Fed. R. Crim. P. 48(b) so that the parties can come to a pre-indictment resolution of this case and to give counsel for the defendants, Larry S. Gondelman, Fonda Dawn Kubiak, and Brian Melber, sufficient time to provide the effective assistance of counsel.

2. On May 19, 2014, a criminal complaint was authorized by the Court charging Defendants Eric Cusimano and Jamie Boye with violating Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; Title 18, United States Code, Section 2 [securities fraud]; and with violating

Title 18, United States Code, Section 1957 and 2 [money laundering]; and Defendant Jessica Cusimano with violating Title 18, United States Code, Section 2 [securities fraud].

3. On June 16, 2014, Defendant Jessica Cusimano appeared before this Court for an initial appearance. On June 20, 2014, Defendant Eric Cusimano appeared before this Court for an initial appearance. On June 24, 2014, Defendant Jamie Boye appeared before this Court for an initial appearance. At the initial appearances for the defendants, the Court adjourned the proceedings until September 19, 2014, and set that date for a Rule 48(b) dismissal. Based on motions filed by the government and Defendant Boye, the Court subsequently adjourned the Rule 48(b) date until October 31, 2014.

4. Since the initial appearance, counsel for the government has spoken extensively with all defense counsel, and anticipate that a pretrial resolution will be reached in this case for the defendants. In the case of Defendant Eric Cusimano and Defendant Jessica Cusimano, the parties have discussed the parameters of a potential plea, and have a nearly finalized plea document. The parties need to clarify a few minor issues, at which point the plea will be submitted for approval. In the case of Defendant Jamie Boye, the parties have discussed the parameters of a potential plea, and additional discovery has been provided to assist in evaluating the plea. For all of the defendants, the pre-indictment plea process has been lengthy due to the complex issues regarding the plea, including loss calculations for guidelines purposes, associated tax issues, and the forfeiture of assets that will accompany the plea. Therefore, the parties are requesting additional time to allow a change of plea and sentence to occur in the present case.

5. The defendants assent to this motion, and have agreed to the exclusion of time from October 31, 2014, through December 19, 2014, under the Speedy Trial Act, pursuant to Title 18, United States Code, Section 3161(h)(7)(A), in that the ends of justice are served by such an adjournment and outweigh the best interests of the public and the defendant in a speedy trial.

6. It is in the best interests of the defendants to resolve the case in such a way that provides a more favorable plea and sentence than what the defendants would face if convicted after indictment and trial. The time, resources, and expense of grand jury, a trial and possible appeal would be saved if a pretrial resolution is reached, and therefore the interests of justice outweigh the interest of the public in a speedy trial.

7. All time from the time set at the initial appearances, through and including October 31, 2014, has been excluded under the Speedy Trial Act for the defendants, pursuant to Title 18, United States Code, Section 3161(h)(7)(A). Thus, because the entire period during which the complaint has been pending has been excluded from the computation of Speedy Trial Act time, as of October 31, 2014, 30 days remain in the period within which defendants must be indicted.

WHEREFORE, for all of the foregoing reasons, the parties respectfully request that the Court grant the government's motion to extend the Rule 48(b) dismissal date of the pending criminal complaint until December 19, 2014, and to exclude the period from

October 31, 2014, through December 19, 2014, from the Speedy Trial Act, pursuant to Title 18, United States Code, Section 3161(h)(7)(A).

S/ AARON J. MANGO

AARON J. MANGO
Assistant United States Attorney

Sworn to before me this 24th day
of October, 2014.

S/ KATHLEEN M. RIEMAN

KATHLEEN M. RIEMAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 9-23-17