

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

14-M-69

JAMIE BOYE,

Defendant.

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**GOVERNMENT'S NOTICE OF THIRD 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 December 19, 2014, to February 6, 2015. The motion is based upon an accompanying Affidavit of Assistant United States Attorney Aaron J. Mango. Counsel for the defendant, Fonda Dawn Kubiak, consents to and joins in the relief sought herein.

**DATED:** Buffalo, New York, December 18, 2014.

Respectfully submitted,

WILLIAM J. HOCHUL, JR.  
United States Attorney

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

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TO: Fonda Dawn Kubiak, 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 defendant, Fonda Dawn Kubiak, 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 December 19, 2014.

4. Since the initial appearance, counsel for the government has spoken extensively with all defense counsel regarding a pretrial resolution. In fact, on December 17, 2014, Defendant Eric Cusimano pled guilty before United States District Court Judge Richard J. Arcara to two felony violations relating to this matter. As part of the plea negotiation with Defendant Eric Cusimano, the government agreed to dismiss the pending criminal complaint against Defendant Jessica Cusimano. On December 18, 2014, the government submitted a request to the Court for an Order of Dismissal relating to Defendant Jessica Cusimano. With respect to Defendant Boye, the parties have been actively discussing a pretrial resolution, and a draft plea agreement has been prepared and provided to the defendant for review. Additional time is necessary for defense counsel to review the draft plea with Defendant Boye and to finalize plea discussion with the government. Therefore, the parties are requesting additional time to allow a change of plea and sentence to occur in the present case relating to Defendant Boye.

5. The defendant assents to this motion, and has agreed to the exclusion of time from December 19, 2014, through February 6, 2015, 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 defendant to resolve the case in such a way that provides a more favorable plea and sentence than what the defendant 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 appearance, through and including December 19, 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 December 19, 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 February 6, 2015, and to exclude the period from

December 19, 2014, through February 6, 2015, from the Speedy Trial Act, pursuant to Title 18, United States Code, Section 3161(h)(7)(A).

*S/ AARON J. MANGO*

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AARON J. MANGO  
Assistant United States Attorney

Sworn to before me this 18<sup>th</sup> day  
of December, 2014.

*S/ KATHLEEN M. RIEMAN*

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