

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 13-CR-966 JCH

MATTHEW CHANNON and  
BRANDI CHANNON,

Defendants.

**DEFENDANTS' JOINT MOTION TO COMPEL DISCOVERY**

COMES NOW defendant Matthew Channon, through the Law Office of Amy Sirignano, P.C., (Amy Sirignano, Esq. and Kevin L. Nault, Esq.), and Brandi Channon, by and through counsel of record, Todd B. Hotchkiss of Frechette & Associates, jointly and respectfully move this Court to compel the government to produce the specifically requested material identified below pursuant to Fed. R. Crim. P. 16, the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419, 433 (1995); *Smith v. Sec'y of N.M. Dep't. of Corr.*, 50 F.3d 801 (1995); *Banks v. Dretke*, 540 U.S. 668, 698–99 (2004); and *Cone v. Bell*, 556 U.S. 449, 470 n. 15 (2009). The basis for this motion is as follows.

**I. BACKGROUND**

1. Mr. Matthew Channon is charged in an eleven-count Indictment filed March 27, 2013, with ten counts of wire fraud contrary to 18 U.S.C. §§ 1343 and 2, and

conspiracy to commit wire fraud contrary to 18 U.S.C. § 1349 (Doc. 2). His wife, Brandi Channon is charged only in counts 7-11 (Doc. 2).

2. Mr. and Mrs. Channon were arraigned on April 12, 2013 at which time they pleaded not guilty as to all counts (Docs. 9, 10). Both Mr. and Mrs. Channon requested appointment of counsel and the court denied this request [no entry on docket]. On May 23, 2013 Chief Magistrate Judge Karen B. Molzen granted the Channons' pro se motion to reconsider appointment of counsel. (Doc. 22). On May 24, 2013, Attorney Amy Sirignano was appointed as CJA counsel for Mr. Channon and Attorney Todd B. Hotchkiss was appointed as CJA counsel for Mrs. Channon (Docs. 23 and 24). On July 22, 2013, the Court appointed Attorney Kevin Nault as CJA counsel for the defendant Mr. Channon (Doc. 39).

3. The Channons were released from custody pursuant to orders setting conditions of release. They both are out of custody (Docs. 12, 13).

4. Trial in this matter is currently set for May 19, 2014 (Doc. 45). Thus far, the government has disclosed to appointed counsel for Mr. Channon and Mrs. Channon over 2500 Bates-numbered pages of discovery (some items are voluminous spreadsheets labeled with a single Bates number, making the actual number of pages difficult to estimate), and approximately three hundred and sixty six (366) photos related to this case.

5. The government has not produced any admissible evidence i.e., records or documents that tie Mr. and Mrs. Channon to the creation of the relevant Google email accounts and MaxPerk accounts as alleged in the indictment. (Doc. 2); *See Exhibit A* (defense index of discovery). Specifically for: [teechur12345678@gmail.com](mailto:teechur12345678@gmail.com) basis for count 1; OfficeMax MaxPerks account created with the email address of [t.eech.u.r.1.2345.6.78@gmail.com](mailto:t.eech.u.r.1.2345.6.78@gmail.com) basis for count 2; [coach12345678@gmail.com](mailto:coach12345678@gmail.com) basis for count 3; OfficeMax MaxPerks account created with the email address of [co.a.ch.1.2.3.4.56.78@gmail.com](mailto:co.a.ch.1.2.3.4.56.78@gmail.com) basis for count 4; [bargle12345678@gmail.com](mailto:bargle12345678@gmail.com) basis for count 5; OfficeMax MaxPerks account created with the email address of [b.a.rgl.e.12.34.56.78@gmail.com](mailto:b.a.rgl.e.12.34.56.78@gmail.com) basis for count 6; [sandeepshwawar@gmail.com](mailto:sandeepshwawar@gmail.com) basis for count 7; OfficeMax MaxPerks account created with the email address of [sandeepshwawar@gmail.com](mailto:sandeepshwawar@gmail.com) basis for count 8; [ameriodespatch@gmail.com](mailto:ameriodespatch@gmail.com) basis for count 9; and OfficeMax MaxPerks account created with the email address of [a.m.eriodespatch@gmail.com](mailto:a.m.eriodespatch@gmail.com) basis for count 9.

6. Also not included in the discovery were original copies or duplicates receipts of each alleged fraudulent in-store purchase or transaction or "each extrapolated receipt" and/or a original copy or duplicate of receipt for each recycled cartridge transaction alleged as fraudulent by the government in the introduction and scheme or artifice sections of the indictment (Doc. 2); *See Exhibits B & C.*

7. The government also has not produced an Encase computer report (or similar computer forensic report/analysis) regarding the images of the two seized computer hard drives still remaining in FBI custody, though the defense has made repeated requests. Defense counsel requested the FBI's forensic analysis of each computer seized and the search warrant return of the computers. The government responded by providing insufficient "summaries" of the forensic analysis rather than providing the complete analysis. The defense needs to determine whether any data on the computers supports the government's criminal allegations, and whether any exculpatory or mitigating evidence also exists. *See* Exhibits D & E.

8. The government asserts that the computer images themselves and unspecified logs, without verification or inspection of the computers from which the images were made, are self-verifying. Exhibit E. Upon information and belief, the parity information generally contained in computer forensic images verifies that the individual blocks<sup>1</sup> have not been altered since the image was created, but they do *not* verify that the image is an accurate copy of the original data. More significantly, and also upon information and belief, forensic computer imaging software is not frequently used for creating forensic computer images by professionals working in the field of computer forensics because there are devices that create the images much more quickly.

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<sup>1</sup> A block is a term for an arbitrarily-sized section of data. *See, e.g.*, Merriam-Webster Online Dictionary, *Block* (8), <http://www.merriam-webster.com/dictionary/block> (last accessed Jan. 28, 2014).

*See, e.g., Berryhill Computer Forensics, Voom Hardcopy II,*  
<http://www.computerforensics.com/voom.html> (last accessed January 28, 2014)  
(discussing speed testing of imaging devices). Finally, and also upon information and belief, because Apple Macintosh computers are often constructed such that the hard drives are difficult to reach, professionals in the field of computer forensics often image Macintosh computers differently, for instance, relying on boot disks rather than removing the hard drive and using write-blocking cables. Cf iFixit, *iMac Intel 21.5" EMC 2544 Teardown*, <http://www.ifixit.com/Teardown/iMac+Intel+21.5-Inch+EMC+2544+Teardown/11936/> (last accessed Jan. 28, 2014) (requiring heat gun to soften adhesive in Step 4).

9. Without knowing what device was used to create the computer images, the settings selected and pre-set in the imaging device, and how complete the image created was (e.g., whether unallocated space was imaged or not), the defense cannot be sure of the accuracy and completeness of the government's computer images without creating their own images from the original computers for comparison.

10. As of this date, two computers remain in the custody of the FBI. The two computers are: Mac Mini A 1103 (Inventory no. 1B31) and Mac Mini A 1179 (Inventory no. 1B37). These two devices have been characterized by the prosecutor as "relevant" to the government's case, and the government apparently believes that they contain significant evidence against both Mr. Channon and Mrs. Channon. Defense counsel has

requested access to the originals and images of the computer evidence on numerous occasions. The government has been unwilling to provide the defense with access to the view or image the computer evidence. Defense counsel requested access to this relevant evidence in writing on August 14, 2013 and again October 2, 2013 (Exhibits B, D). The government responded on August 20, 2013 and October 24, 2013. *See Exhibits C, E.*

11. The government desires the defense to provide them a hard drive (at CJA expense) and stipulate to the copy of evidence on the mirror imaged hard drives, sight unseen. In addition, the FBI refuses to certify that its own copies of the computer match the original seized computer evidence. The defense has no information that the seizure and copy of the hard drives were done properly or accurately and thus, at this point cannot stipulate to the accuracy of the evidence. The evidence on these computers is integral to Mr. Channon and Mrs. Channon's defense. Defense counsel requests access to the data so that their expert may determine whether the government's copies/images are accurate. *See Exhibits F and G.*

12. As an example, the government requested and served a search warrant for the contents of thirteen (13) e-mail addresses, but only alleges that five (5) of those addresses are attributable to Mr. Channon. *Compare, In the Matter of Google, Inc., No. 11-MR-172 (D.N.M. 2011) with Doc. 2.* Based on the fact that Mr. Channon was charged in relation to only four of the thirteen e-mail addresses searched, it appears that other

persons not charged in the Indictment (Doc. 2) may have also been involved in allegedly breaching OfficeMax policies as the government charged in this case.

13. Defense counsel has thus far encountered great difficulty scheduling sufficient time with the FBI and the government to review evidence in this case, and the defense anticipates similar difficulty to schedule several hours for creating computer hard drive images by the defense computer expert. Defense counsel and the defense investigator (Doc. 38) attempted to schedule a time to view the approximately four dozen numbered items of evidence seized during execution of the search warrant on Mr. Channon's residence, several of which contain multiple pieces of physical evidence (e.g., item number 1 is "travel documents itinerary, Staples, OfficeMax Cards, docs"). The FBI scheduled only two hours to view the evidence, when counsel was expecting the majority of a work day. Follow-up meetings were attempted by both parties; yet defense counsel has been unable to schedule a subsequent appointment due to FBI case agent unavailability and defense scheduling conflicts. The government attempted to rectify the situation by providing copies of *some* documents taken from the Channons' home during the search warrant, but the entire collection of documents was not provided on the disk labeled and produced on October 24, 2013. *See Exhibit E.*

14. Counsel reviewed the discovery produced by the government, and identified the following categories of discovery that the government either did not respond to, or are allegedly not in the custody of the government:

1. All receipts (including, but not limited to "electronic journal receipts" *see* Bates 1144), records, backup documents, screen captures of receipts, profile(s), Max Perks profile detail, accurate reprinted copies of each transaction, record(s) of transactions for each alleged purchase/sale/transaction/"qualified purchase" at each Office Max store that the government alleges is related to Mr. Channon, identified in the countless spreadsheets provided by the government in the discovery relevant to Mr. Channon (*See* Bates numbers 1420-1424, 1374).
2. Copies of all register receipts, electronic journal receipt, or internal Office Max or MaxPerk document(s) for any and all recycled ink accounts that the government alleges is related to Mr. Channon. The following Bates numbers are not complete: Bates 1315a and 1315i (missing photos), 1521, and 1526.
3. Any and all documents to ascertain what the government refers to as a "qualified purchase" (*See* Bates 1367).
4. Any and all receipts, including, but not limited to, "electronic journal receipts," records, backup documents, screen captures of receipts, profile(s), Max Perks profile detail, accurate reprinted copies of each transaction, record(s) of transactions for each alleged purchase/sale/transaction/"qualified purchase" at each Office Max store identifying the dollar amounts for both loss and restitution claimed in the discovery and the plea agreement dated September 24, 2013.
5. Any government offset or reduction in the loss calculation as determined in the discovery or the plea agreement dated September 24, 2013.
6. Copies of missing pages initially disclosed as Bates: 1346 and 1556.
7. Clear, legible copies of Bates numbers 1339 and 1620.
8. Complete and unredacted copies of Bates numbers 206-208, 215-217, and 621-623, which are blank or redacted.
11. Copies of all documentation supporting the forfeiture allegation, including, but not limited to, any and all bank statements and reports of money tracing and forensic accounting analysis performed by the government.

12. Copies of all subpoenas issued by the Grand Jury during its investigation of this case and the alleged conduct set forth in the indictment.
13. Copies of all CDs, pictures and descriptions of physical items, and hard copies of documents produced in response to all subpoenas issued by the Grand Jury during its investigation of this case and the underlying alleged conduct (*See Bates 0548*).
14. Copy of all the Grand Jury transcripts relating to the present indictment.
15. Copies of any and all e-mails and other correspondence including, but not limited to intra-office correspondence, text messages, and voicemails from the pre-indictment investigative period to the present between any FBI employee working on the instant case and Steven Gardner, Chuck Sipko, and any and all employees or consultant of OfficeMax that relates to the activities charged in this case.
16. Copies of any and all e-mails and other correspondence including, but not limited to intra-office correspondence, text messages and voicemails from the pre-indictment investigative period to the present between any FBI employee working on the instant case and any employee of Blackhawk, including, but not limited to Chanel Rabb, EBay, Google, and Ceridian (*See Bates 1956, 1286*).
17. Any and all surveillance video from OfficeMax stores of the ink cartridge recycling transactions related to 123 MaxPerks accounts (*See Bates 1335*).
18. A copy of the recording of OfficeMax loss prevention personnel made of the interview of Matt Channon referenced in Bates 1335.
19. A copy of Mr. Chuck Sipko's report regarding the interview of Matt Channon (*See Bates 1335*).
20. Any and all reports of interviews with Mr. Channon and documents identifying Mr. Channon (*See Bates 1328 – the actual Bates number is missing*).
21. The "Intellix" software program required to view video footage disclosed by OfficeMax (Bates 1379).
22. A copy of all Maxperks program policies, terms and conditions from inception to the present, including the date of enactment of the policy and the date of each policy change (*See Bates 1381*).

23. A copy of all MaxPerks qualifying ink cartridge lists, and revisions dating from its inception to the present.
24. Any and all statements, records, documents, and confirmation of activity for each gift card issued by Ceridian relevant to this investigation and indictment alleged to have been issued or sold to Mr. or Mrs. Channon, identified by card number and store, and all activity on each gift card (*See Bates 1145*).
25. Any and all statements, records, documents, and confirmation of activity for each gift card issued by Blackhawk relevant to this investigation and indictment, alleged to have been issued or sold to Mr. or Mrs. Channon, identified by card number and store, and all activity on each gift card (*See Bates 1384*).
26. Any and all Office Max policies regarding purchase and sale of gift cards, including but not limited to the specific policy regarding gift card fees.
28. Copies of all FBI 1A envelopes and their contents.
29. Copies of all FBI chains of custody for each piece of evidence seized by law enforcement in this case.
30. Copies of all documents and records obtained by law enforcement during the search warrant of Mr. Channon's residence and any other search warrant executed in conjunction with this case.
31. A copy of the government's Encase (or similar computer forensic report/analysis) for each computer or electronic device/medium seized by the government in this case.
34. Any and all documents and records of relevant MaxPerk account signups including the IP addresses the requests were made from, dates, and times.
35. Any and all documents and records of relevant MaxPerk receipt adjustments including the IP addresses the requests were made from, dates, and times.
36. Any and all documents and records of relevant MaxPerks logins including the IP addresses the requests were made from, dates, and times.
37. A companywide financial summary of OfficeMax's ink cartridge program for redemption of ink and toner cartridges accepted, number

of used ink cartridges sold, and median, mean, and maximum retail prices of refilled ink cartridges sold, detailed by the makes and models OfficeMax accepted for redemption, from the date of the initiation of this investigation to the present.

38. A companywide financial disclosure of the MaxPerks program from 2009 to the present, including, but not limited to, the amount of qualifying transactions, number and dollar amount assigned to rewards card numbers, number and dollar amount of rewards points issued, number and dollar amount of rewards points redeemed, with each category broken down by rebates from ink cartridge recycling and rebates from qualifying purchases.
39. Any and all records and documents identifying the date and time each MaxPerks account alleged to be related to Mr. Channon was shut down, the balance of at the time of shut down, the person who shut it down, and the cited reason for the account closure from the date of the initiation of this investigation to the present.
40. Defense expert access to all of the data on the two computers still in the custody of the FBI, the Mac Mini A 1103 (1B31) and Mac Mini A 1179 (1B37).
41. Copies of the missing pages Bates: 43-44; 153-202; 478-482; 1338; 1369-1370; 1630-1633; 1638-1683; and 2166-2532.
42. Any and all records of Mr. Channon and Mrs. Channon's credit card and debit card transaction records relating to Office Depot and Staples.

*See Exhibits D, F.*

The aforementioned discovery is necessary to the defense for both Mr. Channon and Mrs. Channon and the filing of this motion has become necessary since the government has failed to comply with Defense Counsel's written discovery requests.

The Court set deadlines to disclose witness lists, *Giglio* materials, and experts/reports pursuant to *Daubert* that have not yet passed (Doc. 45). Without waiving their rights to

those materials, Mr. and Mrs. Channon do not request that the Court further order the government to produce those materials at this time.

Lastly, the defense requested that contact information including addresses, telephone numbers, and computer account information not be redacted from the discovery in order to permit the defense to conduct its investigation. The defense is willing to review these documents at the U.S. Attorney's Office to prevent further unnecessary dissemination of identifying information.

## **II. ARGUMENT**

On April 12, 2013, the Court entered a standing discovery Order in Mr. Channon's case which is applicable to all criminal cases in the District of New Mexico (Doc. 11). The discovery Orders track Fed. R. Crim. P. 16(a)(1)(C), and provides:

The government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's 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.

According to the terms of the standing discovery Order, this information is to be provided automatically to the defense, without the necessity of a formal request. As stated above, the government has initially produced thousands of pages of discovery relating to this case. Despite the government's production of some items, many still

remain missing, or the government has refused to comply with defense discovery requests.

The information requested herein is material to the Channons' defense. Materiality, for the purposes of Rule 16, is not a heavy burden. *See, e.g., United States v. Jackson*, 850 F. Supp. 1481, 1503 (D. Kan. 1994) (allegation that evidence existed that would show bias was sufficient for *Brady* and Rule 16 materiality). Under Rule 16, "evidence is material as long as there is a strong indication that it will play an important role in uncovering material evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." *United States v. Caro*, 597 F.3d 608, 621 (4<sup>th</sup> Cir. 2010). Due Process requires the production of documents that are "material either to guilt or to punishment." *Brady v. Maryland*, 373 U.S. 87, 87 (1963). This includes the production of impeachment evidence. *Giglio v. U.S.*, 405 U.S. 150, 154-55 (1972); *United States v. Torres*, 569 F.3d 1277 (10<sup>th</sup> Cir. 2009).

Federal Rule of Criminal Procedure 16(a)(1)(E) requires the government to provide Mr. Channon and Mrs. Channon any document or object within the government's possession, custody, or control that "is material to preparing the defense." "Where doubt exists as to the usefulness of the evidence to the defendant, the government must resolve all such doubts in favor of full disclosure." *United States v. Safavian*, 233 F.R.D. 12, 16, 17 (D.D.C. 2005); *see also Jencks*, 353 U.S. 657, 668-69 ("only the defense is adequately equipped to determine the effective use for purpose of

discrediting the [g]overnment's witness and thereby furthering the accused's defense"); *People v. Rosario*, 173 N.E.2d 881, 883, 9 N.Y.2d 286, 290 (N.Y. 1961) ("[O]missions, contrasts and even contradictions, vital perhaps, for discrediting a witness, are certainly not as apparent to the impartial presiding judge as to single-minded counsel for the accused; the latter is in a far better position to appraise the value of a witness' pretrial statements for impeachment purposes.").

Further, defense counsel has a right to material exculpatory information under Rule 16, the Fifth and Sixth Amendments to the United States Constitution, *Brady*, *Kyles*, *Smith*, *Banks*, and *Cone*. *Brady* held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. at 87. The Court observed: "Society wins not only when the guilty are convicted but when criminal trials are fair; our system or the administration of justice suffers when any accused is treated unfairly." *Id.* More recently, in *Kyles v. Whitley*, the Court re-affirmed that information that discredits, undermines, or impeaches the government's evidence or the way it was obtained is exculpatory and material information: "[w]hen, for example, the probative force of evidence depends on the circumstances in which it was obtained and those circumstances raise a possibility of fraud, indications of conscientious police work will enhance probative force and slovenly work will diminish it." *Kyles v. Whitley*, 514 U.S.

at 446, n. 15. Any information relevant to also show “integrity of the investigation” or a conclusion within the investigation is likewise *Brady* material. *Id.* at 447.

Also, the prosecution has a duty to disclose information even if it is inadmissible at trial. *State v. Potts*, 334 N.C. 575, 433 S.E.2d 736 (1993) (evidence need not be admissible if it would lead to admissible favorable evidence); *Maynard v. Dixon*, 943 F.2d 407 (4th Cir. 1991) (evidence must be disclosed if it would assist the defendant in discovering other evidence or preparing for trial). The prosecution must provide a criminal defendant “the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case.” *United States v. Poindexter*, 727 F. Supp. 1470, 1473 (D.D.C. 1989). Evidence is material if there is indication that it may play an “important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.” *United States v. George*, 786 F. Supp. 11, 13 (D.D.C. 1991).

Here, the requested evidence is relevant and necessary in preparing for Mr. Channon and Mrs. Channon’s defense. The government has even acknowledged the relevancy of the information on the two computers that remain in the FBI’s custody yet refuse to allow the Defense’s expert access to them. The government has not produced any records or documents tying Mr. and Mrs. Channon to the relevant OfficeMax accounts or emails as alleged in counts 1 through 9 of the Indictment. (Doc.2). The government has a duty to provide the requested documents to Mr. Channon and Mrs.

Channon and thus should be ordered to comply with Defense counsel's discovery requests.

**III. GOVERNMENT'S POSITION**

Due to the nature of the motion, the government's position was not sought. The defense presumes the government opposes.

**IV. CONCLUSION**

Therefore, and for the foregoing reasons, Mr. Channon and Mrs. Channon respectfully request the Court order the government to respond to the above-listed discovery requests, and further order the government to produce unredacted copies of all materials produced to the defense for inspection.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent via the Court's CM/ECF system to counsel for the government on this 28th day of January, 2014.

/s  
Amy Sirignano, Esq.

**MOTION TO COMPEL**

**A. Legal Standard**

Rule 16 of the Federal Rules of Criminal Procedure governs the discovery and inspection in this case. Rule 16(a)(E) requires the government to provide Mr. Channon any document or object within the government's possession, custody, or control that "is material to preparing the defense." Fed. R. Crim. P. 16(a)(1)(E). Rule 16 "is intended to prescribe the minimum amount of discovery to which the parties are entitled, and leaves intact a court's discretion to grant or deny the broader discovery requests of a criminal defendant." *United States v. Richards*, 659 F.3d 527, 543 (6<sup>th</sup> Cir. 2011). Due Process requires the production of documents that are "material either to guilt or to punishment." *Brady v. Maryland*, 373 U.S. 87, 87 (1963). This includes the production of impeachment evidence. *Giglio v. U.S.*, 405 U.S. 150, 154-55 (1972); *United States v. Torres*, 569 F.3d 1277 (10<sup>th</sup> Cir. 2009).

**B. Argument and Authority**

The government apparently intends to introduce a summary of Mr. Channon's Office Max transaction history at trial. It has produced these summary spreadsheets to Mr. Channon but has refused to produce any records supporting the transactions including backup documents, or screen captures of receipts for each of Mr. Channon's

alleged purchases, sales, transaction, or “qualified purchases” at Office Max stores.

Exhibit 2. The government has the duty to prove beyond a reasonable doubt that the alleged transactions happened. *In Re Winship*, 397 US 358, 362 (1963). However, the government has not provided the defense with competent evidence that these transaction actually occurred. Exhibits 1, at 3-4, and 2, at 2. These requested receipts may contain information necessary to Mr. Channon’s defense or potentially exculpatory information.

In *United States v. Kilroy*, as in the case at bar, the government intended to use a summary of the requested documents as evidence at trial. *Kilroy*, 523 F.Supp 206, 214-15 (E.D. Wis. 1981). The court in *Kilroy*, summarized the defendant’s position in his motion to compel as follows:

The defendant . . . states that the Government intends to present its case in part through the use of summary evidence and takes the position that the defendant’s bank records not involving Standard Oil are not relevant to this case. Finally, the defendant contends that all of his bank records should be available so that the jury can be presented with a complete financial picture, that he does not himself have copies of the records, and that the Government should obtain the copies for him.

*Id.* Mr. Channon’s position in this case is stronger than then defendant’s position in *Kilroy*. In *Kilroy* the defendant was requesting his own bank records. *Id.* Here, Mr. Channon is not requesting his personal records, but the records of a third party, Office Max, which provided material information to the government. In *Kilroy*, the court

ordered the government to provide the defendant with all of the defendant's financial records that were considered when compiling the summary introduced into evidence.

*Id.* at 216. In this case, Mr. Channon is requesting the government be compelled to produce those Office Max receipts and records, which Mr. Channon has no access to, which the government and Office Max relied upon when creating the summary spreadsheets and those that the government intends to rely upon at trial. Exhibits 1, at 3-4, and 2, at 2. The government has a duty to provide the requested documents to Mr. Channon. *Kilroy*, at 216; *People v. McDonald*, 15P.3d 788, 791 (2000) ("it is a condition precedent to the admissibility of summaries of voluminous records that the original or copies be made available for examination by the other party at a reasonable time and place"); *United States v. Gorel*, 622 F.2d 100, 106 (5th Cir. 1979) (the Federal Rules of Evidence permit admission of summaries of recordings when the original or copies of the originals are made available to the other party); *In re Shelley Furniture, Inc.*, 283 F.2d 540, 543 (7th Cir. 1960) (the entire mass of the records themselves need not be admitted in evidence, where the records are available and can be made accessible to the opposing party for inspection).

The requested receipts are critical to the government's case in chief, and as such are material to Mr. Channon's defense, potentially exculpatory, and may be used by the Mr. Channon for impeachment at trial. Under Rule 16, "evidence is material as long as there is a strong indication that it will play an important role in uncovering

material evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.” *United States v. Caro*, 597 F.3d 608, 621 (4<sup>th</sup> Cir. 2010). Here, the receipts are material because the government cannot obtain a conviction without the Office Max receipts. 18 U.S.C. §§ 1343, 2, 1349.

The transaction records or receipts are potentially exculpatory. *Brady* requires the production of documents that are exculpatory, meaning that are material either to guilt or to punishment.” *Brady v. Maryland*, 373 U.S. (1963). It is the government’s “duty to learn of any favorable evidence known to the others acting on the government’s behalf in this case.” *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). Here, the government claims that the original receipts do not exist and if they existed were in the possession of a third party, namely Office Max (Doc. 2, at 2). The government has a duty to obtain from Office Max the original or copies of the original business records which Office Max used in its production of the summaries. *McDonald*, 15 P.3d 788, 789-90 (2000). Without the proper foundation for the summaries, Mr. Channon will not have an “adequate opportunity to challenge the accuracy of the summaries and to cross-examine the witness who presented the evidence.” *Id.* at 791.

Matthew Channon Discovery	
Bates #	Description
0001-0004	FBI 302 reports of Roberta Duran-Gonzaleson 10/13/2011
0005	FBI 302 report of search warrant executed at 7100 Gladden Avenue NE, Albuquerque, NM on 6/28/2011
0006	FBI 302 report of search warrant executed at 1132 Calle del Oso, Taos, NM on 10/13/2011
0007	FBI 302 report of receipt and review of iPhone image 1/12/2012
0008	FBI report requesting approval for UC purchase on 1/24/2011
0009	FBI 302 report of seized items, computers, coupons, receipts, Office Max listing, ink cartridge information 1/27/2012
0010	FBI 302 report of Office Depot Fraud Investigator interview 2/22/2011
0011	FBI 302 report of Steve Gardner interview identifying Brandi Lucero 2/24/2011
0012-0015	FBI 302 report of interview of Brandi Channon on 6/28/11
0016	FBI 302 report of interview of Jason Moran on 6/28/11
0017-0018	FBI 302 report of Chris Channon, Matt's father on 6/30/2011
0019-0021	FBI 302 report of Steven Gardner on 7/12/2011
0022	FBI 302 report of drive-by surveillance in Taos 10/11/11
0023-0025	FBI 302 report of Steven Gardner on 10/14/2011
0026-0027	FBI 302 report of Jason Moran interview during execution of search warrant at Taos location on 10/13/2011
0028	FBI 302 report of Jason Moran concerning the searching the contents of his laptop computer on 10/13/2011

Exhibit  
A

Matthew Channon Discovery	
Bates #	Description
0029	FBI 302 report of Bobby Duran during execution of search warrant at Taos location on 10/13/2011
0030-0031	FBI 302 report of Steve Gardner interview regarding loss amounts and teacher accounts on 10/21/2011
0032	FBI 302 report of requests by Jason Moran and Roberta Duran-Gonzales for return of day planners
0033-0034	FBI 302 report of Steven Gardner advising the FBI of Channon's activity in Arizona stores and the closing of most of his accounts with the exception of 89 accounts which he is monitoring dated 12/14/2010
0035-0036	FBI 302 report regarding search of EBay accounts associated with Matthew Channon 12/14/2013
0037	FBI 302 report regarding search of computer image of HP Mini 100 laptop S/N: CNU0244VIN
0038	FBI 302 report regarding search of computers HP Mini 100 Laptop S/N: CNV0244V8Q and ACER Notebook S/N: BUS050B18483701AD32535, a CPU, two thumb drives, and a Seagate HD
0039	FBI 302 report of Jeremy Barlow, Loss Prevention Manager for Staples stores in Colorado, Wyoming, New Mexico, and Texas
0040-0041	FBI 302 report of Roberta Duran Gonzales dated 6/28/2011
0042	FBI 302 report of Patrick Vigil dated 6/28/2011
0043	Missing

Matthew Channon Discovery	
Bates #	Description
0044	Missing
0045-0046	EBay Fraud Investigations Team report re: convenientvideo
0047-0050	EBay Fraud Investigations Team report re: doctor_zoidberg
0051-0052	EBay Fraud Investigations Team report re: rmamyway
0053-0061	EBay Seller History re: doctor_zoidberg
0062	EBay Seller History re: furnitu
0063-0071	EBay Seller History re: rmamyway
0072-0073	FBI report summarizing the review of email communications from, Bargle12345678@gmail.com
0074-0075	FBI report summarizing the review of email communications from, COACH12345678@gmail.com
0076-0077	FBI report summarizing the review of email communications from, Furnituu@gmail.com
0078-0080	FBI report summarizing the review of email communications from, Jehnajehnsen@gmail.com
0081-0084	FBI report summarizing the review of email communications from, mahashamaranka@gmail.com
0085-0086	FBI report summarizing the UC purchase from Channon's eBay account on 02/25/2011 and 02/27/2011, PayPal account hydrazoic@aol.com
0087-0090	FBI report summarizing the review of email communications from, amclay2@gmail.com

Matthew Channon Discovery	
Bates #	Description
0091-0096	FBI report summarizing a call from Office Max, fraud investigation team providing information on the discovery of possible scam.
0097-0099	FBI report summarizing the review of email communications from, Teechur12345678@gmail.com
0100-0113	Supporting documents for FBI UC purchase on 02/25/2013 and 02/27/2013
0114-0123	Email correspondence regarding possible Staples items in New Mexico with attached Staples cards and transaction details.
0124-0152	Information regarding the background of the suspects from Taos
0153-202	Missing
0203-0225	Straw purchase with FBI and phone and email account information from Brandi Lucero and Chris Channon (Dad)
0226-0342	Dad's PayPal account information with IP's
0343-0344	Matt's EBay account from 2005
0345-0477	Matt's primary EBay account 2001-2011.
0478-0482	Missing
0483-0484	Matt Channon PayPal account secondary.
0485-0490	Primary PayPal account
0491	EBay purchases
0492-0493	EBay account info for user ID: convenientvideo
0494-0503	EBay account info for user ID: doctor_zoidberg
0504-0506	EBay account info for user ID: furnitu
0507-0509	EBay account info for user ID: rmamyway

Matthew Channon Discovery	
Bates #	Description
0510?	Listing history of items Matt sold on eBay (no bates number- consisting of 64 pages)
0511-0529	Brandi's PayPal card
0531	Brandi's PayPal info
0532	Transfers from Matt's accounts to Brandi's
0533	PayPal; Notes: <i>Matt did transfer?</i>
0534	Brandi's PayPal purchases
0535-0537	Brandi's PayPal account info
0538-0546	Reply to customer information requested from Google by FBI with information attached.
0547-0551	Google search warrant. Taos suspects accounts.
0552-0556	Google information requested from FBI
0557-0590	Hotmail accounts for Taos people
0591-0592	Matt's home land line (Qwest)
0593-0623	Old phone numbers
0624-0787	Southwest Airlines information to FBI regarding purchases by Matt.
0788-0905	Staples Rewards profiles (Taos?)
0906-1042	Taos accounts for Staples
1043-1080	Taos people bank statements
1081-1090	Dad's Yahoo account information.
1091-1094	Yahoo account information for Linda & Paul Pearson
1095-1102	Unknown Yahoo account information
1103	AOL summary of email accounts for Brandi and Matt.
1104-1106	Possible staples rewards accounts
1107-1143	Every FedEx shipment Matt made at Office Max
1144-1154	Office Max rewards transactions
1155	Listing of items sold on eBay consisting of 15 pages

Matthew Channon Discovery	
Bates #	Description
1156-1161	Listing of items sold and bought on EBay (no bates number on most pages, bates numbers only on last three pages ending 1161)
1162-1245	Every phone number and email in alphabetical order.
1246-1253	Shipping destinations from Matt's primary and secondary EBay accounts and Dad's account
1254-1285	Online information on Matt
1286-1288	Office Max to FBI with information on Matt's Max Perks accounts activity.
1289	Arizona Office Max people
1290	FedEx transactions at Office Max
1291	"Garble" set of email addresses and Office Max accounts
1292	Jackie Gomez account; purchases
1293-1298	Correspondence between Office Max and FBI regarding "Garble" accounts and FedEx shipments (with locations Matt used FedEx services)
1299-1300	Surveillance images of Brandi with ink
1301	Color photograph of Brandi
1303-1308	Correspondence between Office Max and FBI regarding Max Perks transactions
1309-1313	Correspondence between Office Max and FBI regarding straw purchase setup
1314	Correspondence between Office Max and FBI regarding surveillance of possible female accomplice
1315 a-i	Copies of 1303-1308 & 1314
1316-1324	FedEx shipment details of boxes of ink
1325	List of FedEx shipments by Matt to own residence

Matthew Channon Discovery	
Bates #	Description
1326	Correspondence between Office Max and FBI regarding more FedEx shipments
1327	FedEx shipments
1328	FedEx shipments
1329	FedEx shipping information
1330	Correspondence between Office Max and FBI regarding FedEx shipments.
1331-1333	Correspondence between Office Max and FBI regarding adjusting MaxPerks transactions.
1334	Adding a receipt instructions
1335	Report of interview with Office Max and Matt.
1336	Accounts linked to Matt.
1337	Almost all ink recycling
1338	Spreadsheet of names, addresses, and phone numbers (purpose unknown)
1339-1342	MaxPerks account numbers
1343-1344	Correspondence between Office Max and FBI regarding Channon activity June, 2011
1345-1346	Summary of all "Teacher" accounts
1347-1348	Correspondence frOffice Max Office Max to FBI including message Office Max sent to Matt confronting him and telling him to cease activity.
1349-1357	Correspondence between Office Max and FBI, including correspondence between Office Max and Channon's attorney.
1358-1365	Email correspondence between Office Max and FBI regarding Matt's activity
1366	Summary of transactions using Paypal debit cards

Matthew Channon Discovery	
Bates #	Description
1366a	ATTACHMENT to 1377 - All Transactions with Channon Debit
1367	Summary of ink accounts "total net spend"
1368	"Adjustments" associated with ink accounts only
1369	Spreadsheet of reward transactions attributed to Channon
1369-1370	List of point-of-sale transactions (attributed to Channon?)
1371	"Garble" Accounts
1371-1374a	ATTACHMENT to 1375 - Garble account summary detail
1372	Transactions summary for Grable accounts
1373	Garble reward card usage details
1374	Copy of transaction with Channon's debit card
1375-1377	Correspondence between Office Max and FBI regarding "Garble" and "Other" accounts and Channon's debit card
1378a	ATTACHMENT to 1379 - Open thru quick view plus Channon Fedex (damaged/won't open)
1379	Correspondence between Office Max and FBI regarding video footage of Matt
1380	Correspondence between Office Max and FBI with a summary of Matt's MaxPerks accounts
1381	Correspondence between Office Max and FBI regarding MaxPerks accounts
1382	Jay Moran's account from Taos.
1383	Correspondence between Office Max and FBI regarding MaxPerks accounts

Matthew Channon Discovery	
Bates #	Description
1384	Correspondence between Office Max and FBI regarding prepaid cards
1385-1389	ATTACHMENT to 1384 - Black hawks seized by FBI
1390-1391	ATTACHMENT TO 1393 - Channon MaxPerks accounts found by FBI
1392	Office Max warehouse shipping label
1393	Correspondence between Office Max and FBI regarding MaxPerks accounts
1394-1402	Channon accomplice suspect photos
1403-1407	Channon accomplice suspect photos
1408-1409	Channon accomplice suspect photos
1410	Channon accomplice suspect photos
1411	Channon accomplice suspect photos
1412	Correspondence between OM and FBI regarding Channon's accomplices
1413-1415	Email's regarding Jay Moran's Max Perks account
1416-1419	Correspondence regarding Jay Moran's MaxPerks account being closed
1420-1422	Receipt of ink recycle in Colorado Springs
1423-1424	\$50 gift card purchase receipt
1425	Ink cartridge receipt
1426-1428	Receipt for ink cartridge purchase and ink recycle
1429-1431	Receipt for purchase
1432	Receipt for ink cartridge
1433-1490	Receipts
1491-1492	Correspondence between Office Max and FBI regarding purchases with debit card ending in 6699

## Attorney Work Product

Matthew Channon Discovery	
Bates #	Description
1493-1494	Correspondence between Office Max and FBI regarding an unknown shipping label
1495	Missing
1496-1498	Bargle case files explanations
1499-1500	Correspondence between Office Max and FBI regarding how Teechur accounts were used on purchases.
1501-1503	All detail from Channon purchase at store #743
1504-1510	All detail from Channon purchase at store #217
1511-1518	All detail from Channon purchase at store #917
1519-1520	Missing
1521-1527	Correspondence between Office Max and FBI regarding Channon activity and items listed on EBay
1528-1529	Correspondence between Office Max and FBI regarding Blackhawk gift cards contact Chanel Rabb
1530-1537	Duplicate of Bates 1511-1518
1538-1540	Correspondence regarding Black Hawk gift card info.
1541-1547	Correspondence between Office Max and FBI regarding Black Hawk usage history
1541a-1547a	Gift card receipts purchased in ABQ 10/2010
1547b	Summary of adjustments by date the adjustment was made
1547c - 1550	Correspondence regarding multiple adjusted transactions with summary of adjustments
1548	Teechur accounts
1549	Account enrollment by day account was opened
1551-1554	Case summary by Office Max plus email correspondence with loss calculation
1555-1556	Bargle case files explanations

## Attorney Work Product

Matthew Channon Discovery	
Bates #	Description
1557-1558	Correspondence between Office Max and FBI regarding account rewards used for purchases
1559-1562	All accounts and transactions listing
1563-1564	Channon MaxPerks accounts found by FBI
1564a	Taos accounts and unidentified accounts
1565-1571	All detail from Channon purchase at store #217
1572-1574	All detail from Channon purchase at store #743
1575-1582	All detail from Channon purchase at store #917
1583	FedEx shipments by Matt, Dad, and 3 other unknowns
1584-1585	More FedEx transaction detail
1586	Summary of eBay accounts
1587-1588	Dr. Zoidberg 9/09-9/10 all sales and purchases on eBay
1589-1590	Furnitu account Google Voice purchase and rewards cards sold on eBay
1591-1592	Items Dad sold and bought on eBay
1593	Items Matt bought by sellers on eBay
1594-1595	All buying detail on eBay for Matt and dad combined
1596-1616	Power point by Office Max regarding investigation
1617-1623	Open Channon MaxPerks accounts
1618	Transactions listing by ink accounts
	Every Office Max listing of General and District Managers and whether the store was "high risk"
1620	Random adjustments
1621	All ink accounts

## Attorney Work Product

Matthew Channon Discovery	
Bates #	Description
1622	Breakdown by month on ink accounts
1623	Duplicate listing of loyalty rewards accounts consisting 1 page
1624	Total rewards issued Teechur and Coach accounts consisting of 20 pages
1625	Redemption details two spreadsheets-Where rewards are redeemed by transaction ID consisting of 9 pages; and Every rewards card number consisting of 9 pages
1626	Teechur accounts linked to ink accounts consisting of 24 pages
1627	Cards associated with Bargle, Teechur, and Elementaryconsisting of 27 pages
1628	Listing of every store consisting of 19 pages
1629	Teechur, Coach, Bargle, account summary consisting of 52 pages
1630-1633	Missing
1634-1637	Summary of eBay accounts for conenientvideo; doctor_zoidberg; and furntiu - Matthew Channon; and rmamyway regarding Chris Channon
1638-1683	Missing
1684-1704	Surveillance images of Jay Moran
1705-1706	Surveillance of Channon at five locations in California
1707-1717	Surveillance images of Jay Moran locations in Albuquerque and California
1718-1725	Surveillance images of Bobby Duran in Albuquerque and Denver

## Attorney Work Product

Matthew Channon Discovery	
Bates #	Description
1726-1727	Surveillance image of unidentified Silver Tip Male Albuquerque 5/4/2011 and 6/2011
1728	Surveillance images of Roberta in Albuquerque
1729	Surveillance images of Cleo in Albuquerque
1730-1734	Surveillance images of Matthew Channon
1735-1737	Surveillance images of Jay and Roberta
1738-1740	Surveillance images of unidentified male
1741-1743	Surveillance images of Cleo
1744-1762	Surveillance images of Bobby Duran
1750a	Taos accounts
1751a	Mainly Taos accounts (by store photos)
1752a	Office Max stores
1753a	List of Taos accounts
1754a	Taos accounts
1755a	Matt's ink accounts mixed with Taos accounts
1756a	Taos accounts
1757-1761a	MaxPerks Program Description - Office Max general terms and conditions copyright 2010
1762a	\$0 transactions
1763-1766	Receipts
1767-1772	Receipt for recycling 20 ink cartridges and some purchases
1773-1775	Receipt for purchases
1776-1777	Receipt for ink recycling and label printer purchase
1778-1780	Receipt for recycled ink
1781	Ink recycling accounts consisting of 2 pages
1782-1910	All teechnical accounts
1911-1913	All Taos accounts except first one
1914-1937	Garble accounts
1938-1941	Cannon ink accounts

## Attorney Work Product

Final

Matthew Channon Discovery	
Bates #	Description
1942-1944	Channon ink accounts (again)
1945	2 Random accounts consisting of 3 pages
1946	Ink accounts consisting of 15 pages
1947	Ink and other accounts since 10/09 consisting of 248 pages, spreadsheet has 3 column breaks
1948	Details for all transactions every time a reward card was used since 1/10 consisting of 60 pages
1949	Mostly ink accounts consisting of 51 pages
1950	Detail of FedEx shipments consisting of 10 pages
1951	Ink accounts consisting of 6 pages
1952	FedEx Shipping UPC and SKU's
1953-1955	Google message to FBI regarding request for documents
1956-1957	Message frOffice Max Office Max to FBI regarding FedEx shipping history
1958	Garble accounts consisting of 40 pages
1959-1961	Garble accounts tied into video of Channon at stores consisting of 5 pages
1962	Report of interview with Office Max and Matt.
1963	List of ink accounts consisting of 2 pages
1964	Ink accounts consisting of 6 pages
1965	MaxPerks loyalty transactions linked to members 2008-2009 consisting of 12 pages
1966	Details for all transactions consisting of 66 pages (no bates number found)
1967-1981	Locations of Office Max
1982-1985	Management @ Office Max

## Attorney Work Product

Final

Matthew Channon Discovery	
Bates #	Description
1986	Teechur accounts consisting of 114 pages
1987-2026	Affidavit to search Channon residence
2027-2032	Search warrant for Channon's residence
2023-2033	Attachments A and B from Affidavit to search 1132 Calle del Oso, Taos
2037 - 2039	Application for search warrant of Taos house and return
2040-2068	Affidavit to search 1132 Calle del Oso, Taos
2069	Search warrant for email accounts detailed in application for search warrant attachment A
2070-2116	Application for search warrant of information associated with email accounts detailed in attachment A (Bates 2113)
2117	Blank certificate of authenticity for Google
2118-2119	Application ordering Google not to inform any person of existing warrant
2120	Order to Google to not inform any person of existing search warrant
2121-2165	Google subscriber information for accounts detailed in search warrant (Bates 2113)
2166-2532	Missing
2533	FedEx home delivery customer receipt
2534	Prepaid card information
2535	Park Place Technologies MaxPerks profile
2536	Ink recycle receipt
2537-2538	Garble suspect list
2539-2540	Open Channon MaxPerks accounts
2541	Listing of names, addresses, phone, and fax numbers

## Attorney Work Product

Matthew Channon Discovery	
Bates #	Description
2542	Details of FedEx shipments made by Channon
2543	Jay Moran address history
2544	Bill Moran MaxPerks account
2545	Channon photograph
2546-2748	List of locations for multiple Office Max and Staples stores in California with Google maps directions to stores
2749-2774	Images of evidence seized including multiple MaxPerks rewards cards, Staples rewards cards, receipts, and a road atlas
2775-2782	Matt's Allstate Insurance application
2783	Matt's personal Capital One account information
2784-2791	Transunion credit report for Matt 01/2006
2792-2811	Experian credit report for Matt 09/2007
2812-2821	Transunion credit report for 05/2007
2822-2836	Allstate policy information for Matt
2837-2840	Matt's Sandia Laboratory Federal Credit Union CC statement 1/30/2007
2841	Matthew Channon paystub
2842	New Mexico Educators Federal Credit Union CC statement for Matt
2843-2846	University Mazda service invoice
2847	PayPal receipt arcade video game \$2,663.00
2848-2851	State Farm auto insurance Premium
2852	Image of receipts from Sandia Laboratories Federal CU and NM Educators FCU
2853-2854	Capital One Mastercard statement for Matt

## Attorney Work Product

Final

Matthew Channon Discovery	
Bates #	Description
2855	Rural Radiology Associates bill for Brandi Lucero
2856-2857	NMEFCU CC statement for Matt
2858-2859	Comcast past due notice for Matt
2860-2862	Bank of America combined statement for Matt
2863-2864	US Bankruptcy Court subpoena in an advisory proceeding
2865	Bankruptcy Court Summons and Notice of Scheduling Conference
2866-2870	CitiMortgage statement for Matt
2871-2872	Collections notice for Brandi Lucero from Eastern New Mexico Medical Center
2873	Notice of unpaid policy loan interest for Matt
2874-2875	MBNA CC statement for Matt
2876	Image of bank statements
2877	Image of bank statements
2878	Image of bank statements
2879	<a href="mailto:donna.neumon@mac.com">donna.neumon@mac.com</a>
2880-2881	Rout 66 Casino Ultimate Rewards card for Brandi Lucero
2882-2889	Staples receipts
2890-2895	New Mexico Institute of Mining and Technology cash receipt
2896	Matt's resume
2897-2899	Business plan for Convenient Video
2900-2901	Matt's resume
2902	Cover letter for a job
2903-2904	W-2 wage and tax statement
2905-2906	EBay account bill
2907-2908	Matt's SAT score report
2909	Matt long distance phone call bill
2911-2916	First State Bank account statements

Matthew Channon Discovery	
Bates #	Description
2917-2972	Student information for Matt while attending New Mexico Institute of Mining and Technology
2973-2976	UNM account statements for Matt
2977	Image of application for admission at Georgia Institute of Technology
2978	Image of letters from NM Tech and Georgia Institute of Technology
2979-2980	CitiMortgage escrow account disclosure statement
2981	NMEFCU 10 day first letter
2982-2983	Letter from IRS to Matt
2984-2989	Wells Fargo Business Market Rate Savings for account #3013763218
2990-2993	CitiMortgage letter regarding loan default
2994	Attorney invoice
2995	Letter to Matt from SLFCU regarding car loan
2996-2997	Letter to Matt from New Mexico Dept. of Workforce Solutions regarding a debit balance
2998-2999	CitiMortgage account info
3000	Wells Fargo change of address notification
3001-3002	Notice of value for Channon residence
3003	Image of receipts and various mail
3004	SLFCU loan payment receipt
3005	NMEFCU withdrawal receipt
3006	SLFCU loan payment receipt
3007	NMEFCU deposit receipt
3008	FedEx receipt
3009-3016	AT&T bill
3017-3019	Letters to Channon from Office Max regarding reimbursement
3020-3021	Experian credit report for Matt 06/2011

Matthew Channon Discovery	
Bates #	Description
3022-3025	Qwest phone bill
3026-3028	Experian credit report for Matt
	Experian credit report for Brandi
3029-3031	06/2011
3032	Order summary for checks ordered from Walmart for Matt or Brandi
3033-3034	Car rental information for rental in San Jose, CA for Matt
3035-3036	Southwest flight confirmation from ABQ to San Jose for Matt
3037-3039	Notice of fraudulent purchase of an Xbox from TigerDirect.com by Channon and collections notice
3040-3041	Correspondence from IRS to Channon
3042-3043	Comcast bill
3044-3045	Delta Airlines flight confirmation from ABQ to Knoxville, TN for Matt
3046-3047	Rental car information for Matt in San Jose
3048	To-do list written by Matt
3049-3067	Matt's income tax return for 2010
3068-3095	Brandi's income tax return and amended tax return for 2010
3096-3097	Brandi's 1099
3098-3099	Sandia Casino Peak Rewards players cards
3100-3116	FBI 302 06/28/2011, for search warrant at 7100 Gladden including Evidence Recovery Log and Photographic log
3117-3121	Search warrant for Matt's home 7100 Gladden
3122-3124	Search warrant list of property seized

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August 14, 2013

VIA EMAIL, FASCIMILE & U.S. MAIL

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Federal Bureau of Investigation  
SA Jeff Moon  
SSA Brad Bleier  
2400 Luecking Park Ave, NE  
Albuquerque, NM 87101  
505-889-1512 facsimile

Re: United States v. Michael Channon; 13-CR-966 JCH.

Dear AUSA Messic:

The following is a list of computers that were seized from my client's residence, 7100 Gladden NW, Albuquerque, NM on June 28, 2011. The following numbers correspond to the return that was made with the Court on or about June 30, 2011. I've attached the return to the Court hereto as Exhibit A.

- 9) MD Hard Drive SN: MMAATIA09358  
13) HP Notebook SN: CNVOZ44VIN

Exhibit

B

HP Notebook SN: CNVOZ44V89  
 22) Apple Computer SN: 6NYM7470LAQYL2  
     Apple Computer SN: G852785ZTYV  
     Hitachi HD SN: HQ3RY31H  
 23) GMC CPU Orange no SN  
 28) HP Box, HP Box, HP Box w/CNV0244JRT, HP Box CNVOZ910NH  
 29) Apple Computer SN: RM7324GDWOB  
 31) ACER Notebooks SN: BU5050B184837O0AD32535  
 32) Seagate HD SN: 26HK9RH3  
 36) Olympus Camera SN: H22540739  
     Olympus Camera SN: H22540332  
 39) HP Printer SN: CNB9536317  
 41) HP 2140 FAX SN: CV09FBNODS

Before we met on July 23, 2013, I requested the FBI's forensic analysis of each computer and search warrant return of the computers on July 23, 2013. On that day, you and SA Jeff Moon advised that you were unaware whether the government's computer forensic analysis was completed. The government stated that it would let us know the status of the computer forensic evaluation. I've not received any notification of the status of the government's forensic examinations or a copy of those examinations.

I have repeatedly requested that my client's computers be returned (since the government mirror imaged each computer hard drive) so the defense can proceed with its own investigation. I have also requested a copy or return of my client's financial documents so my client can take care of his financial affairs. We also requested a computer printout of all the evidence that is in the FBI custody, chains of custody, and a copy of the documentary evidence that has been checked into FBI evidence and copies of documents in FBI 1A envelope. I've not heard back from the government or received any of the requested evidence and documents.

The government requested the defense to stipulate to the copy of evidence on the mirror imaged hard drives prior to the return of the originals. After contemplating your request, my client and I are unwilling to provide you with such a stipulation. We have no information that the seizure and copy of the hard drives were done properly or accurately.<sup>1</sup> Therefore, since this issue has been pending since the date I was appointed

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<sup>1</sup> As you know, the computer evidence in Mr. Channon's case is very important. Defense counsel has significant concerns that the computer evidence has been lost or not properly seized. See <http://www.abqjournal.com/242897/news/feds-say-wiretap-case-not-part-of-fast-and-furious.html?paperboy=loggedin630am>. "According to court records, the investigation of

to Mr. Channon's case, if the computer evidence is not returned to us by close of business, Friday, August 23, 2013, we will have no choice to file a motion to compel and a motion to return my client's property with Judge Herrera. Since the government seized the computers, we are under no obligation to provide you with a device or media to obtain the evidence. Furthermore, it is common practice to turn over such computer evidence to the defense, and therefore, my expert and I will not waste our time sitting in the FBI offices reviewing said evidence.

On July 23, 2013, the defense spent a little over an hour reviewing search warrant discovery at the FBI after we requested to review the evidence at the FBI for the entire afternoon. While the government repeatedly stated that a follow-up appointment(s) would be necessary, I only heard from you today after another request to review the physical evidence. I'd like to immediately schedule an appointment next week to continue reviewing the physical evidence for at least 8 hours to attempt to complete our review. I understand and sympathize SA Moon's personal circumstances, but my client's liberty is at stake, and further delays in this case are not warranted or necessary. If needed, SA Moon's supervisor, SSA Brad Bleier, the evidence technician, Frank Ladd, or another member of the Cyber Squad can assist with this evidence review.

If you have any questions, please feel free to call me at the office number above.

Sincerely,  
Law Office of Amy Sirignano, PC  
*[Handwritten signature of Amy Sirignano, Esq.]*  
I sent electronically  
Amy Sirignano, Esq.

cc: Todd Hotchkiss  
Michelle Rinaldi  
client

---

Paula Burnett's computers was inconclusive as to whether the email attachments that included the wiretap affidavits were ever opened. But defense attorneys were unable to have most of the computer evidence checked by their experts because the copies of the computer hard drives were lost by federal investigators during a computer system upgrade."

## UNITED STATES DISTRICT COURT

JUN 30 2011 *det*

for the

District of New Mexico

MATTHEW J. DYKMAN

CLERK

*11MR 401*

In the Matter of the Search of )  
 (Briefly describe the property to be searched )  
 or identify the person by name and address )  
 ) Case No.  
 7100 Gladden Avenue NE, Albuquerque, NM 87110 described )  
 in Attachment A, incorporated herein by reference. )

## SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the \_\_\_\_\_ District of New Mexico

(identify the person or describe the property to be searched and give its location):

7100 Gladden Avenue NE, Albuquerque, NM 87110, described in Attachment A, incorporated herein by reference.

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized):

See the Affidavit and Attachment B which are attached hereto and incorporated herein.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

**YOU ARE COMMANDED** to execute this warrant on or before 7 July

(not to exceed 14 days)

in the daytime 6:00 a.m. to 10 p.m.  at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge

(name)

I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)  for \_\_\_\_\_ days (not to exceed 30).

until, the facts justifying, the later specific date of \_\_\_\_\_.

Date and time issued: 27 Jun 11

W. DANIEL SCHREIDER

UNITED STATES MAGISTRATE JUDGE

Printed name and title

City and state: ALBUQUERQUE, NEW MEXICO

Channon 2027

16  
100-2000-AQ-63579-60

**Return**

Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
11-MR-402	6/28/11 @ 7:12AM	Brandi Channing

Inventory made in the presence of:

Brandi Channing

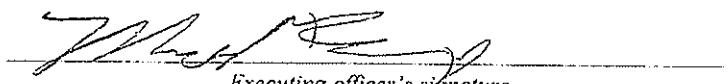
Inventory of the property taken and name of any person(s) seized:

See Attached (3 pages)

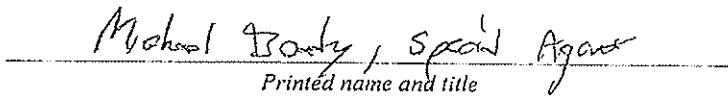
**Certification**

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: 6/30/11



Executing officer's signature

  
Michael Boddy, Special Agent

Printed name and title

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
Receipt for Property Received/Returned/Released/Seized

File # Z88A-AQ-63579

On (date) June 28, 2011

item(s) listed below were:

- Received From  
 Returned To  
 Released To  
 Seized

(Name) \_\_\_\_\_

(Street Address) 700 Gladden Ave

(City) Albuquerque, New Mexico

Description of Item(s): \_\_\_\_\_

- 1) Travel documents, itinerary, Staples, Office Max Cards, etc
- 2) 3 Memory Cards
- 3) 6 Amex Gift Cards, 3 VISA Gift Cards
- 4) LG Cell sn 003KPOU3093827
- 5) HTC Sprint Cell sn HT13VHVC00311
- 6) VISA Gift Card
- 7) Financial Documents
- 8) Ink Cartridges
- 9) Financial documents
- 10) Hard Drive sn MAAAT1M09358
- 11) email address
- 12) Wooden container w/ green leafy substance
- 13) Pipe w/ Residue
- 14) iPhone sn B16A1303A
- 15) HP Notebook CNV0Z-44VIN HP Notebook CNV0Z44VKA
- 16) RT 66 Casino Rewards Card - Brand, Lucas
- 17) Staples Receipts
- 18) Financial Documents
- 19) Financial Documents

Received By: Danny Parikh  
(Signature)

Received From: Brian Channon  
(Signature)

Channon 2029

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
Receipt for Property Received/Returned/Released/SeizedFile # ZSSCA-AD-63579On (date) 6/28/2011

item(s) listed below were:

- Received From  
 Returned To  
 Released To  
 Seized

(Name) \_\_\_\_\_

(Street Address) 7100 Gladden Ave(City) Albuquerque, NM

Description of Item(s): \_\_\_\_\_

- 18) MasterCard/PayPal  
19) Financial documents / travel / documents  
20) Fridays, Best Buy, the Specialty Shop, Hines, Dinner+Fin, Coldstone Creamery, Virgin Mobile, MC, eBay, Applebees, Cinnabon, Gift Cards  
20) CDs  
21) Note to Staples Script  
22) Apple Computer SN YN174101AYLZ, Apple Computer G852785ZTYV  
Hitachi HD HQ3RY31H  
23) GNC CPU Orange w/o S/N  
24) 2010 tax documents  
25) Memory Cards \* Item 26 not listed  
26) Apple Computer SC11407CK5G  
28) HP Box, HP Box, HP Box w/ C110244WRT, HP Box C1102910WU  
29) Apple Computer RM7324KJUAB  
30) 2 thumb drives  
31) Acer Notebooks BU5D50B18483700A032535  
32) Seagate HD Z64K9RH3  
33) Kodak Digital Picture Frame  
34) Office Max, iTunes, Giftcards

Received By: Diana Parker  
(Signature)Received From: B. A. Channon

(Signature)

Channon 2030

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

File # 748A-AQ-63529

On (date) June 28, 2011

item(s) listed below were:

- Received From  
 Returned To  
 Released To  
 Seized

(Name) \_\_\_\_\_

(Street Address) 7100 Gladden Ave

(City) Albuquerque, NM

Description of Item(s): \_\_\_\_\_

- 35) thumbdrives
  - 36) Olympus Camera H22-540739, Olympus Camera H22-540332
  - 37) Ink Cartridges
  - 38) Ink Cartridges
  - 39) HP Printer sn CNB9536317
  - 40) Dell Ink Cartridges
  - 41) HP 2140 FAX CN09FBNODS
    - \* 42 Not taken \* 43 not taken
  - 44) Green leafy substance
  - 45) Green leafy Substance Cookies
  - 46) Sandia Casino Rewards Card
  - 47) Green leafy Substance
  - 48) Pipe

Received By: A. M. Park Jr.  
(Signature)

Received From:

(Signature)



**U.S. Department of Justice  
United States Attorney  
District of New Mexico**

Post Office Box 607  
Albuquerque, NM 87103

Telephone: 505-346-7274  
Fax: 505-346-7296

Via E-mail and U.S. Mail

Amy Sirignano, Esq.  
20 First Plaza NW, Suite 310  
Albuquerque, NM 87102

August 20, 2013

*Re: United States v. MATTHEW Channon, 13-CR-966 JCH*

Dear Ms. Sirignano,

The United States takes its discovery obligations seriously and intends to comply with the Court's discovery order, Rule 16, *Brady, Giglio, Jencks*, and any other pertinent authorities governing discovery. I hope that we can work together amicably to resolve any disputes regarding discovery.

Your recollection of certain events and conversations, however, differs from my own. Although I will not undertake in this letter to challenge each characterization with which I disagree, you should not interpret any portion of this response as an acceptance of your statements. To avoid future misunderstandings, I ask that you please put all requests in writing.

Your letter states that you have not received a copy of the government's computer forensic examinations. As I stated at our meeting on July 23, you have been provided with summaries of the results of the examinations. If additional forensic reports are completed, they will be provided to you at that time.

Your letter states that you requested a copy or return of your client's financial documents. I do remember that you requested these documents so that your client could complete his taxes. However, we then discussed that these documents were seized two years ago and that his taxes would have already been due for 2012. I recall that you then stated that you would ask your client if he needed the documents back. I did not hear anything else from you about those documents until I received your letter. If you would like to copy any of these documents, you may do so.

Your letter next states that you requested a copy of all documentary evidence that has been checked into FBI evidence. My recollection is that we discussed a procedure in a previous case of yours in which documentary evidence was scanned offsite by a contractor for the defendant under the supervision of the case agent. You or your investigator suggested that a similar procedure could work in this case. I have no objection to permitting the defendant to copy the documents, but I did

not hear anything from you after our July 23 meeting about arranging for such a process. Further, it was not clear to us whether you wanted copies only of the evidence you had already reviewed or were requesting copies of all documentary evidence whether or not you had reviewed it yet. Regardless, if you are requesting to make copies of all the documentary evidence held at the FBI, then I would suggest that we skip the step of you and your investigator reviewing the additional documentary evidence at the FBI and proceed immediately to arranging for the copying of all documents held in evidence at the FBI.

At present, I am not aware of any discoverable information in any 1A envelope that has not already been disclosed. I will review all such documentation and disclose anything that the government is required to disclose.

Your letter also states that you have requested "a computer printout" of all the evidence that is in FBI custody and of the chains of custody. You have already been provided with a list of the evidence in FBI custody. I am unaware of any authority requiring disclosure in discovery of the chain of custody for items of evidence.

We are prepared to release the attached list of items to you and Mr. Hotchkiss. No evidence of relevance was discovered on any of these items. I am not willing to release the Mac Mini A1179 or the Mac Mini A1103 without a stipulation from both Defendants. Relevant evidence was located on both of these computers, and I am not aware of any authority requiring the government to return original evidence in a criminal case to a defendant while the case is pending. Nevertheless, if I can protect the interests of the United States in this case through a stipulation while returning the original devices to your client and his wife, I am willing to do so.

If the defendants are unwilling to enter the necessary stipulations, then you will need to arrange to view the evidence at the FBI or accept image copies of the devices for offsite review. If you would like to receive image copies, you will need to provide suitable storage media. Rule 16(a)(1)(E) provides that "the government must permit the defendant to inspect and to copy or photograph" documents or tangible objects in its possession that meet one of the three requirements of (a)(1)(E)(i)-(iii). The government's obligation is to permit access to the evidence; the rule places the burden of inspecting or copying that evidence on the defendant. To facilitate your review of the computer evidence, we are willing to provide you with imaged copies, but you must first provide media or devices on which they can be stored.

Sincerely yours,

STEVEN C. YARBROUGH  
Acting United States Attorney



C. PAIGE MESSEC  
Assistant U.S. Attorney  
201 Third St. NW, Suite 900  
Albuquerque, NM 87102  
(505) 224-1501  
(505) 246-7296 fax

7100 GLADDEN AVE NE ALBUQUERQUE, NM,

<u>Item #</u>	<u>Type</u>	<u>Acquired On</u>	<u>Barcode</u>	<u>Description</u>
<u>1B48</u>	CART	6/28/2011 8:00	E4738872	(U//FOUO) HP 2140 FAX, S/N: CN09FBN0DS ITEM: 41
<u>1B46</u>	CART	6/28/2011 8:00	E4738870	(U//FOUO) HP PRINTER, S/N: CNB9536317 ITEM: 39
<u>1B43</u>	CART	6/28/2011 8:00	E4738867	(U//FOUO) TWO OLYMPUS CAMERAS, S/N: H22540739 ITEM: 36 S/N H22540332 ITEM: 36
<u>1B42</u>	CART	6/28/2011 8:00	E4738866	(U//FOUO) THUMB DRIVES ITEM: 35
<u>1B41</u>	CART	6/28/2011 8:00	E4738865	(U//FOUO) KODAK DIGITAL PICTURE FRAME ITEM: 33
<u>1B40</u>	CART	6/28/2011 8:00	E4738864	(U//FOUO) SEAGATE HD, S/N: 26HK9RH3 ITEM: 32
<u>1B39</u>	CART	6/28/2011 8:00	E4738863	(U//FOUO) ACER NOTEBOOK, S/N: BUS050B18483701AD32535 ITEM: 31
<u>1B38</u>	CART	6/28/2011 8:00	E4738862	(U//FOUO) TWO THUMBDRIVES ITEM: 30
<u>1B36</u>	CART	6/28/2011 8:00	E4738860	(U//FOUO) 4 HP BOXES, TWO CONTAINING COMPUTERS (S/N: CNU0244VBJ & CNU02910NH) ITEM: 28
<u>1B35</u>	CART	6/28/2011 8:00	E4738859	(U//FOUO) APPLE COMPUTER, S/N: SG114B2CK59 ITEM: 27
<u>1B34</u>	CART	6/28/2011 8:00	E4738858	(U//FOUO) MEMORY CARDS ITEM: 25
<u>1B32</u>	CART	6/28/2011 8:00	E4738856	(U//FOUO) ORANGE GMC CPU, NO S/N ITEM: 23
<u>1B31</u>	CART	6/28/2011 8:00	E4738855	(U//FOUO) APPLE COMPUTER, S/N: YM7470LQYL2 HITACHI HD, S/N: HQ3RY31H ITEM: 22
<u>1B29</u>	CART	6/28/2011 8:00	E4738853	(U//FOUO) CD'S ITEM: 20
<u>1B23</u>	CART	6/28/2011 8:00	E4738847	(U//FOUO) HP NOTEBOOK, S/N: CNV0244VIN; HP NOTEBOOK, S/N: CNV0244V8Q ITEM: 13
<u>1B22</u>	CART	6/28/2011 8:00	E4738846	(U//FOUO) IPHONE A1303, S/N: GLGA1303A ITEM: 12
<u>1B20</u>	CART	6/28/2011 8:00	E4738844	(U//FOUO) MD HARD DRIVE, S/N: MMAAT1A09358 ITEM: 9
<u>1B16</u>	CART	6/28/2011 8:00	E4738840	(U//FOUO) LG CELL, S/N: 003KPUU3093822 ITEM: 4
<u>1B15</u>	CART	6/28/2011 8:00	E4738839	(U//FOUO) MEMORY CARDS ITEM: 2

LAW OFFICE OF AMY SIRIGNANO, PC  
AMY SIRIGNANO, Esq.  
ATTORNEY AT LAW

ADMITTED IN NEW MEXICO, CALIFORNIA, AND THE DISTRICT OF COLUMBIA  
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October 2, 2013

VIA EMAIL & U.S. MAIL

Paige Messic  
Assistant United States Attorney  
United States Attorney's Office  
for the District of New Mexico  
201 3<sup>rd</sup> Street NW, Suite 900  
Albuquerque, NM 87102  
[Paige.Messec@usdoj.gov](mailto:Paige.Messec@usdoj.gov)

**Re: United States v. Matthew Channon; 13-CR-966 JCH.**

Dear AUSA Messic:

I received your letter dated August 20, 2013, about release of two of the remaining computers and the government's copies of the information on them, documentary evidence in the custody of the FBI, and documentation of the chain of custody of the evidence the government collected. I also received your letter dated September 24, 2013, extending an offer for a joint plea agreement by Mr. and Mrs. Channon.

As I am sure you know, the United States Supreme Court made clear in *Lafler v. Cooper*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1376 (2012), and *Missouri v. Frye*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1399 (2012), defendants are entitled to effective assistance of counsel in considering plea offers made by the government. At this point in time, discovery is nowhere near complete; the defense has not had complete access to all the evidence that was taken during the execution of the search warrants, and the government has withheld four

Exhibit

D

computers and an external hard drive relevant to the defense. Therefore, the plea agreement that you proposed is premature.

Specifically, in your letter dated August 20, 2013, you ask Mr. Channon to stipulate that copies of computer data that he has not seen are accurate. Even if the defense had access to the copies, the defense cannot compare the copies to the original, unreturned, data. Mr. Channon or his potential computer expert cannot reasonably certify or stipulate to the accuracy of the government's unseen copies of undisclosed originals.

You refer to two (2) Mac Mini computers with relevant evidence, Mac Mini A1179 or the Mac Mini A1103, however, my review of the FBI inventory sheets from the search warrant return and the FD-597 Receipt of Property that your agent drafted, and our investigator signed on September 4, 2013, provides that we have not been given evidence relating or access to the following four (4) devices:

Apple computer SN: YM7470LQYLZ;  
Apple computer SN: G852785ZTYV;  
Hitachi HD SN: HQ3RY31H; and  
Apple computer SN: RM7324GDWOB.

The only resolution I can suggest at this point, (since the FBI won't certify that its own copies of the computer evidence match the original seized computer evidence), is for the government to allow the defense's own computer expert monitored access to the original computer evidence to make our own copy of the original computer evidence that the government refuses to turn over without a stipulation. Once the defense expert has prepared defense copies, and we have received the government's copies of the data, our expert will be able to determine whether the government's copies are accurate.

As you may be aware, CJA funding and payments were suspended for the remainder of the 2013 fiscal year. We are working to obtain the services of a computer forensics expert able to review the partial computer evidence that we have been given access to. However, the more resources the government requires the defense to commit to gain access to the case discovery, the longer the timeline to complete discovery will be, due to current and ongoing funding limitations. Even seemingly simple tasks like purchasing a hard drive to store government copies of Mr. Channon's computer data will introduce delay and will likely result in a motion to amend the current scheduling order.

For the same reason, I cannot be certain that the defense can be finished with discovery in order to fully advise Mr. Channon about the merits of the government's

plea offer by November 5, 2013, the government's plea deadline set forth in your September 24, 2013 letter. We will need to seek Court approval for expert funding. At this point, given the Congressional gridlock, we cannot guarantee that there will be any CJA funding, or a Judge to review our request. Once a budget is passed, we will still be subject to the Court's schedule for review of the defendant's ex parte funding requests. We must then allow our expert ample time to perform the work that may be approved. The time you have allotted to respond to your plea offer, approximately one month, does not seem adequate at this time.

The same approval processes and scheduling issues apply with regard to FBI-supervised third-party copying of documentary evidence at the defense's cost. We can seek approval for that process (which, I might add, is the first request I've had by the government in countless cases). However, we will need an approximate page count from the government to obtain estimates from third-party companies. Once the cost of copying is estimated, the defense must again request Court approval for the expenditure before we can even begin working with you and your case agent to schedule the copying itself. Thus far, our email correspondence reflects that the government's case agent has not been available very frequently, or for sufficient periods of time, to complete evidence viewing, so we do not anticipate that this process can be complete by November 5, 2013.

Finally, in your letter dated August 20, 2013, you appear to assert that you have reviewed the chain of custody for all of the evidence in FBI custody and that the chains of custody are complete and therefore not exculpatory. The chains of custody may be relevant to impeachment or cross-examination pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and *Kyles v. Whitley*, 514 U.S. 419 (1995). Please either disclose them or explicitly certify that you have reviewed them and they are not relevant to Mr. Channon's right to due process.

The following is a list of discovery that the defense formally requests production of as soon as possible. Where I cite to a Bates number from the discovery already produced, the document or item requested is referenced by or in reference to the previous discovery.

1. All receipts (including, but not limited to "electronic journal receipts" see Bates 1144), records, backup documents, screen captures of receipts, profile(s), Max Perks profile detail, accurate reprinted copies of each transaction, record(s) of transactions for each alleged purchase/sale/transaction/"qualified purchase" at each Office Max store that the government alleges is related to Mr. Channon, identified in the

countless spreadsheets provided by the government in the discovery relevant to Mr. Channon (*See* Bates numbers 1420-1424, 1374).

2. Copies of all register receipts, electronic journal receipt, or internal Office Max or MaxPerk document(s) for any and all recycled ink accounts that the government alleges is related to Mr. Channon. The following Bates numbers are not complete: Bates 1303-1306, 1314, 1315 and 1315a-I (missing photos), 1331-1333, 1413-1415, 1521-1522, 1526).
3. Any and all documents to ascertain what the government refers to as a "qualified purchase" (*See* Bates 1367).
4. Any and all receipts, including, but not limited to, "electronic journal receipts," records, backup documents, screen captures of receipts, profile(s), Max Perks profile detail, accurate reprinted copies of each transaction, record(s) of transactions for each alleged purchase/sale/transaction/"qualified purchase" at each Office Max store identifying the dollar amounts for both loss and restitution claimed in the discovery and the plea agreement dated September 24, 2013.
5. Any government offset or reduction in the loss calculation as determined in the discovery or the plea agreement dated September 24, 2013.
6. Items Bates numbered 624-787, 1346-1348, and 1556-1562, as these were omitted from the initial disclosure. Bates 1104-1106 has numbering issues.
7. Clear, legible copies of Bates numbers 1339 and 1620.
8. Complete and unredacted copies of Bates numbers 206-208, 215-217, and 621-623, which are blank or redacted.
9. Part 1 of 4 is missing as to Bates 1349.
10. The attachments referenced in Bates 0556a, 1293, 1296, 1326, 1330, 1343, 1347, 1349, 1375, 1376, 1377, 1379, 1380, 1383, 1384, 1393, 1538, 1557,
11. Copies of all documentation supporting the forfeiture allegation, including, but not limited to, any and all bank statements and reports of money tracing and forensic accounting analysis performed by the government.

12. Copies of all subpoenas issued by the Grand Jury during its investigation of this case and the alleged conduct set forth in the indictment.
13. Copies of all CDs, pictures and descriptions of physical items, and hard copies of documents produced in response to all subpoenas issued by the Grand Jury during its investigation of this case and the underlying alleged conduct (*See Bates 0548*).
14. Copy of all the Grand Jury transcripts relating to the present indictment.
15. Copies of any and all e-mails and other correspondence including, but not limited to intra-office correspondence, text messages, and voicemails from the pre-indictment investigative period to the present between any FBI employee working on the instant case and Steven Gardner, Chuck Sipko, and any and all employees or consultant of OfficeMax that relates to the activities charged in this case.
16. Copies of any and all e-mails and other correspondence including, but not limited to intra-office correspondence, text messages and voicemails from the pre-indictment investigative period to the present between any FBI employee working on the instant case and any employee of Blackhawk, including, but not limited to Chanel Rabb, EBay, Google, and Ceridian (*See Bates 1956, 1286*).
17. Any and all surveillance video from OfficeMax stores of the ink cartridge recycling transactions related to 123 MaxPerks accounts (*See Bates 1335*).
18. A copy of the recording of OfficeMax loss prevention personnel made of the interview of Matt Channon referenced in Bates 1335.
19. A copy of Mr. Chuck Sipko's report regarding the interview of Matt Channon (*See Bates 1335*).
20. Any and all reports of interviews with Mr. Channon and documents identifying Mr. Channon (*See Bates 1328 – the actual Bates number is missing*).
21. The "Intellix" software program required to view video footage disclosed by OfficeMax (Bates 1379).

22. A copy of all Maxperks program policies, terms and conditions from inception to the present, including the date of enactment of the policy and the date of each policy change (*See Bates 1381*).
23. A copy of all MaxPerks qualifying ink cartridge lists, and revisions dating from its inception to the present.
24. Any and all statements, records, documents, and confirmation of activity for each gift card issued by Ceridian relevant to this investigation and indictment alleged to have been issued or sold to Mr. or Mrs. Channon, identified by card number and store, and all activity on each gift card (*See Bates 1145*).
25. Any and all statements, records, documents, and confirmation of activity for each gift card issued by Blackhawk relevant to this investigation and indictment, alleged to have been issued or sold to Mr. or Mrs. Channon, identified by card number and store, and all activity on each gift card (*See Bates 1384*).
26. Any and all Office Max policies regarding purchase and sale of gift cards, including but not limited to the specific policy regarding gift card fees.
27. All tax returns and financial records and documents seized by the FBI during the search of Mr. Channon's residence.
28. Copies of all FBI 1A envelopes and their contents.
29. Copies of all FBI chains of custody for each piece of evidence seized by law enforcement in this case.
30. Copies of all documents and records obtained by law enforcement during the search warrant of Mr. Channon's residence and any other search warrant executed in conjunction with this case.
31. A copy of the government's Encase (or similar computer forensic report/analysis) for each computer or electronic device/medium seized by the government in this case.
32. Copy of diagram/schematic/sketch made by FBI evidence recovery personnel which corresponds to where each item of evidence was recovered in Mr. Channon's residence (as reflected on each evidence bag and presumably, on each chain of custody).

33. A computer printout, by identifying barcode and item number, from the FBI evidence control unit identifying each piece of evidence seized and logged into the FBI evidence unit relating to this case.
34. Any and all documents and records of relevant MaxPerk account signups including the IP addresses the requests were made from, dates, and times.
35. Any and all documents and records of relevant MaxPerk receipt adjustments including the IP addresses the requests were made from, dates, and times.
36. Any and all documents and records of relevant MaxPerks logins including the IP addresses the requests were made from, dates, and times
37. A companywide financial summary of OfficeMax's ink cartridge program for redemption of ink and toner cartridges accepted, number of used ink cartridges sold, and median, mean, and maximum retail prices of refilled ink cartridges sold, detailed by the makes and models OfficeMax accepted for redemption, from the date of the initiation of this investigation to the present.
38. A companywide financial disclosure of the MaxPerks program from 2009 to the present, including, but not limited to, the amount of qualifying transactions, number and dollar amount assigned to rewards card numbers, number and dollar amount of rewards points issued, number and dollar amount of rewards points redeemed, with each category broken down by rebates from ink cartridge recycling and rebates from qualifying purchases.
39. Any and all records and documents identifying the date and time each MaxPerks account alleged to be related to Mr. Channon was shut down, the balance of at the time of shut down, the person who shut it down, and the cited reason for the account closure from the date of the initiation of this investigation to the present.

Please respond in writing as soon as possible to attempt to resolve any discovery issues, and to alleviate filing a motion to compel discovery.

Sincerely,  
Law Office of Amy Sirignano, PC



Amy Sirignano, Esq.

cc: Todd Hotchkiss  
Michelle Rinaldi  
Client



**U.S. Department of Justice  
United States Attorney  
District of New Mexico**

---

Post Office Box 607                      Telephone: 505-346-7274  
Albuquerque, NM 87103                  Fax: 505-346-7296

Hand-delivered

Amy Sirignano, Esq.  
20 First Plaza NW, Suite 310  
Albuquerque, NM 87102

October 24, 2013

*Re: United States v. Matthew Channon, 13-CR-966 JCH*

Dear Ms. Sirignano,

I write in response to your October 2, 2013 discovery letter.

On the enclosed CD, labeled Discovery 10.24.13, you are being provided with scanned copies or photographs of the documents seized from the Channons' home. Items that cannot be readily scanned (primarily ink cartridges) are available for you to inspect at the FBI. Although Rule 16 does not place the burden of copying documents on the government, we did so in an attempt to simplify matters. For clarification, it was never *my* suggestion that you hire a third party to scan the documents — that was an idea suggested by the defense.

Since your letter, the government has delivered to you the Apple computer and the Hitachi hard drive that did not contain relevant evidence. This leaves only two items of computer evidence taken from the Channon residence in FBI custody: the Mac Mini A1103 of 1B31 and the Mac Mini A1179 of 1B37. To receive images of the two Mac Mini hard drives, Mr. Channon must provide a suitable storage device. I first informed him of this in my initial discovery letter of May 14, 2013. I recognize that this requires court approval, and as a government employee, I am all too familiar myself with the red tape of procurement — but I cannot treat defendants differently depending on whether they are represented by a public defender, CJA counsel, or a privately retained attorney.

I'm not sure what you mean when you say that "the FBI won't certify that its own copies of the computer evidence match the original seized evidence." The government's position is that the images created from the seized computer evidence *do* match the original evidence. The only reason I asked for a stipulation as to the imaged copies is your client is requesting the release of the original evidence before the conclusion of the case. This isn't the

Exhibit

D

standard procedure, but I was willing to accommodate that request if I could do so without risk to the government's case.

Given the defendant's declination of this option, however, I suggest that we follow the normal procedure for disclosure of computer evidence. Upon receipt of a storage device, the Regional Computer Forensics Laboratory (RCFL) will make an exact copy of the two hard drives and provide them to you. The RCFL does not permit a defense expert access to the facility, but the RCFL will provide you with the logs pertaining to the images. These should allow your computer expert to assess the integrity of the images. If, after receiving the images and the logs, you wish to stipulate to the authenticity of the images, then the government will release the originals. Even if you ultimately find that you are unable to enter such a stipulation and wish to file a motion for the return of the original hard drives, I nevertheless request that you provide the RCFL with a suitable storage device as soon as possible so that you can at least review the logs and the evidence that the government has identified on the hard drives, which is set forth on Bates 0009.

Your letter contains 39 requests for additional production, addressed below. Except where additional production is noted below, the government has already produced everything that is required at this stage of litigation under the Court's discovery order, Rule 16, and other authorities. In some cases, even though I don't believe that what you are requesting is required by the discovery rules, the government will voluntarily provide the additional discovery requested.

The paragraphs numbers below refer to the numbered paragraphs on pages 3 through 7 of your Oct. 2 letter:

- ¶¶ 1, 2, 4, 17, 18, 19, 22, 23, 24, 25, 26, 34, 35, 36, 37, 38, and 39. These paragraphs request materials which, if they exist, are in the possession of private parties. The government is not required to obtain discovery from private parties on behalf of the defendant. Discoverable materials within these categories in the possession of the government have been disclosed.
- ¶2. The images and spreadsheets attached to Bates 1303-08 are being produced as Bates 2533-42. Please ignore the files labeled 1315b-g and 1315h; they are duplicates but could not be deleted from production because of errors with the file name. Regarding Bates 1314, 1315, and 1315a, the image sent by SA Boady was provided as Bates 1301; the images attached by Mr. Gardner were provided as Bates 1299 and 1300. The image for 1331-33 was previously included as the subsequent Bates number, 1334. The images attached to Bates 1413-1415 are being included as Bates 2543 and 2544. The image attached to 1522 is being provided as Bates 2545. I don't believe that 1526 is missing anything. The question-mark box under Steven Gardner's signature line is for the OfficeMax logo, which does not display when converted from email format.

- ¶3. You requested documents to ascertain the meaning of the term “qualified purchase.” This is a term used by OfficeMax. *See, e.g.*, Bates 1757-61.
- ¶5. I don’t understand what you are requesting.
- ¶6. The omitted pages are being provided. An error related to the length of the files names may have caused their initial omission. I don’t see any “numbering issues” with Bates 1104-06. (¶6)
- ¶7. Bates numbers 1339 and 1620 are an Excel spreadsheet and appear legible to me. Please provide further explanation of the problem.
- ¶8. The discoverable portions of these documents have been provided.
- ¶9. Bates 1349 is complete. Part 1 of 4 has been produced as Bates 1347.
- ¶10. All of the attachments you refer to in this paragraph were previously produced adjacent to the files they correspond to. They are being re-labeled for clarity and re-produced.
- ¶11. All discoverable material has been produced.
- ¶¶12, 13, 14, 15, 16, 28. All material currently discoverable has been produced. Jencks Act material will be produced before or at the time required by law.
- ¶ 20. Bates 1328 is not missing its Bates number (it is at the bottom of the Excel sheet), and I don’t see any reference there to a report of an interview with Mr. Channon.
- ¶ 21. Free software downloads are available on the internet for viewing IMG files. Please let me know if you are unable to find one that works for you.
- ¶¶ 27, 30. Documents seized from the Channon residence and Gmail search warrants have been disclosed. The government does not intend to use any documents seized from 1132 Calle del Oso in its case in chief against the Channons.
- ¶ 29. There is nothing on the chains of custody that is discoverable at this time.
- ¶¶ 32, 33. The diagram/schematic you requested and other documentation regarding the search of the Channons’ residence, including a log corresponding to the photographs taken, are being provided in Bates 3100-3124. I previously emailed to you on July 18, 2013 a spreadsheet listing all items of evidence from the Channon residence and 1132 Calle del Oso.

The plea offer remains open, and I will extend the deadline to December 30, 2013. The offer is contingent on the Defendants not requiring the government to respond to pretrial motions in that time period. Your discovery letter demonstrates a solid command of the evidence in this case, and this extension should allow ample time to assimilate the additional material and evaluate whether the Defendants plan to proceed to trial. If you have any conflicts that would prevent a response by that date, please let me know as soon as possible.

Sincerely yours,

STEVEN C. YARBROUGH  
Acting United States Attorney



C. PAIGE MESSEC  
Assistant U.S. Attorney  
201 Third St. NW, Suite 900  
Albuquerque, NM 87102  
(505) 224-1501  
(505) 246-7296 fax

CC: Todd Hotchkiss

Enclosure:

Compact disc labeled Discovery 10.24.13

**LAW OFFICE OF AMY SIRIGNANO, PC**  
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January 27, 2014

**VIA EMAIL & U.S. MAIL**

Paige Messic  
Assistant United States Attorney  
United States Attorney's Office  
for the District of New Mexico  
201 3<sup>rd</sup> Street NW, Suite 900  
Albuquerque, NM 87102  
[Paige.Messec@usdoj.gov](mailto:Paige.Messec@usdoj.gov)

Re: United States v. Matthew and Brandi Channon; 13-CR-966 JCH.

Dear AUSA Messic:

Upon further review of the discovery in the above referenced case, it has come to my attention that we are still missing pages from your initial discovery disclosure. In addition, we request the following documents and evidence:

40. Defense expert access to all of the data on the two computers still in the custody of the FBI, the Mac Mini A 1103 (1B31) and Mac Mini A 1179 (1B37).
41. Copies of the missing pages Bates: 43-44; 153-202; 478-482; 1338; 1369-1370; 1630-1633; 1638-1683; and 2166-2532.

Exhibit

F

42. Any and all records of Mr. Channon and Mrs. Channon's credit card and debit card transaction records relating to Office Depot and Staples.

Tomorrow is the motions deadline, and these requests will be part of a motion to compel due to the pending deadline. Please respond in writing as soon as possible to attempt to resolve any discovery issues. If they are resolved informally, we will withdraw them from our motion.

Sincerely,  
Law Office of Amy Sirignano, PC

/s \_\_\_\_\_  
Amy Sirignano, Esq.

cc: Todd Hotchkiss  
Michelle Rinaldi  
Client

**Kevin@abqnmnlaw.com**

---

**From:** Messec, Paige (USANM) <Paige.Messec@usdoj.gov>  
**Sent:** Tuesday, January 28, 2014 8:19 AM  
**To:** amy@abqnmnlaw.com  
**Cc:** Todd. B. Hotchkiss; Kevin@abqnmnlaw.com; Michelle L Rinaldi  
**Subject:** RE: CHANNON: Third Discovery Letter

Counsel,

¶40: You know the government's position on the hard drives. If you provide a storage device you will be given exact image copies of the drives, along with logs that will permit your expert to satisfy himself that the copies are true.

¶41: I will reexamine the discovery sent out, and if the Bates pages you listed were indeed missing from the initial or supplemental discovery, I will have them sent out. I cannot get to that today, but there is no reason to bring it up with the Court.

¶42: You have been provided all records in the government's possession.

Sincerely,

Paige Messec  
Assistant U.S Attorney  
201 Third St. NW, Suite 900  
P.O. Box 607  
Albuquerque, NM 87103  
(505) 224-1501 ph  
(505) 346-7296 fax

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**From:** [amy@abqnmnlaw.com](mailto:amy@abqnmnlaw.com) [mailto:[amy@abqnmnlaw.com](mailto:amy@abqnmnlaw.com)]  
**Sent:** Monday, January 27, 2014 6:16 PM  
**To:** Messec, Paige (USANM)  
**Cc:** Todd. B. Hotchkiss; [amy@abqnmnlaw.com](mailto:amy@abqnmnlaw.com); Kevin@abqnmnlaw.com; Michelle L Rinaldi  
**Subject:** CHANNON: Third Discovery Letter

Paige,  
Please see the attached. Thank you.

Amy Sirignano, Esq.  
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Albuquerque, NM 87102

235 Montgomery Street, Ste. 1070  
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Exhibit  
G