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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA

14 United States of America,
15
16 Plaintiff,
17
18 vs.

19 1. Thomas Mario Costanzo,
20
21 and
22
23 2. Peter Nathan Steinmetz,
24
25 Defendants.

CR-17-585-PHX-JJT

**UNITED STATES' MOTION FOR
LIMITED DISCLOSURE OF TAX
INFORMATION AND FOR A
PROTECTIVE ORDER**

26 The United States respectfully moves the Court, pursuant to 26 U.S.C. § 6103(i)(4)
27 and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, for a protective order that:
28 1) authorizes limited disclosure of tax returns and return information obtained during the
investigation of this matter; and 2) restricts the copying, dissemination, and use of items
disclosed by the United States that contain personal identifying information (PII) of third
parties. Defense counsel has been contacted and does not oppose this motion for a
protective order.

The first superseding indictment in this case alleges that, from 2013 through 2017,
both defendants (1) engaged in a conspiracy to operate an unlicensed money transmitting
business and (2) operated an unlicensed money transmitting business. (Doc. 18.) Costanzo

1 is also charged separately with five counts of money laundering and one count of felon in
2 possession of ammunition. (Doc. 18.) Subpoenas were issued to several financial
3 institutions, including banks, a credit reporting agency, and virtual currency exchanges. In
4 addition, search warrants were executed at business locations and residences. The
5 allegations in this matter are supported by evidence of a sensitive nature, including tax
6 returns, return information, financial data, and other records containing PII of third parties.
7 The United States seeks to disclose these relevant records in furtherance of the criminal
8 proceeding and pursuant to its obligations under Rule 16 of the Federal Rules of Criminal
9 Procedure.

10 26 U.S.C. § 6103(a) generally prohibits, with certain exceptions, the disclosure of
11 “any return or return information.” 26 U.S.C. § 6103(b)(1) and (b)(2) define “return” and
12 “return information” broadly to include, inter alia, all tax and information returns filed with
13 the Internal Revenue Service and any information regarding a taxpayer’s identity, the
14 nature and source of a taxpayer’s income and expenses, tax liability, tax deficiency, tax
15 payments, and “any other data, received by, recorded by, prepared by, furnished to, or
16 collected by” the Internal Revenue Service. 26 U.S.C. § 6103(b)(3) defines “taxpayer
17 return information” as “return information” that is filed with or furnished to the Internal
18 Revenue Service by, or on behalf of, the taxpayer to whom the return information relates.
19 26 U.S.C. § 6103(i)(4)(A) states that tax returns and return information obtained pursuant
20 to 26 U.S.C. § 6103(i)(1) may be disclosed “in any judicial or administrative proceeding
21 pertaining to enforcement of a specifically designated Federal criminal statute or related
22 civil forfeiture (not involving tax administration) to which the United States or a Federal
23 agency is a party (i) if the court finds that such return or taxpayer return information is
24 probative of a matter in issue relevant in establishing the commission of a crime or the guilt
25 or liability of a party, or (ii) to the extent required by order of the court pursuant to section
26 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure.”

27 Disclosure of return and return information is warranted in this case because it is
28 direct evidence of the defendants’ criminal activity and is thus “probative of a matter in

1 issue relevant in establishing the commission of a crime.” *See* 26 U.S.C.
2 § 6103(i)(4)(A)(i). In addition, the United States intends to introduce some of these records
3 as trial exhibits in its case-in-chief, which is allowable under 26 U.S.C. § 6103(i)(4)(A)(ii).
4 *See also* Fed. R. Crim. P. 16(a)(1)(E).

5 Federal Rule of Criminal Procedure 16(d)(1) allows this Court to restrict or “grant
6 other appropriate relief” with regard to discovery upon a showing of good cause. Due to
7 the sensitive nature of the third-party PII that may be disclosed in this matter and the
8 volume of discovery, which is estimated to be several thousand pages, the United States
9 asks this Court to enter an order restricting the defendants’ use and dissemination of such
10 information. A protective order is necessary to permit the United States to fulfill its
11 discovery obligations while protecting the privacy of the defendants and third parties.

12 Courts have recognized that the need to protect sensitive, personal information
13 pertaining to third parties qualifies as “good cause” under this standard. *United States v.*
14 *Carriles*, 654 F. Supp. 2d 557, 565-66 (W.D. Tex. 2009) (granting protective order to limit
15 dissemination of third-party medical records and emphasizing that a “protective order may
16 be issued upon a showing . . . by a party advocating the privacy interests of nonparties”);
17 *United States v. Luchko*, 2007 WL 1651139, *10 (E.D. Pa. 2007) (granting prosecution’s
18 motion for protective order, which defense did not contest, and noting that “[t]he protective
19 order protects the privacy interests of uncharged persons [and] promotes the government’s
20 policy of open discovery”). *See generally Alderman v. United States*, 394 U.S. 165, 185
21 (1969) (“[T]he trial court can and should, where appropriate, place a defendant and his
22 counsel under enforceable orders against unwarranted disclosure of the materials which
23 they may be entitled to inspect.”).

24 Therefore, the United States respectfully requests that the Court issue the proposed
25 protective order attached hereto as Exhibit A, which would provide that:

26 1. The United States may disclose to defense counsel and the defendants
27 returns, return information, and PII for the individuals and entities referenced in the first
28 superseding indictment.

1 2. The United States may disclose to defense counsel and the defendants
2 additional returns, return information, and PII subject to its continuing duty of disclosure
3 pursuant to Rule 16(c), Federal Rules of Criminal Procedure, without making separate
4 application to the Court.

5 3. Defense counsel shall maintain the returns, return information, and PII of
6 third parties received from the United States in the defense counsels' custody and disclose
7 such information only to defendants, defense investigators, agents, or experts as necessary
8 for purposes of the defense of this criminal proceeding. Defendants, defense counsel,
9 defense investigators, agents, or experts shall not reproduce or disseminate any returns,
10 return information, or un-redacted PII of third parties without further order of the Court.

11 4. The order resulting from this motion shall be presented to any individual to
12 whom, under the terms of the order, defendants or defense counsel disclose the returns,
13 return information, or PII. By accepting any returns, return information, or PII, such
14 persons shall agree to submit to the jurisdiction of the United States District Court for the
15 District of Arizona for the sole purpose of enforcing the terms of this order.

16 5. With respect to any copies made at the request and expense of defense
17 counsel of evidence that is stored by the Internal Revenue Service in relation to this case,
18 any and all returns, return information, and PII of third parties contained therein shall be
19 subject to the order resulting from this motion; and any and all returns, return information,
20 and PII of third parties contained therein shall not be further copied or disseminated without
21 further order of the Court.

22 6. Any discovery provided by the United States in this case that contains tax or
23 personal identifying information is for use in the defense of this criminal case and must be
24 either returned to the assigned Assistant U.S. Attorney for destruction, or otherwise
25 properly disposed of by defense counsel, after the completion of all proceedings, to include
26 any appeal, collateral attack, or other post-conviction proceedings.

27 7. Nothing in the Court's order requires the United States to provide discovery
28 beyond what is required by Rule 16 of the Federal Rules of Criminal Procedure, and, if

1 applicable, the Court's discovery orders and production schedule.

2 8. Defendants and defense counsel shall file an acknowledgment of the order
3 resulting from this motion within 10 days of the date of such order.

4 Excludable delay under 18 U.S.C. § 3161(h) may occur as a result of this motion.

5 Respectfully submitted this 7th day of August 2017.

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7 ELIZABETH A. STRANGE
Acting United States Attorney
8 District of Arizona

9 *s/Matthew Binford*
10 MATTHEW BINFORD
Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2017, I used the CM/ECF system to electronically transmit the attached document to the Clerk's Office and the following CM/ECF registrants:

Brian E. Klein
Attorney for Peter Nathan Steinmetz

Lee David Stein
Attorney for Peter Nathan Steinmetz

Maria Teresa Weidner
Attorney for Thomas Mario Costanzo

s/Yvonne Garcia
U.S. Attorney's Office