

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

-vs-

RICHARD PETIX,

Defendant.

CASE NO. 15-CR-227-A

**ATTORNEY AFFIRMATION IN
SUPPORT OF MOTION
FOR LEAVE TO FILE RESPONSE
TO GOVERNMENT'S OBJECTIONS
TO MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

I, Matthew R. Lembke, having been duly admitted to practice law in the Western District of New York, do hereby affirm, under penalty of perjury:

1. I am co-counsel with attorney Stephen M. Leonardo representing the defendant, Richard Petix [Petix].

2. I make this motion in support of Petix's request for leave to file a response to the government's objections to the magistrate's report and recommendation,¹ which recommends that the second count of the indictment against Petix (charging him with the operation of an unauthorized money transmitting business) be dismissed.²

3. It appears that none of the rules regarding objections to a magistrate judge's report and recommendation mention the time in which a party has to

¹ Dkt. #42

² Dkt. #36

respond to an opposing party's objections. In fact, as best I can decipher, the rules don't even mention an opposing party's response to objections to an R&R at all.

4. The closest provision I found was Local Rule 12(b)(2), which pertains to the time to respond to motions of the opposing party. Under this rule – in absence of a court order setting filing dates – a party has 14 days to file a response to a motion.

5. If this rule applies to responses to a party's objections to a magistrate's report and recommendation, then the date for us to file our response is today (December 28, 2016).

6. Given the Christmas holiday, combined with other personal and professional matters to which Mr. Leonardo and I have needed to attend, we are not ready to file our response to the government's objections to Magistrate Judge Scott's report and recommendation.

7. We expect to be able to have our response filed on or before Friday, December 30, 2016.

WHEREFORE, it is respectfully requested that the Court enter an order granting Petix leave to file a response in opposition to the government's objections to the magistrate's report and recommendation; that the Court allow Petix's response to be timely submitted if filed on or before Friday, December 30, 2016; and

that the Court grant such other, further and different relief, as may seem just and proper.

Dated: December 28, 2016

/S/ Matthew R. Lembke
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