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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,

12 vs.

13
14 1. Thomas Mario Costanzo,
15 and
16 2. Peter Nathan Steinmetz,
17 Defendants.
18

CR-17-585-PHX-JJT

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

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

26 The first superseding indictment in this case alleges that, from 2013 through 2017,
27 both defendants (1) engaged in a conspiracy to operate an unlicensed money transmitting
28 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

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

CR-17-585-PHX-JJT

vs.

ORDER

1. Thomas Mario Costanzo,
and
2. Peter Nathan Steinmetz,
Defendants.

Pursuant to 26 U.S.C. § 6103(i)(4)(A) and Federal Rule of Criminal Procedure 16(d)(1), and good cause appearing,

IT IS ORDERED that the United States’ Motion for Limited Disclosure of Tax Information and for a Protective Order (Doc. ___) is GRANTED.

IT IS FURTHER ORDERED that the United States may disclose to defense counsel and Defendants return and return information obtained pursuant to 26 U.S.C. § 6103(i), in accordance with its discovery obligations pursuant to Federal Rule of Criminal Procedure 16 and 18 U.S.C. § 3500. For purposes of this Order, “return” and “return information” shall be defined as set forth in 26 U.S.C. § 6103(b).

IT IS FURTHER ORDERED that the United States may disclose to defense counsel and Defendants documents containing personal identifying information (“PII”) of third parties.

IT IS FURTHER ORDERED that the United States may disclose to defense

1 counsel and Defendants additional returns, return information, or PII subject to its
2 continuing duty of disclosure pursuant to Federal Rule of Criminal Procedure 16(c)
3 without making separate application to the Court.

4 **IT IS FURTHER ORDERED** that defense counsel shall maintain all returns,
5 return information and PII from the United States in the defense counsel's custody and
6 disclose said information only to Defendants, defense investigators, agents or experts as
7 necessary for purposes of the defense of this case. Defendants, defense investigators,
8 agents, and experts receiving such information shall not reproduce or disseminate any
9 returns, return information, or unredacted PII of third parties without further order of the
10 Court and must return any copies of such material to defense counsel at the conclusion of
11 this case.

12 **IT IS FURTHER ORDERED** that this Order shall be presented to any individual
13 to whom, under the terms of this Order, Defendants or defense counsel disclose the
14 returns, return information, or PII. By accepting any returns, return information or PII,
15 such persons agree to submit to the jurisdiction of the United States District Court for the
16 District of Arizona for the sole purpose of enforcing the terms of this Order.

17 **IT IS FURTHER ORDERED** that, with respect to any copies made at the
18 request and expense of defense counsel of evidence that is stored by the Internal Revenue
19 Service in relation to this case, the following conditions shall apply:

- 20 1. Any and all returns, return information, and PII of third parties contained
21 therein shall be subject to this Order; and
22 2. Any and all returns, return information, and PII of third parties contained
23 therein shall not be further copied or disseminated without further order of the Court.

24 **IT IS FURTHER ORDERED** that with respect to any discovery provided by the
25 United States in this case, said discovery is for use in the defense of this criminal case
26 only and shall be returned to the United States upon demand for destruction after the
27 completion of the proceedings.
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IT IS FURTHER ORDERED that nothing herein requires the United States to provide discovery beyond what is required by Rule 16 of the Federal Rules of Criminal Procedure.

IT IS FURTHER ORDERED that this Order will apply to any additional defendants added to the case after its issuance.

IT IS FURTHER ORDERED that the defendants and defense counsel shall file an acknowledgment of this Order within 10 days of the date of this Order.

Dated this _____ day of _____, 2017.

HONORABLE JOHN J. TUCHI
United States District Judge