

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD ROSS HANSEN and
DIANE RENEE ERDMANN,

Defendants.

NO. CR18-92RAJ

**GOVERNMENT MEMORANDUM
FOR APRIL 17, 2019
STATUS CONFERENCE**

I. CASE OVERVIEW

On April 12, 2018, the grand jury returned an indictment charging Defendants with 20 counts of wire fraud (in violation of 18 U.S.C. § 1343) and mail fraud (in violation of 18 U.S.C. § 1341) related to a scheme to defraud the customers of Northwest Territorial Mint (NWTM). Trial is scheduled for October 21, 2019.

II. PENDING MOTION

The only motion before the Court is Defendants’ Motion Asserting Privilege in Part and Waiving Privilege in Part Regarding Karr Tuttle Documents (hereinafter “Privilege Motion”). Dkt. #63. The Privilege Motion is fully briefed – the government responded at Dkt. #66 and Defendants filed a reply brief at Dkt. #69.

1 The Privilege Motion pleadings describe how NWTM retained the Karr Tuttle
2 Campbell law firm in late 2015-early 2016, in the months before NWTM filed for
3 bankruptcy, and after NWTM's former counsel raised concerns about fraudulent business
4 practices. Dkt. #63 at 3-5; Dkt. #63-4 ("Fullington Memo"). Karr Tuttle attorney Dino
5 Vasquez conducted an audit of part of the NWTM business including a series of
6 interviews of NWTM employees. Mr. Vasquez then prepared a six-page letter describing
7 his work. Dkt. #63 at 4; Dkt. #63-5 ("Audit Memo").

8 Besides the communications about the audit, there were separate communications
9 about a criminal investigation. These communications were between Ross Hansen,
10 Diane Erdmann, and Karr Tuttle attorney Ron Friedman.

11 In their Privilege Motion, Defendants seek to protect both seven specific emails
12 (Dkt. #63 at 7) and "communications with the Karr Tuttle attorneys related to the
13 criminal investigation" (Dkt. #63 at 10) as privileged. The government responded and
14 cited the relevant Ninth Circuit precedent concerning attorney-client privilege in the
15 context of company counsel. *See* Dkt. #66 at 4-8. The government respectfully requests
16 that the Court rule as to whether Defendants have carried their burden.

17 In addition, the government also requests that the Court clarify that the
18 communications regarding the audit and the Audit Memo are not privileged, and
19 therefore Mr. Vasquez (or other Karr Tuttle witnesses) may answer the government's
20 questions about the audit. Defendants do not appear to be asserting privilege as to any of
21 the audit-related communications, but rather only the communications later in time and
22 related to any criminal investigation.

23 **III. OTHER ISSUES TO BE ADDRESSED AT STATUS CONFERENCE**

24 **A. The Scheduling Order**

25 As the Court knows, two-and-a-half months ago, on January 29, 2019, the Court
26 entered the parties' agreed Order Setting Case Schedule. Dkt. #65. The government has
27 been proceeding under this case schedule. The next date on this schedule is the deadline
28 for filing pretrial motions, which is May 3, 2019.

1 The defense approached the government about an agreement for a preliminary
2 disclosure of exhibit and witness lists. The government agreed to earlier August dates.
3 These earlier dates were a good-faith estimate based on the current agreed scheduling
4 order and the time it would take to prepare useful lists.

5 Now, in their status conference filing, the defense suggests not only that the
6 government should be required to prepare exhibit lists in June, but also suggests that the
7 pretrial motions briefing and hearing should be moved to August and September
8 (encroaching on time that was previously reserved for motions *in limine*).

9 The government respectfully requests that the pretrial motions schedule remain as
10 scheduled. *See* Dkt. #65 at 2.

11 **B. Request for Subpoenas**

12 The defense also requested that the government produce the subpoenas that were
13 issued to the Trustee during the investigation of this case. To be clear, the government
14 has produced subpoena returns, i.e., documents produced in response to the subpoena.
15 The government understands that the defense will file a motion and the government will
16 respond at that time.

17
18 Dated this 16th day of April 2019.

19 Respectfully submitted,

20 BRIAN T. MORAN
21 United States Attorney

22 *s/ Brian Werner*
23 _____
24 BRIAN WERNER
25 Assistant United States Attorney
26 BENJAMIN T. DIGGS
27 Special Assistant United States Attorney
28 700 Stewart Street, Suite 5220
Seattle, Washington 98101
Telephone: (206) 553-7970
E-mail: brian.werner@usdoj.gov

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants.

s/ Brian Werner

BRIAN WERNER