

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION

2016 SEP 23 A 11:07

DISTRICT OF UTAH

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>KEMP &amp; ASSOCIATES, INC. AND DANIEL J. MANNIX</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:16-cr-00403-DS </p> <p style="text-align: center;"><del>REDACTED</del> ORDER GRANTING STIPULATED MOTION FOR PROTECTIVE ORDER</p> <p>U.S. District Court Judge David Sam Magistrate Judge Brooke C. Wells</p>
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The Court, having considered the Stipulated Motion for a Protective Order, and good cause appearing, finds that a protective order is necessary and appropriate in this case to preserve grand jury secrecy, to prevent harmful disclosure of both the personal identifying information of various individuals and the sensitive information of individuals and companies, while still preserving the Defendants' right to meaningful discovery and a fair trial. Pursuant to the Court's authority under Federal Rules of Criminal Procedure 6(e) and 16(d)(1), it is hereby ordered:

1. This Protective Order authorizes the United States to provide to Defendants, and if appropriate, Defendants to provide to the United States copies of discovery materials in this matter, including grand jury materials, and documents that contain personal identifying information of third parties and other sensitive information (hereinafter "Protected Materials"). The Protected Materials also include documents voluntarily produced to the parties.
2. The Protected Materials produced in discovery in this case shall not be disclosed or made available for inspection or copying to any person, other than as permitted in this Protective Order. As used in this Protective Order, the word "Defendants" means the individual

and corporate Defendants; defense counsel actively representing the Defendants in the above captioned matter; and partners, associates, secretaries, paralegals, and employees of those defense counsel.

3. Except as permitted by Federal Rule of Criminal Procedure 6(e), this Protective Order, or another court order, attorneys for the United States and the Defendants shall not disclose the Protected Materials or their contents to anyone. Solely to effectuate the purposes of this Protective Order, which are to restrict the dissemination of the Protected Materials except as necessary for the preparation and conduct of this criminal trial, and any connected hearings, collateral proceedings, or appeals:

- a. defense counsel may disclose the Protected Materials to the Defendants;
- b. attorneys for the United States and defense counsel may use their knowledge of the Protected Materials to interview prospective witnesses;
- c. attorneys for the United States and defense counsel may disclose to a prospective witness or the witness' counsel the Protected Materials, but only if such a prospective witness and the witness' counsel is provided with a copy of this Protective Order and informed of their obligation to comply therewith;
- d. attorneys for the United States and defense counsel may disclose the Protected Materials to consultants, investigators, experts, and any other third party retained for preparing for the above-captioned matter ("Designated Agents"), but only if such persons are provided with a copy of this Protective Order and informed of their obligation to comply therewith;
- e. Protected Materials may be disclosed to court officials involved in this case; and

f. To the extent that any party attaches any Protected Materials to any document that it seeks to file with the court in this case, such party shall take appropriate steps to file such attachments under seal, and such attachments shall remain under seal and shall not be filed or disclosed publicly, subject to further court order.

4. For each person to whom the Protected Materials have been shown or their contents disclosed by attorneys for the United States or defense counsel pursuant to Paragraph 3(a)-(d) of this Protective Order, attorneys for the United States and defense counsel shall provide that person a copy of this Protective Order. Attorneys for the United States and defense counsel shall not be required, absent further court order, to disclose the identities of persons to which they have disclosed or disseminated the Protected Materials. No person shall be required to disclose their receipt of Protected Materials pursuant to this Protective Order.

5. Attorneys for the United States, Defendants and all other individuals or entities who receive Protected Materials in this case shall maintain the Protected Materials in a manner consistent with the terms of this Protective Order. Protected Materials produced as hard copies shall be stored in a secure manner. Protected Materials produced in digital form shall also be stored in a secure manner with access to digital instances of such Protected Materials permitted only to the extent authorized in Paragraph 3(a)-(e).

6. The parties may apply to the Court for a modification or rescission of this Protective Order at any time.

7. Each person to whom Protected Materials have been disclosed or their contents disclosed pursuant to Paragraph 3(a)-(d) of this Protective Order shall not discuss with, or disclose the contents of the Protected Materials to, anyone other than attorneys for the United States, defense counsel, or his or her own counsel, and shall not be permitted to further disclose

such Protected Material, unless otherwise authorized to do so by this Protective Order. In the event that any individual or entity discloses the Protected Materials in violation of this Protective Order, that individual or entity (inclusive of that individual or entity's counsel, if counsel becomes aware of the violation) shall immediately notify the Defendants' counsel or the attorneys of record on the case for the United States of the violation, and shall use reasonable efforts to secure the return or destruction of the improperly disclosed Protected Materials. Should either the Defendants' counsel or the attorneys for the United States become aware of a disclosure in violation of this Protective Order, that party shall immediately notify the opposing counsel of the violation, and also use reasonable efforts to secure the return or destruction of the improperly disclosed Protected Materials..

8. Anyone in possession of Protected Materials is responsible for employing reasonable measures to control duplication of, and access to, the Protected Materials.

9. Any abstracts, summaries, or information derived from the Protective Materials and any notes or other records made relating to the contents of the Protected Materials (collectively "Derivative Materials and Information") may only be disclosed to others if disclosure of the underlying Protected Materials to those recipients is also authorized by this Protective Order. Anyone in possession of the Protected Materials, copies thereof, or Derivative Materials and Information shall maintain their confidentiality pursuant to the terms of this Protective Order after this case is disposed of by trial, sentencing, or other judicial proceeding, appeal, if any, or other resolution of the charges against the Defendants.

10. With the exception of certain attorney work product described in Paragraph 11, all Protected Materials, all Derivative Materials and Information described in Paragraph 9 above, and all copies of such materials (other than exhibits of the court), shall be returned to the United

States' counsel of record within 90 days of the conclusion of this case. Alternatively, anyone in possession of such materials, information and copies may inform the attorneys of record on the case for the United States in writing that all such materials, information, and copies have been destroyed.

11. Attorney work product of the Defendants' counsel that contains Derivative Material and Information is not subject to the requirements in Paragraph 10, above. Such attorney work product may be retained by the Defendants' counsel indefinitely, but must still otherwise be treated as Protected Material for the duration of its existence.

12. Should any individual or entity in possession, custody, or control of Protected Materials receive a subpoena, document request, civil investigative demand, or similar request as part of a judicial or administrative proceeding that calls for any of the Protected Materials, that individual or entity (hereinafter the "Request Recipient") shall promptly notify the requesting entity of the existence of this Protective Order. The Request Recipient shall also promptly notify attorneys of record on the case for the United States or the Defendant, who must then promptly notify opposing counsel. If, nonetheless, the Request Recipient is compelled by court order or other compulsory process to produce the Protected Materials, then production of such materials shall not be deemed a violation of this Protective Order.

13. To the extent any Protective Material is produced by any individual or entity to any other individual or entity by mistake, the producing party shall have the right to the return of the material if so requested in writing. Within five days of the receipt of such request (or in an alternative timeframe agreeable to the Defendants and the United States), the receiving individual or entity shall either (1) return all such material if in hard copy, and in the case of digital materials, shall certify in writing that all copies of the specified material have been

deleted from any location in which the material was stored, and all corresponding Derivative Materials and Information have also been destroyed; or (2) shall seek appropriate relief from the court.

14. Willful violation of this Protective Order may be punishable by contempt of court or any other sanction or combinations of sanctions which are legally available.

15. The provisions of this order governing disclosure and use of the documents shall not terminate at the conclusion of this criminal prosecution.

It is so ordered:

*David Loom*

United States <sup>Dist. Ct.</sup> Magistrate Judge

Dated: 9/22/16