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9  
 10 UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 12 WESTERN DIVISION  
 13

14 UNITED STATES OF AMERICA,  
 15  
 16 Plaintiff,  
 17 v.  
 18 SEAN DAVID MORTON, et al.,  
 19 Defendants.

No. 2:15-cr-00611-SVW  
 APPLICATION FOR PROTECTIVE  
 ORDER RE: DISCLOSURE OF  
 CONFIDENTIAL TAX RETURN AND  
 PRIVATE FINANCIAL INFORMATION  
 TO DEFENDANT SEAN DAVID MORTON;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES; DECLARATION OF  
 JAMES C. HUGHES

[Proposed] ORDER LODGED  
 CONCURRENTLY HEREWITH

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 24 Plaintiff United States of America, by and through its counsel  
 25 of record, the United States Attorney for the Central District of  
 26 California, hereby files this Application pursuant to Rule 16(d)(1)  
 27 of the Federal Rules of Criminal Procedure and the general  
 28

1 supervisory authority of the Court for a Protective Order regarding  
2 the Disclosure of Confidential Tax Return and Private Financial  
3 Information. Specifically, the Government respectfully requests that  
4 the Court issue a Protective Order that restricts the dissemination  
5 of the confidential tax, financial, and other private information  
6 that the government is disclosing in this case to defendant Sean  
7 David Morton. This application is based on the attached memorandum  
8 of points and authorities, the declaration of James C. Hughes, the  
9 files and records in this case, and such evidence and argument as the  
10 Court may allow at any hearing on this application.

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Respectfully Submitted,

EILEEN M. DECKER  
United States Attorney  
SANDRA R. BROWN  
Assistant United States Attorney  
Chief, Tax Division

DATED: 3/9/2016

\_\_\_\_\_/s/\_\_\_\_\_  
VALERIE L. MAKAREWICZ  
JAMES C. HUGHES  
Assistant United States Attorneys  
Attorneys for Plaintiff  
United States of America

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. **FACTUAL BACKGROUND**

3 The superseding indictment in this case was filed on January 27,  
4 2016. Defendant Sean David Morton (hereinafter "SDM") is charged in  
5 the pending indictment with conspiracy to defraud the United States  
6 in violation of 18 U.S.C. § 371; two counts of making false claims  
7 against the United States in violations of 18 U.S.C. § 287; and  
8 twenty-six violation counts of passing fictitious instruments in  
9 violation of 18 U.S.C. § 514.

10 As part of its investigation, the United States of America  
11 (variously the "United States" or the "Government") obtained third  
12 party tax return and other private information, including  
13 approximately 2500 pages of hard documents seized during a search  
14 warrant on September 23, 2015; approximately 10,382 pages of  
15 electronic pdf files, 1,300 word files, 100 excel files, and over  
16 2600 pages of text messages and emails obtained from nine digital  
17 devices seized during the same search warrant; and approximately  
18 11,000 pages of tax returns, financial statements, emails, text  
19 messages, and other correspondence obtained from IRS records and  
20 various third party individuals and financial institutions.

21 (Declaration of James C. Hughes "Hughes Decl." ¶ 3) The government  
22 has also received approximately 1.5 gigabytes of investigative files  
23 compiled by the Securities and Exchange Commission pursuant to its  
24 previous civil investigation of the defendants. (Id.) These  
25 investigative files include third party correspondence, financial  
26 statements, and interview transcripts. (Id.)

27 The evidence in this matter includes personal identification  
28 information for other individuals including, but not limited to,

1 names, credit and/or debit card numbers, account numbers, addresses,  
2 phone numbers, social security numbers, driver's license numbers, and  
3 dates of birth (collectively "Confidential Information"). (Hughes  
4 Decl. ¶ 4) The evidence also contains third party return information  
5 as defined under 26 U.S.C. § 6103(b)(2). (Id.) As detailed below,  
6 the government has previously provided these files to defendant SDM  
7 on ten encrypted DVDs. However, due to concerns regarding the  
8 dissemination of confidential financial records, and the absence of a  
9 protective order from the Court, the government has yet to provide  
10 defendant SDM with the password to view the encrypted materials.

11 On March 7, 2016, the United States and defendant Melissa Morton  
12 ("MM") entered into a stipulation regarding the disclosure of tax  
13 return information pursuant to the government's discovery  
14 obligations. (DE 52). A proposed order authorizing the disclosure  
15 of such information to MM and her counsel was lodged concurrently  
16 therewith. (Id.) Upon the issuance of the proposed order by the  
17 Court, the government shall provide MM's counsel with the password to  
18 view the encrypted materials.

19 To date, the United States and counsel for SDM have been unable  
20 to reach a stipulation regarding a protective order limiting  
21 defendant SDM's ability to disseminate the confidential materials  
22 produced by the government. SDM's counsel has advised the government  
23 that she intends to seek to be relieved as counsel. As a result,  
24 SDM's counsel has stated that she is unable to offer a position with  
25 regard to this Application.

26 **a. DISCOVERY EFFORTS TO DATE**

27 On February 12, 2016, the government emailed a proposed  
28 stipulation and order to counsel for SDM and counsel for MM regarding

1 authorization of the disclosure of tax return information by the  
2 government pursuant to its ongoing discovery obligations ("the draft  
3 stipulation"). (Hughes Decl. ¶ 5) In the draft stipulation the  
4 United States explained that its investigative files contained tax  
5 return information of various third parties, including but not  
6 limited to, individuals for whom SDM and MM (collectively  
7 "defendants") were alleged to have prepared, or aided and assisted in  
8 the preparation of, fictitious financial instruments. (Id.) The  
9 government requested the defendants review the enclosed stipulations  
10 and apprise the government of any questions or concerns. (Id.)

11 On February 18, 2016, the government hand delivered a copy of  
12 the initial discovery disclosures to the office of SDM's counsel and  
13 sent a copy of the disclosures to MM's counsel via certified mail.  
14 (Hughes Decl. ¶ 6) The government's discovery disclosures were  
15 provided on eight encrypted Digital Versatile Disks ("DVDs") with  
16 5040 files containing 49,184 bates-numbered pdf pages, 200+ non-Bates  
17 numbered PDF files, 61 audio files, 7 video files, 1336 word  
18 documents, 122 Excel Spreadsheets, 248 graphic files, 224 text files,  
19 and 31 HTML documents. (Id.) The files were described and  
20 categorized in a discovery index provided with the government's  
21 initial disclosures. (Id.)

22 On February 18, 2016, the government received an email from MM's  
23 counsel. (Hughes Decl. ¶ 7) In his email, counsel requested certain  
24 changes to the draft stipulation's language regarding the retention  
25 of records. (Id.) The government incorporated the suggested changes  
26 and sent a revised version of the proposed stipulation to MM's  
27 counsel for his review. (Id.)

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1 On February 18, 2016, the United States received documents by  
2 mail from defendant SDM entitled "Notice of Rescission, Termination,  
3 Rejection, Revocation of All Powers of Attorney." (Hughes Decl. ¶ 8)  
4 In the document, defendant SDM claimed to "RESCIND, TERMINATE, REJECT  
5 AND REVOKE ALL POWERS OF ATTORNEY" of his counsel of record.<sup>1</sup> (Id.)

6 On February 22, 2016, counsel for the government spoke with  
7 counsel for defendant SDM via telephone. (Hughes Decl. ¶ 10) During  
8 the conversation, government counsel asked defendant SDM's counsel  
9 how she wished to proceed in light of the letter submitted to the  
10 government. (Id.) Government counsel also informed defendant SDM's  
11 counsel that the government had yet to receive a response regarding  
12 its proposed stipulation for the disclosure of tax return  
13 information. (Id.) Defense counsel noted that she shared the  
14 concerns previously articulated by counsel for MM in his April 18,  
15 2016 email regarding stipulation language concerning the retention of  
16 records. (Id.) The parties agreed that counsel for the United  
17 States would continue to work towards finalizing a stipulation with  
18 counsel for defendant MM, and would provide an updated copy of the  
19 stipulation to defendant SDM's counsel once a finalized version was  
20 ready. (Id.) Later in the day, defendant SDM's counsel contacted  
21 government counsel and stated that she would be unable to sign any  
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24 <sup>1</sup> A virtually identical document was also received from Melissa  
25 Morton. (Hughes Decl. ¶ 9) Melissa Morton subsequently applied for  
26 a status hearing regarding her request to proceed in pro per, but  
27 later filed a request to withdraw this application based on her  
28 decision to proceed with her current counsel of record. (DE 48 &  
51). The government and Melissa Morton have subsequently entered  
into a stipulation regarding the disclosure of tax return information  
pursuant to the government's ongoing discovery obligations. (DE 52).

1 stipulations on behalf of the defendant until any issues regarding  
2 his request to terminate her power of attorney were resolved. (Id.)

3 On February 22, 2016, the government issued supplementary  
4 discovery disclosures to defendants via mail. (Hughes Decl. ¶ 11) The  
5 government's discovery disclosures were provided on an encrypted DVD  
6 with 6 zip files containing 97 bates-numbered pdf pages, 16 audio  
7 files, and one Word document. (Id.) The files were described and  
8 categorized in a discovery index provided with the government's  
9 disclosures. (Id.)

10 On March 2, 2016, counsel for the United States spoke with  
11 defendant SDM's counsel via telephone. (Hughes Decl. ¶ 12) During  
12 the conversation, counsel for defendant SDM stated that she was  
13 unable to advise the government whether she would continue to  
14 represent defendant in light of his letter dated February 18, 2016,  
15 or if she intended to request a hearing by the Court on the issue.  
16 (Id.)

17 On March 7, 2016, the government served supplementary discovery  
18 disclosures on defendants. (Hughes Decl. ¶ 13) The supplementary  
19 disclosures were mailed to the office of MM's counsel and hand  
20 delivered to the office of defendant SDM's counsel. (Id.) The  
21 government's discovery disclosures were contained on an encrypted DVD  
22 with 61 files containing 2636 bates-numbered pdf pages, 13 Excel  
23 spreadsheets, and 1 audio recording. (Id.) The files were described  
24 and categorized in a discovery index provided with the disclosures.  
25 (Id.) The same day, the government also provided defendant SDM's  
26 counsel with a DVD labeled "Discovery Disk 1A." (Id.) This DVD  
27 included select documents from the government's previous discovery  
28 disclosures. (Id.) Specifically, the DVD contained those documents

1 that the government determined did not contain third party personal  
2 identifying information or § 6103 return information. (Id.)

3 **II. Proposed Protective Order**

4 To serve the government's interest in protecting the  
5 Confidential Information in this case, including the government's  
6 interest in safeguarding against further dissemination, or use by any  
7 person, including defendants, of the Confidential Information, and  
8 also to serve and protect defendant's right to prepare an effective  
9 defense in this case, the government requests the entry of a  
10 Protective Order for discovery in this case. The Court has currently  
11 scheduled a status conference for March 14, 2015. During this  
12 hearing the government anticipates that the Court shall determine  
13 whether defendant SDM shall proceed in pro per in this case. The  
14 government has therefore drafted its proposed protective order to  
15 provide for two outcomes: 1) defendant SDM retains his current  
16 counsel; and 2) defendant SDM proceeds without representation.

17 In the event defendant SDM retains his current counsel of  
18 record, the government asks that the Court enter a protective order  
19 prohibiting defendant SDM and his counsel from disclosing or  
20 disseminating to any third parties the confidential personal  
21 identifying information and return information provided by the  
22 government pursuant to its discovery obligations. This prohibition  
23 shall be subject to the exception that defendant and his attorney may  
24 disclose such information to members of the defense team for the  
25 limited purposes of preparing a defense or resolution of this case.  
26 Additionally, the government requests that the protective order  
27 require that at the close of this case, including any appellate or  
28 habeas proceedings, defendant shall either destroy or return the



1 confidential personal identifying information and return information  
2 provided by the government.

3 In the event defendant SDM elects to represent himself in this  
4 case, the government asks that the Court issue a substantially  
5 similar protective order with one additional protection.

6 Specifically, with the exception of any attorney defendant SDM may  
7 subsequently maintain to represent him in this case, the government  
8 asks that defendant SDM be ordered not to allow any individuals  
9 assisting him in the preparation of his defense to retain, maintain,  
10 or copy the third party financial and tax return information  
11 disclosed by the government. This prohibition is necessary in order  
12 to ensure that the information provided to defendant SDM is not  
13 widely disseminated or publicly disclosed by any individuals  
14 assisting defendant SDM in the preparation of his defense.

15 **III. ARGUMENT**

16 Federal Rule of Criminal Procedure 16(d)(1) provide as follows:  
17 **Protective and Modifying Orders.** At any time the court may,  
18 for good cause, deny, restrict, or defer discovery or  
19 inspection, or grant other appropriate relief. The court  
20 may permit a party to show good cause by a written  
21 statement that the court will inspect ex parte. If relief  
22 is granted, the court must preserve the entire text of the  
23 party's statement under seal.

24 In addressing a prior version of this rule, the Supreme Court stated  
25 that the trial court can and should, where appropriate, place a  
26 defendant and his counsel under enforceable orders against  
27 unwarranted disclosure of the materials which they may be entitled to  
28 inspect. *Alderman v. United States*, 394 U.S. 165, 185, 89 S. Ct.  
961, 973, 22 L. Ed. 2d 176 (1969). The power of courts, state as  
well as federal, to delimit how parties may use information obtained

1 through the court's power of compulsion is of long standing and well  
2 accepted. *Bittaker v. Woodford*, 331 F.3d 715, 726 (9th Cir. 2003).

3 Here, there is extensive personal identifying information and  
4 financial information that must be protected. Moreover, much of the  
5 discovery contains confidential tax return information, which is even  
6 further protected from disclosure. Disclosure of tax information is  
7 strictly governed by Section 6103 of Title 26 of the United States  
8 Code, entitled "Confidentiality and disclosure of returns and return  
9 information." Under Section 6103(a), entitled "General Rule,"  
10 "Returns and return information shall be confidential, and except as  
11 authorized by this title - (1) no officer or employee of the United  
12 States ... shall disclose any return or return information obtained  
13 by him in any manner in connection with his service as such an  
14 officer or an employee or otherwise or under the provisions of this  
15 section." Tax "return information" is defined very broadly, and  
16 includes:

17 taxpayer's identity, the nature, source, or amount of his  
18 income, payments, receipts, deductions, exemptions,  
19 credits, assets, liabilities, net worth, tax liability, tax  
20 withheld, deficiencies, overassessments, or tax payments,  
21 whether the taxpayer's return was, is being, or will be  
22 examined or subject to other investigation or processing,  
23 or any other data, received by, recorded by, prepared by,  
24 furnished to, or collected by the Secretary with respect to  
a return or with respect to the determination of the  
existence, or possible existence, of liability (or the  
amount thereof) of any person under this title for any tax,  
penalty, interest, fine, forfeiture, or other imposition,  
or offense

25 26 U.S.C. § 6103(b)(2)(A). However, Section 6103(h)(4)(D)  
26 specifically authorizes the Court to issue an Order authorizing the  
27 disclosure of tax return information in a case involving tax  
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1 administration to the extent such disclosure is required by Rule 16  
2 of the Federal Rules of Criminal Procedure or 18 U.S.C. § 3500, with  
3 the Court giving "due consideration to congressional policy favoring  
4 the confidentiality of returns and return information as set forth in  
5 Title 26."

6 The confidential identity, financial, and tax information in  
7 this case must be protected, which the Court has the authority to do  
8 under Rule 16 and its inherent powers. The record demonstrates good  
9 cause to permit the Court to exercise its discretion to restrict  
10 discovery of the confidential information in this case, specifically  
11 including the tax information, by allowing defendant SDM access to  
12 the confidential information, but limiting any further disclosures to  
13 third parties. Such a protective order adequately balances defendant  
14 SDM's need for access to the confidential information of third  
15 parties with the need to protect these individuals from the public  
16 disclosure of said information.

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DECLARATION OF JAMES C. HUGHES

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2 1. I am an Assistant United States Attorney in the United  
3 States Attorney's Office for the Central District of California. In  
4 that capacity, I am assigned to the case of United States of America  
5 v. Sean David Morton, et al., 2:15-CR-611-SVW. I write this  
6 declaration in support of the Government's Application for a  
7 Protective Order.

8 2. Defendant Sean David Morton (hereinafter "SDM") is charged  
9 in the pending indictment with conspiracy to defraud the United  
10 States in violation of 18 U.S.C. § 371; two counts of making false  
11 claims against the United States in violations of 18 U.S.C. § 287;  
12 and twenty-six violation counts of passing fictitious instruments in  
13 violation of 18 U.S.C. § 514.

14 3. As part of its investigation, the United States of America  
15 (variously the "United States" or the "Government") obtained much  
16 third party tax return and other private information, including  
17 approximately 2500 pages of hard documents seized during a search  
18 warrant on September 23, 2015; approximately 10,382 pages of  
19 electronic pdf files, 1,300 word files, 100 excel files, and over  
20 2600 pages of text messages and emails obtained from nine digital  
21 devices seized during the same search warrant; and approximately  
22 11,000 pages of tax returns, financial statements, emails, text  
23 messages, and other correspondence obtained from IRS records and  
24 various third party individuals and financial institutions. The  
25 government has also received approximately 1.5 gigabytes of  
26 investigative files compiled by the Securities and Exchange  
27 Commission pursuant to its previous civil investigation of the  
28

1 defendants. These investigative files include third party  
2 correspondence, financial statements, and interview transcripts.

3 4. The evidence in this matter includes personal  
4 identification information for other individuals including, but not  
5 limited to, names, credit and/or debit card numbers, account numbers,  
6 addresses, phone numbers, social security numbers, driver's license  
7 numbers, and dates of birth (collectively "Confidential  
8 Information").

9 5. On February 12, 2016, I emailed a proposed stipulation and  
10 order to counsel for defendant SDM and counsel for MM regarding  
11 authorization of the disclosure of tax return information by the  
12 government pursuant to its ongoing discovery obligations ("the  
13 proposed stipulation"). In the draft stipulation the United States  
14 explained that its investigative files contained tax return  
15 information of various third parties, including but not limited to,  
16 individuals for whom defendants SDM and MM (collectively  
17 "defendants") were alleged to have prepared, or aided and assisted in  
18 the preparation of, fictitious financial instruments. The government  
19 requested the defendants review the enclosed stipulations and apprise  
20 the government of any questions or concerns.

21 6. On February 18, 2016, the government served supplementary  
22 discovery disclosures on defendants. The government had delivered a  
23 copy of the initial discovery disclosures to the office of defendant  
24 SDM's counsel and sent a copy of the disclosures to MM's counsel via  
25 certified mail. The government's discovery disclosures were provided  
26 on eight encrypted Digital Versatile Disks ("DVDs") with 5040 files  
27 containing 49,184 bates-numbered pdf pages, 200+ non-bates numbered  
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1 Excel Spreadsheets, 248 graphic files, 224 text files, and 31 HTML  
2 documents. The files were described and categorized in a discovery  
3 index provided with the government's initial disclosures.

4 7. On February 18, 2016, I received an email from MM's  
5 counsel. In his email, counsel requested certain changes to the  
6 draft stipulation's language regarding the retention of records. The  
7 government subsequently incorporated the suggested changes and sent a  
8 revised version of the proposed stipulation to MM's counsel for his  
9 review.

10 8. On February 18, 2016, the United States received a document  
11 by mail from defendant SDM entitled "Notice of Rescission,  
12 Termination, Rejection, Revocation of All Powers of Attorney." In  
13 the document, defendant SDM claimed to "RESCIND, TERMINATE, REJECT  
14 AND REVOKE ALL POWERS OF ATTORNEY" of his counsel of record.

15 9. On February 18, 2016, the United States received a document  
16 by mail from MM entitled "Notice of Rescission, Termination,  
17 Rejection, Revocation of All Powers of Attorney." In the document,  
18 defendant MM claimed to "RESCIND, TERMINATE, REJECT AND REVOKE ALL  
19 POWERS OF ATTORNEY" of his counsel of record.

20 10. On February 22, 2016, counsel for the government spoke with  
21 counsel for defendant SDM via telephone. During the conversation,  
22 government counsel asked defendant SDM's counsel how she wished to  
23 proceed in light of the letter submitted to the government by her  
24 client. Government counsel also informed defendant SDM's counsel that  
25 the government had yet to receive a response regarding its proposed  
26 stipulation for the disclosure of tax return information. Defense  
27 counsel noted that she shared the concerns previously articulated by  
28 counsel for MM in his April 18, 2016 email regarding stipulation

1 language concerning the retention of records. The parties agreed  
2 that counsel for the United States would continue to work towards  
3 finalizing a stipulation with counsel for defendant MM, and would  
4 provide an updated copy of the stipulation to defendant SDM's counsel  
5 once a finalized version was ready. Later in the day, defendant  
6 SDM's counsel contacted government counsel and stated that she would  
7 be unable to sign any stipulations on behalf of defendant SDM until  
8 any issues regarding his request to terminate her power of attorney  
9 were resolved.

10 11. On February 22, 2016, the government issued supplementary  
11 discovery disclosures to defendants via mail. The government's  
12 discovery disclosures were provided on an encrypted DVD with 6 zip  
13 files containing 97 bates-numbered pdf pages, 16 audio files, and one  
14 Word document. The files were described and categorized in a  
15 discovery index provided with the government's disclosures.

16 12. On March 2, 2016, I spoke with defendant SDM's counsel via  
17 telephone. During the conversation, counsel for defendant SDM stated  
18 that she was unable to advise the government whether she would  
19 continue to represent defendant SDM in light of his letter dated  
20 February 18, 2016, or if she intended to request a hearing by the  
21 Court on the issue.

22 13. On March 6, 2016, I received an email from defendant SDM's  
23 counsel informing me that she intended to seek to be relieved as  
24 counsel for defendant SDM.

25 14. On March 7, 2016, the government served supplementary  
26 discovery disclosures on defendants. The supplementary disclosures  
27 were mailed to the office of MM's counsel and hand delivered to the  
28 office of SDM's counsel. The government's discovery disclosures were

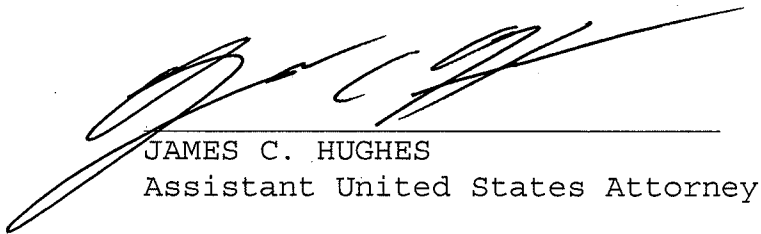


1 contained on an encrypted DVD with 61 files containing 2636 bates-  
2 numbered pdf pages, 13 Excel spreadsheets, and 1 audio recording. The  
3 files were described and categorized in a discovery index provided  
4 with the disclosures.

5 15. The same day, the government also provided defendant SDM's  
6 counsel with a DVD labeled "Discovery Disk 1A." This DVD included  
7 select documents from the government's previous discovery  
8 disclosures. Specifically, the DVD contained those documents that  
9 the government determined did not contain third party personal  
10 identifying information or § 6103 return information.

11 16. On March 7, 2016, I sent an email to defendant SDM's  
12 counsel informing her that the government intended to file an  
13 application for a protective order with the Court. Defendant SDM's  
14 counsel subsequently sent a responsive email informing me that she  
15 was unable to take a position with regard to the government's  
16 application as she was currently seeking to be relieved as counsel  
17 for defendant SDM.

18 I declare under penalty of perjury that the foregoing is true  
19 and correct. Executed this 9th day of March 2016 in Los Angeles,  
20 California.

21   
22 JAMES C. HUGHES  
23 Assistant United States Attorney