



because the government believes that these e-mails contain a significant amount of inculpatory evidence. Unfortunately, the government simply does not have and cannot obtain the e-mails requested by defense counsel. All e-mails in the government's possession have been turned over in discovery. For this reason, the defendant's motion must be denied.

## **II. The Investigations**

In order to understand why the government does not have possession of these e-mails, it is necessary to review the investigative process. E-mails are typically obtained in a criminal investigation through the use of a search warrant. The first two government agencies to investigate Mantria were the Colorado Division of Securities and the United States Securities and Exchange Commission ("SEC"). Because the SEC was able to quickly obtain a temporary injunction and, shortly thereafter, a permanent injunction, the SEC's investigation of Mantria was abbreviated. Thus, the SEC did not obtain any of the e-mails at issue here. The FBI in Denver then began a limited investigation of Mantria. This investigation was hampered by the untimely death of the assigned Assistant United States Attorney and the retirement of the FBI case agent. As a result, the FBI in Denver did not obtain the e-mails at issue here. In late 2014, the criminal investigation was transferred to the FBI in Philadelphia. By this point, five years after Mantria collapsed, the government simply could not obtain the necessary search warrants to seize the e-mails at issue here due to the lapse in time, even though there is no question that these e-mails would contain a significant amount of incriminating evidence. Consequently, the government does not have the e-mails requested by the defendant.

### **III. Discovery Process**

The government has disclosed in discovery all available information. The government has produced all available materials from: (1) the SEC and Colorado Division of Securities investigation, (2) the FBI investigation in Denver, (3) the FBI investigation in Philadelphia, and (4) all materials obtained from any other source.

As noted in the defendant's motion, the amount of discovery is "immense." The government provided the bulk of the data on a hard drive and has supplemented that information with additional information on disk and via e-mail. In addition, the government received approximately 100 boxes of documents from the Mantria receiver. Although these documents have not been scanned, the government notified defense counsel of their existence on October 1, 2015, the government provided a rough table of contents for these boxes, and the government informed defense counsel that they may view these documents at a mutually agreeable time. Based upon the government's cursory review of these materials, it does not appear that any of these boxes contain the e-mails sought by the defendant.

The government and defense counsel have been discussing the issue about these e-mails since at least November 4, 2015, when defense counsel sent government counsel an e-mail inquiring where these e-mails could be found. The parties' discussions have continued since that time. For example, on October 11, 2016, defense counsel sent government counsel an e-mail with an attachment of a Mantria "Daily Sales Report" which defense counsel averred that WRAGG e-mailed to MCKELVY on a regular basis. Pursuant to defense counsel's request, the FBI searched all available materials but was unable to find any additional "Daily Sales Reports" or e-mails between WRAGG and MCKELVY.

On October 31, 2016, government counsel e-mailed defense counsel and stated, “It is clear that the e-mails between Mr. Wragg and Mr. McKelvy are a focal point in this case. Therefore, I am going to ask the agents to keep digging to make sure that we (all of us) have them.” The FBI thereafter sent additional electronic storages devices provided by the receiver to the FBI laboratory (“RCFL”) for analysis. Unfortunately, a forensic review of these devices did not uncover any of the requested e-mails. On January 10, 2017, government counsel sent defense counsel an e-mail which stated:

Pursuant to your request to search for e-mails, the FBI sent one of the hard drives we recovered from Mantria’s storage unit (namely s/n 9SZ34B4Q) marked with RCFL barcode 28181 to the RCFL for processing. The RCFL referred to this exam as request #17-111. A search of this hard drive did not reveal any e-mails. In fact, there was very little data on it at all. The RCFL report is attached.

We have several other devices currently being processed at the RCFL. I will let you know what they find.

I note that there was a folder of e-mails and text messages turned over on the hard drive you provided in folder 17 labeled “Mantria Storage Unit Media Cellphone And Email Folders For Multiple Devices”. The e-mails can be accessed by clicking on the Report.html file for each searched device.

On February 24, 2017, government counsel alerted defense counsel that the FBI was able to retrieve some e-mails from the storage devices provided by the receiver. The government placed those e-mails on a disk and sent it to defense counsel. However, as defense counsel noted in the motion, most of these e-mails concerned communications by a Mantria employee named Jadah Hill, not the persons identified in the defendant’s motion. On June 28, 2017, government counsel sent an e-mail to defense counsel providing further information on e-mails in the discovery materials by stating:

Disks 8-10 contained the forensic image of the Mantria computer server provided to the FBI by the receiver who took possession of all Mantria property. I was

looking through the files. The .eml files can be opened by Microsoft Outlook. The files marked .eml.txt are also Outlook files. However, you may need to import those files into Outlook before they can be opened. Looking at the size of some of those files, it is possible that they may not contain any actual text.

The government's search for responsive e-mails was not limited to items in the government's physical possession. Pursuant to his cooperation agreement, the government requested that TROY WRAGG produce any e-mails in his possession. WRAGG, through counsel, stated that he maintained possession of his Mantria laptop until approximately 2011 when the battery died on that computer. After the battery died, WRAGG discarded the laptop. Therefore, WRAGG currently does not possess any Mantria-related e-mails.

The government also asked AMANDA KNORR to provide any Mantria-related e-mails in her possession. Through counsel, KNORR stated that she does not possess any Mantria-related e-mails.

The FBI investigators contacted Christopher Flannery who stated that he does not possess any Mantria-related e-mails.

The government contacted the attorneys for Daniel Rink and requested that they provide any Mantria-related e-mails in Mr. Rink's possession. Counsel for Mr. Rink from the law firm of Conrad O'Brien, PC, are currently searching for any Mantria-related e-mails. If they are able to find any e-mails, the government obviously will provide copies to the defendant.

Finally, the government is open to exploring any other avenue available to obtain these e-mails. If the government successfully finds any such e-mails, the government surely will provide copies to the defendant.



