



**U.S. Department of Justice**

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December 19, 2017

The Honorable Joel H. Slomsky  
United States District Court  
Eastern District of Pennsylvania

**Re: United States v. Wayde McKelvy  
15-CR-398-3  
**Government's Response to Defendant's  
Motion for Reconsideration of the  
Court's Order Denying the Motion to  
Dismiss Counts 1-8****

Dear Judge Slomsky:

The government hereby responds to the defendant's motion to reconsider the Court's order denying his motion to dismiss counts 1-8 of the indictment based upon the statute of limitations. The government avers that the Court should deny the defendant's motion for reconsideration for the exact same reasons which supported the Court's original order. The Court's ruling was entirely correct. In his motion for reconsideration, the defendant rehashes the same arguments which he presented in his original motion to dismiss and which the Court found unpersuasive. There is no new legal analysis which should change the Court's ruling on the matter.

The bottom line is that the government properly alleged the statute of limitations issue in the indictment and now the burden is upon the government to prove those allegations at trial. For example, in his motion for reconsideration, the defendant continues to argue that Mantria Financial was not a financial institution under the law and that Mantria Financial was not affected by the fraud scheme. The Court has already heard and rejected these arguments. At trial, the defendant will have an opportunity to argue those facts and urge the jury to find that the government has not met its burden of proof. Ultimately, the jury will make that determination. It is not the province of the Court, as the Court has already held, to supplant the jury's role as the finder of fact, especially when no evidence has been introduced at trial. At this stage of the proceeding, the Court must accept the factual allegations set forth in the indictment as true. United States v. Besmajian, 910 F.2d 1153, 1154 (3rd Cir.1990). The indictment contains the

