#1:16-CR-00301 WJM

UNITED STATES OF AMERICA

v

WILLIAM J SEARS

FILED
U.S. DISTRICT COURT
DISTRICT OF COLOR ADO

2020 JAN 30 FM l: l 7

JEFFREY P. COLWELL
CLERK

9y____ OEP. CLK

MOTION FOR DISMISSAL OF CHARGES WITH PREJUDICE
FOR LACK OF JURISDICTION

HERE COMES TO

The defendant, William J. Sears comes before the court on his own behalf after he realized that any and all of the legal counsel and legal advice he has trusted since before this case started has provided less than adequate representation for him. As such this has made it necessary for him to present this motion pro se in order so that justice might finally be served in this case filed against him. ·No agency of the United States should be allowed to operate outside the laws and regulations that grant them their power. Just as no government employee should be allowed to violate the laws they have been hired to enforce under the guise of enforcement. This is unless the government expects the citizens in the country to resort to the behavior that exists in a lawless society. The rules of law must apply equally to everyone including those who work within the government. There are only minor exceptions and this cannot be negotiable as it seems to be the situation in this case. When the federal prosecutors entered into a plea agreement which was based on an investigation that violated federal regulations whereby rendering the investigation the product of perjury. Thus the failure by the prosecution to disclose this fact makes the plea agreement made in this case the product of government misconduct. Ultimately rendering it invalid and making the charges in this case invalid which then requires this case be dismissed with prejudice.

BACKGROUND

On May 16, 2014 the federal government exercised a search warrant on the FusionPharm warehouse. On that same day Kate Funk of the FBI exercised a search warrant to Mr. Sears bank account, brokerage account and family trusts. Then approximately 6 months later on November 28, 2014, a warrant was exercised on the email and web hosting companies for FusionPharm and Mr. Sears' personal email accounts. Please note just like Fred Lehrer's FBI 302 the warrant for Mr. Sears bank records, brokerage accounts and family trust have never been seen by the defendants!

Then on September 16, 2016 nearly 3 years after this investigation started, the prosecution filed charges against the defendant by information.

I. ELEMENTS TO WITHDRAW PLEA

The Defendant essentially will argue his plea is constitutionally infirm for two distinct reasons: (1) The prosecution's Funk's underlying pre-plea misconduct rendered his plea involuntary under Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970); and (2) the government failed to meet its evidentiary disclosure obligations under Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In Brady it was argued that:

> "[A] guilty plea is a grave and solemn act to be accepted only with care and discernment[.]" Brady v. United States, 397 U.S. at 748, 90 S.Ct. 1463.

> When a defendant pleads guilty, he forgoes not only a fair trial, but also other accompanying constitutional guarantees. 628, 122 S.Ct. 2450, 153 L.Ed.2d 586 . (2002).

> Thus, a guilty plea "not only must be voluntary but must be a knowing, intelligent act done with sufficient awareness of the relevant circumstances and likely consequences." Brady v. United States, 397 U.S. at 748, 90 S.Ct. 1463.

It is axiomatic that, "to be constitutionally valid, a plea of guilty must be knowingly and voluntarily made." United States v. Brown, 117 F.3d 471,473 (11th Cir.1997). And" a guilty plea is not knowingly and voluntarily made when the defendant has been misinformed" as to a crucial aspect of his case.

While AUSA attempts to equate the discovery by the defendant with regards to the United States v. Ruiz, 536 U.S. At 630 122 S.Ct. 2450 where it states, "Nevertheless the Constitution "permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." And" Often the decision to plead guilty is heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted." Brady v. United States, 397 U.S. at 756, 90 S.Ct. 1463. Ruiz, 536 U.S. at 630, 122 S.Ct. 2450

However, this is not where the defendant is seeking to withdraw his plea "merely because he discovers[ed] long after the plea had been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. United States, 397 U.S. at 757, 90 S.Ct. 1463.

Rather, Defendant's misapprehension stems from an affirmative government misrepresentation that strikes at the integrity of the prosecution as a whole. Only when the defendant's misapprehension of the strength of the government's case results from some particularly pernicious form of impermissible conduct that due process concerns are implicated, should a plea be vacated. To have a plea vacated, in addition to showing impermissible government conduct, Defendant must show that the misconduct induced him to plead guilty. Brady v. United States, 397 U.S. at 755, 90 S.Ct. 1463. In other words, Defendant must show a reasonable probability that, but for the misconduct, he would not have pleaded guilty and would have insisted on going to trial.

II. SECURITIES FRAUD FINANCIAL INVESTIGATION

The SEC press releases regarding the halted trading of FusionPharm stock states, "The Commission temporarily suspended trading in the securities of FusionPharm due to a lack of current and accurate information about the company because of questions that have been raised about the accuracy and adequacy of publicly disseminated information concerning, among other things: (1) the company's assets; (2) the company's revenues; (3) the company's financial statements; (4) the company's business transactions; and (5) the company's current financial condition. This order was entered pursuant to Section 12(k) of the Exchange Act." See Exhibit A and B

The defendant now asserts and will show that the DOJ and FBI were aware or should have been aware of the fact that Special Agent Funk provided false information regarding her qualifications. For instance the year she graduated, the fact her degree was in business not accounting and the year she received her Kansas State certificate. Instead she was using the title Certified Public Accountant to misrepresent her professional licensing status required under federal regulations required for the forensic financial investigations that are required in securities fraud cases.

III. QUALIFICATIONS TO PERFORM A SECURITIES FRAUD FINANCIAL INVESTIGATION

This investigation requires that the regulations of the Commission apply as this was a referral and a paral1el investigation. It ful]y relied on the financial investigation by Special Agent Kate Funk who failed to meet the requirements of practice to transact business with the Commission. As such the Commission failed to insure the qualifications of the person they provided confidential financial information to regarding

Mr. Sears including his personal, business and trading accounts which is in violation of the Commissions own regulatory requirements. The defendant calls the courts attention to the following;

17 CFR § 201.102 - Appearance and practice before the Commission

(f) Practice defined. For the purposes of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:

(1) Transacting any business with the Commission; and

(2) The preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

17 CFR § 210.2-01 Qualifications of accountants.

(a) The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

Under the definitions section this shows that the definitions of this section apply to licensing requirements under the following;

17 CFR § 201.101 - Definitions.

(4) Enforcement proceeding means an action, initiated by an order instituting proceedings, held for the purpose of determining whether or not a person is about to violate, has violated, has caused a violation of, or has aided or abetted a violation of any statute or rule administered by the Commission, or whether to impose a sanction as defined in Section 551(10) of the Administrative Procedure Act, 5 U.S.C. 551(10);

Under the Administrative Procedure Act 5 U.S. Code § 551. Definitions as it relates to this investigation and licensing it applies by definition to

For the purpose of this subchapter-

(1) "agency" means each authority of the Government of the United States, whether or not it is within·or subject to review by another agency, but does not include-

(A) the Congress;
(B) the courts of the United States;
(C) the governments of the territories or possessions of the United States;
(D) the government of the District of Columbia;

And it applies to any agency that holds the power over a person's freedom which is shown in the Administrative Procedure Act 5 U.S. Code §551(10)

(10) "sanction" includes the whole or a part of an agency-
(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;
(B) withholding of relief;
(C) imposition of penalty or fine;
(D) destruction, taking, seizure, or withholding of property;
(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
(F) requirement, revocation, or suspension of a license; or
(G) taking other compulsory or restrictive action;

Under the code of federal regulations contained in 17 CFR Part 210 which is used to define an accountant's report

§ 210.l-02(a)(l) Accountant's report. The term accountant's report is "used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a who le, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated."

V. IMPERMISSIBLE GOVERNMENT CONDUCTING UNQUALIFIED INVESTIGATOR

The defendant has discovered impermissible misconduct on the part of Special Agent Kate Funk, who is the sole source of evidence relied on by the courts in rendering its probable cause determination in this case. This investigation was the basis for the asset forfeiture that Funk claimed FusionPharm to be a Ponzi scheme, which was proven not

to be the case in Funk's own investigation. The government never disclosed the fact that Special Agent Funk provided perjured testimony when she attested to the information contained in her sworn affidavits.

In Special Agent Kate Funk's sworn affidavit in support of search warrant dated May 15, 2014, whereby in Paragraph 1 on Page 1, Special Agent Funk stated under oath,

"I became a Certified Public Accountant in 1996 through the state of Kansas." See Exhibit C

She then repeats this claim again in the second sworn affidavit in support of search warrant dated November 28, 2014, in Paragraph 1 on Page I , Special Agent Funk whereby again, she states under oath,

"I became a Certified Public Accountant in 1996 through the state of Kansas." See Exhibit D

It is important to note that nowhere in the either of these two documents does Special Agent Funk use the initials CPA behind or after her last name, as was claimed by AUSA Sibert in his response to the defendant's motion to withdraw his plea previously

filed on April 19, 2019.

After reviewing the Kansas Board of Accountancy website, it was discovered that Kansas does not comply with the requirements of the Uniform Accountancy Act (UAA), as it requires a two-tiered regulatory standard for the licensing of Certified Public Accountants, which was basically abolished under the UAA. Prior to the passage of the UAA, most states had the two tiered (Exhibit) regulatory requirements for the licensing of Certified Public Accountants. This required being issued a certificate and a license in order to meet the regulatory licensing requirements. However, after it was discovered that many holding only a certificate but did not complete the requirements to be legally licensed were falselx claiming to be Certified Public Accountants. All the while providing services to individuals, businesses, academia and government and falsely claiming to be licensed when they were not. It was these violations that Jed to the passage of the UAA in o der to be established. See Exhibit

A Kansas issued certificate is not a license, as it is issued prior to meeting the regulatory standards for licensing. Because it is not a license and the reason, the Kansas issued certificate is not valid without also obtaining a valid permit (license). This is plainly stated on the Kansas Board of Accountancy‹ [3] website. See Exhibit

A search of the Kansas Board of Accountancy website found no listing for Kate Funk being issued license as a Certified Public Accountant in Kansas. A wild card

attempt was made using the first name Kate and there was a single name that was returned, Kate Egan. While the information did not match what Funk stated in her sworn affidavit, a public record check verified Egan was in fact Special Agent Funk's maiden name. It was then learned that Egan aka Funk did not hold the permit required under Kansas law to claim to be a Certified Public Accountant, as she only held the certificate but not the required license (or permit) required by regulation to use the professional credentials of Certified Public Accountant. The Kansas issued certificate is not a standalone license as it is under the standards for the UAA. Exhibit E

The NASBA website Verify PA, is an excellent source of information which explains the Kansas issued certificate is not a license under the regulatory requirements established for the licensing of Certified Public Accountants. It also addresses the legal limitations imposed on those who hold only a Kansas issued certificate, a review of the information regarding Kate Egan is included here. Exhibit F

On April 19, 2019, the same day the defendant's counsel filed the motion to withdraw his plea for various reasons that were not addressed properly and the reason why it is necessary for Mr. Sears to represent himself here now. It was noticed the same day of that filing Special Agent Funk changed her name on her Kansas issued certificate. While Funk had not changed her name legally after she was married in 2009, it seems a bit odd that she would choose that specific day to make that change. However her name has nothing to do with the legal reason why she is not a Certified Public Accountant, although it does confirm the fact that Special Agent Funk and Kate Egan were the same person who holds the Kansas issued certificate #8757. Exhibit G

(1) AICPA (https://www.aicpa.org)
(2) NASBA (https://www.nasba.org)
(3) Kansas Board of Accountancy (http://www.ksboa.org/applyCertificate.htm)

VI. OTHER INACCURATE INFORMATION

It was also discovered that Special Agent Funk provided inaccurate information regarding several items contained in Paragraph I on Page 1 of her sworn affidavits. This includes the year she was issued a certificate which according to the Kansas Board of Accountancy website[4] Egan was not issued a certificate in 1996 instead Egan was issued a certificate in August 1999. According to the Kansas University Alumni Association website[5] it indicates Egan did not graduate from Kansas University in 1995 but instead it indicates Egan graduated from Kansas University in 1996. The Alumni Association also shows Kansas University did not offer a bachelor's degree in Accounting, therefor Egan cannot have a degree in Accounting as she states. It does however show that she earned a degree in Business. While accounting does include business, that does not mean business is accounting, so the difference can be substantial. This also means that she is not eligible for any exempts for licensing that occurred in

Kansas in 1996, as there are no 'grandfathered' exceptions applicable in 1999. However, this does however indicate a very disturbing pattern of deceptive pattern of behavior on the part of Special Agent Funk and calls into question the hiring practices of the FBI and the DOJ which is responsible for supervising the hiring of the FBI. See Exhibits Hand I

The defendant wishes to call attention to the Kansas Laws of Accountancy requires Certified Public Accountants must possess both the Kansas issued certificate and permit to practice prior to holding out to be a Certified Public Accountant or to practice as such before the courts, this fact is clearly addressed under the laws governing the licensing of Certified Public Accountants in Kansas. (KS Stat§ l-316(a) (2012)) See Exhibit J

Special Agent Funk has violated the statues and regulations governing the licensing and practice of Certified Public Accountancy in Colorado and every State in the United States, including Kansas by claiming to be a Certified Public Accountant, which she is not because she does not hold the required permit which is a license in Kansas. See Exhibit K

As the Kansas issued certificate is provided prior to the license (permit) is issued, this means the Kansas issued certificate holds absolutely no meaning outside of Kansas nor does it provide the holder the ability to use the professional designation in legal proceedings. Doing such provides the false status of being a financial expert which comes with the commitment required to be a licensed and practicing Certified Public Accountant. This case was handed to the FBI by the SEC. Now let us keep in mind the SEC's requirements to be recognized as a Certified Public Accountant.

The Securities and Exchange Commission Federal Regulations under: 17 CFR § 210.2-01 - Qualifications of accountants

(a) The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

(b) The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment 011 all issues encompassed within the accountant's engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed.

(4) Kansas Board of Accountancy (http://www.ksboa.org/applyCertificate.htm)
(5) Kansas University Alumni Association

https://sec urelb.imodules.com/s/ 1 312/alumn i/ index .aspx?sid= 1312&gid=2&pgid=8&cid=46

A person is a "statutory" resident of Colorado if the person maintains a permanent place of abode in Colorado and spends, in aggregate, more than six months in Colorado. For a more complete discussion of domicile and statutory residency. See Department Regulation 39-22-103(8)(A).

As such the laws of Colorado require residents who are licensed by a regulatory agency in another state must apply for licensing in Colorado after becoming a resident. As such Special Agent Funk was required to apply for licensing as a Certified Public Accountant in 2011 after she became a resident. This is regulated by the Colorado Code of Regulations governing the licensing and practice of Certified Public Accountants under 3 CCR 705-1 - 1.5 Requirements for Certification - (E.) Reciprocity Requirements states, "An applicant who holds a certificate or license issued by another state based upon passage of the examination but who does not hold a certificate or license to practice is not eligible for reciprocity through that certificate or license." As such this means Special Agent Funk does not meet the requirements to obtain a license by reciprocity in Colorado and as such she cannot legally hold out as being a Certified Public Accountant in proceedings conducted in the State of Colorado and there is nothing that excludes a federal agent who resides in Colorado from meeting these legal requirements for licensing and practice within the state.

VII. FORENSIC ACCOUNTING EXPLANATION

The defendant wishes to introduce the definition and explanation regarding forensic accounting as was found on the Investopedia website which is operated with permission by the SEC, the explanation of meaning of forensic accounting investigation< [6] is explained it detail below:

What is Forensic Accounting?

Forensic accounting utilizes account ing, auditing and investigative skills to conduct an examination into the finances of an individual or business. Forensic accounting provides an accounting analysis suitable to be used in legal proceedings. Forensic accountants are trained to look beyond the numbers and deal with the business reality of a situ ation. Forensic accounting is frequently used in fraud and embezzlement cases to explain the nature of a financial crime in court.

[6] lnvestopedia

(https://www.investopedia.com/terms/f/forensicaccounting.asp)
Understanding Forensic Accounting

Forensic accountants analyze, interpret and summarize complex financial and business matters. They may be employed by insurance companies, banks, police forces, government agencies or public accounting firms. Forensic accountants compile financial evidence, develop computer applications to manage the information collected and communicate their findings in the form of reports or presentations.

Forensic Accounting for Criminal Investigation

Forensic accounting is also used to discover whether a crime occurred and assess the likelihood of criminal intent. Such crimes may include employee theft, securities fraud, falsification of financial statement information, identify theft or insurance fraud. Forensic accounting is often brought to bear in complex and high-profile financial crimes. The reason we understand the nature of Bernie Madoffs Ponzi scheme today is because forensic accountants dissected the scheme and made it understandable for the court case.

Defining Financial Forensics

Financial forensics is a field that combines criminal investigation skills with financial auditing skills to identify criminal financial activity coming from within or outside of an organization. Financial forensics may be used in prevention, detection, and recovery activities to investigate terrorism and other criminal activity, provide oversight to private-sector and government organizations, and assess organizations' vulnerability to fraudulent activities. In the world of investments, financial forensics experts look for companies to short or try to win whistleblower awards.

This fact that this was a forensic financial investigation was even admitted to by Special Agent Funk in her sworn affidavits on Page 5 in Paragraph 12, whereby Funk says:

"Your ajfiant thereafter reviewed and has been reviewing the SEC Produced Records on an ongoing basis. Additionally, your ajfiant was made privy to SEC analyses of the Bank Records, Brokerage Records and Transfer Agent Records

(collectively "SEC Analyses") and has reviewed the same on an ongoing basis."

According to the FBI's own website under the position of Forensic Accountant (S) it states the following:

"FOLLOW THE MONEY TRAILS OF CRIMINAL ACTIVITY AND NATIONAL SECURITY MATTERS"

Because in the Affidavit in Support of Search Warrant prepared by Special Agent Kate Funk she referenced auditing standards accepted by the SEC and the United States of American with her references to violations of GAAP. This means she created a report and as such this requires she must be a Certified Public Accountant, as she not only claimed a violation of GAAP but she then attempted to track financial transactions between accounts in order to determine actual company earnings. This requires the services of a Certified Public Accountant in order to legally attest to those sworn opinions before the court. Under the laws in Kansas,

"It is unlawful for any person, except the holder of a Kansas permit to practice, to issue a report with regard to any attest or compilation service under standards adopted by the board. A reference in a report to auditing standards generally accepted in the United States of America is deemed to be a reference to standards adopted by the board. " Keeping in mind she's not in Kansas Anymore. (KS Stat§ 1-316(e) (2012)) Exhibit Highlighted Pages

Additionally, under KS Stat § 1-321. Definitions - it defines "Report" as follows:

"When used with reference to any attest or compilation service, means an opinion, report or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use, by the issuer of the report, of names or titles indicating that the person or firm is an accountant or auditor or from the language of the report itself The term report includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled.financial statements referred to or special competence on the part of the person or.firm issuing such language; and it includes any other form of language that is

conventionally understood to imply such assurance or such special knowledge or competence. "

[8] FBI Forensic Accountant
https://www.fbijobs.gov/career-paths/forensic-accountant

VIII. RELIVANCE TO THIS CASE

As the affidavits in support of search warrants prepared by Special Agent Funk were provided to the court through the use of telephonic equipment the requirements under the federal rules of criminal procedure apply. Under section 4.1(b)(2)(A) requires the affiant must attest to information contained in the written affidavit. Which has occurred in this case, as such the requirements under the rules of public accountancy that requires only a certified public accountant can attest to information contained in a financial report. As such this means the information attested to before the judge magistrates in this case was perjury as Special Agent Funk knowingly provided false testimony under oath.

In law, an attestation is a declaration by a witness that a legal document was properly signed in the presence of the witness. Essentially, it confirms that a document is valid. In finance, an attestation service is a Certified Public Accountants declaration that the numbers are accurate and reliable. As the service is completed by an independent party, it validates or invalidates in this case the financial information prepared by internal accountants.

Title 41 Search and Seizure d. Obtaining a warrant (2) The applicant must orally state facts sufficient to satisfy the probable cause requirement for the issuance of the search warrant. (See subdivision (c)(1).) This information may come from either the applicant federal law enforcement officer or the attorney for the government or a witness willing to make an oral statement. The oral testimony must be recorded at this time so that he transcribed affidavit will provide an adequate basis for determining the sufficiency of the evidence if that issue should later arise. See Kipperman. Inaccurate Search Warrant Affidavits as a Ground for Suppressing Evidence, 84 Avalere. 825 (1971).

Testimony provided in the form of opinion must be grounded in an accepted body of learning or experience in that particular field, and the witness must explain how the conclusion is so grounded. See, e.g., American College of Trial Lawyers, Standards and Procedures for Determining the Admissibility of Expert Testimony after Daubert, 157 F.R.D. 571, 579 (1994) ("[W]hither the testimony concerns economic principles, accounting standards, property valuation or other non-scientific subjects, it should be

evaluated by reference to the 'knowledge and experience' of that particular field.").

As Special Agent Funk attested before the courts in three sworn affidavits (keeping in mind Mr. Sears nor his lawyers have ever seen the warrant for the bank accounts and brokerage accounts of his family's trust.) which she testified under oath were truthful. That means she represented herself as a Certified Public Accountant. This means she was an expert capable of performing the services of the financial investigation of the publicly traded company and the transactions regarding money involved with that company. This she confirmed with the implied insurances of her knowledge, training and experience a total of 47 times in these affidavits. As the courts relied on this information as evidence to support probable cause of her claims, the fact that this was perjury means it was material to this case and required disclosure to the defendant prior to entering into the plea agreement.

IX. SHOWING PATTERN OF MISCONDUCT

This is not the only incidence of misconduct by Special Agent Funk that could be construed as unlawful, as on October 13, 2009, Special Agent Funk aka Kate Egan married then United States Assistant Lead Prosecutor for the United States Department of Justice, AUSA T Markus Funk. As such when Special Agent Kate Funk, decided to accept a position of employment with the FBI while her husband the esteemed Mr. Funk was still employed by the DOJ (while still using her maiden name). As such by Special Agent Funk accepting the position with the FBI, she violated federal regulations and code in doing such. Exhibit

After which Special Agent Kate Funk accepted employment within the FBI, in violation of the following federal regulations:

(a) 5 U.S. Code (USC),§ 3110, Employment of Relatives; Restrictions
(b) 5 Code of Federal Regulations (CFR) § 310, Employment of Relatives
(c) 5 CFR § 2635, Standards of Ethical Conduct for Employees of the Executive Branch; Subparts D, E, G,
(d) 5 USC § 2302, Prohibited Personnel Practices
(e) Executive Order 11222, Prescribing Standards of Ethical Conduct for Government Officers and Employees, May 8, 1965
(f) 5 CFR § 735, Employee Responsibilities and Conduct

This situation extends beyond just a minor violation of federal regulation by an employee holding a position of trust within the government. This matter involves numerous violations of federal regulation by two executive level employees within the

Department of Justice who swore to uphold and defend the Constitution of the United States and are responsible for national security. As such this makes the fact that they were willing to violate the laws in order for one of them to obtain a position enforcing the law, suspect. Clearly this relates to the credibility of this government agent and the integrity of this investigation and the fact that Special Agent Kate Funk was the sole source of evidence provided to the court makes this discovery material in this case.

X. GOVERNMENT AWARE OF MISCONDUCT

Special Agent Kate Funk was required to obtain and pass a mandatory 10 year background invest ig atiod [7] in order to obtain the top secret security clearance required · of all FBI Special Agents. This information was readily available to the Department of Justice, FBI and SEC, all of which were actively involved in the investigation and prosecution of this case, as such this information regarding the violations of federal regulation that were involved in the hiring of Special Agent Kate Funk. Exhibit

The fact Special Agent Funk had no law enforcement experience prior to working for the FBI and she had never been involved in a white collar securities fraud investigation prior her assignment as the lead investigator in this case, as such there is nothing to support the fact that Special Agent Funk is an expert in these proceedings. As is shown in the court decision in the 5th circuit where the decision of that court was, *"The government used an FDIC investigator as an expert in the area of mortgage fraud. Though the agent had some training in fraud investigation, he had no specialized training in the area of mortgage fraud and had never previously testified as an expert in this field."* United States v. Cooks, 589 F.3d 173 (5th Cir. 2009) AUSA Jeremy Siebert also attests to the fact that Special Agent Funk is not an expert in his response to Mr. Sears' motion to withdraw his plea.

As this entire case rested on the misrepresentations provided by Special Agent Funk as to the inadmissible hearsay statements provided by the confidential witness which she knew was not only unreliable but were false to form the legal basis for her investigation and the fact that she based the opinions she provided to the courts as evidence in this case, makes this information exculpatory in nature and as such it should have been disclosed to the defense. The facts upon which a witness relies for her opinion is discoverable and must be disclosed to the other party. See Dickinson-Tidewater, Inc. v. Supervisor of Assessments, 273 Md. 245 (Md. 1974). The trier of fact should be disregarded if it is found to be unreasonable or not adequately supp01ied by the facts upon which the opinion is based. Clark v. State ex rel. Wyoming Workers' Safety & Compensation Div. (In re Clark), 934 P.2d 1269 (Wyo. 1997).

As the court relied on evidence in the form of inadmissible hearsay and the opinions held by Special Agent Funk which were derived from such this qualifies as

expert testimony in this case and as Special Agent Funk is not an expert this violates the· federal rules of evidence 70 I and 702-705. As Special Agent Funk was allowed to testify before the court supplying opinions that were not based on first hand observation into, the matters claimed by Special Agent Funk, the court must take into consideration any Sixth Amendment Confrontation Clause concerns whenever the prosecution intends to call an expert to offer his or her opinion . *"Though'an expert may generally rely on inadmissible evidence in reaching a conclusion, including hearsay, that rule assumes that an expert will carefully analyze the basis of his opinion...* " Howard v. Walker, 406 F.3d 114 (2d Cir. 2005)

XI. WHISTLEBLOWER PROVEN UNRELIABLE

So, the fact that Special Agent Funk's entire investigation was based on the securities fraud investigation which was based on the fal.se statements provided by the confidential witness, where he claims that FusionPharm was a Ponzi scheme, as is shown in Special Agent Funk's affidavit, in paragraph 8 pages 2 and 3, Funk states:

"The genesis of the SEC's investigation involved a complaint filed by Cooperating Witness 1 (hereinafter referred to as "CW-1 "), a former FusionPharm employee. In the complaint, CW-1 suspected that FusionPharm was operating as a "Ponzi" investment fraud. Although FusionPharm publicly claimed via press releases and quarterly and annual disclosures to develop, produce and sell refurbished shipping containers called "Pharm Pods" to cannabis and organic produce grow operations, CW-1 stated that the company had not made any legitimate product sales during his time with the company. "

Then in Special Agent Funk's own investigation, it was proven this information was false, in footnote 8 on page 28, whereby Funk states:

> '" *As noted in ,I8, CW-1 originally complained that FusionPharm had not made any sales during his time with the company. CW-1 has revised that statement to match the sales highlighted in* if*58.* "

To further support this claim the following is provided from Special Agent Funks affidavit whereby in paragraph 58 on page 28, Funk states:

> *"CW-1 identified, at most, two possible sales between January-October 2013: (a) FusionPharm sold two Pharm Pods to a customer in California" ,·and*
>
> *"(b) FusionPharm sold five Pharm Pods to Local Products, a Denver company." and*

"CW-1 said there might have been an additional, single Pharm Pod sale to Mile High Green Cross in 2013, but he could not be sure.

And again where the confidential witness is allowed to provided information and claims that are material to the investigation without there being any way that information which he has provided can be verified given the discrepancies he has provided here or possibly could it be Special Agent Funk simply altering evidence her elf to fit within the answers she is looking to discover in order to fit within her investigation. However, it might be a good thing if Special Agent Funk learns to perform basic math as 2+5+1=8 not 7 as she states the confidential witness has said, in paragraph 59 on page 28, Funk states:

"(b) as noted above, CW-1 could recall, at most, 7 Pharm Pod sales total in 2013."

XIII. PROBLEMS WITH WARRANTS

The problems with this investigation are reflected in the Search and Seizure Warrants as well. In the Search and Seizure Warrants executed in this case both affidavits contain the following charges on its face instead the violations being alleged are contained in Attachment B, however the violations are not the same as those alleged in the affidavits. The charges not on the face but on the Attachment B and government exceeded the scope of the warrant as Attachment B. Exhibit L- May 15, 2014 and Exhibit M - November 28, 2014

The affidavit in support of search warrant dated May 15, 2014 and the affidavit dated November 28, 20 I 4 do not allege a chargeable violation of law has been committed. Both of these documents cite the following violations were committed:

In the Affidavit dated May 15, 2014, violations cited on Page 2 in Paragraph 4 which states:

"William Sears ("Sears"), Dittman S brother-in-law, and a founder and control person of FusionPharm,for various suspected federal criminal offenses, including wire fraud, in violation of 18 USC. §1343, and securities fraud, in violation of 15 USC §§78{b) and 78.ff(a) , and 17 C.F R.§240.l0b-5."

In the Affidavit dated November 28, 2014, violations cited on Page 1 in Paragraph 4 which states:

" William Sears (" Sears"), Dittman **S** *brother-in-law, and a founder and control person of FusionPharm, for various suspected federal criminal offenses, includin g wire fraud, in violation of 18 U.S.*C. *§1343, and securities fraud, in violation of 15 U.S.*C. *§§78(b) and 78.ff(a), and 17 C.FR. §240.10b-5. "*

The following is a breakdown of the violations cited in the Affidavit in Support of Search Warrant, dated May 15, 2014;

15 U.S.C. §§78(b) is a regulatory statement, it contains no essential elements required to support a violation of law having been committed under this section.

15 U.S.C. §§78ff(a) is a penalty assessment which discusses the penalties for violations of the various sections under 15 U.S.C. §§78, however it does not actually address the actual violation and the legal elements required to show a violation under this section instead it requires a valid violation be included one of the numerous violations contained in Section §78 for there to be a penalty assessed under this section.

18 U.S.C. §1343 as there was no legally chargeable fraud violation cited there is nothing to establish a fraud violation has been committed and without which there is nothing to invoke the protections of the mail fraud statutes and it is well established the protections of the mail fraud statutes do not extend to government regulatory interests. See F.J. Vollmer & Co., 1 F.3d 1511, 1521 (7th Cir. 1993) ("It is well established that the government's regulatory interests are not protected by the mail fraud statute.)

17 C.F.R. §240.10b-5 is not addressed in the search warrant as such there is no reason to address this here. The Code of Federal Regulation must be named separately on the Search and Seizure Warrant to be considered a part of the items that are being Searched and Seized it is not a standalone charge where it can be included automatically and there was nothing discussed in the affidavit that showed that the company was a Ponzi scheme as was claimed by the CW# I

The Search and Seizure Warrant executed on the FusionPharm warehouse on May 16 , 2014 contained the violations in Attachment B however those were not the same violations cited in the supporting affidavit. Attachment B to the Search and Seizure Warrant dated May 16, 201 4, states the following:

" Title 18, United States Code, Section 1343 (wire fraud) and Title 15 United States Codes, Section 78j(b) and 78.ff(a)"

While the prosecution is likely to claim this was merely a clerical error, this was shown not to be the case, as the search waITant dated November 28, 2014 contains the same errors as the Attachment B which states the following

"Title 18, United States Code, Section 1343 (wire fraud) and Title 15 United States Codes, Section 78j(b) and 78jf(a), excluding, however, any items constituting privileged attorney-client communications"

The affidavits were not attached to the Search and Seizure Warrants despite being referenced. This normally invalidates the Search and Seizure Warrants and the evidence discovered as the result of these type of warrants is illegally obtained.

It is well established under the Colorado Constitution, the facts supporting probable cause must be reduced to a writing, and probable cause must be established within the four corners of the warrant or its supporting affidavit. See the Colorado Constitution Article II, § 7; United States Constitution IV Amendment and People v. Padilla, 182 Colo. 101,105,511 P.2d 480,482 (1973).

"In this Circuit, both attachment and incorporation are required for an affidavit to remedy a warrants lack of particularity." See United States v. Leary, 846 F.2d *592 (J 0th Cir. 1988) at 603 and United States v. Williamson, 1 F 3d 1134, II 36 n.l (J 0th Cir. 1993).*

The Fourth Amendment requires a search warrant to *"describe the things to be seized with sufficient particularity to prevent a general exploratory rummaging in a person '.s belongings."* United States v. Carey, 172 F.3d 1268, 1272 (10th Cir. 1999).

A warrant runs afoul of the Fourth Amendment when it is broader in scope than justified by the *"probable cause established by the affidavit upon which the warrant issued. "* United States v. Christine, 687 F.2d 749, 753 (3rd Cir.1982)

Because the Search and Seizure Warrant authorized the seizure of a very broad aITay of items in the FusionPharm offices, for which there was no probable cause and whereby making the search warrant overly broad and as such violated the Fourth Amendment. The Fourth Amendment prohibits general warrants authorizing *"a general, exploratory rummaging in a person '.s belongings."* Coolidge v. New Hampshire, 403 U.S. at 467. Evidence seized pursuant to a general warrant must be suppressed. Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979).

A search warrant that provides law enforcement agents free reign to rummage through a defendant's papers at will renders the warrant overly broad and vague. United States v.

Beckett, 321 F.3d 26, 33 (1st Cir. 2003).

The Search and Seizure Warrant and supporting documentation presented to Magistrate Judge Craig B. Shaffer on May 15,2014 was attested to telephonically by Special Agent Funk which requires a recording of that and the Search and Seizure Warrant and all supporting documentation be filed with clerk of the court in accordance with the Federal Rules of Criminal Procedure Rule 41 and Rule 4.1.

As this document was not filed in an emergency situation which is shown by the time and date of the Magistrate Judges signature being on May 15, 2014 and the time which it was executed on the following day on May 16, 2014, as such this was not an anticipatory warrant, as such there was no reason why this search warrant was never properly filed. See Exhibit A and Exhibit B

After reviewing this Search and Seizure Warrant it was discovered it was not properly filed as it does not contain the appropriate seal nor the stamp of the clerk across the top. See Exhibit C - copy of Search and Seizure Warrant signed by Robert Dittman.

Nor was this document ever sealed as was claimed by AUSA Harmon on numerous occasions. There is no court order on the dockets sealing the Search and Seizure Warrant which was in fact exercised on the FusionPharm warehouses. Due to the invalid Search and Seizure Warrant which was exercised on the May 16, 2014 raid on FusionPharm which included Special Agent Funk, IRS-CID Agent Loecker and AUSA Harmon and others from the prosecutors office who all have many years' experience dealing with Search and Seizure Warrants. They all knew that this warrant was not valid because it was never properly filed. See Exhibit D - Showing the proper filing and sealing stamps required on a Search and Seizure Warrant as is shown from co-defendant Jean-Pierre's case. There was a **third Warrant served** on the bank, trust and trading ccounts of Mr. Sears and his family on May 16, 2014 By Special agent Funk. Much like Fred Lehrer's 302 interview, no one but no one has ever seen it. Mr Sears has called the clerk of the court and confirmed that the Warrant is not in their possession and could not furnish a certified copy. How can the integrity of the warrant be guaranteed if it was not registered with the court as per Federal Rules of Criminal Procedure which state:

(f) Executing and Returning the Warrant.

(1) Warrant to Search for and Seize a Person or Property.

{A) Noting the Time. The officer executing the warrant must·enter on it the exact date and time it was executed.

(BJ Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person. In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied.

(C) Receipt. The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property. For a warrant to use remote access to search electronic storage media and seize or copy electronically stored information, the officer must make reasonable efforts to serve a copy of the warrant and receipt on the person whose property was searched or who possessed the information that was seized or copied. Service may be accomplished by any means, including electronic means, reasonably calculated to reach thatperson.

(D) Return. The officer executing the warrant must promptly return it-together with a copy of the inventory-to the magistrate judge designated on the warrant. The officer may do so by reliable electronic means. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

XIV. DISCLOSURE REQUIREMENTS
& FAILURE TO DISCLOSE

Based on the previous responses supplied by the federal prosecutor in this case, which has ignored the fact that the Supreme Court ruled, *"the prosecution has an affirmative duty to learn of and disclose, any favorable evidence known to "others acting on the governments behalf in the case, including the police.* " Kyles v. Whitley, 514 U.S. 419,437 (1995). Thus, the prosecution was required not only to disclose what was already known to prosecutors, but also to learn of any such information that was known to law enforcement, including matters related to witness credibility even that of law enforcement.

Additionally, the Supreme Court decision in Giglio v. United States, 405 U.S. 150 (1972), were the disclosure rule was extended to include not only evidence directly related to the crime involved, but also to information that would affect the credibility of a prosecution witness in the case. The fact, Special Agent Funk was the sole source of the evidence discovered in this investigation and she was the sole source of opinions relied on by the court as evidence including that which was relied on by the courts in rendering it's probable cause determination, this means her credibility relates directly to the evidence.

Additionally, in that case the Supreme Court honed in on the ultimate goal of the Confrontation Clause - that the reliability of evidence introduced against a criminal defendant be assessed through the particular mechanism of cross-examination. In Crawford, it was *decided "[The [Confrontation] Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. Its commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination."* The applicability of the Confrontation Clause, according to Crawford, is limited to witnesses providing testimonial statements. While Justice Scalia did not provide an absolute definition of "testimonial," but articulated that testimonial statements *are "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.* "

Furthermore, the Supreme Court provided useful examples of testimonial statements: statements taken by police officers in the course of interrogations and prior testimony given at a court proceeding. The Court held that where a testimonial hearsay statement is offered against a criminal defendant, it is not admissible unless either (1) the prosecution makes the witness who made the statement available, or (2) if the witness is unavailable, the defendant had a prior opportunity to cross-examine him or her.

In United States v. Bagley, 473 U.S. 667 (1985), the Supreme Court defines "material" evidence as information that, had it been disclosed to the defense, would have a *"reasonable probability of providing a different result in the trial or sentencing"* in the case. The national law enforcement model policy defines in the disclosure requirements under Brady, as exculpatory evidence is "material" if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding. Further, it notes, that a "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial or sentencing of a criminal case. So, the requirements of Brady relate not only to the finding of the case but to the sentencing phase as well.

As the term "exculpatory" is generally understood to refer to virtually any kind of

information that would cast doubt on the guilt of the defendant. As such exculpatory information is that which would bear directly upon the issue of the defendant's guilt or innocence and, therefore must be disclosed to the defense. Like the discussion of material evidence however, material that is exculpatory can also be germane to sentencing. The model policy states that "Brady violations are, by definition, violations of an individual's 14th Amendment right to due process of law. Exculpatory evidence is evidence that is favorable to the accused; is material to the guilt, innocence, or punishment of the accused; and that may impact the credibility of a government witness, including a police officer. Impeachment material is included in the Brady disclosure requirements." With the help of a Florida Forensic Securities Lawyer and specialist who was a whistle-blower to the Securities & Exchange Commission in the case entitled Securities and Exchange Commission v. Guy M. Jean-Pierre, a/k/a Marcelo Dominguez de Guerra, Civil Action No. 12-cv-8886, I uncovered many disturbing things that can only be deemed as Corruption on the part of Mr. Lehrer. The case can be found at the links below:
www.sec.gov/litigation/litreleases/2015/lr23217.htm
https://www.sec.gov/litigation/complaints/20l2/comp-pr20l2-257.pdf
In that case Jean-Pierre forged more than 100 legal opinions that were used to remove the restrictive legend from millions of shares of penny stock companies. Through discovery in a related case, The specialists firm obtained the forged opinions. The referral to the Florida Bar of that matter resulted in the Florida Supreme court disbarring Mr. Jean-Pierre. (Please note Jean Pierre was never criminally charged. What?) In connection with that case Jean Pierre provided a letter from Scott Dittman, in his capacity as the Chief Executive Officer of Fusion Pharm Inc. ("FSPM") in defense of the allegations. At that time, Jean Pierre was a corporate officer of FSPM. The Specialist involvement in that matter resulted in a civil suit and bar complaint against the securities specialist by Jean-Pierre and his client, Marc Jablon. The securities specialist spent more than two years and thousands of unpaid hours because they were retaliated against for stating that the conduct of Jean-Pierre and his associates was illegal. During that period, the specialist was represented by **Frederick M. Lehrer.** Lehrer assisted them in drafting the documents in all aspects referring the matter to the Florida Bar, SEC and FBI vs Mr. Jeanne Pierre. As a result of the retaliation the securities specialist endured, they became a witness for the Securities & Exchange Commission (the "SEC") in the penalty phase of that proceeding against Marc Jablon. They have not had meaningful communications with Lehrer since 2013.
The Forensic securities specialist then became aware of what they believed to be egregious misconduct by the Colorado Office of the SEC. In approximately 2014, the Colorado SEC commenced an investigation of FSPM. The SEC's news release about FSPM is below:
https://www.sec.gov/litigation/admin/2016/33-10210.pdf
In connection with FSPM, Sears and Dittman were indicted by the US Attorney's Office in Colorado. This, taken from the SEC's press release was then and remained forever

untrue, neither myself or Mr. Dittman were ever in this case.
When The specialist met William Sears and Scott Dittman and learned of Lehrer's involvement in FSPM, they were shocked to learn of Lehrer's conflicts of interest in connection with FSPM. The specialist then contacted Sears and Mr. Dittman to make them aware of Mr. Lehrer's familiarity with Mr. Jeanne Pierre and his conflicts of interest with Mr. Jeanne Pierre in this case. They also made Sears and Mr. Dittman aware of Mr. Lehrers conflicts of interest with AUSA Harmon, who was in charge of the investigation/prosecution. Per the specialist, Mr. Lehrer and Mr. Harmon were 2 of 4 attorneys who constituted the special task force for securities fraud in South Florida in the 1990s (referred to above). **In** fact, Mr. Harmon and Mr. Lehrer worked side by side for 4 years and remained close friends to this day. This conflict of interest was never disclosed in this case by Mr. Harmon, who should have recused himself from the case as soon as Mr. Lehrers involvement was known. Unfortunately, he did not.
Despite the conflict of interest and without disclosing his conflict, Lehrer commenced representing FSPM, Dittman and Sears within a few months after representing the specialist in the Guy Jeanne Pierre matter. Lehrer continued to represent FSPM until the middle of 2014, approximately two months after the SEC investigation commenced. Pursuant to a Formal Order of Investigation dated January 29, 2015, Lehrer was asked to submit to a deposition concerning FSPM, Dittman and Sears. Prior to his testimony, Lehrer requested that Dittman and Sears waived the attorney client privilege, which they did without any knowledge of Mr. Lehrer's prior involvement with Guy Jeanne Pierre or Kenneth Harmon.
Lehrer provided sworn testimony on January 29, 2015 and May 29, 2015. In that testimony, Lehrer lied repeatedly. Among other things, Lehrer falsely stated that he learned about Jean Pierres OTC Markets ban, a ban he himself brought about, from 'Google searches' after the SEC investigation of FusionPhann began. He was largely responsible for the OTC Markets ban as a result of his representation of specialist in connection with referrals to the SEC, FBI and Florida Bar!
Secondly, Lehrer lied in stating that he had no knowledge of Sears relationship with Dittman or Sears family involvement in FusionPharm. Even more troubling is that Lehrer' conduct makes the waiver of the privilege given by Dittman and Sears ineffective because they were not provided with disclosure of Lehrers egregious conflict of interest and role in reporting a corporate officer of FSPM. ***Because of this non-disclosure, Sears and Dittman could not have made an informed decision of whether*** *to waive the attornev client privilege allowing Lehrer to testifv against them*.
Despite this, Denver SEC enforcement attorneys, Ian Karpel and Kim Greer allowed Lehrer to testify as to matters that were subject to the attorney client privilege. Dittman and Sears would never have waived the attorney client privilege if they knew that (i) Lehrer had participated in reporting Jean-Pierre, a corporate officer of FSPM to the FBI and SEC, and (ii) Kenneth Harmon had worked with Lehrer for years and was his supervisor. Greer and Karpel were aware of these conflicts and took no steps to ensure the integrity of Lehrers testimony to the SEC.

Karpel and Greers questioning of Lehrer during his testimony reflects they were aware of tre specialists relationship with Lehrer - that he worked with the specialists law firm. The NY SEC action also references the bar complaints the specialist filed. Despite this, Karpel and Greer never contacted the specialist for information about Guy Jean-Pierre, Lehrer or their investigation. Greer and Carpels knowledge of many of the conflicts is demonstrated by Lehrers own SEC testimony.
Further, the DOJ who would interview countless witnesses in the FusionPharm case and would ultimately bring charges against both Jeanne Pierre and Tod DiTomasso (another lawyer who worked with Jeanne Pierre and advised FusionPharm),
NEVER INTERVIEWED LEHRER!! ...
Ken Harmons friendand previous co-worker. The SEC only interviewed one witness in this case, twice interviewing Fred Lehrer. **The SEC never interviewed another witness, attorney or otherwise.**
Upon the specialists review of this matter, they found that Lehrer had provided multiple baseless legal opinions for Sears in regarding the trading of his FSPM stock. The only thing more shocking was they learned that Lehrer had even instructed Sears (in writing) to sign his name to legal opinions to remove the legend from restricted securities. This was due to his printer not working, as he explained in his email to Sears. Sears trusting Lehrer, as who better to protect him then an EX SEC enforcement attorney? He did as instruct. IfFSPM,is a fraud as the SEC states then Lehrer was the gatekeeper allowing Sears to cut and paste legal opinions on his law firm. Fact is Fred Lehrer cut and pasted Guy Jean Pierres legal opinions as they are almost exactly the same. Kim Greer of the SEC commented on this in Lehrers interview. According to the SEC's press release based on Agent Funks Investigation, FSPM was a pump and dump (not that she would know what that really means) that resulted in investor losses of more than $12 million because of baseless legal opinions. The vast majority (more than $10million of the $12 million at issue with the SEC) of the sales of FSPM stock were only possible because of **Lehrer's opinions.** In the most recent filing to Scott Dittmans lawyers Mr Jeremy Siebert say:"Still no investigation or even mention of Lehrer from the DOJ while all other attorneys in the case were prosecuted? Additionally, "Pump and dump" is when multiple (1-2 a week) press releases are made through a given period to stimulate volume in the stock price. Once volume and a target price are met shareholders will sell into the new volume. FSPM did 10 press releases in 4 years. This was in no way a pump and dump. During the investigation, no press release was ever questioned or at issue. FusionPharms stock price followed the same exact trajectory as all the other marijuana index companies when amendment 64 passed in 2014. If anything, FusionPharm was critiqued by many investors for not putting out any PR/News. Exhibit 19

- In 2017 the specialist, provided Mr. Karpel and Ms. Greer with evidence demonstrating that Lehrer lied multiple times under oath in connection with their investigation. they advised them that the specialist had declarations and other evidence of Lehrer that contradict his SEC testimony. Along with emails from Sears that directly refuted much of his SEC testimony. One example was an email communication whereas Lehrer

advised Scott Dittman and Craig Dudley (FusionPharms CFO) that disclosing William Sears was not necessary-=- Craig Dudley confirms this in his FBI 302 interview. The specialist also advised them that Lehrer had told William Sears to sign his name to a legal opinion. After receipt of this information, Ms. Greer and Mr. Karpel did not investigate. *EXHIBIT 20 EXHIBIT 21. Exhibit 22*
Instead Greer contacted Jeff Thomas an attorney of Scott Dittman
"Kim called to let me know that they received a call from X, *who detailed some of her knowledge about Fred Lehrer. I pressed Kim as to what this meant in terms of their case, and she made it clear that it didn't mean anything. Because their case is technically still open, she just believed that she had an obligation to inform me of the call."*

Greer violated SEC policy by disclosing confidential SEC information to a private attorney. Her motive is clear and she did this to silence the specialist as a whistle-blower against Lehrer. Greer indicated that their refusal to investigate Lehrer was because of Mr. Harmon.

Further, when Harmon learned the specialist had provided exonerating information about Lehrer to Sears and Dittman and to the FBI as a whistle- blower, Harmon retaliated against Sears and the specialist. Instead of encouraging whistle-blowers to come forward when they learn of information relevant to investigations, Harmon, Karpel and Greer retaliated against the specialist and Sears and sought to discourage them from providing information and him from speaking to the specialist. While the SECs revolving door ignored Lehrer, the SEC charged another attorney, Todd D Tommaso for his legal opinions. The action against him can be found at this link: www.sec.gov/litigation/admin/2016/33-10215.pdf

Sears had put together a chart whereas it could be shown as Mr. D Tomasso also committed perjury in his interview with the SEC.
Exhibit 24
The Conviction of Mr. Jeanne Pierre in the Fusionpharm case can be found at this link: www. justice.gov/usao-co/pr/ denver-j ury-convi cts-attorney-securities-fraud-0

The specialist even went to the extent to send a letter to Matt Kirsch at the Denver DOJ' office. At that time Matt Kirsch, the First Assistant United States Attorney was the second in command below US Attorney Bob Troyer. This too was ignored and swept under the rug. Despite that Lehrer opinions were baseless and merely cut and pasted from previous Tod D Tomasso opinions and caused greater investor losses and his conduct was more egregious, the Denver SEC/DOJ would never charge Lehrer. For the reasons above, Karpel and Greer of the SEC should be investigated by the Inspector General. Along with Kate Funk of the FBI and & former AUSA Ken Harmon of the Denv,er US Attorney office.

XV. MISCONDUCT BY FEDERAL PROSECUTOR

Furthermore, as AUSA Jeremy Sibert failed to adequately investigate these credible claims alleged by Mr. Sears, amounts to misconduct, as it is well established the duty of prosecutors is "to seek justice within the bounds of the law, not merely to convict." ABA Criminal Justice Standards for the Prosecution Function, Standard 3-l.2(b) (4th ed.2015); see also Berger v. United States, 295 U.S. 78, 88(1935) (a prosecutor's interest is not to "win a case, but that justice shall be done"); United States v. Kojayan,8 F.3d 1315, 1323 (9th Cir. 1993) ("Prosecutors are subject to constraints and responsibilities that don't apply to other lawyers.... The prosecutor's job isn't just to win, but to win fairly, staying well within the rules."). And should view these obligations as applying in both civil and criminal enforcement actions. See Freeport-McMoRan Oil & Gas Co. v. FERC, 962 F. 2 d 45, 47 (D.C. Cir. 1992) (duty to do justice applies "with equal force to the government's civil lawyers").

XII. CASE SUMMARY

As such, Special Agent Funks use of the term Certified Public Accountant was not just being used to show she held a Kansas issued certificate but instead was done to mislead the magistrate judges into believing she was qualified to perform the services required in this investigation as the evidence discovered as the result of her unqualified forensic accounting opinions were the basis of fact relied on by the court in this investigation and by the courts in rendering their probable cause determinations and as such violates federal regulations tainting this entire investigation and rendering these search warrants as being illegal.

Without the investigation, search warrants and everything else discovered subsequent to this investigation renders the prosecution with no winnable case and the reasons why the prosecutors kept coming after the company and Mr. Sears. The last thing that the government thought they would find, is exactly what they found. A legitimate business. Instead of the Ponzi scheme or illegal marijuana grow they were assured they would discover.

The defendant humbly requests consideration in this matter that relates to the fact that the government ! abuse of power and corruption undermines the courts at its very

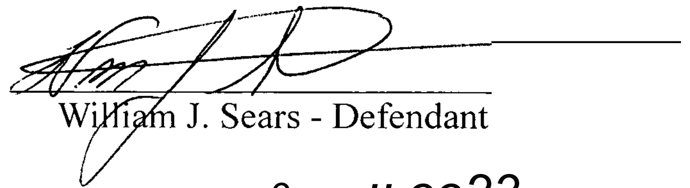
foundation.

However should this court choose not to grant this motion the defendant humbly requests a stay in proceedings so a proper evidentiary hearing may be conducted

The defendant wishes to thank the court for its assistance, fairness and patience as this.is a prose filing of which I have never had the experience to encounter till this day. As shown above he has not received effective counsel in this matter as he was advised to accept a pre-charging plea agreement without his attorney ever reviewing in detail any of the evidence provided in this document. All of the above claims were discovered after the fact by non-legal professionals and myself.

Thank you again your Honor and I do pray you will honor my request here by granting this motion.

Respectfully submitted this 29th day of January 2020.



William J. Sears - Defendant

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EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

May 16, 2014

IN THE MATTER OF Fusion Pharm, Inc. File No. 500-1	ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FusionPharm, Inc. ("FusionPharm") because of questions regarding the accuracy of assertions by FusionPharm and by others, in filings and disclosures made by FusionPharm on OTC Link (previously "Pink Sheets") operated by OTC Markets Group. Inc. and press releases to investors concerning, among other things: (1) the company's assets; (2) the company's revenues; (3) the company's financial statements; (4) the company's business transactions; and (5) the company's current financial condition.

The Coinmission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended from the period 9:30 a.m. EDT, on May 16, 2014, through 11 :59 p.m. EDT, on May 30, 2014.

By the Commission.

Jill M. Peterson
Assistant Secretary

EXHIBIT B

ATTACHMENT B

ITEMS TO BE SEIZED

The following records and other items, however maintained, related to (a) the formation, ownership, control and/or operations of FusionPharm, Inc., MeadPoint Venture Partners, LLC, VertiFresh, LLC, Bayside Realty Holdings, LLC, and Microcap Management, LLC (hereinafter, collectively, the "Enumerated Entities"); and (b) the scheme and activities which are described and are the subject of the affidavit in support of this warrant (which affidavit is incorporated by reference herein), which records and items are further described below, and which constitute evidence and/or instrumentalities of violations of Title 18, United States Code, Section 1343 (wire fraud) and Title 15 United States Codes, Section 78j(b) and 78ff(a):

(As used herein, the terms "recordsn and "information" include all of the items of evidence in whatever form and by whatever means they may have been created or stored, including any electrical, electronic, or magnetic form (such as any information on an electronic or magnetic storage device, including floppy diskettes, hard disks, ZIP disks, CO-ROMs, optical discs, backup tapes, 'printer buffers, smarl cards, memory, calculators, pagers, personal digital assistants such as Palm Pilot computers, as well as printouts or readouts from any magnetic storage device); any handmade form (such as writing, drawing, painting); any mechanical form (such as printing or typing); and any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, photocopies).)

-A Accounting records and supporting workpapers (in any iteration, including drafts) concerning any and all of the Enumerated Entities, including general journals, general ledgers, accounts receivable and payable ledgers, sales journals, purchase journals, accounts reconciliations, and all data entered in Quickb.o oks or any other computer digital accounting syst m.

B. All financial statements and supporting workpapers (in any iteration, including drafts) concerning any and a_ll of the Enumerated Entities.

C. All records concerning sale-s or any other revenue generating activities of any and all of the Enumerated Entities, including, by way of example, purchase and sales contracts or agreements, memoranda of understanding, term sheets, licensing or distributor agreements and contracts, invoices and purchase orders.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72177 / May 16, 2014

The Securities and Exchange Commission ("Comm iss ion") announced the temporary suspension, pursuant to Section 12(k) of the Securities Exchange Act of 1934 (the "Exchange , Act"), of trading in the securities of FusionPharm, Inc. (" FusionPharm ") of Denver, Colorado, at 9:30 a.m. EDT on May 16, 2014, and terminating at 11:59 p.m. EDT on May 30, 2014.

The Commission temporarily suspended trading in the securities of FusionPharm due to a lack of current and accurate information about the company because of questions that have been raised about the accuracy and adequacy of publicly disseminated information conce rning , among other things: (1) the company' s assets; (2) the company's revenues; (3) the company' s financial statements; (4) the company's business transactions; and (5) the company ' s current financial condition. This order was entered pursuant to Section 12(k) of the Exchange Act.

The Commission cautions broker-dealers, shareholders, and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Further , brokers and dealers should be alert to the fact that , pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspens ion, no quotation may be entered unless and until they have strictly complied with all of the provisions of the rule. If any broker or dealer has any questions as to whether or not he has complied with the rule, he should not enter any quotation but immediately contact the staff in the Division of Trading and Markets, Office of Interpretation and Guidance, at (202) 551-5777. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to FusionPharm's securities until such time as he has famili arized himself with the rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of the rule, the Commission will consider the need for prompt enforcement action .

If any broker-dealer or other person has any information which may relate to this matter , they should contact Jay Scoggins at (303) 844-11 05, Kimberly S. Greer at (303) 844-1042, or Ian S. Karpel at (303) 844-1011; of the Division of Enforcement.

EXHIBIT C

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

· tI,-KATEE FUNK! being duly sworn, depose and state the following:

1. I am a Special Agent employed by the Federal Bureau of Investigation ("FBI"). I have been so employed for approximately four years . I am currently assigned . in Denver, Colorado, to investigate economic or white collar crimes.

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2. At all times during the investigation described in this affidavit, I have been acting in my official capacity as a Special Agent with the FBI and have conducted interviews, collected and reviewed documents, and obtained information from the sources outlined in the following paragraphs as they relate to the issue of probable cause.

3. I make this affidavit in support of applications for the issuance of a search warrant for the following premises described more fully herein and in Attachment A (incorporated herein by reference) :

a. Business of FusionPharm, 5850 East 58th Avenue , Unit F, and 5750 East 58th Avenue Unit J, Commerce City, Colorado, 80022 (hereinafter, the "Subject Premises").

4. The FBI, with the assistance of the Internal Revenue Service's Criminal Investigation Division ("IRS-CID"), is investigating an offering fraud and "pump and dump" microcap stock scheme believed to be perpetrated by Scott Dittman ("Dittman"),

EXHIBIT D

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

I, KATEE. FUNK, being duly sworn, depose and state the following:

1. I am a Special Agent employed by the Federal Bureau of Investigation ("FBI"). I have been so employed for approximately four years. I am currently assigned in Denver, Colorado, to investigate economic or white collar crimes. I have participated in several fraud investigations, with many of those investigations involving wire fraud, mail fraud, money-laundering an mortgage fraud. (B9 .J9 lJJY f!1P19YlI)§r1L'\\1f6J fi j

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2. At all times during the investigation described in this affidavit, I have been acting in my official capacity as a Special Agent with the FBI and have conducted interviews, collected and reviewed documents, and obtained information from the sources outlined in the following paragraphs as they relate to the issue of probable cause.

3. I make this affidavit in support of applications for the issuance of a search warrant for the following premises described more fully herein and in Attachment A (incorporated herein by reference):

a. Business of FusionPharm, 5850 East 58th Avenue, Unit F, and 5750 East 58th Avenue Unit J, Commerce City, Colorado, 80022 (hereinafter, the "Subject Premises").

4. The FBI, with the assistance of the Internal Revenue Service's Criminal Investigation Division ("IRS-CID"), is investigating an offering fraud and "pump and dump" microcap stock scheme believed to be perpetrate·d by Scott Dittman ("Dittman"),

President and CEO of FusionPharm, Inc. ("FusionPharm") and William Sears ("Sears"), Dittman's brother-in-law, and a founder and control person of FusionPharm, for various suspected federal criminal offenses, including wire fraud, in violation of 18 U.S.C. §1343, and securities fraud, in violation of 15 U.S.C. §§78(b) and 78ff(a), and 17 C.F.R. §240.10b-5.

5. The facts set forth in this affidavit are based upon my personal observations, my training and experience, written reports, information from witnesses, and information and analyses obtained from other law enforcement agencies, including the United States Securities and Exchange Commission (" SEC"). This affidavit is intended to show that there is probable cause for the requested search warrants and does not purport to set forth all of my knowledge of, or investigation into, this matter.

6. Based on the evidence developed, described and detailed herein, your affiant submits that there is probable cause to believe that (a) Dittman and Sears have committed the criminal offenses as listed in paragraph 4 above, and (b) evidence of these crimes is located at the Subject Premises.

ORIGINS OF SEC'S INVESTIGATION

7. The matter which is currently the subject of a criminal investigation arose from a referral on or.about December 9, 2013, by the SEC's Regional Office in Denver, Colorado. The referral involved allegations the SEC had been investigating relating to a possible offering fraud and pump-and-dump scheme being orchestrated by Dittman and Sears through FusionPharm, a publicly traded small cap company.

8. The genesis of the SEC's investigation involved a complaint filed by Cooperating Witness 1 (hereinafter referred to as "CW-1"), a former FusionPharm