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Seth Uram and Clemon Ashley
US Attorney's Office
1000 S.W. Third Avenue Ste 600
Portland, OR 97204

RE: *U.S. v. Fred Allman* - Case No. 3:13-cr-00339-HZ
Plea Agreement and Discovery Issues

Dear Mr. Uram and Mr. Ashley:

I write to you in response to your plea agreement proposing a resolution of Mr. Allman's case. Mr. Allman thanks you for the consideration. He rejects the offer and will proceed to a jury trial.

A. Issues with the plea agreement:

Our extensive discussions with Mr. Allman make clear why the offer is unacceptable. Mr. Allman believes that he cannot plead guilty because he is not guilty based on the elements of the crime set forth in the plea agreement. It remains a complete mystery to him why the government believes that Mr. Allman can plead guilty to attempting to conceal an interest in property in which he did not have any interest. He cannot escape this fundamental flaw in the government's theory. Even if he serves more time because of it, he cannot plead guilty to conduct that is not a crime.

Beyond these factual issues, the government's proposed loss figure appears to be based on completely unrelated state court civil judgments that existed before Mr. Allman ever contemplated bankruptcy. Those are not an appropriate measure of loss in this bankruptcy case. Even if the government's allegations are true, Mr. Allman's conduct during the

bankruptcy did not have any material impact on any of those claims or the losses they allege. It is not Mr. Allman's relevant conduct nor is it relevant to this case.

In contrast, the fraud and negligence committed by the trustee and his beneficiaries has prevented the creditors from recovering anything through bankruptcy. In this case, the defense is unable to ascertain any losses other than those caused by the trustees, the opaque and conflicted bankruptcy system, and a team of government endorsed parasites who looted the bankruptcy estate to pay themselves.

As best we can determine, the only losses were suffered by Mrs. Allman. This allegedly battered and mentally ill woman was victimized by the bankruptcy process and a trustee who was then promoted to federal bankruptcy judge for his fine work. Enriching themselves, these vultures stripped every bit of meat off the carcass of Mrs. Allman's dreams of a horse farm. But you should not suffer for Mrs. Allman's losses long given what she stole from the bankruptcy estate. In the end, she did well especially considering the obvious fact that she is far more culpable than Mr. Allman and he is the one facing criminal charges. The government seems to consistently ignore that she is the one that actually owned these assets and she was a professional financial planner at the time of the bankruptcy.

Mr. Allman looks forward to having these issues vetted by a jury. Before we can get to a trial, however, there are significant discovery problems that need to be resolved.

B. Discovery Issues:

1. The Discovery need to be reprocessed consistent with current protocols.

As you both know, the process of preparing for trial brings into focus the evidence. It is only within the last 45 days that we have undertaken a comprehensive audit of the discovery provided by the government. That

audit has revealed discovery that is materially incomplete. This must be redressed before we proceed to trial.

The specific problems with the discovery are outlined below:

a. Missing Native Files:

The discovery has been produced in six volumes. GOV 01 – 03 was originally produced to the FPD on 6/23/2014. GOV 04 was originally produced to the FPD on 2/6/2015. GOV 04B was originally produced to the FPD on 3/20/2015. GOV 05 was originally produced to Lynne Morgan on 10/17/2016. GOV 6 was produced to Lynne Morgan on 10/25/2016.

Because the discovery had been through a number of hands and did not look particularly voluminous, Mr. Allman requested that the discovery be reproduced in its entirety. Pursuant to an email request, the government reproduced GOV 1 – 6 and provided it to the defense on 11/29/2016.

A review of those volumes indicates that none of the native files were produced. It is crucial for the defense to have access to native files in order to use the litigation software tools we have in place. Poorly OCR'd .pdf files of the kind provided in this case can be used for a very basic review but little more.

- GOV 01

This volume contains 677 .pdf files. There is no native file folder and none of the native files have been produced. It also does not contain DATA/TIFF/OCR folders consistent with current protocols.

- GOV 02

This volume contains 47 .pdf files. There is no native file folder and none of the native files have been produced. It also does not contain DATA/TIFF/OCR folders consistent with current protocols.

- GOV 03

This volume contains three .pdf files. There is no native file folder and none of the native files have been produced. It also does not contain DATA/TIFF/OCR folders consistent with current protocols.

- GOV 04

This volume contains two .pdf files. There is no native file folder and none of the native files have been produced. It also does not contain DATA/TIFF/OCR folders consistent with current protocols.

- GOV 05

This volume contains two .pdf files. There is no native file folder and none of the native files have been produced. It also does not contain DATA/TIFF/OCR folders consistent with current protocols.

- GOV 06

This volume contains one .pdf file. There is no native file folder and none of the native files have been produced. It also does not contain DATA/TIFF/OCR folders consistent with current protocols.

b. Missing Indices:

Current discovery protocols dictate that indices of the discovery are generated and provided to assure that there is a clear record of what has been produced. Because, as to the majority of the discovery, there are no indices we cannot know if what the government produced is what the government intended to produce. There are no indices whatsoever for Volumes 1-3. Volume 4 has a worthless index that does not accurately characterize the documents. Volumes 5 and 6 contain an index that accurately listed what was in those volumes but did nothing to resolve the lack of prior indices. We ask that you reprocess these volumes and properly index them so that we can

all be assured that what you believe you are producing is actually what you produced.

I apologize that the flaws in your original production did not come to our attention sooner. One reason for that was our mistaken assumption that at least one of Mr. Allman's three prior attorneys had to have comprehensively audited the discovery. It turns out none of them did. Another reason we failed to discover this sooner was that Mr. Allman did not inform us that he had never had any opportunity to review the discovery until last month. We again naturally assumed that over the course of three lawyers and two years someone would have reviewed the discovery with Mr. Allman. Apparently no one did. When we started to look at specific witness statements with him in preparation for trial, he made a comment about never having seen the report before. Further inquiry revealed he had seen next to nothing from the discovery. Once we undertook a comprehensive review together with him, it was evident that significant materials were missing.

We do not blame you for the flaws with the discovery but resolving these issues now falls to you personally. We believe the discovery is incomplete, in part, because it was produced when a completely different set of protocols were in place in 2013. We believe that some of the issues can be remedied simply by starting from the scratch and re-processing the entire discovery production consistent with current protocols. Nevertheless, given the exigencies in place we are confident that there is no way this can be completed in time for the current trial date.

2. Missing Discovery:

Reprocessing does not solve all of our problems. There are significant materials referenced in the discovery itself that have not been provided. It appears that your office delegated the responsibility for production of much of the materials to the US Trustee's Office. I further believe that the trustee's office failed to provide materials to your office which of course impacted

what your office produced as discovery. Those issues are discussed further below.

- **Item #1 – Hard drive image.**

An image of a computer allegedly belonging to Mr. Allman was produced by the United States trustee and to our knowledge has never been provided to the defendant. We know the image exists because an FBI 302 refers to it. On February 17, 2015, SA LaMonica asked Judge McKittrick about an image he had made of Fred Allman's computer. Judge McKittrick told SA LaMonica he had an image made but was unable to recall the name of the individual who made the image. According to SA LaMonica's FD-302, McKittrick said "... he [McKittrick] will check his records and provide the information to Agent LaMonica" and "Judge McKittrick advised he would review his files regarding the Allman Bankruptcy to get more information on the individual who created the back-up image of Allman's computer." In a follow-up discussion between SA LaMonica and Judge McKittrick on February 24, 2015 Judge McKittrick told LaMonica he "checked his records and advised that he had used Steve Nichols Consulting to prepare the back-up image." Refer to SA LaMonica's FD-302 dated 2/17/2015 (ALLMAN_0006944).

The defense has never received a copy of this image.

- **Item #2 - Trustee files, work papers, records and other materials in the possession of the United States trustee**

The United States bankruptcy trustee's office and its professionals cannot possibly have managed this entire bankruptcy estate over a period of eight years without generating any work papers, files, or records. We have repeatedly asked for the trustee's work papers, files, or records in this case. Nothing has been provided.

We know they exist because in SA LaMonica's FD-302 dated 2/17/2015, Judge McKittrick references "files" and "records" that he

maintained. It appears as though Judge McKittrick stored records in multiple locations and that as a result records relevant to Mr. Allman's case have not been collected and assembled by your office.

We have repeatedly asked for the details concerning the disbursement of the proceeds from the bankruptcy estate. We have repeatedly asked for what payments were made to professionals and what they were made for. None of this information which is critical to the bias of a number of of your key witnesses has been provided.

We have repeatedly asked for details about what the law firms, lawyers, accounting firms, and accountants did for the trustee while dissipating the entire bankruptcy estate and providing nothing to the creditors. None of this information has been provided despite our requests.

- **Item #3 - Photographs and video of the estate property generated by or in the possession of Trustee McKittrick.**

On 1/21/2009 Mr. McKittrick's testified that, "I had my assistant bring a digital camera as well as a video camera. And between the two of us we took still pictures and did a video as well." We have been provided .pdf files of eighteen photographs. Our assessment, based on the way the photos are numbered, is that there are as many as 218 photos and possibly more. Only a fraction of these images have been produced. These images are relevant to the defense arguments about the trustee's malfeasance and missing estate property.

We have the following images:

- Allman 21
- Allman 22
- Allman 24
- Allman 91
- Cindy 12
- Cindy 22

- Cindy 28 – Cindy 29
- Cindy 44
- Cindy 59
- Cindy 66
- Cindy 72
- Cindy 75
- Cindy 94
- Cindy 97 – Cindy 99
- Cindy 129

Based on the numbering system Judge McKittrick used the following photographs are missing:

- Allman 1 – Allman 20
- Allman 23
- Allman 25 – Allman 90
- Any photos past Allman 90
- Cindy 1 – Cindy 11
- Cindy 13 – Cindy 21
- Cindy 23 – Cindy 27
- Cindy 30 – Cindy 43
- Cindy 45 – Cindy 58
- Cindy 60 – Cindy 65
- Cindy 67 – Cindy 71
- Cindy 73 – Cindy 74
- Cindy 76 – Cindy 93
- Cindy 95 – Cindy 96
- Cindy 100 – Cindy 128
- Everything beyond Cindy 128

In addition to the entirely missing images, we do not have natives of any of the images. This means none of the images are suitable for display or use in a courtroom.

We also do not have a copy of the video McKittrick testified that he made with Ms. Morris when he entered the property with a court order. Beyond the video he personally took, we also believe that once you have obtained the billing statements for the professionals in this matter, it will show that attorneys Bosse and Cobb were paid to make some kind of video of the property. That video too has never been provided.

- **Item #4 – Accounting records relating to the bankruptcy estate**

We know that documents were seized by SA LaMonica subsequent to his document review at the accounting firm of Henderson Bennington Moshofsky C.P.A. on January 30, 2015. (ALLMAN_0006893). What we do not know is what those documents are and we have no indication they were ever produced in discovery.

- **Item #5 – Documents seized by SA Lamonica from US Trustee Kenneth Eiler’s garage.**

On January 28, 2015 SA LaMonica spent five hours reviewing boxes of documents in the garage of Bankruptcy Trustee Ken Eiler. LaMonica seized approximately 1/2 of a bankers box worth of documents. If these were Mr. Allman’s business records they should be produced under Rule 16 as discovery and we have no indication that any of that material was produced. Agent LaMonica also took photographs of the boxes and provided a receipt to Eiler. We do not have a copy of the receipt and we do not have copies of LaMonica’s photographs. Refer to SA LaMonica’s FD-302 dated 1/28/2015 (ALLMAN_0006895).

- **Item #6 – FBI inspection of evidence and records in the possession of the Portland police Bureau:**

The Multnomah County D.A.’s office provided the FBI with two authorizations for pretrial inspection of State’s evidence. One is dated 8/7/2012 and it allowed SA Chris Chew access take & test items listed on

PPB Property/Evidence receipt 1281503 (Toshiba laptop computer) and PPB Property/Evidence receipt 1281502 (cardboard box filled with miscellaneous business, financial and personal documents). Refer to ALLMAN_0000074. The other is dated 3/25/2013 and it allowed SA Mike Palmer access to a black Dell computer tower, serial #D46ZTH1, illustrated on PPB Property/Evidence receipt 1281502, a cardboard box filled with miscellaneous business, financial and personal documents illustrated on PPB Property/Evidence receipt 1281503 and a Toshiba laptop computer illustrated on PPB Property/Evidence receipt 1260801. Refer to (ALLMAN_0000073).

We have not been provided any discovery regarding the FBI's inspection of this evidence. We have no idea whether any of this evidence is in the discovery. We have no indication of what the results of any testing might be. We further request any FD-302's or other investigative reports regarding the FBI's inspection of computers and other evidence held at the Portland Police Bureau's Property/Evidence facility. If these are Mr. Allman's records then they should have been produced under Rule 16.

- **Item #7 - Email files in native format**

We request all FBI emails from email exchanges between the agents and civilians produced in the native file format such as .PST. Discovery indicates that on 2/7/2012 SA Chew exchanged emails with Mark Cowtan. In addition, Mr. Allman had a series of email exchanges with SA Chew. Also there are a series of emails from David Terveen to SA Chew. (ALLMAN_0000021). We also have some emails between Marilee Cross and SA Chew. ALLMAN_0000071. It is imperative that we have all of the emails in their entirety as well as all attachments.

As noted above, for any emails it is essential to have the container files (.PST). It is only with those that we can be assured that the entirety of the email thread is present and that necessary context has been provided. We cannot use the flattened out, reprinted emails provided in discovery as

exhibits at trial because we cannot be sure they represent the entirety of the email thread.

- **Item #8 – FD-192A reports**

We request that the government provide all FD-192A's generated in this case. Based on information and belief it appears there should be more FD-192A reports that were generated relative to Mr. Allman's case. We only have two. (ALLMAN_0000075, 351).

- **Item #9 – Complete List of Kimberly Allman Jewelry**

Mrs. Allman testified that she provided Judge McKittrick a list of all of her jewelry assets that she did not declare in her petition. That list has never been provided in discovery and we have no information regarding the disposition of these assets. Was an arrangement made between the trustee and Mrs. Allman? If so what was it? Where did the jewelry go and why was it not part of the bankruptcy estate?

- **Item #10 – Financial Documents:**

We request the select financial documents SA Chew obtained from the First Federal account jointly held by John Hinman SSA 545-54-9465 and Alicia Rojas-Ugalde. Refer to ALLMAN_0000030. We do not know what these records are and we have no indication they have been produced in discovery.

- **Item #11 – Production of all 302's based on serial.**

In reviewing the FBI 302's in the case, we observed a gap in the sequence of report's serial numbers. From this we infer that the government has failed to produce these reports created relative to this investigation. A table of these reports follows:

Date of 302	File #	Serial #	Bates#
01/23/2012	49A-PD-54034	Serial 3	ALLMAN_0000028
01/25/2012	49A-PD-54034	Serial 6	ALLMAN_0000030
01/30/2012	318B-PD-54034	Serial 13	ALLMAN_0000040
02/02/2012	318B-PD-54034	Serial 21	ALLMAN_0000051
02/06/2012	318B-PD-54034	Serial 40	ALLMAN_0000028
02/08/2012	318B-PD-54034	Serial 17	ALLMAN_0000045
02/13/2012	318B-PD-54034	Serial 12	ALLMAN_0000056
02/14/2012	318B-PD-54034	Serial 22	ALLMAN_0000058
02/22/2012	318B-PD-54034	Serial 23	ALLMAN_0000062
02/22/2012	318B-PD-54034	Serial 16	ALLMAN_0000047
02/24/2012	318B-PD-54034	Serial 18	ALLMAN_0000049
03/30/2012	318B-PD-54034	Serial 27	ALLMAN_0000066
05/24/2012	318B-PD-54034	Serial 31	ALLMAN_0000071

To the extent that there are other reports, we ask that they be produced.

- **Item #12 – The “Sylvan” file and discovery related to Avalon Communications proposed purchase of assets from the In re Fournery bankruptcy.**

US Trustee Camacho testifies in a deposition about interactions he had with Mr. Allman doing business as Avalon Communications regarding the sale of assets from the In re Forney bankruptcy. Mr. Camacho discusses records and agreements that were shared. He also talks about the possibility of a capital investment by Avalon and this is where the Sylvan file becomes relevant. That file contained information about sources of capital completely separate from Mr. Allman that would have been involved in that sale. During the bankruptcy trial, McKittrick talks about the Sylvan file and trying to obtain it for review.

We are requesting all information relating to the Sylvan file and all communications between Mr. Camacho and Mr. Allman. We are requesting all documents exchanged between Mr. Camacho and Avalon or Mr. Allman.

We are also requesting all communications between Mr. Camacho and Mr. McKittrick regarding these issues.

- **Item #13 – Exhibit and Witness Lists**

We have repeatedly asked for witness lists and exhibit lists to aid in our trial preparation. None have been provided.

- **Item #14 – Expert Summaries**

We have asked for expert disclosures required under Rule 16. At our last meeting you explained that a federal bankruptcy judge and former trustee of the case would be a fact witness but could not serve as your expert. You reported that there would need to be someone who was somehow more expert than a federal bankruptcy judge to say that the federal bankruptcy judge was right in the first instance. As unreal as that seems, it might not impact our trial date if you had handed me the expert disclosures required under Rule 16 at that meeting. You did not and you could not even confirm for sure who the expert would be. That puts Mr. Allman in an untenable position relative to an April 17 trial date, especially in combination with the discovery issues outlined here.

- **Item #15 – Witness Statements:**

You have been speaking with key witnesses like Mrs. Allman, Judge McKittrick, and others and yet there have been no new reports or any new discovery of any kind produced since 2016.

It seems unlikely that nothing discoverable has occurred since that time. Your oral summary of her meeting with you introduced a new government theory: that Mrs. Allman was a battered spouse and that is why she told dozens of lies during her deposition. We now have to defend a domestic violence case in the middle of a bankruptcy concealment fraud allegation and we have no actual report regarding the specifics of what she said. This raises a host of other issues.

- **Item #16 – Communications between the US Trustee and the USAO**

This appears to be a case pushed by the US Trustee's office that never merited federal prosecution. Why would your office ever accept a standalone bankruptcy fraud case where there was no loss and no assets actually concealed? Why would your office accept a standalone bankruptcy fraud case against Fred Allman where no assets were ever identified by the trustee other than those already disclosed and owned by Mrs. Allman? Why would your office ever agree to accept a standalone bankruptcy fraud case where the involvement of the US Trustee's office over the course of eight years would result in zero recovery for the creditors and all of the estate being wasted on the trustee's professional fees? There is nothing about Mr. Allman's conduct during the bankruptcy that had any impact on what happened to the creditors. So why are we wasting time with this when we could be litigating real crimes with real harm to real victims in the real world?

These are not rhetorical questions. If this prosecution was initiated as a favor or at the specific request of someone in the US trustee's office, particularly if the person is a witness, it is material and relevant to Mr. Allman's defense. We are therefore requesting discovery of all communications between the USAO and the trustees individually or the United States Trustee's Office about how this prosecution was initiated in the first instance. Why was the actual owner of these assets who perjured herself repeatedly about her interest in them not the one charged with this crime?

3. Conclusion:

We look forward to trying this case with you. I anticipate it will be a fascinating journey of discovery through the bankruptcy system. The new domestic violence angle you have introduced makes it even more intriguing. I had great success defending those cases when I was a young public

defender more than 20 years ago and I never thought I would be a part of one again.

Before we get to trial, however, we need to make certain that we have closed the loop on the various discovery issues identified above. You need to be able to personally certify that everything that should be produced has been produced and then we can proceed with what should be an interesting piece of litigation.

Thank you for your consideration. We look forward to discussing these issues with you soon.

Sincerely,

s/Matthew Schindler
Matthew Schindler

s/Robert Salisbury
Robert Salisbury
Attorneys for Fred Allman