STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF McLEAN

People of the State of Illinois	)	
	)	
v	)	No. 17 CF 1025
	)	
John Butler,	)	
	)	
Defendant	)	

REASSIGNMENT ORDER

This case is assigned to Judge William Yoder. State to contact Judge Yoder's office at 309-888-5222 to set a Status hearing.

Attorney's of Record: See Attached

Kevin P. Fitzgerald

Honorable Kevin Fitzgerald

Dated this 6th day of April, 2018.

Adam Ghrist
Assistant McLean County State's Attorney
104 W. Front Street
Bloomington, IL 61701
adam.ghrist@mcleancountyil.gov

Bradley Rigdon
Assistant McLean County State's Attorney
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skording@meyercapel.com

J. Steven Beckett
Attorney at Law
508 S. Broadway
Urbana, IL 61801
steve@beckettlawpc.com

Clerk of The Circuit Court
Eleventh Judicial Circuit
County of McLean
104 W Front St. Bloomington, IL 61701

RECEIPT VOUCHER

Date Received : 03/22/2018 Batch Id : CR303222018 Effective Date 03/22/2018 Receipt # : 1227676
Manual Receipt # :

Received From : BUTLER, JOHN YALE
Party Name : BUTLER, JOHN YALE
Case Number : 2017CF001025
New Party Balance : $ .00

Source/Ck# or CC Val.#	Amount
CASH	$ 1.00
Total Paid :	$ 1.00

Count	Citation #	Account Name	Starting Balance	Amount Paid	Ending Balance
		COPY OR MOTION FEE	$ 1.00	$ 1.00	$ .00
		Totals:	**$ 1.00**	**$ 1.00**	**$ .00**

Clerk of The Circuit Court
Eleventh Judicial Circuit
County of McLean
104 W Front St. Bloomington, IL 61701

RECEIPT VOUCHER

Date Received : 03/22/2018 Batch Id : CR303222018 Effective Date 03/22/2018 Receipt # : 1227675
Manual Receipt # :

Received From : BUTLER, JOHN YALE
Party Name : BUTLER, JOHN YALE
Case Number : 2017CF001025
New Party Balance : $ .00

Source/Ck# or CC Val.#	Amount
CASH	$ 2.00
Total Paid :	$ 2.00

Count	Citation #	Account Name	Starting Balance	Amount Paid	Ending Balance
		COPY OR MOTION FEE	$ 2.00	$ 2.00	$ .00
		Totals:	**$ 2.00**	**$ 2.00**	**$ .00**

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

MOTION FOR SUBSTITUTION OF JUDGE

NOW COMES the Defendant JOHN Y. BUTLER by his attorney J. STEVEN BECKETT of Beckett Law Office, P.C., and for his Motion for Substitution of Judge states as follows:

1. That the Defendant is charged in a 44-Count indictment which includes 12 Counts charging offenses that are classified as Class X felonies.

2. That his matter had previously been assigned to Judge Robert Frietag, who had conducted all pretrial proceedings to date.

3. That on March 15, 2018, counsel for Defendant received a letter from Judge Freitag indicating that he had asked for the re-assignment of this case due to his pending retirement, and notifying Defendant that the case had been reassigned to Judge Michael Stroh, effective March 13, 2018 (the date of Judge Freitag's letter.)

4. Pursuant to 725 ILCS 114-5(a), Defendant moves to substitute Judge Stroh on grounds that said judge is so prejudiced against him that he cannot receive a fair trial. The Defendant, pursuant to said statute, also moves to substitute Judge Charles Feeney on grounds that said judge is so prejudiced against him that he cannot receive a fair trial.

5. That this motion is filed within 10 days of notice of reassignment and is thus automatic in operation.

WHEREFORE the Defendant JOHN Y. BUTLER prays that his Motion for Substitution of Judge be granted and for such other relief deemed just and appropriate.

Respectfully submitted,
JOHN Y. BUTLER, Defendant,

By: _____
His attorney

J. STEVEN BECKETT #0151580
BECKETT LAW OFFICE, P.C.
508 South Broadway
Urbana IL 61801
steve@beckettlawpc.com
(217) 328-0263
(217) 328-0290 FAX

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2018, a copy of the foregoing ***Motion for Substitution of Judge*** was served by hand delivery:

Adam Ghrist
McLean County States Attorneys Office
Law and Justice Center
104 W. Front Street
Bloomington IL 61701

J. STEVEN BECKETT

J. STEVEN BECKETT #0151580
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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

THE PEOPLE OF THE STATE OF ILLINOIS	)	
VS.	)	No. 2017-CF-1025
JOHN BUTLER, Defendant.	)	

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS WIRE FRAUD COUNT

Now comes the People of the State of Illinois by and through Adam W. Ghrist and Bradly Rigdon, McLean County Assistant State's Attorneys, and RESPONDS TO Defendant's Motion to Dismiss Wire Fraud Count, filed January 18, 2018, and in support there of state as follows:

1. The People file this response as a complementary answer to the constitutional claims raised in Defendant's Motion to Dismiss Wire Fraud Count.

The Count 26 of the Bill of Indictment Sufficiently States a Claim.

2. Defendant alleges in paragraph 2.a. of their motion that Count 26 does not constitute a scheme or artifice to defraud or to obtain money or property by means of false pretense, representation or promises.
3. The People allege in Count 26 that the Defendant understated the amounts of taxable sales for the month of March, 2014.
4. In order to properly state a criminal offense the People must set forth the nature and elements of the offense. *People v. McClenton*, 2017 IL App (3d) 160387, ¶ 35, appeal denied, 122750, 2017 WL 5635916 (Ill. Nov. 22, 2017), citing People v. *Sheehan*, 168 Ill. 2d 298 at 303, 213 Ill.Dec. 692, 659 N.E.2d 1339 (1995).

5. The People have provided sufficient facts to state the nature of the offense as it relates to the charged conduct.

The Court Should Disregard and Strike Arguments Regarding Facts of the Case.

6. "The purpose of a motion to dismiss for failure to state an offense is to challenge the sufficiency of the allegations in the complaint, not the sufficiency of the evidence." *Sheehan*, 168 Ill. 2d at 303. See also *People v. Soliday*, 313 Ill. App. 3d 338, 342, 729 N.E.2d 527, 530 (4th Dist. 2000).
7. The Defendant spends some time raising facts that may be relevant to the defense theory of the case. However, those facts are not relevant to addressing a motion to dismiss under 725 ILCS 5/114-1(a)(8). *Id.*

WHEREFORE, the People pray this Court grant the People's Motion and deny the Defendant's Motion to Dismiss Wire Fraud.

Respectfully submitted,

Adam W. Ghrist
First Assistant State's Attorney
McLean County State's Attorney's Office

Bradly Rigdon
Assistant State's Attorney
McLean County State's Attorney's Office

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney's of record of all parties to the above cause by:

✓ Depositing a true and correct copy of the same in the U.S. Post Office or post office box in the City of Bloomington, Illinois, enclosed in an envelope with postage fully prepaid on the 20 day of March, 2018.

____ Hand delivering a true and correct copy of the same on the ____ day of _____, 2018.

Subscribed to and sworn before
me this 26 day of March, 2018.

Tami E. Buckles
Notary Public

OFFICIAL SEAL
TAMI E BUCKLES
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:10/18/18

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2017-CF-1025
	)	
JOHN Y. BUTLER	)	
	)	
Defendant.	)	

DEFENDANT'S DISCOVERY RESPONSE

NOW COMES the Defendant, JOHN Y. BUTLER, by his attorney, J. STEVEN BECKETT, BECKETT LAW OFFICE, P.C. and SCOTT KORDING, MEYER CAPEL, P.C., and for his discovery response states as follows:

1. That at a trial of this cause, the Defendant may raise one or more of the following defenses:

(a) Non-committal of the acts alleged.

(b) Failure of proof of the essential elements of the charged crimes.

(c) Lack of the requisite mental state;

(d) Good faith;

(e) Reliance upon audit findings and directives;

(f) Compliance with contractual provisions under an existing management agreement;

(g) No criminal responsibility for the alleged wrongful acts of others.

(h) Advice of counsel.

2. That at a trial of this cause, the Defendant may call as a witness:

(a) Any witness identified by the State in its discovery responses or in underlying reports within said response;

(b) Anthony Matens, Bloomington, IL

Witness interview summaries are being provided to the State by separate cover and are not filed with this discovery response. Investigation continues in this case. Defendant acknowledges a continuing duty to disclose such matters pursuant to Illinois Supreme Court 413.

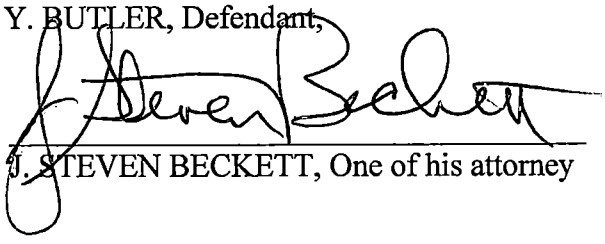
3. The Defendant may introduce items of physical evidence consisting of business records of Central Illinois Arena Management, Inc. (CIAM), BMI, Inc. and other affiliated entities, accounting records that have been contained in the State's discovery disclosures and banking records that are within the State's discovery disclosure. At present all of these records are within the possession and control of the State. The Defendant acknowledges a continuing duty to identify and disclose those records which may be used at trial pursuant to Illinois Supreme Court Rule 413.

The Defendant is attempting to locate and examine records still in the possession of the State, notwithstanding the inconvenience caused by seizure and relocation of said records outside of McLean County. The Defendant acknowledges a continuing duty to identify and disclose those records which may be used at trial pursuant to Illinois Supreme Court Rule 413.

4. The Defendant may engage a forensic accounting expert to provide financial analysis and opinion. No such engagement has been finalized at this time, but consultation for that purpose continues. Defendant acknowledges a continuing duty to disclose such matters pursuant to Illinois Supreme Court 413.

5. Upon identification of items of physical evidence to be used at trial, said matters will be available for inspection and copying at Beckett Law Offices PC, 508 South Broadway, Urbana IL 61801.

Respectfully submitted
JOHN Y. BUTLER, Defendant,

By: 
J. STEVEN BECKETT, One of his attorney

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(217) 328-0263
(217) 328-0290 FAX

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 2018, a copy of the foregoing ***Defendant's Discovery Response*** was served by U.S. Mail delivery:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

J. STEVEN BECKETT

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IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER, Defendant.	)	

DEFENDANT'S REPLY TO THE PEOPLE'S RESPONSE IN SUPPORT OF THE CONSTITUTIONALITY OF 720 ILCS 5/17-24(b)

BACKGROUND

Defendant is charged with six counts of wire fraud under 720 ILCS 5/17-24(b). These are Counts 26, 28, 30, 32, 34, and 36 of the Indictment.

ARGUMENT

All statutes are presumed constitutional, and the party challenging the constitutionality of a statute has the burden of clearly establishing that it violates the constitution. *People v. Carpenter,* 228 Ill. 2d 250, 267 (2008); *People v. Johnson,* 225 Ill. 2d 573, 584 (2007). Under the banner of its police power, the legislature has wide discretion to fashion penalties for criminal offenses, but this discretion is limited by the constitutional guarantee of substantive due process, which provides that a person may not be deprived of liberty without due process of law. *People v. Wright,* 194 Ill. 2d 1, 24 (2000). A criminal statute must be scrutinized with particular care and any statute that makes a substantial amount of constitutionally protected conduct unlawful may be held facially invalid even if they also have legitimate application. *City of Houston, Texas v. Hill,* 482 U.S. 451, 459 (1987).

The statute in question states that "a person commits wire fraud when he or she: (1) devises or intends to devise a scheme or artifice to defraud or to obtain money or property by

means of false pretenses, representations, or promises; and (2) for the purpose of executing the scheme or artifice, transmits or causes to be transmitted any writings, signals, pictures, sounds, or electronic or electronic impulses by means of wire, radio, or television communications: (A) from within this State; or (B) so that the transmission is received by a person within this State; or (C) so that the transmission may be accessed by a person within this State." 720 ILCS 5/17-24(b).

1. The Statute As Applied is so Vague that it Permits Law Enforcement and Prosecutors to Arbitrarily or Discriminatorily Enforce It

Under the Due Process Clauses of the United States and Illinois Constitutions, a statute may found to be impermissibly vague and thus unconstitutional for two separate and independent reasons: (1) it fails to provide individuals of ordinary intelligence reasonable opportunity to understand what conduct the law prohibits so that they may act accordingly; OR (2) it fails to provide reasonable standards to law enforcement to prevent against authorizing or even encouraging arbitrary or discriminatory enforcement. *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849 (1999); *Martin v. Lloyd*, 700 F.3d 132, 135 (4th Cir. 2012); *Bartlow v. Costigan*, 2014 IL 115152, ¶ 40 (citing *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill.2d 390, 441 (2006)). The degree of vagueness tolerated by the United States Constitution depends on the nature of the enactment. *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). The United States Constitution tolerates a "lesser degree of vagueness in enactments with criminal rather than civil penalties...." *Wilson*, 2012 IL 112026 at ¶ 23.

All of the charges that Defendant is facing stems from a disagreement as to the interpretation of a business contract between Defendant and the City of Bloomington. This

contract included mandatory consultation, mediation, and arbitration clauses that were never utilized. Instead, law enforcement and prosecutorial agents used 720 ILCS 5/17-24(b) to charge Defendant with criminal actions for essentially a civil disagreement of contract interpretation. A statute must provide "sufficiently definite standards for law-enforcement officers and triers of fact that its applications does not depend merely on their private conceptions." *People v. Fabring*, 143 Ill. 2d 48, 53 (1991). In this case, law enforcement agents used their private conceptions to charge Defendant with wire fraud, and were able to use the Statute to charge several offenses where the dispute regards monies received and paid under a contract. Furthermore, a statute lacking "terms susceptible of objective measurement" is unconstitutionally vague. *Keyishian v. Board of Regents of the University of the State of New York*, 385 U.S. 589, 604 (1967) (*quoting Cramp v. Board of Public Instruction*, 368 U.S. 278, 286 (1961)). In this case, law enforcement agents used their own subjective interpretation of what constituted a false pretense, representation, or promise when they alleged that a civil disagreement that was required to be mediated was criminal conduct.

2. 720 ILCS 5/17-24(b) Completely Lacks a *Mens Rea* Requirement and Renders the Statute an Absolute Liability Offense

The general rule of the common law is the requirement of mens rea in a criminal statute. *United States v. Balint*, 258 U.S. 250, 251 (1922). A statute violates the due process clauses of both the Illinois and United States Constitutions if it potentially subjects wholly innocent conduct to criminal penalty without requiring a culpable mental state beyond mere knowledge. *People v. Madrigal*, 241 Ill. 2d 463, 467 (2011). Generally, a guilty mind is "a necessary element in the indictment and proof of every crime." *United States v. Elonis*, 135 S.Ct. 2001, 2009 (2015).

Illinois courts have a history of holding statutes unconstitutional when the required mental state is missing or lacking clarity such that they potentially punish innocent conduct. *See In re K.C.*, 186 Ill. 2d 542, 549, 553 (1999) (invalidated criminal trespass to a vehicle statute that prohibited entering a vehicle whenever it was done "knowingly and without authority" because it "potentially punish[ed] wholly innocent conduct without requiring proof of a culpable mental state"); *People v. Zaremba,* 158 Ill. 2d 36, 42-43 (1994) (theft statute did not bear a reasonable relationship to its purpose because "it potentially subject[ed] wholly innocent conduct to punishment" and failed to require a culpable mental state other than that the defendant do the prohibited actions "knowingly"); *People v. Wick,* 107 Ill. 2d 62, 66 (1985) ("Because aggravated arson as defined by the statute does not require an unlawful purpose in setting a fire, however, the statute as presently constituted sweeps too broadly by punishing innocent as well as culpable conduct in setting fires."). These statutes that potentially punish innocent conduct violate due process principles as they are not reasonably designed to achieve their purpose. *People v. Wright,* 194 Ill. 2d 1, 24, 25 (2000).

In the instant case, there is a wide range of innocent conduct that this statute potentially punishes. For example, a wife uses her husband's email account to sell or buy items online and does not correct the seller when they assume that she is her husband; a son calls his mom and asks her to send him money for rent, but then uses that money for tuition or food; or a company calls its financier and tells him that they need money to pay one legitimate business expense, but when the money is paid, it is used to pay a different, legitimate business expense. In these situations, this innocent conduct is punishable under the statute, even though none of the parties intended to criminally defraud the other party. This statute essentially makes wire fraud an

absolute liability offense, either the wife told the seller that she was not her husband or she did not; either the son told his mom he needed the money for tuition or he did not, etc.

720 ILCS 5/17-24(b) lacks a culpable mental state because it does not require a criminal purpose for a person to be convicted. *Madrigal*, 241 Ill. 2d at 472. Section (a) of 720 ILCS 5/17-24 includes a "knowingly" mental state ("Knowingly causes any such matter or thing to be delivered by mail or by private or commercial carrier, according to the direction on the matter or thing"), which indicates a legislative intent to include a mental state that is lacking in (b). The State argues that any mental state defined in Section 4-4, 4-5, or 4-6 of the Criminal Code is applicable to this statute. However, because 720 ILCS 5/17-24 already includes a mental state of "knowingly" in Section (a), the court cannot "read a culpable mental state into the statute so that a criminal purpose is required for a violation." *Id.* at 475. If a statute already contains one or more mental states and none of them provide culpability, a court may not add a culpable mental state. *People v. Carpenter,* 228 Ill. 2d 250, 270 (2008).

3. The Statute is Overbroad as it Fails to Have the Required Element of "Materiality" Under the Common Law and Thus Potentially Punishes a Wide Range of Innocent Conduct

In *Neder v. United States*, the United States Supreme Court held that materiality of falsehood is an element of the federal bank fraud statute. In coming to that conclusion, they noted that the wire fraud statute did not explicitly mention a materiality element, much like Illinois' current statute, and nor did it define "a scheme or artifice to defraud", much like Illinois' current statute. The analysis the Supreme Court used in determining if materiality of the falsehood was an element of wire fraud required that they look at the text of the statutes. *Neder v. United States*, 527 U.S. 1, 20 (1999). However, the second step in the analysis provides that

"'[w]here Congress uses terms that have accumulated settled meaning under ... the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.' " *Neder*, 527 U.S. at 20; *Nationwide Mut. Ins. Co. v. Darden,* 503 U.S. 318, 322 (1992). The common law fraud definition dictates, among other factors, that the defendant makes a false statement of *material* fact. *Suburban 1, Inc. v. GHS Mortg., LLC*, 358 Ill. App. 3d 769, 772, (2nd Dist. 2005). The court in *Neder* ruled that a court cannot infer from the absence of a specific reference to materiality that Congress intended to drop that element from the fraud statutes and must *presume* that Congress intended to incorporate materiality unless the statutes otherwise dictate. *Neder*, 527 U.S. at 3. In short, Congress intended to limit the criminal liability to conduct that would constitute common-law fraud. *Id.* The same principles should apply to the Illinois Legislative branch.

However, because the common law definition of fraud is needed to limit the scope of the wire fraud statute, 720 ILCS 5/17-24(b) is unconstitutional. 720 ILCS 5/1-3(a) dictates that no conduct constitutes an offense unless it is described as an offense in the codes and statutes of Illinois. Because 720 ILCS 5/17-24(b) relies on the common law for the materiality component of fraud, its conduct is not described in the codes and statutes of Illinois and is thus unconstitutional.

The lack of materiality in the statute opens up liability for a range of innocent conduct. Using one of the examples listed above, the wife who uses her husband's email account to assist in an online sale has used false pretenses in order to obtain money or property. The fact that it is immaterial to the seller who is buying the property should factor into whether the wife is charged with a crime. Under the common law, impersonating her husband on the internet is likely not falsely stating a material fact, however, she would be just as liable under the wire fraud statute as

someone running a Nigerian Prince email scam who clearly makes material false statements in an attempt to scam money from the vulnerable.

CONCLUSION

This Court should dismiss with prejudice the charges filed against Defendant, pursuant to Section 114-1, find the Illinois Wire Fraud Statute (720 ILCS 5/17-24(b)) unconstitutional in violation of the 5th and 14th Amendments to the Constitution of the United States and corollary provisions of the Illinois State Constitution of 1970, and grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

JOHN Y. BUTLER, Defendant

By: _____
J. Steven Beckett, Attorney at Law

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(309) 827-8139 [Facsimile]
Skording@MeyerCapel.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on March 9, 2018 he did cause a copy of the foregoing ***Defendant's Reply To The People's Response In Support Of The Constitutionality Of 720 ILCS 5/17-24(B)*** to be hand delivered or sent via U. S. Postal Service to the following:

Daniel B. Lewin
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218

Adam Ghrist
Bradley Rigdon
McLean County State's Attorney
104 West Front Street
Bloomington, Illinois 61701

J. STEVEN BECKETT

J. STEVEN BECKETT, #0151580
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Circuit Court of Illinois
Eleventh Judicial Circuit
McLean County

Chambers of
ROBERT L. FREITAG
Circuit Judge
104 W. Front Street
Room 522
Bloomington, IL 61701
309-888-5220

COUNTIES
Ford
Livingston
Logan
McLean
Woodford

J. Steven Beckett
508 S. Broadway
Urbana, IL 61801-7160

13 March 2018

Re: People vs. John Butler
McLean County case 17 CF 1025

Dear Mr. Beckett:

This letter is to inform you that due to my impending retirement, the above case is being re-assigned effective on the date noted above. A docket entry reflecting the re-assignment has been made on this date.

The case is hereby assigned to Judge Michael Stroh.

Respectfully,

Robert L. Freitag
Circuit Judge

Circuit Court of Illinois
Eleventh Judicial Circuit
McLean County

Chambers of
ROBERT L. FREITAG
Circuit Judge
104 W. Front Street
Room 522
Bloomington, IL 61701
309-888-5220

COUNTIES
Ford
Livingston
Logan
McLean
Woodford

Scott Kording
Meyer Capel
202 N. Center Street
Suite 2
Bloomington, IL 61701-3970

13 March 2018

Re: People vs. John Butler
McLean County case 17 CF 1025

Dear Mr. Kording:

This letter is to inform you that due to my impending retirement, the above case is being re-assigned effective on the date noted above. A docket entry reflecting the re-assignment has been made on this date.

The case is hereby assigned to Judge Michael Stroh.

Respectfully,

Robert L. Freitag
Circuit Judge

Circuit Court of Illinois
Eleventh Judicial Circuit
McLean County

FILED
MAR 13 2018
CIRCUIT CLERK
McLEAN COUNTY

Chambers of
ROBERT L. FREITAG
Circuit Judge
104 W. Front Street
Room 522
Bloomington, IL 61701
309-888-5220

COUNTIES
Ford
Livingston
Logan
McLean
Woodford

Jason Chambers
McLean County State's Attorney
104 W. Front Street
Room 605
Bloomington, IL 61701

13 March 2018

Re: People vs. John Butler, 17 CF 1025 ✓
People vs. Paul Grazar, 17 CF 1028
People vs. Kelly Klein, 17 CF 1029

Dear Mr. Chambers:

This letter is to inform you that due to my impending retirement, the above cases are being re-assigned effective on the date noted above. A docket entry reflecting the re-assignments have been made on this date.

The cases are hereby assigned to Judge Michael Stroh.

Respectfully,

Robert L. Freitag
Circuit Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

THE PEOPLE OF THE STATE OF ILLINOIS,

VS. CASE NO. 17 CF 1025

JOHN BUTLER

ORDER

This cause comes on for consideration of a Media Coordinator's Notice of Request for Extended Media Coverage, filed herein on 27 February 2018, and the court having reviewed the Notice and the court file herein, DOES HEREBY FIND AND ORDER:

1. That the Notice of Request was timely filed and provided appropriate notice;

2. That no objections have been filed to the Notice of Request;

3. That the court has reviewed the terms of the Notice of Request and finds that they are reasonable and appropriate;

WHEREFORE, IT IS HEREBY ORDERED:

1. That subject to any timely objections being filed, the Notice of Request is approved, and the court hereby grants permission for extended media coverage in this case, as set forth in the Notice of Request;

2. That the extended media coverage provided for shall be in accordance with all of the provisions and requirements of Eleventh Judicial Circuit Administrative Order 2016-13;

3. That this order and permission is subject to modification and/or revocation in accordance with Administrative Order 2016-13.

DATE: 13 March 2018

JUDGE

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

McLEAN COUNTY
FILED
FEB 27 2018
CIRCUIT CLERK

NOTICE OF HEARING

TO:

Daniel B. Lewin Assistant Attorney General 100 West Randolph Street 12th Floor Chicago, IL 60601-3218	State's Attorney's Office McLean County Courthouse 104 W. Front Street Bloomington, IL 61701

YOU ARE HEREBY NOTIFIED that on **April 3, 2018, at 1:30 p.m.**, I shall appear before the **Honorable Judge Freitag** in **Courtroom 5A** of the McLean County Courthouse, 104 West Front Street, Bloomington, Illinois, and then and there proceed with a **Hearing on the Motion to Dismiss Wire Fraud** in the above cause.

DATED this 26th day of February, 2018.

J. STEVEN BECKETT

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2018, a copy of the foregoing ***Notice of Hearing*** was served by depositing same in the U.S. Mails in an envelope securely sealed, postage prepaid and legibly addressed to the above-named individual.

J. STEVEN BECKETT

J. STEVEN BECKETT
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State of Illinois
ELEVENTH JUDICIAL CIRCUIT COURT
McLean County County, IL

2017CF1025

FILED
McLEAN COUNTY
FEB 27 2018
CIRCUIT CLERK

City of Bloomington
V
John Y. Butler

Media Coordinator's Notice of Request for Extended Media Coverage of Trial or Proceedings
COMES NOW the undersigned Media Coordinator, who states as follows:

1. Certain representatives of the news media want to use:
X photographic equipment; x television cameras; **x** electronic sound recording equipment in courtroom coverage of the above proceeding. (Check the appropriate type(s) of equipment requested.)

2.The trial or proceeding to be covered by extended media techniques is scheduled on April 3, 2018.This request includes all subsequent court proceedings in this matter.

3.This request for extended media coverage is described as follows (e.g. the number of Photographers with still cameras):
1 Photographer 1 video camera 1 sound recording equipment

4. This notice for extended media coverage is filed (check appropriate box):
X at least 14 days in advance of the proceeding for which extended media coverage is being requested:
Or
__ this notice cannot be filed within 14 days of the proceedings because:

5.A copy of this notice is being provided to all counsel of record, parties appearing without Counsel, the circuit court, the circuit court administrator for the judicial court, and the judicial officer expected to preside at the trial or proceeding for which extended media coverage has been requested as follows:

Attorneys:
Defendants: Scott Kording
State: Jason Chambers
Trial Court Administrator: William Scanlon
Presiding Judge: Judge Robert Freitag

6. I will abide by all the provisions of the Policy for Extended Media Coverage in Circuit Courts of Illinois and the 11th Judicial Circuit Policy for Extended Media Coverage and perform all duties as required by me as the Media Coordinator.

Edith Brady-Lunny, Media Coordinator

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS Plaintiff, v. JOHN Y. BUTLER, Defendant.	))))))))))	 No. 17 CF 1025 The Honorable Robert Freitag, Judge Presiding.

PEOPLE'S RESPONSE IN SUPPORT OF THE CONSTITUTIONALITY OF 720 ILCS 5/17-24(b)

Under Illinois Supreme Court Rule 19, Illinois Attorney General Lisa Madigan responds to petitioner's claim that the wire fraud statute, 720 ILCS 5/17-24(b), is unconstitutional and requests that it be denied.

BACKGROUND

A grand jury returned a forty-four-count indictment against defendant John Butler, alleging that he committed several illegal activities while leading companies that managed an arena in the city of Bloomington. Indictment, *People v. Butler*, No. 17 CF 1025 (Cir. Ct. McLean Cnty.). Among other things, counts 26, 28, 30, 32, 34, and 36 charged defendant with wire fraud under 720 ILCS 5/17-24(b) for furthering a scheme to defraud by electronically filing several sales and use tax returns that understated the amount of these companies' taxable sales.

Defendant moved to dismiss Count 26 of the indictment, arguing in part that the wire fraud statute is unconstitutional. The Attorney General appears solely to defend the constitutionality of the statute.

ARGUMENT

I. General Principles Governing Constitutional Challenges

"Constitutional challenges carry the heavy burden of successfully rebutting the strong judicial presumption that statutes are constitutional. To overcome this presumption, the party challenging the statute must clearly establish that it violates the constitution." *People v. Rizzo*, 2016 IL 118599, ¶ 23 (internal citations and quotation marks omitted). "Courts have a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity." *Id.* (citation omitted).

II. The Wire Fraud Statute Is Not Vague.

Defendant cannot sustain his heavy burden to show that the wire fraud statute is unconstitutionally vague. A criminal statute is vague under the Due Process Clauses of the United States and Illinois Constitutions only if "the statute . . . fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008) (citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000) and *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)); *see also Bartlow v. Costigan*, 2014 IL 115152, ¶¶ 38-40 (applying same standard under state constitution). Defendant must show that "persons of common intelligence must necessarily guess at its meaning and differ as

to its application." *People ex rel. Ryan v. World Church of the Creator*, 198 Ill. 2d 115, 124 (2001) (internal quotation marks omitted).

At the outset, defendant's claim of vagueness is itself vague. Defendant argues that the wire fraud law is "vague, indefinite and uncertain" but does not identify which portion of the statute makes it so. Mot. at 2. Defendant observes in another part of the motion that "scheme or artifice to defraud" is undefined but does not appear to argue that the phrase is therefore vague. Mot. at 1. Nor could he — undefined terms simply take their ordinary meaning, and the Appellate Court has held that "scheme to defraud" has an ordinary meaning. *People v. Taylor*, 138 Ill. 2d 204, 216-17 (1990) (holding Due Process clause does not require legislature to define every element of a crime); *First Nat'l Bank of Ottawa v. Dillinger*, 386 Ill. App. 3d 393, 395 (3d Dist. 2008) (finding undefined term "scheme to defraud" in another statute has ordinary meaning of artful or underhand plot to deceive others). Defendant's imprecise challenge falls well short of carrying the "heavy burden" required to strike down a law. *Rizzo*, 2016 IL 118599, ¶ 23.

In any event, the wire fraud statute provides fair notice of what it prohibits. "[T]he first step in a vagueness inquiry is to examine the plain language" of the statute. *Wilson v. Cnty. of Cook*, 2012 IL 112026, ¶ 24. The statute prohibits "devis[ing] or intend[ing] to devise a scheme or artifice to defraud or obtain money or property by means of false pretenses, representations, or promises" using certain wire communications. 720 ILCS 5/17-24(b). None of the words in this statute are beyond the grasp of a person of common intelligence. *See, e.g.*, *People v. Oshana*,

2012 IL App (2d) 101144, ¶ 36 (holding ordinary meanings of "false," "fraudulent," and "representation" not vague); *Dillinger*, 386 Ill. App. 3d at 395 (explaining ordinary meaning of "scheme to defraud"). The terms in the wire fraud statute do not resemble the subjective and indeterminate laws the United States Supreme Court has found unconstitutionally vague. *See, e.g., City of Chi. v. Morales*, 527 U.S. 41, 62 (1999) (striking down loitering ordinance that turned on whether person's purpose for remaining in place was apparent to police officer); *Coates v. City of Cincinnati*, 402 U.S. 611, 611-12 (1971) (striking down ordinance prohibiting conduct "annoying to persons passing by"). Whether a person furthers a plot to defraud or obtain something of value by lying through wire communications is "a true-or-false determination, not a subjective judgment such as whether conduct is 'annoying' or 'indecent.'" *Williams*, 553 U.S. at 306.

Nor does the statute allow arbitrary enforcement. Defendant's core belief that "[a] contract dispute is not a scheme to defraud," Mot. at 2, argues not that the wire fraud statute is vague, but that it is clear and he has not violated it. *See* Mot. at 1 (arguing that defendant's actions were all business decisions); *cf. Bartlow*, 2014 IL 115152, ¶ 47 (parties implicitly concede that statute is not vague when they argue they should succeed under it). Defendant may litigate his position at a trial. *Williams*, 553 U.S. at 306 ("The problem [of close cases] is addressed, not by the doctrine of vagueness, but by the requirement of proof beyond a reasonable doubt."). And, in any event, the wire fraud counts allege that defendant committed wire fraud by electronically filing false tax returns, which he could not have arbitrated or

mediated. *See* Indictment at Counts 26, 28, 30, 32, 34, 36, *People v. Butler*, No. 17 CF 1025 (Cir. Ct. McLean Cnty.).

III. The Wire Fraud Statute Is Not a Common-Law Crime.

Defendant next argues that the wire fraud statute "requires use and application of the common law of fraud" in violation of the Due Process Clauses of the United States and Illinois Constitutions and 720 ILCS 5/1-3(a). Mot. at 3. The motion does not explain how the statute requires use of the common law or why that would be unconstitutional. If defendant means that he is charged with a common-law crime, he is not — he is charged under a statute. If he means that it is unconstitutional to use the common law to interpret a statute, he is wrong. *See, e.g.*, *Neder v. United States*, 527 U.S. 1, 21-25 (1999) (using common law to analyze federal fraud statutes).

IV. The Statute Requires Proof of a Culpable Mental State.

Because the State charged that defendant "knowingly devised a scheme to defraud," Indictment at Counts 26, 28, 30, 32, 34, 36, *People v. Butler*, No. 17 CF 1025 (Cir. Ct. McLean Cnty.), he cannot complain that the statute imposes absolute liability. "A party has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or her own rights." *People v. Funches*, 212 Ill. 2d 334, 346 (2004).

In any event, the wire fraud statute does not create absolute liability. If, as here, "the statute defining an offense . . . does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability), any mental state defined in Sections 4-4, 4-5 or 4-6 [intent,

knowledge, and recklessness, respectively] is applicable." 720 ILCS 5/4-3(b). Thus, under Section 4-3 of the Criminal Code, a conviction under the wire fraud statute requires proof of a culpable mental state, which the State has alleged.

V. *Neder v. United States* Provides No Grounds to Strike Down the Wire Fraud Statute.

Finally, citing *Neder v. United States*, 527 U.S. 1 (1999), defendant argues that the wire fraud statute lacks the "required element of 'materiality.'" *Neder* held the conviction under the federal mail and wire fraud statute required proof that the defendant's falsehoods were material. *Id.* at 21-25. The Court did not announce a constitutional rule in *Neder*; it merely held that materiality was already an element of the federal mail and wire fraud statutes. *Id.*

CONCLUSION

This Court should deny defendant's motion to declare 720 ILCS 5/17-24(b) unconstitutional. But if the Court disagrees, its judgment should comply with Illinois Supreme Court Rule 18, which requires that:

> (a) the court make the finding [of unconstitutionality] in a written order or opinion, or in an oral statement on the record that is transcribed;
>
> (b) the order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional;
>
> (c) the order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including
>
> > (1) the constitutional provision(s) upon which the finding of unconstitutionality is based;
> >
> > (2) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case sub judice, or both;

(3) that the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

(4) that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

(5) that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

February 22, 2018

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

By: 
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 22, 2018, the foregoing **People's Response in Support of the Constitutionality of 720 ILCS 5/17-24(b)** was filed with the Clerk of the Circuit Court of McLean County, 104 West Front Street, Bloomington, Illinois 61701, and served upon the following by email

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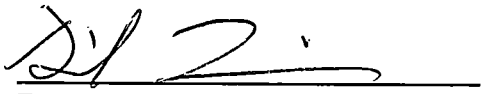

Daniel B. Lewin

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

DEFENDANT'S RESPONSE TO STATE'S MOTION TO DISQUALIFY CONFLICTED TRIAL COUNSEL

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C. and Scott Kording of Meyer Capel, A Professional Corporation, and states as follows for this Defendant's Response to State's Motion to Disqualify Conflicted Trial Counsel:

BACKGROUND

Shortly after issuance of the indictment in this case, Attorney Scott Kording entered his appearance as co-counsel to Attorney J. Steven Beckett, lead defense counsel in this cause for the Defendant, JOHN Y. BUTLER.

On the morning September 29, 2018, Adam W. Ghrist, the First Assistant State's Attorney of McLean County, notified Mr. Kording of a concern by the State about Mr. Kording's involvement as assisting co-counsel for Defendant in the instant cause while also representing another person, Dr. Tari Renner, in a separate, unrelated matter. The prosecutor asserted that the concern arose from the fact that Dr. Renner may potentially be a witness in the instant cause. Later the same morning, Defendant appeared with his lead defense counsel, Mr. Beckett, before

The Honorable J. Casey Costigan, Circuit Judge, for arraignment in this case. Mr. Ghrist represented the State at the hearing. During the hearing, Mr. Beckett advised Judge Costigan of the prosecutor's stated concern on the record, and the Court confirmed that Defendant was aware of Mr. Kording's representation of Dr. Renner in a separate matter and nevertheless persisted in wanting Mr. Kording to serve on his team of defense counsel.

On January 3, 2018, the State filed a Motion to Disqualify Conflicted Trial Counsel. The motion seeks an order disqualifying Mr. Kording from serving as defense counsel in this cause.

RESPONSE TO FACTUAL ALLEGATIONS IN STATE'S MOTION

The State's motion contains five paragraphs alleging facts. Defendant responds as follows to the State's factual allegations:

1. Defendant admits the allegations contained in Paragraph 1.

2. Defendant admits the allegations contained in Paragraph 2.

3. Defendant admits that the State has disclosed a number of Bloomington officials as potential witnesses. Defendant is without sufficient information either to admit or to deny the remaining allegations contained in Paragraph 3.

4. Defendant admits the allegations contained in Paragraph 4.

5. Defendant admits that Tari Renner has made public comments. Defendant is without sufficient information either to admit or to deny the remaining allegations contained in Paragraph 5.

Paragraphs 6-10 contain the State's request for relief and an explanation of undisputed applicable law. No factual allegations are asserted, and therefore Defendant need not admit or deny those allegations.

ARGUMENT

I. *The State's motion fails to identify the nature and scope of Mr. Kording's alleged conflict of interest.*

Noticeably absent from the State's motion is any articulation of what Mr. Kording's conflict of interest is alleged to be. Despite its introductory paragraph's urging of the existence of "a per se, actual conflict and further serious potential for conflict," the State's motion does not express coherently what that conflict is. State's Mot., at 1. For example, in the portion of its motion entitled "Request to disqualify," the State argues only that "Mr. Kording is operating under conflict of interests (sic)." State's Mot., ¶ 6. This section of the State's motion does not identify what the conflict is.

In fact, this Court's cursory review of the factual allegations will leave it guessing as to the precise nature of the unarticulated conflict. In sum, the State's motion alleges the following facts:

A. Mr. Kording has appeared in this case on behalf of Defendant, and Defendant has been charged with 44 felony counts related to management of the "Bloomington Coliseum (sic)" by Defendant and one of Defendant's companies. State's Mot., ¶ 1.

B. The charges alleged theft of money from the City of Bloomington. State's Mot., ¶ 2.

C. Certain potential witnesses disclosed by the State work with or for the City of Bloomington and may "have knowledge of intimate facts." State's Mot., ¶ 3.

D. Mr. Kording represents Tari Renner, the current mayor of Bloomington, personally in an Illinois State Police investigation in a separate matter. State's Mot., ¶ 4.

E. Dr. Renner has made certain public statements and has contacted prosecutors about this case. State's Mot., ¶ 5.

The foregoing five paragraphs constitute the entirety of the factual allegations underlying the State's request to disqualify one of Defendant's chosen attorneys of record. Those barebones allegations fall far short of justifying the ejection of one of Defendant's lawyers from service on his defense team. Even if every one of the State's allegations were proven conclusively, they fail to make a showing why Defendant should not be entitled to have Mr. Kording represent him as assisting co-counsel to Mr. Beckett, the lead defense attorney.

If the State's motion were brought in a civil procedure context, the totality of the foregoing allegations of fact by the State would justify the Court striking or dismissing the State's motion for failure to state a cause of action for which relief could be granted. Although the State is not necessarily required to outline strictly the factual allegations supporting its request to disqualify a defense attorney from service in an ongoing felony prosecution, the reality is that the State's motion hardly apprises Defendant and his lawyers of the precise nature of the conflict of interest alleged, which makes it unfairly difficult for Defendant and his counsel to respond to the State's request. This woefully deficient pleading on an issue of such paramount constitutional importance as that of a defendant's right to counsel of his own choosing should not be countenanced by the Court, and the State's motion should be stricken or denied on that basis.

II. *No conflict of interest exists in Mr. Kording's representation of Defendant.*

Perhaps the primary reason the State has been unable to articulate what actual conflict of interest exists is that there is no actual conflict of interest. In support of their claim that no conflict exists, Defendant and his attorneys hereby submit to the Court for review and consideration three accompanying affidavits—namely, an Affidavit of John Y. Butler (the "Butler Aff."), an Affidavit of Tari Renner (the "Renner Aff."), and an Affidavit of Scott

Kording (the "Kording Aff."). A true and correct copy of each affidavit is attached to the instant motion response.

Initially, the Court should note that Mr. Kording's representation of Dr. Renner is in a separate and entirely unrelated matter. The State concedes that Dr. Renner's matter is separate from Defendant's case. State's Mot., ¶ 4 (noting "Mr. Kording also currently represents Tari Renner . . . personally in a *separate* but ongoing investigation by the Illinois State Police") (emphasis added). The matter for which Dr. Renner retained Mr. Kording bears no connection whatsoever to the prosecution of Defendant in the instant cause. See Renner Aff., ¶¶ 5, 8-9; Kording Aff., ¶¶ 5-7, 10.A., 10.B. Dr. Renner and Mr. Kording have not discussed any issue related to the prosecution of Defendant, the U.S. Cellular Coliseum, or any of Defendant's co-defendants. See Renner Aff., ¶ 9; Kording Aff., ¶ 10.A. Just as he has not discussed the instant case with Dr. Renner, Mr. Kording would not and has not discussed any aspect of his representation of Dr. Renner with Defendant. See Butler Aff., ¶ 9; Kording Aff., ¶ 10.B.

In addition, the fact of Mr. Kording's representation of Defendant was promptly disclosed to both Defendant and Dr. Renner at the outset of Mr. Kording's representation. See Butler Aff., ¶ 5-6; Renner Aff., ¶ 6; Kording Aff., ¶¶ 8-9. Neither man had any objection to Mr. Kording's representation of the other because the two men's matters were separate and unrelated. See Butler Aff., ¶ 5; Renner Aff., ¶ 6; Kording Aff., ¶¶ 8-9. Defendant confirmed this fact to the judge presiding at his arraignment. See Butler Aff., ¶ 6.

Once the State filed its request for the Court to disqualify Mr. Kording as one of Defendant's lawyers, Mr. Kording conferred again with both men about the issue. Dr. Renner persisted in having no objection to Mr. Kording's ongoing representation of Defendant. See Renner Aff., ¶¶ 7-8; Kording Aff. ¶ 11. Defendant also has no concerns about Mr. Kording

continuing to represent him in this cause. See Butler Aff., ¶¶ 7-8; Kording Aff. ¶ 11. In fact, Defendant affirmatively invokes his right to and desire for counsel of his own choosing in this case. See Butler Aff., ¶ 11.

The lack of any conflict here goes beyond the fact that Defendant and Dr. Renner each have no objection to Mr. Kording's representation of the other. Both men are in agreement that they themselves see no conflict of interest. See Butler Aff., ¶ 8; Renner Aff. ¶ 8. Mr. Beckett sees no conflict of interest. See Kording Aff., ¶ 8. Mr. Kording also believes no conflict of interest exists. See Kording Aff., ¶¶ 10, 12.

Beyond its claim that Mr. Kording is operating under a *per se* actual conflict of interest, the State's claim that there is a potential conflict of interest is meritless, too. Given the confirmation from Defendant, Dr. Renner, and Mr. Kording that there is no nexus between the two attorney-client relationships, there is no reason to believe that the unspecified "potential" conflict at which the State's motion hints would come to fruition.

III. *The State's motion fails to identify the prejudice that would result if Mr. Kording continues representing Defendant.*

Just as it wholly fails to specify the nature or scope of Mr. Kording's so-called conflict of interest, the State's motion also is silent on the prejudice to the State that would result if Mr. Kording is permitted to continue his service as one of Defendant's attorneys. In its introductory paragraph, the motion indicates that there is "likely prejudice that will result" if Mr. Kording continues as one of Defendant's lawyers. State's Mot., at 1. Nowhere is the basis for such a claim set forth in the balance of the State's motion.

Even a cursory review of the State's factual allegations makes plain the absence of any conceivable prejudice. For instance, the State asserts that Mr. Kording represents a potential

witness (Dr. Renner) for the State in this case. State's Mot., ¶ 4. The representation by a defense attorney of a potential witness, however, does not establish a conflict of interest, especially when Defendant's constitutional right to counsel of his own choosing would trump any concern that the State may have about one *potential* witness. Furthermore, the State's allegation that the State's potential witness "has made public comments on the investigation into [Defendant]" does nothing to establish any prejudice to the State's case by Mr. Kording's representation of the witness in an unrelated matter. State's Mot., ¶ 5. Neither Defendant nor Mr. Kording have had anything to do with the non-specific "public comments" to which the State's motion refers, and the State does not allege that Defendant or Mr. Kording were involved in Dr. Renner making such statements.

It is not clear why Mr. Kording's representation of Dr. Renner would harm the State. Even though Dr. Renner is the mayor of the City of Bloomington, there is no dispute that Mr. Kording represents Dr. Renner individually in his personal capacity, and not in any official or mayoral capacity. Dr. Renner and Mr. Kording each have confirmed this fact in their sworn affidavits. See Renner Aff., ¶ 5; Kording Aff., ¶¶ 5-6. The State concedes this issue in its motion, too. See State's Mot., ¶ 4 (noting "[t]hat Mr. Kording also currently represents Tari Renner, the Mayor of Bloomington, *personally* in a separate but ongoing investigation by the Illinois State Police") (emphasis added). Moreover, Mr. Kording does not represent the City of Bloomington. See Renner Aff., ¶ 5; Kording Aff., ¶ 6. Even if Mr. Kording were somehow representing the City or its mayor in an official capacity, the City is not the prosecuting authority in Defendant's case, and so the State would not be prejudiced since the City should not be influencing, directing, or controlling the State's prosecution of Defendant.

Thus, without any specific allegations in the State's motion to provide reasonable notice of the alleged conflict of interest to which Defendant is expected to respond, Defendant and the Court are required to guess as to what actual or potential conflict the State objects. Defendant's best guess as to the basis for the State's assertion is that it apparently believes Mr. Kording would either (i) use confidential information from his representation of Dr. Renner to cross examine Dr. Renner if he were to testify as a State's witness at Defendant's trial, or (ii) fail to use all of his skill and available information if called upon to cross examine Dr. Renner as a State's witness at Defendant's trial, thereby giving Defendant some potential claim that Mr. Kording was ineffective in providing assistance as trial counsel.

As for the former concern, it should be noted that the State's motion does not allege that Mr. Kording actually possesses or would possess confidential information from his representation of Dr. Renner that Mr. Kording could use to undermine Dr. Renner's credibility as a trial witness. Even absent the State's failure to make such an allegation, Mr. Kording has represented as an officer of the Court that he possesses no such confidential information. See Kording Aff., ¶ 10.C. Dr. Renner similarly has no concerns with Mr. Kording's ongoing representation of Mr. Butler. See Renner Aff., ¶ 8. Furthermore, since Defendant's lead defense counsel is Mr. Beckett, it is Mr. Beckett, and not Mr. Kording, who would conduct any cross examination if Dr. Renner were to take the witness stand as a prosecution witness at Defendant's trial. See Kording Aff., ¶ 10.C. This concern of the State—if the State even actually has this concern, which is not clear from its motion—is further mitigated by the fact that Mr. Kording's active representation of Defendant is anticipated to be concluded well before Defendant's case goes to trial. See Kording Aff., ¶ 10.D.

To address Defendant's second guess as to the State's worries about Mr. Kording's representation of Defendant—namely, that Mr. Kording, if cross examining Dr. Renner, would somehow pull his punches or otherwise fail to examine Dr. Renner zealously to Defendant's detriment—Defendant reiterates that Mr. Kording will not be called upon to cross examine Dr. Renner since Mr. Beckett would surely handle those duties. See Kording Aff., ¶ 10.C. As an officer of the Court, Mr. Kording has confirmed that he sees no professional or ethical impediment to his ability to discharge his duties as Defendant's counsel by virtue of Mr. Kording's representation of Dr. Renner in a separate, unrelated matter. See Kording Aff., ¶ 10.C.

IV. *Even if the Court were to find the existence of a conflict and some resulting prejudice, both Defendant and the potential witness have knowingly waived any such conflict.*

Even as they express that they see no conflict of interest, both Defendant and Dr. Renner have knowingly waived any conflict of interest that may later be found to exist. See Butler Aff., ¶ 10; Renner Aff., ¶ 10; see also Kording Aff., ¶ 12. Therefore, if the Court were able to identify an actual conflict of interest where the State has been unable to articulate one, and if the Court were to discern some legitimate prejudice that could result in the face of any such nominal conflict, then the Court should nevertheless deny the State's request to disqualify Mr. Kording. The signed waivers from Defendant and Dr. Renner contain acknowledgement of the State's concerns and a clear, knowing waiver of any conflict. These waivers should provide adequate assurance to the State and the Court that the State's concerns do not justify disqualifying one of Defendant's chosen attorneys.

While the State correctly articulates in its motion that the provision of a signed waiver does not necessarily mean that an attorney cannot be disqualified from representing a defendant,

there is no reason for the Court to disqualify Mr. Kording in light of the signed waivers accompanying this motion response. None of the special concerns the State may have in other matters would apply in this case. Furthermore, if the Court finds a conflict to exist, then the Court can admonish Defendant of the issues and confirm his knowing waiver of a conflict in open court.

CONCLUSION

The State failed to plead or prove facts that would establish the existence of an actual conflict of interest (or even a potential one) or any prejudice that would result if Defendant's counsel continues representing him. Defendant and the State's potential witness were apprised of Mr. Kording's involvement in their respective matters at the outset of Defendant's case, and again months later when the State formally moved to disqualify counsel. There is no conflict of interest, and even if a nominal one can be found, both Defendant and the State's potential witness have knowingly waived it.

Given the dearth of allegations or facts warranting even the thought of disqualifying one of Defendant's attorneys, the Court should deny the State's motion. To do otherwise would do a great disservice to Defendant's constitutional right to counsel of his own choosing. If the State's motion is sufficient to cause the Court to disqualify Mr. Kording as one of Defendant's attorneys in this case, then the result would not merely be fundamentally unfair to Defendant and a violation of his constitutional rights; rather, if this motion by the State is enough to jettison one of Defendant's attorneys, then the Court would effectively be giving the State the ability to approve or veto a defendant's chosen counsel in future cases.

WHEREFORE, the Defendant, JOHN Y. BUTLER, respectfully requests that this Court enter an Order consistent with the following:

A. Denying the State's Motion to Disqualify Conflicted Trial Counsel; and

B. Granting to Defendant and his counsel such other and further relief as the Court deems just and proper.

Respectfully submitted,
JOHN Y. BUTLER, Defendant

By: _____
J. Steven Beckett, Attorney at Law

By: _____
Scott Kording, Attorney at Law

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

AFFIDAVIT OF JOHN Y. BUTLER

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

I, JOHN Y. BUTLER, do hereby depose on oath and state as follows:

1. I am an adult male under no legal disability.

2. I am the Defendant in the above-captioned criminal case.

3. When I became aware of the filing of charges against me in this case in September 2017, I retained Attorney J. Steven Beckett of the Becket Law Office, P.C. in Urbana, Illinois, to serve as my lead defense attorney. Mr. Beckett has entered his appearance as one of my defense attorneys in this case.

4. After conferring with Mr. Beckett, I also retained Attorney Scott Kording of the law firm of Meyer Capel, A Professional Corporation, in Bloomington, Illinois, to serve as local counsel and assisting co-counsel on my defense team. Mr. Kording has entered his appearance as one of my defense attorneys in this case.

5. At or near the outset of Mr. Kording's involvement, my defense attorneys notified me of Mr. Kording's representation of Tari Renner, who presently serves as the mayor of the City of Bloomington, Illinois, in a separate and unrelated matter. Since it may be possible that Dr. Renner would be called as a witness by one or both sides at the trial in my case, my attorneys notified me of Mr. Kording's representation of Dr. Renner. They also informed me that they wanted me to know of Mr. Kording's representation of Dr. Renner because it is theoretically possible that Dr. Renner may be called as a witness in my trial and that one or more of my attorneys may be tasked with examining Dr. Renner as a witness. I told my attorneys that Mr. Kording's representation of Dr. Renner in an unrelated matter does not bother me and that I wanted Mr. Kording to continue working as a member of my defense team.

6. On September 29, 2017, I appeared for arraignment before The Honorable J. Casey Costigan, Circuit Judge. I was accompanied by my lead defense attorney, Mr. Beckett. During that court appearance, Mr. Beckett informed the judge that a member of my defense team, Mr. Kording, presently represents Dr. Renner, a potential witness in my case. We confirmed to the judge that I was aware of Mr. Kording's representation of the potential witness in a separate matter and that I nevertheless still wanted Mr. Kording to continue working as a member of my defense team.

7. My attorneys have made me aware that the State has filed a motion in my case seeking to disqualify Mr. Kording from serving as one of my defense attorneys. I told my attorneys that I still have no objection to Mr. Kording's ongoing service as one of my lawyers in this case.

8. It is my understanding that the State is asserting that Mr. Kording has an actual conflict of interest as a result of his representation as one of my lawyers and his present representation of Dr. Renner in a separate, unrelated matter. I do not feel that there is any conflict of interest because it is my understanding that my legal matter has nothing whatsoever to do with the matter on which Mr. Kording represents Dr. Renner. If I had felt there were a conflict of interest, then I would have notified Mr. Kording that he should discontinue his representation of me when I was advised of his representation of Dr. Renner back in September 2017.

9. Beyond the above-described communications, I have never discussed with Mr. Kording or his law firm any subjects related to the matter on which Mr. Kording represents Dr. Renner. Likewise, except for the foregoing communications, Mr. Kording and his colleagues and staff have never discussed or sought to discuss with me any subjects related to Dr. Renner or the matter on which Mr. Kording represents him. I see no reason why that would change or need to change in the future.

10. To the extent that the Court would find that there is somehow a conflict of interest with Mr. Kording's representation of Dr. Renner and of me, I hereby waive any such conflict.

11. I want and need Mr. Kording to continue serving as a member of my defense team. I hired Mr. Kording specifically because of his knowledge, expertise, work ethic, geographical location, and other qualities that he brings to the team preparing my defense. I feel that my ability to prepare my defense may be compromised somewhat if the Court were to disqualify Mr. Kording from serving as one of my lawyers. I have chosen Mr. Kording as one of my attorneys, and I want him to continue to serve in that capacity.

12. I have not been pressured to sign this instrument. I know I am not required to sign this document, which I have read and which I understand fully. I sign this affidavit voluntarily and of my own free will.

VERIFICATION BY CERTIFICATION

Under authority of Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, I do hereby certify under penalty of law that the foregoing statements made by me in this affidavit are true and correct.

JOHN Y. BUTLER, Affiant

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Avenue
Urbana, IL 61801
(217) 328-0263 [Voice]
(217) 328-0290 [Facsimile]
Steve@BeckettLawPC.com

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

AFFIDAVIT OF TARI RENNER

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

I, TARI RENNER, do hereby depose on oath and state as follows:

1. I am an adult male under no legal disability.

2. I am employed as a professor at Illinois Wesleyan University.

3. I also presently serve as the elected mayor of the City of Bloomington, Illinois.

4. I am aware of the pending criminal prosecution of John Y. Butler in McLean County case number 17-CF-1025 related to Mr. Butler's alleged misappropriation of funds and other issues pertaining to the conduct of Mr. Butler and his business in operating and managing the Bloomington venue formerly known as the U.S. Cellular Coliseum.

5. In or about the summer of 2017, I retained Attorney Scott Kording and his Bloomington law firm (Meyer Capel, A Professional Corporation) to advise and assist me with respect to a certain matter involving an investigation initiated by the Illinois State Police. The matter for which Mr. Kording serves as my lawyer is separate from and entirely unrelated to the prosecution of Mr. Butler and/or events at the U.S. Cellular Coliseum. Mr. Kording has represented me in my individual capacity in that matter. Mr. Kording does not represent, and has not acted on behalf of, the Office of the Mayor of Bloomington or the City of Bloomington in any way.

6. In late September 2017, another attorney from Mr. Kording's law firm contacted me to make me aware of the fact that Mr. Butler has asked Mr. Kording to be involved as one of Mr. Butler's defense attorneys. I informed Mr. Kording's colleague that I had no objection to Mr. Kording's service as one of Mr. Butler's attorneys.

7. Mr. Kording recently made me aware that the State has filed a motion in Mr. Butler's criminal case seeking to disqualify Mr. Kording from serving as one of Mr. Butler's defense attorneys. I told Mr. Kording that I still have no objection to his ongoing service as an attorney for Mr. Butler.

8. It is my understanding that the State is asserting that Mr. Kording has an actual conflict of interest as a result of his representation as one of Mr. Butler's lawyers and his present representation of me in a separate, unrelated matter. I do not feel that there is any conflict of interest because my legal matter has nothing whatsoever to do with Mr. Butler or the U.S. Cellular Coliseum. If I had felt there were a conflict of interest, then I would have said so and objected when Mr. Kording's law firm contacted me back in late September 2017.

9. Beyond the above-described communications, I have never discussed with Mr. Kording or his law firm any subjects related to Mr. Butler or the events at the U.S. Cellular Coliseum. Likewise, except for the foregoing communications, Mr. Kording and his colleagues and staff have never discussed or sought to discuss with me any subjects related to Mr. Butler or the events at the U.S. Cellular Coliseum. I see no reason why that would change or need to change in the future.

10. To the extent that the Court would find that there is somehow a conflict of interest with Mr. Kording's representation of Mr. Butler and of me, I hereby waive any such conflict.

11. I have not been pressured to sign this instrument. I know I am not required to sign this document, which I have read and which I understand fully. I sign this affidavit voluntarily and of my own free will.

VERIFICATION BY CERTIFICATION

Under authority of Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, I do hereby certify under penalty of law that the foregoing statements made by me in this affidavit are true and correct.

TARI RENNER, Affiant

J. STEVEN BECKETT
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(217) 328-0263 [Voice]
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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

AFFIDAVIT OF SCOTT KORDING

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

I, SCOTT KORDING, do hereby depose on oath and state as follows:

1. I am an adult male under no legal disability.

2. I am an attorney in good standing and licensed to practice law in the State of Illinois.

3. I am a shareholder/partner in the law firm of Meyer Capel, A Professional Corporation. My primary office is located in Bloomington, Illinois.

4. I have entered an appearance as assisting co-counsel for the Defendant, JOHN Y. BUTLER, in the criminal prosecution now pending against him in McLean County case number 17-CF-1025.

5. In or about the summer of 2017, Tari Renner retained my law firm and me to advise and assist him with respect to a certain matter involving an investigation initiated by the Illinois State Police. Dr. Renner was then and still is the elected mayor of the City of Bloomington, Illinois.

6. The matter for which I represent Dr. Renner is separate from and entirely unrelated to the prosecution of Mr. Butler. I have represented Dr. Renner, and continue to do so, in his individual capacity. I have not been retained to represent the Office of the Mayor of Bloomington or the City of Bloomington, Illinois.

7. In the discharge of my duties as his attorney, I have performed for Dr. Renner certain legal work related to the matter for which he retained my law firm and me. None of my legal work in Dr. Renner's matter has involved or been in any way related to Mr. Butler,

the U.S. Cellular Coliseum, or any of Mr. Butler's co-defendants (Bart Rogers, Kelly Klein, Jay Laesch, and Paul Grazar).

8. In late September 2017, I was approached by Attorney J. Steven Beckett, lead defense attorney for Mr. Butler, about becoming a member of Mr. Butler's defense team. I knew generally from media accounts at the time that the allegations against Mr. Butler involved certain events concerning the Bloomington venue formerly known as the U.S. Cellular Coliseum, and Mr. Beckett confirmed as much to me. Although the matter for which Dr. Renner retained me was entirely unrelated to the prosecution of Mr. Butler, I promptly disclosed to Mr. Beckett, and then to Mr. Butler, the fact of my then-existing attorney-client relationship with Dr. Renner in a separate matter. Mr. Beckett and Mr. Butler both acknowledged my disclosure, confirmed they saw no conflict of interest, and indicated they wanted me to serve as another attorney of record for Mr. Butler in his criminal prosecution.

9. Once I was retained as one of Mr. Butler's attorneys, I had another lawyer from my law firm (who was assisting me in representing Dr. Renner) contact Dr. Renner to make him aware of the fact that Mr. Butler has asked me to be involved as one of his defense attorneys. Dr. Renner informed my colleague that he had no objection to my service as one of Mr. Butler's attorneys.

10. I am aware that the State filed on January 3, 2018, a motion seeking my disqualification as one of Mr. Butler's defense attorneys of record. In my opinion, there is no conflict of interest whatsoever.

    A. With the exception of the limited communications described in this affidavit, at no time during my representation of Dr. Renner have I discussed with him any subjects related to Mr. Butler, the U.S. Cellular Coliseum, or any of Mr. Butler's co-defendants, and neither of us has sought to do. I see no reason why the subject of Mr. Butler or his prosecution would come up as a substantive issue for discussion in the anticipated future course of my work for Dr. Renner.

    B. Furthermore, with the exception of the limited communications described in this affidavit, at no time during my representation of Mr. Butler have I discussed with him any subjects related to the matter on which I represent Dr. Renner, and neither of us has sought to do so. I also see no reason why the subject of Dr. Renner's matter would come up as a substantive issue for discussion in the future course of my work for Mr. Butler.

    C. Since I serve presently as assisting co-counsel and local counsel on Mr. Butler's team, I assume that Mr. Beckett would cross examine Dr. Renner if Dr. Renner were called as a witness by the State during Mr. Butler's trial. Even if circumstances were to change such that I were required to cross examine Dr. Renner, I am unaware of any professional or ethical reason why I would be unable to do so, as I do not possess any confidential information from my representation of Dr. Renner that would bear in any material way on my work for

Mr. Butler. For all the connection it has to Mr. Butler or his case, Dr. Renner's matter may as well be a residential real estate transaction, and there is nothing about my attorney-client relationship with Dr. Renner that would inhibit in any way my ability to perform my duties as one of Mr. Butler's defense attorneys.

D. Based upon my prior experience as a criminal defense attorney and the extremely voluminous nature of the State's materials produced in discovery thus far, as well as the present status of Mr. Butler's case, it seems to me increasingly likely that the trial of this cause would occur sometime in 2019 at the earliest. Although I cannot be certain, I believe my active representation of Dr. Renner will be concluded long before any trial would be scheduled in Mr. Butler's case. Thus, it is likely that at the time of Mr. Butler's trial, I would no longer be representing Dr. Renner because the matter on which he has retained me would be concluded.

11. Upon receipt of the State's motion seeking my disqualification as one of Mr. Butler's defense attorneys, I again contacted both Dr. Renner and Mr. Butler to discuss the matter. Each has reaffirmed that he sees no issue with my ongoing representation of Mr. Butler, and each has agreed to confirm as much in writing. To the extent the Court may find the existence of some conflict, each has informed me that he would willingly sign a written waiver of the conflict. Both men have signed written, sworn statements confirming that they have no objection to my representation of Mr. Butler even given my concurrent representation of both men, and that each man is waiving any conflict of interest which may be found to exist.

12. I wish to continue serving as a member of Mr. Butler's defense team, and I see no ethical or professional bar to my doing so, especially in light of my early and repeated disclosure to both Dr. Renner and Mr. Butler of the fact that I am actively performing legal work for both men in separate and unrelated matters.

13. I have not been pressured to sign this instrument. I know I am not required to sign this document, which I have read and which I understand fully. I sign this affidavit voluntarily and of my own free will.

VERIFICATION BY CERTIFICATION

Under authority of Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, I do hereby certify under penalty of law that the foregoing statements made by me in this affidavit are true and correct.

SCOTT KORDING, Affiant

J. STEVEN BECKETT
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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the undersigned caused service of the foregoing ***Defendant's Response to State's Motion to Disqualify Conflicted Trial Counsel***, to be made upon the recipient(s) designated below by the following method(s):

VIA HAND DELIVERY: A true and correct copy of the foregoing instrument(s) was delivered by hand to the person or professional offices of the following recipient(s) on this 21st day of February, 2018.

McLean County State's Attorney's Office
Law & Justice Center
104 West Front Street
Bloomington, IL 61701

Scott Kording, Attorney at Law

SCOTT KORDING
MEYER CAPEL, P.C.
202 North Center Street, Suite 2
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Facsimile]
SKording@MeyerCapel.com

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS	)	
VS.	)	No. 2017-CF-1025
JOHN BUTLER, DEFENDANT	)	

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION FOR PRE-TRIAL DISCOVERY

Now comes the People of the State of Illinois by Adam W. Ghrist and Bradly Rigdon, Assistant State's Attorneys, in and for the County of McLean, State of Illinois, and move that this Court deny the Defendant's Motion to for Pre-Trial Discovery, and state the following in support thereof:

1. The Defendant seeks production of ALL communication between the Illinois State Police and a number of other county, state, and federal agencies.
    a. The Defendant makes no effort to limit the scope of the request to a specific investigation, case, defendant, or time frame.
    b. The Defendant further makes no effort to limit the request to the specific person who would be party to the communication.
2. In support of this boundless request the Defendant cites *People v. Nichols*, 63 Ill.2d 443, 448 (1976), for the proposition that this court should give some deference to the Defendant's request.
    a. In *Nichols* the Illinois Supreme Court analyzed the State's nonproduction of a shoe that was found outside a window which the intruders in an armed robbery and attempted rape were suspected in entering. *Nichols*, 63 Ill.2d 443.

b. Defendant has clearly overstated the proposition they attribute to *Nichols*.

c. In supporting the holding that the State should have disclosed the shoe the court said, "The shoe must be considered as evidence favorable to the defendant's and should have been turned over to them under the courts order." *Id* at 448. This is considerably different that the proposition the Defendant asserts in paragraph 5. of their motion.

d. Further, the court in *Nichols* went directly thereafter to analyzing *People v. Hoffman*, 32 Ill.2d 96, in which the defendant claimed that a pair of shorts found in the room where a murder occurred were not his and should have been produced. The *Nichols* court cites the *Hoffman* court that "materiality of the shorts, it appears obvious from the very item, its condition and where it was found, that it was material." *Id.*

e. Clearly *Nichols* does not stand for the proposition that the Defendant asserts, and is not applicable to the request the Defendant now makes.

3. The Defendant has made no showing that there is discoverable material in the boundless request sought by the Defendant.

a. The Defendant asserts that this boundless communication will show some bias by law enforcement in this case because the case was reviewed by federal agencies.

b. However, the Defendant cites no case which supports this request.

c. Rather, the Defendant attempts to cast aspersions on the credibility of a law enforcement officer simply because the case has been reviewed by a prosecuting agency.

d. If this gave rise to requiring ALL communication to be turned over for the defense to go fishing, then all communications would be required to be turned over in every case that is prosecuted.

WHEREFORE, the People of the State of Illinois respectfully request that this Court deny the Defendant's Motion for Pre-Trial Discovery, filed December 14, 2017, in its entirely.

Respectfully Submitted,

Adam W. Ghrist
Assistant State's Attorney

Bradly Rigdon
Assistant State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney's of record of all parties to the above cause by:

✓ Via E-Mail by sending a true and accurate copy of the same to the e-mail address of the attorney of record, J. Steven Beckett at steve@beckettwebber.com on the 20 day of February, 2018.

Subscribed to and sworn before
me this 20 day of February 2018.

Katie Myers
Notary Public

OFFICIAL SEAL
KATIE MYERS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/29/19

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS	)	
VS.	)	No. 2017-CF-1025
JOHN BUTLER, DEFENDANT	)	

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION FOR A BILL OF PARTICULARS

Now comes the People of the State of Illinois by Adam W. Ghrist and Bradly Rigdon, Assistant State's Attorneys, in and for the County of McLean, State of Illinois, and move that this Court deny the Defendant's Motion to Dismiss, and state the following in support thereof:

I. PROCEDURAL POSTURE

On September 20, 2017, the Grand Jury of McLean County returned a Bill of Indictment in the above-entitled case and in four other cases pertaining to co-defendants. The Defendant filed a document entitled "Defendant's Motion for Bill of Particulars" (HEREINAFTER "Motion") on December 14, 2017. Within the body of that Motion, the Defendant alleges that the charges against are "vague, indefinite, uncertain and insufficient in general terms and conclusions" and that the "Defendant is unable from a reading of said indictment to reasonably know the nature and cause of charges and is unable to prepare an intelligent defense thereto."

II. ARGUMENT

This Court should deny the Defendant's Motion for a Bill of Particulars because the charges sufficiently inform the Defendant of the crimes with which he is charged such that he can prepare a defense and to prevent his being placed twice in jeopardy.

A bill of particulars is not an absolute right of a defendant charged with a criminal offense and "whether the prosecution shall be required to give a bill of particulars in a given case rests in the discretion of the trial court, and only a clear abuse of discretion in the denial of a motion is error." *People v. Sims*, 393 Ill. 238, 242 (1946). "A bill of particulars is required only when the indictment, standing alone, is not specific enough to allow the defendant to prepare a defense or prevent his being twice placed in jeopardy." *People v. Honn,* 47 Ill.App3d 378, 386 (4th Dist. 1977).The request for a bill of particulars; therefore, is a very specific remedy and "it was never intended for the purpose of a disclosure of facts which would constitute evidence of the prosecution in advance of trial." *Sims* at 241. "A defendant is not entitled to request a general disclosure of evidence through a motion for a bill of particulars." *People. Therriault,* 42 Ill.App3d 876, 888 (1st Dist. 1976). When analyzing the need for a bill of particulars, "the core of the issue here is whether defendant was sufficiently informed of the nature and elements of the charged offense." *People v. Velez,* 967 N.E.2d 433, 452 (1st Dist. 2012).

The State filed a 44-count Bill of Indictment and, in each of those counts, provided a high level of detail and specifics as it relates to the offenses. A charging document would be valid with much less information contained within it and the additional specifics provided by the State are exactly the type of information which allows the Defendant to prepare a defense and to know he is not subject to double-jeopardy on the charges. It might be a different situation had a charging document simply alleged the statutory elements and alleged the amount of the theft to

be in excess of a certain amount. However, the language in the charges does not stop at a simple recitation of the statutory elements; rather, the State provided details about the exact amount of money involved in each offense, the specific type of conduct which gave rise to each offense, the interplay between counts which charged the same conduct in multiple ways, and identified the counts which aggregated conduct that was the subject of other charges. Requiring the State to provide the information requested would amount to no more than the general disclosure of evidence which is not prohibited under the law governing a bill of particulars.

Courts have denied motions for bill of particulars when the charging language was much more broad. While it is a First District case, the *Velez* case contains cogent reasoning and a more detailed analysis of the propriety of a court requiring the State to produce a bill of particulars. That case, and the Second District case it cites, dealt with the charging language in a charge of child abduction. *Velez* at 439. The charging language utilized by the state in that case was that "'he, intentionally attempted to lure [J.H.], a child under the age of 16, into a motor vehicle without the consent of her parent, or lawful custodian, *for other than a lawful purpose*, in violation of [the child abduction statute].'" *Id.* at 449 (emphasis added). The defendant in that matter asked the court to require the State to provide a bill of particular which, in part, would require the State to name the "unlawful purpose the Defendant was going to commit upon the minor." *Id.*

The *Velez* decision is of particular value in the analysis as it shows that language in a charging document that is much more vague than the language in this case still was not sufficient to require a bill of particulars. The analysis in that case is the same analysis that the Court should conduct in this case and make a determination as to whether the Defendant has been sufficiently informed of the nature and the elements of the charged offense. When that analysis is conducted,

the only conclusion reached can be that the extent of information it the Bill of Indictment is more than sufficient to allow this court to deny the Defendant's Motion.

III. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that this Court deny the Defendant's Motion for a Bill of Particulars in its entirety.

Respectfully Submitted,

Adam W. Ghrist
Assistant State's Attorney

Bradly Rigdon
Assistant State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record of the Defendant, John Butler, in the above cause by:

X Via U.S. Mail by depositing a true and correct copy of the same in a United States Post Office Box addressed to the attorney of record on the 16th day of February, 2018.

X Via E-Mail by sending a true and accurate copy of the same to the e-mail address of the attorney of record, Steve Beckett at steve@beckettlawpc.com on the 16th day of February, 2018.

Bradly Rigdon
Assistant State's Attorney

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS	)	
VS.	)	No. 2017-CF-1025
JOHN BUTLER, DEFENDANT	)	

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Now comes the People of the State of Illinois by Adam W. Ghrist and Bradly Rigdon, Assistant State's Attorneys, in and for the County of McLean, State of Illinois, and move that this Court deny the Defendant's Motion to Dismiss, and state the following in support thereof:

I. PROCEDURAL POSTURE

On September 20, 2017, the Grand Jury of McLean County returned a Bill of Indictment in the above-entitled case and in four other cases pertaining to co-defendants. The Defendant filed a document entitled "Defendant's Motion to Dismiss" (HEREINAFTER "Motion") on January 18, 2018. Within the body of that Motion, the Defendant alleges that the charges against him should be dismissed. As an exhibit, the Defendant attached a copy of the Development and Management Agreement entered into between Central Illinois Arena Management and the City of Bloomington. In what the State assumes was an unintentional oversight, one page of the Management Agreement was not included in the Defendant's exhibit. For completeness of the record, the State has attached that page to this Response and marked it for identification purposes as People's Exhibit 1. The Defendant's Motion makes multiple factual allegations within paragraphs 6 through 17.

II. STATE'S ANSWER TO FACTUAL ALLEGATIONS

For the purposes of this Motion only, the State admits Paragraphs 6, 7, 8, 9, 12, 13, 15, 16, and 17.

Paragraph 10- The State admits that there were provisions regarding an annual audit contained within section 8.1 of the Management Agreement and noted on pages 18-19 of said Agreement.

Paragraph 11- The State denies the allegation as it cannot presume the mindset of the Defendant and disagrees that the Defendant justifiably relied on annual audits which were conducted based on documents provided by the Defendant and his organization.

Paragraph 14- the State denies that the annual audits provided to the City of Bloomington contained the entirety of allocation and categories of income and expenses.

III. STATEMENT OF LAW AND ARGUMENT

The Bill of Indictment in this matter should not be dismissed as it does properly state an offense and there will be no miscarriage of justice if the Bill of Indictment remains in effect.

There are eleven statutory grounds under which an indictment may be dismissed by a trial court. 725 Ill. Comp. Stat. Ann. 5/114-1(a). If the motion presents only an issue of law the court shall determine it without the necessity of further pleadings. ft the motion alleged facts not of record in the case the State shall file an answer admitting or denying each of the factual allegations of the motion. 725 Ill. Comp. Stat. Ann. 5/114-1(c). "The purpose of a motion to

dismiss for failure to state an offense is to challenge the sufficiency of the allegations in the complaint, not the sufficiency of the evidence." *People v.* Sheehan, 168 Ill.2d 298, 303 (1995). The procedures for addressing a motion to dismiss dictate that "when addressing a defendant's motion to dismiss a charge under section 114-1(a)(8), a trial court is strictly limited to assessing the legal sufficiency of the indictment, information, or criminal complaint and *may not* evaluate the evidence the parties might present at trial." *Soliday* at 342.

Those eleven statutory factors may be expanded because a "trial court possesses the inherent authority to dismiss a charge for reasons other than those listed in subsection 114-1(a)." *People v. Soliday,* 313 Ill.App.3d 338, 342 (4th Dist. 2000). However, that power is not unfettered and the Supreme Court has cautioned that a trial court's use of "'such supervisory power be exercised only when failure to do so will effect a deprivation of due process or result in a miscarriage of justice.'" *People v. Fassler*, 153 Ill.2d 49, 58 (1992), quoting *People v. Sears*, 49 Ill.2d 14, 31 (1971).

Charging documents are generally designed to place a Defendant on notice of the charges against him and are "designed to inform the accused of the nature of the offense which he is charged so that he may prepare a defense and to assure that the charged offense may serve as a bar to subsequent prosecution arising out of the same conduct." *People v. Meyers*, 158 Ill.2d 46, 51 (1994). The basic requirements are that the "charging instrument be in writing, stating the name of the offense and the relevant statutory provision violated, setting forth the nature and elements of the offense and the date and county in which the offense occurred, and naming the accused if known or a reasonably certain description." *Id.*

As a threshold matter, the Defendant has made no claim in his motion that the charges against the Defendant fail to comply with 725 ILCS 5/111-3. On their face, the charges

themselves do comport with the requirement of the statute because they are in writing, state the name of the offense, state the statutory citation, state the county in which the acts occurred, and state with particularity the acts which comprise each offense. It is of particular note that the charging documents themselves go beyond a mere recitation of the statutory elements and state specific actions on the part of the Defendant and those for whose actions he was legally responsible in great detail. The Defendant instead couches his arguments on other grounds.

The majority of the Defendant's arguments regarding why he believes the charges fail to state an offense are based upon his belief that the allegations against him are contractual in nature. He spent many paragraphs of his motion detailing the business relationship and laying out what is, in essence, the theory of what he believes to be a potential defense to the charges. It would be inappropriate for the State to address the inadequacies and shortcomings of the Defendant's belief at this stage in the proceedings because a Motion to Dismiss is not the time for the Defendant to plead a defense and it is not the time for the State to rebut that defense; that time comes when the case is heard at a trial. The entirety of the Motion boils down to the fact that the Defendant subjectively does not believe his conduct amounts to a crime and disagrees with the State as to whether he is guilty of the charged offenses. Such a subjective belief cannot be the grounds for a motion to dismiss. If the hypothetical existence of a defense were all it took to warrant dismissal of criminal charges, all cases would be resolved at this stage of the proceedings because there would never be any need for a trial. Whether there is a defense to the charges should be a matter for the fact-finder and the cases cited above bear out that fact.

The Motion before the court has similarities to the one that was presented in the *Soliday* case that has been cited by both parties. In *Soliday*, the Motion to Dismiss was also premised on the grounds that a contract vitiated an element of the criminal charges against the Defendant. The

Court in that matter was reversed for improperly considering the contract and the evidence that would be presented at trial. While that case revolved around a much less serious offense, the guiding principle that the facts of the case itself should not be considered when determining whether a charge states an offense still applies. Like in *Soliday*, The Defendant here asks the court to improperly make legal findings as to the sufficiency of the evidence which may be presented at trial by analyzing the past business relationships and contents of the contract itself. To do so would be an inappropriate action by the Court because it would require the Court to consider the evidence that the parties might present at trial.

The Defendant asks the Court to consider the terms of the Management Agreement by also making the argument that not dismissing the charges would result in a miscarriage of justice. The Defendant has cited to no authority to support his position that the existence of a potential defense results in a miscarriage of justice and the State can find none that supports that claim. Generally, this request is once again based on a belief by the Defendant that his actions do not constitute a crime or that he is not accountable for some of the actions of his co-defendants. Once again, the belief in the existence of a defense to the charges should not be held to be a miscarriage of justice because it would yield an absurd result in which no Defendant ever went to trial and, instead, had his case dismissed shortly after the return of a Bill of Indictment.

The State anticipates that the evidence at trial, as demonstrated through the charging documents themselves, will show that a systematic and far-reaching scheme was utilized to defraud the City of Bloomington out of hundreds of thousands of dollars over a course of years and that the Defendant took steps and directed others to cover up those actions and hide them from auditing procedures. There is nothing within the terms of the Management Agreement cited by the Defendant which allows for the Defendant to engage in Theft, Money Laundering, and/or

Tax Fraud and the fact that a contract was in place governing portions of the relationship between the Defendant and the City of Bloomington does not absolve him of criminal responsibility for his criminal activity. The question of whether the Defendant was merely operating under a contract or whether he engaged in criminal activity is a question of fact. The mens rea of the Defendant is something the State is required to prove at trial and such a question of fact is rightly to be considered by a fact-finder at a trial. This Defendant is asking the court to break new ground and set a legal precedent that allowing a fact-finder to make the ultimate determination on a question of fact constitutes a "miscarriage of justice" and such a finding is not supported by the law.

The Bill of Indictment in this matter should not be dismissed because it does properly comply with 725 ILCS 5/111-3 and allowing the case to proceed to trial on its merits would not result in a miscarriage of justice.

IV. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that this Court deny the Defendant's Motion to Dismiss in its entirely.

Respectfully Submitted,

Adam W. Ghrist
Assistant State's Attorney

Bradly Rigdon
Assistant State's Attorney

effective date of such termination. The Coliseum and all equipment and furnishings shall be returned to the City in good repair, reasonable wear and tear excepted, to the extent funds were made available therefore by the City. All reports, records, including financial records, and documents or copies thereof shall be maintained by CIA at the Coliseum relating to this Agreement (other than materials containing CIA's proprietary information) and shall be immediately surrendered to the City by CIA upon termination.

16. Miscellaneous.

16.1 Use of Coliseum at Direction of City.

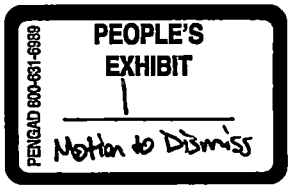
(a) At the direction of the City, upon reasonable advance notice and subject to availability, CIA shall provide use of the Coliseum or any part thereof to civic and non-profit organizations located in the City of Bloomington at reduced rates. All event related expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Coliseum by such organizations, if not reimbursed to CIA by the organization using the Coliseum, shall be reimbursed by the City to CIA for deposit into the operating account(s) specified in Section 5.6.

(b) The City shall have the right to use the Coliseum or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee (or at a reduced fee), except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City.

(c) The City shall not schedule use of the Coliseum pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by CIA and shall in all instances be subordinate thereto in terms of priority of use of the Coliseum. In all in stances when the Coliseum, or part thereof, is to be used at the City's request or by the City pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Revenues for the purpose of calculating CIA's Incentive Fee pursuant to Section 10.2 above.

16.2 Cooperation/Mediation.

(a) The parties desire to cooperate with each other in the management and operation of the Coliseum pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within ninety (90) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, the matter will be resolved pursuant to Section 16.2(b) and (c) below.



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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record of the Defendant, John Butler, in the above cause by:

X Via U.S. Mail by depositing a true and correct copy of the same in a United States Post Office Box addressed to the attorney of record on the 16th day of February, 2018.

X Via E-Mail by sending a true and accurate copy of the same to the e-mail address of the attorney of record, Steve Beckett at steve@beckettlawpc.com on the 16th day of February, 2018.

Bradly Rigdon
Assistant State's Attorney

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
)
v.) No. 2017-CF-1025
)
JOHN Y. BUTLER)
Defendant.)

Confessed by State

SUPPLEMENTAL MOTION TO DISMISS

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorney, J. STEVEN BECKETT, of Beckett Law Office, P.C., and pursuant to 725 ILCS 5/114-1(a)(2), the Fifth and Fourteenth Amendments to the U.S. Constitution, and the corollary provisions of the Illinois State Constitution of 1970, moves this Honorable Court to dismiss the charges in the above cause and in support thereof state as follows:

1. That the Defendant is charged with 22 counts of theft.
2. That the Statute of Limitations for theft of property under $100,000 is three years. 720 ILCS 5/3-5(b).
3. That the Statute of Limitation for theft of property over $100,000 is five years. 720 ILCS 5/3-5(a-5).
4. That when an offense is "based on a series of acts performed at different times, the period of limitation . . . starts at the time when the last act is committed." 720 ILCS 5/3-8.
5. That Counts 5 and 6 allege offense dates of May 5, 2010 through April 4, 2016 for Class 1 Felony Theft of property under $100,000. The Statute of Limitations on these counts is three years and therefore Counts 5 and 6 fail to allege that the theft occurred within the applicable time limitation. Specifically, the time period between May 5, 2010 and September 19, 2014 fall outside the 3-year statutory period.

6. That, in order to toll the Statute of Limitations, the State should have alleged in the information that the last act of the theft constituting the offense occurred after September 19, 2014 and therefore the entire information would have been within the Statute of Limitations period. *People v. Thingvold*, 145 Ill. 2d 441 (1991).
7. That in *Toolen*, the indictment, filed on January 29, 1982 alleged that criminal conduct occurred "between January 1, 1979 and October 1980." *People v. Toolen*, 116 Ill. App. 3d 632 (5th Dist. 1983). The first month of that period was beyond the statute of limitation period, and no facts in the indictment established that the last of any series of acts occurred later than the first month. *Id.* The court in *Toolen* dismissed the indictment because the State failed to allege facts giving rise to the exception for a series of acts. *Id.*
8. That Counts 5 and 6 fail to allege facts giving rise to the exception for a series of acts by failing to establish that the last of any series of acts occurred later than September 19, 2014.
9. That Counts 19 and 20 allege an offense date of January 18, 2013 through March 20, 2015 for Class 1 Felony Theft under $100,000. The Statute of Limitations on these counts is three years and Counts 19 and 20 fail to allege facts giving rise to the exception for a series of acts by failing to establish that the last of any series of acts occurred later than September 19, 2014.
10. That Count 21 and 22 allege an offense date of January 4, 2013 through March 29, 2016 for Class 1 Felony Theft under $100,000. The Statute of Limitations on these counts is three years and Counts 21 and 22 fail to allege facts giving rise to the exception for a series of acts by failing to establish that the last of any series of acts occurred later than September 19, 2014.
11. That Counts 11 and 12 allege an offense date of August 1, 2008 through February 29, 2016 for Class X Felony Theft of property over $100,000. The Statute of Limitations on these counts is five years and Counts 11 and 12 fail to allege facts giving rise to the exception for a series of acts by failing to establish that the last of any series of acts occurred later than September 19, 2012.

12. That Counts 13 and 14 allege an offense date of January 4, 2008 through March 27, 2016 for Class X Felony Theft of property over $100,000. The Statute of Limitations on these counts is five years and Counts 13 and 14 fail to allege facts giving rise to the exception for a series of acts by failing to establish that the last of any series of acts occurred later than September 19, 2012.

13. That Counts 15, 16, 17, and 18 all allege an offense date of November 4, 2007 through March 27, 2016 for Class X Felony Theft of property over $100,000. The Statute of Limitations on these counts is five years and Counts 15-18 fail to allege facts giving rise to the exception for a series of acts by failing to establish that the last of any series of acts occurred later than September 19, 2012.

14. That, finally, Counts 7 and 8 allege an offense date of May 5, 2010 through March 28, 2012 for Class 1 Felony Theft of property under $100,000. The Statute of Limitations on these counts is three years and the statutory period has clearly expired.

WHEREFORE, the Defendant, JOHN Y. BUTLER, respectfully requests that this Court dismiss Counts 5-8, and 11-22 of the Indictment and grant to Defendant such other and further relief as this court deems just and appropriate.

Respectfully Submitted,

JOHN Y. BUTLER, Defendant

By: J. Steven Beckett

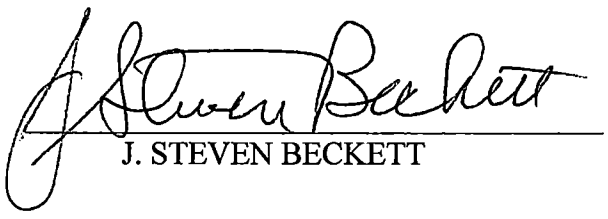
J. Steven Beckett

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
Urbana, IL 61801
(217) 328-0263
(217) 328-0290 (FAX)
steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on February 14th, 2018 he did cause a copy of the foregoing ***Defendant's Supplemental Motion to Dismiss*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701



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IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

NOTICE OF HEARING

TO: State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

YOU ARE HEREBY NOTIFIED that on February 23, 2018 at 1:30 p.m., I shall appear before the **Honorable Judge Freitag** in **Courtroom 5A** of the McLean County Courthouse, 104 W. Front St, Bloomington, Illinois, and then and there proceed with a **Hearing on Defendant's Request for a Stay of Forfeiture Notice** in the above cause.

DATED this 14th day of February, 2018.

J. STEVEN BECKETT

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
Urbana, IL 61801
(217) 328-0263
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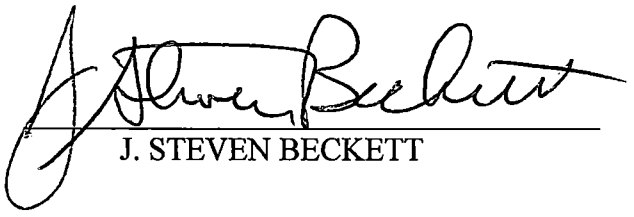
steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on February 14th, 2018 he did cause a copy of the foregoing ***Notice of Hearing*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701



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IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

v.

JOHN Y. BUTLER
Defendant.

No. 2017-CF-1025

DEFENDANT'S MOTION TO STRIKE NOTICE OF FORFEITURE

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorney, J. STEVEN BECKETT, of BECKETT LAW OFFICE, P.C., and moves this Honorable Court to strike the State's Notice of Pending Forfeiture pursuant to the Fifth and Fourteenth Amendments to the U.S. Constitution and the corollary provisions of the Illinois State Constitution of 1970, and for his ***Defendant's Motion to Strike Notice of Forfeiture*** states in support as follows:

1. That, on or about September 26, 2017, Special Agent Dan Rossiter of the Illinois State Police served via facsimile a Seizure Warrant on Citizens Equity First Credit Union (CEFCU) seizing all of the accounts that were held in Defendant's name.
2. That, on or about December 19, 2017, CEFCU turned over the contents of several of Defendant's accounts, totaling $31,430.47, to the Illinois State Police. Upon information and belief, this turnover occurred without a valid court order.
3. That, after the confiscation of Defendant's $31,430.47, the remaining funds that had been seized and not turned over were released to Defendant.
4. That on January 30, 2018, a Notice of Pending Forfeiture was hand delivered to Defendant in open court to his counsel for the $31,430.47 that was confiscated from Defendant's CEFCU bank accounts.

5. That the Notice of Pending Forfeiture incorrectly lists the date of the seizure of Defendant's funds as 12/19/17, when, in fact, said funds were seized at an earlier date, and Defendant had been deprived of the use and benefit of all of his accounts at CEFCU since September 26, 2017.
6. That, upon information and belief, no Miscellaneous Remedies case file has been opened in this matter which would allow Defendant to adequately prepare for a forfeiture hearing.
7. That Defendant received a Notice of Pending Forfeiture 126 days after his bank accounts had been seized.
8. That the State was required to institute judicial *in rem* forfeiture proceedings within 45 days from receipt of notice of seizure from the seizing agency. 720 ILCS 5/29B-1(l), and has failed to meet the requirements of said statute.
9. That the factors to consider in determining whether the government's delay in filing forfeiture proceedings violated Defendant's due process right to be heard at meaningful time are the length of the delay, the reason for the delay, the Defendant's assertion of his right, and the prejudice to Defendant. *People ex rel. Waller v. Seeburg Slot Machines*, 641 N.E.2d 997 (Ill. App. 2d Dist. 1994).
10. That the State's Notice of Pending Forfeiture was untimely in that it was hand delivered to Defendant after more than the 45 statutorily mandated days.
11. That the State failed to follow the statutorily provided forfeiture requirements by compelling CEFCU to turnover Defendant's funds before any forfeiture hearing and without a court order.

12. That any turnover of funds from CEFCU to the Illinois State Police constitutes a Due Process violation because the turnover occurred prior to any forfeiture hearing or probable cause determination.

13. That this seizure of Defendant's funds is unconstitutional for reasons stated in Defendant's earlier briefings:

    a. That the warrant is a general warrant and Special Agent Rossiter's attempt to excuse it by releasing holds on some of Defendant's accounts does not make the warrant constitutional.

    b. That Special Agent Rossiter used the warrant "as if armed with a general warrant and searched and seized indiscriminately" when seizing Defendant's bank accounts and this seizure was not justifiable. *People v. Harmon*, 90 Ill. App. 3d 753, 759 (4th Dist. 1980).

    c. That the Fourth Amendment of the United States Constitution "protects against the issuance of search warrants that grant the police broad discretion to conduct a general, exploratory rummaging in a person's belongings". *People v. Dressler*, 317 Ill. App. 3d 379 (3rd Dist. 2000). General warrants and seizures are likewise prohibited by Article I, Section 6 of the Illinois Constitution of 1970. *People v. McCarty*, 356 Ill. App. 3d 552 (2005), *aff'd*, 223 Ill. 2d 109 (2006).

    d. That the Fourth Amendment's requirement that a warrant particularly describe the things to be seized makes general searches impossible and prevents seizure of one thing under a warrant describing another and leaving nothing to

the discretion of the officer executing the warrant as to what is to be taken. *Berger v. State of N.Y.*, 388 U.S. 41 (1967).

e. That the general rule is that due process requires notice and hearing, prior to government action involving deprivation of property rights, and exceptions occur only in extraordinary situations. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43 (1993).

f. That the Seizure Warrant process set forth in 725 ILCS 5/108-3 and 725 ILCS 5/108-4 and utilized by the Illinois State Police in this case are unconstitutional in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States and corollary provisions of the Illinois State Constitution of 1970 in one or more of the following respects:

   i. Said statute, on its face and as applied, permits the issuance of a general warrant to seize the property of a Defendant.

   ii. The Seizure Warrant in this case was a general warrant that commanded the seizure of accounts that had no bearing, connection, or relevance to the pending investigation of the Defendant, or the criminal charges that were filed against him.

   iii. Said statute permits the seizure and taking of property without any pre-seizure notice and opportunity to be heard, not as evidence, but to deprive a Defendant of the use and benefit of his property.

   iv. The Seizure Warrant process in this case is secretive and not open to public examination, nor made available as a public record to a defendant or other aggrieved party affected by the seizure of property.

v. That the issuing judge did not have probable cause to support the issuance of the Seizure Warrant in this case.

14. That the Notice of Pending Forfeiture seeks to require John Y. Butler, Defendant herein, to file a bond within 45 days of the date of the Notice (January 26, 2018) despite his prior motions attacking the seizure and requesting the return of the improperly seized funds as noted in paragraph 13 above.

WHEREFORE, the Defendant, JOHN BUTLER, asks that this Honorable Court strike or dismiss the State's Notice of Pending Forfeiture, order the return to Defendant of the $31,430.47 improperly confiscated funds, stay any requirement of posting bond by John Y. Butler, pending ruling on this motion and the motion to quash seizure warrant and motion for return of property, and also grant to Defendant such other and further relief as this court deems just and appropriate.

Respectfully Submitted,

JOHN Y. BUTLER, Defendant

By: J. Steven Beckett

J. Steven Beckett

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
Urbana, IL 61801
(217) 328-0263
(217) 328-0290 (FAX)
steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on February 7, 2018 he did cause a copy of the foregoing ***Defendant's Motion to Strike Notice of Forfeiture*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

J. STEVEN BECKETT

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
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IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

NOTICE OF HEARING

TO: State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

YOU ARE HEREBY NOTIFIED that on February 23, 2018 at 1:30 p.m., I shall appear before the **Honorable Judge Freitag** in **Courtroom 5A** of the McLean County Courthouse, 104 W. Front St, Bloomington, Illinois, and then and there proceed with a **Hearing on Defendant's Motion for Extension of Time to Comply with Pre-Trial Discovery Order, Defendant's Motion for Bill of Particulars, Defendant's Motion for Pre-Trial Discovery and Production Pursuant to *Brady v. Maryland*, and Defendant's Motion to Dismiss** in the above cause.

DATED this 7th day of February, 2018.

J. STEVEN BECKETT

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Urbana, IL 61801
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CERTIFICATE OF SERVICE

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McLean County Courthouse
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Bloomington, IL 61701

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

RETURN AND INVENTORY OF SEARCH WARRANT

Special Agent Daniel Rossiter of the Illinois State Police Department does hereby certify under oath certify that a Search Warrant was executed on 08/15/17 by searching the following described items as listed below.

The personal cellular device of John Butler with a phone number of 309-242-7107.

The following is a verified inventory:

Phone extraction report was placed on a disc.

Special Agent Daniel Rossiter of the Illinois State Police Department does hereby state that the above referenced inventory is complete and correct pursuant to the Search Warrant issued by the Honorable Judge David Butler, Associate Judge in and for McLean County of the Eleventh Judicial Circuit on 08/14/17 at about 8:43 AM.

The Circuit Clerk of McLean County is hereby directed to file the Complaint for Search Warrant and this return with the related pending criminal case in McLean County court specifically being The People of the State of Illinois vs. John Butler 17CF1025, Jay Laesch 17CF1026, Paul Grazer 17CF1028, Kelly Klein 17CF1029 and Bart Rogers 17CF1027.

Subscribed and sworn to before me this 30 day of January of 2018.

Officer 740220

Judge

ORDER

This Court hereby finds that a proper return has been made on the aforesaid Search Warrant according to provisions of 725 ILCS 5/108-10, and therefore:

IT IS HEREBY ordered that the custody of these articles, items and things seized upon the execution of said Search Warrant, as shown by the above Return and Inventory, be taken by the Illinois State Police Department, or its successor or assignees of the agency to be held as evidence until proper disposition can be made in accordance with law.

Entered this 30 day of January, 2018

Judge

AUG 14 2017

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

COMPLAINT FOR SEARCH WARRANT

A. Complainant: Special Agent Daniel Rossiter #6230 .
Illinois State Police

B. Place or Objects to be seized:

B.1. The Personal Cellular Device of John Butler with phone # (309) 242-7107 which is most likely in the custody of John Butler

B.2. The person of John Butler

C. Items or Materials to be seized and searched:

C.1. 1) The cellular device with # (309) 242-7107 seized from John Butler which is currently in the custody of John Butler, 2) SMS messages sent and received on the telephone relating to planning, execution, concealing, or discussion of fraud related activities, 3) MMS messages sent and received on the telephone relating to planning, execution, concealing, or discussion of fraud related activities, 4) photographs depicting the implements, planning, execution, or results of fraud related activity, 5) videos depicting the implements, planning, execution, or results of fraud related activity, 6) Social networking profile information, 7) Social networking messages, 8) incoming/outgoing call records, 9) contact lists information, 10) Bluetooth logs, 11) stored application data including content of any messaging apps, 12) all Metadata which is associated with any seized file and/or information, 13) the phone's identifying information and user data including assigned phone number, IMEI/MEID number, serial number, and any user registration or identifying information to include information to disable the devices security measures.

D. Probable Cause Statement

D.1. Applicant Petitioner S/A Daniel Rossiter #6230 has probable cause to believe said items or materials are located on, at, or within the place or object to be searched based on the information contained within this petition. As a regular part of affiant's duties, affiant conducts investigations into criminal offenses, interviews witnesses, collects, and preserves evidence connected to the investigations.

D.2. Affiant S/A Daniel Rossiter #6230 is a sworn officer with the Illinois State Police. As a regular part of affiant's duties, affiant conducts investigations into criminal offenses, interviews witnesses, collects, and preserves evidence connected to the investigations. Affiant is aware that modern cellular telephones are equipped with GPS functions. These GPS functions are often

turned on by default and constantly track the positioning of the cellular telephone. In addition to the potential for constant tracking, the GPS functions of the cellular telephone are able to interact with "metadata" on the cellular telephone. "Metadata" is a set of data that describes and gives information about other data. Essentially, metadata is data that is attached to the various files, images, SMS/MMS messages, etc... which are contained within the storage of a cellular telephone. Common examples of metadata may be the phone number to which a text message was sent, or the specific camera settings which were used when a photograph was taken. However, metadata also incorporates GPS information. This means that a phone is able to record the exact GPS coordinates at any given time and attach it to the metadata of the files within the cellular telephone. Practically speaking, this means that SMS/MMS messages, sent/received phone calls, photos, videos, applications, and other files may have GPS data attached to them which can indicate exactly where a cellular telephone was at a particular time. The recording of the GPS data frequently occurs without the actual knowledge of the user of the cellular telephone and the information does not patently appear when simply viewing the file. The GPS functions on a cellular telephone can also be actively enabled or disabled by the user and neither is a permanent setting. This means that some files may have GPS metadata attached to them while other files may not have such metadata. It is not possible to determine whether a particular file has that metadata without conducting a search of the cellular telephone and its files. In order to fully recover any potential GPS data contained within the metadata of those files, all of the files themselves have to be seized and searched.

Background

D.3. The Coliseum, with a seating capacity of 5,000 to 7,000 opened in April 2006 managed by CIAM under the Development and Management Agreement adopted in October 2005. CIAM is owned by John Butler. The Coliseum has incurred significant operating losses in recent years and has required annual cash infusions from City funds. In 2002 CIAM and the City of Bloomington entered into a Consulting and Sales Agreement under which CIAM became the city's exclusive agent responsible for the sales of naming rights, sponsorship, signage, luxury suites, and premium seating agreements. During CIAM's 10 years term of the management agreement, CIAM continued to receive annual commissions on these various sales agreements. CIAM was also responsible for negotiating with the anchor tenants, including sports franchises, and assisting with the design of the Coliseum facility. In 2005, an agreement was reached between the City of Bloomington and CIAM which incorporated provisions from the previous 2002 and 2004 agreements. In addition, the 2005 agreement allowed CIAM to use organizations affiliated with CIAM to provide all Coliseum concession and merchandizing services. As Coliseum managers, CIAM became responsible for the marketing and contracting of all Coliseum events. CIAM entered into an agreement with "BMI Concessions" for all concession and merchandizing services. BMI Concessions is also owned by John Butler.

In 2016 the City of Bloomington engaged into contract negotiations with CIAM asking for larger and stricter auditing powers. CIAM refused to agree to any new and more stringent

auditing requests and negotiations ended. The City of Bloomington hired a new management company named VenuWorks.

Investigation

D.4. On March 31, 2016 CIAM vacated their position with the Coliseum. Subsequently it was learned that from 3/28/16 – 3/31/16 someone accessed the City of Bloomington secure servers and began to delete all contents of the folder to include business documents and emails sent across the city of Bloomington's server dealing with CIAM. Many of these files were recovered by the City of Bloomington's IT department and are currently being stored on the City's secure server.

D.5. When CIAM vacated the Coliseum on March 31, 2016 they abandoned several boxes labeled CIAM. It was believed that those boxes contain payroll and other business documents. As part of the turnover VenuWorks began to review current and expiring contracts. During this review significant issues were discovered to include commissions paid to CIAM or agents for money or goods which were not received by the Coliseum. It should be noted that these commissions are paid by City of Bloomington funds. Further, alcohol sales in the Coliseum were tracked using a "MICROS" program. This program is a reporting system that records sales and inventory from multiple points of sale from within the Coliseum. A review of that program reflects an approximant discrepancy alcohol purchases of $210,000.

D.6. City of Bloomington finance department began to review the Coliseum's yearly audit forms prepared and submitted by CIAM's Assistant GM of Finance Kelly Klein. The City Finance department had observed the Box Office Account currently has a $150,000 shortfall. During this review a $60,000 shortfall from the Revolving Loan Account for the Coliseum was also discovered. Since CIAM has been replaced by VenuWorks it has been discovered that the numbers reported on the yearly auditing forms prepared by Kelly Klein do not match the city funds remaining in the Coliseum accounts.

D.7. On April 26, 2016 The City of Bloomington contracted the Bronner Group, LLC to complete a limited review focusing on six main concerns, legal fees and CIAM expenses charged to the Coliseum Fund, Commission claimed paid to CIAM, Box Office Activities, concessions and transactions with CIAM affiliates, use of Coliseum credit cards and personal expenses, and unbooked audit corrections. The Petitioner has reviewed that audit in conjunction with the investigation. For FY 2016 CIAM paid legal fees totaling $43,210 to one law firm from Coliseum funds and was unable to associate any of the billings with Coliseum operations adding most appeared to relate to CIAM corporate matters. It should be noted that CIAM paid other fees to this same law firm that related only to corporate CIAM matters. Further, some legal expenses paid by the Coliseum fund were appropriately paid.

Several expense categories have been identified that are high risk for inappropriate usage of Coliseum funds. In reviewing an "Extraordinary Expenses"- many of the expenses were for insurance. The audit noted that added insurance costs are usually predictable and would not be charged to an Extraordinary Expense account. A total of $3,752 was reflected as insurance costs to the Coliseum's insurance provider. CIAM records reflect $5,000 in prepaid expenses for the OSF St. Joseph Medical Center, however it was not clear what services were being received in exchange. There were other expense accounts that raised concern including an "automobile expense" reflecting one entry per month.

D.8. From the investigation it appears that CIAM, John Butler and Bart Rogers were receiving personal benefits from sales agreements made on behalf of the Coliseum. The investigation to this point has identified multiple commissions or benefits totaling $152,233.75 paid on contracts negotiated without City of Bloomington authorization as required by the Development and Management Agreement for contracts negotiated with end dates extending past March 31, 2016. The city of Bloomington estimated 50 contracts were negotiated past March 31, 2016 without the City's authorization. A contract with State Farm with a value of $100,000 was negotiated to start on April 1, 207 and expire on April 1, 2017. CIAM did not seek approval for this contract and paid John Butler a 10% commission of $10,000 twice, once through invoicing and once through direct wire transfer on March 28, 2016. Par-A-Dice Casino commissions were paid on the contract that extends from 1/1/16 – 5/31/16 with a signed execution date of March 13, 2016. Other examples of contracts negotiated past March 31, 2016 with commissions paid include, Ameren Homfield II Power 6/1/15-5/31/16, City Beverage 5/1/14-4/30/16, Copy Shop 1/1/16-12/31/16, Snyder Companies 1/1/2016-1/1/2017,Vital Signs 10/1/15-9/30/17, and OSF 8/15/15-8/15/16.

D.9. The Annual Net Concession Sales for FY2016 (5/1/15 to 4/12/16) totaled $908,986 per the MICROS Point of Sale system. Of this, the Coliseum should have been paid 32% of regular sales and 15% of sales from luxury suites and catering (according to the management agreement). Estimated revenues paid to the Coliseum would have been approximately $279,054 for regular sales (32%) and $5,541 for luxury suites and catering (15%) – for a total of $284,595. Actual concession revenues recorded in Commission records through March 31, 2016 were $215,085 – a difference of $69,510. It should be noted that BMI Concessions is owned by the owners of CIAM. It was determined the annual sales report from the MICROS system reflected beer sales for Fiscal Year 2016 of $425,970. A review of the beer distributor report reflects annual beer purchases by the Coliseum in Calendar year 2015 of 5,300 cases or 127,222 individual beers. If sold at an average price of $5.00, this beer should have generated sales totaling $636,111.

D.10. CIAM owners, John Butler and Bart Rogers were issued CEFCU credit cards that were paid by City of Bloomington funds. Both CIAM owners used Coliseum credit cards to purchase gasoline for personal vehicles when commuting to Bloomington for work. Under the CIAM management agreement, both of these individuals were to be full-time Coliseum employees and their cost to commute to and from the coliseum should have been personal expenses of the owner and not the operating expenses of the Coliseum. Both CIAM owners

combined for a total of 98 transactions at gas stations in Morton, Peoria, and Bloomington totaling $2,925. Coliseum credit cards were also used to make ticket purchases with the United Center, the Chicago Blackhawks, and ITicket Ohio totaling $1,836.00. Various good were purchased with these credit cards to local stores including, Wal-Mart, Lowe's, Menard's, Kroger, Hobby Lobby, Farm & Fleet, and Amazon.com totaling $8,706.00.

D.11. While reviewing CEFCU Bank records provided pursuant to a Mclean County Warrant signed by Judge Butler on March 21, 2016 several transactions were correlated with all three CEFCU bank accounts during the month of March 2016. Account #0819255 (Coliseum Box Office) had $202,252.52 transferred to account #0816438 (Coliseum Fund). Account #0816438 (Coliseum Fund) had $197,039.76 transferred to account #0803706 (CIAM Savings). On March 11, 2016 the City of Bloomington granted CIAM's request for an infusion of $247,843.42 to cover utilities and other building expenses. This infusion was done at the request of CIAM who told the City of Bloomington that utilities would be shut off if the money was not provided. However, after the infusion, on March 11, 2016 check #10937 for $162,004.73 was written to CIAM and deposited into account #0803706 (CIAM Savings). On March 11, 2016 check #2853 from account #0803706 (CIAM Savings) was written to John Butler for $100,000. On March 14, 2016 check #2855 was written from the same account to John Butler in the amount of $42,887.29. On March 28, 2016 the amount of $10,000 was transferred form account #0816438 (Coliseum Fund) to account #0803706 (CIAM Savings). Commissions on these contracts would have been owed to the city. Further, it was discovered through invoicing two payments for $10,000 were paid to CIAM for the State Farm Contract starting on April 1, 2016 through April 1, 2017 including a wire transfer on March 28, 2016.

D.12. While reviewing settlement documents recovered from records recovered pursuant to a Mclean County Warrant signed by Judge Butler on December 22, 2016 cash sheets and other source documents indicated cash skimming was occurring from 2012 through 2016. Cash sheets were compared to bank statements and point of sale printouts confirming over $50,000 in cash sales were not reported and were not deposited into the BMI concessions bank account. On July 13, 2017 during the interview of Jay Laesch information was discovered that John Butler communicated to Jay Laesch through text message instructing him to engage in fraudulent activities including cash skimming and tax fraud. Jay Laesch provided written consent for the Illinois State Police to conduct a search of his cellular device, a Samsung Note 5, with phone number (309) 830-9757. Among the data extracted from this device are several voice mail messages from Butler. In these voice mail John Butler references communication with several individuals identified by the Illinois State Police as witnesses to this fraudulent activity. Also in the extracted data are several text messages instructing Jay Laesch to engage in cash payouts from the skimmed cash sales and text messages instructing Jay Laesch to misrepresent finances in violation of state and federal tax laws **(Exhibit 1)**.

E. Affiant Petitioner Special Agent Daniel Rossiter of the Illinois State Police Department has probable cause to believe such items or materials are located on, at, or within the place or object to be searched based on the information contained within this Complaint for Search Warrant and attachments incorporated by reference.

E.1. The analysis for electronically stored data within a cellular phone, hard dive, SD card, and the like are similar to that of a computer. The analysis of electronically stored data, whether performed on site or in a laboratory or other controlled environment, may entail any or all of several different techniques. Such techniques may include, but are not be limited to, performing an extraction of the cellular telephone's data through specialized hardware and/or software, physically interacting with the device just as a user would and viewing the contents of the cellular telephone, and, in certain cases, more invasive approaches involving directly connecting to the internal components of the cellular telephone.

E.2. The ability of cellular telephones, including built-in internal storage and other removable storage devices (such as an SD card), to store large quantities of data of varying types makes them an ideal repository for evidence. The size of the electronic storage media (commonly referred to as the hard drive) used in cellular telephones has grown tremendously within the last several years. These drives can store a massive number of images and data at very high resolution. A single cellular telephone can store the equivalent of hundreds, if not thousands, of images and thousands, if not millions, of pages of text. Evidence that is created by its user is stored on the cellular telephone. Especially when the user wants to conceal criminal evidence, the user often stores it in random order with deceptive file names. Additionally, the user may utilize apps or other programs disguised to hide the location of files. This requires searching authorities to examine all stored data to determine whether it is included in the warrant. When a user attempts to delete a file from a cellular telephone, the data itself may not be deleted from the cellular telephone. The data itself remains in the same location on the disk. As such, an examiner may be able to recover data which a suspect believes has been "deleted." This data can remain on the suspect's cellular telephone until such time as the data is deleted using special software or said data is overwritten by new data.

E.3. Additionally, there are specialized pieces of hardware and software which have streamlined the information extraction process when a cellular telephone is being analyzed. This allows for individuals who are not forensic computer examiners to conduct complete and accurate cell phone extractions outside of a laboratory environment and may even allow for the analysis to be conducted in the field. This warrant contemplates that the cellular telephone may be analyzed in whatever situation is most practical given the individual circumstances of the agency and available personnel. The telephone may be sent to a laboratory or it may be analyzed using the programs and tools referenced above. Regardless of how the analysis is conducted, it holds true that in order to determine whether the information being sought is contained within the storage of the cellular telephone, the cellular telephone and all of its contents must be seized and analyzed.

E.4. Furthermore, when dealing with the analysis of cellular telephones, the devices and/or software utilized by law enforcement generally allow the examiner access to the cellular telephone's data through non-destructive means and generally cause no damage to the cellular telephone. However, there are circumstances under which the cellular telephone's information may not be able to be accessed through conventional means. This may be true for a number of reasons, including if the cellular telephone is damaged in some way or has a security lock on it which cannot be bypassed

by the forensic tools available at the time of analysis. An examiner with sufficient training and experience may be able to utilize additional methods to directly access the data on the internal components of the cellular telephone. If such implementation of methods is required, the phone may be unusable in the future because the techniques utilized may require the physical disassembly of the telephone and/or the removal of key components. Affiant believes this type of technique is akin to an officer cutting open the seats of a motor vehicle in order to recover contraband stored within the seats themselves. It is contemplated that the examiner will be able to recover the information sought through non-destructive means; however, it is also contemplated that the scope of this complaint and requested search warrant allows for the use of destructive methods if such methods are necessary in order to effectuate full service of the search warrant.

#6230

Affiant, S/A Daniel Rossiter #6230

Subscribed and sworn to before me this August 14, 2017 at 8:47 AM/[redacted].

Honorable David Butler Associate Circuit Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

SEARCH WARRANT

TO ALL PEACE OFFICERS OF THE STATE:

On this date being Monday, August 14, 2017, affiant Special Agent Daniel Rossiter #6230 has subscribed and sworn to a Complaint for Search Warrant before me. Upon examination of said Complaint, I find it states facts sufficient to establish probable cause for the issuance of a warrant to search the following described place, persons or objects for the items listed.

I, THEREFORE, COMMAND THAT YOU SEIZE AND SEARCH:

1. The Personal Cellular Device of John Butler with phone # (309) 242-7107 which is most likely in the custody of the John Butler

2. The person of John Butler

AND, IF FOUND, SEIZE and SEARCH THE FOLLOWING:

1) The cellular device with # (309) 242-7107 seized from John Butler which is currently in the custody of John Butler, 2) SMS messages sent and received on the telephone relating to planning, execution, concealing, or discussion of fraud related activities, 3) MMS messages sent and received on the telephone relating to planning, execution, concealing, or discussion of fraud related activities, 4) photographs depicting the implements, planning, execution, or results of fraud related activity, 5) videos depicting the implements, planning, execution, or results of fraud related activity, 6) Social networking profile information, 7) Social networking messages, 8) incoming/outgoing call records, 9) contact lists information, 10) Bluetooth logs, 11) stored application data including content of any messaging apps, 12) all Metadata which is associated with any seized file and/or information, 13) the phone's identifying information and user data including assigned phone number, IMEI/MEID number, serial number, and any user registration or identifying information to include information to disable the devices security measures.

ISSUED this August 14, 2017 at 8:43 AM/PM.

John Butler

Honorable David Butler Associate Circuit Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, vs. JOHN Y. BUTLER, Defendant.	)))))))))	No. 17-CF-1025

NOTICE OF CLAIM OF UNCONSTITUTIONALITY OF 720 ILCS 5/17-24(b)

TO: Lisa Madigan
Illinois Attorney General
500 South Second Street
Springfield, IL 62701

Pursuant to Illinois Supreme Court Rule 19,you are notified that the Defendant, John Y. Butler, in the above captioned cause has filed on January 18, 2018 a Motion to Dismiss Wire Fraud Count, where in the claim is made that 720 ILCS 5/17-24(b) is unconstitutional under the 5th and 14th Amendments to the Constitution of the United States and corollary provisions of the Illinois Constitution of 1970 because said statute is so vague and indefinite that it fails to provide reasonable notice to a putative defendant or to law enforcement about the conduct that is asserted to be criminal, that it is overbroad bringing within its sweep innocent conduct and that it does not have the required *mens rea* necessary for a valid criminal statute.

Dated: Jan. 18, 2018

JOHN Y. BUTLER, Defendant

By: J. Steven Beckett
J. STEVEN BECKETT, Attorney at Law

Prepared by:
J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Avenue
Urbana, IL 61801
Office: (217) 328-0263
E-mail: Steve@beckettlawpc.com

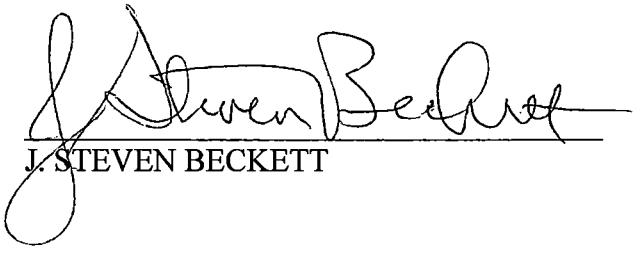
CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January 18, 2018, a copy of the foregoing ***Entry of Appearance*** was served by hand delivery:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

I further certify that on the 18th day of January, 2018, a copy of the foegoig Notice of Claim of Unconstitutionality of 720 ILCS 5/17-24(b) was sent by U. S. Mail, postage prepaid to:

Lisa Madigan
Illinois Attorney General
500 South Second Street
Springfield, IL 62701



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IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

Granted

MOTION REGARDING ADMISSIBILITY OF CO-CONSPIRATOR DECLARATIONS

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorney, J. STEVEN BECKETT, or the law firm BECKETT LAW OFFICE, P.C., and pursuant to Illinois Rule of Evidence 104, moves this Court for the entry of an Order granting a pretrial hearing to determine the admissibility of any alleged co-conspirator declarations under Illinois Rule of Evidence 801(d)(2)(E), or in the alternative, for the entry of an Order compelling the government to submit a written offer of proof regarding the alleged co-conspirator declarations which it intends to introduce under Rule 801(d)(2)(E), and in support thereof, states as follows:

1. That the Defendant is charged in a 44-count indictment with, among other offenses, the offense of conspiracy to commit tax evasion in violation of 720 ILCS 5/8-2.
2. That the Defendant and his counsel have reason to believe that the State intends to introduce at the trial of this cause certain co-conspirator declarations under Illinois Rule of Evidence 801(d)(2)(E) in an attempt to implicate Defendant in the alleged offenses.
3. That under Illinois Rule of Evidence 801(D)(2)(E), a statement is not hearsay if it is offered against a party and is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy."

4. That it is well established that before any co-conspirator declarations may be admitted, the State must show, by a preponderance of the evidence, that: (a) a conspiracy existed; (b) the defendant and declarant were members of the conspiracy; and (c) the statements were made by the declarant during the course of and in furtherance of the conspiracy. *People v. Goodman*, 81 Ill. 2d 278, 283 (1980); *People v. Coleman*, 399 Ill. App. 3d 1198, 1202-03 (4th Dist. 2010); *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978); *United States v. James*, 590 F.2d 575 (5th Cir. 1979).

5. That it is the function of this Court to make the above-referenced determination as to the admissibility of alleged co-conspirator declarations outside the presence of the jury, either after a pretrial hearing or a review of a written offer of proof submitted by the State. Ill.R.Evid. 104; *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978); *United States v. James*, 590 F.2d 575 (5th Cir. 1979).

6. That the pretrial hearing or written offer of proof contemplated by this motion will facilitate the orderly conduct of this trial and will avoid repetitious and constant objections that Defendant and others may have to such hearsay declarations and statements, and will avoid the risk that a mistrial would have to be granted if the evidentiary foundation for the admissibility of the alleged co-conspirator declarations is not established by the State's proof.

WHEREFORE, Defendant requests the entry of an Order granting a pretrial hearing to determine the admissibility of alleged co-conspirator declarations under Illinois Rule of Evidence 801(d)(2)(E), or in the alternative, for the entry of an Order compelling the State to submit a written offer of proof regarding the alleged co-conspirator declarations which it intends to introduce under Illinois Rule of Evidence 801(d)(2)(E).

JOHN Y. BUTLER, Defendant

J. STEVEN BECKETT

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steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on January 18, 2018 he did cause a copy of the foregoing ***Motion Regarding Admissibility of Co-Conspirator Declarations*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

J. STEVEN BECKETT

J. STEVEN BECKETT
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steve@beckettlawpc.com

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

DEFENDANT'S MOTION FOR AN ORDER TO RETURN PROPERTY

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorney, J. STEVEN BECKETT, of BECKETT LAW OFFICE, P.C., and moves this Honorable Court to order the return of items seized pursuant to the Fourth and Fourteenth Amendments to the U.S. Constitution and the corollary provisions of the Illinois State Constitution of 1970, and in support of his ***Motion for an Order to Return Property*** states as follows:

1. That, upon information and belief, on or about September 25, 2017, Special Agent Daniel Rossiter of the Illinois State Police subscribed and swore to a Complaint for Warrant for Seizure of Assets. This complaint is not publicly available to Defendant.
2. That, upon information and belief, a judge found that the Complaint established sufficient facts to establish probable cause for the seizure of assets held by Defendant at CEFCU.
3. That a judge issued a Seizure Warrant that commanded the Illinois State Police to seize "CEFCU Bank Accounts including but not limited to: any and all holdings in accounts (including but not limited to checking, savings and safety deposit boxes) which authorized use/access by John Butler, and/or Central Illinois Arena Management, Inc. (CIAM), and/or BMI Concessions, LLC." (Seizure Order/Warrant is attached hereto as Exhibit 1.)

4. That on or about September 26, 2017, CEFCU mailed a letter to Defendant informing him that CEFCU had placed a hold on all of the accounts in his name pursuant to the Seizure Warrant. (Letter dated September 26, 2017 to John Butler is attached hereto as Exhibit 2.)
5. That on or about Thursday, December 14, 2017, Defendant filed a Motion to Quash Seizure Warrant and Order the Release of Items Seized.
6. That on or about Tuesday, December 19, 2017, Special Agent Dan Rossiter ordered CEFCU to turn over the funds that were held in the personal accounts of Defendant to the Illinois State Police and remove the holds that he had placed on seven other accounts in Defendant's name, including Defendant's sons' checking and savings account, his health savings account, and other bank accounts that are not tied to the present case in any way.
7. That Special Agent Dan Rossiter, on behalf of the Illinois State Police, confiscated approximately $31,430.47 from Defendant.
8. That the Seizure Warrant was a general warrant and as such was unconstitutional.
9. That Defendant was not given prior notice of the confiscation of his funds, nor was he informed that his bank accounts were subject to forfeiture, confiscation or turnover, by any notice or order issued by any law enforcement agency or any court, prior to the seizure or confiscation of the bank account funds in his name..
10. That Defendant was not given a hearing or due process prior to the confiscation or forfeiture of his $31,430.47.
11. That Defendant still does not have access to the complaint or Special Agent Dan Rossiter's sworn affidavit or any form of sworn testimony that led to the granting of the seizure warrant.

12. That Defendant has need of the seized $31,430.47 to pay for personal, family, other business, and legal expenses.

13. That Special Agent Dan Rossiter attempted to specify and excuse the general warrant retroactively by releasing the hold on some of Defendant's bank accounts only after Defendant filed a motion alleging that the warrant was unconstitutional.

14. That the warrant is a general warrant and Special Agent Rossiter's attempt to excuse it by releasing holds on some of Defendant's accounts does not make the warrant constitutional.

15. That Special Agent Dan Rossiter used the warrant "as if armed with a general warrant and searched and seized indiscriminately" when seizing Defendant's bank accounts and this seizure was not justifiable. *People v. Harmon*, 90 Ill. App. 3d 753, 759 (4th Dist. 1980).

16. That the Fourth Amendment of the United States Constitution "protects against the issuance of search warrants that grant the police broad discretion to conduct a general, exploratory rummaging in a person's belongings". *People v. Dressler*, 317 Ill. App. 3d 379 (3rd Dist. 2000). General warrants and seizures are likewise prohibited by Article I, Section 6 of the Illinois Constitution of 1970. *People v. McCarty*, 356 Ill. App. 3d 552 (2005), *aff'd*, 223 Ill. 2d 109 (2006).

17. That property must be sufficiently described in a warrant so that the officer conducting the search will not seize the wrong property or go on a fishing expedition. *Id.*

18. That in determining whether a warrant is a general warrant, the court should consider what degree of descriptive detail is reasonable given nature of the items involved and the progress of the police investigation at the time the warrant was issued. *People v. Capuzi*,

308 Ill. App. 3d 425 (2nd Dist. 1999). At the time that the warrant was issued, Special Agent Rossiter knew the bank account numbers of the accounts that might be at issue in the case.

19. That a general description of the items to be seized is not appropriate if a specific description is available to the investigating authorities applying for search warrant. *Id.* At the time that the warrant was issued, Special Agent Rossiter listed the account numbers of Defendant's personal accounts, but also generally seized any account that his name was on, despite knowing which specific accounts might be at issue in the case and not specifically listing the others.

WHEREFORE, the Defendant, JOHN Y. BUTLER, asks that this Honorable Court order the Illinois State Police to return the illegally seized $31,430.47 to Defendant, find the warrant process used in this case unconstitutional for the reasons set forth herein, and grant such other and further relief as this court deems just and appropriate.

Respectfully Submitted,

JOHN Y. BUTLER, Defendant

By: _____
J. STEVEN BECKETT

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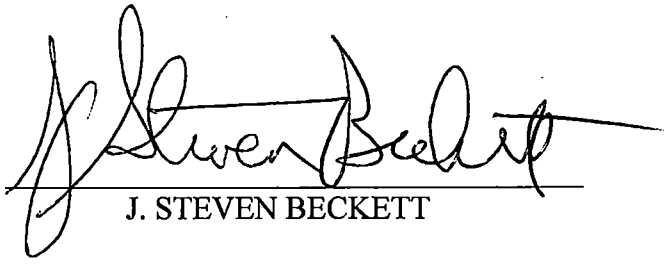
steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on January 18, 2017 he did cause a copy of the foregoing ***Defendant's Motion For An Order To Return Property*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701



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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

In the matter in the seizure of:	)	
	)	
CEFCU Bank Accounts	)	Case No. 2017-MR-_____
Of: John Butler, and	)	
Central Illinois Arena Management, Inc. (CIAM); and	)	
BMI Concessions, LLC.	)	

TO ALL PEACE OFFICERS OF THE STATE:

On this date being 25th day of September of 2017, affiant Special Agent Daniel Rossiter has subscribed and sworn to a **Complaint for Warrant for Seizure of Assets** before a Judge of the Eleventh Judicial Circuit, County of McLean. Upon examination of said Complaint, I find it states facts sufficient to establish probable cause for the seizure of assets the following described assets listed.

I, THEREFORE, COMMAND THAT YOU SEIZE:

CEFCU Bank Accounts including but not limited to: any and all holdings in accounts (including but not limited to checking, savings and safety deposit boxes) which authorized use/access by John Butler, and/or Central Illinois Arena Management, Inc. (CIAM), and/or BMI Concessions, LLC; including those specifically described below.

1. CEFCU Bank Acct. # 636927 - believed to be a personal savings/checking account for John Butler.

2. CEFCU Bank Acct. # 803706 – believed to be a savings/checking account for Central Illinois Arena Management (CIAM).

3. CEFCU Bank Acct. #0806745 - believed to be a savings/checking accounts for BMI Concessions, LLC.

ISSUED this 25th day of September of 2017 at 1:20 AM/PM

(Associate) Circuit Judge

EXHIBIT
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CEFCU
Not a bank. Better.

P.O. Box 1715, Peoria, IL 61656-1715
309.633.7000 | 1.800.633.7077

5401 W. Dirksen Parkway, Peoria, IL 61607
cefcu.com

September 26, 2017

MR JOHN Y BUTLER
9513 N 2125 EAST RD
BLOOMINGTON IL 61705-5599

Dear Mr. Butler,

Please be advised, CEFCU has been served with a *Warrant for Seizure of Assets* from the Illinois State Police. Due to this seizure warrant, CEFCU is obligated, by law, to place a hold on your account(s) until further notice from the court.

Holds have been placed on your accounts as listed below. If you have any outstanding checks or ACH transactions, you may need to contact the payees and make arrangements to cover those obligations.

Account	Amount Held	Account	Amount Held
0636927-000	$7,096.15	1320127-000	$295.90
01 06369270	$23,098.48	01 13201274	$11,588.13
0803706-000	$11.30	0846576-000	$366.84
01 08037062	$1,163.34	01 08465765	$47.66
0622015-000	$28.31	1238417-000	$3,540.73
01 06220153	$39.69		
		0646937-000	$117.79
0806745-000	$21.99		
01 08067450	$39.21	0846575-000	$693.12
1250086-000	$1,403.10		
01 12500863	$20,244.23		

For your records, a copy of the *Warrant for Seizure of Assets* is enclosed.

CEFCU regrets holding your funds in this manner. If you have any questions, please call.

Sincerely,

Amy Trust
Compliance Manager

Telephone: 309.633.3508
Fax: 309.633.3406
Enc.

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IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
)
v.) No. 2017-CF-1025
)
JOHN Y. BUTLER)
Defendant.

denied

DEFENDANT'S MOTION TO QUASH INDICTMENT

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorney, J. STEVEN BECKETT, of BECKETT LAW OFFICE, P.C., and moves this Honorable Court to dismiss this case pursuant to 725 ILCS 5/114-1, the Fifth and Fourteenth Amendments to the U.S. Constitution and the corollary provisions of the Illinois State Constitution of 1970, and for his ***Motion to Quash Indictment*** states in support as follows:

1. That Defendant is charged with 11 Counts of THEFT in violation of 720 ILCS 5/16-1(a)(1)(A) and a Class 1 Felony, 11 Counts of THEFT in violation of 5/16-1(a)(2)(A) and a Class 1 Felony, 8 Counts of MONEY LAUNDERING in violation of 720 ILCS 5/29B-1(A)(1)(A) and a Class 2 Felony, 6 Counts of FILING A FRAUDULENT SALES AND USE TAX RETURN in violation of 35 ILCS 120/13(a) and a Class 3 Felony, 6 Counts of WIRE FRAUD in violation of 720 ILCS 5/17-24(b) and a Class 3 Felony, 1 Count of TAX EVASION in violation of 35 ILCS 120/12(b)(i) and a Class 2 Felony, and 1 Count of CONSPIRACY TO COMMIT TAX EVASION in violation of 720 ILCS 5/8-2 and a Class 3 Felony.

2. That this court possesses the inherent authority to dismiss a charge for reasons other than those listed in section 114-1(a). *People v. Soliday*, 313 Ill. App. 3d 338, 342 (4th Dist. 2000).
3. That a defendant may challenge an indictment that is procured through prosecutorial misconduct if that misconduct rises to the level of a deprivation of due process or a miscarriage of justice. *People v. DiVincenzo*, 183 Ill. 2d 239, 255, 257 (1998).
4. That the due process rights of a defendant may be violated if the prosecutor deliberately or intentionally misleads the Grand Jury or presents other deceptive or inaccurate evidence. *DiVincenzo*, 183 Ill. 2d at 257-58; *People v. Sampson*, 406 Ill. App. 3d 1054, 1058 (3rd Dist. 2011).
5. That the State's Attorney has the power to subpoena information, however, these subpoenas should be returnable to the Court, and not the State's Attorney, so that the Court can determine whether the documents are relevant, material, or privileged, or whether the subpoena was unreasonable or oppressive, before the State's Attorney has access to them. *Wilson*, 164 Ill. 2d at 458; *People v. Hathaway*, 263 Ill. App. 3d 426, 429 (4th Dist. 1994); *People v. Feldmeier*, 286 Ill. App. 3d 602, 603 (2nd Dist. 1997).
6. That the court may appoint an investigator for the Grand Jury, whose duties and responsibilities are to be determined by the court. 725 ILCS 5/112-5.
7. That upon information and belief, Special Agent Dan Rossiter was not appointed as an agent or an investigator for the Grand Jury.
8. That the Grand Jury proceedings in the instant case denied Defendant due process and resulted in substantial prejudice and a miscarriage of justice to Defendant in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and

corollary provisions of the Illinois State Constitution of 1970 in one or more of the following respects:

a. The State's Attorney in the instant case misstated the law to the Grand Jury by failing to enter the parties' Management Agreement (attached hereto as Exhibit 1) into evidence for the Grand Jury's consideration.

b. The State's Attorney misled the Grand Jury by failing to enter the parties' Management Agreement into evidence for the Grand Jury's consideration, thereby misrepresenting the relationship between the parties and misleading the Grand Jury into believing that there was no legal basis for the actions of Defendant.

c. The State's Attorney abused his authority over the Grand Jury when he told a Grand Juror, "I don't know if it's relevant for our consideration here today" as a response to a question posed by that juror. His comment was prejudicial because it caused improper influence on the members of the Grand Jury.

d. Special Agent Dan Rossiter misused the Grand Jury process in obtaining subpoenas returnable to him for Central Illinois Arena Management, Inc. and BMI Concessions, LLC business documents (attached hereto as Exhibit 2), by substituting his authority to obtain the subpoenas for that of the Grand Jury and by not requiring that the subpoenaed information be returnable to the Grand Jury.

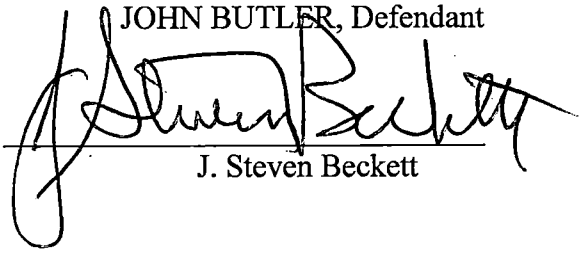
e. Because Special Agent Dan Rossiter substituted his authority to obtain the subpoenas for that of the Grand Jury, the Court was not able to determine whether the documents were relevant, material, or privileged, or whether the subpoenas were unreasonable or oppressive, before Special Agent Rossiter had access to the seized information.

f. All the business records that Special Agent Dan Rossiter obtained through the execution of the Grand Jury subpoenas returnable to him were obtained illegally and presentation of that evidence to the Grand Jury caused substantial prejudice to Defendant's case.

WHEREFORE, the Defendant, JOHN Y. BUTLER, asks that this Honorable Court quash the prosecution's Indictment and grant such other and further relief as this court deems just and appropriate.

Respectfully Submitted,

JOHN BUTLER, Defendant

By: 
J. Steven Beckett

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
Urbana, IL 61801
(217) 328-0263
(217) 328-0290 (FAX)
steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on January 18, 2018 he did cause a copy of the foregoing ***Defendant's Motion To Quash Indictment*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

J. STEVEN BECKETT

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
Urbana, IL 61801
(217) 328-0263
(217) 328-0290 (FAX)
steve@beckettlawpc.com

DEVELOPMENT AND MANAGEMENT AGREEMENT

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THIS DEVELOPMENT AND MANAGEMENT AGREEMENT (this "Agreement") dated as of the 10th day of October, 2005, by and between the City of Bloomington, Illinois, organized and existing pursuant to laws of the State of Illinois (the "City"), and Central Illinois Arena Management, Inc. (CIA), organized under the laws of the State of Illinois.

WHEREAS, the City is developing a sports and entertainment center, known as the U.S. Cellular Coliseum (the "Coliseum"), to be located in downtown Bloomington and serving the surrounding regional markets;

WHEREAS, it is currently contemplated that the Coliseum will contain an approximately 7,000 seat arena with self contained supporting and ancillary areas suitable for a variety of community activities and additionally, for professional ice hockey, professional indoor football, concerts, circus, ice shows and other entertainment events;

WHEREAS, it is further contemplated that the Coliseum will also contain an adjoining public ice rink, together with appropriate ancillary facilities, to be available for public ice-skating and related recreational activities;

WHEREAS, as the initial step in considering development of the Coliseum, the City has previously entered into a Consulting and Sale Agreement date January 14, 2002 (the "CSA Agreement") with Central Illinois Arena Management, Inc., a copy of which is attached hereto and incorporated herein by reference as "Exhibit A".

WHEREAS, in furtherance of the development of the Coliseum, the City has previously entered into a Pre Opening Sales and Management Agreement, dated April 27, 2004, (the "POSM agreement") with Central Illinois Arena Management, Inc., a copy of which is attached hereto and incorporated herein by reference as "Exhibit B".

WHEREAS, the CSA Agreement and POSM Agreement provide, in whole and in part as follows:

1. During the Pre-Opening Period, CIA is the sole and exclusive agent to provide comprehensive services with respect to sales and services and the development of the Coliseum, such services including, but not limited to design consulting, marketing, sale of key revenue generating sources, including naming rights, luxury suites, club seats, major sponsorships, and primary tenancies with private and third party funding sources;

2. The receipt by CIA from the City of commissions, fees, expense reimbursements and compensation as described in the CSA Agreement and POSM Agreement including paragraph 17 of POSM Agreement (Exhibit B).

3. Certain rights of CIA with respect to the future management and operations or the Coliseum including an obligation of the City to negotiate in good faith with CIA to

EXHIBIT tabbies 1

enter into a management agreement for the operation and management of their Coliseum after opening and;

4. A right of first refusal with respect to any management agreement with the City in favor of CIA as provided in the POSM Agreement.

5. A right until the thirtieth day before the public opening of the Coliseum, to provide services to the City and retain all rights under the POSM Agreement.

WHEREAS, CIA has exercised its right of first refusal and the City, by its approval of this agreement, acknowledges and accepts such right.

WHEREAS, CIA is prepared to provide a significant private investment in the Coliseum, as set forth hereinafter, and desires to utilize its resources to assist the City in the development and operation of the Coliseum;

WHEREAS, the City desires to receive the benefit of CIA's investment in the Coliseum and to engage CIA on its behalf, to provide development and management services for the Coliseum;

WHEREAS, this Agreement, consistent with the terms and conditions of the CSA Agreement and POSM Agreement, sets forth comprehensively the relationship between the City and CIA in the development and management of the Coliseum.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"Affiliate" -- a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests that represent more than 40% of the voting power in the controlled person.

"Approved Budget" -- any budget submitted by CIA, as approved by the City pursuant to Section 5 hereof.

"Capital Equipment" -- any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of $5,000 (said $5,000 to be adjusted by reference to the Consumer Price Index each January 1st) or more or an expected useful life of more than one year.

"Capital Improvements" -- any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than $5,000 (said $5,000 to be adjusted by reference to the Consumer Price Index each January 1st) or per project.

oliseum" -- An approximately 7,000 seat entertainment center suitable for a variety of ..ity activities and additionally, for professional ice hockey, professional indoor football, ..rts, circus, ice shows and other entertainment events, but excluding the public ice rink;

"Coliseum Fund" - The fund within which there shall be accounts and sub-accounts into which all revenues of the Coliseum shall be deposited and from which payments shall be dispersed. Funds paid by the City shall also be deposited into the Coliseum Fund.

"Capital Costs" - the amounts necessary for purchase, replacement, or maintenance of all fixtures, signs, displays, equipment, machinery, appurtenances, improvements, additions, alterations, systems (including, but not limited to, plumbing systems, electrical system, wiring and conduits, heating and air-conditioning systems), and items of identical or similar nature and character, including, for example, seats and chairs, which are replaced and/or repaired in multiple units contemporaneously. The expense sum for such repairs, maintenance or replacement for multiple units shall be the total cost of same for all such multiple units.

"City" - the City of Bloomington, Illinois. In connection with this Agreement, the City Manager, unless applicable law requires action by the City Council, shall have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of the City, and with the effect of binding the City in that connection.

"City Council" -- the City Council for Bloomington, Illinois.

"City Manager" -- the duly appointed and acting City Manager or his designee, or, in the event of a vacancy in the office of City Manager, such person as may from time to time be authorized by the City Council to perform as City Manager during the term of such vacancy.

"Design/Build Team" - the architects and general contractor, together with any and all subcontractors and agents, selected by the City for the design and construction of the Coliseum.

"Event Expenses" - any and all expenses, exclusive of ordinary operating expenses, incurred or payments made by CIA in connection with the occurrence of events at the Coliseum, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

"Event Revenues" - For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Coliseum are not Revenues under this Agreement, but are instead revenues of the promoter and/or performer of each such event. To the extent that CIA collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue (without taking into account excluding governmentally imposed taxes, fees, and charges, which shall be dispersed pursuant to applicable law) shall be the source of funds from which CIA collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Coliseum, which such charges and reimbursements are Revenues hereunder.

"Fiscal Year" -- a one-year period beginning May 1 and ending April 30; May 1 will commence the first day of the first Quarterly Period.

anagement Term" - as defined in Section 4.1 of this Agreement.

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"Net Operating Loss/Profit - with respect to a Fiscal Year, in the case of a loss, the excess, if any, of perating Expenses for such Fiscal Year over Revenues for such Fiscal Year, and in the case of a profit, the excess, if any, of Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year.

"Operating Expenses" - (a) any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by CIA in promoting, operating, maintaining and managing the Coliseum, including, but not limited to: employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances), employee benefits and related costs (e.g., relocation and other related expenses pursuant to CIA's relocation policy (a copy of which will be provided upon request), parking and other fringe benefits), supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring and maintaining the insurance and fidelity bond referred to in Section 8 below, amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties and fees, legal and professional fees', printing and stationery costs, Event Expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs (e.g., elevators and HV AC), security expenses, utility and telephone charges, travel and entertainment expenses in accordance with CIA's policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Coliseum, the cost of compliance with laws and regulations, other start- up expenses associated with the opening of the Coliseum, costs incurred under agreements, commitments, licenses and contracts executed in CIA's name (or in CIA's name as agent of the City) as provided in Section 2 hereof, and the commissions and management fees payable to CIA pursuant to Section 7 and 10 below, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis.

(b) Solely for purposes of identifying Operating Expenses which will be budgeted in Approved Budgets, Operating Expenses shall exclude (A) Event Expenses, which are deducted from the gross receipts of all event activities at the Coliseum (in accordance with the last sentence in the definition of Event Expenses), and (B) all extraordinary expenses and all interest, income tax, depreciation and amortization expenses.

(c) Notwithstanding anything in this Agreement to the contrary, subparagraph (a) of this definition is subject to the Budget Approval process set forth in Section 5 of this Agreement.

(d) Extraordinary operating expenses must have the prior approval of the City.

"Revenues" - (a) any and all revenues of every kind or nature derived from operating, managing or promoting the Coliseum, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising sales, equipment rentals, utility revenues, box office revenues, including ticket surcharges, parking revenues, food service and concession revenues (if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues paid by the concessionaire

to the Coliseum shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues paid by such contractors to the Coliseum shall be included as Operating Revenues), miscellaneous operating revenues, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis.

(b) Solely for purposes of (i) identifying Revenues which will be budgeted in Approved Budgets, and (ii) calculating Net Operating Loss Profit and CIA's incentive fee hereunder, Revenues from all event activity at the Coliseum will be calculated to encompass the gross receipts from each such event, less Event Expenses.

"Public Ice Rink" - a public ice facility owned and operated by the City of Bloomington. It is adjacent to and shares some of the infrastructure of the Coliseum, and the Coliseum but, for the purposes of this Agreement, shall not be considered part of the Coliseum. The City and CIA may agree from time to time, in a form to be approved by Bond Counsel, in a manner so tax exempt status of bonds for the Public Ice Rink shall not be endangered, to agree to a division of revenue between the Coliseum and the Public Ice Rink.

"Pre-Opening Period" - the period commencing on the date hereof and ending on the date of the first public event in the Coliseum.

"License Agreement" -- each contract, license, agreement, option, lease and commitment that grants any person or entity any right (i) to license, use, occupy or rent all or any portion of the Coliseum, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of the Coliseum.

"CIA" – Central Illinois Arena Management, Inc., organized under the laws of Illinois.

"CIA Capital Contribution" shall mean the sum of up to $1,000,000 to be contributed by CIA to the Coliseum and to be utilized as provided in Section 2.2 hereof. The amount of the CIA Capital Contribution may be contributed by CIA in cash and/or in property purchased by CIA, provided, however, that if any such contribution is in property, the value of such property to be credited to the amount of CIA's contribution hereunder shall be proposed by CIA and approved by the City (which approval shall not be unreasonably withheld).

"Term" or "Renewal Terms" - as defined in Section 4 hereof.

2. Financial Contributions by CIA

CIA agrees to make the following financial contributions to the development, financing and operations of the Coliseum.

2.1 Naming Rights.

Pursuant to the aforementioned POSM, CIA negotiated a sale of the naming rights to the Coliseum with United States Cellular Corporation, a Delaware Corporation, the City of Bloomington, and CIA a copy of which agreement is attached hereto and incorporated herein by

reference as "Exhibit C" and a Beverage Marketing and Naming Rights Agreement with Pepsi-Cola General Bottlers, Inc. d/b/a Pepsi Americas, a Delaware Corporation, the City of Bloomington and CIA a copy of which agreement is attached hereto and incorporated herein by reference as "Exhibit D" and has tendered both such agreements to the City. The United States Cellular agreement provides for annual payments of $175,000 per year to the City for a ten year period and the Pepsi-Cola Bottlers agreement provides for payments of 50,000 per year for a ten year period. CIA hereby, as agent for the City, transfers the Agreements, Exhibits C and D, and the contractual obligations to the City for the duration of Exhibits C and D.

The parties acknowledge that the revenue from the sale of the naming rights is a critical source of funding for the coliseum, that the City must receive a minimum of $200,000.00 per year for a period of ten years from the sale of naming rights and that the City is entering into this agreement in reliance on the representation by CIA that the aforedescribed naming rights agreements will provide the necessary amount of revenue over the time required. CIA agrees that in the event of a termination of either of the aforedescribed agreements with United States Cellular Corporation or Pepsi-Cola General Bottlers or any subsequent agreement entered into as hereinafter provided, CIA shall be required to use its best efforts to resell those naming rights within one year of the date City receives notice of the termination of the naming rights agreement then in effect, subject to the provisions of Section 7.3 . In the event CIA is unable to procure a new naming rights agreement within one year, then CIA agrees to indemnify City from any loss of revenue that would have been generated from the naming rights agreement that was terminated by waiving its management fee, commissions or some combination of both in part or in whole up to the amount of revenue expected from the naming rights agreement in question, subject to the condition that CIA shall have no obligation to waive any fees or commissions if it sells the naming rights for an amount that would produce the same amount of revenue over ten year as the terminated agreement. CIA's obligation to indemnify the City shall remain in effect until such time as a new naming rights agreement becomes effective which provides at least as much revenue as would have been provided under the terminated agreements.

2.2 Capital Contribution.

CIA shall contribute to the direct cost of the project an amount not to exceed $1,000,000 for the purchase of all concession equipment necessary and appropriate to provide the Coliseum with commercially reasonable food and beverage and merchandise related equipment. The amount of the capital contribution may be contributed by CIA in cash or property purchased by CIA, or both; provided, however that if any such contribution is in property, the value of such property to be credited to the amount of CIA's contribution hereunder shall be proposed by CIA and approved by the City, which approval shall not be unreasonably withheld.

2.3 Professional Sports Franchises.

a. CIA shall be responsible for providing to the Coliseum commitments from professional sports franchises as long-term, primary tenants at the Coliseum with aggregate annual playing dates approximating 50 home games, at the Coliseum, as follows:

b. Ice Hockey. CIA has secured on behalf of the City a debt free professional hockey franchise, approved for play in the Bloomington Region as defined by its league membership with BMI

Hockey, L.L.C., an Illinois Limited Liability Company. Said Hockey License shall be submitted for approval by the City and City Council by October 10, 2005 and executed upon approval by the City Council.

c. Professional Indoor Football. CIA has secured on behalf of the City a debt free professional football franchise, approved for play in the Bloomington Region as defined by its league membership with B-N Football, L.L.C. an Illinois Limited Liability Company as shown and indicated on Football License Agreement. Said Football License shall be submitted for approval by the City and City Council by October 10, 2005 and executed upon approval by the City Council.

2.4 Additional Financial Commitments. With respect to both (b) and (c) above, CIA and the Licensee shall be fully responsible for all acquisition costs with respect to such tenants, including membership, maintenance and transfer costs, all financial guarantees and letters-of-credit obligations to the respective leagues and otherwise, and all operational costs. Acquisition costs with respect to such tenants shall not be construed to be operating expenses.

3. Engagement of CIA: Scope of Services.

3.1 Engagement.

a. General Scope. The City hereby engages CIA to promote, operate and manage the Coliseum during the Term and the Renewal Terms, if any, upon the terms and conditions hereinafter set forth, and CIA hereby accepts such engagement. CIA shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Coliseum in a manner consistent with CIA's policies and procedures and the operations of other similar first-class facilities.

b, Managing Agent for the Coliseum. Subject to the terms of this Agreement, CIA shall be the sole and exclusive managing agent of the City to manage, operate and promote the Coliseum during the Term and the Renewal Terms, if any. CIA shall have exclusive authority over the day-to-day operation of the Coliseum and all activities therein; provided that CIA shall follow all policies and guidelines of the City hereafter established or modified by the City that the City notifies CIA in writing are applicable to the Coliseum (including without limitation any methodology pertaining to the allocation of any costs and expenses by the City to the Coliseum as permitted herein).

With respect to (a) and (b) above, both parties acknowledge that the pro forma operating statements attached hereto as Exhibit E are a guideline as to the desired performance of the Center, including as to the number and quality of events to be conducted annually.

3.2 Specific Services.

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Without limiting the generality of the foregoing, CIA shall have, without (except as otherwise expressly noted below) any prior approval by the City, sole right and authority to:

(a) employ, supervise and direct employees and personnel consistent with the provisions of this Agreement;

(b) administer relationships with all subcontractors, and all other contracting parties assume responsibility for any and all negotiations, renewals and extensions (to the extent CIA deems any of the foregoing to be necessary or desirable) relating to such contracts, and enforce contracts;

(c) negotiate, execute in its own name, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Coliseum; provided that the City shall have the right to approve any such license, agreement, commitment or contract in an amount in excess of $9,999, and provided further, that, if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Coliseum in the ordinary course has a term that extends beyond the remaining Term or Renewal Terms, as the case may be, such license, agreement, commitment or contract shall be approved and executed by the City (which approval and execution shall not be unreasonably withheld);

(d) to the extent that Revenues or funds supplied by the City are made available therefore, maintain the Coliseum in the condition received, reasonable wear and tear excepted; provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(e) to the extent that Revenues or funds supplied by the City are made available therefore, rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Coliseum, provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8, subject to the CIA Capital Contribution as provided in Section 2.2;

(f) establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Coliseum to be negotiated by CIA in the course of its management, operation and promotion of the Coliseum. In determining such prices and rate schedules, CIA shall evaluate comparable charges for similar goods and services at similar and/or competing

facilities and shall consult with the City Manager about any adjustments to, or all schedules at the Coliseum to be made by CIA; CONFIDENTIAL

(g) pay, when due, on behalf of the City, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(h) Subject to the written approval of the City, institute as agent for the City and at the reasonable expense of the City, with counsel selected by CIA and approved by the City, such legal actions or proceedings as CIA shall deem necessary or appropriate in connection with the operation of the Coliseum, including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Coliseum;

(i) maintain a master set of all booking records and schedules for the Coliseum;

(j) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;

(k) engage in such advertising, solicitation, and promotional activities as CIA deems necessary or appropriate to develop the potential of the Coliseum and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Coliseum). CIA shall work with the City's designees to market the Coliseum for conventions, trade shows and public entertainment shows. CIA shall be permitted to use the term "Coliseum" and logos for such names in its advertising, subject to the approval of the City Manager.

(l) provide directly or by independent contractor (such contracts with independent contractors subject to the approval of the City, such approval not to be unreasonably withheld) (i) public concessions throughout the Coliseum at locations mutually agreed by the City and CIA (including, without limitation, at permanent and portable concession stands and cafes located in the Coliseum and on the grounds around it), (ii) catering and related services for all catering required at the Coliseum, as requested by the City or any outside group or organization seeking catering services at the Coliseum; (iii) vending services at the Coliseum, and (iv) alcoholic beverage services, to the extent the applicable liquor license permits (collectively referred to herein as "Concession Services"),

3.3 Right of Entry Reserved.

Representatives of the City designated in writing by the City Manager shall have the right, upon reasonable advance notice to CIA and at appropriate times, to enter all portions of the Coliseum to inspect same, to observe the performance of CIA of its obligations under this Agreement, to install, remove, adjust, repair, replace or

otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not interfere with the activities of CIA hereunder, and the City's actions shall be conducted such that disruption of CIA 's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

3.4 Pre-Opening Services.

a. CIA shall continue to perform all terms and conditions and provide all Pre-Opening services as described in the CSA Agreement and PSOM Agreement during the Pre-Opening Period. Attached hereto as "Exhibits F & G" is a descriptive scope of Pre-Opening services and FF&E services.

b. The City shall continue to perform all terms and conditions and provide and pay to CIA all payments, compensation and reimbursements as described in the CSA Agreement and the PSOM Agreement during the Pre-Opening Period.

c. The City acknowledges and agrees that CIA is neither an architect nor an engineer and its consulting services provided under the CSA Agreement, PSOM Agreement and this Agreement with respect to the Coliseum are based upon its operational knowledge and the services to be provided are as a consultant. At no time should the services of CIA be construed as architectural or engineering. Neither the City nor any of their respective agent, consultants or representatives will rely upon CIA as having architectural or engineering expertise. Accordingly, notwithstanding any other term or condition of this agreement, CIA shall have no liability to the City with respect to architectural or engineering matters relating to the Coliseum.

3.5 Confidentiality/Nondisclosure.

The parties hereto agree that they shall keep secret and confidential any and all proprietary information (which shall include all documents which CIA marks as confidential or proprietary}, and neither party shall divulge any such information, in whole or in part, to any third party, except as required by law, without the prior written consent of the other party, The parties shall provide notice to the other party of any known or suspected violations of this Section 3.6.

4. Term and Renewal Terms.

4.1 Term.

(a) The Term of this Agreement (Management Term) shall commence on the date of execution of this Agreement and shall expire on the date ten (10) years subsequent to the date of the first public event held in the Coliseum. If CIA fully complies with the

terms and conditions contained herein, then it shall have the first right of refusal and option to exercise one 5 year renewal of the Agreement for the term of April 1, 2016 to March 31, 2021, on terms and conditions negotiated at the time; except that in the event the City and CIA are unable to reach an agreement regarding fees and conditions CIA shall notify the City in writing no later than one year prior to the end of the tenth year of this Agreement of its intent to exercise its renewal option. Upon receipt of such notice by the City, CIA and the City shall meet promptly for the purpose of negotiating fees and conditions which shall replace the fees and conditions contained in this agreement.

5. Funding; Budgets; Bank Accounts.

5.1 Operating Funds.

a. Pre-Opening Budget. Pursuant to the CSA Agreement, and the PSOM Agreement CIA has submitted and the City has approved a Pre-Opening Budget for the Coliseum through December 31, 2005. From time to time, CIA shall be entitled to revise and update the Pre-Opening Budget to reflect changes in circumstances, provided that any revised Pre-Opening Budget shall require the re-approval of the City. During the Pre-Opening Period, CIA's aggregate expenses (when taken as a whole relative to the total Pre-Opening Budget and not on a per line item basis) shall not exceed the aggregate Pre-Opening Budget, without consent of the City. In the event that any time during the Pre-Opening Period, CIA reasonably believes that its expenditures are (i) likely to exceed the budgeted amounts or (ii) there insufficient funds to perform the Pre-Opening services, CIA shall promptly give notice to the City.

(b) In order to provide funding for the expenses set forth in the Pre-Opening Budget, the City shall advance to CIA for deposit in an interest-bearing account established in accordance with Section 5.6 below and withdrawal upon incurrence of such pre-opening expenses ("Pre-Opening Fund"), an amount equal to or greater than the aggregate of the projected Pre-Opening Budget expenses for three (3) month period beginning on the date hereof (each a "Quarterly Period"). By no later than the first day of each successive Quarterly Period during the Pre-Opening Period, the City shall advance to CIA such amount as is necessary to replenish the Pre-Opening Fund to a minimum amount equal to the aggregate of projected pre-opening expenses set forth in the Pre-Opening Budget for the next Quarterly Period then in effect. If, at the end of the Pre-Opening Period, there is a balance in the Pre-Opening Fund in an amount in excess of the then accrued expenses set forth in the Pre-Opening Budget, CIA shall disburse such excess to account established pursuant to Section 5.6 below. If, after the first day of any month, the amount of moneys on deposit in the Pre-Opening Fund shall be insufficient for the payment of (i) pre-opening expenses set forth in the Pre-Opening Budget then due or budgeted to become due during such month or (ii) emergency expenditures to which the City has consented, CIA may, but shall not be required to, advance the amount of such insufficiency out of its funds. In that event, CIA shall immediately notify the City of any such advance, and the City shall promptly, but in no event later than the thirtieth (30th) day following the giving of such notice, reimburse CIA in an amount equal to such advance.

(c) Subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the Term hereof), the City shall make available to CIA all funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year. To the extent that Operating Revenues during a calendar quarter period are insufficient, or expected to be insufficient, to cover Operating Expenses, the City shall advance funds to CIA as follows: ninety (90) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, CIA will submit to the City an invoice for the projected Cash Flow Shortfall for such Quarterly Period and the City will transfer such funds to CIA within ten (10) days after the start of such Quarterly Period. Such funds shall be deposited by CIA in the operating or payroll account(s) established pursuant to Section 5.7 and used to pay Operating Expenses.

5.2 Non-Funding.

(a) The City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date CIA receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated for the Coliseum.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the City shall pay all Operating Expenses incurred or committed for after such date which are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The City shall pay all Operating Expenses incurred or committed for prior to the date receives the Appropriation Deficiency Notice. Any failure by the City to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after CIA receives an Appropriations Deficiency Notice shall not be a breach of or default under this Agreement by the City. Any failure by CIA to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from the City's failure to appropriate sufficient funds for the management, operation and promotion of the Coliseum.

(c) If the City appropriates funds at (or reduces appropriated funds) to a level that, in CIA 's judgment, renders the management of the Coliseum not feasible, CIA may, at its option, either (i) continue management of the Coliseum at a reduced level consistent with anticipated Operating Revenues and available funding or (ii) terminate this Agreement pursuant to Section 15. Following such termination, CIA shall have the right to resume management of the Coliseum at such time as the City shall first restore appropriated funds to reasonable levels.

5.3 Annual Budget: Cash Flow Budget.

(a) As part of the annual plan described in Section 8.2 herein, on or before September 15 of each year (beginning September 15, 2006), CIA will prepare an annual operating and cash flow budget for the next Fiscal Year (which shall be a calendar

year) to meet the scope of services and objectives under this Agreement. Such budget materials shall contain appropriate line items for revenues and expenses, including debt service, and the projected net operating deficit or surplus.

(b) The annual budget materials referred to in subparagraph (a) above shall be reviewed and are subject to approval by the City by sixty *(60)* days prior to the end of each Fiscal Year during the term of this Agreement, the City Manager shall notify CIA of any changes to the annual operating budget and the cash flow funding budget for the succeeding Fiscal Year proposed by CIA and with such changes, if any, as are made by the City prior to thirty *(30)* days prior to the end of each Fiscal Year during the Term of this Agreement, such budgets shall be the Approved Budgets for the following Fiscal Year, provided that if the annual operating budget or the annual cash flow budget as proposed by CIA are modified by the City in a manner which, in CIA 's commercially reasonable judgment, which judgment may be established only subsequent to a minimum of sixty (60) days of good faith discussions with the City, could materially interfere, impede or impair the ability of CIA to manage, operate or promote the Coliseum, CIA shall have the right to terminate this Agreement pursuant to Section 15, and provided further that if the approved annual operating budget or annual cash flow budget departs from the budgets proposed by CIA, CIA shall not be construed to have breached its obligations under this Agreement if the alleged breach has been caused by the limitations in the Fiscal Year's budgets.

5.4 Budget Modifications Initiated by CIA.

CIA may submit to the City at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the City of such supplemental or revised budget, the Approved Budgets for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in Section 5.5 below or in the two preceding sentences except that CIA shall have the right to amend the Approved Budgets as may be necessary or appropriate as the result of the scheduling by CIA of additional events or activities at the Coliseum (and the incurrence of additional Operating Expenses arising from the scheduling of additional events or activities at the Coliseum) as long as prior to the scheduling of such events or activities, CIA had a good faith belief that the Loss would be increased as a result of such additional events or activities.

5.5 Budget Modifications Initiated by the City.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual net operating loss/profit for such Fiscal Year will be less than projected (or greater with respect to a net operating loss) in the annual operating budget for such Fiscal Year, the City Manager may request from CIA a plan for reduction of Operating Expenses to a level consistent with the budgeted net operating loss/profit amount. CIA shall forthwith comply with any such expense reduction requested by the City and the approved budgets for such Fiscal Year shall be modified accordingly, provided that if the annual operating budget or annual cash flow budget is modified in a manner which, in CIA 's judgment, could materially interfere, impede or impair the

ability of CIA to manage, operate or promote the Coliseum, CIA shall have the right to terminate this Agreement pursuant to Section 15 and provided further that CIA shall not be construed to have breached its obligations under this Agreement if such alleged breach has been caused by the limitations in the Fiscal Year's budgets.

5.6 Receipts and Disbursements.

CIA shall establish and maintain in one or more depositories one or more operating, payroll and other bank accounts for the promotion, operation and management of the Coliseum. All revenues collected by CIA from the operation of the Coliseum shall be deposited into such accounts and Operating Expenses (other than Operating Expenses to be paid-from an account-described in Section 5.7) shall be paid by CIA from such accounts. All revenues collected by CIA arising from operation of the Coliseum, including revenues from box office sales, Coliseum or equipment rentals, utility rental agreements, food and beverage concessions, or any other source are the sole property of the City. Any amounts remaining in such accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by CIA to the City. The City shall have the right to review such accounts and to request and review bank statements to the same extent as CIA.

5.7 Ticket Sales Revenues.

CIA shall hold in a separate interest-bearing account in a banking institution depository in the City of Bloomington, Illinois any ticket sale revenues which it receives with respect to an event to be held at the Coliseum pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the City and CIA, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, CIA shall make a nightly deposit into the operating account(s) established pursuant to Section 5.6 above of the amount in such account and shall pay from the operating account Event Expenses and provide the City with a full event settlement report. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.7 and the ticket account referred to above shall be considered Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

5.8 Capital Improvements: Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases (defined as equipment costing more than $5,000.00 and services costing more than $5,000.00, as adjusted by the CPI Index) shall remain with the City, and will not be considered Operating Expenses. The annual management plan submitted pursuant to Section 8.2 shall include CIA 's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefore. The

City shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Coliseum.

5.9 Limitation of CIA Liability.

Notwithstanding any provision herein to the contrary and except for CIA 's express indemnification undertakings in Section 11.1 and its express reimbursement undertakings in Section 8.1 (b), and financial obligations pursuant to Section 2 hereof, CIA shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Coliseum, including, specifically, any pre-opening expenses incurred during the Pre-Opening Period as set forth in the Pre-Opening Budget. Notwithstanding anything to the contrary set forth in this Agreement, the City recognizes and agrees that performance by CIA of its responsibilities under this Agreement is in all respects subject to and conditioned upon the timely provision of funds to CIA for such purposes as hereinafter provided. In addition, any financial forecasts or projections made by CIA under this Agreement pertaining to the Coliseum (including without limitation operating expenses, advertising sales, and other revenues) are, or will be, made in good faith by CIA based upon its experience at other facilities which are as comparable as possible to the Coliseum; however, given the individual characteristics of each the Coliseum and the uncertainty associated with future events and/or market conditions, the actual financial results obtained may vary from such financial forecasts or projections, and such forecast and projections shall not be construed as a representation, warranty or guarantee by CIA of the actual financial results to be obtained.

5.10 Funds for Emergency Repairs.

CIA shall have the right to act, with the consent of the City, in situations which CIA reasonably determines to be an emergency with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account(s) of the Coliseum, even if such expenses are not budgeted; provided, however, CIA shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. Immediately following such action, CIA shall inform the City of the situation and the action(s) taken, and the City shall pay into such account(s) the amount of funds, if any, spent or committed by CIA pursuant to this Section 5.10 in excess of budgeted amounts.

6. Concessions and Merchandise.

6.1 Capital Contribution.

Pursuant to Section 2.2 hereof, CIA shall contribute an amount not to exceed $1,000,000 to provide the Coliseum with commercially reasonable food and beverage and merchandise related equipment, all as set forth in such provision. Title to such equipment shall remain with CIA. In the event of a termination of this Agreement, the City shall have the right to purchase the equipment at fair market value as may reasonably be determined by the parties.

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6.2 Budget and Design.

CIA will work with the City to prepare, and mutually agree upon, a budget for the Capital Improvements and Capital Equipment to be funded with such contribution, along with the scope of work to be performed thereunder, the supervision of tasks and the estimated time frames for the projects listed in such budget. CIA shall additionally work with the Design/Build Team to develop a full food, beverage and merchandise program for the Coliseum. Final design, schematic and construction drawings will be the responsibility of the Design/Build Team, and the cost of installation will be a project cost. CIA will provide initial drawings and will oversee installation.

6.3 Scope.

CIA shall have the exclusive right to operate all food, beverage and merchandise concessions in the Coliseum, unless otherwise agreed, specifically excluding the public ice rink.

6.4 Payment to the Coliseum.

CIA will make payments to the Coliseum as follows:

Food and Beverage Sales

$0 - 1.0M	32%
$0- 1.2M	34%
$0- 1.8M	38%
$0- 2.5M	42%
Suite sales	15%
Catering sales	15%

Such payments will be deposited under Section 5.6 within three business days after receipt. The foregoing payments to the Coliseum will be paid as a percentage of Gross Receipts, defined as total revenues from food and beverage sales, less sales and other taxes, service charges, employee meals, and reduced or at-cost items per Fiscal Year.

6.5 Food Prices and Menus.

CIA will in its reasonable discretion, determine menus and food prices based on industry standards. The City may require modifications of such menus and prices only on a commercially reasonable basis.

6.6 Utilities.

CIA will be responsible for the cleaning of the kitchen and food preparation areas. Utilities and cleaning expenses, including rubbish removal, will be from the account of the Coliseum.

6.7 Sponsorships/Local Vendors.

CIA shall encourage participation by local vendors in the food and beverage services of the Coliseum. CIA shall have full responsibility for the negotiation of any such contracts, including the allocation and determination of the value of related sponsorships and food and beverage costs.

6.8 Sales of Merchandise.

All sales of merchandise relating to teams with license agreements with the Coliseum will be in accordance with the terms of such license agreements, all as approved by the City and, accordingly, will be for the full account of the teams as to revenues and expenses. With respect to all other merchandise sold at the Coliseum, the Coliseum Fund shall receive 10% of the gross revenues, less sales and other similar levied charges.

7. **Sponsorship; Premium Seating; Naming Rights.**

7.1 Sponsorship.

CIA shall, on behalf of the City and the Coliseum, have the sole and exclusive right to sell all sponsorship and advertising relating to the Coliseum, including but not limited to, all fixed and movable signage of any type, concourse and inner-bowl signage and Coliseum-related signage of the hockey and football tenants ("Sponsorship Inventory"). Such Sponsorship Inventory shall be under the exclusive control of CIA, on behalf of the City. The Coliseum will retain all proceeds from such sponsorship sales, less (i) industry standard commissions of 10%, (ii) cost of sales and (iii) payments to the hockey and football tenants in accordance with their respective License Agreements. The hockey and football teams will retain its own revenues that it generates from dasher boards, ice/field logos, program ads, and other sponsorship opportunities with the approval of CIA.

7.2 Premium Seating.

CIA shall, on behalf of the City and the Coliseum, have the sole and exclusive right and responsibility to sell the suites and club seats that are part of the Coliseum program. The Coliseum shall retain all proceeds of such sales, less (i) industry standard commissions of 10%, (ii) cost of sales and (iii) payments to the hockey and football tenants, and other tenants whether single event or otherwise if so determined, with respect to the ticket value component of such sales, in accordance with their respective License Agreements. CIA shall guarantee the City the sale of 22 suites sold by the Coliseum's opening night and will secure the remaining two suites by similar long-term contracts or by leasing the suites on an event-by-event basis. The parties

hereto recognize that the consideration for certain suite or other licenses may be in the form of "trade" or other vendor relationships with the Coliseum and/or its tenants. In each such instance, amounts shall be allocated to the respective licenses based on commercially reasonable valuations determined by good faith discussions by the parties hereto.

7.3 Naming Rights.

Pursuant to Section 2.1 hereof, and as indicated in "Exhibits C & D" attached hereto and incorporated herein by reference, CIA has sold the Naming Rights to the Coliseum to United States Cellular Corporation and Pepsi-Cola General Bottlers, Inc d/b/a Pepsi Americas. The City, by approving this Management Agreement, hereby approves such sale; and in the event that such further and additional sales of naming rights, the City shall have the right to approve the identity of such naming rights entity; such approval to be withhold, however, only (i) in the event that the City reasonably determines that the business, character or reputation of the entity is inconsistent with the community values of the City of Bloomington or (ii) the entity does not have the financial capability to meet its obligations under the Naming Rights Agreement. All cash proceeds from the sale of Naming Rights up to $200,000.00 annually shall be held for the Coliseum Fund; all cash amounts exceeding $200,000.00 per Fiscal Year shall be deposited and distributed in accordance with the terms and conditions of Section 10.3 hereof.

8. Records, Audits and Reports.

8.1 Records and Audits.

(a) CIA shall keep full and accurate accounting records relating to its activities at the Coliseum in accordance with generally accepted United States accounting principles. CIA shall maintain a system of bookkeeping adequate for its operations hereunder. CIA shall give the City's authorized representatives access to such books and records maintained at the Coliseum during reasonable business hours and upon reasonable advance notice as often as the City shall deem reasonably necessary or appropriate. CIA shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Revenues and Operating Expenses for such period. In addition, on or before April 1 following each Fiscal Year for which CIA is managing the Coliseum hereunder, CIA shall furnish to the City a balance sheet, a statement of profit or loss and a statement of cash flows for the Coliseum, for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles and accompanied by an independent auditor's report of a recognized, independent certified public accountant. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by CIA and of amounts due to the Coliseum Fund. The audit shall also provide a certification of Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The audit shall be conducted by a reputable firm selected by CIA with City approval. The City shall not withhold or delay such

consent or approval unreasonably. Notwithstanding anything to the contrary herein, the costs of such audit shall be deemed Operating Expenses.

(b) The City shall have the right at any time, and from time to time, to cause recognized independent auditors to audit all of the books of CIA relating to Revenues and Operating Expenses, including, without limitation, bank books, sales slips, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Revenues or Operating Expenditures reflected in any financial statements prepared by CIA and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Revenues), in either case by more than five percent (5%), CIA shall pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion of the Incentive Fee (defined in Section 10.2) paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be. The City's right to have such an audit made with respect to any Fiscal Year and CIA's obligation to retain the above records shall expire three (3) years after CIA's statement for such Fiscal Year has been delivered to the City.

(c) The parties shall cooperate in any audits conducted pursuant to (a) or (b) above.

8.2 Annual Plan.

(a) CIA shall provide to the City on or before September 1 of each year, an annual management plan, which shall include the annual operating budget described in Section 5.3 for the next Fiscal Year, The annual plan shall include information regarding CIA's anticipated operations for such Fiscal Year, including planned operating maintenance activities by CIA, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefore, anticipated events at the Coliseum, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the City. Following review and revision by the City, CIA shall have thirty (30) days to incorporate the City's revisions into its plan. Upon approval by the City, such annual plan shall constitute the operating program for CIA for the following Fiscal Year.

8.3 Monthly Reports.

By the twenty-fifth day of each month, CIA shall provide to the City a written monthly report in a form approved by the City and similar to that used in other CIA managed facilities setting out the Coliseum's anticipated activities for the upcoming month and reporting on the prior month's activities and finances.

8.4 Event Report.

CIA shall provide to the City, after each event, a report showing the amount of revenue attributable to specific activities conducted by CIA in connection with that

event, such as ticket sales, concessions, merchandise sales, and parking fees. Such report shall be submitted to the City no later than 3 business days after the event.

9. Employees.

9.1 CIA Employees.

(a) CIA shall select, train and employ at the Coliseum such number of employees as CIA deems necessary or appropriate to satisfy its responsibilities hereunder CIA shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and CIA shall have authority to hire, terminate and discipline any and all personnel working at the Coliseum.

(b) CIA shall assign to the Coliseum a competent, full-time general manager who shall have no duties other than the day-to-day operation and management of the Coliseum, and a full-time marketing executive to direct, among other things, all sales of sponsorships, premium seating and the resale of naming rights. Prior to CIA's appointment of such general manager and marketing executive, CIA shall consult with the City with respect to the qualifications of each of the general manager and marketing executive proposed by CIA.

(c) CIA employees at the Coliseum shall not for any purpose be considered to be employees of the City, and CIA shall be solely responsible for their supervision and daily direction and control and for setting and paying as an Operating Expense, their compensation (and federal income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

9.2 No Solicitation or Employment by City.

During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with CIA's prior written consent, the City will not, for any reason, solicit for employment, or hire, the general manager, assistant general manager and any director level employee (e.g. director of sales or operations). In addition to any other remedies which CIA may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

10. Compensation.

10.1 Management Fee.

As base compensation to CIA for providing the services herein specified during the Term and any Renewal Terms, the City shall pay CIA during the Term and a Renewal Term, if any, an annual fee ("Base Fee") representing 4% of the Gross Revenues, as hereinafter defined, of the Coliseum. Gross Revenues shall be all revenues actually received by the Coliseum under Section 5.6 during such Fiscal Year, less any sales or other similar taxes imposed on such revenues. The Base Fee will be paid on a pro rata

monthly basis, such monthly amounts to be calculated based upon annual budgeted revenues in accordance with the mutually agreed budget established prior to each Fiscal Year in accordance with this Agreement. In the event that amounts paid on a monthly basis either exceed or are less than the actual amount due as a Base Fee for a given Fiscal Year, such differential shall be reimbursed to the City or paid to CIA, as the case may be, within 30 days of receipt of the relevant settlement calculation for such Fiscal Year.

10.2 Incentive Fee.

In any Fiscal Year during the Term or any Renewal Terms, CIA shall be entitled to a 20% share of the Coliseum's Operating Revenue, as hereinafter defined. Operating Revenue for this purpose shall be Gross Revenues, as defined in Section 10.1, less all sales and other applicable use taxes, Operating Expenses, debt service and Incentive Fund payments as defined in Section 10.3 below. The Incentive Fee determined pursuant to this Section 10.2 shall be payable to CIA within 30 days after the City's receipt of an invoice from CIA accompanied by an annual statement certified by one of its officers setting forth the Operating Revenues for the previous Fiscal Year and showing in reasonable detail the basis of the calculation of the Incentive Fee payable with respect to such Fiscal Year.

10.3 Incentive Account.

Any resale of naming rights resulting in cash and trade proceeds in excess of $200,000 per Fiscal Year shall be contributed to an incentive account (the "Incentive Account") and divided equally between the City and CIA (such payments to CIA constitute the Incentive Fee). Proceeds from the Incentive Account, if any, shall be paid to the respective parties no later than 30 days from the date of the final settlement or reconciliation and pursuant to the procedure identified in Section 10.2 above.

11. Indemnification and Insurance.

11.1 Indemnification.

(a) CIA shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against any and all losses, liabilities, claims, damages, and expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from (x) any material default or breach by CIA of its obligations specified herein or (y) bodily and personal injury or death to any persons, including invitees, licensees and trespassers or damage to the property received or sustained by any persons to the extent caused by the negligent acts or omissions of CIA in the performance of this Agreement; provided, however, that the foregoing indemnification obligations shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the City of its obligations hereunder and/or the negligent acts of the City, its officers, agents, and employees, (ii) are caused by or arise out of the services provided by the general contractors, subcontractors, architects, engineers and other agents (other than CIA) retained by the City in connection with the development, construction of the

Coliseum or Capital Improvements or Capital Equipment purchases at the Coliseum, (iii) arise from the fact that at any time prior to, as of, or after the commencement of the Term the Coliseum has not been or will not be operated, or the Coliseum and its premises are not, have not been or will not be, in compliance with all federal, state, local, and municipal laws, statutes, regulations, ordinances, and constitutional provisions (collectively, the "Laws"), including, but not limited to the Americans with Disabilities Act, except to the extent that such noncompliance directly results from the failure of CIA to follow any of its obligations specified herein, (v) arise from the fact that prior to, as of, or after the commencement of the Term there is any condition on, above, beneath, or arising from the premises occupied by the Coliseum which might, under any Law, give rise to liability or which would or may require any "response," "removal," or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act), except to the extent that CIA is directly responsible for the creation of the condition in question, or (vi) arise from any structural defect or unsound condition with respect to the Coliseum or the premises occupied by the Coliseum prior to, as of, or after the commencement of the Term, except to the extent directly caused by the failure of CIA to follow any of its obligations specified herein.

(b) The provisions set forth in subparagraph (a) above shall survive the completion of all services of CIA under this Agreement or the termination of this Agreement.

(c) The foregoing indemnification right shall be the exclusive remedy of the City (other than any right to terminate this Agreement pursuant to Section 15) arising from any breach of, default under or performance pursuant to this Agreement.

11.2 Liability Insurance.

(a) CIA shall secure and deliver to the City Manager prior to the commencement of the Management Term hereunder and shall keep in force at all times during the term of this Agreement, a commercial liability insurance policy, including public liability and property damage, covering the premises, the operations hereunder, in the amount of One Million Dollars ($1,000,000.00) for bodily injury and One Million Dollars ($ 1,000,000.00) for property damage, including products and completed operations, personal and advertising liability and independent contractors. CIA shall also maintain (i) fire legal liability insurance in the amount of $50,000 per occurrence and (ii) umbrella liability insurance with a limit of Five Million Dollars ($5,000,000).

(b) CIA shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by CIA officers, agents and employees in connection with the Coliseum, whether owned by CIA, the City, or otherwise, with a combined single limit of not less than One Million Dollars ($1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) Certificates evidencing the existence of the above policy, or policies, all in such form as the City may reasonably require, shall be delivered upon request to the City

prior to the commencement of this Agreement and periodically upon request thereafter. In addition, concurrently with the furnishing of each certificate of insurance under this Section 8.2(d), CIA shall, upon request by the City, furnish the City with a report of an independent insurance broker, signed by an officer of the broker, stating that in the opinion of such broker, the insurance then carried is in accordance with the terms of this Section 8 applicable to those policies. Notwithstanding the provisions of this Section 11.2(d), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days written notice thereof to the City Manager, at the address of the City Manager as provided thereby, sent by certified mail, return receipt requested."

(d) A renewal binder of coverage (or satisfactory evidence of such renewal) shall be delivered to the City Manager at least twenty (20) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

(e) Except as provided in Section 11.5 (b), all insurance procured by CIA in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City and not require contribution by the City.

11.3 Workers Compensation Insurance.

CIA shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the Illinois State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Illinois, insuring its employees at the Coliseum in amounts equal to or greater than required under Illinois law. CIA shall carry employer's liability policies in an amount of at least Five Hundred Thousand Dollars ($500,000.00) with an excess umbrella policy covering amounts in excess of Five Hundred Thousand Dollars ($500,000) up to Five Million Dollars ($5,000.000.00).

11.4 Fidelity Bond.

CIA shall provide to the City a Fidelity Bond covering all of CIA's personnel under this Agreement in the amount of Five Hundred Thousand Dollars ($500,000.00) for each loss, to reimburse the City for losses experienced due to the omissions or dishonest acts of CIA's employees.

11.5 Property Insurance.

(a) CIA shall maintain sufficient property damage or loss insurance to cover personal property owned by the City and CIA at the Coliseum and shall maintain such insurance throughout the term of this Agreement. CIA shall maintain business interruption and loss of rent insurance for its operations. At least forty-five (45) days prior to the commencement of the Management Term hereunder, the City shall

provide to CIA a schedule of declaration of values at replacement cost for the personal property owned by the City at the Coliseum.

(b) The City shall, subject to Section 5.2, maintain its current property insurance covering the premises of the Coliseum. In addition, the City shall, with respect to the Losses covered by such property and hazard insurance and business interruption and extra expenses insurance, waive any subrogation rights that it may have against CIA, its partners and their respective officers, employees and agents, whether or not the City self-insures for the Losses covered by such insurance.

(i) The original or a certified copy of the above policy, or policies referred to in Section 11.5(b) (with all required policy' endorsements), plus certificates evidencing the existence thereof, all in such form as CIA may reasonably require, shall be delivered to CIA prior to the commencement of this Agreement. Notwithstanding the provisions of this Section 11.5(b), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to CIA." The original or a certified copy of the policies referred to in Section 11.2, 11.3 and 11.5 (a) (with all required policy' endorsements), plus certificates evidencing the existence thereof, all in such form as the City may reasonably require, shall be delivered to the City at appropriate times. Notwithstanding the provisions of this Section 11.5(a), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the City."

(ii) A renewal binder of coverage (or satisfactory evidence of such renewal) shall be delivered to CIA or the City, as the case may be, at least twenty (20) days after a policy's expiration date except for any policy expiring on the Termination date of this Agreement or thereafter.

11.6 Certain Other Insurance.

If CIA enters into any agreements during the Term with any independent contractors for the provision of services hereunder, CIA shall have the right to require such contractors to name CIA as an additional insured under any insurance required by CIA thereunder and to deliver to CIA prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Sections 8.5(b)(i) and (ii).

12. Ownership of Assets.

12.1 Ownership.

With the exception of concession equipment acquired by CIA pursuant to Section 2 hereof, the ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Coliseum shall remain with the City. Ownership of and title to all intellectual property rights of whatsoever value held in the City's name shall remain in the name of the City. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Revenues or City funds shall remain with the City, but such assets may be utilized and consumed by CIA in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and software owned by CIA shall remain with CIA. CIA shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the City for the use of the Coliseum, unless written consent is granted by the City. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by CIA with City funds for use at and for the Coliseum shall vest in the City automatically and immediately upon purchase or acquisition. The assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned without the prior approval of the City.

12.2 City Obligations.

Except as herein otherwise set forth, throughout the Term of this Agreement, the City will maintain full beneficial use and ownership of the Coliseum and will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts relating to the Coliseum to which the City may be bound.

13. Assignment; Affiliates.

13.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. Notwithstanding the foregoing, CIA may, upon sixty (60) days written notice to the City, assign all or any part of its rights hereunder to subsidiaries or affiliates under the direct control of CIA ("Affiliates") provided that (i) such Affiliates possess substantially the same degree of expertise and quality of personnel as originally provided under this Agreement, and (ii) such assignment shall be at no increased cost to the City. It is understood by the City and CIA that CIA may undertake the ownership and operation of the concession equipment to be purchased by CIA pursuant to Section 2 hereof through a separate legal entity. Such entity will be an Affiliate of CIA and will assume all obligations of CIA hereunder. The City agrees to assist in the execution of any necessary or appropriate documentation to effectuate such transaction.

14. Laws and Permits.

14.1 Permits, Licenses, Taxes and Liens.

CIA shall use reasonable efforts to procure any permits and licenses required for the business to be conducted by-it hereunder. The City shall cooperate with CIA in applying for such permits and licenses. CIA shall deliver copies of all such permits and licenses to the City. CIA shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Coliseum. CIA shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Coliseum, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at CIA's direction and the City has supplied funds for the payment of charges therefore in accordance with this Agreement. All work contracted by CIA to be done for the Coliseum shall be in accordance with the City's Prevailing Wage Resolution, as from time to time amended by the City.

14.2 Governmental Compliance.

CIA, its officers, agents and employees shall comply with all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions (collectively, "Laws") applicable to CIA's management of the Coliseum hereunder, including without limitation Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 14.2 or elsewhere in this Agreement shall, however, require CIA to undertake any of the foregoing compliance activity, nor shall CIA have any liability under this Agreement therefore, if such activity requires any Capital Improvements or Capital Equipment purchases, unless the City provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof. Furthermore, CIA shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Coliseum to comply, and to be financially responsible for compliance, with Title III of the in connection with any activities of such licensee, lessee, tenant, promoter or user at the Coliseum.

14.3 No Discrimination in Employment.

In connection with the performance of work under this Agreement, CIA shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, unlawfully because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

15. Termination.

15 .1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum pay able hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party, or (iii) with respect to CIA, if CIA fails to maintain the Naming Rights L/C in accordance with Section 2.1 hereof. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

15.2 Termination Other than Upon Default.

(a) CIA shall have the right to terminate this Agreement upon sixty (60) days written notice to the City (i) under the circumstances described in Sections 5.3, 5.4 or 5.5 hereof, or (ii) if the City fails to make Capital Improvements or Capital Equipment purchases at the Coliseum to the extent that such omission, in CIA's judgment, materially interferes with, impedes or impairs the ability of CIA to manage the Coliseum effectively.

15.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the City shall pay all such Operating Expenses and shall indemnify and hold CIA harmless therefrom, and (ii) the City shall promptly pay CIA all fees earned to the date of expiration or termination (the Base and Incentive Fees described in Section 10 hereof being subject to proration), provided that the City shall be entitled to offset against such unpaid fees any damages (actual, not consequential) directly incurred by the City in remedying any default by CIA hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Coliseum), and (iii) the City shall pay, or cause any successor management company to pay, to CIA unconditionally and without set-off the unamortized amount of the CIA Capital Contribution pursuant to Section 2 hereof. Upon a termination pursuant to Section 15.1, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 15.3,9.2, 11.1 and 15.4; provided, however, that if such termination is the result of a willful default, the nondefaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

15.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, including termination pursuant to the terms of this Section 15.4 and any expiration of the term hereof), CIA shall surrender and vacate the Coliseum upon the

(b) If any dispute between the parties has not been resolved pursuant to Section 16.2(a) above, the parties will endeavor to settle the dispute by mediation under the then current Coliseum for Public Resources ("CPR") model procedure for mediation of business disputes or, if such model procedure no longer exists, some other mutually agreeable procedure. Within ten (10) business days from the date that the parties cease direct negotiations pursuant to Section 13.2(a) above, the City shall select a neutral third party mediator, who shall be subject to the reasonable approval of CIA. Each party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the parties. Venue for all mediation and arbitration proceedings shall be in Bloomington, IL.

(c) The parties agree that any mediation proceeding (as well as any discussion pursuant to Section 16.2(a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party.

(d) The parties agree that this mediation procedure will be obligatory and participation therein legally binding upon each of them. In the event that either party refuses to adhere to the mediation procedure set forth in this Section 16.2, the other party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction.

(e) The parties' efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the parties, or (ii) the mediator concludes and informs the parties in writing that further efforts to mediate the dispute would not be useful, or (iii) the parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either party may withdraw from the mediation proceeding without liability therefore in the event such proceeding continues for more than ninety (90) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided in Section 16.2(b).

(f) If any dispute has not been resolved pursuant to the foregoing, either party can submit the dispute to binding arbitration as provided below (the "Arbitration") and/or terminate the Agreement as provided in Section 15 hereof. The Arbitration shall be held in the City of Bloomington, Illinois before an arbitrator or a panel of arbitrators whose number shall be determined, and who shall be selected, in accordance with the rules of the American Arbitration Association ("AAA"). The then current Commercial Arbitration Rules of the AAA will apply to the Arbitration

(g) Notwithstanding the foregoing, the following shall apply to the Arbitration:

(i) Each arbitrator shall be neutral, independent, disinterested, impartial and shall abide by the Canon of Ethics of the American Bar Association for neutral, independent arbitrators. An arbitrator shall be subject to disqualification in an appointing party, either before or after the appointment, asks for the views of the arbitrator or makes an *ex parte* disclosure of significant facts or themes of the dispute beyond what is appropriate for the arbitrators' conflict check and revelation of his qualifications for the case. There shall be no *ex parte* communications with an arbitrator either before or during the arbitration, relating to the dispute of the issues involved in the dispute or the arbitration's views on any such issues.

(ii) It is the intention of the parties to expedite the resolution of the Arbitration. In that connection, the arbitrator(s) shall commit the time and priority of claim on his or their time so as to expedite the case. The arbitrator or if applicable, the chairman of the panel is directed to assume case management initiative and control to schedule the case early and reasonably to expedite the case toward full resolution promptly. The arbitrator of if applicable, the panel shall render the award within fifteen (15) days of the close of evidence or any post-evidence briefing.

(iii) The arbitrator shall have the authority to exclude evidence deemed to be irrelevant, redundant to prejudicial beyond its probative value and is instructed to exercise that authority consistently with expediting the proceeding reasonably. The parties explicitly agree that exclusion of evidence by the arbitrator on ground of irrelevance, redundancy, or prejudicial beyond its probative value shall not be grounds of failure to confirm and enforce the award.

(iv) If the Arbitration results in a determination by the arbitrator(s) that a default has occurred under this Agreement, then the provisions of Section 11 and 15 hereof shall govern the damages or other remedies that may be implemented or ordered by the arbitrator(s). Neither the requirement to utilize nor the pendency of any procedures under this Section 16.2 shall in any way invalidate any notices or extend any cure periods applicable to any default under Section 15.1

(h) The procedure specified in this Section 16.2 shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that (i) a party, without prejudice to the above procedures, may file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole discretion such action is necessary to avoid irreparable damage or to preserve the status quo ("Equitable Litigation') or (ii) any party may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Arbitration .award in accordance with applicable law. Despite such action,

the parties will continue to participate in good faith in the procedures specified in this Section 16.2.

(i) Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until the alternative dispute resolution procedures described in this Section 16.2 concerning the dispute that is the subject of such Equitable Litigation result in a settlement agreement or the issuance of an Arbitration award. Such written settlement agreement or Arbitration award shall be the final, binding determination on the merits of such dispute, shall supersede and nullify any decision in the Equitable Litigation, and shall preclude any subsequent litigation on such merits, notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom.

(j) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section 16.2 are pending. The parties will take such action, if any, required to effectuate such tolling. Each party shall be required to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances.

16.3 No Partnership or Joint Venture.

Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and CIA. None of the officers, agents or employees of CIA shall be or be deemed to be employees of the City for any purpose whatsoever.

16.4 Entire Agreement.

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof.

16.5 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

16.6 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain

materials., supplies, epidemics, landslides, lightning storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefore shall be prohibited or rationed by any Law.

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to CIA shall be claimed by the City or charged against CIA, nor shall CIA be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing.

(d) In the event of damage to or destruction of the Coliseum, by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Coliseum materially untenantable, notwithstanding the City's reasonable efforts to remedy such situation, for a period estimated by an architect selected by the City at the request of CIA of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon written notice to the other.

(e) CIA may suspend performance required under this Agreement, without any further liability, in the event of any act of God or other occurrence, which act or occurrence is of such effect and duration as to effectively curtail the use of the Coliseum so as effect a substantial reduction in the need for the services provided by CIA for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, CIA shall have the right to suspend performance retroactively effective as of the date of the use of the Coliseum was effectively curtailed. "Substantial reduction in the need for these services provided by CIA" shall mean such a reduction as shall make the provision of any services by CIA economically impractical. No payments of the management fees otherwise due and payable to CIA shall be made by the City during the period of suspension, In lieu thereof, the City and CIA may agree to a reduced management fee payment for the period of reduction in services required.

16.7 Binding Upon Successors and Assigns: No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

16.8 Notices.

Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefore as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

16.9 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

16.10 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

16.11 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

16.12 Non-Waiver.

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A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

16.13 Certain Representations and Warranties.

(a) The City represents and warrants to CIA the following: (i) all required approvals have been obtained, and the City has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) CIA represents and warrants to the City the following: (i) all required approvals have been obtained, and CIA has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by CIA and constitutes a valid and binding obligation of CIA, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

16.14 Governing Law.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to otherwise applicable principles of conflicts of law.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

ATTEST:

Tracey Covert

Its City Clerk

CITY OF BLOOMINGTON

By: Stephen F. Stockton

Name: Stephen F. Stockton

Title: Mayor

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

MCLEAN COUNTY, ILLINOIS

Grand Jury Investigation

2016-720

SUBPOENA DUCES TECUM

To: Central Illinois Arena Management

[X] You are commanded to produce the following items or evidence for examination by the parties or the Court in the above location and on the date and time specified below:

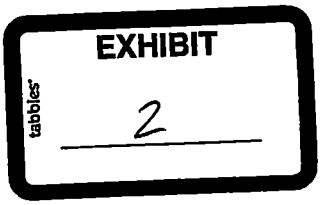
Record or Documents Requested:

Central Illinois Arena Management (CIAM) business documents: Any and all documents physical and digital for the business listed in B.4. above for the period of January 1, 2013 to March 31, 2016 including but not limited to: 1) General Journals and charts of accounts; 2) general ledger and subsidiary ledgers; 3) cash receipt journals, cash deposit journals, cash drop journals from concessions; and cash disbursement journals; 4) sales journals and purchase journals; 5) Point of Sale (POS) daily close reports; 6) Point of Sale (POS) monthly close reports; 7) balance sheets, income statements and profit/loss statements; 8) records pertaining to customer accounts, accounts receivables, notes receivables, etc.; 9) records pertaining to allowance for bad debts and bad expenses; 10) records pertaining to accounts payable, notes payable, loans payable, mortgages payable, etc.; 11) cash receipt books; bank statements, deposit slips, cancelled checks, withdrawal slips, debit memos, and credit memos for all checking and or savings accounts; 12) assets and/ or investments, such as certificates of deposits, stocks, bonds, real estate, vehicles, aircraft, boats, etc.; 13) itemized inventory records; 14) purchase orders, vouchers, invoices, receipts, etc.; 15) payroll records, payroll journals, personnel files, W 2's, 1099's; 16) copies of all certified audits along with accountants confidential file; 17) all work sheets, accountant work papers, adjusting entries, etc.; 18) copies of all federal and state income tax, and/or employee tax returns for the identified period; 19) any and all reconciliations of books to tax returns for the identified period; 20) any other financial records that were created for, by, or on behalf of the partnership/corporation, such as loan applications, deeds to real estate, schedules of loan payments, etc.

Return in digital format to Daniel_rossiter@isp.state.il.us. SA Daniel Rossiter, Illinois State Police, 800 S. Old Airport Road, Pontiac, IL 61764. 815-844-1500.

IT IS REQUESTED that the records be accompanied by an affidavit that complies with the requirements set forth in Rule 902(11) of the Illinois Rules of Evidence. Specifically, it is requested that the accompanying affidavit set forth that:

1) the record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters;
2) the record was kept in the course of the regularly conducted activity; and
3) the record was made by the regularly conducted activity as a regular practice.



Special Agent Daniel Rossi, Illinois State Police

The undersigned attorney, on behalf of the Court, hereby commands said documents to be produced to be considered as evidence in certain criminal matters now pending before the McLean County Grand Jury on or before January 18, 2017 at 9:00 a.m.

☐ This subpoena requires an appearance in Court.

☒ This subpoena does not require your appearance if said documents are turned over to the above mentioned individual/agency on or before the date and time designated above.

FAILURE TO COMPLY WITH ANY PORTION OF THIS SUBPOENA MAY SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF COURT

DATED: December 21, 2016

A.W. GH

Print Attorney Name: Adam W. Ghrist
Attorney Address: McLean County State's Attorney's Office
104 W. Front St. Room 605, PO Box 2400
Bloomington, IL 61701 309-888-5400

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ATTACHMENT 1 16-130224 BC P.2 OF 4

Special Agent Daniel Rossiter, Illinois State Police

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

MCLEAN COUNTY, ILLINOIS

Grand Jury Investigation

2016-719

SUBPOENA DUCES TECUM

To: BMI Concessions

[x] You are commanded to produce the following items or evidence for examination by the parties or the Court in the above location and on the date and time specified below:

Record or Documents Requested:

BMI Concessions business documents: Any and all documents physical and digital for the business listed in B.4. above for the period of January 1, 2013 to March 31, 2016 including but not limited to: 1) General Journals and charts of accounts; 2) general ledger and subsidiary ledgers; 3) cash receipt journals, cash deposit journals, cash drop journals from concessions; and cash disbursement journals; 4) sales journals and purchase journals; 5) Point of Sale (POS) daily close reports; 6) Point of Sale (POS) monthly close reports; 7) balance sheets, income statements and profit/loss statements; 8) records pertaining to customer accounts, accounts receivables, notes receivables, etc.; 9) records pertaining to allowance for bad debts and bad expenses; 10) records pertaining to accounts payable, notes payable, loans payable, mortgages payable, etc.; 11) cash receipt books; bank statements, deposit slips, cancelled checks, withdrawal slips, debit memos, and credit memos for all checking and or savings accounts; 12) assets and/ or investments, such as certificates of deposits, stocks, bonds, real estate, vehicles, aircraft, boats, etc.; 13) itemized inventory records; 14) purchase orders, vouchers, invoices, receipts, etc.; 15) payroll records, payroll journals, personnel files, W 2's, 1099's; 16) copies of all certified audits along with accountants confidential file; 17) all work sheets, accountant work papers, adjusting entries, etc.; 18) copies of all federal and state income tax, and/or employee tax returns for the identified period; 19) any and all reconciliations of books to tax returns for the identified period; 20) any other financial records that were created for, by, or on behalf of the partnership/corporation, such as loan applications, deeds to real estate, schedules of loan payments, etc.;

Return in digital format to Daniel_rossiter@isp.state.il.us. SA Daniel Rossiter, Illinois State Police, 800 S. Old Airport Road, Pontiac, IL 61764. 815-844-1500.

IT IS REQUESTED that the records be accompanied by an affidavit that complies with the requirements set forth in Rule 902(11) of the Illinois Rules of Evidence. Specifically, it is requested that the accompanying affidavit set forth that:

1) the record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters;
2) the record was kept in the course of the regularly conducted activity; and
3) the record was made by the regularly conducted activity as a regular practice.

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Special Agent Daniel Rossit[redacted]linois State Police

The undersigned attorney, on behalf of the Court, hereby commands said documents to be produced to be considered as evidence in certain criminal matters now pending before the McLean County Grand Jury on or before January 18, 2017 at 9:00 a.m.

☐ This subpoena requires an appearance in Court.

☒ This subpoena does not require your appearance if said documents are turned over to the above mentioned individual/agency on or before the date and time designated above.

FAILURE TO COMPLY WITH ANY PORTION OF THIS SUBPOENA MAY SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF COURT

DATED: December 21, 2016

AWG

Print Attorney Name: Adam W. Ghrist
Attorney Address: McLean County State's Attorney's Office
104 W. Front St. Room 605, PO Box 2400
Bloomington, IL 61701 309-888-5400

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Attachment 1

16-130241BL

P. 4 of 4