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14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 vs.

19 STUART H. WOLFF,

20 Defendant.

CASE NO. CR-05-398 GAF

**FINDINGS AND ORDER TO SET TRIAL,
SET PRETRIAL SCHEDULE, AND
EXCLUDE TIME UNDER THE SPEEDY
TRIAL ACT**

Trial Date - January 26, 2010 at 8:30 a.m.

1 The following findings are based on the parties' stipulations in their Stipulation to
2 Set Trial Date and Exclude Time Under the Speedy Trial Act and the files and records in
3 this matter:
4

5 **Procedural History**

6 1. On April 27, 2005, a federal grand jury returned an indictment charging
7 defendant Wolff with conspiracy and related violations of the federal securities laws.
8

9 2. This case was previously brought to trial before the Hon. Percy Anderson in
10 the spring of 2006. Defendant was convicted by the jury of all charges. In January 2008,
11 the Ninth Circuit vacated those convictions. Following the denial of the government's
12 petition for panel rehearing, the Ninth Circuit issued its mandate remanding the case on
13 March 28, 2008.
14
15

16 3. Pursuant to 18 U.S.C. § 3161(e), defendant's maximum trial date was June
17 6, 2008 (70 days from the date the action occasioning retrial becomes final (unless court
18 retrying case extends period to 180 days)).
19

20 4. On April 16, 2008, the case was reassigned to the Hon. Valerie Baker
21 Fairbank. Judge Fairbank's husband represented a former Homestore executive who pled
22 guilty in this matter and testified against defendant Wolff at the original trial. For this
23 reason, on April 17, 2008, Judge Fairbank entered an Order to Reassign Criminal Case
24 Due to Self-Recusal.
25
26

27 5. The case was subsequently reassigned to this Court for retrial. On May 12,
28 2008, the Court conducted a status conference with the parties. Based on an earlier

1 discussion between counsel, the parties requested that the Court set the matter for trial in
2 February 2009. The Court entered an order excluding time under the Speedy Trial Act
3 for the period between April 23, 2008 and the trial date (February 24, 2009).
4

5 6. On February 9, 2009, the Court conducted a status conference with the
6 parties. At the hearing, the Court ordered the case be re-set for trial on October 13, 2009,
7 and entered an order excluding time under the Speedy Trial Act until October 13, 2009.
8

9 **Complexity of Case**

10 7. This case involves allegations of securities fraud. Defendant was the chief
11 executive officer of Homestore.com, Inc., a publicly-traded corporation located in
12 Westlake Village, California. The Indictment alleges that defendant conspired to commit
13 securities fraud and other violations as part of a scheme to inflate Homestore's reported
14 revenues.
15
16

17 8. The Indictment alleges that approximately two dozen transactions entered
18 into by Homestore during 2001 were accounted for incorrectly. The parties anticipate
19 that there will be extensive testimony at trial concerning accounting rules and industry
20 practices related to the transactions involved in this case.
21

22 9. The government believes that it will require at least two months to conduct
23 its case-in-chief. The government's trial estimate is consistent with the lengths of trials
24 in other, similar securities fraud trials, including trials conducted in this district. The
25 original trial in this matter took approximately two-and-a-half months of court time to
26 conduct. The defense will require approximately four weeks to conduct its defense.
27
28

1 10. As required under the Local Rules of Practice, the government has filed a
2 notice with the Court designating this as a “complex” case.
3

4 **Discovery to Date**

5 11. The government has produced voluminous data in hard copy and electronic
6 formats. This included documents from the Homestore transactions, e-mails, auditor
7 work papers, investigative reports of interviews, and extensive materials from related
8 SEC and Justice Department investigations in California, Virginia, and Washington D.C.
9 Additionally, the parties possess numerous transcripts of various proceedings and
10 testimony from the original forty days of trial.
11
12

13 12. On August 18, 2008, this Court authorized early return subpoenas directed
14 to third parties, including PricewaterhouseCoopers (“PwC”) and Homestore, for the
15 production of specific records not obtained previously.
16

17 13. On March 27, 2009, the defense reported to the Court that it had received
18 the following material, pursuant to early return subpoenas:
19

- 20 • 50 Boxes of materials (including computer hard drives of key witnesses that
21 the defense had long believed were forever lost), seven CD’s of electronic
22 material, and five email back-up server tapes from Homestore (now called
23 Move.com);
- 24 • Five CD’s of electronically stored work papers, electronic documents and
25 emails from PwC, plus various documents produced after being permitted to
26 inspect 90 boxes of documents at PwC’s office; and,
27
28

- Eight electronic work paper databases and three CD's that included versions of PwC's work papers for 2000 and 2001 from the SEC.

14. From the report dated March 2009 to the present the defense has diligently reviewed the voluminous, recently-produced electronic records, which encompassed the equivalent of 50 million pages of documents¹. Though the defense has not yet completed this daunting task, it did discover evidence that raised issues about the credibility and reliability of certain evidence in the case. On July 22, 2009, the defense sent a 35 page memorandum along with detailed supporting material to the government in relation to these issues. The parties' requested continuance is needed to allow the government to meaningfully investigate the newly discovered evidence put forward by the defense, while at the same time allowing the defense to finish its review of the voluminous discovery referenced above. The parties estimate this will take one to two months to complete these tasks.

15. The requested short continuance of the trial date will also permit the parties to prepare appropriate pre-trial motions predicated on the new evidence, if resolution of the issue and/or case is not otherwise achieved. To that end, and pursuant to the Court's February 18, 2009 Order, the parties have requested that the Court strike the current trial date of October 13, 2009 (and the corresponding pre-trial conference set September 28, 2009) and enter the following proposed pre-trial and trial schedule:

¹ The defense has also diligently communicated with attorneys from PwC, Move.com, the SEC and the government to address outstanding production issues. There are several discovery issues outstanding that should be resolved without the need for court intervention.

- Pre-trial motions filed on or before October 23, 2009.
- Oppositions filed on or before November 13, 2009.
- Replies (if any) filed on or before November 27, 2009.
- Hearing on pre-trial motions on December 17, 2009 at 1:30 p.m.
- Pre-trial conference on January 11, 2010 at 1:30 p.m.
- Trial on January 26, 2010.

The parties have further requested that they be permitted to notice motions for a hearing date earlier than December 17, 2009. Except for good cause, such motions must be filed no less than 28 days before the requested hearing date and provide the opposing party with no less than 14 days to respond. Except for good cause, the parties shall meet and confer telephonically before filing any motion.

16. The requested continuance will not inconvenience third parties and because the parties have agreed to a bench trial in this matter, scheduling will be a much less onerous task than if a jury were to be empanelled.

Conclusion

17. The parties believe that the failure to grant a continuance of the trial date would unreasonably deny defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, under 18 U.S.C. § 3161(h)(7)(B)(iv).

18. The parties believe that this case is sufficiently complex so that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself

1 within the time limits established by the Speedy Trial Act under 18 U.S.C. §
2 3161(h)(7)(B)(ii).
3

4 19. The parties further believe that the ends of justice served by granting a
5 continuance outweigh the best interest of the public and defendant in a speedy trial under
6 18 U.S.C. § 3161(h)(7)(A) and (B)(iv).
7

8 20. The parties believe that the time between October 13, 2009 (date of current
9 trial date), and the new trial date (January 26, 2010) is excludable time under 18 U.S.C.
10 §§ 3161(h)(7)(A) and (B)(iv).
11

12 21. The parties have requested that the Court continue the trial and enter an
13 appropriate scheduling order based on the parties' proposed dates.
14

15 22. Defendant has been advised of his right to a speedy trial under the Sixth
16 Amendment of the Constitution and the Speedy Trial Act. Defendant has knowingly and
17 voluntarily waived his speedy trial right by entering into this stipulation.
18

19 **Accordingly, IT IS HEREBY ORDERED**

- 20 1. For good cause shown, trial in this matter is set for January 26, 2010.
21 2. The Court enters the following pre-trial and trial schedule:
22
- 23 • Pre-trial motions filed on or before October 23, 2009.
 - 24 • Oppositions filed on or before November 13, 2009.
 - 25 • Replies (if any) filed on or before November 27, 2009.
 - 26 • Hearing on pre-trial motions on December 17, 2009 at 1:30 p.m.
 - 27 • Pre-trial conference on January 11, 2010 at 1:30 p.m.
 - 28

- Trial on January 26, 2010 at 8:30 a.m.

The parties are permitted to notice motions for a hearing date earlier than December 17, 2009. Except for good cause, such motions must be filed no less than 28 days before the requested hearing date and provide the opposing party with no less than 14 days to respond. Except for good cause, the parties shall meet and confer telephonically before filing any motion.

3. For purposes of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, *et. seq.*, within which defendant's trial must commence, the period of time between October 13, 2009 (previous trial date) and the new trial date (January 26, 2010) (105 days) is excludable time under 18 U.S.C. §§ 3161(h)(7)(A) and 7(B)(iv).


4. The Court finds that the failure to grant a continuance would unreasonably deny defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, and would deny defendant and the government continuity of counsel under 18 U.S.C. § 3161(h)(7)(B)(iv).

5. The Court also finds that this case is so complex, due to the nature of the prosecution and the existence of novel questions of law and fact, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by the Speedy Trial Act under 18 U.S.C. § 3161(h)(7)(B)(ii).

6. The Court further finds that the ends of justice served by granting a continuance outweigh the best interest of the public and defendant in a speedy trial under 18 U.S.C. § 3161(h)(7)(A) and (B)(iv).

1 7. Defendant's maximum trial date under the Speedy Trial Act will be March
2
3 1, 2020 (70 days from the issuance of mandate (March 28, 2008) plus 643 days of
4 excludable time).

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7 Dated: September 2, 2009

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11 _____
12 HON. GARY A. FEES
13 UNITED STATES DISTRICT JUDGE

14 Presented by:

15 **GREENBERG TRAURIG, LLP**

16 /s/
17 _____

18 John F. Gibbons
19 Daniel D. Rubinstein

20 Attorneys for Defendant Stuart Wolff
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