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6 UNITED STATES DISTRICT COURT FOR THE  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE  
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ERIC SHIBLEY,

14 Defendant.  
15

NO. MJ20-385

AGREED MOTION TO EXTEND TIME  
TO SEEK AN INDICTMENT

**Noted: July 7, 2020**

16 **I. INTRODUCTION**

17 The United States and Defendant Eric Shibley seek an order from this Court  
18 extending the deadline for the return of an indictment in this case to October 16, 2020,  
19 per 18 U.S.C. § 3161. Defendant Shibley has waived speedy indictment through October  
20 31, 2020, in order to make more informed decisions on trial strategies, among other  
21 reasons. *See* Shibley Waiver of Speedy Indictment, Dkt. #9.

22 Further, this extension of time is being sought in light of General Orders No. 01-  
23 20, 02-20, 03-20, 04-20, 07-20, 08-20, and 09-20 of the United States District Court for  
24 the Western District of Washington.

25 **II. PROCEDURAL HISTORY**

26 On June 29, 2020, the Honorable Michelle L. Peterson signed a two-count  
27 Complaint in this matter charging Defendant Eric Shibley with one count of Wire Fraud  
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1 and one count of Bank Fraud, in violation of Title 18 U.S.C. § § 1343 and 1344. Dkt. #1.  
 2 On June 30, 2020, Mr. Shibley was arrested and appeared before Judge Peterson and was  
 3 released on conditions. Dkt. #5, 6. Mr. Shibley waived his preliminary hearing. Dkt. #8.

4 According to Section 3161(b) of the Speedy Trial Act, an indictment or an  
 5 information must be filed within 30 days from the date the individual was arrested. 18  
 6 U.S.C. § 3161(b). Mr. Shibley was arrested on June 30, and an indictment is initially  
 7 returnable within 30 days, or by July 30, 2020. In the event that no grand jury is in  
 8 session in this District within that time frame, the time to indict is automatically extended  
 9 by another 30 days. 18 U.S.C. § 3161(b).

### 10 **III. ADDITIONAL BACKGROUND**

11 On March 6, 2020, the Chief Judge for the Western District of Washington issued  
 12 General Order 01-20 to address the impact of the spread of Coronavirus Disease 2019  
 13 (COVID-19) within this District. General Order 01-20 states that interim guidance from  
 14 the Centers for Disease Control and Prevention (CDC) and the recommendations from  
 15 the Departments of Public Health for Seattle and King County all suggest that individuals  
 16 at higher risk – including individuals with underlying health conditions, individuals age  
 17 60 and older, and individuals who are pregnant – avoid large groups of people. As a  
 18 result, and consistent with those recommendations, General Order 01-20 directed the  
 19 continuance of court proceedings, including grand jury proceedings, until further order of  
 20 the Court.

21 After the issuance of General Order 01-20, the President of the United States  
 22 declared a public health emergency in response to the spread of COVID-19, and the  
 23 Governor of the State of Washington issued a stay-at-home order. The stay-at-home order  
 24 expired on May 31, 2020, and the State of Washington is now following a phased  
 25 approach to the reopening of businesses and other activities. On June 19, 2020, King  
 26 County, where the Seattle Courthouse is located, moved to Phase 2 of this four-step  
 27 approach.  
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On May 13, 2020, the Chief Judge for the Western District of Washington signed General Order No. 08-20. Among other things, this Order suspended all grand jury proceedings in this District. On June 25, 2020, the Chief Judge signed General Order 09-20, which extended the use of video conferencing and telephone conferencing for certain criminal hearings. These General Orders and the earlier General Orders (01-20, 02-20, 03-20, 04-20, and 07-20) are based on the outbreak of Coronavirus Disease 2019 (COVID-19), throughout the United States and, in particular, in the Western District of Washington, and the General Orders are directed at complying with health directives aimed at stopping the spread of this virus.

#### IV. BASIS FOR REQUEST

First, Defendant Eric Shibley filed a wavier of speedy indictment in order explore trial strategies. Dkt. #9. As discussed in the Complaint (Dkt. #1), this investigation involves multiple loan applications for multiple businesses. It is reasonable for Defendant Shibley to request additional time before the filing of an indictment.

Second, the current health crisis further demonstrates that a continuance of the speedy indictment deadline is supported by the ends of justice. Social distancing measures mentioned above make it difficult to convene a grand jury. The United States and the Court are working to address the health measures necessary to allow grand jury proceedings safely to take place and to ensure that a quorum of grand jury members will be willing to appear. Still, even if grand jury proceedings are able to resume prior to July 30, 2020, the number of cases awaiting presentation is large enough that the government will be unable to present all of the cases currently awaiting indictment to a grand jury prior to July 30, 2020.

The parties respectfully asks this Court to find that, pursuant to 18 U.S.C. § 3161(h)(7)(A), the ends of justice served by extending the time in which an indictment must be filed in this matter outweigh the best interests of the public and the defendant in pursuing a speedy indictment and trial, and that the failure to grant such a continuance would make a continuation of the proceeding impossible resulting in a miscarriage of

1 justice. This finding is consistent with the Chief Judge's finding in General Order 08-20  
2 with respect to the analogous issue of speedy trial rights:

3 The Court continues to find that, due to the current inability to obtain an  
4 adequate spectrum of jurors and the effect of the above public health  
5 situation on the availability of witnesses, counsel and Court staff to be  
6 present in the courtroom, the time period of the continuances implemented  
7 by this General Order will be excluded under the Speedy Trial Act, as the  
8 Court finds that the ends of justice served by ordering the continuances  
outweigh the best interests of the public and any defendant's right to a  
speedy trial, pursuant to 18 U.S.C. §3161(h)(7)(A).

### 9 V. CONCLUSION

10 For the reasons stated, an extension of the Indictment deadline to October 16,  
11 2020, is necessary to avoid a miscarriage of justice.

12 DATED this 7th day of July, 2020.

13 Respectfully submitted,

14 BRIAN T. MORAN  
15 United States Attorney

16 s/ Brian Werner

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24 s/ Michael Nance

25 MICHAEL NANCE  
26 Attorney For Defendant  
27  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

s /Anna Chang  
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