

1 THOMAS P. O'BRIEN
 United States Attorney
 2 CHRISTINE C. EWELL
 Assistant United States Attorney
 3 Chief, Criminal Division
 LAWRENCE S. MIDDLETON (Cal. Bar No. 157866)
 4 DENNIS MITCHELL (Cal. Bar No. 116039)
 Assistant United States Attorneys
 5 1300 United States Courthouse
 312 North Spring Street
 6 Los Angeles, California 90012
 Telephone: (213) 894-2484
 7 Facsimile: (213) 894-6436

8 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) NO. CR 08-872-SJO
 12)
 Plaintiff,) STIPULATION TO DISMISS COUNT THREE
 13) OF INDICTMENT WITHOUT PREJUDICE
 v.)
 14)
 PIERCE O'DONNELL,)
 15)
 Defendant.)
 16)

17
 18 Plaintiff United States of America, by and through its
 19 counsel of record, the United States Attorney's Office for the
 20 Central District of California, and defendant Pierce O'Donnell
 ("defendant"), by and through his attorney of record, Brian
 21 O'Neill, Esq., hereby stipulate as follows:

22 1. Defendant first appeared before a judicial officer in
 23 the court in which this charge is pending on August 25, 2008.
 24 The Indictment in this case was filed on July 24, 2008. The
 25 Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq., originally
 26 required that the trial commence on or before November 3, 2008.

27 2. On August 25, 2008, defendant was arraigned on the
 28 Indictment. The Court set a trial date of October 21, 2008 at

1 9:00 a.m.

2 3. As a result of the parties' prior stipulations and the
3 Court's findings regarding excludable time, the current date by
4 which trial must commence under the Speedy Trial Act, 18 U.S.C.
5 § 3161, et seq., is July 21, 2009.

6 4. Defendant is released on bond pending trial.

7 5. On or about March 16, 2009, defendant filed a motion to
8 dismiss the indictment. The government opposed defendant's
9 motion. On June 8, 2009, the Court issued an order granting in
10 part and denying in part defendant's motion. Under the terms of
11 the Court's June 8, 2009 order, counts one and two of the
12 indictment were dismissed, while count three remained pending
13 trial.

14 6. On June 15, 2009, the government filed a notice of
15 appeal with respect to the Court's June 8, 2009 dismissal of
16 counts one and two.

17 7. Trial on count three of the indictment is currently set
18 for July 7, 2009.

19 8. The government is prepared to proceed to trial on count
20 three, but the parties recognize that if the parties were to
21 proceed to trial on count three and the government's appeal were
22 subsequently to result in the reinstatement of counts one and two
23 of the indictment, there could be two separate trials for alleged
24 campaign violations contained in one indictment. This would
25 likely create an additional and substantial financial burden on
26 defendant and would also require the expenditure of extra
27 prosecutorial resources. In addition, most, if not all of the
28 witnesses to be called by the government to testify at a trial on

1 count three would also be called to testify again if counts one
2 and two are re-instated by the Court of Appeals.

3 9. Accordingly, to avoid the possibility of two separate
4 trials and the resulting additional expenditure of resources, the
5 parties agree that on motion of the government pursuant to Fed.
6 R. Crim. P. 48(a) that count three of the indictment shall be
7 dismissed without prejudice pending resolution of the
8 government's appeal of counts one and two, and defendant agrees
9 (1) to toll the limitations period applicable to count three of
10 the indictment and (2) to waive his right to indictment so that
11 the offense described in count three may be re-filed by the
12 government by way of an information. Defendant and his counsel
13 have executed a "Statute of Limitations Tolling Agreement and
14 Waiver" and a "Waiver of Indictment" reflecting these agreements.

15 10. In the event that counts one and two are reinstated,
16 defendant further agrees to waive his right to indictment and
17 consents to the government filing an information that charges
18 the offenses set forth in counts one, two, and three of the
19 indictment.

20 11. To keep the Court informed as to the status of the
21 government's appeal, defendant and the government request that
22
23
24
25
26
27
28

JUN-24-2009 17:17

US ATTORNEYS OFFICE

213 534 4300

P.05

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the Court set a status conference on November 9, 2009 at 10:00 a.m.

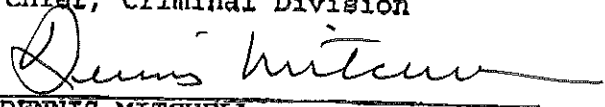
IT IS SO STIPULATED.

Respectfully Submitted,

THOMAS P. O'BRIEN
United States Attorney

CHRISTINE C. EWELL
Assistant United States Attorney
Chief, Criminal Division

DATED: June 25, 2009

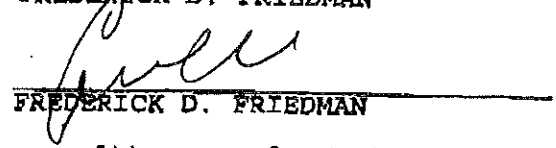


DENNIS MITCHELL
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

DATED: June 25, 2009

JONES DAY
ERIAN O'NEILL
FREDERICK D. FRIEDMAN


FREDERICK D. FRIEDMAN

Attorneys for Defendant
PIERCE O'DONNELL

DATED: June 25, 2009



PIERCE O'DONNELL
Defendant