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T. DILLMAN
DEPUTY

9 **MONTANA FIRST JUDICIAL DISTRICT COURT**
10 **LEWIS AND CLARK COUNTY**
11 **STATE OF MONTANA**

11 THE STATE OF MONTANA,)
12 Plaintiff,) Case No. CDC-2010-21
13 vs.)
14 ARTHUR LEROY HEFFELFINGER,) **STATE'S BRIEF IN SUPPORT OF**
15 Defendant.) **MOTION FOR LEAVE TO FILE**
16) **AMENDED INFORMATION**

17 The State has moved the Court to allow the State to file an Amended Information charging
18 the Defendant with the same counts as the counts in the Information. The State seeks to amend the
19 Information, however, to ensure that the elderly victim who is the basis for Count III, Exploitation of
20 an Older Person, is not a part of the bases for Counts I and II, Operating a Ponzi Scheme and Theft,
21 respectively.

22 Pursuant to Mont. Code Ann. § 46-11-205:

- 23 (1) The court may allow an information to be amended in matters of substance at any
24 time, but not less than 5 days before trial, provided that a motion is filed in a
25 timely manner, states the nature of the proposed amendment, and is accompanied
by an affidavit stating facts that show the existence of probable cause to support

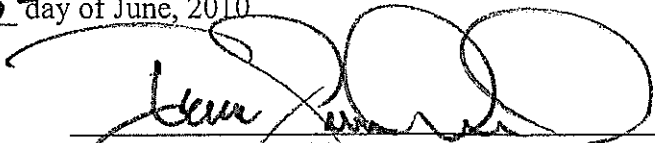
1 the charge as amended. A copy of the proposed amended information must be
2 included with the motion to amend the information.

- 3 (2) If the court grants leave to amend the information, the defendant must be
4 arraigned on the amended information without unreasonable delay and must be
5 given a reasonable period of time to prepare for trial on the amended information.
- 6 (3) The court may permit an information to be amended as to form at any time before
7 a verdict or finding is issued if no additional or different offense is charged and if
8 the substantial rights of the defendant are not prejudiced.

9 The State submits that the Amended Information amends the charges as to form and not
10 substance and that the State's request is timely. Specifically, the Defendant has moved for a change
11 of plea hearing and given notice of his intent to plead guilty to Counts I and II of the Information.
12 The trial on Count III is currently set for August 2, 2010. By seeking leave to file an Amended
13 Information, the State is attempting to avoid a possible statutory double jeopardy challenge under
14 Mont. Code Ann. § 46-11-503 regarding Count III. If the Court grants the State's motion, the
15 Amended Information will reflect that the elderly victim who was allegedly exploited by the
16 Defendant, as charged in Count III, is not a part of the facts providing the bases for Counts I and II.
17 The facts, therefore, pertaining to the elderly victim would exist only in Count III so as to preserve
18 Count III from dismissal on the basis of a possible statutory double jeopardy challenge subsequent to
19 the Defendant's guilty pleas and conviction for Counts I and II.

20 Based on the foregoing, the State respectfully submits that it is entitled to amend the
21 Information.

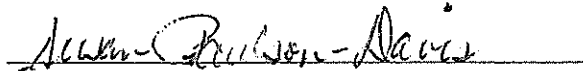
22 DATED this 23rd day of June, 2010

23 
24 JESSE LASLOVICH
Special Assistant Attorney General
Special Deputy Lewis and Clark County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon the Defendant's attorney of record on the 23rd day of June, 2010, by placing a copy of the same in the United States mail postage pre-paid addressed as follows:

BRENDAN MCQUILLAN
CANDIDA QUINN
Assistant Public Defenders
Office of the State Public Defender
139 N. Last Chance Gulch
Helena, MT 59601



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9 Attorneys for the State

10 **MONTANA FIRST JUDICIAL DISTRICT COURT**
11 **LEWIS AND CLARK COUNTY**
12 **STATE OF MONTANA**

13 THE STATE OF MONTANA,

14 Plaintiff,

15 vs.

16 ARTHUR LEROY HEFFELFINGER,

17 Defendant.

18 Case No.: CDC-2010-21

19 **AMENDED AFFIDAVIT IN SUPPORT OF**
20 **MOTION FOR LEAVE TO FILE**
21 **AMENDED INFORMATION**

22 STATE OF MONTANA)
23 :ss.
24 County of Lewis and Clark)

25 After being duly sworn the undersigned deposes and states:

26 1. That he is the duly appointed, qualified, and acting Special Deputy County Attorney in
27 and for the county of Lewis and Clark, and the state of Montana herein and acting in this capacity he
28 is familiar with the investigation relating to the above-named defendant.

29 2. That the Defendant has committed offenses in Lewis and Clark, Jefferson, Broadwater,
30 Missoula, Gallatin, Lake, Judith Basin, and Ravalli Counties, Montana, as hereinafter set forth and,
31 based upon information developed through an investigation conducted by a criminal justice
32 investigator and securities examiners, this Court should grant leave to file an Information directly in

1 District Court pursuant to Mont. Code Ann. § 46-11-201, charging the Defendant with the offenses
2 of: COUNT I: OPERATING A PYRAMID PROMOTIONAL SCHEME (PONZI SCHEME), a
3 FELONY, in violation of Mont. Code Ann. §§ 30-10-325 and 30-10-324(6)(b); COUNT II: THEFT
4 (Common Scheme), a FELONY in violation of Mont. Code Ann. §§ 45-6-301(2)(B) and 45-2-
5 101(8); and COUNT III: EXPLOITATION OF AN OLDER PERSON (Common Scheme), a
6 FELONY, in violation of Mont. Code Ann. §§ 52-3-825 and 45-2-101(8).

7
8 3. That venue is proper in Lewis and Clark County pursuant to Mont. Code Ann. § 46-3-
9 112(1), because two or more acts requisite to the commission of the offenses occurred and continued
10 in furtherance of a common scheme in more than one county including Lewis and Clark County; and
11 the result of many acts that formed the basis of the charges against the Defendant occurred in Lewis
12 and Clark County. *See eg., State v. Cooney*, 271 Mont. 42, 894 P.2d 303 (1995).

13
14 4. That criminal justice investigators and securities examiners have made a full and careful
15 investigation of all the facts and circumstances surrounding the commission of said offenses, so far
16 as they are known or ascertainable and Affiant believes it a proper case for the filing of an Amended
17 Information and for this reason, and none other, the foregoing motion is made.

18
19 5. The facts establishing probable cause are as follows:

20 a. The Defendant was registered with the Montana Securities Department
21 (Department) as a broker/dealer salesperson and investment adviser representative for KMS
22 Financial Services, Inc., from February 20, 2001, to September 23, 2009.

23
24 b. On or about September 24, 2009, P.F., a KMS client of the Defendant, told the
25 Department that the Defendant had recently called her on the phone and told her that the
26 approximately \$409,000 she thought the Defendant had invested for her in a real estate
27
28

1 investment trust (REIT) through KMS had, instead, been converted by the Defendant for his
2 own personal use.

3 c. On or about September 24, 2009, Eric Westberg, Chief Operating Officer for
4 KMS, told the Department that the Defendant had contacted Tracy Forsyth, Chief
5 Compliance Officer for KMS, and confessed to taking at least \$900,000 from his KMS
6 clients.
7

8 d. The Department conducted an extensive examination of the Defendant's
9 activities from 1998 to the present, including examination of 17,362 financial instruments
10 and 13 bank accounts at Montana City Bank and Wells Fargo Bank in Helena.
11

12 e. Based on the Department's investigation, the Defendant began converting
13 funds from KMS clients to his own personal use through a Ponzi scheme by January 1998. It
14 appears the primary investment lure was a bogus real estate investment trust (REIT) that
15 Defendant claimed was paying 9% interest.
16

17 f. The Department was unable to obtain Defendant's bank records for the period
18 January 1998 through January 2001, but found some bank records in Defendant's KMS
19 branch office for this time period and it imaged the Defendant's accounting records that were
20 maintained on his Quicken software for the time period January 1998 through September
21 2009. A Departmental analysis of the bank and accounting records indicates that during the
22 period January 1998 through January 2001, Defendant, for his own personal use and for the
23 purpose of operating a Ponzi scheme, took at least \$720,855 from at least 28 brokerage
24 clients.
25
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1 g. The Department's investigation indicates that a majority of the pre-February
2 2001 investors have received their principal back with some interest payments, primarily
3 through Defendant's recruitment of new investors into the scheme.
4

5 h. Since February 2001 and until September 23, 2009, the Defendant victimized
6 at least 20 different people on multiple occasions by conducting his Ponzi scheme, stealing
7 their money, or exploiting an older person for a collective total of at least \$2,021,546.
8

9 i. M.P. and M.E.P., husband and wife, both deceased, were residents of Lewis
10 and Clark County, Montana. M.E.P. had been a resident of The Waterford retirement center
11 in Helena for several years and was moved to the Big Sky Care Center in Helena in the
12 summer of 2009 due to declining health and severe cognitive impairment. While at the Big
13 Sky Care Center, the checks to pay for her care bounced due to a lack of funds. M.E.P.'s
14 daughter, P.R., indicated she believed her parents' money was invested in a real estate
15 investment trust through KMS Financial Services. P.R. thought she would have to apply for
16 Medicaid to care for her mother because the money had all been lost. M.E.P. passed away in
17 October of 2009 before a Medicaid application could be submitted.
18

19 j. In September 2009 Defendant told P.R. that he had taken M.E.P.'s money and
20 used it for his own personal use. According to Dr. Shari Marx, M.E.P.'s primary care
21 physician, M.E.P. suffered from cognitive impairment and advanced dementia and did not
22 have the cognitive ability to manage her financial affairs during the entire time period her
23 funds were used in Defendant's scheme.
24

25 k. Over the course of an eight-year period, the Defendant took approximately
26 \$412,303 from M.P. and M.E.P. Specifically as to M.E.P., since March 12, 2001, the
27 Defendant took money from M.E.P. on nine separate occasions totaling at least \$364,044.
28

1 During this same time period, the Defendant paid M.E.P. back at least \$186,735, leaving a
2 net amount of approximately \$177,309 that M.E.P.'s estate is still owed.

3 i. P.F. is 69 years old and is a retired resident of Bozeman, Gallatin County,
4 Montana. Based on the Department's investigation, over the course of an eight-year period,
5 the Defendant took at least \$540,000 from P.F. and used it for his personal use and for the
6 purposes of promoting and conducting a Ponzi scheme. Defendant paid P.F. random interest
7 on P.F.'s investments and returned approximately \$130,265 in principal over the past eight
8 years leaving an outstanding remaining principal balance due of at least \$409,734.
9

10 m. A.G. is 65 years old and J.G. is 64 years old and they currently live in Texas.
11 A.G. and J.G. have told the Department that they have to sell their home, move in with their
12 daughter, and that they are now both working because the money they gave Defendant,
13 which represented their entire retirement savings, is gone. Based on the Department's
14 investigation, since February 2001 the Defendant took \$294,000 from them and at least
15 \$34,986 has been returned to them by the Defendant, as well as some interest income and
16 principal payments of approximately \$143,290, primarily from funds from new investors.
17 The Department estimates that A.G. and J.G. appear to have an outstanding principal balance
18 of at least \$150,709.
19

20 n. L.A.S. is 71 years old, widowed, and lives alone in Missoula County,
21 Montana. L.A.S. had a pre-2001 outstanding principal balance of \$16,025 as a result of
22 Defendant taking her investment funds and using them for his own personal use and for the
23 promotion of the Ponzi scheme, in addition to \$145,338 in funds taken by Defendant after he
24 joined KMS in February 2001, which he took for his own personal use and for the purpose of
25 promoting and operating a Ponzi scheme. The Department estimates that the Defendant has
26
27
28

1 returned approximately \$107,485 in principal and has paid L.A.S. some interest throughout
2 the eight-year period, leaving a current outstanding principal balance of at least \$37,852.

3 o. K.B. is 78 years old, single, retired, and living in Helena, Lewis and Clark
4 County, Montana. Based on the Department's investigation, the Defendant took at least
5 \$53,218 from K.B. before February 2001 and at least \$117,652 from her after February 2001
6 for his own personal use and for the purposes of promoting and conducting a Ponzi scheme.
7 K.B. still had an outstanding remaining principal balance due as of February 2001 of at least
8 \$98,585. Defendant categorized a \$16,474 payment he sent her as a return of
9 principal/interest when it was actually the tax consequence of his taking K.B.'s money from a
10 qualified plan and taking it for himself instead of returning it to a qualified plan to avoid the
11 tax consequences.
12

13
14 p. J.S. currently lives in Canada. Based on the Department's investigation, the
15 Defendant took at least \$56,323 from J.S. and used it for himself and for the purposes of
16 promoting and conducting a Ponzi scheme. J.S. still has an outstanding remaining principal
17 balance due of at least \$31,323.
18

19 q. P.P. is 60 years old and is a son of M.P. and M.E.P. Based on the
20 Department's investigation, the Defendant took at least \$10,500 from P.P. and used it for his
21 own personal use and for the purposes of promoting and conducting a Ponzi scheme. P.P.
22 still has an outstanding remaining principal balance due of \$10,500.
23

24 r. R.V.M. is a resident of Lewis and Clark County, Montana. Based on the
25 Department's investigation, the Defendant took at least \$12,000 from R.V.M. and used it for
26 his personal use and for the purposes of promoting and conducting a Ponzi scheme. R.V.M.
27 still has an outstanding remaining principal balance due of at least \$1,224.
28

1 s. B.H. lives in Jefferson County, Montana. Based on the Department's
2 investigation, B.H. gave the Defendant \$52,403 to invest on his behalf for his children's
3 educations. Instead of investing the money, the Defendant converted it to his own personal
4 use and used it in the Ponzi scheme. The Department's investigation indicates B.H. does not
5 have any outstanding balance on his involvement in the Ponzi scheme, as he was
6 subsequently repaid using funds from new investors to the scheme.
7

8 t. D.P. and R.P., residents of Lake County, Montana, gave the Defendant a total
9 of \$65,000 to invest on their behalf. Instead of investing the money, the Defendant converted
10 it to his own personal use and used it in the Ponzi scheme. The Department's investigation
11 indicates D.P. and R.P. do not have any outstanding balance on their involvement in the
12 Ponzi scheme, as they were subsequently repaid using funds from new investors to the
13 scheme.
14

15 u. J.T. is a disabled resident of Jefferson County. J.T. gave the Defendant
16 \$69,210 in November 2001 to invest on his behalf. Instead of investing the money, the
17 Defendant converted it to his own personal use and used it in the Ponzi scheme. The
18 Department's investigation indicates J.T. does not have any outstanding balance on his
19 involvement in the Ponzi scheme, as he was subsequently repaid using funds from new
20 investors to the scheme.
21

22 v. D.B., a resident of Wolf Creek, Lewis and Clark County, Montana, gave the
23 Defendant a total of \$176,913 to invest on his behalf. Instead of investing the money, the
24 Defendant converted it to his own personal use and used it in the Ponzi scheme. The
25 Department's investigation indicates D.B. does not have any outstanding balance on his
26 involvement in the Ponzi scheme, as he was subsequently repaid using funds from new
27 investors to the scheme.
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1 involvement in the Ponzi scheme, as he was subsequently repaid using funds from new
2 investors to the scheme.

3 w. J.K. is 61 years old and lives in Florence, Ravalli County, Montana. J.K. gave
4 the Defendant a total of \$9,890 to invest on his behalf. Instead of investing the money, the
5 Defendant converted it to his own personal use and used it in the Ponzi scheme. The
6 Department's investigation indicates J.K. does not have any outstanding balance on his
7 involvement in the Ponzi scheme, as he was subsequently repaid using funds from new
8 investors to the scheme.
9

10 x. R.M. passed away March 6, 2007. R.M. gave the Defendant a total of
11 \$24,000 to invest on his behalf. Instead of investing the money, the Defendant converted it
12 to his own personal use and used it in the Ponzi scheme. The Department's investigation
13 indicates R.M. does not have any outstanding balance on his involvement in the Ponzi
14 scheme, as he was subsequently repaid using funds from new investors to the scheme.
15

16 y. G.S. is a Vietnam veteran living on a full-time disability and a resident of
17 Judith Basin County, Montana. At the time he invested with Defendant, his annual income
18 was \$24,000 a year. G.S. gave the Defendant a total of \$15,000 to invest on his behalf.
19 Instead of investing the money, the Defendant converted it to his own personal use and used
20 it in the Ponzi scheme. The Department's investigation indicates G.S. does not have any
21 outstanding balance on his involvement in the Ponzi scheme, as he was subsequently repaid
22 using funds from new investors to the scheme.
23

24 z. T.B. and E.B. reside in Jefferson County, Montana. T.B. and E.B. gave the
25 Defendant a total of \$2,000 to invest on their behalf. Instead of investing the money, the
26 Defendant converted it to his own personal use and used it in the Ponzi scheme. The
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1 Department's investigation indicates T.B. and E.B. do not have any outstanding balance on
2 their involvement in the Ponzi scheme, as they were subsequently repaid using funds from
3 new investors to the scheme.
4

5 aa. S.N. is a resident of Helena, Lewis and Clark County, Montana. S.N. gave the
6 Defendant a total of \$19,000 to invest on his behalf. Instead of investing the money, the
7 Defendant converted it to his own personal use and used it in the Ponzi scheme. The
8 Department's investigation indicates S.N. does not have any outstanding balance on his
9 involvement in the Ponzi scheme, as he was subsequently repaid using funds from new
10 investors to the scheme.
11

12 bb. During the time period February 2001 through September 2009, \$104,050 of
13 victim funds taken by Defendant were deposited directly into investment accounts owned and
14 controlled by Defendant, and/or Sheri Heffelfinger, his wife.
15

16 cc. To summarize, during the period January 1998 through January 2001,
17 Defendant operated a Ponzi scheme in which he took money from investors, used it to pay a
18 return to old investors and used it for personal use. The Department has identified at least 28
19 KMS clients of Defendant's who had at least \$720,855 diverted from legitimate investments
20 to Defendant's Ponzi scheme during this period. At the end of January 2001, approximately
21 \$179,281 in principal remained outstanding for 12 of these victims.
22

23 dd. During the period February 1, 2001, through September 23, 2009, the
24 Defendant converted at least \$2,021,546 from at least 20 KMS clients on at least 54 separate
25 occasions for the purposes of running a Ponzi scheme, for his own personal use, and
26 exploiting an elderly person.
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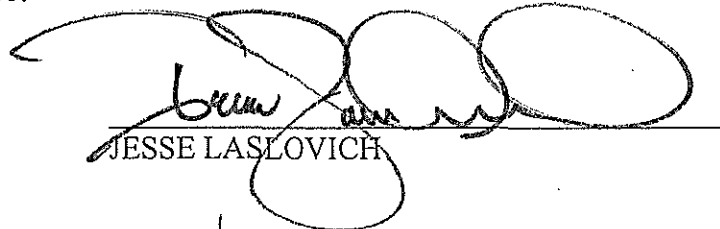
1 ee. The following chart shows what the Department has determined each victim is
2 owed by the Defendant due to his criminal actions:

3 Amount	Investor
4 \$225,578	The Estate of M.E.P.
5 \$ 37,853	L.A.S.
6 \$216,420	P.F.
7 \$77,676	A.G. and J.G.
8 \$ 45,367	K.B.
9 \$ 31,324	J.S.
10 \$ 10,500	P.P.
11 \$ 1,224	R.M.

13 ff. Specifically, the Department determines that the Defendant took
14 approximately \$917,777 for his own personal use (Theft), approximately \$739,724 for purposes
15 of conducting the Ponzi Scheme, and approximately \$364,044 when exploiting M.E.P.

16 DATED this 23rd day of June, 2010.

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JESSE LASLOVICH

SUBSCRIBED and SWORN to before me this 23rd day of June, 2010.



