209-cr-00369-DMC Document 408 Filed 01/14/13 Page 1 of 2 PageID: 10729

**U.S. Department of Justice** 

United States Attorney District of New Jersey

Appeals Division

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January 14, 2013

# BY ECF & E-MAIL

Hon. Dennis M. Cavanaugh, U.S.D.J.U.S. District Court, District of New JerseyPost Office Building & Federal Courthouse, Room 451Newark, New Jersey 07101-0999

## Re: United States v. Bergrin, Crim. No. 09-369 (DMC)

Dear Judge Cavanaugh:

During the severed trial on Counts 12 and 13, Defendant Paul Bergrin entered into 22 stipulations.<sup>1</sup> Given this Court's desire to move the trial along, we ask this Court to exercise its discretion to hold that the previously executed stipulations remain binding on Bergrin for purposes of the RICO trial.

In <u>Waldorf v. Shuta</u>, the Third Circuit observed that "[i]n general, courts encourage parties to enter into stipulations to promote judicial economy by narrowing the issues in dispute during litigation." 142 F.3d 601, 617 (3d Cir. 1998). Consistent with this purpose, the court instructed that "[g]enerally, a stipulation entered into prior to a trial remains binding during subsequent proceedings between the parties," noting "a wellrecognized rule of law that valid stipulations entered into freely and fairly, and approved by the court, should not be lightly set aside." <u>Id.</u> (citation omitted). While "conclusory stipulations are entitled to less deference than evidentiary ones," <u>id.</u> at 617, the "overriding factor" is "the parties' intention to limit or not limit a stipulation to only one proceeding." <u>Id.</u>

<sup>&</sup>lt;sup>1</sup> All such stipulations are attached herewith. The first two agreed that substances obtained from William Baskerville during several controlled buys tested positive for cocaine base. Gov't Exhs. 6000-01. The third addressed conversations had been intercepted by a valid wiretap. Gov't Exh. 6002. The remainder agreed that the documents contained in various Government Exhibits qualified as business records under Rule 806(3) and were authentic under Rule 902, while allowing Bergrin to dispute relevancy or other matters.

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Courts have extended this principle to criminal cases. In <u>United States v. Kanu</u>, the Court of Appeals for the District of Columbia Circuit recently agreed that "District courts have broad discretion to manage trials, and this includes holding defendants to their stipulations, even regarding essential elements of proof, in the absence of manifest injustice, inadvertence or a mistake as to the law or facts of the case." 695 F.3d 74 (D.C. Cir. 2012) (quoting <u>United States v. Wingate</u>, 128 F.3d 1157, 1161 (7th Cir. 1997)).

"These principles, applied here, compel the conclusion that defendant should be held to the previously-made stipulations for purposes of the new trial." <u>United States v.</u> <u>Lentz</u>, 419 F. Supp. 2d 843, 845 (E.D. Va. 2006). Most importantly, there is no "evidence that the stipulations were expressly limited to the first trial." <u>Id.</u> at 845-46. To the contrary, by seeking and obtaining a severance, Bergrin knew full well that there would be a subsequent RICO trial, at which these same exhibits would be introduced. Further, the stipulations are evidential, and not merely conclusory.

Additionally, enforcing the stipulations Bergrin voluntarily executed would not work any injustice, let alone a "manifest injustice." Bergrin is an experienced litigator, not a lay person. Importantly, moreover, while Bergrin stipulated that various documents were authentic business records, he reserved the right to contest their admissibility on any other available ground, such as under Rule 401 or Rule 403. Further, this Court has expressed its desire to move the trial along. Requiring Bergrin to adhere to his prior stipulations will help ensure that the trial is not prolonged by needlessly having to call document custodians to satisfy the foundational requirements set forth in Rule 803(6).

In sum, the Government respectfully requests that this Court exercise its broad discretion to hold that Bergrin at this trial will be bound by the stipulations he entered into during the 2011 trial. Of course, whatever this Court's ruling, the Government will continue to try to work with Bergrin to secure stipulations for the additional documents that will be introduced at trial, which will obviate the need to call between 20 and 40 document custodians.

Respectfully submitted,

PAUL J. FISHMAN United States Attorney

By: s/ STEVEN G. SANDERS Assistant U.S. Attorney

cc: Lawrence S. Lustberg, Esq. Bruce A. Levy, Esq. Amanda B. Protess, Esq. (all by ECF and e-mail)

UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

**STIPULATION #1** 

GOVERNMENT EXHIBIT 6000

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

If called to testify, Roger Godino, a retired Senior Forensic Chemist at the Drug Enforcement Administration laboratory in New York City, would testify as follows:

1. He examined the substance described in Government Exhibit 2209a, a copy of which is attached hereto and incorporated herein by reference, and concluded, to a reasonable degree of scientific certainty, that the substance described in Government Exhibit 2209a contained cocaine base, also known as crack cocaine, the net weight of which was 26 grams.

2. He examined the substance described in Government Exhibit 2209b, a copy of which is attached hereto and incorporated herein by reference, and concluded, to a reasonable degree of scientific certainty, that the substance described in Government Exhibit 2209b contained cocaine base, also known as crack cocaine, the net weight of which was 46.7 grams.

J. FISHMAN

United States Attorney

PAUL BERGRIN

Defendant, pro se

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UNITED STATES OF AMERICA

v.

Crim. No. 09-369 (WJM)

**STIPULATION # 2** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

If called to testify, Brian O'Rourke, a qualified Forensic Chemist at the Drug Enforcement Administration laboratory in New York City, would testify as follows:

1. He examined Government Exhibit 2202 and concluded, to a reasonable degree of scientific certainty, that the item examined contained cocaine base, also known as crack cocaine, the net weight of which was 26.7 grams.

2. He examined Government Exhibit 2203 and concluded, to a reasonable degree of scientific certainty, that the item examined contained cocaine base, also known as crack cocaine, the net weight of which was 45.4 grams.



3. He examined Government Exhibit 2204 and concluded, to a

reasonable degree of scientific certainty, that the item examined contained cocaine base, also known as crack cocaine, the net weight of which was 21.2 grams.

He examined Government Exhibit 2205 and concluded, to a 4. reasonable degree of scientific certainty, the item examined contained cocaine base, also known as crack cocaine, the net weight of which was 24 grams.

PA J. FISHMAN

United States Attorney

PAUL BERGRIN Defendant, pro se

UNITED STATES OF AMERICA

v.

Crim. No. 09-369 (WJM)

**STIPULATION #3** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

1. The wiretap monitors, if called to testify, would testify that the wiretap recordings (Government Exhibits 4202-4212) accurately reflect the conversations heard on the dates and times indicated.

2. If called to testify, an individual who verified the information contained in the headings of the transcripts (Government Exhibits 4202a through 4212a), including the date and approximate time of the call, the telephone numbers, and the subscriber name and address, would testify that that information is accurate.

3. If called to testify, individuals who are able to identify the voices of the speakers identified in the transcripts (Government Exhibits 4202a through 4212a) would testify that the speakers are correctly identified in those transcripts.



4. If called to testify, an individual who compared the conversations on the wiretap recordings (Government Exhibits 4202 through 4212) with the transcripts (Government Exhibits 4202a through 4212a) would testify that the transcripts accurately reflect the conversations on the audiotapes.

PAUL J. FISHMAN

United States Attorney

PAUL BERGRIN

Defendant, pro se

UNITED STATES OF AMERICA

v.

Crim. No. 09-369 (WJM)

**STIPULATION #4** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 500 through 533 are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

By: Steven G. Sanders Assistant U.S. Attorney PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

**STIPULATION #5** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 2269 through 2274a are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

v.

Crim. No. 09-369 (WJM)

**STIPULATION #6** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibit 2275 is a true and accurate copy of business records that are authentic within the meaning of Federal Rule of Evidence 902(11) and are a record of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

**STIPULATION #7** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 1000 through 1000c, 1001, 1002, 1002*l*, and 1050 through 1068 are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

By: Steven G. Sanders Assistant U.S. Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

**STIPULATION #8** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 1009 through 1010b, and 1012 through 1012a are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

By: Steven G. Sanders Assistant U.S. Attorney

RAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

**STIPULATION #9** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibit 1333 is a true and accurate copy of business records that are authentic within the meaning of Federal Rule of Evidence 902(11) and are a record of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence

803(6).

PAUL J. FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

STIPULATION # 10

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 1320 through 1322 are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements

of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

By: Steven G. Sanders Assistant U.S. Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

STIPULATION # 11

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 2512 through 2513 are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

STIPULATION # 12

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 2303, 2305, and 2511 are true and accurate copies of

business records, and therefore are authentic within the meaning of Federal Rule of

Evidence 902(11) and are records of regularly conducted activity, thus satisfying the

requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

v.

Crim. No. 09-369 (WJM)

**STIPULATION # 13** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibit 2302 is a true and accurate copy of business records that are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

**STIPULATION # 14** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 2304, and 2500 through 2508 are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

v.

Crim. No. 09-369 (WJM)

**STIPULATION # 15** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibit 2516 is a true and accurate copy of business records that are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence

803(6).

PAUL J. FISHMAN

United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

v.

Crim. No. 09-369 (WJM)

**STIPULATION # 16** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 2276a through 2276t are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se





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# UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

**STIPULATION # 17** 

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 900 and 920 through 921 are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN United States Attorney

By: Steven G. Sanders Assistant U.S. Attorney

PAUL BERGRIN

Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

STIPULATION # 18

PAUL BERGRIN

**IT IS HEREBY STIPULATED AND AGREED** by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 5700 through 5705 are true and accurate copies of business records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(11) and are records of regularly conducted activity, thus satisfying the requirements of Federal Rule of Evidence 803(6).

PAUL J. FISHMAN

PAUL J. FISHMAN United States Attorney

UE BERGRIN

Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

STIPULATION # 19

PAUL BERGRIN

IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Government Exhibits 5156 through 5158 and 5161 through 5163 are true and accurate copies of public records, and therefore are authentic within the meaning of Federal Rule of Evidence 902(4) and are official public records, thus satisfying the requirements of Federal Rule of Evidence 803(8).

PAUL J. FISHMAN BERGRIN

United States Attorney

By: Steven G. Sanders Assistant U.S. Attorney Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

V.

STIPULATION # 20

PAUL BERGRIN

IT IS HEREBY STIPULATED AND AGREED by and between the United

States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant

United States Attorney), and defendant Paul Bergrin, that:

Jury selection in the trial of William Baskerville commenced on February 13,

2007, and opening statements were delivered on April 4, 2007.

PAUL J. FISHMAN

United States Attorney

D

PAUL BERGRIN Defendant, pro se

By: Steven G. Sanders Assistant U.S. Attorney

> GOVERNMENT **EXHIBIT** 6019

UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

STIPULATION # 23 A 23

PAUL BERGRIN

IT IS HEREBY STIPULATED AND AGREED by and between the United

States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant

United States Attorney), and defendant Paul Bergrin, that:

Paul Bergrin has not represented Hakeem Curry in a criminal case since December 12, 2002.

PAUL J. FISHMAN

United States Attorney

PAUL BERGRIN Defendant, pro se



UNITED STATES OF AMERICA

Crim. No. 09-369 (WJM)

v.

STIPULATION # 24

PAUL BERGRIN

IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, Paul J. Fishman, United States Attorney (Steven G. Sanders, Assistant United States Attorney), and defendant Paul Bergrin, that:

Defense Exhibit 17 contains a complete listing of the items that Detective Rashid Sabur received from the Regional Medical Examiner's Office.

FISHMAN United States Attorney

PAUL BERGRIN Defendant, pro se



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