UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
vs.	:	15 Cr. 252 (S-1)(PKC)
JEFFREY WEBB, et al.	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT JOSÉ MARIA MARIN'S MOTION TO DISMISS COUNT ONE OF THE SUPERSEDING INDICTMENT

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Defendant José Maria Marin ("Marin") submits this Memorandum of Law in support of his motion, pursuant to Federal Rule of Criminal Procedure 12(b), to dismiss Count One of the Superseding Indictment (the "Indictment").[1] For the reasons discussed below, Count One, which charges a conspiracy to violate the Racketeer Influenced and Corrupt Organization ("RICO") Act, must be dismissed because: (1) the Indictment does not provide allegations sufficient to support the existence of an essential element of any RICO charge -- the enterprise; and (2) in the absence of such allegations, Count One -- as to Marin -- is duplicitous in that it is nothing more than an impermissible accumulation of the separate conspiracies that he is already charged with elsewhere in the Indictment.

Count One's allegations, while purporting to establish a structure where various global soccer confederations supposedly interacted with each other in a way that supports a criminal RICO enterprise, in reality do nothing more than describe a series of independent confederations, each acting on its own with essentially no coordination among one another. That, most respectfully, is simply not sufficient to support the alleged enterprise.

RELEVANT FACTUAL ALLEGATIONS

The Government filed the Indictment on November 25, 2015. Count One charges Mr. Marin and twenty-six co-defendants with conspiracy to violate RICO (18 U.S.C. § 1962(c)), which prohibits the participation in the affairs of an enterprise through a pattern of racketeering activity.

A. The Alleged Structure Of The Purported Enterprise And Lack Of Interaction Between The Global Confederations

The Indictment alleges that the Fédération Internationale de Football Association ("FIFA") and its six constituent continental confederations (the "Confederations"), including

[1] The Indictment is attached as Exhibit A to the accompanying Affirmation of Charles A. Stillman, Esq. dated November 21, 2016.

among others the Confederation of North, Central American and Caribbean Association Football ("CONCACAF") and the Confederación Sudamericana de Fútbol ("CONMEBOL"),[2] together with affiliated regional federations, national member associations, and sports marketing companies . . . "collectively constituted [a RICO] enterprise," specifically an "associat[ion]-in-fact" enterprise. (Ind. ¶ 1.) The Indictment alleges that these organizations had a common purpose to regulate and promote the sport of soccer worldwide and that they did so by creating and enforcing uniform standards and rules, organizing international competitions, and commercializing the media and marketing rights associated with the sport. (Ind. ¶ 2.) The Indictment also makes the broad general allegation that these entities functioned as a "continuing unit." (Ind. ¶ 1.) As we discuss below, that generalization does not square with the facts actually alleged, in particular as to the supposed interrelationships of the soccer Confederations that are crucial to the government's effort to define an "enterprise" under RICO.

FIFA is cast at the center of the supposed enterprise, with the six global Confederations apparently alleged to be offshoots or arms of FIFA. Each global Confederation, in turn, is alleged to be comprised of constituent national associations and regional federations. (Ind. ¶ 23.) The regional federations allegedly organized tournaments within their individual geographic areas (Ind. ¶¶ 24-27), with the assistance of their respective umbrella Confederation.

The Indictment alleges that FIFA and the individual Confederations raised revenues for their respective organizations by commercializing the media and marketing rights of their respective tournaments. (Ind. ¶ 29.) For example, FIFA sold media and marketing rights associated with the World Cup. (Ind. ¶ 12.) CONMEBOL commercialized the rights to the

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[2] The other four Confederations -- UEFA, CAF, AFC and OFC -- consist of member associations representing, respectively, soccer in Switzerland, Africa, Asia/Guam, and New Zealand and the Pacific Island nations. (Ind. ¶¶ 18-21.)

Copa América and Copa Libertadores tournaments (Ind. ¶¶ 144 & 167), and CONCACAF did the same for the Gold Cup. (Ind. ¶ 161-62.) Significantly, FIFA and the respective Confederations each owned the marketing rights to their own tournaments, with the exclusive right to commercialize those rights. (Ind. ¶ 354.) Member associations and Confederations contributed various representatives, "observers," and delegates to FIFA's governing congress, executive committee, and standing committees. (Ind. ¶¶ 7-8.)

Consistent with these circumstances, the Indictment makes no allegation that the six global Confederations assisted each other in any way with their commercialization of media and marketing rights for their various, respective tournaments. That commercialization included the engagement of sports marketing companies for those tournaments. Indeed, what the Indictment alleges is essentially each Confederation acting on its own, and through its own personnel with respect to each tournament (and the alleged wrongful conduct/scheme attendant to that tournament). For example, with respect to the Copa Libertadores (a CONMEBOL tournament), the Indictment alleges that defendants Napout, Burga, Chávez, Chiriboga, Esquivel, Del Nero, Marin, Meiszner, and Teixeira received bribes and kickback payments in exchange for their support of T&T Sports Marketing Ltd. (Ind. ¶¶ 180-83.) All of these individuals belonged to various member associations within CONMEBOL alone. (Ind. ¶ 41-53.) A review of each of the other Confederation-specific conspiracies alleged in the Indictment is consistent with this conclusion -- only the specific members of each Confederation are identified as participating in that Confederation's respective conspiracy. (Ind. ¶¶ 142-361.)

The Indictment describes how each Confederation managed the process of marketing the media rights for their regional federations and national associations within that specific Confederation. For instance, the UNCAF -- a regional federation within CONCACAF --

allegedly participated in a scheme where "UNCAF members sought to sell the media rights they owned to home team matches played to qualify for the World Cup." (Ind. ¶ 231.) The Indictment alleges that the national associations within UNCAF sold their individual rights to the World Cup competition through a process of bribes and kickback schemes. (*Id.*) Missing entirely from the Indictment's allegations are those that would support the notion that there were any inter-Confederation relationships or coordination that supported the supposed RICO enterprise.

The Indictment relies on the sale of marketing and media rights associated with various tournaments as the pattern of racketeering behavior. (Ind. ¶ 28.) But again, those marketing and media rights were owned and distributed by each Confederation alone, (Ind. ¶ 354) and it was the individuals associated with each particular Confederation that supposedly received bribes from sports marketing companies to secure the rights for those regional tournaments. (Ind. ¶¶ 149 & 151.) Each particular scheme set out in the Indictment alleges bribes paid only to those officials within the specific Confederation that owned the media and marketing rights. Finally, there is no allegation that FIFA's relationship with the Confederations extended to the commercializing of tournament marketing and media rights.

In short, the Indictment describes a structure where the Confederations functioned as separate entities from each other, with each in control of their own individual tournaments. Despite the allegation in Paragraph 15 of the Indictment stating that the Confederations worked closely with FIFA and one another to organize soccer competitions, the factual allegations are the opposite -- the Confederations are consistently described as independent arms of FIFA, with no relevant connection to one another.

Further illustrative of this point are the allegations that FIFA, through the Financial Assistance Program and the Goal Program, provided funds to the Confederations and member associations for the development of youth academics, soccer fields, technical centers, and other infrastructure projects (Ind. ¶ 13.) While FIFA provided financial assistance to its arms, there are no such allegations of financial assistance flowing directly between different Confederations or between regional and national entities of separate Confederations.

B. The Allegations As To Defendant Marin

There are 522 paragraphs in the 236 page Indictment. Substantive allegations concerning José Maria Marin's specific role in the alleged conspiracy appear in only seven of those paragraphs. They include, in pertinent part, the following:

Paragraph 50:

> In or about March 2012 to April 2015, MARIN was the president of CBF, the Brazilian soccer federation . . . MARIN was also a member of multiple FIFA standing committees, including the organizing committees for the Olympic football tournaments, as well as the organizing committees for the World Cup and the Confederations Cup, as to which he was a special adviser.

Paragraph 114:

> Torneos, along with its affiliates and subsidiaries, also was engaged in the commercialization of media and marketing rights to various soccer tournaments and matches within the CONMEBOL region . . . Alejandro Burzaco . . . secured those rights through systematic payment of bribes and kickbacks to high-ranking CONMEBOL officials, including [naming 13 individuals including Marin].

Paragraph 133:

> In connection with the acquisition of the media rights to the Copa América and Centenario tournaments from CONMEBOL and CONCACAF, Datisa [a sports marketing agency] agreed to pay tens of millions of dollars in bribes to the defendants [naming five persons including Marin] and several other soccer officials.

Paragraph 183:

> At various times, [four individual defendants including Marin] also solicited and received bribe and kickback payments from Alejandro Burzaco and Co-

> Conspirator #12 in exchange for their support of T&T as holder of the rights to the Copa Libertadores, among other tournaments.

Paragraph 192:

> Co-Conspirator #7 further advised Hawilla that the bribe payment he had originally negotiated with the defendant [Teixeira] had increased when other CBF officials, the defendants [Marin and Del Nero] requested bribe payments as well. Hawilla agreed to pay half the cost of the bribe payments, which totaled 2 million Brazilian reais per year, to be distributed among TEXIEIRA, MARIN, and DEL NERO.

Paragraph 194:

> In or about April 2014 [Marin] traveled to Miami . . . to attend a press conference . . . had a meeting with Jose Hawilla . . . in which Marin discussed the status of payments due to him.

Paragraph 348:

> Datisa agreed to pay tens of millions of dollars in bribes to CONMEBOL officials . . . including bribe payments . . . to be made to [the top three CONMEBOL officials and as many as seven other CONMEBOL federation presidents]. . . . The officials who had solicited and/or were to receive bribes included [thirteen named individuals including Marin].

It is noteworthy that, consistent with the Indictment's description of the various global soccer Confederations as operating entirely independent of one another, the substantive allegations concerning Jose Maria Marin relate, not surprising, only to his role with respect to CONMEBOL (and its constituent federation, CBF) and the licensing of marketing rights for that specific Confederation's own tournaments.

ARGUMENT

POINT I

COUNT ONE SHOULD BE DISMISSED BECAUSE IT FAILS TO ALLEGE ESSENTIAL ELEMENTS OF A RICO CONSPIRACY

Pursuant to Fed. R. Crim. P. 12(b)(3)(B)(v), a defendant can raise a defect in the indictment for "failure to state an offense" prior to trial "if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits." *United States v. Walsh*, 156 F. Supp. 3d 374, 379 (E.D.N.Y. 2016). Count One of the Indictment -- while charging a RICO conspiracy -- fails to allege adequately the existence of an enterprise, much less an agreement to join that enterprise and conduct the enterprise's affairs through a pattern of racketeering activity.[3] Accordingly, for the reasons we discuss below, Count One should be dismissed.

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[3] We recognize the limitations to which a pre-trial motion to dismiss is subject in challenging the factual sufficiency of the pleadings in an indictment. *See United States v. Alfonso,* 143 F.3d 772, 776 (2d Cir. 1998) ("It is well settled that 'an indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.'" (quoting *Hamling v. United States,* 418 U.S. 87, 117 (1974)). . . . An indictment must "charge[] a crime with sufficient precision to inform the defendant of the charges he must meet and with enough detail that he may plead double jeopardy in a future prosecution based on the same set of events." (quoting *United States v. Stavroulakis,* 952 F.2d 686, 693 (2d Cir. 1992))).

Those principles do not save Count One of this Indictment; thus this motion argues that the Indictment's extraordinarily detailed and lengthy allegations -- even when taken as true for purposes of this motion -- are not legally sufficient. Indeed, the Count does not contain the essential elements of a RICO conspiracy, namely "identifying a proper enterprise and the defendant's association with that enterprise [and] that the defendant knowingly joined a conspiracy the objective of which was to operate that enterprise through an identified pattern of racketeering activity." *United States v. Glecier*, 923 F.2d 496, 499–500 (7th Cir. 1991); *see also United States v. Applins*, 637 F.3d 59, 81 (2d Cir. 2011).

A. The Indictment Does Not Allege The Existence Of An "Enterprise" As Defined By RICO

Count One does not adequately allege an "enterprise" because it fails to allege that the purported members of the conspiracy were actually associated with one another. A RICO enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Here, the Indictment obtained by the government relies on an "association-in-fact" theory to support the claimed existence of an "enterprise" (Ind. ¶ 1.), but the theory does not fit the factual allegations made.

An association-in-fact enterprise is a "group of persons associated together for a common purpose of engaging in a course of conduct." *United States v. Turkette,* 452 U.S. 576, 583 (1981). The Supreme Court has held that "[f]rom the terms of RICO, it is apparent that an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle v. United States*, 556 U.S. 938, 946 (2009). The requirement that there be a relationship among those supposedly associated with the enterprise provides important protection against an ancillary defendant being otherwise lumped in as part of a racketeering conspiracy and subject to the resulting enhanced penalties of being found to have participated in such conduct. *United States v. Viola*, 35 F.3d 37, 44 (2d Cir. 1994).

Here, the Indictment alleges the FIFA and its "six constituent continental confederations . . . , together with affiliated regional federations, national member associations, and sports marketing companies, collectively constituted" the supposed "associat[ion] in fact" enterprise. (Ind. ¶ 1.) The Indictment further alleges that the Confederations had relationships with FIFA, and that the Confederations worked with their own constituent member associations and regional

federations to market media rights to tournaments. However, despite its 522 paragraphs, the Indictment never alleges a connection between the Confederations. This connection, we respectfully submit, is an essential element to the supposed "association in fact" enterprise, and its absence from the allegations is fatal to Count One of the Indictment.

For example, the Indictment describes how each Confederation organized its regional tournaments, acting independently of the other five global Confederations.[4] The Confederations and their members are the alleged owners of the media rights to their individual tournaments and alone held the right to enter into, and play any role in negotiating, those contracts. On the other hand, each Confederation (and the regional federations and national associations within it) is wholly unconnected to the other Confederations and there are no allegations that one Confederation could -- or even tried to -- influence the commercialization and award of media and marketing rights for another Confederation's soccer tournaments.

In short, the Indictment defines a conspiracy consisting of several disparate, discrete, and wholly unconnected Confederations that purportedly form a singular purpose driven enterprise. However, rather than functioning as a cohesive unit, the "enterprise" was a disjointed group

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[4] There is only one instance in the Indictment alleging that two confederations jointly organized a soccer competition related to the Copa América Centenario tournament supposedly organized by CONMEBOL and CONCACAF. (Ind. ¶ 341-361.) But even those allegations illustrate their disconnectedness. First, the marketing rights of the CONMEBOL and CONCACAF were discrete and separate. Each Confederation negotiated on its own behalf. The Indictment alleges that Datisa [a sports marketing company] contracted separately with CONMEBOL and CONCACAF for the commercial rights that each confederation held individually. (Ind. ¶ 354.) ("Datisa acquired the exclusive commercial rights to the Copa América Centenario that CONMEBOL held as part of the 2013 Copa América Contract. In addition, Datisa contracted with CONCACAF, in its capacity as the co-organizer of the tournament, to acquire CONCACAF's rights to that tournament as well."). Second, the Indictment alleges much fanfare and pomp related to the announcement of the joint tournament, suggesting further that the collaboration between the Confederations was unique -- indeed, it came about only upon the one hundred year anniversary of the Copa América tournament.

allegedly connected to FIFA, but not to each other. Indeed, per the Indictment, the only commonality shared by the Confederations was their connection with FIFA. FIFA member associations were allegedly required to join one of the six Confederations, and the member associations paid FIFA subscriptions or annual dues. (Ind. ¶ 4-5.) Thus, while the Confederations and the member associations allegedly had a relationship with FIFA, the Indictment fails entirely to even allege that the Confederations and member associations had continuous and ongoing relationships with each other.[5] In the absence of such adequate allegations of an enterprise, Count One should be dismissed.

B. Count One Fails To Allege Adequately That Marin Agreed To Join Or Establish A RICO Conspiracy

First, because the Indictment has failed to allege adequately the existence of the RICO enterprise, it follows logically that Count One also cannot allege adequately that Marin agreed to join a separate RICO conspiracy based on that supposed enterprise. The Indictment makes plain that, with respect to the supposed goals of the conspiracy, each global soccer Confederation operated with essentially no connection to any other one. The limited allegations made as to Mr. Marin are no different. The actual substantive allegations of conduct by Marin concern exclusively a role with one Confederation, CONMEBOL, its constituent members, and the operation of that Confederation's own business.[6]

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[5] While the government may assert it will provide such evidentiary details at trial that would seem entirely inconsistent with the otherwise extraordinary detail found in its 236 page Indictment. It is also noteworthy that the United States Attorney's Manual on Criminal RICO urges federal prosecutors to include in the Indictment all allegations supporting the contention of an association-in-fact enterprise, including that "the enterprise had an ongoing organization and that its members functioned as a continuing unit." United States Attorney Manual, *Criminal Rico: 18 U.S.C. §§ 1961-1968, A Manual for Federal Prosecutors* 303 (6th ed. 2016).

[6] While alleged to be on several "standing committees" of FIFA, the Indictment does not tie Mr. Marin's role with FIFA to any of the criminal schemes alleged in the Indictment;

"[A RICO conspiracy count of] an indictment need only charge -- after identifying a proper enterprise and the defendant's association with that enterprise -- that the defendant knowingly joined a conspiracy the objective of which was to operate that enterprise through an identified pattern of racketeering activity." *Glecier*, 923 F.2d at 499–500; *see also Applins*, 637 F.3d at 81. Here where no "proper enterprise" has even been identified by the Indictment's allegations, a defendant cannot be sufficiently alleged to have joined a conspiracy based on that supposed enterprise.

Second, even if the Indictment could be viewed as adequately alleging a "proper enterprise," the allegations as to both how that enterprise operated and Marin's own conduct simply cannot square with the notion that he could have joined with any awareness as to the objects or purposes of the other global Confederations and their alleged wrongful conduct. To agree to participate in a RICO conspiracy, the "alleged conspirator [must know] . . . what the other conspirators 'were up to' or whether the situation would logically lead an alleged conspirator' to suspect he was part of a larger enterprise.'" *United States v. Zichettello*, 208 F.3d 72, 99 (2d Cir. 2000) (citation omitted). Here the allegations fall far short of establishing that Marin could have joined the conspiracy with any such awareness of the "larger enterprise" alleged by the Indictment.

For these reasons as well, Count One must be dismissed.

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specifically he is notably absent from the FIFA-centered conspiracies related to the election of FIFA officers and the World Cup Vote.

POINT II

COUNT ONE CHARGES MULTIPLE CONSPIRACIES AS ONE AND THEREFORE SHOULD BE DISMISSED AS DUPLICITOUS

"An indictment is impermissibly duplicitous where: (1) it combines two or more distinct crimes into one count in contravention of Fed. R. Crim. P. 8(a)'s requirement that there be a separate count for each offense, *and* (2) the defendant is prejudiced thereby." *United States v. Felder*, No. S2 14 CR. 546 (CM), 2016 WL 1659145, at *2 (S.D.N.Y. Apr. 22, 2016) (internal citations omitted). "An indictment which charges multiple conspiracies in a single count creates the risk that one defendant, against whom the government's proof is quite weak, will suffer from an evidentiary 'spill-over effect' or transference of guilt from another defendant." *United States v. Boffa*, 513 F. Supp. 444, 472 (D. Del. 1980) ("[I]f a defendant is convicted on a count charging him with separate conspiracies, it will be impossible to determine, for double jeopardy and sentencing purposes and for the purpose of appellate review, whether the jury found the defendant guilty of one conspiracy or both").

Duplicity is particularly implicated in indictments charging conspiracy, "the proceedings [of which] are exceptional to our tradition and call for use of every safeguard to individualize each defendant in his relation to the mass." *Kotteakos v. United States*, 328 U.S. 750, 773 (1946). Indeed, according to the Supreme Court, "[g]uilt with us remains individual and personal, even as respects conspiracies." *Id.* at 772.

A. Count One Is Duplicitous

For all of the reasons discussed in Point I above, we respectfully submit that Count One has failed utterly to allege the existence of a proper enterprise. The result is that Count One is really nothing more than an effort to take all of the various distinct conspiracies alleged to have taken place among the independent-acting soccer Confederations (and their smaller constituents),

cram them into a single count, and call it a RICO conspiracy. The law requires more. In the context of a RICO conspiracy, charging multiple conspiracies in a single RICO conspiracy is duplicitous when the conspiracies are not connected by the fact that the participants agreed to commit a substantive RICO offense, *i.e.*, to conduct the affairs of an enterprise through a pattern of racketeering. *United States v. Infelise*, No. 90 CR 87, 1991 WL 159126, at *2 (N.D. Ill. July 25, 1991). Where, as here, no enterprise is adequately pleaded, this standard cannot be met.

The consequence for Mr. Marin is that the three wire fraud conspiracies that make up Counts Nine, Eleven, and Eighty-Three and the three money laundering conspiracies charged in Counts Ten, Twelve, and Eighty-Four -- all distinct criminal charges -- are lumped together in Count One, making that charge duplicitous. The appropriate remedy for a duplicitous count is either dismissal of that count or requiring the government to elect between the multiple charges contained in that one count. *United States v. Starks*, 515 F.2d 112, 117 (3d Cir. 1975). While "[d]uplicity does not necessarily require dismissal," *United States v. Sturdivant*, 244 F.3d 71, 79 (2d Cir. 2001), here dismissal of Count One is the only appropriate remedy as the multiple conspiracies lumped into that Count are already separately charged elsewhere in the Indictment.[7]

B. Mr. Marin Is Prejudiced By Count One's Duplicity

"Duplicitous counts pose three types of potential prejudice: (1) the potential lack of notice of the crime charged and its maximum penalty; (2) the possibility that a second trial on the same offense would not be barred by the Double Jeopardy Clause; and (3) the potential

[7] Another consequence, of course, is that the Indictment -- as to Mr. Marin -- is multiplicitous as it charges the very same six conspiracies twice; once as part of Count One and then again as part of a distinct conspiracy charge, in contravention of Fed. R. Crim. P. 12(b)(3)(B)(ii). *Boffa*, 513 F. Supp. at 476 ("Offenses are multiplicitous . . . when the evidence required to sustain a conviction on one offense will be sufficient to warrant a conviction on the other.")

uncertainty with respect to the jury's verdict and the attendant sentencing implications of the verdict." *Felder*, 2016 WL 1659145, at *2 (S.D.N.Y. Apr. 22, 2016).

All of these concerns are implicated should Mr. Marin be forced to defend himself at a trial where Count One remains part of the case. The potential uncertainty as to the meaning of a guilty verdict and the sentencing implications to Mr. Marin are particularly concerning. Among the 92 Counts of the Indictment, there are alone **38 separate conspiracies charged**, not including the RICO conspiracy in Count One. All but six of those involve alleged conduct by persons other than Mr. Marin, and most of which relate to soccer Confederations other than CONMEBOL. Any trial of Count One would be nothing short of overwhelming; it would involve weeks, if not months, of testimony concerning actions taken by other defendants affiliated with other Confederations, and in which Mr. Marin -- by the Indictment's own admission -- had absolutely no role. As such, there is a significant likelihood that a jury will conflate evidence of others' conduct with that of Mr. Marin and potentially convict him as a result. Upon such a conviction, Mr. Marin would be further prejudiced by the likelihood that the loss amount of the entire unconnected enterprise would be attributed to him under the Sentencing Guidelines. U.S.S.G. § 2B1.1(b)(1).

This is illustrated vividly by the allegation that Mr. Marin's tenure as President of the CBF, the Brazilian national association within the CONMEBOL association, is alleged to have lasted only three years, while Count One alleges conduct supposedly ongoing from 1991 until the present day -- a span of twenty-five years. (Ind. ¶ 363.) Asking a jury to parse that inevitable sea of evidence and make a fair, reasoned assessment of whether it actually relates to Mr. Marin would, we submit, be virtually impossible and fundamentally unfair.

CONCLUSION

For all of the reasons discussed above, it is respectfully submitted that this Court should enter an order: (1) dismissing Count One of the Indictment; and (2) providing such other and further relief as the Court deems appropriate.[8]

Dated: November 21, 2016

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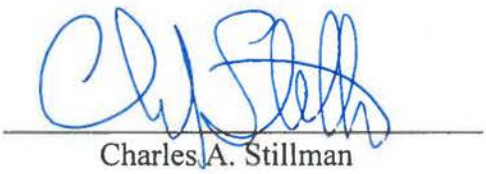
[8] Defendant Marin joins in the motions of his co-defendants to the extent they are applicable to him

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2016, I caused the foregoing Notice of Motion and the accompanying Affirmation and Memorandum of Law to be electronically filed with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all parties.

Dated: November 21, 2016



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